

Право. Людина. Довкілля

Journal homepage: <https://environmentalscience.com.ua/en>

Том 16, № 4



ISSN 2663-1350

E-ISSN 2663-1369

Засновник:

Національний університет біоресурсів і природокористування України

Рік заснування: 2010

*Рекомендовано до друку та поширення
через мережу Інтернет Вченою радою*

*Національного університету біоресурсів і природокористування України
(протокол № 5 від 27 листопада 2025 р.)*

Державна реєстрація:

Ідентифікатор медіа R30-02295.

Рішення Національної Ради України
з питань телебачення і радіомовлення
№ 1795, протокол № 31 від 21.12.2023 р.

Журнал входить до переліку наукових фахових видань України

Категорія «Б». Галузь наук – юридичні, спеціальності – 081

«Право», 293 «Міжнародне право»

(наказ Міністерства освіти і науки України від 17 березня 2020 р. № 409)

Журнал представлено у міжнародних наукометричних базах даних, репозитаріях та пошукових системах: Google Scholar,

Національна бібліотека України імені В. І. Вернадського, BASE, Dimensions,
Ulrichsweb Global Serials Directory, Litmaps, Open Ukrainian Citation Index, Scopus, ERIH PLUS

Адреса редакції:

Національний університет біоресурсів і природокористування України

03041, вул. Героїв Оборони, 15, м. Київ, Україна

E-mail: lhe@environmentalscience.com.ua

<https://environmentalscience.com.ua/uk>

Law. Human. Environment

Journal homepage: <https://environmentalscience.com.ua/en>

Volume 16, No. 4



ISSN 2663-1350

E-ISSN 2663-1369

Founder:

National University of Life and Environmental Sciences of Ukraine

Year of foundation: 2010

*Recommended for printing and distribution
via the Internet by the Academic Council
of National University of Life and Environmental Sciences of Ukraine
(Minutes No. 5 of November 27, 2025)*

State Registration:

Media identifier R30-02295.

Decision of the National Council
of Television and Radio Broadcasting of Ukraine
No. 1795, Minutes No. 31, dated 21.12.2023.

The journal is included in the list of Scientific Professional Publications of Ukraine
Category "B". Branch of sciences – legal, specialties – 081 "Law", 293 "International Law"
(order of the Ministry of Education and Science of Ukraine of March 17, 2020, No. 409)

**The journal is presented international scientometric databases, repositories
and scientific systems:** Google Scholar, Vernadsky National Library of Ukraine,
BASE, Dimensions, Ulrichsweb Global Serials Directory, Litmaps,
Open Ukrainian Citation Index, Scopus, ERIH PLUS

Editors office address:

National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine
E-mail: lhe@environmentalscience.com.ua
<https://environmentalscience.com.ua/en>

Law. Human. Environment

Journal homepage: <https://environmentalscience.com.ua/en>

Volume 16, No. 4



Редакційна колегія

Головний редактор:

Ольга Балинська

Доктор юридичних наук, професор, академік Національної академії наук вищої освіти України, дійсний член Міжнародної академії інформатики, м. Львів, Україна

Заступник головного редактора:

Олена Яра

Доктор юридичних наук, професор, Національний університет біоресурсів і природокористування України, м. Київ, Україна

Відповідальний секретар:

Марина Дейнега

Доктор юридичних наук, доцент, Національний університет біоресурсів і природокористування України, м. Київ, Україна

Національні члени редколегії:

Віктор Ладиченко

Доктор юридичних наук, професор, Національний університет біоресурсів і природокористування України, м. Київ, Україна

Ганна Анісімова

Доктор юридичних наук, доцент, Національний юридичний університет імені Ярослава Мудрого, м. Харків, Україна

Євген Гетьман

Доктор юридичних наук, професор, член-кореспондент НАПрН України, Національна академія правових наук України, м. Харків, Україна

Людмила Головка

Кандидат юридичних наук, доцент, Національний університет біоресурсів і природокористування України, м. Київ, Україна

Інна Курило

Доктор юридичних наук, професор, Національний університет біоресурсів і природокористування України, м. Київ, Україна

Олена Улютіна

Кандидат юридичних наук, доцент, Національний університет біоресурсів і природокористування України, м. Київ, Україна

Світлана Ясечко

Кандидат юридичних наук, доцент, Харківський національний університет внутрішніх справ, м. Харків, Україна

Міжнародні члени редакційної колегії:

Габор Кечеш

Кандидат юридичних наук, доцент, Університет Іштвана Сечені, м. Дьйор, Угорщина

Лібор Клімек

Кандидат юридичних наук, доцент, Університет імені Матея Бела, м. Банська Бистриця, Словаччина

Стефано Монталдо

Кандидат юридичних наук, Туринський університет, м. Турин, Італія

Растіслав Фунта

Кандидат юридичних наук, Університет Данубіус, м. Сладковічово, Словаччина

Law. Human. Environment

Journal homepage: <https://environmentalscience.com.ua/en>

Volume 16, No. 4



Редакційна колегія

Бистрік Шрамел	Кандидат юридичних наук, доцент, Університет святих Кирила та Мефодія у Трнаві, м. Трнава, Словаччина
Сандрін Мальжан-Дюбуа	Доктор права за спеціальністю міжнародне екологічне право, директор з досліджень в Національному центрі наукових досліджень, м. Париж, Франція
Ерік Хайнце	Магістр наук, доктор права, доктор філософії в галузі права та гуманітарних наук, професор, Лондонський університет королеви Марії, м. Лондон, Сполучене Королівство
Ієн Тернер	Кандидат юридичних наук та політичної теорії, викладач з прав людини та безпеки, Університет Центрального Ланкаширу, м. Престон, Сполучене Королівство
Єрмек Бурібаєв	Доктор юридичних наук, професор, Жетісуський Університет ім. І. Жансугурова, м. Талдикорган, Республіка Казахстан

Law. Human. Environment

Journal homepage: <https://environmentalscience.com.ua/en>

Volume 16, No. 4



Editorial Board

Editor-in-Chief:

Olha Balynska

Doctor of Law, Professor, Academician of the National Academy of Sciences of Higher Education of Ukraine, Full Member of the International Academy of Informatics, Lviv, Ukraine

Deputy Editor-in-Chief:

Olena Yara

Doctor of Law, Professor, National University of Life and Environmental Sciences of Ukraine, Kyiv, Ukraine

Executive Secretary:

Maryna Deineha

Doctor of Law, Associate Professor, National University of Life and Environmental Sciences of Ukraine, Kyiv, Ukraine

National Members of the Editorial Board:

Viktor Ladychenko

Doctor of Law, Professor, National University of Life and Environmental Sciences of Ukraine, Kyiv, Ukraine

Hanna Anisimova

Doctor of Law, Associate Professor, Yaroslav Mudryi National Law University, Kharkiv, Ukraine

Yevhen Hetman

Doctor of Law, Professor, Corresponding Member of the National Academy of Legal Sciences of Ukraine; National Academy of Legal Sciences of Ukraine, Kharkiv, Ukraine

Liudmyla Golovko

PhD in Law, Associate Professor, National University of Life and Environmental Sciences of Ukraine, Kyiv, Ukraine

Inna Kurylo

Doctor of Law, Professor, National University of Life and Environmental Sciences of Ukraine, Kyiv, Ukraine

Olena Uliutina

PhD in Law, Associate Professor, National University of Life and Environmental Sciences of Ukraine, Kyiv, Ukraine

Svitlana Iasechko

PhD in Law, Associate Professor, Kharkiv National University of Internal Affairs, Kharkiv, Ukraine

International Members of the Editorial Board:

Gábor Kecskés

PhD in Law, Associate Professor, Széchenyi István University, Győr, Hungary

Libor Klimek

PhD in Law, Associate Professor, Matej Bel University, Banská Bystrica, Slovakia

Stefano Montaldo

PhD in Law, University of Turin, Turin, Italy

Rastislav Funta

PhD in Law, Danubius University, Sladkovichevo, Slovakia

Law. Human. Environment

Journal homepage: <https://environmentalscience.com.ua/en>

Volume 16, No. 4



Editorial Board

- | | |
|--------------------------------|--|
| Bystrík Šramel | PhD in Law, Associate Professor, University of St. Cyril and Methodius in Trnava, Trnava, Slovakia |
| Sandrine Maljean-Dubois | Doctor of Law in the Specialty International Environmental Law, Director of Research at the National Centre for Scientific Research, Paris, France |
| Eric Heinze | Master of Science, Juris Doctor, PhD in the Specialty of Law and Humanities, Professor, Queen Mary University of London, London, United Kingdom |
| Ian Turner | PhD in Law and Political Theory, Reader in Human Rights and Security, University of Central Lancashire, Preston, United Kingdom |
| Yermek Buribayev | Doctor of Law, Professor, Zhetysu University named after Ilyas Zhansugurov, Taldykorgan, Republic of Kazakhstan |

ЗМІСТ

Е. О. Аду, Б. Дамоа, Ш. Хільдебранд

Оцінка Закону Нью-Йорка про лідерство у сфері клімату та захист громади з точки зору справедливого та ефективного управління кліматом..... 9

М. Лоза, Л. Панькова

Економічні санкції як виклик правовій теорії: аксіологічний аналіз впливу на права людини та державний суверенітет 25

Е. Алімусаєв

Аналіз правових проблем у сфері регулювання клімату в Азербайджані та пропозиція щодо прийняття закону про клімат 42

Н. Коробцова, О. Печений, А. Ісаєв, В. Янишен

Медико-правові та економічні (фінансові) аспекти спадкового права 59

В. Лавренчук

Адміністративно-процесуальний статус суб'єктів провадження у справах про порушення рибоохоронного законодавства 95

М. М. Е.-С. Джабара, А. Х. А. Е.-М. Лейла, А. Таштанова, А. А. А. Мусса

Права дітей в ісламському шариаті та міжнародних документах: аналітичний підхід до етичних та законодавчих цінностей..... 115

Л. Зінич, І. Петровська, О. Бурлак, Н. Полішко, В. Мазур

Проблеми захисту прав інтелектуальної власності в цифровому середовищі 135

В. Лепеха, С. Слюсаренко

Шляхи вдосконалення нормативно-правових основ діяльності наукових установ агропромислового комплексу в галузі забезпечення сталого розвитку та охорони довкілля 158

А. Ліценжі, А. Фортuzzi

Відповідальність роботодавця за шкоду, заподіяну працівником: Дослідження про сурогатну відповідальність 177

А. Жееналієв, Р. Нургазієв, Б. Рисмендєєв

Правове регулювання забезпечення екологічної безпеки в країнах Центральної Азії..... 197

М. Шакірі

Правові аспекти управління людськими ресурсами в малих і середніх підприємствах..... 221

CONTENTS

E.O. Adu, B. Damoah, S. Hildebrand

Evaluating New York's Climate Leadership and Community Protection Act for equitable and effective climate governance..... 9

M. Loza, L. Pankova

Economic sanctions as a challenge to legal theory:

Axiological analysis of the impact on human rights and state sovereignty 25

E. Alimusayev

Analysis of legal challenges in climate regulation of Azerbaijan

and proposal for climate law 42

N. Korobtsova, O. Pecheniy, A. Isaiev, V. Yanyshen

Medico-legal and economic (financial) aspects of inheritance law 59

V. Lavrenchuk

Administrative and procedural status of entities involved

in proceedings concerning violations of fisheries protection legislation..... 95

M.M.E.-S. Dzhabara, A.H.A.E.-M. Leila, A. Tashtanova, A.A.A. Moussa

Children's rights in Islamic Sharia and international instruments:

An analytical approach to ethical and legislative values..... 115

L. Zynych, I. Petrovska, O. Burlak, N. Polishko, V. Mazur

Problems of intellectual property rights protection in the digital environment..... 135

V. Lepekha, S. Slyusarenko

Ways to improve the regulatory and legal framework for the activities

of scientific institutions in the agro-industrial complex

in the field of sustainable development and environmental protection..... 158

A. Licenji, A. Fortuzi

Employer liability for employee-caused harm:

A study of vicarious responsibility..... 177

A. Zheenaliev, R. Nurgaziev, B. Rysmendeev

Legal regulation of ensuring environmental security in Central Asian countries 197

M. Shaqiri

Legal aspects of human resource management in small and medium-sized enterprises..... 221



UDC 551.583:502.172

Doi: 10.31548/law/4.2025.09

Evaluating New York's Climate Leadership and Community Protection Act for equitable and effective climate governance

Emmanuel Olusola Adu

PhD in Education, Professor
Ball State University

47306, 2000 W University Ave., Muncie, Indiana, USA
<https://orcid.org/0000-0003-1345-5517>

Benjamin Damoah*

PhD in Environmental Education and Policy
University of Southern Mississippi
School of Biological, Environmental and Earth Sciences
39406, 118 College Dr., Hattiesburg, Mississippi, USA
<https://orcid.org/0000-0002-9204-3395>

Sean Hildebrand

PhD in Public Administration, Associate Professor
Ball State University
Department of Political Science
47306, 2000 W University Ave., Muncie, Indiana, USA
<https://orcid.org/0000-0002-0381-6158>

Article's History:

Received: 06.07.2025
Revised: 15.10.2025
Accepted: 27.11.2025

Abstract

New York's Climate Leadership and Community Protection Act (CLCPA) sets some of the most ambitious climate targets in the United States, calling for a 40% reduction in greenhouse gas emissions by 2030, an 85% reduction by 2050, and a fully zero-emission power sector by 2040. This study examined whether the CLCPA's design and early implementation can deliver on its

Suggested Citation:

Adu, E.O., Damoah, B., & Hildebrand, S. (2025). Evaluating New York's Climate Leadership and Community Protection Act for equitable and effective climate governance. *Law. Human. Environment*, 16(4), 9-24. doi: 10.31548/law/4.2025.09.



*Corresponding author

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

environmental, social, and economic goals. The study employed a qualitative policy analysis using peer-reviewed articles, state agency reports, and advocacy documents published between 2019 and 2025. The paper coded findings thematically across three dimensions—environmental effectiveness, social equity, and economic viability— and compared the CLCPA with California's Executive Order N-79-20 and the European Union's Green Deal to identify transferable strategies. The CLCPA stands out for its binding equity mandate, which directs 35-40% of climate investments to disadvantaged communities. Despite this, the study found delays in program implementation, grid infrastructure bottlenecks, and limited planning for workforce transitions. California's focus on transportation decarbonization and the EU's financing mechanisms offer proven strategies that can strengthen enforcement, streamline permitting, equitable access to benefits. New York can position the CLCPA as a national model for equitable decarbonization by closing implementation gaps, aligning administrative capacity with statutory targets, and rigorously tracking outcomes. The analysis contributed to climate governance scholarship by showing how states can pair ambitious emissions targets with justice-centered implementation to deliver measurable climate and social gains

Keywords: climate policy; Climate Change; environmental justice; renewable energy; equity

Introduction

New York responded directly to the climate crisis in 2019 when it passed the Climate Leadership and Community Protection Act (CLCPA, Act) (2019) with binding decarbonization targets. The law requires that 70% of the state's electricity come from renewable sources in 2030 and that the power system achieve full decarbonization in 2040 (Dewey, 2020). The Act integrates justice into climate governance through a mandate that 35-40% of investments flow to disadvantaged communities. The CLCPA aligns with the Paris Agreement's (2016) 1.5°C target and reflects broader United Nations climate goals. It demonstrates how state-level action can advance ambitious climate agendas even when federal policy stagnates. At the same time, the law addresses local environmental injustices through the prioritization of communities disproportionately burdened with pollution. Through this dual orientation, the CLCPA provides a critical case study in balancing rapid decarbonization with equity. The Act sits within both national and global contexts and highlights the broader lessons it offers.

As stated, S. Vangala and A. Awah (2020) and A. Fields (2020), this legislation has catalyzed a comprehensive transformation of New York's energy, land use, and economic systems, necessitating large-scale deployment of renewable energy, such as solar and offshore wind, and the development of new regulatory frameworks to streamline project siting and grid integration. At the same time, the CLCPA's approach to identifying and supporting Disadvantaged Communities – by considering factors like race, ethnicity, and socioeconomic status – reflects the influence of the environmental justice movement (Damoah & Boglo, 2025), but also raises complex legal and policy questions (Jones, 2024). As New York pursues its climate ambitions, the CLCPA serves as a critical case study in balancing rapid decarbonization with the imperative of justice, offering valuable lessons for other jurisdictions seeking to align climate action with equity and resilience.

The CLCPA (2019) aims to reduce greenhouse gas emissions from automobiles and factories. The act further wants to ensure that the advantages of

climate efforts are shared. A critical element within the law considers specific disadvantaged communities, which continuously bear a significant burden from air pollution alongside ecological degradation. Additionally, the law establishes the Climate Action Council, a group tasked with developing many strategies to meet New York's climate goals while considering economic and technical feasibility. Assessing the impact of these policies on emissions reduction, economic transformation, and environmental justice remains relevant.

Studies have not provided precise projections on how this will affect electricity prices, grid reliability, and job markets (Hanley, 2022; Meara & Rizzo, 2024). On the contrary, states like Texas, which have no strong climate regulations but show fast growth in wind and solar energy from market dynamics, offer a different approach that CLCPA-led shifts have not fully contrasted. When thorough economic effect evaluations are absent, policymakers could find reconcile aggressive emissions goals with economic viability, unrealistic.

As stated, F. Sultana (2021) and S. Foster *et al.* (2024), the CLCPA's implementation highlights the broader trend of U.S. cities and states increasingly integrating justice into climate planning, with growing recognition of historical and structural inequities in climate vulnerability and adaptation. Policy tools developed in pioneering cities include metrics for vulnerability, community engagement processes, and targeted investments; however, ongoing evaluation and adaptation are necessary to ensure that justice goals are met in practice.

The Act's (2019) justice provisions reflect distributive and procedural justice principles. Distributive justice emphasizes fair distribution of costs and benefits, while procedural justice emphasizes participation in decision-making. Through its equity requirements, the CLCPA attempts to operationalize both J. Hwang (2024). warn, however, that defining disadvantaged communities through race and socioeconomic status

may trigger constitutional challenges under the Equal Protection Clause, even as advocates defend the law as a necessary corrective to historical inequities.

Other U.S. climate policies illustrate alternative approaches. The Regional Greenhouse Gas Initiative employs market-based carbon pricing but does not include explicit equity requirements. Washington State's Climate Commitment Act (Revised Code of Washington, 2025) includes reinvestments in frontline communities but remains untested compared to New York's framework. Internationally, the EU Green Deal (2019), as stated G. Dubois and P. Laurent (2020) and L. Montanarella and P. Panagos (2021), financial mobilization and coordination across member states, while Executive Order of Executive Department of the State of California N-79-20 (2020) demonstrates a sector-specific approach centered on transport decarbonization. These cases highlight the CLCPA's distinctive integration of enforceable justice provisions.

Balancing climate ambition with justice also involves navigating political, economic, and legal complexities (Damoah & Yeboah, 2025). Policymakers are encouraged to design sector-specific roadmaps, use carbon revenues for social investment, and build broad coalitions to ensure both effectiveness and fairness (Vogt-Schilb & Hallegatte, 2017). According to C. Beauregard *et al.* (2021), while litigation can advance certain aspects of climate justice, such as intergenerational equity, distributive justice often requires more comprehensive policy frameworks and international cooperation. The CLCPA (2019) serves as a leading example of how climate ambition and justice can be integrated, but its success depends on continued vigilance, legal robustness, and genuine community participation to avoid perpetuating or creating new injustices.

This study aimed to provide a comprehensive evaluation of the CLCPA by: (1) analyzing

the effectiveness and legal robustness of its justice-oriented criteria for DACs; (2) assessing the technical, operational, successes and regulatory challenges in achieving the state's decarbonization and renewable energy targets; and (3) identifying overlooked sources of emissions and liabilities, such as those from land development. The objective is to synthesize current research, highlight policy and implementation gaps, and offer actionable recommendations to ensure that New York's climate ambition is balanced with justice, reliability, and long-term sustainability.

Materials and Methods

This study employed a qualitative policy analysis framework to evaluate CLCPA (2019) and its implications for climate governance, economic transformation, and environmental justice. The analysis was guided by three evaluative dimensions – environmental effectiveness, social equity, and economic viability – commonly applied in climate policy research (Agyeman *et al.*, 2003; Wheeler, 2008). Table 1 illustrates key evaluative dimensions that emerged from an exhaustive literature review.

Table 1. Three levels of dimension for climate legislation

Evaluative Dimension	Key Indicators	Rational
Environmental effectiveness	<ul style="list-style-type: none"> ❖ GHG reduction targets (40% by 2030; 85% by 2050); ❖ renewable electricity (70% by 2030; 100% by 2040); ❖ local ecological impacts (air/water quality, habitat effects). 	Assesses progress toward carbon neutrality and broader environmental benefits.
Social equity & justice	<ul style="list-style-type: none"> ❖ investment share to disadvantaged communities (35-40%); ❖ public health outcomes (e.g., reduced asthma); ❖ community participation in decision-making. 	Evaluates fairness, inclusivity, and distribution of climate policy benefits.
Economic viability	<ul style="list-style-type: none"> ❖ job creation in renewable sectors (150,000+ projected); ❖ workforce transition from fossil fuel industries - Cost-effectiveness (energy prices, grid stability, health savings). 	Examines balance between economic growth, affordability, and just transition.

Source: the authors' compilation was based on the reviewed literature

Data for the study were collected from a purposive sample of sources published between 2019 and 2025, a period that captures both the enactment of the CLCPA and subsequent implementation challenges. The dataset included policy reports from government agencies (e.g., New York State Energy Research and Development Authority), non-profit advocacy reports (New York Renew, 2023; Earthjustice, 2025), and comparative policy analyses from California and the European Union. The study used comparative policy analysis as its central methodological lens, contrasting the CLCPA (2019) with California's Executive Order N-79-20 (2020) and the European Union's Green Deal (2019). This comparison highlighted both unique and transferable lessons across

contexts. In addition, a thematic coding strategy was applied to categorize findings under three evaluative criteria: (1) environmental outcomes (emission targets, renewable energy adoption, ecological impacts), (2) social justice outcomes (distribution of benefits, community participation, health equity), and (3) economic outcomes (job creation, cost-effectiveness, industrial transition). By triangulating across diverse sources and applying a structured evaluative framework, this methodology ensures a balanced and multi-dimensional assessment of the CLCPA (2019). It also strengthens the validity of findings by situating New York's policy within broader state and international climate governance contexts, allowing for both within-case and cross-case insights.

Results and Discussion

Climate legislation objectives. This section articulates the study's findings across four interrelated themes: social evaluative criteria, economic evaluative criteria, alternative policies to the CLCPA, and a comparative assessment of policy frameworks, emission targets, and renewable energy adoption. Figure 1 summarizes the CLCPA's implementation framework, linking legislative inputs to key processes and resulting environmental, social, and economic outcomes. This visual overview provides a conceptual roadmap that orients the relationships among policy design, implementation pathways, and the multidimensional impacts that are subsequently analyzed in detail.

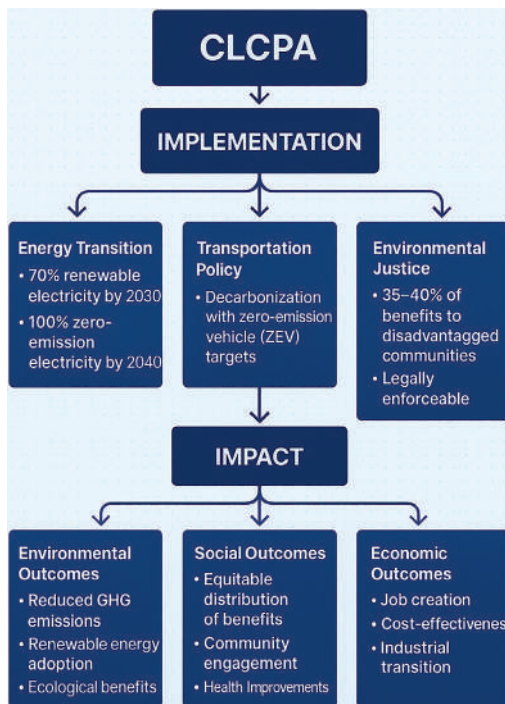


Figure 1. CLCPA implementation pathways and their environmental, social, and economic outcomes

Source: visualization by the authors based on the Climate Leadership and Community Protection Act (2019)

This framework highlights the interconnected nature of the CLCPA's design. Figure 1 shows that successful implementation requires simultaneous progress in multiple sectors – energy, transportation, and equity-focused investments. The outcome categories underscore the law's dual focus: achieving aggressive greenhouse gas reduction targets and ensuring that benefits flow equitably to disadvantaged communities. These pathways collectively shape the environmental, social, and economic dimensions analyzed in the sections that follow.

Social evaluative criteria are essential for understanding whether climate policy delivers on its promise of justice and inclusivity. An environmentally conscious framework such as the CLCPA (2019) must prioritize both equity and ecological justice, the principle that all communities, species, and ecosystems have intrinsic value and deserve protection from environmental harm (Agyeman *et al.*, 2003). This requires that the benefits and burdens of climate action be fairly distributed across current and future generations, with particular attention to historically disadvantaged communities (Diezmartínez & Gianotti, 2022; Foster *et al.*, 2024).

A persistent weakness in climate policy assessment is the neglect of procedural justice, which ensures that affected communities have meaningful opportunities to participate in shaping decisions (Hügel & Davies, 2020). When procedural justice is absent, marginalized groups are often excluded from decisions that directly impact their health, livelihoods, and local environment, leading to policies that lack legitimacy and long-term effectiveness (Resnik, 2022). Measuring equity in the CLCPA (2019), therefore, involves assessing distributional outcomes – such as pollution reduction, access to clean energy, and economic opportunity – while also evaluating whether decision-making processes actively include disadvantaged populations. Key indicators include

improvements in public health outcomes, reduced asthma rates, and documented participation of affected communities in planning processes.

Economic evaluative criteria capture whether the CLCPA (2019) can deliver prosperity alongside decarbonization. Job creation in the renewable energy and energy efficiency sectors remains a crucial benchmark, with projections of over 150,000 new jobs over the next decade, more than half of which are accessible to workers without a four-year college degree (New York Renews, 2023). These jobs represent not only economic growth but also a just transition – a deliberate effort to retrain and reemploy workers displaced from fossil fuel industries (Wang & Shittu, 2023). Nevertheless, significant gaps remain. Research has yet to fully model the long-term economic impacts of the CLCPA, including cost savings from improved public health, grid modernization, and avoided climate damages (Tol, 2018). Wage equity and job stability in the green economy are also underexplored, raising questions about whether new jobs will provide living wages and durable career pathways (Hanna *et al.*, 2024). Furthermore, administrative bottlenecks, particularly within the Public Service Commission (PSC) and the Department of Environmental Conservation (DEC), have delayed implementation, threatening the state's ability to meet its legally binding targets for 2040 and 2050 (Rhodes *et al.*, 2020). These delays risk eroding public trust and undermining the economic benefits of the transition unless addressed through stronger governance and streamlined permitting processes.

As of April 2025, significant delays continue to impede the implementation of CLCPA (2019). The state has not yet fully operationalized its “Cap-and-Invest” program, a central mechanism designed to regulate carbon emissions and reinvest proceeds into renewable energy and climate resilience projects. Advocacy groups, including Earthjustice, have filed lawsuits against the state

for failing to meet critical regulatory deadlines, arguing that the CLCPA's mandate to achieve a 40% reduction in greenhouse gas (GHG) emissions by 2030 is jeopardized by the slow pace of progress (Earthjustice, 2025).

Despite these challenges, the CLCPA remains distinctive for its robust environmental justice mandate, requiring that 35-40% of climate-related investments benefit disadvantaged communities (New York State, 2019). This provision positions the CLCPA as a model for integrating equity considerations into state-level climate policy. However, a notable gap persists in the literature: few comparative studies systematically evaluate the effectiveness of New York's approach relative to other regulatory and economic contexts. While New York prioritizes equity in principle, existing research insufficiently explores how its implementation barriers, such as funding allocation, project execution, and administrative capacity, align with or diverge from those encountered in other states and jurisdictions (Wheeler, 2008; Doering *et al.*, 2023).

California's Executive Order N-79-20 (2020), represents one of the state's most ambitious climate initiatives, committing California to achieving carbon neutrality no later than 2045. The order establishes sector-specific directives aimed at accelerating the transition to a low-carbon economy, including requiring 100% of in-state sales of new passenger vehicles to be zero-emission by 2035, prioritizing investments in renewable energy generation, and incentivizing innovation in green technologies. By integrating equity considerations into its implementation strategy, the order seeks to expand access to clean transportation and energy benefits for disadvantaged communities, reflecting a similar commitment to environmental justice as articulated in New York's CLCPA (Wheeler, 2008; Doering *et al.*, 2023).

Although Executive Order N-79-20 (2020) emerged in the same year as California's broader

COVID-19 response, including stay-at-home directives and economic resilience measures, its climate provisions remain distinct and forward-looking. The order positions California as a global leader in clean energy deployment, sustainable development, and climate governance by aligning economic recovery strategies with decarbonization goals (California Air Resources Board, 2021). Its approach underscores the importance of pairing ambitious climate targets with robust regulatory mechanisms, fiscal planning, and equity-centered implementation, elements critical to avoiding policy backsliding and ensuring a just transition for all residents.

Similarly, the European Union's Green Deal (2019), provides a comprehensive framework for reducing greenhouse gas emissions, accelerating the transition to renewable energy, and fostering economic growth that respects environmental limits. Its central objective is to make Europe the first climate-neutral continent by 2050 (European Commission, 2021). The Green Deal represents an integrated policy package that combines environmental protection, sustainable economic development, and social equity measures. It sets ambitious targets for renewable energy deployment, emissions reduction, and sustainable industrial transformation while simultaneously promoting innovation and the creation of green jobs (Wheeler, 2008; Doering *et al.*, 2023). By embedding principles of a just transition, the Green Deal seeks to ensure that no community or sector is left behind as Europe shifts toward a low-carbon economy. Collectively, these strategies underscore the EU's commitment to long-term sustainability and highlight the critical role of government-led initiatives in mitigating climate change and advancing an ecologically resilient future. Taken together, the CLCPA (2019), California's Executive Order N-79-20 (2020), and the EU Green Deal (2019) illustrate how subnational and supranational

jurisdictions deploy ambitious, multi-sector strategies to decarbonize their economies, advance climate justice, and stimulate innovation – providing complementary models for accelerating the global transition toward a net-zero future

Analysis of policy frameworks, emission targets, and renewable energy adoption. Strong policy frameworks anchor effective climate action because they set clear rules, establish accountability, and decide who benefits from the transition. Yet too many analyses look at these frameworks in isolation, missing the chance to compare how different states and regions tackle the same challenge. CLCPA (2019) is particularly important in this conversation. It not only sets binding targets for emissions reductions but also promises that 35-40% of climate investments will go to disadvantaged communities, an unusually bold commitment to climate justice. Emission targets are where ambition meets reality. The CLCPA commits New York to cutting GHG emissions 40% by 2030 and 85% by 2050, with a zero-emissions power sector by 2040 (Rhodes *et al.*, 2020; Wiley, 2023). These are not soft goals; they are legally enforceable. But having a law on paper does not guarantee results. Enforcement remains patchy, and delays in rolling out key programs like “Cap-and-Invest” raise concerns about whether the state can deliver on time (Wheeler, 2008; Doering *et al.*, 2023).

This tension is not unique to New York. The EU Green Deal (2019) sets a target of net-zero emissions by 2050 and mobilizes billions of euros for decarbonization, yet critics argue that financing still falls short of what's needed for a truly just transition (Dubois & Laurent, 2020; European Commission, 2021). California's Executive Order N-79-20 (2020) focuses on the transportation sector, mandating that all new passenger vehicles sold be zero-emission by 2035 and charging agencies with building out the infrastructure to make that possible (California Executive Order N-79-20, 2020; California Air Resources Board, 2021).

These cases show that ambitious targets are powerful tools for signaling direction, but they must be backed by capacity, funding, and political resolve or risk becoming symbolic rather than transformational (Alves *et al.*, 2020).

The CLCPA also puts a stake in the ground on renewable energy: 70% of electricity must come from renewable sources by 2030, and 100% must be zero-emission by 2040. These are ambitious targets that require not only new projects but also faster permitting, modernized grid infrastructure, and sustained investment in storage technology (Vangala & Aweh, 2020; Ali *et al.*, 2022). Programs like NY-Sun and large-scale offshore wind projects show that the state is moving, but bottlenecks in permitting and grid upgrades still threaten progress (Alves *et al.*, 2020; Hanley, 2022; Meara & Rizzo, 2024). The upside is significant. These investments are expected to generate more than 150,000 jobs over the next decade, and more than half of those jobs will be open to workers without four-year degrees, offering new opportunities to working-class New Yorkers (New York Renews, 2023). But to make good on the promise of a just transition, the state must pair job creation with robust retraining programs for workers

leaving fossil fuel industries and with policies that ensure equitable access to affordable clean energy. Without these safeguards, the transition risks deepening rather than reducing existing inequalities (Sultana, 2021; Foster *et al.*, 2024).

Equity is not just a side benefit of the CLCPA – it is written into the law (Table 2). By directing 35-40% of investments toward disadvantaged communities, the policy aims to deliver cleaner air, lower energy bills, and real economic opportunities where they are needed most (Agyeman *et al.*, 2003; Diezmartínez & Gianotti, 2022). But we still lack solid data on whether these outcomes are being felt on the ground. Communities are watching closely to see whether promises translate into better health, better jobs, and lower costs. Other jurisdictions face similar struggles. California's EO N-79-20 (2020) sets big goals for vehicle electrification but does not fully address affordability or infrastructure gaps, especially for rural and low-income communities (Neslen, 2024). The EU Green Deal (2019) also faces criticism for uneven implementation across member states and for not doing enough to prepare workers in fossil fuel-dependent regions for the shift to green industries (Wang, 2022).

Table 2. Comparative overview of climate policy frameworks

Feature	CLCPA (New York)	California Executive Order N-79-20	European Union Green Deal
Energy Transition	70% renewable electricity by 2030; 100% zero-emission electricity by 2040	Supports transition but less specific on electricity sector	Deep decarbonization, strong push for renewable energy
Transportation Policy	Decarbonization required; ZEV targets (e.g., 100% light-duty ZEV sales by 2035)	Mandates 100% ZEV sales for new cars by 2035	Promotes ZEVs, sustainable transport, EV infrastructure
Environmental Justice Focus	Yes – mandates 35-40% of benefits go to disadvantaged communities	Indirect focus	Yes – just transition mechanism for social equity
Enforcement Mechanism	Legally enforceable, includes Climate Action Council	Executive order (not legislation) – relies on implementation through state agencies	Mix of regulations, incentives, and legal obligations
Governance & Planning	Climate Action Council develops scoping plans	Implemented via California Air Resources Board and others	European Commission leads, with national plans from member states

Notes: ZEV – Zero-Emission Vehicle

Source: compiled by the authors

This analysis applies a community development and policy evaluation perspective to critically examine the distinctive features of each policy, yielding insights into their unique characteristics. This comparative synthesis elucidates key points of convergence and divergence among the CLCPA (2019), California's Executive Order N-79-20 (2020), and the European Union's Green Deal (2019), systematically examining energy transition, transportation decarbonization, environmental justice, enforcement mechanisms, and governance structures. Collectively, these dimensions offer critical insights into the design, implementation, and potential transferability of climate policy across diverse jurisdictions. Comparisons in Table 3 reveal a crucial insight:

ambitious laws like the CLCPA are necessary but not sufficient. Targets must be paired with strong enforcement, adequate funding, and real accountability to communities. California shows how transportation policy can accelerate emissions cuts, and the EU demonstrates the power of coordinated financing and regional planning. New York now has an opportunity and an obligation to combine these lessons: to accelerate implementation, strengthen its monitoring systems, and ensure that equity commitments lead to measurable improvements in people's lives. Without that follow-through, the CLCPA risks becoming another climate promise that looks good on paper but fails to deliver the transformation it envisions.

Table 3. Comparisons between

Use Case	Best Pick
Equity + Enforcement + State-Level Model	CLCPA (2019)
Comprehensive, International Scope + Big Finance	EU Green Deal (2019)
Transport-Specific + U.S. Influence	California EO N-79-20 (2020)

Source: developed by the authors

The CLCPA's legally binding targets – 40% GHG reduction by 2030, 85% by 2050, and 100% zero-emission electricity by 2040 – set a clear direction for decarbonization (Rhodes *et al.*, 2020; Wiley, 2023). Questions remain, however, about whether enforcement mechanisms and current permitting processes are strong enough to keep the state on track, particularly considering regulatory delays (Alves *et al.*, 2020). New York has made substantial progress in expanding solar capacity and launching offshore wind projects, but grid constraints and siting delays continue to slow deployment (Ali *et al.*, 2022). Research highlights the importance of modernizing transmission systems and streamlining approvals if the state is to meet its 2030 renewable electricity target (Vangala & Aweh, 2020; Hanley, 2022; Meara & Rizzo, 2024).

The CLCPA's (2019) equity mandate presents an opportunity to pair decarbonization with health and economic co-benefits for communities that have been historically excluded from climate investments. But these benefits must be documented and evaluated; without robust monitoring, it will remain unclear whether disparities are being reduced or reinforced (Sultana, 2021). Taken together, these findings suggest that the CLCPA has the potential to serve as a national model for linking climate ambition with justice, but only if the state addresses implementation gaps, strengthens enforcement, and centers community participation. California's transportation mandates and the EU's financing strategies offer actionable insights that New York can adapt to improve delivery and maintain public trust (Dubois & Laurent, 2020; Neslen, 2024).

Policy recommendations. First, policymakers must expand support for workers transitioning from fossil fuel-dependent industries to green employment (Consolidated Laws of New York, Section §75-0103(8), 2014; Consolidated Laws of New York, Section §75-0111, 2020). They should design and deliver comprehensive retraining programs, provide direct financial assistance during the transition period, and open pathways to employment in the renewable energy sector. According to Section §75-0103(8) (2014) to direct the Department of Labor (DOL) and New York State Energy Research and Development Authority (NYSERDA) to design and deliver sector-aligned retraining programs tied to the Climate Action Council Scoping Plan; require an annual statewide clean-energy skills-gap analysis and reporting on placement and wage outcomes; authorize transitional income supports such as tuition, fees, child-care, and time-limited wage insurance for displaced workers enrolled in approved programs, with priority for communities identified under Consolidated Laws of New York, Section §75-0111 “Climate Justice Working Group” (2020). Policymakers, educators, and community organizations should form strategic partnerships that align training programs with the specific demands of the clean energy labor market. According to Section 66-p “Establishment of a Renewable Energy Program” (2025) that projects receiving renewable energy credits (RECs) include apprenticeship utilization targets and formal partnerships with community colleges or union JATCs as a condition of award. Proactive workforce preparation mitigates job displacement and builds a more inclusive, sustainable economy.

Second, state agencies must strengthen the CLCPA’s (2019) enforcement mechanisms to guarantee compliance with emissions reduction targets (Consolidated Laws of New York, Section §75-0109(2), 2020; Consolidated Laws of New York, Section §75-0107, 2020). They should

impose stricter penalties for noncompliance, expand monitoring and reporting requirements, and increase transparency to ensure public accountability. Amend Section 75-0109 (2020) to require New York State Department of Environmental Conservation to incorporate greenhouse gas limit compliance conditions into all applicable Article 19 permits; specify that violations are enforceable under Environmental Conservation Law (2014) Article 71, Title 21, including Section §71-2103 (2014) civil penalties and injunctive relief. Add Section 75-0105 “Statewide Greenhouse Gas Emissions Report” (2020), creating a mandatory facility-level GHG registry with quarterly electronic reporting, third-party verification above a specified tonnage threshold, and public posting of emissions and compliance status in open, machine-readable formats. Amend §75-0119 “Implementation Reporting” (2020) to require a public compliance dashboard updated quarterly, in addition to the statute’s periodic implementation reports.] Policymakers should also offer targeted incentives – such as tax credits and grants to accelerate private-sector adoption of low-carbon technologies and practices. Amend Tax Law (Consolidated Laws of New York, Section §606(g-1), 2025) to extend eligibility beyond solar equipment to qualified industrial decarbonization equipment and community/shared systems, with award levels conditioned on verified CO₂e reductions reported through the Section 75-0105 (2020) registry; align NYSERDA procurements under Section §66-p (2025) with measurable workforce and equity outcomes.

Together, these actions transform the CLCPA’s (2019) ambitious targets into enforceable outcomes and position New York as a national model for integrating climate mitigation with social equity and economic resilience (as outlined in Section §75-0107 (2020) and 6 New York Codes, Rules and Regulations (n.d.) Part 496, which establish statewide GHG limits and direct

the Department of Environmental Conservation to maintain those limits while publishing the 1990 baseline and annual inventories that anchor compliance).

Future scholarship must rigorously evaluate the extent to which the CLCPA integrates with national and international climate governance frameworks. Although the statute aligns with key objectives of the Paris Agreement (2016), (art. 4 “nationally determined contributions”, art. 13 “enhanced transparency framework”), systematic investigation is needed to clarify how state-level policies interact with federal and global mechanisms to deliver measurable emissions reductions (Alves *et al.*, 2020). Propose a comparative MRV mapping that aligns §75-0105 (2020) and §75-0119 (2020) reporting elements with Paris Article 13 modalities, procedures, and guidelines, and specifies how New York’s facility-level data could roll up to national inventory and biennial transparency report requirements. Such inquiry is essential to determine whether overlapping climate policies function synergistically or generate policy friction, thereby informing strategies to ensure that state-driven initiatives like the CLCPA advance collective climate goals effectively. Without this integrative research, climate governance risks remaining fragmented, leading to inefficiencies and inequities in policy implementation. Longitudinal studies should also examine the CLCPA’s capacity to build a just and resilient economy over time. Addressing these questions would position the CLCPA as a model framework for states and nations seeking to harmonize climate mitigation with equity-centered development.

Conclusions

This study examined how New York’s Climate Leadership and Community Protection Act translates ambitious statutory mandates into measurable and equitable outcomes. The central objective

assessed whether state implementation tools, including enforcement mechanisms, measurement and reporting systems, incentive design, workforce transition supports, and administrative processes, are sufficient to deliver rapid decarbonization while directing tangible benefits to disadvantaged communities. Findings indicated that the CLCPA’s architecture aligns with its aims, yet success depends on three intertwined capacities: enforceability, transparent measurement, and delivery speed.

The analysis maps the CLCPA’s legal framework and equity guardrails, including the requirement that 35 to 40 percent of climate investments accrue to disadvantaged communities. The examination of enforcement pathways identified the need to embed greenhouse gas compliance conditions in air permits, calibrate penalties to excess tons, and publish a penalty policy that strengthens deterrence. Assessment of measurement and transparency highlighted the value of a facility level registry with quarterly reporting, third party verification above defined thresholds, and a public dashboard that links dollars to outcomes, including emissions, health indicators, and household energy burden. Analysis of just transition provisions showed that workforce pipelines from fossil jobs to clean energy careers are central to timely project delivery, cost control, and equitable distribution of opportunity. Comparative lessons from California’s sector mandates and the European Union’s finance and governance model demonstrated how targeted standards, stable funding, and multilevel coordination can accelerate results without compromising equity or environmental review.

Taken together, these strands support a practical conception of credibility for subnational climate law: targets become believable when legal obligations are enforceable, data systems convert spending into verified outcomes, and institutions move projects from approval to operation on

predictable timelines. This approach shifts the discussion from aspiration to implementation, clarifies how the law can improve air quality, affordability, participation, and employment where needs are greatest, and treats equity requirements as testable claims rather than budget lines. It also reframes permitting and transmission as policy delivery risks that the state can measure and manage, and underscores that incentives achieve the most when conditioned on verified emissions reductions and documented community benefits, thereby strengthening public trust through observable results.

The study has limitations. Cross jurisdiction comparisons aid interpretation but do not generalize directly because legal and fiscal architectures differ, and several CLCPA programs remain

mid implementation. Future research should prioritize longitudinal, distribution sensitive evaluation of community benefits, causal analyses of permitting and interconnection timelines, cohort tracking of just transition outcomes, and integrated dashboards that tie investments to emissions, health, and affordability to guide adaptive course corrections.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of Interest

None.

References

- [1] Agyeman, J., Bullard, R.D., & Evans, B. (Eds.). (2003). *Just sustainabilities: Development in an unequal world*. London: Routledge. doi: [10.4324/9781849771771](https://doi.org/10.4324/9781849771771).
- [2] Ali, A., Koch, T., Volk, T., Malmsheimer, R., Eisenbies, M., Kloster, D., Brown, T., Naim, N., & Therasme, O. (2022). The environmental life cycle assessment of electricity production in New York State from distributed solar photovoltaic systems. *Energies*, 15(19), article number 7278. doi: [10.3390/en15197278](https://doi.org/10.3390/en15197278).
- [3] Alves, F., et al. (2020). Climate change policies and agendas: Facing implementation challenges and guiding responses. *Environmental Science & Policy*, 104, 190-198. doi: [10.1016/j.envsci.2019.12.001](https://doi.org/10.1016/j.envsci.2019.12.001).
- [4] Beauregard, C., Carlson, D., Robinson, S., Cobb, C., & Patton, M. (2021). Climate justice and rights-based litigation in a post-Paris world. *Climate Policy*, 21, 652-665. doi: [10.1080/14693062.2020.1867047](https://doi.org/10.1080/14693062.2020.1867047).
- [5] California Air Resources Board. (2021). *Advanced clean cars II regulations: Achieving 100% zero-emission vehicle sales by 2035*. Retrieved from <https://surl.li/ijfjke>.
- [6] Consolidated Laws of New York, Section §43-B "Environmental Conservation Law". (2014, September). Retrieved from <https://www.nysenate.gov/legislation/laws/ENV>.
- [7] Consolidated Laws of New York, Section §606(g-1) "Solar Energy System Equipment Credit". (2025, July). Retrieved from <https://www.nysenate.gov/legislation/laws/TAX/606>.
- [8] Consolidated Laws of New York, Section §66-p "Establishment of a Renewable Energy Program". (2025, May). Retrieved from <https://www.nysenate.gov/legislation/laws/PBS/66-P>.
- [9] Consolidated Laws of New York, Section §71-2103 "Violations; Civil liability". (2014, September). Retrieved from <https://www.nysenate.gov/legislation/laws/ENV/71-2103>.
- [10] Consolidated Laws of New York, Section §75-0103(8) "Just Transition Working Group". (2014, September). Retrieved from <https://www.nysenate.gov/legislation/laws/ENV/75-0103>.

- [11] Consolidated Laws of New York, Section §75-0105 “Statewide Greenhouse Gas Emissions Report”. (2020, January). Retrieved from <https://www.nysenate.gov/legislation/laws/ENV/75-0105>.
- [12] Consolidated Laws of New York, Section §75-0107 “Statewide Greenhouse Gas Emission Limits”. (2020, January). Retrieved from <https://www.nysenate.gov/legislation/laws/ENV/75-0107>.
- [13] Consolidated Laws of New York, Section §75-0109(2) “Legally Enforceable Measures to Ensure Compliance”. (2020, January). Retrieved from <https://www.nysenate.gov/legislation/laws/ENV/75-0109>.
- [14] Consolidated Laws of New York, Section §75-0111 “Climate Justice Working Group”. (2020, January). Retrieved from <https://www.nysenate.gov/legislation/laws/ENV/75-0111>.
- [15] Consolidated Laws of New York, Section §75-0119 “Implementation Reporting”. (2020, January). Retrieved from <https://www.nysenate.gov/legislation/laws/ENV/75-0119>.
- [16] Damoah, B., & Yeboah, C. (2025). Harnessing innovative financial instruments for robust climate change mitigation in the United States. *Academia Environmental Sciences and Sustainability*, 2(3). doi: 10.20935/AcadEnvSci7826.
- [17] Damoah, B., & Boglo, R. (2025). Nuances of economic development and environmental sustainability in Sub-Saharan Africa. *Discover Sustainability*, 6, article number 999. doi: 10.1007/s43621-025-01796-4.
- [18] Dewey, R. (2020). The NYISO carbon pricing initiative: Helping New York meet its clean energy goals. *Natural Gas & Electricity*, 36. doi: 10.1002/gas.22160.
- [19] Diezmartínez, C., & Gianotti, A. (2022). US cities increasingly integrate justice into climate planning and create policy tools for climate justice. *Nature Communications*, 13, article number 5763. doi: 10.1038/s41467-022-33392-9.
- [20] Doering, K., Anderson, C., & Steinschneider, S. (2023). Evaluating the intensity, duration, and frequency of flexible energy resources needed in a zero-emission, hydropower reliant power system. *Oxford Open Energy*, 2, article number oiad003. doi: 10.1093/ooenergy/oiad003.
- [21] Dubois, G., & Laurent, P. (2020). [Climate justice in the European Green Deal: Ensuring a just transition](#). *Sustainability and Policy Journal*, 9(3), 112-127.
- [22] Earthjustice. (2025). [First-of-its-kind lawsuit urges New York to release overdue climate law regulations](#). Retrieved from <https://surl.li/benmxk>.
- [23] EU Green Deal. (2019, December). Retrieved from https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal_en.
- [24] European Commission. (2021). [The European Green Deal: A roadmap for climate neutrality by 2050](#). Brussels: UNIDO Liaison Office.
- [25] Executive Order of Executive Department of the State of California N-79-20 “Governor Newsom’s Zero-Emission Vehicle Action Plan for California”. (2020, September). Retrieved from <https://surl.li/tebbry>.
- [26] Fields, A. (2020). Will Section 94-C Enable Renewable Energy Project siting and help New York State achieve its energy targets? *Columbia Journal of Environmental Law*, 46(1). doi: 10.7916/CJEL.V46I1.7916.
- [27] Foster, S., Baptista, A., Nguyen, K., Tchen, J., Tedesco, M., & Leichenko, R. (2024). NPCC4: Advancing climate justice in climate adaptation strategies for New York City. *Annals of the New York Academy of Sciences*, 1539(1), 126-177. doi: 10.1111/nyas.15148.

- [28] Hanley, J. (2022). *CLCPA Renewable Energy Targets can be met only at Great Cost*. Retrieved from <https://surl.li/nxcppq>.
- [29] Hanna, R., Heptonstall, P., & Gross, R. (2024). Job creation in a low-carbon transition to renewables and energy efficiency: A review of international evidence. *Sustainability Science*, 19, 125-150. doi: 10.1007/s11625-023-01440-y.
- [30] Hossain, M., Volk, T., Therasme, O., & Shaker, R. (2024). Evaluation for establishing a monitoring system to reach sustainability in New York State's bioeconomy. *Sustainability*, 16(24), article number 11191. doi: 10.3390/su162411191.
- [31] Hügel, S., & Davies, A.R. (2020). Public participation, engagement, and climate change adaptation: A review. *WIREs Climate Change*, 11(6), article number e645. doi: 10.1002/wcc.645.
- [32] Hwang, J. (2024). Climate change and social inequality: Analyzing the disproportionate impact of environmental crises on marginalized communities. *International Journal of Science and Research Archive*, 15(1), 1251-1262. doi: 10.30574/ijrsra.2025.15.1.1176.
- [33] Montanarella, L., & Panagos, P. (2021). The relevance of sustainable soil management within the European Green Deal. *Land Use Policy*, 100, article number 104950. doi: 10.1016/j.landusepol.2020.104950.
- [34] Jones, J. (2024). Defending race-conscious policy. *Columbia Journal of Environmental Law*, 49(2), 425-478. doi: 10.52214/cjel.v49i2.12632.
- [35] Meara, K.E., & Rizzo, C. (2024). New York's Climate Act, five years in: Updates on grid reliability. *Carter Ledyard & Milburn LLP Commentary (reposted on Mondaq)*. Retrieved from <https://surli.cc/nafbxx>.
- [36] Neslen, A. (2024). "We are backsliding": EU's Green Deal under threat from far-right and farmers, say scientists. Retrieved from <https://surl.li/uilddb>.
- [37] New York Codes, Rules, and Regulations. (n.d.). Retrieved from <https://surl.li/vrjfrz>.
- [38] New York Renewables. (2023). *New jobs report: Climate and community protection fund*. Retrieved from <https://www.nyrenews.org/news/2023/ccpf-jobs-report>.
- [39] New York State Climate Leadership and Community Protection Act. (2019, July). Retrieved from <https://www.nysenate.gov/legislation/bills/2019/S6599>.
- [40] New York State Department of Environmental Conservation. (2020). *Statewide greenhouse gas emission limits (Title 6, Part 496 of the New York Codes, Rules and Regulations)*. Retrieved from https://extapps.dec.ny.gov/docs/administration_pdf/revisedris496.pdf.
- [41] Paris Agreement. (2016, April). Retrieved from <https://surl.lu/wlimkb>.
- [42] Resnik, D. (2022). Environmental justice and climate change policies. *Bioethics*, 36(7), 735-741. doi: 10.1111/bioe.13042.
- [43] Revised Code of Washington. (2025). Retrieved from <https://app.leg.wa.gov/rcw/>.
- [44] Rhodes, J., Burman, D., Alesi, J., Edwards, T., & Howard, J. (2020). *State of New York Public Service Commission order: Proceeding on motion of the Commission to implement the Climate Leadership and Community Protection Act*. New York: New York State Public Service Commission.
- [45] Sultana, F. (2021). Critical climate justice. *The Geographical Journal*, 188, 118-124. doi: 10.1111/geoj.12417.
- [46] Tol, R. (2018). The economic impacts of climate change. *Review of Environmental Economics and Policy*, 12, 4-25. doi: 10.1093/reep/rex027.

- [47] Vangala, S., & Aweh, A. (2020). Unpacking key drivers of offshore wind integration for New York's Climate Leadership and Community Protection Act. *Natural Gas & Electricity*, 36, 18-25. doi: [10.1002/gas.22162](https://doi.org/10.1002/gas.22162).
- [48] Vogt-Schilb, A., & Hallegatte, S. (2017). Climate policies and nationally determined contributions: reconciling the needed ambition with the political economy. *Wiley Interdisciplinary Reviews: Energy and Environment*, 6(6), article number e256. doi: [10.1002/wene.256](https://doi.org/10.1002/wene.256).
- [49] Wang, J. (2022). *Challenges in implementing California's zero-emission vehicle executive order*. Stanford: Stanford University.
- [50] Wang, T., & Shittu, E. (2023). Simulating the impact of the U.S. Inflation Reduction Act on state-level CO2 emissions: An integrated assessment model approach. *Sustainability*, 15(24), article number 16562. doi: [10.3390/su152416562](https://doi.org/10.3390/su152416562).
- [51] Wheeler, S. (2008). State and municipal climate change plans: The first generation. *Journal of the American Planning Association*, 74(4), 481-496. doi: [10.1080/01944360802377973](https://doi.org/10.1080/01944360802377973).
- [52] Wiley, C. (2023). *New York's Climate Leadership and Community Protection Act standards for renewable and clean energy: An evaluation of policy implementation*. (Doctoral dissertation, Johns Hopkins University, Baltimore, U.S.).

Оцінка Закону Нью-Йорка про лідерство у сфері клімату та захист громади з точки зору справедливого та ефективного управління кліматом

Еммануель Олусола Аду

Доктор педагогічних наук, професор
Університет Болл Стейт
47306, Університі Авеню, 2000 W, м. Мансі, США
<https://orcid.org/0000-0003-1345-5517>

Бенджамін Дамоа

Доктор педагогічних наук, професор
Університет Південного Міссісіпі
Факультет біологічних, екологічних та географічних наук
39406, Коледж Драйв, 118, м. Хаттісберг, США
<https://orcid.org/0000-0002-9204-3395>

Шон Хільдебранд

Доктор наук з державного управління, доцент
Університет Болл Стейт
Кафедра політичних наук
47306, Університі Авеню, 2000 W, м. Мансі, США
<https://orcid.org/0000-0002-0381-6158>

Анотація

Закон штату Нью-Йорк про лідерство у сфері клімату та захист громад встановлює одні з найамбітніших кліматичних цілей у Сполучених Штатах, закликаючи до скорочення

викидів парникових газів на 40 % до 2030 року, на 85 % до 2050 року та до повного переходу енергетичного сектору на нульові викиди до 2040 року. У цьому дослідженні було проаналізовано, чи можуть структура та початкова реалізація Закону штату Нью-Йорк забезпечити досягнення його екологічних, соціальних та економічних цілей. У дослідженні було застосовано якісний аналіз політики з використанням рецензованих статей, звітів державних органів та адвокаційних документів, опублікованих у період з 2019 по 2025 рік. У статті результати дослідження були систематизовані за трьома напрямками – екологічна ефективність, соціальна справедливість та економічна життєздатність. Закон Нью-Йорку було порівняно з виконавчим наказом Каліфорнії N-79-20 та «Зеленою угодою» Європейського Союзу з метою визначення стратегій, які можна перейняти. Закон штату Нью-Йорк вирізняється своїм обов'язковим мандатом щодо справедливості, який спрямовує 35-40% інвестицій у клімат на незахищені громади. Незважаючи на це, дослідження виявило затримки у впровадженні програми, вузькі місця в інфраструктурі енергомережі та обмежене планування переходу робочої сили. Фокус Каліфорнії на декарбонізації транспорту та механізми фінансування ЄС пропонують перевірені стратегії, які можуть посилити виконання, спростити видачу дозволів та забезпечити справедливий доступ до пільг. Нью-Йорк може позиціонувати своє законодавство як національну модель справедливої декарбонізації, усунувши прогалини в імплементації, привівши адміністративний потенціал у відповідність до законодавчих цілей та ретельно відстежуючи результати. Аналіз зробив внесок у наукові дослідження з питань управління кліматом, продемонструвавши, як штати можуть поєднати амбітні цілі щодо викидів із справедливою імплементацією, щоб досягти вимірюваних кліматичних і соціальних вигод

Ключові слова: воєнний стан; правове регулювання; екологічні права; Європейський суд з прав людини; Міжнародний суд ООН



UDC 341.322:342.7

Doi: 10.31548/law/4.2025.25

Economic sanctions as a challenge to legal theory: Axiological analysis of the impact on human rights and state sovereignty

Maksym Loza*

Postgraduate Student

National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine
<https://orcid.org/0009-0000-7837-1918>

Lilia Pankova

PhD in Law

National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine
<https://orcid.org/0000-0003-0150-1571>

Article's History:

Received: 24.06.2025

Revised: 12.10.2025

Accepted: 27.11.2025

Abstract

The research was aimed at axiological analysis of economic sanctions and their impact on fundamental legal values, in particular, human rights and state sovereignty. The study was conducted based on a comprehensive combination of general scientific and special legal methods. A set of methods was used, in particular comparative legal, formal legal methods within the framework of a systematic approach, which allowed comprehensively assessing the impact of sanctions on legal systems, international norms, and state sovereignty. The study found that sanctions, as an instrument of international pressure, have a serious impact on state sovereignty and human rights. Their application often jeopardises the fundamental rights

Suggested Citation:

Loza, M., & Pankova, L. (2025). Economic sanctions as a challenge to legal theory: Axiological analysis of the impact on human rights and state sovereignty. *Law. Human. Environment*, 16(4), 25-41. doi: 10.31548/law/4.2025.25.



*Corresponding author

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

of citizens, in particular, economic rights such as access to work, social security, and essential goods and services. Sanctions can lead to violations of the rights to life, dignity, and development, especially when restrictions on access to resources affect the general population, including the most vulnerable social groups. It was also found that the selectivity of the application of sanctions and their unequal implementation often lead to double standards in international relations, which undermines confidence in international legal mechanisms. In addition, sanctions can undermine state sovereignty, creating prerequisites for external interference in the internal affairs of the state, which further complicates the protection of citizens' rights. Therefore, sanctions not only increase political isolation, but also call into question the principles of human rights and the international rule of law. The results obtained indicate the need to harmonise international standards of sanctions policy, develop mechanisms for monitoring the effectiveness of sanctions, and introduce humanitarian exceptions to minimise their negative impact

Keywords: global security; democratic values; public order; international politics; countermeasures

Introduction

The relevance of the study of economic sanctions as an instrument of international policy is conditioned by their growing role in resolving international conflicts, deterring states that violate international norms, and ensuring global security. Sanctions are imposed both by leading international organisations (the United Nations, the European Union, etc.) and by individual states, which raises questions about their legitimacy, effectiveness, and compliance with legal principles. Despite the fact that sanctions are often presented as a means of protecting democratic values and human rights, their consequences can be contradictory, in particular, leading to violations of the socio-economic rights of the civilian population and restrictions on state sovereignty. The problem of the study is that the application of economic sanctions often goes beyond international legal norms, which raises questions about their legal nature and compliance with the principles of equality and sovereignty of states. In particular, the principle of sovereign equality of states, consolidated in Article 2 of the United Nations Charter (1945), provides that no state can interfere in the internal affairs of another. However, economic

sanctions, as an instrument of external pressure, often contribute to limiting the sovereignty of states, which can violate this principle. In addition, the application of sanctions sometimes violates the principles of equality between states, since unilateral sanctions can be applied without a corresponding decision of the UN Security Council, which is a violation of the requirements of Article 24 of the Charter.

The analysis of the scientific literature on economic sanctions indicates that researchers pay considerable attention to the legal, political, and economic aspects of this phenomenon. Research by A.A. Gonchar (2024) focused on the mechanisms of legal regulation of European Union sanctions, covering the processes of their initiation and implementation. The researcher emphasised the need for clear legal regulation of sanctions procedures.

A separate area of research is the assessment of the effectiveness of sanctions in the international legal aspect. K.V. Gromovenko (2021) considered economic sanctions as a means of international pressure, concluding that their effectiveness is limited due to the contradiction

between the declared goals and the actual humanitarian consequences, and due to ambiguous compliance with international law. The paper examined in detail the cases of circumvention of sanctions and their consequences, but does not sufficiently consider the social aspects of sanctions influence, in particular, the protection of human rights.

An important addition to the topic is the study by A.O. Gnitii *et al.* (2024), which analysed the mechanisms for ensuring the implementation of sanctions measures in the EU. The researchers concluded that the effectiveness of the sanctions policy largely depends on the level of control over its compliance, especially in the financial sector, which is critical in the context of protecting human rights and ensuring state sovereignty under external pressure. However, the study mainly focused on European experience and did not consider the sanctions mechanisms of other international organisations, such as the UN or the Organisation for Security and Co-operation in Europe.

Considerable attention was also paid to the use of sanctions as a means of foreign policy influence. The study by O.M. Sokolovska (2022) considered economic sanctions as one of the key instruments of foreign policy influence of states. She stressed that sanctions are often used not only to change the behaviour of the object of sanctions, but also to demonstrate the political position of the initiator. In the context of the axiological analysis proposed in this paper, the findings by O.M. Sokolovska (2022) are particularly important because they point to a potential conflict between the strategic interests of states and fundamental legal values – in particular, respect for human rights and respect for sovereignty. This helps to better understand the moral and legal dilemma that arises when applying sanctions as a means of pressure.

The study by K. Flissak (2019) analysed the evolution of sanctions policy in the context of

changes in the international legal order. The researcher noted that economic sanctions, although positioned as an instrument of diplomatic influence, often violate the principles of sovereign equality of states, and can also create disproportionate pressure on the population of the target country, which, in turn, calls into question their compliance with the basic norms of international humanitarian law.

The study by T.S. Yarovoy (2024) considered sanctions as a component of national policy that can promote or, conversely, hinder the development of civil society, depending on the nature of their application. The researcher noted that excessive or politically motivated sanctions pressure can have the opposite effect – lead to the curtailment of democratic freedoms and the strengthening of authoritarian practices in target states, which directly affects the observance of human rights. It is also emphasised that the legality of sanctions should be assessed not only on the formal grounds of adoption, but also on the consequences for the sovereignty of states that fall under restrictive measures.

Research has largely focused on the impact of sanctions on the socio-economic rights of the population. R. Akter and R. Hossain (2021) found that economic sanctions significantly affect the implementation of socio-economic rights in recipient countries of sanctions pressure, in particular, restrict access to basic services, worsen living conditions of the population, and cause an increase in humanitarian crises. The researchers concluded that sanctions, especially those of a sectoral nature, may run counter to international human rights obligations. This underscores the need for their legal assessment not only in view of their political relevance, but also in the context of international humanitarian law and the principles of proportionality and non-discrimination.

T.C. Morgan *et al.* (2023) investigated the evolution and impact of sanctions, in particular,

their role in current international challenges. The researchers noted the growing role of sanctions in world politics, but left open the question of the long-term effectiveness of these measures. D. Lektzian and G. Mkrtchian (2021) analysed the impact of sanctions on economic freedom, noting that economic pressures can lead to increased government control and reduced market freedoms. The paper highlighted an important aspect of the sanctions policy, but did not offer mechanisms to minimise the negative impact of sanctions on economic freedom in sanctioned countries.

Thus, the analysis of scientific sources shows that despite the widespread attention to the legal and economic aspects of sanctions, the axiological dimensions of this phenomenon remain insufficiently developed. In particular, there is a lack of thorough research that would assess the legality of sanctions through the prism of respect for human rights and respect for state sovereignty. In this context, it is relevant to further investigate how sanctions relate to the fundamental values of international law and whether they undermine the axiological foundations of contemporary legal theory.

The purpose of the study was to conduct an axiological analysis of economic sanctions in the context of their impact on fundamental legal values, in particular, human rights and state sovereignty. To achieve this goal, the study performed the following tasks: analysed the legal nature of economic sanctions and their compliance with international law; assessed the impact of sanctions on human rights, in particular, the socio-economic rights of citizens in sanctioned states; investigated the problem of balance between the right of states to sovereignty and the right of the international community to apply sanctions.

Materials and Methods

The study of economic sanctions as a challenge to legal theory was conducted based on a comprehensive combination of general scientific and

special legal methods. This approach has facilitated a systematic investigation of the axiological impact of sanctions on human rights and state sovereignty in an international legal context. The main method of research was comparative legal analysis, which was used to assess the impact of economic sanctions on the legal systems of various states and their compliance with international legal norms. Within the framework of this method, the norms of international law regulating sanctions mechanisms were compared with the regulatory legal acts of the EU and the UN. In particular, such documents as Charter of the United Nations (1945), Treaty on European Union (1992), Regulation of the Council of European Union No. 2580/2001 "On Specific Restrictive Measures Directed Against Certain Persons and Entities with a View to Combating Terrorism" (2001), Regulation of the Council of European Union No. 833/2014 "On the Restrictive Measures in View of Russia's Actions Destabilising the Situation in Ukraine" (2014), Resolution the General Assembly No. 2019A/RES/74/200 "Unilateral Economic Measures as a Means of Political and Economic Coercion Against Developing Countries" (2019).

The formal legal method was used to analyse the structure and content of legal acts regulating the sanctions policy, in particular, to determine the legal grounds for imposing sanctions, procedures for their adoption, and mechanisms for monitoring their compliance. Special attention was paid to the compliance of sanctions with the principles of international law, such as the principle of sovereign equality of states, the inadmissibility of collective punishment and respect for fundamental human rights. The method of a systematic approach helped to comprehensively study the relationship of economic sanctions with political, legal and economic processes in the international arena. Within the framework of this approach, the multi-level consequences of sanctions policies were analysed both for the states

subject to sanctions and for the countries that impose them, considering the global redistribution of geopolitical forces. Special attention was paid to the structural impact of sanctions on domestic political processes, changes in the course of foreign policy, the reaction of financial markets and socio-economic indicators.

To assess the impact of sanctions on human rights, an analysis was used that included studies of real cases, in particular, sanctions against Syria, Iran, and North Korea. The study was based on a number of international legal documents and reports of international organisations, including reports of the UN Special Rapporteur (2018), OHCHR (2019), and Human Rights Watch (2019; 2020). The analysis focused on such socio-economic rights as the right to work, education, health and social security, and the humanitarian consequences of sanctions – access to food, medical services, international assistance, and the impact on migration processes. Special emphasis was placed on the data of the report of the Independent International Commission of Inquiry on the Syrian Arab Republic (2023), which records large-scale human rights violations in conditions of increased isolation. The study of these sources allowed covering a broad picture of the legal consequences of sanctions, including in the context of international humanitarian law, and the principle of state sovereignty.

Results

Essence and classification of economic sanctions. Economic sanctions are an important instrument of international policy used to respond to threats to international peace and security, violations of international law, or non-compliance with the norms and principles of international relations. Sanctions mechanisms provide for the introduction of restrictive measures by individual states, international organisations or coalitions of countries to influence the policy, economy, and

security situation in a particular state or in relation to individuals and institutions. Charter of the United Nations (1945) provides for the possibility of applying sanctions as one of the means of supporting international security, contributing to the prevention of conflicts, stopping aggressive actions, combating human rights violations, countering terrorism, and supporting democratic processes.

During 2000-2024, there is a tendency to increase the number of sanctions regimes, which is conditioned by the globalisation of economic processes, the deepening interdependence of national economies, and the internationalisation of financial flows. In such circumstances, sanctions become more effective as an instrument of influence, since violations or restrictions on economic ties can cause significant negative consequences for the states subject to sanctions. This is especially true for developing countries, as their economies are more dependent on external factors, financial assistance, international trade and investment.

It is generally accepted that modern threats to international peace and security are no longer limited to conventional interstate wars. Recent threats include terrorism, transnational organised crime, proliferation of weapons of mass destruction, human rights violations, environmental disasters, and economic instability. Considering these factors, sanctions mechanisms have become more developed and diverse, aimed at eliminating specific threats or punishing the entities responsible for their occurrence, which, according to S. Kang *et al.* (2023), leads to a deterioration of human rights in sanctioned countries.

Economic sanctions are divided into unilateral (imposed by individual states) and multilateral (approved by international organisations such as the UN). There is also a distinction between general sanctions that cover entire sectors of the economy and targeted sanctions that target specific individuals or institutions. A separate type is financial sanctions, which include asset freezes

and restrictions on financial transactions (Meyer *et al.*, 2023). One of the key aspects of international sanctions is the difference between the sanctions mechanisms used by the UN and the EU. Although both regimes are aimed at ensuring the international rule of law, their legal basis, adoption procedure, binding enforcement and monitoring mechanisms differ significantly (Table 1). The sanctions imposed by the United Nations are based on Article 41 of Title VII of the Charter of the United Nations (1945), which provides for the possibility of using coercive measures that are not related to the use of armed force to maintain or restore international peace and security. EU

sanctions are an instrument of the Common Foreign and Security Policy (CFSP), based on articles 21 and 29 of the Treaty on European Union (2012) and are adopted by a decision of the EU Council. In accordance with articles 42 (4) and 43 (2) of the Treaty on European Union (2012), the council adopts the legal framework for civilian missions of the Common Security and Defence Policy (CSDP). Based on Article 28, member states may decide to initiate operational activities, such as stabilisation missions. With regard to actions in the field of non-proliferation and disarmament, the Council shall take decisions based on articles 28(1) and 31(1) of this Treaty.

Table 1. Comparative characteristics of the UN and EU sanctions regimes

UN sanctions regime	EU sanctions regime
Legal framework	
Chapter VII, Article 41 of the Charter of the United Nations (1945)	Treaty on European Union (2012) (Articles 29, 215)
Decision-making body	
UN Security Council	Council of the European Union (unanimous decision of the member states)
Mandatory execution	
Binding on all UN member states	Mandatory only for EU member states
Types of sanctions	
Trade, financial, transport, arms embargo, travel restrictions	Economic, diplomatic, visa restrictions, asset freezes, arms embargoes
Possibility of appeal	
Limited, revision is possible only by a decision of the Security Council	Individuals and legal entities can challenge sanctions in the EU Court of Justice

Source: compiled by the authors

The legal mechanism for imposing UN sanctions is unified and covers all UN member states. According to Article 25 of the UN Charter (1945), all member states are required to comply with decisions of the UN Security Council that provide for sanctions. Thus, they are binding on all subjects of international law, regardless of their position on a specific sanctions regime. The main forms of UN sanctions are economic and trade restrictions, asset freezes, travel bans, arms embargoes, etc.

An important aspect is that UN sanctions can be directed against both states and non-state actors, including terrorist organisations and persons involved in violations of international law.

EU sanctions, in turn, can be initiated both independently and for the implementation of UN Security Council resolutions. However, their specificity is that they are not automatic: even if the Security Council adopts a corresponding resolution, its implementation in the EU requires a

separate decision by the EU Council. EU sanctions fall into three main categories: UN sanctions, which the EU implements in its legislation; autonomous sanctions, which are imposed independently of the UN; and sanctions against specific countries or individuals based on national policy decisions (Farzanegan, 2022).

From the standpoint of legal regulation, the EU sanctions policy is determined by a number of legal acts, among which the EU Council regulations and decisions of the EU Council play a key role. For example, Regulation of the Council of European Union No. 2580/2001 (2001) defines the mechanism for combating terrorism through financial restrictions, and Regulation of the Council of European Union No. 833/2014 (2014) establishes economic sanctions against Russia in connection with the events in Ukraine. It is important to note that unlike UN sanctions, which apply globally, EU sanctions are applied only on the territory of the member states of the European Union and in relation to its residents.

Another significant difference is the procedure for adopting sanctions. At the UN, the decision to impose sanctions is made by the Security Council on the basis of a consensus of five permanent members (the United States, Great Britain, France, China and Russia), who have the right of veto. This often makes it difficult to adopt sanctions regimes, especially when the interests of the permanent members of the Security Council diverge. In the EU, sanctions measures are taken by the EU Council with the unanimous approval of member states, although in the event of an extension or modification of sanctions, decisions by a qualified majority can be applied (Zhou & Wang, 2022)

The practical application of sanctions also differs. UN sanctions, being universal, require national implementation through the legislation of member states, which sometimes leads to delays or incomplete implementation of sanctions regimes. Moreover, EU sanctions, after the

adoption of relevant regulations and decisions, are binding on all member states and have a direct effect that ensures their effectiveness and unified implementation. Unilateral sanctions imposed by individual states or regional associations, such as the European Union or the United States, often cause controversy over their legality (Alhassan *et al.*, 2023). There is no general mechanism in international law that explicitly authorises or prohibits the use of unilateral restrictive measures outside of UN Security Council sanctions. This creates a legal gap that is interpreted differently by different states and legal schools.

In particular, the UN General Assembly has repeatedly criticised unilateral sanctions that may violate the sovereignty of states, the principles of non-interference in internal affairs and human rights (Gutmann *et al.*, 2021). The Resolution the General Assembly No. 2019a/RES/74/200 (2019) notes that unilateral restrictive measures are incompatible with international law when they are introduced bypassing UN mechanisms. The UN International Law Commission has also repeatedly drawn attention to the need for a clear distinction between legitimate means of coercion and measures that may qualify as disproportionate or discriminatory (Early & Peksen, 2022).

From a legal standpoint, the imposition of sanctions by states or regional organisations can only be justified under certain conditions, in particular, as countermeasures in response to violations of jus cogens norms or to ensure compliance with international law. However, even in such cases, these measures must meet the criteria of proportionality, temporality and non-selectivity, as stated in the decisions of the International Court of Justice, in particular in the case of “Nicaragua v. United States of America” (1986). The legitimacy of sanctions in contemporary international law is closely linked to their source, adoption procedure, and compliance with fundamental

principles. Unilateral sanctions remain the subject of scientific and political debate, especially given their impact on civilians and the potential abuse of economic leverage in global politics.

Axiological analysis of the impact of economic sanctions on human rights. Economic sanctions have a mixed impact on the system of values of society, the economic stability of the state and the well-being of citizens, which requires an in-depth analysis of their effectiveness and compliance with the fundamental principles of human rights. One of the main arguments in favour of sanctions is their role in protecting human rights by putting pressure on authoritarian regimes that violate democratic principles and repress the population. In particular, in such cases, sanctions become a catalyst for political change, encouraging governments to reform the political system and comply with international human rights standards. However, the practical application of economic sanctions demonstrates that they often lead to negative humanitarian consequences, affecting primarily the most vulnerable segments of the population. For example, in the case of Iran, sanctions had serious humanitarian consequences, despite the fact that medicines and humanitarian aid were not formally subject to sanctions restrictions. According to a report by Human Rights Watch (2019), restrictions imposed by the United States have significantly complicated financial transactions, making it impossible to purchase important medicines and medical equipment. This has had a particularly acute impact on patients with rare diseases, cancer, and blood disorders, who have become almost impossible to receive treatment. The report notes that as a result of the sanctions, a significant part of the population was deprived of the basic right to health care, which is contrary to international human rights obligations.

In the case of Venezuela, in 2019, UN High Commissioner for Human Rights Michelle

Bachelet expressed concern about new sanctions imposed by the United States of America against the regime of Nicolas Maduro. She noted that these restrictions, which were intended to put pressure on the country's authorities, can cause serious harm to the population and lead to violations of basic human rights. Bachelet stressed that the sanctions are "extremely large-scale" and do not provide sufficient safeguards to minimise their negative impact on the delivery of humanitarian aid and public access to basic needs (Kolesnichenko, 2019).

In 2019, the Office of the United Nations High Commissioner for Human Rights published a report highlighting the human rights situation in North Korea (OHCHR, 2020). According to this report, the country has recorded an increase in cases of human rights violations, including crimes against humanity. In particular, increased security tensions have led to increased control over the movement of people and new violations of freedom of speech and political rights. The UN has received reports of the tragic fate of those returned to North Korea, including cases of torture, beatings, food deprivation, and sexual violence.

In international legal doctrine, the question of the relationship between sanctions and human rights remains the subject of heated discussions. For example, according to the Universal Declaration of Human Rights (1948), everyone has the right to an adequate standard of living, including food, health care, and social security (Article 25). In addition, the International Covenant on Economic, Social and Cultural Rights (1966) guarantees the right to work and social protection (articles 6-9). Thus, economic sanctions that lead to a significant deterioration in the well-being of the population may run counter to the fundamental principles of international law. Among the most illustrative examples of countries under long-term sanctions regimes, it is worth considering Syria, Iran, Russia, and North Korea (Table 2).

Table 1. Consequences of the impact of economic sanctions on the well-being of the population

Country, period	Reason for imposition	Consequences
Syria (2011-present)	The repression of the Bashar al-Assad regime against civilians during the civil war.	Decline in GDP. Hyperinflation, depreciation of the national currency. Shortage of basic goods, in particular, medicines and food. Rising unemployment and poverty levels. Humanitarian crisis.
Iran (2018-present)	Restoration of US sanctions due to withdrawal from the nuclear deal (JCPOA).	Reduction of oil exports, which is a key source of foreign exchange earnings. Decline in living standards of the population, rise in unemployment. Shortage of medicines and medical equipment. Increased protest movements due to economic difficulties.
Russia (2014-present)	Annexation of Crimea, military aggression against Ukraine.	Shortage of Western technologies and imported goods. Inflation and decline in the purchasing power of the population. Deterioration of living standards due to rising prices. Mass relocation of highly qualified personnel and businesses.
North Korea (2004-present)	Nuclear tests and violations of UN resolutions.	Lack of access to advanced technologies. Weak economy, dependence on contraband supplies. Massive human rights violations through centralised resource allocation. Spread of the shadow economy as a means of survival.

Source: compiled by authors based on the EU Sanctions Map (2025)

A separate area of axiological analysis is the impact of sanctions on social justice and economic stability of a state subject to sanctions regimes. There is an opinion that sanctions that restrict a country's access to world markets can strengthen the position of authoritarian regimes, since they create prerequisites for reinforcing state control over the economy and society (Felbermayr *et al.*, 2020). In this aspect, it is worth mentioning the sanctions regimes against Iran and North Korea, which did not lead to drastic political changes, but caused significant socio-economic difficulties.

In particular, in Syria, according to the Office of the United Nations High Commissioner for Human Rights (OHCHR), long-term US and EU sanctions combined with internal conflict have led to a sharp decline in living standards, a shortage of medical supplies and food, which disproportionately hit the civilian population. The report of the Independent International Commission of Inquiry on the Syrian Arab Republic (2023) notes that restrictions in the field of banking operations make international humanitarian transfers impossible, which is particularly harmful to the implementation of Health and education programmes. In addition, in the case of Iran, according to Human

Rights Watch (2020), restrictions imposed by the United States after withdrawing from the nuclear deal led to a significant reduction in imports of vital medicines and medical equipment. Despite the fact that medical products were not formally sanctioned, indirect consequences – blocking financial transactions and insurance services – made it difficult to access them. This directly affected the exercise of the right to health care enshrined in international law.

An important aspect of the sanctions policy is the development of mechanisms for humanitarian exceptions that allow providing the population with vital goods. UN Security Council Resolution No. 2615 (2021) provides for the possibility of providing humanitarian assistance to Afghanistan, despite sanctions against representatives of the Taliban government. Such exceptions apply in the EU sanctions policy, for example, in relation to Belarus, where the sanctions regime does not restrict humanitarian aid. Economic sanctions have a contradictory impact: on the one hand, they are an effective tool of international pressure, on the other – they can violate human rights, especially of vulnerable groups of the population. Optimising sanctions mechanisms, targeting them, and

continuously monitoring humanitarian consequences are key challenges for the international community to ensure a balance between global security and human rights.

Sanctions and state sovereignty. State sovereignty is a fundamental principle of international law that determines the independence and equality of states in international relations. According to the UN Charter, all states, regardless of their political, economic or military characteristics, have equal rights and obligations, including the right to non-interference in their internal affairs. However, the introduction of sanctions, especially in the form of unilateral economic or political restrictions, raises discussions about their compliance with the principle of sovereign equality of states and international legal norms.

On the one hand, sanctions are justified by the need to respond to violations of international law, prevent aggression or fight terrorism and human rights violations. On the other hand, their effectiveness and legitimacy depend on the objectivity and transparency of their implementation mechanisms. In this context, the problem of “double standards” arises, when sanctions are applied selectively depending on the political or economic interests of key global actors. For example, in the case of the annexation of Crimea in 2014, a number of Western countries imposed large-scale sanctions against Russia, while in similar situations in other regions, in particular in the Middle East, such a harsh reaction was absent or limited to symbolic measures.

In the practice of international relations, unilateral sanctions imposed without a UN Security Council mandate often cause criticism about their compliance with the principle of state sovereignty. The Declaration on Principles of International Law concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations (1970) emphasises the duty of states to refrain from any interference in the

internal affairs of other countries, including economic pressure. Thus, unilateral sanctions that are not approved by multilateral mechanisms can be seen as a form of coercion that undermines the principle of sovereign equality.

In particular, UN Special Rapporteur (2018) points out that unilateral sanctions applied outside the framework of international law can violate the right to development and undermine the stability of the countries that are subject to them. The report notes that the frequent use of such measures undermines the authority of the international legal order and sets dangerous precedents. For example, Iran has repeatedly appealed to international institutions to criticise US sanctions as violating both its sovereign right to economic development and the basic principles of international justice. The report of the Secretary-General (A/73/331, 2018) states that the sanctions imposed on the Iranian government are directed not only against the political authorities, but against the entire nation, undermining its fundamental rights and development opportunities. Similarly, in the case of “Islamic Republic of Iran v. United States of America” (2018), Iran’s right to trade in humanitarian products was recognised, despite the restrictions imposed. In addition, the example of Cuba shows the long-term impact of unilateral US sanctions on the country’s economic system and international relations. In UN General Assembly Resolution No. A/RES/77/7 (2022), 187 states supported the lifting of restrictions, emphasising their negative impact on the country’s socio-economic development and violation of its sovereignty.

Thus, sanctions, especially unilateral ones imposed without the consent of the international community, are not only an instrument of geopolitical pressure, but also a factor that directly affects the sovereignty of states. They can contribute to the fragmentation of the international legal system and increase conflicts between the norms

of force and the norms of law. To ensure the legitimacy of the sanctions mechanism, it is necessary to strengthen the role of international institutions, primarily the UN Security Council, and develop a clear legal framework that takes into account the balance between protecting the international legal order and respecting state sovereignty.

Discussion

During 2000-2024, there was a steady trend towards an increase in the number of sanctions regimes, which is largely conditioned by the strengthening of global interdependence and the spread of the concept of state responsibility for compliance with international law. As noted by G. Moteng *et al.* (2023), sanctions imposed on developing countries, in particular, in the form of restrictions on financial flows and energy transactions, lead to an increase in energy poverty and a decrease in investment attractiveness. These findings are supported by the results of the current study, according to which countries with a high level of dependence on foreign capital (in particular, foreign direct investment and credit programmes of international financial institutions) show increased vulnerability to the consequences of sanctions that go beyond the energy sector.

In countries with low levels of economic diversification, such as Venezuela or Iran, there is a clear link between sanctions pressure and systemic economic destabilisation, including declining industrial production, inflation, and the decline of healthcare and education. In this context, it is important to emphasise that sanctions have a complex impact: restricting access to international payment systems and capital markets causes a chain reaction that exacerbates fiscal imbalances, slows down the development of infrastructure projects, and reduces the level of social well-being.

As part of the study, it was revealed that sanctions pressure, especially in its unilateral format, has a complex and ambiguous impact on

the implementation of human rights and sovereign opportunities of states. This correlates with the critical approach proposed by B. Korf (2023), which saw sanctions as part of a broader paradoxical development logic: on the one hand, they can increase pressure on power regimes, and on the other, they create conditions in which the population suffers from restrictions on access to basic resources, services and guarantees. A similar situation can be traced in this study, which found that the effects of sanctions significantly affect social groups that are not directly related to political elites or sanctions decisions, in particular, women, children, and people with disabilities. Special attention should be paid to the remark by B. Korf (2023) regarding the cynicism of the international development regime, in which sanctions are often disguised as instruments of humanitarian influence, although in fact they lead to increased instability and violations of basic rights. The results of this analysis partially confirm this thesis: sanctions, which are declared as a human rights or democratic tool, in practice often lead to the erosion of sovereignty, increasing dependence on external actors and narrowing the ability of the national legal system to exercise its powers independently.

In turn, Q. Fu *et al.* (2023) examined the relationship between international sanctions and environmental innovation, emphasising that sanctions slow down innovation processes due to restrictions on access to technology and financial resources. Although this study did not focus on environmental aspects, the results confirm a similar trend: sanctions create significant difficulties for modernising institutional and economic infrastructure, limiting the ability of states to perform social functions that directly affect the level of respect for human rights. However, unlike Q. Fu *et al.* (2023), the current study noted that the negative impact is not limited to the technology sector, but also covers the political system as a whole,

increasing the risks of losing state control over domestic politics and economic independence.

The issue of selectivity in the application of sanctions is also extremely relevant in international relations. Despite the fact that sanctions are positioned as a universal mechanism of responsibility for violations of international law, their application often depends on the political and strategic interests of influential states. This creates a situation of “double standards”, when some countries are subject to strict restrictions, while others, despite such violations, avoid sanctions or face only minor restrictions. This situation undermines the credibility of the international sanctions mechanism and calls into question its effectiveness as an instrument for ensuring the international rule of law. In this context, the analysis by H. Veltmeyer (2020) of the impact of imperialist trends on global economic processes pointed out that sanctions policies are often used as a mechanism for controlling the economic development of individual countries, rather than as a means of supporting international law. Similar critical views in the context of international criminal justice were expressed by H. Wang and D. Tatarinov (2024).

The difference between the sanctions applied by the UN and the EU is determined separately. UN sanctions are based on the UN Charter, while EU sanctions are part of a common foreign and security policy. This is confirmed by the analysis of T.C. Nguyen *et al.* (2022), which noted the difference in approaches to sanctions between international organisations. The results of the study also confirm this difference, highlighting the importance of international coordination to maximise the impact of sanctions.

M. Prasad and M. Zaloznaya (2021) emphasised that the effectiveness of responding to external pressure largely depends on the level of institutional organisation and the ability of state structures. This study also shows that states with lower levels of administrative autonomy and weak

state infrastructure are more vulnerable to sanctions, which complicates the implementation of internationally recognised human rights, in particular, access to basic services, health, and education.

The study by M. Splinter and J. Klomp (2022) examined the macroeconomic consequences of sanctions, in particular, the potential risk of economic destabilisation in target countries. Although the present study did not consider indicators of economic growth, the results of the analysis indicate significant social consequences of sanctions, which indirectly confirms the assumption of their destructive role. In particular, economic pressures have been found to impede access to vital resources, such as health, food, and energy, which directly affects the exercise of human rights. Thus, in comparison with the authors' approach, the focus of this study was mainly on the humanitarian dimension of sanctions policy, and not on purely economic indicators.

The paper by O. Zveriev (2024) considered economic sanctions as an instrument of political influence with ambiguous consequences, in particular in terms of long-term social effects. Although the political consolidation of the population around the authorities was not the subject of the analysis of this study, the results confirm another opinion of the author – about significant negative socio-economic pressure, which is not accompanied by the achievement of the stated political goals. This can be seen in countries such as Iran and North Korea, where sanctions have restricted access to basic resources and exacerbated social imbalances without ensuring democratisation or reducing authoritarianism.

On the one hand, sanctions can play the role of a deterrent tool that encourages the target state to comply with international norms and standards. On the other hand, their impact on state sovereignty can be ambiguous, since sanctions often limit the state's ability to freely determine its own economic, political and social policies.

Research by K.V. Gromovenko (2021) emphasised the importance of international legal aspects of economic sanctions, in particular, their effective application in the context of ensuring human rights. The researcher noted that sanctions, although used as an instrument of pressure on offending states, are often of limited effectiveness due to the complexity of ensuring compliance with international norms and the instability of legal control. The results are consistent with these findings, as they show that sanctions pressure on countries that violate international obligations does not always lead to the desired changes in their policies. In particular, when sanctions are applied to states with low levels of legal and institutional capacity, they can only deepen socio-economic problems without significantly affecting the political situation.

Summing up the results of the study, it can be noted that economic sanctions are a complex and contradictory instrument of international pressure, which has both positive and negative consequences for the states on which they are imposed. Literature analysis showed that sanctions can serve the function of protecting human rights, but their impact is often limited by socio-economic difficulties for the population living in the countries to which they are applied. Accordingly, the effectiveness of sanctions does not always meet their goals, especially in conditions of low institutional capacity and political instability in the target countries.

Conclusions

As a result of the study, the legal nature of economic sanctions and their compliance with international law was comprehensively analysed; the impact of sanctions policy on human rights, in particular socio-economic rights of citizens in sanctioned states, was assessed; and the problem of balance between the sovereignty of states and the right of the international community to apply

sanctions was investigated. Regarding the legal nature of economic sanctions, it was established that they are a complex instrument of international regulation, combining economic, political and legal aspects. Although international law allows the use of sanctions as a measure of coercion in response to violations of international norms, the lack of uniform international standards for their implementation creates conditions for their arbitrary use by individual states or international organisations. As part of the study, it was found that sanctions imposed unilaterally without the appropriate approval of the UN Security Council may contradict the principles of international law, in particular, the principle of non-interference in the internal affairs of states and the principle of sovereign equality. However, it should be noted that even multilateral sanctions, supported by a majority of international actors, can cause legal contradictions, especially if their impact extends to the basic rights of citizens who are not involved in the political decisions of the government of their country. This situation often occurs when sanctions result in restrictions on access to essential goods and services, such as medical supplies, food or energy, which directly violates states' obligations to respect economic, social, and cultural rights consolidated in international agreements, such as the International Covenant on Economic, Social and Cultural Rights. However, it calls into question the principles of sovereignty and relations between states, where some actors try to influence the domestic policies of others through economic mechanisms, which does not always meet international human rights standards.

Assessing the impact of sanctions on human rights, it was found that, despite their focus on correcting the political behaviour of states, they can have negative consequences for the socio-economic rights of citizens. In particular, restrictions on financial transactions, blocking assets, banning exports and imports, and other economic

restrictions lead to a decline in living standards, violations of the right to work, and restrictions on access to critical goods, in particular, medical products and food. In addition, it was noted that in the context of sanctions pressure, there is often a centralisation of power and an increase in authoritarian tendencies in sanctioned states, which further restricts civil rights. The best approach to resolving this contradiction is to develop universal standards of sanctions policy under the auspices of the UN or other reputable international institutions, which would allow for a more fair and transparent mechanism for sanctions regulation.

Further research in this area may be aimed at developing new approaches to assessing the effectiveness of sanctions measures, considering

both political and socio-economic indicators. An important area for further research is also the analysis of alternative mechanisms of international influence on states that violate international law, in particular, diplomatic, economic, and legal measures that can complement or partially replace the sanctions policy.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of Interest

None.

References

- [1] Akter, R., & Hossain, R. (2024). The impact of economic sanctions on human rights protection: A critical examination of targeted countries. *Economics & Law*, 5(1), 15-32. doi: [10.37708/el.swu.v5i1.2](https://doi.org/10.37708/el.swu.v5i1.2).
- [2] Alhassan, A., Shabani, A., Taha, A., & Haseki, M. (2023). Sanctions and economic growth: Do sanction diversity and level of development matter? *Heliyon*, 9(9), article number e19571. doi: [10.1016/j.heliyon.2023.e19571](https://doi.org/10.1016/j.heliyon.2023.e19571).
- [3] Charter of the United Nations. (1945, June). Retrieved from <https://surl.lu/dgdjsb>.
- [4] Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations. (1970, December). Retrieved from <https://digitallibrary.un.org/record/202170?v=pdf>.
- [5] Early, B.R., & Peksen, D. (2022). Does misery love company? Analyzing the global suffering inflicted by US economic sanctions. *Global Studies Quarterly*, 2(2), article number ksac013. doi: [10.1093/isagsq/ksac013](https://doi.org/10.1093/isagsq/ksac013).
- [6] EU Sanctions Map. (2025). Retrieved from <https://www.sanctionsmap.eu/#/main>.
- [7] Farzanegan, M.R. (2022). The effects of international sanctions on Iran's military spending: A synthetic control analysis. *Defence and Peace Economics*, 33(7), 767-778. doi: [10.1080/10242694.2021.1941548](https://doi.org/10.1080/10242694.2021.1941548).
- [8] Felbermayr, G., Kirilakha, A., Syropoulos, C., Yalcin, E., & Yotov, Y.V. (2020). The global sanctions data base. *European Economic Review*, 129, article number 103561. doi: [10.1016/j.eurocorev.2020.103561](https://doi.org/10.1016/j.eurocorev.2020.103561).
- [9] Flissak, K. (2019). [Economic sanctions and the specifics of their positioning in modern international relations](#). *Current Problems of Jurisprudence*, 1(17), 72-80.
- [10] Fu, Q., Gong, Q., Zhao, X.X., & Chang, C.P. (2023). The effects of international sanctions on green innovations. *Technological and Economic Development of Economy*, 29(1), 141-164. doi: [10.3846/tede.2022.17782](https://doi.org/10.3846/tede.2022.17782).

- [11] Gnitii, A.O., Antonov, A.O., & Shatokha, E.O. (2024). Mechanisms for ensuring the implementation of sanctions (restrictive measures) of the European Union. *Forum of Law*, 79(2), 96-104. doi: [10.5281/zenodo.10933564](https://doi.org/10.5281/zenodo.10933564).
- [12] Gonchar, A.A. (2024). Legal regulation of EU sanctions: From initiation to implementation. *Economic Theory and Law*, 2(57), 71-82. doi: [10.31359/2411-5584-2024-57-2-71](https://doi.org/10.31359/2411-5584-2024-57-2-71).
- [13] Gromovenko, K.V. (2021). Economic sanctions: International legal aspects of effectiveness. *Juris Europes Scientia*, 4, 70-77. doi: [10.32837/chern.v0i4.265](https://doi.org/10.32837/chern.v0i4.265).
- [14] Gutmann, J., Neuenkirch, M., & Neumeier, F. (2021). Sanctioned to death? The impact of economic sanctions on life expectancy and its gender gap. *The Journal of Development Studies*, 57(1), 139-162. doi: [10.1080/00220388.2020.1746277](https://doi.org/10.1080/00220388.2020.1746277).
- [15] Human Rights Watch. (2019). *Maximum pressure: US Economic sanctions harm Iranians right to health*. Retrieved from <https://surl.li/xkdoja>.
- [16] Human Rights Watch. (2020). *World Report 2020*. Retrieved from <https://surl.li/mwwjza>.
- [17] International Covenant on Economic, Social and Cultural Rights. (1966, December). Retrieved from https://treaties.un.org/doc/treaties/1976/01/19760103%2009-57%20pm/ch_iv_03.pdf.
- [18] Judgement of the International Court of Justice in Case "Nicaragua v. United States of America". (1986, June). Retrieved from <https://www.icj-cij.org/sites/default/files/case-related/70/070-19860627-JUD-01-00-EN.pdf>.
- [19] Judgment of the International Court of Justice in the Case of "Islamic Republic of Iran v. United States of America". (2018, October). Retrieved from <https://www.icj-cij.org/node/105708>.
- [20] Kang, S., Lee, S., & Whang, T. (2023). Economic sanctions, repression capacity, and human rights. *Journal of Human Rights*, 22(2), 174-197. doi: [10.1080/14754835.2022.2096404](https://doi.org/10.1080/14754835.2022.2096404).
- [21] Kolesnichenko, D. (2019). *The UN called the new US sanctions against Venezuela excessive*. Retrieved from <https://surl.li/dpunbo>.
- [22] Korf, B. (2023). The irony of development: Critique, complicity, cynicism. *Anthropological Theory*, 23(2), 147-166. doi: [10.1177/14634996221115225](https://doi.org/10.1177/14634996221115225).
- [23] Lektzian, D., & Mkrtchian, G. (2021). The effect of sanctions on economic freedom. *Social Science Quarterly*, 102(6), 2776-2794. doi: [10.1111/ssqu.13067](https://doi.org/10.1111/ssqu.13067).
- [24] Meyer, K.E., Fang, T., Panibratov, A.Y., Peng, M.W., & Gaur, A. (2023). International business under sanctions. *Journal of World Business*, 58(2), article number 101426. doi: [10.1016/j.jwb.2023.101426](https://doi.org/10.1016/j.jwb.2023.101426).
- [25] Morgan, T.C., Syropoulos, C., & Yotov, Y.V. (2023). Economic sanctions: Evolution, consequences, and challenges. *Journal of Economic Perspectives*, 37(1), 3-29. doi: [10.1257/jep.37.1.3](https://doi.org/10.1257/jep.37.1.3).
- [26] Moteng, G., Raghutla, C., Njangang, H., & Nembot, L.N. (2023). International sanctions and energy poverty in target developing countries. *Energy Policy*, 179, article number 113629. doi: [10.1016/j.enpol.2023.113629](https://doi.org/10.1016/j.enpol.2023.113629).
- [27] Nguyen, T.C., Castro, V., & Wood, J. (2022). A new comprehensive database of financial crises: Identification, frequency, and duration. *Economic Modelling*, 108, article number 105770. doi: [10.1016/j.econmod.2022.105770](https://doi.org/10.1016/j.econmod.2022.105770).
- [28] OHCHR. (2020). *United Nations Human Rights Report 2019*. Retrieved from <https://surl.li/yqbtad>.
- [29] Prasad, M., & Zaloznaya, M. (2021). Bureaucratic quality and social development. *Sociology of Development*, 7(3), 231-252. doi: [10.1525/sod.2019.0023](https://doi.org/10.1525/sod.2019.0023).

- [30] Regulation of the Council of European Union No. 2580/2001 "On Specific Restrictive Measures Directed Against Certain Persons and Entities with a View to Combating Terrorism". (2001, December). Retrieved from <https://eur-lex.europa.eu/eli/reg/2001/2580/oj/eng>.
- [31] Regulation of the Council of European Union No. 833/2014 "On the Restrictive Measures in View of Russia's Actions Destabilising the Situation in Ukraine". (2014, July). Retrieved from <https://eur-lex.europa.eu/eli/reg/2001/2580/oj/eng>.
- [32] Report of the Independent International Commission of Inquiry on the Syrian Arab Republic. (2023). Retrieved from <https://surl.li/mxzdqx>.
- [33] Report of the UN Special Rapporteur on the negative impact of unilateral coercive measures on the enjoyment of human rights. (2018). Retrieved from <https://surl.li/wwkvdtd>.
- [34] Resolution the General Assembly No. 2019A/RES/74/200 "Unilateral Economic Measures as a Means of Political and Economic Coercion Against Developing Countries". (2019, December). Retrieved from <https://documents.un.org/doc/undoc/gen/n19/434/06/pdf/n1943406.pdf>.
- [35] Sokolovska, O.M. (2022). Sanctions as a means of foreign policy influence. *Bulletin of NTUU "KPI". Political Science. Sociology. Law*, 3(55), 82-86. doi: 10.20535/2308-5053.2022.3(55).269556.
- [36] Splinter, M., & Klomp, J. (2022). Do sanctions cause economic growth collapses? In R. Beeres, R. Bertrand, J. Klomp, J. Timmermans & J. Voetelink (Eds.), *NL ARMS Netherlands annual review of military studies 2021* (pp. 115-132). Hague: NL ARMS. T.M.C. Asser Press. doi: 10.1007/978-94-6265-471-6_7.
- [37] Treaty on European Union. (2012, October). Retrieved from https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF.
- [38] UN General Assembly Resolution No. A/RES/77/7 "On the Need to End the Embargo Against Cuba". (2022, November). Retrieved from <https://docs.un.org/ru/A/Res/77/7>.
- [39] UN Security Council Resolution No. 2615. (2021, December). Retrieved from <https://surl.li/ayqyab>.
- [40] Universal Declaration of Human Rights. (1948, December). Retrieved from <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.
- [41] Veltmeyer, H. (2020). Capitalism, development, imperialism, globalization: A tale of four concepts. *Globalizations*, 17(8), 1335-1349. doi: 10.1080/14747731.2019.1699706.
- [42] Wang, H., & Tatarinov, D. (2024). Issues of limitation of international criminal justice in the modern world. *Social and Legal Studies*, 7(4), 121-131. doi: 10.32518/sals4.2024.121.
- [43] Wei, W., Cui, Q., & Cui, H. (2023). How political conflicts threaten energy security and economic growth in Asia: A study on the sanctions imposed on Iran. *Energy & Environment*, 34(1), 58-77. doi: 10.1177/0958305X211045768.
- [44] Yarovoy, T.S. (2024). Prospects for the application of political and economic sanctions as an instrument of state policy in the conditions of the formation of civil society. *Scientific notes of VI. Vernadsky TNU. Series: Public Management and Administration*, 35(74), 146-151. doi: 10.32782/TNU-2663-6468/2024.3/27.
- [45] Zhou, F., & Wang, X. (2022). The carbon emissions trading scheme and green technology innovation in China: A new structural economics perspective. *Economic Analysis and Policy*, 74, 365-381. doi: 10.1016/j.eap.2022.03.007.
- [46] Zveriev, O. (2024). Nature of economic sanctions and reasons for their application. *Economy of Ukraine*, 1(746), 40-53. doi: 10.15407/economyukr.2024.01.040.

Економічні санкції як виклик правовій теорії: аксіологічний аналіз впливу на права людини та державний суверенітет

Максим Лоза

Аспірант

Національний університет біоресурсів і природокористування України
03041, вул. Героїв оборони, 15, м. Київ, Україна
<https://orcid.org/0009-0000-7837-1918>

Лілія Панькова

Кандидат юридичних наук

Національний університет біоресурсів і природокористування України
03041, вул. Героїв оборони, 15, м. Київ, Україна
<https://orcid.org/0000-0003-0150-1571>

Анотація

Дослідження було спрямоване на аксіологічний аналіз економічних санкцій та їхнього впливу на фундаментальні правові цінності, зокрема права людини й державний суверенітет. Дослідження проводилося на основі комплексного поєднання загальнонаукових і спеціальних юридичних методів. Для дослідження було використано комплекс методів, зокрема порівняльно-правовий, формально-юридичний методи у межах системного підходу, що дозволило всебічно оцінити вплив санкцій на правові системи, міжнародні норми та державний суверенітет. У ході дослідження встановлено, що санкції, як інструмент міжнародного тиску, мають серйозний вплив на державний суверенітет і права людини. Їх застосування часто ставить під загрозу основні права громадян, зокрема економічні права, такі як доступ до праці, соціального забезпечення та необхідних товарів і послуг. Санкції можуть призводити до порушення прав на життя, гідність та розвиток, особливо в умовах, коли обмеження доступу до ресурсів торкаються широких верств населення, включаючи найбільш вразливі соціальні групи. Також було з'ясовано, що вибірковість застосування санкцій і нерівне їхнє виконання часто призводять до виникнення подвійних стандартів у міжнародних відносинах, що підриває довіру до міжнародних правових механізмів. Крім того, санкції можуть підривати державний суверенітет, створюючи передумови для зовнішнього втручання у внутрішні справи держави, що ще більше ускладнює захист прав громадян. Відтак санкції не тільки посилюють політичну ізоляцію, але й ставлять під питання принципи прав людини та міжнародного правопорядку. Отримані результати засвідчили необхідність гармонізації міжнародних стандартів санкційної політики, розробки механізмів моніторингу ефективності санкцій та запровадження гуманітарних винятків для мінімізації їхнього негативного впливу.

Ключові слова: глобальна безпека; демократичні цінності; публічний порядок; міжнародна політика; контрзаходи



UDC 349.6(479.24)

DOI: 10.31548/law/4.2025.42

Analysis of legal challenges in climate regulation of Azerbaijan and proposal for climate law

Emin Alimusayev*

Postgraduate Student

Baku State University

AZ1148, 33 Academician Zahid Khalilov Str., Baku, Azerbaijan

<https://orcid.org/0009-0001-2300-0690>

Article's History:

Abstract

Received: 01.07.2025

Revised: 19.10.2025

Accepted: 27.11.2025

Climate change presents an urgent and complex challenge that demands proper legal response. In Azerbaijan, the year 2022 was noted to have the highest number of forest fires within the recorded period, while water resources reduced by 26.4% between 1980 and 2023, and the Caspian Sea has experienced notable fluctuations in its level, all of which underscore the intensifying impacts of climate change on the regional environment. The study aimed to analyse existing environmental legislative framework of the Republic of Azerbaijan, revealing significant challenges in climate regulation, including the lack of legally binding climate targets, presence of vague and fragmented provisions, absence of clear institutional framework and enforcement mechanisms. Employing doctrinal and comparative legal analysis methods, the study analysed Azerbaijan's environmental legislation and relevant international practices to identify the root causes of these challenges. These problems hinder the effectiveness of climate regulation. To address these legal deficiencies, this article proposes a comprehensive draft Law "On Climate Change". The proposed Law introduces a substantial legal mechanism in climate regulation and includes legally-binding climate targets, climate financing and economic instruments, legal status of climate

Suggested Citation:

Alimusayev, E. (2025). Analysis of legal challenges in climate regulation of Azerbaijan and proposal for climate law. *Law. Human. Environment*, 16(4), 42-58. doi: 10.31548/law/4.2025.42.



*Corresponding author

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

authority and state control mechanisms for ensuring enforceability. It is inspired by the best practices of leading countries and aims to establish a set legal framework. The study concluded that adoption of such law is essential not only to meet global obligations but also to ensure sustainable and resilient economic development

Keywords: climate change; climate targets; environmental legislative framework; law-making; legal reform; “green future”

Introduction

The history of mankind demonstrates that the development of human civilization proportionally increases the human impact on the environment. Starting from the Agricultural Revolution in the Neolithic Age, people began altering ecosystems through farming and domestication of animals. The Industrial Revolution substantially increased human impact on the environment by large-scale use of fossil fuels, pollution and urbanisation. In the 20th and 21st centuries, the environmental impact of humanity kept intensifying, causing issues such as climate change, loss of biodiversity and pollution. According to the report of the Intergovernmental Panel on Climate Change (2023), human activities have caused a global temperature rise of approximately 1.1°C above pre-industrial levels, moreover, forecasts indicate that in the near future this number will number, the frequency of abnormal weather events (floods, torrents, etc.) will intensify, droughts and water scarcity will be more substantial, forest fires will become more severe, and ocean levels will rise due to glacial melting. Further research of different scenarios indicate that sea-level rise-induced coastal flooding is projected to cause annual losses equivalent to 4% of global gross domestic product annually by 2100 (Organisation for Economic Co-operation and Development, 2022) and area affected by forest fires will increase by 19% by 2050 (Zou *et al.*, 2020). Meanwhile, the year 2023 was the hottest recorded year in the last 174 years, the frequency of recorded natural

disasters increased 5 times in the last 50 years, in addition, the number of people affected was 133 million annually from 2015 to 2022, in contrary to 29 million people annually from 2005 to 2014 (State Statistical Committee of the Republic of Azerbaijan, 2024). As the environmental problems escalate both in scale and complexity, states are required to adopt and strengthen effective legal instruments to protect the environment.

As environmental problems, more specifically climate change, is intensifying, its impacts are becoming more evident in Azerbaijan. The Fourth National Communication (Republic of Azerbaijan, 2021) emphasises that with a population of approximately 10 million people, Azerbaijan contributes 0.15% of total global greenhouse gas emissions, moreover its physical and geographical characteristic render Azerbaijan highly sensitive to the effects of climate change (more specifically, droughts, thermal stresses, floods, and other dangerous natural phenomena). Statistics indicate that in 2022, Azerbaijan suffered from an unprecedented peak in forest fire damage in over two decades, with 66 recorded events covering 869 hectares of land (State Statistical Committee of the Republic of Azerbaijan, 2025). Meanwhile, water resources have significantly declined by 26.4% over four decades, including a 35.9% decrease in transboundary waters and a 23.3% decline in local river contributions (Decree of the President of Azerbaijan No. 320, 2024). Moreover, climate change also affects the level of the Caspian

Sea. State officials highlighted climate change as the major cause of level fluctuations of the Caspian Sea, meanwhile both rising and declining of the level endangers the ecosystem. (Ministry of Ecology and Natural Resources, 2024) Additionally, numerous academic studies highlight the impact of environmental problems in the region. The research by V. Teymurova *et al.* (2025) indicated that air pollution results in economic losses estimated between 0.11% and 0.14% of GDP of Azerbaijan, while particulate emission damage accounts for about 0.166% of gross national income as adjusted savings, additionally land degradation, particularly soil erosion, costs Azerbaijan approximately 10-11 billion manats annually. The study by G. Bayramli (2020) addressed environmental problems of Azerbaijan and highlighted the significance of substantial state control and strict environmental policy, public awareness and international cooperation. In addition, G.A. Mustafayeva *et al.* (2025) emphasising the significance of COP29, held in Baku in November 2024, argued that policymakers must ensure that infrastructure projects contribute to climate resilience and are in line with nations climate targets.

Therefore, the legislative framework of nations is always proportional to their socio-economic development. Therefore, the characteristics of the environmental legal framework in developed countries significantly differ from the developing countries. This difference is also supported with the 3rd Article of United Nations Framework Convention on Climate Change (1992), as it determines one of the key principles of climate regulation “common but differentiated responsibilities and respective capabilities”. As the developing countries lack necessary resources and institutional capacities to address complex environmental problems, they are often more vulnerable to such challenges. Consequently, in addition to international support (financing and technology transfer), substantial national legislation is essential

for creation of effective monitoring and compliance, determining responsibilities for public and private actors, as well as establishment of robust legal protections for the environment. Furthermore, T. Huseyinov (2024) indicated that climate justice is correlated with human rights and state responsibilities, therefore, a strong legal framework is essential for ensuring climate justice.

The study aimed to analyse the current legislative framework regulating climate change in Azerbaijan and to propose a model law to strengthen legal mechanisms for climate regulation. The objectives of this research were to identify the main challenges in the existing climate regulation of Azerbaijan, to analyse international legal frameworks and best practices applicable to the national context, as well as to develop proposals for strengthening Azerbaijani climate regulation through a dedicated climate law.

Materials and Methods

The study adopted the conceptual framework of environmental law and climate regulation, emphasising the interaction between legal norms, institutions, and policy mechanisms in addressing climate change. This research analysed the existing environmental legislation of Azerbaijan to identify the main challenges in climate regulations by conducting doctrinal and comparative legal analysis. To determine the existing environmental reality, intensification of the impacts of climate change in the region is addressed. The reports of the international organisations (OECD, 2022; UNEP, 2023; World Bank, 2023) and the government (Republic of Azerbaijan, 2021), official statistical data (State Statistical Committee of the Republic of Azerbaijan, 2024), speeches of the government officials (Ministry of Ecology and Natural Resources, 2024), official documents (Azerbaijan’s Second Nationally Determined Contribution, 2023), were analysed. These sources were selected due to their official status, reliability,

and relevance to assessing the legal and institutional framework for climate governance.

Secondly, the legal provisions that address climate change were identified. Key challenges in the legislation were determined by the analysis of the relevant legal acts and their provisions on climate regulation. The analysis addressed the Constitution of Azerbaijan (1995), environmental and energy laws, as these are the key legal acts in the legislation than include provisions related to climate regulation. This study also analysed the policy documents (Azerbaijan 2030: National Priorities on the Socio-economic Development, 2021), Socio-economic Development Strategy of Azerbaijan in 2022-2026, 2022), as well as the existing institutional framework (Charter of the Ministry of Ecology and Natural Resources, 2020).

Lastly, to address the key legal challenges, the study proposed a climate law by examining best practices from leading countries and neighbouring states. The legislative frameworks of European Union, France, Germany and United Kingdom were studied for their comprehensive climate legislation. Additionally, practices from neighbouring countries such as Turkey, Iran, Georgia and Armenia were analysed to determine regional approaches and challenges in climate regulation. The study also covered recommendations from international organisations such as the UNEP (2023). These sources were chosen for their authoritative perspectives and relevance to the proposed climate law.

Results and Discussion

Overview of the national environmental legislation and reforms. Early laws included primitive clauses that addressed environmental issues on a narrow scale. For example, the Code of Hammurabi (2008) (54-56th laws) instated responsibility for poor maintenance of irrigation systems and the Roman law protected environmental elements (with special laws regarding water

pollution) through protection of individual rights rather than public environmental policies (Wacke, 2002). As society advanced, environmental legal protection became more sophisticated. Starting from the 1800s, states adopted distinct legal acts, aimed at preventing pollution. In the 20th century many national laws and international conventions were enacted that addressed various aspects of environmental protection, such as natural resources, biodiversity, climate change etc. As of 2025, an increasing number of countries keep refining their legislative framework by stricter regulations, distinct climate laws etc.

The collapse of the Soviet Union in 1991 resulted in an emergence of fifteen independent countries, including the Republic of Azerbaijan. Since gaining independence, Azerbaijan has established national legal system to govern domestic affairs. In the years following independence, Azerbaijan adopted environmental legal acts to address various environmental problems, such as pollution, natural resources, ecological degradation etc. Azerbaijan continued to refine and develop its environmental legislation. Ongoing reforms provided notable improvements in the environmental legislative framework. Despite these reforms, remaining legal challenges in the legislation hinder the effectiveness of climate regulation. To better determine the challenges about climate regulation, it is necessary to examine the main elements of the environmental legislative framework. Comprehensive legal analysis of the legal acts in the environmental legislative framework of Azerbaijan is crucial in evaluation of effectiveness of the normative provisions and identification of key challenges.

The environmental legislation of Azerbaijan consists of various legal acts that address certain aspects of environmental protection. International agreements which were ratified by Azerbaijan, such as Framework Convention and Paris Agreement (2015) are also integrated parts of

the legislation. The Constitution of the Republic of Azerbaijan (1995) is central in the environmental legislation by setting the basic principles and environmental rights. Article 39 stipulates the right to live in a clean environment and mandates the state to ensure ecological balance and biodiversity. Moreover, Article 78 declares the common duty to protect the environment. The role of the Constitution for climate regulation is notable. As the Judgment of the Federal Constitutional Court of Germany No. BvR 2656/18 (2021) ruled insufficient climate provisions unconstitutional, several scholars addressed this substantial decision and constitutional basis of climate regulation (de Vilchez, 2021; Krämer-Hoppe, 2021; Theil, 2023). Despite the fact that the Constitutional Court of Azerbaijan has not yet addressed to this issue, German Federal Constitutional Court's ruling highlights that the Constitution provides the legal basis for climate regulation by guaranteeing fundamental rights which obligate the state to enact laws that prevent environmental harm and protect future generations. This establishes a constitutional duty for the state to implement long-term, binding climate policies that ensure intergenerational justice.

To ensure the proper functioning of the relevant articles of the Constitution, several environmental laws have been adopted. One of the key legislative acts in environmental legislative framework of Azerbaijan is the Law of Azerbaijan No. 678-IQ (1999). It addresses the crucial aspects of environmental protection, such as benefiting from nature, economic tools to protect the environment, ensuring ecological balance, environmental requirements for business activities etc. Article 49 is called "protection of the climate of Earth and Ozone layer of the atmosphere". However, the Article does not determine any regulation mechanism, only stating that such protection is ensured based on the national legislation and the international agreements that Azerbaijan has ratified. Azerbaijan ratified the Paris

Agreement (2015), however distinct provisions to protect the climate have not been adopted in national legislation. Therefore, Article 49 undermines the legal certainty and fails to determine any regulation mechanism.

Another major legislative acts in environmental protection is the Law of Azerbaijan No. 109-IIQ "On the Protection of the Atmosphere Air" (2001). This law addresses protection of the atmosphere from pollution by ensuring monitoring, prevention and control mechanisms. Article 14 prohibits business projects that may damage the climate. However, this provision is vague, as it does not explicitly define criteria which can be used to determine whether the business activities harm the climate. The Law of Azerbaijan No. 1175-VQ (2018) is also crucial as it regulates the legal mechanisms for implementing environmental impact assessment for business and other projects. Article 4.9 indicates that the impact of the project on climate change must be evaluated during such an assessment. While this provision is ambiguous, no further provisions on climate are determined in the mentioned Law.

There are few more laws with narrower scope, each addressing a particular aspect of environmental law. For instance, the Law of Azerbaijan No. 677-IQ (1999) addresses protection from environmental hazards, the Law of Azerbaijan No. 270-IIQ (2002) sets the mechanism for information gathering about the environment, the Law of Azerbaijan No. 401-IIQ (2002) is dedicated to increase the awareness of people on environmental protection, the Law of Azerbaijan No. 957-IVQ (2014) regulates the use, conservation and restoration of the green spaces. Moreover, there are other laws, each addressing distinct category of natural resources, such as the Forest Code of Azerbaijan (1997), the Water Code of Azerbaijan (1997), the Soil Code of Azerbaijan (1998) etc. Nevertheless, none of these laws include any set provisions on climate regulation.

Between 2020 and 2025, there have been further reforms aimed to reduce the dependency on fossil fuels by promoting the use of renewable energy sources. Accordingly, in 2021 the Law of Azerbaijan No. 339-VIQ “On the Use of Renewable Energy Sources in the Production of Electric Energy” (2021) was adopted. That Law establishes the promotion mechanism for renewable energy sources, while not justifying and aligning this promotion with the climate goals of Azerbaijan. Moreover, in 2023, two major laws in the energy sector: the Law of Azerbaijan No. 1006-VIQ

“On Energy” (2023) and the Law of Azerbaijan No. 858-VIQ “On Electro-energy” (2023) were adopted. Both laws include provisions for mandatory environmental impact assessment and protection of the environment. While the first law mandates energy subjects to take measures to reduce the emission of greenhouse gasses, neither law stipulates any clear requirements related to the climate regulation. Therefore, the Table below describes the climate provisions of the normative acts in the environmental legislation of Azerbaijan.

Table 1. Laws that include climate provisions

The name of the legal act	Relevant article	Provision
The Law of Azerbaijan No. 678-IQ “On Environmental Protection” (1999)	Article 49	The protection of the climate and Ozone layer is conducted based on the national legislation and the ratified international agreements
The Law of Azerbaijan No. 109-IIQ “On the Protection of the Atmosphere Air” (2001)	Article 14.8	Design, placement, construction and operation of facilities that may cause deterioration of human health, the state of the ozone layer, climate, flora and fauna, and substantial consequences for the environment and the population are prohibited.
The Law of Azerbaijan No. 1175-VQ “On the Environmental Impact Assessment” (2018)	Article 4.9	Impact of the project on the climate change must be evaluated during EIA
The Law of Azerbaijan No. 339-VIQ “On the Use of Renewable Energy Sources in the Production of Electric Energy” (2021)	The entire Law promotes renewable energy sources	
The Law No. 1006-VIQ “On Energy” (2023)	Article 21.4 (second sentence)	Energy entities take measures to reduce the amount of greenhouse gas emissions released into the environment, prevent pollution of soils and water bodies with oil and oil products, as well as reduce the impact of other wastes that harm the environment.
The Law of Azerbaijan No. 858-VIQ “On Electro-energy” (2023)	Article 32	Electric power entities comply with technical regulations on environmental protection, are responsible for their violation, and implement technical and organisational measures aimed at reducing harmful impacts on the environment.

Source: systematised by the author

Along with these laws, the Charter of the Ministry of Ecology and Natural Resources (Decree of the President of Azerbaijan No. 975, 2020) obligates the Ministry to examine the effects of climate change on the population and the economy. However, the Charter lacks institutional clarity by not mandating the Ministry to take effective

measures in climate regulation and not defining its legal status as a climate authority. Moreover, in February 2025, by the Decrees of the President of Azerbaijan No. 472 and No. 478, (2025) of the President, a position of special representative for climate change of the President of Azerbaijan was established.

In 2021, “Azerbaijan 2030: National Priorities on the Socio-economic Development” (Decree of the President of Azerbaijan No. 2469, 2021) (“National Priorities”) was adopted. The document determines 5 priorities, one of them is “Clean Environment and “Green Development” Nation”. The priority highlights the emergency of climate change and identifies two objectives – high quality environment, clean energy space.

First goal covers the protection of the environment and the efficient management of natural resources. The latter targets increase in the use of renewable energy sources and reducing the impact on climate. Being highly conceptual, National Priorities do not define any clear measures or enforcement mechanisms. To implement the National Priorities, “Socio-economic Development Strategy of Azerbaijan in 2022-2026” (“the Strategy”) was approved by the Decree of the President of Azerbaijan No. 3378 (2022). The strategy includes measures to combat climate change. The 13rd object of the Strategy is determined as “combatting climate change”. Alongside with the other measures, the Strategy also stipulates the preparation of the “State Program for the Low-carbon Development” and “National Adaptation Plan”. The 13th objective of the Strategy is determined as “combat with climate change”. While the Strategy includes clear steps to implement National Priorities, the non-normative nature of this act prevents coverage of remaining legal challenges. Furthermore, with the Decree of the President of Azerbaijan No. 2620 (2021), the liberated territories of the Karabakh and East Zengezur were declared as “clean energy zones”.

By the Decree of the President of Azerbaijan No. 4233 (2023), in Azerbaijan the year 2024 was declared as “In Solidarity for a Green World”. Moreover, that Decree also highlights the climate commitments of Azerbaijan, mentioning that it is targeted to reduce the emission of greenhouse gasses by 35% until 2030 and 40% until

2040. Being a non-normative legal act, that Decree does not include enforceable provision on climate regulation. However, it is the only legal act in national legislation that specifies climate targets of Azerbaijan.

In addition to the national legislation, international instruments, more specifically, Paris Agreement (2015), is also substantial in shaping the climate targets of Azerbaijan. As the Paris Agreement (Article 4) requires parties to prepare nationally determined contributions (NDCs) indicating their climate efforts, Azerbaijan also provided and updated its NDCs. Azerbaijan’s NDCs (2023) outline the climate commitments to reduce the emission of greenhouse gas emissions by 35% until 2030 and 40% until 2040.

Analysis of the legislative framework demonstrates several findings:

- lack of the legally binding climate targets: climate targets of Azerbaijan are included in NDCs and non-normative legal act;

- vague provisions on climate regulation: provisions on climate regulation stipulated in mentioned laws are not clear and measurable, making it difficult to assess compliance and effectiveness. For example, Article 49 of the Law “On Environmental Protection” (1999), states that protection of climate is based on the national legislation and the international agreements. However distinct provisions to protect the climate have not been adopted in national legislation. Furthermore, Article 14.8 of the Law “On the Protection of the Atmosphere Air” (2001), Article 4.9 of the Law of Azerbaijan No. 1175-VQ (2018), the entire Law of Azerbaijan No. 339-VIQ (2021), Article 21.4 of the Law of Azerbaijan No. 1006-VIQ (2023) and Article 32 of the Law of Azerbaijan No. 858-VIQ (2023) fail to define clear indicators for assessing the effectiveness of climate measures. Without clear, measurable provisions, enforcement authorities cannot evaluate whether entities comply with climate objectives;

➤ missing carbon pricing mechanisms: legislative framework lacks carbon pricing instruments (carbon taxes or emission trading systems);

➤ absence of clear institutional framework: along with existing laws, the Charter of the Ministry of Ecology and Natural Resources requires the Ministry to examine climate change effects on the population and economy. However, it does not mandate the Ministry to implement specific climate measures or define its role as the central climate authority. The institutional framework is further fragmented by the establishment of a Special Representative for Climate Change, whose mandate and coordination with the Ministry remain unclear;

➤ ambiguous enforcement mechanisms: the analysis above demonstrates that Azerbaijan's climate regulation framework faces significant enforceability challenges. The lack of legally binding climate targets, combined with vague and non-measurable provisions across various laws, prevents authorities from effectively monitoring and assessing compliance. The absence of carbon pricing mechanisms further limits the ability of the state to incentivise emission reductions. Institutional ambiguity, highlighted by unclear mandate between the Ministry of Ecology and Natural Resources and the Special Representative for Climate Change, intensifies these enforcement gaps. These challenges highlight the need to clarify legal provisions, establish measurable targets, and define clear institutional responsibilities to ensure effective climate regulation.

Necessity of adopting climate law. The study demonstrated that various legal acts in the environmental legislative framework include provisions on climate, while lacking the legal certainty. These provisions are generally conceptual and lack operational clarity. In addition, climate targets of Azerbaijan are described in the NDCs and non-normative legal acts in national legislation. The Strategy is of non-normative nature

and the only legal act that depicts systemic measures in climate regulation. Overall, vague status of the regulatory framework, underdeveloped enforcement mechanisms and lack of the clear institutional framework were highlighted as key problems remaining in the climate regulation of Azerbaijan. To properly address these challenges, legislative action is essential.

Consistent with the historical provided background, although regulation has advanced from irrigation clauses in ancient codes to contemporary climate statutes, the strength and enforcement of these frameworks are largely determined by a national socio-economic development. This correlation also demonstrates the reason for the difficulties in addressing environmental challenges among developing countries, as recognised by the UNFCCC principle of "common but differentiated responsibilities.". Alongside with the legal challenges in the legislation, advancing international support mechanisms also highlight the necessity of such legislative initiative. In November 2024, the 29th Conference of the Parties (COP29) to the Framework Convention was held in Baku, Azerbaijan. The most notable outcome of the COP29 was New Collective Quantified Goal on Climate Finance (UNFCCC, 2024), as the developed countries committed to triple the amount of the money to support developing nations in climate actions by providing 300 billion USD annually by 2035. This marks a significant point especially for developing countries (as well as Azerbaijan), as they are more dependent on international support. The analysis by B. O'Callaghan (2024) demonstrated that the median climate finance target should be 1.7 trillion USD. Another research by NCQG demonstrated that climate finance is not only equitable for developed countries, but also in their economic interests (Bolton & Kleinnijenhuis, 2024). Moreover, some research suggests that the legal framework in climate finance is underdeveloped compared to other economic sectors

(Wei *et al.*, 2025). Consequently, to ensure that financial commitments achieve their targeted outcomes, developing countries need to establish strong legal and institutional frameworks that support effective governance, transparency and accountability.

Study of the global trends in environmental law and identification of successful international practices is central in shaping such legislative initiatives. The analysis of the environmental legislative framework in developed countries demonstrated that increasing number of countries adopted distinct climate laws. For example, in 2021, the European Union adopted the European Climate Law (Regulation of European Union No. 2018/1999, 2021). Being a regulation, it is applicable in all member states. It sets legally-binding climate targets for the EU to achieve climate neutrality by 2050. It strengthens EU climate commitments by embedding them into law. The similar trend can also be observed in member states. In 2019, France launched democratic initiative called the Citizens' Climate Convention (Convention Citoyenne pour le Climat, n.d.). It united 150 French citizens with a mission to propose measures to combat climate change. Inspired with the proposed measures, France adopted several laws, more specifically Law of France No. 2021-1104 (2021) that sets legally binding climate targets and introduces measures to achieve these targets. Alongside with France, Germany adopted the Federal Climate Change Act (2021). In 2021, the Constitutional Court of Germany in Judgment No. BvR 2656/18 (2021), ruled that this law was incompatible with the German Constitution. Therefore, the law was significantly revised by setting more enhanced climate targets. The United Kingdom was one of the first countries that adopted a distinct climate law, as its primary climate law, which is the Climate Change Act was adopted in 2008. That law was amended in 2019 introducing climate neutrality targets

into UK legislation. Furthermore, according to the UNEP (2023) report, a growing number of climate cases invoke fundamental rights to compel stronger governmental action on climate change.

Alongside developed countries, there have been several attempts in the neighbouring countries of Azerbaijan to adopt climate laws. In 2025, Turkey adopted first Climate Change Law (Law of Turkey No. 7552, 2025). It sets legally binding climate targets for Turkey and introduces an emission trading system into the legislation. However, the project is criticised for emphasis on economic aspects rather than environment (Gürçam, 2025). Iran also faces significant impacts of climate change including intensifying droughts, declining water sources and shrinking lakes. Several researchers condemned the lack of clear climate regulation in Iran (Heydari *et al.*, 2025; Mousavi *et al.*, 2025). The impact of climate change is also becoming more evident in Georgia and Armenia. Both Nations drafted Laws on climate change (Parliament of Georgia, 2023; EcoLur, 2025).

An international trend can be observed: nations adopting distinct climate laws, setting legally binding climate targets, specifying compliance and monitoring mechanisms. Beyond the presence of legally binding climate targets, the qualitative features of such laws including the clarity of provisions, coherence across legal instruments, specificity of mandates, and robustness of monitoring systems determine their effectiveness. Developed countries have tended to lead this trend as they can invest in institutions, monitoring capacity, and enforcement mechanisms, by contrast, many developing countries rely on non-normative acts and conditional NDCs that lack legal force and precise indicators. Therefore, COP29's enhanced finance commitments are substantial not only for funding mitigation and adaptation, but also for enabling the qualitative reforms. For Azerbaijan, this implies that adopting legally binding climate targets is insufficient, a law must

be drafted with measurable indicators, allocation of responsibilities, transparent monitoring requirements and enforceable sanctions to transform commitments into outcomes. Reforming these qualitative elements is essential to turn financial support into evident emission reductions and adaptation gains.

Drafting climate law for Azerbaijan. Previous sections analysed the environmental legislative framework of Azerbaijan, identifying the key issues in the legislation, as well as highlighting the necessity of addressing these challenges. These

challenges hinder the effectiveness of climate regulation in Azerbaijan. To address these issues, adoption of the dedicated climate law is essential.

Considering the characteristics of the legislation of Azerbaijan, studying climate laws in foreign countries and analysing the challenges in existing legislative framework, basic structure of the Law of the Republic of Azerbaijan “on Climate Change” (“İqlim dəyişikliyi haqqında” Azərbaycan Respublikasının Qanunu) can be drafted. Basic structure of such law may include preamble and 6 chapters (Table 2).

Table 2. Structure of the Law of the Republic of Azerbaijan

Chapter I: General provisions	1-ci fəsil. Ümumi müddəalar
Chapter II: Climate targets	2-ci fəsil. İqlim hədəfləri
Chapter III: Financing and economic instruments	3-cü fəsil. Maliyyələşmə və iqtisadi tənzimləmə metodları
Chapter IV: Institutional framework	4-cü fəsil. İnstitusional çərçivə
Chapter V: State control mechanisms	5-ci fəsil. Dövlət nəzarət mexanizmləri
Chapter VI: Final provisions	6-cı fəsil. Yekun müddəalar

Source: compiled by the author

The preamble of the Law includes references to the Article 39 of the Constitution, international obligations under Paris Agreement, interests in the environmental and climate protection and main objective of the proposed law. The first chapter of the draft Law begins with determination of the scope and the purpose of the Law. The scope of the Law covers the climate targets of Azerbaijan, the activity of corporations, government bodies and citizens regarding the reduction of greenhouse gas emissions, enforcement and state control mechanisms, as well as the legal status of climate authority. The aim of the Law is to achieve a green world and combat climate change by reducing greenhouse gas emissions. The chapter continues with key definitions and identification of the main principles of climate regulation in Azerbaijan. The definitions of greenhouse gas emission, climate authority, climate justice, climate targets and other relevant terms are to be

addressed in this chapter. The main principles include transparency, equality, and clarity of climate policy, sustainable development, etc.

The second chapter defines final and intermediate climate targets of Azerbaijan, including reducing the emission of greenhouse gasses by 35% until 2030 and 40% until 2040. It also identifies the duties of the state in climate regulation and mandates “climate authority” for planning, taking measures and adapting to climate change. The third chapter is dedicated to climate financing and introducing economic instruments to the legislation. As previous studies demonstrated, the existing legislation lacks mechanisms for modern economic instruments, such as green procurement (Alimusayev, 2025a) and carbon pricing (Alimusayev, 2025b). This chapter may also include provisions for emission trading systems in Azerbaijan. However, it must be considered that emission trading systems are often considered

more suitable for high-income countries (World Bank, 2023). Moreover, further research highlighted the importance of “green budgeting” in achieving a green economy in Azerbaijan (Qasimli *et al.*, 2022).

The fourth chapter determines the legal basis of climate institutions, more specifically “climate authority”. Such authority can be the Ministry of Ecology and Natural Resources (or other Agency under the Ministry), or an independent body in the form of a climate council or committee. This chapter also defines the rights and the functions of such authority and its cooperation mechanisms with other governmental bodies. The Authority must be mandated to monitor, investigate and enforce the proposed law.

Fifth chapter emphasises the state control mechanisms, more specifically, monitoring and verification systems as they help to ensure transparency and enforceability. This chapter must also include provisions that obligate the government to make a regular climate action plan and implement it. This chapter may also include legal responsibilities and liabilities of subjects in compliance of this Law. Lastly, the sixth chapter concludes the law with final and transitional provisions. This chapter may include a time period for the Law to become enforceable.

Adoption of the proposed law can be considered as a remarkable step for the climate regulation in Azerbaijan. However, to maintain the proper functioning of the law, further legislative acts need to be adopted. For example, after the adoption of the proposed Law other legislative acts,

discussed in the previous chapters, are required to be modified to accommodate new requirements. Furthermore, as the proposed Law introduces new regulation into the legislative framework of Azerbaijan, amendments or additions to the Criminal Code and the Code of Administrative Offenses will be required to ensure legal liability.

The proposed Law “on Climate Change” proportionally addresses the legal challenges identified in the previous sections:

- it sets legally-binding climate targets: it includes the climate targets of Azerbaijan. Additionally, in the hierarchy of normative legal acts, laws stand higher than other legal acts and they include enforceable and legally-binding provisions. Therefore, the proposed climate regulation takes the form of a law;

- it includes clear climate provisions: while defining climate targets, institutional framework and control mechanisms, the proposed Law neutralises the ambiguousness of the legislative framework;

- it specifies climate financing and economic instruments: it contains provisions on financing and carbon pricing;

- it defines institutional framework in climate regulation: the proposed Law establishes the legal basis of climate authority;

- it stipulates state control mechanisms ensuring enforceability: it guarantees enforcement by determining monitoring and verification systems.

As the Table 3 shows, each of the legal problems, discussed in the previous section, is covered in the proposed Law.

Table 3. The legal challenges and the proposed Law

The legal challenge	The proposed Law
Lack of the legally binding climate targets	The second chapter of the proposed Law defines final and intermediate climate targets of Azerbaijan
Vague provisions on climate regulation	The entire Law is dedicated to combatting climate change and it sets clear normative provisions
Missing carbon pricing mechanisms	The third chapter is dedicated to climate financing and introduces economic instruments

Table 2. Continued

The legal challenge	The proposed Law
Absence of the clear institutional framework:	The fourth chapter determines the legal basis of climate authority
Ambiguous enforcement mechanisms	Fifth chapter focuses on the state control mechanisms, moreover after the adoption of the Law further amendments to criminal or administrative offences legislations are considered

Source: compiled by the author

By properly addressing the legal challenges, the proposed Law aligns the legislation of Azerbaijan with international standards. The proposed Law "On Climate Change" seeks to unify Azerbaijani laws with international practice by creating clear targets, monitoring systems, and instruments for a low-carbon economy. H. Ahmedov (2024) suggested a circular economy model as a way of combatting climate change for Azerbaijan. Proposed results support this approach, as the proposed Law includes measures (economic instruments) that could be used to implement circular practices in industry and the public sector. The World Bank Group (2023) recommends a low-carbon transition for Azerbaijan. This recommendation aligns with this study results that laws are insufficient and must be supported by capacity building, clear agency roles and funding, although proposed solutions prioritise legal design and enforceable interim milestones rather than the broader policy-level analysis of the World Bank.

Moreover, local scholarship reaches similar conclusions regarding gaps in Azerbaijan's legal framework. For example, A. Qasimov *et al.* (2024) noted that the environmental laws of Azerbaijan fail to identify the specific aspects of ecological legal relations and, due to gaps in environmental legislation, there is a need for comprehensive systematisation. This local critique reinforces the conclusions regarding legal clarity. Without systematic consolidation, precise definitions and clear allocation of responsibilities, climate targets and international finance will not provide measurable results.

The World Bank's Reference Guide to Climate Change Framework Legislation (2020) identifies twelve key elements for effective climate laws, including clear targets, enforceable interim milestones, defined institutional roles, robust monitoring systems. The proposed Law "on Climate Change" implements these principles by establishing measurable climate targets, clarifying agency responsibilities, embedding monitoring requirements and providing mechanisms for funding and enforcement. By aligning with these internationally recognised elements, the Law strengthens Azerbaijani legal framework, enhances enforceability, and increases the probability of achieving tangible emissions reductions and sustainable development outcomes.

Most notably, the Law "On Climate Change" aims to preserve a green World for future generations by turning policy commitments into durable, enforceable action. By introducing climate regulation into national legislation, the Law would provide the legal certainty required to enforce the law and track progress over time. Furthermore, embedding principles of a just transition and support for low-carbon economic practices will help distribute benefits broadly by protecting modern environment while safeguarding ecosystem services and climate resilience for future generations.

Conclusions

The study analysed the modern state of climate regulation in the legislative framework of Azerbaijan and assessed its adequacy in addressing contemporary climate challenges. The research

objective was to determine whether the existing legal framework ensures effective climate regulation and to identify the main legislative gaps that hinder its implementation. The analysis determined that the objective has been achieved. The study covered the Constitution, environmental and energy laws and other relevant acts to identify climate-related provisions. Comparative analysis with international and regional practices revealed that Azerbaijani legal framework lacks a dedicated and comprehensive climate law. Existing provisions are scattered across various legislative acts, often formulated in general or declarative terms, and fail to provide sufficient legal certainty or enforceable obligations.

Furthermore, the study identified institutional fragmentation and the absence of clear mandates among public authorities as a significant obstacle in climate regulation. The research also highlighted the limited development of economic and financial instruments necessary for supporting climate regulation. The comparison of Azerbaijani legislation with legal approaches in several other jurisdictions demonstrated that effective climate regulation depends on rational legislative design, the presence of clear climate targets and mechanisms for monitoring and enforcement.

References

- [1] Ahmedov, H. (2024). *COP29: Azerbaijan's model in combating climate change*. Retrieved from https://azertag.az/xeber/cop29_iqlim_devisikliyi_ile_mubarizede_azerbaycan_modeli-2896156.
- [2] Alimusayev, E. (2025a). Sustainable development and green procurement: Perspectives on the improvement of legislation. *Qanun Jurnalı*, 1(363). doi: 10.30546/2218-9130.001.2025.1227.
- [3] Alimusayev, E. (2025b). Carbon pricing for a green world: Perspectives on the improvement of legislation. *Qanun Jurnalı*, 3(365). doi: 10.30546/2218-9130.003.2025.1345.
- [4] Azerbaijan's Second Nationally Determined Contribution (NDC). (2023). *United Nations Framework Convention on Climate Change*. Retrieved from https://unfccc.int/sites/default/files/NDC/2023-10/Second%20NDC_Azerbaijan_ENG_Final%20%281%29.pdf.
- [5] Bayramli, G. (2020). The environmental problems of Azerbaijan and the search for solutions. *WSEAS Transactions on Environment and Development*, 16, 423-433. doi: 10.37394/232015.2020.16.42.
- [6] Bolton, P., & Kleinnijenhuis, A.M. (2024). *The economic case for a New Common Quantified Goal of climate finance (NCQG) at scale*. Retrieved from <https://surl.li/eruign>.

The findings highlighted how the absence of a unified legal framework hinders climate action. They underline that without legal clarity and institutional coordination, climate policy remains largely declarative.

The limitations of the study include restricted access to latest statistical data and limited availability of detailed information on administrative and judicial practice related to climate matters in Azerbaijan. These obstacles affected the ability to fully assess the practical enforcement of existing legal provisions. Further research should conduct a more detailed legal analysis of climate legislation in former-Soviet and developing countries, as well as in oil-rich countries. Further research on the implementation of climate regulation in Azerbaijan would also contribute to analysis of legal and institutional barriers to climate action.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of Interest

None.

- [7] Climate Change Act 2008 of the United Kingdom 2008. (2008, November). Retrieved from <https://www.legislation.gov.uk/ukpga/2008/27/contents>.
- [8] Code of Hammurabi. (2008). Retrieved from <https://avalon.law.yale.edu/ancient/hamframe.asp>.
- [9] Constitution of the Republic of Azerbaijan. (1995, November). Retrieved from <https://e-qanun.az/framework/897>.
- [10] Convention Citoyenne pour le Climat. (n.d.). *The Citizens' Convention on Climate*. Retrieved, from <https://www.conventioncitoyennepourleclimat.fr/en/>.
- [11] de Vilchez, P. (2021). Right to a healthy environment and climate litigation. *SSRN*. Retrieved from <https://ssrn.com/abstract=4155484>.
- [12] Decree of the President of Azerbaijan No. 320 "National Strategy on the Efficient Use of Water Resources". (2024, October). Retrieved from <https://e-qanun.az/framework/58119>.
- [13] Decree of the President of Azerbaijan No. 2469 "Azerbaijan 2030: National Priorities on the Socio-economic Development". (2021, February). Retrieved from <https://e-qanun.az/framework/46813>.
- [14] Decree of the President of Azerbaijan No. 2620 "On Measures Related to the Creation of a "Green Energy" Zone in the Liberated Territories of the Republic of Azerbaijan". (2021, May). Retrieved from <https://e-qanun.az/framework/47397>.
- [15] Decree of the President of Azerbaijan No. 3378 "Socio-economic Development Strategy of Azerbaijan in 2022-2026". (2022, July). Retrieved from <https://e-qanun.az/framework/50013>.
- [16] Decree of the President of Azerbaijan No. 4233 "On the Declaration of 2024 as the "Year of Solidarity for a Green World" in the Republic of Azerbaijan". (2023, December). Retrieved from <https://e-qanun.az/framework/55849>.
- [17] Decree of the President of Azerbaijan No. 975 "Charter of the Ministry of Ecology and Natural Resources". (2020, March). Retrieved from <https://e-qanun.az/framework/44803>.
- [18] Decrees of the President of Azerbaijan No. 472 and No. 478. (2025, February). Retrieved from <https://e-qanun.az/framework/58903>.
- [19] EcoLur. (2025). *Government of Armenia approves draft law on climate*. Retrieved from <https://www.ecolur.org/en/news/climate-change/16113/>.
- [20] Federal Climate Change Act of the Federal Republic of Germany. (2021, August). Retrieved from https://www.gesetze-im-internet.de/englisch_ksg/englisch_ksg.html.
- [21] Forest Code of Azerbaijan. (1997, December). Retrieved from <https://e-qanun.az/framework/46941>.
- [22] Qasimov, A.M., Jafarov, Z.I., & Aliyev, M.O. (2024). On the current state of the environmental legislation of the Republic of Azerbaijan. *Environmental Law. Qanun Jurnalı*, 7(357), 93-99. doi: 10.30546/2218-9130.003.2025.1342.
- [23] Gürçam, S. (2025). Combating the climate crisis or market mechanisms for capital? An examination of Turkey's Climate Change Bill. *Environment, Climate and Sustainability*, 26(1), 37-52. doi: 10.29150/ciys.2025.1681625.
- [24] Heydari, N., Mumtaz, M., & Taran, F. (2025). Legislation and policy capacities in agricultural water for adapting to climate change in Iran. *Iranica Journal of Energy & Environment*, 16(3), 528-539. doi: 10.5829/ijee.2025.16.03.13.
- [25] Huseyinov, T. (2024). [Some legal issues of ensuring the principle of climate justice](#). *Azerbaijan Hugug Jurnalı*, 3, 5-20.

- [26] Intergovernmental Panel on Climate Change. (2023). *Climate change 2023: Synthesis report. Summary for policymakers. Contribution of Working Groups I, II and III to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change*. Retrieved from <https://www.ipcc.ch/report/ar6/syr/>.
- [27] Judgment of the Federal Constitutional Court of Germany No. BvR 2656/18. (2021, March). Retrieved from <https://surli.li/jvdrij>.
- [28] Krämer-Hoppe, R. (2021). The climate protection order of the Federal Constitutional Court of Germany and the North-South divide. *German Law Journal*, 22, 1393-1408. doi: 10.1017/glj.2021.84.
- [29] Law of Azerbaijan No. 1006-VIQ "On Energy". (2023, October). Retrieved from <https://e-qanun.az/framework/55699>.
- [30] Law of Azerbaijan No. 109-IIQ "On the Protection of the Atmosphere Air". (2001, March). Retrieved from <https://e-qanun.az/framework/3515>.
- [31] Law of Azerbaijan No. 1175-VQ "On the Environmental Impact Assessment". (2018, June). Retrieved from <https://e-qanun.az/framework/39511>.
- [32] Law of Azerbaijan No. 270-IIQ "On Obtaining Information about the Environment". (2002, March). Retrieved from <https://e-qanun.az/framework/1486>.
- [33] Law of Azerbaijan No. 339-VIQ "On the Use of Renewable Energy Sources in the Production of Electric Energy". (2021, May). Retrieved from <https://e-qanun.az/framework/47842>.
- [34] Law of Azerbaijan No. 401-IIQ "On the Environmental Education and Awareness of People". (2002, December). Retrieved from <https://e-qanun.az/framework/1880>.
- [35] Law of Azerbaijan No. 677-IQ "On Ecological Security". (1999, June). Retrieved from <https://e-qanun.az/framework/3851>.
- [36] Law of Azerbaijan No. 678-IQ "On Environmental Protection". (1999, June). Retrieved from <https://e-qanun.az/framework/3852>.
- [37] Law of Azerbaijan No. 858-VIQ "On Electro-energy". (2023, April). Retrieved from <https://e-qanun.az/framework/54209>.
- [38] Law of Azerbaijan No. 957-IVQ "On the Protection of the Green Spaces". (2014, May). Retrieved from <https://e-qanun.az/framework/27970>.
- [39] Law of France No. 2021-1104 "On Combating Climate Change and Strengthening Resilience to its Effects". (2021, August). Retrieved from <https://surli.li/ykswkn>.
- [40] Law of Turkey No. 7552. "On Climate" (2025, July). Retrieved from <https://www.resmigazete.gov.tr/eskiler/2025/07/20250709-1.htm>.
- [41] Ministry of Ecology and Natural Resources of the Republic of Azerbaijan. (2024). *Head of Service: Climate and geological factors play an important role in Caspian Sea level fluctuations*. Retrieved from <https://eco.gov.az/az/nazirlik/xeber?newsID=23503>.
- [42] Mousavi, A., Ardalan, A., Takian, A., Naddafi, K., & Mesdaghinia, A. (2025). A policy context and process analysis to implement the Paris Agreement on climate change in the health system of Iran. *BMC Public Health*, 25(1), article number 893. doi: 10.1186/s12889-025-22029-3.
- [43] Mustafayeva, G.A., Mammadova, S.Y., & Balajayeva, T.P. (2025). Enhancing infrastructure competitiveness in alignment with COP-29 climate goals. *BIO Web of Conferences*, 151, article number 04004. doi: 10.1051/bioconf/202515104004.

- [44] O'Callaghan, B. (2024). *A COP29 climate finance target that makes economic sense*. Retrieved from <https://surli.cc/yvrtty>.
- [45] Organisation for Economic Co-operation and Development. (2022). *2022 OECD work in support of a sustainable ocean*. Retrieved from <https://surl.lu/gcccrn>.
- [46] Paris Agreement. (2015, December). Retrieved from <https://surl.li/icomex>.
- [47] Parliament of Georgia. (2023). *Environmental Protection and Natural Resources Committee introducing white paper on climate change for public consultations*. Retrieved from <https://surl.li/gfdrlf>.
- [48] Qasimli, V.Ə. (2022). *Green economics*. Baku: Azprint nəşriyyatı.
- [49] Regulation of the European Parliament and of the Council No. 2021/1119 "On the Establishing the Framework for Achieving Climate Neutrality and Amending Regulations (EC) No. 401/2009 and (EU) 2018/1999 (European Climate Law)". (2021, June). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32021R1119>.
- [50] Republic of Azerbaijan. (2021). *Fourth national communication to the United Nations Framework Convention on Climate Change*. Retrieved from <https://surli.cc/rqcfef>.
- [51] Soil Code of Azerbaijan. (1999, June). Retrieved from <https://e-qanun.az/framework/46942>.
- [52] State Statistical Committee of the Republic of Azerbaijan. (2024). *Statistical review of Sustainable Development Goals: Description of SDG progress in national context with statistical indicators*. Retrieved from <https://surl.li/assmps>.
- [53] State Statistical Committee of the Republic of Azerbaijan. (2025). *Forest fires*. Retrieved from <https://opendata.az/@@@statistika/mese-yanginlari>.
- [54] Teymurova, V., Abdullayeva, S., Muradova, K., Aslanova, M., & Bayramli, M. (2025). Environmental challenges and the impact of human capital on Azerbaijan's foreign economic activity. *Scientific Bulletin of Mukachevo State University. Series "Economics"*, 12(1), 20-34. doi: [10.52566/msu-econ1.2025.20](https://doi.org/10.52566/msu-econ1.2025.20).
- [55] Theil, S. (2023). Cautious scrutiny: The Federal Climate Change Act case in the UK. *Modern Law Review*, 86(1), 263-275. doi: [10.1111/1468-2230.12746](https://doi.org/10.1111/1468-2230.12746).
- [56] United Nations Environment Programme (UNEP). (2023). *Global climate litigation report: 2023 status review*. Retrieved from <https://surl.li/jeqbaf>.
- [57] United Nations Framework Convention on Climate Change. (1992, May). Retrieved from <https://surl.li/rbtssn>.
- [58] United Nations Framework Convention on Climate Change. (2024, December). Retrieved from <https://unfccc.int/news/cop29-un-climate-conference-agrees-to-triple-finance-to-developing-countries-protecting-lives-and>.
- [59] Wacke, A. (2002). *Protection of the environment in Roman law?* Retrieved from <https://romanlegaltradition.org/contents/2002/RLT-WACKE1.PDF>.
- [60] Water Code of Azerbaijan. (1997, December). Retrieved from <https://e-qanun.az/framework/46940>.
- [61] Wei, J., Tong Jiang, T., Ménager, PH., Kim, D.G., & Dong, W. (2025). COP29: Progresses and challenges to global efforts on the climate crisis. *The Innovation*, 6(1). doi: [10.1016/j.xinn.2024.100748](https://doi.org/10.1016/j.xinn.2024.100748).
- [62] World Bank Group. (2020). *World Bank reference guide to climate change framework legislation*. Washington: World Bank.

- [63] World Bank Group. (2023). *Investments and policy reforms towards low carbon transition and resilience are in Azerbaijan's economic interest, says WBG report [Press release]*. Retrieved from <https://surl.lt/ginhap>.
- [64] World Bank. (2023). *State and trends of carbon pricing 2023*. Washington, DC: World Bank. doi: [10.1596/978-1-4648-2006-9](https://doi.org/10.1596/978-1-4648-2006-9).
- [65] Zou, Y., Wang, Y., Qian, Y., Tian, H., Yang, J., & Alvarado, E. (2020). Using CESM-RESFire to understand climate-fire-ecosystem interactions and the implications for decadal climate variability. *Atmospheric Chemistry and Physics*, 20(2), 995-1020. doi: [10.5194/acp-20-995-2020](https://doi.org/10.5194/acp-20-995-2020).

Аналіз правових проблем у сфері регулювання клімату в Азербайджані та пропозиція щодо прийняття закону про клімат

Емін Алімусаєв

Аспірант

Бакинський державний університет

AZ1148, вул. Академіка Західа Халілова, 33, м. Баку, Азербайджан

<https://orcid.org/0009-0001-2300-0690>

Анотація

Зміна клімату є нагальною і складною проблемою, яка вимагає належного правового реагування. В Азербайджані у 2022 році було зафіксовано найбільшу кількість лісових пожеж за весь період спостережень, а між 1980 і 2023 роками водні ресурси скоротилися на 26,4 %, крім того, рівень Каспійського моря зазнав значних коливань, що підкреслює посилення впливу зміни клімату на навколишнє середовище регіону. У статті досліджено існуючу законодавчу базу Азербайджанської Республіки у сфері охорони навколишнього середовища, виявлено значні виклики у сфері регулювання клімату, включаючи відсутність юридично зобов'язуючих кліматичних цілей, наявність нечітких і фрагментарних положень, відсутність чіткої інституційної бази та механізмів забезпечення дотримання законодавства. За допомогою доктринальних та порівняльно-правових методів аналізу в цьому дослідженні проаналізовано законодавство Азербайджану у сфері охорони навколишнього середовища та відповідну міжнародну практику з метою виявлення першопричин цих викликів. Ці проблеми перешкоджають ефективності регулювання клімату. Для усунення цих правових недоліків у цій запропоновано комплексний проект закону «Про зміну клімату». Запропонований закон запровадить потужний правовий механізм регулювання клімату і включає юридично зобов'язуючі кліматичні цілі, кліматичне фінансування та економічні інструменти, правовий статус кліматичного органу та механізми державного контролю для забезпечення виконання. Він натхненний кращими практиками провідних країн і має на меті створення чіткої правової бази. У статті робиться висновок, що прийняття такого закону є необхідним не тільки для виконання глобальних зобов'язань, але й для забезпечення сталого та стійкого економічного розвитку

Ключові слова: зміна клімату; кліматичні цілі; законодавча база у сфері охорони навколишнього середовища; законотворчість; правова реформа; «зелене майбутнє»



UDC 347.63:343.1(477)

DOI: 10.31548/law/4.2025.59

Medico-legal and economic (financial) aspects of inheritance law

Nataliia Korobtsova

PhD in Law, Associate Professor
Yaroslav Mudryi National Law University
61024, 77 Hryhorii Skovoroda Str., Kharkiv, Ukraine
<https://orcid.org/0000-0002-9997-1485>

Oleg Pechenyi

PhD in Law, Associate Professor
Yaroslav Mudryi National Law University
61024, 77 Hryhorii Skovoroda Str., Kharkiv, Ukraine
<http://orcid.org/0000-0003-1480-1864>

Arsen Isaiev

PhD in Law, Associate Professor
Yaroslav Mudryi National Law University
61024, 77 Hryhorii Skovoroda Str., Kharkiv, Ukraine
<http://orcid.org/0000-0002-9982-0572>

Victor Yanyshen*

PhD in Law, Associate Professor
Yaroslav Mudryi National Law University
61024, 77 Hryhorii Skovoroda Str., Kharkiv, Ukraine
<http://orcid.org/0000-0002-1495-613X>

Article's History:

Abstract

Received: 21.06.2025

Revised: 12.10.2025

Accepted: 27.11.2025

This study aimed to substantiate the theoretical and legal foundations for regulating the medico-legal and economic aspects of inheritance law in the contemporary context of the Ukrainian health care system. The research employed a comparative legal method to examine European approaches to regulating medico-legal aspects of inheritance, economic analysis to explore

Suggested Citation:

Korobtsova, N., Pechenyi, O., Isaiev, A., & Yanyshen, V. (2025). Medico-legal and economic (financial) aspects of inheritance law. *Law. Human. Environment*, 16(4), 59-94. doi: 10.31548/law/4.2025.59.



*Corresponding author

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

the financial dimensions of inheritance relations involving medical institutions, and an interdisciplinary approach to assess the legal nature of medico-legal relations. It was established that medico-legal relations in inheritance law constitute an independent category of civil law relations with a dual nature and require specific legal regulation that integrates the principles of inheritance law, medical law and bioethics. The study identified the critical impact of medical expenses on the structure of the estate, particularly in cases of oncological diseases, where the average cost of treatment reaches UAH 120,000, and organ transplantation may amount to UAH 2.6 million, creating objective preconditions for the accumulation of substantial medical debts. The analysis demonstrated the need to develop effective mechanisms for financial and economic inheritance planning through strategic medical insurance and the establishment of targeted medical funds. European approaches to regulating medico-legal aspects of inheritance were systematised, including the French concept of compensation rights for heirs, German guarantees for the protection of constitutional rights and Swiss mechanisms for limiting liability for excessive obligations. Based on these findings, a set of conceptual proposals was developed to improve Ukrainian legislation, including the creation of a special legal regime for medical obligations with a clear distinction between those compensated and not compensated by the National Health Service of Ukraine, as well as the introduction of a medical inheritance planning framework. The practical significance of the study lies in establishing a scientific foundation for modernising Ukraine's inheritance legislation, taking into account the specific nature of medico-legal relations and developing mechanisms to protect the economic interests of heirs in the context of rising medical costs

Keywords: health care; confidential information; inheritance relations; economic (financial) interests of heirs; notarial practice; legal regulation

Introduction

The relevance of the study is driven by the systemic transformations in medical financing following the introduction, in 2017-2018, of a new system of state guarantees and the establishment of the National Health Service of Ukraine (Resolution of the Cabinet of Ministers of Ukraine No. 1394-2023-p, 2023). The health care reform has produced legal conflicts at the intersection of inheritance and medical law, particularly with regard to reimbursement of treatment expenses, the involvement of medical institutions in inheritance relations and the protection of the interests of all parties. The increasing autonomy of medical institutions, the commercialisation of services and rising costs highlight the need for regulatory clarification of these issues which determines the applied importance of the topic.

The central problem addressed by the study is the absence of a comprehensive approach to regulating the medico-legal and economic aspects of inheritance law in Ukraine under the reformed health care system. An analysis of judicial practice demonstrates insufficient regulatory provisions governing the procedures for declaring a person deceased, establishing the fact of death for inheritance purposes, resolving the reimbursement of medical expenses from the estate, and the lack of a clear mechanism for protecting inheritance rights in cases where medical care is provided to the testator (Niyazbekova *et al.*, 2025). In particular, the ruling of the Civil Cassation Court within the Supreme Court of 17 May 2023 obliged the heirs to reimburse USD 75,836 and UAH 137,618 in expenses for the treatment of the

deceased's oncological illness (Resolution of the CCS of the Supreme Administrative Court in case No. 756/7001/20, 2023). These gaps result in legal uncertainty, infringement of the rights of heirs and third parties, and inefficient use of economic resources in the health care sector.

The degree of academic development of medico-legal and economic aspects of inheritance law is characterised by a certain fragmentation of research which necessitates a comprehensive approach to addressing this issue. Current questions concerning the exercise of inheritance rights in contemporary conditions are discussed in the studies of K. Kosiachenko (2022), who examines general mechanisms for exercising the right to inherit, analysing the specific procedures for submitting an inheritance acceptance application and engaging with notaries. The author identifies key procedural problems in the exercise of inheritance rights and proposes ways to improve notarial procedures governing inheritance relations. The specific features of exercising inheritance rights under extreme conditions are explored by O.E. Kukharev (2022), who considers how heirs exercise the right to accept an inheritance during martial law, identifying legal conflicts and proposing mechanisms for resolving them. This line of research is further developed by M.P. Yunina and I.O. Buyakova (2025), who systematise problematic aspects of inheritance during martial law and propose comprehensive solutions, with particular emphasis on the need to adapt inheritance legislation to the challenges of wartime. O.P. Pechenyi (2024) analysed the issues surrounding inheritance after persons declared deceased.

International experience in the legal regulation of inheritance relations demonstrates a variety of approaches to addressing complex questions of succession and its economic consequences (Ketners *et al.*, 2025). The fundamental study by N. Cahn *et al.* (2023) examines family law in the context of human life expectancy extending

to one hundred years which raises the importance of long-term inheritance planning and the medical aspects associated with it. The authors justify the need to revise approaches to inheritance law in light of demographic changes and medical advances, considering economic mechanisms for financing long-term care and their impact on inheritance relations. In this context, the findings of O. Berezov *et al.* (2022) are significant, as they analyse the challenges of regulating inheritance relations in Lithuanian law within the framework of European Union law, highlighting the need to harmonise national legislation with European standards in the field of cross-border inheritance and its economic aspects.

The theoretical foundations of inheritance law and their practical application acquire particular importance amid contemporary transformations of the legal system and the need to adapt inheritance norms to emerging societal challenges. Issues relating to the regulation of inheritance by will are examined by S.B. Palamar (2022), who analyses specific aspects of wills under Ukrainian legislation, identifying shortcomings in the current legal framework and proposing solutions to ensure the effective implementation of the testator's intentions. A comprehensive approach to the study of inheritance law is demonstrated in the collective study of D. Kirnos and M.V. Loginova (2024) which examines the main institutions of inheritance law with a focus on the dogmatic analysis and systematisation of legal norms, developing theoretical foundations for further improvement of inheritance legislation, although it does not address the medico-legal aspects of inheritance relations. The Swiss approach to inheritance law is presented by M. Thommen (2022), who analyses the specific features of legal regulation and judicial practice in this area, identifying effective mechanisms for protecting the property interests of heirs and for the economic planning of inheritance. Gender and social aspects of

inheritance in the European context are explored by M. Segalen (2021), who examines inheritance models in rural areas of Europe with regard to gender-specific factors and social roles, demonstrating the importance of considering socio-economic factors when formulating inheritance policy.

The analysis of the academic literature indicates that previous research has focused primarily on procedural aspects of exercising inheritance rights, comparative studies and general theoretical issues of inheritance law. At the same time, medico-legal aspects of inheritance have remained largely overlooked, particularly questions concerning the inheritance of medical information, heirs' rights to medical care and the economic consequences of medical obligations involving the testator. Issues of financial and economic inheritance planning with regard to medical expenses and insurance payments also remain insufficiently developed.

This study aimed to examine the need for comprehensive regulation of the medico-legal and financial-economic aspects of inheritance law in Ukraine. To achieve this aim, the study set the following objectives: to clarify the legal nature of medicolegal relations in the context of inheritance law and determine their place within the system of civil law relations; to analyse the economic mechanisms regulating the financial aspects of inheritance relations involving medical institutions; and to substantiate the theoretical foundations for improving the current legislation of Ukraine in the field of medico-legal regulation of inheritance relations.

Materials and Methods

The methodological basis of the study was a comprehensive approach to analysing the medicolegal and economic aspects of inheritance law in Ukraine and in the European context, combining the principles of systemacity, historicism and objectivity. The legal nature of medico-legal

relations in the context of inheritance law was explored through an interdisciplinary approach encompassing the interconnections between inheritance law, medical law and bioethics. The structure and content of these relations were identified using structural and functional analysis which made it possible to reveal distinctive features of medico-legal inheritance relations in comparison with traditional inheritance relations across nine criteria, including the composition of subjects, the object of legal relations, legal regulation, timeframes for implementation and economic consequences.

European regulations in the sphere of medical data were examined, in particular Regulation of the European Parliament and of the Council No. 2025/327 "On the European Health Data Space and Amending Directive 2011/24/EU and Regulation (EU) 2024/2847" (2025), concerning heirs' access to the medical information of the deceased. National legislation of France, Germany, Switzerland, Austria, Spain and Poland, as well as the provisions of Regulation of the European Parliament and of the Council No. 650/2012 (2012), was analysed using the comparative legal method to identify advanced approaches to regulating the medico-legal aspects of inheritance.

The financial aspects of inheritance relations involving medical institutions were examined through economic analysis based on statistical processing of data on the structure of medical expenses within the estate across eight categories of medical services. The statistical basis of the study consists of official data from the Ministry of Finance of Ukraine (2024; 2025), tariffs of the National Health Service of Ukraine (2024), findings from research on household spending on medical services (Obrizan, 2024), and reports of the Ministry of Justice of Ukraine (2025) on the activities of state and private notaries in the field of inheritance law. The impact of medical obligations on the economic interests of heirs was examined

through the analysis of risks associated with joint liability, legal support costs and time losses resulting from the duration of inheritance procedures.

The source base of the study comprises Ukrainian legislative and regulatory acts governing inheritance and medico-legal relations. The provisions of the Constitution of Ukraine (1996) guaranteeing the right to life, privacy and health care were analysed. The norms of the Civil Code of Ukraine (2003) were examined, in particular Chapter 87, "Exercise of the Right to Inherit", and Articles 1281-1282 concerning the general principles of liability of heirs. The study also considered the provisions of the Law of Ukraine No. 2801-XII (1992) concerning the preservation of medical confidentiality; the Law of Ukraine No. 2168-VIII (2017) concerning mechanisms for compensating medical expenses; and the Law of Ukraine No. 3425-XII (1993) regarding procedures for requesting documents for notarial acts. Additionally, the Law of Ukraine No. 2297-VI (2010) concerning the regime for processing medical personal data was examined.

Judicial practice in Ukraine and European countries was examined using the case study method to identify legal conflicts in medico-legal inheritance relations and progressive approaches to safeguarding heirs' rights. The Resolution of the CCS of the Supreme Administrative Court in Case No. 756/7001/20 (2023) concerning the recovery of expenses for the treatment of the deceased's oncological illness was analysed. In addition, the Resolution of the CCS of the Supreme Administrative Court of Ukraine in Case No. 127/7945/18 (2019) and the Resolution of the Civil Court of Cassation in Case No. 346/2744/21 (2024) on the recovery of expenses from inherited property, including the determination of legal aid costs, were reviewed. Further analysis included decisions of local courts, in particular the decision in Case No. 335/11320/17 (2018) concerning the reimbursement of the testator's medical expenses, and

the Judgment in Case No. 707/3454/23 (2023) relating to the compensation of funeral expenses. Foreign judicial practice was examined through the judgment of the Judgment of the German Federal Court of Justice in Case No. IV ZR 110/21 (2022), in which the court recognised a son's right to a compulsory share (Pflichtteil) as a constitutional right and a component of German public policy. The court held that this right cannot be restricted even when English law which permits complete disinheritance, is applicable, thereby establishing an important precedent for protecting heirs' rights in cases where medical obligations may entirely consume the estate. The statistical analysis of judicial practice was conducted on the basis of the official reports of the Supreme Court of Ukraine (2024; 2025) on the administration of justice for 2024 and the first half of 2025. The structure of cassation cases by type of proceedings, the dynamics of inheritance dispute resolution, the effectiveness of cassation review, and the distribution of cases by category were examined to identify trends in medico-legal inheritance relations.

Results

The legal nature of medico-legal relations in the context of inheritance law. Medico-legal relations in the field of inheritance law constitute a multifaceted system of legal connections formed at the intersection of medical and inheritance law, characterised by distinctive regulatory features. The doctrinal foundations of medico-legal relations in inheritance law are built upon core principles that integrate constitutional guarantees of individual rights in the medical sphere with inheritance law institutions. These legal relations arise from the need to regulate issues associated with medical support for the testator, the determination of death, the storage and transmission of medical data, as well as the financial aspects of medical intervention within inheritance relations.

The constitutional basis for these relations is

set out in Articles 27, 32 and 49 of the Constitution of Ukraine (1996) which guarantee the right to life, the right to privacy and the right to health care. The legal regulation of medico-legal relations in inheritance law is grounded in principles designed to protect the rights of both the testator and the heirs. Central to this regulation are the requirements of medical confidentiality and the protection of sensitive medical information, as the testator's death creates a legal conflict between the protection of the deceased's personal data and the heirs' right to obtain information necessary to safeguard their property interests. The protection of constitutional rights and freedoms in the course of biomedical research and medical interventions creates specific legal challenges within the context of inheritance relations. These include the legality of disclosing a testator's diagnoses and medical research results to third parties to substantiate medical expenses; the need to define the limits of heirs' access to information on experimental treatments and the deceased's participation in clinical trials; the difficulty of establishing the voluntariness and informed consent of the deceased for medical interventions when assessing the legitimacy of medical obligations; and the requirement to balance the right to the inviolability of the deceased's body with the necessity of conducting post-mortem medical examinations to protect inheritance rights. In these cases, it is essential to reconcile respect for the will and dignity of the deceased with the practical needs of heirs to determine the scope and legitimacy of medical obligations (Kozodaev *et al.*, 2018; Korobtsova, 2021).

The distinctive feature of medico-legal relations in inheritance law lies in their dual nature, as such relations fall under both medical and inheritance law jurisdictions. Their emergence is driven by the need to achieve parity between patients' medical rights, guarantees of medical confidentiality, and the inheritance interests of

successors. Medico-legal relations in inheritance law are characterised by a specific structure of participants, including the testator, heirs, medical institutions, health care personnel and notarial authorities. Each of these subjects possesses individual legal capacities and obligations which are exercised within the framework of inheritance relations.

The testator, as a subject of medico-legal relations, is entitled to quality medical care, the confidentiality of medical information, and the right to manage their medical data in the event of death, in accordance with Article 40 of the Law of Ukraine No. 2801-XII (1992) and Article 285 of the Civil Code of Ukraine (2003) which guarantee the protection of medical confidentiality and the individual's right to access medical information. Heirs, in turn, have the right to obtain the medical information necessary to exercise their inheritance rights under Article 46 of the Law of Ukraine No. 3425-XII (1993) which grants notaries the authority to request the documents required for notarial acts. Their rights, however, are constrained by the requirements to maintain medical confidentiality and respect the will of the deceased, in accordance with Article 32 of the Constitution of Ukraine (1996) on the right to privacy. The legal status of heirs in medico-legal relations is determined either by their position in the statutory order of succession under Articles 1261-1266 of the Civil Code of Ukraine or by appointment in a will pursuant to Article 1223 of the Civil Code of Ukraine.

Medical institutions and health care professionals act as subjects obligated to provide medical care in accordance with established standards, as set out in Articles 3 and 35-37 of the Law of Ukraine No. 2801-XII (1992). They are required to maintain medical records for 25 years in accordance with the Order of the Ministry of Regional Development, Construction and Housing and Communal Services of

Ukraine No. z0347-12 “On Amendments to the Order of the Ministry of Regional Development of Ukraine dated 07.07.2011 No. 109” (2012), and to provide necessary information to authorised persons in cases prescribed by Article 40 of the Law of Ukraine No. 2801-XII and Article 285 of the Civil Code of Ukraine (2003). Notaries, as subjects of medico-legal relations in inheritance law, have the right to request medical documents necessary to establish the circumstances of the testator’s death and to formalise inheritance rights in accordance with Article 46 of the Law of Ukraine No. 3425-XII (1993) which grants notaries the authority to obtain documents and certificates from enterprises, institutions, organisations and individuals for the purpose of performing notarial acts. The interaction of these subjects is governed by a body of legal norms enshrined in the Civil Code of Ukraine, the Law of Ukraine No. 2801-XII (1992), the Law of Ukraine No. 3425-XII (1993) and key subordinate acts of the Ministry of Health of Ukraine, including the Order of the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine No. z0347-12 (2012), the Decision of the National Commission on Securities and Stock Market No. z0697-18 “On Approval of the Procedure for Changing the Type of Collective Investment Institution” (2018), and the Order of the Ministry of Justice of Ukraine No. z0347-20 “On Amending the Procedure for Admission to the Profession of a Private Executor” (2020) which ensure a balance between their rights and obligations.

The objects of medico-legal relations in inheritance matters include medical information, medical records, medical services, medical equipment, and property or personal non-property rights associated with medical activity. Medical information, as an object of these relations, has a special legal status, as its disclosure may harm an individual’s honour, dignity and reputation. At

the same time, information regarding the cause of death, diagnoses, medical interventions performed prior to death, and the scope of medical services provided may be necessary to establish the circumstances of the testator’s death which is a crucial element in the process of formalising inheritance rights. Medical records, including patient charts, test results and physicians’ reports, also constitute objects of medico-legal relations in inheritance law.

The legal regime governing medical information in inheritance matters is characterised by specific requirements regarding its preservation, use and transmission, in accordance with Article 40 of the Law of Ukraine No. 2801-XII (1992) which establishes the principles of maintaining medical confidentiality. Medical information is subject to special protection as personal data of a sensitive category, containing details about an individual’s health, pursuant to Article 7 of the Law of Ukraine No. 2297-VI (2010). Following a person’s death, the protection of medical information does not automatically cease but continues to apply, taking into account the interests of heirs and society, in accordance with Article 285 of the Civil Code of Ukraine (2003). Heirs are entitled to access medical information only to the extent necessary to safeguard their inheritance rights and interests, under Article 46 of the Law of Ukraine No. 3425-XII (1993). Access to full medical information may be restricted by the testator’s expressed wishes or legal requirements, in line with Article 32 of the Constitution of Ukraine (1996) regarding the right to privacy.

An analysis of current Ukrainian legislation reveals significant gaps in the legal regulation of medico-legal relations in inheritance law. Articles 1281-1282 of the Civil Code of Ukraine (2003) establish only the general principles of heirs’ liability for the testator’s debts, without specifying the particularities of medical obligations. Article 40 of the Fundamentals of the Legislation of Ukraine

on Health care guarantees the preservation of medical confidentiality but does not regulate heirs' access to the deceased's medical information. Article 46 of the Law of Ukraine No. 3425-XII (1993) grants notaries the right to request documents, yet it does not establish specific procedures for verifying medical claims. At present, there are no clear mechanisms for determining the scope of medical information that may be disclosed to heirs, criteria for assessing the necessity of such information to protect inheritance rights, or procedures for reconciling the interests of the various subjects involved in these relations.

European experience demonstrates progressive approaches to regulating access to medical information in inheritance matters. Regulation (EU) No. 2025/327 of the European Parliament and of the Council (2025) establishes clear patient rights to access their electronic health data, including the ability to restrict access for specific individuals or delegate it to heirs through technological solutions (Articles 3.8, 4). Delegation mechanisms allow heirs to access medical data via patient portals with the consent of the individual (European Commission, 2025a; 2025b). The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine (1997) in Article 10 recognises the right to privacy and confidentiality of medical data, but also permits disclosure when necessary to protect the legitimate interests of close relatives. In France, heirs may access the deceased's medical data if it is necessary for the administration of the estate, in accordance with Law of France No. 2016-1321 "On the Digital Republic" (2016). After death, the GDPR no longer applies, but Member States are entitled to establish their own rules regarding the processing of the medical data of deceased persons, including heirs' access to medical records (Steering Committee for Human..., 2023).

The place of medico-legal relations within the system of civil-law relations is determined by their specific characteristics and the complex nature of their legal regulation. These relations possess features of both property and non-property civil-law relations which complicates their legal classification and regulation. The property aspects of medico-legal relations in inheritance law are associated with the economic consequences of medical care, the cost of medical services, insurance payments, and other financial matters affecting the composition and value of the estate. The nonproperty aspects concern individual rights to health care, the confidentiality of medical information, and respect for personal dignity and bodily integrity.

The development of medico-legal relations in inheritance law is also shaped by the reform of Ukraine's health care system (2017-2025), including the establishment of the National Health Service of Ukraine (NHSU) under Law of Ukraine No. 2168-VIII (2017) and the introduction of new mechanisms for funding medical care through the medical guarantees program which provides for the reimbursement of medical services from the state budget in accordance with approved tariffs. These changes have significantly affected the structure and content of medico-legal relations, creating new challenges for the legal regulation of inheritance matters, particularly regarding the distinction between medical obligations reimbursable by the NHSU and those that remain the personal debts of the patient which may be inherited. The introduction of the medical guarantees program, the expansion of the autonomy of medical institutions under Article 16 of the Fundamentals of the Legislation of Ukraine on Health care, and new forms of contractual relations in the health care sector – including agreements with the NHSU on the provision of medical services to the population and contracts between patients and

private medical institutions for additional services – require appropriate reflection in inheritance legislation to regulate the succession of medical obligations.

Systematising the key differences between traditional inheritance relations and medico-legal inheritance relations allows the identification of the specific characteristics of the latter and substantiates the need for their separate legal regulation. Comparative analysis of these categories

of legal relations demonstrates the considerable complexity of medico-legal inheritance relations, their multi-party nature, and their interdisciplinary character. At the same time, significant gaps in legal regulation are revealed, creating legal uncertainty and complicating the practical exercise of the rights of the parties involved. A detailed comparison of the main characteristics of traditional and medicolegal inheritance relations is presented in Table 1.

Table 1. Comparative characteristics of traditional and medico-legal inheritance relations

Comparison criterion	Traditional inheritance relations	Medico-legal inheritance relations
Composition of parties	Testator, heirs, notary	Testator, heirs, medical institutions, health care professionals, notary
Object of legal relations	Assets, property rights and obligations	Assets, property rights, medical information, medical services
Legal regulation	Inheritance law	Inheritance law + medical law + biomedical law
Timeframes for execution	6 months from the date of opening the estate	6 months + medical record retention periods (25 years)
Confidentiality	General personal data requirements	Enhanced requirements (medical confidentiality, biomedical ethics)
Documentation	Legal title documents	Legal title documents + medical records + expert reports
Economic consequences	Value of the estate	Value of the estate ± medical expenses ± insurance pay-outs
Court disputes	Disputes regarding inheritance rights	Disputes regarding inheritance rights + medical aspects + bioethical issues
International regulation	Hague Conventions on Private International Law (Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions (1961), Convention on the Law Applicable to Succession to the Estates of Deceased Persons (1989))	Hague Conventions on Private International Law + Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (1997)

Source: compiled by the authors based on Convention of Concerning the International Administration of the Estates of Deceased Persons (1973); S.P. Kozodaev *et al.* (2018); I.Y. Puchkovska *et al.* (2021); O. Berezov *et al.* (2022); O. Biliaiev *et al.* (2023)

The differences presented in the table highlight the need for a specialised legal approach to regulating medico-legal relations in inheritance law. The complexity and multifaceted nature of these relations necessitate the development of a comprehensive legal framework that accounts for both the traditional principles of inheritance law and the specific features of medical law and bioethics. The identified characteristics of medico-legal inheritance relations underscore their

independent significance within the system of civil legal relations and justify the need to improve existing legislation to ensure effective protection of the rights and interests of all parties involved.

Economic mechanisms for regulating the financial aspects of inheritance relations involving medical institutions. The structure of medical expenses within an estate constitutes a complex economic category encompassing a variety of medical obligations and costs arising in the

process of providing care to the testator. Medical expenses in inheritance matters are classified according to the type of medical service, timing of provision, legal status of the obligations, and their impact on the economic interests of heirs. Analysing this structure allows the identification of economic risks for heirs and the development of optimal strategies for managing medical obligations within inheritance relations.

Inpatient medical expenses account for the largest share of medical costs within an estate and exhibit the greatest variability depending on the complexity of the medical case. According to the 2024-2025 Medical Guarantees Program, standard tariffs for inpatient treatment of adults range from UAH 5,000 to UAH 7,506 per case, depending on the complexity and type of medical intervention (Obrizan, 2024). However, for complex surgical procedures, particularly organ transplants, tariffs can reach critical levels: over UAH 2 million for a heart transplant and more than 2.6 million UAH for a lung transplant (National Health Service of Ukraine, 2024).

Oncological expenses constitute a distinct category of medical costs due to their high price, prolonged treatment duration, and significant impact on the estate. According to the 2024 Medical Guarantees Program, the National Health Service of Ukraine reimburses UAH 42,000 per chemotherapy session and UAH 58,000 per course of radiotherapy, resulting in an estimated cost of a typical combined treatment course of around UAH 100,000 for an adult patient (Yefimenko, 2025). The most substantial financial challenges, however, are associated with innovative targeted and immunotherapy treatments, whose availability remains critically limited. A study conducted by the Global Medical Knowledge Alliance among 289 oncology patients in April 2023 revealed that only 21% of patients received full free coverage for targeted or immunotherapy, while 79% were required to pay at least partially for these

expensive treatments out of their own funds (Patient Experience with..., 2023). These figures illustrate the systemic nature of accumulating medical debt in oncology, as innovative therapies are often the most effective but simultaneously the least financially accessible.

Despite substantial investments, state efforts to provide oncology patients with the necessary medications remain insufficient to fully meet demand. In 2024, the state enterprise “Medical Procurement of Ukraine” purchased 245 oncology drugs and medical devices, including high-cost medications such as pembrolizumab, brentuximab vedotin, and venetoclax, totalling UAH 1.5 billion. Experts estimate that this provision still falls short of covering the needs of all oncology patients (Yefimenko, 2025). At the same time, under the Medical Guarantees Program, over 420,000 people received six priority screenings for early cancer detection free of charge: mammography, gastroscopy, bronchoscopy, hysteroscopy, colonoscopy, and cystoscopy. While these programs provide basic diagnostics and standard treatment, additional examinations, specialist consultations, innovative therapies, and repeat diagnostic procedures often require supplementary funding from patients, creating conditions for significant medical liabilities.

This situation means that heirs may inherit not only assets but also substantial medical debts associated with incomplete treatment or the need to reimburse expensive therapies. Partial or entirely absent state coverage for innovative treatment regimens increases the risk that heirs will inherit medical obligations alongside assets, including debts arising from costly loans for medications, payment for private medical services, or treatment abroad. As a result, medical debts can substantially reduce – or even completely consume – the value of the inheritance, creating complex dilemmas regarding the advisability of accepting an estate and

necessitating specialised legal regulation to protect the economic interests of heirs.

Outpatient medical expenses and diagnostic procedures, although individually less costly than inpatient treatment, can accumulate over extended periods of care and constitute a significant proportion of total medical costs. According to the tariffs of the NHSU, the cost of a mammogram is UAH 248.64 per examination, although private medical institutions set significantly higher rates (Abankina, 2025). A consultation with a doctor at private clinics in Kyiv, based on research and aggregated data from Expatistan (2025), costs approximately UAH 677 for a short visit (15 minutes), equivalent to roughly USD 18. By contrast, the average price of a standard medical consultation in European countries is around EUR 40-50 (How much do medical..., 2024). This indicates that consultation fees in Kyiv's private clinics are broadly in line with European levels, suggesting the absence of significant overpricing in this segment of the Ukrainian private health care market.

This comparative cost becomes particularly significant for patients requiring regular monitoring and follow-up examinations which is typical for chronic conditions and oncology patients in remission. The persistence of such financial burdens creates a cumulative effect of medical expenses which can significantly affect the structure of an estate in the long term. Even relatively modest costs for individual consultations can accumulate into substantial medical obligations when long-term monitoring is required, particularly in cases where patients need consultations with multiple specialists simultaneously or regular follow-up examinations using costly diagnostic procedures.

Pharmaceutical expenses constitute a substantial and steadily growing portion of total medical costs, especially in the treatment of chronic conditions and in geriatric practice. Under the 2024 Medical Guarantees Program, UAH 5.2 billion were allocated for the reimbursement

of medications, covering treatments for cardiovascular diseases, type II diabetes, bronchial asthma, and mental health disorders (National Health Service of Ukraine, 2024). Additionally, reimbursement was introduced for ten medications used in the outpatient treatment of mental and behavioural disorders. However, non-reimbursed medicines – particularly innovative oncology drugs, treatments for rare diseases, and novel biological therapies – can place a significant financial burden on families, often amounting to tens of thousands of hryvnias per month. This issue is particularly acute for elderly patients who require multiple medications simultaneously to manage comorbid conditions.

Expenditures on medical rehabilitation and palliative care acquire special significance in the context of inheritance law, as they frequently arise in the final months of the deceased's life and can substantially influence the composition of the estate. The tariff for high-complexity rehabilitation services, such as post-acute stroke care, exceeds UAH 31,000, while medical rehabilitation for premature infants' costs UAH 10,820 per service (National Health Service of Ukraine, 2024). For multidisciplinary teams working in cluster and supra-cluster hospitals and involved in assessing an individual's daily functioning, separate funding is allocated at UAH 92,360 per month per team, capped at UAH 333,000 for a single facility. Palliative care, although partially covered by the Medical Guarantees Program, often requires additional expenses for home care, specialised equipment, and pain-relief medications, ranging from UAH 5,000 to UAH 20,000 per month, depending on the patient's needs.

Regional variations in medical expenses are linked to the accessibility of medical services, differences in tariffs, and the quality of medical infrastructure. In rural areas, additional costs include transport to access specialised care in regional centres, accommodation for accompanying

persons, and time lost travelling. Since the introduction of martial law in 2022, a special package titled “Preparedness and Provision of Medical Care to Populations in Areas of Active Hostilities” has been implemented, featuring separate tariffs determined as a global monthly rate based on the actual cost of medical services in December 2022 (National Health Service of Ukraine, 2024). This creates additional economic challenges for families living in active conflict zones or forced to evacuate.

The economic consequences of a deceased’s medical obligations for their heirs are multifaceted and often unpredictable, significantly affecting the financial position of those who inherit. These consequences include both direct financial liabilities for settling medical debts and indirect economic effects associated with managing the estate under the burden of medical obligations. Direct financial liabilities of heirs involve the need to repay the deceased’s medical debts within the value of the inherited estate, in accordance with the principle of universal succession established in Articles 1281-1282 of the Civil Code of Ukraine (2003). A distinctive feature of medical obligations is their potentially substantial scale in cases of prolonged treatment which can lead to situations where the cost of medical debts approaches or even exceeds the value of the estate, creating a dilemma for heirs regarding the advisability of accepting the inheritance.

The impact of medical obligations on the liquidity of the estate is one of the most critical factors for the heirs’ economic position, as demonstrated by specific case law in Ukraine. The Resolution of the CCS of the Supreme Administrative Court in Case No. 756/7001/20 (2023) required heirs to reimburse 75,836 USD and 137,618 UAH spent on the treatment of the deceased’s cancer. Similarly, in Case No. 335/11320/17 (2018), the Ordzhonikidzevskiy District Court of Zaporizhzhia City ordered two heirs to pay UAH 24,998 each for their

father’s medical treatment and burial expenses. Once these rulings acquire legal force, such debts are enforced through the State Executive Service (or private executors); if the heirs lack sufficient funds, the executor inventories and sells the inherited property, effectively forcing the heirs to sell the estate below market value to satisfy the claims of medical creditors.

The necessity of urgently repaying medical debts can lead to a forced sale of inherited assets at prices significantly below market value. This is particularly relevant for real estate which typically constitutes the main portion of the estate but is characterised by low liquidity and requires time to be sold at a fair market price. International studies show that medical expenditures are heavily concentrated at the end of life, creating particular financial pressure on the estate precisely during the period when inheritance rights are formalised. A Norwegian analysis of 207,299 decedents found that nearly 40% of all medical expenses incurred in the final six months of life were concentrated in the last month, while an Australian cohort study of 4,271 cancer patients revealed a similar trend, with 40% of six-month medical costs occurring in the final month of life (Langton *et al.*, 2016; Michel *et al.*, 2024). Although specialised studies for Ukraine have not yet been published, international experience indicates the universality of this issue and underscores the need to consider the concentrated nature of end-of-life medical expenses when planning inheritance arrangements.

The risks associated with the joint liability of heirs for medical obligations create additional economic threats and can result in a disproportionate distribution of financial burdens among the heirs. According to Part 2 of Article 1282 of the Civil Code of Ukraine (2003), heirs are liable for the debts of the deceased up to the actual value of the inherited property received by each of them. In practice, this means that if one heir is

unable to pay their share of the medical debts, the creditor may recover the full amount from another heir, who may then exercise a right of recourse. Disproportionate distribution of debt among heirs often gives rise to intra-family conflicts, as evidenced by the decision of the Cherkasy District Court on 9 January 2024 in Judgement in Case No. 707/3454/23 (2023), where a minor heir, acting through a representative, refused to cover half of the expenses for their father's burial (EUR 820 + UAH 47,200), resulting in legal proceedings and additional attorney fees. In cases where heirs lack sufficient funds, the creditor may approach the enforcement service to seize real estate, as confirmed by Resolution of the Civil Court of Cassation in Case No. 346/2744/21 (2024), where the court upheld the decision to recover debts from inherited property and separately awarded 8,000 UAH for professional legal services.

Legal costs associated with managing inheritance cases involving medical obligations generally exceed the standard costs of estate administration due to the complexity and specificity of medical claims. The necessity for a detailed review of the legitimacy of medical claims, analysis of medical documentation, and engagement of medical experts to assess the appropriateness of services and their compliance with medical standards requires specialised legal support. Potential court disputes with medical institutions regarding inflated service charges, substandard treatment, or unjustified medical interventions necessitate the involvement of lawyers specialising in medical law. An overview of Supreme Court practice emphasises that courts only reimburse attorney fees when a detailed description of services is provided; such fees may amount to 10%-15% of the property claims (Supreme Court of Ukraine, 2021). The cost of these services can range from 5% to 15% of the total value of the estate, further reducing the financial benefit of inheritance and potentially making the

acceptance of an estate economically unviable in cases involving substantial medical obligations.

Time costs and lost opportunities associated with the duration of estate administration in the presence of medical obligations impose additional indirect economic losses on heirs. The need for a thorough analysis of medical claims, completion of expert evaluations, and resolution of disputes with medical institutions and insurance companies can significantly extend the standard six-month period for processing inheritance rights to a year or longer. During this period, heirs are unable to fully manage the estate, invest its assets, or derive income from its use, resulting in lost investment opportunities. This is particularly relevant for commercial property, shares, and other income-generating assets, the value of which can depreciate due to underuse or mismanagement during extended periods of uncertainty.

Financial and economic planning for inheritance with consideration of medical expenses is a complex process that involves forecasting potential medical liabilities, developing strategies to minimise financial risks, and optimising the structure of the estate to ensure effective coverage of medical needs without critically impacting the heirs' welfare (Masna *et al.*, 2024). Effective planning should take into account demographic trends, disease statistics, the dynamics of medical tariffs, and the specific functioning of the health care system in Ukraine. Strategic medical insurance, both under the Ukrainian Medical Guarantees Program and through additional private coverage, can substantially reduce the financial burden on the estate, but requires careful analysis of the cost-to-benefit ratio of insurance premiums versus potential coverage.

Structuring an estate with medical risks in mind involves the optimal allocation of assets between liquid and illiquid investments, ensuring the ability to respond promptly to medical needs

without incurring significant losses in asset value. A portion of the estate, approximately 15-25% depending on the age and health of the individual, should be held in highly liquid assets, such as cash deposits, government bonds, highly liquid securities, or dedicated medical savings accounts. These assets can be quickly realised to cover medical expenses without substantial depreciation in value or the need for lengthy sales procedures. The remainder of the estate may be invested in less liquid but potentially higher-yielding assets, such as real estate, shares in growing companies, or long-term investment projects.

Testamentary planning with consideration of medical expenses can include specific testamentary provisions for the allocation of part of the estate to cover medical needs, the creation of medical trusts, or the appointment of dedicated estate administrators to manage medical expenditures. A will may contain precise instructions regarding the order of repayment of medical obligations, maximum sums that may be spent on health care, criteria for the appropriateness of medical interventions, and mechanisms for monitoring the justification of medical costs. Such provisions should

take into account current tariffs for medical services, anticipated changes in the health care system in Ukraine, and potential inflationary trends within the medical sector. An important aspect is also the allocation of funds for the medical care of close relatives or the establishment of medical funds for future generations, ensuring long-term medical support for the family.

Investment planning with medical needs in mind should balance the necessity of generating sufficient income to cover rising medical costs with the preservation of capital to ensure the financial stability of the heirs. An investment strategy may include diversified investments in medical technologies, the pharmaceutical sector, medical Real Estate Investment Trusts (REITs), specialised medical investment funds, or innovative medical start-ups. This approach not only protects capital from inflation in the health care sector but also offers the potential for additional returns from the growth of the medical industry. At the same time, a portion of investments should be directed towards conservative instruments with guaranteed returns to ensure stable financing of ongoing medical needs.

Table 2. Structure of medical expenses in the estate by category (2024)

Expense category	Average cost (UAH)	Share of total medical expenses (%)	NHSU Coverage	Impact on estate
Inpatient treatment	5,000-7,506 per case	45-60	Full	High
Oncology treatment	120,000 average cost	35-50	Partial	Critical
Organ transplantation	2,000,000-2,600,000	80-95	Full	Critical
Outpatient services	300-1,500 per visit	15-25	Partial	Medium
Diagnostic procedures	249-2,000 per procedure	10-15	Partial	Low
Medications	2,000-15,000 per month	20-35	Limited	High
Rehabilitation measures	10,820-31,000 per course	8-18	Partial	Medium
Palliative care	5,000-20,000 per month	5-15	Partial	Medium

Note: *data are based on tariffs for 2024-2025

Source: compiled by the authors based on the National Health Service of Ukraine (2024)

The analysis of medical expenses demonstrates significant variability in their impact on the estate and highlights the need for a comprehensive approach to financial and economic

planning of inheritance. The greatest risk to heirs arises from oncology treatment and organ transplantation which may substantially exceed the value of the inherited assets. Effective planning

should take into account all categories of medical expenses, provide adequate mechanisms for their coverage, and minimise the adverse impact on the heirs' welfare through a strategic combination of insurance, investment, and asset structuring.

Comparative analysis of national and international approaches to the legal regulation of medical-legal aspects of inheritance. A systematic analysis of current Ukrainian legislation reveals significant shortcomings in the legal regulation of the medical-legal aspects of inheritance, creating legal uncertainty and complicating the practical exercise of inheritance rights in cases involving the decedent's medical obligations. Key legislative acts governing inheritance in Ukraine do not contain specific provisions on the regulation of medical liabilities within an estate and fail to consider the particularities of medical services in the context of inheritance relations. Chapter 87 of the Civil Code of Ukraine (2003), "Exercise of the Right to Inherit", establishes only general principles regarding heirs' responsibility for the decedent's debts, without specifying the particularities of medical obligations, their classification according to coverage by state programs, or the procedure for verifying medical claims. Article 1281 of the Code sets a general six-month period for creditors to submit claims, but does not account for the specific nature of medical liabilities which may arise over prolonged periods of treatment or become known after the deadline due to the complexities of medical record-keeping.

Law of Ukraine No. 2801-XII (1992), Article 40, establishes the principles of medical confidentiality but does not regulate heirs' access to the decedent's medical information which is necessary to protect their inheritance rights and determine the scope of medical obligations. The absence of clear criteria for determining which medical information may be disclosed to heirs without violating confidentiality principles creates a legal conflict between the right to protect

the personal data of the deceased and the heirs' right to access information necessary to safeguard their property interests. Law of Ukraine No. 2297-VI (2010) likewise does not contain specific provisions on the handling of medical personal data in the context of inheritance relations following the death of the data subject. Law of Ukraine No. 3425-XII (1993), Article 46, grants notaries the authority to request documents necessary for notarial acts, but does not establish specific procedures for verifying the legitimacy of medical claims, their correspondence with services provided, market prices, or medical standards. Law of Ukraine No. 2168-VIII (2017) defines mechanisms for compensating medical expenses through the National Health Service of Ukraine, but it does not regulate the consideration of such compensations when determining the amount of medical obligations within an estate, nor does it provide mechanisms for informing heirs about the extent of compensation for medical services.

European experience in regulating the medical-legal aspects of inheritance demonstrates diverse and innovative approaches to addressing problems similar to those present in Ukrainian legislation and offers valuable guidance for reforming the domestic legal system in line with contemporary trends in the harmonisation of European law. Regulation of the European Parliament and of the Council No. 650/2012 (2012) establishes uniform rules for cross-border inheritance cases within the European Union, ensuring consistency through a single applicable law and a single competent authority. This is particularly significant in cases involving medical obligations of an international nature. An analysis of the provisions of this regulation shows that the introduction of the principle of territorial jurisdiction based on the deceased's last habitual residence under Article 4, alongside the option for individuals to choose the law of their nationality under Article 22, provides legal mechanisms for

optimising the management of medical obligations in cross-border inheritance matters. Notably, Article 23 allows for the restriction of the application of foreign law on public policy grounds, thereby protecting heirs from excessive medical obligations that may conflict with the fundamental principles of the forum state's law. Contemporary practice in European countries demonstrates the effectiveness of this regulation in resolving complex cross-border inheritance disputes, including those involving medical obligations (Barriatti *et al.*, 2022).

The French legal system exemplifies a particularly progressive approach to regulating inheritance relations through substantial legislative reforms that directly affect the management of medical obligations in succession cases. Amendments to Article 913 of the Civil Code of France (2025), effective from 1 November 2021, introduced a ground-breaking concept of "compensatory rights" (*droit de prélèvement compensatoire*) for heirs excluded from inheritance under foreign law that does not provide for a forced share (Changes in French inheritance law..., 2024). This reform allows for a balance between the interests of creditors, including medical institutions, and the deceased's relatives, while safeguarding the rights of close relatives to compensation from French assets within the estate (Ramaciotti, 2021). In the context of medical obligations, this means that French heirs may claim compensation even in cases where the applicable foreign law permits the testator to entirely disinherit them in order to cover medical expenses or other obligations.

The German legal system places particular emphasis on protecting the constitutional rights of heirs in the context of applying European inheritance law which directly relates to the management of medical obligations. The Case No. IV ZR 110/21 (2022) demonstrated the readiness of German courts to limit the

application of foreign law chosen under Regulation of the European Parliament and of the Council No. 650/2012 (2012) if such law conflicts with German public policy, especially regarding the protection of family rights (Current threats to the..., 2023). In this case, the German court recognised that a son's right to a compulsory share (*Pflichtteil*) is a constitutional right and a core element of German public policy which cannot be restricted even when English law – allowing total disinheritance – is applied. This approach establishes a significant precedent for protecting heirs' rights in situations where medical obligations could entirely consume the estate, leaving close relatives without means of subsistence.

The Swiss experience in modernising international inheritance law also merits attention in the context of regulating the medical aspects of succession. Recent reforms of Swiss legislation, aimed at adapting to the contemporary challenges of cross-border inheritance, include the enhancement of mechanisms for recognising foreign decisions in inheritance matters and the establishment of specific procedures for managing complex property relations, including medical obligations (Weiss & Müller-Zhang, 2024). Swiss law introduces innovative approaches to protect heirs from excessive liabilities, including medical debts, through mechanisms limiting liability and specialised procedures for estate insolvency.

Austrian legislation demonstrates a pragmatic approach to integrating the principles of the European Succession Regulation with national legal particularities, including specific provisions addressing medical obligations. Austrian law allows the testator to choose the law of their nationality to govern inheritance which can be particularly useful for minimising medical liabilities or optimising their management under a more favourable legal framework, in accordance with Article 22 of Regulation of the European Parliament and of the Council No. 650/2012 (2012) and

Articles 546-547 of the General Civil Code for all German Hereditary Lands of the Austrian Monarchy (1811). A distinctive feature of the Austrian system is the abolition of inheritance and gift taxes which significantly facilitates the management of medical obligations within the estate and reduces the overall financial burden on heirs, allowing them to focus on settling medical debts without additional tax pressures.

The Spanish experience in regulating inheritance is characterised by a complex federal structure, with different legal regimes across the various autonomous communities, highlighting the importance of accounting for regional particularities when addressing the medico-legal aspects of succession. Spanish law establishes clear rules regarding the liability of heirs for the debts of the deceased, including the option to accept an inheritance under inventory (benefit of inventory), whereby the heir is obliged to pay debts only up to the value of the estate's assets, in accordance with Article 1023 of the Civil Code of Spain (1989). This provision is particularly significant for managing medical obligations which may exceed the value of the estate, as it protects heirs from personal liability with their own assets for the deceased's medical debts.

The Polish experience of reforming inheritance law, implemented through amendments to the Civil Code effective 15 November 2023, demonstrates contemporary trends in adapting inheritance legislation to evolving social needs and new forms of property relations, pursuant to the Act Amending the Civil Code and Certain Other Acts (2023). The Polish reforms introduced the possibility of inheriting family funds which can be utilised to establish special medical funds to cover long-term health care needs of the family. They also refined the rules for renouncing an inheritance to protect heirs from excessive liabilities and simplified procedures for parents to renounce inheritances on behalf of their children in

cases where the estate includes significant medical debts. Particularly noteworthy is the introduction of new categories of circumstances allowing a court to declare an heir unworthy, including cases involving abuses in the provision of medical care to the deceased.

A systematic comparative analysis of the legal regulation of medico-legal aspects of inheritance in Ukraine and leading European countries has been conducted based on the study of statutory instruments, case law, and international documents. Analysis of court decisions highlights the practical significance of the issue: the Resolution of the CCS of the Supreme Administrative Court in Case No. 756/7001/20 (2023) required heirs to reimburse 75,836 USD and 137,618 UAH for the treatment of the deceased's oncological illness, demonstrating the critical impact of medical expenses on the estate. Similarly, in Case No. 335/11320/17 (2018), the Ordzhonikidzevskyi District Court of Zaporizhzhia City ordered two heirs to pay 24,998 UAH each for their father's medical treatment and funeral costs.

In the international context, the case of the Federal Court of Justice in the Name of the People, Judgment No. IV ZR 110/21 (2022) is particularly illustrative. In this case, a British citizen who had lived in Germany for 53 years applied English law to his inheritance, disinheriting his adopted son, a German national. The son claimed his compulsory share (Pflichtteil) under German law. The Federal Court of Justice ruled that the application of English law violated German public policy (ordre public), as English law does not guarantee a compulsory share for children regardless of their needs, unlike German law. The court emphasised that children's right to a compulsory share constitutes a constitutional right under Articles 14(1) and 6(1) of the Basic Law of Germany, protecting family relationships even after the death of parents. The Inheritance (Provision for Family and Dependents) Act 1975 provides only need-based

compensation which contradicts the German principle of a guaranteed compulsory share. This ruling demonstrated the willingness of German courts to limit the application of foreign law in order to protect the constitutional rights of heirs,

particularly in cases where medical or other obligations could completely deplete the estate, leaving close relatives without means of subsistence. The results of the comparative analysis are summarised in Table 3.

Table 3. Comparative analysis of the legal regulation of medico-legal aspects of inheritance

Comparison criterion	Ukraine	France	Germany	Switzerland	Spain	Austria	Poland
Protection against excessive medical debts	Limited liability within the estate	Right of compensation when disinherited from French assets	Prohibition on applying foreign law if it violates public policy	Special procedures limiting liability through estate bankruptcy	Benefit of inventory – liability only within estate assets	Simplified procedures through the abolition of inheritance taxes	Simplified renunciation procedures to protect children
Access to medical information	Legal gap (Art. 40 Fundamentals of the Legislation of Ukraine on Health care does not regulate heirs' access)	Delegated access via EHDS* patient portals	Protection through public policy principles and constitutional rights	Technological solutions for electronic access with patient consent	Regional regulation in autonomous communities	EU-wide EHDS standards adapted to the national context	EU-wide EHDS standards adapted to the national context
Verification of medical claims	No special procedures	Judicial review of claim validity according to medical standards	Expert assessment of compliance with medical standards and evidence-based medicine principles	Independent medical evaluation involving specialised institutions	Regional verification standards depend on the autonomous community	Simplified verification procedures through unified standards	2023 judicial reform simplified verification procedures
International instruments	Not adapted to European standards	Regulation of the European Parliament and of the Council No. 650/2012 (2012) on cross-border inheritance	European law with national limitations	Bilateral agreements with the EU and national regulations	European law, considering the federal structure	European law with simplified procedures	European law and 2023 reforms
Tax benefits	No special provisions for medical obligations	Limited benefits for compensatory payments	Standard benefits under German tax law	Moderate benefits under Swiss federal law	Regional variations depending on the autonomous community	Full abolition of inheritance and gift taxes	Standard benefits with the option of using family funds

Source: compiled by the authors

European experience highlights the need for a comprehensive legal framework that takes into account the specific nature of medical obligations, balances the interests of all parties involved, and provides effective tools to protect heirs from excessive financial burdens. Progressive European approaches include specialised statutory regulation, multi-level protective mechanisms, technological integration, and international coordination which together create an effective system for safeguarding inheritance rights in the context of medical liabilities.

Statistical analysis and empirical data.

The study of judicial practice in inheritance cases is based on official data from the Supreme Court of Ukraine. According to the 2024 report on the administration of justice by the Supreme Court, the total number of procedural appeals and cases amounted to 107,707, of which 87,495 cases were adjudicated (Supreme Court of Ukraine, 2025). Within the civil justice system which encompasses inheritance cases, 26,108 cases were pending in 2024, of which 17,904 were resolved. Specifically, in disputes arising from inheritance relations, 1,210 cases were pending in 2024, with 759 cases adjudicated. This indicates a consistently high level of inheritance-related disputes within the civil justice system.

A comparative analysis with data from the first half of 2025 shows certain trends: the total number of procedural appeals was 65,233, of which 45,993 cases were resolved (Supreme Court of Ukraine, 2025). In civil proceedings during the first half of 2025, 16,481 cases were pending, with 8,590 adjudicated. In the category of disputes arising from inheritance relations, 839 cases were pending in the first half of 2025, of which 399 were resolved. This demonstrates that the intensity of inheritance case proceedings in the first half of 2025 proportionally mirrors the annual figures for 2024, indicating a sustained demand for judicial resolution of inheritance disputes.

It is also worth noting that, in civil proceedings, 18,929 cassation appeals were filed in 2024, of which 17,198 were adjudicated, while in the first half of 2025, 8,878 cassation appeals were filed, with 8,240 resolved. These figures indicate the active use of the cassation instance for addressing complex legal issues in civil cases, including inheritance disputes. A detailed analysis of the structure of cassation cases in 2024 shows that, within civil proceedings, the largest share consisted of disputes arising from contracts – 7,113 cases; noncontractual obligations – 3,542 cases; and property rights – 2,517 cases (Supreme Court of Ukraine, 2025). Inheritance disputes (1,210 cases) occupy a significant place among civil cases, underscoring their practical importance.

This trend reflects the inherent complexity and contentiousness of issues related to the testator's intentions, particularly in the context of medico-legal aspects. The most problematic grounds for contesting wills are disputes concerning discrepancies between the testator's will and its expression which judicial practice recognises as the primary and most common reason for declaring a will invalid. This category of disputes is directly linked to medico-legal aspects of inheritance, as it often involves the testator's mental state, cognitive abilities, or general capacity at the time the will was drawn up. The complexity of resolving such cases is significantly heightened by the absence of the testator at the time of trial which creates objective challenges in establishing their mental state, cognitive abilities, and awareness of the significance of their actions when making the will.

Disputes regarding discrepancies between the testator's intentions and their expressed will require a post-mortem forensic psychiatric examination to determine the testator's mental state and capacity at the time of signing the will. This procedure is not merely a formal requirement but a fundamental reliance on medical expertise to

establish the legal fact of capacity. The Resolution of the Supreme Court in Case No. 496/4851/14-ts (2019) emphasised that a forensic psychiatric examination must ascertain the individual's mental state specifically at the moment the will was drawn up. Witness testimony regarding the testator's behaviour may only be considered as corroborative evidence, with the primary basis being the categorical conclusion of the expert. Resolution of the CCS of the Supreme Administrative Court of Ukraine in Case No. 127/7945/18 (2019) documents an instance where court testimony about a depressed state and psychological pressure did not carry decisive weight: the appellate court concluded that the evidence was insufficient, and the will was valid, as the testator's expressed will corresponded to their genuine intentions.

Witness testimony also plays a crucial role in these cases, as it is expected to confirm that the testator understood the significance of their actions, expressed their true intentions without external influence, and personally signed the will. This indicates that the legal system recognises the profound influence of an individual's medical and psychological state on their legal actions, effectively making medical experts' *de facto* arbiters in these specific legal disputes. A will may be declared invalid if the testator's intentions were not freely expressed and did not reflect their genuine wishes; that is, if the person did not understand the significance of their actions, was subject to physical or psychological pressure, or acted under deception, threat, or coercion.

The issues of access to and interpretation of judicial statistics pose additional challenges for a comprehensive analysis of the medico-legal aspects of inheritance. While the available data provide qualitative insights into court practice and general trends, exhaustive statistical information regarding the number and outcomes of medico-legal inheritance disputes is not fully accessible from official sources (Why a notary when..., 2025).

The economic landscape of health care in Ukraine is characterised by substantial state (budgetary) funding alongside a high proportion of out-of-pocket expenses for the population, creating direct conditions for the accumulation of medical debts within the estate. According to the Ministry of Finance of Ukraine, total health care expenditures in 2023 amounted to UAH 217.4 billion, of which UAH 181.8 billion was allocated from the state budget, with planned increases for 2024 to UAH 238.7 billion, including UAH 204.2 billion from the state budget (Ministry of Finance, 2024, 2025). A substantial portion of these funds is allocated to the Medical Guarantees Program: UAH 139.4 billion in 2023 and UAH 157.3 billion in 2024, covering a wide range of services, including emergency medical care, primary and specialised health care, as well as reimbursement for certain medications. Despite this significant state funding, a notable feature of Ukraine's health care system remains the high proportion of out-of-pocket expenses which in 2021 accounted for 46.3% of total current health care expenditures (Obrizan, 2024). This figure is considerably higher compared with European countries. According to the Organisation for Economic Co-operation and Development (OECD) (2023), Health at a Glance 2023, out-of-pocket expenses in Germany constitute 12% of total health care spending, with voluntary/out-of-pocket costs amounting to 1.7% of GDP, while the average share of personal health care expenditure across OECD countries does not exceed 20% of total medical costs. This creates a clear basis for the accumulation of significant medical debts by individuals over their lifetime. The dynamics of civil case proceedings demonstrate the stability of the judicial system: in 2024, complaints were dismissed and court decisions left unchanged in 3,961 cases; complaints were upheld and court decisions modified in 381 cases; and rulings were overturned in 2,298 cases (Supreme Court, 2025).

The combination of substantial overall health care expenditures and an exceptionally high proportion of out-of-pocket costs creates a direct causal link with the potential presence of significant medical liabilities within the estate. When nearly half of health care expenses are covered directly by individuals, prolonged illness, complex treatment, or emergency medical care can easily result in the accumulation of considerable financial obligations, particularly in cases of cancer, major surgical procedures, or extended rehabilitation. Researchers estimate that health care costs during the last six months of life can account for 25% to 40% of total medical expenditures over the course of an illness, generating concentrated financial pressure on the estate precisely at the time of inheritance proceedings (Obrizan, 2024). After death, these accumulated, unpaid medical expenses are highly likely to form part of the decedent's outstanding debts, directly affecting the value and attractiveness of the estate for potential heirs.

The legal regulation of inherited debts, including medical liabilities, is based on the principle of limited liability for heirs, as established in the Civil Code of Ukraine (2003). Heirs are responsible for the deceased's debts only to the extent of the inherited estate, meaning that if the value of the estate is a certain amount, creditors' claims cannot exceed that sum (Inherited debts, 2025). This principle of limited liability, enshrined in Article 1282 of the Civil Code of Ukraine, serves as a critical protective mechanism for heirs, preventing their personal impoverishment through inherited debts exceeding the value of the assets received. Although medical expenses are not explicitly identified as a separate category of debt, they fall under general financial obligations and, unlike personal fines or alimony, constitute contractual or quasi-contractual liabilities, making them transferable to heirs. This creates a strategic decision point for heirs: to accept the

inheritance along with the associated debts up to the estate's value, or to formally renounce it.

Statistical data indicate high activity in the field of inheritance law in Ukraine. According to official data from the Ministry of Justice of Ukraine, notaries performed a total of 12.6 million notarial acts in 2024, representing a 20% increase compared with 2023. Inheritance cases constitute a substantial proportion of notarial activity: 699 state notaries issued 412,533 certificates of inheritance rights in 2024, while 5,568 private notaries issued 638,770 such certificates. In total, state notaries opened 135,876 inheritance cases, and private notaries 248,251 cases. Moreover, in 2024, 131,100 wills were notarised (24,012 by state notaries and 107,088 by private notaries), reflecting active citizen engagement in estate planning (National Health Service of Ukraine, 2024).

Judicial practice in resolving inheritance disputes demonstrates the active role of the Supreme Court in analysing and consolidating legal positions, aimed at ensuring consistency in the application of the law, particularly in complex areas of inheritance (Fedorchenko et al., 2020). A common area of dispute concerns the extension of the statutory six-month period for accepting an inheritance, where courts may grant additional time if the heir encounters objective, insurmountable, and significant obstacles. Recognised justifications include prolonged illness of the heirs, considerable distance between the heir's permanent residence and the location of the estate, demanding work conditions involving longterm assignments, including overseas postings, and service in the Armed Forces of Ukraine. By contrast, reasons generally not considered valid include lack of legal knowledge, ignorance of the existence of inherited property, advanced age, disability, uncertainty among co-heirs, insufficient funds for travel, or simply residing in the inherited property after the estate has opened.

Analysis of judicial practice also highlights the circumstances under which wills may be declared invalid. This may occur if the testator's free will was not properly expressed, if the testator was incapacitated, or if formal requirements for drafting the will were breached. A will is also void if it disposes of property that the testator did not own at the time of drafting, as confirmed by case studies. Courts may interpret wills to clarify ambiguities or inaccuracies, ensuring that the testator's true final intentions are respected; however, this process must not alter the content of the will or substitute the court's interpretation for the testator's genuine wishes. The Supreme Court's consolidated practice also addresses complex issues concerning the proof of familial relationships, particularly for individuals who lived together as a family without formal marriage, and the determination of the place of inheritance opening in cases where the deceased's last registered residence is absent or cannot be established. The court may recognise cohabitation as a factual circumstance without the need for a separate judicial ruling, and if the deceased's last residence is unregistered, the estate opens at the location of the main assets, as noted by O. Kukharev (2022).

Notarial activity occupies a central role in inheritance procedures at the initial stages and functions as a primary barrier against invalid wills and unfounded claims. Notaries are obliged to verify the legality of a will and ensure its registration in the Inheritance Register, and if any legislative violations are identified, the notary must reject the document (Results of the work..., 2024). Notaries must also ensure the presence of documents evidencing familial relationships and the deceased's property rights, and in their absence, they may require the submission of original or notarised documents. Their regulatory role allows numerous legal conflicts to be resolved or prevented at the notarial level before escalating to court proceedings, as evidenced by

the high proportion of notarial procedures in inheritance matters relative to court cases. At the same time, although notaries handle the majority of inheritance cases, their findings are subject to judicial review, and courts regularly rely on materials from notarial inheritance proceedings to resolve disputes.

The identified legislative shortcomings and problems in law enforcement create systemic obstacles to the proper regulation of medico-legal issues in inheritance. The Civil Code of Ukraine (2003) does not define or provide a specific interpretation of the concept of "family" which creates difficulties in applying Article 1264 of the Civil Code, establishing inheritance rights for individuals who cohabited with the testator for at least five years prior to the opening of the estate (Efimova *et al.*, 2022). Despite the Supreme Court's clarification that cohabitation can be established as a factual circumstance without a separate judicial act, this key legislative deficiency remains unresolved, delegating interpretative authority to the courts and potentially leading to inconsistent application of the law. Moreover, an analytical study by the DeJure Foundation has revealed cases of manipulation in inheritance disputes, particularly in the absence of alternative claimants who could challenge the decisions made (Why a notary when..., 2025). The researchers documented indirect indicators of such manipulation, including unusually rapid case resolutions, significant delays in publishing decisions in the Unified State Register of Court Decisions, and the absence of references in judicial acts to the reinstatement of inheritance proceedings or the identification of heirs. An additional legal challenge is the difficulty of conducting post-mortem psychiatric examinations to determine the testator's capacity at the time the will was executed. These procedures are characterised by multiple stages, substantial resource requirements, the absence of medical documentation, and reliance on

indirect evidence and expert opinions which creates risks of subjective interpretation and may result in prolonged litigation.

Recommendations for improving Ukrainian legislation on the medico-legal regulation of inheritance. Based on the analysis of shortcomings in Ukrainian legislation and a comparative study of European experience, a set of recommendations is proposed for modernising the legal regulation of medico-legal aspects of inheritance. The analysis identified significant gaps in the current legislation, creating legal uncertainty and complicating the practical realisation of inheritance rights where medical liabilities are involved. The main legislative acts regulating inheritance in Ukraine do not contain specific provisions addressing the settlement of medical obligations within the estate and fail to consider the particular nature of medical services in the context of inheritance relationships.

Priority should be given to modernising the Civil Code of Ukraine (2003) by supplementing Chapter 87, “Exercise of the Right to Inherit”, with a new Article 1282-1, “Specifics of Liability for the Testator’s Medical Obligations”. This article should establish a specialised legal framework for medical liabilities, taking into account the French experience of the “right of compensation” (*droit de prélèvement compensatoire*), introduced through amendments to Article 913 of the Code Civil (2025), and the German guarantees for protecting heirs’ constitutional rights, as demonstrated Judgment of the Federal Court of Justice in Case No. IV ZR 110/21 (2022). It is recommended that the article include a clear definition of medical obligations as liabilities arising from the provision of medical care to the testator, their classification into those compensated and not compensated by the National Health Service of Ukraine in accordance with Law of Ukraine No. 2168-VIII (2017), a detailed procedure for the verification of medical claims

involving medical experts, and a specified order of satisfaction that takes into account the social significance of medical services.

The second area of modernisation is the establishment of a legal institution of “medical inheritance planning” through the addition of Article 1247-1, “Testamentary Provisions Regarding Medical Expenses and Medical Information” to Chapter 84 of the Civil Code of Ukraine (2003). This recommendation is based on the Polish experience of creating special medical funds to cover the long-term health care needs of families (Act Amending the Civil..., 2023). The article should provide the testator with the ability to determine how part of the estate may be used to cover medical needs, set limits on the types and extent of medical interventions that can be financed from the estate, appoint special administrators to manage the medical aspects of the inheritance, and specify the persons entitled to access the deceased’s medical information for the protection of inheritance rights.

The third area concerns the modernisation of the legal regulation of medical information in inheritance relations through systematic amendments to Law of Ukraine No. 2801-XII (1992) and the creation of a balanced mechanism allowing heirs access to the medical information necessary for the protection of their inheritance rights. This recommendation is based on the experience of Regulation of the European Parliament and of the Council No. 2025/327 (2025) which establishes clear patient rights to access their own medical data, including the ability to delegate access to heirs. Article 40 of Law of Ukraine No. 2801-XII (1992) should be supplemented with provisions governing the procedure for providing medical information to heirs, ensuring compliance with principles of confidentiality and the protection of the deceased person’s personal data.

Organisational recommendations include the creation of a specialised interagency working

group composed of representatives from the Ministry of Justice of Ukraine, the Ministry of Health of Ukraine, the National Health Service of Ukraine, the Ukrainian Notarial Chamber, and leading scholars in inheritance and medical law. This approach follows the Swiss model of establishing dedicated procedures for resolving complex property relations (Weiss & Müller-Zhang, 2024). The working group should conduct consultations with medical associations, patient organisations, international experts, and European institutions to ensure that the drafted legal norms meet European standards.

Procedural recommendations envisage the development of subordinate legislation, including: a procedure for providing medical information to heirs, with detailed definitions of the types of information and methods of provision, modelled on the Austrian experience of optimising the legal regulation of medical obligations under Articles 546-547 of the General Civil Code for all German Hereditary Lands of the Austrian Monarchy (1811), concerning the legal status of the estate, and Article 22 of Regulation of the European Parliament and of the Council No. 650/2012 (2012); methodological guidelines for the professional assessment of medical obligations in inheritance cases, involving medical experts; regulations governing the interaction of notaries with medical institutions in the processing of inheritance rights. The Ministry of Health of Ukraine should develop modern standards for documenting medical services specifically for inheritance purposes, alongside procedures for independent verification of medical claims in accordance with established medical standards and principles of evidence-based medicine.

Technological recommendations concern the creation of a modern technological infrastructure and electronic document management systems to enable efficient interaction between medical institutions, notarial bodies, and heirs, following

the European model of implementing electronic estate management mechanisms. A unified electronic platform should be established to record medical obligations, automatically verify medical claims in line with approved NHS Ukraine tariffs, and promptly inform heirs of the scale of medical debts and their coverage under state programs.

Protective mechanisms should include rules for accepting an estate with an inventory, following the Spanish model which shields heirs from personal liability for the deceased's medical debts exceeding the value of the inherited property (Lutska *et al.*, 2022). It is also recommended to create liability-limitation mechanisms based on Swiss innovations that protect heirs from excessive obligations through specialised estate bankruptcy procedures (Weiss & Müller-Zhang, 2024). Compensation mechanisms should be developed drawing on the French concept of "droit de prélèvement compensatoire" which allows heirs to claim compensation even where medical obligations might otherwise consume the entire estate, thereby balancing the interests of medical creditors with the rights of close relatives to maintain a livelihood (Ramaciotti, 2021).

International legal recommendations include adapting Ukrainian legislation to the principles of Regulation of the European Parliament and of the Council No. 650/2012 (2012) on cross-border inheritance which will ensure the effective regulation of medical obligations of an international nature, and implementing the standards of the Convention for the Protection of Human Rights and Dignity of the Human Being (1997) regarding the protection of patients' and their heirs' rights. European standards are recommended to be introduced gradually, taking into account the national specificities of the Ukrainian legal system, including through the establishment of specialised procedures for the verification of medical claims based on the German model of protecting heirs' constitutional rights, and the introduction

of tax relief mechanisms following the Austrian approach to reducing heirs' financial burdens in settling medical obligations.

The proposed recommendations constitute a comprehensive framework for modernising Ukrainian legislation on the medico-legal regulation of inheritance relations, taking into account both identified gaps in national legal regulation and best international practices from European countries. Implementing these recommendations will create an effective legal foundation for protecting the interests of all participants in medico-legal inheritance relations, ensuring a balance between heirs' rights and the obligations of medical institutions, and promoting the development of innovative mechanisms for financial and economic estate planning that consider medical risks. The practical significance of the proposed recommendations lies in the possibility of their phased implementation, taking into account the institutional capacity of the Ukrainian state and available financial resources. This approach will enable the gradual adaptation of national legislation to contemporary challenges in the field of medico-legal inheritance relations and to European standards of legal regulation.

Discussion

The analysis conducted demonstrated the critical importance of legal regulation of medico-legal relations in Ukrainian inheritance law, revealing significant gaps in legislation and the need for a systematic approach to regulating the economic aspects of medical obligations within the estate. The study's findings indicate that medical expenses constitute a substantial portion of the deceased's debt obligations, with oncological diseases generating the highest financial risks for heirs. The established resumption of court activity in inheritance cases to pre-war levels also underscores the ongoing need for effective legal regulation of inheritance relations.

The identified lack of effective mechanisms for interaction between medical institutions, the National Health Service of Ukraine, notarial authorities, and heirs highlight the urgency of digitalising legal processes in the field of inheritance. This issue is addressed in the research of G.S. Saidakhrarovich *et al.* (2022), who analyse the impact of digitalisation on inheritance law and the prospects for technological modernisation of legal regulation. The researchers argue for the adaptation of traditional legal institutions to the digital era and the creation of electronic systems for managing inheritance processes. The gaps identified in this study confirm the relevance of digital transformation, particularly regarding the establishment of integrated systems for recording medical obligations and automating the verification of medical claims. The implementation of digital technologies could facilitate the creation of a unified electronic platform for recording medical obligations, automatic verification of claims according to the approved tariffs of the NHSU, and timely notification of heirs about the volume of medical debts and their coverage under state programs. At the same time, the study identifies specific challenges associated with the digitalisation of the medico-legal sphere, particularly the need to ensure enhanced safeguards for the confidentiality of medical information which constitutes sensitive personal data. A key issue is the development of secure protocols for transmitting medical information between various participants in inheritance relations, alongside the establishment of an electronic signature system for medical documents.

The international legal aspects of inheriting immovable property involving foreign heirs are examined in the research of L.E.A. Pandiangan (2020) which explores the regulation of property rights of foreigners in inheritance procedures through the lens of civil law. The author emphasises the difficulties in coordinating

international inheritance processes and the importance of applying conflict-of-law principles to resolve inheritance disputes. Ukraine's legislative shortcomings in the medico-legal sphere of inheritance are characterised in this study as critically significant for international inheritance law, since medical debts may arise under different legal systems with varying regulatory approaches. The research concludes that the practice of the European Union – particularly the provisions of Regulation of the European Parliament and of the Council No. 650/2012 (2012) – provides substantial methodological guidance for managing such cases through the application of the territorial principle and the right to choose jurisdiction. However, medical debts require a specialised legislative approach that takes into account the specificities of national health care systems and the financial mechanisms for delivering medical care. It is fundamentally important to recognise that medical obligations may acquire an international dimension when medical services are received abroad, necessitating the harmonisation of legal standards between states.

The long-term economic consequences of inheritance are examined in the study of C. Bartels *et al.* (2024) which considers the impact of mechanisms for equitable distribution of estates on economic processes. The researchers find that inheritance legislation significantly influences economic activity and the wealth stratification of the population. Analysis of the medicolegal aspects of inheritance supports this concept, showing that medical debts can profoundly affect the economic viability of intergenerational property redistribution. Statistical data indicate that substantial private medical expenditures in Ukraine (46.3% of total current spending) create real conditions for the accumulation of critical medical debts which may result in situations where the value of medical obligations equals or even exceeds the value of the estate. Such circumstances

generate prolonged economic challenges for families and society at large, as they can prompt the forced sale of inherited property at depressed prices or a categorical refusal to accept the inheritance. At the same time, it should be emphasised that, unlike standard inheritance liabilities, medical obligations are not exceptional, as they are correlated with constitutional medical guarantees and state social obligations.

Classical approaches to regulating family, marital, and inheritance relations are discussed in the research of G.A. Azizovich (2024) which examines the historical development of the inheritance institution within the context of socio-economic relations. The study focuses on the evolution of inheritance practices under the influence of socio-economic factors and changing societal needs. The conclusions of this study indicate that Ukraine's contemporary health care system presents fundamentally new challenges for inheritance law which did not exist in a historical context. In particular, the introduction of the Medical Guarantees Program, the establishment of the National Health Service of Ukraine, and new mechanisms for financing medical care have significantly affected the structure and content of medical and legal relations, creating novel challenges for the legal regulation of inheritance. A comparative analysis of traditional medical and legal inheritance relations, presented in the study, highlights their substantial differences, as well as their multistakeholder and interdisciplinary character. The research demonstrates the need to develop a specialised legal approach to the regulation of medico-legal relations in inheritance law – one that accounts for both the traditional principles of inheritance law and the specificities of medical law and bioethics. A structural analysis of the factors influencing inheritance relations is conducted in the research of C. Schiffer *et al.* (2020), who examine the conditionality of inheritance in various contexts.

The researchers emphasise the importance of a systemic approach to understanding the factors that shape the nature of inheritance relations. The findings of the study support the need for a comprehensive approach to regulating the medical and legal aspects of inheritance, given that these relations exhibit a dual nature and are simultaneously governed by norms of both medical and inheritance law. The analysis shows that medical and legal relations within inheritance law possess characteristics of both property and non-property civil law, complicating their legal classification and regulation. The property-related aspects are connected with the economic consequences of medical care, whereas the non-property aspects concern personal human rights to medical treatment and the confidentiality of medical information. A structural approach to analysing these relations allows for the identification of their specific features and underlines the need for specialised legal regulation.

The study by S. Morelli *et al.* (2021) focuses on inheritance, gifts, and wealth accumulation among low-income households. The authors conclude that inheritance mechanisms are critically important for the economic well-being of disadvantaged families. The findings reveal a paradoxical situation in which the most vulnerable segments of the population face the greatest risks in the sphere of medico-legal inheritance relations. Statistical data show that the high proportion of out-of-pocket health care expenditure in Ukraine disproportionately affects low-income families, who lack sufficient resources to cover expensive medical treatment. This can result in situations where the estate is entirely consumed by medical debts, leaving heirs without means of subsistence. The problem is particularly acute in cases of oncological diseases, where only 5% of patients receive innovative therapy free of charge, and 12% are unable to undergo necessary treatment due to lack of funds. The results of the study

highlight the urgent need to establish protective mechanisms for such families, including the possibility of limiting medical obligations within the estate and creating social support systems to cover critical medical expenses.

The results of the study demonstrate significant potential for the technological modernisation of medico-legal inheritance relations. This is reflected in the study of R.M. Garcia-Teruel (2020) which examines legal challenges and the prospects of implementing blockchain technologies in the real estate sector, as well as opportunities for the technological enhancement of regulatory frameworks governing property relations. The author highlights the potential of modern technologies to address entrenched legal issues and to optimise legal regulation. The study identifies a lack of effective mechanisms for interaction between medical institutions, notarial authorities, and heirs, emphasising the need for technological transformation in this field, particularly through the development of integrated digital platforms for recording medical obligations and automating the verification of medical claims. The research findings indicate that a major deficiency of the current system is the absence of efficient communication channels among health care providers, the National Health Service of Ukraine, notaries, and beneficiaries. The implementation of technological innovations could establish a transparent platform for recording medical debts, automate the verification of medical claims in accordance with NHSU tariffs, and provide heirs with prompt notifications regarding the extent of medical liabilities and their coverage under state programs (Vazov *et al.*, 2024).

The economic mechanisms identified in the study regarding the accumulation of medical expenses within estates and their impact on the financial position of heirs align with the conclusions of S. Jestl (2021), who conducted a comparative analysis of inheritance taxation systems and

reviewed methods employed by different states for fiscal oversight of inheritance processes. The researcher examines both the positive and negative aspects of alternative taxation models and their impact on economic activity. The analysis of the structure of medical expenses within estates confirms the relevance of fiscal regulation, particularly in light of the substantial financial burden imposed on heirs by the medical liabilities of the deceased. It was found that the greatest risks to heirs arise from the costs of cancer treatment (average cost 120,000 UAH) and organ transplantation (up to 2.6 million UAH) which can significantly exceed the value of the estate. A particularly important conclusion drawn by the researcher is the need for coordination across different branches of law to regulate inheritance relations effectively which aligns fully with the identified necessity of synchronising inheritance and medical legislation to address the medico-legal aspects of succession.

The results of the study underscore the urgent need for comprehensive reform of Ukrainian legislation in the field of medico-legal regulation of inheritance, taking into account both the national characteristics of the health care system and international experience in legal regulation. Comparative analysis with other studies confirms the universality of the identified problems and the need for an interdisciplinary approach that integrates legal, economic, and medical aspects of inheritance relations.

Conclusions

On the basis of this comprehensive study of the medico-legal and economic (financial) aspects of inheritance law in Ukraine, it can be concluded that the objective of developing theoretical and legal foundations for regulating this complex area of legal relations has been achieved. The study revealed that medico-legal relations in inheritance law constitute a distinct category of civil-law

relations, characterised by a dual nature and requiring specialised legal regulation that integrates principles of inheritance law, medical law, and bioethics. A specific composition of actors within these relations was identified, including not only the traditional participants in inheritance proceedings but also medical institutions, health care professionals, and health authorities, resulting in a considerably more complex structure of legal connections compared with conventional inheritance relations.

Economic analysis demonstrated the critical impact of medical expenses on the composition of estates, particularly in cases of cancer and complex medical procedures, where the average cost of cancer treatment is 120,000 UAH and organ transplantation expenses can reach 2.6 million UAH. Specific court cases confirm the practical significance of this issue: the ruling of the Cassation Civil Court on 17 May 2023 obliged heirs to reimburse 75,836 USD and 137,618 UAH spent on the deceased's medical treatment. It was established that the high proportion of out-of-pocket health care spending in Ukraine (46.3% of total current expenditures) creates objective conditions for the accumulation of significant medical debts which substantially affects the financial interests of heirs and can lead to situations in which they entirely renounce the inheritance.

Statistical analysis also indicated high activity in the field of inheritance law: in 2024, notaries issued 1,051,303 certificates of inheritance, opened 384,127 inheritance cases, and certified 131,100 wills. Judicial practice demonstrates that, within the structure of cassation cases in civil proceedings, disputes arising from inheritance relations accounted for 1,210 cases out of a total of 25,337 civil cases, with the vast majority of these cases requiring post-mortem forensic psychiatric examination.

Comparative analysis of European experience reveals the existence of progressive

approaches to regulating the medico-legal aspects of inheritance, including the French concept of compensatory rights for heirs deprived of inheritance under foreign law, the German safeguards protecting the constitutional rights of heirs through limitations on the application of foreign law in cases contravening public policy, and the Swiss mechanisms limiting liability for excessive obligations through specialised procedures for estate bankruptcy. Regulation No. 650/2012 of the European Parliament and of the Council establishes harmonised rules for cross-border inheritance cases and the principle of territorial jurisdiction, ensuring effective resolution of medical obligations of an international nature.

The study's limitations are associated with the lack of official statistics on medico-legal inheritance disputes and the dynamic changes in

Ukraine's health care system during the state of war. Prospects for further research include the study of digitalisation of medical data in the context of inheritance, the development of mechanisms for international cooperation in cross-border medicolegal inheritance cases, and the investigation of the impact of demographic changes on the composition of medical expenses within estates.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of Interest

None.

References

- [1] Abankina, A. (2025). *Medical guarantee program: Rates, packages, features*. Retrieved from <https://medplatforma.com.ua/article/15737-programa-medichnikh-garantiy-2023-perelik-poslug-osoblivosti>.
- [2] Azizovich, G.A. (2024). [Family-marriage and inheritance relations of the population in the Bukhara Emirate](#). *City of the Future*, 53, 964-969.
- [3] Bariatti, S., Viarengo, I., & Villata, F.C. (2022). *EU cross-border succession law*. Cheltenham: Edward Elgar Publishing.
- [4] Bartels, C., Jäger, S., & Obergruber, N. (2024). Long-term effects of equal sharing: Evidence from inheritance rules for land. *Economic Journal*, 134(664), 3137-3172. doi: 10.1093/ej/ueae040.
- [5] Berezov, O., Perkumiene, D., & Legkova, L. (2022). Problems of legal regulation of inheritance relations in Lithuanian law in the context of European Union law. *Humanities Studies*, 89(12), 104-112. doi: 10.26661/hst-2022-12-89-12.
- [6] Biliaiev, O., Isaiev, A., Korobtsova, N., Puchkovska, I., & Yanyshen, V. (2023). Contractual dynamics in Ukrainian civil law regulation. *Portugalense Legal Journal*, 34, 237-256. doi: 10.34625/issn.2183-2705(34)2023.ic-12.
- [7] Cahn, N., Huntington, C., & Scott, E. (2023). [Family law for the one-hundred-year life](#). *Yale Law Journal*, 132(6), 1600-1969.
- [8] Judgement of the Ordzhonikidze District Court in Case No. 335/11320/17. (2018, May). Retrieved from <https://reyestr.court.gov.ua/Review/74323296>.
- [9] Changes in French inheritance law: What UK expats need to know in 2024. (2024). Retrieved from <https://www.francetaxlaw.com/news/2024-changed-to-french-inheritance-law-for-expats/>.

- [10] Convention for the Protection of Human Rights and Dignity of the Human: Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine. (1997, April). Retrieved from <https://rm.coe.int/168007cf98>.
- [11] Convention of Concerning the International Administration of the Estates of Deceased Persons. (1973, October). Retrieved from <https://surl.li/ssofwx>.
- [12] Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions. (1961, September). Retrieved from <https://treaties.un.org/doc/Publication/UNTS/Volume%20510/volume-510-I-7413-English.pdf>.
- [13] Convention on the Law Applicable to Succession to the Estates of Deceased Persons. (1989, August). Retrieved from <https://www.hcch.net/en/instruments/conventions/full-text/?cid=62>.
- [14] Current threats to the EU succession regulation. (2023). Retrieved from <https://www.stoneking.co.uk/literature/e-bulletins/current-threats-eu-succession-regulation>.
- [15] Judgment of the Cherkasy District Court of Cherkasy Region in Case No. 707/3454/23. (2023, January). Retrieved from <https://opendatobot.ua/court/116177093-43188af54df0c4960a7d521d3b6c87f0>.
- [16] Decision of the National Commission on Securities and Stock Market No. z0697-18 “On Approval of the Procedure for Changing the Type of Collective Investment Institution”. (2018, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0697-18>.
- [17] Efimova, A.O., Gunya, V.M., & Kosyachenko, K.E. (2022). Analysis of inheritance by civil law of Ukraine. *Legal Scientific Electronic Journal*, 5, 34-37. doi: 10.32782/2524-0374/2022-5/34.
- [18] European Commission. (2025a). *Reuse of health data*. Retrieved from https://health.ec.europa.eu/ehealth-digital-health-and-care/reuse-health-data_en.
- [19] European Commission. (2025b). *My rights over my health data*. Retrieved from https://health.ec.europa.eu/ehealth-digital-health-and-care/my-rights-over-my-health-data_en.
- [20] Expatistan. (2025). *The price of Short visit to private Doctor (15 minutes) in Kyiv is 677€*. Retrieved from <https://www.expatisitan.com/price/doctor/kyiv>.
- [21] Judgment of the Federal Court of Justice in Case No. IV ZR 110/21. (2022, June). Retrieved from <https://juris.bundesgerichtshof.de/cgi-bin/rechtsprechung/document.py?Gericht=bgh&Art=en&Datum=Aktuell&Seite=1&nr=130671&pos=33&anz=863>.
- [22] Community organisation as a subject of civil relations according to Law of Ukraine and CIS countries *Memoria E Ricerca*, 1, 353-370. doi: 10.4478/98143.
- [23] Garcia-Teruel, R.M. (2020). Legal challenges and opportunities of blockchain technology in the real estate sector. *Journal of Property, Planning and Environmental Law*, 12(2), 129-145. doi: 10.1108/JPEL-07-2019-0039.
- [24] General Civil Code for all German Hereditary Lands of the Austrian Monarchy. (1811). Retrieved from <https://surl.li/uijshg>.
- [25] How much do medical services cost abroad: We compare, analyse, and advise. (2024). Retrieved from <https://surl.li/muisxr>.
- [26] Inherited debts: What to do. (2025). Retrieved from <https://legalaid.gov.ua/publikatsiyi/borgy-u-spadok-shho-robyty/>.
- [27] Jestl, S. (2021). Inheritance tax regimes: A comparison. *Public Sector Economics*, 45(3), 363-385. doi: 10.3326/pse.45.3.3.

- [28] Ketners, K., Jargalsaikhan, Z., Miller, A., Miliienko, O., & Malkhasyan, L. (2025). Evaluation of effective anti-corruption strategies in state institutions. *Ceridap*, 2025(1), 93-118. doi: [10.13130/2723-9195/2025-1-48](https://doi.org/10.13130/2723-9195/2025-1-48).
- [29] Kirnos, D., & Loginova, M.V. (2024). [Inheritance law](#). In *Collection of scientific papers with materials of the V international scientific conference "Scientific discoveries and fundamental scientific research: World experience"* (pp. 166-169). Vinnytsia: LLC "UKRLOGOS Group".
- [30] Korobtsova, N.V. (2021). The patient's order as a separate manifestation of his will. *Open MenuTheory and Practice of Jurisprudence*, 2(20), 85-97. doi: [10.21564/2225-6555.2021.2.238013](https://doi.org/10.21564/2225-6555.2021.2.238013).
- [31] Kosiachenko, K. (2022). Current issues of implementing inheritance rights. *Copernicus: Political and Legal Studies*, 1(3), 94-100. doi: [10.15804/CPLS.20223.11](https://doi.org/10.15804/CPLS.20223.11).
- [32] Kozodaev, S.P., Bysaga, Y.M., Belov, D.M., & Gromovchuk, M.V. (2018). [Protection of constitutional rights and human freedoms in the process of conducting biomedical research](#). Uzhhorod: Helvetica Publishing House.
- [33] Kukharev, O.E. (2022). Relevant aspects of exercising the right to accept succession by lawful heirs in terms of the martial law. *Juridical Scientific and Electronic Journal*, 11, 222-225. doi: [10.32782/2524-0374/2022-11/50](https://doi.org/10.32782/2524-0374/2022-11/50).
- [34] Langton, J.M., Reeve, R., Srasuebkul, P., Haas, M., Viney, R., Currow, D., & Pearson, S. (2016). Health service use and costs in the last 6 months of life in elderly decedents with a history of cancer: A comprehensive analysis from a health payer perspective. *British Journal of Cancer*, 114, 1293-1302. doi: [10.1038/bjc.2016.75](https://doi.org/10.1038/bjc.2016.75).
- [35] Law of France No. 2021-1109 "On the Strengthening Respect for the Principles of the Republic". (2021, August). Retrieved from https://www.legifrance.gouv.fr/jorf/article_jo/JORFARTI000043964829.
- [36] Law of Ukraine No. 2168-VIII "On State Financial Guarantees of Medical Service to the Population". (2017, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/en/2168-19#Text>.
- [37] Law of Ukraine No. 2297-VI "On Personal Data Protection". (2010, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/en/2297-17>.
- [38] Law of Ukraine No. 2801-XII "Fundamentals of the Legislation of Ukraine on Health care". (1992, November). Retrieved from <https://zakon.rada.gov.ua/laws/show/en/2801-12>.
- [39] Lutska, G., Karmaza, O., Koucherets, D., Makhinchuk, V., & Koroied, S. (2022). The analysis of the implementation of inheritance law in selected EU countries. *Amazonia Investiga*, 11(49), 149-155. doi: [10.34069/AI/2022.49.01.16](https://doi.org/10.34069/AI/2022.49.01.16).
- [40] Masna, Z., Sergienko, V., Zhurakivska, O., Chelpanova, I., Haczkiwicz-Leśniak, K., Vergun, A., Dakhno, L., Adamovych, O., Rudnytska, K., Adamovych, O., Chalyi, I., & Kaminska, M. (2024). The problem of "norm" in modern medicine – trends of individual reconstruction of the human organism and new opportunities of research in the context of academic integrity. *Proceedings of the Shevchenko Scientific Society. Medical Sciences*, 73(1), 343-360. doi: [10.25040/ntsh2024.01.24](https://doi.org/10.25040/ntsh2024.01.24).
- [41] Michel, Y.A., Aas, E., Augestad, L.A., Burger, E., Thoresen, L., & Bjørnelv, G.M.W. (2024). Health care use and costs in the last six months of life by level of care and cause of death. *BMC Health Services Research*, 24, article number 688. doi: [10.1186/s12913-024-10877-5](https://doi.org/10.1186/s12913-024-10877-5).
- [42] Ministry of Finance of Ukraine. (2024). *In 2023, health care expenditures amounted to 217.4 billion hryvnias*. Retrieved from <https://surli.cc/utkchh>.

- [43] Ministry of Finance of Ukraine. (2025). *In 2024, health care expenditures amounted to 238.7 billion hryvnias*. Retrieved from https://mof.gov.ua/uk/news/minfin_u_2024_rotsi_vidatki_na_okhoronu_zdorovia_stanovili_2387_mlrd_griven-4999.
- [44] Ministry of Justice of Ukraine. (2025). *Report on the work of state and private notaries, the Ministry of Justice of Ukraine and its territorial bodies in the field of notarial affairs for 2024*. Retrieved from <https://minjust.gov.ua/files/general/2025/01/31/20250131164507-56.pdf>.
- [45] Morelli, S., Nolan, B., Palomino, J.C., & van Kerm, P. (2021). Inheritance, gifts and the accumulation of wealth for low-income households. *Journal of European Social Policy*, 31(5), 533-548. doi: [10.1177/09589287211040419](https://doi.org/10.1177/09589287211040419).
- [46] National Health Service of Ukraine. (2024). *The Medical Guarantee Program for 2024 comes into effect on January 1*. Retrieved from <https://www.kmu.gov.ua/news/z-1-sichnia-pochynaie-diiaty-prohrama-medychnykh-harantii-na-2024-rik>.
- [47] Niyazbekova, L., Cattolico, A., Geneva-Popova, M., Popova-Belova, S., & Jurka, R. (2025). Legal aspects of safety in medical procedures: International standards and practices. *Medicine, Law and Society*, 18(2), 261-288. doi: [10.18690/mls.18.2.261-288.2025](https://doi.org/10.18690/mls.18.2.261-288.2025).
- [48] Obrizan, M. (2024). *Characteristics of households with catastrophic medical expenses in Ukraine before full-scale war*. Retrieved from <https://voxukraine.org/harakterystyky-domogospodarstv-iz-katastrofichnymy-medychnymy-vytratamy-v-ukrayini-pered-povnomasshtabnoyu-vijnoyu>.
- [49] Order of the Ministry of Justice of Ukraine No. z0347-20 "On Amending the Procedure for Admission to the Profession of a Private Executor". (2020, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0347-20>.
- [50] Order of the Ministry of Regional Development, Construction and Housing and Communal Services of Ukraine No. z0347-12 "On Amendments to the Order of the Ministry of Regional Development of Ukraine dated 07.07.2011 No. 109". (2012, February). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0347-12>.
- [51] Organisation for Economic Co-operation and Development. (2023). *Health at a glance 2023: OECD indicators*. doi: [10.1787/7a7afb35-en](https://doi.org/10.1787/7a7afb35-en).
- [52] Palamar, S.B. (2022). [Certain aspects of legal regulation of inheritance by will in Ukraine](#). In *Materials of the V International Scientific and Practical Conference in Lviv Practical and Theoretical Issues of the Development of Science and Education*" (pp. 105-108). Lviv: Lviv Scientific Forum.
- [53] Pandiangan, L.E.A. (2020). An analysis of heritage legal law for foreign national heirs on the permanent object (property) based on civil law: An analysis of heritage legal law for foreign national heirs on the permanent object (property) based on civil law. *Advances in Social Sciences Research Journal*, 7(4), 186-196. doi: [10.14738/assrj.74.8080](https://doi.org/10.14738/assrj.74.8080).
- [54] Patient experience with cancer care before and after the war in Ukraine – abstract. (2023). Retrieved from <https://surl.li/plbrfw>.
- [55] Pechenyi, O.P. (2024). Implementation of some types of ensuring the fulfillment of obligations in the course of inheritance legal relations. *Uzhhorod National University Herald. Series: Law*, 84(1), 364-369. doi: [10.24144/2307-3322.2024.84.1.55](https://doi.org/10.24144/2307-3322.2024.84.1.55).
- [56] Puchkovska, I.Y., Pechenyi, O.P., & Isaiev, A.M. (2021). Ensuring the fulfillment of contracts in civil law. *International Journal of Criminology and Sociology*, 9, 3040-3047. doi: [10.6000/1929-4409.2020.09.370](https://doi.org/10.6000/1929-4409.2020.09.370).

- [57] Ramaciotti, S. (2021). [An examination of the European and constitutional requirements of the compensatory levy in draft article 913 of the French Civil Code](#). *Critical Review of Private International Law*, 2(2), 311-326.
- [58] Regulation of the European Parliament and of the Council No. 650/2012 "On Jurisdiction, Applicable Law, Recognition and Enforcement of Decisions and Acceptance and Enforcement of Authentic Instruments in Matters of Succession and on the Creation of a European Certificate of Succession". (2012, July). Retrieved from <https://eur-lex.europa.eu/eli/reg/2012/650/oj/eng>.
- [59] Regulation of the European Parliament and of the Council No. 2025/327 "On the European Health Data Space and Amending Directive 2011/24/EU and Regulation (EU) 2024/2847". (2025, February). Retrieved from <https://eur-lex.europa.eu/eli/reg/2025/327/oj>.
- [60] Resolution Civil Court of Cassation in Case No. 496/4851/14-ts. (2019, November). Retrieved from <https://zakononline.ua/court-decisions/show/85868730>.
- [61] Resolution of the Cabinet of Ministers of Ukraine No. 1394-2023-p "Some Issues of Implementing the Program of State Guarantees of Medical Care for the Population in 2024". (2023, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1394-2023-%D0%BF#n41>.
- [62] Resolution of the CCS of the Supreme Administrative Court in Case No. 756/7001/20. (2023, May). Retrieved from <https://protocol.ua/ua/postanova ktss vp vid 17 05 2023 roku u spravi 756 7001 20 1/>.
- [63] Resolution of the CCS of the Supreme Administrative Court of Ukraine in Case No. 127/7945/18. (2019, September). Retrieved from <https://protocol.ua/ua/postanova ktss vp vid 28 09 2020 roku u spravi 127 7945 18>.
- [64] Results of the work of notaries, the Ministry of Justice and its territorial bodies in the field of notarial affairs for 2023. (2024). Retrieved from <https://centraljust.gov.ua/news/direction/pidsumki-roboti-notariusiv-minyustu-ta-yogo-teritorialnih-organiv-u-sferi-notariatu-za-2023-rik>.
- [65] Saidakhrarovich, G.S., Ugli, A.A.A., & Ugli, E.G.B. (2022). [Digitalisation in inheritance law](#). *World Bulletin of Management and Law*, 10, 18-30.
- [66] Schiffer, C., et al. (2020). Structural inheritance in the North Atlantic. *Earth-Science Reviews*, 206, article number 102975. doi: 10.1016/j.earscirev.2019.102975.
- [67] Segalen, M. (2021). Gender and inheritance patterns in rural Europe: Women as wives, widows, daughters and sisters. *History and Anthropology*, 32(2), 171-187. doi: 10.1080/02757206.2021.1905239.
- [68] Steering Committee for Human Rights in the Fields of Biomedicine and Health (CDBIO). Impact of AI on the Patient-Doctor Relationship: Draft Report for Consultation. (2023). Retrieved from <https://rm.coe.int/steering-committee-for-human-rights-in-the-fields-of-biomedicine-and-h/1680ae87f0>.
- [69] Supreme Court of Ukraine. (2021). [Reimbursement of legal expenses for professional legal assistance](#). Retrieved from https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/PREZ_Guleykov_13_10_2021_1.pdf.
- [70] Supreme Court of Ukraine. (2024). [Report on the administration of justice by the Supreme Court for 2024](#). Retrieved from https://court.gov.ua/storage/portal/supreme/rizne/1_Zvit_1_VS_2024.pdf.

- [71] Supreme Court of Ukraine. (2025). *Report on the administration of justice by the Supreme Court for the first half of 2025*. Retrieved from https://court.gov.ua/storage/portal/supreme/rizne/1_Zvit_1_VS_pivr_2025_1.pdf.
- [72] Thommen, M. (2022). *Introduction to Swiss Law*. Zurich: Sui generis.
- [73] Vazov, R., Kanazireva, R., Grynko, T.V., & Krupskiy, O.P. (2024). Strategies for health care disaster management in the context of technology innovation: The case of Bulgaria. *Medicni Perspektivi*, 29(2), 215-228. doi: 10.26641/2307-0404.2024.2.307703.
- [74] Weiss, K.M., & Müller-Zhang, M. (2024). Revision of Swiss international inheritance law. *Trusts & Trustees*, 30(7), 429-435. doi: 10.1093/tandt/ttae045.
- [75] Why a notary when there is a court? Abuse of judges in inheritance disputes. (2025). Retrieved from <https://dejure.foundation/navishho-notarius-koly-ye-sud-zlovzhyvannya-suddiv-u-spadkovyh-sporah/>.
- [76] Yefimenko, O.V. (2025). *Oncology in Ukraine: Results of 2024*. Retrieved from <https://health-ua.com/onkologiya-i-gematologiya/mizdisciplinarni-problemi/79697-onkologiya-v-ukrayini-pidsumki-2024-roku>.
- [77] Yunina, M.P., & Buyakova, I.O. (2025). The problematic aspects of inheritance under martial law and possible ways of resolving them. *Analytical and Comparative Jurisprudence*, 1(3), 351-355. doi: 10.24144/2788-6018.2025.03.1.53.
- [78] Swiss Civil Code. (1907, December). Retrieved from <https://www.admin.ch/opc/de/classified-compilation/19070042/index.html>.
- [79] Inheritance (Provision for Family and Dependents) Act of UK. (1975, November). Retrieved from <https://www.legislation.gov.uk/ukpga/1975/63>.
- [80] Civil Code of Spain. (1989, July). Retrieved from <https://www.boe.es/buscar/act.php?id=BOE-A-1889-4763>.
- [81] Law of Ukraine No. 3425-XII "On Notary Public". (1993, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/3425-12>.
- [82] Constitution of Ukraine. (1996, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/en/254%D0%BA/96-%D0%B2%D1%80>.
- [83] Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15>.
- [84] Law of France No. 2016-1321 "On the Digital Republic". (2016, October). Retrieved from <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000033202746>.
- [85] Act Amending the Civil Code and Certain Other Acts. (2023, July). Retrieved from <https://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20230001615>.
- [86] Civil Code of France. (2025, December). Retrieved from https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006070721/.
- [87] Resolution of the Civil Court of Cassation in Case No. 346/2744/21. (2024, April). Retrieved from <https://zakononline.com.ua/court-decisions/show/118868220>.

Медико-правові та економічні (фінансові) аспекти спадкового права

Наталія Коробцова

Кандидат юридичних наук, доцент
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, м. Харків, Україна
<https://orcid.org/0000-0002-9997-1485>

Олег Печений

Кандидат юридичних наук, доцент
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, м. Харків, Україна
<http://orcid.org/0000-0003-1480-1864>

Арсен Ісаєв

Кандидат юридичних наук, доцент
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, м. Харків, Україна
<http://orcid.org/0000-0002-9982-0572>

Віктор Янишен

Кандидат юридичних наук, доцент
Національний юридичний університет імені Ярослава Мудрого
61024, вул. Григорія Сковороди, 77, м. Харків, Україна
<http://orcid.org/0000-0002-1495-613X>

Анотація

Метою даного дослідження було обґрунтування теоретико-правових засад регулювання медико-правових та економічних аспектів спадкового права в сучасному контексті системи охорони здоров'я України. У дослідженні було використано порівняльно-правовий метод для вивчення європейських підходів до регулювання медико-правових аспектів спадкування, економічний аналіз для дослідження фінансових аспектів спадкових відносин за участю медичних закладів та міждисциплінарний підхід для оцінки правової природи медико-правових відносин. Було встановлено, що медико-правові відносини у спадковому праві є самостійною категорією цивільно-правових відносин з подвійною природою та потребують спеціального правового регулювання, яке інтегрує принципи спадкового права, медичного права та біоетики. У дослідженні було виявлено критичний вплив медичних витрат на структуру спадщини, зокрема у випадках онкологічних захворювань, де середня вартість лікування сягає 120 000 гривень, а трансплантація органів може становити 2,6 млн гривень, що створює об'єктивні передумови для накопичення значних медичних боргів. Аналіз продемонстрував необхідність розробки ефективних механізмів фінансово-економічного планування спадкування шляхом стратегічного медичного страхування та створення цільових медичних фондів. Систематизовано європейські підходи до регулювання медико-правових аспектів спадкування, включаючи французьку концепцію компенсаційних прав спадкоємців, німецькі гарантії захисту

конституційних прав та швейцарські механізми обмеження відповідальності за надмірні зобов'язання. На основі цих висновків було розроблено низку концептуальних пропозицій щодо вдосконалення українського законодавства, зокрема створення спеціального правового режиму медичних зобов'язань з чітким розмежуванням між тими, що компенсуються, та тими, що не компенсуються Національною службою здоров'я України, а також запровадження системи планування медичної спадщини. Практичне значення дослідження полягає у створенні наукової основи для модернізації спадкового законодавства України з урахуванням специфіки медико-правових відносин та розробці механізмів захисту економічних інтересів спадкоємців в умовах зростання вартості медичного обслуговування

Ключові слова: охорона здоров'я; конфіденційна інформація; спадкові відносини; економічні (фінансові) інтереси спадкоємців; нотаріальна практика; правове регулювання



UDC 342.9:639.2

DOI: 10.31548/law/4.2025.95

Administrative and procedural status of entities involved in proceedings concerning violations of fisheries protection legislation

Vladyslav Lavrenchuk*

Postgraduate Student

National University of Life and Environmental Sciences of Ukraine

03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

<https://orcid.org/0009-0003-9565-5391>

Article's History:

Received: 28.06.2025

Revised: 18.10.2025

Accepted: 27.11.2025

Abstract

The aim of the study was to examine the procedural activities of authorised bodies in cases concerning violations of fisheries protection legislation. A systematic approach was used in the study to examine the institutional structure of fisheries protection authorities in relation to the National Police, courts and local executive authorities. The result was the identification of the key role of fisheries protection authorities in recording offences, as well as the determination of the need for more effective coordination of their activities with other law enforcement agencies. It was established that interaction with the National Police contributed to strengthening control over compliance with legislation, but had shortcomings in terms of the rapid exchange of information and proper documentation of violations. Court decisions were analysed, in particular rulings from 2023-2024, which illustrate practical problems of law enforcement in the field of fisheries. The analysis revealed inconsistencies in the courts' approaches to assessing the evidence in cases of violations of fisheries legislation, which negatively affects the legal certainty of court decisions. The judicial authorities performed the function

Suggested Citation:

Lavrenchuk, V. (2025). Administrative and procedural status of entities involved in proceedings concerning violations of fisheries protection legislation. *Law. Human. Environment*, 16(4), 95-114. doi: 10.31548/law/4.2024.95.



*Corresponding author

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

of verifying the legality of the actions of administrative bodies, but the practice of applying sanctions varied depending on the specific circumstances of the case. The use of a comparative legal method made it possible to compare Ukrainian experience with the practice of EU countries, in particular, the approach of the European Court of Human Rights in the case of “Yaşar v. Romania” to the confiscation of property used for illegal fishing was analysed. This made it possible to identify common features in the application of sanctions and to justify the compliance of Ukrainian practice with European standards

Keywords: environmental challenges; aquatic biological resources; illegal fishing; violation of fishing rules; prosecution

Introduction

The relevance of researching the administrative and procedural status of parties involved in cases concerning violations of fisheries legislation is due, in particular, to the intensive degradation of aquatic ecosystems, the decline in commercial fish populations, the pollution of water bodies, and the increase in poaching. With the increasing anthropogenic impact on aquatic ecosystems, illegal fishing and violations of fishing rules are becoming a serious threat to the ecological balance and sustainability of fisheries. In this regard, it is important to improve administrative procedures aimed at bringing violators to justice, as well as ensuring the proper procedural status of all participants in the relevant proceedings.

Ukrainian and European legislation provides for administrative liability for violations of fisheries protection regulations, but their application in practice reveals a number of problems. In particular, there are difficulties in determining the competence of the authorities that consider such cases, as well as in ensuring the rights of persons subject to liability. The lack of clear procedural guarantees for the parties to the proceedings may lead to legal uncertainty, reduced effectiveness of fisheries protection measures and conflicts between state authorities and economic entities.

An additional challenge is the need to harmonise Ukrainian legislation with European standards of environmental control and human

rights protection in administrative proceedings. Research into the specific features of the administrative and procedural status of parties in this area will contribute not only to improving legal regulation, but also to increasing the effectiveness of the fight against illegal fishing and other environmental offences.

The study by I.Yu. Ragulin (2024) focused on the legal aspects of the use of aquatic biological resources in the context of Ukraine’s food security. The author examined regulatory mechanisms and their effectiveness in ensuring sustainable fisheries, focusing on gaps in legislation that create conditions for illegal fishing. The work of A.I. Ripenko and O.I. Nastina (2022) examines the problems of regulatory and legal support for fisheries and fish farming in Ukraine. A number of contradictions in the legislative framework were identified, in particular regarding the jurisdictional powers of various bodies, which creates obstacles to effective control over compliance with regulations in this area.

A.P. Sakhno and Ya.A. Kovalenko (2023) examined topical issues of interaction between law enforcement agencies in the field of fisheries protection. The authors focused on the mechanisms of cooperation between the water police and the State Fisheries Agency, analysing the effectiveness of joint fisheries protection raids and their impact on reducing the level of offences. A.P. Sakhno (2023) separately considered the jurisdictional

powers of the police on the water and the State Fisheries Agency, focusing on the problems of regulatory control of their activities during joint law enforcement measures.

The study by L. Kozhura (2021) was devoted to the legal aspects of aquaculture regulation in Ukraine. The author examined the legal basis for the functioning of the industry, analysed its shortcomings and proposed areas for improving legislation to promote the sustainable development of aquaculture. L.Ye. Kupinets and O.M. Shershun (2022) analysed the market for fishery and fish farming products, examining the relationship between supply and demand. The main factors influencing the economic efficiency of the industry and regulatory mechanisms that can contribute to its further development were identified. D.V. Fedchyshyn (2022) focused on practical legal issues of the use of aquatic biological resources in fisheries. The author examined the issue of compliance with environmental standards, the problem of illegal fishing, and the effectiveness of existing sanctions for violations of environmental legislation.

M. Mackay *et al.* (2020) analysed the interrelationship between illegal fishing, maritime crime, and social well-being. They found that illegal fishing is closely associated with labour exploitation and organised crime, necessitating strengthened international control and regulatory measures. T. Fajardo (2022) explored the European Union's approach to the criminalisation of Illegal, Unreported, and Unregulated (IUU) fishing. The author analysed the normative-legal mechanisms applied within the EU and assessed their effectiveness in combating offences in the fisheries sector. T. Faiyaz and A. Al Arif (2022) examined measures for regional cooperation to combat IUU fishing in the Bay of Bengal. The authors stressed the importance of enhancing international interaction among the region's states, implementing modern monitoring technologies, and harmonising legal norms to improve the effectiveness of control.

The existing scholarly works do not adequately cover the procedural aspects of the legal status of subjects in proceedings concerning violations of fisheries protection legislation, particularly in the context of the administrative process. Specifically, there is no comprehensive assessment of the rights and obligations of participants, nor of the interaction between the bodies that carry out control and investigation of violations. There is also a need for an analysis of the legal status of persons conducting fisheries protection raids and the procedural aspects of their interaction, which is key to understanding the effectiveness of the current legal regulation.

The aim of the study was to analyse the legal regulation of the administrative procedural status of subjects in proceedings concerning violations of fisheries protection legislation within the context of ensuring ecological safety and observing legal guarantees. To achieve this aim, the following objectives were set: to characterise the legal grounds for administrative proceedings in cases of violations of fisheries protection legislation and the range of its subjects; to investigate the procedural rights and obligations of the subjects of administrative proceedings; to assess the compliance of the current regulation with international and European standards of ecological law enforcement.

Materials and Methods

The study was conducted using special legal methods, which ensured a comprehensive approach to analysing the legal status of state bodies authorised to exercise control in the field of fisheries and other entities involved in relevant proceedings. The main research method was comparative legal analysis, which was used to assess the compliance of Ukrainian national legislation with international standards in the field of aquatic biological resources protection and administrative proceedings. Within the framework of this method, a comparison was made between the

provisions of Ukrainian legislative acts, such as Law of Ukraine No. 3677-VI "On Fisheries, Industrial Fishing and Protection of Aquatic Biological Resources" (2011), Law of Ukraine No. 5293-VI "On Aquaculture" (2012), Law of Ukraine No. 1264-XII "On Environmental Protection" (1991), Law of Ukraine No. 2894-III (2001), Regulations on the State Agency for Land Reclamation and Fisheries of Ukraine (2015) with European and international regulatory acts, in particular Regulation of the European Council No. 1005/2008 (2008), Aarhus Convention (1998), Code of Conduct for Responsible Fisheries (1995), United Nations Convention on the Law of the Sea (1994), Agreement on the Implementation of International Conservation and Management Measures for Fishery Resources (1993), Convention on Biological Diversity (1992). The analysis pays particular attention to the principles of procedural guarantees in administrative proceedings, which, although not directly compared, were compared with the provisions of the European Convention on Human Rights (1950) in terms of access to justice and fair trial, which is relevant in the context of assessing the compliance of administrative procedures with international standards.

A formal legal method was used to analyse in detail the structure and content of key regulatory and legal acts governing administrative proceedings in cases of violations of fisheries legislation. The main documents for analysis were the Code of Ukraine on Administrative Offences (1984), the Criminal Code of Ukraine (2001), Law of Ukraine No. 580-VIII "On the National Police" (2015), Order of the Ministry of Agrarian Policy and Food of Ukraine No. 512 "On Approval of the Procedure for Conducting Fish Protection Raids" (2018), Resolution of the Cabinet of Ministers of Ukraine No. 895 "On Approval of the Regulations on the State Agency of Ukraine for the Development of Land Reclamation, Fisheries and Food Programs" (2015), Instructions for the preparation of

materials on administrative offences by fisheries protection authorities, approved by Order of the Ministry of Agrarian Policy and Food of Ukraine No. 101 (2003), as well as Strategy for the Development of Fisheries until 2030 (2023).

The case study method was used to analyse court decisions illustrating the practical aspects of the application of administrative law in the field of fisheries. In particular, the following decisions were considered: Judgement of the Commercial Court of Odessa Region in Case No. 916/2571/23 (2023) on the removal of obstacles to the use and disposal of property, Judgement of the Belyaevsky District Court of Odessa Region No. 123737886 (2024) in a case concerning illegal crayfish fishing. The analysis of these decisions made it possible to assess law enforcement practice in cases of violations of fisheries protection legislation and the specifics of interaction between the relevant state bodies, as well as the correlation between national regulation and international human rights standards, as evidenced by the practice of the ECHR in the case of "Yaşar v. Romania" (2020). In addition, a legal modelling method was used to assess possible scenarios for improving administrative proceedings in cases of violations of fisheries protection legislation and to identify ways to increase the effectiveness of control in this area.

Results

Legal basis for administrative proceedings in cases of violations of fisheries protection legislation. Fisheries management in Ukraine was based on a comprehensive approach enshrined in a number of specific and general regulatory acts. The main one is Law of Ukraine No. 3677-VI (2011), which defines the legal basis for fisheries management, including the procedure for issuing permits for the special use of aquatic biological resources, the rules for industrial fishing, and establishes the powers of regulatory

authorities, mechanisms for state supervision and liability for violations in this area. The law pays particular attention to the division of powers between central and local executive authorities, as well as the procedure for state accounting of aquatic biological resources. The basic legislation is supplemented by Law of Ukraine No. 5293-VI (2012), which aims to regulate activities related to the cultivation of aquatic organisms in artificially created conditions. It regulates issues of state support for the industry, establishes requirements for aquaculture operators, product certification mechanisms, and environmental restrictions on environmental impact.

Law of Ukraine No. 1264-XII (1991) forms the general regulatory framework for environmental safety, including the principles of sustainable use of natural resources, including aquatic biological resources. This law provides the legal basis for the environmental assessment of fisheries activities and defines environmental requirements for economic activities in coastal and inland waters. In turn, Law of Ukraine No. 2894-III (2001) covers aspects of the protection of aquatic fauna as part of the animal world, including the regulation of species listed in the Red Book of Ukraine, restrictions on the catch, transport and storage of aquatic living resources.

Thus, the system of regulatory control of fisheries in Ukraine is multi-level: it covers specialised regulations on industrial fishing and aquaculture, as well as general provisions of environmental and nature conservation legislation aimed at ensuring the sustainable use of water resources and the conservation of biodiversity. A significant role in the regulation of fisheries in Ukraine was played by the regulatory acts of the Cabinet of Ministers of Ukraine, among which the key one is Resolution of the Cabinet of Ministers of Ukraine No. 895 (2015), which approved the Regulations on the State Agency for Land Reclamation and Fisheries of Ukraine. This act defines

the powers of the agency, in particular with regard to state management in the field of industrial fisheries, protection, rational use and reproduction of aquatic biological resources. However, this provision does not contain clear mechanisms for ensuring food security by stimulating the development of aquaculture, which is critical in the context of current challenges. In particular, the procedures for state support of aquaculture entities are not specified, and there is no link to state food reserve programmes, which creates a regulatory gap in the supply of fish products in times of crisis. At the same time, Regulation of the European Council No. 1224/2009 (2009) establishes a comprehensive system for monitoring compliance with the rules of the common fisheries policy, including electronic reporting systems, inspection measures and a centralised database. In Ukraine, such mechanisms are either not applied or remain at the pilot project stage. Regulation of the European Council No. 1005/2008 (2008), aimed at combating illegal, unreported and unregulated fishing, provides for mandatory certification of the origin of catches, control of imports of fish products and international cooperation, which is also lacking in Ukrainian legislation. In addition, international documents such as the Code of Conduct for Responsible Fisheries (1995), the Aarhus Convention (1998), the United Nations Convention on the Law of the Sea (1994), the Convention on Biological Diversity (1992), and the Agreement on the Implementation of International Conservation and Management Measures for Fishery Resources (1993) contain principles of transparency, public participation, and scientific basis for resource management, but these provisions are implemented only fragmentarily in the Ukrainian regulatory framework.

Regulatory acts of the Cabinet of Ministers of Ukraine play a significant role in regulating the fishing industry. In particular, Resolution of the Cabinet of Ministers of Ukraine No. 895 (2015),

which defines the functions of this body in the field of regulating industrial fishing, restoring aquatic biological resources and combating illegal fishing. At the same time, there are still significant gaps in the regulatory framework, particularly in terms of ensuring food security through the development of fisheries.

Current challenges in the fisheries sector are also linked to the impact of martial law in Ukraine, which complicates the control of aquatic biological resources and creates additional risks for illegal fishing. According to A.I. Ripenko and O.I. Nastina (2022), one of the key problems remains the high level of shadowing in the industry, as according to various estimates, more than 70% of fish catches are not accounted for. A problematic aspect in the field of aquatic biological resource protection remains the violation of the boundaries between recreational and commercial fishing, in particular the illegal sale of caught fish by individuals, which complicates the effective control of the use of aquatic biological resources. Additional problems are created by the low level of digitalisation in the industry. The lack of product traceability mechanisms used in the EU (e.g. electronic catch registration system, fishing logbook, accompanying documents for fish prod-

ucts (Catch Certification Scheme), as well as an integrated system for monitoring the movement and circulation of products) is one of the factors hindering Ukraine's integration into the European fish products market. The low level of legal support for aquaculture also remains a problem: the lack of effective state control mechanisms, in particular mandatory state registration of aquaculture facilities, systematic checks of compliance with technological requirements and a single register of producers, makes it impossible to obtain reliable data on the state of the industry and complicates strategic planning.

The significant number of offences in the field of fisheries protection requires clear classification for effective law enforcement and the development of preventive measures. Analysing the current legislation, it is possible to identify the main categories of such violations, which differ in nature, level of public danger and legal consequences. These include illegal fishing, violations of fishing rules, pollution of water bodies, violations of the use of aquatic living resources, and illegal trafficking of fishing gear. Table 1 reflects the key characteristics of these offences, the regulatory framework for their regulation, and their consequences.

Table 1. Types of offences in the field of fisheries protection

Type of offence	Content of the violation	Normative-legal regulation	Consequences
Illegal fishing	Violation of quotas, fishing during prohibited periods or in prohibited areas, use of prohibited fishing gear	Art. 85, 88-1 Code of Ukraine on Administrative Offenses (1984); Art. 249 Criminal Code of Ukraine (2001)	Causes damage to fish stocks, may result in administrative or criminal liability
Violation of fishing regulations	Use of explosives, poisonous substances, electric fishing gear, and other prohibited fishing methods	Art. 85 Code of Ukraine on Administrative Offenses (1984)	Destroys the ecosystem of water bodies, results in administrative liability
Pollution of water bodies	Discharge of waste, use of pesticides and other substances that cause the death of aquatic biological resources	Art. 59, 60 Law of Ukraine No. 1264-XII (1991)	Leads to the degradation of water resources, death of fish and other biological resources
Illegal trafficking of fishing gear	Manufacture, sale, transport, and storage of prohibited fishing gear (nets, electric fishing gear, etc.)	Art. 85-1 Code of Ukraine on Administrative Offenses (1984)	Contributes to the spread of illegal fishing, causes damage to aquatic biological resources

Source: developed by the author

A comparison of these categories shows that most offences have not only environmental but also economic and social dimensions. Illegal fishing and violations of fishing regulations directly threaten the conservation of fish stocks, which in turn can lead to a significant decline in the population of valuable fish species and cause economic damage to the fishing industry. At the same time, pollution of water bodies is a systemic factor that causes not only a reduction in biodiversity, but also a deterioration in the quality of water resources in general, which affects the health of the population (Bennett, 2019).

Particular attention should be paid to violations in the use of aquatic living resources and the illegal circulation of fishing gear, as these actions are often part of large-scale illegal schemes that require a comprehensive approach to their detection and cessation. An important aspect of law enforcement is the distinction between administrative and criminal liability depending on the damage caused, as provided for by current legislation (Nakamura, 2022). Thus, a systematic analysis of offences in the field of fisheries protection allows not only to identify the main problems in law enforcement, but also to form strategic directions for strengthening control and preventing environmental threats. Thus, offences in the field of fisheries protection are diverse in nature and legal consequences. The need to improve law enforcement practices in this area remains relevant due to the increased anthropogenic pressure on aquatic ecosystems and the need to adapt national legislation to European standards.

Administrative and procedural status of parties to proceedings. The administrative and procedural status of parties to proceedings in cases of violations of fisheries protection legislation is determined by their rights, obligations and procedural functions within the framework of administrative proceedings. For clear legal regulation of these issues, it is important to classify such

parties according to their roles and powers. Parties to proceedings in cases of violations of fisheries protection legislation are divided into three main groups: state authorities, persons subject to liability, and other participants in the administrative process. The first group includes authorities authorised to monitor compliance with fisheries protection legislation, record violations and consider relevant cases.

The main body exercising state control in the field of fisheries is the State Agency of Ukraine for Melioration and Fisheries and its territorial divisions. They have the right to draw up reports on administrative offences and impose appropriate penalties in accordance with the Code of Ukraine on Administrative Offences (1984) (Articles 85, 86-1, 88-1). In addition to the State Agency, the bodies with powers in the field of fisheries protection also include the National Police, the State Environmental Inspection, and, in some cases, local government bodies. Interaction between these structures is regulated by current legislation, in particular Law of Ukraine No. 580-VIII (2015), which provides for cooperation between the police and other state and local government bodies. Similar provisions are contained in the Regulations on the State Agency for Fisheries, approved by Resolution of the Cabinet of Ministers of Ukraine No. 895 "On Approval of the Regulations on the State Agency of Ukraine for the Development of Land Reclamation, Fisheries and Food Programs" (2015), which defines the mechanism for cooperation between the agency and state and public structures.

One of the key measures in the field of fisheries protection is fisheries protection raids, which are carried out in accordance with Order of the Ministry of Agrarian Policy and Food of Ukraine No. 512 (2018). This document regulates the procedure for conducting raids by officials of the State Fisheries Agency and its territorial bodies, and also defines the participants in these activities,

which may include police officers, public fisheries protection inspectors, environmental protection inspectors and other representatives of state bodies and local self-government. In accordance with Article 27 of Law of Ukraine No. 3677-VI (2011), fisheries protection authorities carry out fisheries protection raids aimed at preventing, detecting and stopping violations of fishing rules, as well as controlling the use and reproduction of aquatic biological resources in inland water bodies, territorial waters, internal sea waters and the exclusive (maritime) economic zone of Ukraine.

The legal powers of fisheries protection officials are enshrined in the Law of Ukraine "On Fisheries, Industrial Fishing and the Protection of Aquatic Biological Resources" and cover a number of important aspects aimed at ensuring control over compliance with the rules for the use of aquatic biological resources and preventing violations in this area. In particular, officials of fisheries protection agencies are authorised to draw up reports on administrative offences and to consider relevant administrative cases, which allows them to respond promptly to illegal fishing or other violations of environmental legislation. In addition, they have the right to seize illegally obtained aquatic biological resources along with the fishing gear used to commit the offence. This is an important mechanism for preventing the further use of prohibited fishing methods and

preserving aquatic ecosystems. If it is impossible to identify the offender directly at the scene of the offence, officials of the fisheries protection authorities may deliver the offender to law enforcement agencies for identification and appropriate legal action.

The jurisdictional powers of fisheries protection authorities are also defined by the Code of Ukraine on Administrative Offences, which regulates the procedure for recording violations and imposing sanctions. At the same time, the Instructions for the preparation of materials on administrative offences by fisheries protection authorities, approved by Order of the Ministry of Agrarian Policy and Food of Ukraine No. 101 (2003), detail the procedure for preparing the relevant materials.

The second group consists of persons who are held liable for violations of fisheries protection legislation. According to Article 9 of the Code of Ukraine on Administrative Offences (1984), citizens and officials are subject to administrative liability if their actions violate established rules in the field of fisheries, the use of aquatic living resources or the protection of the natural environment. It is important to note the distinction between administrative and criminal liability, which depends on the extent of the damage caused, the repetition of the offence and the fishing methods used. For a detailed analysis of these aspects, a summary comparative overview is provided in Table 2.

Table 2. Procedural rights and obligations of persons subject to liability in cases of violation of fisheries protection legislation

Criterion	Administrative liability	Criminal liability
Person subject to liability	Violators of fishing regulations who have committed administrative offences (minor violations).	A person who has committed a gross violation that constitutes a criminal offence (e.g., illegal fishing on a significant scale).
Rights of the person	Review of case materials. Provision of explanations and evidence. Use of legal assistance. Appealing decisions. Notification of the substance of the charges.	Access to the materials of the pre-trial investigation. The right to the presumption of innocence. The right to a fair trial.

Table 2. Continued

Criterion	Administrative liability	Criminal liability
Obligations of the person	Compliance with the lawful requirements of fisheries protection officials. Provision of necessary information. Execution of the imposed penalty within the established time limit.	Compliance with procedural law. Enforcement of court decisions. Compensation for damages if caused.
Sanctions	Fines. Confiscation of illegally caught biological resources and fishing gear.	Fines. Confiscation of fishing gear. Imprisonment (for serious offences).
Appealing decisions	Submission of a complaint to a higher authority or administrative court.	Appeal or cassation to a higher court.

Source: developed by the author

Analysing the procedural rights and obligations of persons brought to justice for violating fisheries protection legislation, as presented in the table, several important trends can be identified. First, there is a significant difference in the procedural status of persons depending on the type of liability. Administrative proceedings are focused on a simplified procedure aimed at quickly establishing the fact of the offence and applying the appropriate penalty. At the same time, criminal proceedings relating to gross violations provide individuals with a wider range of guarantees, as they entail more severe consequences. Secondly, an important aspect is the mandatory observance of the principle of presumption of innocence in criminal cases, which distinguishes them from administrative offences, where the concept of objective liability applies. This confirms the need for a clear evidence base for criminal prosecution, including expert conclusions and assessment of the damage caused. Thirdly, the right to legal assistance plays a special role in the mechanism of bringing to justice. In criminal cases, it is implemented in the form of mandatory participation of a lawyer, while in administrative proceedings, a person has the opportunity, but is not obliged, to use such assistance. This may affect the level of protection of the offender's rights, especially in cases where it is necessary to correctly assess the evidence or appeal against the decisions of the fisheries protection authorities.

Fourthly, the institution of appeal is a key mechanism for protecting the rights of a person subject to liability. Its effectiveness depends on the accessibility and independence of judicial and administrative procedures. While in administrative cases it is possible to appeal within the executive authorities, in criminal cases the decision is reviewed exclusively in court, which provides an additional level of legal control. Thus, an analysis of the procedural rights and obligations of persons brought to justice in cases of violations of fisheries protection legislation indicates the need for a clear distinction between administrative and criminal procedures, ensuring adequate human rights guarantees and compliance with the principle of legal certainty.

The third group consists of other participants in administrative proceedings, in particular witnesses, experts, interpreters, victims and representatives. Witnesses may be called upon to confirm the facts of the offence, and experts may be called upon to conduct studies on the damage caused to aquatic biological resources or ecological systems in general. An important role is played by representatives of legal entities or lawyers who ensure the protection of the rights of persons subject to liability in accordance with Article 268 of the Code of Ukraine on Administrative Offences (1984). Thus, the administrative procedural status of the subjects of the proceedings determines their role in the law enforcement

mechanism and affects the effectiveness of both control and protective functions in the field of fisheries legislation.

Analysis of the effectiveness of law enforcement in the field of fisheries protection.

Analysis of judicial practice in the field of fisheries protection is a key element in assessing the effectiveness of law enforcement and identifying existing problems in the mechanisms of control and accountability for violations of environmental legislation. The decisions of the courts of Ukraine and the European Union are of particular importance, as they demonstrate differences in approaches to the interpretation of norms, the severity of sanctions and mechanisms for bringing offenders to justice. The case concerning illegal crayfish fishing on the Turunchuk River (Judgement of the Belyaevsky District Court of Odessa Region No. 123737886, 2024), which is a tributary of the Dniester, is important for assessing the effectiveness of law enforcement in the field of fisheries protection in Ukraine. This case demonstrates the peculiarities of the response of law enforcement agencies and the judicial system to violations of environmental legislation, and also allows for an assessment of the level of sanctions applied for gross violations of fishing rules. The violation occurred on 4 October 2024 during a fisheries protection raid carried out by a state inspection team consisting of inspectors from the Odessa Fisheries Protection Patrol and water police officers. It was established that the citizen used a prohibited fishing gear – a “trاندada”, which is a direct violation of the fishing rules defined by the Rules of Amateur and Sport Fishing in Ukraine. According to Article 85, Part 4 of the Code of Ukraine on Administrative Offences (1984), the prohibited catch of aquatic biological resources using prohibited fishing gear is classified as a gross violation of fishing rules, which entails administrative liability. At the same time, in this case, there are grounds for considering

criminal liability under Article 249 of the Criminal Code of Ukraine (2001) (illegal engagement in fishing, hunting or other water extraction industries) if significant damage or repeated violations are proven. The amount of damage caused by the illegal catch of 69 crayfish (1.2 kg) is estimated at 229,908 hryvnia, which indicates significant material damage to the region’s fishing industry. This underscores the importance of adequate law enforcement and the need for severe sanctions against violators. From the point of view of judicial practice, this case may set a precedent for increasing liability for similar offences, which will help prevent similar cases in the future.

In European Union countries, the fight against illegal fishing is regulated at both the national and supranational levels. For example, the EU Marine Strategy (2008) has strict mechanisms in place to monitor compliance with fishing quotas and the use of permitted fishing gear. In France and Germany, the use of prohibited fishing gear can be classified as a criminal offence, resulting in the confiscation of fishing gear and vehicles and significant fines (Chen *et al.*, 2023). Unlike Ukraine, where illegal crayfish fishing is often dealt with through administrative proceedings, in Spain and Portugal similar offences may result in criminal liability with the possibility of imprisonment in cases of significant damage to aquatic ecosystems (Oral, 2020).

The consideration of Case No. 916/2571/23 (2023), related to the violation by Danube Aquaresource LTD of the conditions for fishing in Lake Kahul, is indicative in the context of assessing the effectiveness of law enforcement in the field of aquatic biological resources protection in Ukraine. This case illustrates the response of judicial and supervisory authorities to non-compliance with environmental requirements and allows to determine the effectiveness of sanctions against violators of environmental legislation. In 2019, Danube Aquaresource LTD received

approval to carry out fishery activities on Lake Kahul, covering an area of 8,500 hectares, located in the Izmail district of the Odesa region, in accordance with the Special Commercial Fishery Regime (SCFR) approved by the State Fisheries Agency of Ukraine. This regime is valid from 2019 to 2028. According to information from the State Agency for Land Reclamation and Fisheries in the Odesa region, Danube Aquaresource LTD did not carry out any fish farming and land reclamation activities between 2019 and 2022, such as installing spawning nests (except for 2020, when 250 were installed), improving spawning grounds and clearing waterfall channels and streams. In addition, since 2021, the company has ceased work on the repopulation of aquatic biological resources. The deputy head of the Odesa Regional Prosecutor's Office filed a lawsuit with the Odesa Regional Commercial Court on behalf of the state, represented by the Odesa Regional State Administration, to remove obstacles to the use and disposal of Lake Kahul. The Commercial Court of the Odesa Region upheld the claim, ordering Danube Aquaresource LTD to cease using Lake Kahul and return it to the state, represented by the Odesa Regional State Administration. The court concluded that the company had failed to comply with the conditions of the SCFR regime, as confirmed by the evidence provided.

This case is indicative of the effectiveness of law enforcement in the field of fisheries protection in Ukraine. It demonstrates that failure by business entities to comply with the conditions for the special use of aquatic biological resources may lead to judicial intervention and termination of the right to use water bodies. At the same time, the process of enforcing court decisions may encounter difficulties, in particular with regard to the interpretation and implementation of the operative parts of decisions.

Similar legal approaches can be seen in international court practice. For example, in the

case of "Yaşar v. Romania" (2020) concerning a complaint of unlawful confiscation of property, the court found no violation of Article 1 (Protection of property) of Protocol 1 to the European Convention on Human Rights (1950). In this case, the applicant, who lives in Turkey, was the owner of a vessel used for illegal fishing in the Black Sea. The Romanian courts ordered the confiscation of the vessel, despite the applicant's arguments that he was unaware of the crew's illegal activities. The European Court of Human Rights (ECHR) found that the confiscation measure was proportionate to the seriousness of the offence and the potential damage to fish stocks, and did not impose an excessive burden on the applicant (Husein & Aziz, 2020). Thus, as in the Case No. 916/2571/23 (2023) concerning Lake Kahul in Ukraine, and in "Yaşar v. Romania" (2020), the courts applied the principles of protecting public interests and natural resources, even when the property owners denied their involvement in the violations (Figueroa, 2021). This indicates a general trend towards tighter control over the use of natural resources and more effective judicial protection of the state's environmental interests.

Prospects for improving legal regulation.

The prospects for regulating Ukraine's fisheries sector are a key area of state policy aimed at improving management efficiency, conserving aquatic biological resources and ensuring food security. Given the challenges, including high import dependency, declining industrial catches, lack of transparent mechanisms for access to water bodies, and illegal fishing, the state is initiating comprehensive measures to reform the industry. One of the main steps was the approval of the Strategy for the Development of Fisheries until 2030 (2023), which provides for the creation of favourable conditions for increasing fish production, improving the bioproductivity of water bodies and reducing dependence on imports.

An important aspect of the reform is to ensure the sustainable development of fisheries in the context of climate change and the conservation of natural aquatic biological resources. The priority task of state policy is to create favourable conditions for the investment development of the industry, including the modernisation of infrastructure and the expansion of production from fish and other aquatic biological resources in accordance with the principles of environmental sustainability. In this context, an electronic auction mechanism has been introduced to ensure the transparent distribution of rights for industrial fishing of aquatic biological resources. The introduction of digital technologies in the fishing industry contributes to the automation of processes, reduction of administrative burdens and minimisation of corruption risks. In particular, Law of Ukraine No. 2989-IX (2023) provides for the simplification of market access procedures through electronic auctions, the digitisation of the issuance of permits, and the creation of a mechanism for the traceability of aquatic biological resources, which will guarantee their safe consumption.

An important area of reform is attracting investment in the development of the fishing industry. The implementation of relevant legislative initiatives will create a new investment environment conducive to the development of the fishing business, which will also create additional opportunities for the growth of Ukraine's economy as a whole. Institutional strengthening of the industry requires improving the tax burden on aquaculture entities, which will contribute to production growth and ensure the stable operation of enterprises.

The fight against illegal, unreported and unregulated fishing remains a pressing task for state policy. To this end, it is necessary to comprehensively strengthen the mechanisms for controlling the origin of aquatic biological resources, which will reduce the volume of illegal catches, increase the level of responsibility of economic entities and

introduce an effective system of product traceability at all stages of its circulation. One of the key areas of reform in this area is the introduction of digital technologies. In particular, it is worth considering the possibility of introducing electronic systems for tracking fish products based on blockchain technologies, which will allow the creation of a reliable and transparent database on the catch, transport and sale of fish products. This practice is already being successfully applied in the European Union, in particular in Denmark and Spain. For example, in accordance with the provisions of Regulation of the European Council No. 1224/2009 (2009), Denmark has introduced an e-logbook system that records catch data in real time and transmits it to the National Fisheries Monitoring Centre. This allows for rapid monitoring of quota compliance and detection of overfishing. Spain uses the Sistema de Control de la Flota Pesquera system, which provides electronic recording of fishing operations, including landing points and vessel routes, which significantly increases the effectiveness of combating illegal, unreported and unregulated (IUU) fishing. Another important element is the introduction of mandatory electronic certification of the origin of aquatic biological resources, which will meet European requirements and facilitate access for Ukrainian products to EU markets.

With regard to improving the legal regulation of recreational and sport fishing, it is necessary to establish clear rules for such activities, in particular, to determine permissible catch volumes, a list of permitted fishing gear and seasonal restrictions to preserve aquatic biological resources populations. An important aspect is the development of an integrated model for managing recreational fishing that takes into account both environmental and economic factors. EU countries such as Finland and Sweden actively use licensing systems that allow to regulate the flow of fishermen on water bodies and direct the funds collected

to the restoration of fish stocks. For example, Finland has introduced a single national fishing licence system (National Fisheries Management Fee), which all citizens aged 18 to 64 are required to pay when fishing with tackle. These funds are centrally allocated to programmes for the restoration of natural fish populations, restocking of water bodies and environmental protection. Sweden has a similar system, in particular through the so-called fishing card systems (fiskekort), which are sold for both individual water bodies and regions. Revenues from these cards are directed towards local fisheries management, monitoring of biological resources and support for the sustainable use of aquatic ecosystems (Regulation of the European Council No. 1005/2008, 2008).

In addition, a promising direction is the development of sustainable fishing through the introduction of environmental certification programmes, for example, according to the standards of the Marine Stewardship Council (MSC). This will stimulate the use of environmentally friendly fishing methods, contribute to the conservation of aquatic ecosystems and create additional competitive advantages for Ukrainian producers in the international market. In general, the improvement of legal regulation in the field of fisheries should be based on a combination of modern technological solutions, harmonisation of legislation with European standards and the creation of effective control mechanisms, which will ensure the sustainable development of the industry in the long term.

Discussion

An analysis of the legal regulation of fisheries in Ukraine revealed a number of shortcomings that affected the effectiveness of control over the catch of aquatic biological resources and compliance with fisheries legislation. A comparison of the results obtained with international studies revealed both common trends and specific problems of the

Ukrainian legal environment in this area. In particular, a study by K.N. Heidrich *et al.* (2023) on the regulation of fishing in the Indian Ocean confirmed the importance of accurate fish catch accounting and the need to implement traceability mechanisms, which was one of the key challenges for Ukraine. The low level of digitalisation and the predominant use of paper documentation made it difficult to control catches and contributed to abuse.

The problem of illegal fishing remains relevant for many countries, confirming the findings of C.J. Donlan *et al.* (2020), who found that in some regions of the world up to 30% of fish catches were illegal. In the case of Ukraine, it has been established that the effectiveness of law enforcement in the field of fisheries legislation largely depended on the level of interagency coordination between state authorities, in particular between the State Agency for Land Reclamation and Fisheries of Ukraine, the National Police, environmental control authorities and the prosecutor's office. In addition, the clarity of the legal classification of offences remained an important factor, as it determines the choice of procedure for bringing offenders to liability – administrative or criminal – and affects the possibility of securing evidence and subsequent court proceedings. Similar challenges were noted in a study by M. Carvalho *et al.* (2023), which emphasised that the lack of a systematic approach to combating illegal fishing threatened biodiversity and the economic stability of the industry.

An analysis of offences in the field of fisheries protection revealed the need for a clearer distinction between administrative and criminal liability depending on the level of damage caused to ecosystems. This was in line with the conclusions of C.J. Donlan *et al.* (2020), who emphasised the importance of grading sanctions according to the severity of the offences. The lack of effective state control mechanisms and the low level of legal protection for aquaculture remained

problems that complicated Ukraine's integration into the European fish market.

The impact of martial law on the fisheries sector played an important role. The study showed that military operations complicate the control of water resource use and create additional risks for illegal fishing. Similar challenges were observed in countries with unstable security situations, particularly in Somalia, the Democratic Republic of Congo and Venezuela, where weak institutional control over the fishing industry led to critical losses of aquatic biological resources due to widespread illegal, unreported and unregulated (IUU) fishing. This was confirmed in the work of M. Carvalho *et al.* (2023), which analyses the consequences of the lack of effective monitoring and enforcement mechanisms in these countries. The results of the study confirmed the importance of clearly defining the administrative and procedural status of parties to proceedings in cases of violations of fisheries legislation. It was found that effective legal regulation of this area requires the classification of parties to proceedings according to their functions, which was consistent with the approaches discussed in the current scientific literature. An analysis of Ukrainian legislation showed that the national fisheries control system has a sufficient regulatory framework but needs to improve mechanisms for interagency cooperation, which is consistent with the conclusions of studies on international fisheries law.

It has been established that the jurisdictional powers of fisheries protection authorities, in particular the State Fisheries Agency, the police and the environmental inspectorate, allow for control over compliance with fisheries protection legislation, but there are gaps in the practical implementation of these powers. In particular, the problem of insufficient coordination between state structures is similar to the difficulties observed in international fisheries protection mechanisms. As

noted in the work of M. Mackay *et al.* (2020), law enforcement in the field of fisheries protection often faces challenges related to limited resources and the complexity of proving offences. Similar problems are characteristic of Ukraine, as evidenced by the difficulties in documenting administrative offences and collecting evidence.

A significant difference has been identified in the procedural status of persons brought to liability, which manifests itself in differences between administrative and criminal proceedings. This is in line with general trends in international law, where administrative measures are applied for minor offences and criminal measures for serious cases of illegal fishing, as highlighted in the work of J.N. Nakamura (2023). In addition, the need to ensure compliance with the principle of presumption of innocence in criminal proceedings, which is consistent with international legal standards, has been confirmed. At the same time, as T. Fajardo (2022) points out, modern approaches to the criminalisation of illegal fishing require flexible application, as overly severe penalties can have negative socio-economic consequences for fishing communities.

M. Mackay *et al.* (2020) noted that the effectiveness of fisheries protection measures largely depends on the involvement of the public and independent experts, which is also confirmed by the study. The experience of international jurisdictions indicates the need for active use of scientific methods to assess damage to aquatic biological resources, which can contribute to greater objectivity in the consideration of cases involving violations of fisheries protection legislation.

An analysis of judicial practice in the field of fisheries protection has revealed key differences in approaches to law enforcement between Ukraine and European Union countries. In particular, Ukraine tends to focus on administrative liability, even in cases involving significant material damage. In contrast, in EU countries, such

offences are more often classified as criminal, which is accompanied by stricter sanctions and broader opportunities for compensation for damage. These differences indicate the need to strengthen a comprehensive approach to the protection of aquatic biological resources in national law enforcement practice. At the same time, M. Rosello (2022) emphasised that in EU countries, similar actions are often classified as criminal offences, which entail more severe sanctions, including confiscation of property and imprisonment.

The establishment of a violation committed by a Ukrainian citizen using the prohibited fishing gear “trandada” made it possible to assess the effectiveness of the response of law enforcement agencies and the judicial system to such cases. At the same time, the absence of criminal prosecution in this case, despite the significant amount of damage caused, indicates the need to improve mechanisms for bringing offenders to liability. In particular, a study by A.A. Stefanus and J.A. Vervaele (2021) pointed out that the effectiveness of combating illegal fishing depends not only on the severity of sanctions, but also on their inevitability, which is a much more effective deterrent in countries with a high level of law enforcement.

A comparison of judicial practice in Ukraine and EU countries using the example of the Danube Aquaresource LTD case demonstrates differences in the mechanisms for controlling fishing activities. Ukrainian courts imposed a ban on the use of water resources as a sanction for systematic violations of the conditions for fishing in Lake Kahul. A similar approach can be seen in the practice of the ECHR in the case of “Yaşar v. Romania” (2020), where the court recognised the confiscation of property used for illegal fishing as lawful. The study by A.M. Song *et al.* (2020) notes that the ECHR justified its decision in this case by the need to ensure the sustainable use of natural resources. Thus, the introduction of tougher sanctions for violations of environmental legisla-

tion in Ukraine is in line with general European trends in judicial practice.

The results of the study also confirm the importance of strengthening control and international cooperation in the field of fisheries protection. As noted by J. Vince *et al.* (2021), effectively addressing the problem of illegal fishing requires the introduction of unified sanctions and the exchange of information between states. In this context, applying the EU’s experience, in particular the mechanisms of the Common Fisheries Policy, could help to improve the effectiveness of Ukrainian law enforcement.

Overall, an analysis of Ukrainian and EU judicial practice in the field of fisheries control shows that Ukrainian approaches are gradually converging with European standards. The application of sanctions such as deprivation of the right to use water bodies and confiscation of property is consistent with the decisions of the ECHR and international judicial practice, confirming the general trend towards strengthening measures of responsibility for violations of environmental legislation. In this context, further improvement of law enforcement mechanisms will contribute to ensuring effective regulation of fisheries activities in accordance with European environmental standards.

Conclusions

The regulation of fisheries in Ukraine was based on a set of legislative and regulatory acts that define the legal regimes for the use of aquatic biological resources, mechanisms of state control, and liability for offences. Despite the existence of a comprehensive regulatory framework, there remain significant gaps, particularly in the areas of food security, digitalisation and integration with the European market. The impact of martial law exacerbates the problems of illegal fishing and the shadow economy in the sector, which requires stronger state control.

The administrative and procedural status of parties to proceedings in cases of violations of fisheries legislation is determined by their rights, obligations and procedural functions, which affect the effectiveness of law enforcement. The classification of these parties into state authorities, persons subject to liability and other participants in the proceedings makes it possible to clearly define their powers. Fisheries protection authorities, in particular the State Fisheries Agency, the National Police and the State Environmental Inspection, exercise control, record violations and impose sanctions. Persons subject to liability have certain procedural rights and obligations depending on the nature of the offence, as well as mechanisms for appealing decisions.

Other participants, such as witnesses, experts and lawyers, play an important role in ensuring the objectivity and legality of the administrative process. An analysis of the administrative and procedural status of the parties to the proceedings indicates the need for a clear distinction between administrative and criminal liability, compliance with the principle of legal certainty and the provision of adequate guarantees of the rights of persons involved in the proceedings. An analysis of judicial practice in the field of fisheries protection has revealed systemic features of national law enforcement, in particular the predominance of administrative liability and the limited use of instruments of influence, such as the confiscation of fishing gear or criminal prosecution. A comparative study with European Union practice indicates the need to strengthen the sanction mechanism, improve procedural procedures and take a tougher approach to countering violations, which should become an important benchmark for reforming Ukrainian legislation in this area.

References

- [1] Agreement on the Implementation of International Conservation and Management Measures for Fishery Resources. (1993, August). Retrieved from <https://www.fao.org/4/y5357e/y5357e07.htm>.

Improving the legal regulation of Ukraine's fisheries is a priority task of state policy aimed at improving management efficiency, conserving aquatic biological resources and ensuring food security. Key areas of reform include harmonising legislation with European standards, digitising processes, modernising industry infrastructure, and strengthening control mechanisms. The introduction of electronic auctions, digital product traceability systems, and electronic certification will help increase market transparency and reduce corruption risks. Attracting investment and creating a favourable tax environment will contribute to the growth of production and the development of aquaculture. Particular attention should be paid to combating illegal fishing and introducing environmental standards for sustainable fishing, which will ensure the long-term development of the industry and the competitiveness of Ukrainian fish products on the international market.

Further research in this area could focus on developing effective mechanisms for integrating digital technologies into the fishing industry, assessing the impact of environmental certification on the competitiveness of Ukrainian fish products, and studying best practices in fish resource management in EU countries for adaptation in Ukraine.

Acknowledgements

None.

Funding

The study received no funding.

Conflict of Interest

None.

- [2] Bennett, N.J. (2019). In political seas: Engaging with political ecology in the ocean and coastal environment. *Coastal Management*, 47(1), 67-87. doi: [10.1080/08920753.2019.1540905](https://doi.org/10.1080/08920753.2019.1540905).
- [3] Carvalho, M., Mathis, J., Hamzah, B.A., Forbes, V.Louis, Carlarne, C.P., & Manfredi, J.L. (2023). Ocean law, policies, and regulation. In *Oceans and human health* (pp. 643-685). London: Academic Press. doi: [10.1016/B978-0-323-95227-9.00023-3](https://doi.org/10.1016/B978-0-323-95227-9.00023-3).
- [4] Chen, X., Xu, Q., & Li, L. (2023). Illegal, unreported, and unregulated fishing governance in disputed maritime areas: Reflections on the international legal obligations of states. *Fishes*, 8(1), article number 36. doi: [10.3390/fishes8010036](https://doi.org/10.3390/fishes8010036).
- [5] Code of Ukraine on Administrative Offenses. (1984, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/80731-10#Text>.
- [6] Convention on Biological Diversity. (1992, June). Retrieved from <https://surl.it/xqzdbt>.
- [7] Criminal Code of Ukraine. (2001, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/2341-14#Text>.
- [8] Donlan, C.J., Wilcox, C., Luque, G.M., & Gelcich, S. (2020). Estimating illegal fishing from enforcement officers. *Scientific Reports*, 10(1), article number 12478. doi: [10.1038/s41598-020-69311-5](https://doi.org/10.1038/s41598-020-69311-5).
- [9] EU Marine Strategy. (2008, June). Retrieved from <https://surl.li/mypwqv>.
- [10] European Convention on Human Rights. (1950, November). Retrieved from https://www.echr.coe.int/documents/d/echr/convention_ENG.
- [11] Faiyaz, T., & Al Arif, A. (2022). Towards a blue revolution in the bay of Bengal: Tackling illegal, unreported and unregulated fishing through effective regional cooperation. *The Journal of World Investment & Trade*, 23(1), 9-38. doi: [10.1163/22119000-12340239](https://doi.org/10.1163/22119000-12340239).
- [12] Fajardo, T. (2022). To criminalise or not to criminalise IUU fishing: The EU's choice. *Marine Policy*, 144, article number 105212. doi: [10.1016/j.marpol.2022.105212](https://doi.org/10.1016/j.marpol.2022.105212).
- [13] Fedchyshyn, D.V. (2022). Practical legal problems of using aquatic biological resources in the field of fisheries. *Law and Society*, 2, 128-134. doi: [10.32842/2078-3736/2022.2.20](https://doi.org/10.32842/2078-3736/2022.2.20).
- [14] Figueroa, I. (2021). Artisanal coastal marine fishing and the cultural rights of ethnic communities in Colombia. *Veredas do Direito*, 18(40), 309-337. doi: [10.18623/rvd.v18i40.1953](https://doi.org/10.18623/rvd.v18i40.1953).
- [15] Heidrich, K.N., Meeuwig, J.J., & Zeller, D. (2023). Reconstructing past fisheries catches for large pelagic species in the Indian Ocean. *Frontiers in Marine Science*, 10, 2296-7745. doi: [10.3389/fmars.2023.1177872](https://doi.org/10.3389/fmars.2023.1177872).
- [16] Husein, Y., & Aziz, M.F. (2020). The necessity to reform Indonesian legal framework on provisional arrangement to combat IUU Fishing. *Indonesian Journal of International Law*, 18, 125-151. doi: [10.17304/ijil.vol18.1.805](https://doi.org/10.17304/ijil.vol18.1.805).
- [17] Judgement of the Belyaevsky District Court of Odessa Region No. 123737886. (2024, November). Retrieved from <https://youcontrol.com.ua/catalog/court-document/123737886/>.
- [18] Judgement of the Commercial Court of Odessa Region in the Case No. 916/2571/23. (2023, October). Retrieved from <https://zakononline.com.ua/court-decisions/show/114150706?utm>.
- [19] Judgment of the European Court of Human Rights in Case No. 64863/13 “Yaşar v. Romania”. (2020, February). Retrieved from <https://hudoc.echr.coe.int/fre#%22itemid%22:%22001-198637%22>].
- [20] Kozhura, L. (2021). Peculiarities of legal regulation of the aquaculture sector in Ukraine. *Legal Bulletin*, 1, 132-137. doi: [10.32837/yuv.v0i1.2090](https://doi.org/10.32837/yuv.v0i1.2090).

- [21] Kupinets, L.E., & Shershun, O.M. (2022). Market capacity of fishery and fish farming products based on the principles of determining the ratio of supply and demand. *Eastern Europe: Economy, Business and Management*, 4(37), 23-32. doi: [10.32782/easterneurope.37-4](https://doi.org/10.32782/easterneurope.37-4).
- [22] Law of Ukraine No. 1264-XII "On Environmental Protection". (1991, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1264-12#Text>.
- [23] Law of Ukraine No. 2894-III "On the Fauna". (2001, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/2894-14#Text>.
- [24] Law of Ukraine No. 2989-IX "On Amendments to Certain Legislative Acts of Ukraine on Improving State Regulation in the Field of Fisheries, Conservation and Rational Use of Aquatic Bioresources and the Field of Aquaculture". (2023, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/2989-20#Text>.
- [25] Law of Ukraine No. 3677-VI "On Fisheries, Industrial Fishing and Protection of Aquatic Biological Resources". (2011, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/3677-17#Text>.
- [26] Law of Ukraine No. 5293-VI "On Aquaculture". (2012, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/5293-17#Text>.
- [27] Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/580-19#Text>.
- [28] Mackay, M., Hardesty, B.D., & Wilcox, C. (2020). The intersection between illegal fishing, crimes at sea, and social well-being. *Frontiers in Marine Science*, 7, article number 589000. doi: [10.3389/fmars.2020.589000](https://doi.org/10.3389/fmars.2020.589000).
- [29] Nakamura, J.N. (2022). Legal reflections on the small-scale fisheries guidelines: Building a global safety net for small-scale fisheries. *The International Journal of Marine and Coastal Law*, 37(1), 31-72. doi: [10.1163/15718085-bja10081](https://doi.org/10.1163/15718085-bja10081).
- [30] Nakamura, J.N. (2023). International fisheries law: Past to future. In S. Partelow, M. Hadjimichael & A.K. Hornidge (Eds.), *Ocean governance. MARE publication series* (pp. 175-207). Cham: Springer. doi: [10.1007/978-3-031-20740-2](https://doi.org/10.1007/978-3-031-20740-2).
- [31] Oral, N. (2020). Reflections on the past, present, and future of IUU fishing under international law. *International Community Law Review*, 22(3-4), 368-376. doi: [10.1163/18719732-12341435](https://doi.org/10.1163/18719732-12341435).
- [32] Order of the Cabinet of Ministers of Ukraine No. 402-p "Strategy for the Development of Fisheries until 2030". (2023, May). Retrieved from <https://zakon.rada.gov.ua/laws/show/402-2023-%D1%80#n10>.
- [33] Order of the Ministry of Agrarian Policy and Food of Ukraine No. 101 "On Approval of the Instructions for Registration of Materials on Administrative Offenses by fish Protection Bodies". (2003, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/z0320-03#Text>.
- [34] Order of the Ministry of Agrarian Policy and Food of Ukraine No. 512 "On Approval of the Procedure for Conducting Fish Protection Raids". (2018, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/z1296-18#Text>.
- [35] Ragulin, I.Yu. (2024). The use of aquatic bioresources as a factor in ensuring food security of Ukraine: Legal aspects. *Electronic Scientific Publication "Analytical and Comparative Law"*, 5, 423-427. doi: [10.24144/2788-6018.2024.05.66](https://doi.org/10.24144/2788-6018.2024.05.66).

- [36] Regulation of the European Council No. 1005/2008 “On the Establishing a System to Combat Illegal, Unreported and Unregulated (IUU) Fishing”. (2008, September). Retrieved from <https://eur-lex.europa.eu/eli/reg/2008/1005/oj/eng>.
- [37] Regulation of the European Council No. 1224/2009 “On the Establishing a Control System for Ensuring Compliance with the Rules of the Common Fisheries Policy”. (2009, November). Retrieved from <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC091900/>.
- [38] Resolution of the Cabinet of Ministers of Ukraine No. 895 “On Approval of the Regulations on the State Agency of Ukraine for the Development of Land Reclamation, Fisheries and Food Programs”. (2015, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/895-2015-%D0%BF#Text>.
- [39] Ripenko, A.I., & Nastina, O.I. (2022). Problems of regulatory and legal support of fishing and fish farming in Ukraine. *Legal Scientific Electronic Journal*, 9, 191-196. doi: [10.32782/2524-0374/2022-9/46](https://doi.org/10.32782/2524-0374/2022-9/46).
- [40] Rosello, M. (2022). Regional fishery management organisation measures and the imposition of criminal and administrative sanctions in respect of high seas fishing. *Marine Policy*, 144, article number 105213. doi: [10.1016/j.marpol.2022.105213](https://doi.org/10.1016/j.marpol.2022.105213).
- [41] Sakhno, A.P. (2023). Regarding the content of the jurisdictional powers of the water police and the State Fisheries Agency during joint law enforcement raids. *Ukrainian Policing: Theory, Legislation, Practice*, 1(5), 77-81. doi: [10.32782/2709-9261-2022-1-5-14](https://doi.org/10.32782/2709-9261-2022-1-5-14).
- [42] Sakhno, A.P., & Kovalenko, Ya.A. (2023). Current issues of interaction between water police units and territorial bodies of the State Fisheries Agency during fish protection raids. *Scientific Bulletin of the Uzhhorod National University. Law Series*, 77(2), 108-113. doi: [10.24144/2307-3322.2023.77.2.18](https://doi.org/10.24144/2307-3322.2023.77.2.18).
- [43] Song, A.M., Scholtens, J., Barclay, K., Bush, S.R., Fabinyi, M., Adhuri, D.S., & Houghton, M. (2020). Collateral damage? Small-scale fisheries in the global fight against IUU fishing. *Fish and Fisheries*, 21(4), 831-843. doi: [10.1111/faf.12462](https://doi.org/10.1111/faf.12462).
- [44] Stefanus, A.A., & Vervaele, J.A. (2021). Fishy business: Regulatory and enforcement challenges of transnational organised IUU fishing crimes. *Trends in Organized Crime*, 24(4), 581-604. doi: [10.1007/s12117-021-09425-y](https://doi.org/10.1007/s12117-021-09425-y).
- [45] United Nations Convention on the Law of the Sea. (1994, November). Retrieved from <https://www.imo.org/en/ourwork/legal/pages/unitednationsconventiononthelawofthesea.aspx>.
- [46] Vince, J., Hardesty, B.D., & Wilcox, C. (2021). Progress and challenges in eliminating illegal fishing. *Fish and Fisheries*, 22(3), 518-531. doi: [10.1111/faf.12532](https://doi.org/10.1111/faf.12532).

Адміністративно-процесуальний статус суб'єктів провадження у справах про порушення рибоохоронного законодавства

Владислав Лавренчук

Аспірант

Національний університет біоресурсів і природокористування України

03041, вул. Героїв Оборони, 15, м. Київ, Україна

<https://orcid.org/0009-0003-9565-5391>

Анотація

Метою дослідження було вивчення особливостей процесуальної діяльності уповноважених органів у справах про порушення рибоохоронного законодавства процесуальної діяльності уповноважених органів у справах про порушення рибоохоронного законодавства. У процесі дослідження було використано системний підхід, за допомогою якого досліджено інституційну структуру органів рибоохорони у взаємозв'язку з Національною поліцією, судами та місцевими органами виконавчої влади. Результатом стало виявлення ключової ролі органів рибоохорони у фіксації правопорушень, а також визначення потреби в ефективнішій координації їх діяльності з іншими суб'єктами правозастосування. Встановлено, що взаємодія з Національною поліцією сприяла посиленню контролю за дотриманням законодавства, проте мала недоліки щодо оперативного обміну інформацією та належного документування фактів порушень. Було проаналізовано судові рішення, зокрема постанови 2023-2024 років, що ілюструють практичні проблеми правозастосування у сфері рибогосподарської діяльності. Аналіз засвідчив неоднорідність підходів судів до оцінки доказової бази у справах про порушення рибоохоронного законодавства, що негативно впливає на правову визначеність судових рішень. Судові органи виконували функцію перевірки правомірності дій адміністративних органів, однак практика застосування санкцій варіювалася залежно від конкретних обставин справи. Застосування порівняльно-правового методу дозволило зіставити український досвід із практикою країн ЄС, зокрема проаналізовано підхід ЄСПЛ у справі «Яшар проти Румунії» до конфіскації майна, використаного для незаконного промислу. Це дало змогу виявити спільні риси у застосуванні санкцій та обґрунтувати відповідність української практики європейським стандартам

Ключові слова: екологічні виклики; водні біоресурси; незаконний вилов; порушення правил рибальства; притягнення до відповідальності



UDC 34:342;342.7

DOI: 10.31548/law/4.2025.115

Children's rights in Islamic Sharia and international instruments: An analytical approach to ethical and legislative values

Musa Musa El-Said Dzhabara*

Doctoral Student

Kyrgyz State University named after I. Arabaev
720026, 51A Razzakov Str., Bishkek, Kyrgyz Republic
<https://orcid.org/0009-0006-7246-0438>

Ansaf Hussein Abdulkhadi El-Mungi Leila

Doctoral Student, Lecturer

Kyrgyz State University named after I. Arabaev
720026, 51A Razzakov Str., Bishkek, Kyrgyz Republic
<https://orcid.org/0009-0009-6226-0936>

Aizada Tashtanova

PhD, Associate Professor

Kyrgyz State University named after I. Arabaev
720026, 51A Razzakov Str., Bishkek, Kyrgyz Republic
<https://orcid.org/0009-0004-9785-8114>

Abdelgawad Ahmed Abdelmawla Moussa

PhD

Kara-Baltic Institute of the Koran
724400, 8-March Str., Kara-Balta, Kyrgyz Republic
<https://orcid.org/0009-0007-5953-7389>

Article's History:

Abstract

Received: 04.07.2025

Revised: 02.11.2025

Accepted: 27.11.2025

This study provided a comparative analysis of the ethical and legislative frameworks governing children's rights in Islamic Sharia and international law, using the cases of three countries with distinct legal models: Kyrgyzstan,

Suggested Citation:

Dzhabara, M.M.E.-S., Leila, A.H.A.E.-M., Tashtanova, A., & Moussa, A.A.A. (2025). Children's rights in Islamic Sharia and international instruments: An analytical approach to ethical and legislative values. *Law. Human. Environment*, 16(4), 115-134. doi: 10.31548/law/4.2025.115.



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

*Corresponding author

Egypt, and Malaysia. The aim of the research was to identify the systemic gap between normative declarations and the practical implementation of child protection in Muslim-majority societies. The study employed a qualitative methodology, including comparative analysis of international conventions, national legislation, doctrinal sources of Islamic law, and reports by international organisations. The findings demonstrated that Islamic doctrine – particularly through the prism of the higher objectives of Sharia (Maqasid al-Sharia) – offers a strong conceptual foundation for the protection of children's rights. At the same time, case study analysis revealed that the key obstacles to their realisation are legal pluralism (Kyrgyzstan); jurisdictional conflicts in dual legal systems (Malaysia); and enforcement difficulties even in codified systems (Egypt), especially in the fight against child marriage. Across all cases, the most vulnerable party is the girl child, whose rights to education, health, and free choice are often neglected. It was established that effective child protection requires not a mere replication of international standards, but the development of integrated strategies that harmonise secular legislation with correct interpretations of Sharia, engage religious leaders in promoting humanistic interpretations, and aim at transforming deeply rooted social attitudes. Research results may be used by legislative bodies to harmonise national laws with international standards, as well as by law enforcement and judicial authorities

Keywords: Maqasid al-Sharia; harmonisation of legal acts; dualist system; nafaqa; tarbiya

Introduction

In the context of contemporary globalisation and intensive cultural interaction, the question of harmonising universal human rights standards with national legal and religious traditions has gained exceptional relevance. This issue is particularly acute in the field of child protection, where the fate of millions of children is determined at the intersection of international obligations and deeply rooted socio-cultural norms. Their legal status, access to education, protection from harmful practices such as child marriage, and family relations are often regulated simultaneously by multiple normative systems. Understanding how these systems – international law and one of the world's major religio-legal doctrines, Islamic Sharia – interact, conflict, or complement one another is a key task for lawyers, policymakers, and human rights advocates seeking to safeguard the interests of children across diverse cultural contexts.

A society's attitude towards its youngest and most vulnerable members is one of the key indicators of its civilisational development and

humanistic values. This idea, reflected in the works of M. Freeman and P.E. Veerman (2021), underpins the modern global ideology of children's rights codified in the United Nations Convention on the Rights of the Child (UN CRC) (1989). This document established a universal standard whereby every child is recognised as an autonomous subject of rights requiring protection and the provision of optimal conditions for development. At the same time, the relevance of research in this area arises from the ongoing tension between the universality of international legal norms and the particularity of national legal systems, which remain strongly influenced by religious and cultural traditions. This dilemma is especially pronounced in Muslim societies, where the norms of Islamic Sharia play a central role in regulating family and social relations, creating a complex and multifaceted context for the implementation of children's rights.

The academic discourse on children's rights in Islam is both extensive and polarised. On the

one hand, as M. Houmine and K. Loudghiri (2023) argue, Islamic civilisation historically developed a comprehensive doctrine of child protection that is often underestimated or misinterpreted by Western scholars. This doctrine is grounded less in the concept of individual rights and more in the higher objectives of Sharia (Maqasid al-Sharia). According to studies by M.A. Firdaus and I. Iwan (2024), and L. Lisma and R. Nikmah (2021), these objectives encompass five fundamental values: the protection of faith (hifz al-din), life (hifz al-nafs), intellect (hifz al-'aql), lineage (hifz al-nasl), and property (hifz al-mal). Within this framework, the protection of children's rights is viewed as an inseparable part of preserving lineage and ensuring the healthy development of future generations. Research by M.H.M. Marwa *et al.* (2024) and Y. Yusefri *et al.* (2024), focusing on child labour, has empirically shown that the exploitation of children directly contravenes all five higher objectives of Sharia, as it endangers their lives, health, intellectual growth, and appropriate religious upbringing. At the same time, as S.S. Karimullah (2023) notes, the Islamic legal tradition is not monolithic; significant challenges stem from interpretative diversity, gender inequality, and social problems that hinder the full implementation of its protective principles.

In post-Soviet Central Asia, particularly in Kyrgyzstan, these issues are especially acute. As A. Chinara (2021) highlights, the protection of children in Kyrgyz society was historically governed by Sharia norms and customary law (adat), which were displaced during the Soviet period by a state-based institutional care system. After gaining independence, the country ratified the UN CRC, initiating a complex process of harmonising national legislation with international standards. However, research by N.Z. Osmonaliev *et al.* (2021) revealed that, despite the formal adoption of progressive laws, social problems such as poverty, unemployment, migration, and

domestic violence continue to create adverse conditions for children's development, while state institutions remain insufficiently effective. Similar challenges – gaps between legislation and practice – exist in other Muslim countries. Research by R.S.S. Qizi *et al.* (2024) in Uzbekistan showed that, despite the establishment of a comprehensive legal framework, implementation – especially in the digital age – requires continuous refinement. Transnational problems such as unregistered marriages and child sexual abuse have been analysed by F. Larhzizar (2024) and F. Hayati and L. Fidiawati (2025), who concluded that culturally adapted, comprehensive approaches are essential. Despite the significant body of literature on specific aspects of children's rights in Islam and in individual countries, a research gap has been identified: the absence of direct comparative empirical analysis systematically juxtaposing the ethical values of Islamic Sharia with the legislative values of international instruments, as well as their practical implementation in countries with varying models of interaction between secular and religious law.

Accordingly, the purpose of this study was to conduct a comparative analytical examination of the ethical and legislative values underpinning child protection in Islamic Sharia and international instruments, and their practical application in Kyrgyzstan, Malaysia, and Egypt. This entailed analysing doctrinal foundations of children's rights in the Qur'an, the Sunnah, and the concept of Maqasid al-Sharia; undertaking a comparative analysis of the legislation of the three countries in key areas (origin, equality, education, protection against child marriage); identifying main conflicts and harmonisation points between international obligations and national practice; and developing recommendations for improving the child protection system in Kyrgyzstan based on identified challenges and successful international experience.

Materials and Methods

This research was conducted between July 2025 and August 2025 using a qualitative methodology. It is based on a comparative analysis of three case studies: Kyrgyzstan, Egypt, and Malaysia. These countries were selected because they represent three distinct models of interaction between state law and Islamic norms. Kyrgyzstan demonstrates a secular system with informal Sharia influence; Egypt represents an integrated model with codified Islamic law; and Malaysia exemplifies a dualist system with parallel secular and Sharia courts. The research design is descriptive-analytical, aiming to study, compare, and interpret the ethical and legislative frameworks regulating children's rights in the context of Islamic Sharia and international standards. Data collection was carried out through desk research, involving systematic selection and analysis of documentary sources only. The research materials were divided into four main categories. Firstly, international legal instruments – primarily the UN CRC (1989), which served as the benchmark for comparing international standards. Secondly, national legislation of the three countries. For Kyrgyzstan, this included the Constitution of the Kyrgyz Republic (2021), the Children's Code of the Kyrgyz Republic (2020), the Family Code of the Kyrgyz Republic (2003), the Labour Code of the Kyrgyz Republic (2025), and the Criminal Code of the Kyrgyz Republic (2021). Malaysia's framework was examined through the Federal Constitution of Malaysia (2020), the Law Reform (Marriage and Divorce) Act of Malaysia (1976), and the Islamic Family Law (Federal Territories) Act of Malaysia (1984). For Egypt, the Law No. 12 "The Child Law" (1996), Penal Code of Egypt (1937) were analysed. Thirdly, doctrinal sources of Islamic law – including specialised analytical and encyclopaedic works (Sharia: Islamic Law, 2025; UNICEF, 2025). The theoretical framework was reinforced by concepts such as "the best interests of the child" (Sormunen, 2016) and re-

views of child custody practices (Custody of Children Malaysia, 2025). The last one is empirical data – including the Multiple Indicator Cluster Survey (MICS) (UNICEF, 2019) and analytical reports by non-governmental organisations (NGOs) and international organisations (UNFPA, 2014; Girls Not Brides, 2025).

The analysis proceeded in several stages using a combination of methods. At the first stage, doctrinal analysis was applied to systematise and conceptualise the fundamental rights of the child in Islamic Sharia. At the second stage, normative-legal analysis was used to study international and national legislative acts, allowing for the identification of the formal legal framework of child protection in each of the selected countries and the extent of its harmonisation with international standards. At the final stage, the comparative method was employed, involving both cross-country comparison (Kyrgyzstan, Egypt, Malaysia) and juxtaposition of their *de jure* norms with the *de facto* situation described in analytical reports and statistical surveys. This approach made it possible to identify common challenges, the unique features of each legal system, and the deeper causes of the gap between legislative declarations and social realities.

Results

Children's rights in Islamic Sharia: Doctrinal foundations and diversity of interpretations.

The Islamic legal and ethical tradition regards children as both a blessing (*ni'ma*) and a sacred trust (*amana*) from God, which imposes on parents, guardians, and society as a whole a set of clearly defined duties concerning their protection and upbringing (Sharia: Islamic Law, 2025; UNICEF, 2025). Unlike Western concepts that are built on the idea of the individual's autonomous rights, Islamic doctrine frames children's rights through the lens of divine injunctions found in the Qur'an and the Sunnah (the practice of the

Prophet Muhammad) (Sharia: Islamic Law, 2025). At the same time, the application of these principles is not monolithic and varies significantly depending on the region and legal school (madhhab). In Gulf countries such as Saudi Arabia, Sharia is codified as a source of state law (UNICEF, 2025). In dualist systems such as Malaysia, it governs only the personal status of Muslims in parallel with secular legislation (UNICEF, 2025). In Central Asia, particularly Kyrgyzstan, Islam (predominantly of the Hanafi school) exists as part of cultural identity and social norms, often in syncretism with pre-Islamic customs, and is applied mostly at an informal level alongside secular law. This diversity of interpretation is crucial for understanding how universal Islamic principles are transformed into concrete practices of protecting – or conversely, violating – children’s rights.

A fundamental right, recognised even before birth, is the right to life. Islamic doctrine strictly prohibits infanticide, especially the killing of girls (wa’d al-banāt), which was a widespread practice in pre-Islamic Arabia (Sharia: Islamic Law, 2025). The Qur’an explicitly condemns such acts, emphasising divine providence: “Do not kill your children for fear of poverty. We provide sustenance for them and for you” (Qur’an, 17:31) (Sharia: Islamic Law, 2025). This right also extends to the prenatal period, where abortion after the soul has entered the foetus (commonly believed to occur on the 120th day) is considered a grave sin, permissible only in cases of direct threat to the mother’s life. Closely linked is the right to lineage (nasab), which forms the basis of a child’s identity in Islamic society. Nasab determines inheritance rights, maintenance, and social status; thus, Sharia attaches exceptional importance to legitimate origin within lawful marriage (Sharia: Islamic Law, 2025). Extra-marital relations (zina) are strictly prohibited, and a child born as a result of such a union often faces severe social stigmatisation (UNICEF, 2025). Another unique

right, enshrined in the Qur’an, is the right to breastfeeding (rada’a) for a full two years. This is seen not only as a source of health but also as a mechanism establishing milk kinship, which has legal consequences, such as prohibiting marriage between milk-siblings (Sharia: Islamic Law, 2025). Throughout childhood, Sharia imposes on the father an unconditional legal duty of financial maintenance (nafaqa) (Sharia: Islamic Law, 2025). This obligation includes food, clothing, housing, and medical care in accordance with the family’s social status, and it is independent of the mother’s financial condition. If the father is unable to provide, responsibility passes to other male relatives, creating a system of collective support. The right to upbringing and education (tarbiya) is comprehensive, encompassing both religious and secular learning. The pursuit of knowledge (‘ilm) is considered a religious duty for all Muslims, regardless of gender, as confirmed by the famous hadith: “Seeking knowledge is an obligation upon every Muslim” (Sharia: Islamic Law, 2025). Parents are obliged to teach children the fundamentals of faith, morality, and the skills necessary for a full life. The principle of justice (‘adl) requires parents to treat all their children equally and impartially, forbidding preference for sons over daughters in either emotional support or material benefits. All forms of abuse are condemned; while disciplinary measures are permitted, they must not be degrading or cause physical harm (Sharia: Islamic Law, 2025).

One of the most debated aspects, where interpretations of Sharia diverge most strongly, is the issue of marriage. Islamic jurisprudence (fiqh) links marital capacity to the attainment of physical and intellectual maturity (bulugh and rushd), rather than to a specific chronological age (UNICEF, 2025). Historically, the onset of puberty was often regarded as sufficient for marriage. This classical interpretation is still used in some conservative communities, including in Kyrgyzstan,

to justify child marriages concluded by religious rites, which directly contradict the modern understanding of the best interests of the child and their right to education and healthy development (Sormunen, 2016). At the same time, many contemporary Islamic scholars stress that the true purpose of marriage is the creation of a stable family based on love (*mawadda*) and mercy (*rahma*), which is impossible without full psychological and social maturity of both partners. They argue that setting a minimum marriage age by the state (for example, 18 years) does not

contradict the spirit of Sharia but rather protects the family institution and prevents harm (*darar*), one of the higher principles of Islamic law. Thus, the divergences in the practice of protecting children's rights in Muslim countries stem less from the provisions of Sharia itself than from the ongoing struggle between wrong and correct interpretations in the contemporary world. For clarity, a comparative summary of doctrinal approaches in Islamic law and modern international standards regarding children's rights is presented below (Table 1).

Table 1. Comparative analysis of key children's rights: Islamic Sharia Doctrine vs. the UN CRC

Field of Rights	Principles of Islamic Sharia	Corresponding Standards of the CRC
Right to life and health	<ul style="list-style-type: none"> ➤ Absolute sanctity of life from conception. ➤ Prohibition of infanticide (<i>wa'd al-banāt</i>). ➤ Right to breastfeeding (<i>rada'a</i>) for up to two years. 	<ul style="list-style-type: none"> ➤ Inherent right to life, survival, and healthy development (Art. 6). ➤ Right to the highest attainable standard of health services (Art. 24).
Right to identity and family	<ul style="list-style-type: none"> ➤ Right to lawful origin (<i>nasab</i>) and lineage. ➤ Right to a good name. ➤ Parents' duty to care for the child. 	<ul style="list-style-type: none"> ➤ Right to a name and nationality from birth (Art. 7). ➤ Right to preserve identity (Art. 8). ➤ Right not to be separated from parents against their will (Art. 9).
Right to maintenance and welfare	<ul style="list-style-type: none"> ➤ Father's unconditional duty of financial support (<i>nafaqa</i>): food, clothing, housing, medical care. 	<ul style="list-style-type: none"> ➤ Right to an adequate standard of living for physical, mental, spiritual, moral, and social development (Art. 27).
Right to education and development	<ul style="list-style-type: none"> ➤ Duty to seek knowledge (<i>'ilm</i>) for both sexes. ➤ Holistic upbringing (<i>tarbiya</i>), including moral, spiritual, and intellectual development. 	<ul style="list-style-type: none"> ➤ Right to education; introduction of free and compulsory primary education (Art. 28). ➤ Education directed to the development of the child's personality, talents, mental and physical abilities (Art. 29).
Marriage and readiness for family life	<ul style="list-style-type: none"> ➤ Marital capacity linked to physical and intellectual maturity (<i>bulugh</i> and <i>rushd</i>), not a fixed age. 	<ul style="list-style-type: none"> ➤ States Parties must take all effective measures to abolish child marriage. General Comment No. 4 to the CRC recommends a minimum age of 18.
Protection from violence and injustice	<ul style="list-style-type: none"> ➤ Prohibition of abuse. ➤ Principle of fair and equal treatment of all children (<i>'adl</i>). 	<ul style="list-style-type: none"> ➤ Protection from all forms of physical and psychological violence, abuse, or neglect (Art. 19). ➤ Principle of non-discrimination (Art. 2).

Source: compiled by the authors based on UN CRC (1989), Sharia: Islamic Law (2025), UNICEF (2025)

Thus, the Islamic legal tradition offers a comprehensive and ethically grounded doctrine of children's rights, based on the duties of parents and society. However, as the analysis demonstrates, the universality of these principles encounters diverse interpretations and models of implementation across national contexts. A central field of debate remains the issue

of marital age, where traditional interpretations of physical maturity conflict with the modern understanding of the best interests of the child. This highlights that the actual state of child protection in Muslim societies is determined less by the provisions of Sharia itself than by the ongoing contest between conservative and reformist interpretations.

Legal regulation and practical implementation of children's rights in Kyrgyzstan.

Analysis of the legal system and socio-cultural context of Kyrgyzstan identifies it as a unique case study, characterised by a profound conflict between formally proclaimed secular, democratic values and the strong influence of Islamic and traditional (adat) norms on social relations. This duality creates a complex and contradictory system in which children's rights, though enshrined in legislation in line with international standards, are systematically violated in practice due to the dominance of informal institutions. At the formal legal (de jure) level, Kyrgyzstan demonstrates full commitment to international standards of child protection. The country has ratified key international documents, including the UN CRC (1989), which, under Article 6 of the Constitution of the Kyrgyz Republic (2021), forms part of the national legal system with superior authority. The primary national legal instrument in this field is the Children's Code of the Kyrgyz Republic (2020). A detailed analysis of its provisions shows that it almost entirely reproduces the core principles of the CRC. In particular, the Code guarantees the child's fundamental right to life and healthy development, the right to a name, nationality, and preservation of identity, the right to equality and protection from all forms of discrimination, as well as the rights to education, healthcare, and protection from economic exploitation, violence, and abuse. The Family Code of the Kyrgyz Republic (2003) establishes a uniform minimum marriage age of 18 for both men and women, fully in line with international recommendations. The Labour Code of the Kyrgyz Republic (2025) and Criminal Code of the Kyrgyz Republic (2021) contain provisions prohibiting the worst forms of child labour and establishing criminal liability for offences against children. Thus, at the level of written law, Kyrgyzstan has created a comprehensive and progressive child protection framework.

However, analysis of the de facto situation reveals a systemic gap between legislative declarations and social reality, particularly in rural areas and conservative communities where patriarchal norms prevail. This gap is most evident in the issue of child marriage. Despite the Family Code's 18-year age requirement, statistical data confirm the persistence of this practice: 13% of girls in Kyrgyzstan marry before the age of 18 (Girls Not Brides, 2025). UNICEF's MICS (2019) highlights strong regional disparities: in rural areas the figure reaches 16%, compared with 9% in urban centres, pointing to the stronger influence of traditional norms outside major cities. One of the key factors sustaining child marriage is the practice of bride kidnapping (ala kachuu), which persists despite its criminalisation (Criminal Code of the Kyrgyz Republic, 2021). Law enforcement remains weak, as sociological factors – including community pressure on victims to avoid public shame and the widespread belief in the need to “preserve family honour” through subsequent marriage – result in low reporting rates (UNICEF, 2019). Studies by UNFPA (2014) show that a significant proportion of early marriages directly result from abductions. Thus, criminal law prohibitions are neutralised by social norms, which reframe a crime as a legitimate form of marriage. In parallel, religious marriage ceremonies (nikah) involving minors are widely practised. These ceremonies, conducted by local religious figures, confer social and religious legitimacy on unions that are legally void under the Family Code of the Kyrgyz Republic (2003). The legal consequences for underage girls are extremely negative. Without an official marriage certificate, they are deprived of rights guaranteed under secular law, such as entitlement to jointly acquired property, inheritance rights, and the ability to claim child maintenance in case of separation. This creates a parallel system of family regulation that removes a

significant number of children from state protection. This issue is directly linked to violations of the child's right to education, guaranteed by the Children's Code of the Kyrgyz Republic (2020). There is a clear correlation between education level and prevalence of child marriage: among women without education, 26% were married in childhood, compared with only 4% among those with higher education. Upon entering an early – albeit unofficial – marriage, girls almost invariably abandon their education, as they assume full reproductive and domestic responsibilities, reinforcing cycles of poverty and gender inequality (UNICEF, 2019).

Another area of conflicting norms is protection from violence. Despite the Criminal Code of the Kyrgyz Republic (2021) provisions against abuse, physical punishment is widely perceived in public consciousness as a legitimate and necessary component of upbringing (*tarbiya*). This creates a high level of tolerance towards domestic violence. Seeking help from state authorities is often stigmatised by the community as unwelcome interference in private affairs. As a result, institutions mandated to protect children remain passive due to a lack of complaints, and cases of violence remain latent (UNICEF, 2019). Moreover, the authority of the formal legal system is undermined by the functioning of informal justice institutions such as *aksakal* (elder councils). In resolving family disputes, they rely primarily on customary law (*adat*) and local interpretations of Islamic norms, often prioritising the preservation of social order and patriarchal hierarchy over the individual rights of children enshrined in the Children's Code of the Kyrgyz Republic (2020). This legal pluralism fragments the legal space and creates a situation where, for a large segment of the population, secular law is perceived as optional, while actual regulation of social life takes place on the basis of tradition and religious beliefs.

Children's rights in Egypt and Malaysia: A comparative analysis of integrated and dualist models. The analysis of the legal systems of Egypt and Malaysia reveals two fundamentally different approaches to incorporating the norms of Islamic Sharia into national legislation, which directly affects the scope and mechanisms of child protection. Egypt represents an integrated legal model, where Sharia principles are codified and incorporated into the national civil law, particularly within personal status legislation. Malaysia, by contrast, operates under a dualist system, where secular law (based on English common law) exists in parallel with a separate system of Sharia courts for Muslims. These structural differences give rise to unique challenges and conflicts when attempting to harmonise national law with international standards, such as the UN CRC (1989). Both countries ratified the CRC (1989), but with significant reservations reflecting their determination to preserve the priority of Islamic norms in family law – although the nature of these reservations differs.

The dualism of Malaysia's legal system is a constant source of legal conflicts, especially in the area of family law. The Federal Constitution of Malaysia (2020) grants state-level Sharia courts exclusive jurisdiction over matters relating to the personal status of Muslims, while civil courts deal with non-Muslims. This creates situations where a child's rights may differ drastically depending on the religious affiliation of their parents. Malaysia has entered reservations to key CRC (1989), notably Article 14, which guarantees freedom of thought, conscience, and religion. This reservation safeguards the constitutional status of Islam and, in practice, means that a child born into a Muslim family is automatically identified as Muslim and has no right to change religion. This creates complex identity issues and undermines the child's right to self-determination guaranteed by international standards. One of the most acute

problems arising from legal dualism is the issue of the minimum age for marriage. For non-Muslims, the Law Reform (Marriage and Divorce) Act 1976 of Malaysia (1976) sets the minimum marriage age at 18. However, for Islamic Family Law (Federal Territories) Act 1984 of Malaysia (1984) establishes the minimum at 18 for men and 16 for women. Critically, the law permits the state Chief Minister or a Sharia court judge to authorise the marriage of a girl under 16 if, in their view, such a marriage will not cause her harm. This provision is a direct application of classical fiqh doctrine, which links marital capacity to physical maturity (bulugh) rather than chronological age. Although Sharia requires the consent of both parties to marriage, in practice the consent of a minor girl may be nominal due to family pressure. This creates a legal pathway for child marriages, directly contradicting international standards and drawing constant criticism from human rights organisations. Custody (hadana) and guardianship (wilaya) of children are also regulated by Sharia courts. Typically, custody of young children is awarded to the mother, while the father remains the legal guardian responsible for financial support and major decisions (Custody of Children Malaysia, 2025). Problems arise in cases of interfaith marriages, particularly when one parent (usually the father) converts to Islam. In such cases, he may petition the Sharia court for custody of the children to raise them as Muslims. The civil court handling the case for the non-Muslim parent often declines jurisdiction, creating a legal vacuum. The child becomes caught in the middle of a jurisdictional conflict, and the principle of the child's best interests is ignored (Sormunen, 2016).

Egypt's legal system, rooted in the French civil law tradition, has incorporated Sharia norms (primarily from the Hanafi school) (Sharia: Islamic Law, 2025) directly into state personal status legislation. Unlike Malaysia, there is no parallel judiciary; instead, specialised family courts

apply a single codified law for all Muslims. Egypt ratified the CRC (1989), but with a general reservation stipulating that no provision of the Convention may contravene Islamic Sharia. A major achievement in child protection in Egypt was the adoption of the Law of Egypt No. 12 "The Child Law" (1996), which established a single minimum marriage age of 18 for both sexes. This reform represents an example of state-led *ijtihad* (independent legal reasoning), aimed at realising the higher objectives of Sharia (maqasid), particularly the prevention of harm (darar) associated with early marriage. By prohibiting official registration of underage marriages, the state does not ban religious ceremonies but deprives such unions of legal validity, making them more difficult to contract. Nonetheless, the problem of unregistered child marriages, particularly in rural areas, remains, although the prevalence is lower than in countries with looser regulation (UNICEF, 2025). Egypt also demonstrates active state policy in combating harmful traditional practices, notably female genital mutilation (FGM) (UNICEF, 2025). This practice, which has no basis in Islamic primary sources, was explicitly criminalised by Egyptian law. In particular, the Penal Code of Egypt (1937) as amended by Law No. 78 "On Amending Some Provisions of the Penal Code" (2016) and Law of Egypt No. 10 (2021), prescribes punishment both for medical practitioners who perform the procedure and for family members who initiate it. This illustrates how the state employs secular criminal law to protect the child's fundamental right to health and bodily integrity, fully consistent with the Sharia principle of preserving life (*hifz al-nafs*). In matters of identity and family relations, Egyptian law adheres strictly to Sharia norms. The right to lineage (*nasab*) is central. Adoption, which involves changing a child's surname and granting the rights of a biological heir, is prohibited (TTE Gulf Management Consultancy, 2025). Instead, the *kafala* system allows a child

to be raised and supported without altering their biological lineage. This creates difficulties for Egyptian children travelling abroad to countries where adoption, not kafala, is legally required.

A comparative analysis of the three case-study countries highlights significant differences in legal models and key aspects of child protection, summarised in Table 2.

Table 1. Comparative analysis of the legal status of children in Kyrgyzstan, Egypt, and Malaysia

Parameter	Kyrgyzstan	Egypt	Malaysia
Legal system	Secular law (civil law family) with strong influence of informal religious and customary norms.	Integrated system: civil law, with Sharia as the main source for codified personal status legislation.	Dualist system: parallel existence of secular (common) law and Sharia court system for Muslims.
CRC status	Ratified without reservations.	Ratified with a general reservation on the supremacy of Islamic Sharia.	Ratified with reservations to key articles (incl. freedom of religion, education, marriage age).
Minimum legal marriage age	18 for all.	18 (for registered marriages).	18 for non-Muslims. 16 for Muslim girls (with Sharia court/judge's permission for earlier).
Adoption	Permitted under the Family Code.	Prohibited. Kafala applies, preserving the child's biological lineage.	Permitted for non-Muslims. For Muslims, kafala applies.
Main challenge in child rights	Deep gap between progressive secular legislation and social practices (child marriage, <i>ala kachuu</i>) regulated by informal norms.	Combating deeply rooted harmful practices (unregistered child marriages, FGM) despite progressive legislation.	Jurisdictional conflicts between civil and Sharia courts, creating legal uncertainty for children, especially in interfaith families.

Source: compiled by the authors based on Constitution of the Kyrgyz Republic (2021), Law of Egypt No. 12 "The Child Law" (1996), Federal Constitution of Malaysia (2020)

Thus, comparative analysis shows that although both countries are guided by Sharia principles, their legal models produce different outcomes. Malaysia's dualism generates overt jurisdictional conflicts and legal uncertainty, especially for children in interfaith families. Egypt's integrated system is more consistent, with the state playing an active role in reforming legislation (as in the case of marriage age and FGM) (UNICEF, 2025), seeking to adapt traditional norms to modern child protection requirements. Nevertheless, in both countries, the main challenge remains the gap between formal law and deeply entrenched social practices.

Strategic directions for improving the child protection system in the Kyrgyz Republic: From legal pluralism to an integrated approach. The analysis of children's rights in Kyrgyzstan reveals a fundamental gap between

progressive secular legislation and social practices, which are largely governed by informal religious and customary norms. This legal pluralism – where state laws are disregarded in favour of traditions – presents the key challenge undermining enforcement efforts. The recommendations below aim to develop a comprehensive, integrated approach, not opposing secular and religious norms but harmonising them, strengthening state institutions by engaging communities, and transforming the social attitudes underpinning child rights violations. A priority task is to establish constructive dialogue between state institutions and religious communities to overcome misinterpretations of Islamic law used to justify harmful practices. It is recommended that mandatory educational programmes for local imams and religious leaders (*moldo*) be introduced at state level. These programmes should be based

on a clear explanation of the higher objectives of Sharia (Maqasid al-Sharia), particularly principles such as the preservation of life (hifz al-nafs), lineage (hifz al-nasl), and intellect (hifz al-'aql). Training should demonstrate that these objectives fully align with state laws prohibiting child marriage and guaranteeing the right to education. Special emphasis should be placed on clarifying that marriage in Islam requires not only physical maturity (bulugh) but also full psychological and social readiness (rushd), which is impossible in childhood. To prevent child marriage in practice, legislation should require religious leaders to conduct marriage ceremonies (nikah) only after presentation of an official state marriage certificate. This measure does not prohibit the religious rite but makes it directly dependent on compliance with secular law, particularly age requirements, thereby curbing the legitimisation of unlawful unions. Strengthening state institutions also requires enhancing their legitimacy in the eyes of local communities, which often perceive police and social services as external and repressive (Syzdykov *et al.*, 2025). To overcome this mistrust, it is recommended to integrate state protection mechanisms into the social fabric through the creation of community advisers or mediators, chosen from respected local figures, including women. These individuals could act as intermediaries between the population and law enforcement in cases of domestic violence or forced marriage, in a culturally acceptable way, reducing the under-reporting of such crimes confirmed by statistics. At the same time, nationwide information campaigns should be developed, using dual arguments. For example, a campaign against child marriage should invoke not only the relevant legal codes but also Islamic ethical principles, quoting the Qur'an and Sunnah (Sharia: Islamic Law, 2025) that emphasise the importance of girls' education and prohibit harm (darar). This approach uses the authority of

religion to reinforce the goals of the secular state. Long-term change requires systematic efforts to empower girls and transform social attitudes. Given the strong correlation between poverty and child marriage, it is recommended that state programmes be introduced to provide economic incentives for girls from low-income rural families – such as educational grants, scholarships, or vocational training schemes – that offer a real alternative to early marriage. Simultaneously, school curricula should include compulsory courses explaining basic human rights, gender equality, and the negative consequences of harmful practices (Khamzina *et al.*, 2020; Oleksandrivna *et al.*, 2023). A crucial component is the involvement of positive male role models – respected community leaders, elders, and fathers – who publicly oppose bride kidnapping and support their daughters' rights to education and self-realisation. This directly challenges the patriarchal stereotypes underpinning the problem.

Finally, while dialogue and preventive measures are important, the state must not neglect legal enforcement mechanisms in cases of serious child rights violations that constitute criminal offences. Specialised training should be provided regularly for police, prosecutors, and judges on the classification and investigation of cases of bride kidnapping (ala kachuu) and forced marriage. Emphasis should be placed on overcoming the stereotype that this is a “cultural tradition” and on applying the relevant provisions of the Criminal Code of the Kyrgyz Republic (2021) as serious crimes against personal freedom and dignity. It is also recommended to establish an effective and accessible mechanism for judicial annulment of marriages contracted under coercion and to guarantee victims free legal assistance and psychological rehabilitation. Only such a comprehensive approach – combining harmonisation of norms, community engagement, women's empowerment, and effective law enforcement – can bridge

the gap between law and reality, ensuring genuine protection of children's rights in Kyrgyzstan.

Discussion

The results of this study, which analysed children's rights in Kyrgyzstan, Egypt, and Malaysia, reveal a fundamental tension between the protective ideals enshrined both in international law and in the doctrine of Islamic Sharia, and the complex reality of their practical implementation. This gap stems not from the absence of legal norms but rather from their multiplicity and competition in conditions of legal pluralism, where official state law coexists with powerful social, cultural, and religious norms. The purpose of this discussion is to interpret the findings through the lens of enforcement challenges, the progressive potential of the Maqasid al-Sharia concept, and the central role of education and upbringing (*tarbiya*) as key elements in addressing existing gaps. In this regard, the findings resonate with broader educational research demonstrating that the violation of children's rights often occurs not only through explicit physical harm but also through systemic psychological pressure embedded in educational environments. J.-K. Chung (2023), in a systematic analysis of school violence, shows that authority-based psychological pressure from teachers and peers may function as a normalized practice, thereby undermining the very protective ideals formally proclaimed in legal and moral frameworks.

The practical difficulties in implementing children's rights identified in the case-study countries are reflected in the broader context of Muslim societies. As shown in the work of M. Muhammadong *et al.* (2024), the dynamics of enforcing Islamic norms are the subject of constant social debate, with both supporters and opponents, shaped by deep socio-cultural factors. Even in countries with formalised systems of religious courts, as demonstrated by R. Rohmawati

and A. Rofiq (2021), legal uncertainty arises due to differing judicial approaches to interpreting the law. They found that depending on whether a judge is pragmatic, conservative, or progressive, rulings on the civil rights of a child born outside marriage can range from complete denial of protection to partial or near-full recognition of rights – leaving such children in a state of extreme legal vulnerability. This problem is compounded by a lack of specialised knowledge among legal practitioners. As B.S. Panjaitan *et al.* (2024) note, there is an urgent need to reform legislation to strengthen the role of Sharia lawyers in religious courts to prevent harm to Muslim clients' interests. Similar procedural and legislative gaps are highlighted in the study by W.B. Yusof (2024), which, using Malaysia as an example, shows that the absence of clear standard operating procedures (SOPs) for children in conflict with Sharia criminal law at the pre-trial stage constitutes a serious legislative gap and necessitates the urgent development of such standards to ensure consistency and fairness. Thus, the findings of this study align with the conclusion reached by L. Lisma and R. Nikmah (2021), namely, that the mere existence of law does not guarantee its effective application; the effectiveness of child protection systems depends on consistency in judicial practice and clarity of procedural mechanisms.

In response to these challenges, as modern scholarship demonstrates, the concept of Maqasid al-Sharia is gaining increasing relevance as a methodological framework for the reform of Islamic law. As I. Afiyah (2025) notes, this concept allows for the harmonisation of Islamic legal instruments with the achievement of the global Sustainable Development Goals. Its application to the issue of child labour, as analysed in detail by M.H.M. Marwa *et al.* (2024), clearly shows that the practice of exploiting children contradicts all five principles of Maqasid, as it undermines their religious and moral upbringing, physical health,

intellectual development, and dignity. A similar approach is adopted by D.N. Indah and S. Zuhdi (2022) in their analysis of the “childfree” phenomenon, while M.A. Firdaus and I. Iwan (2024) emphasise the necessity of state presence in protecting children through the mechanism of guardianship grounded in the principles of Maqasid. However, this theoretical potential of Maqasid stands in sharp contrast with the results of this research. It was found that in practice, particularly in Kyrgyzstan and Malaysia, narrow, traditionalist interpretations of fiqh concerning the age of marriage (linking it solely to physical maturity, bulugh) prevail over the higher objectives of Maqasid – protecting life, intellect, and the child’s future. Moreover, the idea expressed by I.Z. Asyiqin *et al.* (2024) that Sharia prohibits contracts involving excessive uncertainty (gharar) may be extrapolated to the findings of this study. It was revealed that the legal status of a child from an unregistered religious marriage in Kyrgyzstan, or caught in a jurisdictional conflict in Malaysia, constitutes a state of extreme gharar, since their future rights are indeterminate. This demonstrates that the results of this research empirically confirm the existence of a gulf between the progressive potential of Islamic law described in the scholarly literature and its regressive interpretation in practice. At the same time, the analysis shows that legal reforms are insufficient without deep socio-cultural change through education and upbringing. A.N. Saputri *et al.* (2022) underline the urgent need to instil Islamic ethics and morality (akhlaq) from early childhood. As M.A. Ramli (2022) demonstrates, this process requires a holistic approach, including teaching methods based on example, play, and storytelling. The central role of the family as the first and most important educator is highlighted by S.I.S. Al-Hawary *et al.* (2023), who stress that a healthy family environment is essential for cultivating moral virtues. At the same time, research on faith-based

educational institutions suggests that schools themselves may function either as protective or harmful environments for children. J.-K. Chung (2025), analysing the educational roles of a Christian school, demonstrates that religious education can contribute positively to moral development only when institutional authority is exercised through care, responsibility, and protection rather than coercion or discipline-driven control. Yet the results of this study reveal how harmful practices undermine this educational ideal. It was found that in Kyrgyzstan and Malaysia, child marriages justified by tradition effectively terminate girls’ education, directly contradicting Islam’s obligation to pursue knowledge (‘ilm). As D. Istiyani *et al.* (2024) point out, educational practice also suffers from routine approaches and the neglect of child psychology. This echoes the findings of this research, where it was shown that religious marriage ceremonies (nikah) in Kyrgyzstan are often performed as a formality, without awareness of their destructive consequences for the child, reducing them to a routine devoid of deeper moral meaning. Therefore, as A. Nurhuda (2023) argues, new models of upbringing are required, sensitive to cultural and religious values. For example, C. Mahfud *et al.* (2023) propose an Islamic education model for children with disabilities based on an authoritative rather than authoritarian style. M. Huda (2021) reminds us of the importance of respect as a central educational value, while Y.K. Saputra *et al.* (2023) show how specific methods – such as Qur’an memorisation (tahfiz) – can support moral formation. Even in multireligious environments, as S. Futaqi and A.A. Yenuri (2023) demonstrate, religious rituals can serve as tools for building intercultural awareness. The findings of this study, however, demonstrate the absence of such adaptive approaches in the examined contexts, where rigid and harmful practices are prioritised over flexible educational models.

Thus, the discussion of findings allows us to conclude that effective protection of children's rights in Muslim-majority countries requires a comprehensive, synergistic approach. It is necessary to overcome not only legislative gaps but also the negative effects of misguided religious dogmas and economic interests, which – as Y. Sopyan *et al.* (2023) show – can lead to exploitative practices such as child marriage, often facilitated by third parties such as marriage brokers. These conclusions fully correspond with the findings of this study on Kyrgyzstan, where economic factors and community pressure are often decisive. At the same time, as S.S. Karimullah (2023) notes, the flexibility of Islamic law and the growing role of social activists create opportunities for positive change and social transformation. The results of this research provide a foundation for such changes, as they identify concrete problems requiring intervention. Only the combined efforts of the state, progressive religious leaders, civil society organisations, and families can ensure the creation of an environment for sustainable social development and youth empowerment, thereby realising the protective ideals of both international law and Islamic Sharia.

Conclusions

This study of children's rights in Kyrgyzstan, Egypt, and Malaysia through the prism of Islamic Sharia and international instruments confirms the central thesis of a significant gap between normative ideals and practical reality. It has been established that the key challenge is not a confrontation between "religious" and "secular" law, but rather the complex interaction under legal pluralism, where the effectiveness of child protection depends less on the quality of the laws themselves and more on the state's ability to implement them, the interpretation of religious norms, and the influence of deeply rooted socio-cultural factors. The research has

shown that Islamic legal doctrine – especially when analysed through the concept of Maqasid al-Sharia – provides a powerful and comprehensive foundation for child protection, encompassing rights to life, health, identity, education, and welfare. The comparative findings from the three countries demonstrate varied approaches to harmonisation. Kyrgyzstan represents a model where progressive secular legislation proves largely ineffective due to the dominance of informal customary and religious practices, leading to widespread child marriage and weak responses to violence. Malaysia's dualist legal system produces jurisdictional conflicts that leave children, particularly in interfaith families, in a state of legal uncertainty. Egypt, meanwhile, exemplifies an integrated model, where the state codifies Sharia norms and seeks to adapt them to modern requirements, as seen in the establishment of a minimum marriage age, though enforcement challenges persist. These findings confirm that gaps in child protection stem not only from legislative shortcomings but also from inconsistent judicial practice and insufficient expertise among practitioners operating at the intersection of secular and religious law.

The practical implications of this study point to the inefficiency of purely centralised approaches to reform. Real improvement in children's welfare requires comprehensive strategies that combine legislative reform with broad community-level initiatives. This includes educational programmes for religious leaders, parents, and children, promoting progressive, child-centred interpretations of Islam. At the theoretical level, the research underscores the importance of using the Maqasid al-Sharia framework as an analytical tool capable of reconciling Islamic law with international human rights standards, revealing their potential synergy in achieving the shared goal of child welfare. A limitation of this study is its focus on only three countries, which

prevents broader generalisation to the entire Muslim world. Future research could expand the geographical scope and examine specific issues more deeply, such as developing Islamic models of education for children with special needs or assessing the effectiveness of religious education in multicultural societies. In conclusion, effective child protection in the studied contexts requires not the opposition of secular law and Sharia, but their harmonisation. This entails creating a holistic and functional justice system in which the protective mechanisms of both normative traditions are integrated to meet international obligations while remaining consistent with the socio-cultural values of society.

Future research should broaden its geographical scope and focus on the role of Islamic educational models – particularly in inclusive and multicultural contexts – to better understand and enhance child protection at the intersection of Sharia and international human rights.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of Interest

None.

References

- [1] Afiyah, I. (2025). The existence of Islamic law in Indonesia in the millennial era in supporting the sustainable development goals (SDGs): Maqashid Sharia perspective. *Demak Universal Journal of Islam and Sharia*, 3(1), 27-40. doi: [10.61455/deujis.v3i01.226](https://doi.org/10.61455/deujis.v3i01.226).
- [2] Al-Hawary, S.I.S., Kumar, T., Pallathadka, H., Alshahrani, S.H., Al-Tamimi, H.A.N.M., Muda, I., & Singer, N. (2023). [The education of children in an Islamic family based on the Holy Qur'an](#). *HTS Teologiese Studies/Theological Studies*, 79(2), 8273.
- [3] Asyiqin, I.Z., Akbar, M.F., & Genovés, M.B. (2024). Cryptocurrency as a medium of rupiah exchange: Perspective Sharia Islamic law and jurisprudential analysis. *Volkgeist: Journal of Legal and Constitutional Studies*, 7(2), 227-292. doi: [10.24090/volkgeist.v7i2.10975](https://doi.org/10.24090/volkgeist.v7i2.10975).
- [4] Children's Code of the Kyrgyz Republic. (2020, August). Retrieved from https://online.zakon.kz/Document/?doc_id=31223299.
- [5] Chinara, A. (2021). Kyrgyzstan. In I. Earner & A. Telitsyna (Eds.), *The development of child protection systems in the post-soviet states: A twenty-five years perspective* (pp. 91-98). Cham: Springer. doi: [10.1007/978-3-030-59588-3_6](https://doi.org/10.1007/978-3-030-59588-3_6).
- [6] Chung, J.-K. (2023). Safeguarding children from school violence: A systematic analysis of the issue of psychological and physical pressures from teachers and peers. *Journal of Education Culture and Society*, 14(2), 131-143. doi: [10.15503/jecs2023.2.131.143](https://doi.org/10.15503/jecs2023.2.131.143).
- [7] Chung, J.-K. (2025). [The educational roles of Geojassi Christian school](#). *European Journal of Science and Theology*, 21(1), 29-45.
- [8] Constitution of the Kyrgyz Republic. (2021, April). Retrieved from <https://cbd.minjust.gov.kg/1-2/edition/1202952/ru>.
- [9] Criminal Code of the Kyrgyz Republic. (2021, October). Retrieved from <https://mvd.gov.kg/rus/ministry/normative-bases/22>.
- [10] Custody of Children Malaysia. (2025). Retrieved from <https://www.thedivorcelawyer-malaysia.com/services/custody-of-children-malaysia/>.

- [11] Family Code of the Kyrgyz Republic. (2003, August). Retrieved from https://online.zakon.kz/Document/?doc_id=30286698.
- [12] Federal Constitution of Malaysia. (2020, October). Retrieved from <https://lom.agc.gov.my/federal-constitution.php>.
- [13] Firdaus, M.A., & Iwan, I. (2024). Custody determination for a child born as a result of rape: A Maqashid al-Sharia perspective. *Al-Ishlah: Scientific Journal of Law*, 27(2), 406-426. doi: [10.56087/aijih.v27i2.512](https://doi.org/10.56087/aijih.v27i2.512).
- [14] Freeman, M., & Veerman, P.E. (Eds). (2021). *The ideologies of children's rights*. Leiden: Brill. doi: [10.1163/9789004482180](https://doi.org/10.1163/9789004482180).
- [15] Futaqi, S., & Yenuri, A.A. (2023). Ritual communication in learning Islam in multi-religious school. *Journal of Islamic Education and Ethics*, 1(1), 38-51. doi: [10.18196/jiee.v1i1.4](https://doi.org/10.18196/jiee.v1i1.4).
- [16] Girls Not Brides. (2025). *Kyrgyzstan*. Retrieved from <https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/regions-and-countries/kyrgyzstan/>.
- [17] Hayati, F., & Fidiawati, L. (2025). Sharia-based collaborative counseling model to prevent child sexual abuse and violence. *Multidisciplinary Science Journal*, 7(5), article number 2025236. doi: [10.31893/multiscience.2025236](https://doi.org/10.31893/multiscience.2025236).
- [18] Houmine, M., & Loudghiri, K. (2023). Exploring child rights and the concept of childhood in Islam: A contemporary descriptive analysis. *Khazanah Hukum*, 5(2), 130-147. doi: [10.15575/kh.v5i2.28734](https://doi.org/10.15575/kh.v5i2.28734).
- [19] Huda, M. (2021). Islamic philosophy and ethics of education. *Journal of Islamic Studies*, 25(2), 399-421. doi: [10.20414/ujis.v25i2.464](https://doi.org/10.20414/ujis.v25i2.464).
- [20] Indah, D.N., & Zuhdi, S. (2022). The childfree phenomenon in the perspective of human rights and Maqashid al-shari'ah. In *International conference on community empowerment and engagement* (pp. 222-231). Dordrecht: Atlantis Press. doi: [10.2991/assehrk.220501.025](https://doi.org/10.2991/assehrk.220501.025).
- [21] Islamic Family Law (Federal Territories) Act 1984 of Malaysia. (1984, June). Retrieved from https://www.commonlii.org/my/legis/consol_act/iflta1984362/.
- [22] Istiyani, D., Wibowo, A.M., Taruna, M.M., Rahmawati, T., & Atmanto, N.E. (2024). Challenges and opportunities in early childhood religious and moral education: A perspective from the evaluation of logical models. *Nazhruna: Journal of Islamic Education*, 7(2), 233-249. doi: [10.31538/nzh.v7i2.4843](https://doi.org/10.31538/nzh.v7i2.4843).
- [23] Karimullah, S.S. (2023). Empowering youth: Social transformation and Islamic law's impact on child rights. *Various Laws*, 5(2), 153-169. doi: [10.15575/vh.v5i2.28209](https://doi.org/10.15575/vh.v5i2.28209).
- [24] Khamzina, Z., Buribayev, Y., Yermukanov, Y., & Alshurazova, A. (2020). Is it possible to achieve gender equality in Kazakhstan: Focus on employment and social protection. *International Journal of Discrimination and the Law*, 20(1), 5-20. doi: [10.1177/1358229120927904](https://doi.org/10.1177/1358229120927904).
- [25] Labour Code of the Kyrgyz Republic. (2025, January). Retrieved from <https://cis-legislation.com/document.fwx?rgn=164746>.
- [26] Larhzizar, F. (2024). Unregistered marriages in Islamic law: Ensuring children's rights amidst legal validity. *Amorti: Journal of Interdisciplinary Islamic Studies*, 3(3), 128-138. doi: [10.59944/amorti.v3i3.345](https://doi.org/10.59944/amorti.v3i3.345).
- [27] Law of Egypt No. 10. (2021, January). Retrieved from https://www.law.cornell.edu/gender-justice/resource/law_no_10_of_the_year_2021.

- [28] Law of Egypt No. 12 “The Child Law”. (1996, March). Retrieved from <https://www.warnathgroup.com/wp-content/uploads/2015/03/Egypt-Child-Law-2008.pdf>.
- [29] Law of Egypt No. 78 “On Amending Some Provisions of the Penal Code”. (2016, December). Retrieved from <https://dspace.id.com.eg/items/db9c036c-2407-4bd3-b898-3f612feffe80/full>.
- [30] Law Reform (Marriage and Divorce) Act 1976 of Malaysia. (1976, March). Retrieved from https://www.commonlii.org/my/legis/consol_act/lrada1976272/.
- [31] Lisma, L., & Nikmah, R. (2021). Child care and protection in perspective of legislation, human rights and Islamic law. *Al-Bayyinah*, 5(1), 29-42. doi: 10.35673/al-bayyinah.v4i2.1333.
- [32] Mahfud, C., Rohani, I., Nuryana, Z., Baihaqi, M., & Munawir, M. (2023). Islamic education for disabilities: New model for developing Islamic parenting in Integrated Blind Orphanage of Aisiyah. *Indonesian Journal of Islam and Muslim Societies*, 13(1), 115-142. doi: 10.18326/ijims.v13i1.
- [33] Marwa, M.H.M., Wahyudi, I., & Shalihah, F. (2024). Analysis of child labor rights fulfillment based on Maqashid Syariah. *JUSTISI*, 10(2), 489-504. doi: 10.33506/js.v10i2.2861.
- [34] Muhammadong, M., Nurhilalayah, N., & Khaerunnisa, K. (2024). *Dynamics of implementing Islamic law through the Islamic Sharia enforcement committee in South Sulawesi*. *Letters in High Energy Physics*, 205-211.
- [35] Nurhuda, A. (2023). Islamic education in the family: Concept, role, relationship, and parenting style. *Journal Corner of Education, Linguistics, and Literature*, 2(4), 359-368. doi: 10.54012/jcell.v2i4.153.
- [36] Oleksandrivna, K.V., Fedchuk, O.V., & Pavlovich, M.V. (2023). Relationship between corporate culture and psychological safety of training and educational space for young female athletes. *Insight*, 9, 113-129. doi: 10.32999/KSU2663-970X/2023-9-7.
- [37] Osmonalieva, N.Z., Atabekov, K., & Osmonalieva, A.Z. (2021). Improving the legislation of the Kyrgyz Republic on orphans and children deprived of parental care. *Bulletin of the National Academy of Sciences of the Republic of Kazakhstan*, 1(389), 271-277. doi: 10.32014/2021.2518-1467.36.
- [38] Panjaitan, B.S., Hasibuan, P.H., Kurniawan, P., Sirait, A.S., & Ma'mun, S. (2024). Revitalizing Sharia advocates: Reforming the law on advocates in strengthening the role of Islamic law in Indonesia. *Al-Istinbath: Journal of Islamic Law*, 9(2), 485-504. doi: 10.29240/jhi.v9i2.10875.
- [39] Penal Code of Egypt. (1937, August). Retrieved from <https://www.refworld.org/legal/legislation/natlegbod/1937/en/119651>.
- [40] Qizi, R.S.S., Shukhratovna, T.S., & Karamatovna, M.A. (2024). Implementation of education and protection of children's rights in the age of technology. *SPAST Reports*, 1(7). doi: 10.69848/sreports.v1i7.5090.
- [41] Ramli, M.A. (2022). Early childhood education in Islamic perspective. *Bulletin of Early Childhood*, 1(1), 31-41. doi: 10.51278/bec.v1i1.416.
- [42] Rohmawati, R., & Rofiq, A. (2021). Legal reasonings of religious court judges in deciding the origin of children: A study on the protection of biological children's civil rights. *Ijtihad: Journal of Islamic Law and Humanitarian Discourse*, 21(1), 1-20. doi: 10.18326/ijtihad.v21i1.1-20.
- [43] Saputra, Y.K., Dylan, M., & Carmelo, D. (2023). Fostering Islamic morality through tahfidz learning: Islamic law. *International Journal of Educational Narratives*, 1(2), 60-73. doi: 10.55849/ijen.v1i2.305.

- [44] Saputri, A.N., Lessy, Z., Siskowati, E., & Illahi, R. (2022). *The urgency of Islamic moral education during early childhood in the perspective of Hadith*. *Holistic al-Hadis*, 8(1), 1-14.
- [45] Sharia: Islamic Law. (2025). Retrieved from <https://www.britannica.com/topic/sharia>.
- [46] Sopyan, Y., Muttaqin, Z.Z., Solihat, C., & Aripin, J. (2023). Child exploitation by parents in early marriage: Case study in Cianjur West Java, Indonesia. *Samarah: Journal of Family Law and Islamic Law*, 7(3), 1921-1942. doi: 10.22373/sjhk.v7i3.14804.
- [47] Sormunen, M. (Ed.). (2016). *The best interests of the child – a dialogue between theory and practice*. Strasbourg: Council of Europe Publishing.
- [48] Syzdykov, A., Iskakova, Z., Karazhan, B., Seidesh, B., & Mukanov, D. (2025). The role of national human rights institutions in the protection of human rights. *Journal of Human Rights and Social Work*. doi: 10.1007/s41134-025-00403-w.
- [49] TTE Gulf Management Consultancy. (2025). *Remarkable victory: Egypt labor law reform boosts rights*. Retrieved from <https://ttegulf.com/egypt-labor-law-reform/>.
- [50] United Nations Convention on the Rights of the Child (UN CRC). (1989, November). Retrieved from <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>.
- [51] United Nations International Children's Emergency Fund (UNICEF). (2025). *Child rights in Islam*. Retrieved from <https://iliflc.com/wp-content/uploads/2025/03/Child-Rights-in-Islam-training-manual-AFG.pdf>.
- [52] United Nations International Children's Emergency Fund (UNICEF). (2019). *Multiple Indicator Cluster Survey (MICS) on the situation of children and women in Kyrgyzstan*. Retrieved from <https://www.unicef.org/kyrgyzstan/reports/multiple-indicator-cluster-survey-mics-situation-children-and-women-kyrgyzstan>.
- [53] United Nations Population Fund (UNFPA). (2024). *Child marriage in Kyrgyzstan (overview)*. Retrieved from https://eeca.unfpa.org/sites/default/files/pub-pdf/unfpa_kyrgyzstan_overview.pdf.
- [54] Yusefri, Y., Faizin, M.A., & Jafar, W.A. (2024). Protecting child labor rights: Maqasid Sharia framework and policy recommendations. *Samarah: J Journal of Family Law and Islamic Law*, 8(2), 1188-1215. doi: 10.22373/sjhk.v8i2.24559.
- [55] Yusof, W.B. (2022). Search procedure and children in conflict with the law according to Islamic law. *International Journal of Academic Research in Business and Social Sciences*, 12(11), 2760-2768. doi: 10.6007/IJARBS/V12-I11/15130.

Права дітей в ісламському шариаті та міжнародних документах: аналітичний підхід до етичних та законодавчих цінностей

Муса Муса Ель-Саїд Джабара

Докторант

Киргизький Державний Університет смені І. Арабаєва
720026, вул. Раззакова, 51А, м. Бішкек, Киргизька Республіка
<https://orcid.org/0009-0006-7246-0438>

Ансаф Хуссейн Абдулхаді Ель-Мунгі Лейла

Докторант, викладач

Киргизький Державний Університет смені І. Арабаєва
720026, вул. Раззакова, 51А, м. Бішкек, Киргизька Республіка
<https://orcid.org/0009-0009-6226-0936>

Айзада Таштанова

Доктор філософії, доцент

Киргизький Державний Університет смені І. Арабаєва 720026,
вул. Раззакова, 51А, м. Бішкек, Киргизька Республіка
<https://orcid.org/0009-0004-9785-8114>

Абдельгавад Ахмед Абдельмавлa Мусса

Доктор філософії

Кара-Балтійський інститут Корану
724400, вул. 8-го Березня, м. Кара-Балта, Киргизька Республіка
<https://orcid.org/0009-0007-5953-7389>

Анотація

У дослідженні було запропоновано порівняльний аналіз етичних та законодавчих рамок, що регулюють права дітей в ісламському шариаті та міжнародному праві, використовуючи випадки трьох країн з різними правовими моделями: Киргизстану, Єгипту та Малайзії. Метою дослідження було окреслення системного розриву між нормативними деклараціями та практичним впровадженням захисту дітей у суспільствах з мусульманською більшістю. У дослідженні використовувалася якісна методологія, включаючи порівняльний аналіз міжнародних конвенцій, національного законодавства, доктринальних джерел ісламського права та звітів міжнародних організацій. Результати дослідження показали, що ісламська доктрина, зокрема крізь призму вищих цілей шариату (Макасид аш-Шаріат), пропонує міцну концептуальну основу для захисту прав дітей. Водночас аналіз тематичних досліджень показав, що ключовими перешкодами для їх реалізації є правовий плюралізм (Киргизстан); юрисдикційні конфлікти в подвійних правових системах (Малайзія); та труднощі із забезпеченням дотримання навіть у кодифікованих системах (Єгипет), особливо у боротьбі з дитячими шлюбами. У всіх випадках найбільш вразливою стороною є дівчинка, чії права на освіту, охорону здоров'я та вільний вибір часто нехтуються. Було встановлено, що

ефективний захист дітей вимагає не простого відтворення міжнародних стандартів, а розробки комплексних стратегій, які гармонізують світське законодавство з правильними тлумаченнями шаріату, залучають релігійних лідерів до просування гуманістичних тлумачень та спрямовані на трансформацію глибоко вкорінених соціальних установок. Результати дослідження можуть бути використані законодавчими органами для гармонізації національного законодавства з міжнародними стандартами, а також правоохоронними та судовими органами

Ключові слова: Макасід аш-Шаріат; гармонізація правових актів; дуалістична система; нафака; тарбія



UDC 34:343;343.1

DOI: 10.31548/law/4.2025.135

Problems of intellectual property rights protection in the digital environment

Liubomyr Zynych*

PhD in Law, Associate Professor
Vasyl Stefanyk Carpathian National University
76018, 57 Shevchenko Str., Ivano-Frankivsk, Ukraine
<https://orcid.org/0000-0002-2562-1036>

Iryna Petrovska

PhD in Law, Associate Professor
Vasyl Stefanyk Carpathian National University
76018, 57 Shevchenko Str., Ivano-Frankivsk, Ukraine
<https://orcid.org/0000-0002-8025-9340>

Oksana Burlak

PhD in Law, Associate Professor
Vasyl Stefanyk Carpathian National University
76018, 57 Shevchenko Str., Ivano-Frankivsk, Ukraine
<https://orcid.org/0000-0001-6530-496X>

Nataliia Polishko

PhD in Law, Associate Professor
National Academy of Internal Affairs of Ukraine
03035, 1 Solomianska Sq., Kyiv, Ukraine
<https://orcid.org/0000-0002-3898-3896>

Viktoriiia Mazur

PhD in Law, Associate Professor
Taras Shevchenko National University of Kyiv
01033, 60 Volodymyrska Str., Kyiv, Ukraine
<https://orcid.org/0000-0002-8988-1283>

Suggested Citation:

Zynych, L., Petrovska, I., Burlak, O., Polishko, N., & Mazur, V. (2025). Problems of intellectual property rights protection in the digital environment. *Law. Human. Environment*, 16(4), 135-157. doi: 10.31548/law/4.2025.135.



*Corresponding author

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

Article's History:

Received: 24.05.2025
Revised: 26.10.2025
Accepted: 27.11.2025

Abstract

The purpose of the study was to conduct a comprehensive analysis of the problems of legal protection of intellectual property in Ukraine's digital environment and to propose ways to improve the national legal system. The research was based on comparative and systemic analysis methods, within which national legislation, case law, statistical data, and international experience were examined. The study revealed a significant gap between Ukraine's progressive legislative framework – harmonised with European standards – and the extremely low efficiency of its practical implementation. It was established that pirated content dominates the Ukrainian digital market, exceeding the legal segment many times over, while the level of legal response remains minimal, as evidenced by the small number of court verdicts in copyright infringement cases. The main institutional obstacle was identified as the absence of a specialised High Court for Intellectual Property, which leads to inconsistent case law, procedural delays, and a low level of trust in the justice system. The analysis of judicial practice showed that, although courts apply the principles of the presumption of authorship and proportionality when determining compensation, the process remains lengthy and complex. Ukraine continues to lag significantly behind leading international practices in areas such as online platform liability, pre-trial dispute resolution, and the fight against cross-border infringements. The results of the study can be applied in legislative activities aimed at further improving national legislation in the field of intellectual property. The formulated recommendations may also serve as a basis for the effective implementation of the Strategy for the Digital Development of Innovative Activity of Ukraine and the modernisation of law enforcement practice

Keywords: artificial intelligence; digital environment; national strategy; judicial protection; social networks

Introduction

The active digitalisation of society in the 21st century has radically transformed the field of intellectual property (IP), creating new forms of offences and raising questions about the effectiveness of traditional mechanisms for its legal protection. The ease of copying, distributing, and modifying digital content requires legal systems to develop new approaches to law enforcement and to review existing regulatory frameworks. This issue is particularly relevant for Ukraine, which is in the process of integrating into the European legal space and aims to build a digital economy, the core of which is the institution of intellectual property. The research problem lies in the significant gap

between Ukraine's formally progressive IP legislation – harmonised with EU norms – and the extremely low efficiency of its practical application. This gap is manifested in the institutional incompleteness of judicial reform, particularly in the absence of a specialised IP court, the dominance of digital piracy, the ineffectiveness of sanctions, and the fragmented regulation of online intermediaries. As a result, Ukraine exhibits a low culture of IP consumption and a lack of an effective rights management system, which creates significant legal risks and hinders economic development.

The scientific discourse on IP protection in the digital environment is extremely broad and

multifaceted. A.S. Zolotar (2023) conducted a comprehensive study analysing the doctrinal foundations, in which she draws an important distinction between protection as a static legal regime and protection as a dynamic activity aimed at restoring violated rights. This distinction is key to understanding the Ukrainian problem: formal protection of rights exists at the legislative level, yet mechanisms for active protection remain ineffective. She also examines modern concepts such as *lex informatica* and *code is law*, arguing that, in the absence of effective state law enforcement, the *de facto* regulator in Ukraine's digital space is the "code" of pirated platforms rather than formal law.

Similar issues were addressed by Ya.A. Malykhina (2023), who identified key challenges for Ukraine's IP system, particularly the low culture of creation and consumption of intangible goods. She linked this problem not only to economic factors but also to the absence of supporting instruments grounded in the principles of social justice, allowing piracy to be viewed not only as an offence but also as a complex socio-cultural phenomenon. In the international context, R. Ajabe-Alhat *et al.* (2024) examined the legal aspects of copyright in the era of digital platforms and emphasised the urgent need for a strong and balanced legal framework that simultaneously protects property and promotes creativity. The problem of balancing interests was also analysed by O.J. Aroba and M. Ramchander (2024), who, using the example of South Africa, explored the tension between protecting creators' rights and ensuring access to knowledge – an issue that is particularly relevant in the context of the digital divide.

The need for a global approach was emphasised by D.A. Niemichev and S.A. Petrenko (2025), who analysed key international documents such as the TRIPS Agreement and the WIPO treaties. Their work presents a detailed comparative analysis of approaches to copyright protection in leading countries, particularly Switzerland and

Poland, and highlights the role of international institutions such as WIPO, WTO, and UNESCO in shaping a global coordination system. The problem of digital piracy as a global phenomenon was examined in detail by G. Androshchuk (2023), who characterised it as one of the largest criminal activities in the world, in which organised networks exploit weaknesses in law enforcement systems. He also identified the economic reasons behind the spread of this phenomenon: high profitability for offenders and low fines that fail to produce a deterrent effect. I. Bedratyi *et al.* (2025) addressed the need for systemic legislative reform, substantiating the necessity of recodifying Ukraine's civil and information legislation to adequately respond to the challenges of the digital age. Finally, W. Zhang and Y. Zhang (2023), in their empirical study, demonstrated a significant positive correlation between the level of intellectual property protection and the development of the digital economy, emphasising that weak IP protection constitutes a direct obstacle to economic growth.

Despite the significant number of studies analysing general problems, international norms, and the need for legislative changes, the area of practical law enforcement in Ukraine under the new legislation remains insufficiently researched. Most works focus on the analysis of legal norms, neglecting a comprehensive examination of contemporary judicial practice, statistical indicators, and the real effectiveness of legal mechanisms. Consequently, a scientific gap exists in the systematic analysis that would combine the study of Ukraine's latest legislative framework with an in-depth assessment of its practical implementation and comparison with specific, successful international models.

The purpose of this study was to conduct a comprehensive analysis of the effectiveness of the legal and institutional mechanism for intellectual property protection in Ukraine's digital environment, with a view to identifying the gap between

the formal harmonisation of national legislation with European standards and the actual practice of its application.

Materials and Methods

The study is based on a comprehensive analysis of regulatory documents, statistical data, and international experience in the field of intellectual property protection in the digital environment. An analytical approach was employed to examine in detail the legislative acts of Ukraine regulating the field of IP in the digital space, in particular: the Civil Code of Ukraine (2003), which establishes the general principles and classification of intellectual property rights; the Law of Ukraine No. 2811-IX "On Copyright and Related Rights" (2022), which implements the provisions of Directive of the European Parliament and of the Council No. 2019/790 "On Copyright and Related Rights in the Digital Single Market" (2019) and elaborates the conceptual framework and procedures for notice and takedown; the Law of Ukraine No. 675-VIII "On Electronic Commerce (E-Commerce)" (2015), which establishes the principle of "safe harbour"; Article 176 of the Criminal Code of Ukraine (2001), which provides for liability for copyright infringement; and the Order of the Cabinet of Ministers of Ukraine No. 1351-2024-p "On Approval of the Strategy for the Digital Development of Innovative Activity of Ukraine for the Period until 2030 and Approval of the Operational Plan of Measures for its Implementation in 2025-2027" (2024).

The comparative analysis method was applied to compare Ukrainian legislation and practice with international legal mechanisms for the protection of digital rights. The regulatory and legal models of the European Union were examined, particularly those based on Regulation of the European Parliament and of the Council No. 2022/2065 "On a Single Market for Digital Services (Digital Services Act)" (2022). Article 17

of Directive of the European Parliament and of the Council No. 2019/790 (2019), which redefines the liability paradigm for digital platforms, was also analysed. The approaches of individual EU Member States were further explored, including: Germany, with the Act on the Copyright Liability of Online Content Sharing Service Providers (2021); France, with its graduated response model and the activities of ARCOM (The graduated response, 2025); Spain, through the work of Sección Segunda; Sweden, with its judicial precedent model (Gregersen, 2025); and Poland, which places emphasis on the protection of authors' personal non-property rights.

In addition, the study included an analysis of the United States model, incorporating the safe harbour and fair use doctrines (17 U.S. Code §512, 2010), as well as the Canadian notice-and-notice model (Government of Canada, 2025). To assess the effectiveness of law enforcement in Ukraine, statistical data provided by the Intellectual Property Office of Ukraine (IP Office) (The state of intellectual..., 2025), statistics on Internet piracy in Ukraine (Shargorodsky, 2024), and analytical data from MUSO TNT (2023) were utilised. The study also took into account Ukraine's international obligations, which have driven legislative modernisation, including the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (2023); the Agreement on Trade-Related Aspects of Intellectual Property Rights (1994); and the WIPO Copyright Treaty (1996). The problem of the absence of a High Court for Intellectual Property (IP Court) in Ukraine (IP Court in Ukraine..., 2025) and its impact on the practical application of legislation was analysed separately. In addition, case law on copyright protection was examined, including the courts judgements No. 754/6613/22 (2024), No. 113071618 (2023), No. 97343839 (2021). This methodological approach provided a

comprehensive and in-depth understanding of the issues under study and formed the basis for the conclusions drawn.

Results

Legal regulation in Ukraine in the field of intellectual property. Legal regulation in Ukraine in the field of intellectual property protection in the digital environment has undergone fundamental legislative changes during 2020-2025, primarily stimulated by the country's obligations within the framework of its European integration course. However, the study reveals a significant gap between the progressive legislative framework and the effectiveness of its practical application. The foundation for the protection of intellectual property rights remains the Civil Code of Ukraine (2003), which establishes general principles, defines the list of objects of intellectual property rights, and enshrines the inalienable division of rights into personal non-property rights (the right to be recognised as an author; the right to the inviolability of a work, the right to a pseudonym, etc.) and property rights, which include the exclusive right to use the work and to authorise or prohibit its use by others in any form, including reproduction, public communication, translation, or adaptation. This civil law foundation is developed by special legislation, the key element of which is the new Law of Ukraine No. 2811-IX (2022), which entered into force in 2022, replacing the

outdated act of 1993. This law implements the provisions of several European directives, in particular Directive of the European Parliament and of the Council No. 2019/790 (2019), significantly expanding and clarifying the conceptual framework to adapt it to the digital reality.

In particular, computer programs are now explicitly recognised as literary works, while databases have been granted a dual protection regime: their structure is protected by copyright, and their content is protected by a special *sui generis* right. Alongside defining the objects of protection, the law provides an exhaustive list of cases of free use of works, following the continental model of law. These include important exceptions such as temporary reproduction of a work as an integral part of a technological process (caching), reproduction for personal purposes (balanced by a system of private copying levies on devices and media), use as a quotation, and use for educational and scientific purposes. At the same time, each such use must now strictly comply with the "three-step test" established by the Berne Convention for the Protection of Literary and Artistic Works (1979); that is, the use must not conflict with the normal exploitation of the work or unreasonably prejudice the legitimate interests of the author. For further details on the main legislative acts of Ukraine in the field of intellectual property protection in the digital environment and their key provisions, see Table 1.

Table 1. Main Legislative Acts of Ukraine in the Field of Intellectual Property Protection in the Digital Environment and Their Key Provisions

Legislative Act	Year of Adoption/ Update	Key Provisions in the Field of Digital IP
Civil Code of Ukraine (2003)	2025	Establishes general principles and a list of objects of intellectual property rights, establishes the division of rights into personal non-property and property rights.
Law of Ukraine No. 2811-IX "On Copyright and Related Rights" (2022)	2022	Implements the provisions of Directive No. 2019/790 (2019) on copyright in the Digital Single Market. Expands the conceptual framework to adapt to the digital reality, protects computer programs as literary works, databases have a dual protection regime. Details the cases of free use of works in accordance with the "three-step test" of the Berne Convention for the Protection of Literary and Artistic Works (1979). Regulates the notice and takedown procedure (Article 52)

Table 1. Continued

Legislative Act	Year of Adoption/ Update	Key Provisions in the Field of Digital IP
Law of Ukraine No. 675-VIII "On Electronic Commerce (E-Commerce)" (2015)	2017	Establishes a "safe harbour" principle for information society service providers
Criminal Code of Ukraine (2001)	2025	Provides for liability for copyright infringements that have caused significant material damage

Source: compiled by the authors

One of the most significant practical tools is the procedure for terminating infringements on the Internet, which is regulated in detail by Article 52 of the Law of Ukraine No. 2811-IX (2022), and is similar to the international notice and takedown mechanism. It enables the rightholder, by submitting a properly executed application to the website owner or hosting provider, to have access to pirated content disabled within 24 hours. This mechanism also provides for a balanced counter-notification procedure for the person who posted the content, requiring the applicant either to withdraw the claim or to initiate court proceedings within 10 business days. The protection of IP rights in the digital environment is further supplemented by the provisions of related branches of law.

The Law of Ukraine No. 675-VIII (2015) establishes the principle of a "safe harbour" for information society service providers, while Article 176 of the Criminal Code of Ukraine (2001) provides for liability for copyright infringements that have caused material damage in a significant amount (calculated on the basis of the non-taxable minimum income of citizens). In practice, however, criminal proceedings are rare and generally concern large-scale cases of commercial piracy. According to the analysis conducted by the Intellectual Property Office of Ukraine (IP Office) (The state of intellectual..., 2025), in 2024, 33 criminal proceedings were registered under Article 176 of the Criminal Code of Ukraine. Following investigations carried out by detectives

of the Bureau of Economic Security (BEB), the courts issued six verdicts. These figures confirm that the number of cases reaching a final verdict remains extremely low nationwide. The key factor driving such large-scale legislative modernisation has been Ukraine's international obligations.

An analysis of case law, in particular the Judgement of the Desnyanskyi District Court of Kyiv in Case No. 754/6613/22 (2024), illustrates key problems in the enforcement of legal norms in disputes concerning the co-authorship of digital content. The subject of the dispute was the recognition of the right of co-authorship for 294 audiovisual works (video clips) created for a YouTube channel, and the cessation of their unlawful use. After the termination of cooperation, the defendant, in whose name the channel was registered, continued to monetise the joint content independently, thereby violating the rights of the plaintiff-expert. The court established the fact of joint creative activity, on the basis of which the plaintiff was recognised as a co-author. The key legal position involved the application of the provision stipulating that, in the absence of an agreement between co-authors, the disposal of an intellectual property object shall be carried out only with their joint consent. Accordingly, the sole public display and monetisation of the works were qualified as violations of the plaintiff's property and non-property rights.

As a result, the claim was partially satisfied: the right of co-authorship was recognised, further unauthorised use of the works was

prohibited, and part of the income – calculated on the basis of YouTube platform analytics requested by the court – was recovered from the defendant. This case is illustrative as it demonstrates the application by courts of general jurisdiction of the provisions of the Law of Ukraine No. 2811-IX (2022) to digital objects. At the same time, it highlights systemic shortcomings in law enforcement practice: the ineffectiveness of out-of-court settlement mechanisms (such as complaints to platform administrations), the difficulty of proving the amount of damage – which requires the use of coercive measures to obtain evidence – and the significant duration of judicial proceedings. This supports the conclusion of the study regarding the existence of a gap between the legislative framework and the effectiveness of its practical implementation, thereby underscoring the need to establish a specialised IP court.

An examination of case law also reveals the complexity of evidence in disputes concerning the use of copyrighted works in commercial portfolios. An analysis of Judgement of the Suvorovsky District Court of Odessa No. 113071618 (2023) provides insight into judicial approaches to such situations. The dispute arose between the owner of rights to a work of fine art (a logo) and a web design agency that had displayed the logo in the “Portfolio” section of its website as an example of work performed for the plaintiff’s company. The principal difficulty in the case lay in the plaintiff’s proof of ownership, as the defendant contested the authenticity of the 2003 copyright agreement, as well as in determining a fair amount of compensation. The court based its decision on the presumption of the legality of the transaction, noting that the defendant, although alleging forgery of the copyright agreement, failed to provide appropriate evidence and did not file a counterclaim for its invalidation. The fact of unauthorised use of the work on the website was not disputed by the defendant. The most significant aspect of this

case is the court’s approach to calculating compensation. The plaintiff demanded UAH 600,000, justifying this amount as triple the remuneration under a licence agreement previously concluded with a third party.

However, the court rejected such a calculation, finding it disproportionate and contrary to the principles of reasonableness and fairness. The court took into account that the infringement was not long-term, that the defendant removed the work immediately upon receiving the claim, and that the scope of use (in a portfolio) was much narrower than that provided for in the licence agreement. As a result, the court awarded compensation amounting to 30 subsistence minimums (UAH 80,520), which, in its view, ensured effective and proportionate protection of the plaintiff’s rights. This case demonstrates that courts not only establish the fact of infringement but also actively intervene in assessing the amount of compensation, applying fairness criteria. At the same time, it highlights the high cost and duration of such disputes, emphasising the need for more effective, particularly pre-trial, mechanisms for their resolution. The case law on the unauthorised use of digital content by online media, which constitutes one of the most common types of infringement, is also illustrative. In Judgement of the Darnytskyi District Court of Kyiv No. 97343839 (2021), an Internet provider (plaintiff) filed a lawsuit against a major news portal (defendant) for the unlawful use of an audiovisual work – a video recording from a surveillance camera that had gained public attention.

The defendant not only copied the video published on the plaintiff’s YouTube channel but also superimposed its own logo on it and distributed it in the news without permission or a reference to the original source. Since the defendant neither submitted a response nor participated in the hearings, the court delivered a default judgment based on the plaintiff’s evidence. The court confirmed

the plaintiff's rights under the presumption of authorship, recognising the initial publication on YouTube with the plaintiff's logo as sufficient proof. The actions of the news portal were qualified as a complex infringement, including illegal reproduction, modification of the work (through the addition of the logo), and communication to the public. Importantly, the court recognised the infringement as intentional, as the addition of the defendant's own logo indicated an intent to present the work as its own. This allowed the court to apply the maximum sanction: it ordered the defendant to pay compensation amounting to three times the remuneration (UAH 5,000) publicly stated by the plaintiff as the standard licence fee on his YouTube channel. This case demonstrates the effectiveness of the compensation recovery mechanism and the importance of the presumption of authorship in the digital environment. It also illustrates how courts interpret the rebranding of another's content as evidence of intent.

Ukraine consistently ranks among the world leaders in the consumption of pirated content. According to international rankings, in 2023 the country ranked sixth globally in terms of the number of visits to illegal online resources (MUSO TNT, 2023). The peculiarity of the situation lies in the fact that, despite a smaller population compared to leading countries such as the USA, India and Russia, per capita pirate traffic in Ukraine is among the highest in the world (3%). According to statistics from the SimilarWeb platform (Sharгородsky, 2024), the monthly traffic of the largest pirate websites in Ukraine in 2024 amounted to tens of millions of views. In particular, UAKino recorded over 122 million visits, HDRezka about 83 million, and Filmix over 40 million, while legal services demonstrated significantly lower figures: Netflix only 4.3 million and Megogo 6.2 million visits. Thus, the audience of pirated platforms exceeded that of licensed services by 15–20 times. Research data from MUSO TNT (2023), which

specialises in monitoring pirate traffic, indicate that the global number of visits to pirated sites in 2020–2023 ranged from 216 to 229 billion per year, and Ukraine consistently remained among the countries with the highest intensity of visits per user. Hence, statistical indicators demonstrate that pirated content dominates the Ukrainian digital market, and the scale of its consumption exceeds that of the legal segment many times over. This creates significant challenges for copyright holders and the state, as potential profits from legal services are lost and the national budget does not receive corresponding tax revenues.

The Association Agreement between the European Union and its Member States, of the One Part, and Ukraine, of the Other Part (2023), requires ensuring a level of intellectual property protection equivalent to that of the European Union. Participation in the Agreement on Trade-Related Aspects of Intellectual Property Rights (1994) and the WIPO Copyright Treaty (1996) also obliges Ukraine to protect not only the works themselves but also the technical means of their protection from unauthorised circumvention. However, despite a significant update of the legislative framework, the main problem that offsets many of the positive changes remains its practical application. The most critical institutional challenge is the delay in launching the High Court for Intellectual Property (IP Court). Its absence, even after a competition for judges was held, creates a legal vacuum, as cases requiring in-depth technical and legal expertise are considered by courts of general jurisdiction. This leads to contradictory judicial practices, lengthy proceedings, and, as a result, a low level of trust in the judicial system among innovative businesses and authors (IP Court in Ukraine..., 2025). Thus, the Ukrainian model of digital rights protection appears modern and harmonised with the European one on paper, but in practice its effectiveness is significantly reduced due to weak law

enforcement and the critical institutional incompleteness of judicial reform in this vital area.

International legal mechanisms for the protection of digital intellectual property rights. The analysis of international experience in the field of digital intellectual property rights protection begins with a review of the regulatory and legal model of the European Union (EU). The main ideological guideline of this model is the creation of the Digital Single Market, which aims to ensure the free movement of goods, services, capital and persons in the digital space while maintaining high standards of copyright protection (What is the digital..., 2025). The EU's legal framework is based on the principles of preventive regulation, strict liability of platforms, and the priority of rightholder's interests over the technical or economic interests of intermediaries. A key stage in the evolution of this system was the adoption of Directive of the European Parliament and of the Council No. 2019/790 (2019). Article 17 of this act, known in legal practice as the "value gap provision", is of particular significance. Its importance lies in the paradigm shift regarding the liability of digital platforms – from passive hosting providers, not directly responsible for content, to active participants in information circulation, recognised as those performing "communication to the public" (Al Azzam *et al.*, 2023).

This legal reclassification resulted in online platforms (such as YouTube, Facebook, TikTok, etc.) that provide users with the technical capability to upload content being recognised as entities responsible for copyright infringements, even when such infringements are committed by third parties. To avoid legal liability, platform operators must demonstrate that they have made all possible and "best efforts" to obtain appropriate licences from copyright holders, as well as to implement effective technological monitoring measures and upload filters to prevent the posting of unauthorised content (Sultanbayeva *et al.*, 2025).

At the same time, the legislative framework incorporated balancing mechanisms, particularly to preserve users' rights to make legitimate use of protected works – within the scope of freedom of expression, quotation, parody, or scientific criticism (Iskakova *et al.*, 2023). Thus, Article 17 embodies a complex compromise between the interests of the creative industry, digital platforms and users. Additional emphasis in this directive is placed on strengthening the rights of the press in the digital environment, as reflected in Article 15. This provision grants press publishers a new related right, enabling them to demand licence fees from news aggregators and search engines for the use of fragments of journalistic materials.

The strengthening of the legal regime for digital liability has also been reflected in the provisions of Regulation of the European Parliament and of the Council No. 2022/2065 (2022). This regulation establishes mandatory notice-and-action mechanisms – procedures for reporting illegal content and ensuring an appropriate response by the platform. In addition, it introduces transparency standards, the obligation to provide users with clear explanations when their content is removed, and mechanisms for external auditing of moderation algorithms. Considering the intra-European specifics of law enforcement, it should be emphasised that within the framework of the single regulatory system (the *acquis communautaire*), the implementation of directives is carried out through national implementing acts, which, in turn, largely depend on the characteristics of the Member States' legal systems.

Consequently, even under conditions of formal harmonisation, in practice there are significant variations in the scope of enforcement, the degree of effectiveness, and the approaches to balancing the interests of digital market participants. In the Federal Republic of Germany, a special role in the field of digital intellectual property is played by the judiciary, which traditionally assumes an

active role in interpreting the rules. The doctrine of *Störerhaftung* (What is *Störerhaftung*, 2025) – liability as a disturber of the peace – has become the foundation for holding Internet intermediaries liable even in cases of indirect involvement in an infringement, for example when they technically facilitate the distribution of illegal content. Following the implementation of Article 17 of Directive of the European Parliament and of the Council No. 2019/790 (2019), the German legislator adopted the Act on the Copyright Liability of Online Content Sharing Service Providers (2021), which formalised the obligation of platforms to implement upload filters while simultaneously introducing restrictions on excessive censorship through a system of “correct proportionality” (*richtige Verhältnismäßigkeit*), intended to prevent the blocking of legitimate content.

France, with its traditionally centralised administrative system, introduced the graduated response model in 2009 (The graduated response, 2025), initially implemented by the Haute Autorité pour la Diffusion des Œuvres et la Protection des droits sur Internet (HADOPI), and now by the unified structure of the “Autorité de régulation de la communication audiovisuelle et numérique” (ARCOM). Its activities include warning users about violations, maintaining registers of infringers, and cooperating with law enforcement agencies regarding repeat offences. A distinctive feature of the French approach is the preservation of the administrative nature of the response to most violations, without involving judicial proceedings at the initial stage. The Spanish model is characterised by a formalised administrative response mechanism, particularly through the work of the Sección Segunda, a structural unit of the Intellectual Property Commission under the Ministry of Culture. This body is authorised to decide on the blocking of web resources that systematically violate copyright, following a simplified procedure that does not require judicial involvement.

Although such a mechanism ensures rapid response, it has been criticised for potential threats to freedom of expression and for the risks of automated intervention without adequate judicial oversight. In Sweden, regulation is clearly oriented towards the judicial precedent model. In addition to the landmark *Pirate Bay* case (Gregersen, 2025), subsequent court decisions that established strict criteria for holding online intermediaries liable are also of great importance. The Supreme Court of Sweden has repeatedly emphasised in its jurisprudence that, even where an intermediary role exists, digital platform operators may be found complicit in copyright infringement if they actively participate in the technical organisation of content exchange. In Poland, where the legal system reflects a combination of the continental tradition and European integration imperatives, the adaptation of European norms was carried out in several stages. Particular efforts were made to specify the norms governing the protection of authors’ personal non-property rights, which are absolutely protected, perpetual, and non-transferable. This creates a specific structure in the relationship between the author and the publisher, especially in the digital environment. It is important to note that Polish legal doctrine tends to prioritise the protection of authors in their relations with large platforms, avoiding the over-delegation of monitoring functions to users themselves.

The US model, in turn, is based on the maximum preservation of freedom of speech and the minimisation of state interference in content moderation mechanisms (Syzykov *et al.*, 2025). The safe harbour doctrine, enshrined in 17 U.S. Code §512 (2010), allows platforms to avoid liability if they provide a functional mechanism for removing content upon a complaint by the copyright holder (notice-and-takedown). While this system maintains a balance between innovation and legal protection, it has been criticised for its

inefficiency in addressing the mass distribution of infringements, given the absence of a preventive filtering obligation. At the same time, the fair use doctrine, also enshrined in 17 U.S. Code, permits the use of copyrighted content without a licence for certain purposes, which are interpreted by courts in each specific case according to the criteria of transformability, proportionality, commercial harm, and public interest. In Canada, by contrast, a compromise notice-and-notice model has been implemented.

Under this approach, an Internet provider, upon receiving a complaint from a copyright holder, is obliged to notify the end user but is not entitled to remove content without a court decision. This system focuses not only on the protection of rights but also on promoting legal awareness among users. It is considered effective in preventing minor infringements but demonstrates limited effectiveness in combating professional pirate resources operating within closed networks or outside the jurisdiction. Consequently, comparative analysis reveals a heterogeneous spectrum of approaches to the protection of digital intellectual property rights. Although there is a general tendency towards unification and cross-border enforcement, the specific features of national legal traditions, administrative capacities, and judicial practices ensure the preservation of unique regional models that are in a constant process of adaptation to new digital challenges

As a result of the comparative analysis of digital legal regulation in the field of intellectual property, it is possible to identify key features that are both common and distinct in the approaches of Ukraine and leading international jurisdictions. The European Union legal model is characterised by a high degree of harmonisation, detail, and institutional stability. The implementation of Directive of the European Parliament and of the Council No. 2019/790 (2019) and Regulation of the European Parliament and of the Council

No. 2022/2065 (2022) introduced clear obligations for digital platforms, including the use of technological filters, responses to infringements (notice-and-action systems), transparency in moderation, and user protection mechanisms. Ukrainian legislation, particularly Law of Ukraine No. 2811-IX (2022), largely adapts these provisions but remains declarative in terms of institutional support, notably due to the absence of an IP court and insufficient secondary legislation regulating procedures. Germany demonstrates an example of a highly developed judicial doctrine, where the liability of platforms is recognised even in cases of indirect participation in rights infringements (What is Störerhaftung?, 2025).

The Act on the Copyright Liability of Online Content Sharing Service Providers (2021) introduces a balance between the protection of authors and the right to freedom of expression by regulating the limits of filter application. Ukraine borrows certain concepts but has not yet developed its own model of proportional intervention. France is distinguished by a preventive administrative model implemented through the ARCOM body, whose powers include warning users, controlling access to content, and cooperating with law enforcement agencies. Ukraine lacks an equivalent institution, and all actions concerning infringements are conducted through the judicial system, which complicates prompt response. Spain applies a similar administrative model through the Sección Segunda under the Ministry of Culture, which has the authority to block access to websites that systematically infringe rights. A comparable mechanism in Ukraine is formally established but lacks the organisational infrastructure required for implementation.

Sweden follows a judicial model with a strong emphasis on case law enforcement. The precedent case of *The Pirate Bay* (Gregersen, 2025) established a high standard of liability even for indirect intermediaries. Ukrainian courts

dealing with intellectual property disputes lack narrow specialisation and sufficient technical expertise, which reduces the quality of judgments and generates inconsistent practices. In Poland, emphasis is placed on the protection of authors' personal non-property rights, which are considered perpetual and inalienable. Polish law demonstrates a delicate balance between the interests of authors and publishers in the digital environment. In Ukraine, such balance is not always maintained, and mechanisms for protecting personal rights are often reduced to formalities. The United States implements a model focused on freedom of speech, under which platforms benefit from the "safe harbour" protection provided by 17 U.S. Code §512 (2010), provided that notice-and-takedown procedures are followed. However, this system does not impose an obligation for preventive filtering.

Furthermore, 17 U.S. Code §512 (2010) provides a judicial mechanism for legalising secondary use of content based on transformability, purpose of use, scope, and market impact. There is no equivalent doctrine in Ukraine, although its adaptation could help balance the interests of users and copyright holders. Canada applies the notice-and-notice model (Government of Canada, 2025), designed to inform infringers through the provider without an obligation to block content immediately. This approach contributes to enhancing legal awareness and prevents excessive censorship. In Ukraine, the implementation of a similar information and educational mechanism would be feasible, particularly through state digital services.

As a result, the Ukrainian model normatively gravitates towards the European one, but its effectiveness is largely undermined by insufficient institutional development, weak judicial infrastructure, the absence of a specialised pre-trial response body, and the slow formation of case law. Modernisation requires not only the renewal of

legal norms but also their practical implementation through the establishment of an IP court, the introduction of ARCOM-like supervisory instruments, the incorporation of balancing doctrines (such as fair use), and the development of digital monitoring and warning tools. Only in this way will Ukraine be able to transform formal compliance with international standards into effective law enforcement mechanisms.

Recommendations for improving the legal mechanism for protecting digital intellectual property rights in Ukraine. Based on a comparative analysis of international practice and Ukrainian legislation, a number of systemic recommendations can be formulated to improve the legal mechanism for protecting digital intellectual property rights in Ukraine. Although the regulatory framework is already largely harmonised with European law – primarily through the adoption of the Law of Ukraine No. 2811-IX (2022) – further efforts should be directed towards the effective implementation of norms, institutional modernisation, and technological support for law enforcement. A key step should be the launch of the High Court for Intellectual Property, which will ensure the high-quality and timely consideration of cases related to infringements of intellectual property rights in the digital environment. Such a court should include an expert council involving specialists in IT, digital security, and copyright, which would facilitate the formation of consistent and technically sound judicial practice.

An important element should be the improvement of the mechanism for addressing copyright infringements on the Internet (notice-and-takedown), which is already enshrined in the Law of Ukraine No. 2811-IX (2022). It is proposed to create a digital automated response platform that will ensure the rapid submission of complaints, integration with IP rights registries, communication with hosting platforms, and monitoring of procedural progress. Such a system should employ

artificial intelligence to classify infringements, identify repeat cases, and automatically generate reports. At the same time, it is necessary to develop unified instructions for Internet intermediaries clearly defining their obligations regarding the processing of complaints, timeframes for content blocking, formulation of counter-notices, and transparency in moderation. In this context, the provisions of Regulation No. 2022/2065 (2022) should serve as a basis, particularly concerning mechanisms for protecting users from excessive interference. The instructions should also include safeguards against the automatic blocking of lawful content – for instance, in cases of educational, scientific, satirical, or critical use.

In the future, an important step will be the introduction of the fair use doctrine, similar to that applied in the United States. This flexible construct allows the court, based on specific circumstances, to determine the limits of permissible secondary use of a work without a licence. The introduction of such a doctrine in Ukraine would contribute to balancing the interests of copyright holders and users, particularly in the fields of innovation, digital art, generative AI, and research initiatives. In addition, there is a need to intensify the application of criminal legislation in the field of digital piracy. Article 176 of the Criminal Code of Ukraine (2001) should be supported by special methodological recommendations for investigators and prosecutors. It is advisable to establish specialised departments within the cyber police, the Bureau of Economic Security, and prosecution bodies. Judges hearing IP-related cases should have continuous access to technological expertise, including on peer-to-peer protocols, content delivery networks (CDNs), and virtual private networks (VPNs). In parallel with legal measures, it is important to implement information and educational initiatives. Ukraine could adopt the Canadian notice-and-notice model, which involves informing users about

a potential infringement without immediately blocking the content. This approach contributes to enhancing digital literacy and legal awareness, particularly among young people and novice authors. Educational programmes on digital ethics and copyright should become mandatory in educational institutions and be integrated into national e-government services.

The key direction should be the effective implementation of the already approved Order of the Cabinet of Ministers of Ukraine No. 1351-2024-p (2024). Within its framework, priority should be given to the objectives related to the implementation of the latest European regulations and laws, the modernisation of state IP registers through the use of blockchain technologies and NFT identification, the development of digital environment monitoring, connection to international platforms (such as WIPO Alert), and support for innovative IP startups. Enhancing the level of international integration of Ukraine in the field of intellectual property is also a priority. Representatives of Ukraine should actively participate in the working groups of the World Intellectual Property Organization (WIPO), the World Trade Organization (WTO), UNESCO, and other institutions.

In particular, it is necessary to engage in the formation of new global copyright mechanisms in the digital era, such as the development of a unified international copyright database, the creation of cross-border licensing platforms, and the expansion of provisions on technical means of protection. It is equally important to ensure transparency and accountability in the activities of the bodies responsible for regulating intellectual property. This should include the regular publication of reports by the IP Office with open analytical data, the creation of a platform for analysing case law, the public accessibility of decisions with expert commentary, and the establishment of a mechanism for external auditing of strategy implementation. All these steps should be

accompanied by an update of the legislative terminology base. Collisions between the Civil Code of Ukraine (2003), the Law of Ukraine No. 2811-IX (2022), the Law of Ukraine No. 675-VIII (2015), the Criminal Code of Ukraine (2001), and relevant by-laws should be eliminated through the development of a unified glossary and correspondence map, which will enhance the predictability and effectiveness of law enforcement.

Discussion

The results of this study, which reveal a fundamental gap between Ukraine's progressive legislative framework – harmonised with European law – and the weak effectiveness of its practical implementation, find confirmation and further development in the works of other scholars. This gap is not merely technical but systemic in nature, hindering the development of creative industries and the digital economy as a whole. Further discussion will demonstrate how this central problem manifests itself in specific aspects, such as the absence of specialised judicial institutions and technological lag. Comparing the identified challenges with the international academic discourse allows us to conclude that the difficulties faced by Ukraine form part of broader global trends but possess distinct national specificity, which lies in institutional and law enforcement immaturity. The principal conclusion regarding the modernisation of Ukrainian legislation, particularly through the adoption of the new Law of Ukraine No. 2811-IX (2022), is consistent with the analysis conducted by K. Militsyna and L. Maidanyk (2023). They confirm that the new law is ambitious, largely inspired by EU legislation, and introduces such modern concepts as a clear definition of the criterion of originality, an expanded list of objects of protection, and new *sui generis* regimes for non-original databases and computer-generated works. At the same time, their concerns that outdated case law –

particularly the presumption of originality – may nullify the progressive intentions of the legislator directly echo this study's conclusion regarding the deep gap between formal norms and their practical implementation.

This process of harmonisation is unfolding in a global context, where, as noted by K. Sanjaya and P.R.L. Rajavenkatesan (2023), key international conventions themselves face new challenges in the digital age. Their conclusion concerning the urgent need to maintain a constant balance between the interests of rights holders and society underscores that Ukraine's adoption of progressive legislation represents only the first step. The true challenge lies in the practical realisation of this balance, which, as this study has demonstrated, has not yet been achieved. The key institutional problem identified in this study – the absence of a specialised High Court for Intellectual Property (IP Court) in Ukraine – is also the subject of scholarly attention. T.A. Frantsuz-Yakovets *et al.* (2024), in their research on constitutional guarantees for IP protection, emphasise the decisive role of specialised courts in ensuring such guarantees within the context of digital transformation. The conclusions of this study, that the absence of an IP Court results in contradictory practices, procedural delays, and a low level of trust, are fully consistent with their thesis regarding the need for institutional strengthening of the judiciary to ensure adequate protection of digital rights. When state institutions remain weak, rights holders are compelled to resort to self-protection mechanisms, such as the notice-and-take-down procedure (Oklander *et al.*, 2023).

However, as E. Egamberdiev (2025) noted, such self-protection of rights in the digital space itself requires clear legal boundaries and proportionality, which can only be determined by a competent and consistent court through its decisions. Thus, the absence of an IP Court not only slows down the consideration of cases but also

creates risks of abuse within the sphere of extrajudicial regulation. The large-scale spread of piracy in Ukraine, recorded in the results of this study, forms part of a global problem analysed by N.A. Okene *et al.* (2025). They observed that the rapid growth of digital platforms and streaming technologies has intensified the need for reliable and adaptive IP laws worldwide, highlighting the tension between protecting the rights of creators and ensuring public access to knowledge. Hence, the high level of piracy in Ukraine indicates not only deficiencies within the national system but also its vulnerability to global trends, exacerbated by the weakness of law enforcement agencies.

In this context, the works of H. Hudz (2025) and A.S. Grewal *et al.* (2023) emphasise that intellectual property is a key economic asset in the modern knowledge economy, and its protection constitutes a fundamental prerequisite for investment and sustainable development. Accordingly, the inefficiency of law enforcement and the dominance of the pirate market identified in this study are not merely legal issues but also significant economic challenges that directly hinder the transformation of Ukrainian “ideas into assets” and the country’s integration into the global innovation system. There is also a pressing need to address the adaptation of legal systems to new technologies (Franchuk *et al.*, 2020). The results of this study concerning Ukraine’s lag in regulating content created by artificial intelligence and the use of blockchain technologies are directly confirmed by the works of other scholars.

A. Mahala and B. Chauhan (2025), analysing global challenges related to AI, conclude that there are significant gaps in existing IP protection mechanisms and propose new framework solutions integrating blockchain and smart contracts. This confirms that the recommendations on modernising registries proposed in this study align with a global trend towards technological responses to technological challenges. A similar

view is expressed by N. Baadzy (2025), who directly indicates the absence of a clear legal mechanism for the operation of blockchain registries for IP objects in Ukraine, which hinders the implementation of innovative protection technologies capable of ensuring transparency and trust.

D. Shi’s (2023) research on the protection of “virtual IP” (digital avatars) further demonstrates that legal systems are constantly forced to catch up with technological development, and the lack of clear definitions and standards for new digital objects creates legal uncertainty – a characteristic feature of the Ukrainian context, as shown in this study. Finally, the conclusion that Ukraine needs to introduce more flexible and balanced protection mechanisms – such as the doctrine of fair use and alternative dispute resolution (ADR) – is consistent with international scholarship. Although A. Pandey’s (2025) work concerns the agricultural sector, it raises the universal issue of balancing innovation incentives with the protection of users’ rights, which is central to any modern IP system.

The absence of an effective fair use doctrine in Ukraine, as demonstrated in this study, reflects the inability to achieve the “harmonious balance” that A. Pandey advocates. Similarly, G. Bhagyamma’s (2023) analysis of the effectiveness of the international domain name dispute resolution system (UDRP) created by ICANN supports this study’s conclusion that the absence of effective ADR mechanisms in Ukraine overburdens the judicial system and reduces the accessibility and efficiency of rights protection, particularly in cross-border disputes. The ethical dimension of this balance is underscored by V. Dan *et al.* (2024), who highlight the need to uphold ethical norms to protect human dignity and individual rights in the digital environment – an aspect that must also be considered in the development of national legislation.

The results of this study are consistent with international scientific approaches to the issue of intellectual property in the digital environment

but possess several distinctive features. In the work of O. Hubanov *et al.* (2021), emphasis was placed on the need to modernise international copyright legislation, taking into account the emergence of new forms of digital piracy. This study confirms that trend while simultaneously revealing a persistent gap between legislation and law enforcement in Ukraine. At the same time, the approach of S.M.H. Bamakan *et al.* (2022), who examined the prospects of using NFTs as a form of intellectual property protection, demonstrated the potential of blockchain technologies in ensuring transparency and the commercialisation of assets. This research confirmed the feasibility of such innovations in addressing deficiencies in the protection of digital rights in Ukraine.

The work of L. Judijanto *et al.* (2023) highlighted the role of corporate architecture in cyber risk management, broadening the understanding of intellectual property within the context of cybersecurity; similarly, Ukrainian practice has confirmed the need for comprehensive digital risk management at the state level. The study by T. Margoni and M. Kretschmer (2022) problematises the European system of exceptions for text and data mining, which creates risks for the development of artificial intelligence. This resonates with the conclusions of the present study on the need for a balanced approach that simultaneously stimulates innovation and safeguards authors' rights. National studies, in particular those by O.A. Pashchenko and V.L. Khomenko (2023), V. Baranovska (2024) and O.S. Klymenko and N.P. Khrystynchenko (2025), have also confirmed that digitalisation significantly complicates the enforcement of IP law. The findings of this study concretise these theses through the example of Ukrainian judicial practice, demonstrating its instability, high cost, and protracted procedures.

Thus, the discussion has shown that the problems identified within Ukraine's IP protection system are not unique; however, their

combination – modernised legislation, institutional incompleteness, weak law enforcement, and technological lag – creates a distinct and multifaceted challenge. This challenge extends beyond the legal sphere and has a pronounced economic dimension, as it slows the development of the digital market, deters foreign investment, and diminishes the competitiveness of Ukrainian creative industries on the global stage. Without a comprehensive solution to these interrelated problems, Ukraine risks consolidating its status as a country with a high level of piracy and a low level of innovation protection.

Comparison with international scholarly findings confirms that the recommendations proposed in this study correspond to leading global trends. The proposed comprehensive measures – encompassing institutional reform, the implementation of advanced technologies, and the adaptation of flexible legal doctrines – constitute a necessary response to this systemic crisis. Their adoption is essential to align the national legal system with the requirements of the digital age and to transform it from a formal set of norms into an effective mechanism for protecting innovation.

Conclusions

The conducted study of the legal protection of intellectual property in the digital environment of Ukraine revealed a fundamental paradox: despite significant progress in harmonising national legislation with European standards, there remains a deep gap between the modern regulatory framework and the effectiveness of its practical implementation. Such dysfunction not only creates legal uncertainty for authors and businesses but also undermines the rule of law and negatively affects the investment climate within the creative industries. While Ukraine formally meets international requirements, its system of IP protection in practice remains weak and unable to adequately respond to the dynamic challenges of the digital age.

It has been established that digital piracy dominates the Ukrainian market, with the audience of illegal resources exceeding that of legal services by many times, placing Ukraine among the world leaders in the consumption of unlicensed content.

Against this backdrop, the state response remains extremely limited. Criminal prosecution for copyright infringement is rare, and the small number of registered proceedings results in even fewer convictions, illustrating the systemic weakness of law enforcement mechanisms. The main institutional obstacle to fair and efficient justice in Ukraine is the absence of a specialised High Court for Intellectual Property. This legal vacuum leads to complex cases requiring in-depth technical expertise being heard by courts of general jurisdiction. The consequence is the formation of contradictory and inconsistent case law, excessive delays in proceedings that may last for years, and, as a result, a low level of trust in the judicial system among authors, inventors, and innovative businesses.

The analysis of case law confirmed that courts of general jurisdiction are capable of applying new legislation to modern digital disputes, particularly in cases involving co-authorship of YouTube content, unauthorised use of logos in commercial portfolios, and online media piracy. Courts rely on fundamental principles such as the presumption of authorship and the necessity of mutual consent for the use of collective works. At the same time, the examination of individual cases highlights the systemic shortcomings of the entire rights protection ecosystem: the ineffectiveness of pre-trial settlement mechanisms at the level of online platforms, which frequently ignore complaints from

rightholders; the objective difficulties of proving the extent of damage, which requires mandatory evidence collection; as well as the high cost and considerable duration of judicial protection. An important finding is that courts demonstrate an active role in ensuring a balance of interests by applying the principles of proportionality and fairness when determining compensation and refusing to mechanically impose inflated amounts.

Finally, a comparison with international experience demonstrates that, despite the formal implementation of European norms, Ukraine significantly lags behind leading jurisdictions in the introduction of effective models of online intermediary liability, alternative dispute resolution mechanisms, and tools for combating cross-border infringements. This indicates an incomplete and fragmented adaptation of the best global practices. A limitation of this study is its focus primarily on legal and institutional aspects, leaving aside an in-depth analysis of the economic and socio-cultural factors underpinning piracy. Prospects for further research lie in conducting empirical assessments of the effectiveness of specific law enforcement tools, as well as in studying the impact of digital education on users' legal awareness.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of Interest

None.

References

- [1] 17 U.S. Code §512 "Limitations on Liability Relating to Material Online". (2010, December). Retrieved from <https://www.law.cornell.edu/uscode/text/17/512>.
- [2] Act on the Copyright Liability of Online Content Sharing Service Providers. (2021, June). Retrieved from https://www.bmjv.de/SharedDocs/Downloads/DE/Gesetzgebung/RefE/UrhDaG_ENG.pdf.

- [3] Agreement on Trade-Related Aspects of Intellectual Property Rights. (1994, April). Retrieved from https://zakon.rada.gov.ua/laws/show/981_018#Text.
- [4] Ajabe-Alhat, R., Priyadarshi, D., Chaudhery, U., & Ramchandran, S.D. (2024). Intellectual property rights in the digital era: Exploring the legal aspects of copyright in the context of digital content sharing and online platform. *Journal of Ecohumanism*, 3(8), 7668-7675. doi: [10.62754/joe.v3i8.5391](https://doi.org/10.62754/joe.v3i8.5391).
- [5] Al Azzam, F.A.F., Khomko, L., Mykhailyk, N., Maslak, O., & Danchak, L. (2023). Optimization of international trade for sustainable development marketing strategy: Economic and legal EU regulations. *International Journal of Sustainable Development and Planning*, 18(8), 2615-2621. doi: [10.18280/ijstdp.180834](https://doi.org/10.18280/ijstdp.180834).
- [6] Androshchuk, G. (2023). Digital piracy and counterfeiting in the conditions of digital transformation: Analysis of the situation, trends, defense mechanisms. *Theory and Practice of Intellectual Property*, 3, 97-108. doi: [10.33731/32023.282327](https://doi.org/10.33731/32023.282327).
- [7] Aroba, O.J., & Ramchander, M. (2024). Digital intellectual property and privacy right in achieving the sustainable development goals using South Africa as a case study. *MATEC Web of Conferences*, 406, article number 05007. doi: [10.1051/mateconf/202440605007](https://doi.org/10.1051/mateconf/202440605007).
- [8] Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. (2023, March). Retrieved from <https://surl.li/adzsog>.
- [9] Baadzhy, N. (2025). Blockchain technology and artificial intelligence in the management of intellectual property rights. In O. Kostenko, O. Kharytonova & Y. Kharytonov (Eds.), *Digitalization, metaverse, artificial intelligence in the context of human and individual rights protection in Ukraine and the world* (pp. 305-328). Calgary: SciFormat Publishing Books. doi: [10.69635/978-1-0690482-4-0-ch17](https://doi.org/10.69635/978-1-0690482-4-0-ch17).
- [10] Bamakan, S.M.H., Nezhadsistani, N., Bodaghi, O., & Qu, Q. (2022). Patents and intellectual property assets as non-fungible tokens; key technologies and challenges. *Scientific Reports*, 12(1), 2178. doi: [10.1038/s41598-022-05920-6](https://doi.org/10.1038/s41598-022-05920-6).
- [11] Baranovska, V. (2024). Intellectual property rights in the digital age. *Analytical and Comparative Jurisprudence*, 1, 167-171. doi: [10.24144/2788-6018.2024.01.28](https://doi.org/10.24144/2788-6018.2024.01.28).
- [12] Bedratyi, I., Shevchshyn, O., & Astakhov, V. (2025). Legal aspects of intellectual property rights violation in the digital environment: prospects of recodification. *Social Development: Economic and Legal Issues*, 4. doi: [10.70651/3083-6018/2025.4.09](https://doi.org/10.70651/3083-6018/2025.4.09).
- [13] Berne Convention for the Protection of Literary and Artistic Works. (1979, September). Retrieved from <https://www.wipo.int/wipolex/en/text/283693>.
- [14] Bhagyamma, G. (2023). *The protection of domain: Protecting intellectual property rights and resolving disputes in the digital era*. Retrieved from <https://surl.li/eyraiz>.
- [15] Civil Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/435-15#Text>.
- [16] Criminal Code of Ukraine. (2001, April). Retrieved from <https://zakon.rada.gov.ua/laws/show/en/2341-14#Text>.
- [17] Dan, V., Christopher, G., Loverth_tin, & Ogunrinde, V. (2024). *Digital ethics: Upholding individual dignity, identity, and intellectual property in online research*. Retrieved from <https://surl.li/ahirrm>.

- [18] Directive of the European Parliament and of the Council No. 2019/790 “On Copyright and Related Rights in the Digital Single Market”. (2019, April). Retrieved from <https://eur-lex.europa.eu/eli/dir/2019/790/oj/eng>.
- [19] Egamberdiev, E. (2025). Self-defense of rights in the digital space: Legal boundaries and forms of implementation. *Uzbek Journal of Law and Digital Policy*, 3(1), 74-103. doi: 10.59022/ujldp.292.
- [20] Franchuk, V., Omelchuk, O., Melnyk, S., Kelman, M., & Mykytyuk, O. (2020). Identification the ways of counteraction of the threats to the financial security of high-tech enterprises. *Business: Theory and Practice*, 21(1), 1-9. doi: 10.3846/BTP.2020.11215.
- [21] Frantsuz-Yakovets, T.A., Anisimov, K., Biryukova, A.G., Kolisnykova, H.V., & Yaroshevska, T.V. (2024). Constitutional guarantees of intellectual property protection in the context of digital transformation: Ukrainian experience. *Journal of the University of Latvia. Law*, 17, 209-222. doi: 10.22364/jull.17.13.
- [22] Government of Canada. (2025). *Notices to Canadian internet subscribers*. Retrieved from <https://surl.li/sobilb>.
- [23] Gregersen, E. (2025). *Pirate Bay*. Retrieved from <https://www.britannica.com/topic/The-Pirate-Bay>.
- [24] Grewal, A.S., Dhingra, A.K., Deswal, G., & Chopra, B. (2023). *From ideas to assets: A guide to intellectual property rights*. Yamuna Nagar: Guru Gobind Singh College of Pharmacy.
- [25] Hubanov, O., Hubanova, T., Kotliarevska, H., Vikhliaiev, M., Donenko, V., & Lepekh, Y. (2021). International legal regulation of copyright and related rights protection in the digital environment. *Studies of Applied Economics*, 39(7). doi: 10.25115/eea.v39i7.5014.
- [26] Hudz, H. (2025). Peculiarities of intellectual property insurance implementation. *Economics Finances Law*, 4, 105-107. doi: 10.37634/efp.2025.4.22.
- [27] IP Court in Ukraine: Representatives of the legal community discussed the challenges and prospects of starting the institution’s activities. (2025). Retrieved from <https://nipo.gov.ua/ip-cud-v-ukraini-vyklyky-ta-perspektvy/>.
- [28] Iskakova, Z., Karazhan, B., Seidesh, B., Karabayev, F., & Zukay, Z. (2023). Integration law-an independent legal system. *European Review*, 31(1), 45-64. doi: 10.1017/S1062798722000187.
- [29] Judgement of the Darnytskyi District Court of Kyiv in Case No. 97343839. (2021, March). Retrieved from <https://youcontrol.com.ua/catalog/court-document/97343839/>.
- [30] Judgement of the Desnyanskyi District Court of Kyiv in Case No. 754/6613/22. (2024, February). Retrieved from <https://zakononline.ua/court-decisions/show/117094625>.
- [31] Judgement of the Suvorovsky District Court of Odessa in Case No. 113071618. (2023, August). Retrieved from <https://youcontrol.com.ua/catalog/court-document/113071618/>.
- [32] Judijanto, L., Hindarto, D., Wahjono, S.I., & Djunarto, N. (2023). Edge of enterprise architecture in addressing cyber security threats and business risks. *International Journal Software Engineering and Computer Science (IJSECS)*, 3(3), 386-396. doi: 10.35870/ijsecs.v3i3.1816.
- [33] Klymenko, O.S., & Khrystynchenko, N.P. (2025). *Peculiarities of legal liability for infringement of intellectual property rights in the digital environment*. *Academic Visions*, 42.
- [34] Law of Ukraine No. 2811-IX “On Copyright and Related Rights”. (2022, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/2811-20#Text>.

- [35] Law of Ukraine No. 675-VIII "On Electronic Commerce (E-Commerce)". (2015, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/en/675-19#Text>.
- [36] Mahala, A., & Chauhan, B. (2025). AI-generated innovations: Developing intellectual property (IP) protection framework for the digital age. *International Cybersecurity Law Review*, 6(2), 155-171. doi: 10.1365/s43439-025-00144-6.
- [37] Malykhina, Ya.A. (2023). *Problems of intellectual property rights protection in the digital space*. Kharkiv: Machulin.
- [38] Margoni, T., & Kretschmer, M. (2022). A deeper look into the EU text and data mining exceptions: Harmonisation, data ownership, and the future of technology. *GRUR International*, 71(8), 685-701. doi: 10.1093/grurint/ikac054.
- [39] Militysna, K., & Maidanyk, L. (2023). *New Ukrainian law on copyright and related rights*. Retrieved from <https://ipkitten.blogspot.com/2023/01/guest-post-new-law-on-copyright-and.html>.
- [40] MUSO TNT. (2023). *Global piracy by industry report 2023*. Retrieved from <https://www.muso.com/magazine/global-piracy-by-industry-report-2023>.
- [41] Niemichev, D.A., & Petrenko, S.A. (2025). International legal protection of copyright and related rights. *Uzhhorod National University Herald. Series Law*, 1(89), 375-383. doi: 10.24144/2307-3322.2025.89.1.52.
- [42] Okene, N.A., Atejimah, N., & Timothy, B.B. (2025). *Intellectual property in the digital age*. Retrieved from https://www.researchgate.net/publication/387823662_INTELLECTUAL_PROPERTY_IN_THE_DIGITAL_AGE.
- [43] Oklander, M., Yashkina, O., Chukurna, O., Oklander, T., Pandas, A., Radkevych, L., & Sinkovska, V. (2023). Economic and mathematical modeling of innovative development of the agglomeration on the basis of information technologies. *Journal of Information Technology Management*, 15(1), 1-13. doi: 10.22059/jitm.2023.90723.
- [44] Order of the Cabinet of the Ministers of Ukraine No. 1351-2024-p "On Approval of the Strategy for the Digital Development of Innovative Activity of Ukraine for the Period until 2030 and Approval of the Operational Plan of Measures for its Implementation in 2025-2027". (2024, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1351-2024-%D1%80#Text>.
- [45] Pandey, A. (2025). Technological innovation and intellectual property in agriculture: A critical study with reference to farmers' rights. In P. Whig & A. Elngar (Eds.), *Precision and intelligence in agriculture: Advanced technologies for sustainable farming* (pp. 29-50). Hershey: IGI Global Scientific Publishing. doi: 10.4018/979-8-3373-5283-1.ch002.
- [46] Pashchenko, O.A., & Khomenko, V.L. (2023). [Digital technologies in intellectual property protection in Ukraine](#). In *Collection of scientific works based on the materials of the V International scientific and practical internet conference of the cities "Kyiv-Dnipro" "Project management. Prospects for the development of project and neuromegration, information technologies of management, technologies for the creation and use of intellectual property rights objects, technology transfer"* (pp. 601-607). Dnipro: UrService.
- [47] Pasupuleti, M.K. (2024). Cyberlaw essentials: Rights and regulations in the digital age. *International Journal of Academic and Industrial Research Innovations*, 4(5), 16-31. doi: 10.62311/nesx/97804.

- [48] Regulation of the European Parliament and of the Council No. 2022/2065 “On a Single Market for Digital Services (Digital Services Act)”. (2022, October). Retrieved from <https://eur-lex.europa.eu/eli/reg/2022/2065/oj/eng>.
- [49] Regulation of the European Parliament and of the Council No. 2024/1689 “On Laying Down Harmonised Rules on Artificial Intelligence (Artificial Intelligence Act)”. (2024, July). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1689>.
- [50] Sanjaya, K., & Rajavenkatesan, P.R.L. (2023). [Globalizing innovation: The role of international conventions in the protection of intellectual property](#). In *Intellectual property rights and information technology act*. San Francisco: Lex Memento.
- [51] Shargorodsky, I. (2024). *At the level of “digital Somalia”: Statistics of internet piracy in Ukraine*. Retrieved from <https://uablocklist.com/news/na-rivni-tsyfrovoho-somali-statystyka-internet-piratstva-v-ukraini>.
- [52] Shi, D. (2023). Intellectual property protection of virtual IP in the age of digital economy and its jurisprudence discussion. *Lecture Notes in Education Psychology and Public Media*, 24, 270-275. doi: 10.54254/2753-7048/24/20230746.
- [53] Sultanbayeva, G., Lozhnikova, O., Tolegen, B., Kulsariyeva, A., & Kalibekuly, D. (2025). Negative influence of incorrect information on Facebook user behaviour: Kazakhstan Case. *Rotura: Journal of Communication, Culture and Arts*, 5(1), 37-54. doi: 10.34623/b000-jg37.
- [54] Syzdykov, A., Iskakova, Z., Karazhan, B., Seidesh, B., & Mukanov, D. (2025). The role of national human rights institutions in the protection of human rights. *Journal of Human Rights and Social Work*. doi: 10.1007/s41134-025-00403-w.
- [55] The graduated response. (2025). Retrieved from <https://www.arcom.fr/nos-missions/promotion-et-protection-de-la-creation/la-reponse-graduee>.
- [56] The state of intellectual property rights protection in Ukraine: Analytical report for 2024 from the IPR Observatory. (2025). Retrieved from <https://nipo.gov.ua/stan-zakhystu-prav-iv-v-ukraini/>.
- [57] What is Störerhaftung? (2025). Retrieved from <https://www.lhr-law.de/glossar/stoererhaftung/>.
- [58] What is the digital single market about? (2025). Retrieved from <https://ec.europa.eu/eurostat/cache/infographs/ict/bloc-4.html>.
- [59] WIPO Copyright Treaty. (1996, December). Retrieved from <https://www.wipo.int/wipolex/en/text/295157>.
- [60] Zhang, W., & Zhang, Y. (2023). Enigma of relationship between digital economy and intellectual property rights: Reflections on innovation in digital economy represented by cloud computing. *ICST Transactions on Scalable Information Systems*, 10(6), 1-13. doi: 10.4108/eetsis.3946.
- [61] Zolotar, A.S. (2023). [Protection of intellectual property rights in the digital environment](#). Kyiv: Igor Sikorsky Kyiv Polytechnic Institute.

Проблеми захисту прав інтелектуальної власності в цифровому середовищі

Любомир Зінич

Кандидат юридичних наук, доцент
Карпатський національний університет імені Василя Стефаника
76018, вул. Шевченка, 57, м. Івано-Франківськ, Україна
<https://orcid.org/0000-0002-2562-1036>

Ірина Петровська

Кандидат юридичних наук, доцент
Карпатський національний університет імені Василя Стефаника
76018, вул. Шевченка, 57, м. Івано-Франківськ, Україна
<https://orcid.org/0000-0002-8025-9340>

Оксана Бурлак

Кандидат юридичних наук, доцент
Карпатський національний університет імені Василя Стефаника
76018, вул. Шевченка, 57, м. Івано-Франківськ, Україна
<https://orcid.org/0000-0001-6530-496X>

Наталія Полішко

Кандидат юридичних наук, доцент
Національна академія внутрішніх справ
03035, Солом'янська пл., 1, м. Київ, Україна
<https://orcid.org/0000-0002-3898-3896>

Вікторія Мазур

Кандидат юридичних наук, доцент
Київський національний університет імені Тараса Шевченка
01033, вул. Володимирська, 60, м. Київ, Україна
<https://orcid.org/0000-0002-8988-1283>

Анотація

Метою дослідження було проведення порівняльного аналізу правового захисту інтелектуальної власності в цифровому середовищі України. Дослідження базувалося на методах порівняльного та системного аналізу, в рамках яких було розглянуто національне законодавство, судову практику, статистичні дані та міжнародний досвід. Дослідження виявило значний розрив між прогресивною законодавчою базою України, гармонізованою з європейськими стандартами, та вкрай низькою ефективністю її практичного впровадження. Було встановлено, що піратський контент домінує на українському цифровому ринку, багаторазово перевищуючи легальний сегмент, тоді як рівень правової реакції залишається мінімальним, про що свідчить невелика кількість судових рішень у справах про порушення авторських прав. Основною інституційною перешкодою було визнано відсутність спеціалізованого Вищого суду з питань інтелектуальної власності, що призводить до непослідовності судової практики, процедурних затримок та низького рівня довіри до системи правосуддя. Аналіз судової практики показав, що, хоча суди

застосовують принципи презумпції авторства та пропорційності при визначенні розміру компенсації, процес залишається тривалим і складним. Україна продовжує значно відставати від провідних міжнародних практик у таких сферах, як відповідальність онлайн-платформ, досудове вирішення спорів та боротьба з транскордонними порушеннями. Результати дослідження можуть бути застосовані в законодавчій діяльності, спрямованій на подальше вдосконалення національного законодавства у сфері інтелектуальної власності. Сформульовані рекомендації також можуть слугувати основою для ефективної реалізації Стратегії цифрового розвитку інноваційної діяльності України та модернізації правоохоронної практики

Ключові слова: штучний інтелект; цифрове середовище; національна стратегія; судовий захист; соціальні мережі



UDC 346.2

DOI: 10.31548/law/4.2025.158

Ways to improve the regulatory and legal framework for the activities of scientific institutions in the agro-industrial complex in the field of sustainable development and environmental protection

Vyacheslav Lepekha*

Postgraduate Student

National University of Life and Environmental Sciences of Ukraine

03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

<https://orcid.org/0009-0001-2992-5424>

Serhiy Slyusarenko

PhD in Law, Professor

National University of Life and Environmental Sciences of Ukraine

03041, 15 Heroiv Oborony Str., Kyiv, Ukraine

<https://orcid.org/0000-0002-6718-222X>

Article's History:

Received: 10.07.2025

Revised: 25.10.2025

Accepted: 27.11.2025

Abstract

The aim of the study was to assess the regulatory and legal framework for the functioning of scientific institutions and ways to improve their effectiveness in addressing key environmental issues. The following methods were used in the study: content analysis of regulatory and legal acts governing sustainable development of economic activity in Ukraine; comparative analysis of the activities of scientific institutes in Ukraine, France, Germany and Switzerland in the field of sustainable development and environmental safety; and contextual analysis of the implementation of a

Suggested Citation:

Lepekha, V., & Slyusarenko, S. (2025). Ways to improve the regulatory and legal framework for the activities of scientific institutions in the agro-industrial complex in the field of sustainable development and environmental protection. *Law. Human. Environment*, 16(4), 158-176. doi: 10.31548/law/4.2025.158.



*Corresponding author

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

codified regulatory framework in the management of national research institutes in the agro-industrial segment. It was found that research in the field of sustainable development is a key prerequisite for the effective development of the agro-industrial segment. In Ukraine, the activities of research institutes in the agro-industrial complex are hampered by a fragmented regulatory and legal framework, the lack of a universal definition of sustainable development in the national legal field, the lack of incentives for conducting relevant research in the segment, and the limited adaptation of European and international standards in sustainable development management, in particular environmental protection. Based on the experience of individual European Union member states – France, Germany and Switzerland – the following recommendations have been developed: the development of a single legislative act to regulate the activities of scientific institutions in the agro-industrial complex, the integration of pan-European standards of sustainable development into the Ukrainian regulatory framework, introduction of mechanisms to stimulate research in the field of sustainable development and environmental protection, as well as the introduction of a unified system for monitoring and controlling research on sustainable development in the agro-industrial complex. The results of the work can be used to improve the effectiveness of research in the agro-industrial complex

Keywords: Triple Bottom Line model; rational use of resources; food security; economic benefits; systematisation; codification; resource management

Introduction

The agro-industrial sector's development in Ukraine is being hampered by numerous environmental problems: a reduction in cultivated areas and a decrease in their fertility, pollution of soils, water bodies, and air, soil erosion, and the reduction of natural biodiversity, among others. The environmental problems that have been recorded in the agrarian segment over many years have been exacerbated since the start of the full-scale military invasion. The resolution of existing problems is possible through the activities of research institutes, which study the causes, consequences, and strategies for combating environmental problems, thereby promoting the sector's sustainable development. The activity of Ukrainian scientific institutions in the agro-industrial complex is governed by a regulatory and legal framework that, as of 2025, is fragmented, inconsistent, and unadapted to the challenges of wartime. Based on this, studying the regulatory and legal framework and the ways to align it with

generally accepted European and international standards is a relevant task.

S.O. Ametepey *et al.* (2023) noted that although the concept of sustainable development is one of the most widely used in international academic discourse, its definition remains a problematic issue. The statements of A. Lelechenko (2020), who emphasised the inconsistency of definitions of the concept of sustainable development in the regulatory and legal documents of Ukraine, are consonant. M. Fischer *et al.* (2023) asserted that at the international level, the definition proposed in the "Our Common Future" memorandum (UN, 1987) has received the most recognition. According to this definition, development is sustainable if it meets the needs of the present generation without sacrificing the ability of future generations to meet their own needs. M. Ogryzek (2022) argued that planning for sustainable development involves taking into account three components: the environment, society, and the

economy. E. Nogueira *et al.* (2023) underlined that the quoted components are the basis of the Triple Bottom Line model, which is an integral part of the strategic planning of companies and institutions aimed at long-term development.

Not only individual companies but also entire segments of the economy are oriented towards sustainable development, understanding its advantages. W. Wang *et al.* (2023) indicated in their research that sustainable development is the key to economic progress. Using the method of regression analysis, the cited researchers concluded that a 1% increase in renewable energy consumption led to a 0.12% rise in Gross Domestic Product (GDP). In the opinion of Q. An *et al.* (2024), the link between sustainable development and economic growth is moderated by innovations aimed at the rational distribution and use of limited resources. Drawing on statistical data collected in 268 Chinese cities during the period 2011-2020, the cited researchers suggested that the philosophy of sustainable development is a driving force in the segment of green innovations and the digital economy, which lead to increasing GDP figures.

Academic research also proves the positive impact of the philosophy of sustainable development on solving acute societal problems, particularly inequality. According to R. Lima and M.G. Guedes (2024), the concept of sustainable development involves cultural transformations, which are the driving force behind long-awaited social changes. The authors emphasised that the implementation of the concept of sustainable development will allow, in particular, solving the issue of gender pay inequality. In a broader sense, the impact of sustainable development was considered by A.O. Tenorio and M.O. Tenorio (2024), who studied sustainable development as a way to support social equity.

In addition to the aforementioned benefits, sustainable development is a prerequisite for

solving environmental problems, including those within the agro-industrial sector. Confirmation of this opinion was found, in particular, in the work of M. Türkeş (2024), who emphasised that achieving the seventeen internationally approved goals contributes to solving key environmental problems, notably restoring arable lands and preserving natural biodiversity. The importance of the sustainable development philosophy for resolving environmental issues was also underscored in the work of M. Pathak *et al.* (2024), whose conclusions are based on an analysis of 433 scientific studies on the topic. Thus, sufficient academic material has been accumulated to confirm the importance of sustainable development as a key element of national strategic development.

The implementation of sustainable development ideas into specific economic segments, including the agro-industrial complex, remains a problematic issue. According to L. Horbata (2024), the problem lies in the imperfection of the regulatory and legal framework and the fragmentation of legal norms. As of 2024, there was no single law in Ukraine regulating key aspects of sustainable development across different segments of the economy. The cited researcher also highlighted the inconsistency of certain national provisions regarding sustainable development with European and international standards. In the opinion of H. Hreshchuk (2022), problems with regulatory and legal control affect the functioning of the agro-industrial complex, which is one of the main sources of state budget revenue.

As of 2025, there is a lack of academic research into the regulatory and legal foundations of the activities of scientific institutes in specific countries focused on the sustainable development of the agro-industrial sector, which confirms the relevance of the proposed work. Thus, the aim of the study was to conduct a comparative analysis of the regulatory and legal framework governing the activities of agricultural research

institutes in selected European Union member states and Ukraine. The objectives of the work were to analyse the factors that determine the sustainable development of the agro-industrial complex; to study the European experience in creating a regulatory and legal framework for the activities of economic entities in the context of sustainable development; and to investigate the possibilities for implementing this experience in Ukrainian realities.

Materials and Methods

The main materials of the study were the regulatory and legal acts of Ukraine governing the activities of Ukrainian research institutes in the agricultural sector. In particular, the following materials were used: Economic Code of Ukraine (2003), Law of Ukraine No. 1602-III "On State Forecasting and Development of Programs for the Economic and Social Development of Ukraine" (2000), Law of Ukraine No. 2411-VI "On the Principles of Domestic and Foreign Policy of Ukraine" (2010), Decree of the President of Ukraine No. 722/2019 "On the Sustainable Development Goals of Ukraine for the Period Until 2030" (2019) and Strategy for Introducing Sustainable Development Reporting by Enterprises (2023). The annual report of the International Trade Administration (2023, 2024), materials from the Agrohub scientific and analytical platform (2025) and statistical data from the Bundesamt für Statistik (2023) were also used as supporting materials. These materials were examined through content analysis in order to define the concept of sustainable analysis and outline its principles in the context of the development of the Ukrainian economy. Contextual analysis was conducted to study external factors that influence the activities of scientific institutions in the agro-industrial complex in the field of sustainable development and environmental protection.

The work also used the method of contextual analysis, which involved studying the current

state of development of scientific institutions in the agro-industrial complex – the National Scientific Centre "O.N. Sokolovsky Institute of Soil Science and Agrochemistry", the Institute of Agroecology and Environmental Management of the National Academy of Agrarian Sciences of Ukraine, and the Institute of Plant Protection of the National Academy of Agrarian Sciences of Ukraine. Sokolovsky Institute of Soil Science and Agrochemistry, the Institute of Agroecology and Nature Management of the National Academy of Agrarian Sciences of Ukraine, and the Institute of Plant Protection of the National Academy of Agrarian Sciences of Ukraine. The study also involved conducting a PESTEL analysis to identify political, economic, social, technological, environmental, and legal factors that influence the functioning and further development of the above-mentioned scientific institutions of the agro-industrial complex of Ukraine.

A comparative analysis was conducted to examine the regulatory and legal features of sustainable development in selected European Union (EU) countries: Germany, France and Switzerland, whose experience can be adapted to Ukrainian realities. The choice of countries was based on the following inclusion criteria: EU member status; the existence of a regulatory framework for sustainable development in various sectors of the economy; and the key role of the agro-industrial complex in the country's economic development. The exclusion criteria were the small share of the agro-industrial complex in the country's economic development and the lack of up-to-date information on the implementation of sustainable development strategies in the agro-industrial segment. The task of the comparative analysis was to identify strategies for the effective implementation of the philosophy of sustainable development in the agro-industrial segment of EU member states and to explore opportunities for implementing these strategies in the Ukrainian context.

Results

Features of sustainable development of Ukraine's agro-industrial complex. Sustainable development in various segments of the economy, including the agro-industrial sector, is one of Ukraine's priority goals. At the legislative level, the state's commitment to sustainable development is defined in a number of regulatory acts approved by the Verkhovna Rada of Ukraine since 2000. For example, Law of Ukraine No. 1602-III (2000) defines the legal, economic and organisational foundations for the formation of a system of forecast and programme documents. This document plays an important role in ensuring the sustainable economic and social development of the country, emphasising its importance in various spheres of society and forming the philosophical foundations of such development.

The Economic Code of Ukraine (2003) is a codified act that regulates the basic principles of economic management in the country. In particular, Article 6 of the Code defines the principles of economic diversity, freedom of entrepreneurial activity and free movement of capital, which generally corresponds to the key ideas of sustainable development, contributing to the creation of an economic model focused on long-term growth, taking into account environmental and social factors.

Law of Ukraine No. 2411-VI (2010) establishes a system of priorities for state policy, among which environmental and technological safety occupy an important place. This provision is directly related to the environmental dimension of the sustainable development model known as the Triple Bottom Line, where environmental aspects are given equal weight alongside economic and social aspects. Foreign policy also includes integration into European structures through the adaptation of key sustainable development standards.

Decree of the President of Ukraine No. 722/2019 "On the Sustainable Development Goals of Ukraine for the Period Until 2030" (2019)

supports the UN General Assembly resolution and takes into account national development characteristics. The decree defines 17 national sustainable development goals and proposes tools and strategies for their implementation. The document emphasises the need to involve scientific research in the process of implementing sustainable development principles, which indicates the integration of international experience into national policy.

Strategy for Introducing Sustainable Development Reporting by Enterprises (2024) is a relevant policy document that contains 101 tasks and 309 indicators for assessing the effectiveness of sustainable development in the economy. The strategy provides a comparative analysis of Ukrainian and European legislative initiatives, which ensures that national policy complies with international standards and informs the process of planning and evaluating results in various sectors of the economy.

Based on the analysis, it was concluded that there is a regulatory framework to support sustainable development in various segments of Ukraine's economy. However, a limited number of regulatory acts were identified that regulate sustainable development exclusively in the agricultural sector of the national economy. The analysis of existing acts also revealed the existence of legislative acts to bring the sustainable development of the Ukrainian economy into line with European standards. The study, however, highlighted the lack of a single definition of sustainable development that could bring the existing regulatory framework into line. The lack of a universal definition is somewhat compensated for by the articulation of seventeen key sustainable development goals for the state until 2020, outlined in Decree of the President of Ukraine No. 722/2019 (2019). However, the existence of generally accepted goals does not guarantee the absence of discrepancies in the interpretation of

sustainable development strategies in different segments of the national economy.

The sustainable development of the Ukrainian agro-industrial segment is taking place in conditions of uncertainty and under the influence of various external factors. Key external aspects of development include political, economic, social, technological, environmental and legal factors.

Ukraine's agro-industrial complex operates under conditions of large-scale armed aggression by the Russian Federation, which significantly reduces its stability and makes long-term planning impossible. Recovery and sustainable development are only possible with active international partnerships aimed at finding new export routes, rebuilding infrastructure, preserving labour potential, and providing support in the post-war period. Despite the loss of certain export routes and attacks on energy infrastructure, the agro-industrial sector is showing its ability to recover. In 2024, the use of new sea routes made it possible to increase agricultural exports by 20% compared to 2023 (Nehrey & Trofimtseva, 2022). The total volume of exported agricultural products reached \$41.7 billion, demonstrating the flexibility and resilience of the sector.

Ukraine remains one of the world's leading exporters of agricultural products, including sunflower oil (\$6.4 billion), corn (\$5.9 billion), wheat (\$5.2 billion) and rapeseed (\$1.7 billion) (Borko & Jammal, 2024; Prokopova *et al.*, 2024). A decline in exports could have negative consequences for global food security. In addition, ensuring sustainable development requires skilled personnel, which is complicated by military action and population migration from affected regions.

Modern digital technologies, including databases and monitoring systems, facilitate the effective management of information on the status and prospects of sustainable development (Chub, 2021). Their implementation in the agricultural sector allows for the optimisation of

processes, resource planning and the adaptation of strategies to new conditions.

Full-scale war has led to a significant deterioration in the environmental situation in agriculture. As of 2024, approximately 5 million hectares of agricultural land are unusable due to mining or contamination (Skydan *et al.*, 2024). Solving these problems will require considerable time and resources, which affects the prospects for sustainable development. Legal regulation of sustainable development in the agricultural sector is carried out through national documents, in particular Decree of the President of Ukraine No. 722/2019 (2019), as well as through the implementation of European and international regulatory acts (Sokolska *et al.*, 2024). This allows for the harmonisation of national goals with global practices and ensures a systematic approach to the development of the industry.

Based on the analysis, Ukraine is striving for sustainable development of the agro-industrial sector, despite the challenges of full-scale invasion and restrictions associated with the legal regime of wartime. Full-scale military aggression by the Russian Federation has led to the loss of control over certain agricultural territories and the deepening of environmental problems in territories under Ukraine's military-legal control. Despite this, Ukraine continues to implement sustainable development strategies in the agro-industrial sector by approving the national sustainable development strategy declared in Decree of the President of Ukraine No. 722/2019 (2019). Technological progress, including the use of databases for information storage and exchange, modelling of sustainable development scenarios, etc., is a prerequisite for the further development of the national agro-industrial complex.

The functioning of scientific institutions in the agro-industrial complex in the field of sustainable development and environmental protection: A comparative analysis. As of 2025,

there are several research institutes operating in Ukraine's agro-industrial complex that study issues of sustainable development and environmental protection. One of the most well-known is the O.N. Sokolovsky National Scientific Centre "Institute of Soil Science and Agrochemistry", whose history began in 1924 as a national research laboratory of soil science at the Kharkiv Agricultural Institute. The centre has several areas of research activity, including scientific support for the rational use of land resources, the development of modern agricultural technologies, and the coordination of research on soil science, agrochemistry, and soil protection (National Scientific Centre..., 2025). Compliance with European standards of sustainable development is important for the centre, whose specialists participate in international initiatives, in particular, the Global Soil Partnership with the Food and Agriculture Organisation (FAO) of the United Nations. Between 2019 and 2023, the centre's experts participated in improving the regulatory framework for sustainable development by working on documents such as Irrigation and Drainage Strategy in Ukraine for the Period Until 2030 (2019) and Concept of the National Target Programme for Land Use and Protection (2022).

Experts from the Institute of Agroecology and Nature Management also contribute to the formation of the regulatory framework for sustainable development. Founded in 1992, the institute is a leading research institution for determining the scientific basis of state policy on rational nature management (Institute of Agroecology..., 2025). The institute's research activities contribute to the creation of scientifically based standards for natural resource use, the improvement of the regulatory framework for sustainable development of the agro-industrial sector, and its alignment with European requirements. Since 2006, research activities have taken various forms, including the following: preparation of monographs and

textbooks (>30), development of scientific and methodological recommendations (>100), holding of all-Ukrainian scientific conferences (25), organisation of round tables (65), obtaining Ukrainian patents and copyright certificates (32), etc.

In addition to the above-mentioned research institutes of the agro-industrial complex of Ukraine, the activities of the Institute of Plant Protection, founded in 1946 as part of the Academy of Sciences of the Ukrainian Union of Soviet Socialist Republics, are also relevant. The Institute has several departments whose scientific activities are directly related to sustainable development and environmental protection: a forecasting laboratory, a laboratory of analytical chemistry and pesticide toxicology, a laboratory of pesticide application technology, and a laboratory of plant ecological genetics and biotechnology. The Institute's research activities include organising national and international conferences and seminars and preparing publications for scientific journals. The Institute's specialists also oversee the work of the scientific school of entomology, which focuses on the rational use of natural resources and the preservation of natural diversity.

Until 1991, the activities of the above-mentioned research institutes took place in the context of the Soviet approach to natural resource use, which differed from European standards of sustainable development. The idea of corporate social responsibility, which, in particular, provides for rational nature management and environmental protection, emerged in the 1960s and became widespread in the European Union. This means that individual member states of the union, in particular Germany, France and Switzerland, have accumulated sufficient experience in the field of sustainable development, including through the regulatory and legal regulation of research in the agricultural sector. This experience can be adapted to the realities of the Ukrainian agricultural sector, whose commitment to

sustainable development has been declared since the 2000s.

France was used as one of the countries focused on sustainable development, whose agro-industrial sector is one of the key sources of national GDP, as well as one of the largest employers. According to a report by the International Trade Administration (2024), France's agro-industrial sector, which comprises 17,372 enterprises, generates annual revenue of \$207.97 billion and is the main place of employment for 459,803 workers. The scale of the agro-industrial complex and production volumes underscore the importance of its sustainable development. France has several scientific institutions whose activities contribute to ensuring sustainable development and environmental protection in the country's agro-industrial segment.

In France, leading agricultural institutions play an important role in ensuring sustainable development and environmental protection. The National Institute for Agricultural Research (INRAE) specialises in scientific research in the field of agroecology and the rational use of natural resources (Institute for European Environmental Policy, 2024). AgroParisTech trains specialists in agricultural sciences and actively implements innovations for sustainable agriculture. The main training and research department of the French Ministry of Agriculture is responsible for integrating environmental components into education and the development of agricultural innovations (Wezel & David, 2020).

Thus, there are several research institutes in France whose activities are aimed at supporting sustainable development and solving environmental problems in the agro-industrial sector. Further research indicates that these institutions are actively involved in international projects to exchange practical experience and promote the philosophy of sustainable development. An example of such an exchange is the decentralised

cooperation project between the Vinnytsia region (Ukraine) and the Burgundy-Franche-Comté region (France), aimed at creating an innovative scientific and practical platform called "Agrohub" based at the Vinnytsia National Agrarian University (Haisyn District State Administration, 2021). This platform brings together the scientific potential of the university, agricultural enterprises and local authorities to conduct scientific research aimed at ensuring the sustainable development of the agricultural sector and reducing the negative impact on the region's environment.

Sustainable development is also a priority for Germany, which has a large and well-developed agro-industrial sector. According to the International Trade Administration (2023), Germany is one of the world's largest exporters of consumer-oriented agricultural products, after China and the United States. According to the Federal Ministry of Food and Agriculture (2025), Germany's agro-industrial complex consists of 270,000 enterprises employing over 1 million people and producing goods worth a total of €50 billion.

In Germany, the Helmholtz Centre for Environmental Research, founded in 1991, conducts fundamental and applied research focusing on biodiversity conservation, land and water management, and the study of the impact of chemicals on the environment and human health (Helmholtz Centre..., 2025). The University of Sustainable Development in Eberswalde, which dates back to 1830, specialises in areas such as forestry, sustainable tourism, nature conservation, organic farming and climate change adaptation, actively collaborating with international partners (International Associations of Universities, 2025). This university is distinguished by its innovative approach to teaching and is one of the pioneers of sustainable development in the German education sector. Weihenstephan-Triesdorf University of Applied Sciences focuses on green technologies, climate change, and applied biology, implements

practical training oriented towards environmental, economic, and social sustainability, and became the country's first state higher education institution to receive the EMASplus certificate (Weihenstephan-Triesdorf University..., 2025).

Based on the cited data, conclusions were made regarding active research work aimed at sustainable development and environmental protection in Germany's agro-industrial sector. Two of the research institutes considered – the University of Sustainable Development in Eberswalde and the Weihenstephan-Triesdorf University of Applied Sciences – have more than a century of history, meaning they have accumulated significant experience in solving pressing problems in the agro-industrial segment of the economy. By actively participating in international cooperation, these institutes contribute to the promotion of sustainable development ideas and the resolution of environmental problems in the agro-industrial sector.

In addition to the above-mentioned countries, the experience of Switzerland was also analysed, which has an effectively differentiated agro-industrial sector that actively functions in conditions of sustainable development. According to the Bundesamt für Statistik (2023), the country's agro-industrial complex comprises 48,000 enterprises and 160,000 employees, which annually produce goods with a total value of 12 billion euros. Although the agro-industrial complex accounts for only 1% of the national GDP, Switzerland's experience is valuable in terms of rational nature management and sustainable development. The implementation of these tasks is possible, among other things, thanks to the functioning of the research institutes listed below.

The Research Institute of Organic Agriculture (FiBL), founded in 1973, is one of the world's leading centres for organic farming, conducting interdisciplinary research and developing innovations together with farmers and the food

industry, with offices in Switzerland, Germany, Austria and France (FiBL Switzerland, 2025). The institute also actively promotes the exchange of knowledge and experience in the field of organic production. Agroscope is a Swiss agricultural research institute under the Federal Office for Agriculture that promotes the sustainable development of agriculture and the food sector while ensuring the preservation of a healthy environment (Agroscope, 2025). Agroscope has several research centres throughout Switzerland, including in Avenches, Cadenazzo, Changins and other cities, and focuses on issues such as crop production, animal husbandry, agroecology and sustainability assessment.

Based on the above information, it can be argued that Swiss research institutes are highly effective in accumulating scientific and practical experience in supporting sustainable development in the agro-industrial sector. Research centres and institutes also actively participate in disseminating this experience through interdisciplinary international cooperation. For example, as part of a cooperation programme funded by the Swiss Confederation through the State Secretariat for Economic Affairs (SECO), support is provided for the development of the organic and dairy sectors in Ukraine (Agro Review, 2025). The programme aims to create business opportunities in both sectors, improve product quality and safety, and promote employment and income growth in rural areas. The programme is implemented by FiBL in partnership with the consulting company SAFOSO AG.

Implementation of European experience in improving the regulatory framework for the activities of scientific institutes in the agricultural sector of Ukraine. Based on the analysis, problematic issues in the regulatory framework for the functioning of scientific institutions in the agro-industrial complex were identified and recommendations for overcoming

them were developed. The key problems of development included the fragmentation and inconsistency of legislation, the lack of financial and organisational incentives, the insufficient level of integration of science and production,

and the limited adaptation of European and international standards. The essence of the identified limitations in the activities of scientific institutions in the agro-industrial complex of Ukraine is revealed in Table 1 below.

Table 1. Problems of the current regulatory framework for the activities of scientific institutions in the agro-industrial complex of Ukraine

No.	Problem	Essence
1	Fragmentation and inconsistency of legislation	The activities of scientific institutions in the agricultural sector are regulated by various regulatory and legal documents that are not coordinated with each other. The lack of coordination is manifested, in particular, in the absence of a universal definition of sustainable development in the agro-industrial segment.
2	Lack of financial and organisational incentives	As of 2024, Ukraine has a limited number of mechanisms for state stimulation of research in the field of sustainable development. The most well-known of these mechanisms is Decree of the President of Ukraine No. 722/2019 (2019), which emphasises the priority of academic research in the field of sustainable development and environmental protection.
3	Insufficient integration of science and production	Scientific developments are not always effectively applied in the agro-industrial sector due to a lack of resources, insufficiently developed interdisciplinary interaction and other factors
4	Limited adaptation of European and international standards	The first steps towards harmonising Ukrainian legislation with EU standards and international agreements were taken in 2019 and separately recorded in the Strategy for Introducing Sustainable Development Reporting by Enterprises (2030). The integration of European and international standards into the Ukrainian regulatory framework may take some time

Source: developed by the author

The table shows that the effectiveness of the current regulatory framework for scientific institutions in Ukraine's agro-industrial sector is limited by a number of external factors. Understanding these factors, as well as analysing the relevant experience of individual EU member states, allows to develop recommendations for improving the work of research entities in Ukraine's agro-industrial sector in the field of sustainable development and solving environmental problems.

The key recommendation is to codify and systematise the current legislation in order to avoid contradictions in the definition of sustainable development and its key principles in the context of Ukraine's agro-industrial complex. Key steps towards modification and generalisation could be the adoption of a single legislative act to regulate the activities of scientific institutions in the agro-industrial complex and the

harmonisation of environmental standards with EU norms. The following examples of universal standards applicable to all EU member states can serve as examples: the European Green Deal (2019) and the European Climate Law (2021). The first document is unique in that it articulates the concept of sustainable development from an environmental perspective and declares a pan-European obligation to support such development. The European Climate Law (2021) articulates generally accepted standards of sustainable development in the field of environmental protection, in particular the climate neutrality of countries by 2050, mandatory medium-term targets, accountability of economic entities and segments of the economy, and sanctions for non-compliance, as well as providing tools with which EU member states can assess their progress in achieving sustainable development goals.

The effectiveness of the unified legislative framework governing the activities of research institutes in France, Germany, Switzerland and other European countries is an argument for bringing Ukrainian legislation into line with EU standards.

Another recommendation was to provide financial incentives for research into sustainable development and environmental protection in the agro-industrial sector. Based on the above analysis, there is a discrepancy between the idea put forward in Decree of the President of Ukraine No. 722/2019 (2019) about the priority of academic research in the field of sustainable development and environmental protection and the lack of a clear mechanism for stimulating such research. A recommended mechanism for financial incentives could be the provision of tax breaks for companies that implement environmentally friendly technologies and other innovations in the field of sustainable development. The link between theory and practice can also be ensured through cooperation between research institutes and agribusiness companies to create effective environmental protection strategies. An illustration of the effectiveness of such cooperation is the work of the University for Sustainable Development in Eberswalde, whose staff implement practice-oriented training to address current sustainable development issues in the agro-industrial sector.

In addition to the proposed strategies, monitoring and control of sustainable development could also be introduced, including the creation of a unified environmental monitoring system for the agro-industrial complex. Based on the results of monitoring, liability for violations of sustainable development principles, including non-compliance with environmental standards set out in Ukrainian and European legislation, could be increased. An example of compliance with standards is the gradual reduction of carbon dioxide emissions under the European Effort Sharing Regulation (European Environment Agency, 2025).

Compliance with European regulations is advisable, as Ukraine has not yet developed nationwide requirements for permissible carbon dioxide emissions in the agricultural sector. The effectiveness of such a strategy can be confirmed in the context of the European Climate Law (2021), which proposes to increase the responsibility of EU member states for violations of environmental standards.

The proposed recommendations represent a comprehensive three-level plan for achieving sustainable development of Ukraine's agri-industrial complex, focused on European integration. They begin with fundamental reform – the codification of legislation and its harmonisation with EU standards, which will ensure a single legal field. The second level involves financial incentives for scientific research and innovation (tax breaks), which transforms academic priorities into real economic action and strengthens the link between science and practice. The third level is to strengthen control and accountability by creating a unified environmental monitoring system, which is a necessary mechanism for ensuring compliance with standards and gradually reducing emissions in line with European regulations. These steps are consistent, strategic and necessary for the modernisation of Ukraine's agro-industrial complex.

Discussion

One of the key ideas proposed in this work was that sustainable development is a complex phenomenon consisting of several components. Although addressing environmental issues is a priority in the agro-industrial sector, it is recommended to also consider the economic and social aspects of sustainable development. Confirmation of this idea was found in the work of Y.I. Purnama (2024), who considered the advantages of sustainable development in the context of the Triple Bottom Line model. According to the cited researcher, the key tasks of sustainable development are to address environmental, economic

and social issues. Y.I. Purnama (2024) emphasised that planning economic activities according to the principles of sustainable development creates long-term value for the company and reflects its commitment to overall development. Based on a contextual analysis of the 17 goals set by the United Nations (UN), M.A. Rosse and F.A.I. Gonzalez (2024) emphasised that planning activities in accordance with the requirements of sustainable development creates a competitive advantage for companies in an ever-changing market. The cited study confirmed the opinion presented in the current work about the need to comply with sustainable development standards, despite challenges, including the uncertainty of wartime. After analysing the realities of the food market, F.S.Y. Thaher and A.A.M. Jaaron (2022) recommended the implementation of sustainable development principles in the strategic planning of enterprises. A correspondence was noted between the cited recommendation and the Decree of the President of Ukraine No. 722/2019 "On Sustainable Development Goals" (2019) presented in this work, which is a key standard for strategic planning in the Ukrainian agricultural sector. A similar idea was noted in the work of L. Li (2024), who argued that the integration of generally accepted sustainable development standards required the following components to be taken into account: the implementation of innovation-oriented initiatives, the dissemination of green development practices, the promotion of social responsibility initiatives, rational financial management, and the cultivation of talent. Thus, the idea of the strategic importance of sustainable development presented in the work has been confirmed by previous studies.

A comparative study of the activities of research institutes in Ukraine, Germany, France and Switzerland also confirmed the importance of adhering to the principles of sustainable development in the agro-industrial complex, which is one of the key segments of the economy in

various EU countries and around the world. The idea of the priority of sustainable development in the agricultural segment has also been substantiated in previous studies, including the work of A.A. Atapattu *et al.* (2024). The cited experts concluded that the implementation of sustainable development goals, in particular the rational use of resources, the transition to renewable energy sources and the preservation of natural diversity, is the driving force behind the development of the agro-industrial sector and an effective solution to the problems of poverty, insufficient food security and inequality. A.A. Mahfudz and L. Mataali (2024) analysed empirical data collected in the city of Madiun, France, and concluded that sustainable agriculture plays a critical role in addressing global challenges, promoting environmental protection and supporting socio-economic progress in line with the UN goals. J. Frątczak-Müller *et al.* (2024) concluded that the agro-industrial sector is ready to implement sustainable development ideas by seeking a balance between demand and consumption, investing in safety and improving working conditions, developing experimental science, and applying the knowledge of local farmers. Based on the cited studies, the topic of implementing sustainable development principles to solve economic, social and other problems in the agro-industrial segment is relevant.

The relevance of comparing research institutes has also been confirmed by previous studies on the role of research and development in supporting the sustainable development of the agro-industrial complex. One such study is the work of S. Vyas and S. Singh (2022), which highlights the existence of a strong link between scientific activity, innovation and the management of India's agro-industrial complex. In the European context, the importance of research activities in the development of the agro-industrial segment was confirmed by N. Shvets *et al.* (2023),

who analysed 44 priority areas of development in 12 countries of Central and Eastern Europe. According to the cited experts, interdisciplinary research in the agro-industrial segment focuses mainly on the planning and dissemination of innovative bio- and digital technologies in agri-food systems. Such research contributes to the rational use of resources to support sustainable development in the European agricultural segment. The importance of research activities for the sustainable development of the agro-industrial complex was also emphasised in the work of J.G. Kindangen *et al.* (2023), who considered such activities as a prerequisite for increasing agricultural productivity. According to the cited experts, efficiency is improved by optimising the use of available resources and introducing innovative management technologies. This opinion was confirmed in this work, which emphasised the need to adopt advanced European experience for more effective management of research in the agricultural sector of Ukraine. M.G. Gicheha *et al.* (2023) emphasised that scientific research helps to identify the most pressing issues of sustainable development in the agro-industrial complex and plan solutions to them. R. Abdullah *et al.* (2024) emphasised that scientific research in the field contributes to the creation of an interdisciplinary network for addressing pressing issues of sustainable development in the agro-industrial complex, in particular, the lack of resources and their inefficient distribution, capital outflow, etc. The semantic links between the presented work and previous studies confirm the importance of scientific research in the management of sustainable development of the agro-industrial segment as a subject of discussion.

According to the presented work, one of the tasks of research institutes is to study obstacles to sustainable development management and find ways to overcome them. The existence of obstacles to the sustainable development of the agro-industrial segment has also been document-

ed in previous studies, in particular in the work of M. Nemenyi *et al.* (2022). The cited experts put forward in their work the idea that the effectiveness of sustainable development in the agro-industrial sector is reduced due to the existing gap between theory and practice, which manifests itself in the fact that the proposed innovative strategies are not implemented or are implemented incompletely. A correspondence was noted between the results of the cited study and the recommendation proposed in this work to establish interdisciplinary cooperation between research institutes and enterprises for the management of sustainable development in the agro-industrial segment. O. Shebanina *et al.* (2024) emphasised that the achievement of certain sustainable development goals, in particular overcoming food insecurity, is hampered by a lack of effort in the field of scientific research. This conclusion partly corresponds to the idea presented in the current work about the slow development of research activities in the agro-industrial complex of Ukraine during the legal regime of wartime and related restrictions. Based on the cited studies, it can be argued that the proposed recommendations for improving the effectiveness of research activities are relevant and scientifically sound.

Despite the significance of all the obstacles listed above, the presented work emphasised that the inconsistency of the regulatory framework is a key obstacle to the activities of research institutes in the agro-industrial sector in the field of sustainable development and environmental protection. This opinion was confirmed in the work of S. Liu (2023), who argued that research in the field of sustainable development is hampered by the lack of a universal definition of such development. The cited author expressed the opinion that the lack of a generally accepted definition can be compensated for by the introduction of uniform principles, standards and objectives of sustainable development in the agro-industrial

segment. A similar idea was explored in the present work during a content analysis of the regulatory framework governing the activities of research institutes in the agro-industrial sector in the field of sustainable development and environmental protection.

Based on the analysis, it is possible to highlight the similarities between the ideas presented in this work and previous studies. Key correspondences were found in the context of the importance of the philosophy of sustainable development for the effective functioning of the agro-industrial segment, the role of research work in managing sustainable development, and the identification of factors that hinder it. The similarities found between this work and previous studies emphasise the relevance and feasibility of the proposed recommendations.

Conclusions

The study analysed the regulatory and legal framework for the activities of scientific institutions in Ukraine's agro-industrial complex in the context of ensuring sustainable development and environmental protection. It was found that Ukraine has a certain regulatory and legal framework governing sustainable development, but the number of documents regulating the activities of research institutes and sustainable development in the agricultural sector is limited. The complexity of the regulatory framework can also be a disadvantage, as the lack of a single definition of sustainable development complicates the implementation of relevant policies and mechanisms.

The study emphasised that sustainable development is a key factor for the effective functioning of the agro-industrial complex, as confirmed by the European experience of France, Germany and Switzerland. These countries have powerful research institutions, including the National Institute for Agricultural Research (France), the University of Sustainable Development in

Eberswalde (Germany) and the Research Institute of Organic Agriculture (Switzerland), which play an important role in the implementation of sustainable development strategies. Particular attention was paid to the system of financing research in the field of sustainable development, state regulation of environmental standards and mechanisms for monitoring the impact of the agro-industrial complex on the environment.

Based on the analysis, the main problems in the regulatory and legal regulation of the activities of scientific institutions in the agro-industrial complex of Ukraine were identified, namely: fragmentation of legislation, insufficient integration of science and production, lack of financial and organisational incentives for scientific research in the field of sustainable development, and limited adaptation of European and international standards. To overcome these problems, a number of recommendations have been proposed, including the development of a single legislative act to regulate the activities of scientific institutions in the field of sustainable development, the harmonisation of Ukrainian legislation with European standards, the creation of mechanisms for state stimulation of scientific research, the financing of environmentally safe innovations, and the introduction of a system for monitoring and controlling sustainable development.

It has also been proven that international cooperation and Ukraine's integration into global environmental and scientific initiatives can contribute to improving the efficiency of scientific institutions in the agro-industrial complex. The exchange of experience, the involvement of international donors and participation in joint research programmes will contribute to the adaptation of best practices in sustainable development to the Ukrainian context.

Further research could focus on analysing the effectiveness of implementing specific sustainable development strategies in individual

regions of Ukraine and developing adapted mechanisms for their implementation.

Funding

This study was not funded.

Acknowledgements

None.

Conflict of Interest

None.

References

- [1] Abdullah, R., Najim, M.M.M., & Esham, M. (2024). Agriculture for sustainable development to empower smallholder farming communities. *The Journal of Agricultural Sciences*, 19(3), 462-474. doi: [10.4038/jas.v19i3.10831](https://doi.org/10.4038/jas.v19i3.10831).
- [2] Agro Review. (2025). *Switzerland supports the development of Ukraine's organic and dairy sectors*. Retrieved from <https://agroreview.com/content/shvejariya-pidtrymuye-rozvytok-orhanichnoho-ta-molochnoho-sektoriv-ukrayiny>.
- [3] Agrohub. (2025). *Analyzing millions of numbers to help you earn millions of dollars*. Retrieved from <https://agrohub.ua/en/about/>.
- [4] Agroscope. (2025). *Agroscope: Good food, healthy environment*. Retrieved from <https://www.agroscope.admin.ch/agroscope/en/home.html>.
- [5] Ametepey, S.O., Aigbavboa, C., Ansah, S.K., & Gyadu-Asiedu, W. (2023). Meaning, evolution, principles, and future of sustainable development: A systematic review. *Preprints*. doi: [10.20944/preprints202302.0158.v1](https://doi.org/10.20944/preprints202302.0158.v1).
- [6] An, P., Wang, R., Wang, Y., & Pavel, K. (2024). The impact of the digital economy on sustainable development: Evidence from China. *Frontiers in Environmental Science*, 12. article number 1341471. doi: [10.3389/fenvs.2024.1341471](https://doi.org/10.3389/fenvs.2024.1341471).
- [7] Atapattu, A.J., Ranasinghe, C.S., Udumann, S.S., & Nuwarapaksha, T.D. (2024). Sustainable agriculture and sustainable development goals. In *Emerging technologies and marketing strategies for sustainable agriculture* (pp. 1-27). Hershey, PA: IGI Global. doi: [10.4018/979-8-3693-4864-2.ch001](https://doi.org/10.4018/979-8-3693-4864-2.ch001).
- [8] Borko, T., & Jammal, M. (2024). Role of agriculture in the development of Ukrainian socio-economic potential. *Agrarian Black Sea Region Agrarian Science*, 28(3), 78-86. doi: [10.56407/bs.agrarian/3.2024.78](https://doi.org/10.56407/bs.agrarian/3.2024.78).
- [9] Bundesamt fur Statistik. (2023). *Agriculture*. Retrieved from <https://www.aboutswitzerland.eda.admin.ch/en/economy-agriculture>.
- [10] Chub, A. (2021). Current state and development trends of the agro-industrial complex of Ukraine. *Azov Economic Bulletin*, 5, 34-43. doi: [10.32840/2522-4263/2021-5-5](https://doi.org/10.32840/2522-4263/2021-5-5).
- [11] Decree of the President of Ukraine No. 722/2019 "On the Sustainable Development Goals of Ukraine for the Period Until 2030". (2019, September). Retrieved from <https://zakon.rada.gov.ua/laws/show/722/2019#Text>.
- [12] Economic Code of Ukraine. (2003, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/436-15?lang=en#Text>.
- [13] European Climate Law. (2021, June). Retrieved from <https://surl.li/yiesjg>.
- [14] European Environment Agency. (2025). *Greenhouse gas emissions from agriculture in Europe*. Retrieved from <https://surl.li/fnrzws>.

- [15] European Green Deal. (2019, December). Retrieved from <https://surl.li/xptoum>.
- [16] Federal Ministry of Food and Agriculture. (2025). *Farming*. Retrieved from <https://surl.li/cubljv>.
- [17] FiBL Switzerland. (2025). *FiBL in Frick*. Retrieved from <https://surl.li/vridbf>.
- [18] Fischer, M., Frece, J., Hillebrand, K., & Foord, D. (2023). The concept in sustainable development. In *Sustainable business* (pp. 17-27). Cham: Springer. doi: 10.1007/978-3-031-25397-3_2.
- [19] Frątczak-Müller, J., Rychła, A., Winiwarter, W., & Amon, B. (2024). Social conditions of smallholder dairy farmers influence their environmental decisions. *Scientific Reports*, 14. article number 31020. doi: 10.1038/s41598-024-82120-4.
- [20] Gicheha, M.G., Mwashu, V., Mbindyo, P., Maina, R.A., & Mugodo, C. (2023). Role of research and innovation on sustainable development. *Journal of Agriculture, Science and Technology*, 22(1). doi: 10.4314/jagst.v22i1.1.
- [21] Haisyn District State Administration. (2021). *The establishment of the French right to manage water resources and technologies for land expansion for Vinnytsia is de facto factual*. Retrieved from <https://surl.li/wupmfo>.
- [22] Horbata, L.P. (2024). Regulatory and legal support for the sustainable development of territorial communities. *Successes and Achievements in Science*, 9(9), 468-478. doi: 10.52058/3041-1254-2024-8(8).
- [23] Hreshchuk, H.I. (2022). Normative and legal regulation of sustainable use of agricultural lands. *Herald of the Economic Sciences of Ukraine*, 1(42), 26-31. doi:10.37405/1729-7206.2022.1(42).26-31.
- [24] Institute for European Environmental Policy. (2024). *Supporting a transition to sustainable farming systems*. Retrieved from <https://ieep.eu/wp-content/uploads/2024/07/Supporting-a-transition-to-sustainable-farming-systems-IEEP-2024.pdf>.
- [25] Institute of Agroecology and Environmental Management of the National Academy of Agrarian Sciences of Ukraine. (2025). Retrieved from <https://agroeco.org.ua/>.
- [26] International Association of Universities. (2025). *Eberswalde university for sustainable development (HNEE)*. Retrieved from <https://surl.li/nsykda>.
- [27] International Trade Administration. (2023). *Germany. Agricultural sector overview*. Retrieved from <https://www.trade.gov/country-commercial-guides/germany-agricultural-sector>.
- [28] International Trade Administration. (2024). *France. Agricultural sector overview*. Retrieved from <https://www.trade.gov/country-commercial-guides/france-agricultural-sector>.
- [29] Kindangen, J.G., Kairupan, A.N., Joseph, G.H., Bawung, J.B.M., & Indrasti, R. (2023). Sustainable agricultural development through agribusiness approach and provision of location specific technology in North Sulawesi. *E3S Web of Conferences*, 444, article number 01003. doi: 10.1051/e3sconf/202344401003.
- [30] Law of Ukraine No. 1602-III "On State Forecasting and Development of Programs for the Economic and Social Development of Ukraine". (2000, March). Retrieved from <https://zakon.rada.gov.ua/laws/show/1602-14?lang=en#Text>.
- [31] Law of Ukraine No. 2411-VI "On the Principles of Domestic and Foreign Policy of Ukraine". (2010, July). Retrieved from <https://zakon.rada.gov.ua/laws/show/2411-17#Text>.
- [32] Lelechenko, A. (2020). Evolution of regulatory framework for ensuring sustainable development of Ukraine. *Investytsiyi: Praktyka ta Dosvid*, 15-16, 132-137. doi: 10.32702/2306-6814.2020.15-16.132.

- [33] Li, L. (2024). The impact of sustainable development strategies on corporate performance. *Proceedings of Business and Economic Studies*, 7(1). doi: [10.26689/pbes.v7i1.6075](https://doi.org/10.26689/pbes.v7i1.6075).
- [34] Lima, R., & Guedes, G. (2024). Sustainable development goals and gender equality: A social design approach on gender-based violence. *Sustainability*, 16(2), article number 914. doi: [10.3390/su16020914](https://doi.org/10.3390/su16020914).
- [35] Liu, S. (2023). Towards a sustainable agriculture: Achievements and challenges of sustainable development goal indicator 2.4.1. *Global Food Security*, article number 100694. 37. doi: [10.1016/j.gfs.2023.100694](https://doi.org/10.1016/j.gfs.2023.100694).
- [36] Mahfudz, A.A., & Mutaali, L. (2024). The role of agricultural sector in sustainable development: Analysis of data availability and achievement of sustainable development goals indicators for Goal 2 (Zero Hunger) – case study of Madiun Regency and Madiun City. In *4th international conference in social sciences (4th ICONISS): Governance and poverty alleviation* (pp. 322-333). Malang: KnE Open. doi: [10.18502/kss.v9i27.17116](https://doi.org/10.18502/kss.v9i27.17116).
- [37] Ministry of Finance of Ukraine. (2024). *Strategy for introducing sustainable development reporting by enterprises*. Retrieved from https://mof.gov.ua/storage/files/UKR_Presentation_Strategy%20of%20sustainability%20reporting.pdf.
- [38] National Scientific Center “O.N. Sokolovsky Institute of Soil Science and Agrochemistry”. (2025). Retrieved from <https://issar.com.ua/>.
- [39] Nehrey, M., & Trofimtseva, O. (2022). Analysis of the agricultural sector of Ukraine during the war. *Bulletin of V.N. Karazin Kharkiv National University Economic Series*, 102, 49-56. doi: [10.26565/2311-2379-2022-102-06](https://doi.org/10.26565/2311-2379-2022-102-06).
- [40] Nemenyi, M., Kovacs, A.J., Olah, J., Popp, J., Erdei, E., Harsanyi, E., Ambrus, B., Teschner, G., & Nyeki, A. (2022). Challenges of sustainable agricultural development with special regard to the Internet of Things: Survey. *Progress in Agricultural Engineering Sciences*, 18(1). 95-114. doi: [10.1556/446.2022.00053](https://doi.org/10.1556/446.2022.00053).
- [41] Nogueira, E., Gomes, S., & Lopes, J.M. (2023). Triple bottom line, sustainability. And economic development: What binds them together? A biometric approach. *Sustainability*, 15(8), article number 6706. doi: [10.3390/su15086706](https://doi.org/10.3390/su15086706).
- [42] Ogryzek, M. (2023). The sustainable development paradigm. *Geomatics and Environmental Engineering*, 17(1), 5-18. doi: [10.7494/geom.2023.17.1.5](https://doi.org/10.7494/geom.2023.17.1.5).
- [43] Order of the Cabinet of Ministers No. 70-2022-p “On approval of the Concept of the National Target Program for Land Use and Protection”. (2022, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/en/70-2022-%D1%80?lang=en#Text>.
- [44] Pathak, M., Patel, S., & Some, S. (2024). Climate change mitigation and sustainable development goals: Evidence and research gaps. *PLOS Climate*, 3(3), article number e0000366. doi: [10.1371/journal.pclm.0000366](https://doi.org/10.1371/journal.pclm.0000366).
- [45] Purnama, Y.I. (2024). Implementation of the triple bottom line concept to improve sustainable marketing performance. *Journal of Economics and Business Letters*, 4(2), 40-50. doi: [10.55942/jeb.v4i2.284](https://doi.org/10.55942/jeb.v4i2.284).
- [46] Resolution of the Cabinet of Ministers of Ukraine No. 1015-p “Strategy for Introducing Sustainable Development Reporting by Enterprises”. (2024, December). Retrieved from <https://zakon.rada.gov.ua/laws/show/1015-2024-%D1%80#Text>.

- [47] Resolution of the Cabinet of Ministers of Ukraine No. 688-p "Irrigation and Drainage Strategy in Ukraine for the Period Until 2030". (2019, August). Retrieved from <https://zakon.rada.gov.ua/laws/show/688-2019-%D1%80?lang=en#Text>.
- [48] Resolution of the Cabinet of Ministers of Ukraine No. 70-p "Concept of the National Target Programme for Land Use and Protection". (2022, January). Retrieved from <https://zakon.rada.gov.ua/laws/show/70-2022-%D1%80#Text>.
- [49] Rosse, M.A., & Gonzalez, F.A.I. (2024). The impact of sustainable practices on the financial performance of companies: A review of the literature. *Vision de Future*, 28(1), 221-240. doi: 10.36995/j.visiondefuturo.2023.28.01.006.en.
- [50] Shebanina, O., Poltorak, A., & Chorniy, D. (2024). Global food security: Challenges in achieving the sustainable development goals. *Ukrainian Black Sea Region Agrarian Science*, 28(4), 9-20. doi: 10.56407/bs.agrarian/4.2024.09.
- [51] Shvets, N., Shevtsova, H., Pidorycheva, I., Prokopenko, O., & Maslosh, O. (2023). Sustainable development of agriculture based on the smart specialization approach: Cases of the central and eastern European countries. *Agricultural and Resource Economics: International Scientific E-Journal*, 9(1), 260-282. doi: 10.51599/are.2023.09.01.12.
- [52] Skydan, O., Bugaychuk, V., Grabchuk, I., Sych, K., & Kubrak, S. (2024). Growth of value added as a factor in the development of Ukrainian agriculture in the context of accelerated integration into the EU. *Scientific Horizons*, 27(5), 143-158. doi: 10.48077/scihor5.2024.143.
- [53] Sokolska, T., Polischuk, S., & Osypenko, B. (2024). Ukraine agricultural policy adaptation to the natural environment challenges. *Public Administration Aspects*, 12(1), 29-36. doi: 10.15421/152404.
- [54] Tenorio, A.O., & Tenorio, M.O. (2024). Relationship between sustainable development, economy and poverty. *IgMin Research*, 2(7), 611-618. doi: 10.61927/igmin224.
- [55] Thaher, Y., & Jaaron, A.A.M. (2022). The impact of sustainability strategic planning and management on the organizational sustainable performance: A developing-country perspective. *Journal of Environmental Management*, 305(494), article number 1143381. doi: 10.1016/j.jenvman.2021.114381.
- [56] Türkeş, M. (2024). The role of sustainability and sustainable development in climate change mitigation and adaptation. *Sustainable Social Development*, 2(1), article number 2407. doi: 10.54517/ssd.v2i1.2407.
- [57] United Nations. (1987). *Report of the World Commission on Environment and Development "Our common future"*. Retrieved from <https://surl.li/svcvpx>.
- [58] Vyas, S., & Singh, S. (2022). Role of innovation for sustainable development in agriculture: A review. *Agricultural Reviews*. doi: 10.18805/ag.R-25360.
- [59] Wang, W., Wei, K., Kubatko, O., Piven, V., Chortok, Y., & Derykolenko, O. (2023). Economic growth and sustainable transition: Investigating classical and novel factors in developed countries. *Sustainability*, 15(16), article number 12346. doi: 10.3390/su151612346.
- [60] Weihenstephan-Triesdorf University of Applied Sciences. (2025). *Research at HSWT*. Retrieved from <https://www.hswt.de/en/research/research-profile/research-projects>.
- [61] Wezel, A., & David, C. (2020). Policies for agroecology in France: Implementation and impact in practice, research and education. *Landbauforschung. Journal of Sustainable and Organic Agricultural Systems*, 70(2), 66-76. doi: 10.3220/LBF1608660604000.

Шляхи вдосконалення нормативно-правових основ діяльності наукових установ агропромислового комплексу в галузі забезпечення сталого розвитку та охорони довкілля

Вячеслав Лепеха

Аспірант

Національний Університет біоресурсів і природокористування України

03041, вул. Героїв Оборони, 15, м. Київ, Україна

<https://orcid.org/0009-0001-2992-5424>

Сергій Слюсаренко

Кандидат юридичних наук, професор

Національний університет біоресурсів і природокористування України

03041, вул. Героїв Оборони, 15, м. Київ, Україна

<https://orcid.org/0000-0002-6718-222X>

Анотація

Метою роботи було оцінити нормативно-правові основи функціонування наукових установ та шляхи до покращення їхньої ефективності у вирішенні ключових екологічних проблем. У дослідженні були використані наступні методи: контент-аналіз нормативно-правових актів, що регламентують сталий розвиток господарської діяльності в Україні; порівняльний аналіз діяльності наукових інститутів України, Франції, Німеччини та Швейцарії в галузі сталого розвитку та екологічної безпеки; та контекстуальний аналіз впровадження кодифікованої нормативно-правової бази в управлінні національними дослідними інститутами в агропромисловому сегменті. Було виявлено, що дослідження в сфері сталого розвитку є ключовою передумовою для ефективного розвитку агропромислового сегменту. В Україні діяльності дослідних інститутів агропромислового комплексу, гальмується фрагментарною нормативно-правовою базою, відсутністю універсального визначення сталого розвитку в національному правовому полі, браком стимулів для проведення актуальних досліджень в сегменті та обмеженою адаптацією європейських та міжнародних стандартів в управлінні сталого розвитку, зокрема, охорони довкілля. Спираючись на досвід окремих країн-членів Європейського Союзу – Франції, Німеччини та Швейцарії – були розроблені наступні рекомендації: розробка єдиного законодавчого акту на регулювання діяльності наукових установ агропромислового комплексу, інтеграція загальноєвропейських стандартів сталого розвитку в українську нормативно-правову базу, впровадження механізмів стимулювання досліджень у сфері сталого розвитку та охорони довкілля, а також впровадження уніфікованої системи моніторингу та контролю за дослідженнями сталого розвитку в агропромисловому комплексі. Результати роботи можуть бути використані для підвищення ефективності дослідної роботи в агропромисловому комплексі

Ключові слова: модель потрійної нижньої межі; раціональне використання ресурсів; продуктова безпека; економічна вигоди; систематизація; кодифікація; управління ресурсами цифровізація моніторингу; європейські стандарти



UDC 347.5

DOI: 10.31548/law/4.2025.177

Employer liability for employee-caused harm: A study of vicarious responsibility

Anjeza Licenji

Lecturer

University of Tirana

1010, 183 Mother Tereza Str, Tirana, Albania

<https://orcid.org/0009-0005-0992-8926>

Alfiora Fortuzi*

Master

University of Tirana

1010, 183 Mother Tereza Str, Tirana, Albania

<https://orcid.org/0009-0008-7576-0035>

Article's History:

Received: 09.07.2025

Revised: 03.11.2025

Accepted: 27.11.2025

Abstract

The study aimed to determine the effectiveness of legal mechanisms governing the subsidiary liability of employers for damages caused by employees in the course of their employment duties. The paper examined the theoretical foundations of tort law, judicial practice, and comparative approaches across different legal systems. The methodological framework was based on a comprehensive approach that combined doctrinal analysis, a comparative examination of common law and European law provisions, and case law analysis, including a review of specific cases. This approach made it possible to identify the peculiarities of interpretation and application of the relevant norms in various jurisdictions. The findings of the research demonstrated that subsidiary liability continues to play a key role within the system of tort law, as it ensures effective compensation for victims even in cases where the

Suggested Citation:

Lepekha, V., & Slyusarenko, S. (2025). Employer liability for employee-caused harm: A study of vicarious responsibility. *Law. Human. Environment*, 16(4), 177-196. doi: 10.31548/law/4.2025.177.



*Corresponding author

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

employee lacks sufficient financial resources. At the same time, it was established that legal systems vary in their definition of the employer's scope of liability: while continental European jurisdictions tend to interpret it more broadly, common law countries are more inclined to apply restrictive criteria. The analysis of judicial practice revealed that courts increasingly favour the principles of fairness and proportionality, striving to protect victims while preventing excessive financial burdens on employers. The research also identified ambiguity in the qualification of employees' intentional torts, which necessitates clarification of statutory criteria regarding the boundaries of "the course of employment". The obtained results have practical implications: for legal practitioners, they assist in the proper legal qualification of duties and scope of liability, and for employers, they serve as guidance for implementing preventive strategies, including risk management, compliance programmes, and insurance mechanisms

Keywords: subsidiary liability; employer's liability; tort law; employee misconduct; comparative law; workplace harm

Introduction

Employers' liability for damage caused by employees represents one of the most contentious areas of civil and labour law. It directly influences the balance between the economic interests of entrepreneurs, the rights of employees, and the protection of third parties who may suffer harm as a result of an employee's actions. The central issue concerns the delineation of the scope of the employer's liability, including whether it should be confined to the direct consequences of an employee's actions or extended to cover indirect losses arising in connection with the performance of employment duties.

In the case of Albania, the complexity stems from the process of integrating the national legal tradition with European standards and international approaches. Although Article 618 of the Civil Code of the Republic of Albania (2001) formally enshrines the principle of vicarious liability, judicial practice Albanian court practice shows inconsistent interpretation of its scope, particularly regarding the required proof of an employment relationship and the degree of connection between the employee's conduct and their professional duties. This Code recognised that the employer's scope of liability should include indirect

consequences of employees' actions. This demonstrates that, despite the statutory recognition of indirect liability, the practical determination of its boundaries remains insufficiently specified, leading to divergent judicial interpretations and uncertainty in law enforcement.

The research employed an extensive range of literature encompassing both national and international sources, as well as theoretical and practical aspects of employers' liability for employees' actions. B.O. Adebayo (2021) offered a doctrinally grounded analysis of employers' vicarious liability, focusing on the legal meaning of acts committed "in the course of employment" and the extent to which such acts may be attributed to the employer. The author made the case for a restrictive approach and concluded that employers shouldn't be held vicariously accountable for the criminal activities of their workers unless there is clear evidence of a tight functional relationship between the crimes and employment duties or the acts were specifically authorised. The author helped to define the conceptual boundaries of vicarious liability in tort law by highlighting the degree of proximity between the wrongdoing and the employee's responsibilities.

I. Gredka-Ligarska (2025) examined how well the vicarious responsibility doctrine applied to modern employment situations that were influenced by technological advancements. According to the author, classic employer responsibility principles are still applicable in today's more complex workplaces, but they need to be conceptually rethought to handle indirect harm and organisational control. This study emphasised the growing conflict between new types of risk created in contemporary businesses and traditional doctrinal frameworks.

P. Giliker (2024) looked at recent court rulings in Australia and the UK, showing that judges are still working to clarify the parameters of vicarious liability. Employer liability's preventive and compensating goals are strengthened by the analysis, which revealed that courts are increasingly focussing on the relational and functional relationship between employment and wrongdoing rather than formal classifications. M. Campbell and B. Lindsay (2024) offered a doctrinal reassessment of vicarious liability, concentrating on the legal relationships that justify the attribution of responsibility to employers. The study underlined that the ability of the employer to plan, profit from, and regulate labour activities is the foundation for liability, which offers a theoretical foundation for expanding liability beyond strictly defined employment laws.

A more recent perspective on the subject was offered by L. Burnazi Mitllari (2023), who, in her presentation at an international conference, addressed corporate fraud and liability provisions in Albanian law. The author explained that vicarious and subsidiary liability serve as tools for enhancing organisational accountability, especially by associating criminal liability with the proof of corporate actors' intent, knowledge, and involvement and civil liability with compensation and financial balance restoration. Her findings emphasised that the key to preventing corporate fraud and guaranteeing the efficacy of the law is

the efficient application of European standards in corporate governance and the concerted enforcement by regulatory and law enforcement agencies. A comparative analysis of employer liability across several legal systems was provided by Y.M. Porytska (2023), who also noted general trends towards extending protection for harmed third parties. The study emphasised how inconsistently the definition of the scope of work is applied and how crucial contextual interpretation is in establishing whether or not an employee's actions can be ascribed to the employer.

Previous studies have outlined a range of relevant aspects but left certain gaps requiring further investigation. In particular, there is a lack of detailed analysis of Albanian judicial practice concerning employers' liability, insufficient attention to the economic implications for small and medium-sized enterprises, and an absence of exploration into the harmonisation of approaches in states with transitional legal systems. Moreover, there is no comprehensive assessment of practical mechanisms for implementing European standards into national legislation, making an in-depth study of these dimensions especially pertinent. This study aimed to conduct a comprehensive analysis of the institution of employers' liability for harm caused by employees, particularly through the prism of the vicarious liability principle. To achieve this aim, the research addressed the following objectives:

- ▶ to examine the provisions of the Civil Code of the Republic of Albania (2001) and other regulatory acts governing employers' liability for employees' actions;

- ▶ to analyse the practice of Albanian courts in cases involving harm caused by employees, to identify trends and challenges in the application of the law;

- ▶ to determine the limits and conditions under which an employer bears liability for employees' actions, as well as exceptions to this rule.

Materials and Methods

To achieve the aim of the study, a comprehensive approach was employed, combining an analysis of Albania's national legislation, international legal instruments, and a comparative legal analysis. The primary sources included: Albanian statutes and codes regulating tortious and labour liability; case law of the Supreme Court and courts of general jurisdiction; directives and regulations of the European Union; and doctrinal sources on tort law and vicarious liability.

This study applied a complex methodological framework integrating multiple scientific methods to ensure a thorough exploration of employer liability for employees' acts. The formal-legal method enabled the examination of legislative provisions and their interpretation, which is essential for determining the legal nature of employer liability. In particular, the research analysed Article 618 of the Civil Code of the Republic of Albania (2001) and the relevant provisions of the Labour Code of the Republic of Albania (1995). The comparative legal method was employed to juxtapose Albanian provisions with the practice and norms of other European jurisdictions, aiming to identify both common features and divergences in legal approaches. The analysis encompassed Article 1242 of the Civil Code of France (2023), Paragraph 831 of the Civil Code of the Federal Republic of Germany (2021), and Article 2049 of the Civil Code of Italy (2016).

The study reviewed and analysed a range of judicial sources from different legal systems in order to examine the application of the vicarious liability doctrine in comparative perspective. This included landmark decisions of the United Kingdom courts concerning the "close connection" test (Judgement of the United Kingdom House of Lords..., 2001; Judgement of the United Kingdom Supreme Court..., 2016), Judgment of the Supreme Court of Canada in Case "Bazley v. Curry" (1999) addressing preventive and risk-based approaches

to employer liability, and United States Supreme Court case law emphasising employers' institutional duties and compliance obligations (Judgement of the U.S. Supreme Court in Case "Faragher v. City of Boca Raton", 1998). In addition, decisions of the French Court of Cassation were examined to capture a more restrictive civil-law interpretation of employer liability limited to acts directly connected with the performance of employment duties (Court of Cassation of France, 2005). Recent rulings from the Albanian Constitutional Court, specifically Judgement No. 14 (2025) and No. 229 (2025), were also included in the analysis. These rulings emphasise the importance of evidentiary standards for establishing an employment relationship and reject the idea of automatic or solidary employer liability, thus clarifying the application of Article 618 of the Civil Code of the Republic of Albania (2001).

To identify contemporary trends within the EU, statistical data and analytical reports of the European Commission (2022; 2023) and conclusions of the European Committee of Social Rights (2022) were examined. The study also reviewed international recommendations, including the Guiding Principles on Business and Human Rights of the United Nations (2011) and materials from the Office of the United Nations High Commissioner for Human Rights (OHCHR) (2025), which reveal the human rights dimension of the vicarious liability doctrine.

A systemic analysis made it possible to trace interconnections between national and international legal norms, as well as to assess the extent to which Albanian legislation aligns with European standards and EU practice. This approach provided a basis for evaluating the degree of harmonisation of Albanian law with the European legal framework – an especially relevant aspect within the context of European integration. The historical-legal method was used to explore the evolution of the vicarious liability concept in the

European legal tradition and its reception by the Albanian legislator.

Results

The concept of vicarious liability occupies a significant position in international tort law doctrine, as it enables the effective allocation of risks between the employee who directly caused the harm and the employer who organises the work process and benefits from the employee's activity. It represents a specific form of indirect or secondary liability, whereby one person is held liable for the acts of another, irrespective of personal fault. This approach is grounded in the notion that the employer is better placed both to supervise the employee and to ensure compensation to victims through financial resources or insurance mechanisms.

Modern employment relations, shaped by digital platforms and remote work, pose new challenges to the application of vicarious liability. Under such conditions, the boundaries of employment duties become increasingly blurred, as employees may perform tasks outside traditional workplaces and at varying times, complicating the determination of when and under what circumstances an act falls within the course of employment (Porkodi *et al.*, 2022). This necessitates an adaptation of legal mechanisms, including a reassessment of the functional nexus between employees' conduct and employers' duties, and clarification of the employer's role in supervision and harm prevention in decentralised work environments.

An analysis of selected judicial decisions reveals the particularities of applying the vicarious liability doctrine across legal systems and illustrates how it evolves in response to socio-legal contexts. A comparative review of common law and civil law jurisprudence highlights substantial differences in delineating the scope of employment duties, the relationship between the employee's personal fault, and the employer's

obligation to compensate for harm. Case law across jurisdictions demonstrates varying interpretations of the limits of employer vicarious liability. In the United Kingdom, the landmark case "Lister v Hesley Hall Ltd" involved a boarding school employee who committed sexual abuse against pupils (Judgement of the United Kingdom House of Lords..., 2001). The court held the employer liable, reasoning that the acts were "closely connected" with the employee's professional functions. This case established the "close connection" test, which has since served as a reference point for analogous decisions. The doctrine's further development is traceable in "Mohamud v. WM Morrison Supermarkets Plc" (2016), where a store employee assaulted a customer during service. The Supreme Court again imposed liability on the employer, holding that the incident arose within the course of employment, thereby broadening the scope of occupational duties. In French jurisprudence, the approach remains narrower. In the case of the Court of Cassation of France No. 02-30.858 (2005), an employee caused a traffic accident after deviating from his route for personal reasons. The court refused to hold the employer liable, finding that the act did not occur within the scope of employment duties. This decision reflects a restrictive interpretation of the link between harm and occupational functions.

In the United States, the seminal case "Faragher v. City of Boca Raton" (1998) concerned sexual harassment by a supervisor. The Court found the city, acting as employer, liable for inadequate oversight. Crucially, the Court emphasised the employer's duty to adopt preventive policies and maintain effective supervision to avert misconduct. In Canada, "Bazley v. Curry" (1999) became a cornerstone in shaping the doctrine. An employee of a charitable organisation committed sexual abuse against children, and the court held the organisation liable, reasoning that its operations created a heightened risk to victims. Thus,

Canadian jurisprudence ascribes a preventive function to vicarious liability, aimed at deterring harm by holding employers accountable for risks inherent in their activities. Anglo-American legal systems increasingly embrace an expansive interpretation of employment duties, emphasising prevention and victim protection, whereas continental jurisdictions, notably France, maintain a more formalised and restrictive stance.

In Judgement of the Constitutional Court of Albania No. 14 (2025), examined the use of employer liability in a case where the plaintiff invoked general tort laws along with Article 618 of the Civil Code of the Republic of Albania (2001). The Court examined the different strategies used by the regular courts, pointing out that the High Court later overturned the appellate court's judgement to hold the employer liable for flaws in safety organisation and supervision. The rationale supports a cautious and methodical application of vicarious liability principles by highlighting the judiciary's emphasis on accurately determining whether the employee's actions were within the scope of their work duties and on correctly qualifying facts under the law.

Important clarification regarding the legal character of employer liability under Article 618 of the Civil Code of the Republic of Albania (2001) is provided by Judgement of the Constitutional Court of Albania No. 14 (2025). The Albanian Constitutional Court emphasised that Albanian law does not automatically establish solidarity in such instances, explicitly rejecting the interpretation that sees employer and employee as jointly culpable. In order to strengthen legal certainty and evidentiary standards in the application of vicarious liability, the Court further emphasised that the imposition of employer liability necessitates unambiguous proof of an employment relationship and a functional connection between the employee's conduct and their professional duties.

The interpretation of vicarious liability exhibits both similarities and differences when comparing current Albanian court practice with US and UK case law. As evidenced by the Constitutional Court's rulings, Albanian courts take a rather formal and stringent stance, rejecting automatic or solidary liability and emphasising the need to establish an employment relationship and a clear functional connection between an employee's actions and their responsibilities. The "close connection" test, on the other hand, has given UK courts a broader interpretation, permitting employer culpability even in cases where the wrongdoing deviates from regular responsibilities as long as there is a significant connection to the employer's employment. In turn, US jurisprudence emphasises the employer's institutional responsibilities, like oversight and compliance guidelines, which frames vicarious liability as a tool for risk management and organisational prevention as well as a matter of factual relationship.

The evolution of the vicarious liability concept within the European legal tradition is closely intertwined with socio-economic transformations and doctrinal developments. Initially, employer liability was limited and predicated on personal fault; over time, however, an objective approach emerged, grounded in the doctrine of risk allocation. As noted by scholars of German tort law (von Bar, 2009), the principal aim shifted from punishing the wrongdoer to equitably distributing the consequences of hazardous activities between those who organise and control them and those who may suffer harm. In the French tradition, beginning with interpretations of Article 1242 of the French Civil Code (2023), the Court of Cassation progressively moved from personal fault towards recognising an objective link between enterprise activity and resulting harm – reflecting the principles of prevention and effective victim protection (Terré *et al.*, 2019). In common law jurisdictions, particularly in British

jurisprudence, the close connection test articulated in Case “Lister v Heselley Hall Ltd” (2001) has played a pivotal role, enabling broader coverage of employees’ wrongful acts. Collectively, these approaches align with the concept of social justice, which seeks a fair balance between employers’ economic interests and victims’ rights. The extension of liability incentivises employers to implement preventive mechanisms (insurance, compliance programmes, internal controls) while ensuring effective compensation for victims. Consequently, the modern doctrine of vicarious liability embodies an integration of risk allocation and social justice, reflecting both doctrinal progress and societal demand for more robust legal protection mechanisms (Vazova *et al.*, 2025).

According to the data of the European Commission for the Efficiency of Justice (2022), in EU Member States, the number of civil cases related to employment relationships and compensation for damages increased by approximately 15-20% in 2019-2022. This indirectly indicates a growing number of instances in which the issue of employers’ liability for employees’ actions becomes a subject of judicial examination.

In the case-law of the European Court of Human Rights (ECHR), it has been repeatedly emphasised that employers have positive obligations to protect the rights of both employees and third parties. For instance, in “Öneryıldız v. Turkey”, the ECHR (2004) held that the State and, correspondingly, employers bear broader duties regarding the safety of life and health when their activities involve elevated risks. Although the case did not directly concern vicarious liability, its reasoning has been actively invoked by national courts as a basis for expanding the scope of employers’ duties.

The UN, in its Guiding Principles on Business and Human Rights (2011), clearly underscores the corporate duty to conduct due diligence regarding risks of human rights violations and to

implement remediation mechanisms for affected individuals. This strengthens arguments for imposing liability on organisations as entities capable of controlling and compensating for the consequences of their employees’ actions. A similar stance is advanced by the OHCHR (2025) in its regular reports on business and human rights, emphasising the obligation of companies not only to prevent violations but also to establish effective redress mechanisms.

The European dimension of this trend is reflected in the practice of the European Committee of Social Rights (2022), which, in its conclusions under the European Social Charter (1996), stresses the need for enhanced protection of vulnerable categories of workers and third parties, as well as the obligation of States to ensure proportionality and legal foreseeability in the field of labour relations. Similar benchmarks are contained in the Guidelines of the Council of Europe (2025), which underscore the necessity of preventing excessive risks for workers and developing mechanisms of collective responsibility.

Furthermore, the European Commission (2023) in its “Joint employment report” highlights the need to adapt legal mechanisms to new forms of employment, including remote work and the gig economy, as well as to strengthen guarantees for the protection of third parties against harm caused by employees in the course of their professional duties. This confirms a Europe-wide trend towards revisiting the traditional doctrine of vicarious liability in favour of expanding employers’ social responsibility.

The legal regulation of employers’ liability for harm caused by employees in Albania is multi-layered and based on the provisions of the Civil Code of the Republic of Albania (2001), the Labour Code of the Republic of Albania (1995), insurance legislation, and a number of special acts. The Civil Code of the Republic of Albania (2001) occupies a central position in this system, particularly

Article 618, which enshrines the general principle of vicarious liability. Pursuant to this provision, an employer is liable for damage caused by employees in the course of their employment duties, even if the employer personally committed no wrongful act. Significantly, the injured party is not required to prove the employer's fault; it suffices to establish that the harm was inflicted by the employee within the scope of their employment. At the same time, the law defines the limits of such liability. If the employee acted solely in their own interests, unrelated to professional duties, the employer's liability may be excluded (Article 618). In cases where the actions exceeded specific instructions but remained closely linked to employment functions, judicial practice allows for the imposition of liability on the employer (Article 608). The Code also grants the employer a right of recourse – after compensating the injured party, the employer may seek reimbursement from the employee if the latter acted intentionally or with gross negligence.

Building on these statutory provisions, Article 608 further shapes the judicial interpretation of employers' liability, serving as the principal reference point in case law. Courts consistently emphasise that liability under this Article is objective in nature and arises whenever a functional link exists between the employee's conduct and the performance of their professional duties. This broad judicial approach reinforces the primacy of victim protection and ensures that employers remain accountable for harm occurring within the general scope of employment, irrespective of the degree of fault or whether the harmful act was directly or indirectly connected to the employee's official responsibilities.

Complementing the provisions of the Civil Code (2001), the Labour Code of the Republic of Albania (1995) elaborates on employers' duties concerning work organisation and occupational safety. Article 105 of the Labour Code establishes

the general obligation of the employer to ensure safe working conditions and monitor their compliance, while Article 106 provides for liability for harm caused to employees or third parties as a result of inadequate supervision, improper allocation of functions, or breaches of safety standards. The injured party is entitled to bring claims directly against the employer, which significantly facilitates the protection of their rights. The Labour Code demonstrates a distinctly social character of regulation: the employee is not held liable beyond their personal fault, particularly where harm arises from deficiencies in the employer's organisational arrangements. These provisions reinforce vicarious liability as a mechanism for equitable risk distribution and ensure effective protection of victims.

Law of the Republic of Albania No. 32 "On Compulsory Insurance in the Transport Sector" (2021) establishes mandatory civil liability insurance for vehicle owners and other transport operators vis-à-vis third parties. This constitutes one of the clearest norms on compulsory insurance; however, it remains confined to the transport sector, thereby excluding other risk-prone areas where employer liability for employees' actions may arise (e.g., construction, healthcare, manufacturing, etc.). Law of the Republic of Albania No. 52 "On the Activity of Insurance and Reinsurance" (2014) sets out the general framework for insurance regulation in Albania. It defines requirements for insurers and brokers, licensing procedures, financial minima, and obligations regarding insurance products. Nevertheless, it does not contain a specific general provision mandating employer liability insurance for employees' actions across all high-risk sectors.

A distinct category consists of sector-specific statutes governing individual professional activities. For example, the Road Code of the Republic of Albania (2015) establishes heightened carrier liability for harm inflicted upon passengers or cargo

owners by drivers' actions. The law stipulates that a carrier is liable for any injury or material loss occurring during transportation, irrespective of the carrier's direct fault, thereby operationalising the principle of objective liability. The injured party may lodge claims directly against the carrier company, ensuring swift compensation, while the carrier may exercise a right of recourse against the driver if intent or gross negligence is proven. Such provisions produce a preventive effect: carriers are incentivised to strictly monitor drivers' qualifications and conduct, implement training, and comply with safety standards. This approach balances victim protection with the economic interests of transport companies, integrating vicarious liability principles into the national regulatory framework for road transport.

Judicial practice confirms that employers are liable for employees' acts performed in the course of employment, with courts assessing the nature of the work, the connection between the employee's conduct and assigned tasks, and the employer's compliance with supervisory standards. This comprehensive approach illustrates the interrelation between legislative provisions and the practical implementation of vicarious liability in the national context. Albanian courts consistently uphold the principle that the employer is liable for damage caused by an employee while performing professional duties. In doing so, courts examine not only the existence of an employment relationship but also the nature of the work performed, the nexus between the employee's actions and their assigned functions, and the employer's adherence to appropriate control standards. These rulings demonstrate a general trend within the Albanian judiciary towards prioritising the interests of victims and reinforcing the principle of employers' strict (objective) liability, consistent with prevailing international approaches in the field of vicarious liability. A comparative perspective across

jurisdictions facilitates a deeper understanding of the specific features of Albanian law concerning employer liability.

In France, employer liability is grounded in the principle of liability of the employer for the acts of subordinates (*responsabilité du commettant du fait de ses préposés*), which affords a broad scope of coverage, extending even to acts that exceed explicit instructions, provided such acts remain within the employee's professional functions. The case of the Court of Cassation (1988) confirmed that an employer bears liability for the actions of an employee even when those actions exceed given instructions, insofar as they remain within the framework of the employee's professional duties. This approach is oriented towards the maximum protection of victims and establishes a strong presumption of employer liability (Civil Code of France, 2023).

In Germany, employer liability is governed by Paragraph 831 of the Civil Code of the Federal Republic (2021) and is characterised by greater flexibility: an employer may be exempted from liability if it can demonstrate that it exercised due care in the selection, training, and supervision of the employee. The *Straßenbahn Case* (Decision of the Federal Court of Justice..., 1957) confirmed that an employer may be relieved of liability if it can prove that its employees acted properly and that all necessary preventive measures, such as appropriate recruitment, training, and supervision, were taken. This mechanism enables courts to take into account the employer's due diligence in preventing harm and affords a certain degree of protection. In Italy, Article 2049 of the Civil Code of Italy (2016) establishes strict liability of employers for the acts of their employees performed in the course of their duties, subject to limited exceptions where the harm is unrelated to employment. This model ensures robust protection of victims and a broad understanding of the functional nexus between the employee's conduct

and the employer (Perozzi *et al.*, 2024). Table 1 compares the principal approaches of these jurisdictions to employer liability for employees' acts,

highlighting the distinctive features of Albanian law and its similarities and divergences with other legal systems.

Table 1. Approaches to employer liability for employee actions: A comparative jurisdictional analysis

Country	Core principle	Scope of employer liability	Exceptions	Specific features
Albania	The employer bears objective (strict) liability for damage caused by an employee within the scope of their employment duties	Liability applies if the damage was caused during and in connection with work	Exoneration is possible if it is proven that the employee's actions were entirely outside their duties (e.g., a private act) (Article 618)	Court practice firmly establishes the employer's duty to ensure supervision of employees
France	Principle of responsabilité du commettant du fait de ses préposés	The employer is liable for any actions of an employee, even if they exceed instructions, provided they are not entirely disconnected from work	Exception – when the employee acts "hors des fonctions" ("outside of functions"), without any relation to work (Article 1242)	A very broad scope of liability, enhancing victim protection
Germany	Paragraph 831 of the German Civil Code (Liability for vicarious agents)	Liability is based on a presumption of fault in the selection or supervision of the employee	The employer can be exonerated if they prove adequate control and selection of the employee	The system is more flexible than the Albanian or French systems, as it allows for the avoidance of liability with proper organisation
Italy	Article 2049 of the Italian Civil Code (Responsibilities of owners and clients)	Objective liability for actions of employees within the scope of their work	Very rare exceptions, mostly if a complete lack of connection to work is proven	Closely aligned with the French model – strong victim protection

Source: compiled by the authors based on Civil Code of the Republic of Albania (2001), Civil Code of Italy (2016), Civil Code of France (2023), Civil Code of Germany (2021)

The comparative analysis indicates that jurisdictions differ in the degree of strictness applied to employer liability, with some allowing defences based on due diligence and others imposing near-absolute liability. Albania thus exemplifies a system in which a balance between the interests of victims and employers is achieved through a clear delineation of the boundaries and conditions of liability.

The effectiveness of the legal mechanism governing employer liability for employees' acts in Albania and other countries largely depends on the precise definition of the scope and conditions of such liability, as well as the practical ability of victims to prove damage and establish a causal

nexus with the employee's conduct (Civil Code of the Republic of Albania, 2001).

Nevertheless, the practical application of this mechanism reveals certain challenges. First, establishing proof of harm and causation can be complex, particularly in cases involving indirect damage or when the employee's actions are not fully documented. The judiciary often requires a detailed factual analysis in each instance, which may complicate proceedings and extend the duration of litigation. Second, limitations arise concerning the scope of liability: the employer is liable only for acts performed within the execution of professional duties or functionally connected with employment. Acts wholly outside the scope

of employment or of a private nature (akt privat) do not give rise to employer liability. Furthermore, compared with other jurisdictions, such as Germany, the Albanian system is less flexible in permitting exemptions from liability, which may impose additional burdens on employers in the areas of insurance and workplace organisation.

Despite these difficulties, the effectiveness of the legal framework is determined by its capacity to safeguard victims and to prevent recurrences of harm through incentivising employers to adopt preventive measures. International comparative analysis demonstrates that the stringent nature of liability embedded in the Albanian system yields

more predictable outcomes for victims, though it necessitates further procedural reforms aimed at simplifying evidentiary requirements and enhancing the transparency of judicial decisions.

The application of the vicarious liability mechanism in Albania, notwithstanding its effectiveness in victim protection, is accompanied by several practical challenges. These pertain both to procedural aspects and to organisational characteristics of employers' operations. Table 2 systematises the key issues encountered in the implementation of employer liability for harm caused by employees and provides illustrative examples of each complexity.

Table 2. Principal challenges in applying vicarious liability in Albania

Challenge	Description	Examples
Proving damage	The necessity to prove actual material or non-material damage, including the causal link to the employee's actions	Difficulty in proving damage in cases of indirect impact or psychological trauma
Defining liability scope	The clear determination of whether the employee's actions were within the scope of their employment duties	Actions entirely outside the scope of work do not incur employer liability
Limited evidence base	Insufficient documentation of internal processes, lack of supervision or records	The employee acted without written instructions or supervision
Duration of legal proceedings	The complexity and protracted nature of court proceedings due to the detailed examination of each case	Protracted proceedings in cases involving indirect or complex damages
Insurance and financial risks	The high probability of liability leads to additional costs for employers	The need for professional indemnity insurance
Insufficient employer awareness	Employers are often unaware of the full extent of their liability and the associated risks	Inadequate organisation of employee supervision

Source: compiled by the authors

Analysis of the principal difficulties in applying vicarious liability demonstrates that the efficacy of the legal mechanism depends substantially on the victim's ability to prove harm, the clear delineation of liability boundaries, and the adequacy of internal control mechanisms within enterprises. Technological developments – particularly autonomous systems, artificial intelligence, and digital platforms – pose fundamentally new challenges to the traditional understanding of vicarious liability. The classical doctrine was

premised upon the existence of an “employer-employee” relationship and the imposition of liability for acts of individuals operating within the sphere of organisational control (Nuni, 2016). However, with the deployment of autonomous technologies, a critical issue emerges concerning whether an enterprise can be held liable for harm caused by an algorithm or a self-operating system functioning with a high degree of independence from human intervention. Comparable challenges emerge within the realm of digital platforms,

where the link between the platform and the individual service provider (for example, a ride-hailing driver or a delivery courier) does not always satisfy the classical criteria of employment. In many jurisdictions, an ongoing debate concerns whether platforms should bear vicarious liability for the acts of their “partners”, who may be legally classified as independent contractors but are, in practice, subject to algorithmic control. These technological developments necessitate the adaptation of traditional doctrine and the formulation of new criteria for defining the “sphere of control” and the “connection with the employer’s activity”, thereby opening avenues for integrating classical tort law with elements of digital economy regulation and risk-based liability inherent in the deployment of innovative technologies.

Considering the aforementioned practices, several directions for reform should be examined to improve the legal framework in Albania. In order to enhance the Albanian legal system concerning the application of the vicarious liability principle (employer’s liability for the acts of employees), attention should be focused on a clearer definition of the evidentiary procedures for proving damage and establishing the causal nexus between the employee’s conduct and the harm caused. This would help reduce the burden on the courts and facilitate victims’ access to legal protection. According to information provided by the European Union, the Albanian government does not collect data on compensation payments made in cases of public liability, nor on the reasons for such payments. In November 2021, the Parliament adopted the Law on Co-Governance, granting the Agency for Dialogue and Co-Governance significant powers, including conducting inspections of public institutions based on citizens’ complaints and imposing administrative sanctions or proposing disciplinary measures. This reform has raised concerns regarding its potential impact on judicial independence and the effectiveness of law

enforcement in employer liability cases (European Commission, 2022). Recommendations for improving the legal framework concerning the application of the vicarious liability principle are of a comprehensive nature and envisage several interrelated directions aimed at enhancing the effectiveness of the legal mechanism and ensuring fairness in compensating victims. Firstly, it is necessary to more precisely define the scope of an employee’s professional duties by specifying which acts constitute the performance of employment functions and which are personal or outside the scope of employment. Such an approach will reduce uncertainty in damage cases and facilitate the establishment of a causal link between the employee’s actions and the harm caused, thereby contributing to more predictable and well-reasoned judicial decisions.

An important measure is the introduction of mandatory employers’ civil liability insurance, which would guarantee victims a realistic mechanism for compensation without the need to prove the employer’s personal fault (Nitsenko *et al.*, 2024). This instrument simultaneously incentivises employers to comply with safety standards, creating a preventive effect through risk insurance and recourse claims in cases of intentional or gross misconduct. Equally significant is the improvement of documentation systems and internal controls within companies, which allows for monitoring the performance of professional duties, timely detection of breaches, and reduction of incidents. Such an approach not only helps prevent harm but also facilitates the evidentiary process in the event of disputes.

One of the key reform directions is the organisation of systematic collection and publication of statistical data concerning court cases related to employers’ liability, as well as their outcomes. This will enable assessment of the legal mechanism’s effectiveness, identification of trends in judicial practice, and formulation of

evidence-based recommendations for further legislative improvements. In parallel, it is necessary to provide training and professional development for judges by conducting regular workshops and seminars on the application of vicarious liability and causal analysis in tort cases, thereby enhancing the quality of judicial reasoning and ensuring fair adjudication of disputes. Taken together, the implementation of these measures would improve the effectiveness of the vicarious liability doctrine, create conditions for equitable compensation to victims, and encourage employers to adhere to high safety standards, maintain appropriate employee supervision, and ensure safe working conditions.

Discussion

The conducted research demonstrates that the vicarious liability system is based on an objective approach and primarily seeks to protect victims, while providing limited preventive mechanisms for employers. This is supported by the study of E. Cela *et al.* (2023), who emphasise that during EU integration, there arises a need to harmonise approaches to tort liability, particularly in defining the boundaries between the interests of victims and employers. The present analysis aligns with this view while drawing attention to the risk of excessive standard intensification, which may lead to an imbalance between business interests and victims' rights.

Corporate practice confirms a trend towards extending liability to parent companies for the actions of their subsidiaries, as reflected in the study by X. Feng (2024). However, for Albania, such an approach remains premature due to the lack of consistent practice even within fundamental employment relationships. Further development of this doctrine requires first strengthening national judicial practice in the sphere of employment-related torts. Technological advancements, particularly autonomous systems and digital

platforms, create new challenges for the vicarious liability institution (Lukash *et al.*, 2025). M.C. Gaeta (2018) highlights the need to adapt legal mechanisms to the digital era, where harm may be caused by algorithms or automated systems. This raises the question of the limits of employer liability when acts are performed not directly by a human but through technological tools – an issue of particular importance in the transport and logistics sectors.

Judicial practice indicates that collective and corporate structures are increasingly recognised as bearers of liability (Khamzina *et al.*, 2021). This is consistent with the conclusions of P. Giliker (2023), who views vicarious liability as an institution gradually fulfilling not only a compensatory but also a social function. D. Glavaničová and M. Pascucci (2024) underscore the significance of this risk-distribution approach aimed at balancing the protection of societal interests with individual rights. European jurisdictions are actively consolidating this balance, interpreting employers' liability as an element of social policy. Comparative analysis reveals that various legal systems display differing degrees of flexibility in applying vicarious liability. In the Caribbean region, as shown in the study by G. Kodilinye and N. Corthésy (2022), employers possess greater opportunities to exonerate themselves from liability, whereas Albanian practice remains more rigid and objective. E. Marku (2023) observes that integrating the good faith principle into legal interpretation enhances the predictability of rulings and is gradually gaining traction across European jurisdictions.

The balance between protecting victims and preventing excessive burdens on employers remains pertinent. M.P. Ram Mohan and K. Sai Muralidhar (2023) argue that transferring the entire liability burden onto businesses may undermine their economic sustainability. B. Okpeh (2021) stresses the need to modernise

the doctrine to reflect new labour realities, particularly remote work and the gig economy. In these contexts, the traditional model exhibits significant gaps, as employers often lack full control over workers' activities. In the realm of corporate and criminal liability, D. Ormerod and K. Laird (2021) demonstrate the interconnection between tortious and criminal elements. Comparative analysis by E. Pupe *et al.* (2023) shows that employing hybrid legal models ensures greater legal certainty for employers. K.S. Abraham and G.E. White (2022) highlight that the evolution of European tort law is directed towards developing an integrated approach that accounts for social and economic factors.

The economic efficiency of the doctrine is confirmed by Y. Yin (2023), who shows that vicarious liability encourages employers to enhance employee supervision and implement compliance mechanisms. However, in many European countries, the lack of a well-developed insurance system and preventive measures reduce the practical efficacy of this mechanism. This underscores the necessity for coordinated regulatory solutions at the EU level. The Albanian model, in this regard, generally corresponds to European trends but requires greater flexibility and institutional capacity-building.

The theoretical foundation was laid by J. Cooke (2024), who justified the social function of vicarious liability as a guarantee of compensation irrespective of employer fault. P. Giliker (2023) established that strict models coexist with more flexible systems, wherein the presence of effective preventive measures enables employers to avoid liability. This confirms the multidirectional development of the institution. E. Baginska (2025), in her research, analyses tort law reforms in Central and Eastern Europe, demonstrating that most reforms are aimed at alignment with European standards, yet adaptation of foreign models creates challenges for national legal systems. R.

Aguilera Gordillo (2024), exploring Spanish practice, identified difficulties in transferring liability between corporations, which undermines the effectiveness of compensation mechanisms.

The British doctrine has been thoroughly analysed by C. Beuermann (2022), who identifies difficulties in determining liability forms within complex corporate structures. M. Campbell and B. Lindsay (2024) caution against the dangers of excessive expansion of vicarious liability's scope and propose ways to refine the doctrine to preserve equilibrium. A similar perspective is upheld by M. Cappelletti (2024), who advocates for a pluralistic model that accommodates diverse legal and social contexts.

In their study, A.S.A. Al-Hashmi and A.B.A.O. Al-Nuaimi (2023) focus on administrative liability arising from the activities of public authorities, particularly in the field of public roads. The authors argue that modern legal systems tend towards imposing liability even in cases of indirect fault, underscoring the doctrine's social orientation. B. Tahiri and M. Muharremi (2022) analyse the application of vicarious liability in employment relations across various jurisdictions and emphasise the importance of clearly defining the scope of employment duties, implementing effective internal control mechanisms, and establishing insurance instruments to ensure adequate victim protection.

Summarising the findings, it may be concluded that vicarious liability is evolving towards a synthesis of compensatory and preventive functions. European practice is gradually consolidating the social orientation of this legal doctrine, whereas the Albanian system demonstrates a commitment to objectivity but requires further strengthening of preventive mechanisms and institutional support. Continued harmonisation within the framework of EU law remains a necessary precondition for enhancing the effectiveness and predictability of judicial decisions.

Conclusions

The conducted research provided a detailed analysis of the legal mechanisms governing employer liability for employees' actions in Albania and offered a comparative assessment with the practice of European Union Member States, particularly France, Germany, and Italy. The examination of recent rulings from the Albanian Constitutional Court demonstrates that the vicarious liability doctrine is applied cautiously and methodically in national judicial practice. While expressly rejecting interpretations that impose automatic or solidary liability on employers, Albanian courts have consistently emphasised the need for unambiguous proof of an employment relationship and a functional connection between the employee's conduct and professional duties. In the Albanian tort law system, employer liability is positioned as an objective but precisely defined mechanism of third-party protection. These cases show a judicial commitment to legal certainty and proportionality. Comparative analysis with EU practices has revealed that other jurisdictions frequently provide additional mechanisms enabling employers to be partially exonerated from liability upon proving proper selection, training, and supervision of employees, thereby creating a more balanced framework for the allocation of responsibility. The examination of legislative provisions, case law, and international standards has also allowed the identification of key issues hindering the effective application of the mechanism in Albania, including difficulties in proving damage, defining precise boundaries of liability, and the limited scope of preventive measures available to employers for risk mitigation. The identified challenges underscore the necessity of improving the legal framework and procedural norms to ensure a more predictable and effective system of legal protection for all participants in employment relations.

Drawing on international experience, Albania should establish clear boundaries of employer liability, introduce mandatory civil liability insurance, and further develop internal systems for monitoring and documenting the performance of professional duties. In addition, integrating the principle of good faith into the interpretation of relevant provisions would enhance the predictability of judicial decisions and promote compliance with safety standards.

The analysis of modern employment relations demonstrates that vicarious liability applies not only within traditional employment models but also in the context of digital platforms and remote work, where employees' actions may cause harm to third parties. In such circumstances, it is crucial to establish a functional connection between the performed tasks and the resulting harm, as well as to ensure adequate supervision and preventive measures by the employer, including monitoring of digital processes and the use of insurance instruments to compensate potential risks.

The practical value of this study lies in its applicability for employers, legal practitioners, and consultants seeking to enhance awareness of rights and obligations within the sphere of vicarious liability. For employers, this entails the need to establish internal control procedures, implement staff training, and obtain liability insurance, thereby reducing the risk of legal disputes. For lawyers and consultants, the research provides an analytical foundation for assessing and predicting litigation outcomes, as well as for identifying effective strategies of legal protection for clients.

The limitations of the study stem from the absence of comprehensive statistical data on judicial decisions and the application of emerging technologies within employment relations, which may reduce the accuracy of evaluating the effectiveness of the proposed mechanisms.

Potential directions for further research include assessing the efficiency of preventive mechanisms such as internal control, employee training, and liability insurance, as well as conducting comparative analyses of vicarious liability application across different sectors and examining the impact of digitalisation on emerging risks.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of Interest

None.

References

- [1] Abraham, K.S., & White, G.E. (2022). *Tort law and the construction of change: Studies in the inevitability of history*. Charlottesville: University of Virginia Press.
- [2] Adebayo, B.O. (2021). [The nexus between vicarious liability of employers and the acts committed “in the cause of employment” by the employees: A discourse](#). *Journal of Commercial and Property Law*, 8(4), 71-86.
- [3] Aguilera Gordillo, R. (2024). Weaknesses in Spanish jurisprudence on the criminal liability of legal entities: Non-imputability of certain legal entities and lack of methodology when applying the transfer of criminal liability between corporations. *Eucriim – The European Criminal Law Associations’ Forum*, 3, 293-299. [doi: 10.30709/eucriim-2023-027](#).
- [4] Al-Hashmi, A.S.A., & Al-Nuaimi, A.B.A.O. (2023). [Administrative liability arising from damage caused by a public road facility: A comparative study](#). *Journal of Social and Environmental Management*, 17(7), article number e03986.
- [5] Baginska, E. (2025). Tort law reforms in Central and Eastern European countries. *European Review of Private Law*, 33(1-2), 59-90. [doi: 10.54648/erpl2025021](#).
- [6] Beuermann, C. (2022). Discerning the form at the second stage of vicarious liability. *Cambridge Law Journal*, 81(3), 495-523. [doi: 10.1017/S0008197322000526](#).
- [7] Burnazi Mitllari, L. (2023). Corporate fraud and liability provisions in Albania. In *9th international scientific conference ERAZ – Knowledge Based Sustainable Development* (pp. 525-531). Belgrade: Association of Economists and Managers of the Balkans. [doi: 10.31410/eraz.2023.525](#).
- [8] Campbell, M., & Lindsay, B. (2024). Refining vicarious liability. *Edinburgh Law Review*, 28(2), 174-206. [doi: 10.3366/elr.2024.0892](#).
- [9] Cappelletti, M. (2024). A pluralist view of vicarious liability in tort. *Law Quarterly Review*, 140, 61-84. [doi: 10.2139/ssrn.4358773](#).
- [10] Cela, E., Çela, R., & Kalemaj, E. (2023). Liability for causing damage under European private international law: Albanian rapprochement framework during the integration process towards the EU. *Interdisciplinary Journal of Research and Development*, 10(1S1), article number 89. [doi: 10.56345/ijrdv10n1s113](#).
- [11] Civil Code of France. (2023, November). Retrieved from <https://french-business-law.com/french-legislation/legitext000006070721-french-civil-code/>.
- [12] Civil Code of Italy. (2016, November). Retrieved from <http://italiantortlaw.altervista.org/civilcode.html>.

- [13] Civil Code of the Federal Republic of Germany. (2021, August). Retrieved from https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html.
- [14] Civil Code of the Republic of Albania. (2001, September). Retrieved from https://www.icnl.org/wp-content/uploads/Albania_civcode.pdf.
- [15] Cooke, J. (2024). *The law of tort*. Harlow: Pearson Education Limited.
- [16] Council of Europe. (2025). *Guidelines for improving access to social protection and explanatory memorandum*. Retrieved from https://www.coe.int/t/dg3/socialpolicies/socialrights/guidelinessocprot_en.asp.
- [17] Decision of the Federal Court of Justice in Civil Matters in Case "Straßenbahn". (1957, March). Retrieved from <https://law.utexas.edu/transnational/foreign-law-translations/german/case.php?id=788>.
- [18] European Commission for the Efficiency of Justice. (2024). *European judicial systems CEPEJ: Evaluation report*. Retrieved from <https://rm.coe.int/cepej-evaluation-report-2024-general-analyses/1680b1e91d>.
- [19] European Commission. (2022). *Commission staff working document: Albania 2022 report*. Retrieved from <https://surl.li/zvzpuo>.
- [20] European Commission. (2023). *Joint employment report 2023*. Retrieved from https://employment-social-affairs.ec.europa.eu/joint-employment-report-2023_en.
- [21] European Committee of Social Rights. (2022). *2022 conclusions*. Retrieved from <https://rm.coe.int/conclusions-2022-highlights-eng-final/1680aaa1b7>.
- [22] European Social Charter. (1996, May). Retrieved from <https://rm.coe.int/168007cf93>.
- [23] Feng, X. (2024). The extension of vicarious liability in corporate groups. *Journal of Corporate Law Studies*, 24(1), 169-198. doi: 10.1080/14735970.2024.2376278.
- [24] Gaeta, M.C. (2018). *Liability rules and self-driving cars: The evolution of tort law in the light of new technologies*. Napoli: University of Naples Federico II.
- [25] Giliker, P. (2023). Vicarious liability and corporations. In M. Petrin & C. Witting (Eds.), *Research handbook on corporate liability* (pp. 274-291). Cheltenham: Edward Elgar Publishing. doi: 10.4337/9781800371286.00024.
- [26] Giliker, P. (2024). Vicarious liability in the UK Supreme Court and High Court of Australia. *Legal Studies*, 44(1), 191-198. doi: 10.1017/lst.2023.38.
- [27] Glavaničová, D., & Pascucci, M. (2024). Making sense of vicarious responsibility: Moral philosophy meets legal theory. *Erkenntnis*, 89, 107-128. doi: 10.1007/s10670-022-00525-x.
- [28] Gredka-Ligarska, I. (2025). Employer's vicarious liability for damage caused by an AI worker: Comparative law perspective. *Utrecht Law Review*, 21(1), 36-48. doi: 10.36633/ulr.1063.
- [29] Judgement of the Constitutional Court of the Republic of Albania No. 14. (2025, March). Retrieved from <https://www.gjykatakushtetuese.gov.al/wp-content/uploads/2025/05/vend.1425.pdf>.
- [30] Judgement of the Constitutional Court of the Republic of Albania No. 229. (2025, September). Retrieved from <https://www.gjykatakushtetuese.gov.al/wp-content/uploads/2025/11/vend.mosk.22925.pdf>.
- [31] Judgement of the European Court of Human Rights in Case No. 48939/99 "Öneryıldız v. Turkey". (2004). Retrieved from <https://www.globalhealthrights.org/oneryildiz-v-turkey/>.

- [32] Judgement of the U.S. Supreme Court in Case “Faragher v. City of Boca Raton”. (1998, March). Retrieved from <https://supreme.justia.com/cases/federal/us/524/775/>.
- [33] Judgement of the United Kingdom House of Lords in Case “Lister and Others v. Hesley Hall Limited: UKHL 22”. (2001, May). Retrieved from <https://www.bailii.org/uk/cases/UKHL/2001/22.html>.
- [34] Judgement of the United Kingdom Supreme Court in Case “Mohamud v. WM Morrison Supermarkets Plc (Rev 1): UKSC 11”. (2016, March). Retrieved from <https://www.bailii.org/uk/cases/UKSC/2016/11.html>.
- [35] Judgment of the Supreme Court of Canada in Case “Bazley v. Curry”. (1999, June). Retrieved from <https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/1709/index.do>.
- [36] Khamzina, Z., Buribayev, Y., Taitorina, B., & Baisalova, G. (2021). Gender equality in employment: A view from Kazakhstan. *Anais Da Academia Brasileira De Ciencias*, 93(4), article number e20190042. doi: [10.1590/0001-3765202120190042](https://doi.org/10.1590/0001-3765202120190042).
- [37] Kodilinye, G., & Corthésy, N. (2022). Vicarious liability. In *Commonwealth Caribbean tort law* (pp. 361-406). London: Routledge. doi: [10.4324/9781351065108](https://doi.org/10.4324/9781351065108).
- [38] Labour Code of the Republic of Albania. (1995, July). Retrieved from <https://www.wipo.int/wipolex/en/legislation/details/10575>.
- [39] Law of the Republic of Albania No. 32 “On Compulsory Insurance in the Transport Sector”. (2021, March). Retrieved from https://amf.gov.al/pdf/ligje/LawNo32_16032021_CompulsoryInsuranceintheTransportSector.pdf.
- [40] Law of the Republic of Albania No. 52 “On the Activity of Insurance and Reinsurance”. (2014, May). Retrieved from https://amf.gov.al/pdf/ligje/191_Law%20No.52%202014%20On%20the%20activity%20of%20insurance%20and%20reinsurance.pdf.
- [41] Lukash, M., Chuprun, Y., Lysak, O., Husakovskiy, A., & Hanhanov, K. (2025). AI evolution and its role in transforming the automation of commercial activities. *LatIA*, 3, article number 344. doi: [10.62486/latia2025344](https://doi.org/10.62486/latia2025344).
- [42] Marku, E. (2023). The principle of good faith in the civil law and common law systems: The Albanian legal system, comparative analysis. *Interdisciplinary Journal of Research and Development*, 10(1 S1), article number 255. doi: [10.56345/ijrdv10n1s138](https://doi.org/10.56345/ijrdv10n1s138).
- [43] Nitsenko, V., Dankevych, A., Dzoba, O., Ustenko, A., & Bashynska, Y. (2024). Ethical and social incentives for the transformation of the business model of enterprise management in conditions of sustainable development. *Naukovyi Visnyk Natsionalnoho Hirnychoho Universytetu*, 4, 172-179. doi: [10.33271/nvngu/2024-4/172](https://doi.org/10.33271/nvngu/2024-4/172).
- [44] Nuni, M. (2016). Employer’s liability for damages caused to third parties by employees. *Mediterranean Journal of Social Sciences*, 7(1S1), 423-428. doi: [10.5901/mjss.2016.v7n1s1p423](https://doi.org/10.5901/mjss.2016.v7n1s1p423).
- [45] Office of the United Nations High Commissioner for Human Rights. (2025). *OHCHR and business and human rights*. Retrieved from <https://www.ohchr.org/en/business>.
- [46] Okpeh, B. (2021). Modern approach to the doctrine of vicarious liability. *SSRN Electronic Journal*. doi: [10.2139/ssrn.3884388](https://doi.org/10.2139/ssrn.3884388).
- [47] Ormerod, D., & Laird, K. (2021). Corporate and vicarious liability. In *Smith, Hogan, and Ormerod’s criminal law* (pp. 259-291). Oxford: Oxford University Press. doi: [10.1093/he/9780198849704.003.0008](https://doi.org/10.1093/he/9780198849704.003.0008).

- [48] Perozzi, F.G., Longo, F., Bernardi, F., & Randazzo, R. (2024). *In brief: Civil liability for corporate human rights violations in Italy*. Retrieved from <https://www.lexology.com/library/detail.aspx?g=a93c99ac-897e-416a-8126-ab3196f87cd7>.
- [49] Plenary Assembly of the Court of Cassation of France No. 02-30.858. (2005, March). Retrieved from <https://justice.pappers.fr/decision/ce26b869bc6860313602f144dd99f8a3f9a0eb99>.
- [50] Plenary Assembly of the Court of Cassation of France No. 87-82.654. (1988, May). Retrieved from <https://www.legifrance.gouv.fr/juri/id/JURITEXT000007020609>.
- [51] Porkodi, S., Srihari, S., & Vijayakumar, N. (2022). Talent management by predicting employee attrition using enhanced weighted forest optimization algorithm with improved random forest classifier. *International Journal of Advanced Technology and Engineering Exploration*, 9(90), 563-582. doi: 10.19101/IJATEE.2021.875340.
- [52] Porytska, Y.M. (2023). Financial liability of the employer under the legislation of foreign countries. *Uzhhorod National University Herald. Series: Law*, 77(1), 219-223. doi: 10.24144/2307-3322.2023.77.1.35.
- [53] Pupe, E., Veshi, D., Venditti, C., Picaro, R., & Haxhia, K. (2023). Case-law on informed consent in Germany: A model for Albania? *Liverpool Law Review*, 44, 43-81. doi: 10.1007/s10991-022-09319-1.
- [54] Ram Mohan, M.P., & Sai Muralidhar, K. (2023). *In pursuit of balance: Vicarious liability doctrine in the United Kingdom and India*. *Hofstra Labor & Employment Law Journal*, 40(2), article number 4.
- [55] Road Code of the Republic of Albania. (2015, January). Retrieved from <https://policycommons.net/artifacts/4849225/kodi-rrugor-i/5686067/>.
- [56] Tahiri, B., & Muharremi, M. (2022). Liability for damage arising from the employment relationship – Comparative aspects. *The Seybold Report Journal*, 17(11), 2002-2017. doi: 10.5281/zenodo.7389881.
- [57] Terré, F., Simler, P., Lequette, Y., & Chénéde, F. (2019). *Civil law: Obligations (Droit civil: Les obligations)*. Paris: Dalloz.
- [58] United Nations. (2011). *Guiding principles on business and human rights: Implementing the United Nations "Protect, Respect and Remedy" framework*. Retrieved from https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf.
- [59] Vazova, T., Vazov, R., & Radev, V. (2025). Active aging among the elderly and its economic and social consequences in Bulgaria. *Jurnal Ilmiah Ilmu Terapan Universitas Jambi*, 9(3), 1037-1054. doi: 10.22437/jiituj.v9i3.42957.
- [60] von Bar, C. (2009). *The common European law of torts*. Oxford: Oxford University Press.
- [61] Yin, Y. (2023). The economic efficiency of vicarious liability in employment relationships. *Lecture Notes in Education Psychology and Public Media*, 26(1), 116-120. doi: 10.54254/2753-7048/26/20230864.

Відповідальність роботодавця за шкоду, заподіяну працівником: Дослідження про сурогатну відповідальність

Анжеза Ліценжі

Викладач

Університет Тирана

1010, вул. Матері Терези, 183, м. Тирана, Албанія
<https://orcid.org/0009-0005-0992-8926>

Альфіора Фортuzzi

Магістр

Університет Тирана

1010, вул. Матері Терези, 183, м. Тирана, Албанія
<https://orcid.org/0009-0008-7576-0035>

Анотація

Метою дослідження було визначення ефективності правових механізмів, що регулюють субсидіарну відповідальність роботодавців за шкоду, заподіяну працівниками під час виконання своїх трудових обов'язків. У роботі розглянуто теоретичні основи деліктного права, судову практику та порівняльні підходи в різних правових системах. Методологічна основа базувалася на комплексному підході, що поєднував доктринальний аналіз, порівняльний аналіз положень загального права та європейського права, а також аналіз прецедентного права, включаючи розгляд конкретних справ. Такий підхід дозволив виявити особливості тлумачення та застосування відповідних норм у різних юрисдикціях. Результати дослідження продемонстрували, що субсидіарна відповідальність продовжує відігравати ключову роль у системі деліктного права, оскільки забезпечує ефективну компенсацію потерпілим навіть у випадках, коли працівник не має достатніх фінансових ресурсів. Водночас було встановлено, що правові системи різняться у визначенні обсягу відповідальності роботодавця: тоді як континентальні європейські юрисдикції, як правило, тлумачать його більш широко, країни загального права схильні застосовувати обмежувальні критерії. Аналіз судової практики показав, що суди все частіше віддають перевагу принципам справедливості та пропорційності, прагнучи захистити потерпілих і водночас запобігти надмірному фінансовому навантаженню на роботодавців. Дослідження також виявило неоднозначність у кваліфікації умисних протиправних дій працівників, що вимагає уточнення законодавчих критеріїв щодо меж «виконання службових обов'язків». Отримані результати мають практичне значення: для юристів-практиків вони допомагають у правильній юридичній кваліфікації обов'язків та обсягу відповідальності, а для роботодавців слугують орієнтиром для впровадження превентивних стратегій, включаючи управління ризиками, програми дотримання нормативних вимог та механізми страхування

Ключові слова: субсидіарна відповідальність; відповідальність роботодавця; деліктне право; неправомірні дії працівника; порівняльне право; шкода на робочому місці



UDC 34:349;349.1

Doi: 10.31548/law/4.2025.197

Legal regulation of ensuring environmental security in Central Asian countries

Almaz Zheenaliev*

Doctoral Student

Kyrgyz National Agrarian University named after K.I. Skryabin
720005, 68 Mederova Str., Bishkek, Kyrgyz Republic
<https://orcid.org/0009-0001-4680-5985>

Rysbek Nurgaziev

Rector

Kyrgyz National Agrarian University named after K.I. Skryabin
720005, 68 Mederova Str., Bishkek, Kyrgyz Republic
<https://orcid.org/0000-0003-1376-6921>

Baktybek Rysmendeev

Professor

Kyrgyz National University named after Jusup Balasagyn
720033, 547 Frunze Str., Bishkek, Kyrgyz Republic
<https://orcid.org/0009-0003-9513-5660>

Article's History:

Received: 11.07.2025

Revised: 22.10.2025

Accepted: 27.11.2025

Abstract

The aim of the study was to examine the legal mechanisms for ensuring environmental security in Central Asian countries. A phased analysis of the regulatory framework was conducted, starting at the constitutional level and extending to sectoral legislation and institutional support. The study addressed transboundary environmental threats in Central Asia, particularly the degradation of water resources in the Syr Darya and Amu

Suggested Citation:

Zheenaliev, A., Nurgaziev, R., & Rysmendeev, B. (2025). Legal regulation of ensuring environmental security in Central Asian countries. *Law. Human. Environment*, 16(4), 197-220. doi: 10.31548/law/4.2025.197.



*Corresponding author

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

Darya basins, as well as transboundary air pollution in the Fergana Valley. The low effectiveness of existing agreements was attributed to the absence of joint monitoring mechanisms, inconsistency of standards, and limited legal liability among the parties. The activities of the International Fund for Saving the Aral Sea were assessed as fragmented and insufficiently integrated into national policies. Structural barriers and conditions for effective environmental coordination among the countries of the region were identified. A comparative analysis of legislative frameworks revealed that only Kazakhstan has a fully codified and updated body of environmental law, while other states continue to rely on frameworks established in the 1990s, which have not been adapted to contemporary challenges such as climate change or the digitalisation of environmental governance. Institutional models also differ significantly: Kazakhstan and Uzbekistan are moving towards consolidation and digitalisation of environmental policy bodies, whereas Tajikistan and Turkmenistan maintain rigidly centralised and less effective structures. A major threat to regional security is posed by over 90 radiation-hazardous facilities in Kyrgyzstan, which could affect neighbouring ecosystems in the event of a man-made accident. The study found that cross-border cooperation remains largely declarative, with international conventions implemented only in fragmented form. The findings confirmed the need for a comprehensive overhaul of the legal framework for environmental security, enhanced interstate coordination, and the development of effective mechanisms to implement environmental rights and obligations at the regional level. The practical significance of the study lies in its potential application to improving national environmental legislation in Central Asian countries, drafting joint intergovernmental agreements on environmental protection, and providing recommendations to international organisations involved in environmental assistance and integration of environmental policy into regional development strategies

Keywords: institutional interaction; transnational challenges; institutional efficiency; cross-border cooperation; technogenic risks; constitutional guarantees of the environment

Introduction

The issue of environmental security remains one of the most pressing concerns in both global and regional contexts. Contemporary challenges – including climate change, the degradation of natural resources, increasing anthropogenic pressures, and global ecological instability – necessitate a re-evaluation of the effectiveness of existing approaches to environmental protection. In Central Asia, this issue is particularly acute due to a combination of interconnected natural, anthropogenic, socio-economic, and political factors. These include shared water resources, ecosystem vulnerability to climate change, the legacy of post-Soviet institutional frameworks, fragmented

legislation, the absence of sustainable environmental management practices, and a generally insufficient level of interstate coordination in the field of environmental protection. The impact of external environmental pressures – such as global warming, desertification, and disruption of the hydrological balance – only serves to intensify the region's systemic challenges.

The ecosystems of Central Asia are highly interdependent and form a unified transboundary natural complex. Consequently, land degradation, water scarcity, or industrial pollution in one country rapidly evolve into potential threats to neighbouring states, laying the groundwork

for interstate tensions or conflict (Orazaliev *et al.*, 2024). This highlights the critical need for coordinated efforts at both the legal and institutional levels. Legal frameworks for environmental security in Central Asian countries remain fragmented, inconsistent, and often ineffective. As demonstrated by Z.B. Umbetbayeva *et al.* (2024), existing air protection legislation in the region is largely declarative: while it formally aligns with basic international standards, it lacks effective mechanisms for enforcement, monitoring, and sanctions. The absence of internal regulatory coherence, harmonised technical standards, and interoperable environmental monitoring systems across the region significantly hampers comparative data assessment and renders the development of joint solutions to transboundary environmental problems virtually impossible.

These problems are particularly pronounced in Kyrgyzstan, where, according to B. Zhusupov *et al.* (2024), the legislative framework is outdated, and state institutions – particularly the Ministry of Natural Resources, Ecology and Technical Supervision – lack the financial, technical, and human resource capacity necessary for the effective implementation of environmental policy. Similar systemic difficulties are also observed in Tajikistan and Uzbekistan. In these countries, the centralised model of public administration restricts not only institutional flexibility but also public participation, horizontal coordination between departments, and the implementation of transparent environmental control mechanisms.

The work of J. Gupta *et al.* (2024) highlights that, unlike in EU member states, environmental governance in Central Asia does not integrate contemporary principles of sustainable development and lacks a systematic application of Environmental, Social and Governance (ESG) approaches. In most cases, strategic documents are largely formalistic, and public access to environmental information remains limited. The absence

of independent monitoring, public consultations, and mechanisms for appealing environmental decisions contributes to an administratively closed system (Mukhamediyarova *et al.*, 2025).

According to the findings of R. Urinboyev (2020), the legal systems in the region are characterised by hybridity: formal regulatory acts coexist with informal customary practices, which diminishes the effectiveness of environmental legislation. The interaction between traditional and statutory law often results in regulatory conflicts, complicates law enforcement, and undermines public trust in institutions. A particularly important area within the region's legal architecture is transboundary water resource management (Narzullaeva *et al.*, 2025). An analysis by J. Sehring *et al.* (2024) shows that existing bilateral and multilateral agreements are largely framework-based and lack clearly defined mechanisms for conflict resolution, arbitration procedures, or sanctions in the event of non-compliance. The absence of legally binding obligations renders water cooperation vulnerable to political fluctuations and unilateral actions.

A.B. Gulimov (2023) highlights another critical issue – the lack of institutional sustainability in the implementation of environmental programmes. In most cases, environmental initiatives are funded by external donors such as the UNDP, World Bank, and IAEA. However, once this funding ceases, the programmes often lose relevance due to the absence of mechanisms for their long-term operation. This underscores the need to establish a permanent regional coordination body capable of ensuring continuity, monitoring, and legal support for environmental policy. The issue of legal liability for environmental damage also remains insufficiently addressed. As S.T. Tulibayev (2024) notes, there is no unified definition of environmental crime within the criminal legislation of Central Asian countries. Consequently, ecocide – as a distinct and severe form of

environmental harm – rarely results in legal prosecution. In complex environmental cases, the inability to establish a clear causal link between the actions of a subject and the resulting damage significantly complicates the attribution of guilt.

In the area of recreational use of natural resources, A. Sopykhanova (2017) demonstrates that current regulatory and legal acts fail to consider the interests of local communities and fall short of modern standards for the protection of natural heritage. This results in the overuse of protected areas, ecosystem degradation, and heightened social tension due to restricted access to natural resources. S. Brunelli *et al.* (2022) underscore the acute shortage of legal mechanisms for independent environmental monitoring, particularly in rural areas. The absence of a mandatory legal response to the outcomes of environmental audits renders these procedures largely bureaucratic and devoid of practical significance. I. Gulomov and R. Rasulova (2024) conclude that national environmental policy in Central Asian countries is largely declarative in nature. While strategic documents are formally adopted, they often lack adequate financing, implementation mechanisms, and effective institutional oversight. This highlights the urgent need to establish a coherent, harmonised, and accountable legal system in the field of environmental security – one that not only fulfils formal international obligations but also addresses the practical needs of the region.

A review of recent literature reveals significant gaps in legal doctrine, regulatory frameworks, and institutional practice related to environmental security in the region. The effectiveness of legal regulation across constitutional, sectoral, and international levels remains unresolved, particularly in terms of the capacity of Central Asian states to fulfil environmental obligations and develop coordinated mechanisms for addressing shared environmental challenges. In this context, a systematic study that integrates

legal comparative analysis, institutional evaluation, and consideration of transboundary threats is of particular importance.

The purpose of this study was to assess the capacity of the legal systems of Central Asian countries to effectively respond to contemporary environmental challenges and to identify barriers to the development of a coordinated regional legal model of environmental security. To achieve this aim, the study formulated the following objectives: to analyse the regulatory and legal frameworks governing environmental security in Central Asian countries, with particular attention to key differences and regulatory gaps; to evaluate the effectiveness of national environmental institutions and the extent of their integration with international legal mechanisms; and to identify both the potential and the constraints in developing a harmonised regional legal model capable of facilitating joint responses to environmental challenges and fulfilling international obligations.

Materials and Methods

The study was focused on examining the legal mechanisms for ensuring environmental security in the Central Asian states. The object of the study comprised five countries in the region: the Kyrgyz Republic, the Republic of Kazakhstan, the Republic of Tajikistan, the Republic of Uzbekistan, and Turkmenistan. The selection of these states is justified by their geographical proximity, shared ecosystems and transboundary natural resources, as well as their common historical and legal heritage, shaped within the Soviet legal space. All five countries are united by a high degree of water dependency, with the major river basins – the Syr Darya and the Amu Darya – supplying water to millions of residents and playing a pivotal role in agriculture, energy, and industry. Simultaneously, these states face similar environmental challenges, including soil degradation, glacier retreat, radiation pollution, deteriorating infrastructure,

and insufficient funding for environmental programmes. The study involved the collection and analysis of key regulatory legal acts defining the principles of environmental protection and environmental security in the countries of Central Asia. Specifically, in Kazakhstan, the Environmental Code of the Republic of Kazakhstan (2021) was reviewed as the foundational document in national environmental legislation.

The study was carried out in four main stages. At the first stage, the collection and systematisation of regulatory legal acts and strategic documents were conducted using the legal-dogmatic method, allowing for an in-depth analysis of the structure of legal texts and the content of legal concepts. At the second stage, comparative legal analysis was applied to identify characteristic models of legal regulation of environmental security in each of the five countries and to determine both commonalities and distinctions in regulatory frameworks and law enforcement practices. At the third stage, a system-structural approach was employed to explore the interrelations between sectoral legal acts, the distribution of competencies among state authorities, and the effectiveness of control mechanisms and public participation. At the fourth stage, a study was conducted on the frequency, context, and meaning of key terms related to environmental security, such as 'environmental security', 'environmental risks', 'sustainable development', 'prevention of environmental damage', 'environmental rights of citizens', and 'transboundary cooperation' in strategic and regulatory documents, including the Article 31 of the Constitution of the Republic of Kazakhstan (1995), Constitution of the Kyrgyz Republic (2021), Article 50 of the Constitution of the Republic of Uzbekistan (2023), Constitution of the Republic of Tajikistan (1994), and Constitution of Turkmenistan (2016). The purpose was to assess how environmental security is reflected at the constitutional level, determine the extent to

which environmental rights and responsibilities are recognised in national legal systems, and evaluate the consistency and coherence of these provisions in supporting sustainable and cooperative environmental governance in the region.

Results

At the initial stage of analysis, a comparative examination was conducted of the constitutional recognition of environmental human rights, as well as the principles and mechanisms for ensuring environmental security in the five Central Asian states – Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan, and Turkmenistan. A common feature across all these countries is the constitutional recognition of the human right to a favourable environment as a fundamental legal principle. However, the degree of detail, level of legal certainty, and the scope of state obligations associated with this right vary significantly between countries.

In the Constitution of the Republic of Kazakhstan (1995), Article 31 states that "the state shall aim to protect the environment favourable to human life and health". This provision not only proclaims the right to a clean environment but also places a direct obligation on the state to undertake active measures in the field of environmental protection. Notably, environmental safety is integrated into the broader framework of state policy and is explicitly enshrined in the country's highest legal instrument. As a result, legal regulation in Kazakhstan enjoys strong institutional support grounded in constitutional authority.

The Constitution of the Kyrgyz Republic (2021) also offers comprehensive regulation of environmental issues. Article 49 guarantees the right of every individual to an environment favourable to life and health. Furthermore, it affirms the right to compensation for damage to health or property resulting from violations of environmental legislation. The Article also imposes a duty on all citizens to treat nature with care and to protect

flora and fauna. This dual focus – on individual rights and civic responsibilities – demonstrates that the Kyrgyz Constitution goes beyond merely declaring environmental rights; it also establishes a normative foundation for environmental responsibility across society. This contributes to the formation of a more sustainable and participatory legal framework for environmental protection.

In Uzbekistan, constitutional regulation of environmental issues takes a somewhat different form. Article 50 of the Constitution of the Republic of Uzbekistan (2023) establishes the principle of careful treatment of nature as a civic duty. Although the right to environmental safety is not explicitly stated, it can be inferred from the broader provisions of the Basic Law that the state bears responsibility for environmental protection as a core element in ensuring adequate living conditions for the population. However, in practice, this model remains largely declarative. Constitutional provisions are rarely translated into concrete legal mechanisms for the realisation of environmental rights or into a system of enforceable regulatory guarantees.

In the Constitution of the Republic of Tajikistan (1994), constitutional provisions related to environmental protection are articulated in Article 38, which sets out the general duty of every citizen to preserve nature. However, the right to environmental safety is neither defined as a distinct nor as an explicit constitutional right. While the constitutional approach implies a commitment to basic principles of environmental responsibility, it lacks the specificity and legal precision required for effective implementation. The Constitution provides broad guidance for the development of environmental legislation but does not contain sufficient detail to support practical law enforcement.

The Constitution of Turkmenistan (2016), in Article 53, identifies the protection of nature as one of the state's priority goals. It also outlines

the responsibility of every citizen to participate in environmental protection. Nonetheless, as in the case of Tajikistan, these provisions function largely as political declarations and are not supported by corresponding institutional or legal mechanisms for implementation. As a result, the actual level of protection of citizens' environmental rights remains limited, despite the formal presence of relevant constitutional language.

In general, it can be concluded that the Central Asian states acknowledge the importance of environmental security and environmental protection at the level of their constitutions. However, only Kazakhstan and Kyrgyzstan demonstrate a more systematic approach – one that includes not only the proclamation of environmental rights but also the articulation of state and citizen responsibilities, alongside the presence of certain legal mechanisms for implementation. In contrast, the relevant provisions in Uzbekistan, Tajikistan, and Turkmenistan are predominantly formal and declarative, with environmental policy implementation often falling outside the scope of effective legal practice. It should also be emphasised that in none of the five countries is environmental security recognised as a distinct structural component of national security. This omission significantly undermines the efficacy of the regional legal framework for preventing environmental threats and establishing a sustainable, coordinated environmental policy at the interstate level.

The second stage of the analysis focused on an in-depth examination of national environmental legislation governing environmental protection in Central Asian countries. The primary aim of this stage was to identify similarities and differences in regulatory approaches and to evaluate the effectiveness of current legislation in terms of its modernity, internal consistency, level of codification, and alignment with international standards. The analysis revealed considerable divergence among the countries in both the structure

and substantive content of their environmental legislation, reflecting historical legacies and varying levels of political commitment to legal reform.

The most comprehensive, coherent, and up-to-date system of environmental law was found in the Republic of Kazakhstan (2021). The key regulatory instrument is the Environmental Code of the Republic of Kazakhstan (2021). This document represents the outcome of a large-scale overhaul of the legal framework, incorporating European approaches to environmental regulation. The Code systematises essential environmental institutions and integrates key principles of sustainable development, including the precautionary principle, the “polluter pays” principle, and the principle of public access to environmental information. The Code also regulates mechanisms such as environmental expertise, strategic environmental assessment, environmental audit, and environmental monitoring. Furthermore, it provides for the integration of digital technologies into the system of environmental impact assessment. These innovations contribute to making the environmental governance framework in Kazakhstan more transparent, accountable, and effective.

In the Kyrgyz Republic, the principal legal instrument governing environmental protection is the Law of the Kyrgyz Republic No. 53 “On Environmental Protection” (1999), which, despite its age, remains in force. The law recognises environmental protection as an essential component of national security and clearly outlines the rights and obligations of citizens, enterprises, organisations, and state bodies in this domain. It provides for the implementation of environmental expertise, environmental impact assessment, and a system of environmental licensing. In addition to this foundational law, Kyrgyzstan has adopted a number of specialised legal acts, including the Law of the Kyrgyz Republic No. 48 “On Biosphere Territories” (1999), the Law of the Kyrgyz Republic No. 49 “On Subsoil” (2021), the Law of the

Kyrgyz Republic No. 93 “On Industrial Safety of Hazardous Production Facilities” (2001), and the Law of the Kyrgyz Republic No. 89 “On Production and Consumption Waste” (2001). However, the legislative system remains fragmented, posing challenges for integrated natural resource management. Efforts are underway to gradually update environmental legislation and align it with international standards. Environmental Code of the Republic of Kazakhstan (2021) reflecting European approaches, particularly through the adoption of best available technologies and the digitalisation of permitting procedures. Uzbekistan has undertaken substantial reforms between 2020 and 2024, introducing new laws on environmental impact assessment, waste management, and air protection, and updating key regulatory acts. These include the foundational Law of the Republic of Uzbekistan No. 754XII (1992), the Law of the Republic of Uzbekistan No. 837-XII (1993), Law No. 353-I “On Protection of Atmospheric Air” (1996), and the new Law No. ZRU 1036 “On Environmental Expertise, Environmental Impact Assessment and Strategic Environmental Assessment” (2025). The legal framework is being restructured to improve coherence and ensure compliance with modern environmental governance standards. In Kyrgyzstan, the development of a new Environmental Code is currently underway. This code aims to systematise existing legislation and bring it in line with international commitments. A similar process is taking place in Tajikistan, where a new version of the Environmental Code is in preparation to modernise the country’s approach to environmental protection. Turkmenistan has also revised several key legal acts, including updated versions of laws on air quality, waste, and land use. Furthermore, in 2023, a dedicated ministry for environmental affairs was established, reflecting a more structured approach to environmental governance. These legislative

developments indicate a growing commitment across the region to integrate environmental policy into the broader context of sustainable development and international cooperation.

In Uzbekistan, while the environmental regulatory framework is still based on the Law of the Republic of Uzbekistan No. 754 XII (1992), the law has undergone multiple amendments over the years. Nevertheless, its structural and conceptual framework remains outdated. Although it defines the basic principles of environmental protection, outlines liability mechanisms for environmental violations, and assigns responsibilities to public authorities, its fragmented structure, overlapping provisions, and lack of a unified terminological base hinder effective implementation. To address these issues, a new Law of the Republic of Uzbekistan No. LPU-1036 (2025) with the aim of consolidating existing norms into a coherent, modern, and unified system of environmental regulation.

In Tajikistan, environmental legislation consists of a large number of separate laws, the most notable of which include the Law of Tajikistan No. 905 (1996), the Law of Tajikistan No. 915 "On Protection of the Atmospheric Air" (2012). While the legal framework is relatively extensive, its practical application remains limited. The key obstacles to the effective implementation of environmental law include weak institutional capacity, an insufficient level of independent environmental oversight, and the absence of effective enforcement mechanisms. Moreover, a significant proportion of legal provisions fail to address current challenges such as climate change, soil degradation, and water scarcity.

In Turkmenistan, environmental legislation follows a centralised model and is primarily based on the Law of the Law of Turkmenistan No. 40-V "On Nature Protection" (2014). The country has also adopted several specialised laws, including the Law of Turkmenistan No. 182-I "On Atmospheric Air Protection" (2016), the

Law of Turkmenistan "On Waste" (2015), and the Land Code of Turkmenistan (2004). However, the existing legal framework remains largely declarative, establishing general principles without providing sufficient procedural detail or effective instruments for implementation and enforcement. Additionally, the legislative process lacks transparency, and public participation in environmental decision-making and monitoring is severely restricted.

Thus, at the present stage, only the Republic of Kazakhstan has developed a codified, coherent, and modernised environmental legal system aligned with European standards and offering a high level of regulatory clarity and certainty. In the other Central Asian states, the regulatory and legal frameworks for environmental protection remain either fragmented or outdated, necessitating comprehensive reform, codification, and alignment with international commitments. This disparity hinders not only the effectiveness of domestic environmental policy but also poses significant challenges to interstate coordination. The lack of harmonised legal frameworks creates barriers to the joint management of shared natural resources, effective responses to transboundary environmental threats, and the implementation of regional sustainable development initiatives.

The next stage of the analysis focused in particular on the institutional mechanisms of environmental security in the countries of Central Asia, namely Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan, and Turkmenistan. The study revealed that, although all states formally declare their commitment to environmental protection, there is significant variation in the actual institutional capacity, the functionality of environmental governance bodies, and the level of public participation.

In the Republic of Kazakhstan, responsibilities for environmental governance are vested in the Ministry of Ecology and Natural Resources (Environmental Code of the Republic of

Kazakhstan, 2021), which is the most structurally developed and well-resourced institution among the countries analysed. The Ministry plays an active role in the digitalisation of environmental processes, particularly through the operation of an electronic environmental platform that publishes data on environmental monitoring, environmental impact assessments (EIA), and environmental audits. It also ensures interdepartmental coordination, implements a distinct climate policy, and facilitates the international integration of environmental standards, positioning it as a leading institutional model in the region.

In the Kyrgyz Republic, environmental regulatory functions are carried out by the Ministry of Natural Resources, Ecology and Technical Supervision (2025), which was established through the consolidation of several previously independent bodies. Despite this attempt at centralisation, the division of powers between central and local authorities remains inconsistent, leading to inefficiencies in the implementation of environmental policy at the local level. A persistent problem is the underfunding of the sector and the shortage of highly qualified specialists in environmental control bodies, which severely limits their operational capacity.

In Uzbekistan, the Ministry of Ecology, Environmental Protection and Climate Change was established in 2023 (Constitution of the Republic of Uzbekistan, 2023), succeeding several previous institutions and now playing a central role in the development and implementation of environmental policy. The Ministry's structural divisions encompass biodiversity management, climate change, waste management, protection of water resources, and environmental monitoring. A positive development has been the establishment of a specialised environmental inspection body; however, procedural transparency remains limited, public participation is weak, and there is informal executive influence over oversight processes.

In Tajikistan, environmental protection is managed by the Committee for Nature Protection under the Government of the Republic of Tajikistan (Law of Tajikistan No. 905, 1996), which has limited institutional capacity. The Committee's activities are primarily focused on the fulfilment of formal obligations, while the practical implementation of environmental policy encounters multiple challenges, including inadequate technical equipment, low remuneration for staff, and a lack of incentives for initiative. The institutional structure remains rigid and poorly equipped to respond promptly to emerging environmental challenges, particularly those related to climate change and the degradation of natural resources.

In Turkmenistan, environmental policy is implemented by the Ministry of Environmental Protection (Decree on the establishment..., 2023), which functions within a narrowly centralised and opaque institutional framework. Although it is formally responsible for a broad range of powers – including issuing environmental permits and monitoring nature use – in practice, the Ministry's operations are marked by formalism, low transparency, restricted access to environmental information, and an almost complete absence of mechanisms for public oversight. This creates a situation in which environmental policy is carried out without adequate feedback or external scrutiny.

The next stage involved a comprehensive analysis of the institutional mechanisms of environmental security operating in the five Central Asian countries: Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan, and Turkmenistan. The analysis included an assessment of institutional structure, functional competencies, degree of centralisation, resource allocation, and levels of public engagement. It was found that the institutional architecture of these countries exhibits substantial variation, reflecting differences in political commitment, available resources, and foreign policy

orientations. To systematise the results of this comparative analysis, a summary table (Table 1) is presented, highlighting the key similarities and differences in the institutional mechanisms of

environmental security across the region. The data are drawn from official government documents, reports by international organisations, and the findings of secondary analysis.

Table 1. Comparative characteristics of environmental security institutions in Central Asian countries

Country	Central authority	Level of centralisation	Availability of digital tools	Public participation	Key issues
Kazakhstan	Ministry of Ecology	High	Available (electronic ATS platform)	Average	Institutional complexity
Kyrgyzstan	Ministry of Natural Resources and Ecology	Average	Limited	Low	Lack of personnel, fragmentation of powers
Uzbekistan	Ministry of Ecology, Environmental Protection and Climate Change	Increasing	Partial	Limited	Independence of control, formality
Tajikistan	Nature Protection Committee	Low	Missing	Very low	Weak capacity, lack of resources
Turkmenistan	Ministry of Environmental Protection	High (hard)	Missing	Missing	Closedness, declarativeness

Source: Constitution of the Republic of Tajikistan (1994), Constitution of the Republic of Kazakhstan (1995), Constitution of the Kyrgyz Republic (2021), Constitution of the Republic of Uzbekistan (2023), Decree on the Establishment of Ministry of Environmental Protection of Turkmenistan (2023)

Public involvement in environmental governance processes in Central Asian countries remains uneven. Although all five countries are signatories to the Aarhus Convention (1998), the actual implementation of its provisions concerning access to environmental information, public participation in decision-making, and access to justice varies considerably.

In Kazakhstan, public participation is regulated under "Articles 13-15" of the Environmental Code of the Republic of Kazakhstan (2021), which enshrine the right of citizens to submit comments on draft environmental regulations and to take part in state environmental assessments. However, according to environmental organisations, such participation is largely consultative in nature, with no legal obligation for the authorities to incorporate public input into final decisions. A similar situation is observed in Uzbekistan, where the Law "On Environmental Control" (2014)

formally provides for the participation of non-governmental organisations in environmental monitoring, but lacks clear procedural mechanisms for exercising this right.

In Kyrgyzstan and Tajikistan, public participation mechanisms are included only as general provisions within environmental legislation (for example, in the Law of the Kyrgyz Republic "On Protection of Atmospheric Air" and "On Environmental Expertise" (1999), the Law No. 48 "On Biosphere Territories" (1999), and the Law of the Republic of Tajikistan "On Environmental Protection" (2011)). However, effective tools for the implementation of these provisions are absent. Specifically, there are no electronic platforms facilitating access to environmental information, nor are there mechanisms holding authorities legally accountable for disregarding citizens' requests.

In Turkmenistan, the level of public participation is assessed as very low. Although the right

to participate is formally guaranteed under “Article 50” of the Law “On Environmental Protection” (2014), in practice, access to environmental information is highly restricted, and civil society organisations face substantial administrative barriers in engaging in environmental advocacy.

The main barriers to the implementation of public participation in all Central Asian countries remain legal, procedural, and technical in nature. From a legal perspective, current regulations are often declarative or insufficiently defined, with mechanisms for the mandatory consideration of public opinion in environmentally significant decision-making either absent or lacking enforceability. Procedurally, challenges persist in accessing environmental impact assessment processes, public hearings, and the submission of comments – these mechanisms are frequently opaque, complex, and fail to provide meaningful feedback.

The technical dimension also acts as a limiting factor: in most countries of the region, access to environmental information is restricted, electronic registers are either non-existent or only partially operational, and the level of digitalisation of state environmental services remains low. The convergence of these factors results in a situation where, although citizen participation in environmental policy is formally guaranteed, it is implemented in practice to a very limited extent and does not meet the requirements of the Aarhus Convention.

Thus, despite formal accession to the Aarhus Convention, public participation in the domain of environmental security in the Central Asian countries remains constrained – both in terms of regulatory support and the actual implementation of international environmental law provisions. To ensure compliance with Aarhus standards, it is essential to improve procedures for access to information, guarantee legal certainty, and enhance the institutional capacity of authorities to engage with the public.

The highest level of institutional capacity is demonstrated by Kazakhstan, where digital monitoring tools are being actively deployed and a functioning system of state environmental control is in place. A similar trend, albeit with certain limitations, is observable in Uzbekistan, where environmental reform and administrative centralisation are underway. In the remaining countries, institutional models remain fragmented and under-resourced, which adversely affects the effective implementation of environmental policy.

The analysis of the transboundary dimension of environmental security in Central Asia is crucial in the context of regional stability, as most environmental threats transcend political boundaries and are supranational in nature. The geographical configuration of the region – particularly the reliance of lowland states on water resources originating in mountainous areas – necessitates continuous coordination in the management of natural resources. Transboundary environmental security in Central Asia encompasses several interconnected domains: water use, radiation and chemical safety, air pollution, waste management, and climate change.

Among these, one of the most pressing challenges is the management of shared water resources, particularly those of the Syr Darya and Amu Darya rivers. The primary water catchment areas are located in Kyrgyzstan and Tajikistan, while Uzbekistan, Kazakhstan, and Turkmenistan are the major consumers, primarily for irrigation and industrial purposes. This asymmetry generates significant tensions, especially during periods of drought. Water use is currently governed by agreements concluded in the 1990s, notably the Agreement Between Central Asian Republics on Cooperation in the Field of Joint Water Resources Management and Conservation of Interstate Sources (1992). However, these documents are not legally binding and lack concrete mechanisms for enforcement,

implementation monitoring, or dispute resolution, thereby limiting their effectiveness under present-day conditions.

A separate and serious threat is posed by the legacy of the Soviet era, namely numerous storage facilities for radioactive and chemical waste. Kyrgyzstan alone hosts more than 90 such facilities, some of which are situated close to the sources of transboundary rivers (International Atomic Energy Agency, 2012). Given the region's seismic activity, climate variability, and deteriorating infrastructure, there is a high risk of toxic leaks, which could trigger large-scale environmental disasters with cross-border repercussions. Similar facilities are also present in Tajikistan and Uzbekistan. Although measures to neutralise or contain these hazards are largely financed by international donors – including the UNDP, IAEA, and World Bank (2021) – a sustainable, regionally coordinated response mechanism has yet to be established.

Although Kazakhstan, Kyrgyzstan, and Tajikistan have acceded to key international environmental treaties – including the Aarhus Convention (1998), the Espoo Convention on the Transboundary Impact of Industrial Accidents (1991), and the Convention on the Protection of Transboundary Watercourses (1992) – their practical implementation remains partial and is characterised by systemic shortcomings.

In particular, the provisions concerning access to environmental information are inadequately implemented due to the underdevelopment of electronic platforms. While Kazakhstan has developed an environmental portal, data updates are infrequent and information requests often go unanswered. Kyrgyzstan does not regularly publish national reports under the Aarhus Convention (for instance, for the years 2021–2024), which reflects a lack of transparency and incomplete adherence to access requirements. With regard to public participation guarantees,

although legislation formally permits public hearings and the submission of comments, these procedures are often applied selectively or their outcomes disregarded. In Kazakhstan, roundtables and discussions involving environmental non-governmental organisations (NGOs) are advisory in nature and rarely influence final decision-making. The implementation of the right to access justice in environmental matters remains weak across the region, primarily due to the absence of specialised judicial procedures and insufficient funding.

At the national level, meaningful adaptation of international norms is observed only in Kazakhstan, where the 2021 Environmental Code formally incorporates the principles of the Aarhus Convention, including electronic access to information, environmental audits, and public hearings via an ecological portal. In contrast, Kyrgyzstan and Tajikistan have limited adaptation to declarative provisions within their basic environmental laws, without establishing specific procedures or digital platforms. Therefore, although the legal norms exist, their implementation remains incomplete, inconsistent, and largely ineffective, falling short of the Aarhus Convention's standards (Zaharchenko, 2007).

Among institutional initiatives, the activities of the Regional Environmental Centre for Central Asia (CAREC) (2025) are noteworthy. CAREC facilitates coordination and information exchange among countries and implements joint programmes on water resource monitoring, climate change, and the promotion of green technologies. However, CAREC lacks formal legal authority, its activities are confined to grant-based projects, and it does not benefit from stable financial contributions from participating states. A summary of key international agreements, organisations, and programmes regulating transboundary environmental cooperation in Central Asia is presented in Table 2.

Table 2. Principal transboundary environmental threats in Central Asia

Threat category	Countries involved	Nature of the problem	Legal framework / Initiatives	Implementation problems
Water use (Syr Darya, Amu Darya)	Kyrgyzstan, Tajikistan, Uzbekistan, Kazakhstan, Turkmenistan	Uneven distribution of water, conflicts in water intake, seasonal conflicts	Agreement on cooperation in the field of joint use of water resources (Almaty, 1992)	Lack of binding agreement, weak implementation
Melting glaciers and climate risks	Kyrgyzstan, Tajikistan → all countries in the region	Reduced river flow, a threat to water security in low-lying states	Aarhus Convention, UNECE Water Convention	Lack of joint climate monitoring
Air pollution and dust storms	Kazakhstan, Uzbekistan, Turkmenistan	Dust spread from the Aral Sea zone, transboundary air pollution	Aarhus Convention, CAREC	Insufficient monitoring coverage
Hazardous waste and industrial pollution	All countries	Cross-border flow of industrial waste, soil and water pollution	Espoo Convention, national strategies	Lack of environmental responsibility mechanisms
Regional cooperation	All countries	Formal cooperation through CAREC, donor projects	CAREC, UNECE, UNDP, CA SDDP	No binding authority in CAREC

Note: UNECE – United Nations Economic Commission for Europe; UN – United Nations UNDP – United Nations Development Programme; CAREC – Regional Environmental Centre for Central Asia; JECCA – Joint Environmental Initiative for Central Asia; UNECE- United Nations Economic Commission for Europe

Source: United Nations Economic Commission for Europe (UNECE)(1991), United Nations Economic Commission for Europe (UNECE) (1992), United Nations Economic Commission for Europe (UNECE) (1998), H. Monken-Fernandes and P. O’Sullivan (2015), Regional Environmental Centre for Central Asia (CAREC) (2023), D. Ziganshina (2023), W. Ali and U. Kang (2024), Regional Environmental Centre for Central Asia (2025)

An additional challenge is the absence of a unified approach to environmental information – access to environmental data is often restricted or irregular, rendering comprehensive cross-border analysis unfeasible. Although the Aarhus Convention guarantees citizens the right to access environmental information, its implementation is frequently inadequate due to internal limitations within public administration systems.

Accordingly, transboundary environmental security in Central Asia remains structurally unstable. The region is confronted with multiple environmental threats, fragmented and often declarative regulatory frameworks, uncoordinated policies, and weak institutional mechanisms – all of which pose systemic risks to both the population and natural ecosystems. In the long term, several key objectives must be pursued: the development of binding intergovernmental

agreements with clearly defined procedures and enforcement mechanisms; the establishment of a joint regional centre for environmental monitoring; the harmonisation of national environmental standards in line with international norms; the institutional strengthening of the Regional Environmental Centre for Central Asia (CAREC), including the assignment of executive powers; and the expansion of public and scientific participation in decision-making processes. These steps are essential to reducing the conflict potential of transboundary environmental issues and ensuring the balanced development of Central Asian states in the context of escalating ecological challenges.

The findings of the study have revealed a number of systemic issues and contradictions that hinder the effective legal regulation of environmental security in Central Asia. These challenges relate to both internal legal and

institutional frameworks, as well as to mechanisms of interstate cooperation.

Much of the environmental legislation in the region remains largely declarative. Although environmental rights are formally enshrined in constitutions and statutory law, the mechanisms for their practical enforcement are either weak or entirely absent. In many cases, there are no effective procedures enabling citizens to seek judicial redress for violations of environmental rights, claim compensation for environmental damage, or require mandatory environmental impact assessments for all categories of economic activity.

The majority of regulatory legal acts are either outdated or fragmented. For instance, in Uzbekistan and Tajikistan, the core environmental laws were enacted in the 1990s and have not been adequately updated to address contemporary challenges such as climate change, digitalisation of governance, biosafety, or the adoption of green technologies. The absence of consistent terminology, harmonised standards, and objective criteria for assessing environmental harm significantly hampers the effective application of these laws in judicial and administrative practice.

Another major issue is the limited implementation of international environmental obligations. While Kazakhstan and Kyrgyzstan have ratified key environmental conventions – including the Aarhus, Espoo, and Basel Conventions – their practical application remains constrained by insufficient financial resources, limited technical infrastructure, and a lack of specialised personnel. Turkmenistan and Tajikistan exhibit even lower levels of engagement with international environmental law, further weakening the region's capacity for coordinated and effective environmental governance.

Institutional weakness is evident in the absence of a clear delineation of powers among authorities, duplication of functions, insufficient inter-ministerial coordination, and a shortage of

personnel with appropriate qualifications. In several countries, environmental control bodies are subordinated to the executive branch without elements of independent oversight, thereby limiting their effectiveness.

There is an almost complete absence of regional coordination mechanisms. No binding legal framework exists for the management of transboundary water resources, radiation monitoring, or coordination during environmental emergencies. Existing agreements remain framework-based and lack enforcement provisions such as sanctioning or arbitration mechanisms. This situation fosters mutual distrust among countries – an especially critical issue given the competition for shared water resources.

Finally, the level of public participation in the development and implementation of environmental policy remains low. In most countries, transparent mechanisms for access to environmental information, public consultation procedures, and independent environmental expertise are lacking. This contravenes both the principles of the Aarhus Convention and the pan-European standards of environmental democracy, as outlined by the United Nations Economic Commission for Europe (UNECE) (2023). Overall, the countries of Central Asia are at varying stages in the development of their environmental legal systems. However, all exhibit structural dysfunctions that necessitate not only comprehensive domestic reform but also deeper regional integration underpinned by international legal frameworks.

Discussion

The study revealed significant differences in national approaches to the legal regulation of environmental security across Central Asian countries. There is marked divergence in the content of constitutional provisions defining the core principles of environmental policy – ranging from largely declarative formulations in the constitutions of

Tajikistan and Turkmenistan to more structured norms incorporating elements of implementation mechanisms, as observed in the Constitution of Kazakhstan. This trend reflects the uneven evolution of national legal systems in the field of environmental protection, a conclusion supported by the findings of B. Libert (2017) and S. Sayapin (2022), who also highlight varying degrees of institutionalisation of environmental policy across the region.

The results of this study align with the conclusions of N. Zambrana-Tévar (2022), who provides a detailed analysis of environmental legislation reform in Kazakhstan. Her research underscores that Kazakhstan remains the only country in the region with a systematically constructed Environmental Code, structured in accordance with European regulatory principles. This confirms the finding that Kazakhstan stands out in terms of regulatory comprehensiveness, legal clarity, and alignment with international environmental standards. In contrast, other Central Asian states – notably Kyrgyzstan, Tajikistan, and Turkmenistan – maintain fragmented and outdated regulatory frameworks, a pattern also noted in the works of J. Allen (2018) and H. Buck *et al.* (2023).

A similar level of consistency is observed in relation to the legal implementation of international treaties. B. Libert (2017) and S. Brunelli *et al.* (2022) note that, although countries in the region have formally acceded to key conventions (such as Aarhus, Espoo, and Basel), these commitments are not accompanied by effective implementation mechanisms. The present analysis corroborates this finding: across all five countries, there exists a gap between declarative commitments and the actual administrative and legal tools required for the practical enforcement of international environmental obligations. The implementation of procedures concerning access to environmental information and public

participation in environmental decision-making remains particularly weak, undermining the core principles of the Aarhus Convention. These deficiencies highlight both institutional and legal constraints, particularly related to the limited mandates of competent authorities and insufficient financial and technical resources.

At the same time, the results of this study significantly complement, expand upon, and clarify the conclusions of V. Krepl *et al.* (2013), who outlined general trends in the functioning of environmental monitoring systems in Central Asian countries. The analysis identified a range of technical and institutional problems that remain unresolved, particularly in Tajikistan, Uzbekistan, and Kyrgyzstan. In these countries, environmental monitoring systems exhibit a fragmented structure, characterised by periodic disruptions in the collection and processing of environmental data, the absence of a unified digital state register of emissions and pollution, and the lack of standardised methodological approaches for determining baseline indicators.

These deficiencies hinder the timely identification of environmental risks and prevent objective assessments based on technical parameters and quantitative metrics. Furthermore, the integration of environmental monitoring data into national-level decision-making processes remains minimal, which significantly undermines the effectiveness of monitoring activities. In many cases, agencies responsible for collecting environmental information operate with outdated equipment and do not utilise modern digital tools, such as satellite remote sensing, automated air quality sensors, or integrated Geographic Information Systems (GIS).

In the context of implementing international environmental agreements and formulating climate policy, it is essential to consider both global frameworks and local specificities. J. Wisznowski (2024) notes that climate policy frequently encounters contradictions between national ob-

jectives and local realities, complicating its effective implementation. Similarly, J.A. Basseches *et al.* (2022), in their critical assessment of climate conflicts at the US state level, highlight the complexities of coordinating policy decisions within multi-level governance systems – insights that offer a useful comparative perspective for understanding similar challenges in Central Asia. Both studies underscore the importance of enhanced transparency, public engagement, and the development of robust monitoring mechanisms – factors that strongly align with the deficiencies identified in the implementation of environmental agreements across the region.

These findings are consistent with the observations of L. Jalling (2003), who emphasises the institutional inertia rooted in the Soviet period, which continues to shape the structural barriers hindering the modernisation of the regulatory framework for environmental monitoring. In particular, a substantial portion of environmental legislation in Central Asian countries relies on outdated technical standards that do not align with current international practices for the collection, processing, and verification of environmental data. The absence of political will to digitalise this sector, coupled with insufficient funding and a lack of technical expertise, exacerbates the region's technogenic vulnerability and reduces its capacity for early response to environmental threats (Buribayev *et al.*, 2020).

Regarding the legal regulation of water use – an issue of critical importance in the context of the Aral Sea crisis – the findings align with the analyses of D. Ziganshina (2022) and H. Nashoonga (2022). The study demonstrates that, despite the existence of international water agreements, the legal framework for the joint management of transboundary resources remains weak and lacks binding dispute resolution mechanisms. This deficiency poses a serious risk to environmental and social security, particularly in border areas

such as the Fergana Valley, Karakalpakstan, and Surkhandarya. Moreover, the lack of effective inter-state mechanisms for compensation for environmental damage remains a persistent challenge, as also noted in the work of T. Goeschl (2008).

Issues concerning property rights to natural resources revealed further significant disparities. The study by S. Robinson *et al.* (2017) highlighted that legal uncertainty surrounding pastoral land use undermines both environmental and social stability in Kyrgyzstan and Tajikistan. The present analysis confirms these findings, additionally revealing that legal conflicts between traditional practices and modern land legislation continue to persist in Uzbekistan following recent land use reforms.

In addition, the results of the analysis expand the existing analytical base required for a comprehensive assessment of climate policy in Central Asian countries, taking into account legal, institutional, and managerial dimensions. As noted by D.Y. Park and O. Parviz (2016), most climate strategies in the region are characterised by a declarative nature – that is, formal adoption without the corresponding implementation and monitoring mechanisms. The present findings confirm and elaborate on this thesis, revealing the absence of legally binding regulatory frameworks related to climate change adaptation at the national level, particularly in Tajikistan and Turkmenistan. This legislative gap impedes the establishment of effective climate risk management systems, constrains the development of adaptive measures, and creates significant barriers to fulfilling international obligations, especially within the framework of the UN Framework Convention on Climate Change. Consequently, the effectiveness of financial and technical support provided through multilateral climate mechanisms, such as the Green Climate Fund, is substantially diminished. The discrepancy between formal international commitments and actual enforcement practices

points to a structural instability in climate governance across the region (Kovach *et al.*, 2024).

In the broader context of environmental policy under authoritarian political regimes, the study's findings align with the conclusions of C. Buranelli (2023), who argues that weak legal institutions, coupled with the absence of political competition, severely hinder the institutionalisation of environmental agendas. This analysis develops that concept further by examining specific institutional mechanisms, demonstrating that in states with centralised models of public administration – particularly Turkmenistan and Uzbekistan – environmental institutions are largely limited to a nominal existence. These bodies lack autonomy, financial independence, and decision-making authority, resulting in the effective marginalisation of environmental concerns within the national governance architecture.

In their study, A. Pfeiffer *et al.* (2016) examine the environmental challenges facing Central Asia, particularly the consequences of the Soviet legacy and the impacts of climate change. The authors highlight that large-scale irrigation projects implemented during the Soviet era have led to the significant depletion of water resources, especially in the Syr Darya and Amu Darya River basins, contributing to the desiccation of the Aral Sea and widespread environmental degradation. Furthermore, they draw attention to the inefficiencies in managing industrial and domestic waste in the region's expanding urban centres, which further exacerbate environmental issues. These factors, combined with the growing impact of climate change, pose serious threats to environmental security in Central Asia. A. Pfeiffer and C. Hepburn (2016) stress the need for both national and regional measures to secure a sustainable future for the region by 2050. These conclusions align with the present study's findings, which likewise identify substantial problems in water resource management and

weaknesses in environmental legislation across Central Asian states.

Thus, the findings of this study are largely consistent with previous scholarly work, confirming the key challenges and further clarifying them from a legal perspective. At the same time, the study contributes to the existing body of literature by providing specific examples of regulatory frameworks and highlighting gaps in enforcement practice. The data collected represent a valuable addition to the theoretical development of environmental law in post-Soviet states and offer prospects for advancing models of legal integration and interstate environmental governance in Central Asia.

Conclusions

The study found that the legal regulation of environmental safety in the countries of Central Asia demonstrates significant differences, both in terms of the level of detail in regulatory legal acts and the effectiveness of their implementation in practice. The analysis revealed that the basic constitutional provisions establishing the foundations of environmental policy range from declarative formulations to structured and specified norms, indicating uneven development of legal systems in the field of environmental protection. This creates substantial challenges for the implementation of effective technical and administrative mechanisms for monitoring and managing natural resources.

According to qualitative indicators, notable gaps were identified in the implementation of international environmental agreements, particularly the Aarhus Convention. These include limited access to environmental information due to the absence of open and user-friendly electronic platforms; insufficient transparency in decision-making procedures, with limited and formal public consultations; and a declarative or absent system of independent environmental expertise.

Furthermore, the weak role of civil society organisations, coupled with legal and procedural barriers that do not fully comply with international obligations – as well as limited funding and technical support – result in uneven implementation of norms, diminished public trust, and a heightened risk of social conflicts, especially in cross-border contexts.

The technical analysis of environmental monitoring systems revealed unstable operation and a low level of digital integration, as well as the absence of unified standards for data processing and exchange, all of which reduce the effectiveness of environmental control. It was found that outdated technologies and infrastructure constrain the ability to respond promptly to environmental threats and hinder the formation of a comprehensive environmental risk management system.

The situation regarding the regulation of transboundary water use is particularly critical, with a significant impact on the region's ecological security. The lack of effective legal and technical regulatory mechanisms creates risks of conflict and environmental disasters. In this context, the inadequacy of water resource monitoring systems and joint management mechanisms limits the potential for sustainable development and adaptation to climate change. The practical results of the study confirm the necessity of modernising the regulatory framework, taking into account the latest technical solutions in environmental

monitoring, particularly the implementation of digital platforms, satellite observation systems, and automated data collection technologies.

It is recommended to strengthen the institutional capacity of authorised bodies and to develop unified data standards and reporting procedures, which will enhance the transparency and efficiency of natural resource management. A key area of focus should be the creation of mechanisms for interstate coordination and information exchange, to optimise the management of transboundary ecosystems.

The limitation of the study was the insufficient openness of data in the technical field of environmental control, as well as restricted access to domestic protocols and technological regulations. This has led to partial incompleteness of the technical analysis and highlights the need to expand the empirical base in future research. To improve outcomes, a more in-depth examination of the implementation of specific technological solutions in environmental monitoring is required, along with an assessment of their impact on the effectiveness of regulatory compliance.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of Interest

None.

References

- [1] Agreement Between Central Asian Republics on Cooperation in the Field of Joint Water Resources Management and Conservation of Interstate Sources, Almaty. (1992, February). Retrieved from <http://www.icwc-aral.uz/statute1.htm>.
- [2] Ali, W., & Kang, U. (2024). *Climate, land and security risks go hand-in-hand in Central Asia*. Retrieved from <https://www.undp.org/eurasia/blog/climate-land-and-security-risks-central-asia>.
- [3] Allen, J. (2018). Climate change and severe thunderstorms. *Oxford Research Encyclopedia of Climate Science*. doi: [10.1093/acrefore/9780190228620.013.62](https://doi.org/10.1093/acrefore/9780190228620.013.62).

- [4] Aral Sea Basin Program (ASBP): Water and Environmental Management Project (Project P008326). (2021). Retrieved from <https://surl.li/dkqsha>.
- [5] Basseches, J.A., et al. (2022). Climate policy conflict in the U.S. states: A critical review and way forward. *Climatic Change*, 170, article number 32. doi: 10.1007/s10584-022-03319-w.
- [6] Brunelli, S., Murzakhmetova, A., & Falivena, C. (2022). Environmental auditing in rural areas: Current patterns and future challenges in Central Asia. *Sustainability*, 14(22), article number 15163. doi: 10.3390/su142215163.
- [7] Buck, H.J., Carton, W., Lund, J.F., & Markusson, N. (2023). "Countries" long-term climate strategies fail to define residual emissions. *Nature Climate Change*, 13, 317-319. doi: 10.1038/s41558-023-01614-7.
- [8] Buranelli, F.C. (2023). The institutionalisation of environmentalism in Central Asia. *SpringerBriefs in Climate Studies*, 137-148. doi: 10.1007/978-3-031-29831-8_11.
- [9] Buribayev, Y.A., Khamzina, Z.A., Suteeva, C., Apakhayev, N.Z., Kussainov, S.Z., & Baitekova, K.Z. (2020). Legislative regulation of criminal liability for environmental crimes. *Journal of Environmental Accounting and Management*, 8(4), 323-334. doi: 10.5890/jeam.2020.12.002.
- [10] Committee for Environmental Protection under the Government of the Republic of Tajikistan. (2025). *About the committee: Functions and responsibilities*. Retrieved from https://cites.org/eng/node/111779?utm_source.
- [11] Constitution of the Kyrgyz Republic. (2021). Retrieved from <https://surl.li/dltbst>.
- [12] Constitution of the Republic of Kazakhstan. (1995, August). Retrieved from https://www.akorda.kz/ru/official_documents/constitution.
- [13] Constitution of the Republic of Tajikistan. (1994, November). Retrieved from [https://www.rightofassembly.info/assets/downloads/1994_Constitution_of_Tajikistan_\(as_amended\)_%28English_translation%29.pdf](https://www.rightofassembly.info/assets/downloads/1994_Constitution_of_Tajikistan_(as_amended)_%28English_translation%29.pdf).
- [14] Constitution of the Republic of Uzbekistan. (2023, April). Retrieved from <https://constitution.uz/en/clause/index>.
- [15] Constitution of Turkmenistan. (2016, September). Retrieved from https://legislationline.org/sites/default/files/documents/8c/288_CONST-TKM_21Jul2016_ANNEX_en.pdf.
- [16] Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention). (1998, June). Retrieved from https://treaties.un.org/doc/treaties/1998/06/19980625%2008-35%20am/ch_xxvii_13p.pdf.
- [17] Convention on Environmental Impact Assessment in a Transboundary Context. (1991, February). Retrieved from <https://unece.org/sites/default/files/2021-03/Espoo%20Convention.pdf>.
- [18] Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Water Convention). (1992, March). Retrieved from <https://surl.li/dnxjdg>.
- [19] Decree on the Establishment of the Ministry of Environmental Protection of Turkmenistan. (2023, July). Retrieved from <https://surl.li/muunjy>.
- [20] Environmental Code of the Republic of Kazakhstan. (2021, January). Retrieved from https://online.zakon.kz/Document/?doc_id=39768520&show_di=1&pos=4;-106#pos=4;-106.
- [21] Environmental Code of the Republic of Tajikistan. (2011, August). Retrieved from http://www.cawater-info.net/library/rus/tj_ob_ohrane_okrzhayushei_sredi.pdf.

- [22] Goeschl, T. (2008). Distributive constraints on environmental policy in Central Asia. In *Environmental problems of Central Asia and their economic, social and security impacts*. NATO science for peace and security (pp. 311-326). Dordrecht: Springer. doi: [10.1007/978-1-4020-8960-2_22](https://doi.org/10.1007/978-1-4020-8960-2_22).
- [23] Gulimov, A.B. (2023). The importance of international legal cooperation of Central Asian states in the field of ecology and environmental protection in the Aral Sea region. *International Journal of Law and Criminology*, 3(10), 27-33. doi: [10.37547/ijlc/volume03issue10-06](https://doi.org/10.37547/ijlc/volume03issue10-06).
- [24] Gulomov, I., & Rasulova, R. (2024). Environmental policy and the environmental situation in the countries of Central Asia. *BIO Web of Conferences*, 116, article number 07013. doi: [10.1051/bioconf/202411607013](https://doi.org/10.1051/bioconf/202411607013).
- [25] Gupta, J., Chen, Y., Mckay, D.I.A., Fezzigma, P., Gentile, G., Karg, A., van Vliet, L., Lade, S.J., & Jacobson, L. (2024). Applying earth system justice to phase out fossil fuels: Learning from the injustice of adopting 1.5 °C over 1 °C. *International Environmental Agreements: Politics, Law and Economics*, 24, 233-255. doi: [10.1007/s10784-024-09628-y](https://doi.org/10.1007/s10784-024-09628-y).
- [26] Jalling, L. (2003). Central Asia. In T. Everett-Heath (Ed.), *Environmental issues in Central Asia: A source of hope or despair?* (pp. 177-190). London: Routledge. doi: [10.4324/9780203451359-21](https://doi.org/10.4324/9780203451359-21).
- [27] Kovach, D., Kullolli, B., Djaparova, S., Mikhnevych, L., & Myskovets, I. (2024). Legal aspects of environmental sustainability and climate change: The role of international and national legislation. *Journal of Environmental Law and Policy*, 4(2), 149-179. doi: [10.33002/jelp040206](https://doi.org/10.33002/jelp040206).
- [28] Krepl, V., Kment, P., & Vališ, Z. (2013). Environmental development in Central Asia: Towards sustainability? *Agricultura Tropica Et Subtropica*, 46(2), 73-78. doi: [10.2478/ATS-2013-0012](https://doi.org/10.2478/ATS-2013-0012).
- [29] Land Code of Turkmenistan. (2004, October). Retrieved from <https://faolex.fao.org/docs/pdf/tuk81992.pdf>.
- [30] Law of Tajikistan No. 905 "On Environmental Protection". (1996, February). Retrieved from <http://faolex.fao.org/docs/pdf/taj42462E.pdf>.
- [31] Law of Tajikistan No. 915 "On Protection of the Atmospheric Air". (2012, December). Retrieved from <http://faolex.fao.org/docs/pdf/taj171009.pdf>.
- [32] Law of the Kergez Republic No. 49 "On Subsoil". (2021, August). Retrieved from <https://policy.asiapacificenergy.org/sites/default/files/Law%20on%20Subsoil%20No.%2049%20of%202018%20%282021%20Ed.%29.pdf>.
- [33] Law of the Kyrgyz Republic No. 48 "On Biosphere Territories". (1999, June). Retrieved from http://faolex.fao.org/docs/pdf/kyr36603_1999.pdf.
- [34] Law of the Kyrgyz Republic No. 51 "On Protection of Atmospheric Air". (1999, June). Retrieved from <https://faolex.fao.org/docs/pdf/kyr81554.pdf>.
- [35] Law of the Kyrgyz Republic No. 53 "On Environmental Protection". (1999, June). Retrieved from <http://faolex.fao.org/docs/pdf/kyr43149.pdf>.
- [36] Law of the Kyrgyz Republic No. 54 "On Environmental Expertise". (1999, May). Retrieved from <https://faolex.fao.org/docs/pdf/kyr54021.pdf>.
- [37] Law of the Kyrgyz Republic No. 89 "On Production and Consumption Waste". (2001, November). Retrieved from <https://cis-legislation.com/document.fwx?rgn=352>
- [38] Law of the Kyrgyz Republic No. 93 "On Industrial Safety of Hazardous Production Facilities". (2001, November). Retrieved from <https://cis-legislation.com/document.fwx?rgn=383>.

- [39] Law of the Republic of Uzbekistan No. 353-I “On Protection of Atmospheric Air”. (1996, December). Retrieved from <https://lex.uz/ru/docs/6814444?ONDATE=03.01.1997>.
- [40] Law of the Republic of Uzbekistan No. 754XII “On Nature Protection”. (1992, December). Retrieved from <https://leap.unep.org/en/countries/uz/national-legislation/law-no754-xii-nature-protection>.
- [41] Law of the Republic of Uzbekistan no. 837-XII “On Water and Water Use”. (1993, March). Retrieved from <http://faolex.fao.org/docs/pdf/uzb5255.pdf>.
- [42] Law of the Republic of Uzbekistan No. ZRU1036 “On Environmental Expertise, Environmental Impact Assessment and Strategic Environmental Assessment”. (2025, February). Retrieved from <https://surli.cc/gbamyc>.
- [43] Law of the Republic of Uzbekistan No. LPU-1036 “On Environmental Expertise, Environmental Impact Assessment, and Strategic Environmental Assessment”. (2025, January). Retrieved from <https://lex.uz/ru/docs/7397289>.
- [44] Law of Turkmenistan “On Waste”. (2015, May). Retrieved from <https://www.cawater-info.net/library/rus/tm-othody-2015.pdf>.
- [45] Law of Turkmenistan No. 182-I “On Atmospheric Air Protection”. (2016, December). Retrieved from <https://www.fao.org/faolex/results/details/fr/c/LEX-FAOC054039>.
- [46] Law of Turkmenistan No. 40-V “On Nature Protection”. (2014, March). Retrieved from <https://faolex.fao.org/docs/pdf/tuk132755original.pdf>.
- [47] Libert, B. (2017). *Application of the UNECE environmental conventions in Central Asia*. Cham: Springer. doi: 10.1007/698_2017_139.
- [48] Ministry of Natural Resources, Ecology and Technical Supervision of the Kyrgyz Republic – official description of responsibilities. (2025). Retrieved from <https://2024.minexasia.com/partners/ministry-of-natural-resources-ecology-and-technical-supervision-of-the-kyrgyz-republic/>.
- [49] Monken-Fernandes, H., & O’Sullivan, P. (2015). Overcoming the barriers to implementation of decommissioning and environmental remediation projects – a focus on uranium mining legacy sites. The CIDER project. In *Uranium – past and future challenges* (pp. 417-424). Cham: Springer. doi: 10.1007/978-3-319-11059-2_48.
- [50] Mukhamediyarova, O., Moroz, S., & Akimbekova, S. (2025). Current issues of agricultural land transfer in the Republic of Kazakhstan. *Acta Scientiarum Polonorum Administratio Locorum*, 24(1), 115-127. doi: 10.31648/aspal.9812.
- [51] Narzullaeva, O., Mukasheva, A., & Sadikova, D. (2025). Ensuring Legal Protection of Biological Diversity Regulations for Safeguarding Ecosystem. *Journal of Human Rights, Culture and Legal System*, 5(2), 531-553. doi: 10.53955/jhcls.v5i2.515.
- [52] Nashoonga, H. (2022). The role of international law in the prevention and resolution of possible conflicts over water in Central Asia: A comparative study with special reference to the European Union (EU). In *International conflict and security law* (pp. 1473-1497). The Hague: T.M.C. Asser Press. doi: 10.1007/978-94-6265-515-7_64.
- [53] Orzaliev, K., Mukasheva, A., Ybyray, N., & Nurekeshov, T. (2024). Current regulation of water relations in Central Asia. *Regional Science Policy and Practice*, 16(9), article number 100038. doi: 10.1016/j.rspp.2024.100038.
- [54] Park, D.-Y., & Parviz, O. (2016). [Central Asian legal and policy responses to climate change](#). *Yonsei Law Review*, 26(2), 183-222.

- [55] Pfeiffer, A., & Hepburn, C. (2016). Facing the challenge of climate change. *Global Journal of Emerging Market Economies*, 8(2), 201-215. doi: [10.1177/0974910116634473](https://doi.org/10.1177/0974910116634473).
- [56] Regional Environmental Centre for Central Asia (CAREC). (2025). *About CAREC: Environmental cooperation platform in Central Asia*. Retrieved from <https://careeco.org/en>.
- [57] Robinson, S., Jamsranjav, C., & Gillin, K. (2017). Pastoral property rights in Central Asia: Factors and actors driving the reform agenda. *Rural Studies*, 200, 220-253. doi: [10.4000/etudesrurales.11774](https://doi.org/10.4000/etudesrurales.11774).
- [58] Sayapin, S. (2022). International law in Central Asia: Practices and doctrines. *Review of Central and East European Law*, 47(3-4), 322-351. doi: [10.1163/15730352-bja10072](https://doi.org/10.1163/15730352-bja10072).
- [59] Sehring, J., Sharipova, B., & Assubayeva, A. (2024). The politics of water governance in Central Asia: Institutionalizing river basin management. In *Handbook on the governance and politics of water resources* (pp. 205-217). Cheltenham: Edward Elgar Publishing. doi: [10.4337/9781800887909.00024](https://doi.org/10.4337/9781800887909.00024).
- [60] Sopykhanova, A. (2017). [Comparative analysis of legislation of foreign countries in the field of recreational environmental management](https://doi.org/10.1177/1056492617700000). *Academy of Strategic Management Journal*, 16(4).
- [61] Tulibayev, S.T. (2024). Issues of ecocide definition in the republic of Kazakhstan: Comparative analysis with the legislation of central asian countries. *Bulletin of the Institute of Legislation and Legal Information of the Republic of Kazakhstan*, 2(77), 314-319. doi: [10.52026/2788-5291_2024_77_2_314](https://doi.org/10.52026/2788-5291_2024_77_2_314).
- [62] Umbetbayeva, Z.B., Suleimenova, S., Ospanova, D., Nurahmetova, G., & Aigarinova, G. (2024). National legislations on air quality protection and penalties for atmospheric air pollution in Central Asia. *Pakistan Journal of Criminology*, 16(3), 171-190. doi: [10.62271/pjc.16.3.171.190](https://doi.org/10.62271/pjc.16.3.171.190).
- [63] Urinboyev, R. (2020). *Central Asian law: Legal cultures, governance and business environment in Central Asia. A collection of papers from Central Asian guest researchers seconded to Lund University*. Retrieved from https://portal.research.lu.se/portal/files/87020250/Web_version_ra_s_report_2020.pdf.
- [64] Wiszniowski, J. (2024). Climate policy in global and local aspects. *Civil and Environmental Engineering Reports*, 34(2), 1-21. doi: [10.59440/ceer/187048](https://doi.org/10.59440/ceer/187048).
- [65] Zaharchenko, T.R. (2007). *On the way to transparency: A comparative study on post-Soviet states and the Aarhus Convention*. Retrieved from <https://doczz.net/doc/8434305/a-comparative-study-on-post-soviet-states-and-the-aarhus>.
- [66] Zambrana-Tévar, N. (2022). Some transnational aspects of environmental disputes in Kazakhstan and its new environmental code. *International Relations and International Law Journal*, 99(3), 65-73. doi: [10.26577/IRIJ.2022.v99.i3.06](https://doi.org/10.26577/IRIJ.2022.v99.i3.06).
- [67] Zhusupov, B., Kuldysheva, G., & Istamkulov, J. (2024). Environmental legislation of Kyrgyzstan problems and solutions. *BIO Web of Conferences*, 116, article number 07017. doi: [10.1051/bioconf/202411607017](https://doi.org/10.1051/bioconf/202411607017).
- [68] Ziganshina, D. (2022). Water law reforms in Central Asian countries: Recent trends and developments. *Chinese Journal of Environmental Law*, 6(2), 295-322. doi: [10.1163/24686042-12340089](https://doi.org/10.1163/24686042-12340089).
- [69] Ziganshina, D. (2023). Water infrastructure in Central Asia: Legal and institutional frameworks. *Frontiers in Climate*, 5, article number 1284400. doi: [10.3389/fclim.2023.1284400](https://doi.org/10.3389/fclim.2023.1284400).

Правове регулювання забезпечення екологічної безпеки в країнах Центральної Азії

Алмаз Жееналієв

Докторант

Киргизький Національний Аграрний Університет імені К.І. Скрябіна
720005, вул. Медерова, 68, м. Бішкек, Киргизька Республіка
<https://orcid.org/0009-0001-4680-5985>

Рисбек Нургазієв

Ректор

Киргизький Національний Аграрний Університет імені К.І. Скрябін
720005, вул. Медерова, 68, м. Бішкек, Киргизька Республіка
<https://orcid.org/0000-0003-1376-6921>

Бактибек Рисмендеев

Професор

Киргизький Національний Університет імені Жусупа Баласагіна
720033, вул. Фрунзе, 547, м. Бішкек, Киргизька Республіка
<https://orcid.org/0009-0003-9513-5660>

Анотація

Метою дослідження було вивчення правових механізмів забезпечення екологічної безпеки в країнах Центральної Азії. Було проведено поетапний аналіз нормативно-правової бази, починаючи з конституційного рівня та поширюючись на галузеве законодавство та інституційну підтримку. У дослідженні розглядалися транскордонні екологічні загрози в Центральній Азії, зокрема деградація водних ресурсів у басейнах Сирдар'ї та Амудар'ї, а також транскордонне забруднення повітря у Ферганській долині. Низька ефективність існуючих угод пояснювалася відсутністю спільних механізмів моніторингу, невідповідністю стандартів та обмеженою юридичною відповідальністю сторін. Діяльність Міжнародного фонду порятунку Аральського моря була оцінена як фрагментована та недостатньо інтегрована в національну політику. Були визначені структурні бар'єри та умови для ефективної координації екологічних питань між країнами регіону. Порівняльний аналіз законодавчих баз показав, що лише Казахстан має повністю кодифікований та оновлений корпус екологічного законодавства, тоді як інші держави продовжують спиратися на бази, створені в 1990-х роках, які не адаптовані до сучасних викликів, таких як зміна клімату чи цифровізація екологічного управління. Інституційні моделі також суттєво відрізняються: Казахстан та Узбекистан рухаються до консолідації та цифровізації органів екологічної політики, тоді як Таджикистан і Туркменістан зберігають жорстко централізовані та менш ефективні структури. Серйозну загрозу регіональній безпеці становлять понад 90 радіаційно небезпечних об'єктів у Киргизстані, які можуть вплинути на сусідні екосистеми у разі техногенної аварії. Дослідження показало, що транскордонне співробітництво залишається значною мірою декларативним, а міжнародні конвенції впроваджуються лише у фрагментарній формі. Результати дослідження підтвердили

необхідність комплексного перегляду правової бази екологічної безпеки, посилення міждержавної координації та розробки ефективних механізмів реалізації екологічних прав та зобов'язань на регіональному рівні. Практичне значення дослідження полягає в його потенційному застосуванні для вдосконалення національного екологічного законодавства країн Центральної Азії, розробки спільних міжурядових угод з охорони навколишнього середовища та надання рекомендацій міжнародним організаціям, що займаються наданням екологічної допомоги та інтеграцією екологічної політики в регіональні стратегії розвитку

Ключові слова: інституційна взаємодія; транснаціональні виклики; інституційна ефективність; транскордонне співробітництво; техногенні ризики; конституційні гарантії навколишнього середовища



UDC 349.2:331.108

Doi: 10.31548/law/4.2025.221

Legal aspects of human resource management in small and medium-sized enterprises

Mentor Shaqiri*

PhD in Business Law and Economic Sciences, Associate Professor
UBT College

10000, 56 Rexhep Krasniqi Str., Pristina, Republic of Kosovo
<https://orcid.org/0000-0002-4656-2450>

Article's History:

Abstract

Received: 24.06.2025

Revised: 19.10.2025

Accepted: 27.11.2025

The aim of this study was to identify legal challenges and assess the compliance of human resource management practices in small and medium-sized enterprises with international standards, in order to justify ways of improving legal enforcement. The research methodology was based on a comparative analysis of current labour legislation in the selected countries, the study of relevant international labour standards, secondary data from international reports, and the examination of available case law in the field of labour disputes. International surveys and court rulings showed a large disparity between the official labour legislation of the nations reviewed, which generally corresponds with international principles, and its practical application in small and medium-sized firms. Despite the establishment of digital legal registries to increase transparency, its potential to improve legal awareness among small and medium-sized firms remains unexplored. All three countries have thorough labour relations laws, but their execution is difficult. Labour disputes and international reviews show that informal practises, particularly in Albania, make it difficult to document employment contracts, provide official remuneration, and follow termination procedures.

Suggested Citation:

Shaqiri, M. (2025). Legal aspects of human resource management in small and medium-sized enterprises. *Law. Human. Environment*, 16(4), 221-239. doi: 10.31548/law/4.2025.221.



*Corresponding author

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

International reports show low employer legal knowledge and institutional inadequacies in oversight and law enforcement contribute to non-compliance. The study substantiates the need to develop and implement comprehensive measures aimed at improving the legal culture among small and medium-sized enterprises employers, strengthening the institutional capacity of regulatory bodies, and improving access to qualified legal support in Kosovo, Albania, and North Macedonia, in order to bridge the gap between legislation and practice

Keywords: labour law; legal compliance; informal employment; labour regulation; human resource management

Introduction

Small and medium-sized enterprises (SMEs) remain the backbone of the Western Balkans' private sector. Recent official statistics and country reports show that SMEs account for virtually all enterprises and a very large share of jobs and value added. In Albania, SMEs represented 99.9% of enterprises, employed 82.5% of workers, and generated 78.2% of value added (Institute of Statistics, 2023). In Kosovo, SMEs represent over 99% of registered businesses, account for 80.4% of employment in non-financial businesses, and generate 81% of total value added (European Commission, 2024). In North Macedonia, SMEs accounted for 99.7% of enterprises and employed nearly 75% of workers, MSMEs' contribution to GDP is reported at around 68% over 2018-2023 (Ministry of Economy and Labour of the Republic of North Macedonia, 2025). The effectiveness and sustainability of these enterprises depend greatly on the quality of human resource management (HRM), as HR practices directly influence innovation, productivity, and organisational performance. For example, in Albania, E. Cera and E. Subashi (2024) find that commitment-based HRM practices significantly enhance open innovation, particularly when supported by a developmental organisational culture. In North Macedonia, E. Piperkova *et al.* (2023) highlight that HRM remains largely informal and resource-constrained, with limited employee training posing a

challenge to long-term SME sustainability. Proper personnel management is therefore an essential prerequisite for the successful operation of SMEs.

A growing body of scholarship explains SME non-compliance with labour standards through the interaction between employer behaviour, enforcement, and the institutional environment (Porkodi *et al.*, 2024). Using Western Balkan economies, C.C. Williams and A. Gashi (2022) examined which "formal institutional failings" are most closely linked to informal employment and concluded that informality is significantly associated with negative perceptions of governance quality, public integrity/corruption, and dissatisfaction with public services, implying that strengthening integrity, responsiveness, and trust in institutions is central to compliance. In Albania, E. Karma and V. Pinto (2021) analysed undeclared work (including "envelope wages") through an institutional-asymmetry lens and showed that lower trust in government/rule of law and weaker "tax morality" (a proxy for misalignment between formal rules and social norms) coincide with higher undeclared employment, suggesting that compliance improves when enforcement is paired with legitimacy-building and norm alignment. Complementing these institutional explanations, S. Clibborn and S. Hanna-Osborne (2023) synthesise the employer-side logic of wage-law breaches: their systematic review shows that SME

owners/managers rationalise underpayment through factors such as financial viability pressures, perceived (low) consequences of detection, ethical or normative justifications, and the influence of external actors, highlighting how legal awareness and the perceived credibility of enforcement shape compliance decisions.

From the perspective of legal design, A. Ristovski (2023) studied the “grey area” between employment and self-employment in North Macedonia (e.g., disguised employment and objectively ambiguous work) and argued that these arrangements generate precariousness, unfair competition, and tax evasion, concluding that labour law needs clearer doctrinal and regulatory tools to formalise informal work and extend protections beyond rigid binary categories. At the level of legal awareness and rights-realisation, M. Binaku and S. Ismajli (2024) surveyed employees across private and public sectors in Kosovo and concluded that policy measures should prioritise informing employees about their rights and strengthening monitoring and transparency, since greater awareness and institutional accountability are prerequisites for consistent compliance in practice. Reflecting newer compliance challenges connected to digitalisation, T. Kalamatiev and N. Murdzev (2022) analysed crowdwork and platform-mediated work relationships and showed that the tripartite “platform-worker-client” structure blurs the classic employer-employee model, complicating the application of labour protections and indicating the need for updated regulatory approaches in South-East European labour systems.

Despite the breadth of research on informality and labour standards, an important gap remains in explaining, within the Western Balkans context, how the institutional environment and enforcement capacity, and SME employers’ legal awareness and compliance rationalisations, jointly translate formally harmonised labour rules into day-to-day HRM practices (contract

formalisation, remuneration legality, working-time records, and lawful termination). Addressing this gap requires a comparative legal focus on the content of labour-law obligations alongside evidence about how those obligations are implemented (or circumvented) in SMEs, including the patterns revealed by disputes and enforcement outcomes.

The purpose of this study was to identify legal challenges and assess the implementation of labour legislation in the human resource management of small and medium-sized enterprises in the Balkan region. To achieve this aim, the study set the following objectives: to analyse and compare the key provisions of labour legislation in Kosovo, Albania, and North Macedonia that regulate essential aspects of HRM in SMEs; to compare the legislation of the countries studied with international labour standards; and to identify and systematise the legal challenges and issues faced by SMEs.

Materials and Methods

This study was of a theoretical and comparative-legal nature and was aimed at a comprehensive examination of the legal aspects of HRM in SMEs within the specific geographic and economic context of the Western Balkans, specifically Kosovo, Albania, and North Macedonia. The research methodology was based on a multifaceted analysis of various types of sources to ensure the depth and objectivity of the findings. The primary research method was the analysis of legal and regulatory acts governing labour relations and SME activities in Kosovo, Albania, and North Macedonia. Particular attention was paid to their Constitutions: Constitution of the Republic of Kosovo (2008), Constitution of Albania (1998), Constitution of the Republic of North Macedonia (1991) and core labour laws: Law of Republic of Kosovo No. 03/L-212 “On Labour” (2010), Labour Code of the Republic of Albania (1995), Labour Relations Law of the Republic of North Macedonia (2025). The analysis of these

documents involved identifying and systematising provisions relating to key aspects of HRM.

An essential component of the methodology was the comparative analysis of national legislation in the selected countries with relevant international labour standards. National norms were compared with conventions and recommendations of the International Labour Organization (1962; 1970; 1982). The comparison also included key European Union (EU) directives in the socio-labour domain: No. 2003/88/EC (2003), No. 2019/1152 (2019). This analysis enabled an assessment of the degree of harmonisation of national legal systems.

In addition, international reports and publications from the Organisation for Economic Co-operation and Development (OECD) (2020), the Support for Improvement in Governance and Management (SIGMA) Programme (Organisation for Economic Co-operation and Development, 2023), and the Employment and Social Affairs Platform (ESAP) (Regional Cooperation Council, 2021) were analysed. These sources provided information on public administration, social rights, labour markets, the SME business environment, and practical challenges in implementing labour legislation in the Western Balkans, contributing to a contextual understanding of HRM issues in SMEs in the region.

Another component of the study involved analysing available case law on labour disputes in Kosovo, Albania, and North Macedonia. This analysis included the review of specific rulings and precedents, as well Judgement of the European Court of Human Rights No. 4586/18 (2022); Qirushi and Adrianov, 2023; Constitutional Court of the Republic of North Macedonia, 2004) and the Constitutional Court of Kosovo (Judgment of the Special Chamber of the Supreme Court in Case No. KI190/22, 2024; Judgment of the Supreme Court of the Republic of Kosovo in Case No. KI38/23, 2024), including the case involving

workers of the Kosovo Energy Corporation (KEK) (Over 1,000 workers..., 2022). Published judgments relating to the interpretation and application of labour law norms were examined to identify key trends in enforcement and the effectiveness of judicial protection of labour rights. A separate line of analysis focused on the state of digitalisation in legislative processes. This involved studying the operation of official government electronic portals – Official Gazette of the Republic of Kosovo (2025), Official Publications Center (2025), Enerunique National Electronic Register of Regulations of the Republic of North Macedonia (2025). The synthesis of information from these diverse sources enabled the formation of a comprehensive picture of the legal environment of HRM in SMEs across the countries studied.

Results

General characteristics of legal regulation and comparative analysis of key aspects of labour relations.

The effectiveness of legal regulation of human resource management in Kosovo, Albania, and North Macedonia largely depends on the level of legal culture and awareness among economic actors, particularly SME managers. Available data indicates significant gaps in SME employers' understanding, especially in Albania, of key provisions of labour legislation, which directly correlates with the prevalence of informal practices in labour relations. This situation reflects broader systemic challenges related to the rule of law and the quality of governance in the Western Balkans, as confirmed by international assessments such as the Government at a glance: Western Balkan (Organisation for Economic Co-operation and Development, 2020). A substantial gap remains between the countries of the region and OECD-EU member states in ensuring the rule of law, manifested in low public trust in the judiciary and persistent problems in ensuring real equality before the law.

Although the legislative frameworks of the countries studied are generally aligned with European standards – as evidenced by the ratification of the European Charter of Local Self-Government (1985) by all three – effective implementation and legal enforcement remain major issues, particularly at the local level. The insufficient legal literacy of SME managers is one manifestation of these deeper systemic weaknesses. This situation creates fertile ground for the spread of informal labour practices, which not only contradict national laws but also conflict with international decent work standards enshrined in the International Labour Organization (2025) and the fundamental The European Pillar of Social Rights in 20 Principles (2025).

Notably, Principle 7 of the “The European Pillar of Social Rights in 20 Principles” (2025) affirms the worker’s right to receive complete information about the conditions of their employment – an obligation often ignored under informal employment. The regional overview of the Western Balkans prepared by ESAP also confirms that ensuring fair and transparent working conditions remains a serious challenge in the region, despite progress in legislative harmonisation (Regional Cooperation Council, 2021). Employers’ critical lack of awareness of their obligations – such as proper employment contract documentation and adherence to dismissal procedures – poses significant and direct risks to workers, leading to rights violations and reduced access to social protection.

The Constitution of the Republic of Kosovo (2008), Article 49, guarantees the right to work and the free choice of profession. The Constitution of Albania (1998), Article 49, similarly guarantees everyone the right to earn a living through lawful work of their choice, freedom to choose profession, workplace, and qualification system, as well as the right to social protection at work. Likewise, the Constitution of the Republic of North Macedonia (1991), Article 32, guarantees everyone

the right to work, free choice of employment, workplace protection, and material support during temporary unemployment. However, the significant gap between constitutional declarations and actual practice, particularly the high level of informality, is confirmed by international reports (Organisation for Economic Co-operation and Development, 2020; Regional Cooperation Council, 2021). The ESAP report specifically noted that informal workers were disproportionately affected during the COVID-19 pandemic due to lack of access to social support (Regional Cooperation Council, 2021).

A comparative analysis of labour legislation regarding types and forms of employment contracts reveals the presence of basic regulations but also significant differences in detail and enforcement. The legislation of all three countries provides for both indefinite and fixed-term employment contracts. Law of Republic of Kosovo No. 03/L-212 “On Labour” (2010) of Kosovo explicitly defines types of contracts. Article 10 of this law states that contracts may be concluded for an indefinite period, for a definite period, or for the execution of specific tasks. Furthermore, under Kosovo law, a fixed-term contract is considered indefinite if renewed continuously for 10 years. Labor Code of the Republic of Albania (1995) also regulates labour relations and provides for both indefinite and fixed-term contracts. Chapter V of the Code is dedicated to the different types of employment contracts, with various articles regulating both types, confirming their legal standing.

The Labour Relations Law of the Republic of North Macedonia Macedonia (2025) of is the main act governing this sphere. It allows for contracts to be concluded for both indefinite and definite periods (limited to five years). Article 46, for instance, regulates fixed-term contracts, confirming their existence alongside indefinite contracts as a standard form. These provisions aim to limit

precarious employment. Regarding contract form, the Labour Relations Law of North Macedonia and Law of Republic of Kosovo No. 03/L-212 (2010) require written employment contracts. Albania's Labour Code also prescribes written form but permits oral agreements. This legislative flexibility in Albania contributes to a greater prevalence of oral arrangements compared to North Macedonia and Kosovo, where stricter legal requirements for written contracts apply. Such practices

contravene international standards, particularly Directive of the European Parliament and of the Council No. 2019/1152 (2019) on transparent and predictable working conditions, which mandates that workers be provided with written information on key terms of employment. The absence of a written contract significantly complicates the protection of employee rights. Table 1 summarises the key aspects of employment contracts and probationary periods.

Table 1. Comparative table of employment contract aspects and probation periods

Aspect	Kosovo	Albania	North Macedonia
Types of employment contracts	Open-ended, fixed-term, for specific tasks	Open-ended, fixed-term (regulated in Chapter V of the Code)	Open-ended (standard form), fixed-term (regulated, e.g., Art. 46)
Conversion of fixed-term to open-ended	After 10 years of continuous renewal	Considered open-ended if exceeding 3 years or renewed more than twice for the same position	Fixed-term contracts limited to a maximum of 5 years
Form of employment contract	Written form mandatory	Written (oral form allowed, which contributes to its prevalence)	Written form mandatory
Maximum probation period	6 months (specified in the contract)	3 months (may be reduced or waived by agreement)	4 months (3 working days for seasonal workers)
Notice during probation	7 days (both parties)	5 days (during the first month); thereafter – general notice periods (from 2 weeks)	3 days (when terminating a fixed-term contract during probation)
Consequences of unsuccessful probation	Employment becomes permanent if not terminated	Employment contract may be terminated unilaterally with due notice	Employment contract becomes void

Source: compiled by the author based on Labour Code of the Republic of Albania (1995), Law of the Republic of Kosovo No. 03/L-212 "On Labour" (2010), Labour Relations Law of the Republic of North Macedonia (2025)

The analysis of national legislation reveals that probationary procedures are regulated by the respective labour codes, although with notable differences. According to available data, Law of Republic of Kosovo No. 03/L-212 (2010) stipulates that the probation period must be specified in the employment contract and shall not exceed six (6) months. A key feature is that either the employer or the employee may terminate the employment relationship during this period by giving seven (7) days' notices. If the employment continues beyond the six-month period without termination, it is deemed permanent. Labor Code of the Republic of Albania (1995) provides for a shorter maximum probation period of three

(3) months. This period may be reduced or even omitted by mutual written agreement. In North Macedonia, the Labour Relations Law (2025) likewise permits a probationary period by agreement of the parties, with a maximum length of four (4) months. An exception applies to seasonal workers, whose probation may not exceed three working days. In cases of unsuccessful probation, the employment contract is rendered void.

Additionally, termination of fixed-term contracts during probation is allowed with a three-day notice. These provisions generally align with international practice; however, the practical application within SMEs and potential abuses highlight the need for further improvement in

legislation. This also relates to the principle of equal opportunities and non-discrimination enshrined both in international instruments and national constitutions – Constitution of the Republic of North Macedonia (1991), Constitution of Albania (1998), Constitution of the Republic of Kosovo (2008). The Constitution of the Republic of Kosovo (2008) (Art. 24) explicitly prohibits discrimination on grounds such as race, colour, gender, language, religion, political or other beliefs, national or social origin, association with any community, property, economic and social status, sexual orientation, birth, disability, or any other personal status. The Constitution of Albania (Art. 18) includes a similar list of prohibited grounds. Constitution of the Republic of North Macedonia (Art. 9) guarantees equality regardless of gender, race, skin colour, national and social origin, political and religious beliefs, property and social status. The absence of a systematic approach to candidate selection in Albania and partially in Kosovo may result in subjectivity and potential discrimination in hiring practices.

Compliance with working time standards and the provision of fair and formal remuneration are fundamental rights reflected in the constitutional provisions of all three countries. The Constitution of the Republic of North Macedonia (1991), Constitution of Albania (1998), Constitution of the Republic of Kosovo (2008) guarantee the right to work (Kosovo, Art. 49; Albania, Art. 49; North Macedonia, Art. 32) and social protection (Kosovo, Art. 51; Albania, Art. 52; North Macedonia, Art. 34), which includes the protection of working conditions. These constitutional guarantees are further specified in the labour legislation of Kosovo, Albania, and North Macedonia, which establishes a 40-hour working week and the right to daily and weekly rest, in line with international standards such as Directive of the European Parliament and of the Council No. 2003/88/EC (2003) and the

R116 – Reduction of Hours of Work Recommendation (1962).

Law of Republic of Kosovo No. 03/L-212 (2010) sets a standard 40-hour week, requiring at least twelve (12) consecutive hours of daily rest and a weekly rest period of no less than twenty-four (24) continuous hours (Art. 30). Labour Code of the Republic of Albania (1995) similarly provides for a 40-hour week (maximum 8 hours per day), 11 consecutive hours of daily rest, and a minimum weekly rest of 36 hours, typically including Sunday. Labour Relations Law (2025) of North Macedonia stipulates the same 40-hour week, 12-hour daily rest, and a 24-hour minimum weekly break.

All three countries legislate overtime compensation. Albania's Code mandates at least a 25% premium over the regular hourly wage or compensatory time off exceeding the overtime by at least 25%. Kosovo limits overtime to 8 hours per week and requires payment for it. North Macedonia mandates compensation according to law or collective agreements. Annual paid leave is guaranteed in line with international standards, particularly the C132 – Holidays with Pay Convention (1970), which recommends at least three weeks of paid holiday. Kosovo grants four (4) weeks (20 working days), regardless of whether the employee is full- or part-time. Additionally, one extra day is granted for every five years of service. Those working under hazardous conditions are entitled to at least 30 working days, while mothers of children under three, single parents, and persons with disabilities are granted two additional days. Albania ensures a minimum of 20-22 working days, and North Macedonia generally provides 20-26 days depending on collective agreements and seniority. Sick leave provisions vary: in Kosovo – up to 20 days annually; in Albania – the first 14 days paid by the employer at a minimum of 80% of wages, thereafter paid from social insurance funds.

Maternity leave is extensive and constitutionally protected (Albania, Art. 54; North Macedonia, Art. 42) in accordance with the ILO (2000) "C183 - Maternity Protection Convention" (Constitution of the Republic of North Macedonia, 1991; Constitution of Albania, 1998). Kosovo allows up to 12 months of maternity leave, with 70% wage compensation for the first six months paid by the employer, 50% by the government for the next three, and the final three months unpaid. Albania grants 1 year, with approximately five months covered at 80% and the remainder at 50%. North Macedonia grants nine months of paid maternity leave. However, paternity leave remains underdeveloped: it is not provided in Albanian law, is limited to 7 days in North Macedonia, and only emerging initiatives exist in Kosovo - indicating slow progress towards gender-balanced caregiving and the implementation of Principle 9 of the European Pillar of Social Rights (EPSR) (The European Pillar..., 2025).

The level of official wages is a critical indicator of legal compliance. The widespread practice of undeclared "envelope wages" undermines constitutional guarantees of social protection by depriving workers of proper contributions, which negatively affects access to benefits like sick leave and pensions (Constitution of the Republic of North Macedonia, 1991; Constitution of Albania, 1998; Constitution of the Republic of Kosovo, 2008). It also contravenes Principle 6 of the EPSR (The European Pillar..., 2025), which guarantees the right to fair remuneration. According to ESAP, this remains a systemic issue in the region (Regional Cooperation Council, 2021).

Procedures for terminating employment relationships are comprehensively regulated by the national legislation of Kosovo, Albania, and North Macedonia, which generally aligns with international standards, notably the C158 - Termination of Employment Convention (1982). Article 4 of this Convention requires a valid reason for

dismissal, relating to the employee's conduct or capacity, or the operational needs of the undertaking. National labour laws specify these grounds in greater detail. The Law of Republic of Kosovo No. 03/L-212 (2010) and the Labour Relations Law of the Republic of North Macedonia (2025) include such grounds as gross misconduct, unsatisfactory performance, or economic and organisational reasons. Similarly, Labor Code of the Republic of Albania (1995) provides for dismissal on justified grounds. Mutual agreement remains the most common method of termination in practice (Albania - 69%, Kosovo - 61%, North Macedonia - 48%) and is legally recognised, though it requires voluntariness from both parties.

Procedural safeguards, such as written notification and notice periods, are of critical importance. Article 11 of the C158 - Termination of Employment Convention (ILO, 1982) mandates the provision of "a reasonable period of notice or compensation in lieu thereof". National legislation establishes specific notice periods, typically based on length of service: in Kosovo - 30 days (6 months to 2 years of service), 45 days (2-10 years), and 60 days (over 10 years) for open-ended contracts; in Albania - 1 to 3 months, depending on seniority; in North Macedonia - from a minimum of 1 month up to a maximum of 3 months. Written notice with an explanation of the grounds is required in all three countries. Severance pay is also regulated, though the conditions vary: in Kosovo, it is mandatory in cases of collective dismissals; in North Macedonia, it applies to dismissals on economic grounds; in Albania, it is contingent on the employee's length of service. The constitutions of the respective countries guarantee the right to judicial protection, including the right to challenge dismissal in court (Constitution of the Republic of North Macedonia, 1991; Constitution of Albania, 1998; Constitution of the Republic of Kosovo, 2008).

An analysis of legal challenges and the interaction of small and medium-sized enterprises (SMEs) with the legal system reveals several core issues. Infrequent inspections amidst high informality, particularly in Albania, point to the inefficiency of state oversight. The SIGMA Report also highlights the need to enhance the effectiveness and coordination of state supervisory functions (Organisation for Economic Co-operation and Development, 2023). The most challenging aspects of labour law for SMEs (contract formalisation, overtime payment, dismissal procedures, working time records, informal wages, tax reporting) reflect key issues of law enforcement. These persist despite constitutional guarantees of the right to work, social protection, and equality before the law.

The Organisation for Economic Co-operation and Development (2020) report emphasised the importance of SME access to quality business services, including legal assistance, as a condition for sustainable growth. Constitutional provisions on economic freedom (Albania – Art. 11, North Macedonia – Art. 55) and property rights (Kosovo – Art. 46, Albania – Art. 41, North Macedonia – Art. 30) provide a framework for SME operation. However, as shown by international reports and enforcement practices, compliance with labour and tax legislation remains complex, creating significant barriers to the practical realisation of these constitutional principles.

Analysis of judicial practice in labour disputes. Albania's judicial practice in the field of labour relations demonstrates proactive protection of workers' rights in cases of unlawful dismissals, particularly when collective dismissal procedures are violated. As illustrated by the case of Alba Call, courts deemed the dismissal of 188 employees unlawful due to failure to follow the procedure stipulated in the Labour Code and ordered substantial compensation (Zylfijaj & Shaqiri, 2023; Kryeziu, 2025). This underscores the importance of procedural justice and the courts' willingness

to hold employers financially accountable. Another notable example is the case of the former Governor of the Bank of Albania, Adrian Fullani, in which the courts found his dismissal following arrest (despite subsequent acquittal) to be unlawful and ordered the payment of his salary for the remainder of his term (Judgement of the European Court of Human Rights No. 4586/18, 2022). This ruling highlights the protection of labour rights for high-ranking officials and the necessity of a final court decision before dismissal based on alleged misconduct. Meanwhile, the case law of Albania's Supreme Court draws a clear distinction in legal regulation: relationships between company administrators and companies themselves are not subject to labour law and are instead governed by civil and commercial legislation (Qirushi & Adrianov, 2023). This establishes an important precedent for the classification of legal relations in corporate governance.

In North Macedonia, judicial practice – particularly decisions of the Constitutional Court – plays a major role in shaping labour law and securing constitutional rights, especially in the public sector. In 2021, the Constitutional Court ruled that provisions establishing a special procedure for dismissing civil servants due to “service necessity” were unconstitutional, citing violations of equality and legal certainty. The decision aimed to harmonise grounds for termination and prevent potential abuse. Another significant ruling involved the temporary suspension of the “Balancer” mechanism, which introduced ethnic quotas for public sector employment (Constitutional Court of the Republic of North Macedonia, 2004). The court responded to the State Anti-Corruption Commission's concerns over the constitutionality of requiring candidates to declare their ethnic background, demonstrating the judiciary's active role in preventing discrimination in recruitment. A further illustrative case involved a worker dismissed by the company Feni for a Facebook post

(Najcevska *et al.*, 2019). The court in Kavadarci ruled the dismissal unlawful, setting a precedent for protecting freedom of expression and limiting employer discretion over off-duty conduct on social media.

In Kosovo, the Constitutional Court has emphasised the safeguarding of fundamental labour rights, including the right to a fair trial and access to justice. In the case of Ramiz Isaku, who was denied compensation for unpaid wages for 2003-2004, the Court found that lower courts had violated his right to a fair hearing and ordered a retrial (Judgment in Case No. KI190/22, 2024). Similarly, in Judgment of the Supreme Court of the Republic of Kosovo in Case No. KI38/23 (2024),

where Flamur Dullhasi was denied a hearing on his claim of unlawful termination on the basis of missing the deadline, the Constitutional Court ruled that the Supreme Court had violated his right of access to justice. These cases underscore the importance of a flexible and fair approach to procedural deadlines in employment disputes. A landmark collective case involved more than 1,000 employees of the Kosovo Energy Corporation (KEK) (Over 1,000 workers..., 2022), who successfully sued for unpaid weekend work. The ruling, confirmed by the Supreme Court, highlights the effectiveness of collective protection of labour rights and the importance of employer compliance with wage laws (Table 2).

Table 2. Key aspects of judicial practice in labour disputes

Country	Type of Dispute/Issue	Decision
Albania	Collective dismissals	Dismissal deemed unlawful due to procedural violations; employer ordered to pay compensation (6 months' salary).
	Unlawful dismissal	Dismissal declared unlawful; employer ordered to pay salary for remainder of term.
	Classification of relations with company administrators	Such relations not covered by the Labour Code; governed by Civil and Commercial Codes.
North Macedonia	Termination in the public sector	Law provisions on "service necessity" termination declared unconstitutional (violation of equality and legal certainty).
	Ethnic quotas in public employment	"Balancer" mechanism temporarily suspended.
	Dismissal over Facebook post	Dismissal ruled unlawful; precedent set for protection of employee expression rights.
Kosovo	Unpaid wage compensation	Violation of right to a fair trial recognised; case returned for retrial.
	Access to justice in dismissal Cases	Procedural rejection ruled a violation of access to justice.
	Compensation for weekend work	Over 1,000 workers awarded compensation; decision upheld by Supreme Court.

Source: compiled by the author based on M. Najcevska *et al.* (2019), Over 1,000 workers win the contest for additional wages for weekend work in KEK (2022), Judgement of the European Court of Human Rights No. 4586/18 (2022), K. Qirushi and S. Adrianov (2023), Constitutional Court of the Republic of North Macedonia (2024), Judgment of the Supreme Court of the Republic of Kosovo in Case No. KI190/22 (2024), Judgment of the Supreme Court of the Republic of Kosovo in Case No. KI38/23 (2024), E. Kryeziu (2025)

The analysis of digital transformation in legislative processes in the studied countries became essential in light of the identified problem of low legal awareness among SME managers, as confirmed by international reports (Organisation for Economic Co-operation and Development, 2020). The development of digital platforms for

legislative access is a necessary state initiative aimed at increasing the transparency and accessibility of legal information, which directly affects SMEs' ability to manage human resources. These initiatives, part of broader strategies for digital transformation and European integration (Organisation for Economic Co-operation and

Development, 2022), offer potential to bridge the gap between formal legislation and actual practice in SMEs by simplifying access to up-to-date labour law provisions.

In Kosovo, the key tool supporting SME managers in HRM matters is the online platform “Official Gazette of the Republic of Kosovo”. This resource enables users to promptly verify current provisions of the Law of the Republic of Kosovo No. 03/L-212 (2010), such as the maximum duration of probation periods or maternity leave regulations. It reduces the risk of unintentional legislative violations caused by outdated information. The operation of such public resources complies with constitutional principles of transparency in public institutions (Constitution of the Republic of Kosovo, 2008). In Albania, the authorities have developed the “Electronic Registry for Public Notices and Consultations” (2025), a platform enabling SMEs and their associations to participate in consultations on labour-related legislative proposals, such as amendments to the Labour Code of the Republic of Albania (1995). This allows

entrepreneurs to provide feedback on regulations concerning overtime pay or dismissal procedures.

The “Official Publications Center” (2025) serves as a core repository of published laws required for daily HR activities, contributing to the realisation of the right to information (Constitution of Albania, 1998). North Macedonia presents a systematic approach through the “Enerunique National Electronic Register of Regulations of the Republic of North Macedonia” (ENER) (2025). For SME managers, this system is essential as it not only provides the Labour Relations Law (2025) text but also all related bylaws and clarifications. For instance, a manager planning staff reductions can use ENER to study all procedural requirements for collective dismissals and thus avoid litigation. The integration of regulatory impact assessment tools allows business leaders to better understand the rationale behind legislative changes, aligning with the rule of law principle (Constitution of the Republic of North Macedonia, 1991). Table 3 presents the summarised data on digital tools available to SMEs.

Table 3. Comparative analysis of digital legislative tools for SMEs

Aspect	Kosovo	Albania	North Macedonia
Main platform for accessing legislation	Official Gazette of the Republic of Kosova (online)	Electronic Registry for Public Notices and Consultations (online)	Enerunique National Electronic Register of Regulations of the Republic of North Macedonia (ENER) (online)
SME participation in law-making	Limited; no centralised platform for consultations.	Electronic register of notifications and public consultations.	ENER includes integrated modules for public consultations.
Practical benefit for HRM	Verification of the validity of laws and by-laws.	Access to legislation; possibility to comment on draft laws.	Centralised access to all labour legislation and tracking of amendments.
Internal parliamentary automation	Limited; implementation at initial stages.	Selective elements being implemented.	Fully functioning “E-Parliament” system for procedural automation.

Sources: compiled by the author based on Organisation for Economic Co-operation and Development (2022), Official Gazette of the Republic of Kosova (2025), Official Publications Center (2025), Enerunique National Electronic Register of Regulations of the Republic of North Macedonia (2025), Electronic Registry for Public Notices and Consultations (2025)

Although the countries under study are developing digital tools that could significantly facilitate compliance with labour legislation by SMEs,

their practical impact remains limited. The main findings of the study indicate that access to information does not automatically solve the problem

of its application (Regional Cooperation Council, 2021). Thus, digitalisation is a necessary but insufficient condition for overcoming challenges in the field of HRM (Hasanova & Najafova, 2025). The study of the legal regulation of human resource management in Kosovo, Albania, and North Macedonia reveals a complex landscape in which legislation formally harmonised with international standards faces significant challenges at the implementation stage. Key issues include the low level of legal awareness among SME employers, particularly in Albania, which contributes to the spread of informal labour practices and violations of workers' rights, despite constitutional guarantees. Comparative analysis of labour legislation shows both common approaches to the regulation of employment contract types, working hours, wages, and dismissal procedures, and national specificities, for example, in the requirements for the form of contracts or probationary periods. At the same time, analysis of case law demonstrates the active role of the judiciary, including constitutional courts, in protecting workers' rights to a fair hearing, adequate compensation, and access to justice, and in setting precedents on unfair dismissal, discrimination, and freedom of expression. Nevertheless, SMEs continue to face legal challenges related to the complexity of compliance, ineffective state oversight, and limited access to quality legal assistance, which hinders the full realisation of constitutional labour principles.

Discussion

This study identifies a significant gap between formal labour legislation and its practical implementation in small and medium-sized enterprises (SMEs) in the countries examined. The low level of formalisation of labour relations and insufficient legal awareness among employers most clearly manifest this gap. The results of this study are consistent with the long-run patterns documented by A. Asllani *et al.* (2025), who trace the

informal economy in the Balkans from 1996 to 2021 and demonstrate that, despite gradual declines, informality remains persistent and highly responsive to institutional and macroeconomic pressures. At the SME level, compliance challenges thus reflect the same macro-institutional environment in which informality functions as a stable structural feature rather than an exception.

Building on this institutional perspective, the findings also align with the logic advanced by C. Barra and A. Papaccio (2024), who link regulatory quality and governance effectiveness to reductions in the shadow economy. The evidence indicates that where oversight bodies are weak, sanctions lack credibility, and access to practical legal support is limited, SMEs tend to internalise non-compliance as a low-risk strategy, particularly under conditions of economic instability. This interpretation is reinforced by I. Geovani *et al.* (2021), who identify ineffective legal protection as a consequence of weak law enforcement agencies. In the context of the Balkans, the results indicate the necessity to enhance state oversight functions and to improve coordination among pertinent institutions. Low activity and limited effectiveness of labour inspections, combined with weak sanctions, create conditions in which SMEs are likely to disregard formal requirements, especially during periods of economic stress (Khamzina *et al.*, 2020). The constitutional judgment in Case No. KO27/21 in Kosovo illustrates these challenges clearly, as issues of jurisdictional separation between labour inspectors and courts escalated to constitutional review, underscoring systemic institutional fragmentation (Judgment of the Supreme Court of the Republic of Kosovo in Case No. KO27/2, 2022). Furthermore, the absence of effective preventive measures, such as accessible informational support, targeted educational programmes for SMEs, and consulting services on labour law, contributes to the persistence of high violation rates.

From a cross-country perspective, the finding that Albania relies more heavily on oral or weakly documented employment arrangements, thereby increasing disputes and weakening social protection, closely mirrors developments addressed in EU labour law. D. Georgiou (2022) notes that Directive (EU) 2019/1152 aims to strengthen worker protection by ensuring written information on essential employment terms, particularly in non-standard employment. Against this background, the persistent difficulty of SMEs in providing written contracts and complete employment information points to a “paper gap”: although formal rules exist, SMEs often lack the administrative capacity, incentives, or legal awareness needed for effective implementation. This gap has broader implications for legal harmonisation. Formal alignment with EU standards may remain largely symbolic unless accompanied by targeted, SME-oriented implementation measures. Kosovo’s constitutional case law, as referenced in this study, indicates that even where judicial protection exists, the costs, delays, and complexity of ex post dispute resolution cannot replace preventive formalisation. Jurisdictional and procedural fragmentation in Kosovo (Judgment of the Supreme Court of the Republic of Kosovo in Case No. K027/2, 2022) illustrates how institutional complexity can undermine the practical enforcement of transparency obligations despite clear substantive rights.

Judicial practice in the examined countries shows that courts can partially compensate for weak administrative enforcement by clarifying standards related to dismissal, access to justice, and unpaid wages. However, judicial protection remains structurally limited as a compliance mechanism for SMEs. Litigation is reactive, case-specific, and often inaccessible to precarious workers. This limitation aligns with M. Lasek-Markey’s (2024) analysis of posting-of-workers enforcement, which stresses that

formal rights require robust operational infrastructures, inspection capacity, information flows, and credible sanctions, to become effective. Consequently, litigation cannot substitute for routine enforcement in the SME context. EU-wide debates further demonstrate how cross-border mobility and complex supply chains exacerbate enforcement challenges. N. Lillie *et al.* (2025) conceptualise labour-standards enforcement as an “arms race” between institutional alignment and regulatory arbitrage. Although this study focuses on the Western Balkans, similar mechanisms apply: fragmented mandates, limited inspectorate resources, and weak coordination incentivise informal practices. Strengthening labour inspectorates therefore requires clearer mandates, improved coordination with courts, and, where relevant, cross-border cooperation.

Despite improved digital access to legislation in Kosovo, Albania, and North Macedonia, SMEs continue to exhibit low legal awareness (Rexhepi, 2023). This confirms that digital availability alone is insufficient. P.N.N.-H. Khorsand and T. Peráček (2023) show that digital working-time recording systems enhance transparency only when embedded in daily routines and supported by training and incentives. In the Western Balkans, working-time recording remains a major compliance weakness, suggesting the need for low-burden tools combined with guidance and inspections.

Finally, although the empirical focus of this study is on SMEs’ compliance with “classic” labour-law obligations, such as contracts, wages, working time, and termination, the broader European regulatory trajectory suggests that non-standard and digitally mediated forms of work will place additional strain on enforcement systems. E. Alogogianni and M. Virvou (2023) demonstrate that machine-learning methods can improve detection of undeclared work under capacity constraints. S. Fredman *et al.* (2025) and

L. Di Cataldo (2024) interpret the EU Platform Work Directive as a response to misclassification risks and algorithmic control, signalling stronger presumptions and transparency obligations. J.L. Polo (2025) adds that a universal regulatory mandate for platform work must account for divergent national contexts and implementation capacities. This perspective is particularly relevant for the Western Balkans, where institutional capacity constraints mean that ambitious legal transplants may fail to produce tangible outcomes without phased implementation, administrative support, and context-sensitive enforcement strategies. In this sense, the findings concerning the limits of formal harmonisation anticipate challenges similar to those identified at the international level: ambitious norms require institutional fit and feasible enforcement mechanisms to become effective.

The findings demonstrate that persistent labour-law non-compliance among SMEs in the Western Balkans is driven less by the absence of formal legal standards than by structural weaknesses in enforcement, institutional coordination, and preventive support. While judicial mechanisms can partially mitigate these gaps, they remain reactive and insufficient as primary compliance tools. Effective implementation therefore requires a shift toward integrated enforcement strategies that combine credible inspections, accessible legal guidance, and practical, low-burden compliance instruments tailored to SME capacities. Without such measures, formal harmonisation with European labour standards is likely to remain largely symbolic, with limited impact on everyday employment practices.

Conclusions

The conducted study on the legal aspects of HRM in SMEs in Kosovo, Albania, and North Macedonia has achieved its objectives by analysing national legal frameworks, international reports, and

judicial practice. The findings reveal that despite the general trend of harmonising national labour laws with ILO standards and EU norms, there exists a significant gap between formal legal requirements and their practical implementation in SMEs across the region. This gap manifests in various areas, including the conclusion and documentation of employment contracts, working time recording, remuneration, and termination procedures. At the same time, all three countries have made progress in developing digital tools for accessing legislation, offering potential for improved compliance. International reports indicate that low levels of legal awareness among SME managers, particularly in Albania, combined with systemic challenges in rule of law and governance, contribute to the persistence of informal practices and non-compliance with labour norms.

The judicial practice in all three countries reflects the efforts of courts to protect workers' rights (e.g., in cases of unlawful dismissal, compensation claims, or access to justice), while simultaneously revealing the complexities of law enforcement and gaps in legal regulation or its interpretation, which require further attention. Key problematic areas identified through the analysis include insufficient formalisation of employment relationships, such as the use of civil contracts to conceal employment; difficulties in securing adequate compensation for overtime; incomplete wage declarations; and the failure to follow due procedures during dismissals. Weak institutional oversight and limited access to qualified legal support for SMEs further aggravate these issues.

Based on the obtained results, several practical recommendations can be proposed to improve the situation: development and implementation of targeted awareness-raising and educational programmes for SME owners and managers on key labour law norms, the importance of formalising employment relations, proper documentation

practices, and the use of available public digital registers and legal tools; exploring opportunities to simplify selected administrative procedures related to HRM, without compromising the protection of employee rights; strengthening the capacity and efficiency of labour inspectorates and other supervisory authorities to ensure effective monitoring of labour law compliance, with clear delineation of responsibilities between administrative and judicial bodies; creating mechanisms to facilitate SME access to qualified legal and HR consultancy services; encouraging social dialogue and the dissemination of best HRM practices among SMEs.

At the same time, several limitations of this study should be acknowledged. Firstly, the analysis relied on available legislative texts, published international reports, and a limited body of judicial decisions, which may not fully capture the complexity and diversity of law enforcement

practices at the SME level in each country. Secondly, the availability of detailed case law specific to SMEs is limited, and published decisions from higher courts do not always represent the full spectrum of labour disputes. Promising directions for future research include an in-depth comparative analysis of the effectiveness of various enforcement mechanisms, such as labour inspections, court proceedings, and mediation, in resolving labour disputes in SMEs across the studied countries.

Acknowledgements

None.

Funding

The study was not funded.

Conflict of Interest

None.

References

- [1] Alogogianni, E., & Virvou, M. (2023). Handling class imbalance and class overlap in machine learning applications for undeclared work prediction. *Electronics*, 12(4), article number 913. [doi: 10.3390/electronics12040913](https://doi.org/10.3390/electronics12040913).
- [2] Asllani, A., Tzivanakis, N., & Schneider, F. (2025). Unveiling the shadows: Tracing the informal economy in the Balkans from 1996 to 2021. *Post-Communist Economies*, 37(8), 1093-1124. [doi: 10.1080/14631377.2025.2566418](https://doi.org/10.1080/14631377.2025.2566418).
- [3] Barra, C., & Papaccio, A. (2024). Does regulatory quality reduce informal economy? A theoretical and empirical framework. *Social Indicators Research*, 172, 543-567. [doi: 10.1007/s11205-024-03319-6](https://doi.org/10.1007/s11205-024-03319-6).
- [4] Binaku, M., & Ismajli, S. (2024). The respect for the rights of employees in the private and public sectors: Evidence from a developing economy. *Corporate Law & Governance Review*, 6(1), 77-84. [doi: 10.22495/clgrv6i1p8](https://doi.org/10.22495/clgrv6i1p8).
- [5] Cera, E., & Subashi, R. (2024). How do commitment-based HRM practices and a developmental culture interact to foster open innovation in SMEs? *Problems and Perspectives in Management*, 22(1), 231-243. [doi: 10.21511/ppm.22\(1\).2024.20](https://doi.org/10.21511/ppm.22(1).2024.20).
- [6] Clibborn, S., & Hanna-Osborne, S. (2023). The employer perspective on wage law non-compliance: State of the field and a framework for new understanding. *Industrial Relations: A Journal of Economy and Society*, 62(4), 411-438. [doi: 10.1111/irel.12333](https://doi.org/10.1111/irel.12333).
- [7] Constitution of Albania. (1998, November). Retrieved from <https://www.fao.org/faolex/results/details/en/c/LEX-FAOC072561/>.

- [8] Constitution of the Republic of Kosovo. (2008, April). Retrieved from <https://surl.lt/vrslkl>.
- [9] Constitution of the Republic of North Macedonia. (1991, September). Retrieved from https://www.sobranie.mk/the-constitution-of-the-republic-of-macedonia-ns_article-constitution-of-the-republic-of-north-macedonia.nspX.
- [10] Constitutional Court of the Republic of North Macedonia. (2004). *Most important case-law (summary decisions)*. Retrieved from <https://ustavensud.mk/archives/12437>.
- [11] Di Cataldo, L. (2024). Improving working conditions in platform work. A comment about the agreement reached on the European directive. *Italian Labour Law E-Journal*, 17(1), 131-152. doi: 10.6092/issn.1561-8048/19793.
- [12] Directive of the European Parliament and of the Council No. 2003/88/EC "Concerning Certain Aspects of the Organisation of Working Time". (2003, November). Retrieved from <https://eur-lex.europa.eu/eli/dir/2003/88/oj/eng>.
- [13] Directive of the European Parliament and of the Council No. 2019/1152 "On Transparent and Predictable Working Conditions in the European Union". (2019, July). Retrieved from <https://eur-lex.europa.eu/eli/dir/2019/1152/oj/eng>.
- [14] Electronic Registry for Public Notices and Consultations. (2025). *List of reports for all institutions*. Retrieved from <https://www.konsultimipublik.gov.al/Konsultime/ListaeRaporteve>.
- [15] Enerunique National Electronic Register of Regulations of the Republic of North Macedonia. (2025). *Regulations*. Retrieved from <https://ener.gov.mk/Default.aspx>.
- [16] European Charter of Local Self-Government. (1985, October). Retrieved from <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatyNum=122>.
- [17] European Commission. (2024). *Kosovo 2024 report*. Retrieved from <https://surl.li/pzbrpj>.
- [18] Fredman, S., Du Toit, D., Bertolini, A., Valente, J., & Graham, M. (2025). Fair work for platform workers: Lessons from the EU Directive and beyond. *Industrial Law Journal*, 54(3), 425-457. doi: 10.1093/indlaw/dwaf018.
- [19] Georgiou, D. (2022). The new EU Directive on Transparent and Predictable Working Conditions in the context of new forms of employment. *European Journal of Industrial Relations*, 28(2), 193-210. doi: 10.1177/09596801211043717.
- [20] Geovani, I., Nurkhotijah, S., Kurniawan, H., Milanie, F., & Nur Ilham, R. (2021). Juridical analysis of victims of the economic exploitation of children under the age to realize legal protection from human rights aspects (Research study at the office of social and community empowerment in Batam city). *International Journal of Educational Review, Law and Social Sciences*, 1(1), 45-52. doi: 10.54443/ijerlas.v1i1.10.
- [21] Hasanova, J., & Najafova, K. (2025). Digitization, automation problems and solutions in small business on the example of Azerbaijan. *WSEAS Transactions on Business and Economics*, 22, 1358-1369. doi: 10.37394/23207.2025.22.110.
- [22] Institute of Statistics. (2023). *Statistics on small and medium enterprises, 2023*. Retrieved from <https://www.instat.gov.al/media/ikyjfhyf/results-on-sme-2023.pdf>.
- [23] International Labor Organization. (1962). *R116 – Reduction of Hours of Work Recommendation No. 116*. Retrieved from <https://surl.lu/iketwa>.
- [24] International Labor Organization. (1970). *C132 – Holidays with Pay Convention (revised), No. 132*. Retrieved from <https://surl.lu/jhrjgt>.

- [25] International Labor Organization. (1982). *C158 – Termination of Employment Convention (No. 158)*. Retrieved from <https://surl.li/hhapjb>.
- [26] International Labor Organization. (2000). *C183 – Maternity Protection Convention (No. 183)*. Retrieved from <https://surl.li/ebmkzr>.
- [27] International Labour Organization. (2025). *International labour standards*. Retrieved from <https://www.ilo.org/international-labour-standards>.
- [28] Judgement of the European Court of Human Rights No. 4586/18 “Adrian Fullani v. Albania”. (2022, September). Retrieved from <https://surl.li/ieoyr>.
- [29] Judgment of the Special Chamber of the Supreme Court in Case No. KI190/22 “Ramiz Isaku”. (2022, August). Retrieved from https://gjk-ks.org/wp-content/uploads/2024/09/ki_190_22_agj_ang.pdf.
- [30] Judgment of the Supreme Court of the Republic of Kosovo in Case No. KI38/23 “Flamur Dylhasi”. (2022, October). Retrieved from <https://surl.li/wbgegc>.
- [31] Judgment of the Supreme Court of the Republic of Kosovo in Case No. KO27/2. (2022, December). Retrieved from https://gjk-ks.org/wp-content/uploads/2022/12/ko_27_21_agj_ang.pdf.
- [32] Kalamatiev, T., & Murdzev, N. (2022). [The notion of digital labour platforms and the european incentive for improvement of the working conditions of the platform workers](#). *HARMONIUS: Journal of Legal and Social Studies in South East Europe*.
- [33] Karma, E., & Pinto, V. (2021). Explaining the undeclared work in Albania. An empirical research in Durres and Tirana. *Euro-Balkan Law and Economics Review*, 1. doi: 10.15162/2612-6583/1228.
- [34] Khamzina, Z., Buribayev, Y., Yermukanov, Y., & Alshurazova, A. (2020). Is it possible to achieve gender equality in Kazakhstan: Focus on employment and social protection. *International Journal of Discrimination and the Law*, 20(1), 5-20. doi: 10.1177/1358229120927904.
- [35] Khorsand, P.N.N.-H., & Peráček, T. (2023). Implementation of a working time recording system as a digital management tool in public administration. *Administrative Sciences*, 13(12), article number 253. doi: 10.3390/admsci13120253.
- [36] Kryeziu, E. (2025). *Another employee wins in court against collective vacations in the call center*. Retrieved from <https://surl.lt/adcien>.
- [37] Labor Code of the Republic of Albania. (1995, July). Retrieved from <https://surl.lt/rbvdkn>.
- [38] Labour Relations Law of the Republic of Macedonia. (2025). Retrieved from <https://natlex.ilo.org/dyn/natlex2/natlex2/files/download/71332/MKD71332%20Eng.pdf>.
- [39] Lasek-Markey, M. (2024). Effective enforcement of the EU framework on the posting of workers: Empirical evidence. *European Labour Law Journal*, 15(4), 740-754. doi: 10.1177/20319525241255601.
- [40] Law of Republic of Kosovo No. 03/L-212 “On Labour”. (2010, December). Retrieved from <https://gzk.rks-gov.net/ActDetail.aspx?ActID=2735&langid=2>.
- [41] Lillie, N., Brzozowska, A., Kall, K., Salamońska, J., & Matuszczyk, K. (2025). Transgovernmental labour standards enforcement in a Pan-European labour market: An arms race between institutional alignment and regulatory arbitrage. *JCMS: Journal of Common Market Studies*, 63(3), 804-820. doi: 10.1111/jcms.13650.
- [42] Ministry of Economy and Labour of the Republic of North Macedonia. (2025). *Strategy for small and medium enterprises 2025-2030 of the Republic of North Macedonia*. Retrieved from <https://portal.mdt.gov.mk/post-body-files/strategii-met-file-kk4G.pdf>.

- [43] Najcevska, M., Cekikj, A., Blazeva, A., Shishovski, J., & Stojadinovic, S. (2019). *Analysis of workers' rights standards and their application in the Republic of North Macedonia*. Skopje: Helsinki committee for human rights of the Republic of Macedonia.
- [44] Official Gazette of the Republic of Kosovo. (2025). *Statistics*. Retrieved from <https://gzk.rks-gov.net/analyticreporting.aspx?index=14>.
- [45] Official Publications Center. (2025). *Acts archive*. Retrieved from <https://qbz.gov.al/eli/akte>.
- [46] Organisation for Economic Co-operation and Development. (2020). *Government at a glance: Western Balkans*. doi: 10.1787/a8c72f1b-en.
- [47] Organisation for Economic Co-operation and Development. (2022). *SME policy index: Western Balkans and Turkey 2022: Assessing the implementation of the Small Business Act for Europe*. doi: 10.1787/b47d15f0-en.
- [48] Organisation for Economic Co-operation and Development. (2023). *Subnational government in the Western Balkans*. Retrieved from [https://one.oecd.org/document/GOV/SIGMA\(2023\)1/en/pdf](https://one.oecd.org/document/GOV/SIGMA(2023)1/en/pdf).
- [49] Over 1,000 workers win the contest for additional wages for weekend work in KEK. (2022). Retrieved from <https://telegrafi.com/en/over-1-thousand-female-workers-win-the-contest-for-additional-wages-for-working-hours-during-the-weekend-in-Kek/>.
- [50] Piperkova, I., Djambaska, E., & Lozanoska, A. (2023). *Human resource practices in small businesses in Republic of North Macedonia*. *Economic Development / Ekonomiski Razvoj*, 25(1-2), 20-36.
- [51] Polo, J.L. (2025). Adopting a universal mandate on platform work: Balancing contrasting realities. *Tilburg Law Review*, 30(2), 65-95. doi: 10.5334/tilr.416.
- [52] Porkodi, S., Ahmad, A., & Tabash, B.K.H. (2024). Employee experience management and its critical impact on the sustainable development of an enterprise-a systematic literature survey with meta-analysis. *Journal of Sustainability Science and Management*, 19(4), 203-237. doi: 10.46754/jssm.2024.04.015.
- [53] Qirushi, K., & Adrianov, S. (2023). *Classification challenges: Analyzing the administrator – company relationship in the context of Albanian legislation*. Retrieved from https://www.ey.com/en_al/newsroom/classification-challenges-the-administrator-company-relationship.
- [54] Regional Cooperation Council. (2021). *Regional overview of Western Balkan economies regarding the European Pillar of Social Rights 2021*. Retrieved from <https://www.rcc.int/pubs/128/regional-overview-of-western-balkan-economies-regarding-the-european-pillar-of-social-rights-2021>.
- [55] Rexhepi, B.R. (2023). Impact of remittances on Kosovo's economic development and poverty reduction. *Quality – Access to Success*, 24(195), 347-359. doi: 10.47750/QAS/24.195.41.
- [56] Ristovski, A. (2023). *The 'gray' area between employment and self-employment: Legal approaches to formalizing informal work and reducing precariousness in the context of Macedonian labour law*. *Iustinianus Primus Law Review*, 14(1).
- [57] The European Pillar of Social Rights in 20 Principles. (2025). Retrieved from https://employment-social-affairs.ec.europa.eu/european-pillar-social-rights-20-principles_en.
- [58] Williams, C.C., & Gashi, A. (2022). Formal institutional failings and informal employment: Evidence from the Western Balkans. *The South East European Journal of Economics and Business*, 17(2), 83-95. doi: 10.2478/jeb-2022-0016.
- [59] Zylfijaj, K., & Shaqiri, M. (2023). *The role of vocational education and training in bridging the skills gap in the labour market*. *UBT International Conference*, 11.

Правові аспекти управління людськими ресурсами в малих і середніх підприємствах

Ментор Шакірі

Доктор наук з господарського права та економічних наук, доцент
УБТ коледж
10000, вул. Рексхеп Краснікі, 56, м. Приштина, Республіка Косово
<https://orcid.org/0000-0002-4656-2450>

Анотація

Метою цього дослідження було виявлення правових викликів та оцінка відповідності практик управління людськими ресурсами в малих і середніх підприємствах міжнародним стандартам з метою обґрунтування шляхів удосконалення правозастосування. Методологія дослідження ґрунтувалася на порівняльному аналізі чинного трудового законодавства обраних країн, вивченні відповідних міжнародних трудових стандартів, аналізі вторинних даних міжнародних звітів, а також дослідженні наявної судової практики у сфері трудових спорів. Міжнародні опитування та судові рішення засвідчили значний розрив між офіційним трудовим законодавством розглянутих держав, яке загалом відповідає міжнародним принципам, і його практичним застосуванням у малих і середніх підприємствах. Попри створення цифрових правових реєстрів з метою підвищення прозорості, їхній потенціал щодо підвищення рівня правової обізнаності малих і середніх підприємств залишається недостатньо дослідженим. Усі три країни мають розвинене законодавство у сфері трудових відносин, однак його реалізація є проблематичною. Трудові спори та міжнародні огляди свідчать, що неформальні практики, особливо в Албанії, ускладнюють документальне оформлення трудових договорів, виплату офіційної заробітної плати та дотримання процедур звільнення. Міжнародні звіти також вказують на низький рівень правової обізнаності роботодавців і інституційні недоліки у сфері нагляду та правозастосування як ключові чинники недотримання законодавства. Дослідженням обґрунтовано необхідність розроблення та впровадження комплексних заходів, спрямованих на підвищення правової культури роботодавців малих і середніх підприємств, посилення інституційної спроможності регуляторних органів і покращення доступу до кваліфікованої правової допомоги в Косові, Албанії та Північній Македонії з метою подолання розриву між законодавством і практикою

Ключові слова: трудове право; правове дотримання; неформальна зайнятість; трудове регулювання; управління людськими ресурсами

ПРАВО. ЛЮДИНА. ДОВКІЛЛЯ

Науково-практичний журнал

Том 16, № 4. 2025

Заснований у 2010 р. Виходить чотири рази на рік

Оригінал-макет видання виготовлено у відділі науково-технічної інформації
Національного університету біоресурсів і природокористування України

Відповідальний редактор:

Н. Шевченко

Підписано до друку 27 листопада 2025 р. Формат 70*100/16

Умов. друк. арк. 19,5

Наклад 50 прим.

Адреса видавництва:

Національний університет біоресурсів і природокористування України

03041, вул. Героїв Оборони, 15, м. Київ, Україна

Тел.: +38(044)-258-42-63

E-mail: lhe@environmentalscience.com.ua

<https://environmentalscience.com.ua/uk>

LAW. HUMAN. ENVIRONMENT

Scientific and Practical Journal

Volume 16, No. 4. 2025

Founded in 2010. Published four times per year

The original layout of the publication is made in the Department of Scientific and Technical Information of National University of Life and Environmental Sciences of Ukraine

Managing Editor:

N. Shevchenko

Signed for print November 27, 2025. Format 70*100/16
Conventional printed pages 19.5
Circulation 50 copies

Editors Office Address:

National University of Life and Environmental Sciences of Ukraine
03041, 15 Heroiv Oborony Str., Kyiv, Ukraine
Tel.: +38(044)-258-42-63
E-mail: lhe@environmentalscience.com.ua
<https://environmentalscience.com.ua/en>