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Marriage contract and cross-border marriage: Issues of legal regulation in the context of international family law and conflict of laws

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Abstract

The relevance of aforementioned issue was due to the fact that in the context of numerous military conflicts, as well as the intensification of demographic phenomena related to migration processes, an effective mechanism for the legal regulation of cross-border marriage contracts is of great importance for the protection of the property rights of spouses. The aim of the scientific research was to conduct a comprehensive scientific and practical analysis of the peculiarities of recognising the validity of cross-border marriage contracts within different jurisdictions, as well as to draw conclusions and make recommendations of a scientific and practical nature. In the course of researching this topic, the comparative method, critical analysis method, interpretation method, abstraction method, logical-legal method, and legal modelling method were used. An analysis of approaches to understanding the essence and content of marriage contracts in common law and civil law countries was conducted. A definition and a system of characteristics of a cross-border marriage contract, which is the primary element of the

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autonomous concept, are proposed. The significance of Council Regulation No. 2016/1103 for the implementation of the conflict-of-laws method of regulating these legal relations in the European legal space was considered. Particular attention was paid to the specifics of the approach to the recognition of marriage contracts in countries with a common law system. Based on the results of the study, a system of proposals was developed aimed at ensuring the effective functioning of cross-border marriage contracts, taking into account the challenges of globalisation. Attention was focused on the need to define the fundamental standards of validity of cross-border marriage contracts. The practical significance of this study lies in the fact that the results obtained can be applied in the process of improving the conflict of laws regulation of contractual marriage relations in general, as well as the development of international legal regulation of the concept of cross-border marriage contracts in particular

Keywords: marriage contract; cross-border marriage; common law; continental legal system; international family law; conflict of laws regulation

Introduction

The problematic issues concerning the legal nature, content, and the peculiarities of the execution and recognition of marriage contracts continue to be relevant due to global globalisation processes, which have led to an increase in the number of cross-border marriages. This issue is particularly acute in the context of active migration phenomena driven by socio-economic factors. This situation leads to a substantiated scientific and practical need for a re-evaluation of the legal regulation of specific aspects of the conclusion, execution, and recognition of marriage contracts in an international context.

The difficulties and conflicts arising during law enforcement regarding the concept of a cross-border marriage contract are related to the existence of different approaches to understanding the essence and legal nature of such agreements across various jurisdictions, and the absence of a unified system of standards for recognising their validity. Consequently, there is a clear necessity for the harmonisation of approaches to the legal regulation of marriage contracts within the European legal dimension, and the adaptation of national legislation to international standards.

The possibility for an individual to realise their personal proprietary rights within matrimonial relations is directly dependent on the level of effectiveness of the legal regulation of the marriage contract institution overall, as this raises the level of social and economic well-being of the population as a whole. In the context of the globalisation of social relations and Ukraine's European integration vector of development, it is especially pertinent to consider positive foreign experience in regulating family relations and to harmonise national legislation with international European standards to prevent difficulties during the recognition and execution of marriage contracts in cross-border matrimonial legal relations.

In general, the problematic issues of the legal nature, content, and the peculiarities of the conclusion, execution, and recognition of marriage contracts at the international level have been reflected in the research of a number of scholars. S. Kumar (2024) explored the development trends of the marriage contract institution, taking into account legal, social, and cultural factors, including globalisation, innovation, and technological development. The author stressed that

the legal regulation of marriage contracts in the territories of European Union member states is provided by national legislation, which features substantial differences. Some countries, such as Germany and France, have a thorough and developed legal framework for marriage contracts. At the same time, in the legal system of Italy, such a contract is recognised only to a limited extent. P. Bruno (2021) investigated the legal specifics, problematics, and difficulties encountered during the recognition and execution of marriage contracts in European Union law. The author emphasised that despite the European legislator focusing on forming a system of clear formal requirements for determining the validity of such contracts, international couples still face legal difficulties in the context of their recognition and execution abroad. In the context of an international comparative aspect, the scholarly work of O.O. Ikubanni *et al.* (2023) regarding the lack of a clear legal mechanism for the recognition and execution of marriage contracts in Nigeria. Attention was focused on the fact that the specificity of executing a marriage contract lies in the discretionary powers of the court, which recognises it at its own discretion, even if it is valid and complies with the requirements of the law.

O. Yavor and T. Kirichenko (2024) analysed the problematic issue of recognising a marriage and a marriage contract as fictitious and concluded that the legal consequence of establishing a fictitious marriage is the judicial declaration of the marriage contract as invalid. H. Lutska *et al.* (2020) focused on determining the peculiarities of the legal nature of a marriage contract by comparing it with the related family contract concerning the division of spousal property. The authors emphasised the proprietary nature of the marriage contract and the absence of a legal possibility to regulate personal relations within such a contractual structure. At the same time, S. Iasechko *et al.* (2022) conducted innovative research and noted that

the categorical approach, according to which the right to information as a personal non-proprietary right cannot be the subject of a marriage contract in Ukraine, is losing its relevance.

E. Xhuvani (2024) emphasises that all European jurisdictions provide spouses with the right to independently and at their own discretion regulate and structure their property interests through the legal construct of a marriage contract. However, the author points out that despite the existence of a number of common elements in this legal mechanism, there are significant differences in the legal regulation of the marriage contract institution within individual states. É. Török (2023) notes that this type of family agreement ensures a balance between the individual and joint interests of the spouses. M.J. Cazorla González *et al.* (2020) carried out a thorough study of spousal property relations in the cross-border dimension, including the specifics of the functioning of the marriage contract institution. Thus, the authors noted that private international law is becoming comprehensive in its scope and lays the foundations for private law relations across the European Union. G. Carobene (2023) remarked that lawyers view marriage contracts as legitimate acts of a personal nature that reflect the freedom of choice of the spouses. A practical analysis of the problematic issue of certifying marriage contracts in the context of private international law was conducted by Y. Fursa (2022), who highlighted the current issues of certifying marriage contracts by consuls in various countries around the world when one of the parties is a foreign citizen, and also determined the legal possibilities for the latter to apply foreign law.

The aim of this research was the scientific and practical analysis of the Issues of recognising the validity of cross-border marriage contracts across different jurisdictions, as well as the formulation of conclusions and recommendations of a scientific and practical nature.

To effectively achieve this aim, the following objectives were set:

- to analyse the approaches to understanding the essence and substantive content of a marriage contract in countries with Common Law and Continental legal systems;

- to investigate the significance of Regulation of the European Council No. 2016/1103 (2016) for the functioning of cross-border marriage contracts in the European legal area;

- to define the substantive content of the legal category “cross-border marriage contract” and to distinguish a system of its essential characteristics.

Materials and Methods

The research was conducted within the framework of the conflict of laws theory of private international law, according to which the priority task is to determine the applicable law when qualifying legal relations with a foreign element. The foundational element is the conflict-of-laws rule, which is used to determine the specific jurisdiction for proper legal application. In this regard, the theoretical basis of the research is the doctrine of conflict-of-laws regulation, which is enshrined at the international level in Regulation of the European Council No. 2016/1103 (2016). Furthermore, the study utilises the concept of party autonomy as a fundamental basis for the legal regulation of marriage contracts in the doctrine of private law. Thus, this research is based on an approach that encompasses private international, family, and civil law. The concept of harmonisation of cross-border regulation of spouses' property relations is also of significant importance.

Considering the aim and objectives, a system of general scientific and special legal research methods was applied in the analysis of this subject matter, among which the following should be highlighted: the comparative method, the logical-legal method, and the legal modelling

method. The use of methods with different functional orientations formed the foundation for a comprehensive and thorough study of the outlined topic. The logic of the analytical study was to compare approaches to understanding the concept of a marriage contract, which directly affects the process of its recognition in the case of a cross-border marriage. Using the comparative method, the concepts of the marriage contract in Continental and Common Law countries were compared. Based on the results of using the critical analysis method, an original position was proposed regarding the current state of resolving conflict-of-laws issues in the context of the cross-border marriage contract, and attention was focused on the need to enhance the effectiveness of international cooperation in this area. An analysis was conducted of the content of regulatory provisions aimed at regulating the institution of the marriage contract within different jurisdictions. The scientific conclusions and practical recommendations of this research were formulated based on a thorough analysis of legislative provisions and judicial precedents: Civil Code of Germany (1896), Civil Code of Spain (1889), Family Code of Ukraine (2002), Civil Code of Catalonia (2005), Judgement of the UK Supreme Court in Case “Radmacher v. Granatino” (2010), and Civil Code of France (2025). The logical-legal method served as an instrument for applying formal logic to analyse the substantive content of concepts and categories relevant to formulating logical and consistent scientific and practical conclusions on the subject matter of the research. The legal modelling method formed the basis for distinguishing the autonomous concept of the cross-border marriage contract within the system of international family law.

Results

Globalisation and demographic migration processes have led to a sharp increase in the number of cross-border marriages. Such marriages are

concluded between citizens of different countries or between persons permanently residing within different jurisdictions. This socio-cultural phenomenon leads to new difficulties and challenges in the international legal regulation of the recognition of marriage contracts, especially in light of the lack of a unified approach to understanding the content of marriage contracts in different countries. J. Moret *et al.* (2021) noted that within the European Union, cross-border marriages are subject to increased state control and are also an issue that requires thorough scientific research.

The study of this demographic phenomenon is also necessary in the context of the formation of a new concept of cross-border marriage contracts, which should be developed through the harmonisation of legislation within the European Union (hereinafter referred to as the EU) and the consolidation of the legal efforts of states to form an effective legal mechanism for regulating the property relations of persons in cross-border marriages. The free expression of will and disposal of property rights must be guaranteed to married persons, regardless of any territorial restrictions. In this context, it is important to focus on the existence of different approaches to understanding the legal nature and essence of a marriage contract in different countries. Moreover, within individual jurisdictions, there are also differences in the legal significance of such a contract for the court in the event of a dispute between spouses over the division of joint property. Thus, some countries do not fully recognise marriage contracts, which significantly complicates law enforcement and reduces the effectiveness of such contracts in a transnational context.

A comparative legal analysis of the national legislation of individual European Union countries reveals fundamental differences in the legal regulation of marriage contracts, which ultimately has a direct impact on their effectiveness in the context of cross-border recognition. Particular

attention should be paid to the legislation of France and Germany as examples of established models of legal regulation of marriage contracts within the continental law system. According to Article 1387 of the Civil Code of France (2025), spouses are granted the right, within the limits defined by law, to establish a regime of joint property that suits both parties. In turn, Article 1408 of the Civil Code of Germany (1896) states that spouses have the right to regulate property relations by concluding a marriage contract, according to which they can cancel or change the basic legal regime of joint property. Thus, French national legislation provides for the right of the parties to choose one of a number of standard property regimes provided for by law, with the legal possibility of modifying them within the limits established by law. The German model of legal regulation of marriage contracts, unlike the French model, is based on a broader application of the principle of autonomy of the parties' will, which allows not only to choose one of the statutory regimes, but also to form a special regime of property relations between spouses within the limits not prohibited by law. At the same time, both legal models of marriage contracts provide for requirements regarding notarial form and compliance with general requirements.

Based on a comparative analysis of these regulatory provisions, it can be concluded that the French model is characterised by a more static, standardised approach, while the German legal model provides for a dynamic approach in the context of the legal regulation of the institution of marriage contracts. This is of fundamental importance in the context of the recognition of marriage contracts in a cross-border legal dimension, since contracts concluded in Germany may not comply with the requirements of French law.

Moreover, French legislation, based on the provisions of Regulation of the European Council No. 2016/1103 (2016), recognises marriage

contracts concluded within other EU jurisdictions if the requirements for form, content and choice of law are clearly complied with. Germany, in turn, tends to recognise agreements that contain autonomously formulated terms, provided that the general requirements of relevance, good faith and legal certainty are met. In view of the above, it should be noted that a comparison of the French and German approaches to the regulation of marriage contracts provides an understanding of the conceptual differences regarding the limits of freedom of choice in private law, which is important to consider when concluding cross-border marriage contracts. In this regard, the fundamental vector of international cooperation in this area is the formation of a standardised general content of a cross-border marriage contract that would form the legal basis for its validity, regardless of jurisdiction.

When analysing the specifics of marriage contract regulation in countries with a continental legal system, it is also advisable to focus on the legal models provided for in Spain, Catalonia and Ukraine. The institution of marriage contracts in Spain (*capitulaciones matrimoniales*) has clear and thorough legal regulation, enshrined both in national legislation and in autonomous regions. The recognition of marriage contracts in the case of cross-border marriages is also carried out on the basis of conflict of laws rules provided for in the Regulation. The main regulatory provisions in this area are enshrined in the Civil Code of Spain (1889) and the Civil Code of Catalonia (2005). The principles of legal regulation of the content, form and peculiarities of concluding marriage contracts correspond to the general European doctrine and, at the same time, have their own peculiarities.

The Civil Code of Spain (1889) enshrines the institution of the marriage contract in Articles 1325-1335. According to these provisions, the parties have broad powers to choose the legal

regime of the spouses' property within the limits provided for by law. At the same time, Spanish law imposes a number of formal requirements on marriage contracts that directly affect their validity (e.g., mandatory notarisation and registration). It should be noted that the Spanish model of a marriage contract is characterised by the presumption of freedom of spouses in the contractual regulation of property rights, but within the limits of the fundamental principles of good faith and fairness.

A distinctive feature of Spanish law is the existence of autonomous entities. For example, an autonomous entity such as Catalonia is characterised by a local private law system and, accordingly, has a separate Civil Code of Catalonia (2005). The Catalan model of marriage contract is extremely flexible and provides for a high degree of autonomy for the parties in regulating the property relations of spouses. However, this does not exclude the existence of formal requirements that are consistent with the Spanish model. It is important to note that, compared to other countries of the continental legal system, Spain and Catalonia allow the regulation of non-property relations between spouses by a marriage contract, but in a limited form that does not contradict established public order.

Ukrainian family law also contains normative provisions devoted to the legal regulation of marriage contracts. The Family Code of Ukraine (2002) states that a marriage contract regulates property relations between spouses and determines their property rights and obligations. Similar to the generally accepted European legal doctrine, national legislation clearly limits the content of a marriage contract to property matters only. At the same time, according to the Ukrainian model of a marriage contract, spouses have significantly fewer legal opportunities to modify the legal regimes of property compared to the legislation of Germany and Spain. As a candidate country for EU membership, Ukraine must

implement an effective process of harmonisation and adaptation of its legislation to European standards, and therefore the experience of foreign countries is extremely important for the implementation of the harmonisation mechanism.

Thus, it can be concluded that the legal models of marriage contracts in Ukraine and France are more formalised. In turn, German and Spanish legislation in this area is characterised by greater dynamism and flexibility. Different approaches to the implementation of the principle of autonomy of the parties in a marriage contract lead to difficulties in the recognition of cross-border marriage contracts. It should be noted that conceptual differences in the legal regulation of marriage contracts can be observed between countries with common law and civil law systems.

Specific principles for regulating marriage contracts are found in the United Kingdom, which is a prominent representative of the common law system. Until 2010, marriage contracts had no legal force. The Supreme Court's decision in "Radmacher v. Granatino" (2010) introduced a presumption of validity for such contracts. According to the content of this decision, the court must recognise the validity of a marriage contract that is concluded on the basis of the free expression of the parties' will and full awareness of the consequences of its conclusion. Compliance with the principle of fairness and non-discrimination of the parties is also important in the recognition of marriage contracts by the courts. It should be noted that the doctrine of marriage contracts in continental law countries, in particular in the United Kingdom, differs significantly from the approaches to the legal regulation of such contracts in continental law countries. In the United Kingdom, a marriage contract does not have automatic binding status, as the court has broad discretionary powers to recognise a marriage contract as valid or to refuse to take its provisions into account in each specific case.

Given the different approaches to understanding the institution of marriage contracts within countries of the continental legal system and, in general, between countries of the continental and common law systems, it should be noted that the significance of Regulation of the European Council No. 2016/1103 (2016) for the development of the concept of cross-border marriage contracts cannot be overestimated. This legal instrument is precisely what governs matrimonial contractual legal relations in the European legal dimension. The Regulation has been applied since 29 January 2019 for resolving cross-border cases among a number of countries. The main provisions in the context of recognising cross-border marriage contracts, according to the Regulation, state that spouses have the possibility to choose the law of any country with which they have a close legal connection. Such a connection may be recognised as citizenship or permanent residence. If the law of a country is not chosen, the law of the spouses' place of residence at the time of marriage shall apply to the conclusion of marriage contracts. Marriage contracts must comply with the requirements of the legislation of the specific state whose law applies in a particular case. For example, in the case of a marriage contract between a German citizen and a Ukrainian citizen concluded in France, German civil law may be chosen for the contract. Accordingly, such a marriage contract will be recognised by both Germany and France.

To achieve the aim of this study, it is important to analyse the level of legal support for the recognition of marriage contracts in a cross-border context, which is formed by clearly establishing a mechanism for determining the applicable law in the context of conflict of laws regulation in this area of legal relations. According to the normative provisions of Article 22 of Regulation of the European Council No. 2016/1103 (2016), spouses are empowered to choose the applicable

law for determining the regime of their property from among: the law of the state of citizenship of one of the spouses; the law of the state of permanent residence of one of the spouses; the law of the state with which the spouses or one of the spouses has a close connection. However, if the parties do not exercise this right, it becomes necessary to apply conflict-of-law rules, which are characterised by a hierarchical principle from the place of permanent residence to a close legal connection.

A.P. Pashynskiy and V.Ya. Kalakura (2023) indicate that the system of conflict-of-law rules enshrined in the Regulation is based on the following principle:

1) the law of the state in which the spouses first took up permanent residence after marriage is the primary applicable law;

2) the secondary conflict of laws rule is the law of the state of joint citizenship of the spouses at the time of marriage;

3) the final conflict of laws rule is the law of the state with which each spouse had the closest legal connection at the time of marriage.

Considering the above, it can be concluded that Regulation of the European Council No. 2016/1103 (2016) establishes a fundamental and unified mechanism for determining the applicable law, which creates conditions for a single legal regime for marriage regardless of jurisdiction. Thus, the Regulation is an effective tool for determining the legal regime of matrimonial property in the case of a marriage with a foreign element by determining conflict of laws rules. This document contains algorithms for determining the applicable law, which, given the increase in the number of cross-border marriages, is a crucial task that goes beyond the jurisdiction of a single state. As of 2025, not all EU countries have acceded to this international document, which negatively affects the effectiveness of the legal regulation of cross-border marriage contracts. Thus, 18 EU Member States have acceded to the Regulation.

Poland, Hungary, Denmark, Estonia, Ireland, Latvia, Lithuania, Slovakia, and Romania have not yet joined, so they continue to apply local national conflict-of-law rules to determine the matrimonial property regime.

Particular attention should be paid to countries that are not members of the EU and have not acceded to this international document, such as the United Kingdom. The United Kingdom does not take into account the provisions of Regulation of the European Council No. 2016/1103 (2016) and uses national conflict-of-law rules to select the applicable law in the case of marriage contracts in cross-border marriages. A foreign marriage contract may be recognised in the United Kingdom, provided that it fully complies with the requirements of the country in which it was concluded and that the principles of fairness, voluntariness and financial transparency are observed. There is no single regulatory act in the United Kingdom that provides for the centralised legal regulation of the institution of marriage contracts. In addition, issues of determining the applicable law are resolved by applying the principles of common law, case law and international treaties. In this regard, it can be concluded that in the United Kingdom, a marriage contract is not automatically considered binding, as its validity is assessed by the court during the consideration of the case on its merits in each specific case based on the principles of good faith, fairness and full financial disclosure. In other words, the court has extremely broad discretionary powers to recognise the terms of a marriage contract as valid, which is a fundamentally different feature from the legal traditions of the continental law system.

Belonging to the common law system determines certain features in the legal regulation of the institution of marriage contracts, which consists in the precedent principle of determining the applicable law, which is formed in the course of the court's broad discretionary powers. Thus,

the fundamental requirements for the recognition of a marriage contract, as established in the decision in “Radmacher v. Granatino” (2010), are good faith, voluntariness and financial transparency.

This causes difficulties in the cross-border context of recognition of marriage contracts and necessitates the formation of a system of unified provisions for their validity. In order to overcome fundamental differences between various approaches and concepts of legal systems with a view to ensuring effective cross-border legal regulation of the institution of marriage contracts, it is advisable to form a system of primary standards, namely:

- 1) the principle of autonomy of the parties, which allows spouses to independently determine the applicable law, jurisdiction and choose the legal regime of property;

- 2) a clear list of formal requirements in the context of compliance with public policy (e.g., non-tarisation);

- 3) good faith of the parties' intentions; an important aspect is the formation of a common understanding of such legal categories as “fairness” and “good faith”;

- 4) the principle of full financial disclosure, which is characteristic of common law countries, should also be implemented at the international level, as it is a guarantee of fair conditions for the parties to the contract;

- 5) the principle of fairness of the parties to the marriage contract;

- 6) the formation of an additional international mechanism for the recognition of marriage contracts, which would take into account not only EU jurisdictions.

Considering the above, there is a need to develop a doctrinal unified approach to determining the substantive content of a cross-border marriage contract. In this regard, it is worth formulating a definition of a cross-border marriage contract, according to which it is a bilateral family contract between spouses or persons who have

officially confirmed their intention to marry, characterised by a foreign element (e.g. citizenship, place of residence, location of property) and aims to regulate property issues in the event of divorce by applying the conflict of laws method.

Discussion

In the context of cross-border marriages, entering into a marriage contract is not just a legal option, but a practical necessity, given the potential difficulties that may arise when determining the property regime, taking into account the specific features of different jurisdictions. One of the important functions of a cross-border marriage contract is to provide legal protection of property in the event of divorce in order to accurately determine the applicable law, property regime, and ownership of property to avoid complex legal proceedings involving foreign elements.

In the context of studying the significance of Regulation of the European Council No. 2016/1103 (2016) for the formation of an effective mechanism for ensuring the recognition of cross-border marriage contracts, it is worth noting that there are well-founded positions of scholars on this issue. As M. Sánchez Moraleda (2019) rightly points out, the conflict-of-law rules in the Regulation are aimed at achieving an important result that meets the needs of international couples. Also, D. Damascelli (2024) notes that even in the absence of a choice of applicable law by the parties to the contract, the Regulation provides for the possibility of applying a clearly defined hierarchical structure of conflict-of-law rules. I. Viarengo and P. Franzina (2020) characterise the provisions of the Regulation as a basic resource for law enforcement.

However, it should be understood that quite often, despite the existence of Regulation of the European Council No. 2016/1103 (2016), questions arise in each individual case related to the recognition of a marriage contract during the

consideration of a divorce and property division case. This issue is particularly acute in cases where, in common law countries, it is necessary to recognise a marriage contract concluded in countries with a continental legal system in court. In this regard, a practical problem arises in the enforcement of the law on an individual basis for each cross-border marriage contract, based on the potential jurisdictions that may be legally relevant in the context of the specifics of property relations.

In this context, D. Eskenazi and M. Valentan (2025) rightly point out in this context that the issue of recognition of French marriage contracts is most difficult in countries with a common law system, since in these countries the approaches to the legal regulation of marriage contracts differ significantly from the principles applied in countries with a continental law system. In order to increase the likelihood of such marriage contracts being recognised in countries with a continental legal system, it is necessary for the relevant contract to take into account the standards that are key to marriage contracts in the United States, the United Kingdom and other common law countries. These standards include the following:

- the marriage contract must comply with the principle of fairness;
- the parties must obtain independent professional advice to understand the significance of their actions;
- when concluding a marriage contract, there must be full financial disclosure by each party to the contract.

J. Edelman (2024), researching the evolution of marriage contract legislation in Australia and the legal structure of marriage contracts in that country, also paid attention to the comparative context with the United Kingdom. The specific nature of approaches to the recognition of marriage contracts in the United Kingdom differs from most countries, as for a long time such contracts were not recognised by the courts, which in this

case had extremely broad discretionary powers. The decision in “Radmacher v. Granatino” (2010) played a revolutionary role in this context, resulting in a rethinking of the legal significance of marriage contracts. J. Edelman (2024) emphasised that, thanks to this decision, marriage contracts were no longer invalidated on the grounds of being contrary to public policy. This contributed to the formation of a new balance between the freedom of private contractual regulation and judicial control over the fairness of contract terms. A similar need to balance the interests of private initiative and the stability of legal regulation can also be seen in the study by X. Kadi and E. Qarri (2025), who emphasise that the harmonisation of family and commercial law in Albania requires consideration of constitutional economic freedom, creditors’ rights and the objectives of legal certainty.

However, although this decision changed the outdated approach, according to which the concept of a marriage contract was a priori contrary to the fundamental principles of general law, the court’s influence on the recognition or non-recognition of a marriage contract remained decisive. An official analytical study by the House of Commons of the United Kingdom on marriage contracts by C. Fairbairn (2023) states that following the Supreme Court’s decision in “Radmacher v. Granatino” (2010), the recognition of a marriage contract depends solely on whether the court recognises it as meeting the requirements of fairness. It is worth supporting the scientific position of D. Eskenazi (2021) that for cross-border couples, a clear choice of applicable law and first common place of residence may influence the formation of the applicable regime for their marital relations as a whole. At the same time, not signing a marriage contract can have unpredictable cross-border consequences.

In view of the above, it should be noted that the existence of Regulation of the European Council No. 2016/1103 (2016) within the jurisdiction

of the EU does not provide a complete solution to the problem in a global context, based on the following: 1) not all countries have acceded to the relevant Regulation, even within the European legal space; 2) common law countries have a special approach to understanding and recognising marriage contracts, which is due to historical traditions in the development of marital relations; 3) other countries around the world have their own unique legal systems and do not apply uniform standards for the legitimisation of marriage contracts. In this regard, it is worth emphasising that in the case of a cross-border marriage, the marriage contract must contain as much legal information as possible to enable its legalisation in another jurisdiction if the need arises. Thus, it is important, first of all, to clearly define the applicable law, as well as the specific jurisdiction within which the court has the authority to hear divorce cases and determine the legal regime of property.

Conclusions

The subject of the current scientific research was the issues of recognition and legal regulation of cross-border marriage contracts through the prism of the application of conflict of laws in the field of private international law. The aim of the scientific article was to conduct a comprehensive scientific and practical analysis of legal models of marriage contracts in different jurisdictions, as well as the peculiarities of their recognition in a cross-border dimension. Taking into account the results obtained, it can be stated that the set goal has been fully achieved. Based on the results of this scientific research, a number of scientific and theoretical conclusions have been formed. It has been established that the specificity of a cross-border marriage contract lies in the comprehensive jurisdictional legal regulation of its provisions, which further affects the legal procedure for recognising its validity.

During the critical analysis, differences were found in the approaches to the legal regulation of the institution of marriage contracts not only within different jurisdictions of the continental law system, but also between two fundamental legal systems – continental and common law. It has been determined that these conceptual differences have a significant impact on the recognition of cross-border marriage contracts. The article provides a thorough comparative legal analysis of the legislation of Germany, France, Spain, Catalonia, Ukraine and the United Kingdom in order to identify the characteristics of local legal models of marriage contracts, which is directly relevant to the recognition of such contracts in a cross-border context. This analysis has led to the scientific conclusion that the principle of party autonomy varies across different jurisdictions. The study examined the provisions of Regulation No. 2016/1103 regarding the peculiarities of conflict of laws regulation in this area, which made it possible to highlight problematic issues of international legal regulation and identify a justified need to develop a unified mechanism for the recognition of cross-border marriage contracts. Based on the analysis of these regulatory provisions, conclusions were drawn regarding the hierarchical nature of the application of conflict of laws rules, and the issue of recognition of such contracts in the context of countries that have not acceded to the terms of this international document was highlighted.

The results obtained allow to assert the need to form a unified model for the recognition of marriage contracts, to create an additional international instrument that will take into account the peculiarities of both legal systems, as well as to ensure a common understanding of key concepts such as fairness, good faith, and full financial disclosure. It was found that Regulation No. 2016/1103 plays a fundamental role in the

formation of a mechanism for harmonising the legal regulation of the institution of marriage contracts in EU countries, but its narrow jurisdictional application creates an urgent need for broader mechanisms of an international nature.

These trends indicate that the issue of recognition of cross-border marriage contracts should be addressed not only within a number of EU jurisdictions, but also at the global level. The prospects for further development of the issue of cross-border marriage contracts include the creation of conditions for active international

cooperation and consideration of the legal possibility of regulating this issue through directives within the European legal space.

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Conflict of Interest

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Шлюбний договір та транскордонний шлюб: проблеми правового регулювання в розрізі міжнародного сімейного права та колізійного регулювання

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Анотація

Актуальність проблематики зумовлена тим, що в умовах численних воєнних конфліктів, а також активізації явищ демографічного характеру, пов'язаних з міграційними процесами, ефективний механізм полягає у тому, що ефективний механізм правового регулювання транскордонних шлюбних договорів має важливе значення для захисту майнових прав подружжя. Метою дослідження був комплексний науково-практичний аналіз особливостей визнання дійсності транскордонних шлюбних договорів в межах різних юрисдикцій, а також висновків та рекомендацій науково-практичного характеру. В процесі дослідження зазначеної теми використано порівняльний метод, метод критичного аналізу, метод тлумачення, метод абстрагування, логіко-юридичний метод, метод правового моделювання. Проведено аналіз підходів до розуміння сутності та змістовного наповнення шлюбного договору у країнах загального та континентального права. Запропоновано визначення та систему ознак транскордонного шлюбного договору, який є первинним елементом автономної концепції. Розглянуто значення Council Regulation No. 2016/1103 для реалізації колізійного методу регулювання вказаних правовідносин у європейському правовому просторі. Окрема увагу звернено на специфіку підходу до визнання шлюбних договорів у країнах загальної правової системи. За результатами здійсненого дослідження сформовано систему пропозицій, направлених на забезпечення ефективності функціонування транскордонних шлюбних контрактів із врахуванням глобалізаційних викликів. Зосереджено увагу на необхідності визначення основоположних стандартів дійсності транскордонних шлюбних договорів. Практичне значення зазначеного дослідження полягає у тому, що одержані результати можуть бути застосовані в процесі удосконалення колізійного регулювання шлюбних договірних відносин в цілому, а також розвитку міжнародно-правового регулювання концепції транскордонного шлюбного договору зокрема

Ключові слова: шлюбний договір; транскордонний шлюб; загальне право; континентальна система права; міжнародне сімейне право; колізійне регулювання

The human right to work in the context of the gig economy: International legal regulation

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Abstract

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Significant changes in labour relations caused by the development of the digital economy have led to the emergence of new forms of employment, in particular the gig economy. However, such forms of employment create numerous problems regarding the social protection of employees and the need for international legal regulation in this area. The purpose of this study was to analyse the problems and challenges of the gig economy in the context of international legal regulation of employee protection and develop proposals for adapting existing international norms. The research methodology was based on a comparative legal analysis of international norms and regional approaches to regulating labour relations in the gig economy sector, assessing law enforcement practices in different jurisdictions, and modelling possible options for unifying legal regulation at the international level. The study showed that differences in approaches to labour laws in different countries lead to a significant legal imbalance, which makes it difficult to ensure equal rights for employees of digital platforms. It was concluded that the concept of an independent performer is widely used

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to apply to employees of digital platforms by the platforms themselves in order to avoid obligations arising in labour relations. Non-recognition by labour relations of the employment of employees on digital platforms creates both problems of protecting the rights of such employees, and guarantees a certain freedom of activity. Various rule-making approaches, the practice of applying current legislation and methods for determining actual labour relations were identified, in particular, through an assessment of the level of control, dependence and form of labour organisation. As a result, the need to introduce unified international norms that would cover the issues of defining modern types of employment, including issues related to such activities, was identified. These recommendations can be used to develop concepts, policies, national and international legal acts aimed at protecting labour rights in the digital era, and to ensure state economic interests related to labour activity

Keywords: the right to work; regulation of labour relations; labour migration; digital era; harmonisation of legislation; international law

Introduction

The global economy is under the influence of digital transformation, which creates and strengthens the conditions for the emergence of the gig economy, which becomes a new dimension of employment. The successful development of this area encourages a rethinking of conventional approaches to regulating labour relations, since gig workers are outside the standard labour framework. The lack of unified international legal norms complicates the situation with social protection of this category of employees. In the context of the rapid digitalisation of the labour market, it is necessary to reconsider the classic definition of the term “labour migrant”, which usually applies only to those who physically move to another country for work. New forms of employment are emerging, such as cross-border remote work, which does not require the physical presence of an employee in another country, but still creates problems with legal regulation and protection of labour rights. Increasing the role of gig workers employed on digital platforms requires adapting legislative approaches.

Digitalisation opens up both new opportunities for the development of labour rights, especially in the field of platform employment, and

new challenges. In particular, J. Hsieh *et al.* (2024) stressed that the digital age creates conditions for a review of labour laws to better protect platform workers, who are often in unstable forms of employment and face an asymmetry of rights in relations with employers. Special attention was paid to the prospects for further development of the sphere of labour in the study by V.G. Panchenko *et al.* (2024). The study analysed the impact of the gig economy and the collaborative economy on the digital transformation of the international labour market, and also examines the issues of social protection of employees in this area.

The analysis of the challenges faced by employees of digital platforms in Ukraine regarding the implementation of collective labour rights, and the possibilities of adapting national legislation to the norms of the European Union, is set out in the paper by I. Alekseenko (2024). The researcher considered the issues of determining the collective rights of employees of digital labour platforms of the gig economy, considering the fact that Ukraine belongs to the countries with the fastest growth rates of the gig economy, which, according to the researcher, emphasises the problem of legal regulation of the entire complex of

relations. This necessitates a comprehensive study of the topic to modernise national legislation.

At the international level, there is a tendency to increase labour mobility, accompanied by the need to adapt international and national legislation to the new realities of the digital age. Research by the European Commission (2023; 2024) showed the significant impact of digital transformation on the rights of migrant workers in the EU, in particular, migrants performing routine tasks become more vulnerable to automation and need social guarantees. In addition, the growth of remote work raises questions of legal regulation of cross-border labour relations and the application of legislation on social security and working conditions for migrants.

N. Countouris (2019) analysed the evolution of the concept of “employee” in the case law of the EU Court of Justice and its application to new forms of work. The researcher suggests that the autonomous interpretation of this concept in EU law is broad enough to cover many gig workers if national courts correctly apply the criteria of dependency and subordination. Some studies focused more deeply on the study of collective action in the gig economy. Thus, H. Johnston (2019) explored how specific spatial and technological characteristics of platform work affect employee organisation strategies. In particular, he noted: “algorithmic control, geographical dispersion or, conversely, concentration of employees in certain places, dependence on digital tools”. The paper analysed various forms of resistance and solidarity, from conventional trade union practices to new digital networks and protests, as workers use both physical and digital space to coordinate their actions.

The question of recognising platform work as a conventional labour or civil relationship is open. The issue was covered in the paper by M. Shumylo (2022). The study examined the judicial practice and legal nature of relations between employees and digital platforms, analysing whether they

should be considered labour or civil, and what consequences this has for the social protection of employees. Contemporary legal research pays considerable attention to the challenges that arise in connection with the digitalisation of labour relations. J. Carby-Hall and L. Mella Méndez (2020) examined how digitalisation is transforming labour relations, creating new forms of employment that do not always comply with conventional labour law norms. The researchers emphasised the need to adapt legal norms to ensure social guarantees for employees in the new conditions of the digital economy. L.M. Méndez and A. Villalba Sánchez (2020) also investigated the digitalisation of the labour market and noted that the latest technologies, such as artificial intelligence and automation, are changing the nature of work processes and strengthening the role of the gig economy. This raises the need to adapt labour law and develop new mechanisms to protect the rights of employees employed on digital platforms.

The study aimed to identify the pressing issues and challenges of the gig economy in the context of international legal regulation. The objectives of the study were: to analyse the international legal foundations of the right to work; to investigate the impact of digitalisation on labour relations; to explore problems of harmonisation of legislation in the field of digital economy.

Materials and Methods

The study was based on an interdisciplinary approach that combines legal analysis, an economic approach, and elements of sociological research. The methodology was based on a comparative legal analysis, a method of regulatory modelling, and a systematic approach, which provided a comprehensive review of international and national legal acts regulating labour relations in the digital economy. The comparative legal method was used to investigate the regulation of labour relations with gig workers in various countries,

including the European Union, the United States, and the United Kingdom. The study analysed the provisions of Protection of Wages Convention No. 95 (1949), Directive of the European Parliament and of the Council No. 2019/1152 (2019), Judgement of the United Kingdom Supreme Court in Case No. A2/2017/3467 (2021) and the Opinion of the Supreme Court of California in Case “Dynamex Operations West, Inc. v. Superior Court” (2018) on the recognition of the relationship between gig workers and platforms as employment relationships. This method identified differences in the legal status of gig workers in different jurisdictions and assessed their impact on social protection.

The method of regulatory modelling was used to develop recommendations for the unification of legal regulation of labour relations in the gig economy. In particular, the possibility of expanding the existing international labour standards or developing a new convention of the International Labour Organisation (ILO), which would address the specifics of digital platforms, was considered. The source base of the study also included statistical data and analytical reports. Official documents of the European Commission were used, in particular the reports of the European Commission (2023; 2024), which contain up-to-date data on the development of digital employment and its legal regulation. The analysis of these sources helped to formulate arguments about the need for international harmonisation of legal approaches and outline prospects for further changes in this area.

Results

The gig economy creates new opportunities for employees and employers, providing flexibility in work and the ability to quickly accept jobs without long-term obligations. For example, the Uber or Upwork platforms allow employees to choose projects or opening hours according to

their needs. This promotes access to the labour market for many people, including young people, students, and even retirees. However, the gig economy also has significant drawbacks. Income instability, lack of employment contracts, social guarantees, and access to pension systems are just some of the challenges that platform workers face. According to a study by K. Hara *et al.* (2018), workers on services such as Amazon Mechanical Turk earn incomes that do not meet the US federal minimum wage standards (approximately USD 2 per hour, compared to the federal minimum wage of USD 7.25 per hour). In countries with a high level of material and social deprivation among their citizens (Romania – 19.8%, Bulgaria – 18.0%, Greece – 13.5%, Hungary – 10.4%) (Eurostat, 2024) this leads to an increase in economic and social vulnerability. In addition, there are tax issues. For example, in Ukraine, platform employees are forced to declare their income independently, which makes it difficult for them to participate in social insurance systems.

International law does not yet have time to adapt to the realities of the gig economy. For example, Protection of Wages Convention No. 95 (1949) and Convention on Freedom of Association and Protection of the right to Organise No. 87 (1948) do not consider the specifics of employees on digital platforms. These norms were created for classical labour relations and do not consider the specifics of platform labour, which complicates their application in Ukraine. There is also a lack of clear mechanisms to ensure minimum working conditions and social guarantees for gig workers. For example, Article 1 of Convention No. 95 defines the term “salary” as: “Remuneration for work payable on the basis of an agreement”. This provision makes it difficult to apply to gig workers, whose status is often “independent contractor” rather than “employee”. Convention No. 87, Article 2: “Employees and employers, without any distinction whatsoever,

have the right to establish organisations of their choice without prior permission, including the right to join such organisations with the sole condition of being subject to the statutes of these latter” – that is, guarantees employees the right to create organisations of their own choice and join them without prior permission. Gig employees face difficulties in exercising this right due to their disparity and lack of a clear employer. These conventions were developed in the era of conventional employment, so their application to the gig economy requires interpretation and adaptation.

The EU seeks to identify “platform” workers (workers who are employed on digital platforms that contain offers to perform work or provide services) as persons entitled to social protection and guarantees. Directive of the European Parliament and of the Council No. 2019/1152 (2019) – ensure transparency and predictability of working conditions for all workers in the EU. This includes the right to receive information about essential aspects of the employment relationship, such as pay conditions, working hours, vacation rights, and dismissal procedures. Article 1 of the directive states: “The purpose of this Directive is to improve working conditions by promoting more transparent and predictable employment while ensuring the flexibility of the labour market”, and: “this directive defines the minimum rights applicable to each employee in the Union who has an employment contract or employment relationship as defined in applicable legislation, collective agreements or practices in each member state, considering the case-law of the Court of Justice of the European Union”. This Article defines the purpose and scope of the directive, which covers employees who have an employment relationship, but does not provide a separate definition of gig workers, especially digital platform workers.

Directive of the European Parliament and of the Council No. 2019/1152 (2019) provides for the right to receive information about any changes

in working conditions. In particular, Article 3 “Provision of information” stipulates: “Employer provides each employee with the necessary information in compliance with this directive, in writing. Information is provided and transmitted in paper form or, provided that the information is available to the employee, that it can be stored and printed and that the employer keeps proof of its transfer or receipt, in electronic form”. These provisions are important for “platform” workers, who often face uncertainty about their rights and working conditions.

Prior to the adoption of this directive, many workers, especially those employed in non-standard forms of work (gig economy, temporary employment, contract work, etc.), may have faced legal uncertainty, unstable working conditions, and insufficient protection. Some employers have used gaps in legislation to minimise social obligations to employees. The main reasons for the adoption of the Directive: 1) Growth of the gig economy – many employees of platforms such as Uber, Deliveroo, Glovo did not have enough information about their rights and obligations. 2) Need to increase the transparency of labour relations – in many cases, working conditions were uncertain or changed without prior notice. 3) Need for social protection – the directive provides employees with minimum guarantees, including restrictions on probationary periods, protection against unjustified layoffs and the right to compensation in the event of sudden termination of the contract.

Directive of the European Parliament and of the Council No. 2019/1152 (2019) provides for the right to information – employees must receive detailed information about working conditions, remuneration, work schedule, and contract duration no later than seven days after the start of work. In addition, the probationary period is limited to no more than six months, unless there are reasonable exceptions. Protection against unexpected termination of work – the employer must

ensure predictable working conditions and notify about changes in advance. Prohibition of restrictions on parallel employment – employees have the right to work for another employer, if this does not contradict the legitimate interests of the company. Article 12, “Transition to another form of employment”, establishes an interesting principle of guaranteeing more reliable (predictable) working conditions through a change in the form of employment: “Member states shall ensure that an employee who has worked for the same employer for at least six months and has completed a probationary period (if any) may request a transfer to another form of employment with more predictable and reliable working conditions, if possible, and receive a reasoned written response. Member states may limit the frequency of submission of claims that give rise to the obligation under this article”. This provision is undesirable for platforms that attempt to define relations with employees as not labour relations, but as civil relations with independent individual contractors in order to limit their obligations regarding social guarantees and liability inherent in a classic employer. The emergence and development of such platform practices became possible, among other things, due to the lack of an appropriate regulatory framework, since the activities of platform employees are formally largely not covered by the classical definitions of labour relations. The Directive came into force on August 1, 2022, after which EU countries had to implement it in their national legislation. It has been adapted in various forms in Germany, France, Spain, Italy, and the Netherlands. The Directive was an important step in the harmonisation of labour legislation in the EU and contributed to greater transparency and social protection of employees, but such harmonisation is a complex and lengthy process that does not keep up with the actual legal relations.

An important document that directly relates to the activities of platform workers is the

Directive of the European Parliament and of the Council No. 2024/2831 “On Improving Working Conditions in Platform Work” (2024). The document is aimed at improving working conditions in the field of platform employment. The Directive recognises the prevalence of defining platform employees as those who are in an employment relationship. This means that platform employees are considered employees by default, not independent contractors, unless the employer proves otherwise. Article 5 “Legal presumption” actually explicitly sets out the following provision for the member states: “Contractual relationship between a digital employment platform and a person performing platform work through this platform is legally considered an employment relationship if facts indicating guidance and control are found, in accordance with national legislation, collective agreements or practices in force in the member states, and considering the practice of the Court of Justice of the European Union. If a digital labour platform seeks to refute a legal presumption, it must prove that the relevant contractual relationship is not an employment relationship as defined by law, collective agreements or practices in force in the member states, considering the practice of the Court of Justice of the European Union”. This important provision of the directive actually establishes the principle of presumption of employment relations. It is important to note that in respect of contractual relations concluded before and continuing on 2 December 2026, the legal presumption provided for in this Article applies only to the period beginning from that date. Directive of the European Parliament and of the Council No. 2024/2831 (2024) provides for the establishment of criteria for determining when interaction between a platform and an employee is considered an employment relationship, the introduction of requirements for transparency and ethical use of algorithms that affect working conditions and decision-making regarding

employees, guarantees of access of platform employees to social benefits and protection, including insurance and pension savings. It was also supposed to help counteract fictitious outsourcing – some platforms, for example, Uber, Amazon Mechanical Turk, Upwork, Glovo, use wording and terminology in the terms of use of the services, which allows avoiding the status of an employer, which affects not only the guarantees of employees' rights, but also tax risks for governments. Different approaches in EU countries to determining the status of platform employees have created a need for unified standards. The Directive was also influenced by the need to ensure fair working conditions, transparency, and social protection for all employees, regardless of the form of employment, as a result of the implementation of the EU's overall social policy. The implementation of the Directive in national legislation provides that EU member states are required to adapt their national laws in accordance with the provisions of the Directive within a certain period. The European Commission will oversee the implementation of the Directive and provide recommendations for improving working conditions on the platforms.

The Judgement of the United Kingdom Supreme Court in case "Uber BV and Others (Appellants) v Aslam and Others (Respondents)" (2021) was an important milestone in the legal regulation of the gig economy, clearly demonstrating the tendency of European courts to strengthen the protection of workers' rights. In the case, the court ruled that Uber drivers should be classified as "workers" rather than independent contractors, based on a thorough analysis of the actual employment relationship between the company and the drivers. Key to this analysis was the use of a factor test that considered aspects such as Uber's level of control over drivers (including determining fares, setting working conditions, controlling the distribution of orders, and evaluating drivers

through the rating system), drivers' dependence on Uber (in particular, not being able to set prices independently or build their own business independently of the platform), and the form of work organisation where the company actually acted as an employer and drivers were integrated into its business model.

The court's finding that Uber exercises significant control over drivers reflects an approach increasingly seen in other European jurisdictions. This approach can be traced back to other iconic solutions. For example, in the case "Asociación Profesional Elite Taxi v Uber Systems Spain SL" (2017), which concerned the regulation of Uber's activities in Barcelona, the European Court of Justice the need for a balance between the employer's right to control and employees' right to privacy. Similar to the Uber case, the Court of Justice also focused on real labour relations and the need to protect employees' rights.

In Spain, in the "Glovo Couriers Case" (Judgement of the Supreme Court of Spain No. 805/2020, 2020), the court also recognised Glovo couriers as "employees" rather than independent contractors, again based on an analysis of the platform's level of control over their work. The key argument was that Glovo owned the main assets for the business (digital platform), set prices and terms of service, and exercised significant control over the organisation of couriers through algorithms, geolocation, and evaluation system. The court concluded that couriers did not have real autonomy in conducting their activities and were integrated into the organisational structure of the company, which is a sign of labour, and not civil law relations. Thus, the couriers were recognised as "fictitious self-employed". This decision obliged Glovo to provide couriers with the rights and guarantees provided for by labour legislation, including social insurance and other payments. The case set an important precedent for regulating labour on digital platforms in Spain.

These decisions, along with the case “Asociación Profesional Elite Taxi v Uber Systems Spain SL” (2017), demonstrated the general trend of European courts to recognise platform workers as employees in order to ensure their labour rights. The decision in “Uber BV and Others (Appellants) v Aslam and Others (Respondents)” (2021) was an important reference point for courts and regulators in other countries, particularly in France, Spain and the Netherlands, which also reviewed the status of platform employees. In general, the approach of European countries shows a clear focus on providing a high level of social protection, including gig workers. These precedents demonstrate the tendency of European courts to consider gig workers as employees, while in the United States the approach differs at the level of individual states. European countries are actively experimenting with policies to protect labour rights. For example, in France, the right to “disconnect” (*droit à la déconnexion*) was introduced, which allows employees not to respond to work communications outside of working hours, formulated as: “Procedures for the employee to fully exercise their right to disconnect and establish mechanisms for the company to regulate the use of digital tools to ensure compliance with rest and vacation periods, personal and family life”. This is intended to provide some protection against digital labour overload (Lerouge, 2021). Denmark has also introduced social insurance (unemployment insurance, health insurance and pension provision) for employees of digital platforms, which provides basic social guarantees for gig workers. However, it is important to recognise that such regulatory policies can have implications for the flexibility of the business environment, and for employees themselves, who may value simplified access to platform offerings.

The American approach can be described as more liberal. California Assembly Bill No. 5 (2019), which codifies the California Supreme Court’s

decision on “Dynamex Operations West, Inc. v. Superior Court” (2018), uses the so-called “ABC test” to determine whether an employee is an independent contractor or an employee. According to M.A. Cherry (2016), test offers a clear classification standard that better protects workers. This meant that platforms like Uber and Lyft had to provide their drivers with a full range of labour rights and benefits. Section 2 of Assembly Bill No. 5 (2019) sets out the criteria by which an employee is considered an employee if: “(A) The employee is free from the control and direction of the employer in connection with the performance of the work, both under the contract of service and in practice; (B) The employee performs work that goes beyond the normal business of the company; and (C) The employee normally engages in an independently established profession, occupation or business of the same nature as the work performed”. In response, gig economy companies initiated Proposition 22 (Law of California “App-based Drivers...”, 2020) to maintain their employees’ status as independent contractors. In particular, Uber and Lyft argued that classifying drivers as employees would lead to a significant increase in costs, which could force them to reduce services or leave the California market altogether. They emphasised flexibility of work for drivers who value the opportunity to work at a convenient time for them. Companies offered an alternative in the form that provides certain benefits (minimum wage at the state level, cost compensation, accident insurance), while maintaining the status of independent contractors, with significant political and legal challenges from platform companies”.

The adoption of Proposition 22 (Law of California “App-based Drivers...”, 2020) had a significant impact on the labour market, effectively cancelling the Assembly Bill No. 5 (2019) for gig economy companies such as Uber and Lyft, which continued to operate without significant changes in their operations, while maintaining flexibility

for drivers. However, in January 2021, the Service Employees International Union (SEIU) filed a lawsuit alleging that Proposition 22 was unconstitutional. SEIU argued that Proposition 22 violated the constitutional rights of the California state legislature because it restricts its power to regulate labour relations. In August 2021, the court of first instance declared the initiative unconstitutional, but in March 2023, the court of Appeal overturned this decision. In July 2024, the California Supreme Court finally confirmed the constitutionality of the Law of California "App-Based Drivers as Contractors and Labour Policies Initiative" (2020).

The adoption of Proposition 22 set a precedent in regulating the gig economy, demonstrating a balance between job flexibility and providing basic social guarantees, while sparking discussions about workers' rights and the role of corporations in determining labour relations. The US federal law Protecting the Right to Organise (PRO Act, 2021) was aimed at expanding workers' labour rights, in particular, their right to unionise and engage in collective bargaining. The bill was part of the overall policy of the US democratic administration aimed at strengthening labour guarantees. The bill proposed revising the definitions of "employee", "manager" and "employer" in order to cover more people with labour standards. This may include gig economy workers who are currently classified as independent contractors. Employers often hold mandatory meetings with employees, where they dissuade them from joining unions. The PRO Act (2021) defined such practices as unfair labour practices and banned them. The bill proposed amendments to Section 10 of the National Labour Relations Act of the USA (1935): "... (2) Notwithstanding subparagraph (m), in the event of a complaint that an employer has engaged in unfair practices within the meaning of Article 8 (a) (1), (3) or (4), which substantially impedes, hinders, or compels employees to exercise the rights guaranteed by

Article 7, or involves dismissal or other serious economic harm to the employee, such complaint shall be subject to immediate preliminary investigation and shall be dealt with as a matter of priority over all other cases, except those of a similar nature in the office where it is filed or where it has been transferred". The bill proposes to give the National Labour Relations Council (NLRB) the authority to impose fines on employers for violating labour laws. Fines can reach up to USD 50,000 for each violation. Federal labour laws set minimum standards, and states can pass stricter laws.

The US approach demonstrates flexibility for employers and gig workers, which should promote economic development through minimal overregulation, and the lack of a unified national policy. Fair Labor Standards Act (FLSA) (1938), which sets federal standards for the minimum wage, National Labor Relations Act of the USA (1935), which protects workers' rights to union and collective bargaining, and the Occupational Safety and Health Act of USA (OSHA) (1970), which sets federal standards for occupational safety and health, guarantees basic standards to be met or exceeded at the individual state level.

In Ukraine, the gig economy is gaining momentum. In 2021, the Verkhovna Rada adopted the Law of Ukraine No. 1667-IX (2021), which introduces a special legal regime "Diia City". This regime is aimed at supporting the IT sector and the digital economy, offering flexible employment and tax conditions for resident companies. The main difference from classical labour legislation is the introduction of gig contracts, which provide companies and employees with more flexible terms of cooperation. Article 1 of the Law gives the following definition: "Gig contract – a civil contract under which a gig specialist undertakes to perform work and/or provide services in accordance with the tasks of a resident of Diia City as a customer, and a resident of Diia City undertakes to pay for the work performed and/or

services rendered and provide a gig specialist with appropriate conditions for performing work and/or providing services, including social guarantees provided for in Section 5 of this Law”.

The key provisions provide for the implementation of gig contracts with employees, establish a flexible model of cooperation between the company and the specialist, differ from employment contracts in that they do not provide for classical labour guarantees, and replace such concepts as paid leave or sick leave due to pregnancy and childbirth with an annual paid break in the performance of work (provision of services) lasting 17 working days and a break in the performance of work (provision of services) due to pregnancy and childbirth lasting at least 70 calendar days.

According to Article 22, there are guarantees for a gig specialist in connection with temporary disability, but this right is provided for in the framework of the legislation on mandatory state social insurance: “Gig specialists are subject to insurance in connection with temporary disability and are entitled to temporary disability benefits provided in accordance with the procedure and amounts provided for by the Law of Ukraine “On Compulsory State Social Insurance” (1999).

The duration of working hours and a number of provisions on the mode of work and rest are very similar to the classical labour legislation, but a gig contract is a separate form of contract, which provides for the possibility of concluding only with a special resident entity “Diia City”, and Article 17 of the Law of Ukraine No. 1667-IX (2021) in the definition of a gig contract actually provides for freedom of contract, including in relation to the establishment of a minimum wage (the cost of specialist services): “The term of validity of the gig contract, the rights, obligations and responsibilities of the parties to the gig contract, the remuneration of the gig specialist, the terms of termination of the gig contract and other conditions are defined in the gig contract by agreement of the

parties, taking into account the specifics defined by this Law”. However, the minimum level of remuneration is set not in the requirements for gig contracts, but in the requirements for a company that wants to get the status of a resident of Diia City. Article 5 provides that the amount of the average monthly remuneration to attracted employees and gig specialists, starting from the calendar month following the calendar month in which the status of a resident of Diia City was acquired, of each calendar month is not less than the equivalent of EUR 1,200 at the official UAH exchange rate against the EUR established by the National Bank of Ukraine as of the first day of the corresponding calendar month). That is, these provisions actually establish indirect regulation of the minimum income of gig specialists through the requirements for a resident of Diia City, without considering such concepts as “living wage” or “minimum wage”, which change and are reduced to certain values considering actual economic conditions. In addition, the phrase “average monthly remuneration to employees involved” does not mean setting a minimum income level for a particular employee or gig specialist, but may mean that 5 out of 10 employees receive an income equivalent to EUR 2,000, and the remaining 5 – an average of EUR 400. In addition, for residents, it is allowed for a certain period of activity not to meet all the criteria specified in the requirements for residents without losing this status.

The flexible tax system for residents of Diia City allows them to choose between an income tax (18%) or a special tax on withdrawn capital (9%), and specialists working under gig contracts pay only 5% of personal income tax (against the standard rate of 18%). Law of Ukraine No. 1667-IX (2021) guarantees companies the right to intellectual property created by employees under the contract (Article 24 “Intellectual property rights to an object created by a gig specialist in connection with the performance of a gig contract belong

to a resident of Diia City, who is the customer under such a gig contract”).

In general, this is a step to stimulate the development of certain types of economic activity, in particular, it is focused on supporting the IT sector. However, the concepts of gig economy and platform work are much broader, and in this sector, the Ukrainian regulation of gig work does not cover such areas as platform work (Uber, Glovo, Upwork, and other similar services). The classic scheme of positioning platforms in their terms of use is that the platforms only provide performers with access to information about ordering services and are not employers in the context of labour relations, do not pay for work, but on the contrary receive commission income from participants. Accordingly, employees engaged in such work or services do not have access to the protection and guarantees provided for employees. This creates a serious problem, as platform workers run the risk of being exposed to instability and uncertainty, which will only exacerbate socio-economic inequality (Segdiepco & Krainik, 2024).

The problem of avoiding formalisation of labour relations by platforms and employers of temporary short-term or irregular types of employment is the disproportionate result of additional, complex, and expensive administration of labour relations. Neither the employee nor the employer is more likely to be interested in entering into a classic employment contract to perform one trip with a passenger around the city once a week, deliver a parcel, or perform some other one-time work by proxy in their spare time.

The Labour Code of Ukraine (1996), developed in Soviet times, does not meet these modern needs of the labour market. This thesis is reflected in other studies on this topic, in particular, I. Atamanchuk and Yu. Kovalchuk (2019) concluded that the current development of labour relations does not correspond to the classical theory of the labour market. It is outdated and requires

significant modernisation, regulation of new forms of labour relations adapted to the digital economy, and the inclusion of social guarantees for employees of the gig economy.

The analysis of the regulation of the gig economy allows summarising the following main approaches: in the EU there is a potential conflict between the freedom of entrepreneurship and labour guarantees of gig workers, in the US there is a certain legal uncertainty due to the application of regulation at the federal level of TV at the level of individual states, and in Ukraine there is no legal definition of the status of a gig employee outside the legal regime of “Diia City”, the lack of regulation of platform employment creates a legal vacuum.

The need for international legal regulation. Analysis of available data on the digital economy reveals a significant impact of digitalisation on the labour market, in particular for migrant workers. According to updated experimental data from Eurostat (2024), 3% of people aged 15-64 in the EU during 2022 performed work through digital platforms for at least one hour per month. This represents a significant share of the labour market, which gradually affects the nature of employment. In the United States, according to the Pew Research Centre (2021), about 16% of American adults have been involved in digital platforms in one way or another, of which 9% work full-time. In 2025, this figure reached 20% of the country's population (Board of Governors of the Federal Reserve System, 2025) in the study by N. Datta *et al.* (2023) provides conclusions on the global scale of employees employed in the gig economy – 154 million unique registered and 60 million active gig employees. The second evaluation model used a global survey and estimated that there are 435 million gig employees. This number of employees increases the need to adapt labour legislation to new working conditions. The intensification of the use of artificial intelligence in all spheres of life will also contribute to

a further increase in the number of gig workers (Khanenko, 2024).

Nowadays, the competition between local workers and foreign labour migrants has reached a new level, which includes remote foreign workers and raises issues of protecting citizens' rights to the priority right to work. An example of this phenomenon is the involvement of companies to work in support services, sales departments, programmers, engineers, and other categories of employees who can perform work remotely from other countries, thus creating additional competition for local workers, reducing the number of available jobs, or creating a kind of dumping due to lower requirements for the level of remuneration and social guarantees. Restrictive measures such as quotas for foreign workers or requirements for work permits to protect the national labour market are one of the regulatory tools that apply at the level of an individual country or region. For example, Canada uses a quota system for various categories of foreign workers, in particular through the Temporary Foreign

Worker Programme, setting restrictions on attracting low-paid workers (Government of Canada, 2025). Switzerland also applies quotas for foreign workers, especially from non-EU/EFTA countries (Federal Act of Switzerland No. 142.20, 2005). These quotas regulate the number of work permits issued to foreigners to control migration and protect the Swiss labour market. But these measures cannot regulate access to the labour market for foreign remote workers. Restrictions such as legislative quotas and regulation of foreigners' access to the national labour market help to reduce competition for local workers, but require adaptation to the conditions of the digital economy. In particular, new approaches should be developed for digital migrants that will ensure a balance between protecting local labour rights and supporting global economic mobility. Given the global nature of the gig economy, it is necessary to create international standards for its regulation. To do this, it is necessary to model changes in international legal instruments of regulation (Table 1).

Table 1. Necessary changes to international legal instruments of regulation

Development and implementation of a new ILO Convention	The convention should provide for recommendations on a unified conceptual framework and recommendations for ensuring appropriate basic social guarantees for platform workers, establish unified approaches to the principles of taxation and protection of the priority right to work of citizens, and help to close the legal gap in national legislation. However, the issue of social protection policies should remain a matter for the relevant government bodies of individual countries, which will determine the balance of overregulation and economic freedom
	Consideration of the experience of the EU, where Directive of the European Parliament and of the Council No. 2019/1152 (2019) on transparent and predictable working conditions and Directive of the European Parliament and of the Council No. 2024/2831 (2024) on improving working conditions in platform employment can serve as a basis for defining minimum standards and unifying concepts
	Court precedents, such as Uber's employee classification decisions and Dynamex Operations West, Inc., can help in determining the criteria for labour relations in the digital economy
Amendments to existing international treaties	It is necessary to adapt existing treaties, in particular, within the framework of the World Trade Organisation, to consider the specifics of the functioning of digital platforms and cross-border labour
	Regional integration associations, such as the Association of Southeast Asian Nations (ASEAN), should serve as an example for developing regional standards for regulating digital labour

Table 1. Continued

Making recommendations for governments	The recommendations should be aimed at ensuring transparent regulation of labour relations, access to social protection, and resolution of labour disputes. Learn from the relevant experience of countries that have already implemented national legislation to regulate the gig economy, such as the California Assembly Bill No. 5 (2019)
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Source: developed by the author

Conventional approaches to regulating labour relations generally do not fully cover the interests of digital migrant workers who work on platforms and do not have stable labour relations. The lack of a unified legal status makes it difficult to determine the level of social guarantees and working conditions for gig employees. Therefore, the extension of the conceptual unified apparatus to include the term “gig-worker”, “digital labour migrant”, or “virtual labour migrant” can contribute to better coverage of real relations and protection of the rights of this category of employees in the international legal field. The existence of a unified conceptual framework and regulatory principles will become the basis for the adaptation and development of national legislation. Additional local norms that set better than generally accepted norms can be a tool for attracting employees and employers to individual jurisdictions to achieve economic goals at the level of individual states or unions.

Discussion

The authors of studies on the regulation of relations between gig participants and the economy express different opinions on the issue of regulation and identify problems, which confirms the complexity of the problem and the lack of a unified approach. For example, M. Risak (2018) analysed discussions about creating an intermediate category between the employee and the self-employed (“third way”) to regulate gig work: “Creating a “third category” may seem like a pragmatic solution... but it risks institutionalising lower standards and not solving the key problem of

dependency and control”. It examines the advantages (flexibility, basic protection) and disadvantages (risk of lowering standards, complexity of definition) of this approach. V. Dubal (2021) critically analysed the impact of Proposition 22, arguing that it undermines labour standards and creates a third, less protected class of workers. Her study showed the political and economic struggles around classification and the implications of “exceptions” for certain platforms: “Proposition 22 is a corporate takeover of labour law, setting a dangerous precedent that takes gig workers out of fundamental protection... It institutionalises undefined work under the guise of flexibility”. A. Aloisi *et al.* (2023) discussed the regulation of platform work in the EU, in particular, by analysing the adoption process and content of the Directive on improving working conditions on platforms. The researcher examined the mechanism of presumption of employment relations and the potential challenges of its implementation at the national level. The analysis showed the EU’s attempt to strike a balance between employee protection and innovation: “The EU Platform Work Directive is a significant attempt to curb bogus self-employment. However, its effectiveness will largely depend on national implementation and enforcement mechanisms”.

The study confirmed the thesis that the gig economy is a significant challenge for conventional labour law and social protection systems around the world. The results, which indicate the specifics of gig employment – flexibility on the one hand and instability of income and lack of social guarantees on the other – are consistent

with both the conclusions given above and the opinions of V.G. Panchenko *et al.* (2024), who analysed the transformational impact of the gig and collaborative economy on the international labour market and related social protection issues. K. Hara *et al.* (2018) using the example of Amazon Mechanical Turk demonstrated the problem of low earnings in the gig sector, which supports conclusions about the economic vulnerability of gig workers.

One aspect of the study was to identify legal imbalances and differences in regulatory approaches in different countries, which makes it difficult to protect the rights of employees of digital platforms in a cross-border context. This problem was discussed in the scientific literature. In particular, J. Carby-Hall and M. Méndez, L. (2020) emphasised that digitalisation creates new forms of employment that go beyond conventional labour law, and highlighted the urgent need to adapt legal norms. The researchers also pointed out the impact of new technologies and the growing role of the gig economy, which requires the development of new protection mechanisms. The study confirmed these theses, demonstrating by examples of international ILO conventions that existing tools are extremely effective in regulating relations in the gig sector due to outdated definitions and difficulties in applying them to individuals classified as “independent contractors”.

The study focused on comparing EU and US regulatory models. It was found that the EU demonstrates a proactive approach aimed at strengthening the protection of platform workers. This approach was also confirmed by judicial practice, in which courts, analysing the level of control and dependence, recognised platform employees as “employees”, and not contractors. In contrast to the European approach, the American model demonstrates a balance between protecting employees and maintaining

the flexibility of the platform’s business models, preferring to classify a specific category of employees as independent contractors with certain additional guarantees. This difference in approaches highlights the complexity of finding a universal solution and confirms the conclusion that international harmonisation of definitions and standards is necessary. The same aspect was emphasised by A. Huys (2024) and S. Raignone (2024), pointing out the need to review legislation in the digital era, and the European Commission (2023), in the context of the rights of migrant workers working remotely.

The research theses on the need to adapt definitions and the need to standardise approaches are confirmed by the study of the problem of regulating platform work at the international level, which was previously written by the leading expert of the ILO V. De Stefano (2016), who emphasised the inadequacy of conventional binary classifications (employee/self-employed) and the need for international standards. The researcher highlighted the risks of “regulatory arbitration” when platforms exploit differences in national legislation. The researcher called for a rethinking of the concepts of “enterprise” and “control” in the digital age.

The results of the study are consistent with the conclusions of scientists on the key problems of the gig economy: legal uncertainty of the status of employees, the insufficiency of existing international legal norms, the need for social protection, and significant differences in national regulatory approaches. The generalisation of the data obtained confirmed that the existing legal mechanisms do not keep up with the transformation of labour relations caused by digitalisation, which is particularly acute in the cross-border dimension. Attempts to create intermediate forms of employee status, such as the “third way”, are controversial in the scientific community due to the

threat of lower standards and uncertainty in the legal status of gig employees. However, the analysis of European and American experience shows that there are opposite approaches. This demonstrates the complexity of finding a universal model of legal regulation and confirms the need for the development of international standards that could ensure a balance between the rights of employees and the needs of the digital economy.

Conclusions

The gig economy is an important element of the current and future labour market, but its development requires up-to-date legal regulation. International legal standards can help ensure fair working conditions, social protection, and reduce the risks associated with income instability. The introduction of universal standards will help to create a fairer and more stable labour market. An analysis of regulation in the EU, the UK, the US, and Ukraine showed that tight regulation creates high guarantees for workers, but can hinder economic development, as Uber and Lyft argued when discussing AB-5, arguing that if their business model is loaded with social security responsibilities, they will have to stop operating in California. The flexible approach of the United States allows rapid business development, but creates social risks. For Ukraine, the minimum sufficient solution is, first of all, the legal definition of new forms of work for the purpose of transparent regulation, de-shadowing, and further harmonisation of legislation to EU standards, in the event of joining the EU within the framework of the declared pro-European course (Association Agreement). The next big challenge for governments and legislators will be to regulate the use of technologies that replace the human being as an employee and how to balance the rights of workers and businesses that strive to be technological, competitive, and efficient.

The above indicates that digitalisation significantly affects labour activity, including the processes of labour migration, and changes the nature of employment in the global labour market. The analysis of regulatory approaches to the social protection of gig workers has shown that developed countries are already engaged in integrating new forms of employment into legal regulation systems, but in general it remains fragmented and is focused so far only on the upper level of needs, such as social protection, but does not cover relations systematically, leaving gaps in concepts, issues of protection of local labour markets, wages, and taxation. Existing legal mechanisms need to be adapted to fully protect the rights of employees on digital platforms, in particular, due to the growing number of employees involved in the gig economy. Such adaptation includes a revision of employment conditions, social guarantees and social security rights, which is becoming particularly relevant in connection with new challenges of digitalisation, including the development of artificial intelligence technologies, and changes in legal norms for migrant workers.

The prospects for further research include a deeper study of the effectiveness of existing and new models of legal regulation for migrant workers in the digital economy, and research into the impact of digital technologies on new forms of employment to ensure adequate protection of workers' rights in the context of globalisation.

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Conflict of Interest

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Право людини на працю у контексті гіг-економіки: міжнародно-правове регулювання

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Аспірант

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Анотація

Суттєві зміни у трудових відносинах, зумовлені розвитком цифрової економіки, викликали появу нових форм зайнятості, зокрема гіг-економіки. Проте такі форми зайнятості породжують численні проблеми щодо соціального захисту працівників та необхідності міжнародно-правового регулювання у цій сфері. Метою цього дослідження став аналіз проблем та викликів гіг-економіки у контексті міжнародно-правового регулювання захисту працівників та розробка пропозицій щодо адаптації існуючих міжнародних норм. Методологія дослідження базувалась на порівняльно-правовому аналізі міжнародних норм та регіональних підходів до регулювання трудових відносин у секторі гіг-економіки, оцінці правозастосовчої практики в різних юрисдикціях і моделюванні можливих варіантів уніфікації правового регулювання на міжнародному рівні. Дослідження вказало на те, що різниця у підходах до трудового законодавства в різних країнах призводить до значного правового дисбалансу, що ускладнює забезпечення рівних прав для працівників цифрових платформ. Зроблено висновок про широку практику застосування поняття незалежного виконавця до працівників цифрових платформ самими платформами з метою уникнення зобов'язань, які виникають у трудових відносинах. Невизнання трудовими відносинами зайнятості працівників на цифрових платформах породжує як проблеми захисту прав таких працівників, так і дозволяє гарантувати певну свободу діяльності. Виявлено різні нормотворчі підходи, практику застосування діючого законодавства та методики визначення фактичних трудових відносин, зокрема через оцінку рівня контролю, залежності та форми організації праці. У підсумку, виявлено необхідність у запровадженні уніфікованих міжнародних норм, які б охоплювали питання надання визначень сучасним видам зайнятості, а також пов'язаним із такою діяльністю питанням. Надані рекомендації можуть бути використані для розвитку концепцій, політик, національних та міжнародних нормативно-правових актів, спрямованих на захист трудових прав у цифрову еру, а також на забезпечення державних економічних інтересів, пов'язаних із трудовою діяльністю.

Ключові слова: право на працю; регуляція трудових відносин; трудова міграція; цифрова ера; гармонізація законодавства; міжнародне право

Features of the implementation and limitations of human information rights in the context of external threats and military aggression in Ukraine

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Abstract

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The relevance of the chosen topic lies in the fact that, in the current context, there was a growing interest on the part of the scientific and legislative community in the fourth generation of human rights, namely information rights. At the same time, under the legal regime of martial law at the legislative level, the implementation of such rights by any person may be restricted, but such restrictions must meet certain criteria. The aim of the study was to assess the restrictions on human information rights in wartime through the prism of contemporary theoretical concepts of the protection of these rights. The following methods were used in the work: formal-legal, systemic-structural, and prognostic. It was determined that

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restrictions on human information rights under martial law must meet the criteria of accessibility, comprehensibility, preservation of the balance between private and public interests, proportionality, and have a legitimate and sufficiently justified purpose. It is concluded that the main measures (tools) for protecting human information rights under martial law should be actions taken by civil society. An analysis of the experience of NATO countries (the United States, Estonia, Latvia) has demonstrated the effectiveness of an integrated approach that combines legislative regulation with educational measures and institutional support. The results of the study confirm the relevance of these changes. It is concluded that only a comprehensive modernisation of the regulatory framework, educational system and institutional support will effectively protect human information rights in the context of modern hybrid challenges. The results of this work can be used to develop regulatory and subordinate regulatory acts on the protection of human information rights

Keywords: information; protection tools; limitation of information rights; information society; security

Introduction

The protection of human rights remains one of the key legal institutions targeted by the activities of the state and authorised bodies. However, in the context of the temporary occupation of parts of Ukraine's territory, the military aggression by the Russian Federation, active hostilities, and the introduction of the legal regime of martial law, the problem of securing human rights and freedoms has become particularly acute. Among the fundamental rights most at risk of limitation during wartime are information rights, specifically the right to access information, freedom of speech, personal data protection, and the right to digital security. In modern information society, these rights are crucial not only for the personal freedom of citizens but also for preserving the democratic order, countering disinformation, and maintaining trust in state institutions.

According to the Freedom House report (2023), Russia's full-scale invasion has significantly undermined internet freedom in Ukraine. Attacks by the Russian army have caused severe damage to internet infrastructure, leading to network disruptions. The Ukrainian government blocks a wide range of Russian websites, including blogs, news portals, social media platforms, and

other online services. According to reports by the Office of the United Nations High Commissioner for Human Rights, information rights are systematically violated in the temporarily occupied territories of Ukraine. There have been documented restrictions on freedom of expression, blocking of Ukrainian media and internet resources, forced Russification of the information space, as well as persecution of journalists and civil activists. Such actions pose serious threats to access to truthful information and to the free formation of public opinion (OHCHR, 2024).

In this regard, the study of the legal mechanisms for protecting human information rights under martial law is extremely relevant, both in the national and international legal contexts. It allows for an assessment of the effectiveness of existing regulatory tools, identification of risks of excessive state interference in the information space, and the development of a legal model that balances security needs with human rights.

Among modern studies concerning the impact of digital transformations on the legal sphere, particular attention should be paid to the work of K. Bieliakov *et al.* (2023), who analysed evolutionary changes in the field of human rights

under the influence of digitalisation. The authors examine the emergence of new rights, the transformation of regulatory principles, the improvement of mechanisms for exercising existing rights, and the introduction of new restrictions and regulatory requirements. The researchers emphasise that these processes are not a deviation but a continuation of the evolution of the legal system, which adapts to the conditions of the digital environment while preserving fundamental legal values.

O.O. Barabash (2024), in own study, stressed that the protection of information rights should not be limited to preventing cyberattacks and personal data leaks but should also take into account the influence of information on an individual's physical and psychological condition, as well as their moral and spiritual values. This approach contributes to the creation of a harmonious and secure information environment that respects the interests of every individual, ensuring the protection of both their data and overall well-being. T.Yu. Tkachuk (2021) noted that in an information society, knowledge formed through the codification of scientific and technical information becomes a key factor influencing the development of the state and law. These processes are directly related to the challenges of legal regulation, particularly in the fields of digital security, information protection, and the stable functioning of the information space. Accordingly, the legal protection of the information environment is viewed as a necessary condition for the realisation of the rights and interests of individuals, as well as a factor in ensuring the stability of public authority and the rule of law.

T. Mikhailina *et al.* (2021) pointed out the need to establish an obligation for transnational information campaigns to open official representative offices in Ukraine. This would contribute to strengthening the protection of the rights of subjects of information legal relations, in particular

through the possibility of judicial protection. In addition, the authors support legislative initiatives to tax transnational information campaigns in Ukraine, which is in line with global trends. However, it is noted that strict state control over the information space is characteristic of totalitarian and authoritarian regimes and cannot be acceptable for democratic societies. In this context, the remarks by O. Antipova (2023) and V.S. Kurylo and O.L. Karaman (2024) on the important role of civil society in preserving information sovereignty are noteworthy.

In the current environment, self-protection measures in information systems, particularly at the corporate level, are becoming increasingly important. The use of financial mechanisms, such as financial liability, is appropriate given the significant profits of information corporations (Yadav *et al.*, 2023). Despite some developments in doctrinal research on the protection of human information rights in the context of military aggression by a neighbouring state, effective instruments for the protection of human information rights in a state of martial law remain unexplored, which will be considered in the course of the study.

Thus, the aim of the study was to examine the legal challenges to the protection of human rights to information in conditions of military aggression and to identify specific instruments of protection that are available under the regime of martial law. To achieve this goal, it was necessary to perform a number of objectives: 1) to define the essence of human information rights; 2) to provide a legal characterisation of restrictions on information rights and to define the criteria for their application; 3) to identify systems of instruments for the protection of information rights under the legal regime of martial law.

Materials and Methods

The research used a combination of general scientific and special legal methods, which was due to

the complex nature of the subject – the legal protection of human information rights in a state of martial law. In particular, general scientific methods (analysis, synthesis, induction, generalisation) were used to study scientific approaches to the concept of “information rights”, to understand the relationship between the right to information, freedom of speech and the right to privacy, and to form the author’s position on the scope and essence of these rights. The essence and content of the basic concepts were studied using a terminological (conceptual-categorical) method, which made it possible to clarify the definition of “human information rights” and their place in the hierarchy of fourth-generation rights.

A formal legal method was used to analyse the current legislation of Ukraine, primarily the articles of the Constitution of Ukraine (1996) and Law of Ukraine No. 389-VIII “On the Legal Regime of Martial Law” (2015). The purpose of analysing this legislation was to clarify the legal grounds, forms and limits of restrictions on information rights under a special legal regime. In the process of revealing the topic and objectives of the study, the practice of the Constitutional Court in cases No. 1-50/2009 (2009) and No. 17-rp/2010 (2010) was analysed. A number of regulatory and legal acts were also examined, including: Law of Ukraine No. 2657-XII “On Information” (1992), Law of Ukraine No. 2163-VIII “On the Basic Principles of Ensuring Cybersecurity of Ukraine” (2017), Draft Law of Ukraine No. 11533 (2024), Resolution of the Council of Judges of Ukraine No. 841-23 (2023). The systemic-structural method helped to identify internal links between norms regulating both general human rights and special restrictions established under martial law. Thanks to the systematisation method, the instruments for protecting human information rights used by the state and the public in conditions of armed conflict were structured.

Results

Concepts, characteristics and essence of the protection of human information rights. In the context of rapid informatisation of society and recognition of the key principles of the information society, human information rights are becoming particularly important. They are not only a set of legal opportunities, but also a priority of vital importance, the implementation of which directly affects human life in the modern world.

According to the Constitution of Ukraine (1996), human rights and freedoms, as well as their guarantees, determine the priorities and direction of the state’s activities, as enshrined in Article 3 (Constitution). Ensuring and upholding human rights and freedoms is the primary duty of the state. Information rights play a key role in this context, as they enable citizens to form beliefs, freely express their opinions, defend their ideas, and monitor the activities of the authorities. The indivisibility and inviolability of the complex of rights and freedoms in the information sphere forms the basis of democratic values in society.

V.D. Chorna and I.V. Alekseenko (2021) view these rights as a set of opportunities to access, create, use, disseminate, comment on, and communicate information on the Internet. A more specific definition of information rights is offered by N.I. Tkachuk (2018) offers a more specific definition of information rights, interpreting them as state-guaranteed opportunities for individuals to satisfy their needs to obtain, use, expand, preserve and protect information necessary for life, communication rights, the right to a safe information environment, etc., which are based on fundamental human rights.

Human information rights are in fact understood as fourth-generation rights. They are characterised by such features as the development and dissemination of information technology solutions, the creation of a global information environment, the transition to modern

socio-economic models, and the transformation of political processes in countries that are forming an information society. In addition, these rights provide for the independence of actions and the choice of lawful behaviour of a person based on the level of access to information. They also consist in protection from incomplete or harmful information, as well as in the security of personal data from unauthorised distribution (Tokarieva, 2023).

In the European legal space, a systematic concept of digital rights is gradually being formed, which is a modern form of realising human information rights in the context of digitalisation. Digital rights cover both traditional rights in the digital environment (the right to freedom of expression, privacy, and access to information) and new ones, in particular the right to access the Internet, digital identity, digital literacy, a safe online environment, and the right to be forgotten. These provisions are based, in particular, on the European Declaration of Digital Rights and Principles for the Digital Decade, adopted by the European Parliament, the Council and the Commission (2022), which defines the values of the EU digital space: respect for human dignity, freedom of choice, participation, non-discrimination and security. The most legally developed and normatively established aspect of digital rights is the right to personal data protection, which is clearly regulated by the General Data Protection Regulation (2016) – a key instrument that defines the boundaries of digital privacy in the EU.

Thus, it can be concluded that human information rights belong to the fourth generation of rights and represent a set of opportunities and powers of any person to obtain, use, disseminate and implement information. These rights are guaranteed by the state and its bodies, and are based on fundamental and constitutional rights. The protection of human information rights includes a set of organisational and legal measures

implemented by state and authorised bodies. These measures were aimed at preventing violations, restrictions and abuses in the field of information rights, as well as ensuring accountability for their violation.

Restrictions on human information rights under martial law. Following the introduction of martial law in Ukraine (Decree of the President of Ukraine No. 64/2022, 2022), it became clear that real threats to the life of Ukrainian society and the state necessitate a shift in the balance between private and public interests. This, in turn, requires the application of lawful measures related to the restriction of human rights and the temporary withdrawal of the state from fulfilling certain obligations in this area. Given the key role of information technology in the functioning of the state, society and the economy, the issue of reasonable restrictions on human information rights (in particular, the right to freedom of speech, access to information and protection of personal data) is becoming particularly relevant. The application of such restrictions must be assessed from the perspective of the principle of the rule of law, which requires that any interference be lawful, necessary and proportionate. This becomes a particularly difficult task in the context of the latest challenges associated with the Russian Federation's armed aggression against Ukraine, which poses global threats to information security, digital rights and democratic institutions on an international scale.

The protection by the Ukrainian population of the territories declared in 1991 as belonging to Ukraine from large-scale armed aggression by a neighbouring state has shown, among other things, that in such extremely difficult conditions, the effective implementation of a certain number of information rights is possible. Information rights, implemented through digital technologies, play an important role in ensuring communication, coordination and rapid data exchange in a

state of martial law. There have been numerous cases of digital platforms being used to report on the movements of occupying forces, document war crimes and record violations of international humanitarian law. The use of digital platforms in Ukraine to record the movements of occupying forces, document war crimes and collect evidence for international trials has become a key element in the fight for information security and justice. In particular, the “e-Enemy” app allows citizens to report on the actions of Russian troops, and the data collected is used to create a database of evidence that can be used in international courts (Tech Ukraine, 2022). In addition, the “EyeWitness to Atrocities” app, developed by the International Bar Association, has collected more than 50,000 pieces of digital evidence of war crimes in Ukraine, including shelling of civilian infrastructure and medical facilities. This data, collected with metadata and geolocation, helps to ensure the authenticity and reliability of the evidence (National School of Judges of Ukraine, 2024).

An analysis of Article 34 of the Constitution of Ukraine (1996) shows that it enshrines the right of every person to access information, including the ability to freely collect, store, use and disseminate it in any form at their own discretion. At the same time, the Article provides for certain restrictions on this right, which may be established in order to ensure national security, territorial integrity, public order, prevent riots or crimes, protect public health, protect the rights and reputation of others, prevent the disclosure of confidential information, or preserve the authority and impartiality of justice. Thus, the Constitution of Ukraine (1996) not only guarantees freedom of information, but also regulates its implementation, ensuring a balance between individual rights and public interests. That is why, under martial law, human rights to information may be legally restricted. According to Article 1 of Law of Ukraine No. 389-VIII (2015), martial

law is a special legal regime that may be introduced throughout Ukraine or in certain regions in the event of armed aggression, threat of attack or danger to the country’s independence and territorial integrity. This regime provides for the granting of special powers to state authorities, military command, military administrations and local self-government bodies in order to avert threats, counter armed aggression, ensure national security and preserve the territorial integrity of the state. It also provides for temporary restrictions on the constitutional rights and freedoms of citizens, as well as the rights and legitimate interests of legal entities, which are determined in accordance with the level of threat and the established terms of its application. This provides a legislative basis for an effective response to extraordinary threats, while adhering to the principles of the rule of law.

Among other human information rights that may be subject to restrictions, the following can be highlighted: Article 31 guarantees everyone the right to confidentiality of correspondence, telephone conversations, telegraph and other correspondence; Article 32 – prohibits interference in personal and family life, except in cases specified by the Constitution of Ukraine (1996); Article 34 – enshrines the right of everyone to freedom of thought and speech, as well as to freely express their views and beliefs; Article 41 – guarantees the right to own, use and dispose of property, as well as the results of intellectual and creative activity.

When imposing restrictions on human rights to information, clearly defined legal criteria must be observed that comply with both national legislation and international standards. According to Articles 34 and 64 of the Constitution of Ukraine (1996), such restrictions are permitted only on the basis of law, must have a legitimate purpose, be necessary in a democratic society and comply with the principle of proportionality.

The practice of the Constitutional Court of Ukraine clearly indicates that restrictions on fundamental rights are possible only in cases of justified public necessity and exclusively within the limits established by law (Judgment of the Constitutional Court of Ukraine No. 26-пн/2009, 2009). In this context, it is also important to take into account the latest initiatives, in particular Draft Law of Ukraine No. 11533 (2024), which provides for amendments to the legislation on access to public information under martial law, as well as the scientific and expert opinion on it, which emphasises the need to maintain a balance between security interests and the right to information.

In addition, Resolution of the Council of Judges of Ukraine No. 841-23 (2023) emphasised the importance of transparency of the judiciary even under martial law. The practice of national courts also demonstrates a desire to maintain a balance between public interests and security: for example, legal analyses by the Centre for Democracy and Rule of Law cite a number of cases in which courts uphold citizens' right to access information. For example, the court ordered the disclosure of the minutes of a local government meeting, recognising that the refusal was not duly justified by a threat to security. In another case concerning the refusal to provide a contract on budget funds, the restriction was also found to be disproportionate, as it was not substantiated by specific damage to defence capabilities (Vashchuk-Ogdanska, 2023a).

In the international context, the practice of the European Court of Human Rights (ECHR) regarding freedom of expression and restrictions on information rights involves the application of a "three-step test": (1) the existence of a legal basis for the interference; (2) the pursuit of a legitimate aim (e.g., the protection of national security or public order); (3) compliance of the interference with the requirement of "necessity in a democratic society" (Judgment in *Długołęcki v.*

Poland (2009). At the same time, the ECHR has repeatedly emphasised that even in a state of emergency or martial law, the state is not exempt from its obligations to guarantee fundamental rights, in particular by adhering to the principles of proportionality, limited interference and proper judicial review (Shevchenko & Rozkladai, 2012).

In practice, this means that the judiciary in Ukraine must not only acknowledge the fact of martial law, but also assess the legality of restrictions on access to information or freedom of expression through the prism of this test. In particular, Resolution of the Council of Judges of Ukraine No. 841-23 (2023) emphasises the preservation of the principles of openness of justice even under martial law, which should guarantee effective access to information about court decisions and proceedings. The judicial practice of administrative courts shows consistent attempts to balance state interests and information transparency. In particular, in Judgment of the Third Administrative Court of Appeal in Case No. 340/5136/22 (2023), the court ruled that a public authority's refusal to provide information at the request of a citizen was unlawful, as the defendant did not justify what interests could be harmed by its disclosure, did not prove the existence of harm, and did not explain why this harm outweighs the public interest, as required by the so-called three-part test.

In addition, the conclusion to Draft Law of Ukraine No. 11533 (2024) emphasises the importance of ensuring that the digital security protection mechanisms provided for therein do not create unreasonable restrictions on individuals' rights to information. The legislature, like the executive branch, must act within the limits of international standards, implementing changes based on legal analysis and taking into account the conclusions of the ECHR. Thus, the approach developed by the ECHR should not be declarative, but integrated into the actual judicial practice of Ukraine, with mandatory reference to the legal

basis, the legitimacy of the objectives of the restriction and verification of the proportionality of the interference in each specific case.

Restrictions must be based on the principle of legal certainty, which means that any restriction of fundamental human and civil rights and freedoms is possible only if the legal norms governing such restrictions are clearly defined and their predictability is ensured for the persons to whom they apply. This means that such restrictions must be clearly defined, transparent and understandable to the persons concerned (Judgment of the Constitutional Court of Ukraine No. 17-пп/2010, 2010). The aim of these restrictions is to prevent arbitrariness, ensure fairness and limit the interference of the state and its bodies to the minimum, optimal level necessary to achieve legitimate goals.

Therefore, under the legal regime of martial law, restrictions on human information rights are entirely legitimate. However, it is important that such restrictions are based on democratic principles and comply with the requirements of the law, namely: maintaining a balance between public and private interests, compliance with the law, including its clarity and accessibility; having a legitimate and sufficiently justified purpose; the proportionality and reasonableness of such restrictions; respect for human dignity and freedom must be a fundamental principle, and all legal norms and restrictions must be aimed at ensuring the fundamental values of society, preserving its stability and maintaining law and order, justice and security.

Tools (measures) for protecting information rights under martial law. It should be noted that modern society is becoming increasingly integrated into the digital space, which, along with broad opportunities for development, communication and access to information, also creates new challenges and threats, particularly in the areas of security, privacy and human rights

protection. This is especially true for the public sector, which is called upon to serve citizens. A distinctive feature of this sector is that citizens often transfer their data through information and communication systems not out of obligation, but voluntarily (Włodyka, 2024). In addition to principles, the tools used to protect information rights also play an important role. As a rule, measures or instruments of protection in any sphere of social relations are considered key and necessary actions that must be implemented by the subject of protection to ensure the smooth functioning of the relevant social relations.

The system of protection measures can be formulated through the prism of the interaction of three main groups: legal, organisational and technical. Legal measures are a system of techniques and methods enshrined in the law that are aimed at guaranteeing and protecting the information rights of citizens and legal entities. Organisational measures are a set of management and coordination methods and measures that contribute to the effective enforcement and observance of information rights. Technical and software-hardware measures are a set of technological solutions, software and specialised devices used to implement and protect information rights in the digital environment. An example of technical measures is the use of electronic signatures, which ensure authentication, data integrity and the protection of citizens' information rights (Yarema, 2022).

Information rights protection and information security measures are broadly divided into two main groups: those aimed at protecting information systems from damage, and those that prevent information leaks or interception. The first category includes physical protection of military facilities and computer equipment from deliberate damage or destruction, as well as radio-electronic protection aimed at preventing data interception. The second group covers a range of measures, such as protecting information systems

from unauthorised remote access, which is implemented through the introduction of specialised software, including DLP and SIEM systems (Smotrych & Brailko, 2023). Another extremely important element is the protection of state and military classified information from leakage, illegal use or theft, which is achieved through the use of specially protected computer systems and software developed with current cyber threats in mind. At the same time, electronic intelligence tools are being developed and implemented to enable rapid monitoring of the information environment and neutralisation of potential threats.

A separate set of measures concerns the information and psychological protection of personnel. In particular, preventive measures are being taken to prevent deliberate psychological influence and manipulation aimed at destabilising the moral and psychological state of military personnel. This includes the correction of information flows broadcast by the enemy in order to prevent the influence of disinformation and deliberate distortion of reality. Considerable attention is also paid to the cybersecurity of communication systems – protection against cyberattacks and unauthorised access. In the current conditions of martial law, special attention is paid to the cybersecurity of communication systems, in particular protection against cyberattacks and unauthorised access. According to a study by V.O. Kucher (2024), the state is actively implementing measures to counter information threats, including the use of social networks to conduct information operations against the enemy. In this context, it is particularly important to analyse effective legal instruments for protecting human rights to information, including the practice of Ukrainian courts and international institutions. For example, Resolution of the Council of Judges of Ukraine No. 841-23 (2023) emphasises the importance of openness of justice and access to public information even in conditions of martial law.

Certain aspects of access to information under restrictions are also considered in court practice, as summarised by the Centre for Democracy and Rule of Law. Ukrainian courts interpret the right to access public information in conditions of security, war and restrictions. In particular, cases are considered where courts have recognised as unlawful the refusal of authorities to provide information under the pretext of martial law, if such refusal was not justified by clear legal grounds. The tendency of courts to require compliance with the principle of proportionality is noted, i.e. weighing the needs of national security against the public interest in access to information. It also emphasises the obligation of public authorities to provide reasoned responses, even in conditions of restricted access, rather than resorting to formal replies. This indicates a strengthening of the role of judicial control in the field of information rights and support for standards of openness even in exceptional circumstances O. Vashchuk-Ogdanska (2023b). At the same time, the European Court of Human Rights, in a number of cases, including *Studio Monitori and Others v. Georgia* (2020), continues to develop standards of proportionality of state interference with freedom of expression and the right to information. Taking these decisions and mechanisms into account allows to assess the effectiveness of current approaches to protecting information rights in emergency conditions, identify challenges for law enforcement, and lay the groundwork for the formation of a balanced, legal model of interaction between the state, society, and digital technologies.

Given the current challenges in the information space, it is advisable to amend Ukrainian legislation in order to specify the concepts and mechanisms for ensuring the information security of military personnel. First, Articles 1, 2, and 4 of Law of Ukraine No. 2163-VIII (2017), the concepts of “information violence”, “information manipulation” and “information displacement”

should be defined in law, and legal liability for such actions should be provided for by amending criminal and criminal procedure legislation. Secondly, it is advisable to develop a special section in Law of Ukraine No. 2657-XII "On Information" (1992) that would regulate the special regime for the circulation of personal and official data of military personnel in the digital environment during martial law. This approach is similar to the experience of Estonia, which has introduced a regime of enhanced protection of military information based on cybersecurity legislation (European Commission, 2018). Thirdly, it would be advisable to include provisions on mandatory training of military personnel in information security in the Regulations on Military Service in the Armed Forces of Ukraine by Citizens of Ukraine (2007), in particular regarding fakes, manipulation, social engineering and malicious software.

According to research, journalists and representatives of civil society organisations in Ukraine demonstrate a significant demand for raising awareness of cyber hygiene and digital security. For example, as part of the Cyber Security Talks programme organised by Internews in 2024-2025, more than 60 participants (journalists, activists, representatives of civil society initiatives) underwent training on the basics of digital hygiene, methods of protection against cyberattacks and the development of cybersecurity policies (High-quality media..., 2025). This confirms the need for regulatory oversight and the creation of institutional mechanisms to ensure coordinated action in the field of information security - for example, by creating a threat monitoring unit within the State Special Communications Service or the Ministry of Defence, modelled on the U.S. Cyber Command.

The effectiveness of the proposed changes is confirmed by the positive experience of the United States, where the Cyber Awareness Challenge programme requires all military personnel to undergo annual certification in information hygiene

(U.S. Department of Defense, 2023). A similar initiative is being implemented in Latvia as part of the Media Literacy and Information Security programme, which covers not only the military but also the civilian population. These examples prove the effectiveness of the state approach to building information resilience by combining legal regulation and educational measures.

Discussion

When analysing information rights under martial law, it is advisable to compare the results obtained with current scientific developments in this field. Based on a comprehensive interpretation of information rights as a component of national security in wartime, the study also proposes a number of new emphases, in particular, the introduction of the terms "information violence", "information manipulation" and "information displacement" into the regulatory field, which are currently absent from legislation but are actively manifested in the information environment. Meanwhile, the article by V.O. Kucher (2024) emphasises the preservation of fundamental human rights even in conditions of martial law. The analysis demonstrates the need to broaden the focus, in particular by legislating new forms of threats that are not covered by existing definitions. The author's conclusions are important in view of the principles of reasonable restriction, but do not cover the need for conceptual and terminological reform of information legislation.

The study by L.I. Rudnyk (2023) proposes a legal justification for restrictions on information rights during martial law. At the same time, these provisions are not fully consistent with the results of this study, as the author does not take into account the evolution of digital threats, in particular content aggression through algorithmic platforms. The reason for the different interpretations may lie in the methodological focus on classical mechanisms of constitutional restriction, while this study focuses on a deeper digital specification.

The statements by A.S. Chistyakova and D.V. Kostenko (2024) about the transformation of the right to information in wartime seem somewhat debatable, as the work presents mainly institutional analysis without specific proposals for modernising the content of information rights. This is inconsistent with the results of this study, which provides a systematic understanding of new forms of threats. Instead, the study by K.V. Denisenko (2023) emphasises the need to strengthen digital rights during the period of martial law, as well as the importance of adapting legal instruments to new challenges.

The work of D.V. Smotrych and L. Brailko (2023) provides a clear technical classification of information security measures, which is fully supported in this study. The authors point to the need to distinguish between protection against physical and digital threats, which is supplemented in this study by a proposal to institutionalise these mechanisms in legislation. Finally, the Article by V. Minyayluk (2024) justifies the need to update the regulatory and legal framework in terms of cyber threats and information security. However, the author's conclusions are mainly focused on the national level and do not cover aspects of the protection of individual rights, which is the key focus of the present study.

A comparison of the results of this study with current scientific approaches leads to the conclusion that although Ukrainian legal science is generally responding actively to the challenges of information security in a state of martial law, a number of important concepts, phenomena and processes remain conceptually unexplored or only fragmentarily addressed. First and foremost, there is a need for a clear regulatory definition of the latest forms of information influence, which already have practical significance but do not have the appropriate legal status. Thus, the further development of the theory and practice of information rights protection requires a

deeper understanding of new forms of digital harm, a review of legislative approaches, and the establishment of interdisciplinary cooperation between jurisprudence, cybersecurity, and information policy.

Conclusions

During the course of the work, it was possible to identify the peculiarities of regulatory and practical enforcement of information rights in conditions of extraordinary challenges, characterise the mechanisms for their restriction, and determine effective protection tools used in Ukrainian and international practice. The results of the analysis showed that information rights in the conditions of a modern digital state are of decisive importance and require comprehensive legal protection. It was established that human information rights are complex in nature: they cover both access to information and its dissemination, personal data protection, and digital security. At the same time, in a state of martial law, some of these rights are subject to restrictions on the grounds of public interest, national security, and public order. An analysis of current legislation, ECHR practice and Ukrainian courts has shown that restrictions on information rights can only be considered lawful if they comply with the so-called "three-step test" – the existence of a legal basis, a legitimate aim and proportionality of the interference. In particular, the practice of Ukrainian courts shows an attempt to strike a balance between security and openness.

It was also found that digital tools and platforms play an important role in protecting human information rights. Numerous cases have been recorded of the use of applications such as "e-Enemy" and "eyeWitness to Atrocities" to collect and record evidence of violations of international humanitarian law, which not only ensures public control but also enables the prosecution of those guilty of war crimes. It has been established that

the legal model of protection should cover not only traditional institutional mechanisms, but also the latest digital practices.

Summarising the results obtained, it can be noted that effective protection of human information rights in wartime is only possible if there is clear legal certainty regarding the limits of restrictions, judicial control over the proportionality of interventions, and adequate technical and regulatory support for digital mechanisms for recording, monitoring and preserving evidence. Positive dynamics in judicial practice regarding openness, as well as the gradual consolidation of new categories (information violence, information displacement) will demonstrate movement towards a comprehensive legal response to contemporary challenges.

Conceptually, the above indicates the need to expand Ukraine's regulatory framework in the

field of information rights protection, harmonise it with international standards, and ensure the technical and legal integration of digital tools into national security and justice systems. Further research could focus on developing criteria for assessing the effectiveness of digital tools for protecting human rights, formalising new types of information threats, and studying the impact of digital deformation of the information space on the realisation of human rights.

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Особливості реалізації та обмеження інформаційних прав людини в умовах зовнішніх загроз та військової агресії в Україні

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Анотація

Актуальність обраної тематики полягає у тому, що в умовах сьогодення все більшої зацікавленості з боку наукової та законодавчої спільноти виникає до четвертого покоління прав людини, а саме інформаційних. При цьому, в умовах правового режиму воєнного стану на рівні законодавства, може бути обмежено реалізацію таких прав будь-якою людиною, проте такі обмеження мають відповідати певним критеріям. Метою дослідження була оцінка обмежень інформаційних прав людини в умовах війни крізь призму сучасних теоретичних концепцій захисту цих прав. В роботі були використані наступні методи: формально-юридичний, системно-структурний, прогностичний. Визначено, що обмеження інформаційних прав людини в умовах воєнного стану мають відповідати критеріям доступності, зрозумілості, збереження балансу приватних та публічних інтересів, пропорційності та мати легітимну та достатньо обґрунтовану мету. Підсумовано, що основними заходами (інструментами) захисту інформаційних прав людини в умовах воєнного стану мають бути дії громадянського суспільства. Аналіз досвіду країн НАТО (США, Естонії, Латвії) засвідчив ефективність інтегрованого підходу, який об'єднує законодавче регулювання з освітніми заходами та інституційною підтримкою. Результати дослідження підтверджують актуальність зазначених змін. Зроблено висновок, що лише комплексна модернізація нормативної бази, освітньої системи та інституційного забезпечення дозволить ефективно захистити інформаційні права людини в умовах сучасних гібридних викликів. Результати цієї роботи можуть бути використані для опрацювання нормативно-правових та підзаконних нормативно-правових актів щодо захисту інформаційних прав людини

Ключові слова: інформація; інструменти захисту; обмеження інформаційних прав; інформаційне суспільство; безпека



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Regulatory problems of consumer protection of agricultural products in civil law relations

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Abstract

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In the civil law regulation of consumer protection of agricultural products, there are gaps in terminology, which requires a clear legislative definition and reliable guarantees for the protection of the rights and interests of such consumers. The purpose of this study was to assess the status of consumers of agricultural products in Ukraine, the European Union and other countries, to form recommendations for the harmonisation of civil law definitions and mechanisms for consumer protection in the legislation of Ukraine. For this purpose, the paper used system and structural, formal and legal, and comparative and legal methods. The methodology allowed outlining the relationship between legal norms and institutions that determine the status of the consumer, and conducting a doctrinal analysis of normative texts. The study revealed that there is no single definition of

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“consumer of agricultural products” in Ukrainian and international legislation, and the concept of consumer is consistently defined as an individual operating outside of commercial or professional activities. It was indicated that agricultural products require specialised regulation due to seasonality, safety requirements, traceability, and labelling of such products. Comparative analysis showed that European standards provide for more clearly defined rights to receive information, waiver of the contract and warranty service. The results of adaptation of Ukrainian legislation to European standards in consumer protection and procedures for the return and exchange of hazardous food products were critically evaluated. The above judicial practice shows how the complex perception of the concept of “consumer” can be interpreted depending on the terms of the consumer contract, its purpose, which leads to an understanding of approaches to determining the consumer of agricultural products. The practical significance of the study lies in the proposed civil law definition and regulatory model, which will help regulators and scientists to improve the regulatory framework, harmonise national rules with international standards, and develop alternative dispute resolution mechanisms, which will contribute to the competitiveness of the national export-oriented agricultural sector

Keywords: legal status; contractual relations; international legislation, comparative law; consumerism

Introduction

The development of a consumer protection system is not only a matter of law, but also a tool for achieving social justice and economic balance. When a consumer is confident that their rights will be guaranteed by law, and in case of violation – effectively restored, this stimulates confidence in the market, improves the quality of products and services. Consumer protection is a fundamental mechanism for ensuring civil rights and legitimate interests, which is an important feature of a state governed by the rule of law. In a society where the rule of law prevails, respect for the rights of the consumer indicates that the state recognises the value of every person who enters into economic relations not as a strong point, but as potentially vulnerable to an unscrupulous manufacturer, performer or seller.

Based on the study by A. Suchoń and N. Stoliarchuk (2024), in 2021, Ukraine exported about 40% of sunflower oil from world exports, more than 10% of corn and about 10% of barley, and about 10% of wheat and rapeseed from world exports, which confirms the importance of Ukraine

in the EU agri-food market. It is well known that Ukraine has not only natural resources, but also an efficient infrastructure for the production and transportation of agricultural products.

Nowadays, the agricultural sector of Ukraine demonstrates a high level of export orientation, which is confirmed by statistics from the National Institute for Strategic Studies (2024): exports of agri-food products in 2024 amounted to USD 24.5 billion, which is 59% of the country's total exports. In particular, exports to the European Union increased by 11%, reaching EUR 3.634 billion. Considering the growth of agricultural exports and harmonisation with the law of the European Union, there is a need to unify and clearly define important terms for the agricultural market, in particular “consumer of agricultural products”, considering the accepted definitions in potential buyers' countries in a comparative analysis. As of 2025, there is no unambiguous definition of this concept in Ukrainian legislation, which complicates the regulation of relations between producers and consumers of agricultural products. The

term “agricultural products” is defined through the list of goods in groups 1-24 of the Ukrainian Commodity Classification for Foreign Economic Activity, as specified in the Appendix to Law of Ukraine No. 2697-IX (2022). This list covers a broad range of plant- and animal-origin products. However, the lack of specification of the consumer of these products complicates the legal regulation of the relevant relations.

The consumer of agricultural products plays a key role in civil law relations. According to the Commercial Code of Ukraine (2003), a consumer is an individual who purchases goods for personal needs (Yanovytska, 2021). However, agricultural products have unique characteristics – seasonality, safety requirements, and traceability and labeling requirements – that necessitate more detailed legal regulation (Starytska, 2011). A significant factor indicating the proper level of exercise of a person’s civil rights and interests is the possibility of applying judicial and non-judicial (alternative) forms of protection. The absence of definitions for terms such as “consumer agricultural products” in legal doctrine narrows the level of protection for the subjects to whom they apply. This reduces consumer trust because the practical exercise of rights lacks clear, unambiguous criteria.

In practice, terminological uncertainty in various regulations, according to H.B. Yanovytska (2021), leads to uncertainty in judicial and administrative decisions. Gaps in the scientific background may reflect gaps in some issues related to consumer protection in specific areas of consumption, in particular, agricultural products. Recent empirical studies have identified gaps in consumer protection, especially with food allergies directly related to agricultural products. For example, the risks of food allergies when visiting public catering establishments, as indicated by S. Dominguez *et al.* (2024), became the basis for strengthening regulatory measures. In addition, H.B. Yanovytska (2021) pointed out that despite

the availability of extensive civil protection tools, consumers often do not have a clear opportunity to apply when detecting defects in product quality or safety.

In the countries of the European Union, comprehensive protection is consolidating in both “hard” law and “soft” law instruments. This is reflected in EU practices regarding the combination of fundamental rights with consumer protection mechanisms, and comparative studies, in particular, by A. Lähteenmäki-Uutela *et al.* (2021), describe various national approaches to regulating the food industry. However, the study of the need to harmonise EU law with Ukrainian legislation in some issues related to the definition of the concept of consumer, depending on the object of consumption, remains incomplete, especially given that such products include not only food products, but also a large number of groups of goods used as raw materials for processing, animal feed, fertilisers, etc.

W. Verheyen and M. Kołacz (2022) also focused on current issues such as supply chains and e-commerce, which may change conventional approaches to consumer protection. Given the recent epidemiological and security challenges, consumers who buy agricultural products online often face difficulties in exercising their rights due to the lack of clear mechanisms of protection at the state level, which are associated with the lack of settlement of contractual relations in terms of determining the subjects of such contracts.

The spread of e-commerce reveals both positive and negative aspects that need to be explored, especially in the context of perishable products. As noted by R.B. Llagas *et al.* (2025), 19% of the world’s food products are spent in retail, catering, and households. Of this number, households generate approximately 60% of the total amount of food waste each year, making them the main factors contributing to their production. These trends highlight the need for clear definitions that

consider the specifics of agricultural products. The purpose of this study was to identify conflicts that complicate the protection of the rights of agricultural consumers in civil relations between Ukraine and the EU. The objectives of the study were: determination of the main characteristics of the consumer of agricultural products as a legal entity; comparative analysis of Ukrainian and international norms to identify discrepancies; research of judicial practice to identify conflicts in the implementation of consumer rights to protection.

Materials and Method

A set of specialised legal methods was applied, which enabled analysis of the legal status of the consumer of agricultural products within civil legal relations, considering the specific features of such products in circulation, transport, and storage, which shape the legal relationship between consumer-buyer and seller. The methods also supported examination of the parties' legal status in light of how this status is formed in the legislation of the EU, Italy, Germany, Poland, China, the United States, and Egypt, as the systems most proximate to current Ukrainian law (EU legislation and legislation of individual EU countries). The theoretical framework of the study was the doctrinal positions of Ukrainian and foreign researchers (Starytska, 2011; Yanovytska, 2021; Barriola *et al.*, 2023), which were used as a theoretical starting point for interpreting the concepts of "consumer" and "agricultural products". The formal dogmatic method was used for a detailed analysis of regulatory acts (Commercial Code of Ukraine, 2003; Law of Ukraine No. 3153-IX, 2023; Resolution of the Cabinet of Ministers of Ukraine No. 1347, 2024), their structure and logical and legal relations considering modern innovations. The formal legal method was aimed at interpreting legal norms and systematising them in accordance with the provisions of Civil Code of Ukraine (2003) and special laws, in particular,

Law of Ukraine No. 3161-IV (2005). The system and structural method allowed considering the definition of the concept of consumer of agricultural products in the relationship of its elements (concepts, norms, institutions), to identify internal logic and functional connections between them. The comparative legal method provided an opportunity to compare Ukrainian regulation with EU standards and practice (Directive of the European Parliament and of the Council No. 2011/83/EU, 2011), and a summary of the best practices of international experts (Pavillon *et al.*, 2022; van der Meulen *et al.*, 2022). The object of the study was the norms of the above-mentioned laws and regulations governing the concepts of "consumer" and "agricultural products", the subject was methodological approaches and practical mechanisms for determining the subjects of civil legal relations.

Results and Discussion

Comparative perspective on the definition of the concept of "consumer" in international legislation. The category "consumer" is a multi-faceted concept that is studied in various scientific disciplines, in particular in sociology, economics, and law. However, the problem of the concept of consumer has not found its final theoretical understanding in the scientific community. In the science of civil law, the definition of "consumer" is used primarily in research in the field of protecting the rights of an individual in the market of goods and services (Yanovytska, 2021). A generalisation can be made that in most cases the consumer will be general (a natural and/or legal person), but depending on the area of legal regulation, the content of this definition will vary. However, there are areas where the corresponding subject composition will be changed, which is conditioned by certain circumstances of the information received (Starytska, 2011).

At the international level, the consumer of agricultural products is considered within the

framework of the law governing the safety and quality of food products, in particular, in the European Union through directives and regulations concerning food quality and safety standards (for example, Regulation of the European Parliament and of the Council No. 178/2002 (2002), which defines the principles and requirements for food safety). This confirms the need for specialised approaches in legislation that would protect consumers from possible risks associated with the use of agricultural products.

It is worth noting about international and national approaches to consumer protection and the very definition of the concept of “consumer”, which reflects the essence of consumer relations and their subject composition, considering the fact that it is the individual consumer who is the weak side of the consumer contract, despite the fact that consumer relations are of a civil nature (Pozhodzhuk, 2023), this creates the need for a comparative analysis of legal systems. However, as noted by K. Thomas (2022), when determining the status of a consumer, the very fact that one party is in a worse position than the other party to the contract does not give it the right to protection. The case law cited in the study is the case of “Francesco Benincasa v. Dentalkit Srl” (1997), in which a court decision recognised that “the same individual can be a consumer for some purposes and an entrepreneur for others. The decisive factor, therefore, is not the personal characteristics of a person, but their position under a particular contract, based on its scope and purpose”.

In the EU, as in many national systems, a “consumer” is an individual who acts outside of their professional or commercial activities (Directive of the European Parliament and of the Council No. 2011/83/EU, 2011), so the mere fact that the buyer may be less knowledgeable does not automatically make them a consumer in every contract on the grounds that the buyer is a natural person. However, the manufacturer and seller,

as key participants in civil legal relations, have significant advantages over the consumer, which is conditioned by their greater awareness, deep knowledge of the specifics of the market, and the ability to influence the terms of concluding transactions, including significantly greater resources and opportunities to protect their interests. Such inequality in power and access to information can create conditions for an imbalance in the rights and interests of the parties, which should be levelled by legal protection of consumers by the state. I. Barriola *et al.* (2023) determined that in civil law systems, the greater importance of the state in creating legal norms helps to limit the initial occurrence of inequality. The right of the state to represent society as a whole gives it the legitimacy to develop laws that pursue social goals. Therefore, Ukraine, as a socially oriented state, guarantees the protection of consumer rights at the constitutional level and implements the relevant provisions of the basic law.

Considering the emergence of such a concept at the international level, the first regulatory definition of the term “consumer” can be found in the Charter for Consumer Protection (1973) (Resolution No. 543, 25th session of the Consultative Assembly of the EU). It was determined that a consumer is an individual or legal entity that uses goods and services for personal purposes. However, legal entities are specified in this context as entities that purchase goods and services for personal purposes, that is, direct business activity in relation to the purchased goods and services is not carried out. Therefore, for a broader consideration of consumer categories, a comprehensive understanding of the legal nature of the consumer is required.

Charter for Consumer Protection (1973) expanded the circle of consumers, recognising them as associations, charitable foundations, artisans and small businesses, if they act to meet their own needs. However, in some sectors (for

example, hotel services), only an individual can be a consumer, while in areas of confidential communication – government agencies and enterprises that require such services (Yanovytska, 2021). According to European Union legislation, Regulation of the European Parliament and of the Council No. 2017/2394 (2017), a consumer is any natural person who acts for purposes unrelated to their trade, business, craft, or profession.

This definition became the basis for the concept of “consumer” within the framework of European legislation, where the emphasis is placed on several main characteristics of this term. First of all, a consumer is an individual who enters into contracts without commercial or professional purposes, with the exception of situations related to tourist services within the framework of business trips. In addition, a consumer is a person who uses products at the final stage of the economic process – the end user. In addition, according to the norms of European Union law, the term “consumer” applies to persons who have suffered damage as a result of using low-quality goods or services. Charter for Consumer Protection (1973) includes legal entities that receive goods for personal use in the “consumer” category. However, in this case, this refers only to associations, charities, associations of artisans, and small businesses. In some cases, depending on the specifics of the service, the consumer can be both an individual and a legal entity, which confirms the condition for considering the concept of a consumer in a complex, that is, the acquisition of such a status is made dependent on both the subject of legal relations and the terms of the consumer agreement itself and its object. On the one hand, this explains the importance of defining the boundaries of this concept, but on the other hand, according to the author, the conclusions should be consolidated in the case-law of the Court of Justice (Fourth Chamber) in Case No. C-110/14 (2015), where, when qualifying an individual as a consumer, it is

necessary to proceed from the purposes of the relevant EU directive, primarily to protect the weaker position of the consumer compared to the seller or supplier, considering the level of knowledge of the consumer and their bargaining power, according to conditions drawn up in advance by the seller or supplier, and the content of which the consumer cannot be influenced.

Legislation of the European Union and member states. EU directives provide additional interpretation of the term “consumer” in various areas, in particular, in cases where the contract is concluded outside the business premises (Directive of the European Parliament and of the Council No. 2011/83/EU, 2011) or in the context of distance trading and financial services (Directive of the European Parliament and of the Council No. 2002/65/EC, 2002). All of the above directives directly or indirectly confirm that consumer status belongs to natural persons, while legal entities are generally not covered by the protection provided for consumers. However, despite this initial semblance of clarity in the EU definition, in practice, there have been a number of cases in which such a definition has been called into question. For example, the case of “Johann Gruber v. Bay Wa AG” (2005) dealt with the issue of so-called mixed or double target contracts, when the buyer is engaged partly for personal and partly for professional purposes. The European Court of Justice has ruled that a farmer’s purchase of tiles for a building that is used partly for private and partly for commercial purposes can only be considered a consumer contract if the commercial or professional purpose is so limited as to be negligent.

Regulation of the European Parliament and of the Council No. 2017/2394 (2017) defines a consumer as any individual acting for purposes not related to their business, professional, or craft activities. In European practice, the concept is clarified through the following features: the contract

is concluded by the end user, and not by an intermediary; a person who actually consumes a product or service can act as a plaintiff in case of damage from a low-quality product. In the EU, the legal definition of “farmer” means an individual or legal entity or a group of individuals or legal entities, regardless of the legal status granted to such group and its members by national legislation, engaged in agricultural activities (Order of the Cabinet of Ministry of Ukraine No. 1163-p, 2024). However, based on the legal definition and judicial practice, the concept of “consumer” should be interpreted narrowly, considering the position of the interested person (buyer) in a particular contract, considering the nature and purpose of this contract, and not the subjective position of the interested person (Judgement of the Court of Justice in Case No. C-630/17, 2019; Judgement of the Court of Justice (Ninth Chamber) in Case No. C-177/22, 2023), it can be found that if a farmer – a natural person – enters into a consumer contract that is aimed at professional activity, the protection of such a subject of the contract as a consumer is not guaranteed only on the basis of the status of an individual.

Italian and German consumer legislation also restricts the status of consumers exclusively to individuals. Thus, in Article 3 of the Consumer Code of Italy (2005), an individual who acts for purposes not related to professional or entrepreneurial activity is recognised as a consumer. Similarly, Paragraph 13 of the Civil Code of the Federal Republic of Germany (2021) treats the consumer as an individual entering into a transaction outside of their own production or profession. The Civil Code of the Poland (1964) (Article 22.1) also restricts consumers to individuals who enter into relations with an entrepreneur outside of their own professional activities. Thus, the national legislation of the EU member states does not go beyond the above definitions specified in EU directives and regulations.

The regulatory framework of the European Union establishes a consistent but limited definition of the consumer. When considering specific legal disputes, for the resolution of which it is necessary to find out the compliance of the “consumer” status of a person applying for protection of their rights, it is determined not by the level of awareness of the person, the implementation of business activities or weakness as a party to the contract, but by the objective purpose of a particular transaction, which is evaluated in each individual case to prevent abuse. This approach gives priority to legal certainty and stable operation of the economy, creating a clear category of protected consumers. Practices of the EU Court of Justice in cases such as “Francesco Benincasa v. Dentalkit Srl” (1997) and “Johann Gruber v. Bay Wa AG” (2005), played a key role in strengthening this principle, in particular, by explaining that neither future professional intent nor a significant percentage of personal consumption in a mixed-use contract allow for the application of consumer protection rules. The status of a consumer should be determined solely by whether an individual acts for a purpose not related to their professional activity, and a person with the status of an entrepreneur can only be considered a consumer if the professional purpose is “so limited as to be negligent”. Thus, legislation and judicial practice jointly form a doctrine according to which, in order to ensure legal certainty, strict restrictions are established in cases where a consumer can be recognised as a person engaged in business activities, but simultaneously under this agreement, the purpose of such a person is personal consumption.

Legal regulation of definitions outside of Europe. Definition of “consumer” by the Law of the People’s Republic of China “On Protection of Consumer Rights and Interests” (1994) provided in Article 2 “The rights and interests of consumers who purchase and use goods or receive

services for daily consumption are protected by this law; or are protected by other applicable laws and regulations, if this law does not say anything about them". This understanding of the definition of "consumer" is problematic for several reasons. This creates uncertainty about a number of key issues, such as whether the concept is limited to individuals only and how to verify whether goods and services were purchased "for daily consumption" (Thomas, 2022). However, it does not explain what exactly is considered "everyday", nor does it indicate who exactly falls under this concept. This wording is legally unsuitable, because it defines the consumer through the consumer itself (*circulus in definiendo*). The absence of mention of "individuals" leaves open the question of whether legal entities, such as small businesses or cooperatives, can be recognised as consumers.

In the context of industry-specific consumer protection legislation, there are also conflicts, for example, unlike many developed countries that have a clear legal definition of financial consumers and include consumers of mobile payment services to financial consumers, China, as one of the largest markets for mobile payment services, does not have a clear legal definition of financial consumers, and there is no clarity as to whether consumers of mobile payment services belong to financial consumers (Ningyao & Zeyu, 2024).

Chinese judicial practice seeks to compensate for the shortcomings of the law through a broad interpretation of the concept of consumer. As can be seen from the decision on the case Guangzhou Vipshop v. Chen Changqing (2020), the court recognised as a consumer a person who purchased a large batch of goods not for resale, but for the purpose of gifts or personal use. This indicates a case-law expansion of the scope of legal protection even in the absence of a clear legislative criterion. However, such flexibility is ambiguous: on the one hand, it allows protecting the rights of bona fide persons; on the other hand, it creates a

risk of abuse, in particular, by the so-called "professional consumers" who buy goods solely for the purpose of receiving compensation (refund of funds for goods).

The absence of a sign of "unprofessionalism" of the parties to the contract in the above-mentioned law may create legal uncertainty in the exercise of their rights by the consumer, because in the absence of similar precedents or identity of circumstances to a particular case, there are risks of recognising a person as acting for a professional purpose. In European law, it is generally accepted that the consumer acts outside of their professional or commercial activity, and the seller – within its limits. In China, this wording is not available, although from the context of the use of the term "business operator" it can be concluded that there is an assumption about the inequality of the parties. This creates a legal standard that does not have a pronounced consolidation, which makes it difficult to apply it in court.

As a result, despite the attempts of the PRC to create a flexible and comprehensive definition of the consumer, the special law contains conceptual shortcomings. The definition, which is limited to the phrase "for everyday use", is vague and not adapted to complex cases. The establishment of the consumer status is carried out by the domestic courts *ex officio*, which cannot be an equivalent substitute for the lack of a regulatory framework. The lack of unambiguous mention of individuals, inequality between the parties, or intent to use the product – all these gaps reduce the effectiveness of law enforcement.

In the United States of America, the approach to developing consumer protection regulations is characterised by a combination of sectoral focus, since consumer protection is not limited to one general law, but has a significant number of "select federal consumer protection states" that cover various sectors of the economy, from financial products and online activities to food and medicine.

Historically, the first link was the Federal Trade Commission Act (1914), which banned “unfair methods of competition” and “unfair or deceptive actions” in commerce, while imposing a duty on the Federal Trade Commission (FTC) to protect consumers and promote competition. In the future, this system was improved both at the federal and state levels. In addition to federal consumer protection laws, state and local governments regulate consumer protection in a variety of ways, ranging from false advertising laws to unfair business practices, and requirements for direct food safety controls for local restaurants, food labelling, privacy, biometrics, and artificial intelligence. A prime example of local control measures is the Safe Drinking Water and Toxic Enforcement Act of California (1986), which requires warnings on the product label regarding the statutory list of natural and synthetic chemicals, including additives or ingredients in pesticides, common household goods, food, medicines, dyes or solvents (ICLG – consumer protection..., 2025).

Federal agencies such as the FTC (Federal Trade Commission), the Consumer Financial Protection Bureau, the Federal Communications Commission (FCC), the Consumer Product Safety Commission (CPSC), the Food and Drug Administration (FDA), and the U.S. Department of Agriculture (USDA) should be singled out to enforce consumer protection laws. Based on the name of these bodies, it can be concluded that, as in the case of law-making, the administration and protection of consumer rights is of an industry nature. For agricultural products, in particular food products, such regulation is carried out by the FDA, which, considering the specifics of the product group, is a balanced decision. The specifics of the object of consumption are important not only in terms of direct risks to the consumer, but also potential risks, i.e., those that may cause harm in the future. In particular, it should be noted that at the end of 2024, the FDA announced

updated criteria for any food product that contains a “healthy” statement, namely, in order for a food product to be marked “healthy”, it must contain a certain amount of food from at least one of certain food groups or subgroups (such as fruits, vegetables, or whole grains) and comply with the established restrictions on saturated fat, sodium, and added sugar (ICLG – consumer protection..., 2025).

The definition of “consumer” in the United States varies depending on the specific law. For example, according to Section 1-201 of the Uniform Commercial Code (1952), a “consumer” is a person who purchases goods primarily for personal, family, or home use. The Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) extends this definition to include agents, proxies, or representatives acting on behalf of an individual (ICLG – consumer protection..., 2025). US law also does not extend the legal status of a consumer to legal entities, but only provides an opportunity for trusted persons or representatives to acquire it when representing the interests of an individual.

In the context of personal data protection, a consumer, for the purposes of the California Consumer Privacy Act (2018), means an individual who is a resident of California. A resident, as defined in the law, includes (1) every person residing in the United States for a purpose other than temporary or transitional, and (2) every person residing in the United States who is located outside the United States for a temporary or transitional purpose. This definition is based on state tax laws and covers individuals who are located in California for a purpose other than temporary or transitional, and individuals who have permanent residence in the state, even if they are temporarily located outside of it.

From this, it can be concluded that the American model implements the unification of federal industry laws on consumer protection with

local regulations and ensures the cooperation of administrative bodies, which allows both flexibility in consumer protection and legal certainty for businesses. Moreover, the definitions of the concept of “consumer” depend on the nature of the regulated goods or services.

The Law of Egypt No. 181/2018 (2018), in Paragraph (1) of Article (1) of Chapter (1), defined the consumer as: “Any natural or legal person who is provided with a product to meet their non-professional or non-commercial needs, or to enter into or conclude contracts with them in this respect”. The same Law defines a “product” in paragraph (4) of Section (1) of Chapter (1) as: “Goods and services provided by subjects of public or private law, including used goods provided through a supplier, with the exception of financial and banking services, which are regulated by the Law on the Central Bank and the Banking System, as well as the Law on Market Regulation and Non-Banking Financial Instruments”. As noted by F. Al Samarae and M. Ismail (2023), an Egyptian legislator has taken the purpose of a contract as a criterion for determining the consumer, since the consumer entitled to protection is a natural or legal person who enters into a contract to meet their needs outside and unrelated to their professional function. As also defined, the description of the concept of consumer includes non-contractual persons who are provided with goods and services to meet their non-professional functions. From the standpoint of consumer law theory, this means that in the Egyptian context, the definition of “consumer” is based on the intent of the subject – that is, whether the transaction has a professional purpose. This approach, on the one hand, allows covering a wider range of individuals, including legal entities that operate outside of their business activities. On the other hand, it creates the risk of exclusion from protection of those actors who, although acting professionally, remain in a

vulnerable position in relations with suppliers or manufacturers.

Thus, when analysing international approaches to the definition of the concept of “consumer”, it should be noted that despite formal differences, there is still a general tendency to identify the consumer with an individual or an entity that acts exclusively for personal or domestic purposes. In this context, the definition of the Egyptian legislator deserves attention as an example of a functional approach, which simultaneously needs to be refined towards more flexible understanding of consumer vulnerability.

Legal regulation of the term “consumer” in Ukrainian legislation. Referring to national legislation, consumer protection in Ukraine is consolidated in parts 3 of Article 42 and Article 50 of the Constitution of Ukraine (1996), which emphasises the importance of this area for the state. Paragraph 3 of Article 42 of the Constitution, which has direct effect, states that the state undertakes to protect the rights of consumers, control the quality and safety of products, and all types of services and works, as well as to promote the activities of public organisations representing the interests of consumers. According to Article 50 of the Constitution, everyone has the right to a safe environment that is not harmful to health, and the right to compensation for damage caused by a violation of this right. In addition, everyone is guaranteed the right to free access to information on the state of the environment, the quality of food and household items, and the right to distribute them. Any classification of such information is prohibited.

Thus, as in the countries of the European Union, consumer protection is an important area of the national policy in Ukraine. The legislation does not distinguish consumer protection into different groups or categories. The general provisions are set out in the Civil Code of Ukraine (2003), which contains basic norms

for consumer protection, in particular, regarding contracts and liability for their improper implementation. Although the term “consumer” is not explicitly used in the text of the Civil Code, its norms still apply to consumers. For example, Article 698 (paragraph 3) of the Code regulating a retail purchase and sale agreement and Article 865 (paragraph 3) – a household contract contain provisions that provide for the application of Law of Ukraine No. 3153-IX (2023) in case of insufficient regulation of these articles.

The now-abolished Commercial Code of Ukraine (2003) also had Article 39, which contained a general provision on consumer protection, referring to Article 3 of the Law of Ukraine No. 1023-XII (1991). This Law covers a wide range of issues, in particular, the definition of the concept of “consumer”, product safety, consumer rights, information, and legal protection and activities of public consumer organisations.

According to Part 22 of Article 1 of the Law of Ukraine No. 3153-IX (2023), a consumer is an individual who purchases or intends to purchase goods or services for personal needs that are not related to business activities. That is, not every individual is recognised as a consumer, but only one who intends to order or purchase goods (works, services), orders, purchases goods (works, services) and uses goods (works, services). Consequently, even in the absence of the fact of concluding a civil contract, an individual will be granted the legal status of a consumer (Yanovytska, 2021). It is worth noting that the main form of regulation of legal relations between the seller (manufacturer, contractor) and the consumer is a specific type of contract, which contains the features of a public contract and an accession agreement. Such types of contracts affect the principle of freedom of contract by restricting them, have similar features to each other, thereby encouraging scientists to further study them. In addition, both operate in the consumer sphere, and their norms establish

protection mechanisms for the weak side (Vaganova, 2024).

Participation in business relations is carried out by business entities, consumers, state authorities and local self-government bodies with economic competence, and citizens, public and other organisations that act as founders of business entities or exercise organisational and economic powers in relation to them on the basis of property relations. However, the Commercial Code of Ukraine (2003) did not provide a definition of the concept of consumer. According to Part 3 of Article 175 of the Commercial Code of Ukraine (2003), it was stated that property obligations arising between business entities and non-economic entities – citizens (or in other words, consumers) are not economic and are regulated by other legislative acts. Therefore, due to the loss of force of the Commercial Code of Ukraine (2003), it becomes necessary to refer to the Civil Code of Ukraine (2003) and the relevant special legislation. According to these changes, it is necessary to clearly define the status of the parties (consumer/business entity), the nature of their obligations and apply the rules provided for by the civil law system, and not the economic code, which increases legal certainty and reduces the risks of conflicts in law enforcement, but gives the legislator and scientists a wide field of opportunities for improvement in the context of the systematic recodification of Civil Code of Ukraine (2003), aimed at bringing its provisions in line with the current realities of the economy, digitalisation, European standards and integration into the EU legal space.

In legal science and legislation, there is already a significant variability in the definitions of the concept of “consumer”, which complicates its unified theoretical understanding and practical application. For example, the current legislation of Ukraine provides a number of definitions of “consumer” (Table 1).

Table 1. Definition of “consumer” in the legislation of Ukraine

Source	Definition of “consumer”
Order of the State Service of Export Control of Ukraine No. 1576/10175 (2004) (paragraph 1.2.)	A party in the international transfer of goods for which the goods are intended, in whose interests the transfer is made or the corresponding service is provided.
Law of Ukraine No. 1023-XII (1991) (paragraph 22, Article 1)	An individual, who purchases, orders, uses or intends to purchase or order products for personal needs that are not directly related to the business activity or performance of the duties of an employee.
Order of the State Tourist Administration of Ukraine No. 413/9012 (2004) (paragraph 1.3.)	An individual, who purchases, orders, uses, or intends to purchase or order goods, works, or services for their own (household) needs.
Methodology for calculating the volume of natural gas losses... dated 08.08.2007 No. 910/14177 (P. 3)	An individual who receives gas supply, centralised heating and hot water supply services for their own household needs.
Law of Ukraine No. 1909-IX (2021) (Article 1, paragraph 47)	An individual who has applied for or is receiving an insurance service to meet personal needs that are not related to business or independent professional activities, and other persons defined in the insurance contract as insured persons and/or beneficiaries who are individuals, or other individuals who are entitled to receive an insurance payment.
Law of Ukraine No. 1591-IX (2021) (paragraph 82 of Part 1 of Article 1)	An individual who receives or intends to receive a payment service to meet personal needs that are not related to entrepreneurial, independent professional activities.
of Ukraine No. 1734-VIII (2016) (paragraph 9 of Part 1 of Article 1)	An individual who has entered into or intends to enter into a consumer loan agreement.
Order of the Antimonopoly Committee of Ukraine No. 239/6527 (2002) (paragraph 1.6.)	A natural or legal person who purchases, orders, uses or intends to purchase or order goods (works, services) sold by the relevant business entities.
Order of the Antimonopoly Committee of Ukraine No. 317/6605 (2002) (paragraph 1.3.)	A legal entity or individual that carries out activities related to the purchase and use of goods, services, or works on the relevant commodity(s) market(s).
Law of Ukraine No. 3503-IV (2006) (Article 2)	A legal entity or individual that uses chemical power sources or products with integrated chemical power sources.
Resolution of the National Commission for State Regulation in the Energy and Utilities Sectors No. 1387/27832 (2015) (paragraph 1.4.)	An individual, or a legal entity, or an individual entrepreneur in respect of whom the conditions stipulated by law for the supply of natural gas are met.
Law of Ukraine No. 2887-IX (2023) (paragraph 22, Article 1)	A legal entity or individual that uses the water disposal system on the basis of the relevant contract.
Order of the Ministry of Energy of Ukraine No. 615/37951 (2022) (P. 2)	A natural or legal person who buys, rents, or receives products for their own use, regardless of whether their purposes are related to trading, business, craft, or profession.
Law of Ukraine No. 1818-IX (2021) (paragraph 28 of Part 1 of Article 1)	An individual, individual entrepreneur or legal entity that uses energy for their own needs, and not for resale or use as raw materials or fuel.
Order of the Cabinet of Ministry of Ukraine No. 264 (2019) (Part 3)	A person who purchases or intends to purchase a product for purposes not related to the trade, business activity, craft or profession of such person.
Law of Ukraine No. 2019-VIII (2017) (paragraph 84 of Part 1 of Article 1)	An individual, including an individual entrepreneur, or a legal entity that purchases electric energy for its own consumption.

Source: systematised by the author

Thus, the definition of consumer subjectivity is provided in accordance with the law of Ukraine No. 3153-IX (2023) may vary depending on the scope of application. Therefore, a comparative analysis of legislation in the field

of consumer protection opens up opportunities for the dissemination of the legal status of the consumer, which apply various regulatory legal acts, to protect the interests of consumers – legal entities, including individual entrepreneurs

who make calculations for personal needs from an entrepreneurial account. In this context, it is also necessary to highlight agricultural products, the consumer of which, considering its specifics (perishable, sensitivity to storage and transportation conditions), deserves a separate definition of the consumer of agricultural products and an increase in confidence in the market of such products. International legal approaches differ significantly depending on the cultural, economic and legal characteristics of each state. Legal systems reflect potentially different compromises within the limits afforded to protect individual and general interests (Barriola *et al.*, 2023). In this respect, the European Union stands out as a unique case in comparative analysis, as it has harmonised consumer protection laws in the member states of the union. This harmonisation is aimed at establishing a single standard that ensures consistent consumer protection measures throughout the EU, and Ukraine's efforts to harmonise demonstrate a collaborative approach that recognises the interconnectedness of markets within the union and highlights the importance of a standardised approach to consumer rights.

Other states choose a more fragmented method, developing specialised regulatory legal acts for certain sectors of the economy. This approach recognises the characteristics and specific features inherent in individual sectors and offers tailored solutions. For example, separate laws may be introduced that regulate consumer protection in the pharmaceutical sector or in e-commerce. This specialised strategy allows considering the subtleties of different market segments and ensuring more accurate and effective regulation. In the global legal field, preference is given to the "consumer" as the final, non-professional user of goods or services, and the definitions differ depending on the legal system and the specifics of the sphere of consumption.

In general, as evidenced by the experience of some states and the wide scope of definitions of the consumer in the legislation of Ukraine, the issue of defining the term "consumer" remains important and controversial, since it directly affects the scope of rights and guarantees provided to buyers entering into civil relations with entrepreneurs-sellers. Notably, agricultural products, as an object of a consumer contract, have certain features of regulation that are important in determining the status of the consumer, since such products include both food products and raw materials for further processing, seeds, industrial crops, animal feed, waste, and many other goods that need to be considered from the standpoint of their regulation to ensure the rights of consumers of such products and the possibility of granting legal status to the consumer depending on the purpose of the contract, and not the legal status of the buyer.

Features of agricultural products as an object of a consumer contract. Agricultural products in the legal sense belong to movable property and are the subject of a purchase and sale agreement both in general and in consumer relations. Since agricultural products are classified as goods, they become the object of a public retail trade agreement (consumer agreement) – that is, the terms of such an agreement, according to Article 633 of the Civil Code of Ukraine (2003), should be the same for all consumers. When it comes to agricultural products specifically, this concept takes on additional aspects, as it concerns not only the general market for goods and services, but also the specific features of regulation relating to agricultural products. For example, at the EU level, the legal regime of Consumer Contracts is regulated in detail by the Directive of the European Parliament and of the Council No. 2011/83/EU (2011) and Directive of the European Parliament and of the Council No. 2019/771 (2019), which extend the rights to refund, guarantee and

inform consumers. As evidence of Ukraine's desire to harmonise national legislation with EU law, the new Law of Ukraine No. 3153-IX (2023) has been adopted, which states in Part 1 of Article 8 that in the event of purchasing an unsuitable or unsafe food product, the consumer has the right to demand that the business replace it with a food product that is suitable for consumption, or to refuse the contract and demand a refund. In addition, in preparation for the entry into force of this law, Resolution of the Cabinet of Ministers of Ukraine No. 1347 (2024) approved the procedure for the return (replacement) of unsuitable and dangerous food products, which creates a quick and affordable mechanism for consumer protection and simultaneously allows businesses to effectively resolve disputes without going to court, making it impossible to groundlessly check bona fide sellers. It provides that the consumer has the right to exchange a dangerous or unusable food product for a high-quality analogue within the established time frame or return it and receive a full refund of the cost. Thus, the consumer of agricultural products acts not only as an end user, but also as a participant in a more complex supply chain from the producer to the end user, which requires clarification of the subject of such a consumer contract, which purchases such products for personal needs and research the possibility of extending such legal status to consumers with the status of an individual entrepreneur and legal entities.

As noted by W. Verheyen and M. Kołacz (2022), an important factor in the sustainability of logistics chain security is the availability of various alternative options tools regardless of whether security measures are introduced as part of transport regulation through consumer legislation or under contract. Therefore, the interpretation of the category "consumer" in the context of agricultural products should be based on the general definition of the consumer, which is important for the legal protection of the rights of persons

who consume agricultural products in the chain from business to customer. This assumes that the consumer is a person who purchases agricultural products for personal, economic or other needs that are not related to business activities.

Simultaneously, agricultural products, as a commodity, have their own specific features – for example, the presence of various types of goods (vegetables, fruits, cereals, meat, raw materials for processing, feed, waste, etc.), which may be subject to a special legal regime. It is also necessary to consider the characteristics of agricultural products consumed by humans, including possible allergic reactions, storage conditions, and food waste associated with the loss of its properties, which is a consequence of unstable food systems.

R.B. Llagas *et al.* (2025) noted that shelf life is a key factor affecting food waste, food safety, and quality. The legal definition of agricultural products correlates with ensuring the rights of consumers to safe and high-quality products, namely, the application of relevant norms in regulating their production, storage and sale, and liability for their violation. In addition, among the number of specific features that distinguish agricultural products intended for human consumption, food allergies can be distinguished. Ukrainian legislation has been brought into line with EU regulations, such as Regulation of the European Parliament and of the Council No. 1169/2011 (2011) and Directive of the European Parliament and of the Council No. 2011/83/EU (2011) by adopting Law of Ukraine No. 2639-VIII (2018), according to which information about allergens should be included in the list of ingredients and clearly highlighted. The adopted law establishes the obligation of market operators to provide consumers with complete and reliable data on products upon their request. In particular, the product name must be indicated, which allows it to be uniquely identified. The consumer must have access to the minimum expiration date or the "use before" date,

which is a guarantee of safe use. If necessary, the market operator informs about special storage conditions and/or conditions of use that ensure the preservation of product quality and safety. The name and address of the operator responsible for the accuracy of the information are indicated, and for imported goods – data about the importer. It is also mandatory to indicate the country or place of origin, which allows tracking the supply chain and increases the level of consumer awareness.

In the EU and Ukraine, there is a comprehensive regulatory framework that clearly defines the list of allergens, the procedure for labelling them, and risk management measures at all stages of production and sale of food (including agricultural) products. However, no jurisdiction has yet adopted or implemented comprehensive regulation or legislation on the management of food allergens in public catering establishments, but some are considering special provisions on this issue (Dominguez *et al.*, 2024).

It follows that in the ongoing processes of harmonisation of Ukrainian legislation with EU legislation, it is also necessary to consider opportunities not only for the implementation of existing legislation, but also the need in certain cases to improve the regulatory and legal regulation on consumer protection and make it more comprehensive and comprehensive in the sectors of the economy, including agricultural products that may contain allergens (accumulative allergens) in their primary form or as a processed product. I. Barriola *et al.* (2023) stressed that consumers are more concerned about the quality and safety of milk, yoghurt, cheese, meat, and seafood products. Although meat and seafood are less studied in this review compared to other categories, they remain problematic due to the need to store food at appropriate temperatures and the higher risk of spoilage due to cold chain problems. Thus, it is agricultural products that have regulatory features that directly affect the safety of their use by

humans, in the case of food products. However, the features of agricultural products that do not belong to food products also have features regulated by regulatory legal acts, regarding their production, storage and conditions of sale of such products, non-compliance with which is the basis for protecting the rights of consumers to the quality and safety of agricultural products. It is important to note that the legal significance of the consumer status lies in the fact that it is designed to balance the imbalance of the subjects of the consumer contract. As noted by N. Mamonova *et al.* (2023), only in Ukraine, a private farm can be recognised as a family farm only if it officially receives the status of an individual entrepreneur (individual entrepreneur), that is, it is equal to a typical business without considering the specifics of agricultural production. However, if small producers (in particular farmers and consumer cooperatives) are unable to benefit from consumer protection in the event of violations by suppliers or trading partners, this will be contrary to the principle of equality and may restrict their rights in market relations. Although individuals who purchase or intend to purchase goods or services for personal needs that are not related to business activities need the same protection as individuals. It follows that in the case of agricultural products, the object of the consumer contract itself is specific and the subject of consumption of which requires a legislative definition in relation to the economic goal that arises at the conclusion of the contract.

Conclusions

Determining the legal status of the consumer of agricultural products is important for the development of the agricultural market of Ukraine and its inclusion in the EU markets. Improvement of legislation should be based on harmonisation with European standards and consideration of the support and protection of agriculture. Ukraine, as a constitutional state of the European space, is

open to international cooperation in accordance with the requirements of foreign policy. However, this cooperation should be based on equality, not on an equal basis, in violation of the basic principles of the internal policy of the state, and should take place on mutually beneficial terms.

In the context of national regulations that define consumer relations in various fields, specialised legislation on consumer protection and the Constitution of Ukraine, the legal definition of the concept of consumer has been clarified, which, through its comparative characteristics with international legislation in terms of consumer protection, has been supplemented and adapted to the requirements of EU law.

Thus, a consumer of agricultural products can define an individual who purchases, uses or intends to purchase goods of Groups 1-24 of the Ukrainian Commodity Classification for Foreign Economic Activity, excluding subheading 2201 10 and headings 2204, 2205, 2207, 2208 of group 22, section IV, and the goods listed in subparagraphs 12-14 of clause 1 of the Requirements for specifications of goods with geographical indications and for the procedure of their approval, provided that such goods are grown, raised, caught, harvested, produced, or processed directly by the producer, or acquired or manufactured at that producer's own or leased facilities. However, such a definition is obviously cumbersome and requires unification to create a concept applicable in civil law that would be consistent with EU directives, in particular, the Directive of the European Parliament and of the Council No. 2011/83/EU on consumer rights, which emphasises the need to ensure transparency, product safety, and fair competition in the market. There is persistent legal ambiguity regarding the status of consumers who are not natural persons. This includes family farms registered as individual entrepreneurs that

use agricultural products for their own needs, and consumer cooperatives that may purchase such products to meet the needs of their members and that, by their legal nature, resemble natural persons acting as parties to a consumer contract.

Further research on the topic can be directed in several areas. Firstly, following the repeal of the Commercial Code of Ukraine, similar provisions of the Civil Code of Ukraine and special laws are applicable, resulting in ongoing recodification of the Civil Code of Ukraine. However, in the context of special legislation on consumer protection, most of the provisions of the Commercial Code of Ukraine have already been duplicated. However, considering the analysed legislative experience of foreign countries and the features of such an object of a consumer contract as agricultural products, there is a need to study and implement the concept of "consumer of agricultural products". Secondly, it is relevant to investigate the legal status of a subject that simultaneously produces and consumes products (for example, a farmer who has the status of an individual entrepreneur who buys seeds for growing crops for their own consumption). Since the relationship between the buyer and the seller is concluded in the contractual plane, in this regard, it is necessary to study the characteristics of the consumer as a subject who enters into the relevant contract precisely for the purpose of personal use and the possibility of their legislative implementation.

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Нормативні проблеми захисту прав споживачів сільськогосподарської продукції в цивільно-правових відносинах

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Анотація

В цивільно-правовому регулюванні захисту прав споживачів сільськогосподарської продукції наявні прогалини у питаннях термінології, що вимагає чіткого законодавчого визначення та надійних гарантій захисту прав і інтересів таких споживачів. Метою цього дослідження була оцінка статусу споживача сільськогосподарської продукції в Україні, Європейському Союзі та інших державах, формування рекомендацій щодо гармонізації цивільно-правового визначення та механізмів захисту споживачів у законодавстві України. Для цього у роботі застосовано системно-структурний, формально-юридичний та порівняльно-правовий методи. Методологія дозволила окреслити взаємозв'язки між правовими нормами та інститутами, що визначають статус споживача, здійснити доктринальний аналіз нормативних текстів. Дослідження виявило, що в українському та міжнародних законодавствах відсутнє єдине визначення «споживача сільськогосподарської продукції», а саме поняття споживача послідовно визначається як фізична особа, що діє поза межами комерційної чи професійної діяльності. Окреслено, що сільськогосподарська продукція потребує спеціалізованого регулювання через сезонність, вимоги до безпеки, простежуваності та маркування такої продукції. Порівняльний аналіз показав, що європейські норми передбачають чіткіше визначені права на отримання інформації, відмову від договору та гарантійне обслуговування. Було критично оцінено результати адаптацію українського законодавства до європейських стандартів у захисті прав споживачів та процедур повернення й обміну небезпечних харчових продуктів. Наведеною судовою практикою показано, як комплексне сприйняття поняття «споживач» може тлумачитися залежно від умов споживчого договору, його мети, що нашоухе на розуміння підходів до визначення споживача сільськогосподарської продукції. Практична цінність роботи полягає в запропонованому цивільно-правовому визначенні та регуляторній моделі, які допоможуть регуляторним органам і науковцям удосконалити нормативну базу, гармонізувати національні правила з міжнародними стандартами та розвинути механізми альтернативного вирішення спорів, що сприятиме конкурентоспроможності національного експортно-орієнтованого аграрного сектору

Ключові слова: правовий статус; договірні відносини; міжнародне законодавство, юридична компаративістика; консюмеризм



Localisation as legal phenomenon: Industrial parks between economic functionality and environmental responsibility

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The study aimed to establish the legal essence of industrial parks as a tool for the territorial localisation of industrial activity and to develop mechanisms for harmonising their special legal status with the principles of environmental responsibility through a comprehensive analysis of international practice. The study was conducted based on a comparative legal analysis of the regulatory regimes of industrial parks in five countries and an empirical analysis of their socio-economic and environmental impacts, as well as an analysis of satellite remote sensing data and official environmental statistics. The conceptual analysis revealed a consistent evolution of legal approaches over seven decades, from exclusively economically oriented models of the 1950s-1970s to modern legal regimes, which have integrated the principles of law, sustainable development and

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climate neutrality. Empirical research in Poland, Germany, China, Vietnam and Ukraine demonstrated a systemic imbalance between the economic benefits and environmental consequences of special territorial regimes: a statistically significant increase in the concentration of nitrogen dioxide by 23%, particulate matter by 28.6% and a catastrophic fivefold increase in biological oxygen demand in water resources was recorded. At the same time, in Germany, with a well-developed institutional system and strict environmental control, a significant reduction in sulphur dioxide emissions by 5% and particulate matter by 9% was achieved. A direct correlation was established between the level of institutional capacity of the state and the effectiveness of environmental management of industrial complexes, and an uneven distribution of socio-economic benefits was revealed, with only 23% of newly created jobs in developing countries going to residents. The results confirmed the existence of a latent conflict between the privileged legal regime of industrial parks and the fundamental principles of legal equality and environmental justice, but also demonstrated the possibility of resolving it through balanced regulatory changes, including the integration of green conditions into the system of economic incentives and the introduction of cumulative liability mechanisms

Keywords: administrative and legal principles; special legal regimes; environmental justice; sustainable development; legal principles of organisation and operation of industrial parks

Introduction

Transformation of traditional industrial parks into eco-industrial complexes reflects a fundamental paradigm shift from a linear production model to a circular economy, which requires a rethinking of legal mechanisms for regulating industrial activity at local level. This issue is particularly relevant in the context of implementing sustainable development goals and need to harmonise economic interests of business with environmental requirements of society. The legal localisation of industrial parks as a phenomenon requires comprehensive research, as the existing regulatory framework is often insufficient to effectively balance economic functionality and environmental responsibility. Research into the issue is critical for the development of adequate legal instruments capable of ensuring sustainable industrial development within local territorial entities.

Conceptual foundations for transforming industrial parks into eco-industrial complexes were addressed by N. Shevchuk *et al.* (2021), describing

a synergistic approach to achieving sustainable development goals within industrial territories. The study determined that transformation of industrial parks requires regulatory changes, the introduction of compliance criteria, and the creation of favourable incentives for enterprises to enter industrial symbiosis. The study demonstrated that eco-industrial parks can become a catalyst for industrial development and enterprise competitiveness through the efficient use of natural resources and minimisation of negative environmental impacts. Practical approaches to developing guidelines for new eco-industrial parks were detailed in a study by M. Nessim *et al.* (2024), proposing a comprehensive structure for the development of such complexes based on an analysis of international standards and practices. Authors identified four key categories for successful creation of eco-industrial parks: location selection, management, environmental performance, and social services. Study emphasised the value of an integrated approach to planning that covers both

technical aspects of industrial symbiosis and socio-economic needs of local communities.

H. Huang and M. Yi (2023) made a significant contribution to the analysis of the effectiveness of different types of environmental regulation by studying the impact of heterogeneous environmental regulations on carbon emission reductions in Chinese cities. Their comprehensive analysis showed that both command-and-control and market-based environmental regulation mechanisms significantly reduced carbon emissions in pilot cities, but emissions trading proved to be more effective than low-carbon pilot programmes. The researchers identified regional specifics in the application of different approaches: low-carbon pilot programmes worked better in the central and western regions, while emissions trading was more effective in the eastern region. The technical aspects of optimising eco-industrial parks were examined by D. Aussel *et al.* (2023) through mathematical modelling of industrial water networks, formulating and solving game-theory problems of the “one leader, many followers” type. The approach demonstrated that companies seek to minimise operating costs by reusing wastewater from other companies, while the designer tries to minimise the consumption of natural resources within the eco-park. The study proved that participation in an eco-park guarantees a minimum relative improvement compared to the autonomous operation of each company.

The institutional mechanisms for formation of eco-industrial parks were analysed by E.-J. Nylén *et al.* (2025) using the example of the bioeconomic and circular industrial park ECO3 in the Tampere region, Finland, addressing the role of mediation and hybrid actors. The study examined in detail the functions of an urban development company as an intermediary between public and private stakeholders. The results showed that mediation proved fruitful in the process of forming an eco-industrial park, as the mediator

catalysed the alignment of interests among stakeholders, who thus contributed resources to the development process. X. Yu *et al.* (2024) examined the effectiveness of green industrial park pilot programme policies on urban carbon emissions using a stepwise difference-in-differences model. The results showed that green industrial parks effectively reduced carbon emissions in the studied counties in terms of both total emissions and intensity. The authors found that the economic scale and administrative levels of cities significantly influence the effect of green industrial park policy implementation, with carbon emission reductions being more pronounced in cities with larger economic scales and higher administrative levels. X. He and B. Li (2023) investigated causal relationship between eco-industrial parks and development of urban green spaces using a multi-period difference-in-differences model based on panel data from 276 prefecture-level cities in China for 2004-2019. The study determined that creation of eco-industrial parks can significantly contribute to sustainable development of urban areas, with a policy stimulation effect of approximately 0.0279. The authors found that the implementation of green industrial policies can enhance the sustainable development of cities by promoting environmental innovation, optimising industrial structures and strengthening environmental regulation. The specific issue of public resistance to alternative energy solutions was investigated by S. Haikola *et al.* (2024) using Sweden as an example, analysing the evolution of localised resistance groups into generalised opposition to wind energy.

Despite significant scientific achievements in the field of eco-industrial parks research, the legal aspects of their localisation remain insufficiently studied, especially in the context of the interaction of national legislation with international standards and local features of legal regulation. The study aimed to determine the legal nature of

industrial parks as a form of territorial localisation of economic activity and to develop mechanisms for harmonising their special legal regime with the principles of environmental responsibility based on a comparative analysis of international experience. A hypothesis was formulated according to which the concept of an industrial park as a legal form of territorial economic management contradicts traditional ideas about the universality of legal space, and the privileged status of industrial parks in terms of access to resources and benefits may contradict the idea of distributive justice, especially in conditions of limited land and environmental resources, which requires the avoidance of conflicts.

Materials and Methods

Conceptual basis of the study was a synthesis of theoretical approaches from economic geography, jurisprudence, and environmental law. Theoretical framework was based on classical theory of optimal location of production by A. Weber (1909) and concept of industrial clusters by M. Porter (1998). Methodological apparatus of the study was based on principles of an interdisciplinary approach, which integrated legal analysis with empirical data on environmental and socio-economic consequences of functioning of industrial parks.

The main research method was comparative legal analysis, applied to systematise the legal regimes of industrial parks in five jurisdictions: Poland, Germany, China, Vietnam and Ukraine. This method made it possible to identify common patterns and specific features of regulatory frameworks for special territorial regimes in different legal systems and to create a periodisation of the evolution of legal approaches over seven decades. The formal-dogmatic method was used to analyse the structure and content of regulatory acts governing the creation and operation of industrial parks, in particular to identify conflicts between

special legislation and general principles of environmental law. Using the method of systematic analysis, the legal nature of industrial parks as a form of territorial localisation of economic activity was conceptualised, and fundamental contradictions between economic efficiency and environmental responsibility were identified.

A key methodological feature of the study was a comprehensive analysis of secondary data for an empirical assessment of the environmental impact of industrial parks. This approach involved systematising official environmental statistics from national monitoring agencies for the period 2016-2024, followed by a comparison of indicators for territories with industrial parks and similar regions without industrial complexes. Satellite data from the Copernicus and Sentinel-5P programmes were used to verify ground measurements, ensuring the objectivity of the assessment of environmental changes. Correlation analysis was used to establish a link between the intensity of regulatory control and the environmental results achieved in the countries studied.

To analyse the effectiveness of control mechanisms, a case study method was used with a detailed examination of the following specific cases: the successful transformation of the German chemical park Bitterfeld-Wolfen through the introduction of a centralised wastewater treatment system (United Nations Industrial Development Organisation, 2021); the environmental disaster in the Vietnamese industrial zone of Vungang caused by the Taiwanese corporation Formosa and its legal consequences (Vietnam Law & Legal Forum, 2010); Polish experience of balanced development of the Euro-Park Kobyerny industrial park, taking into account the interests of the local community (Krajewska, 2024). Chinese national eco-industrial parks in Suzhou are considered separately as an example of effective industrial symbiosis (Gao *et al.*, 2021); the formation of Ukrainian industrial parks "Sygnivka" and "Novyi Rozdil" in

areas with accumulated environmental problems (Lviv Regional State Administration, n.d.).

The source base of the study included four main categories of materials. First group consisted of regulatory and legal acts of various levels: Chinese Order of the Ministry of Ecology and Environment of the People's Republic of China "On Promoting the Circular Economy" (2008), Law of Ukraine No. 5018-VI "On Industrial Parks" (2013), Regulation of the European Parliament and of the Council No. 2021/1058 "On the European Regional Development Fund and on the Cohesion Fund" (2021). This group also included Directive of the European Parliament and of the Council No. 2010/75/EU "On Industrial Emissions" (2010) and the Act of the Parliament of Poland "On Supporting New Investments" (2018). Analysis of these documents revealed a variety of approaches to the legal regulation of special territorial regimes and identified the key principles of their functioning.

Second category consisted of official statistical data from national environmental agencies and international monitoring systems, including reports from the Chief Inspectorate of Environmental Protection of Poland (n.d.) and Ukrainian Hydrometeorological Centre (n.d.). Data from Ministry of Ecology and Environment of China (n.d.) and Ministry of Natural Resources and Environment of Vietnam (2022) were also used. These data provided an empirical basis for assessing impact of industrial parks on quality of atmospheric air, water resources, and soil cover.

The third group of sources consisted of satellite data from remote sensing of the Earth, obtained through the Copernicus Atmosphere Monitoring Service (n.d.) and Sentinel-5P (European Space Agency, n.d.) programmes, which provided objective information on the concentration of atmospheric pollutants and changes in land cover around industrial parks. The use of satellite data made it possible to verify official statistical reports and identify cases of unreliable information. The fourth

category consisted of analytical reports from international organisations, including documents from the Organisation for Economic Co-operation and Development (2020), the United Nations Industrial Development Organisation (2021) and reports from the World Bank (2025).

Empirical analysis was based on a comparison of the basic environmental indicators of industrial parks before the start of operations with indicators after 2-3 years of operation. Quantitative assessment of the dynamics of indicators was based on the following formula:

$$\Delta Y = Y_{\{after\}} - Y_{\{before\}}, \quad (1)$$

where ΔY – denotes metric changes; $Y_{\{after\}}$ – value of the metric 2-3 years after the launch of the industrial park; $Y_{\{before\}}$ – three-year average value of the base period before the launch of the park.

For environmental indicators, the three-year average value of the base period and the average value of the second and third years of the park's operation were calculated to exclude short-term fluctuations. The analysis was conducted using weighted averages for all parks studied, considering their size and industrial capacity. Satellite data from Copernicus and Sentinel-5P programmes were used to verify ground measurements of atmospheric pollutant concentrations, and normalised difference vegetation index (NDVI) was calculated in buffer zones with a radius of 5 km around industrial parks to assess changes in vegetation cover. Socio-economic indicators, including changes in regional GDP (gross domestic product) and unemployment rates, were analysed based on official statistics from national statistical services of the countries studied.

Results

Conceptual foundations of legal regulation of industrial parks as a form of territorial localisation of economic activity. The concept of territorial localisation of economic activity in the form

of industrial parks is a complex legal phenomenon that combines elements of economic theory of production location with regulatory mechanisms for creating special legal regimes. Theoretical foundations of industrial production localisation were laid by German economist A. Weber (1909) in the theory of the standard, identifying the main factors for optimal production location and introducing the concept of “localisation” as the process of selecting a location for new industrial facilities. This concept was further developed by M. Porter (1998), describing the phenomenon of clusters as groups of geographically neighbouring and interconnected companies and institutions that create a synergistic effect. In the legal field, the concept of localisation has been implemented through the categories of territorial jurisdiction

and special economic zones. Traditionally, the state exercises sovereignty uniformly throughout its territory, but the creation of special zones with a simplified legal regime effectively introduces elements of extraterritoriality in the legal sense, which means a certain exclusion of the relevant territory from the general legal order. The historical development of legal approaches to the regulation of industrial parks demonstrates a gradual transformation from models focused exclusively on economic efficiency to comprehensive legal regimes that integrate the principles of sustainable development and environmental responsibility. An analysis of the evolution of regulatory mechanisms over the past seven decades reveals fundamental changes in the legal paradigm, as reflected in Table 1.

Table 1. The evolution of legal approaches to regulating industrial parks

Period/wave	Regulatory focus	Typical legal mechanisms	Level of environmental integration	Key principle of evolution
I. Early export-production/free zones (≈1950s-1970s)	Stimulating exports through customs facilitation	Duty-free warehouses, tariff exemptions, tax holidays, and minimum regulations	Low	Localised economic exemption as a development policy
II. Expansion of SEZs/investment zones (≈1980s-1990s)	Attracting FDI, export-oriented industrialisation	Extensive tax breaks, cheap land allocation, and simplified labour regulations	Very low/fragmented	Scaling, subsequently hidden environmental externalities
III. Integrated pollution control and community participation (≈1990s-mid-2000s)	Harmonisation of special regimes with general environmental law	Impact assessment; integrated permits; public access to information	Medium (increasing)	“Polluter pays” + transparency
IV. Resource-efficient/industrial-ecological clusters (≈2000s-2010s)	Resource efficiency, waste minimisation, industrial symbiosis	Circularity standards; shared treatment/energy systems; material accounting	Medium to high (pilots)	Conditional support linked to environmental performance
V. Sustainable/climate-conditional eco-industrial park (≈2015-present)	Integration of economy, environment, climate and social justice	Benefits for KPI performance; carbon management; PRTR; HRBA; ESG	High (complex)	Regulatory convention + cumulative control

Notes: periods are conditional; wave boundaries overlap between regions

Source: compiled by the authors based on Order of the Ministry of Ecology and Environment of the People’s Republic of China “On Promoting the Circular Economy” (2008), Directive of the European Parliament and of the Council No. 2010/75/EU (2010), T. Farole and G. Akinci (2011), Organisation for Economic Co-operation and Development (2020), United Nations Industrial Development Organisation (2021)

Periodisation of legal approaches presented in Table 1 demonstrates the pattern of gradual complication of normative structures and expansion of the subject of legal regulation of industrial parks. Each stage of evolution is characterised not only by a quantitative increase in regulatory instruments, but also by a qualitative transformation of the legal logic of regulation. It is worth noting the transition from fragmentary consideration of environmental aspects to their systematic integration into the legal architecture of special economic regimes. The current stage of development of legal regulation is characterised by the formation of a new regulatory paradigm, where the environmental component is not considered a limiting factor of economic activity, but is integrated as a constitutive element of the legal regime of industrial parks. This transformation creates the legal preconditions for resolving the fundamental contradiction between economic efficiency and environmental responsibility, which is the subject of further research into the legal mechanisms for harmonising these principles in regulatory space.

The legal nature of industrial parks is determined by the fact that the state establishes a special legal regime for industrial activities in a specific territory by legislative means. The models of such regimes vary from country to country, but a common feature is the combination of economic incentives with elements of deregulation. In the European Union, particularly in Poland and Germany, Regulation of the European Parliament and of the Council No. 2021/1058 "On the European Regional Development Fund and on the Cohesion Fund" (2021) focuses on the development of territorial clusters in the context of the transition to a climate-neutral economy. In China, the Order of the Ministry of Ecology and Environment of the People's Republic of China "On Promoting the Circular Economy" (2008) explicitly requires industrial parks to implement resource-efficient and

closed-loop technologies. In Vietnam, the special regime for industrial parks is regulated through a system of investment zones with significant tax incentives and simplified procedures for international investors, although environmental requirements remain fragmented and insufficiently enforced by effective control mechanisms.

In Ukraine, a special legal regime for industrial parks was introduced by Law of Ukraine No. 5018-VI "On Industrial Parks" (2013). This Law defines an industrial park as a separate plot of land with defined boundaries, within which participants engage in economic activities in the manufacturing industry under the management of a management company, with the application of incentives from the state. The mechanism for creating a special regime includes a set of benefits: exemption of participants from income tax for 10 years for activities in the manufacturing industry, provided that the saved funds are re-invested; exemption from value added tax (VAT) on the import of new equipment; the possibility of setting zero rates for land tax and property tax (State Tax Service of Ukraine, 2022). With the law, management company can act as a "single window" for investors, empowering it to obtain all necessary permits from state authorities on behalf of participants.

However, exceptional conditions for investors in industrial parks create a latent conflict with the basic principles of economic, land and environmental law. The principle of equality before the law, enshrined in Article 13 of the Constitution of Ukraine (1996) and Article 6 of the Economic Code of Ukraine (2003), requires the state to guarantee equal protection to all entrepreneurs and not to grant unjustified advantages. The special regime for residents of industrial parks is a form of selective advantage that puts them in a privileged position vis-à-vis their competitors. The principle of payment for special use of natural resources and the "polluter pays"

concept, enshrined in Article 3 of Law of Ukraine No. 1264-XII (1991), is also under threat. If enterprises in industrial parks receive tax exemptions from environmental payments, the financial burden of compensating for the impact on nature is shifted from them to society.

Special regimes may conflict with the requirements of land and urban planning legislation regarding the rational use of territories. Changes in land use and industrial construction must undergo environmental impact assessment procedures and public hearings. A telling example is the 2023 legislative initiative, which proposed to exclude industrial parks from the scope of Law of Ukraine No. 2059-VIII (2017), which was criticised as a violation of international obligations under the Aarhus Convention (SaveDnipro, 2025). The other pole of regulatory discourse is the concept of sustainable development and environmental justice. The United Nations (UN) global goals for sustainable development establish the imperative that industrial growth should be balanced with environmental constraints and community needs. The concept of environmental justice requires that no population group bear a disproportionately high environmental burden as a result of in-

dustrial activity (Sustainability Directory, 2025). This approach involves ensuring equal access to environmental resources and the fair distribution of both environmental benefits and risks among all segments of society.

Empirical analysis of the socio-economic and environmental consequences of industrial parks. The practical application of the legal concept of industrial parks provides an opportunity for empirical verification of theoretical conclusions regarding the relationship between economic efficiency and environmental responsibility of these special territorial regimes. Analysis of the actual consequences of the functioning of industrial parks identified mechanisms of the impact of localised industrial production on the environment and the socio-economic development of territories. Empirical data from five countries – Poland, Germany, China, Vietnam and Ukraine – show significant variability in results depending on the model of legal regulation and the level of control over compliance with environmental standards. The calculations of the dynamics of indicators are presented in Table 2, incorporating the specifics of each indicator and using a weighted average to aggregate data for all parks studied (Formula 1).

Table 2. Dynamics of environmental indicators in industrial parks in five countries (Poland, Germany, China, Vietnam, Ukraine): comparative analysis of changes before and after the launch of production complexes (2016-2024)

No.	Indicator/unit of measurement	Before IP launch	2-3 years after the launch of IP	Δ (abs.; %)
Environmental indicators				
1	Average annual concentration of NO ₂ in the surface layer, $\mu\text{g}/\text{m}^3$	18.4 ± 1.2	22.7 ± 1.5	$+4.3 \mu\text{g}/\text{m}^3$; +23 %
2	Total SO ₂ emissions from industry in the region, thousand tonnes/year	42.8	46.4	+3.6 thsnd.; +8 %
3	Average daily concentration of PM _{2.5} , $\mu\text{g}/\text{m}^3$	21	27	$+6 \mu\text{g}/\text{m}^3$; +28.6 %
4	BOD ₅ of surface water in the discharge area, mg O ₂ /L	19 ± 4	92 ± 12	$+73 \text{ mg}/\text{L}$; $\times 4.8$
5	Concentration of heavy metals (Pb), mg/L	0.012	0.048	$\times 4.0$
6	Average NDVI index (5 km buffer)	0.55	0.44	-0.11 (-20%)
7	Energy intensity IP, MWh/million EUR VAT	138	130	-8 MWh; -6 %
8	Greenhouse gases (Scope 1 + energy infrastructure), million tonnes CO ₂ -eq/year	8.7	9.4	+0.7 million tonnes; +8%

Table 2. Continued

No.	Indicator/unit of measurement	Before IP launch	2-3 years after the launch of IP	Δ (abs.; %)
Socio-economic indicators				
9	Regional RGP, growth %	–	+13 % (PL); +4 % (control)	–
10	Unemployment rate, percentage points	–	–2.4 percentage points (UA); –0.8 percentage points (control)	–
11	Share of local employees in total IP employment, %	–	23 % (CN, VN); 67 % (PL, DE)	–

Notes: before launch – three-year average of the base period; after 2-3 years – average value of the 2nd and 3rd years of the park's operation; Δ represents the change in indicators, calculated as the difference between the values after launch and the baseline indicators before the launch of industrial parks, based on a comparative analysis of official statistical data; exception for SO₂: Germany shows – 5% thanks to the modernisation of ChemiePark Bitterfeld-Wolfen; the data represent the average indicators for all industrial parks studied in five countries; country-specific indicators are indicated in the corresponding rows by country codes: PL (Poland), DE (Germany), CN (China), VN (Vietnam), UA (Ukraine); environmental indicators (rows 1-8) are calculated as a weighted average across all parks, taking into account their size and industrial capacity; IP – industrial parks; PM_{2.5} – particulate matter with a diameter of less than 2.5 micrometres; BOD₅ – biochemical oxygen demand over five days; GVA – gross value added

Source: compiled by the authors based on Vietnam Briefing (2022), Ministry of Natural Resources and Environment of Vietnam (2022), A. Kaniszewska *et al.* (2024), K. Bebkiewicz *et al.* (2024), Eurostat (2025), European Environment Agency (2025a), European Environment Agency (2025b), Vietnam Briefing (2025), Copernicus Atmosphere Monitoring Service (2025), Ukrainian Hydrometeorological Center (n.d.), Chief Inspectorate of Environmental Protection of Poland (n.d.), European Space Agency (n.d.)

Empirical data presented in Table 2 demonstrate a fundamental asymmetry in the impact of industrial parks on various components of the environment and regional development, which correlates with the level of institutional capacity of national legal systems. An analysis of the quantitative indicators calculated using formula (1) shows significant negative changes in environmental parameters: the increase in NO₂ concentration was $\Delta Y = 22.7 - 18.4 = 4.3 \mu\text{g}/\text{m}^3$ (an increase of 23%), PM_{2.5} by $\Delta Y = 6 \mu\text{g}/\text{m}^3$ (28.6%), while a deterioration in water quality was recorded with a 4.8-fold increase in biological oxygen demand ($\Delta Y = +73 \text{ mg O}_2/\text{L}$) and a 4-fold increase in heavy metal concentrations. Atmospheric pollution shows the most consistent negative trends in all jurisdictions studied, reflecting systemic shortcomings in the legal regulation of cumulative emissions from concentrated industrial complexes, while water resources are most vulnerable

to industrial impact in countries with imperfect environmental control mechanisms, confirming the critical role of institutional architecture in ensuring compliance with environmental standards. At the same time, energy indicators show positive dynamics in resource efficiency, which demonstrates the technological advantages of industrial concentration, provided that there is adequate regulatory support. While socio-economic effects are characterised by significant variability in the distribution of benefits between local communities and external beneficiaries, reflecting the degree of inclusiveness of national models for managing special economic regimes and the effectiveness of mechanisms for ensuring local participation in industrial projects.

An ambiguous impact of industrial parks has been identified, confirming the existence of a systemic imbalance between the economic benefits and environmental consequences of special

territorial regimes. In four of the five countries studied (Poland, China, Vietnam and Ukraine), industrial parks have statistically significantly increased the local load on the atmospheric and aquatic environment. The exception was Germany, where strict enforcement of environmental legislation ensured the opposite dynamic. The key factors contributing to the negative environmental impact were the imperfection of environmental monitoring systems, the weakness of institutional mechanisms for monitoring compliance with environmental standards, the lack of effective sanctions for violations of environmental requirements, and the prioritisation of economic indicators over environmental criteria when assessing the effectiveness of parks. The most telling indicator was a 23% increase in nitrogen dioxide concentrations in the lower atmosphere, observed in all jurisdictions except Germany. Sentinel-5P satellite data demonstrate the formation of hot spots of pollution over the industrial areas of the Yangtze River Delta and the Silesian Voivodeship, which correlates with ground measurements by Copernicus Data Space Ecosystem (2018). A significant 29% increase in $PM_{2.5}$ concentrations poses potential health risks to the population in the surrounding areas. Studies of epidemiological consequences in Chinese prefectures with a high concentration of industrial parks show a statistically significant increase in respiratory diseases among children. The overall increase in greenhouse gas emissions by 8% reflects the cumulative effect of industrial concentration, although Korean eco-industrial parks show the opposite trend with a reduction of 2.1 million tonnes of CO_2 equivalent, thanks to systematic industrial symbiosis. A 6% reduction in energy intensity demonstrates the effectiveness of green modernisation policies in developed countries, where the concentration of enterprises stimulates the introduction of energy-efficient technologies and shared infrastructure.

Water resources show the most dramatic signs of degradation, particularly in countries with inadequate environmental monitoring systems. A 4.8-fold increase in biological oxygen demand and a fourfold increase in heavy metal concentrations in Vietnamese industrial zones reflect systemic deficiencies in industrial wastewater treatment. Analysis of water quality downstream from industrial parks in Dong Nai Province revealed a tenfold exceedance of ammonium standards, leading to eutrophication of water bodies and the death of fish stocks (Vietnam Law & Legal Forum, 2010). The Chinese experience shows similar trends: despite official declarations of compliance with standards, independent environmental audits have recorded systematic violations of discharge standards in 67% of the parks surveyed (Hu *et al.*, 2019; Wang *et al.*, 2024). The loss of green cover, reflected in a 20% decrease in the NDVI index, indicates a direct impact of industrial expansion on biodiversity and ecosystem services in adjacent areas. The degradation of natural landscapes is particularly noticeable in the buffer zones around industrial parks, where agricultural land and forests are being transformed into industrial infrastructure.

The German experience remains an exception to the general trend of environmental degradation, where strict enforcement of the Industrial Emissions Directive and national legislation has resulted in a 5% reduction in SO_2 emissions and a 9% reduction in $PM_{2.5}$ emissions. The chemical park in Bitterfeld demonstrates the effectiveness of shared environmental infrastructure: a centralised wastewater treatment system for all residents has ensured that pollutant concentrations are below regulatory limits, and industrial symbiosis has closed more than 20% of resource logistics (United Nations Industrial Development Organisation, 2021). The concentration of enterprises facilitates regulatory monitoring and provides economies of scale for the implementation of

environmental technologies. Similar positive results are demonstrated by Chinese national eco-industrial parks, particularly in Suzhou, where certification to resource efficiency standards is associated with statistically significant reductions in emissions (Gao *et al.*, 2021). These cases demonstrate that, with “green” criteria, IPs can not only avoid worsening environmental performance but also improve it (by reducing emissions at older enterprises through modernisation).

Country-centric analysis of socio-economic effects reveals the complex dynamics of regional development under the influence of special territorial regimes and the uneven distribution of benefits and costs. The Polish case demonstrates the most balanced approach to maximising local benefits from the operation of industrial parks. Thanks to Euro-Park, the municipality of Kobezyce has become one of the wealthiest municipalities in the Silesian Voivodeship: a 13% increase in regional GDP compared to 4% in control areas was accompanied by the creation of 8,500 high-paying jobs, 67% of which went to residents (Krajewska, 2024). The park’s resident companies invested in the modernisation of local infrastructure, including the construction of new schools and medical facilities, which created positive externalities for the entire community. However, the environmental cost of this economic success is reflected in an increase in air pollutant concentrations of $8 \mu\text{g}/\text{m}^3$ and the formation of traffic jams, which reduces the quality of life of the population.

The Chinese experience illustrates the paradox of technological modernisation in the context of large-scale industrialisation and demonstrates the most acute manifestations of social inequality in the distribution of benefits from industrial concentration. Despite the introduction of state-of-the-art cleaning technologies in newly built factories, the overall environmental impact in prefectures with industrial parks continues to grow due to the scale effect. An analysis of thirty

national parks revealed a 12% reduction in energy intensity of production and a 15% reduction in emissions per unit of output, indicating the introduction of resource-efficient technologies (Cao *et al.*, 2022; Zhang *et al.*, 2023). At the same time, absolute emissions have increased due to a threefold increase in production capacity over five years. Social impacts include large-scale labour migration from rural areas, which puts pressure on urban infrastructure and exacerbates housing problems. Only 23% of newly created jobs are filled by residents, while 77% are filled by migrants from other provinces, creating social tensions and undermining the legitimacy of the parks in the eyes of local communities, which bear the environmental burden without receiving proportionate economic benefits.

Vietnam’s experience demonstrates the most striking manifestations of the conflict between economic growth and environmental security in conditions of weak institutional control and corruption in the environmental regulation system. The country’s industrial parks generate 38% of the national GDP and employ 1.2 million people, making them critical for economic development. At the same time, the environmental consequences of their operation are catastrophic due to systemic shortcomings in regulation and control. A systematic shortage of treatment facilities has been diagnosed: 62% of parks do not have adequate treatment infrastructure, and those that do exist often do not function properly due to insufficient funding and maintenance. The 2016 disaster in the Wungang area, caused by the Taiwanese corporation Formosa, resulted in the death of more than 70 tonnes of fish along a 200-kilometre coastal strip and caused 500 million USD in damage to the fishing industry. This incident exposed systemic problems in environmental assessment and monitoring procedures, where large international investors effectively operate outside national environmental

legislation due to meagre penalties equivalent to 1,500 USD, which transnational corporations simply pay as operating expenses (Vietnam Law & Legal Forum, 2010). Social impacts include the forced relocation of fishing communities, loss of traditional livelihoods, and increased morbidity among coastal populations.

The Ukrainian experience of establishing industrial parks is taking place amid economic transformation and convergence with European regulatory standards, creating a unique opportunity to borrow best practices and avoid the most serious mistakes of predecessors. Of the 58 industrial parks registered for 2024, only 9 have moved to the operational stage, which was used for an early assessment of their impact (Institute of Legislation..., n.d.). An analysis of the functioning parks in Bila Tserkva, Kryvyi Rih, and Fastiv shows positive economic results: a 2.4 percentage point reduction in unemployment compared to control communities, the creation of 3,200 jobs, the attraction of 420 million USD in direct investment, and a 31% increase in local budget revenues over two years (Ministry of Economy, Development and Agriculture of Ukraine, n.d.). At the same time, Sentinel-5P satellite monitoring has already recorded local concentrations of air pollutants at 2-3 $\mu\text{g}/\text{m}^3$, indicating the need for stronger preventive measures. The situation with the Sygnivka and Novyi Rozdil industrial parks in the Lviv region, located on the territory of former mining and chemical enterprises with accumulated sulphur production waste, requires significant attention. These parks require comprehensive recultivation before they can be put into operation (Lviv Regional State Administration, n.d.; European Space..., 2025). A positive aspect of the Ukrainian experience is the legislative requirement for mandatory environmental impact assessment procedures for all facilities in parks, although the lack of a cumulative assessment mechanism remains a critical gap, since even if individual

plants comply with the standards, their cumulative impact may create an unacceptable burden on the local ecosystem. In Ukraine, the system for monitoring industrial parks is still being developed: Law of Ukraine No. 5018-VI "On Industrial Parks" (2013) stipulates that the Ministry of Economy of Ukraine shall publish reports on the performance of parks twice a year, but these reports mainly include infrastructure and economic indicators, such as investments attracted, number of jobs created, value of products manufactured and exported, data on land use and financing of the territory development, but do not contain systematic environmental indicators. It would be advisable to add indicators of air quality (concentrations of NO_2 , $\text{PM}_{2.5}$, SO_2), water resources (BOD_5 , heavy metal concentrations), energy efficiency and waste generation, as these parameters are critical for a comprehensive assessment of the environmental impact of industrial parks in line with international practices for monitoring industrial complexes.

The effectiveness of control mechanisms has proven to be a key factor in determining the balance between the economic and environmental outcomes of industrial parks. In the European Union, strict regulatory oversight through Directive of the European Parliament and of the Council No. 2010/75/EU (2010) ensures a high level of environmental protection without relaxing requirements for residents of special territorial regimes. In developing countries, however, weak control leads to massive violations and the creation of zones of environmental lawlessness, where transnational corporations exploit institutional weaknesses to maximise profits at the expense of the environment and the health of the local population.

Special legal regimes for industrial parks do generate tangible economic benefits through the concentration of production, attraction of investment and creation of jobs, but at the same time,

they systematically exacerbate the problem of environmental justice and the uneven distribution of benefits and costs. The scale of negative environmental impact directly depends on the strictness of regulatory monitoring, the availability of mandatory environmental instruments, and the effectiveness of sanctions for violations. These findings empirically justify the need to seek new legal mechanisms that harmonise economic preferences with the principle of environmental responsibility and ensure a fair distribution of benefits and costs between investors and local communities.

Legal mechanisms for harmonising the economic efficiency of industrial parks with the requirements of environmental legislation. Identified contradictions between the special regime of industrial parks and environmental principles require the development of balanced regulatory strategies. It is necessary to ensure a “coalition of norms” – to harmonise special legislation on industrial parks with the general requirements of environmental and economic law. An analysis of ‘points of conflict’ reveals several problem areas. The first is the intersection of the special land regime for industrial parks with the general procedure for environmental impact assessment. Legislation on industrial parks may simplify the allocation of land plots, while the law on environmental impact assessment requires an environmental assessment procedure with public discussion (SaveDnipro, 2025). The second problem is tax incentives that contradict the “polluter

pays” principle. When a company is exempt from environmental tax, the economic incentive to reduce emissions is negated. The third conflict is simplified construction as opposed to urban planning and landscape restrictions.

Global experience offers successful practices for reconciling economic and environmental interests. The concept of eco-industrial parks, according to the standards of the United Nations Industrial Development Organisation (UNIDO), the World Bank (n.d.) and the Organisation for Economic Co-operation and Development (OECD), establishes mandatory sustainability indicators: efficient use of resources, shared infrastructure for waste treatment and recycling, an impact monitoring system, and transparent management with community involvement. Detailed criteria and assessment methodology are stipulated in the World Bank (2025) documents. The Smart-Green Industrial Complexes initiative aims to equip 15 industrial complexes with remote emission monitoring systems using artificial intelligence, create 81 industrial symbiotic networks and build 100 eco-factories by 2025 (International Energy Agency, 2022). The systematisation of legal approaches to the regulation of industrial parks in the jurisdictions studied reveals a correlation between the intensity of regulatory control and the environmental results achieved. Table 3 presents a comparative analysis of the legal instruments used by different states to ensure the environmental responsibility of industrial complexes.

Table 3. Comparative analysis of legal instruments for regulating industrial parks in the context of environmental responsibility

Country	Tax/financial incentives	Environmental requirements (legal)	Monitoring/reporting	Level of eco-control	Key environmental results
Poland	CIT/property benefits in special zones; access to EU infrastructure grants	Full implementation of Directive IED 2010/75/EU; law on impact assessment; MPC for air/water	GIOS ground stations; E-PRTR facility reporting; annual SOE reports	High	NO ₂ +8 µg/m ³ (locally); GDP +13 %; controlled SO ₂ emissions

Table 3. Continued

Country	Tax/financial incentives	Environmental requirements (legal)	Monitoring/ reporting	Level of eco-control	Key environmental results
Germany	Local grants/ loans; minimum tax holidays	BImSchG; BAT references; no exceptions for IP; EU directives fully applicable	Online continuous emission monitoring; Länder Umweltportale; E-PRTR	High	SO ₂ – 5%; PM _{2.5} – 9%; high resource efficiency
China	VAT, land, energy tariffs; modernisation subsidies	National MEE standards; increased requirements in national EIP programmes; regional variability	Irregular; periodic inspections; selective reporting PRTR-like	Average	Energy intensity – 12%; CO ₂ /SO ₂ intensity –15%; absolute emissions ↑
Vietnam	10-year tax holidays; preferential import of equipment	EIA formal; wastewater requirements poorly enforced	Fragmentary; 62% of IPs without effective treatment facilities; irregular inspections	Low	BOD ₅ ×4.8; Pb ×4; Formosa accident 2016
Ukraine	0% income tax up to 10 million roubles; customs privileges; compensation for communications	EIA law (object-based approach); no cumulative EIA for the park	Ministry of Economy half-yearly reports (economy); eco-indicators are not systematic; local monitoring	Average (under development)	Early signals NO ₂ +2-3 µg/m ³ ; unemployment –2.4 percentage points; budgets +31%

Notes: CIT – Corporate Income Tax; IED – Industrial Emissions Directive; GIOS – Chief Inspectorate for Environmental Protection (Główny Inspektorat Ochrony Środowiska); E-PRTR – European Pollutant Release and Transfer Register; SOE – State of Environment report; BImSchG – Federal Immission Control Act (Bundes-Immissionsschutzgesetz); BAT – Best Available Techniques; IP – Industrial Parks; MEE – Ministry of Ecology and Environment; EIP – Eco-Industrial Parks; EIA – Environmental Impact Assessment; EIA – Environmental Impact Assessment

Source: compiled by the authors based on Act the Federal Republic of Germany “On Prevention of Harmful Effects on the Environment Caused by Air Pollution, Noise, Vibration and Similar Phenomena” (2009), Directive of the European Parliament and of the Council No. 2010/75/EU (2010), Law of Ukraine No. 5018-VI “On Industrial Parks” (2013), Act of the Parliament of Poland “On Supporting New Investments” (2018), Judgment of the European Court of Justice in Case No. C-411/17 (2019), K. Cao *et al.* (2022)

Analysis of the data presented in Table 3 reveals a pattern between the level of institutional capacity of a state and the effectiveness of environmental management in industrial parks. Countries with developed legal systems (Poland and Germany) demonstrate the ability to combine economic incentives with strict environmental standards, while jurisdictions with imperfect regulatory frameworks (Vietnam and, to some extent, China) tend to create regulatory gaps that are exploited by private investors. The Polish experience demonstrates the effectiveness of full implementation of European directives in combination with a comprehensive monitoring system through GIOS and E-PRTR, which has ensured the balanced development of industrial parks in

compliance with environmental standards. The practice in Germany is indicative, where the absence of preferential treatment in the environmental sphere stimulates the introduction of the best available technologies as a competitive advantage. German industrial zones often voluntarily exceed the minimum requirements to maintain their reputation for innovation, which ensures equal opportunities and encourages residents to seek green solutions through the application of strict environmental standards even in areas of accelerated development. In Vietnam, on the other hand, the fragmentation of control mechanisms leads to systemic violations of environmental legislation with minimal legal consequences for violators. The Ukrainian experience is at the stage of

forming institutional architecture, which creates a unique opportunity to borrow the most effective regulatory solutions and avoid mistakes typical of countries with less sophisticated legal systems.

In China, the concept of national green industrial parks evaluates parks based on emission intensity and energy efficiency indicators, granting green park status and bonuses to areas that meet the criteria of the Ministry of Ecology and Environment of China (n.d.). The role of jurisprudence is also relevant in overcoming conflicts. The European Court of Justice has repeatedly emphasised that considerations of economic expediency do not exempt states from fulfilling their environmental obligations. In its judgment in Case C-411/17 *Inter-Environnement Wallonie ASBL and Bond Beter Leefmilieu Vlaanderen ASBL v Council of Ministers*, Judgment of the European Court of Justice in Case No. C-411/17 (2019), it confirmed the primacy of environmental law over special regimes. The Aarhus Convention stipulates that the public must have access to information and the right to participate in decision-making on projects that may affect the environment, regardless of their location in a special zone (SaveDnipro, 2025).

Considering the above, a set of regulatory recommendations was proposed to align the special regime for industrial parks with the objectives of environmental legislation. First, it is necessary to integrate “green conditions” into the law on industrial parks. The provision of state incentives should be accompanied by environmental conditions. It is advisable to supplement the law with a provision on the mandatory environmental management plan for the inclusion of the park in the Register and receipt of state support. The plan should include a preliminary impact assessment, measures to minimise damage, and an eco-design for the park. It is also worth defining performance indicators for industrial parks in terms of ecology: the proportion of reused water, the waste

utilisation rate, and the intensity of greenhouse gas emissions per unit of production.

Secondly, introducing the concept of a “corridor of responsibility” for industrial parks in the environmental sphere. This involves expanding the circle of those responsible for cumulative impact: the management company is obliged to ensure compliance with the total maximum permissible emissions for the entire park. Such a model will stimulate internal control and the implementation of joint cleaning solutions. Thirdly, revising the criteria for selecting participants with a view to prioritising environmental protection. Introducing the principle of “environmentally prioritised access”: preference is given to investors who implement climate-neutral technologies. In the context of Ukraine’s rapprochement with the EU, this makes sense due to the Carbon Border Adjustment Mechanism for exports. In addition, increasing transparency and public participation in the functioning of industrial parks. Creation of an open register of environmental information on industrial parks and an obligation for management companies to hold annual public hearings. A substantial element in balancing interests is mechanisms to compensate local communities for additional environmental burdens. Creation of targeted community environmental funds, to which a certain percentage of residents’ environmental taxes is directed to finance environmental restoration measures. Lastly, the introduction of a mandatory legislative audit procedure for all draft regulations concerning industrial parks for compliance with the principles of sustainable development and environmental justice.

The proposed measures reduce the tension between the economic efficiency of industrial parks and their environmental and social legitimacy. Balance can be achieved by linking preferences to the fulfilment of environmental criteria, transparent management and community involvement in control, and the redistribution of

part of the economic benefits to mitigate environmental damage. The analysis confirmed the initial hypothesis: the privileged status of industrial parks is in latent conflict with the principles of legal equality and environmental justice, but this conflict can be resolved through balanced regulatory changes. The proposed strategies will harmonise the economic viability of industrial parks with environmental and human rights requirements, transforming them into a model of responsible industrial development.

Discussion

The results of the study reveal a systemic imbalance between economic efficiency and environmental responsibility in the operation of industrial parks, as evidenced by a significant deterioration in air quality, water resources, and biodiversity in most of the jurisdictions studied. The 23% increase in nitrogen dioxide concentration and 29% increase in PM_{2.5} particulate matter pose critical health risks to the population of neighbouring areas, which is consistent with the findings of international studies on the negative impact of industrial concentration on air quality. The study by S.-F. Lo *et al.* (2023) provide empirical confirmation of the identified pattern regarding the factors of eco-industrial park efficiency through a comprehensive analysis of 133 industrial complexes. The key determinants of success identified by the authors – energy management systems, mechanisms for inter-enterprise resource sharing and the provision of social services – are consistent with the results regarding the relationship between the effectiveness of regulatory mechanisms and the environmental performance achieved, confirming the conceptual conclusion about the critical importance of high-quality legal regulation for the successful harmonisation of economic efficiency with the principles of environmental responsibility. These results correlate with the results of a study by B. Nguyen and

N. Le (2025), who used a combined approach of Data Envelopment Analysis and Analytic Hierarchy Process to assess the eco-efficiency of 35 industrial parks in Vietnam. The study determined that environmental performance, particularly energy efficiency and waste management, along with social indicators, are decisive in achieving eco-efficiency. The findings of their study confirm the correlation between the level of institutional capacity of the state and the effectiveness of environmental management of industrial complexes. In particular, the Khanh Phu Industrial Park, which received the highest eco-efficiency rating, demonstrated balanced performance across all criteria, consistent with the German experience of reducing emissions through strict enforcement of environmental legislation.

The comprehensive framework for carbon neutrality in industrial parks presented in the study by X. Wei *et al.* (2022) contributes to analysis of technological and economic mechanisms of decarbonisation in industrial complexes. The authors developed a hydrogen-based electrothermal system with an integrated mixed-integer linear programming model to optimise energy processes. The results of the study show that complete carbon neutrality of an industrial park in Shanghai would cost 8.61 billion USD, while a compromise scenario with a 61% reduction in emissions would cost 3.95 billion USD. These findings confirm the conceptual position on the need for a balanced approach to achieving environmental goals, considering economic constraints and technological readiness. The study determined that optimal economic efficiency is achieved with a 95% share of hydrogen in the energy mix, which correlates with the identified patterns regarding the critical role of energy modernisation in the transformation of industrial parks.

A key aspect is the comparison with the study by L. Dong *et al.* (2022), who developed an innovative methodology for dynamic monitoring and

evaluation of the performance of eco-industrial parks by combining the ecological network method with ecological and economic analysis. Their study of the Kawasaki eco-town in Japan demonstrated that effective tracking of industrial symbiosis development provide an accurate assessment of the contribution of environmental initiatives to the overall performance of the park. This approach correlates with the findings on the need for a cumulative assessment of the environmental impact of industrial parks, since even if individual enterprises comply with regulations, their cumulative impact can create an unacceptable burden on the local ecosystem. The results of the atmospheric pollution study are confirmed by the work of A. Phan and H. Fukui (2024) analysed variations in nitrogen dioxide levels in Ukraine during the COVID-19 pandemic and the armed conflict with Russia. The authors used Sentinel-5P satellite data and machine learning to create a baseline NO₂ time series that covered meteorological variability. Their conclusions that industrial activity and transport emissions are the dominant factors in NO₂ pollution are consistent with the identified patterns of increasing pollutant concentrations around industrial parks. In particular, the NO₂ levels recorded by the authors in the industrial areas of the Yangtze River Delta and the Silesian Voivodeship correlate with Sentinel-5P satellite data on the formation of hot spots of pollution over industrial complexes.

The evolutionary approach to the development of eco-industrial parks, presented in the study by L. Mortensen *et al.* (2024), reveals the importance of middle-out processes in the formation of successful industrial symbioses. An analysis of more than ten years of development of the Danish eco-industrial park GreenLab demonstrates three key phases of evolution: pre-emergence, emergence and testing, each of which is characterised by an increase in “networking” between participants. The conceptual contribution of the authors is the role of the curator in the development of

eco-industrial parks, who ensures coordination between different stakeholders and the creation of a shared vision through careful management of planning and implementation processes. These findings confirm the identified pattern of the dominant influence of institutional capacity on the effectiveness of environmental management of industrial complexes and the need for multi-stakeholder processes to ensure sustainable development.

Positive exceptions in the German experience, where SO₂ emissions were reduced by 5% and PM_{2.5} by 9%, find theoretical justification in a study by J. Choi and J. Lee (2023) on Smart-Green Industrial Complexes in South Korea. The authors demonstrated that companies in designated SGICs showed a 6.13% increase in productivity, a 6.88% increase in exports, and an 8.91% increase in labour productivity thanks to the modernisation of energy infrastructure and the introduction of resource-efficient technologies. The Korean experience confirms the possibility of achieving synergy between economic efficiency and environmental responsibility through the application of comprehensive smart automation and green production programmes, which is in line with the proposed mechanisms for integrating green conditions into the system of economic incentives. The identified uneven distribution of socio-economic benefits correlates with the results of N. Nirwan *et al.* (2024), who studied micro-level pollution hotspots and assessed air quality degradation in India's National Capital Region. The study determined significant variations in pollution levels across the region, with nitrogen dioxide concentrations reaching their highest levels in the winter and post-monsoon seasons due to a combination of meteorological conditions and anthropogenic activities. Their findings on the spatial heterogeneity of the impact of industrial pollution sources are consistent with the asymmetry found in the distribution of economic benefits from the operation of industrial parks. X. Hu *et al.* (2024)

provide empirical evidence of the effectiveness of industrial symbiosis policies through an analysis of the impact of National Demonstration Eco-Industrial Parks on carbon emission intensity in 204 Chinese cities. The authors found that the eco-industrial demonstration park (EIDP) policy significantly reduces carbon emission intensity by 395 tonnes per million yuan, mainly due to the transformation of the industrial structure and an increase in the share of the tertiary sector. These results confirm theoretical conclusions about the mechanisms of harmonising economic efficiency with environmental responsibility through balanced structural changes.

A systematic review by I. Alriansyach *et al.* (2024) of methodologies for assessing the productivity of green industrial areas provides valuable context for analysis of diversity of approaches to studying industrial complexes. The authors found that many researchers examined the productivity of green industrial areas by reviewing environmental and economic aspects, using mainly modelling and case studies, while social aspects were studied much less frequently. This asymmetry in research approaches corresponds to the identified need to develop more balanced assessment methodologies that consider not only the economic and environmental but also the social impacts of industrial parks. The practical challenges of implementing eco-industrial parks in developing countries were examined in detail by T. Thanh *et al.* (2023) using the example of assessing the readiness of the Vietnamese industrial park Thang Long II for transformation into an eco-industrial complex. The study identified key institutional barriers, including the lack of incentive policies, specific implementation guidelines and flexible environmental regulations, which correlate with the identified problems of insufficient legal regulation of industrial parks in the Ukrainian context. The study highlights the importance of active stakeholder engagement, a

comprehensive management system and a clear division of responsibilities among participants, which is consistent with the findings regarding the dominant influence of institutional capacity on the effectiveness of environmental management in industrial complexes.

At the same time, a study by H. Hong and A. Gasparatos (2020) examines the institutional challenges of developing eco-industrial parks. The study identified key barriers to effective implementation, including gaps in compliance with standards and a disconnect between planning and implementation, which correlates with the identified problems of insufficient legal regulation in the Ukrainian context. The researchers noted the limited scale of implementation and gaps in environmental assessment systems, which confirm the need for a comprehensive approach to monitoring and cumulative assessment of the impact of industrial parks on local ecosystems. The results of the study are significant for determination of the legal nature of the territorial localisation of economic activity and the formation of effective mechanisms for state regulation of industrial development. The identified constant conflict between the privileged regime of industrial parks and the principles of environmental justice requires a comprehensive legal solution through the integration of green conditions, the introduction of cumulative liability mechanisms, and the strengthening of public control instruments. The proposed recommendations create a methodological basis for the transformation of traditional industrial parks into eco-industrial complexes that meet the modern requirements of the circular economy and climate neutrality, while ensuring a fair distribution of economic benefits between investors and local communities.

Conclusions

Research into the legal regulation of industrial parks in the context of harmonising economic

functionality and environmental responsibility reveals the complex legal nature of special legal regimes and their place in the modern legal space. An analysis of the evolution of legal approaches over seven decades demonstrates a fundamental transformation of the regulatory paradigm from the exclusively economically oriented models of the 1950s-1970s to the complex legal regimes of today, which integrate the principles of sustainable development, climate neutrality and social justice. The study established that each stage of evolution is characterised not only by a quantitative increase in regulatory instruments, but also by a qualitative transformation of the legal logic of regulation, with a gradual transition from fragmentary consideration of environmental aspects to their systematic integration into the legal architecture of special economic regimes.

An empirical study of five jurisdictions revealed a systemic imbalance between the economic benefits and environmental impacts of industrial parks. Statistical analysis showed a significant deterioration in environmental indicators in the four countries studied (Poland, China, Vietnam and Ukraine), including a 23% increase in nitrogen dioxide concentrations, a 29% increase in PM_{2.5} by 29%, and a catastrophic degradation of water resources with a fivefold increase in biological oxygen demand. At the same time, positive exceptions were found in Germany, where strict environmental control ensured a 5% reduction in sulphur dioxide emissions and a 9% reduction in particulate matter. A comparative analysis of legal instruments confirmed a direct correlation between the level of institutional capacity of the state and the effectiveness of environmental management of industrial complexes. A country-specific analysis of socio-economic effects revealed an uneven distribution of benefits and costs, with only 23% of newly created jobs

in developing countries going to residents, while the environmental costs are carried primarily by local communities.

The results obtained are of conceptual importance for analysis of legal nature of the territorial localisation of economic activity and its relationship with the basic principles of constitutional, economic and environmental law. The study confirms the existence of a latent conflict between the privileged regime of industrial parks and the fundamental principles of legal equality, environmental justice and the “polluter pays” concept. At the same time, the study proved that this contradiction can be resolved through balanced regulatory changes, including the integration of green conditions into the system of economic incentives, the introduction of a cumulative liability mechanism and the strengthening of public control instruments. The study established that the effectiveness of control mechanisms is a key factor determining the balance between the economic and environmental results of the functioning of special territorial regimes. Promising areas for further research include analysing the effectiveness of the proposed legal mechanisms after their practical implementation, studying the legal aspects of international green technology transfer within the framework of special economic regimes, and developing a methodology for integrated environmental assessment for industrial clusters.

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Conflict of Interest

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Локалізація як правовий феномен: індустріальні парки між економічною функціональністю та екологічною відповідальністю

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Анотація

Метою дослідження було встановлення правової сутності індустріальних парків як інструменту територіальної локалізації промислової діяльності та формування механізмів узгодження їх спеціального правового статусу з принципами екологічної відповідальності через комплексний аналіз міжнародної практики. Дослідження було здійснено на основі порівняльно-правового аналізу нормативних режимів індустріальних парків у п'яти країнах та емпіричного аналізу їх соціально-економічних і екологічних наслідків, а також аналізу супутникових даних дистанційного зондування та офіційної екологічної статистики. Концептуальний аналіз виявив послідовну еволюцію правових підходів протягом семи десятиліть від виключно економічно орієнтованих моделей 50-70-х років до комплексних правових режимів сучасності, що інтегрували принципи права, сталого розвитку та кліматичної нейтральності. Емпіричне дослідження Польщі, Німеччини, Китаю, В'єтнаму та України продемонструвало системний дисбаланс між економічними перевагами та екологічними наслідками функціонування спеціальних територіальних режимів: було зафіксовано статистично значуще зростання концентрації діоксиду азоту на 23 %, твердих частинок на 28,6 % та катастрофічне п'ятикратне збільшення біологічного споживання кисню у водних ресурсах. Водночас у Німеччині, де

добре розвинена інституційна система та налагоджений суворий екологічний контроль, було досягнуто значне скорочення викидів сірчистого ангідриду на 5 % та твердих частинок на 9 % відсотків. Було встановлено пряму кореляційну залежність між рівнем інституційної спроможності держави та ефективністю екологічного управління промисловими комплексами, а також виявлено нерівномірність розподілу соціально-економічних вигод, коли лише 23 % новостворених робочих місць у країнах, що розвиваються, дістається місцевим мешканцям. Результати підтвердили існування латентного конфлікту між привілейованим правовим режимом індустріальних парків та фундаментальними принципами правової рівності й екологічної справедливості, однак довели можливість його розв'язання через збалансовані нормативні зміни, включаючи інтеграцію зеленої умовності в систему економічних стимулів та запровадження механізмів кумулятивної відповідальності

Ключові слова: адміністративно-правові засади; спеціальні правові режими; екологічна справедливість; сталий розвиток; правові принципи організації та функціонування індустріальних парків



Research on the adaptation of Ukrainian legislation to international norms and principles based on justice and legitimacy

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Abstract

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This article aimed to examine the effectiveness of legal adaptation processes in Ukraine in adapting to the standards of international justice and legitimacy in the context of European integration commitments. The research was carried out by applying a set of research methods (comparative legal, systemic, institutional, statistical, and content analysis), which was implemented in three stages: analysis of conceptual and legal foundations, empirical assessment of sectoral reforms, and examination of institutional mechanisms for ensuring legitimacy. The information and empirical base of the research was the data that by the end of 2024 Ukraine fulfilled 81% of its commitments under the Association Agreement with the European Union, the level of citizen satisfaction with the quality of administrative services has increased to 94.7%, and the level of corruption in this sphere has decreased from 24% in 2014 to 3.8% in 2024. The analysis of 158 judgments of the European Court of Human Rights against Ukraine in 2024 testified to the preservation of systemic problems in ensuring property rights and providing procedural guarantees, while positive dynamics are observed in preventing

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torture. The most adapted spheres of legal regulation were anti-corruption policy (the launch of activity of the High Anti-Corruption Court of Ukraine, which issued 245 judgments since the beginning of its activity) and digitalisation of legal proceedings (the number of electronic documents increased from 548,813 in 2022 to 3,186,546 in 2024). At the same time, structural disproportions were found in fulfilling the tasks of adaptation at different levels of power: the indicators of performance reached 79% in the Cabinet of Ministers of Ukraine, 74% in the Verkhovna Rada of Ukraine, and only 62% in other bodies of state power. The practical significance of the study consists in the possibility of using its results by the Government Office for the Coordination of European and Euro-Atlantic Integration for improving the system of monitoring the European integration processes; by the committees of the Parliament – for strengthening the legislative framework for legal adaptation; by the judicial authorities – for bringing the law enforcement practice closer to European standards; by international organisations and the expert community – for assessing the effectiveness of legal reforms in candidate countries for EU membership

Keywords: legal reforms; European integration; judicial system; anti-corruption bodies; institutional mechanisms; justice

Introduction

Since the granting of Ukraine the status of a candidate for European Union membership (23 June 2022) and the formal launch of accession negotiations at the Intergovernmental Conference (25 June 2024), the process of harmonising Ukrainian legislation with international standards of justice and legitimacy is underway. The launch of the Ukraine Facility mechanism for the period 2024-2027 created opportunities for financial support for structural reforms, while at the same time imposing higher requirements for the quality of legal transformation (European Council..., 2022; Regulation of the European Parliament and of the Council Establishing the Ukraine Facility No. 2024/792, 2024). The relevance of scholarly research into these processes is determined by the need for a theoretical understanding of the mechanisms for implementing European standards under conditions of a simultaneous defensive war and accelerated European integration reforms, which together shape a specific context of state-building. Despite progress in the formal transposition of European

law, official assessments by the European Union record a “compliance gap” between normative changes and their practical implementation. The presence of the indicated gap is confirmed by the requirement to enhance the rule of law, consolidate anti-corruption efforts, improve the quality of impact assessment and the inclusiveness of public consultations (European Commission for Democracy through Law No. 9322, 2023). The key theoretical and practical problem is the entry of principles of justice and democratic legitimacy into all stages of the harmonisation process, which is called to provide not only formal adaptation of Ukrainian legislation to the *acquis communautaire*, but also a real positive shift for Ukrainian citizens in the quality of legal regulation and effectiveness of justice.

The problem of harmonisation of Ukrainian legislation with international standards is explored in the framework of legal science, and this problem has a broad sectoral and institutional content. In the sphere of labour law, U. Beck (2024) has shown the need to balance

productive and protective functions of labour law as the basis for reforming national legislation in the context of European integration. In research, the author comes to the conclusion that the constitutive basis for the realisation of the right to work should be the priority provision of the maximum volume of labour rights determined by law, as well as the optimal conditions for their realisation. A detailed analysis of the issue of occupational safety and health was conducted by S. Petrovska and M. Petrovskiy (2023). The authors of this scientific study note the critical state of the implementation of key European directives in Ukrainian legislation. The scientists pointed out the fragmented implementation of the provisions of the directives due to the incomplete transposition of norms and substantiated a conceptual approach to harmonisation, which involves the transfer of the general legislative structure of the European Union (EU) in the sphere of safety and health.

Legal and technical issues of adaptation processes were investigated in the research of V. Ryndiuk and O. Kuchynska (2024), who, on the conceptual level, singled out adaptation processes within the Association Agreement framework and implementation of the EU *acquis* within the framework of negotiations on the accession of a candidate state. The authors demonstrated that these processes are based on different legal foundations and employ specific legal and technical methods of implementation. Principles of legislative drafting in the context of adapting national legislation were comprehensively examined by L. Nikolenko (2023), who systematised the fundamental principles of the EU rule of law, legality, direct effect of norms, transparency, and proportionality. The scholar also developed principles specific to the Ukrainian context, including intercultural adaptability, anti-crisis legislative drafting, and social compensation.

The digital sphere became the subject of in-depth legal analysis in the studies of L. Valko (2024)

and O. Rossylina (2024). L. Valko (2024) demonstrated partial compliance of the Law of Ukraine No. 3321-IX “On Digital Content and Digital Services” (2023) with European standards, while identifying critical gaps in the regulation of digital content updates and in the application of the principle of a “reasonable time”. O. Rossylina (2024) identified the fragmented nature of legislation in the field of electronic health data protection and substantiated the need to establish a unified digital platform for the effective processing of medical data in accordance with Regulation of the European Parliament and of the Council No. 2016/679 (2016). The institutional mechanisms of legislative adaptation were the subject of a comprehensive analysis in the research of I. Lisina (2024) proved the multi-level nature of adaptation processes, which include systemic transformations of the legal system and public authorities, as well as technical adaptation of legislative acts. The researcher showed the importance of coordination mechanisms, in particular, the role of the Ministry of Justice of Ukraine and the Interagency Coordination Council on Legislative Adaptation.

The international aspects of adaptation processes are the subject of research by authoritative scientists. P. van Elsuwege (2025) grounded the role of the EU-Ukraine Association Agreement as an instrument of integration without membership, which, from a gradual mechanism of economic integration, has developed into a legal mechanism of accelerated preparation for full membership after granting Ukraine the status of an EU candidate. R. Dragneva and K. Wolczuk (2024) showed the transformative potential of the Association Agreement in the context of a full-scale Russian invasion, in particular, its role in structuring relations during the long-term pre-accession negotiation process. A. Gawrich and D. Wydra (2024) revealed the dynamics of the initial accession process under martial law, which demonstrates the complexity of simultaneous protection of the rule

of law and democracy and providing a prospect of membership. Despite the wide scope of research, the problems of conceptual substantiation of criteria of justice and legitimacy of legislative adaptation processes, as well as mechanisms for evaluating the effectiveness of legal transformations in the aspect of democratic legitimacy and social justice, are poorly understood.

This study aimed to analyse the efficiency of mechanisms for adapting Ukrainian legislation to international standards of justice and legitimacy in the context of European integration obligations. The objectives of the study were to analyse the conceptual, legal, and institutional frameworks for adapting Ukrainian legislation to international standards of justice and legitimacy; to empirically analyse the process of bringing sectoral legislation in line with international standards, and to evaluate the effectiveness of the existing mechanisms for ensuring justice in the application of laws, and to elaborate scientifically grounded proposals for optimising the system of legal adaptation in terms of increasing its efficiency and bringing it in line with European standards.

Materials and Methods

The conceptual framework of the study was based on the theory of legal transformations and the processes of European integration, which made it possible to consider legislative adaptation as a multilevel process of interaction between national and international legal systems. The theoretical framework was composed of the categories of the rule of law, democratic legitimacy, and justice fairness developed within the European legal doctrine. The study used theoretical approaches to evaluate the effectiveness of legal reforms in terms of protecting human rights and the functioning of democratic institutions.

The research was carried out in three stages. The first stage consisted of analysing conceptual and legal frameworks through the prism of

constitutional provisions, including the Constitution of Ukraine (1996). International treaties were analysed, in particular the European Convention on Human Rights (1950) and the Association Agreement (2017). Documents of the OSCE were also examined, including the Copenhagen Document (Organization for Security..., 1990). Strategic documents of European integration policy covered the Action Plan for the implementation of Resolution of the Cabinet of Ministers of Ukraine No. 1106 (2017c), No. 759 (2017b), and No. 447 (2017a). At this stage, the comparative legal method was used to establish the correspondence of national constitutional frameworks to international standards of justice and legitimacy, and the systemic method to analyse the hierarchy of legal norms in the context of European integration obligations.

The second stage was an empirical study of sectoral changes in criminal, civil and administrative legislation. The normative base of the study consisted of the Law of Ukraine No. 2341III (2001), No. 1906-IV (2004), and No. 4651-VI (2012), among others. The statistical base of the study included the analytical review of the Supreme Court of Ukraine (n.d.) on the state of civil proceedings, materials of the State Judicial Administration of Ukraine (2025). Information base of the National Anti-Corruption Bureau of Ukraine (2024) and the National Agency on Corruption Prevention (n. d.) were used. The judicial practice was based on 158 judgments of the European Court of Human Rights (2024). Two key decisions of the Constitutional Court of Ukraine concerning the enforcement of court judgments and the appointment of heads of state bodies were examined (Constitutional Court of Ukraine, 2019; Decision of the Constitutional Court of Ukraine No. 19, 2024). Rulings of the Supreme Court of Ukraine (2023) in cases concerning legal principles, as well as reports of the High Anti-Corruption Court of Ukraine (2025), were also analysed.

At this stage, quantitative methods were used to process numerical indicators of compliance with adaptation commitments; the institutional method was applied to analyse the functioning of specialised bodies; and content analysis was employed to systematise judicial decisions in order to identify trends in law enforcement and to assess the effectiveness of sectoral reforms.

The third stage was the study of institutional mechanisms for ensuring legitimacy by analysing the activities of parliamentary committees, executive coordinating bodies, and the public consultation system. The source base of the study consisted of reports of the Committee on Ukraine's Integration into the European Union (2024), materials of the Secretariat of the Cabinet of Ministers of Ukraine (2024), analytical materials of the European Commission (2023), and the Report of the High Council of Justice of Ukraine No. 1157 (2025). The conclusions of the European Commission for Democracy through Law No. 9322 (2023) and reports of the GRECO (2024) were analysed. Additional sources included materials by N. Boyko (2024) and reports of the OECD (2024). At this stage, the institutional method was applied to analyse the functioning of European integration coordination mechanisms, the systemic method to examine interrelations between different levels of government, and content analysis of international recommendations to assess the effectiveness of mechanisms for ensuring the democratic legitimacy of legal transformations and to identify directions for their improvement.

Results

Conceptual and legal foundations for adapting Ukrainian legislation to international standards of justice and legitimacy. The Ukrainian legislation has developed a constitutional basis for the implementation of international standards, enshrining in it the principle of the precedence of ratified international treaties over

national legislation. Article 9 of the Constitution of Ukraine (1996) reads that international treaties concluded by Ukraine in force are part of national legislation. At the same time, the conclusion of international treaties that contradict the Constitution of Ukraine is possible only after making relevant amendments to the Constitution. This procedure not only formalises the entry of international legal norms, but also prepares for their real entry into the national law enforcement system. In the national legal field, the judicial and legislative practice developed a number of principles of application of international law in the national legal order. Resolution of the High Specialized Court of Ukraine for Civil and Criminal Cases No. 13 "On the Application of International Treaties of Ukraine by Courts in the Administration of Justice" (2014) laid down the general principles of judicial application of international norms, which introduced the priority of international treaties over national legislation. The most important was the decision of the Constitutional Court of Ukraine (2019) by which a constitutional mechanism was created for the automatic and unconditional execution of court decisions in cases in which the defendant is a state or state authority. This decision solved the systemic problem of non-execution of decisions of national courts, repeatedly revealed by the European Court of Human Rights in cases against Ukraine. The legislative consolidation was carried out in the Law of Ukraine No. 1906-IV "On the International Treaties of Ukraine" (2004), which stipulates that, if an international treaty establishes rules different from those contained in the relevant act of national legislation, the rules of the international treaty apply.

The international legal basis for the principles of justice and legitimacy is made up of a complex of universal and regional legal instruments that set general standards for national legal systems. The Resolution of the United Nations General Assembly No. 217 (1948) in Articles 7-11 lays

down the foundations of justice, proclaiming the right of all people to equal protection of the law without any discrimination and a fair and public hearing by an independent and impartial tribunal. United Nations General Assembly Resolution No. 2200A (1966) details the principle of justice in Article 14, where the principle of presumption of innocence, the right to defence, publicity of proceedings, reasonable time of proceedings and other due process of law elements are defined. The European Convention on Human Rights (1950) instituted the most advanced legal system for the protection of the right to a fair trial, under Article 6, which details the adversarial procedure, independence and impartiality of the court, a reasonable time of proceedings and the execution of judgments. The European Court of Human Rights case law develops and refines these standards, constructing a dynamic set of legal principles that evolve according to the modern-day justice challenges and considering the peculiarities of the national legal systems of the different States Parties to the Convention.

The principle of legitimacy in international law is closely related to the concept of the rule of law and a democratic basis for the exercise of public authority. The Copenhagen Document of the OSCE (Organization for Security..., 1990) defines the major standards for the legitimacy of the legal proceedings, through the presence of free and fair elections, participatory right of the public to the state decision-making process, transparency of the public administration, accountability of public officials before the civil society and strict observance of the rule of law as a basis for the proper functioning of democratic institutions. These international standards form an integral whole where justice implies an impartial and equal application of the law in relation to any given person, regardless of the social status of the individual, while legitimacy implies the correspondence of the legal decision to the will of the

people, the constitution and international obligations of the state. The interconnection between justice and legitimacy manifests itself in the fact that fair legal decisions meet greater support of the population, and legitimate procedures of decision-making create the conditions for a just solution to legal disputes.

One of the most important documents that fixed the commitments of Ukraine in bringing its national legislation in line with European standards of justice and the rule of law was the Association Agreement (2017). In the preamble and general provisions of the Agreement, the parties state that they respect democratic principles, human rights and fundamental freedoms as well as the rule of law, which are common values, and which constitute the essence of the Association between Ukraine and the EU. Article 2 of the Agreement clearly states that democracy, the rule of law, respect for human rights and fundamental freedoms are essential elements and fundamental principles underlying the domestic and foreign policies of the parties and constitute part of the basis of the domestic and foreign policies of the parties and are essential for deepening their co-operation. Chapter III of the Agreement, Justice, Freedom and Security, contains the concrete commitments of Ukraine to improve the rule of law, to ensure the proper functioning of the judicial system, increase its effectiveness, its independence and impartiality, and to fight against corruption at all levels. In the annexes to the Agreement, there is a list of acts of the *acquis communautaire* which shall be gradually implemented into the national legislation and which sets clear perspectives of the legal adaptation with defined terms and indicators of their implementation.

The implementation of the provisions of the Association Agreement is implemented on the national level through a package of strategic documents and institutional mechanisms. The main programme document is the Resolution of the

Cabinet of Ministers of Ukraine No. 1106 (2017c), in which concrete tasks, indicators and terms of implementation of provisions in all spheres of social life are defined. Institutional provision is ensured by the Resolution of the Cabinet of Ministers of Ukraine No. 759 (2017b), which provides organisational, expert-analytical, and information support of the activity in the sphere of European integration. The monitoring and evaluation of the effectiveness of the implementation is carried out in accordance with the Resolution of the Cabinet of Ministers of Ukraine No. 447 (2017a), which approved the procedure for planning, reporting and control of the implementation of the provisions through a comprehensive information system on the Single Web Portal of the Executive Authorities. Since the EU candidate status recognition for Ukraine in June 2022, the coordination mechanisms have been enhanced by the creation of special action plans at the level of negotiation chapters, providing for the implementation of legal reforms by the coordinated activity of the executive bodies.

The dynamics of the interpretation of the principle of justice in the Ukrainian legal system illustrate the gradual incorporation of European legal standards by the national judiciary and their assimilation into the Ukrainian law enforcement practice. In the process of reviewing judicial decisions of lower courts, the Supreme Court of Ukraine has been increasingly applying the principle of justice as the main criterion of legitimacy and reasonableness of judicial decisions, the interpretation of justice in the context of observance not only of the formal procedure but also of the achievement of material justice in each specific case. The decision of the Supreme Court of Ukraine of 14 March 2023, in the case on determination of the ultimate beneficial owner, is an example thereof: in this case the Supreme Court of Ukraine obliges to conduct a full analysis of the circumstances of the case and apply

proportionality criteria when assessing the reasonableness of decisions of the regulatory authorities (Supreme Court of Ukraine, 2023). The three-stage European proportionality test, which includes analysis of the legitimacy of the aim of interference with human rights, the necessity of interference in a democratic society and the proportionality of the measures applied to attain the objective, is gradually applied in Ukrainian judicial practice. For example, in the decision of the Supreme Court of Ukraine of 21 March 2023, in the case on the “extended arm” principle in the export of rapeseed, elements of the European proportionality test were applied in the assessment of justification of tax adjustments in international taxation (Supreme Court of Ukraine, 2023). The Constitutional Court of Ukraine in the case of A. Sytnyk has consolidated the proportionality principle as an inherent element of the rule of law and a required element of constitutional revision in relation to any normative legal acts, which impose restrictions on human rights and freedoms, and has also emphasised that the appointment of the heads of state bodies must be carried out in accordance with the requirements of the Constitution of Ukraine and not contradict the principle of the separation of powers (Decision of the Constitutional Court of Ukraine No. 19, 2024).

The mechanisms of legitimacy of legal acts in Ukraine are based on the wide involvement of the public and responsible institutions at all stages of the legislative process. Resolution of the Cabinet of Ministers of Ukraine No. 996 (2010) determines the procedure for mandatory public discussion of the draft normative legal acts through their publication on the official websites of the Government, public hearings, electronic consultations, as well as other forms of participation of citizens in the preparation of administrative decisions. In each central executive body, the public councils, as permanent advisory bodies, operate, which consist of representatives of the relevant

civil society organisations, expert centres, professional associations and other civil society institutions. The procedures of regulatory impact assessment, which are introduced in relation to the draft normative legal acts in the sphere of economic activity, stipulate the need for mandatory analysis of the consequences of regulation for business and citizens, publication of the results and taking into account the received comments. The parliamentary control over the legislative adaptation is carried out by the specialised Committee on Ukraine's Integration into the European Union (n.d.), which systematically monitors the compliance of all draft laws with the European law and provides motivated conclusions on the necessary changes to bring them in line with the EU *acquis communautaire*. Thus, in 2024, this Committee carried out intensive expert work: in total, it held 39 meetings, considered 594 draft laws, was a lead committee for 27 of them and initiated three resolutions (Committee on Ukraine's Integration into the European Union, 2024). The Committee presented its proposals to the Parliament on how to bring draft laws into conformity with European law, and in most cases, Parliament was obliged to amend the draft laws to make them compatible with EU Directives and Venice Commission opinions. However, the Verkhovna Rada of Ukraine (n.d.) considered only 27 conclusions of the Committee, which shows that it is necessary to consolidate the institutional potential of the European integration committee and to make mandatory consideration of its decisions in the legislative process.

The legal estimation of the effectiveness of the existing constitutional and legal adaptation mechanisms testifies to the existence of significant successes and systemic problems in the legal regulation of European integration processes. The positive aspect includes the creation of a normative framework for the application of international standards: the Constitution of Ukraine defines the

priority of international treaties concluded and ratified, sectoral laws determine the procedure for legislative adaptation, and state programmes have deadlines and executors. By the end of 2024, Ukraine fulfilled about 81% of its obligations under the Association Agreement, which testifies to the irreversibility and effectiveness of reforms, even in the conditions of war (Boyko, 2024).

However, the analysis of the legal regulation of adaptation processes has revealed a number of systemic flaws that reduce the efficiency of European standards implementation. The studies of legal collisions demonstrate the insufficient settlement of the norms hierarchy in cases of collision between national legislation and international treaties ratified by Ukraine. Article 9 of the Constitution of Ukraine (1996) sets a general rule for incorporating international treaties into national legislation, Law of Ukraine No. 1906-IV (2004) sets precedence of international treaties over national legislative acts (Art. 19), but there are no procedural mechanisms to settle the collision between constitutional norms and international obligations. The practical manifestations of the legal uncertainty are reflected in the European Court of Human Rights case law. According to the ECtHR, a violation of the Convention was committed due to the delayed repeal of the obsolete provisions of national legislation that do not meet the European standards of protection of property rights (Judgment of the European Court of Human Rights, 2018; Judgment of the European Court of Human Rights, 2019). The analysis of monitoring reports of international organisations proves the systemic character of the problem. Thus, in 2021 to 2024, the Compliance Committee to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (2024) observed the discrepancies in access to information, public participation and access to justice, which proved the incompleteness of

harmonisation of the national procedures with international obligations (United Nations Economic Commission for Europe, 2024). The institutional analysis of the coordination of European integration processes demonstrated the fragmentation of executive power. Thus, in 2024, the European Commission directly pointed to the duplication of powers in the law enforcement bloc, where due coordination between agencies was missing, and the use of exceptions led to a lacuna in the law. For example, institutional fragmentation was caused by the absence of single responsibility for the implementation of Directive of the European Parliament and of the Council No. 2001/42/EC "On the Assessment of the Effects of Certain Plans and Programmes on the Environment" (2001), which required the establishment of an additional inter-agency working group and caused delays in the fulfilment of adaptation obligations. The regional aspect of the problem is the inadequate coordination of actions between the central bodies of executive power and local selfgovernment bodies, which may lead to unequal application of the European standards at different territorial levels. This makes the strengthening of vertical coordination mechanisms necessary in order to ensure uniform law-enforcement practice across all the regions of Ukraine (European Commission, 2024).

The striving for prompt implementation of the plans of adaptation has exerted a negative influence on the quality of legal acts and the level of involvement of the public in their drafting, which has decreased the legitimacy of legal acts in the eyes of civil society. For instance, there were a number of gaps during the reform of the judiciary in 2016 to 2019: despite the fact that the reform in general was positively perceived by international partners, the Constitutional Court of Ukraine repealed a number of provisions of anti-corruption legislation in October 2020, which led to an institutional crisis and the need to take urgent

measures to resume the functioning of anti-corruption bodies (Decision of the Constitutional Court of Ukraine No. 1-9, 2024). Such a crisis situation is also caused by the lack of a clear doctrinal position in national constitutional law on the way to overcome collisions between the principle of supremacy of international law and the supremacy of the Constitution. In the scientific literature, there is an ongoing discussion between the supporters of different doctrines: representatives of the national constitutional law defend the precedence of the Constitution over international agreements, and the specialists of international law insist on the unconditional precedence of international obligations regardless of their nature and ratification (Koziubra, 2020). This doctrinal controversy is exacerbated by the lack of a clear procedure for overcoming collisions between constitutional norms and international obligations, which indicates the urgency of the development of the theory of subordination of legal norms in the context of European integration.

Empirical analysis of the harmonisation of sectoral legislation with international standards. The adaptation of Ukraine's criminal legislation to European standards represents a largescale, multi-stage process of reform aimed at ensuring fundamental human rights in criminal proceedings and aligning the national criminal justice system with international standards. The Law of Ukraine No. 2341-III "On the Criminal Code of Ukraine" (2001), from the moment of its coming into force in 2001 to the middle of 2025, has undergone a series of fundamental changes aimed at bringing its norms into full conformity with the European Convention on Human Rights and the practice of the ECtHR. The most notable reform was the exclusion of the death penalty in 2000 for the fulfilment of Ukraine's obligations before the Council of Europe and the institution of life imprisonment as a substitute for the severest punishment. Later, the Criminal Code of

Ukraine was amended, and the European concept of criminal responsibility was implemented into the Ukrainian legislation by extending the list of non-custodial sentences, by humanisation of the punishments for minor and medium gravity crimes and concretisation of torture as stated in Resolution of the United Nations General Assembly No. 39/46 (1984). In particular, after the ECtHR's judgments regarding torture of prisoners in Ukraine in 2005, a separate Article 127, Torture, was added to the Criminal Procedure Code of Ukraine (2012), which was brought in accordance with international prohibitions of torture.

The Criminal Procedure Code of Ukraine (2012) became a milestone on the way to adjusting the national criminal justice system to the requirements of Article 6 of the European Convention on Human Rights and a breaking point in the philosophy of criminal proceedings in Ukraine. New Criminal Procedure Code of Ukraine changed essentially the model of criminal procedure by: implementing adversarial type of criminal proceedings; providing real equality of rights of the parties of criminal proceedings (accusation and defence); creating an institute of the investigating judge to exercise effective judicial control over protection of human rights at the stage of pre-trial investigation; determining the reasonableness of the term of pre-trial investigation and the term of the court examination of the case. The major innovation of the 2012 Criminal Procedure Code was the introduction of separate articles which determined the grounds of inadmissibility of evidence obtained in violation of human rights, introducing into the national criminal procedure the fruit of the poisonous tree doctrine elaborated by the ECtHR' practice, and provided essential guarantees against arbitrariness at the stage of pre-trial investigation (Kharkiv Human Rights Protection Group, 2013). According to Article 87 of the Criminal Procedure Code of Ukraine it is obligatory for a court to recognise as inadmissible evidence

obtained in violation of the rights, freedoms and interests (torture, violation of the right of defence unlawful detention), as well as other evidence obtained as a result of their use, regardless of its reliability and importance for establishment of circumstances of the case. The new Criminal Procedure Code of Ukraine entered into force in 2012, after a number of judgments of the ECtHR against Ukraine, in which systematic breaches of the right to defence, access to a counsel, and the right to study evidence were established (Kharkiv Human Rights Protection Group, 2013).

The positive practical results of the implementation of this criminal procedure law in ensuring the right to a fair trial and the protection of the procedural rights of the parties to criminal proceedings, are demonstrated by the results of the Ministry of Justice of Ukraine in the report for 2024, which states that the number of repeated violations of the rights of the parties to criminal proceedings during the pre-trial investigation decreased, the number of complaints to the ECtHR about violations of Article 6 of the Convention, despite the preservation of some systemic problems in the sphere of criminal justice (Ministry of Justice..., 2024). The reports of the monitoring for 2020-2024 years indicate the scale of the problem: in 2021, 99,233 complaints were filed with investigating judges regarding decisions, actions or omissions of the investigators or prosecutor, of which 89,005 were subject to consideration. The European Court of Human Rights states that the majority of complaints against Ukraine are related to the violations of the right to a fair trial and the non-enforcement of court decisions for a long time, which confirms the relevance of the positive shifts outlined in the report for 2024 (Ministry of Justice..., 2023; 2024). The European Court of Human Rights (2024) points out the existing problem of excessive periods of pre-trial detention, which in some cases is two to three years, unsatisfactory conditions in temporary detention

facilities, and periodic failure of national courts to ensure the fairness of the trial in evaluating the admissibility of evidence. In order to overcome these problems, the Strategy was approved in Ukraine in 2020 (Cabinet of Ministers..., 2020), by the Order of the Cabinet of Ministers of Ukraine No. 210-r (2021a), however, as the European

Commission noted, a number of structural reforms have not yet been implemented to completely eliminate systemic violations (European Commission, 2023). The current practice of the European Court of Human Rights with regard to Ukraine also records widespread issues in different spheres of law enforcement (Table 1).

Table 1. The implementation of the Ukraine-EU Association Agreement: indicators of implementation by level of governance

Indicator	Value
Overall progress in implementing the Association Agreement (2014-2024)	81%
Progress achieved by Ukrainian state bodies in 2024	70%
Task completion (2014-2024): Cabinet of Ministers of Ukraine	79%
Task completion (2014-2024): Verkhovna Rada of Ukraine	74%
Task completion (2014-2024): other state bodies	62%
Share of tasks completed by the Cabinet of Ministers in 2024	69%

Notes: indicators reflect the proportion of obligations fulfilled out of the total number of tasks specified in the Association Agreement for each institutional level. Calculations are based on the official monitoring methodology developed by the Government Office for the Coordination of European and Euro-Atlantic Integration

Source: created by the author

The statistical data in Table 1 illustrate the irregularity of adjustment processes in different levels and spheres of law, which is a consequence of the objective difficulties in coordinating the European integration policy within a decentralised system of public administration. The significantly lower level of implementation by other state bodies (62%) compared to that of the central executive authorities testifies to the insufficiency of the existing mechanisms of vertical coordination and necessitates the standardisation of methodological approaches to the implementation of European law at all levels of governance. The disparity in the indicators of the Cabinet of Ministers and the Verkhovna Rada of Ukraine can be evidence of the need to enhance the inter-institutional dialogue and to improve the procedures of coordination of draft legislation at the stage of their preparation. The fact that the majority of unfulfilled tasks are concentrated within the competence of local authorities and regional state administrations underlines the need to

decentralise the expert potential in the sphere of European law and to create regional coordinating centres of European integration.

The reform of the civil procedural law through the adoption of the Law of Ukraine No. 1618IV "On the Civil Procedure Code of Ukraine" (2017) was part of the overall judicial reform, the purpose of which was to radically bring the civil process in line with European standards of efficiency, accessibility, and fairness of justice. The new Civil Procedure Code determined that the main purpose of civil proceedings is a fair, impartial and timely consideration and resolution of civil cases for ensuring the effective protection of violated, unrecognised or disputed rights, freedoms or interests of individuals, rights and interests of legal entities, and interests of the state in accordance with the basic requirements of Article 6 of the European Convention on Human Rights (1950). The legislator implemented a number of new instruments aimed at simplifying and accelerating the legal process and increasing its efficiency.

The simplified procedure for small claims allows the court to examine an uncomplicated dispute (the claim value is up to 1 million UAH for legal entities, up to 500,000 UAH for individuals) in a simplified (accelerated) order without court proceedings, which greatly expands access to justice for citizens. The “model case” institution in civil proceedings becomes an effective mechanism for ensuring the uniformity of judicial practice and the mass settlement of similar disputes: in the event that a large number of similar claims are filed in various courts, the Supreme Court selects one of them as a model, and the legal positions expressed in this process are obligatory for all courts when considering similar cases (Supreme Court of Ukraine, 2023).

Digitalisation of the legal process through the introduction of the Unified Judiciary Information Telecommunication System (UJITS) and the “Electronic Court” subsystem greatly expands access to justice for citizens and increases the efficiency of the process. Within the system, it is possible to file procedural documents in electronic form round-the-clock, participate in court sessions remotely by means of videoconferencing, receive court decisions and notifications in electronic form, and monitor the progress of the case online in real time. According to the data of the State Judicial Administration of Ukraine (SJAU) presented in the analytical reviews of the Supreme Court, the average term of consideration of a civil case in local courts decreased from 86 days in 2018 to 80 days in 2023 (and 83 days in 2024) which indicates a moderate acceleration of the process and gradual rapprochement with European terms of reasonable duration. Official statistics also testify to the ongoing acceleration and digitalisation of the civil process. Thus, according to the analytical review of the Supreme Court, the average term of a civil case in 2024 was 83 days (in 2023, 80 days), which is about 2.6 to 2.8 months (Supreme Court..., n.d.). The number of applications

and other documents that were filed to courts via the “Electronic Court” subsystem in 2023 totalled 1,430,893, and in 2024 – 3,186,546 (in 2022 – 548,813) (State Judicial Administration of Ukraine, 2025). This points to the widespread digitalisation of access to justice.

Modernisation of Ukrainian administrative law and procedure was realised in the form of a reform of the legal norms governing the relationship between a citizen and a public authority. The Code of Administrative Justice of Ukraine (2005) for the first time introduced a specialised judicial review of public administration activity and incorporated the principles of European administrative law. The novelty of the mentioned Code consisted of, first of all, the introduction of the principle of official ascertainment of the circumstances of a case, which takes into account the inequality of a citizen and a public authority in terms of resources; the principle of proportionality of a court decision; the principle of proper notification of the parties to the administrative proceedings ensuring the adversarial nature of the process. The implementation of these principles in practice allowed the creation of effective mechanisms of judicial protection, such as declaring decisions of authorities unlawful, compelling an official to take certain actions, and reimbursement for damage inflicted by an unlawful act of a public authority. The statistics for 2021 are indicative of the efficiency of the system: administrative courts examined 441,825 claims and satisfied claims in 85% of the cases that were closed, demonstrating a high level of validity of citizens’ appeals (Supreme Court of Ukraine, 2022). The general number of satisfied claims was 71% of all examined claims, which illustrates in practice the accessibility of administrative justice as an instrument for the protection of an individual’s rights in their relations with the state.

It is also important to mention that Law of Ukraine No. 2073-IX “On Administrative Procedure” (2023) was adopted. This was a revolutionary

legislative act, because for the first time at the national level, general standards were set for the interaction between bodies of public administration and individuals when considering individual affairs and adopting individual administrative decisions. This law establishes general principles of good administration that are fully compatible with European principles of good governance: rule of law, legality, legal certainty, nondiscrimination and equality before the law, proportionality, impartiality and good faith, openness and transparency, accountability, efficiency and timeliness. Of special importance are the procedural rights and guarantees established by the law: the right of every person to be heard before an administrative decision that can affect their rights and interests is adopted; the duty of the public authority to provide a written explanation of an administrative decision, specifying its factual and legal grounds; the right to appeal the administrative decision to a higher authority before applying to an administrative court; the duty of the administration to explain to the applicant their rights and ways of protecting them. The entry into force of this law in 2022 to 2023 (though its full application was postponed in part due to martial law) is crucial for the legitimacy of state action, since it provides citizens with a clear and predictable set of procedural guarantees when dealing with public authorities. European experts from SIGMA (2023), the Council of Europe and other international organisations highly appreciated this law as one of the most progressive in Europe, moving Ukraine closer to the highest standards of good governance.

The direct results of the reform of administrative law are an improvement in the quality of administrative services and an increase in citizens' trust in governmental bodies. According to the monitoring of the quality of administrative services carried out in accordance with the Resolution of the Cabinet of Ministers of Ukraine

No. 864 (2021b), as of November 2024, 94.7% of visitors to the centres of administrative services (CSCs) assessed the quality of services as positive. This is significantly higher than the indicator provided for in the Strategy for Reforming Public Administration of Ukraine for 2022-2025 (78% as of 2024), and testifies to a change in the perception of citizens regarding their interaction with the state. This indicator is the result of purposeful work to optimise the procedures for the provision of administrative services, the introduction of the principle of a single window, and digitalisation of public services, through the Unified Judiciary Information Telecommunication System and the Diia portal. The share of corrupt services in the provision of administrative services decreased to 3.8% in 2024 compared to 24% in 2014, which indicates a high level of transparency and accountability of these institutions (LZI, 2024). The average time of expectation in the queue in the CSCs decreased from 47 minutes in 2018 to 12 minutes in 2024, and the share of services rendered on the principle of a "single window" increased from 34% to 89% for the same period. This was achieved through a comprehensive standardisation of administrative procedures, large-scale digitalisation of administrative services through the Diia portal and other electronic services, as well as effective quality control of services rendered to citizens through the system of feedback and monitoring of user satisfaction.

The creation and functioning of a specialised system of anti-corruption bodies is one of the most significant and successful reforms in bringing Ukrainian legislation in line with international corruption-fighting standards and ensuring objectivity in bringing senior officials to justice. After the Revolution of Dignity in 2014, in accordance with the recommendations of the GRECO, as well as the requirements of the IMF and the EU, Ukraine has developed a unique three-level system of anticorruption institutions: the National

Anti-Corruption Bureau of Ukraine (NABU) for pre-trial investigation of top-level corruption offences, the Specialised Anti-Corruption Prosecutor's Office (SAP) for procedural guidance of such proceedings, and the High Anti-Corruption Court (HACC) for consideration of these cases on the merits (OECD, 2024). The distinguishing elements of the system include independence from other law enforcement agencies, special recruitment procedures of the personnel with the participation of international and civil society experts, and publicity of its activities through regular reports to the public. According to official data, the anti-corruption system proves its efficiency in cases of high-level corruption. During 2024, NABU and the SAP sent to the court 113 indictments against 243 persons, showing the consistently high level of case submission to the HACC. Since the start of the work of the specialised court (in September 2019), and as of 21 February 2025, the HACC delivered 245 verdicts, of which 195 were verdicts of conviction, which is quite an impressive number of judgments passed on the merits of cases investigated by NABU and prosecuted by the SAP (National Anti-Corruption Bureau of Ukraine, 2024; n.d.). The High Anti-Corruption Court demonstrates tangible results in high-level corruption cases, although the average length of proceedings is rather long. According to the official report of the president of the court, in 2024, 88 criminal proceedings were completed against 137 persons, among them 77 judgments (which is 18% more than in 2023) (High Anti-Corruption Court of Ukraine, 2025). At the same time, according to the court's analytical report on judicial activities, in 2024, the HACC passed 68 verdicts of conviction (on 112 persons) and 9 verdicts of acquittal (on 10 persons). Judicial statistics show that the average length of court proceedings in the HACC in 2024 was 618 days, which is far from the indicated above "3.4 months" (High Anti-Corruption Court of Ukraine, 2024). Among those

convicted by the HACC, there are former deputies, judges, prosecutors, and heads of central bodies of executive power, which demonstrates the real implementation of the principle of equality before the law.

The recognition at the international level of the effectiveness of the Ukrainian anti-corruption model is regularly confirmed by positive evaluations from GRECO and other monitoring missions. According to the 2023 Compliance Report of the Fourth Evaluation Round, GRECO Ukraine has fully implemented 18 out of 31 recommendations (including an effective monitoring system for the declarations of public officials, regulation of lobbying, and reform of selection procedures for judges involving international experts) (Group of States against Corruption, 2024). The rest of the recommendations are currently being implemented, and GRECO acknowledges the political will and commitment to anti-corruption reforms despite the ongoing full-scale war.

The results of the National Agency on Corruption Prevention activities in the sphere of preventive anti-corruption policy are highly positive. In 2024, the agency launched 1,050 full inspections of declarations of public officials and completed 715 of them. In 353 declarations, it detected inaccurate information worth more than 3.8 billion UAH and unjustified assets worth over 47 million UAH (National Agency on Corruption Prevention, n.d.). In addition, 167 lifestyle audits of declarants were conducted, which resulted in the detection of 42 cases of unjustified assets and illicit enrichment worth 739 million UAH. For comparison, in 2019, out of 1,133 full inspections of declarations, violations were found in 140 cases (12 of the declarations under consideration). The current data shows significant progress in the effectiveness of control and supervisory activities due to improved verification tools and analytical powers of the agency (National Agency on Corruption Prevention, 2020).

The general and systemic evaluation of consistently developing sectoral legislative processes allows us to conclude that significant and irreversible progress has been made in the approximation of the Ukrainian legislation to the international standards of justice, in spite of the unparalleled threats and risks to Ukraine due to Russian armed aggression and the state of war. The most effective part of the harmonisation has been in the area of anti-corruption policy and judicial procedure modernisation, where European-like bodies have been created, new procedural codes have been enacted and some tangible outcomes have already been achieved, such as imprisonment of corrupt top officials, decrease in the number of human rights violations during criminal procedure, growth in public trust towards new judicial bodies, such as the HACC. However, the areas where much is yet to be done are court decisions, execution and finalisation of the reform of law enforcement bodies. According to the Council of

Europe Committee of Ministers, by 2024, Ukraine is still one of the leading countries by the number of pending judgments of the ECtHR, and a considerable part of them relates to systemic non-enforcement of decisions of national courts, excessive length of judicial proceedings and insufficient investigation of crimes by the law enforcement bodies (European Commission, 2023). Areas for further harmonisation should be those where international rankings place Ukraine far behind European standards: finalisation of the reform of the system for court decisions execution, reinforcement of independence and professionalism of law enforcement bodies and development of transitional justice to prosecute war crimes and crimes against humanity according to international humanitarian law. Official statistical data on the implementation of the Association Agreement witness substantial progress of Ukraine in the fulfilment of its European integration obligations during the last ten years (Table 2).

Table 2. Ukraine at the ECtHR: Structure of established Convention violations (2024)

Indicator (Ukraine, 2024)	Number
Total judgments delivered	158
of which has at least one violation	153
Protocol No. 1, Art. 1 (protection of property)	87
Art. 5 (right to liberty and security)	80
Art. 2 – “ineffective investigation”	22
Art. 6 – “length of proceedings”	51
Art. 6 – “right to a fair trial”	13
Art. 3 (prohibition of torture/inhuman or degrading treatment) – core	22
Other categories (Arts. 7, 8, 9, 10, 11, 12, 13, 14; Protocols 1-2, 1-3, etc.)	isolated cases recorded

Notes: a single judgment may record multiple violations of different Articles; therefore, the sum of violations by Article exceeds the number of judgments. The categories above correspond to the columns of the official ECtHR table (right to life/investigation under Art. 2; Art. 3; Art. 5; Art. 6 – fair trial, length, non-enforcement; Arts. 7-14; Protocol No. 1 – Arts. 1-3, etc.)

Source: compiled by the author based on European Court of Human Rights (2024; 2025)

The distribution of ECtHR-established violations as presented in Table 2 is also illustrative of the systemic character of the problems of the Ukrainian legal system, which go beyond sectoral structural flaws and testify to institutional

capability deficits in the sphere of the protection of property rights, procedural guarantees and the implementation of judicial acts. The most widespread violations of Article 1 of Protocol No. 1 to the European Convention on Human

Rights (1950) bear witness to the systemic character of problems of the implementation of court decisions and compensation for property damage caused by unlawful acts of state bodies, which in turn presuppose a need to carry out comprehensive reform of the enforcement proceedings system and to introduce effective mechanisms for compensation at the expense of the state budget (Council of Europe, 1952). The high number of established violations of Articles 5 and 6 of the Convention is a sign of insufficient reform of criminal and civil justice with respect to compliance with the requirements of a reasonable period of pre-trial detention, adequate conditions in places of detention and the right to a fair trial. The relatively low number of established violations of Article 3 could be a sign of positive results of reform of law-enforcement bodies and implementation of international standards for the prevention of torture; however, it is too early to speak about the irreversibility of this positive trend.

Institutional mechanisms for ensuring justice and the legitimacy of legal adaptation processes. The efficient incorporation of international standards into national law is provided by a multilevel system of institutional mechanisms, which embraces bodies of all branches of power, civil society structures and international monitoring institutions. The Committee of the Verkhovna Rada of Ukraine on the Integration of Ukraine into the European Union serves as a kind of filter of the European integration quality of national legislation and provides parliamentary control over the observance of requirements of European standards by legislative initiatives. The Rules of Procedure of the Verkhovna Rada of Ukraine state that all draft laws related to the fulfilment of obligations under the Association Agreement or the implementation of EU legal acts shall be sent to the Committee for review, in order to obtain a qualified opinion on the conformity of such acts with the *acquis communautaire* (Resolution of

Ukraine No. 2483-IX, 2022). Throughout 2023 to 2024, the Committee engaged in intensive expert work, reviewing more than 200 draft laws, and, in particular, those draft laws related to the implementation of seven key recommendations of the European Commission, necessary for the start of negotiations on Ukraine's accession to the EU. These included, inter alia, draft laws on reform of the Constitutional Court of Ukraine, on the media, on national minorities and on the prevention and counteraction of the legalisation of criminal proceeds, which underwent multi-stage review for conformity with European law. The Committee provided the Parliament with recommendations, often requiring serious revision of the draft laws, which allowed their adoption in a form that fully complies with European standards.

As for the executive authority, a coordination function within it is performed by the Government Office for the Coordination of European and Euro-Atlantic Integration, which is a highly specialised body established in the Secretariat of the Cabinet of Ministers of Ukraine, with functions to coordinate the activities of all ministries and other central bodies of executive power in the implementation of international legal obligations. Structurally, the Government Office consists of directorates, which, in their turn, correspond to the basic blocks of EU law: economic, sectoral, and Justice, Freedom and Security blocks. This approach ensures the professional specialisation of each thematic area of European integration (Cabinet of Ministers of Ukraine, 2024). The role of the Government Office significantly increased after Ukraine gained the status of an EU candidate country in June 2022. In particular, with the assistance of the Office, Ukraine's First National Report on fulfilling the criteria for EU membership was prepared and submitted to the European Commission in April 2024 in time. The report consists of more than 1,600 pages and required the involvement of around 140 state bodies and

hundreds of officials in a unified process of collecting and analysing information on the adaptation of Ukrainian legislation. The Office also monitors the implementation of the Action Plan for the realisation of European Commission recommendations, which provides more than 350 concrete steps in all priority reform areas, coordinating the activities of more than 100 executive bodies.

The mechanism of involving civil society in legal adaptation is an important component of the democratic legitimacy of reforms, as it ensures real public participation in the formation of state policy in the field of European integration. The normative framework for its functioning is determined by the Law of Ukraine No. 4572-VI "On Civic Associations" (2013) and Resolution of the Cabinet of Ministers of Ukraine No. 996 (2010), which defines the procedure for public discussion during the preparation of normative legal acts. Permanent advisory bodies, such as civic councils, which include representatives of public organisations, scientific communities, and professional unions, operate in each central executive authority. They are engaged in regular discussions of draft administrative acts and providing expert opinions. The most active are the civic councils under the Ministry of Justice of Ukraine, the Ministry of Internal Affairs, and the Office of the Prosecutor General, which in 2023 reviewed more than 150 draft regulatory acts in the spheres of judicial administration and anticorruption policy (Ministry of Justice of Ukraine, 2023). According to the Secretariat of the Cabinet of Ministers of Ukraine (2024), in the fourth quarter of 2024, 76 executive bodies have conducted 748 events in the framework of public discussion, having considered 638 questions of considerable public interest, among them 351 draft legal and regulatory acts. It is proven by the results of the analysis of the mentioned consultations that the offers of citizens and organisations have a great influence on the improvement of the draft legal and regulatory

acts. It is evidenced by the results of the public discussion held by the Ministry of Finance regarding the order of conducting verification of certificates, within the framework of which the offers of four out of five organisations-participants were fully or partially included in the text of the project of the legal and regulatory act.

The system of justice, as the constitutional guarantor of justice, underwent the most cardinal reform from all state institutions, directed toward providing its full independence from political influence and raising the level of professional training of judges. After the adoption in June 2016 of the constitutional amendments regarding the judiciary a comprehensive reform of the system of justice was started: a full renewal of the staff of the Supreme Court on a competitive basis with the participation of international experts; creation of the Public Integrity Council; introduction of the institute of obligatory qualification evaluation for all acting judges; creation of the High AntiCorruption Court. The most difficult moment was the renewal of efficient functioning of the bodies of the judicial self-governance after the institutional crisis of 2020-2021, caused by the loss of confidence of society in the honesty of some members of the High Council of Justice and the High Qualification Commission of Judges. From 2023 to 2024, a full renewal of the bodies of the judicial governance was conducted, in particular, a service of disciplinary inspectors was created on a competitive basis with the obligatory participation of international experts from international organisations as a part of the commission on selection to the High Council of Justice (2024). With a casting vote of international organisations' representatives in the High Council of Justice's Ethics Council, international organisations had provided the full impartiality and independence of the selection process.

After restoring the High Council of Justice in March 2023, the latter already proved its

efficiency in applying disciplinary responsibility for judges. The High Council of Justice examined more than 300 disciplinary cases in 2023 to 2024, having applied liability or dismissed more than 50 judges for gross violations (High Council of Justice, 2024). Meanwhile, the newly elected in November 2023 High Qualification Commission of Judges has started filling the approximately 2,000 vacant judges' positions, which will help reduce the number of pending cases and speed up their consideration. The indicators of public trust in the judiciary system point to positive dynamics as concerns the newly established bodies: while the general level of trust does not exceed 25%, almost 40% of the respondents trust the High Anti-Corruption Court, which is the highest among the judiciary bodies (Boyko, 2024).

The international monitoring institutions have a special role in ensuring the legitimacy of the legal reforms by exercising professional monitoring of fulfilling international commitments and providing expert recommendations. The European Commission for Democracy through Law (Venice Commission) is one of the most authoritative international institutions in the field of constitutional law, and its opinions have near-binding force in the national legislating. From 2023 to 2024, the Venice Commission issued a number of significant opinions on the most important Ukrainian legislative initiatives. The opinion of the European Commission for Democracy through Law No. 9322 "On Amendments to Certain Legislative Acts of Ukraine on Improving the Procedure for the Selection of Candidates for the Position of Judge of the Constitutional Court of Ukraine on a Competitive Basis" (2023) contains the main recommendations for consolidating the role of international expertise in the competitive selection process and providing political impartiality. Ukraine promptly reacted and corrected the situation by conferring the power to select the judges of the Constitutional

Court upon the specially created Advisory Group of Experts, with the right of a casting vote for the international members. No less positive was the collaboration during the development of the Law of Ukraine No. 2849-IX "On the Media" (2022), in the framework of which the Venice Commission opinion was devoted to the legal issues of possible limitations on the freedom of expression (European Commission for Democracy through Law No. 9322, 2023).

The Council of Europe's Group of States against Corruption (GRECO) systematically monitors Ukraine's compliance with anti-corruption standards in the course of ongoing evaluation rounds. The general evaluation of compliance was "globally satisfactory" and served as additional evidence that Ukraine is a state that has invariably been conscientiously fulfilling its anti-corruption obligations, even in a state of war. N. Boyko (2024) pointed out the positive dynamics of indicators of democratic governance in Ukraine, the stability of democratic institutions, and the high activity of civil society. The efficiency of the mechanisms of implementation of international recommendations is testified by the statistical data on their inclusion in the legislative process. Thus, the analysis of 156 laws enacted in the period 2020 to 2024, in terms of their approximation to European law, revealed that 84% of the recommendations of international organisations had been taken into account, which testifies to the high degree of inclusion of European standards into national legislation (European Commission, 2023). According to the information of the Committee of Ministers of the Council of Europe, Ukraine, in the period 2021 to 2024, introduced about 85 judgments of the ECtHR through relevant laws and individual measures (Ministry of Justice of Ukraine, 2024). The systematic character of the implementation of recommendations is ensured by national plans of action with fixed deadlines, spheres of responsibility, and evaluation criteria.

On the strength of a thorough analysis of the operation of the existing institutional mechanisms, it seems justified to formulate a set of evidence-based recommendations for their systemic improvement in order to enhance the efficiency of providing justice and legitimacy to the processes of legal adaptation. Firstly, it is necessary to enhance the institutional potential of euro-integration coordination bodies, in particular, by transforming the existing Government Office for European Integration into a full-fledged central executive body. The same applies to the institutionalisation of civil society's participation, given that the Law "On Public Consultations" has already been adopted, and it will enter into force six months after the termination or cancellation of the state of war. It would also be useful to create a permanent high-level Civil Society Platform on European Integration under the Cabinet of Ministers of Ukraine to provide a constant dialogue between the state and civil society in the implementation of European standards and coordinate the activities of various nongovernmental organisations in the Euro-integration process. Secondly, in order to ensure objectivity in law enforcement, specialised structural subdivisions should be created in the judicial, prosecutor's and police bodies to implement international best practices, in particular, a separate department in the Office of the Prosecutor General for investigating war crimes, the introduction in all regions of Ukraine of the posts of deputies to the heads of regional state administrations for euro-integration and significant strengthening of parliamentary control by expanding the powers of the relevant Committee of the Verkhovna Rada.

A crucial condition for the effectiveness of all of the above-mentioned measures is to preserve and further strengthen the real independence of all institutions and persons responsible for ensuring justice in the legal sphere: courts of all instances, anti-corruption bodies, the Ombudsman,

bodies of judicial governance, and heads of law enforcement agencies. To achieve this, it is necessary to consolidate at the legislative level the permanent participation of international experts and authoritative representatives of civil society in all personnel selection processes for these bodies on a permanent basis. It is also necessary to provide legal guarantees from political encroachment through the complication of the procedures for the dismissal of the heads of key anti-corruption bodies, the constitutionally guaranteed independence of the budget of the judiciary, as well as the creation of an effective system for the protection of anti-corruption officials from prosecution and political pressure.

Discussion

The findings of this research confirm a high level of adaptation of the national legislation to international standards of justice and legitimacy, which is confirmed by European research on the effectiveness of conditionality mechanisms in the protection of the rule of law within the European Union. A. Pérez (2024) argues that the Regulation of the European Parliament and of the Council No. 2020/2092 (2020) on a general regime of conditionality for the protection of the Union budget has become an important legal instrument for protecting the financial interests of the EU and proper public finance management in case of violations of the rule of law. The finding that 81% of the obligations under the Association Agreement have been implemented coincides with the conclusions of A. Pérez on the practical effectiveness of conditionality mechanisms, although the researcher points to the risks of exceeding powers and undermining trust among the EU Member States. Similar concerns are expressed by C. Fasone and M. Simoncini (2024), who state that the intensive application of conditional funding may entail uncertain legal consequences, given the significant political discretion in the application

of conditionality mechanisms. The structural imbalance between different levels of government in Ukraine (79% for the Cabinet of Ministers and 62% for other state bodies), which was identified during the study, corresponds to the coordination problems between different levels of government in the EU that these researchers speak of.

The phenomenon of the institutional stability of the Ukrainian legal system in the context of martial law, found in the course of the research, is also confirmed by European integration studies. S. Makaradze (2025) notes that the level of support of the EU Member States to ensure the rule of law in the Council of the EU has fixed the existing stable coalitions among the EU Western countries and more diversified attitudes of the newest Eastern EU countries. The results of this study, which confirms the pace of non-stop European integration reforms in Ukraine, even in war conditions, confirm the conclusion of S. Makaradze about the importance of political pragmatism in the Member States' position concerning the rule of law. In her turn, A. Hoxhaj (2024) generalised the outcomes of the Russian invasion on the EU enlargement policy and the expedited assignment of the candidate status to Georgia, Moldova and Ukraine. The ability of Ukraine to keep the pace of European integration reforms in war conditions proves the position of A. Hoxhaj, concerning the feasibility of a two-phase accession, by joining the EU single market within 5 years and full membership within 10 years, provided that there is a continued respect for the EU's fundamental values.

The theoretical comprehension of the adaptation processes is continued in the scientific study of modern researchers. O. Balanuca (2024) notes that the adaptation of Ukrainian legislation to EU law is characterised by a rather progressive nature, but it needs a profound implementation, institutional strength and control over the application of the adapted norms. The author stresses the sectoral character of these processes, the

imperfections of implementation of the adapted norms, due to the lack of control mechanisms, which corresponds to the results of the research about the structural disproportion of the different levels of governance (79% of the implementation at the level of the Cabinet of Ministers and 62% in other bodies of state power). T. Humeniuk (2025) stresses the complex nature of the integration procedures, aimed at ensuring the effective functioning of democratic institutions and strengthening the rule of law. The author stresses the imperfection of the legal framework and difficulties in the sphere of legal support, which is partly confirmed by the results of this research concerning the need to strengthen the coordinating mechanisms at the different levels of governance.

The debate on the effectiveness of legal reforms in candidate countries has also been discussed by N. Hogic (2024), who questions the EU's efforts to promote the rule of law in the Western Balkans. According to N. Hogic, the policy shortcomings in judicial independence, parliamentary oversight, and monitoring and control of corruption hinder the candidate countries from successfully adopting the rule-of-law standards. Unlike the Western Balkans, the results of this study reveal more effective adoption of the Ukrainian legal system, particularly in the anti-corruption policy field. The creation and functioning of the HACC, which has delivered 245 decisions since its creation, speaks against N. Hogic's conclusion on the lack of attention to the judicial system and its performance. At the same time, N. Hogic's suggestions on "surgically targeted" measures in digitalisation, environmental policy, education, and poverty reduction are confirmed by the successful Ukrainian judicial digitalisation, in particular, the number of electronic documents increasing from 548,813 (2022) to 3,186,546 (2024).

The influence of media attention and public support on the enforcement of international court decisions has been discussed by J. Reis and

M. Garz (2024). The authors claim a causal relationship between the extent of media attention to the European Court of Human Rights rulings and the implementation of its decisions. The results of this study, which demonstrate an increase in public trust towards the High Anti-Corruption Court (40% in comparison with the generally low trust towards the judiciary (25%)), confirm the authors' conclusion about the crucial role of public support in enforcing the effectiveness of legal institutions. S. Dothan (2024) continues this line of thought from the perspective of social network analysis, arguing that the structure of the network around international courts matters for the enforcement of international courts' rulings and initiation of social change. The public consultation system's efficiency in Ukraine, where out of the five organisations that submitted their proposals, four were entirely or partially accepted, reflects the practical application of S. Dothan's (2024) theoretical conception of the role of network structures in underpinning the empowerment of courts to promote social change.

Proportionality and standards of review in times of crisis are dealt with by P. Ondřejek and F. Horák (2024), who assert that the proportionality analysis should also be applied during times of crisis, while adjusting each element of the conventional framework to the precautionary principle. The results of the study concerning the practical ability of the Ukrainian judicial system to apply the European proportionality test in the cases related to the "extended arm" principle in the rapeseed export illustrate the practical application of the theoretical recommendations of these authors. J. Letwin (2023) theoretically grounds the three core components of the ECtHR proportionality doctrine on indirect utilitarianism, thus providing a better understanding of the relationship between moral rights and convention rights, resistance to compromise, and the public interest. The results of the study, which have demonstrated

a decrease in the violations of the procedural rights, while the situation with the execution of the judicial decisions remains problematic, reflect the trade-offs analysed by J. Letwin (2023) in the framework of the proportionality doctrine.

The particularity of cultural property in the case law of the European Court of Human Rights is explored by K. Campbell (2024), who demonstrates how the ECtHR does acknowledge that cultural property is a special type of property and considers its particular character when adjudicating. Even though the research was not focused on cultural rights, out of 158 judgments of the ECtHR against Ukraine in 2024, 87 violations of property rights were found, which might include cultural rights and thus require a more detailed study in the light of K. Campbell's (2024) conclusion about the balanced approach of the ECtHR in cases related to the right to peaceful enjoyment of possessions.

The technological dimension of judicial reform is scrutinised by M. Fabri (2024), who looks at the steps and stages in the implementation of information and communication technologies in the European judiciary during the last twenty-five years. The findings on the successful digitalisation of the Ukrainian judiciary through the implementation of the Unified Judiciary Information Telecommunication System corroborate M. Fabri's conclusions regarding the importance of pragmatic and orchestrated approaches, beginning with manageable, feasible projects. Against this backdrop, M. Fabri's (2024) caveat on the importance of engaging judges and court staff in the design and piloting of applications seems to be supported by the relatively swift uptake of digital systems by Ukrainian courts. F. Inchausti (2023) further reinforces this argument by exploring the new EU rules for digitalisation of judicial cooperation and access to justice, arguing that a "digital by default" approach is paramount. The outcomes of Ukrainian judicial digitalisation are aligned with the European path characterised by this author.

On the European front, the evolution of administrative procedural law is being investigated by G. Cananea and L. Parona (2024), who point to the wide proliferation of administrative procedure acts across most of the EU Member States. The legislative step of Ukraine in adopting Law of Ukraine No. 2073-IX (2023), assessed by SIGMA experts (2023) as one of the most progressive in Europe, corroborates the conclusions of these authors concerning the journey of administrative law from noncodification to laying down a common basis. M. Eliantonio and Y. Marique (2024) provide an overview of comparative administrative law in Europe, highlighting four distinct types of comparative legal scholarship and key research trends. The findings on improvements in the quality of administrative services in Ukraine (94.7% positive assessments from CSCs visitors) illustrate the practical implementation of the theoretical approaches analysed by these authors.

The importance of public participation in European governance is emphasised by S. Oberthür *et al.* (2025), who assess the quality of mandatory public involvement in EU national energy and climate plans of Member States. The dynamics of the public consultation system in Ukraine (748 events during the fourth quarter of 2024 by 76 executive bodies) also relate to best practices referred to by these authors. This line of argument is further pursued by R. Neumann *et al.* (2025), who look at citizens' involvement in the EU public consultation processes, which varies from low and unstable, even for politically salient policy issues. A relatively higher degree of public involvement in Ukraine could signify the greater efficiency of national mechanisms for involving civil society compared to their European counterparts.

The role of judicial councils as a mechanism for ensuring judicial independence is explored by R. Aarli and A. Sanders (2023), who analyse the origins, competencies, and composition of such bodies in European countries. The reform of judicial

self-governing bodies in Ukraine, through the complete institutional renewal of the High Council of Justice and the High Qualification Commission of Judges with mandatory participation of international experts, reflects the European trends analysed by these authors. The uniqueness of the Ukrainian model lies in the combination of international oversight with the national characteristics of the legal system.

The experience of specialised anti-corruption agencies is examined by J. Xu and J. Xu (2024) using the example of Hong Kong, who demonstrate that the absence of public support from other authorities creates opportunities for anti-corruption agencies to establish operational independence. Ukrainian three-tier system of anti-corruption bodies (NABU, SAP and HACC), which has high public confidence, confirms the conclusions of these authors on the importance of differentiated public support in ensuring the independence of anti-corruption bodies. Their research shows that potential institutional threats from an unpopular regime can actually consolidate the authority and independence of anti-corruption bodies.

The practical significance of the Ukrainian experience in adapting legislation to international standards of fairness and legitimacy under extreme conditions of martial law is confirmed by the results of the study. The revealed patterns of relationship between fairness and legitimacy of legal decisions, institutional sustainability of the legal system and efficiency of mechanisms of public participation in their adoption lay a solid foundation for further development of the rule of law in Ukraine. At the same time, the need to overcome persistent structural problems, in particular, in the enforcement of court decisions and protection of property rights, requires systemic solutions based on best European practices and recommendations of international organisations.

The research results have direct practical significance for Ukrainian authorities in forming and

implementing European integration policy. The Government Office for the Coordination of European and Euro-Atlantic Integration can use the developed methodology for evaluating the effectiveness of adaptation processes to improve the monitoring system for fulfilling the commitments under the Association Agreement with the European Union and preparing annual reports on the state of European integration. The proposed criteria for balancing fairness and legitimacy in legal transformations are a methodological basis for developing standardised procedures for evaluating the quality of European integration legislation before its submission to the Verkhovna Rada of Ukraine. The revealed structural disproportions between different levels of the executive power in fulfilling the tasks of adaptation are an analytical basis for revising the distribution of powers between the central and local authorities in order to improve coordination of European reforms at the regional level.

The research results are of particular importance for the Ukrainian judicial system in further approximation of national legal practice to European standards of fair trial. The Supreme Court of Ukraine can utilise the conceptualised principles of applying the proportionality test and criteria of reasonableness in judicial decisions to develop consistent case law in matters requiring a balance between national legal traditions and international obligations. The High Council of Justice and the High Qualification Commission of Judges may use the elaborated criteria for ensuring judicial independence for improving the procedures for the selection, evaluation and disciplinary responsibility of judges in accordance with the conclusions of the Venice Commission. The elaborated methodology for assessing the efficiency of specialised judicial bodies may be used as an analytical tool for assessing the effectiveness of the High Anti-Corruption Court and as grounds for creating other specialised courts in the spheres of economic and administrative justice.

Conclusions

The analysis of the processes of legislative adaptation of Ukraine to the international standards and principles of fairness and legitimacy in the context of obligations on European integration has shown the complex nature of legal transformations and the complete fulfilment of the research objectives. The analysis of the conceptual and legal framework, the empirical assessment of sectoral reforms, and the analysis of institutional mechanisms for ensuring fairness and legitimacy made it possible to get a full picture of the adaptation processes in the national legal system. The three-stage analysis has shown the strong constitutional framework for the implementation of international standards, which is represented by the priority of the ratified international treaties and a developed system of coordination mechanisms for the implementation of the EU Association Agreement. The empirical analysis of sectoral legislation has shown the positive dynamics of criminal, civil and administrative legislation due to the introduction of an adversarial model of criminal proceedings, digitalisation of court procedures and the creation of an effective system of counteraction to corruption. The analysis of institutional mechanisms has demonstrated the existence and functioning of a multi-level system for ensuring legitimacy at the levels of parliament, the executive authorities, civil society and international organisations. The quantitative results showed that by the end of 2024, 81% of the Association Agreement's commitments had been fulfilled; citizens' satisfaction with the quality of administrative services had increased to 94.7%; and corruption in this sphere had decreased from 24% in 2014 to 3.8% in 2024. The systematic analysis of European Court of Human Rights case law revealed a positive trend in the reduction of procedural rights violations, while challenges remain in the enforcement of court decisions and the protection of property rights. Special attention was paid to the phenomenon

of legal resilience of the legal system in the context of martial law, which showed how democratic mechanisms are able to perform effectively in extraordinary conditions.

The results of the study conceptualised the legal adaptation process as a multilevel transformation, which combines the legal-technical (legislative harmonisation) component with institutional and socio-political (legitimacy ensuring) components. The study proved the interdependence of fairness and legitimacy in legal decisions to be the key factor for successful adaptation, which deepened the understanding of the mechanisms of legal transformation in modern democracies. Future research perspectives concern the elaboration of the methodologies for the evaluation

of socio-economic consequences of the legal reforms for different groups of society; the analysis of post-conflict mechanisms for the restoration of legal institutions; and the elaboration of a complex model for the evaluation of long-term resilience of the adaptation in transitional societies in the conditions of geopolitical instability.

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Дослідження адаптації українського законодавства до міжнародних норм і принципів які базуються на справедливості і легітимності

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Анотація

Метою дослідження було вивчення рівня ефективності адаптаційних процесів у правовій системі України щодо імплементації міжнародних стандартів справедливості та легітимності в рамках євроінтеграційних зобов'язань. Дослідження проводилося на основі комплексного підходу з використанням порівняльно-правового, системного, інституційного, статистичного методів та контент-аналізу через триетапний аналіз концептуально-правових засад, емпіричну оцінку галузевих реформ та дослідження інституційних механізмів забезпечення легітимності. Вихідними даними дослідження слугували такі показники як 81 % виконання Україною зобов'язань за Угодою про асоціацію з Європейським Союзом станом на кінець 2024 року при одночасному зростанні задоволеності громадян якістю адміністративних послуг до 94,7 % та зниженні рівня корупції в цій сфері з 24 % у 2014 році до 3,8 % у 2024 році. Аналіз 158 рішень Європейського суду з прав людини проти України за 2024 рік виявив збереження системних проблем із захистом майнових прав та забезпеченням процедурних гарантій при позитивній динаміці у сфері запобігання катуванням. Найуспішнішими сферами правової адаптації виявилися антикорупційна політика через створення Вищого антикорупційного суду, який виніс 245 вироків від початку роботи, та цифровізація судочинства з зростанням кількості електронних документів з 548 813 у 2022 році до 3 186 546 у 2024 році. Паралельно виявлено структурні дисбаланси у виконанні адаптаційних завдань між різними рівнями влади, де показники Кабінету Міністрів становили 79 %, Верховної Ради 74 %, а інших державних органів лише 62 %. Практичне значення дослідження полягає у можливості використання його результатів Урядовим офісом координації європейської та євроатлантичної інтеграції для вдосконалення системи моніторингу євроінтеграційних процесів, парламентськими комітетами для покращення законодавчого забезпечення адаптації права, судовими органами для наближення правозастосовної практики до європейських стандартів, а також міжнародними організаціями та експертним середовищем для оцінки ефективності правових реформ у країнах-кандидатах на членство в ЄС

Ключові слова: правові реформи; євроінтеграція; судова система; антикорупційні органи; інституційні механізми; правосуддя



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Between tradition and law: Challenges of enforcing international standards for women's rights in Kyrgyzstan

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The study analysed the protection of women's rights from violence in Central Asian countries in the example of Kyrgyzstan. Despite internationally accepted standards, gender discrimination, domestic violence, early marriage, bride kidnapping and other violations of women's rights are widespread in the region. In addition to the moral and ethical side and legal obligations of Kyrgyzstan as a party to international agreements, the problem of systematic violence against women is relevant from the demographic and socio-economic sides due to the loss of able-bodied resources, the financial burden on the health and social systems. The study identified the main contradictions between international standards of women's protection and national legislation; and analysed the role of law enforcement agencies, and formal and informal judiciary in ensuring the protection of women's rights against violence in Kyrgyzstan. Particular attention was devoted to the problem of inconsistency between international standards and traditions and customs, cultural, religious and other historical features of Central Asia. The study systematised, summarised and analysed data from the United Nations (UN) bodies responsible for ensuring women's rights in Kyrgyzstan; analysed the dynamics and identified intra-regional patterns of violations; and identified the reasons for the low practical effectiveness of international standards for the protection of women from violence at the regional level. Based on the results of the study, recommendations were made to ensure international standards of protection of women from violence in Kyrgyzstan, considering the country's socio-economic, cultural and historical characteristics. The findings can also be applied to the development of legal strategies and policies for the protection of women's rights in other post-Soviet countries of Central Asia

Keywords: gender inequality; forced marriage; traditionalism; informal courts; Central Asia

Introduction

The problem of ensuring international standards for the protection of women's rights from violence is one of the most difficult to regulate in international law because of the significant socio-cultural, religious, historical and national differentiation of regions. Existing international standards often contradict the local traditions of individual countries, are implemented in national legislation with reservations or are of a recommendatory nature (Kiviorg, 2022). Post-Soviet Central Asian countries such as Kyrgyzstan, Tajikistan, and Uzbekistan occupy a special place in this problem. On the one hand, these countries have demonstrated their commitment to democratic values and aspirations for global integration, being members of

the United Nations (UN) and parties to international human rights agreements. But at the same time, the region still has a high level of crimes against women, including violence and gender inequality in virtually all spheres of social and political life (United Nations, 2023a). In addition, to the above-mentioned numerous barriers to the implementation of international standards for the protection of women's rights in Kyrgyzstan, it is important to note the adoption in a new version of Law of the Kyrgyz Republic No. 72 "On Non-Profit Organisations" (2024). The adopted amendments include strengthening State control over non-governmental organisations with foreign funding. The introduction of such measures may lead to

the termination or significant restriction of the activities of human rights organisations on the territory of the country, which ensures the fulfilment of Kyrgyzstan's obligations under ratified international agreements.

This creates a legal dilemma in implementing international standards for the protection of women's rights in the face of contradictions at the regional and local levels. The declarative nature of existing international agreements without effective legal instruments, and the uniformity of international standards without considering the historical, cultural and other specifics of the country, leads to their low practical effectiveness (Tchoukou, 2023). Given the above, the study aimed to investigate the problems of ensuring international standards for the protection of women from violence at the regional level in the example of Kyrgyzstan as a Central Asian country.

Despite the measures taken, the number of women who have been victims of domestic violence has been growing rapidly over the last decade, with the average number of victims rising from 2,237 to 7,329 between 2009-2022, according to data from the National Statistical Committee of the Kyrgyz Republic (2024). As noted by R. Chowdhury (2020) and E. Hrešanová and H.M. Jaroslava (2022), of note is the still widespread practice of stealing women, early marriage, and de facto exploitation under the guise of the tradition of bride kidnapping called *Ala-kachuu*. According to the United Nations (2023a), approximately 13% of women in Kyrgyzstan are victims of forced marriage every year. In this context, Kyrgyzstan's legal system, with its public judiciary, which relies on customary decision-making and in most cases justifies violations of women's rights, such as bride abduction, has been criticised.

The existence of such public or informal courts is part of Kyrgyzstan's patriarchal structure and historically established traditions, most prevalent today in remote settlements.

R. Sain (2021) highlights the systemic challenges faced by rural communities, particularly women, emphasising how economic hardship, limited access to education, and social structures reinforce the importance of local community networks. This perspective underscores the intersection of gender, poverty, and social dynamics in shaping community resilience. Therefore, there is a pronounced dominance of informal forms of judicial power over formal ones, custom and tradition over the existing law.

S. Childress *et al.* (2022) note that many victims of family violence are also not fully aware of the current system of temporary protection and crisis centres, or are not aware of these options at all, fearing homelessness and destitution. In addition, public opinion is a substantial factor and the victim's fear of being judged by relatives and society in case of divorce. In Kyrgyz culture, divorce can be perceived as shameful not only for the woman but also for the parents and other family members.

The study aimed to investigate the problems of ensuring international standards for the protection of women from violence at the regional level in the example of Kyrgyzstan as a Central Asian country. The objectives of the study included identifying the main contradictions between international standards of women's protection and national legislation, analysing the role of law enforcement agencies and the formal and informal judiciary in ensuring the protection of women's rights against violence in Kyrgyzstan, and analysing the dynamics, identifying intra-regional patterns of violations, and determining the reasons for the low practical effectiveness of international standards for the protection of women from violence at the regional level.

Materials and Methods

The methodological basis of the study was based on general scientific, complex interdisciplinary

and special legal research methods: historical and legal, formal legal and comparative legal methods. A comparative legal analysis of Kyrgyz national legislation and international standards for the protection of women from violence was carried out to identify possible contradictions. Using historical and legal methods, attempts were made to explain the reasons for the low practical effectiveness of international standards for the protection of women's rights in Kyrgyzstan due to their inconsistency with the country's historical traditions, customs and mores. Particularly noteworthy was the widespread use of customary law in Kyrgyzstan as a valid legal norm, including the consideration of cases of violence and violations of women's rights through informal public judicial bodies or the so-called aksakal courts.

The normative and legal basis of the study consisted of international treaties under which Kyrgyzstan has undertaken to ensure the protection of women's rights from violence: Convention on the Elimination of All Forms of Discrimination against Women (1979), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), International Covenant on Economic, Social and Cultural Rights (1966) and International Covenant on Civil and Political Rights (1966); national laws and by-laws of Kyrgyzstan: Constitution of the Kyrgyz Republic (2021), Family Code of the Kyrgyz Republic (2022), Law of the Kyrgyz Republic No. 63 "On Protection and Defence against Family Violence" (2017), Law of the Kyrgyz Republic No. 52 "On Courts of Aksakals" (2024).

In the process of analysing UN reporting documents, data on changes in Kyrgyzstan's national policy and legislation to ensure international standards for the protection of women from violence, the effectiveness of the legal system in investigating cases of violence against women, the socio-economic and other measures taken to support women victims of violence, and the

preventive measures taken and planned were studied, systematised and summarised. The quantitative part of the study was based on the analysis of the offence database of the National Statistical Committee of the Kyrgyz Republic (2024) for the period from 2009 to 2023. The sample of analysed offences in Kyrgyzstan for the specified period includes the following data sets: the number of perpetrators of violent acts against women with the issuance of a protection order; the number of women who suffered from domestic violence and applied to healthcare authorities, crisis centres, aksakal courts and other institutions. Based on these statistics, the dynamics and territorial structure of offences related to violence against women were analysed; regional and socio-economic factors of their spread in Kyrgyzstan were identified. The analysis of statistics on the issuance of protection orders and the number of appeals by victims to crisis centres and law enforcement agencies was used to assess the practical effectiveness of the Kyrgyz legal system in protecting women from violence.

Results and Discussion

Inconsistency between international standards for the protection of women and national legislation. The post-Soviet stage of socio-economic development and the formation of political and legal systems in Kyrgyzstan, as in other Central Asian countries, is characterised by two phenomena: retraditionalisation with a conservative approach and adaptation to neoliberalism (Zhussipbek and Nagayeva, 2023). The contradictory nature of the approaches leads to many legal issues and dilemmas, especially in the field of women's rights protection. Retraditionalisation on the one hand is reviving processes of "going back to the roots" in independent Kyrgyzstan, drawing on traditions, customs and conservative Islam (Işık, 2021). Whereas, on the other hand, the neoliberal model embraces globalisation and

international integration processes with ratification of international agreements, adoption of international standards, membership of the country in international organisations and much more.

Since gaining independence in 1991, Kyrgyzstan has ratified several international treaties that regulate international standards for the protection of women from violence: Convention on the Elimination of All Forms of Discrimination against Women (1979), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), International Covenant on Economic, Social and Cultural Rights (1966), International Covenant on Civil and Political Rights (1966), and others. Additionally, optional protocols for international treaties have been ratified. The main international treaty on the protection of women's rights against violence ratified by Kyrgyzstan is the Convention on the Elimination of All Forms of Discrimination against Women.

From a legal point of view, ratification obliges Kyrgyzstan, as a party to the above-mentioned international treaties, to implement the provisions and norms set out in them. In particular, the parties to the Convention on the Elimination of All Forms of Discrimination against Women (1979) undertake to eliminate policies of discrimination against women, to incorporate the principle of equality in their legislation and ensure its practical implementation, and to ensure effective protection of women from any type of discrimination.

One of the first barriers to the practical implementation of the provisions of international treaties and their implementation is the presence of contradictions between the national legislation of the parties and, the historical, cultural and socio-economic peculiarities of the participating states. This case study is based on the example of Kyrgyzstan. An analysis of the international agreements ratified by Kyrgyzstan and national legislation on the protection of women's rights

has shown the existence of significant contradictions. Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (1979) obliges parties to take all measures to change laws, practices and customs that discriminate against women. Under Kyrgyz law, custom is enshrined as one of the fundamental principles of decision-making in the informal judicial system by aksakals' courts.

The mere existence of informal or elders' courts in their current form is a significant barrier to ensuring international standards of women's protection in Central Asia. Based on the example of Kyrgyzstan, it is worth noting the official regulation of informal courts by the Law of the Kyrgyz Republic No. 52 "On Courts of Aksakals" (2024). According to the law, aksakal courts are public bodies that are formed by the decision of citizens of a city or rural district and are guided by moral norms, as well as historical traditions and customs of Kyrgyzstan. At the same time, the activities of aksakal courts should not contradict Kyrgyz legislation. However, due to the lack of legal education and proper knowledge of the law, members of informal courts make decisions mainly based on traditions, customs and generally accepted moral norms at the local level.

Thus, informal courts often justify violence, discrimination and many other violations of women's rights. For example, the abduction of a woman for forced marriage is explained by the tradition of bride abduction or "ala kachuu". Cases of domestic violence become acceptable due to the existing patriarchal attitudes in Kyrgyz society with the subordination of wives to husbands. The report of the UN Working Group on the Elimination of Discrimination against Women notes the widespread belief in Kyrgyzstan that it is acceptable for men to use violence against women when they fail to fulfil their responsibilities, violate social norms, etc. (United Nations, 2023a). As a result, impunity for violence against women is widespread.

The problem of ensuring international standards for the protection of women from violence in Kyrgyzstan is directly related to the actual absence of the concept of economic violence in the legislation and the norms that adequately regulate the financial rights of women in marriage. In many households, women are deprived of access to financial resources and property, and as a result, are forced to perform heavy household work and endure violence. According to the United Nations (2023a), 90% of victims of domestic violence in Kyrgyzstan return to their abusers due to financial dependence, and only 2.5% of all reported cases of domestic violence against women result in legal proceedings.

In the context of financial dependence and the protection of women's rights, it is also worth noting the practice of marriage without official registration through a religious rite – *nikah*. This practice is widespread in rural Kyrgyzstan and is often used in cases of bride abduction and early marriage when the law prohibits marriage to a minor. Without official registration of marriage, a woman becomes more vulnerable from the socio-economic and legal perspectives, being deprived of property rights and many social guarantees, including those provided for in the Family Code of the Kyrgyz Republic (2022). Upon dissolution of such a marriage, a woman loses the right to inheritance and custody of children unless the husband confirms the right to custody.

The existence of the aforementioned "legal gap" allows a man to kick a wife out of the house at any time, deprive a wife of livelihood, and take away children. Thus, the practice of unregistered marriages exacerbates the already weak legal protection of women, contributes to the victims' tolerance of violence and effectively forces them to live in constant fear of being expelled from their homes.

Notably, women's financial dependence on the aggressor in Kyrgyz households is increasing due to several socio-economic and cultural

factors: high unemployment, early marriages and lack of vocational education for women, the patriarchal concept of marriage and the role of housewife for women. This is especially critical in rural areas, where women depend on living in large households, land and other resources. In addition, Kyrgyz society retains the tradition of parents inheriting property from their sons, while daughters go to live with their husbands' families. All these factors together lead to a woman's complete dependence on a husband and life in the household, minimising any rights of women in practice.

Analysing the contradictions between Kyrgyz legislation and international standards for the protection of women, it is also worth noting the exception in the Family Code of the Kyrgyz Republic (2022) that allows marriage from the age of 17 with parental consent. This is contrary to the provisions of the Convention on the Elimination of All Forms of Discrimination against Women (1979), according to which the parties to the Convention undertake to prohibit marriage with persons under 18 years of age and any exceptions to this legal norm.

There are significant legal gaps in Kyrgyzstan's legislation on sexual violence and harassment. For instance, the Labour Code does not have clear rules regulating liability for harassment of women in the workplace and the employer's responsibility for creating a safe working environment. In turn, the Convention on the Elimination of All Forms of Discrimination against Women (1979) obliges the parties to the Convention to ensure that women are protected from sexual harassment at work by law and to introduce penalties for employers for inaction.

In addition, Kyrgyz legislation lacks provisions to properly regulate sexual violence in marriage. The Family Code of the Kyrgyz Republic (2022) describes marital duties, but there are no legal provisions prohibiting the coercion of a partner through physical or psychological violence. Forced marriages should also be considered sexual

violence, as the choice of a spouse as an intimate partner is made without the woman's consent.

It is also worth noting the shortcomings of the texts of international standards from the legal point of view, including the limited interpretation of key terms. For instance, in the text of the Convention on the Elimination of All Forms of Discrimination against Women (1979), the concept of "patriarchy" is reduced to the meaning of cultural norms and traditional practices and is also used as a synonym for the subordination of women to men (Mudgway, 2021). The limited interpretation of the terminology in this case leads to a superficial reflection and understanding of the challenges associated with the patriarchal concept of marriage and society in general. Patriarchy in Kyrgyzstan serves as a justification for early and forced marriages, domestic violence, polygamy and many other violations of women's rights. In the patriarchal system, women are assigned the role of reproduction and household maintenance with heavy physical labour.

At the same time, the weakness of the Convention on the Elimination of All Forms of Discrimination against Women (1979) and other international standards for the protection of women from violence is the lack of clear sanctions for parties for failure to fulfil their obligations. States parties to international treaties, having ratified them, remain free to implement the norms and provisions in their legislation (Ahlgren, 2021; Atadjanov, 2022).

Consequently, law enforcement agencies and courts act following national legislation, which has a higher legal force than international law.

Thus, the existing contradictions between international standards and national legislation, the existence of vulnerabilities and the declarative nature of Kyrgyzstan's laws contribute to the reduction of the practical effectiveness of international standards for the protection of women in the country. The problem is partly determined by the imperfection of the unified texts of the international standards themselves, the limited interpretation of terminology and the lack of specific sanctions for participating states.

Dynamics and territorial structure of offences related to violence against women. To determine the current situation in the sphere of protection of women's rights from violence in Kyrgyzstan, an analysis of static data on offences related to violence against women over the past 15 years was done based on the following indicators: the number of abused women with protection orders, the number of applications of abused women to crisis centres and aksakal courts (Fig. 1). The choice of the study period is determined by the availability of the most complete and relevant data sets on indicators of family violence against women in Kyrgyzstan, statistical records of which have been maintained and made publicly available since 2009 by the National Statistical Committee of the Kyrgyz Republic (2024).



Figure 1. The dynamics of domestic violence against women in Kyrgyzstan from 2009 to 2023
Source: compiled by the authors based on National Statistical Committee of the Kyrgyz Republic (2024)

The results of the static analysis show a significant increase in the number of women victims of domestic violence over the study period, rising from an average of 2,237 victims in 2009-2015 to 7,329 in 2016-2022 and reaching a maximum of 1,102 victims in 2023. At the same time, the rate of women victims' referrals to crisis centres is relatively stable, ranging between 5,000 and 8,000 referrals throughout the reporting period. In contrast, the rates of women's referrals to Aksakal courts tend to decrease, ranging from 422 to 1,048 referrals for 2009-2020 and from 104 to 401 referrals for 2021-2023.

The low rates of complaints by women victims of domestic violence to aksakal courts compared to those to crisis centres and law enforcement agencies may be due to the following reasons: the focus of aksakal courts on patriarchal customs in their decision-making and, as a result, the victim's lack of confidence in receiving protection; the lack of anonymity, increased attention to the consideration of cases and fear of stigmatisation, as aksakal courts operate mainly at the level of small settlements; the limited powers of aksakal courts; and the limited number of women's courts in the region.

The upward trend in the statistical indicator of the issuance of protection orders in Kyrgyzstan at this stage is an indicator of positive changes in the legal and social systems for the protection of women, as well as the practical effectiveness of international standards. This is attributed to a range of factors: increased awareness of women about their rights, the opening of new crisis centres and mobile support services in rural areas, the creation of training programmes for law enforcement officers and social workers on gender-based violence, intensification of education by non-governmental organisations in the media, and others. In addition, in 2016, Kyrgyzstan adopted amendments to Law of the Kyrgyz Republic No. 63 "On Protection and Defence against

Family Violence" (2017), which expanded the powers of law enforcement officers and simplified the procedure for issuing protection orders, and 2024 amendments that introduced remedial programmes for perpetrators of family violence, strengthened inter-agency cooperation to prevent violence and introduced risk assessments to prevent re-offending. The amendments also clarified the rights of survivors, including access to legal, social and medical assistance, and expanded the categories of persons protected by the law to include persons equivalent to family members, such as common-law spouses and guardians (United Nations, 2013). Thus, the measures gradually increased women's reporting of violence to the competent authorities and improved State responses to such cases.

To study the territorial structure of offences, the proportions of women victims of domestic violence by region of their total number in Kyrgyzstan in 2023, the last 5 years of the study period from 2019 to 2023 and the entire study period from 2009 to 2023 were determined.

Following Figure 2, the distribution of the number of women victims of domestic violence across Kyrgyzstan is uneven. The largest share of the total number of women victims in 2023 is occupied by Bishkek and Chui oblasts. Bishkek and Chui Province with 49.3% and 19.5% respectively. A similar situation is typical for the entire period under study, which is mainly due to the high population density of Bishkek and the adjacent Chui Province, the availability of information and the efforts of non-governmental organisations, the developed system of support services for victims of violence and the availability of crisis centres. In this regard, the number of reports of violence in the capital region is higher. It is worth noting that the results presented here actually show the dynamics and territorial structure of officially registered cases of violence against women through law

enforcement agencies, crisis centres, and aksakal courts. At the same time, official statistics do not reflect the exact number of women victims of violence in Kyrgyzstan and its regions. Many women do not report cases of violence to law enforcement agencies due to fear of stigma,

financial dependence on the offender, uncertainty about the real possibility of protecting their rights and other reasons. In addition, in rural and hard-to-reach regions, the judicial system for issuing protection orders is not functioning properly or simply does not exist.

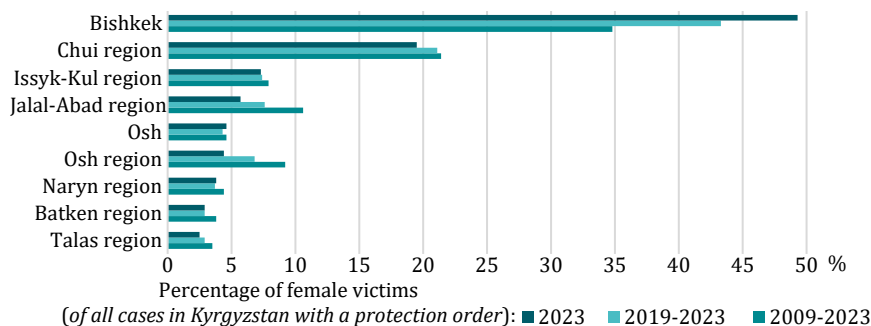


Figure 2. Territorial structure of offences of domestic violence against women from 2009 to 2023
Source: compiled by the authors based on National Statistical Committee of the Kyrgyz Republic (2024)

Qualitative analysis of the implementation of international standards for the protection of women: Status and barriers. Due to the inaccuracy of statistical data and the impossibility of objectively assessing the implementation of international standards for the protection of women's rights in a particular country, international organisations, authorised bodies and other stakeholders use different methods, approaches and data sources in their activities. Comprehensive analysis and assessment of the situation and progress in the field of human rights is based on the results of research and surveys, court practices, investigations, and analysis of the legal framework.

The United Nations Human Rights Council (2013) has developed human rights indicators and guidelines for their measurement and implementation. The national progress in implementing international standards and analysis of the current human rights situation, including the protection of women from violence, are reflected in reports, observations, investigations and other

materials of the UN-authorised bodies (Boche-liuk *et al.*, 2020). Therefore, the study of international standards for the protection of women from violence in Kyrgyzstan analysed UN documents and reports, data from other NGOs and independent studies.

The United Nations (2023a) reports on Kyrgyzstan for 2021-2023 noted systematic violations of international standards for protecting women from violence: early and forced marriage, family violence, dangerous practices such as bride kidnapping, economic violence and labour discrimination against women, gender discrimination based on patriarchal attitudes and conservative Islam, forced hard physical labour, and many others. The above-mentioned violations and their preconditions are noteworthy.

The UN reports on Kyrgyzstan's compliance with international standards for the protection of women from violence pay special attention to the problems of early and forced marriages. Forced marriages are a widespread phenomenon in Central Asian countries, most common in rural areas.

Depending on the reasons, the following types of forced marriages are distinguished: marriages related to the tradition of bride abduction; arranged marriages, when the future husband is chosen by the parents of the girl without accounting for the opinion and desire of the woman; marriages for economic reasons, when a girl is forced into marriage in exchange for a reward; marriages to preserve reputation in the case of premarital intimacy (Kim, 2020; Kim & Karioris, 2020). Some forced marriages are classified as early or child marriages, as they are concluded with minors despite the legal prohibition. In this case, the marriage is not officially registered and is performed by an imam through the religious rite of *nikah*.

Forced early marriage is primarily driven by socio-economic factors. Due to the high level of poverty in Kyrgyzstan, including a lack of funds for childcare, parents are keen to marry off their daughters as early as possible (Gebel, 2020). According to the United Nations (2023a), girls do not receive an education as a result of early marriage, being forced to drop out of school due to pregnancy, childcare and household responsibilities. Such marriages pose a particular threat to health due to frequent pregnancies and early childbirth, with complications leading to high mortality. Therefore, Kyrgyzstan introduced a legal provision prohibiting marriages under the age of 18. According to the Criminal Code of the Kyrgyz Republic (2021), not only the groom but also the parents of both parties, as well as the imam who performs the religious rite of marriage, bear criminal responsibility. Violation of this provision is regulated by Article 175 of the Criminal Code of the Kyrgyz Republic, according to which persons who violate the legislation on the marriage age are subject to punishment.

In addition to cases of coercion, early marriage is common due to a lack of awareness among adolescents about safe intimate relationships, contraception, human physiology, reproductive

health and so on. Such topics are not covered in educational or awareness-raising programmes for cultural and religious reasons and are considered taboo. The problem is aggravated by the lack of financial opportunities to purchase contraceptives and pay for the termination of unwanted pregnancies in medical centres. Consequently, illegal abortions take place in unsafe conditions.

The most common type of violence against women in Kyrgyzstan is family or domestic violence. Women in Kyrgyz families regularly face various forms of violence: physical, sexual, psychological and economic. At the same time, not only husbands but also senior family members, such as mothers-in-law, mothers and others, are the initiators of violence, abuse and discrimination. According to the United Nations (2023a), only 11% of women feel safe at home. Due to the constant growth of domestic violence, a provision was also introduced in the Criminal Code of the Kyrgyz Republic (2021). Previously, there was no such provision. Article 177 of the Criminal Code of the Kyrgyz Republic establishes liability for domestic violence, which was an important step in combating this phenomenon and protecting the rights of victims.

Notably, domestic violence is often not considered by society as a violation of women's rights or a crime. Moreover, there is a widespread practice of blaming victims and justifying violent acts in many cases (Park *et al.*, 2024). Surveys conducted in Kyrgyzstan showed that women considered it acceptable for their spouses to use violence if they did not have time to fulfil household duties or said things that their husbands might not like (Yun *et al.*, 2024). Thus, violence is perceived as normal and part of family life.

The justification and acceptance of violence against women as a norm of family relations is explained by the patriarchal model of society with a strong influence of tradition and conservative Islam (Rodriguez, 2023). The patriarchal model in Kyrgyzstan is characterised by a strict hierarchy

with women subordinated to their husbands and senior family members, which is the basis for the concept of marriage. Financial and property management is assigned to the husband and senior family members, while women are given the role of housekeeping and procreation. The authority of the opinions and decisions of the elders in the family hierarchy is virtually unquestionable for women, including the choice of a groom by parents for an unmarried girl.

The patriarchal concept of marriage in Kyrgyzstan is reflected in the tradition of *kelin*. A *kelin* is a young wife who comes to live in husband's family with parents, sisters, brothers and other members of the household. Cohabitation depends on the financial possibilities and permission of the husband's parents to live separately. However, as a rule, a woman retains the status of *kelyn* until a new daughter-in-law appears in the family: the wife of the younger brother of the husband or the wife of the son.

Kelin is the social status of a daughter-in-law in Central Asian countries, which obliges a woman to perform hard work in the household of the husband. The status of a *kelin* in the family and society is seen as low, marginalised, and subordinate (Zhussipbek & Nagayeva, 2020). The tradition is widespread in both rural areas and large cities of Kyrgyzstan (Iui-Ki & Kosterina, 2024).

The tradition of *kelin* was preserved since the nomadic stage of the history of the peoples of Central Asia, when men were the primary producers and hunters, and their elderly mothers were no longer physically able to bear the burden of heavy household work in the field. At the present stage, this tradition is viewed by international society as an oppression of women and harmful traditional practices that violate women's rights. Women with the status of *kelin* face systematic humiliation, psychological pressure, forced physical labour, economic violence and other forms of discrimination from their husbands' families.

The persistence of the patriarchal model along with historically established traditions and customs in Kyrgyzstan is facilitated by the low level of economic development, as well as gender inequality in the labour sphere. As of 2023, only 46% of women of working age work, compared to 76% of men. Meanwhile, women make up 70% of the economically inactive population (United Nations, 2023a). Lack of their livelihoods leaves women vulnerable and dependent, forced to endure violent acts by their husbands or other family members. According to survey data, most abused women cite financial problems and unemployment as the main causes of domestic violence (Yun *et al.*, 2024).

Addressing the economic causes of violence highlights the shortcomings of Kyrgyzstan's crisis centres, including the limited number of beds. As of 2023, only one of 18 crisis centres in Kyrgyzstan is municipal and fully funded by the state (United Nations, 2023b). All other crisis centres are privately owned and funded by sponsorship and other non-permanent sources. Due to inadequate funding, there is no possibility of long-term support and even the purchase of necessary supplies, including medication. In the future, government spending on women's protection programmes may be reduced due to the International Monetary Fund's requirements to develop austerity plans for Kyrgyzstan and other countries receiving financial support from the Fund (Iui-Ki & Kosterina, 2024).

The system of support for women victims of violence in Central Asia is still in its infancy and does not have a long-term approach, as in Western Europe and other economically developed countries. An effective system of support for women victims of violence is possible only if the necessary assistance is provided and the victims are supported until they can provide for themselves, to avoid being forced to return to their abuser due to financial dependence.

An equally important factor in the systematic violation of women's rights to protection in Kyrgyzstan is the virtual inaction of law enforcement agencies and the judiciary in investigating cases involving violent acts and discrimination against women. Data from the mandated bodies of the United Nations (2023a) indicate delays and refusals to issue protection orders, low enforcement of protection orders, and re-victimisation. Only 2.5% of all reported cases of domestic violence against women end up in court.

The low rates of investigations and criminal sentences in cases of domestic violence are the result of a combination of legal, socio-economic, cultural, historical and other factors. Some women victims are forced to return to their abuser because of financial dependence, lack of property rights and child custody rights in the case of an unregistered marriage, lack of awareness of the work of crisis centres or insufficient support measures, including temporary housing. In Central Asian countries, women often see marriage as the only way of existence and survival, perceiving violence as part of it (Khamzina *et al.*, 2021).

The socio-economic factor complements the psychological pressure on victims of domestic violence from a society that tends, in a patriarchal system, to blame abused women and justify violent acts against them. The imperfection of the domestic legal system with corruption, and the importance of kinship and acquaintances in the investigation of criminal cases also play an important role (France & Kukutschka, 2019; Bakiyev, 2021). Legally and financially insecure, guilty for the violence that has occurred, women victims, fearing stigma and fearing for their future, do not report to law enforcement agencies or withdraw their statements, returning to their families.

At the level of local communities, the informal authority of aksakals and imams as religious leaders plays an important role. Their authority is so strong for the local population that law

enforcement agencies are forced to cooperate on security and conflict prevention issues (Sheranova, 2020). At the same time, actions and decisions of informal authorities that contradict the law go unchallenged by official authorities if they are considered the norm for the local community (Mashal, 2022; Porreca, 2024). Such practices contribute to the de facto legalisation of multiple violations of women's rights in Central Asian countries.

In particular, the consequences of imams conducting the nikah rite without registration are early marriages with minors, polygamy, and deprivation of property and other rights of women in official marriages. Despite the prohibition of polygamy, it is common in Kyrgyzstan and Central Asia for men to live with several wives at the same time under the principle of civil marriage, cohabitation or marriage through nikah (McBrien, 2020; Cleuziou & McBrien, 2021). Women are forced to endure cohabitation with their husband's other wives due to financial dependency, including not having their own living space. According to interview data of women in polygamous marriages, lack of education and work experience, fear of age and ability to provide for themselves makes leaving their husbands almost impossible (Commercio, 2021). Thus, socio-economic conditions and the influence of informal power significantly decreased the practical effectiveness of legislative norms for the protection of women at the level of local communities.

Despite the persistently high level of crimes against women and shortcomings in the legislative system, Kyrgyzstan has made progress in recent years in ensuring international standards for the protection of women (Khamzina *et al.*, 2020). The Kyrgyz government has developed and adopted the Law of the Kyrgyz Republic No. 63 "On Protection and Defence against Family Violence" (2017) and the National Strategy of the Kyrgyz Republic to Achieve Gender Equality until 2030 (2022).

Other measures taken in the reports of the United Nations Executive Committees (2023b; 2023c) include the operation of crisis centres providing temporary shelter for women with children, an increase in the annual cost of the State budget for the operation of crisis centres, the development of training programmes for law enforcement agencies and other categories of professionals on domestic violence, the operation of mobile law enforcement crews to receive the population in remote communities, and the simplification of procedures for obtaining protection orders.

However, the current progress in achieving international standards for the protection of women in Kyrgyzstan may be jeopardised by the adoption of a new version of the Law of the Kyrgyz Republic No. 72 "On Non-Profit Organisations" (2024). According to the new version of the law, non-profit organisations that engage in political activities and receive funding from foreign sources must be included in a special register and mark the materials they produce and distribute with an indication of their foreign representation. In addition, state control over documentation, property, events and other activities is being strengthened.

Political activities include the main activities of human rights, charitable and non-governmental organisations: conducting surveys, shaping public opinion, publishing the results of sociological research, and so on. Thus, Law of the Kyrgyz Republic No. 72 "On Non-Profit Organisations" (2024) restricts the activities of most organisations in the field of women's rights protection in Kyrgyzstan, as they are partially or fully funded by foreign sources: grants, charitable funds, and sponsorship contributions. Representatives of the public and human rights organisations opposed the amendments, describing the new version as a "Law on Foreign Agents" similar to the one adopted earlier in Russia.

The increasing state control over the activities of non-profit organisations is explained by

the growing influence of Internet resources on the formation of public opinion (Kurambayev, 2020). Along with the restriction of information activities of international organisations, the preservation of patriarchy by socio-political groups and individuals who are supporters of traditionalism and conservative Islam is of concern. In recent years, Kyrgyzstan has witnessed the growth of illiberal discourse and the promotion of traditional values and ideas of religious radicalism, including through Internet resources among young people (Aitkulova, 2024). Literature, cinema, and folk art also continue to broadcast images of women and the concept of marriage characteristic of the patriarchal model (Chingiz, 2024). Thus, Kyrgyzstan is between two political vectors: the desire to integrate into international institutions with the provision of international human rights standards and the pressure of traditionalism, which acts as a barrier.

Recommendations for ensuring international standards for the protection of women from violence. Based on the results of the current study and the identified socio-economic, legal and cultural barriers, the following recommendations are proposed to improve the practical effectiveness of ensuring international standards for the protection of women against violence in Kyrgyzstan.

Introduction of targeted legislative reforms to eliminate inconsistencies with international standards. To ensure that national legislation complies with the Convention on the Elimination of All Forms of Discrimination against Women (1979), amendments to specific laws are necessary. The Family Code of the Kyrgyz Republic (2022) needs to be revised to remove the legal exception allowing marriage from the age of 17 with parental consent, in line with international prohibitions on child marriage. In addition, clear legal provisions prohibiting coercion of a partner through physical or psychological violence

should be added to criminalise rape in marriage. The Labour Code requires clear rules establishing liability for harassment of women in the workplace and defining the employer's responsibility for maintaining a safe working environment. Furthermore, the concept of "economic violence" should be formally introduced into the national legal framework to properly regulate the financial rights of women in marriage.

Restricting the jurisdiction of informal courts. Law of the Kyrgyz Republic No. 52 "On Courts of Aksakals" (2024) should be amended to prohibit these informal bodies from hearing cases of violence against women. Currently, members of these courts often have no legal training and base their decisions on tradition and patriarchal customs. As a result, they often justify domestic violence and violations of women's rights, such as bride kidnapping ("ala kachuu").

Reform the funding model for crisis centres to ensure comprehensive social support. Empirical data shows that only one of the 18 crisis centres in Kyrgyzstan is municipal and fully funded by the state. To ensure long-term support for victims, the government should allocate special budget funds to transform these private, sponsor-dependent centres into institutions that are fully funded by the state. Initial social support should include the provision of temporary housing and cash assistance for living expenses so that victims are not forced to return to their abusers due to financial dependence.

Creation of state programmes to ensure economic independence. Statistics show that 90% of victims of domestic violence in Kyrgyzstan return to their abusers due to financial dependence. In addition, women make up 70% of the economically inactive population (United Nations, 2023a). Therefore, additional social support programmes need to be created to assist women in obtaining vocational education or training and guaranteed employment. Providing victims with the opportunity

to support themselves financially is a proven necessity for breaking the cycle of violence.

Strengthening the accountability of law enforcement agencies and the judiciary. Data from the United Nations (2023a) show that only 2.5% of all reported cases of domestic violence against women currently result in court proceedings. To address this serious gap in law enforcement, strict disciplinary and criminal measures must be introduced for law enforcement and judicial officials for inaction, delay or refusal to issue protection orders, as well as for improper resolution of criminal cases through informal networks and corruption.

Changing social discourse and countering patriarchal narratives. Surveys show that many women in Kyrgyzstan consider it acceptable for men to use violence if they do not fulfil their domestic duties and perceive violence as a normal part of family life (Yun *et al.*, 2024). Given the documented rise of illiberal discourse and religious radicalisation on the internet and in traditional media outlets that propagate patriarchal images, targeted campaigns in state media are needed. These campaigns should actively deconstruct harmful norms, condemn violence against women, and promote the building of families based on equal rights and mutual respect between spouses.

Expansion and monitoring of mandatory correctional programmes for perpetrators. Based on recent legislative changes, all persons found guilty under Article 177 of the Criminal Code of the Kyrgyz Republic (2021) must be under strict supervision while undergoing mandatory correctional programmes. These programmes are designed to change the mindset and behaviour of offenders towards their families and serve as an important preventive measure to stop the recurrence of violence in the future.

Conclusions

Ensuring international standards of women's protection in practice faces many challenges when

implementing unified legal norms in countries with different political regimes and structures, social models, historical, cultural and other peculiarities. The process of ensuring international standards for the protection of women from violence in Central Asian countries with a patriarchal model of society, widespread conservative Islam and discriminatory traditions was studied in the example of Kyrgyzstan.

Kyrgyzstan is a member of the UN Human Rights Council and has ratified the main international standards for the protection of women, including the Convention on the Elimination of All Forms of Discrimination against Women. Despite the commitments made under international agreements, women in Kyrgyzstan are subject to systematic violations of their rights, discrimination in many areas of public and family life, domestic violence, and cruel and degrading treatment. Early and forced marriages, as well as abductions of women for forced marriage, are widespread.

Kyrgyz society retains a patriarchal model with elements of conservative Islam and traditionalism, which contradicts international law. In the hierarchy of this patriarchal system, women are subordinate to their husbands and older family members, de facto having a lower social status and limited rights. A bride enters the family of the husband in the status of a *kelin*, taking over the responsibilities of housekeeping and childcare until a new daughter-in-law enters the house. Before marriage, a girl is subject to the authority of the parents, including the choice of a future groom.

Historically entrenched social mores often dominate legal norms, especially in rural and remote areas. Girls are forcibly married through the tradition of bride kidnapping or arranged marriages, including for a fee. The marriage itself is often concluded without official registration through a religious ceremony, similar to civil marriage and cohabitation. In this regard, women are deprived of property and other rights prescribed by law for

official marriages. The absence of official marriage registration in Central Asian countries also contributes to polygamy and early marriages with minors.

The influence of traditionalism affects the effectiveness of the entire legal system in protecting women. Abused women do not report to law enforcement agencies, considering violence to be the norm of marriage and fearing social condemnation. In addition, informal community courts called *aksakal* courts, have remained. These courts rely on historical custom to make decisions, justifying discriminatory traditional practices. The main barrier to ensuring international standards of women's protection in Kyrgyzstan remains socio-economic: high levels of poverty, gender inequality in the labour sphere, and a lack of public funds for long-term financing of crisis centres. All of this leads to women's financial dependence on their families and husbands, contributing to the preservation of patriarchal foundations and traditionalism. Marriage is often seen as the only way for women to survive.

The quantitative part of the research is limited by official statistics on offences, which may not account for all cases due to victims' failure to apply to law enforcement agencies, refusals to initiate proceedings, and uneven registration of cases depending on the period and territory. Prospects for further research are related to the search for legal consensus in achieving international standards for the protection of women from violence between formal and informal institutions of power, the public, and international organisations.

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Між традицією та правом: виклики впровадження міжнародних стандартів прав жінок у Киргизстані

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Анотація

У дослідженні проаналізовано захист прав жінок від насильства в країнах Центральної Азії на прикладі Киргизстану. Незважаючи на міжнародно визнані стандарти, у регіоні поширеними залишаються гендерна дискримінація, домашнє насильство, ранні шлюби, викрадення наречених та інші порушення прав жінок. Окрім морально-етичного аспекту та правових зобов'язань Киргизстану як сторони міжнародних угод, проблема системного насильства щодо жінок є актуальною також з демографічної та соціально-економічної точок зору через втрату працездатних ресурсів і фінансове навантаження на систему охорони здоров'я та соціальні служби. У дослідженні визначено основні суперечності між міжнародними стандартами захисту жінок і національним законодавством; проаналізовано роль правоохоронних органів, а також формальної й неформальної судової системи у забезпеченні

захисту прав жінок від насильства в Киргизстані. Особливу увагу приділено проблемі невідповідності між міжнародними стандартами та традиціями й звичаями, культурними, релігійними та іншими історичними особливостями Центральної Азії. Дослідження систематизувало, узагальнило й проаналізувало дані органів Організації Об'єднаних Націй (ООН), відповідальних за забезпечення прав жінок у Киргизстані; проаналізувало динаміку та виявило внутрішньорегіональні закономірності порушень; а також визначило причини низької практичної ефективності міжнародних стандартів захисту жінок від насильства на регіональному рівні. На основі результатів дослідження було сформульовано рекомендації щодо забезпечення міжнародних стандартів захисту жінок від насильства в Киргизстані з урахуванням соціально-економічних, культурних та історичних особливостей країни. Отримані висновки можуть бути застосовані також для розроблення правових стратегій і політик захисту прав жінок в інших пострадянських країнах Центральної Азії

Ключові слова: гендерна нерівність; примусовий шлюб; традиціоналізм; неформальні суди; Центральна Азія

Protection of inventions and patentability issues under Albanian and European legislation

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Abstract

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The purpose of the study was to identify the legal gaps, institutional conflicts, and practical enforcement problems within the regulation of invention protection in Albania. The institution of Albanian patent law is examined through the prism of a systemic and legal approach, which has made it possible to trace the relationship between national norms and European standards of invention protection. The research has established that Albania's system of invention protection has undergone stages of institutional transformation driven by the transition to a market economy and integration into the European legal space. Based on an analysis of

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institutional, procedural, and expert factors, five key groups of challenges have been identified that limit the effectiveness of the legal protection system for inventions: institutional, procedural, expert, personnel, and informational. The analysis of judicial decisions revealed that national courts tend to focus on procedural and administrative aspects of patent protection, while the technical assessment of novelty and inventive step remains insufficiently developed. Case analysis of judicial rulings and the formal legal method enabled the identification of typical errors in interpreting the criteria of novelty and inventive step, as well as the formulation of proposals for improving the examination of patent applications. The analysis has demonstrated that establishing a dedicated Invention Examination Unit within the General Directorate of Industrial Property, introducing systematic professional development for examiners supported by the European Patent Office (EPO) and the World Intellectual Property Organization (WIPO), and integrating modern information resources (such as Espacenet) would enhance the accuracy of the techno-legal analysis of patent applications and reduce the number of contradictory decisions. The findings of this study may be applied in the work of legislative bodies, patent examiners, judges, and intellectual property law educators with the aim of harmonising national practice with European standards

Keywords: technological leadership; law enforcement practice; technical expertise; institutional capacity; appeal

Introduction

The development of an innovation-driven economy and the intensifying global competition among states for technological leadership create specific challenges for the legal protection of intellectual property, particularly inventions. For countries seeking integration into the European legal framework, such as Albania, ensuring an effective patent protection mechanism constitutes a strategic prerequisite for economic development. Although Albanian legislation formally complies with European standards thanks to recent reforms such as the Law of Albania No. 53/2025 (2025) and accession to the European Patent Convention (EPC) (1973), in practice there are still significant differences in the procedures for filing, examining, and defending patent applications (Albania adopts new law..., 2025). This results in legal uncertainty for inventors, complicates the international commercialisation of research outputs, and reduces the country's investment attractiveness. Moreover, inconsistencies are observed

between the provisions of national legislation and the practice of the European Patent Office (EPO), leading to difficulties in recognising Albanian patents within the European Union (EU). Another problematic aspect concerns the effectiveness of judicial protection of invention rights in Albania. The absence of specialised intellectual property courts, a limited expert base, and the underdeveloped level of patent law enforcement diminish the confidence of the innovative business sector in the legal system (Muçmataj & Liçenji, 2025). At the same time, within the context of European integration processes, Albania is obliged to ensure the adaptation of its national legislation to the EU *acquis communautaire*, which requires a comprehensive analysis of gaps, duplications, and conflicts within the legal framework governing patent protection.

The issue of patent protection in both the European and Albanian contexts has been addressed in contemporary scholarly literature.

Researchers emphasise the correlation between the quality of normative criteria, the level of institutional capacity, and the economic outcomes of intellectual property protection. In the work of L. Beqiraj (2025), it was demonstrated that the rapid implementation of artificial intelligence technologies in Albania has created a paradoxical situation: although the country's innovative potential is growing, the legal uncertainty surrounding the status of AI-generated results introduces new risks into patent law. It was underscored that the ambiguity in defining authorship complicates the work of both experts and courts, while the absence of adapted provisions in the Law of Albania No. 9947 (2008) hinders the development of technological entrepreneurship. In the study by T.A. Dyer *et al.* (2024), it was established that the quality of patent disclosure directly determines the effectiveness of the innovation process: comprehensive and technically accurate descriptions of inventions enhance investor confidence, accelerate technology commercialisation, and reduce the number of appeals in the patenting sphere. The authors concluded that improving the requirements for patent documentation is a key condition for ensuring transparency within the intellectual property protection system and for enhancing the competitiveness of national economies.

The research by L. Garattini *et al.* (2021) analysed the efficiency of the existing model of patent protection in the EU pharmaceutical sector. The authors found that excessive patent protection for minor drug modifications (known as evergreening) creates artificial barriers to the generic market and slows down the introduction of genuine therapeutic innovations. Based on empirical data, it was proven that the current criteria for assessing "inventive step" are overly flexible, resulting in reduced efficiency of the patent system. The issue of harmonising enforcement regimes within the EU was examined by A. Gill and D. Heller (2024), who demonstrated that unified judicial and

administrative procedures enhance the economic value of intellectual property. Their conclusions, indicating an increase in investment attractiveness in jurisdictions with predictable enforcement practices, directly highlight the necessity of establishing a specialised Intellectual Property Chamber in Albania.

Comparison of national patent law systems was conducted by P. Hutukka (2023), who emphasised that the efficiency of patent examination depends not only on legal norms but also on the existence of mechanisms for information exchange and mutual learning among patent offices. The author concluded that countries integrated into international databases for technical solutions demonstrate higher-quality patent examination. In the study by J. Lerner and A. Seru (2022), the impact of patent data quality on the reliability of economic research and the assessment of companies' innovative activity was analysed. The authors found that inaccuracy, fragmentation, or duplication of records in patent databases lead to systematic errors in financial analytics, particularly to the overestimation of the market value of technological assets and the misidentification of the effectiveness of innovation investments. Based on cross-sectoral data, it was demonstrated that the accuracy and completeness of patent information are crucial for the stability of the innovation market and investor confidence. The issue of international cooperation between patent offices was explored by N. Syam (2022), who concluded that a combination of local expert autonomy and work sharing with the EPO ensures the highest efficiency. Such an approach is particularly relevant for smaller states with limited technical resources.

The research by Ö.Ö. Yildiz and S. Görkey (2024) empirically confirmed that patent activity has a direct impact on economic growth, but only under conditions of effective law enforcement. The authors demonstrated that only

consistent judicial practice and coherent administrative policy create a favourable environment for innovation. In turn, E. Xhuvani (2023) traced the course of harmonisation of Albanian legislation with EU law and found that technical implementation proceeds faster than institutional adaptation. It is precisely the lack of human capacity and the imperfect structure of administrative procedures that hinder full approximation to the *acquis communautaire*. This conclusion is consistent with the concept of institutional strengthening of the General Directorate of Industrial Property (GDIP) (2025) and the necessity of establishing specialised judicial structures.

Summarising the results of the analysed studies, it can be stated that the efficiency of a patent system is determined by three interrelated factors: the quality of regulatory criteria, the professional capacity of expert institutions, and the level of procedural organisation. Scholars concur that only the combination of harmonised legal norms with technically competent structures allows for a balance between the stimulation of innovation and the prevention of abuses in the field of patenting. However, most works focus on the pan-European dimension and only partially address the specificities of small states such as Albania.

The aim of the study was to identify regulatory gaps, procedural conflicts, and practical enforcement problems within the legal regulation of invention protection in Albania, evaluating them against the standards of the European patent system. To achieve this aim, the study set out the following objectives: to analyse the Albanian legal framework in the field of patent law and its compliance with major international agreements and European directives; to investigate practical problems of law enforcement in the field of invention protection in Albania, including judicial practice, the activities of expert institutions, and the role of the Patent Office; and to substantiate recommendations for improving the national

system of patent protection in light of the requirements of European legislation and the experience of EU Member States.

Materials and Methods

The methodological basis of the study was the systemic-legal approach, which made it possible to consider the institute of patent law in Albania as an integrated legal system interlinked with international and European regulatory mechanisms. In the course of the research, the comparative-legal method was applied to identify similarities and differences between the provisions of the Law of Albania No. 9947 (2008) and the EPC (1973), as well as to assess the degree of compliance of Albanian legislation with EU directives – specifically, Directive of the Council of European Union No. 98/44/EC (1998) and Directive of the Council of European Union No. 2004/48/EC (2004). The normative-dogmatic method was used to interpret the provisions of international treaties to which Albania is a party, including the Paris Convention for the Protection of Industrial Property (1883), the Patent Cooperation Treaty (PTC) of Albania (1970), and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (1994). In addition, approaches of legal conflict studies (collisiology) were applied to identify normative inconsistencies and conflicts between the provisions of Albanian patent legislation and European legal standards.

The study of the practical aspects of patent protection enforcement in Albania was conducted using an integrated approach combining comparative-legal, formal-legal, systemic analysis, and case study methods. The empirical basis of the research comprised judicial decisions reflecting actual enforcement practice in the field of patent protection. In particular, Judgment of Tirana District Court of Albania No. 298 (2019) and Judgment of Administrative Chamber of Supreme Court of Albania No. 00-017-2270 (2017) were analysed

as representative examples of judicial interpretation in patent law. The comparative context of the study was enhanced by including Decision of the Technical Board of Appeal of the European Patent Office No. T 1389/10 – 3.2.04 (2011) and Decision of the Technical Board of Appeal of the European Patent Office No. T 2472/13 – 3.2.01 (2015), as well as the recent landmark Decision of the Enlarged Board of Appeal of the European Patent Office No. G 0002/21 (2023) and Decision of the Technical Board of Appeal of the European Patent Office No. T 0553/22 – 3.2.05 (2024), which allowed for the identification of differences in approaches to the determination of inventive step and the assessment of technical effect between European and national practices.

The formal-legal method enabled the analysis of the internal consistency of the provisions of Albanian patent legislation, the degree of its harmonisation with European standards, and the identification of existing gaps in the regulatory framework of patent examination procedures. The research on the improvement of the patent protection system in Albania was conducted using a comprehensive approach combining the analysis of legislative acts and the comparative study of international experience, particularly the practice of the EPO and the norms of the EPC (1973). The comparative-legal method was employed to correlate national provisions with the requirements of the EPC and the Guidelines for Examination in the European Patent Office (2025), which facilitated the identification of legislative gaps and the formulation of proposals for harmonisation.

Results

Regulatory and legal framework for the protection of inventions in Albania in the context of international and European standards. The legal regulation of intellectual property protection, particularly with respect to inventions, in Albania has undergone a process of transformation

corresponding to the country's socio-economic changes and its international commitments. Historically, the system of patent protection acquired a formal legal structure following the fall of the communist regime and the governmental reforms of the 1990s. Prior to this period, rights relating to inventions and "rationalisations" were governed within the general provisions of civil and commercial law, without a clearly defined special institution of patent protection similar to those established in Western European countries. In 2008, a fundamental legislative act was adopted – Law of Albania No. 9947 (2008). This law laid the foundation for the system of legal protection of industrial property, including inventions, utility models, industrial designs, trade marks, and geographical indications. The Act defines the objects of protection, establishes the principles and procedures for registration, specifies the rights and obligations of proprietors, and provides for protective measures.

The body responsible for granting patents and protecting inventions is the GDIP (2025), which functions as the central executive authority within the system of state management of intellectual property. Established through the reorganisation of the former Directorate of Patents and Trademarks, the GDIP has become the key institution in the implementation of state policy regarding the legal protection of industrial property, including the patenting of inventions. The GDIP operates under the supervision of the Ministry of Economy and Innovation of the Republic of Albania (2025) and performs functions relating to the receipt, examination, registration, and publication of industrial property objects. Its competence encompasses both formal and substantive examination of patent applications, the conduct of administrative procedures in cases of opposition or revocation, and the maintenance of official registers and publication of bulletins. Furthermore, within the structure of the GDIP there are

specialised units – the Board of Appeal, the Chamber for Objections Examination, and the Chamber for Repeal/Invalidation, which perform quasi-judicial functions by reviewing decisions and resolving disputes in the field of industrial property.

From an organisational and legal perspective, the GDIP (2025) functions not only as a registration authority but also as an essential component of the national innovation system, as its activities aim to create a favourable legal environment for the development of scientific research, the stimulation of inventive activity, and the commercialisation of the results of intellectual labour. The Directorate consistently focuses on the implementation of electronic services, the promotion of transparency in administrative procedures, and the harmonisation of internal processes with the Guidelines for Examination in the European Patent Office (2025) and the World Intellectual Property Organization (WIPO) (2025).

Albania's international legal obligations in the field of invention protection have been a determining factor in shaping its modern patent law system, since it is international standards that define the level of protection, registration procedures, and mechanisms for recognising the rights of foreign applicants. Since the early 1990s, during the course of political and economic reforms, Albania has gradually acceded to the principal international treaties in the field of intellectual property, thereby establishing a comprehensive legal framework compatible with European and global approaches to invention protection. The first step was Albania's accession in 1995 to the Paris Convention for the Protection of Industrial Property (1883). This convention established the fundamental principles of international protection of inventors' rights, notably the principle of national treatment, the right of priority, and the independence of patents granted in different states. For Albania, participation in the Paris Convention for the Protection of Industrial Property

entailed the obligation to ensure an equal level of legal protection for both national and foreign applicants, as well as to develop mechanisms guaranteeing adherence to international norms within the patenting procedure.

The second international instrument was the PTC of Albania (1970). Participation in the PCT enabled Albanian inventors to file international patent applications through the GDIP (2025), which acts as a receiving office. This significantly facilitated access to the global system of patent protection, reduced the financial and procedural burden on applicants, and promoted broader international recognition of Albanian scientific developments.

The third element within the international legal architecture is the Agreement on TRIPS (1994), which constitutes part of the legal system of the World Trade Organization (2025). This Agreement sets out the minimum standards for the protection of intellectual property rights across all categories of subject matter, including inventions. In accordance with the Agreement on TRIPS, Albania undertook to ensure patent protection for inventions in all fields of technology, provided they meet the criteria of novelty, inventive step, and industrial applicability, and to guarantee effective legal remedies in cases of patent infringement.

In the context of further development of its national intellectual property protection system, Albania has consistently pursued a policy of harmonising its legislation with EU legal standards. This process forms part of the country's broader strategy of European integration, enshrined in the Stabilisation and Association Agreement between the European Communities and their Member States No. O.J. (L 107) 166 (2006), which identifies the adaptation of industrial property legislation as a priority area of cooperation. European integration in the sphere of patent law is viewed as a mechanism for modernising the national legal system and enhancing its responsiveness to

contemporary technological and scientific challenges. The main reference point in this process is the EPC (1973), which establishes harmonised approaches to granting legal protection for inventions across the EPO member states. Although Albania is not yet a member of the EPO, its national patent legislation has been actively aligned with the provisions of the EPC and EU directives, notably Directive of the Council of European Union No. 98/44/EC (1998) and Directive of the Council of European Union No. 2004/48/EC (2004). One of the key directions of harmonisation involves aligning the definitions and criteria of patentability with the provisions of the EPC (Hall & Helmers, 2019). In particular, Article 52 of the EPC (1973) establishes three essential requirements – novelty, inventive step, and industrial applicability, which must be simultaneously satisfied for a patent to be granted (Table 1). Law of Albania No. 9947 (2008) provides for analogous

criteria; however, in practical application certain discrepancies persist, arising from less detailed regulation of the concepts of “inventive step” and “unity of invention”. In the European system, these aspects are comprehensively elaborated in the Guidelines for Examination in the European Patent Office (2025), which ensure a high level of legal predictability for applicants. Furthermore, differences between the EPC (1973) and Albania’s national legislation can be observed in the organisation of the examination procedure for patent applications. The Albanian patent system primarily relies on formal examination, whereas the EPO applies a full substantive examination, encompassing an assessment of the technical level of the invention, its novelty, and inventive step based on international searches. This underlines the necessity of further refinement of national procedures to enhance the quality of patent decisions and ensure conformity with EU standards.

Table 1. Comparative analysis of key provisions of the EPC (1973) and Law of Albania No. 9947 (2008)

Criterion	EPC (1973)	Law of Albania No. 9947 (2008)	Key differences
Criteria for patentability	Establishes three mandatory criteria: novelty, inventive step, industrial applicability (Art. 52)	Similar criteria are defined in Art. 5 of the Law; however, the interpretation of the concepts is less detailed	Insufficient specification of the concept of “inventive step” in the national law
Concept of novelty	Absolute novelty: any disclosure worldwide is grounds for refusal of a patent	Also provides for absolute novelty; however, verification mechanisms are based on limited access to international databases	Limited search capabilities beyond national registries
Unity of invention	Requires a single general inventive concept unifying the claimed elements	Unity of invention is recognised, but the criteria are formulated in general terms without practical examples	Lack of detailed methodological guidelines analogous to the Guidelines for Examination in the European Patent Office (2025)
Examination procedure	Full substantive examination, includes international search and assessment of the inventive step	Predominantly formal examination; substantive assessment is conducted on a limited basis	Absence of an international search mechanism; need to establish a system for substantive examination
Term of patent protection	20 years from the filing date (subject to payment of annual fees)	20 years from the filing date	No differences
Publication of application	18 months from the filing date or priority date	Similarly – after 18 months from the filing date	Minimal differences

Table 1. Continued

Criterion	EPC (1973)	Law of Albania No. 9947 (2008)	Key differences
Opposition and appeal	Provides for a two-tier system: Boards of Appeal (2025) and the Enlarged Board of Appeal of the EPO	Possibility of appeal – to the Appeal Commission at the GDIP (2025)	The Albanian system lacks an independent judicial mechanism equivalent to the Boards of Appeal

Source: compiled by the authors

In accordance with the recommendations of the European Commission (Albania Report 2023, 2023), Albania must enhance the mechanisms for judicial protection of intellectual property rights, including improving judges' qualifications in the field of patent law and introducing specialised judicial chambers. Such measures will contribute to strengthening the confidence of European investors and to the development of the innovative sector of the economy. Thus, although Albania has not yet obtained the status of an EPO Member State, its legal policy demonstrates a clear orientation towards the future implementation of the provisions of the EPC (1973). The consistent approximation of national legislation to the EU *acquis communautaire* creates the prerequisites for effective integration into the unified European system for the

protection of inventions and for ensuring equal participation of Albanian applicants in international patent procedures.

Practical aspects of patent law enforcement in Albania. In practice, the application of patent legislation in Albania is accompanied by a range of institutional, procedural, and expert challenges that affect the overall efficiency of the intellectual property protection system. Despite the formal harmonisation of national legislation with European standards, the practical implementation of these norms remains limited. In particular, there are systemic difficulties in conducting comprehensive examinations of patent applications, ensuring the appropriate quality of technical assessments, and resolving disputes arising during the registration and protection of patent rights (Table 2).

Table 2. Key institutional, procedural, and expert challenges in the application of patent law in Albania

Category of challenges	Problem description	Root causes	Implications for legal enforcement
Institutional	Insufficient capacity of the GDIP (2025) to ensure comprehensive examination of applications and monitoring of patent rights compliance	Limited funding, shortage of technical specialists, small number of qualified patent examiners	Low quality of initial decisions, increase in the number of appeals and litigation cases
Procedural	Imperfect procedures for appealing GDIP decisions and delays in application processing	Absence of specialised courts for intellectual property matters; complexity of coordination between administrative and judicial instances	Prolonged duration of case resolution, diminished confidence in the rights protection system
Expert	Insufficient quality of technical expertise in assessing novelty and inventive step	Lack of independent expert institutions, limited access to international databases of technical knowledge	Errors in determining patentability, increased risk of patent annulment

Table 2. Continued

Category of challenges	Problem description	Root causes	Implications for legal enforcement
Human Resources	Small number of specialists possessing both legal and technical training	Absence of a system for specialised education and professional certification of patent attorneys	Low level of staff training, formalistic approach to application examination
Information	Limited level of digitalisation in the processes of filing and processing patent applications	Insufficient integration of GDIP electronic services with EPO and WIPO (2025) platforms	Slower processing of applications, reduced transparency of administrative procedures
International legal	Partial application of Agreement on TRIPS (1994) and EPC (1973) norms in national practice	Lack of full implementation of examination procedures and criteria in accordance with EU standards	Limited mutual recognition of patents, barriers to international patenting

Source: compiled by the authors based on Invention patents, 85 applications in Albania in the last 5 years (2023), Patent Profession in the EPC Contracting states (2025)

To overcome the identified imbalances, it is necessary to introduce a system of continuous professional training for patent examiners, strengthen the analytical function of the GDIP (2025), expand judicial specialisation in the field of intellectual property, and develop a national expert base. These measures would ensure a more predictable, efficient, and trustworthy system of legal protection for inventions in Albania. In this context, the analysis of judicial practice reflects the real challenges in applying the provisions of patent legislation. Judicial decisions serve both as a means of interpreting legal norms and as an important indicator of the level of their practical implementation, as well as of the ability of the national legal system to adequately integrate European standards (Ilieva and Ivanov, 2025). One of the illustrative examples that allows tracing the differences between the approaches of the EPO and Albanian national authorities is the case Decision of the Technical Board of Appeal of the European Patent Office No. T 1389/10 – 3.2.04 (2011). In this case, the application concerned a protective case for delicate items featuring an elastic structure for securing the object inside. The EPO refused to grant a patent, referring to Article 54 of the EPC (1973), which establishes the novelty requirement. During the examination, it was

determined that the main technical characteristics of the invention – shape, material, and function – had already been disclosed in prior patent documents (specifically, in documents D7 and D8). The EPO concluded that minor changes in the design or adaptation of a product to a new type of object cannot be regarded as “new” if the essential technical function remains unchanged. Accordingly, the patent was rejected for lack of novelty, as the claimed solution did not produce any new technical effect compared with the known state of the art.

In comparison with this practice, the Albanian patent law system is currently in the stage of convergence with EU standards but faces difficulties in the proper interpretation of the concepts of “novelty” and “inventive step”. As noted by L. Çami and X. Skënderi (2023), in Albanian national practice, courts and experts demonstrate a limited understanding of the concept of technical distinction between inventions, which leads to inconsistent decisions concerning similar applications. This situation is caused not only by the insufficient detail of the provisions of the Law of Albania No. 9947 (2008) but also by the limited expert capacities of the GDIP (2025).

In the case Decision of the Technical Board of Appeal of the European Patent Office No. T 2472/13 – 3.2.01 (2015), the subject of the

application was an invention related to a bicycle wheel equipped with a quick-release mechanism, specifically, the design of the hub and fastening system allowing the wheel to be removed without the use of tools or with minimal intervention, by means of a lever or similar mechanism. The applicant claimed that this design provided improved ergonomics, ease of transportation or maintenance, and enhanced functionality compared with known wheels.

However, in its decision under Article 56 of the EPC (1973), the EPO found that the invention lacked the required inventive step. In EPC, assessing the inventive step requires a rigorous techno-legal test to determine if the proposed solution offers a genuine technical advancement. The commission analysed whether the inventor's contribution went beyond what would be obvious to a specialist in the field, that is, whether the invention represented a non-obvious development of already known solutions.

In this case, the Board concluded that the applicant had merely proposed an alternative design that was an obvious modification of a previously known hub and fastening mechanism. Crucially, the analysis revealed that the proposed changes did not introduce a new technical effect or a technological solution substantially different from the prior art. Consequently, the patent application was refused, as it did not meet the strict inventive step criterion required by the EPC (1973). This rigorous application of European doctrinal expectations regarding prior art and technical effect stands in contrast to the current Albanian patent law system, which is still in the stage of convergence and faces difficulties in properly interpreting and analysing the concept of "inventive step".

An examination of Albanian practice demonstrates that national courts and administrative bodies also address a broad spectrum of patent disputes – ranging from issues of validity and interpretation of patent rights to disputes

concerning remuneration for employee inventions. However, the focus of their decisions tends to shift towards questions of the actual use of patents, proper registration procedures, and the legal consequences of administrative acts issued by the GDIP (2025). For instance, in Judgment of Tirana District Court of Albania No. 298 (2019), the court examined a complex set of issues related to the enforcement of patent owners' rights, the pursuit of compensation for the commercial use of an invention, and related administrative procedures concerning the recognition of patents before administrative authorities. In this decision, the court conducted a detailed analysis of the circumstances surrounding the actual implementation of the invention, previous administrative acts, and appeal procedures within the national system, which illustrates an emphasis on the procedural and legal dimension of disputes.

Similarly, the final decision in Judgment of Administrative Chamber of Supreme Court of Albania No. 00-017-2270 (2017) concerned issues of patent infringement and the assessment of the legal consequences of administrative decisions. However, because general administrative courts currently lack the necessary technical expertise, their tendency to focus heavily on procedural aspects creates significant risks for fair dispute resolution, including inconsistent decisions and a decline in confidence in the patent protection system. To avoid these risks and ensure rulings are grounded in accurate techno-legal analysis, it is critical to establish a specialised chamber for intellectual property matters, modelled on the Boards of Appeal (2025), that includes both judges and technical experts.

The urgency of establishing this specialised technical capacity is underscored by the widening gap between national practice and European standards. While Albanian courts are still mastering foundational technical assessments, European practice has further evolved to address modern

complexities surrounding the proof of technical effects during the assessment of inventive step. This advanced approach is evidenced by the Decision of the Enlarged Board of Appeal of the European Patent Office No. G 0002/21 (2023), which clarified the reliance on post-published evidence for technical effects, and the Decision of the Technical Board of Appeal of the European Patent Office No. T 0553/22 – 3.2.05 (2024), which reinforced the problem-solution approach for technically independent partial problems. Without specialised judicial bodies capable of engaging with such sophisticated techno-legal doctrines, Albania risks falling further behind the European patent space.

The analysis of European cases, such as Decision of the Technical Board of Appeal of the European Patent Office No. T 1389/10 – 3.2.04 (2011) and Decision of the Technical Board of Appeal of the European Patent Office No. T 2472/13 – 3.2.01 (2015), clearly demonstrates that the criterion of inventive step in European practice is applied as a precise techno-legal test. This rigorous evaluation is strongly supported by doctrinal reasoning concerning prior art and the specific technical effect achieved by the invention. Furthermore, European practice continues to refine its approach to complex proofs of technical effects, as evidenced by recent rulings like Decision of the Enlarged Board of Appeal of the European Patent Office No. G 0002/21 (2023) and Decision of the Technical Board of Appeal of the European Patent Office No. T 0553/22 – 3.2.05 (2024).

In contrast, an examination of Albanian national practice, illustrated by Judgment of Tirana District Court of Albania No. 298 (2019) and Judgment of Administrative Chamber of Supreme Court of Albania No. 00-017-2270 (2017), reveals a different approach. While Albanian national institutions exhibit notable activity in adjudicating patent disputes, their rulings have a marked focus on the procedural and operational aspects of patents rather than conducting substantive

technical evaluations. Because general administrative courts currently lack specialised technical expertise, they tend to default to evaluating proper registration procedures and the legal consequences of administrative acts.

To narrow the gap between European doctrinal expectations and national practice, it is necessary to fundamentally strengthen the technical and expert capacity of the GDIP (2025) and the judiciary. This requires active cooperation with international institutions such as the EPO and the WIPO (2025). Furthermore, to avoid inconsistent decisions, Albania must implement methodological guidelines and enhance access to international prior art sources. Adopting such measures would directly contribute to improving the quality of decisions on patentability and reducing the number of appeals based on technical ambiguity or the inadequacy of expert opinions.

Improving the patent protection system in Albania with regard to European experience.

The process of improving the patent protection system in Albania is linked to the need for harmonising national legislation with the provisions of the EPC (1973) and the Guidelines for Examination in the European Patent Office (2025). To achieve this, amendments should be introduced to the Law of Albania No. 9947 (2008) to provide clear definitions of key concepts stipulated in Articles 52-56 of the EPC (1973), namely “invention”, “novelty”, “inventive step”, and “industrial applicability”. This would allow for the unification of approaches to assessing patentability and reduce the risk of inconsistent decisions during the examination of applications. At the same time, it would be appropriate to introduce procedures analogous to those set out in the Guidelines for Examination in the European Patent Office (2025), which detail the criteria of inventive step and technical effect. Such measures would enhance the quality of expert opinions and the predictability of decisions.

A further stage in improving the Albanian patent protection system involves strengthening the institutional capacity of the GDIP (2025). At present, the existing structure of the GDIP demonstrates limited ability to conduct high-quality techno-legal examination of patent applications, which creates a risk of erroneous determinations of patentability and an increase in the number of appeals. One of the measures to overcome these issues is the establishment of a dedicated Invention Examination Unit specialising in comprehensive techno-legal analysis of submitted applications. Such an organisational structure would allow the concentration of resources and expertise, ensuring a systematic approach to the assessment of novelty, inventive step, and industrial applicability of inventions in accordance with EPC (1973) standards.

In parallel, it is advisable to introduce a continuous mechanism for enhancing the qualifications of GDIP (2025) patent examiners with the support of international organisations, particularly the EPO and WIPO (2025). The Academic Research Programme (2017) provides an effective model for organising training and experience exchange, including expert internships, participation in seminars, and access to analytical materials, enabling the improvement of national specialists' techno-legal competence. Systematic implementation of such programmes would ensure the regular updating of knowledge in the field of modern patentability criteria and prior art assessment methodologies, thereby reducing the number of inconsistent decisions and strengthening confidence in the patent protection system.

Another direction in strengthening the institutional capacity of the GDIP (2025) is the integration of advanced information resources used by the EPO for the verification of novelty and inventive step. In particular, connecting the GDIP to the Espacenet platform, which enables the search for technical solutions in international

databases and the analysis of prior art, would improve the quality of technical examinations and standardise the criteria for assessing inventions. The use of such tools would contribute to a more effective implementation of Articles 52-56 of the EPC (1973) and reinforce Albania's position within the international patent protection system.

The effectiveness of the patent protection system in Albania depends not only on the quality of application examinations but also on the organisation of appellate and judicial proceedings in patent disputes. At present, most intellectual property disputes are adjudicated by general administrative courts which lack the necessary technical expertise. This situation entails significant risks for fair and professional dispute resolution, as courts are unable to assess the technical aspects of inventions and their compliance with the criteria of novelty and inventive step. Consequently, this leads to inconsistent decisions, procedural delays, and a decline in confidence in the patent protection system. To enhance enforcement efficiency, it would be advisable to establish a specialised chamber for intellectual property matters within the Tirana Court of Appeal (2025). Such a chamber should operate following the model of the Boards of Appeal (2025) of the Guidelines for Examination in the European Patent Office (2025), where decisions are rendered with the participation of judges and technical experts possessing relevant sectoral expertise. The specialised chamber would centralise the adjudication of patent disputes, ensure the consistency of judicial practice, and shorten the duration of proceedings, thereby increasing the predictability and stability of enforcement mechanisms.

Improvement of appellate and judicial procedures should also involve the introduction of clear time limits for case consideration, standardised procedures for submitting evidence and requests to technical experts, as well as the publication of reasoned decisions, which would contribute to

enhancing transparency and public trust in the patent protection system. The combination of a specialised judicial approach and the active involvement of technical experts creates preconditions for the stable implementation of Articles 52-56 of the EPC (1973) into national practice and will strengthen Albania's position in the sphere of international patent protection.

Thus, the improvement of Albania's patent protection system requires a comprehensive approach combining regulatory harmonisation with EPC (1973) provisions, institutional strengthening of the GDIP (2025), and the reform of appellate and judicial procedures. Alignment of national legislation with European standards, the introduction of high-quality techno-legal expertise, the integration of modern information resources, and the establishment of specialised judicial structures will contribute to enhancing the quality, predictability, and transparency of law enforcement. Implementation of these measures will ensure more effective protection of patent rights, reduce the number of inconsistent decisions and appeals, and promote Albania's integration into the European patent space, thereby stimulating innovation and increasing the competitiveness of the national economy.

Discussion

The findings of the study demonstrate that the evolution of Albania's patent law system correlates with the processes of European integration and international legal unification. The identified trends in the harmonisation of national legislation with the EPC (1973) and EU directives, namely, Directive of the Council of European Union No. 98/44/EC (1998) and Directive of the Council of European Union No. 2004/48/EC (2004), confirm that Albania's legal framework is acquiring the features of the European model of intellectual property regulation.

The results of this study are consistent with the conclusions drawn by L. Pöld (2024), who determined that the effectiveness of a patent law system depends not only on formal harmonisation with international instruments but also on the existence of institutional mechanisms for preserving technological and commercial secrecy. In her research, the author emphasised that excessive openness of patent procedures may undermine the level of technological security in states undergoing structural reforms. This conclusion partially correlates with the Albanian context, where the implementation of electronic services and the expansion of access to GDIP (2025) databases create challenges in maintaining a balance between the transparency of administrative procedures and the protection of inventors' confidential information. Accordingly, the analysis confirms that effective implementation of European norms in the field of patent law requires consideration of national specificities of institutional security and commercial policy.

Comparison of the obtained results with the research conducted by H. Ullrich (2023) provides grounds to assert that Albania faces similar regulatory challenges to those within the European patent system. In particular, the author identifies the phenomenon of patent dependency as a structural problem associated with the unequal distribution of rights between primary and dependent patent holders, which weakens the innovation potential of small states. Within the Albanian legal system, such dependency manifests itself in the dominance of foreign applicants in the structure of patent registrations and the limited capacity of national inventors to commercialise their developments. Thus, the results confirm that even under conditions of formal harmonisation with EPC (1973) standards, it remains necessary to establish mechanisms for preventing patent concentration and to support innovation among small and medium-sized

enterprises by facilitating access to international PTC of Albania (1970) procedures.

The position of K. Walsh *et al.* (2022) on the transformation of the European patent landscape further confirms the relevance of the identified patterns. The researchers noted that the modernisation of European patent law aims not only at unification but also at enhancing the efficiency of judicial and administrative protection of intellectual property. The authors emphasised that the gradual implementation of the Unitary Patent System and the establishment of the Unified Patent Court are intended to reduce the fragmentation of patent regulation in Europe. In this context, the analysis of Albanian legislation demonstrates that the absence of an independent judicial body equivalent to the Boards of Appeal (2025) remains one of the main barriers to full integration into the European patent area. This inconsistency underscores the importance of improving institutional mechanisms for patent dispute resolution and enhancing judicial expertise in the field of intellectual property.

The results of the practical analysis of enforcement in Albania's patent protection domain confirm the existence of structural problems related to institutional capacity, the quality of examinations, and the efficiency of appellate procedures. The findings indicate that formal harmonisation of national law with European legislation does not automatically ensure improved enforcement without the proper development of expert and organisational mechanisms. In F. Mezzanotti's (2021) study, it was demonstrated that an excessive number of legal disputes and protracted patent protection procedures create a so-called "roadblock to innovation" – an institutional barrier that reduces the incentive for corporate innovation. In comparison with that author's conclusions, the results of the analysis of the Albanian system reveal a similar effect, though caused not by the intensity of litigation,

but rather by its lengthy character and the insufficient quality of technical expertise. In Albanian practice, delays in appealing GDIP (2025) decisions and the absence of specialised courts have a similarly negative impact on the innovation environment, confirming F. Mezzanotti's universal conclusion regarding the institutional influence of patent enforcement on corporate innovation. At the same time, unlike in Western jurisdictions, where the problem lies in the excessive number of lawsuits, in Albania the key factor is weak institutional capacity and a shortage of qualified personnel, which hinders the timely examination of applications (Bodi *et al.*, 2021).

The study by N. Papageorgiadis and W. Sofka (2020), in which the Patent Enforcement Index for 51 countries was developed, revealed significant cross-national variation depending on the degree of development of their legal systems, access to judicial mechanisms, and the extent of compliance with international standards. A comparison of this approach with the results of the Albanian case indicates that Albania ranks at lower levels of the index with regard to such parameters as predictability of judicial decisions and procedural transparency. N. Papageorgiadis and W. Sofka (2020) emphasised that countries with low levels of TRIPS compliance demonstrate a higher degree of uncertainty in the field of patent protection, which, in turn, reduces the confidence of investors and innovative actors. The conclusions obtained in the course of the present research fully correlate with these observations: incomplete implementation of the Agreement on TRIPS (1994) and EPC (1973) provisions in Albania's national practice results in heterogeneity of law enforcement and an increased number of appeals. Thus, the empirical findings confirm the cross-national regularities described in the Patent Enforcement Index.

The study by T. Shu *et al.* (2022) highlights another important aspect – the relationship

between the quality of patent examination, companies' market value, and investors' reactions. The authors demonstrated that the "overload" of patent examiners leads to a decline in the quality of decisions and, consequently, to market undervaluation of innovations. This observation directly corresponds with the findings obtained from the analysis of the Albanian system. In Albania, where the number of qualified experts is limited and the technical infrastructure of the GDIP (2025) remains inadequate, a similar tendency can be observed. The shortage of expert resources leads to errors in the assessment of novelty and inventive step, thereby diminishing overall confidence in patent decisions (Kubiczek *et al.*, 2025). Hence, the conclusions of T. Shu *et al.* possess strong explanatory power for interpreting the causal relationship between the quality of patent examination and the effectiveness of legal protection in Albania.

The obtained results indicate that regulatory alignment with EU and EPO standards is a prerequisite for enhancing the efficiency of the national patent system. This is consistent with the findings of researchers who emphasise that the unification of legal regimes in the field of intellectual property contributes to the reduction of legal uncertainty, stimulates innovative activity, and ensures greater predictability of law enforcement. In particular, the study by M. Kafouros *et al.* (2021) demonstrated that the stability of the patent system and the quality of its institutional framework have a direct impact on the economic efficiency of enterprises, particularly on their ability to obtain profits in the event of patent disputes. The authors underline that in countries with underdeveloped systems of examination and judicial patent protection, enterprises face high risks of losing intangible assets and a decline in investment attractiveness. These conclusions directly correlate with the identified issues in the operation of the GDIP (2025) in Albania, where limited expert capacity leads to an increase in

appeals and inconsistent decisions. The measures proposed in the study – the establishment of a specialised division for invention examination and the introduction of continuous professional development programmes for experts – may mitigate these risks and enhance the efficiency of patent management, which aligns with the recommendations of M. Kafouros *et al.* (2021).

The results also correspond with the findings of W. Sofka *et al.* (2025), which demonstrate that deficiencies in national patent systems increase the strategic risks faced by international corporations, particularly in litigation outside their own jurisdictions. The authors note that companies from countries with "weak" patent regimes are more frequently subject to patent disputes in states with developed judicial practice. This indicates a close interrelationship between the quality of a national patent infrastructure and the international competitiveness of businesses (Teta and Xhafka, 2024). In this context, the harmonisation of Albanian legislation with the EPC (1973) and the implementation of procedures analogous to the Guidelines for Examination in the European Patent Office (2025) may be regarded as instruments for strengthening institutional trust, potentially reducing the risks of international litigation and enhancing the country's reputation in the field of intellectual property protection.

In the study by K. Walsh (2019), attention was drawn to the significance of judicial dialogue between European jurisdictions as a means of ensuring the consistency of practice in the field of patent law. The author emphasised that the establishment of sustainable communication channels between national courts and the Boards of Appeal (2025) fosters the development of common approaches to the interpretation of key concepts, in particular "novelty" and "inventive step". These ideas directly relate to the proposal to establish a specialised chamber for intellectual property matters within the Tirana Court of Appeal (2025),

which should operate following the model of the Boards of Appeal. Such a step could ensure uniformity of law enforcement, enhance the technical competence of courts, and promote Albania's integration into the European patent area.

The findings of the research indicate that the reform of the patent protection system in Albania has not only a regulatory but also a strategic dimension. Harmonisation with European law creates a foundation for strengthening trust in national institutions, reducing business transaction costs, and stimulating innovative activity.

Conclusions

As a result of the conducted research, it was established that the system of legal regulation of invention protection in Albania underwent a consistent evolution – from fragmented regulation within the framework of general civil legislation to a comprehensive normative and legal system harmonised with international and European standards. Analysis of the legislative framework showed that the adoption of the Law on Industrial Property became a key stage in the formation of a modern patent law institution corresponding to the fundamental provisions of the EPC, Agreement on TRIPS and PCT of Albania.

It was proven that the establishment and functioning of the GDIP provided the institutional foundation of the industrial property protection system. Structural analysis of the GDIP's activity determined that it performed the full cycle of administrative procedures, from the receipt and examination of applications to appellate review, and aligned its processes with the practices of the EPO and WIPO. At the same time, several shortcomings in law enforcement were identified, particularly the absence of a substantive examination mechanism and insufficient specification of the criteria for "inventive step" and "unity of invention".

Five systemic groups of problems determining the state of law enforcement in the field of

patent protection were identified: institutional, procedural, expert, personnel-related, and informational. Analysis of judicial practice, particularly the Judgment of Tirana District Court of Albania No. 298 and the Judgment of the Administrative Chamber of the Supreme Court of Albania No. 00-017-2270, demonstrated that Albanian courts primarily focused on procedural and administrative matters, while the evaluation of novelty and inventive step remained limited.

A comparative analysis with the Guidelines for Examination in the European Patent Office, notably in the Decisions of the Technical Board of Appeal of the European Patent Office No. T 1389/10 – 3.2.04 and No. T 2472/13 – 3.2.01, revealed conceptual differences in approaches to determining technical novelty and inventive step. The European model involved a rigorous application of techno-legal criteria and systematic examination of prior art, whereas Albanian practice relied more on procedural interpretation of legal norms.

It was established that improving the patent protection system in Albania was necessary to ensure harmonisation of national legislation with the EPC and the practice of the EPO. The analysis showed that amending the Law of Albania No. 9947 by introducing precise definitions of "invention", "novelty", "inventive step", and "industrial applicability" would facilitate the unification of patentability assessment criteria and reduce contradictory decisions during application examination.

The practical outcomes of the study indicated that strengthening the institutional capacity of the GDIP through the creation of a separate division for invention examination, the systematic training of patent examiners, and the integration of information resources such as Espacenet would improve the accuracy of techno-legal analysis of applications. The research also demonstrated that effective appellate and judicial review of patent disputes required the establishment of a specialised Intellectual Property Chamber within

the Tirana Court of Appeal, the mandatory involvement of technical experts, and the adoption of clear procedures and timeframes for case consideration. Prospects for further research lay in extending the comparative analysis of the law enforcement practices of Western Balkan states and studying the effectiveness of electronic platforms for interaction between the GDIP, EPO, and WIPO.

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Захист винаходів та питання патентоспроможності за албанським та європейським законодавствами

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Анотація

Метою дослідження було виявлення законодавчих прогалин, інституційних конфліктів та практичних проблем застосування норм щодо захисту винаходів в Албанії. Інститут патентного права Албанії розглядається через призму системного та правового підходу, що дозволило простежити взаємозв'язок між національними нормами та європейськими стандартами захисту винаходів. У дослідженні було встановлено, що система захисту винаходів в Албанії пройшла етапи інституційної трансформації, зумовлені переходом до ринкової економіки та інтеграцією у європейський правовий простір. На основі аналізу інституційних, процедурних та експертних факторів було визначено п'ять основних груп викликів, які обмежують ефективність системи правового захисту винаходів: інституційні, процедурні, експертні, кадрові та інформаційні. Аналіз судових рішень показав, що національні суди схильні зосереджуватися на процедурних та адміністративних аспектах патентного захисту, тоді як технічна оцінка новизни та винахідницького рівня залишається недостатньо розвиненою. Аналіз судових справ та застосування формально-правового методу дозволили виявити типові помилки у тлумаченні критеріїв новизни та винахідницького рівня, а також сформулювати пропозиції щодо вдосконалення експертизи патентних заявок. У дослідженні було продемонстровано, що створення спеціального підрозділу з експертизи винаходів у складі Генеральної дирекції промислової власності, впровадження системного професійного розвитку для експертів за підтримки Європейської патентної організації (EPO) та Всесвітньої організації інтелектуальної власності (WIPO), а також інтеграції сучасних інформаційних ресурсів (таких як Espacenet) підвищить точність техніко-правового аналізу патентних заявок та зменшить кількість суперечливих рішень. Результати цього дослідження можуть бути застосовані у роботі законодавчих органів, патентних експертів, суддів та викладачів права інтелектуальної власності з метою гармонізації національної практики з європейськими стандартами.

Ключові слова: технологічне лідерство; практика застосування закону; технічна експертиза; інституційний потенціал; апеляція



Artificial intelligence in the fight against doping: Between breakthrough and ethical and legal dilemma

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Abstract

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The introduction of artificial intelligence (AI) into doping control procedures transforms decision-making and requires verification of the validity, reproducibility and non-discriminatory nature of models. The study aimed to comprehensively examine the possibilities and limitations of AI in anti-doping activities, with an emphasis on the identification of ethical dilemmas and the assessment of the effectiveness of new technological solutions in international and national practices. The study uses qualitative content analysis, comparative legal analysis, and critical assessment of regulatory and ethical frameworks to analyse legal restrictions, the integration of AI technologies into Azerbaijan's anti-doping policy and international practice. The results obtained highlighted the significance of the key provisions

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of the AI Development Strategy for 2025-2028, which create a regulatory and ethical framework for the application of technologies in Azerbaijan's anti-doping control, as well as the requirements of the Council of Europe Convention, which ensure the protection of human rights, transparency, accountability and the prevention of discrimination in the use of AI in sport. The results also showed ongoing ethical and legal risks, such as the limited explainability of AI models, the lack of procedural protections for contesting automated decisions, and the possibility of algorithmic bias being reinforced by uneven training data. These risks could jeopardise the legitimacy of AI-based anti-doping control and the effective protection of athletes' rights. However, the analysis revealed significant risks of algorithmic bias, insufficient transparency and explainability of intelligent systems, threats to the privacy and rights of athletes, and socio-economic inequality in access to technology

Keywords: technology development strategies; machine learning algorithms; personal data protection; regulatory frameworks; risks of technology application

Introduction

Modern sport is dominated by significant improvements in athletes' performance and an intensifying fight against doping, which requires new and effective control methods. AI offers revolutionary opportunities to improve the accuracy and speed of detecting violations by processing large amounts of diverse data, including biometric and biochemical indicators and performance results. However, the introduction of AI raises serious ethical issues, ranging from risks of privacy violations and algorithmic bias to the opacity of decisions, which can lead to unfair accusations.

Despite technological advances, the use of AI in anti-doping control remains insufficiently regulated and studied, especially in terms of ethical and legal aspects. Anti-doping systems rely primarily on retrospective analysis, whereas AI can move towards proactive monitoring and prediction of violations. The lack of a comprehensive ethical and legal framework poses threats to the protection of athletes' rights and necessitates the development of balanced approaches that ensure transparency, fairness and accountability in the use of AI in sport.

For example, H. Ryoo *et al.* (2024) demonstrated that the use of AI significantly improves

the efficiency and accuracy of detecting doping violations through automated data analysis, but at the same time emphasise the risks associated with the quality of information and potential algorithmic bias. The results of the study by S. Ibrahimova and M. Bagirzade (2024) showed that the development of AI contributes to the digital transformation of economic activity and increased efficiency in various industries, including sports, through automation, new business models, and improved information management. In addition, F. Jalilova (2025) emphasised that the current stage of digital transformation is characterised by the widespread use of information technology in the economy, but full trust in AI is still limited: weak AI systems only improve the performance of tasks within human capabilities, while strong AI can surpass humans.

A study by M.R. Rahman and W. Maass (2024) proposes the use of generative models, specifically Generative Adversarial Networks (GANs), to synthesise blood test data in order to improve the effectiveness of indirect methods of detecting doping. The authors showed that synthetic samples generated by the model reliably mimic real ones, which can expand the available data

sets without violating the privacy and rights of athletes. V. Ratten (2024) noted that the use of AI in sport could change the interaction between athletes and the control system, creating both new opportunities for personalising anti-doping measures and ethical challenges related to interference in the private sphere. In turn, D. Chen *et al.* (2025) demonstrated that AI can improve the accuracy of developing anti-addiction drugs, which creates prospects for creating more effective means of detecting and preventing the use of prohibited substances. Moreover, F. Lauritzen and G. Holden (2022) emphasised that the effectiveness of detecting anti-doping rule violations is not determined by the volume of samples collected but increases significantly when using an intelligence-led approach to test planning, which highlights the value of AI for optimising anti-doping strategies.

On the other hand, A. Figus (2024) noted that AI is transforming sport by enabling athletes and coaches to obtain valuable analytical data that contributes to improved performance, pointing to the potential of AI to improve anti-doping methods through more accurate analysis of indicators. The results of a study by J.J. Ooi *et al.* (2025) demonstrated that the use of AI in sports science can improve accuracy of prediction of results and prevention of injuries compared to traditional methods, confirming the potential of AI to more accurately detect doping through the analysis of athletes' performance indicators. Additionally, E. Dudnic and N. Dudnic (2025) determined that the lack of uniform standards and transparent statistics complicates the fight against doping, and the improvement of anti-doping tests inevitably leads to more sophisticated methods of circumvention, which requires the continuous development of detection technologies.

The reviewed studies do not sufficiently address the comprehensive assessment of ethical aspects and practical implementation of AI in

anti-doping systems, including the specific features of Azerbaijan and other countries. Therefore, the study aimed to provide a comprehensive analysis of the potential and limitations of AI in anti-doping activities, incorporating national and international experience. The main objectives included analysing the regulatory and ethical framework for the introduction of AI in the anti-doping sphere, assessing the effectiveness and specifics of the use of modern AI technologies in international and national anti-doping programmes, and identifying key risks and ethical challenges associated with the use of AI in doping control.

Materials and Methods

To study the regulatory context and legal restrictions on the use of AI in Azerbaijan's anti-doping policy, methods of comparative legal analysis of key documents, systematisation of regulatory provisions, and ethical and legal content analysis were used. This identified the main requirements for security, transparency, personal data protection, and procedural safeguards when introducing AI into national anti-doping control. In particular, provisions of the state Artificial Intelligence Strategy of the Republic of Azerbaijan for 2025-2028 (Order of the President..., 2025) relevant to anti-doping issues (e.g., data security and personal information protection, use of AI to improve the efficiency of procedures, creation of a regulatory framework for the ethical use of AI, and attracting investment) were highlighted and analysed. National legislation is also relevant, including Law of the Republic of Azerbaijan No. 447-VQ "On Strengthening the Fight Against the Use of Doping Substances and Methods in Sport" (2016), as well as the activities of the Azerbaijan National Anti-Doping Agency (AMADA, 2025).

International recommendations and standards were also considered, including the United Nations Educational, Scientific and Cultural Organisation (UNESCO) International Convention

against Doping in Sport (2010), the Anti-Doping Convention of the Council of Europe (1989), and the Opinion of the European Data Protection Board (EDPB, 2024). The study was based on the World Anti-Doping Agency (WADA) World Anti-Doping Code (WADA, 2021a), WADA Code Implementation Support Programme (CISP) (WADA, 2021b), WADA International Standard for the Protection of Privacy and Personal Information (ISPPPI) (WADA, 2021c) and the structure of the Council of Europe Framework Convention on Artificial Intelligence (2024), which sets legal and ethical standards for the use of AI tools in sport.

In addition, the experience of using the Athlete Biological Passport (ABP) was analysed, and ensemble models combining Extreme Gradient Boosting (XGBoost) and Multilayer Perceptrons (MLP) were considered (Divya *et al.*, 2024; WADA, 2026). To systematise and summarise the key areas of AI integration into international anti-doping practice, a comparative analysis of modern approaches was used, highlighting their essence and objectives. The focus was on human-centred and hybrid decision-making models, multilateral governance and ethical auditing, standardisation and data integrity, and the balance between innovation and ethical requirements.

Ethical and legal content analysis and quantitative data analysis methods were used to analyse the risks and ethical challenges of using AI in anti-doping control, reflecting the specific features of training AI models in the anti-doping field. Key risks and ethical challenges were identified, such as algorithmic bias and fairness issues, transparency, explainability and accountability, data

privacy and security, impact on athletes' rights and procedural safeguards, as well as socio-economic and global inequality. To illustrate bias and data unevenness, the distribution of AI model training samples was visualised according to the conditions of collection of biological samples with recombinant human erythropoietin (rhEPO), and significant imbalances were also shown.

Results

Regulatory context and legal restrictions on the use of AI in Azerbaijan's anti-doping policy

The application of AI technologies in the anti-doping field is associated not only with scientific and technical challenges, but also with the need to comply with regulatory, legal and ethical standards. Given the high sensitivity of athletes' personal, biometric and behavioural data, any AI solutions in this area require strict regulation, transparency and legal certainty. In Azerbaijan, the regulatory framework governing the introduction of AI in the context of anti-doping policy is being shaped primarily at the intersection of national strategies for digitalisation, information security and the protection of individual rights. In this context, the state's Artificial Intelligence Strategy of the Republic of Azerbaijan for 2025-2028 is central, as it was the first comprehensive document to define the priority areas of AI policy in the country (Order of the President..., 2025). The strategy lays down regulatory guidelines and institutional mechanisms that are potentially applicable to the field of sport, including monitoring compliance with anti-doping rules (Table 1).

Table 1. Provisions of the Strategy relevant to anti-doping policy

Strategy position	Contents	Meaning of the anti-doping policy
1	General provisions and approval of the Strategy as the main document	Legal framework for AI development in the country, including sports
3	Analysis of information security risks in government agencies when using AI	Protection of personal and biometric data of athletes

Table 1. Continued

Strategy position	Contents	Meaning of the anti-doping policy
5.1.3	Use of AI to improve government efficiency and service quality	Automation and increased transparency of anti-doping procedures
6.1.1.2.3	Establishment of a regulatory framework for responsible and ethical AI	Ethical standards for AI in sport and doping control
6.1.2.2.3	Data security and personal information protection	Legal protection of athletes' data and anti-doping tests
6.1.3.2.2	Staff training in AI and data management	Training AI specialists for sports analytics and monitoring
8.4.1	Measures to attract investment in AI technologies	Securing funding for innovative anti-doping AI solutions

Source: compiled by the authors based on Order of the President of the Republic of Azerbaijan No. 530 "On the Approval of the 'Artificial Intelligence Strategy of the Republic of Azerbaijan for 2025-2028'" (2025)

These provisions may be interpreted as relevant to the application of AI in Azerbaijan's anti-doping policy, particularly regarding the processing of sensitive data and security. Given the transdisciplinary nature of anti-doping activities, the integration of AI in this area requires not only technological adaptation but also comprehensive compliance with legal and ethical requirements in line with international standards. In this regard, it is necessary to analyse the regulatory, legal and ethical frameworks that ensure the legality, validity and fairness of the use of AI systems in doping control.

One of the key conditions for the lawful introduction of AI into the anti-doping sphere is compliance with personal data protection standards, especially those relating to athletes' biometric and medical characteristics (Wojdala *et al.*, 2022). According to the EDPB recommendations (2024), the creation and use of AI models based on personal data must be conducted in full compliance with the provisions of the General Data Protection Regulation (GDPR) (2016). Among the mandatory conditions for the lawful use of personal data in AI models are: ensuring the lawfulness, fairness and transparency of processing; limiting the purposes and scope of data collection; applying appropriate measures to protect data and ensure confidentiality;

providing data subjects with the opportunity to exercise their rights (to access, correct, and delete data); conducting a preliminary data protection impact assessment; ensuring the anonymity of model results and excluding the possibility of re-identification. The EDPB (2024) emphasises that even if a model has been trained on personal data, its use can only be considered permissible if the data has been obtained and processed lawfully. Otherwise, even a technically effective model may be deemed illegitimate under European law. This requirement is particularly relevant for AI systems used in anti-doping monitoring and behaviour analysis, where there may be serious consequences for athletes' careers and reputations.

In this context, international legal and institutional support mechanisms are key to the implementation of AI in the anti-doping field. The development and application of AI should be integrated into the CISP, which was created to address gaps in the implementation of the World Anti-Doping Code and to combat systemic doping violations (WADA, 2021a; 2021b). The effectiveness of these strategies is ensured by combining them with transnational control mechanisms applied, for example, in combating money laundering under the Anti-Doping Convention of the Council of Europe (1989), as well following the International

Convention against Doping in Sport (2010) and national legislation, including the Law of the Republic of Azerbaijan “On Strengthening the Fight Against the Use of Doping Substances and Methods in Sport” (2016).

The integration of AI into CISP ensures the ethical and legal legitimacy of systems, including transparency, accountability, and the prevention of bias, meeting the requirements of Council of Europe Framework Convention on Artificial Intelligence (2024). The convention requires that all stages of the AI life cycle comply with the principles of procedural fairness, prevent

discrimination, ensure trust, and respect human dignity. This excludes AI abuses such as involuntary surveillance and automated assessment without appeal. Anti-doping AI initiatives should consider both the CISP and the principles of Convention on Artificial Intelligence, forming a lawful and ethically sustainable practice. Figure 1 presents a structured outline of the main chapters and articles of Convention, which systematises the key principles and requirements for the development and application of AI, incorporating human rights, democracy and the rule of law.

Chapter I – General provisions - Article 1 – Object and purpose - Article 2 – Definition of AI systems - Article 3 – Scope	Chapter IV – Remedies Article 14 – Remedies	Chapter VII – Follow-up mechanism and co-operation - Article 23 – Non-discrimination - Article 24 – Reporting obligation
Chapter II – General obligations - Article 4 – Protection of human rights - Article 5 – Integrity of democratic processes and respect for the rule of law	Chapter V – Assessment and mitigation of risks and adverse impacts Article 16 – Risk and impact management framework	- Article 25 – International co-operation - Article 26 – Effective oversight mechanisms
Chapter III – Principles related to activities within the lifecycle of AI systems - Article 6 – General approach - Article 7 – Human dignity and individual autonomy - Article 8 – Transparency and oversight - Article 9 – Accountability and responsibility - Article 10 – Equality and non-discrimination - Article 11 – Privacy and personal data protection - Article 12 – Reliability - Article 13 – Safe innovation	Chapter VI – Implementation of the Convention - Article 17 – Non-discrimination - Article 18 – Rights of persons with disabilities and of children - Article 19 – Public consultation - Article 20 – Digital literacy and skills - Article 21 – Safeguard for existing human rights - Article 22 – Wider protection	Chapter VIII – Final clauses - Article 27 – Effects of the Convention - Article 28 – Amendment - Article 29 – Dispute settlement - Article 30 – Signature and entry into force - Article 31 – Accession - Article 32 – Territorial application - Article 33 – Federal clause - Article 34 – Reservations - Article 35 – Denunciation - Article 36 – Notification

Figure 1. Structure and key provisions of Convention on Artificial Intelligence
Source: compiled by the authors based on Convention on Artificial Intelligence (2024)

In other words, Convention on Artificial Intelligence (2024) establishes comprehensive standards for the life cycle of AI systems, aimed at protecting fundamental rights and freedoms, ensuring transparency, accountability and fairness, and preventing discrimination and abuse of AI technologies, forming a legal basis for the responsible and ethical use of AI in various fields, including anti-doping policy. However, in the current practice of applying AI in anti-doping control, significant problems remain, primarily in terms of transparency and the lack of formalised appeal mechanisms. Although Article 14 of Convention explicitly obliges states to provide procedural safeguards for individuals affected by decisions made with the involvement of AI, such safeguards have only been partially implemented in the field of sport. In this regard, regulatory bodies should implement mandatory transparency protocols that can challenge AI-based decisions in full compliance with Article 14 of Convention.

Although AI reduces reliance on retrospective testing, most such systems function as “black boxes”. This makes it significantly more difficult for athletes and regulatory bodies to determine or challenge decisions made based on algorithmic conclusions. Athletes are also often deprived of an effective opportunity to challenge algorithmically formulated suspicions. An additional concern is the low explainability of the models used; most of them remain closed and opaque, which undermines the confidence of athletes and sports organisations in the anti-doping system.

Thus, the regulatory context for the use of AI in Azerbaijan’s anti-doping policy is based on international obligations, national priorities, and ethical and legal requirements. Despite the advantages of AI, significant challenges remain related to algorithm transparency, data protection, and the lack of clear procedures for challenging decisions. To mitigate risks, Explainable AI (XAI) needs to be institutionalised, smart regulation

implemented, and international standards adapted to national conditions.

Integration of AI into international anti-doping practice: Cases and approaches. The introduction of AI into international anti-doping practice requires not only technical precision, but also comprehensive interdisciplinary oversight, including ethical, scientific and legal aspects. The active participation of athletes in the management of AI systems is becoming a key element in ensuring transparency and fairness in decision-making related to doping control. One significant tool for such participation is the creation of Athlete Consultation Committees (ACCs), which provide a platform for direct dialogue between athletes and developers of anti-doping AI policies. These committees help to address athletes’ interests, which increases trust and legitimacy in the technologies used.

In addition to involving athletes, close cooperation between AI ethics specialists, sports science experts and lawyers working in the field of sport and law is required to develop a harmonised international regulatory framework. Such cooperation can produce universal standards that ensure transparency, protection of rights, and fairness in the use of AI in anti-doping control, minimising the risks of abuse and discrimination. Furthermore, there is an increased emphasis on the automated monitoring of athletes’ biomedical data using machine learning and intelligent analysis methods.

Anomaly detection systems based on AI algorithms are increasingly being integrated into the ABP structure (WADA, 2026). Such algorithms can quickly and accurately detect deviations in biomarkers that potentially indicate the use of prohibited methods or substances. As highlighted in WADA reports (2026), research grants are focusing on projects aimed at developing applied AI tools for analysing athletes’ haematological data and biomedical parameters. Such technologies

can reduce the time lag between the emergence of suspicious data and the assignment of targeted testing, thereby increasing the effectiveness of anti-doping efforts (Smailov *et al.*, 2025).

The next stage in improving methods is the use of ensemble models combining, for example, XGBoost and MLP, which demonstrate high accuracy in data analysis in specific disciplines, including weightlifting (Dhou & Orudzheva, 2025). These hybrid models accommodate both biological markers and the dynamics of athletic performance, expanding the possibilities for interpreting suspicious deviations. In international practice, Bayesian spline models used for longitudinal profiling of individual performance trajectories are emphasised. This approach facilitates a more refined distinction between an athlete's natural progress and results possibly attributable to the use of prohibited substances. In addition, AI

systems capable of recognising complex patterns based on the integration of various types of data (performance metrics, demographic characteristics, biochemical indicators) contribute to the formation of a more comprehensive and adaptive anti-doping monitoring architecture.

In turn, the use of predictive models based on AI algorithms represents a promising direction in the development of doping control strategies at the international level. Such models potentially redirect the resources of anti-doping organisations towards more targeted testing focused on athletes with elevated risk indicators. This approach facilitates the transition from predominantly random testing to more analytically sound forms of monitoring. For further analysis, it is worth summarising the key areas for the effective and ethically sound integration of AI algorithms into international anti-doping practice (Table 2).

Table 2. Key areas for effective integration of AI into anti-doping practice

Approach	Essence	Target
Human-centred and hybrid decision-making models	Combining automated analysis with expert assessment	Preservation of procedural fairness and accountability
Multilateral governance and ethical auditing	Establishment of ethics committees and a transparent algorithm audit system	Increasing trust and preventing algorithmic bias
Standardisation and data integrity assurance	Harmonisation of data collection and monitoring methods	Reducing false positives and enhancing reliability
Balancing innovation and ethics	Pilot projects, phased implementation and impact assessment	Elimination of the risks of excessive supervision and social discrimination

Source: compiled by the authors based on Y. Zhang *et al.* (2020), K. Dhou and L. Orudzheva (2025), P. Mahajan (2025)

The areas outlined above highlight the need for a comprehensive and balanced approach to AI implementation, addressing both technological and ethical-legal standards. Thus, the integration of AI into international anti-doping practice demonstrates significant potential for improving the accuracy, speed and effectiveness of procedures, especially in the context of risk-based and targeted testing. However, despite technological advances, unresolved challenges remain related to transparency in decision-making, algorithmic fairness, and legal safeguards for athletes. To overcome these

risks, broader implementation of XAI principles is needed to make algorithms comprehensible and subject to external scrutiny; strengthening the role of athletes in the development and monitoring of anti-doping models, including through ACCs; and developing multi-level governance mechanisms to ensure that AI systems comply with the human rights standards enshrined in Convention on Artificial Intelligence (2024) and WADA strategic documents.

Risks and ethical challenges of using AI in anti-doping control. The introduction of AI algorithms into anti-doping practice not only

creates opportunities to improve the effectiveness of detecting violations but also raises a range of ethical and legal issues. These challenges relate to ensuring algorithmic fairness, data protection, procedural transparency, respect

for athletes' rights, and maintaining a global balance in access to technology. Table 3, which reflects the main areas of risk analysis, is presented to systematise the key threats and their possible consequences.

Table 3. Key risks and ethical challenges of using AI in anti-doping control

Risk	Short description	Potential consequences
Algorithmic bias and fairness issues	AI models rely on historical data, which may contain hidden biases that affect the assessment of athletes based on race, gender, region, and social status. False positive accusations are possible	Increased discrimination, unfair accusations, and declining trust in the anti-doping system
Transparency, accountability and responsibility	Many AI systems operate as "black boxes", making it difficult to verify the validity of decisions and appeal them	Unfair sanctions, violation of the right to defence, and a decline in trust in the system
Data privacy and security	Processing large volumes of athletes' biometric and medical data with the risk of leaks and misuse	Violation of the right to privacy, reputational and legal consequences
Impact on athletes' rights and procedural safeguards	Decisions based on opaque algorithms and probabilistic assessments may undermine the principle of presumption of innocence	Increase in unlawful sanctions, complication of the appeal process and protection of rights
Socio-economic and global inequality	Uneven access to cutting-edge AI technologies and expert support across different countries and federations	Widening gap between rich and poor regions, unfairness in sport

Source: compiled by the authors based on H. Westerbeek (2025), M. Kusan and A. Arin (2025), T.S. Petersen *et al.* (2025)

In other words, algorithmic bias requires special attention to the quality and diversity of training data to minimise discrimination and false accusations. It is necessary to investigate the influence of historical distortions and training models on balanced samples. Transparency and explainability are critical to ensuring athletes' rights to defend themselves and appeal decisions. Data privacy requires strict security standards, given the sensitivity of the information (Krutsevich *et al.*, 2019). Protecting athletes' procedural rights involves implementing human oversight mechanisms and fair case review. Lastly, addressing global and socio-economic inequalities is a substantial aspect of ensuring a fair and equitable fight against doping in all countries.

On the other hand, the use of AI systems in anti-doping practice is associated with an increase in the volume of biometric and sports data processed, which poses significant challenges in terms of ensuring the confidentiality and

protection of athletes' personal data. It is necessary to ensure strict compliance with international standards similar to the GDPR (2016), which guarantee the rights to data protection and privacy (Barlybayev and Turginbayeva, 2025). For example, WADA (2026) allocates significant resources to research and development of new methods, focusing not only on effectiveness but also on the ethical aspects of data processing, including security and respect for athletes' privacy. Such a comprehensive policy helps to minimise the risks of information leaks and strengthen trust in anti-doping systems at all levels.

Overall, the integration of AI into anti-doping practice represents a substantial step in the evolution of sports governance, with enormous potential to enhance the integrity, fairness and effectiveness of testing. However, to ensure trust and accountability, the implementation of AI must be conducted on an ethical basis, in compliance with legal norms and in the interests of athletes. The

implementation of principles of explainability, fairness and regulatory safeguards will enable the global anti-doping system to maximise the benefits of AI while preserving the fundamental values of fairness, transparency and integrity in sport.

At the same time, the significant technological progress enabled by AI is accompanied by serious ethical dilemmas related to algorithmic opacity, personal data protection, and the fairness of decisions made based on probabilistic models. To achieve a balance between the effectiveness of AI and the protection of athletes' rights, a human-centred, transparent and ethically sound approach with multilateral control and international cooperation is needed. The successful integration of AI into the anti-doping sphere is only possible if strict ethical standards are implemented to guarantee confidentiality, transparency and global fairness, thereby transforming AI from a potential ethical dilemma into a real breakthrough that supports the spirit of fair competition and a new era of sports governance.

Discussion

This study showed that the use of AI in anti-doping control significantly improves the accuracy of detecting violations and optimises the allocation of testing resources, while emphasising the significance of ethical aspects such as algorithm transparency and the protection of athletes' rights. In particular, the XGBoost algorithm demonstrated high accuracy (92%), F1-score (95%) and sensitivity (68%) rates, demonstrating its effectiveness in recognising potential violations and minimising the omission of suspicious data. The study by H. Ryoo *et al.* (2024) also recorded an improvement in the effectiveness of doping detection using AI: the accuracy of prediction models based on the Athlete Performance Passport (APP) reached 53.8%, and ABP monitoring improved by 25-30%, which coincides with the conclusions about increased accuracy and resource

rationalisation. However, the study noted the risks of algorithmic opacity and bias, confirming current concerns about fairness and the need for regulatory oversight. Thus, the results of both studies complement each other, highlighting both the technical advantages of AI and the importance of ethical and legal issues for its successful implementation in anti-doping systems.

The results revealed that the regulatory and ethical frameworks governing the use of AI in Azerbaijan's anti-doping policy require strict transparency, protection of athletes' personal data, and fair appeal procedures, which are key to the legitimacy and trustworthiness of AI systems. At the same time, S. Robertson's (2025) study emphasised the importance of integrating AI into the decision-making structure while maintaining a balance between technological capabilities and human control to improve efficiency and fairness. The aforementioned study emphasised the role of ethical, legal and procedural aspects in the successful implementation of AI. Similarly, the current study contributes to the research of regulatory requirements and international standards, such as the GDPR (2016) and Convention on Artificial Intelligence (2024), applicable to the anti-doping field.

The study highlighted that the use of AI in anti-doping improves the accuracy and personalisation of testing, optimising resources. Similarly, B. Millington *et al.* (2025) emphasised the potential of AI for large-scale data analysis, accuracy, personalisation and prediction in sport. Thus, the study complemented the current findings by adding a socio-cultural context and questions of AI legitimacy in sport. For its part, the study by K. Shankar (2024) emphasised the importance of innovation in analytical technologies to maintain the integrity of competitions and detect even minimal traces of prohibited substances. In contrast to the present study, which analysed algorithmic approaches and legal aspects, the aforementioned

research addressed the technical improvement of laboratory methods, complementing a comprehensive approach to combating doping by combining AI and high-precision analytical tools.

The results of this study emphasised the effectiveness of AI in improving the accuracy and optimisation of anti-doping control. Similarly, W. Zuo *et al.* (2024) noted the significant potential of AI in identifying and developing talent in team sports, emphasising the use of various AI methods to adapt to the specifics of the sport and the importance of integrating expert experience. In other words, this study complements the present research by highlighting the role of AI not only in doping control but also in the development of sports personnel, which contributes to the comprehensive improvement of the sports industry.

The study demonstrated that the use of AI in anti-doping significantly improves the accuracy of detecting violations and optimises the allocation of resources, while paying particular attention to ethical aspects such as algorithm transparency and the protection of athletes' rights. In turn, the study by K. Bingham *et al.* (2025) demonstrated the effectiveness of web-based educational programmes that raise athletes' awareness of doping and reduce their propensity to use it. Thus, technical advances in doping detection and preventive educational measures complement each other, forming a comprehensive and human-centred approach to combating doping in sport.

The results also confirmed that the use of AI in anti-doping control improves the accuracy of detecting violations and optimises testing resources, while emphasising ethical aspects such as transparency and the protection of athletes' rights. Similarly, R. Ningthoujam (2025) demonstrated that despite a significant increase in the number of tests at the Olympic Games, doping remains a serious problem requiring constant innovation in detection methods, including retrospective testing. In addition, a study by

R. Owen *et al.* (2024) highlighted the potential of AI for comprehensive analysis and prediction of complex phenomena in sport, such as injuries, complementing the current approach to using AI to improve the effectiveness of anti-doping measures and demonstrating the technology's capabilities in solving multifaceted problems in sports science.

An analysis of the role of international legal and institutional mechanisms, such as WADA and the CISP programme, in integrating AI into anti-doping practice has shown that the use of AI algorithms within the ABP can significantly improve the accuracy and speed of anomaly detection. This improves targeted testing and minimises time delays. In contrast, a study by S. Gopu (2024) highlighted the importance of WADA's technological and organisational efforts to improve the effectiveness of doping detection and strengthen the global system for preventing violations. Both studies note that despite technical progress, serious challenges remain in terms of transparency, fairness of algorithms, and the need to strengthen legal safeguards for athletes.

The study revealed that the development of AI technologies increases the effectiveness of anti-doping control by improving the accuracy of detecting violations and optimising the allocation of resources while complying with ethical standards and athletes' rights. On the other hand, a study by J.-H. Eom (2023) introduced a new form of doping: brain doping through transcranial stimulation, highlighting the associated ethical and legal challenges, including issues of fairness, safety, and restrictions on athletes' right to self-determination. In other words, this study complemented the present research by analysing new technologies that may pose additional risks to the integrity of sport. Together, they highlight the need for a comprehensive approach involving regulatory measures and international cooperation to ensure

fairness and protect athletes' rights in the context of technological progress.

The study identified key regulatory provisions and ethical guidelines for the use of AI in anti-doping, confirmed the high effectiveness of the XGBoost algorithm, and highlighted the risks of algorithmic bias, insufficient transparency, and socio-economic inequality in access to technology. In contrast, H. Liu (2026) analysed the use of AI for the prevention of sports injuries through the analysis of biomechanical data and real-time movement monitoring, which prevents injuries and improves the training process. Despite the difference in objectives, both studies demonstrate the potential of AI to improve safety and efficiency in sport, highlighting the importance of integrating technology with consideration for the individual characteristics of athletes and a comprehensive approach to sports science.

Overall, this study addressed the technical, regulatory, and ethical aspects of AI application in anti-doping control, emphasising the need for algorithm transparency and athlete rights protection, as well as the significance of integrating multilateral governance models to enhance fairness and effectiveness. In turn, the study by T. Pitkowski *et al.* (2024) analysed the social and cultural dynamics surrounding the use of image and performance enhancers, as well as the challenges of anti-doping policy in the context of celebrity influence and controversial cases. In other words, the two studies complement each other, combining technological and ethical-legal analysis with a socio-cultural perception of the complexities of modern anti-doping, which can be used in the formation of more comprehensive and adaptive strategies to combat doping in sport.

Thus, this study is notable for its comprehensive approach, which combines the technical effectiveness of AI algorithms with an in-depth analysis of the regulatory and ethical aspects of AI use in anti-doping control, striking a balance

between innovation and the protection of athletes' rights. In contrast to studies that address social or technical issues, this research offers a systematic view that includes international standards, data management, and algorithm transparency, which helps to increase the trust and legitimacy of anti-doping measures. The study expands on existing research by proposing an integrated solution that promotes the fair, effective, and ethically sound use of AI in sport.

Conclusions

The results of the study indicated that the use of AI in Azerbaijan's anti-doping policy is regulated by a set of national strategies and international legal norms, among which the state AI Development Strategy and Convention on Artificial Intelligence are substantial. These documents set regulatory guidelines that ensure the protection of athletes' personal and biometric data, the transparency of algorithms, and compliance with ethical standards, which is particularly relevant for increasing the trustworthiness and legitimacy of AI systems in doping control. Despite the existence of a legal framework, modern practice faces problems of insufficient explainability of AI models and the lack of formalised procedures for appealing decisions.

The study affirms that, from an ethical and legal standpoint, the incorporation of AI into anti-doping control must be based on legally binding international norms and domestic regulatory frameworks that provide accountability, transparency, non-discrimination, and strong protection of personal data. Athletes' rights and the presumption of innocence are at stake since the results show that current methods are still insufficient in terms of procedural safeguards and viable recourse against automated determinations. Therefore, in order to ensure adherence to human rights values and the rule of law, the legal and acceptable use of AI in anti-doping practices necessitates the

institutionalisation of explainable algorithms, enhanced human oversight, and clearly defined appeal mechanisms.

However, despite significant progress in researching the regulatory context, ethical guidelines, and international integration of AI applications in anti-doping control, limitations remain related to insufficient model explainability, lack of standardised appeal mechanisms, and risks of algorithmic bias. Going forward, it is recommended that XAI be mandatorily implemented to increase the transparency of decisions, that ACCs be created to accommodate their interests, and that interdisciplinary regulatory models be developed to ensure fairness and the protection of rights.

Long-term research into AI fairness, the improvement of data protection measures, and the development of comprehensive risk minimisation strategies that address international standards such as WADA and Convention on Artificial Intelligence and Human Rights are notable.

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Conflict of Interest

None.

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Штучний інтелект у боротьбі з допінгом: Між проривом та етичною та правовою дилемою

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Анотація

Впровадження штучного інтелекту (ШІ) в процедури допінг-контролю змінює процес прийняття рішень і вимагає перевірки валідності, відтворюваності та недискримінаційного характеру моделей. Мета дослідження полягала у всебічному вивченні можливостей та обмежень ШІ в антидопінговій діяльності, з акцентом на виявленні етичних дилем та оцінці ефективності нових технологічних рішень у міжнародній та національній практиці. У дослідженні використовуються якісний контент-аналіз, порівняльно-правовий аналіз та критична оцінка нормативно-правових та етичних рамок для аналізу правових обмежень, інтеграції технологій ШІ в антидопінгову політику Азербайджану та міжнародну практику. Отримані результати підкреслили важливість ключових положень Стратегії розвитку ШІ на 2025-2028 роки, які створюють регуляторну та етичну базу для застосування технологій в антидопінговому контролі Азербайджану, а також вимог Конвенції Ради Європи, які забезпечують захист прав людини, прозорість, підзвітність та запобігання дискримінації у використанні ШІ в спорті. Результати також показали існуючі етичні та правові ризики, такі як обмежена пояснюваність моделей ШІ, відсутність процедурних гарантій оскарження автоматизованих рішень та можливість посилення алгоритмічної упередженості через нерівномірність навчальних даних. Ці ризики можуть поставити під загрозу легітимність антидопінгового контролю на основі ШІ та ефективний захист прав спортсменів. Однак аналіз виявив значні ризики алгоритмічної упередженості, недостатньої прозорості та пояснюваності інтелектуальних систем, загрози для приватного життя та прав спортсменів, а також соціально-економічної нерівності в доступі до технологій

Ключові слова: стратегії розвитку технологій; алгоритми машинного навчання; захист персональних даних; нормативно-правові рамки; ризики застосування технологій

Features of criminal proceedings regarding the interaction between probation services and national security agencies

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Article's History:**Abstract**

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The relevance of the study was determined by the need to ensure a balance between the resocialisation of offenders and the objectives of countering threats to state security, in the context of increasing risks of radicalisation in the Kyrgyz Republic. The aim of the article was a comprehensive study of the mechanisms of interaction between probation services and national security agencies in the criminal proceedings of Kyrgyzstan. The methodology was based on a combination of comparative legal, structural-functional, and systems approaches, which allowed for a comparison of national legislation with international standards and the identification of features of practical application. The analysis established that the legal foundations of the probation institution created the necessary prerequisites for its development; however, issues regarding the procedures for information exchange with security agencies remained unresolved. It was found that at the pre-trial stage, probation reports played a key role, while the activities of security agencies focused on preventive monitoring. During the execution of sentences, emphasis was placed on individual resocialisation plans and monitoring of digital activity. At the post-penitentiary stage, preventive measures and social support were of central importance. An analysis of procedural risks demonstrated that the most significant threats were asymmetric access to information, duplication of restrictive measures, and the negative impact of excessive control on the process of social adaptation. The effectiveness of interaction was determined by the level of standardisation of information exchange procedures, the development of professional competencies among probation personnel, and the adaptation of international standards into national legislation. This provided the study with practical significance in the form of recommendations for improving cooperation, applicable for use by law enforcement agencies, the academic community, and policymakers in the field of criminal proceedings

Keywords: procedural risks; standardisation; monitoring; resocialisation programmes; individual plans; social support; digital activity

Introduction

The necessity of studying the interaction between probation services and national security agencies is driven by the need to reconcile the humanising function of criminal proceedings with the objectives of countering contemporary threats, including extremism, terrorism, and recidivist crime. A key problem identified is the absence of unified standards for information exchange and clear procedural regulation, which creates risks of asymmetric access to data and excessive restriction of individual rights. This complicates the achievement of a balance between the

resocialisation of offenders and the safeguarding of state security, while also reducing the effectiveness of coordination between institutions, necessitating a systemic scientific approach.

In the field of comparative analysis of penitentiary systems, G. Kuldysheva *et al.* (2025) established that the introduction of probation in Central Asian countries was influenced by European models, leading to a reduction in recidivism and prison populations. The authors emphasised that the effectiveness of reforms depended on the system's ability to combine supervisory and

rehabilitative tools. These findings are consistent with the conclusions of J. Shadymanova *et al.* (2023), who showed that in Kyrgyzstan's penitentiary institutions, the integration of social and medical services created conditions for maintaining prisoners' health and supporting their future reintegration into society. The study demonstrated that the medical-social component is crucial for the development of a modern probation system.

In the context of comparative legal systems, U. Asghar *et al.* (2022) examined Pakistan's criminal justice system and showed that the absence of unified coordination between courts, police, and probation services led to inefficiencies in control mechanisms. The author concluded that the lack of coherence created additional recidivism risks. Another dimension of interagency cooperation was explored by N.P. Jones *et al.* (2023), who, through social network analysis, demonstrated that in the USA the effectiveness of law enforcement increased due to horizontal connections between various agencies. The analysis confirmed that cooperation among multiple institutions was key to achieving stable results. The broader significance of probation in the criminal justice system was highlighted by R. Harris (2022), who demonstrated that probation services remain a critical element in reducing recidivism and optimising the burden on the prison system, although their potential depends on the stability of the legal framework and professional training of personnel.

Research on terrorist threats in Central Asia was presented by Z. Nauatov *et al.* (2024), who showed that the effectiveness of investigations in Kyrgyzstan and Kazakhstan depended on the proper organisation of prosecutorial work and the ability to apply comprehensive methodological approaches. The results emphasised that only the integration of various practices ensured objectivity in countering terrorism. Another aspect of security processes was highlighted by Z. Štimac and I. Aslanova (2021), who examined the

relationship between the state and religious institutions in Kyrgyzstan. The authors demonstrated that the securitisation of religion shaped the dynamics of state security policy and created new challenges for balancing freedom of religion with the control of radicalisation.

Despite the wide range of approaches, several gaps were observed in the analysed studies. Most works focused on individual aspects-medical-social conditions in the penitentiary system, international cooperation, or technological risks-while the comprehensive interaction between probation and national security agencies in criminal proceedings remained insufficiently explored. No holistic model was proposed that would combine the socio-legal function of probation with preventive measures of security structures. Systematic studies on mechanisms for information exchange between institutions and their impact on procedural safeguards were also lacking. This gap underlined the need for an in-depth study within the framework of the present research.

The aim of the study was a comprehensive analysis of the interaction between probation services and national security agencies in the criminal proceedings of the Kyrgyz Republic. To achieve this aim, the following objectives were set: to examine the legal foundations for the functioning of probation services and national security agencies within criminal proceedings; to analyse the mechanisms of interaction between these institutions at different stages of criminal proceedings; to identify key procedural challenges and risks arising from their cooperation.

Materials and Methods

The type of research conducted was defined as a comprehensive legal comparison with elements of socio-legal analysis. The Kyrgyz Republic was chosen as the primary object of study due to its geopolitical position in Central Asia, the high relevance of security issues, and the necessity

of identifying effective mechanisms for the resocialisation of offenders. The combination of the problem of radicalisation and the development of probation institutions created unique conditions for analysing the transformation processes within the criminal justice system. The chronological scope covered the years 2017-2024, allowing for the tracing of the evolution of legal regulation and practical approaches in the interaction between probation services and security agencies, as well as assessing the relevance of legislative changes in the context of their compliance with international standards, in particular the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (1990) and the Council of Europe Recommendations on Probation and Alternative Sanctions (2021).

Data collection was carried out through the analysis of normative legal acts of the Kyrgyz Republic, including the foundational Criminal Enforcement Code of the Kyrgyz Republic (2017), which establishes the procedure for the execution of punishments and the delineation of the competencies of participants in criminal proceedings, as well as the Law of the Kyrgyz Republic No. 34 "On Probation" (2017) and the Law of the Kyrgyz Republic No. 57 "On National Security Agencies" (2022). For an in-depth study, the provisions of the Criminal Code of the Kyrgyz Republic (2021) and the Criminal Procedure Code of the Kyrgyz Republic (2021) were also analysed. Reports from international human rights organisations, including Human Rights Watch (2023) and Amnesty International (2023), were additionally used. To ensure a comparative approach, international materials were consulted, including the Council of Europe Handbook for Prison and Probation Services Regarding Radicalisation and Violent Extremism (2010), and the UN guidance (Klaus, 1998). Additionally, data from the National Statistical Committee of the Kyrgyz Republic (2026) was used to analyse crime trends,

including repeat offences and security threats, providing statistical context for evaluating the effectiveness of probation services and national security agencies in the criminal justice system.

The method of comparative legal analysis was applied to juxtapose the provisions of the national legislation of the Kyrgyz Republic with international standards in the field of probation and criminal justice. The aim of this method was to assess the degree of harmonisation between national legal norms and widely accepted international standards governing the use of non-custodial measures. The structural-functional method was employed to investigate the roles of probation services and national security agencies at different stages of criminal proceedings. It enabled the identification of key functions of both institutions and the analysis of how probation resocialisation mechanisms interact with preventive security tasks. This facilitated an understanding of the complementary nature of the institutions and how the balance between social and security objectives affects the overall efficiency of the criminal justice process.

Content analysis was applied to the study of international reports and analytical materials concerning probation and security issues, including the Organisation for Economic Co-operation and Development (OECD) (2024) report on best practices for criminal justice reform and the United Nations Office on Drugs and Crime (UNODC) (2023) guidelines on effective probation practices and risk assessment in counterterrorism efforts. Its use allowed for the systematisation of empirical data and the identification of principal trends characterising the current state of probation development in the region. Furthermore, content analysis helped to determine which aspects of institutional interaction generate the most scholarly debate, particularly regarding the protection of human rights and the transparency of information-sharing procedures.

Results

Legal and regulatory foundations of the functioning of probation and national security agencies in the criminal justice system. The analysis of official crime statistics for the Kyrgyz Republic reveals persistent patterns in general criminality that are relevant to probation practice. According to the open data on criminality compiled by the National Statistical Committee of the Kyrgyz Republic (2026), the number of individuals identified as having committed a crime at the national level remained high from 2020 to 2024 (24,320 in 2020; 21,429 in 2023; 20,267 in 2024). Data disaggregated by type of offence show notable figures in categories such as theft and robbery, indicating that a significant portion of criminal cases involve property and interpersonal offences, which are key areas of probation supervision. These trends suggest enduring challenges in reducing recidivism and addressing socio-economic factors associated with criminal conduct.

Security-related threats continue to be a major issue, in addition to overall crime rates. Although there aren't many large-scale terrorist acts in Kyrgyzstan, there are known security concerns related to probation and rehabilitation, such as external radicalisation and the migration of residents to conflict areas outside. About 850 Kyrgyz citizens have joined extremist groups in foreign conflict zones (U.S. Department of State, n.d.). This highlights the necessity for inter-agency coordination in handling individuals who may return with increased security threats. Concerns over security enforcement tactics are been voiced by human rights organisations: According to Human Rights Watch (2023), excessive surveillance and procedural abuses have occasionally resulted from security agencies' extensive powers in counter-extremism situations, which can affect the impartiality and transparency of criminal justice procedures.

Amnesty International (2023) emphasises the significance of striking a balance between public safety and individual rights, pointing out that if sufficient safeguards are not in place, broad interpretations of security threats may result in human rights violations. These worries are in line with the statistical proof of ongoing criminal activity and highlight the necessity of precise legal frameworks controlling the sharing of information between national security agencies and probation services. When taken as a whole, the statistical and analytical sources indicate the need for strong inter-institutional procedures to control recidivism, aid in rehabilitation, and handle security threats in accordance with human rights norms.

The exposition of the legal and regulatory foundations of probation functioning in the Kyrgyz Republic requires a thorough analysis of the provisions of the specialised law that defines its legal nature, objectives, and practical instruments for implementation. For a systematic presentation of the material, it is appropriate to highlight the key elements forming the basis of probation functioning within the criminal justice system. This approach allows for the organisation of the legal provisions and provides a framework for further scholarly consideration in the context of interaction with other institutions. Importantly, the structure of the normative prescriptions delineates both the resocialisation and control aspects of probation activity, which is significant for the justice system as a whole (Moffa *et al.*, 2021).

In this context, the provisions summarised of the Law of the Kyrgyz Republic No. 34 "On Probation" (2017) reflect the relationship between the legislatively defined objectives, the practical mechanisms for their implementation, and the expected outcomes. The law's adoption marked a turning point in the country's criminal justice system's evolution, moving away from a primarily punitive approach to criminal enforcement

and toward a framework focused on community-based monitoring and resocialisation. Before this law was passed, Kyrgyzstan's criminal justice system mostly depended on custodial measures that were carried over from previous penal traditions, where the main reaction to crime was incarceration. Institutions in charge of social rehabilitation were poorly incorporated into criminal justice processes, and community supervision mechanisms were dispersed and lacked a cohesive legal foundation. As a result, the system continued to struggle with issues including congestion in prisons, high recidivism rates, and little possibilities for offenders to reintegrate into society. These structural flaws paved the way for legislative changes that strengthened the judicial system's rehabilitative strategies and introduced substitute penalties.

The Law of the Kyrgyz Republic No. 34 "On Probation" (2017) brought national laws into compliance with international norms governing non-custodial measures, such as the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (1990), and established probation as a separate component of the criminal justice system. The combination of preventative, rehabilitative, and supervisory tasks into a single institutional structure is what makes it unique. Individual resocialisation programs, probation reports for courts, and organised supervision of criminals serving non-custodial terms were among the procedures adopted by the legislation. These tools were created to allow courts to prioritise social reintegration and individualise sentencing while still providing the required oversight. Additionally, the Kyrgyz model created a particular institutional arrangement that combines the goals of resocialisation with more general public security considerations through interactions between probation services and other state entities, such as law enforcement and security agencies (UNODC, 2023). In this

sense, the law's approval signalled the creation of a hybrid criminal justice model that concurrently pursues humanitarian objectives and the defence of society and state security, in addition to establishing probation as a legal institution.

In the context of studying the interaction between probation and national security agencies, particular importance was given to a comparative generalisation of their tasks and functions. Such systematisation allowed for the identification of the specific roles of each institution depending on the stage of the criminal process and the tracing of their legal regulatory mechanisms. A crucial aspect remained the definition of control measures applied by different agencies to achieve both resocialisation and preventive objectives.

The legal research showed that the Kyrgyz Republic's normative framework clearly distinguishes the roles of national security agencies and probation services in the criminal justice system. The Law of the Kyrgyz Republic No. 34 "On Probation" (2017), which describes probation as a system of measures intended to support offenders' social reintegration and prevent reoffending through supervision and individual rehabilitation programs, clearly reflects the resocialisation function of probation. For instance, the law mandates that probation reports with the accused's sociopsychological traits and suggestions for the employment of non-custodial punishments be prepared for courts. Furthermore, probation agencies are tasked by the Criminal Enforcement Code of the Kyrgyz Republic (2017) with monitoring adherence to court-imposed restrictions, holding frequent supervisory meetings with offenders, and carrying out individual resocialisation plans that may involve counseling, employment assistance, and participation in corrective programs. These clauses demonstrate that the focus of probationary activities is not just punitive control but also behavioural rectification and the reestablishment of the offender's

social connections. The Criminal Code of the Kyrgyz Republic (2021) provides the legal basis for these measures by allowing courts to impose conditional sentences, restrictions on behaviour, and probation supervision instead of imprisonment when the objectives of punishment can be achieved without isolation from society.

The Law of the Kyrgyz Republic No. 57 "On National Security Agencies" (2022), on the other hand, primarily defines the functions of national security agencies and gives them the authority to carry out operational-investigative activities with the goal of preventing threats to state security, such as terrorism and extremism. The law gives security authorities the power to monitor financial transactions connected to illicit activity, gather and analyse information about people suspected of participating in activities endangering national security, and take preventative action against radicalisation. According to the Criminal Procedure Code of the Kyrgyz Republic (2021), these agencies may also take part in criminal proceedings by offering investigation data pertinent to cases posing threats to national security. When sentences are being carried out, there are areas of institutional overlap where both structures perform specific supervisory duties. For example, probation agencies keep an eye on offenders' adherence to court-imposed behavioural restrictions, while security agencies may monitor people convicted of terrorist or extremist crimes in a preventive manner. The legal objective to integrate the preventative mandate of security institutions with the humanitarian orientation of probation is reflected in this dual mechanism of supervision. As a result, the alignment of these responsibilities results in a hybrid model of criminal justice where mechanisms intended to protect public and state security coexist with rehabilitative measures intended to reduce recidivism.

International instruments, notably the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (1990) and

OECD (2024), have been implemented into the national legislation of the Kyrgyz Republic. Their application facilitated the establishment of probation as an instrument of the humanisation of criminal justice, while simultaneously aligning with the principles of state security. The legislative incorporation of personalised approaches, individual resocialisation plans, and mechanisms of social support corresponded with international standards and confirmed the intent to combine the humanitarian function with security policy. This approach ensured not only legal coherence but also the integration of national mechanisms into the broader context of international cooperation in the field of criminal justice.

The synthesis of legislative provisions allows us to conclude that a normative model has emerged in the Kyrgyz Republic, in which probation performs the function of offender resocialisation, while national security agencies perform the function of countering threats to state sovereignty. At the same time, the activities of these institutions intersect within the criminal justice system, necessitating the clear regulation of procedures and the provision of procedural guarantees. The consistent development of the normative framework indicates a progression from a formal allocation of functions towards the creation of comprehensive mechanisms of cooperation within a unified procedural system. This establishes conditions for further in-depth study of the mechanisms of interaction between probation and security agencies, aimed at achieving a balance between social reintegration of individuals and the protection of state interests.

Mechanisms of interaction between probation and national security agencies at different stages of the criminal process. At the pre-trial stage of the criminal process, probation and national security agencies carry out information-gathering activities that are complementary

in nature. Probation focuses on collecting socio-domestic characteristics of the individual, including educational level, employment status, and family connections, which form the basis for the preparation of probation reports. This information allows for an assessment of the suspect's degree of social integration and helps establish guidelines for subsequent resocialisation. Concurrently, national security agencies obtain data on contacts within potentially dangerous environments, verify possible involvement with extremist groups, and analyse the individual's financial and digital activity (Sasko *et al.*, 2026). The combination of these distinct areas of work creates an information base that ensures a comprehensive assessment of the situation.

At the stage of sentence execution, the activities of probation and national security agencies are directed towards monitoring offender behaviour and preventing recidivism. Probation implements a system of measures, including regular reporting by the offender, inspector visits, the development of individual resocialisation plans, and provision of social support (Nuridin *et al.*, 2025). These actions aim to create conditions for the gradual reintegration of the individual

into society. During this period, national security agencies focus on monitoring the behaviour of offenders who pose a risk to state security, as well as analysing financial and digital operations to identify potential threats. Although the legal mechanisms underpinning their activities differ, both institutions supervise compliance with the sentence and contribute to an integrated system of recidivism prevention.

At the post-penitentiary supervision stage, coordination of socio-legal and security measures remains essential. Probation continues social support for offenders after completion of the main sentence by implementing resocialisation programmes, assisting with employment, and providing psychological support. These measures are aimed at reducing the risk of reoffending and facilitating the individual's adaptation to societal life. Simultaneously, national security agencies carry out preventive checks, monitor digital activity, and apply preventive measures, including counselling for individuals identified as at-risk. The combined results of this interaction are summarised in Table 1, which systematises the information-gathering and control mechanisms applied at various stages of the criminal process.

Table 1. Information and control mechanisms of probation and national security agencies in the criminal process of the Kyrgyz Republic

Stage of the criminal process	Actor	Types of information/control tools	Sources/examples of application	Forms of use/expected outcomes
Pre-trial proceedings	Probation agencies	Socio-domestic characteristics; educational and employment status; family connections	Interviews with the individual; certificates from place of work and residence; data from educational institutions; local government information	Preparation of probation reports; risk assessment for recidivism; court recommendations regarding alternatives to imprisonment
	National security agencies	Information on involvement with extremist groups; contacts; financial transactions; digital activity	Operational and investigative activities; surveillance results; analysis of communication networks; financial monitoring data	Use in pre-trial investigation; assessment of threats to national security; initiation of preventive measures

Table 1. Continued

Stage of the criminal process	Actor	Types of information/control tools	Sources/examples of application	Forms of use/expected outcomes
Sentence execution	Probation agencies	Regular reporting; inspector visits; individual resocialisation plans; social support	Reporting meetings; checks of living conditions; consultations	Monitoring compliance with restrictions; support for social reintegration; reduction of risk of reoffending
	National security agencies	Monitoring behaviour of offenders convicted of security-related crimes; analysis of financial and digital activity	Surveillance; communications analysis; verification of financial flows	Preventive actions to minimise the risk of radicalisation; ensuring state security
Post-penitentiary supervision	Probation agencies	Social support; recidivism prevention	Resocialisation programmes; employment assistance; psychological support	Adaptation to societal life; prevention of reoffending
	National security agencies	Preventive checks; monitoring individuals at risk of re-radicalisation	Monitoring digital activity; travel restrictions; preventive counselling	Prevention of threats to state security; monitoring at-risk groups

Source: developed by the authors based on Law of the Kyrgyz Republic No. 34 “On Probation” (2017), Criminal Code of the Kyrgyz Republic (2021), Criminal Procedure Code of the Kyrgyz Republic (2021), Law of the Kyrgyz Republic No. 57 “On National Security Agencies” (2022)

The interaction mechanisms between probation and national security agencies form a multi-component system in which information and control blocks operate in close coordination. The combination of these blocks necessitates the simultaneous collection of data on the offender’s social characteristics and the analysis of potentially dangerous contacts or activities. For probation, the key tools are socio-legal in nature, reflecting the individual’s personal traits, social environment, and conditions for adaptation in society. For national security agencies, the priority lies in preventive measures aimed at identifying risks to state security and preventing their escalation. As a result, a system emerges in which social integration and security measures coexist as complementary elements of a unified process.

Within this interaction structure, a clear division of functions is observed, which does not preclude the need for coordination between institutions. Probation focuses on analysing intra-social

factors – living conditions, education and employment levels, and family and work connections – which determine the degree of social stability of the individual. National security agencies focus on external dangers related to participation in communication networks, contacts inside potentially dangerous groups, and questionable financial activities. The Law of the Kyrgyz Republic No. 57 “On National Security Agencies” (2022), which permits the identification and prevention of threats to state security, such as extremism and terrorism, serves as the foundation for these responsibilities. The fundamental legal foundation for such preventive monitoring is provided by the Criminal Code of the Kyrgyz Republic (2021), which provides criminal liability for involvement in extremist organisations, financing terrorist action, and other crimes against constitutional order. A multifaceted information framework that helps courts and investigators make well-informed procedural decisions is created when

these security-oriented mechanisms interact with the socio-legal assessments carried out by probation authorities, such as probation reports and individual resocialisation plans under the Criminal Enforcement Code of the Kyrgyz Republic (2017). Therefore, integrating security and socio-legal data lowers systemic risks associated with radicalism or organised crime as well as individual chances of reoffending.

The jurisprudence of the European Court of Human Rights, specifically the case of *Ekimdzhev and Others v. Bulgaria* (2022), which examined the compatibility of national covert surveillance legislation with Article 8 of the European Convention on Human Rights, can provide comparative doctrinal guidance when assessing the legitimacy of security measures. When using covert surveillance techniques, the Court underlined the need for precise legal regulation, impartial oversight procedures, judicial authority, and proportionality. These criteria serve as a crucial theoretical baseline for striking a balance between security and human rights, even though they are not legally binding for Kyrgyzstan. Kyrgyz national legislation governing operational-investigative activities and judicial oversight also reflects elements of this proportionality approach. It limits intrusive measures to cases involving serious threats and requires authorisation from competent judicial or prosecutorial bodies.

In reality, Kyrgyz criminal justice has had to deal with cases where people who were under probation supervision later joined extremist groups or committed other serious crimes. This has led to increased cooperation between security agencies and probation authorities during sentence enforcement and post-release monitoring. These instances show that the coherence of information sharing, judicial oversight, and respect to confidentiality and proportionality rules are more important for the success of institutional interaction than the severity of control

mechanisms. Reaching this equilibrium is essential to the criminal justice system's steady operation and its progressive conformity to globally accepted norms of security governance and human rights protection.

Procedural challenges and risks in the interaction between probation and national security agencies. Access to restricted information in the criminal process represents one of the most significant challenges in the interaction between probation and national security agencies. Security agencies accumulate a substantial body of data that holds strategic importance for identifying and neutralising threats; however, full disclosure of this information is impossible due to its classified nature. This situation necessitates defining the permissible limits of information sharing between institutions, balancing security interests with the requirements of the criminal justice process. It has been determined that insufficient regulation of this issue creates risks to procedural equilibrium and increases the likelihood of conflicts between the functions of different agencies.

Within probation activities, the use of restricted-access information is auxiliary in nature and is primarily applied to prepare socio-psychological profiles, assess the risk of recidivism, and determine the level of social adaptation of the individual. The study revealed substantial differences between the detail and depth of data available to security agencies and the more generalised information that was transmitted to probation services. This approach enables the court to receive the necessary characteristics without violating confidentiality, but leaves open the question of the boundaries and procedures of such information exchange. For clarity, the results of this systematisation are presented in table 2, which reflects the types of information, sources of acquisition, and categories of data partially utilised by probation.

Table 2. Restricted-access information in the activities of national security agencies and its partial use by probation services

Type of restricted-access information	Sources of acquisition by security agencies	Categories of data that may be transmitted to probation	Form of use by probation
Information on contacts with persons suspected of links to extremist or terrorist organisations	Operational-search measures, surveillance, analysis of communication networks	General data on the social environment of the suspect	Inclusion in the socio-psychological profile for the court
Information on financial activity indicative of money laundering or financing illegal activities	Financial monitoring, transaction control	Generalised information on the level of material provision	Use in probation assessment of social stability
Data on online activity, including access to radical resources	Internet traffic analysis, technical monitoring	Information on propensity to use online resources	Consideration in determining the risk of reoffending
Information on participation in informal organisations or groups	Agent-based intelligence, surveillance results	General information on the circle of social contacts	Reflection in the assessment of social behaviour

Source: developed by the authors based on Law of the Kyrgyz Republic No. 34 “On Probation” (2017), Criminal Code of the Kyrgyz Republic (2021), Criminal Procedure Code of the Kyrgyz Republic (2021), Law of the Kyrgyz Republic No. 57 “On National Security Agencies” (2022)

Analysis of Table 2 demonstrated that the informational interaction between probation services and national security agencies occurs in the form of partial data exchange with varying levels of detail and targeted purpose. Security agencies focus on collecting detailed information regarding suspects’ contacts, financial transactions, online activity, and potential participation in informal groups. The transfer of information to probation services occurs only in a generalised form and within the limits established by criminal procedural law governing access to pre-trial investigation materials and the protection of operational information (Criminal Procedure Code of the Kyrgyz Republic, 2021; Law of the Kyrgyz Republic No. 57, 2022). These limitations are a reflection of data protection and confidentiality laws. The provided data is only used by probation services to create socio-legal evaluations and probation reports for the court. The scope of disclosed data is limited in accordance with personal data protection standards and the necessity and proportionality principles established in the European Court of Human Rights’ jurisprudence.

These principles mandate that access to sensitive information be limited to what is absolutely necessary for the legitimate goal being pursued. This procedural framework protects fundamental rights and maintains the confidentiality of operational information while allowing courts to receive pertinent features of the offender. This approach provides the court with the necessary characteristics to make procedural decisions while maintaining confidentiality.

It was determined that the proportionality test should be used to evaluate the link between state security interests and the demands of the legal system (Barak, 2012). According to this method, limitations on information access or interference with individual rights must have a justifiable purpose, be required in a democratic society, and be commensurate with the goal of preserving national security. The European Court of Human Rights’ jurisprudence shows that in order to avoid undue interference with basic rights, security-related measures (including the processing of sensitive information) must be accompanied by sufficient procedural safeguards

and judicial scrutiny (OECD, 2024). In this framework, the division of information access between national security agencies and probation services acts as a means of preserving proportionality, guaranteeing that security goals are met without compromising procedural justice and the defence of individual rights.

The study also revealed that the process of interaction between probation and national security agencies is accompanied by a range of procedural risks, which are multidimensional. Their

impact extends both to the effectiveness of control mechanisms and to the protection of human rights in criminal proceedings. Systematisation of the collected data allowed the identification of four main categories of risk - legal, informational, organisational, and social. This classification is presented in table 3, where specific examples of their manifestation and potential consequences for criminal proceedings are outlined. The material enables an assessment of the most critical problem areas within this sphere.

Table 3. Classification of procedural risks in the interaction between probation services and national security agencies

Risk category	Nature of the risk	Example with doctrinal or case-law reference	Potential consequences
Legal	Insufficient regulation of probation access to materials containing state secrets; conflicts between legislative acts	Lack of a clear legal procedure for partial disclosure of classified information to the defence or probation services may undermine the principle of a fair trial. The European Court of Human Rights has emphasised that limitations on access to evidence must be accompanied by adequate procedural safeguards (Case of Rowe and Davis v. The United Kingdom, 2000)	Violation of procedural guarantees for the accused; formalisation of judicial control
Informational	Incomplete or asymmetric data exchange between institutions	Risk of excessive collection and retention of personal data by security agencies without clear necessity for probation assessment. This contradicts the principle of data minimisation, which requires that only data necessary for a specific purpose be processed (Case of S. and Marper v. The United Kingdom, 2008; General Data Protection Regulation (GDPR), 2016, Art. 5(1)(c))	Use of unilateral information in court proceedings; reduction in the objectivity of decisions
Organisational	Absence of coordinated interaction standards and overlapping restrictions	Simultaneous restrictions imposed by probation officers and security agencies (e.g., travel or contact bans) may arise due to weak inter-agency coordination. Research on criminal justice governance shows that coordination failures between institutions reduce efficiency and lead to duplication of control measures (Waring <i>et al.</i> , 2022; Iannacci <i>et al.</i> , 2022)	Excessive control over the individual; risk of violating the principle of proportionality
Social	Negative impact of intensified supervision on the resocialisation process	Intensive monitoring or intrusive security checks may undermine reintegration efforts and create a climate of distrust. Empirical studies of probation practice demonstrate that excessive surveillance can weaken rehabilitative outcomes and reduce offender engagement in resocialisation programmes (Sabbe <i>et al.</i> , 2021; Hanslmaier <i>et al.</i> , 2025)	Increased risk of reoffending; complications in social adaptation after serving the sentence

Notes: this table presents a classification of procedural risks without the use of specialised abbreviations requiring additional explanations. The terms “state secret” and “proportionality” are used in the sense defined in criminal procedural and international law

Source: developed by the authors based on Law of the Kyrgyz Republic No. 34 “On Probation” (2017), Criminal Procedure Code of the Kyrgyz Republic (2021), Law of the Kyrgyz Republic No. 57 “On National Security Agencies” (2022), Human Rights Watch (2023), Amnesty International (2023)

Analysis of Table 3 indicated that procedural risks encompass not only the legal sphere but also informational, organisational, and social dimensions. Legal risks arose from the absence of clearly defined procedures for exchanging classified information, which complicated comprehensive judicial oversight and reduced its effectiveness. Informational risks manifested as asymmetric access to data, creating the possibility of relying on unilateral evidentiary sources and affecting the objectivity of judicial decisions. Organisational risks were associated with insufficient coordination between probation services and national security agencies, leading to duplication of functions and the imposition of excessive restrictions. Social risks reflected the complexity of combining security and resocialisation tasks, as additional supervision could reduce trust in the justice system and increase the risk of reoffending.

It was established that a particularly salient challenge was balancing preventive measures with social adaptation objectives. Probation is tasked with supporting the resocialisation process; however, additional restrictions imposed by security agencies created conditions under which the effectiveness of such programmes was diminished. The atmosphere of constant surveillance and suspicion hindered the restoration of the offender's social ties and limited their motivation to change behaviour. This underlined the need to develop unified standards that combine resocialisation goals with preventive security functions without creating contradictions.

The overall findings demonstrated that procedural interaction between probation and national security agencies has a complex, multi-level structure encompassing both legal and organisational components. The simultaneous need to ensure social adaptation of the individual and protection of state security generates risks that require optimisation of regulatory and practical mechanisms. Key considerations remain access to

information, proportionality of restrictive measures, and safeguarding the independence of judicial oversight. These aspects form the foundation for further analysis of organisational and legal forms of interaction between institutions within the criminal justice system

Prospects for improving and reforming the interaction between probation services and national security agencies. Improving the interaction between probation services and national security agencies involves developing clear procedures and establishing transparent mechanisms for information exchange (OECD, 2024). This task is particularly relevant given the need to eliminate duplication of functions and ensure equal access of institutions to data relevant to criminal proceedings. Streamlining the parameters of interaction enhances trust in criminal justice institutions and contributes to more effective fulfilment of procedural tasks.

The introduction of standardised elements of information exchange allows for a balance between responsiveness and compliance with procedural safeguards. In practice, this requires a precise description of the kinds of information that can be sent, the circumstances in which it can be sent, the authorities in charge, and the legal ramifications of using the information. The Law of the Kyrgyz Republic No. 34 "On Probation" (2017), which governs the creation of probation reports, the supervision of people under non-custodial punishments, and the execution of resocialisation programs, provides the normative foundation for these procedures. The obligation of probation authorities to gather and process sociodemographic data on education, employment, family environment, and involvement in rehabilitation programs is specifically established by the provisions governing the preparation of probation reports and the monitoring of compliance with probation conditions. Such data serves as the foundation for estimating

the likelihood of recidivism and evaluating the offender's social stability.

Simultaneously, the Law of the Kyrgyz Republic No. 57 "On National Security Agencies" (2022) establishes the authority of security agencies to gather and examine data pertaining to threats to state security, such as information about financial transactions, contacts with extremist groups, and other signs of possible illegal activity. These authorities are subject to procedural control mechanisms and are used within the bounds set by legislation. When analysing risks or averting threats to public safety, pertinent material may be supplied in a generalised form during criminal proceedings. The Criminal Procedure Code of the Kyrgyz Republic (2021), which establishes the legal framework for gathering, confirming, and using information during criminal investigations and court proceedings, further supports procedural regulation of such information exchange. The Code specifies the standards for evidence's admission, relevance, and legality as well as judicial supervision of investigation activities. According to this framework, information from national security agencies and probation services may only be used in criminal proceedings if it conforms with specific procedural requirements.

The creation of coordinated information-sharing platforms aligns with worldwide guidelines for probation and criminal justice practices in addition to national legislation. International guidelines highlight that the goals of criminal resocialisation should be combined with preventive measures to safeguard public safety in order for probation services and security institutions to work together effectively (Klaus, 1998; Nursaliyeva *et al.*, 2023). Therefore, through transparent legal processes and institutional accountability, the regulatory framework governing these institutions' interactions should guarantee both operational effectiveness and the preservation of basic rights.

The goal of standardising information exchange components is to increase procedural efficiency and transparency. While guaranteeing the applicability of information received by allowed organisations, clearly identifying the sorts of data helps to lower the risks of excessive intrusion into an individual's private life. Clarity in the categories of data transmitted reduces privacy violations and guarantees that only necessary information is shared between authorities, as R. Laird (2021) emphasises. According to R. Peled-Laskov and F.S. Taxman (2024), regulated transmission dates decrease delays in reacting to security issues and encourage prompt procedural decisions by establishing precise deadlines for the sharing of vital information. According to S. Waring *et al.* (2022), assigning responsible parties prevents responsibility overlap and promotes effective decision-making, which guarantees accountability and coordination amongst institutions. The anticipated results, which strike a compromise between state security and offender reintegration, are consistent with the conclusions of M. Sabbe *et al.* (2021), who contend that precise goals and actions guarantee both the protection of public safety and the successful reintegration of offenders.

For probation officers to effectively carry out their duties within the criminal justice system, it is imperative that they get a sufficient degree of professional training. According to M. Hanslmaier *et al.* (2025), in order to handle the current threats posed by risks like radicalisation, probation officers must update their training methods and broaden their capabilities. Furthermore, R. Harris (2022) emphasises how crucial it is to incorporate legal and social-psychological knowledge into probation training in order to successfully handle both preventive and rehabilitative responsibilities. The educational modules, core skills, training techniques, and anticipated results are in line with F. Iannacci *et al.* (2022), who emphasise the necessity of multidisciplinary approaches in

training to adapt to the demands of contemporary probation services, in order to systematise pertinent training orientations. This strategy guarantees that probation officers are prepared to manage the intricacies of their responsibilities within the framework of current security issues.

It is essential to create professional training programmes for probation officers that comply with both national and international standards (UNODC, 2023) in order to guarantee the efficient operation of probation services. The Criminal Procedure Code of the Kyrgyz Republic (2021) and Law of the Kyrgyz Republic No. 34 "On Probation" (2017) provide the legal foundation for probation officers' duties, which include creating reports, evaluating risks, and suggesting possible sentences. Understanding criminal and criminal procedure law is a fundamental part of probation officer training, ensuring that officers can apply legal standards in their day-to-day job. This information is crucial for accurately preparing the probation reports that the law requires, which has a direct bearing on the calibre and validity of court rulings. Additionally, probation officers must be trained in social and psychological work with offenders in order to evaluate risk factors and conduct interviews that influence rehabilitation strategies. The Law of the Kyrgyz Republic No. 34 "On Probation" (2017) states that officers are in charge of assessing the likelihood of reoffending and creating resocialisation plans. This training component increases the effectiveness of rehabilitation initiatives by assisting officers in comprehending the motivations of offenders.

Specialised training is required due to the increase in radicalisation and extremism within the criminal justice system. According to the Council of Europe Handbook for Prison and Probation Services Regarding Radicalisation and Violent Extremism (2010), probation officers can successfully collaborate with national security services and recognise indicators of radicalisation through

seminars and interagency exercises. This kind of cooperation guarantees prompt intervention and enhances probation services' preventive function. In order to ensure that their actions comply with international standards, such as the United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules) (1990) and UNODC (2023), probation officers must also possess a thorough understanding of ethics and human rights (Klaus, 1998). As stated in Article 8 of the Criminal Procedure Code of the Kyrgyz Republic (2021), probation officials who get ethics training are guaranteed to uphold the principles of proportionality and respect for the rights of offenders. Finally, digital literacy is an essential skill given the increasing use of technology in criminal justice. Probation officers can handle sensitive data safely and effectively, as required by the Criminal Procedure Code of the Kyrgyz Republic (2021), including training in information systems and cybersecurity in accordance with the GDPR (2016).

The inclusion of modules on countering radicalisation and extremism is a crucial component of the training system. It highlights the increasing relevance of security aspects in probation work and the need for closer coordination with national security agencies. Orientation towards international human rights standards and application of the principle of proportionality ensures ethical and legal compliance in working with offenders, which reinforces trust in the probation institution. Therefore, staff training goes beyond legal knowledge, encompassing a broader set of competencies necessary for balanced activity in a complex security environment.

Developing digital literacy among probation staff is a priority, ensuring effective information exchange and protection of personal data. The use of digital tools in professional practice enhances the timeliness of monitoring and transparency in cooperation with security agencies. Ultimately,

the professional training system forms the foundation for effective and balanced probation work, where social adaptation is combined with state security objectives. This creates conditions for the further improvement of practical cooperation mechanisms within criminal justice.

Discussion

The conducted study demonstrated that the integration of probation measures with the preventive activities of national security agencies created a comprehensive system of checks and balances, designed to simultaneously ensure the social adaptation of offenders and the protection of state interests. At the same time, the established inequality in access to information and the insufficient specification of procedures for its transmission generated risks of one-sided procedural decisions and weakened the implementation of the principle of proportionality. These findings highlighted the need to develop clearer forms of judicial supervision and unified standards for interagency cooperation. Comparison of the obtained data with the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) (1990) and the European Probation Rules confirmed that the incorporation of international norms into national practice contributed to the reduction of procedural risks and ensured predictability in law enforcement. Overall, the study demonstrated the importance of modernising the legal framework, enhancing professional qualifications, and introducing unified information standards as key conditions for improving the effectiveness of interaction between probation services and security agencies.

Analysis of the coordination system confirmed that the effectiveness of activities largely depended on the existence of unified protocols and transparent information exchange procedures. Similar conclusions were drawn in the study by A.K. Wangara (2024), which showed

that the formalisation of cooperation rules between private security organisations and state security institutions determined accountability and effectiveness in crime prevention. This research established that the absence of such mechanisms generated risks of overlapping functions and hindered preventive activities, which aligns with the findings regarding the interaction of probation and security agencies.

The use of a structural-functional approach allowed the identification of the main directions for role allocation between probation services and security agencies within the criminal process. Similar emphases were observed in the work of F. Iannacci *et al.* (2022), which showed that the effectiveness of information exchange depended on management context characteristics and the establishment of trust between institutions. The results of the present study confirmed that the asymmetry of data access undermined the effectiveness of cooperation and complicated the fulfilment of both resocialisation and security functions, consistent with the conclusions of the aforementioned authors.

The issue of balancing resocialisation objectives with security measures was central to the study. A similar approach was evident in the work of Y. Nafid *et al.* (2024), which argued that the development of criminal law alternatives contributed both to reducing recidivism and to strengthening security measures. The findings indicated that the combination of probation programmes with the preventive control of security agencies reduced the risk of radicalisation, confirming the appropriateness of integrating social and preventive components within the criminal justice system.

In examining legal models, particular attention was paid to European experience. The study's conclusions were consistent with those of D. Todosiev and N. Ricijaš (2021), who emphasised that the development of probation in European states was based on the integration of Council of Europe

standards and a focus on the individualisation of measures. The research demonstrated that the introduction of individual resocialisation plans in the Kyrgyz Republic was an important step towards harmonisation with European practices, indicating common development trends. The results confirmed that the effectiveness of international cooperation in criminal justice depended on the level of detail and mandatory nature of legal mechanisms. Similar conclusions were drawn in the study by D. Danglades and E. Laudic-Baron (2024), which showed that regulatory ambiguity reduced the effectiveness of framework decisions in the European Union. These findings underscored the need to develop clear interaction protocols between probation services and national security agencies as a tool for ensuring the proportionality of restrictive measures.

The study also highlighted the influence of procedural mechanisms on the effectiveness of criminal justice. Similar observations were made by K.M. Warraich and J.S. Butt (2024), who noted that systemic failures in criminal prosecution in Pakistan had serious economic consequences and reduced trust in justice. They emphasised that the ethical and social dimensions of such failures directly correlated with the problems identified in the present research concerning insufficient coordination between probation and security agencies. Analysis of international approaches conducted by A.N. Martín (2022) indicated that the development of global criminal law proceeded through gradual standardisation, providing a foundation for procedural compatibility between different legal systems. These findings align with the results of the present study, which highlighted the importance of applying international norms in the activities of probation authorities in the Kyrgyz Republic to reduce procedural risks and ensure coordinated actions. S. Waring *et al.* (2022) demonstrated that multi-level information exchange among probation teams significantly

affected risk assessment quality and recidivism reduction. This was consistent with the findings of the present study, which confirmed that the standardisation of information flows between probation and security agencies formed the basis for minimising procedural threats and enhancing the effectiveness of resocialisation programmes.

Special attention was given to the interaction of state and civil institutions, summarised in the study by M. Sabbe *et al.* (2021). The authors noted that public trust in criminal justice institutions depended on the nature of their interactions, while transparency and coordination determined the effectiveness of resocialisation activities. Similar conclusions were drawn in this research, which demonstrated that the absence of coordinated actions directly affected the effectiveness of probation activities. Organisational analysis by P. Rocha (2025) emphasised that the internal culture of institutions determined the quality of inter-agency rehabilitation efforts. The author showed that inconsistencies in management practices led to fragmented efforts and reduced the effectiveness of collaborative work. The findings of the present study confirmed this trend, identifying the harmonisation of organisational approaches between probation and security agencies as a key task for improving the effectiveness of their interaction. M. Hailemariam *et al.* (2025) demonstrated that the use of data-driven decision-making in agencies working with individuals involved in the criminal justice system increased the efficiency of management decisions and the quality of resocialisation programmes. The integration of systematised data into planning processes minimised the risk of subjective errors and enabled more substantiated assessments of offenders. The current study confirmed the relevance of this approach, showing that organised information exchange between probation and security agencies formed the basis for reducing procedural risks. N. Malizia (2021) demonstrated that probation

programmes assigning offenders to social services in Italy were an effective alternative to imprisonment, with statistical evidence confirming reduced recidivism and additional opportunities for rehabilitation and social reintegration. The results of the present study partially reflected this approach, emphasising the importance of expanding individual resocialisation plans and strengthening the participation of social institutions in probation practice.

The concept of probation philosophy, as argued by A. Bałandynowicz (2025), defined it as a tool not only of control but also of restoring social justice. The author stressed that the implementation of humanistic approaches enhanced the role of probation in the resocialisation process and increased public trust in the criminal justice system. The current study partially confirmed this position, showing that combining offenders' social adaptation with the preventive functions of security agencies created a more balanced model of criminal justice. M. Hanslmaier *et al.* (2025) highlighted selective punitiveness among social work students, which affected attitudes toward offenders and the prospects for their resocialisation. It was shown that professional bias could negatively impact the future quality of probation services and reinforce punitive tendencies in the justice system. The present study corroborated these findings, identifying the need to improve probation staff training, particularly with emphasis on human rights and proportionality principles.

R. Peled-Laskov and F.S. Taxman (2024) demonstrated the importance of integrating therapeutic and psychological programmes within probation and conditional release. They found that the application of therapeutic approaches significantly reduced recidivism risk and ensured more sustainable rehabilitation outcomes. The present study's findings align with this approach, highlighting that probation effectiveness is determined not only by legal mechanisms but also by the

combination of social-psychological tools in offender work. Reform of Indonesia's criminal legislation, as shown by D. Agusta *et al.* (2025), was based on integrating control, punishment, and rehabilitative measures, promoting the development of a restorative justice model. The authors concluded that harmonising these components reduced the burden on the penal system while maintaining the balance between societal security and offenders' rights. This approach proved relevant in the present study, as the development of probation in the Kyrgyz Republic also required combining resocialisation programmes with the preventive functions of national security agencies.

E. Borta (2025) established that improving legal regulation of conditional release involved both expanding application criteria and clarifying supervision procedures. The author concluded that such changes increased the effectiveness of resocialisation mechanisms while simultaneously reducing recidivism risks. The present study confirmed the significance of this approach, identifying the need for standardising information exchange procedures and formalising control mechanisms. Models of international cooperation regarding juvenile offenders, examined by R. Laird (2021), showed that implementing rehabilitative programmes had long-term positive effects on social integration. The author's conclusions highlighted the importance of educational and preventive measures, corroborated by this study's findings on reducing recidivism risk across offender categories.

In summary, the study demonstrated that the main factors influencing the effectiveness of interaction between probation and national security agencies were: the standardisation of information exchange procedures, the integration of social-psychological and medical tools in the resocialisation process, and the harmonisation of national legislation with international norms. At the same time, analysis confirmed that

insufficiently detailed protocols and unequal access to data generated risks of excessive control and reduced the effectiveness of resocialisation programmes, underlining the necessity to improve organisational and legal mechanisms in this field

Conclusions

The study established that the interaction between probation services and national security agencies in the Kyrgyz Republic is systemic and multi-level. It manifests through the combination of probation's resocialisation measures and the preventive-control actions of security structures. At the pre-trial stage, the main instrument of probation remained probation reports, which formed the social-legal profile of the individual, whereas security agencies focused on collecting information regarding risky contacts, financial transactions, and digital activity. Such a division of functions provided the court with the necessary data for decision-making but simultaneously created risks of asymmetrical access to information.

Analysis of sentence enforcement practices indicated that probation primarily exercised control through individual resocialisation plans, regular reporting, and social support. During this period, national security agencies monitored the behaviour of offenders who could pose a threat to the state, while also conducting checks on financial and digital activity. In the post-penitentiary period, social adaptation programmes, employment assistance, and psychological support became decisive, whereas security structures concentrated on preventive measures and the mitigation of re-radicalisation. This demonstrated the complementary nature of the functions of the two institutions but also highlighted the need for clear coordination of their activities.

The study identified the most significant procedural challenges in the interaction between probation and security agencies as the absence of clearly defined data exchange regulations,

duplication of restrictive measures, and the impact of excessive supervision on the effectiveness of resocialisation. Asymmetrical access to information could result in one-sided judicial decisions, while weak interagency coordination could lead to overlapping functions and excessive burdens on the offender. At the same time, the integration of international standards, such as the United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules) and the European Probation Rules, provided a basis for creating a more balanced system in which security interests were combined with the principles of humanitarian justice.

The practical significance of the study lies in the development of recommendations for improving procedures for interaction between probation services and security agencies. Key directions include the standardisation of information exchange procedures, the development of interagency protocols, the strengthening of judicial oversight, and the enhancement of professional competencies among probation staff. Limitations of the study were associated with restricted access to classified materials of security structures and the lack of comprehensive statistical data on the effectiveness of resocialisation programmes. Further research should focus on evaluating the effectiveness of new legal and organisational mechanisms, as well as examining the experiences of other Central Asian and European countries to develop practical models for harmonising probation and security functions.

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Особливості кримінального провадження щодо взаємодії між службами пробації та органами національної безпеки

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Анотація

Актуальність дослідження зумовлена необхідністю забезпечення балансу між ресоціалізацією правопорушників та завданнями протидії загрозам державній безпеці в умовах зростання ризиків радикалізації в Киргизькій Республіці. Метою статті було комплексне дослідження

механізмів взаємодії служб пробації та органів національної безпеки у кримінальному процесі Киргизстану. Методологія базувалася на поєднанні порівняльно-правового, структурно-функціонального та системного підходів, що дозволило порівняти національне законодавство з міжнародними стандартами та виявити особливості практичного застосування. Аналіз показав, що правові засади інституту пробації створили необхідні передумови для його розвитку; однак питання щодо процедур обміну інформацією з органами безпеки залишилися невирішеними. Було встановлено, що на досудовій стадії ключову роль відігравали звіти пробації, тоді як діяльність органів безпеки зосереджувалася на превентивному моніторингу. Під час виконання покарань акцент робився на індивідуальних планах ресоціалізації та моніторингу цифрової активності. На післявиправній стадії центральне значення мали профілактичні заходи та соціальна підтримка. Аналіз процедурних ризиків показав, що найзначнішими загрозами були асиметричний доступ до інформації, дублювання обмежувальних заходів та негативний вплив надмірного контролю на процес соціальної адаптації. Ефективність взаємодії визначалася рівнем стандартизації процедур обміну інформацією, розвитком професійних компетентностей персоналу пробації та адаптацією міжнародних стандартів до національного законодавства. Це надало дослідженню практичного значення у вигляді рекомендацій щодо покращення співпраці, які можуть бути використані правоохоронними органами, науковою спільнотою та політиками у сфері кримінального судочинства

Ключові слова: процедурні ризики; стандартизація; моніторинг; програми ресоціалізації; індивідуальні плани; соціальна підтримка; цифрова діяльність



Motherhood rights in international human rights instruments and Islam: A comparative analysis

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The study was aimed at identifying the conceptual foundations, implementation mechanisms and convergence potential between universal human rights norms and Islamic legal doctrine in the field of motherhood protection. The methodology was based on the application of comparative

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legal analysis of international conventions, Islamic primary sources and contemporary legal acts of Muslim states. The research identified differences in sources of law: international law was grounded in secular universalism and the concept of human dignity, whereas the Islamic tradition derived norms from their divine origin as established in the Qur'an and the Sunnah. It was found that international law offered an individualistic model of rights guaranteed by the state through social mechanisms, while Islamic jurisprudence proposed a complementary system of mutual family and community obligations. The analysis of the legal systems of Saudi Arabia and Indonesia demonstrated differences in the mechanisms of financial support for motherhood: state responsibility in international law versus the nafaka system in Islam, as well as differing approaches to child custody – the best interests of the child principle versus the hadana framework. The study of bioethical principles revealed the unanimous position of Islamic jurists against surrogacy, rooted in the protection of lineage. At the same time, points of convergence were identified in the recognition of the special status of motherhood and the need for its protection. The practical significance of the research lies in the potential use of the findings to develop hybrid regulatory models of motherhood rights in Muslim countries that integrate international standards with religious-legal traditions, which is particularly relevant in the context of the globalisation of legal space

Keywords: nafaka; hadana; fiqh; Maqasid al-Sharia; discrimination

Introduction

Motherhood, as one of the fundamental social roles, lies at the intersection of diverse legal and cultural systems. In the contemporary world, rights related to motherhood are regulated both by universal norms of international law and by provisions of traditional legal systems, particularly Islamic jurisprudence. The interaction arising at the junction of these systems represents a complex issue in which universal principles of equality may collide with religious and cultural conceptions of the roles of men and women. The relevance of the study is conditioned by the growing need to understand the mechanisms of interaction between international standards for the protection of motherhood rights and Islamic legal traditions in the context of the globalisation of legal space and migration processes. Modern Muslim communities, both in traditionally Islamic countries and in diasporas, exist in a state of constant legal pluralism, where their family relations are simultaneously regulated by

international conventions, national legislation and norms of Sharia.

The current state of research on this topic is characterised by fragmented approaches and insufficient systematic comparative analysis. N.A.B.M. Daud (2025) carried out a critical examination of the reception of the Universal Declaration of Human Rights in Muslim communities, identifying deep epistemological divergences in the understanding of the sources and nature of human rights between Islamic and Western liberal traditions. The author found that the most significant contradictions are concentrated in the sphere of family relations and gender roles, where religious norms display maximum resistance to secular influences. F.R. Meybodi and S. Rasouli (2022) conducted a detailed comparative analysis of the Universal and Islamic Declarations of Human Rights in the field of women's and family rights, demonstrating that the differences between these documents concern

not only terminological formulations but also fundamental principles of rights conception. The researchers showed that the Islamic tradition offers a complementary model of rights based on mutual obligations and collective responsibility, which differs from the individualistic model of international law.

In the field of concrete aspects of the realisation of motherhood rights, a significant methodological contribution was made by N. Kumar and P. Ranga (2025), who analysed judicial practice concerning the protection of labour rights of pregnant women and mothers across various jurisdictions, identifying substantial gaps in the enforcement of international standards at the national level. The authors established the systemic nature of the phenomenon of the “motherhood penalty”, manifested in discriminatory practices by employers despite the formal legislative prohibition of such actions. Bioethical aspects of motherhood in the Islamic context received systematic development in the works of N. Jaser and C. Ahaddour (2023), who methodologically mapped Islamic ethical discourse on prenatal diagnostics and abortion, identifying the existence of significant intra-Islamic pluralism of views on complex biomedical issues. I. Jalili *et al.* (2024) conducted a comprehensive socio-legal analysis of the legitimacy of abortion in Islamic jurisprudence and Indonesian law, uncovering complex mechanisms for adapting classical religious norms to modern medical realities and reproductive technologies. These studies convincingly showed that the Islamic legal tradition possesses substantial internal hermeneutical flexibility that allows for the integration of scientific advances while preserving fundamental religious principles and ethical imperatives.

Contemporary trends in the evolution of Islamic family law were analysed in detail by N.E.H. Pane *et al.* (2024), who examined the influence of Sharia norms on the realisation of

women’s rights in comparative perspective with modern secular family law. The authors found that Muslim states demonstrate a wide array of models for harmonising traditional and modern legal norms – from conservative reproduction of classical provisions of medieval legal schools to innovative interpretations that take into account changing socio-economic conditions. E. Zuhriah *et al.* (2024) focused their research on the analysis of women’s right to refuse pregnancy in the Indonesian legal context, identifying complex institutional mechanisms for balancing religious norms and principles of reproductive autonomy in a pluralistic society. S. Ahmed (2024) offered a conceptual analysis of Muslim motherhood as a sociocultural phenomenon, identifying specific features of Islamic understandings of maternal roles and obligations. E. Lapiedra-Gutiérrez (2025) conducted a historical analysis of the concept and functions of motherhood in Islamic societies from the medieval period to the present, revealing evolutionary trends in the understanding of motherhood rights and status.

Despite the existence of a substantial body of individual studies on various aspects of motherhood rights in Islamic and international legal contexts, the academic literature lacks a comprehensive comparative analysis that would systematically address the conceptual foundations, institutional implementation mechanisms and convergence potential of these legal traditions. Most existing works focus either on individual aspects of motherhood rights or on the examination of specific national models of legal regulation, which does not allow for the development of a holistic scholarly understanding of the nature and dynamics of interaction between international law and Islamic jurisprudence in this critically important domain of human relations.

The present study was aimed at addressing the identified theoretical gap through a comparative analysis of motherhood rights in international

law and the Islamic legal tradition. The main objectives of the research were: the systematisation of international legal standards for the protection of motherhood and the identification of their evolutionary dynamics; the comprehensive analysis of the Islamic concept of the rights and obligations of the mother in the context of religious-legal doctrine; and the identification of points of conceptual intersection and fundamental doctrinal divergences between the legal systems under examination.

Materials and Methods

This study was conducted as a theoretical and applied work based on a comprehensive comparative legal analysis of international legal sources, religious legal texts and practical materials of international organisations that characterise contemporary approaches to the protection of maternal rights across different legal traditions. The methodological foundations of comparative jurisprudence were studied using the work of N. Kumar and P. Ranga (2025). The research was carried out from January 2024 to October 2025 with an examination of legal documents and judicial practice covering the period from 1948 (the adoption of the Universal Declaration of Human Rights) to October 2025, which made it possible to trace the full evolution of international standards for the protection of motherhood and their interaction with religious legal traditions. The geographical scope included an analysis of legal systems with a detailed examination of the contemporary practices of Saudi Arabia, Indonesia and Malaysia, as well as an analysis of Kazakhstan's family and marriage legislation as an example of a post-Soviet Muslim jurisdiction, representing different approaches to the implementation of religious norms in a modern legal context.

The empirical base of international law consisted of the key universal documents of the

United Nations (UN): The Universal Declaration of Human Rights (1948), United Nations General Assembly Resolution No. 2200A (XXI) (1966) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (United Nations General Assembly..., 1979). Specialised conventions of the International Labour Organization (ILO) were examined, in particular the Maternity Protection Convention No. 183 (International Labour Organization, 2000), as well as regional instruments, including the European Convention on Human Rights (1950). A detailed analysis was carried out of the gap between formal legal norms and their practical implementation, which required the study of reports by international organisations, including documents of the United Nations International Children's Emergency Fund (UNICEF) (2019) and the Convention on the Rights of the Child (United Nations General Assembly..., 1989). The study also explored secondary sources, particularly M. Hyland and L. Shen (2022), which provided detailed analyses of relevant reports and documents from international organisations such as UN Women and the World Bank.

The Islamic legal framework of the study included primary sources of religious law: Qur'anic texts in authoritative databases (Quran.com, n.d.) and hadith collections in the electronic repository (Sunnah.com, 2025), encompassing all major Sunni compilations. Contemporary fatwas and decisions of Islamic legal institutions were examined, including materials of the International Islamic Fiqh Academy (n.d.), Egypt's Dar Al-Ifta (Al-Shari'ah, n.d.) and the Mufti of the Federal Territory's Office (2016). Modern codifications of Islamic family law were analysed, including the Personal Status Law No. M/73 (2022) and the Marriage Law of the Republic of Indonesia No. 1 (1974).

Judicial practice was studied through an analysis of decisions of the European Court of Human

Rights, the Court of Justice of the European Union and UN human rights committees. Contemporary bioethical and technological challenges in the field of maternal rights were examined, including decisions of the European Court of Human Rights (ECHR) on surrogacy and the definition of maternal legal status in the context of new reproductive technologies (European Court of Human Rights, 2025). Particular attention was given to landmark precedents such as *Webb vs EMO Air Cargo (UK) Ltd Case C-32/93* (1994) and cases from the series “They are girls, not mothers” (Amnesty International, 2025), which shaped contemporary standards of non-discrimination and reproductive rights. The criteria for selecting judicial precedents included: influence on the development of international standards of maternal rights, the presence of core legal positions on non-discrimination, reproductive rights and family relations, and relevance to comparative analysis with Islamic legal norms. Excluded were decisions on individual disputes without precedent value, cases not directly addressing maternal rights and judgments of national courts without international resonance. The study included an analysis of international legal protection against forced motherhood and the safeguarding of reproductive autonomy as an integral element of maternal rights.

The methodological basis of the study was built on the principles of critical comparative jurisprudence, applying historical legal, formal juridical, and systemic structural approaches to the analysis of legal norms. The comparative legal method was used to identify shared principles and differences between secular and religious legal traditions in the protection of motherhood. This approach allowed for a deeper understanding of how different legal systems conceptualise maternal rights, balancing universal human rights with culturally and religiously specific frameworks.

Results

Maternity rights in the system of international law

Motherhood as a social function and the right to non-discrimination are enshrined in the fundamental document CEDAW (United Nations General Assembly..., 1979), whose preamble emphasises the basic principle of the inadmissibility of discrimination against women on the basis of their reproductive role and calls for an understanding of motherhood as an important social function. This provision holds a central position, as it moves motherhood from a strictly private, biological sphere into the public and socially significant domain. If motherhood is understood as a social function, then responsibility for its support must be borne by society as a whole rather than by an individual employer. This principle serves as a key justification for financing maternity benefits through state or social funds, which prevents the entire burden from falling on enterprises and helps avoid discriminatory practices. Article 11 of CEDAW elaborates this approach, requiring State Parties to take all appropriate measures to eliminate discrimination against women in the field of employment. This includes a prohibition on dismissal on the grounds of pregnancy or maternity leave, as well as the provision of paid leave and social benefits. Protection against discrimination and the right to paid maternity leave constitute interlinked elements forming a unified system. For example, the International Labour Organization (2000) explicitly prohibits the dismissal of a woman during pregnancy and maternity leave, except in circumstances unrelated to her condition, with the burden of proof placed on the employer. These provisions operate in conjunction to create a comprehensive system of protection aimed at ensuring the woman's economic stability and her equal access to the labour market during pregnancy and following childbirth.

The comprehensive system of international legal protection of motherhood is based on a range of international instruments, the key provisions of which are systematised in Table 1.

Table 1. Key articles of international instruments concerning maternity rights

Document	Article/ Paragraph	Core provision	Scope of application
CEDAW	Article 4	Special measures aimed at protecting maternity are not considered discriminatory.	General protection
	Article 11	Protection against dismissal due to pregnancy, paid maternity leave, establishment of childcare facilities.	Labour rights
	Article 12	The right to health care, including services related to family planning.	Health
Maternity Protection Convention No. 183	Various articles	Minimum duration of maternity leave (14 weeks), cash benefits (at least two thirds of previous earnings) financed through social insurance schemes.	Labour rights
Universal Declaration of Human Rights	Article 25	The right to medical care and social protection.	General protection, Health
ICESCR	Article 12	The right to the highest attainable standard of physical and mental health.	Health

Source: compiled by the authors based on Universal Declaration of Human Rights (1948), European Convention on Human Rights (1950), United Nations General Assembly Resolution No. 2200A (XXI) (1966), General Assembly Resolution No. 2200A (1966), United Nations General Assembly Resolution No. 34/180 (1979), United Nations General Assembly Resolution No. 44/25 (1989), International Labour Organization (2000), N. Kumar and P. Ranga (2025)

Protection of maternity rights is based on various international conventions. United Nations General Assembly Resolution No. 2200A (XXI) (1966) affirms the right of every person to social security (Article 9) and the right to the highest attainable standard of physical and mental health (Article 12). Although these provisions do not focus exclusively on maternity, they form a fundamental basis for its protection. Article 10 of the Covenant separately emphasises that mothers should receive special protection. In addition, maternity rights are considered in the context of the right to family and private life as enshrined in Article 8 of the European Convention on Human Rights (1950). This acquires particular relevance in light of new social and technological realities, such as surrogacy. The ECHR recognises that the legal presumption that the woman who gives birth to the child is its mother falls within the

wide margin of appreciation afforded to States (European Court of Human Rights, 2025). This position demonstrates the dynamic character of international law, which adapts to emerging challenges. At the same time, the broad margin of appreciation granted to States reflects the absence of a global consensus on ethically complex issues, leaving room for diverse national approaches. However, this pluralistic approach provides the flexibility necessary for implementation across different legal and cultural contexts and underscores the deep integration of maternity rights into the broader human rights system, covering dimensions ranging from labour relations to health and family life.

The ILO plays a central role in the protection of the rights of working women, beginning from 1919 (Addati, 2015). Its key instrument is the International Labour Organization (2000), which

establishes minimum standards for States. The core provisions of the Convention include the duration of leave: the minimum period of paid maternity leave is at least 14 weeks. The Convention provides for a mandatory six weeks of leave after childbirth, unless otherwise agreed at the national level. Cash benefits must amount to at least two thirds of the woman's previous earnings. Importantly, these benefits must be provided through compulsory social insurance or public funds, rather than directly by the employer. This is crucial for preventing discrimination, as transferring financial responsibility directly to employers may create incentives to refuse to hire or to dismiss pregnant women. Protection against discrimination is set out in Article 9, which expressly prohibits discrimination in employment on grounds of maternity. This includes the prohibition on requiring a pregnancy test at the time of recruitment. Breaks for breastfeeding must be granted as one or more daily breaks for feeding the child. These breaks must be counted as working time and remunerated accordingly.

The case law of the ECHR and the Court of Justice of the European Union (CJEU) plays a decisive role in shaping and expanding international standards for the protection of maternity rights. The courts emphasise that the financial interests of the State or employer cannot justify such discrimination. This reflects the uncompromising approach of international courts to the protection of the rights of pregnant women. Case law actively fills the gaps that exist in legislation. For instance, in the well-known case *Webb v EMO Air Cargo (UK) Ltd*, Case C-32/93 (1994), the CJEU examined a situation in which a woman was hired to replace another employee on maternity leave but was dismissed once she herself became pregnant. The Court held that dismissal on grounds of pregnancy constitutes unlawful direct discrimination, irrespective of circumstances. The ruling highlighted that the mere fact of pregnancy cannot be used as

a justification for termination of employment, reinforcing that discrimination on the basis of pregnancy violates fundamental rights to equality and non-discrimination. This case not only set a precedent in establishing the right of pregnant women to employment protection but also illustrated that case law does not simply apply existing norms but sets concrete criteria for assessing discrimination, transforming a general prohibition into a practical mechanism of protection.

Decisions of UN committees and other international judicial bodies demonstrate that maternity rights form part of the broader framework of reproductive rights. Landmark precedents such as the "They are girls, not mothers" cases, adopted by the UN Human Rights Committee, established new standards obliging States to ensure access to abortion for victims of rape, thereby prohibiting forced motherhood (Amnesty International, 2025). Similarly, other judicial decisions, including the protection of the rights of girls excluded from school due to pregnancy, demonstrate that motherhood must be a conscious and voluntary choice rather than the result of coercion or denial of medical care. These precedents show that the international legal protection of the rights of the mother begins even before childbirth, encompassing reproductive rights.

Despite strong legal mechanisms, discrimination against pregnant women and mothers remains widespread (Ryskaliyev *et al.*, 2019; Khamzina *et al.*, 2021). This gap between formal rights and actual practice is reflected in the phenomenon known as the "motherhood penalty". Research by S.J. Correll *et al.* (2007) indicated that mothers receive lower wages, have fewer promotion opportunities and are frequently perceived as less competent or less committed to work compared with childless women and men. There is a direct causal link between existing policies and this phenomenon. Insufficiently developed family policies and the absence of paid leave for fathers

exacerbate gender imbalances in childcare responsibilities. When mothers receive significantly more paid leave than fathers, employers develop expectations that women will bear the primary burden of childcare, which in turn leads to discrimination and loss of career opportunities. The absence of gender-neutral policies entrenches traditional gender roles and deepens inequality (International Labour Organization, 2025). International standards frequently do not extend to women working in the informal sector, who lack access to official protection mechanisms and social insurance. This creates a significant gap in the protection system, leaving millions of women without essential guarantees.

According to World Bank data, there is a clear global trend towards increasing the duration of maternity leave, which in many countries exceeds the ILO minimum of 14 weeks (Hyland and Shen, 2022). However, despite this progress, inequalities persist. International organisations such as UNICEF (2019) and UN Women actively promote the concept of “family-friendly policies”. This approach extends beyond traditional maternity leave and includes support for breastfeeding and access to quality childcare services. These organisations, as well as World Bank research, demonstrate that support for mothers and families is not only a human rights issue but also an economic tool. Family-oriented policies increase women’s labour force participation, reduce staff turnover, decrease absenteeism and stimulate Gross Domestic Product (GDP) growth.

Maternity rights in the Islamic legal tradition

Islamic jurisprudence (fiqh) represents a unique legal system, which differs from secular legal traditions in its approach to maternity rights. While modern international law is based on the concept of universal human rights, developed within the process of secularisation of Western society, Islamic law derives from the principle of

divine origin of norms enshrined in the Qur’an and the Sunnah of the Prophet Muhammad (Index of the Holy Quran, n.d.). This fundamental difference in sources of law establishes a distinct methodology of legal regulation, where rights and freedoms are not regarded as inherent or inalienable characteristics of the individual but as privileges granted by Allah, inextricably linked to corresponding duties. A central element of the Islamic approach to maternity rights is the concept of Maqasid al-Shariah (objectives of the Shariah), developed by classical Islamic jurists as a universal principle for interpreting religious law (Auda, 2008). According to this concept, all Islamic laws aim to protect five fundamental goods: religion (hifz al-din), life (hifz al-nafs), intellect (hifz al-aql), progeny (hifz al-nasl), and property (hifz al-mal). The principle of hifz al-nasl occupies a central position in this hierarchy, as it ensures not only the biological continuation of the human race but also the preservation of the Islamic community (ummah) as a religious and social institution. This principle forms the philosophical foundation for all norms relating to marriage, family relations, child-rearing, and the regulation of reproductive behaviour among Muslims. The Islamic legal tradition rejects the individualistic approach to rights characteristic of Western liberalism. Instead, it provides a complementary system in which the rights of one subject are inseparably linked to the duties of another. In the context of maternity, this implies that a mother’s rights to financial support, protection, and respect are balanced by her duties in child-rearing and care, and correspond with the father’s obligations to provide for the family materially. Such interdependence creates a system of social protection founded not on state institutions solely but on familial ties and religious obligations. This model differs from secularised societies, where the State assumes responsibility for the social protection of maternity through social

insurance schemes, maternity benefits, and other mechanisms of public support.

The Qur'anic basis for maternity is enshrined in verses 17:23-24, which establish respect for parents as a religious duty immediately following worship of Allah. According to the authoritative database Quran.com (2025), these verses prescribe worship of Allah alone and doing good to one's parents. Hadith literature on the status of mothers is presented in the major electronic database Sunnah.com (2025), which includes all primary Sunni collections. Of particular significance is a hadith from Sunan an-Nasa'i (n.d.), which states that "Paradise lies beneath the feet of mothers", confirming the exceptional status of motherhood in Islam (Sunan an-Nasa'i, n.d.). This database provides hadiths in Arabic with translations into English and other languages. Maqasid al-Shariah, including *hifz al-nasl* (protection of progeny), is one of the five primary objectives of Islamic law. M. Al-Shari'ah (n.d.) explains that the protection of the family line and maternity is a fundamental principle underpinning all aspects of family law. Nafaqah norms establish a comprehensive system of financial support. Al-Islam.org defines nafaqa as the husband's obligation to provide for all family needs in accordance with available resources, customary practices, and the social and economic status of the family (Amini, n.d.).

The distinction between *hadana* and *wilaya* is clearly explained in the authoritative source Al-Islam.org. M.J. Mughniyya (n.d.) notes that custody (*hadana*) is not related to guardianship (*wilaya*) in respect of marriage and is limited to care for the child for purposes of upbringing and protection during the period in which female care is required. Age limits vary across *madhabs*: the Hanafi school provides custody for boys until age 7 and girls until age 9; the Shafi'i school until the age of discernment (*mumayyiz*), when the child may make a choice; the Maliki school – boys until puberty, girls until marriage; the Hanbali

school – 7 years irrespective of gender; thereafter the child chooses; the Imami (Shi'a) school – boys until 2 years, girls until 7 years. Islamic bioethical principles regarding maternity are based on the preservation of lineage (*hifz al-nasl*) as one of the five primary objectives of the Shariah. Research by S. Islam *et al.* (2013) confirms the unanimous position of Islamic scholars against surrogacy. The prohibition of surrogacy is based on several principles: mixing of lineage (*nasab*), creating uncertainty regarding true parentage; involvement of a third party, violating principles of family exclusivity; potential adultery (*zina*) when gametes are used outside marriage. The concept of *nasab* establishes legitimate lineage, which determines inheritance rights, marriage prohibitions, legal identity, and family obligations. The Mufti of Federal Territory's Office (2016) confirms the strict prohibition of surrogacy in Sunni schools of law.

Saudi Arabia represents a significant example of contemporary application of Islamic family law through The Personal Status Law No. M/73 (2022), enacted by Royal Decree. Key innovations in the field of maternity include: a minimum marriage age of 18 for both parties; maternal priority in child custody, with 2025 rules preserving custody even upon the mother's remarriage (for children under 2 years); expanded maternal rights to establish paternity through deoxyribonucleic acid (DNA) evidence without the husband's consent; retention by women of full control over their property. The Saudi Family Council provides full access to the legislation, including implementation regulations. This law consists of 252 provisions based on Hanbali jurisprudence, adapted to contemporary needs. Indonesia demonstrates a unique model of implementing Islamic family law within a pluralistic legal system through The Marriage Law of the Republic of Indonesia No. 1 (1974). The system of maternity rights includes requirements for a religious ceremony plus civil registration, a dual custody system

(Islamic law for Muslims, civil law for non-Muslims), in which Muslim mothers retain custody of children until age 12 (*mumayyiz*), after which the child may choose, and a system of joint property with exceptions for inheritance and gifts.

The Republic of Kazakhstan provides a distinctive example of a post-Soviet Muslim jurisdiction, where Islamic traditions are integrated into secular legislation via the Code of the Republic of Kazakhstan “On Marriage (Matrimony) and Family” (2011). The Kazakh model of maternity rights is characterised by parental equality with prioritisation of the child’s interests, a system of state maternity and childbirth benefits equivalent to the average monthly income over 12 months, maternal leave of 126 calendar days (exceeding ILO standards), and the preservation of cultural traditions respecting maternity through the institution of “*ata-ana*” (parental veneration). The system includes a one-time birth allowance of 38 Monthly Calculation Index (MCI) (KZT 149,416 in 2025) for the first three children and 63 MCI (KZT 247,716) for the fourth and subsequent children (Electronic Government of the Republic of Kazakhstan, 2025).

The electronic platform “Egov.kz” ensures full access to family legal services via the composite service “Child Birth”, including registration of birth, assignment of benefits, and enrolment in kindergarten. Kazakh legislation also regulates surrogacy (Articles 54-59 of the Code), which distinguishes it from strict prohibitions in classical Islamic jurisprudence and demonstrates adaptation to contemporary reproductive technologies (Code of the Republic of Kazakhstan..., 2011). In comparative terms, Kazakhstan demonstrates a hybrid model, combining state responsibility for social protection of maternity with preservation of traditional family values, providing an alternative to both purely secular international approaches and religiously based systems of family obligations.

This integration of Islamic legal principles within a secular framework is not unique to Kazakhstan (Ahmad *et al.*, 2020). Across many Islamic countries, the ongoing dialogue between international human rights standards and traditional Islamic jurisprudence is exemplified in the growing involvement of contemporary female scholars in Islamic law. As seen in the work of the International Islamic Fiqh Academy (n.d.), which unites 57 member states of the Organisation of Islamic Cooperation, there is a dedicated department for family, women, children, and the elderly. The Academy’s issuance of collective fatwas on contemporary issues, including maternity and family rights, highlights the importance of engaging with modern legal challenges while remaining grounded in religious tradition. Institutions like Dar al-Ifta al-Misriya, which issues between 500 and 1,000 fatwas annually, further exemplify how Islamic legal institutions address evolving societal needs. Moreover, female scholars, such as Dr. Tasneem Al-Kiek from Rutgers University and Ustaza Maryam Amir from Al-Azhar University, are increasingly contributing to the shaping of Islamic jurisprudence, particularly in the realm of women’s rights (Women and Nonbinary Scholars of Islamic Studies, n.d.). Their involvement demonstrates the dynamic and evolving nature of Islamic law, where contemporary interpretations can complement traditional values and address modern challenges in areas such as maternity protection and family rights.

Comparative analysis of international and Islamic norms

Maternity rights in international law and the Islamic legal tradition exhibit both points of convergence and fundamental divergences. The most significant divergence lies in the source of rights. International law considers rights as universal, deriving from human dignity, whereas the Islamic tradition grounds them in divine origin.

This fundamental distinction shapes further differences in the mechanisms and subjects of legal protection. International law predominantly focuses on individual rights and freedoms guaranteed by the State through legislation and social mechanisms. Its objective is to achieve equality, which includes, for example, the right to paid maternity leave and job security (Silva-Fernández *et al.*, 2025). In contrast, the Islamic tradition emphasises family and community, where maternal rights are part of a system of mutual obligations among family members. Financial support for the mother is the responsibility of the husband or family, rather than the State. Differences also exist regarding child custody. International law adheres to the “best interests of the child” principle as the central criterion. In Islamic law, while the

child’s welfare is important, the principle of *hadana* grants the mother primary custody, which may be lost under certain conditions and may transfer to the father as the child reaches a specific age (Ghasemi *et al.*, 2023).

Despite these divergences, both systems aim to ensure the welfare of mother and child. Both approaches recognise the need to protect maternal health, provide support, and eliminate adverse conditions. The potential for dialogue between these systems lies in examining how Islamic legal systems in the contemporary world adapt traditional norms to the requirements of international law, for instance, in the areas of medical care and labour rights. To systematise the main differences between the two legal approaches to maternity, a comparative overview is presented in Table 2.

Table 2. Comparative analysis of maternity rights in international law and the Islamic legal tradition

Aspects	International law	Islamic legal tradition
Source of rights	Secular, universal, based on human dignity	Divine origin, based on religious doctrine
The nature of rights	Individual rights guaranteed by the State	Rights embedded in family and community obligations
Right to non-discrimination	Requires elimination of discrimination based on sex and maternity in all spheres, particularly in employment	The status of the mother is elevated, requiring special respect and care.
Paid leave	Provided by the State or employer according to national legislation (CEDAW, ILO Conventions)	Financial support during pregnancy and breastfeeding is the husband’s responsibility
Financial support	Falls within social protection provided by the State (ICESCR)	Responsibility of the husband, children, or guardian
Custody rights	Determined based on the “best interests of the child”	Mother has primary right (<i>hadana</i>), but this may be reviewed as the child ages
Adaptation to contemporary realities	Legal norms are periodically reviewed and updated based on social and scientific progress	Jurisprudence demonstrates flexibility, integrating scientific knowledge, e.g., regarding pregnancy duration

Source: compiled by the authors based on Quran.com (n.d.), Sunnah.com (n.d.), I. Amini (n.d.), M.J. Mughniyya (n.d.), Universal Declaration of Human Rights (1948), United Nations General Assembly Resolution No. 2200A (XXI) (1966), The Marriage Law of the Republic of Indonesia No. 1 (1974), United Nations General Assembly Resolution No. 34/180 (1979), United Nations General Assembly Resolution No. 44/25 (1989), International Labour Organization (2000), S. Islam *et al.* (2013), F.R. Meybodi and S. Rasouli (2022), The Personal Status Law No. M/73 (2022), N.A.B.M. Daud (2025)

The analysis of the presented table demonstrates that the primary divergences between international law and the Islamic legal tradition

concern the conceptual foundations and mechanisms for the implementation of maternity rights. International law is built on a secular basis,

emphasising individual rights and state guarantees, whereas Islamic law integrates the rights of the mother within a system of familial and communal obligations grounded in divine authority. Nonetheless, both systems recognise the special status of motherhood and the necessity of its protection, albeit through different mechanisms (Lakisa, 2025). The Islamic tradition confers upon the mother a high social status and primary custodial rights over young children, correlating with international standards of maternity protection. The divergence lies in the mechanisms of provision: international law places responsibility on the state, while Islamic law relies on the family and community (Misbah, 2024). The research identified significant potential for convergence between universal human rights and Islamic legal doctrine in the domain of maternity protection, based on shared foundational values regarding maternal health and child welfare. Contemporary Islamic states demonstrate the capacity to synthesise international standards with religious norms through mechanisms of legal pluralism and innovative interpretation of traditional texts. These points of convergence provide a basis for the development of hybrid regulatory models that combine universal principles with culturally and religiously specific frameworks. Such patterns warrant further detailed examination within contemporary scholarly debates and practical examples of implementation.

Discussion

The comparative analysis of maternity rights in international law and the Islamic legal tradition revealed substantial differences in conceptual approaches, which require detailed consideration within contemporary academic discourse. The data indicate a fundamental divergence between secular and religious paradigms of legal understanding, corroborated by existing scholarship. The identified conceptual difference in

the sources of rights – divine origin in the Islamic tradition versus secular universalism in international law – is further explored in the study by M. Vidūnaitė (2023), which examined the issue of agency in Islam and human rights among Baltic Muslim women. The author concluded that religious women do not perceive secular human rights as contradictory to their beliefs, but rather integrate them into their own value system through religious interpretation. This supports the findings of the present study on the possibility of synergy between legal systems despite differences in legitimacy sources and supplements the analysis with practical mechanisms of such integration at the level of individual legal consciousness.

The complementary nature of the Islamic legal model, based on mutual obligations, aligns with the findings of S.N. Tawakulli (2021), who analysed maternal responsibilities and custody rights in Islamic jurisprudence. The study demonstrated that Islamic law views maternal rights not as isolated privileges but as components of a complex system of family relationships, where the rights of one party correspond to the obligations of others. The present analysis extends this thesis by showing that such an approach differs from the individualistic model of international law, creating an alternative system of social protection for maternity. The examination of bioethical aspects of motherhood within the Islamic context revealed the presence of intra-Islamic pluralism on complex reproductive issues, as confirmed by S. Halepoto *et al.* (2025). The authors conducted a comparative analysis of the rights of unborn children under Islamic law and international human rights law, identifying differences among Islamic schools of jurisprudence regarding the determination of the beginning of life and associated rights. The prohibition of surrogacy in the Islamic tradition further complements this picture, demonstrating that despite pluralism, consensus positions exist on key reproductive ethics issues

(Toktarbekova *et al.*, 2025a). The models of harmonising international standards with Islamic norms are further substantiated by A.A. Elkholy (2024), who analysed anti-discrimination measures in Egypt following the 2014 Constitution. The study revealed that the Egyptian legal system demonstrates the ability to incorporate international non-discrimination standards while maintaining Islamic legal identity. The present data extend this understanding, showing specific mechanisms for harmonisation in the field of maternity rights and highlighting the potential for developing hybrid legal models.

The identified differences in mechanisms for financial provision during maternity – state responsibility under international law versus family obligations under Islamic law – correspond with findings by C. Pereira-Kotze *et al.* (2022), who analysed maternity protection legislation and policies in South Africa. The authors noted fragmented protection systems and insufficient state support mechanisms. The findings suggest that the Islamic family-support model (*nafaqa*) may serve as an additional mechanism of social protection, particularly where state institutions are weak. Differences in approaches to child custody were further explored in the work of R.A. Yusoff and M.M. Raihanah (2022), who examined maternal narratives in Muslim women's texts. The study established that the Islamic concept of motherhood includes specific cultural and religious elements not adequately reflected in the universalist frameworks of international law. The present analysis of *hadana* rights confirms and systematises these observations, demonstrating concrete legal mechanisms for the implementation of culturally specific understandings of motherhood. The analysis of contemporary trends revealed that Islamic legal systems are capable of innovative interpretations, as supported by B. Bensaid (2021), who examined Muslim spiritual education. The study showed that modern Islamic pedagogy

integrates developmental psychology and educational science while maintaining religious foundations. The present research on Saudi Arabia's The Personal Status Law No. M/73 (2022) and the Indonesian model of legal pluralism confirms this thesis at the level of legal systems, demonstrating mechanisms for adapting traditional norms to modern realities.

The identified potential for convergence between legal systems is corroborated by A.S. Miltenburg *et al.* (2016), who studied women's perceptions of the relationship between maternal support and human rights. Their research found that women from diverse cultural contexts share common understandings of basic maternal needs – safety, respect, and support – despite differences in legal traditions. The present comparative analysis develops this observation, showing that shared fundamental values can form a basis for dialogue between Islamic and international legal traditions. There is a notable correlation with the work of A.E. Yamin (2013) on applying human rights principles to maternal health. The author developed a methodology for integrating rights-based approaches into maternal healthcare, demonstrating the practical applicability of international standards regardless of cultural context. The Islamic concept of *hifz al-nasl* provides a religious foundation for such integration, confirming the feasibility of harmonising different approaches to maternal health protection (Toktarbekova *et al.*, 2025b). Finally, the research findings align with J. Earle (1999), who examined progress in maternal rights through the International Labour Organization. The study highlighted cultural resistance to implementing international standards in traditional societies. The present analysis explains the nature of such resistance through conceptual differences between legal systems and proposes pathways to overcome it by identifying points of convergence. The distinction between individualistic and complementary

models of rights is further substantiated by F. Almoayad (2025), who examined maternal and child health from an Islamic perspective. The author showed that the Islamic approach to healthcare is based on collective responsibility and mutual support, contrasting with Western models of individual patient rights. The present study extends this understanding to the broader domain of maternal rights, highlighting the systemic nature of differences between legal approaches.

Overall, the analysis demonstrated that the identified divergences between legal systems are not insurmountable barriers but rather alternative approaches to addressing common challenges in protecting motherhood. International law offers a universalist approach, grounded in individual rights and state guarantees, whereas the Islamic tradition provides a particularist framework based on familial and communal obligations. The findings indicated that both approaches have advantages and limitations in contemporary contexts, creating a foundation for mutual enrichment of legal traditions through the identification and utilisation of each system's strengths.

Conclusions

The conducted study established the existence of fundamental differences in conceptual approaches to maternity rights between international human rights law and the Islamic legal tradition. The primary conceptual divergence lies in the sources of legitimacy: international law is based on secular universalism and the concept of human dignity, whereas Islamic jurisprudence derives its norms from divine authority as enshrined in the Qur'an and Sunnah. This distinction underpins fundamentally different methodologies for regulating maternity rights.

The analysis revealed that international law offers an individualistic model of rights guaranteed by the state through social mechanisms and legislation, whereas the Islamic tradition develops

a complementary system of mutual familial and communal obligations. Significant differences were identified in mechanisms of financial provision for maternity: state responsibility through social insurance under international law contrasts with the nafaqa system in Islam, where responsibility lies with the husband and family. The study of the legal systems of Saudi Arabia and Indonesia demonstrated different models of adapting Islamic norms to contemporary realities. The analysis of Saudi Arabia demonstrated that contemporary reforms may update traditional family law without departing from its religious foundations, whereas the Indonesian example showed how legal pluralism can operate within a multi-confessional social order.

A systematic review of international instruments confirmed the comprehensive nature of maternity rights protection, encompassing labour relations, healthcare, and social security. At the same time, analysis of ECHR and EU Court case law highlighted the active role of precedent in shaping anti-discrimination standards. Examination of bioethical principles revealed a consensus position among Islamic scholars against surrogacy, based on the protection of nasab (lineage), contrasting with the more liberal approaches of international law to reproductive technologies. The concept of Maqasid al-Shari'ah, particularly the principle of hifz al-nasl, provides the philosophical foundation for the Islamic approach to the protection of motherhood. At the same time, significant points of convergence between the two legal systems were identified in the recognition of the special status of motherhood and the necessity of its protection. Both traditions emphasise the importance of safeguarding maternal health, providing support, and creating favourable conditions for child-rearing.

A limitation of the study is its focus on Sunni schools of Islamic law, with insufficient attention to Shia jurisprudence, which may constrain the generalisability of the conclusions across the

entire Islamic world. Prospective directions for further research include examining the implementation practices of maternity rights in other Islamic jurisdictions, analysing the influence of international law on the evolution of Islamic family law, and exploring opportunities for dialogue between religious and secular legal traditions in the protection of women's and children's rights.

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Права материнства в міжнародних інструментах з прав людини та Ісламі: порівняльний аналіз

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Анотація

Дослідження було спрямоване на виявлення концептуальних основ, механізмів впровадження та потенціалу збіжності між універсальними нормами прав людини та ісламською правовою доктриною в галузі захисту материнства. Методологія ґрунтувалася на застосуванні порівняльного правового аналізу міжнародних конвенцій, ісламських першоджерел та сучасних правових актів мусульманських держав. У ході дослідження виявлено відмінності в джерелах права: міжнародне право базується на секулярному універсалізмі та концепції гідності людини, тоді як ісламська традиція виводить норми з їх божественного походження, закріпленого в Корані та Сунні. Було встановлено, що міжнародне право пропонує індивідуалістичну модель прав, гарантованих державою через соціальні механізми, тоді як ісламська юриспруденція пропонує комплементарну систему взаємних сімейних та громадських зобов'язань. Аналіз правових систем Саудівської Аравії та Індонезії продемонстрував відмінності в механізмах фінансової підтримки материнства: державна відповідальність у міжнародному праві проти системи нафака в ісламі, а також різні підходи до опіки над дітьми – принцип найкращих інтересів дитини проти рамок хадана. Вивчення біоетичних принципів виявило єдину позицію ісламських юристів щодо неприйняття сурогатного материнства, обґрунтовану захистом родоводу. Водночас було

виявлено точки збіжності у визнанні особливого статусу материнства та необхідності його захисту. Практичне значення дослідження полягає в потенційному використанні отриманих результатів для розробки гібридних регуляторних моделей прав материнства в мусульманських країнах, які інтегрують міжнародні стандарти з релігійно-правовими традиціями, що особливо актуально в контексті глобалізації правового простору

Ключові слова: нафака; хадана; фікх; Макасид аш-Шарія; дискримінація

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