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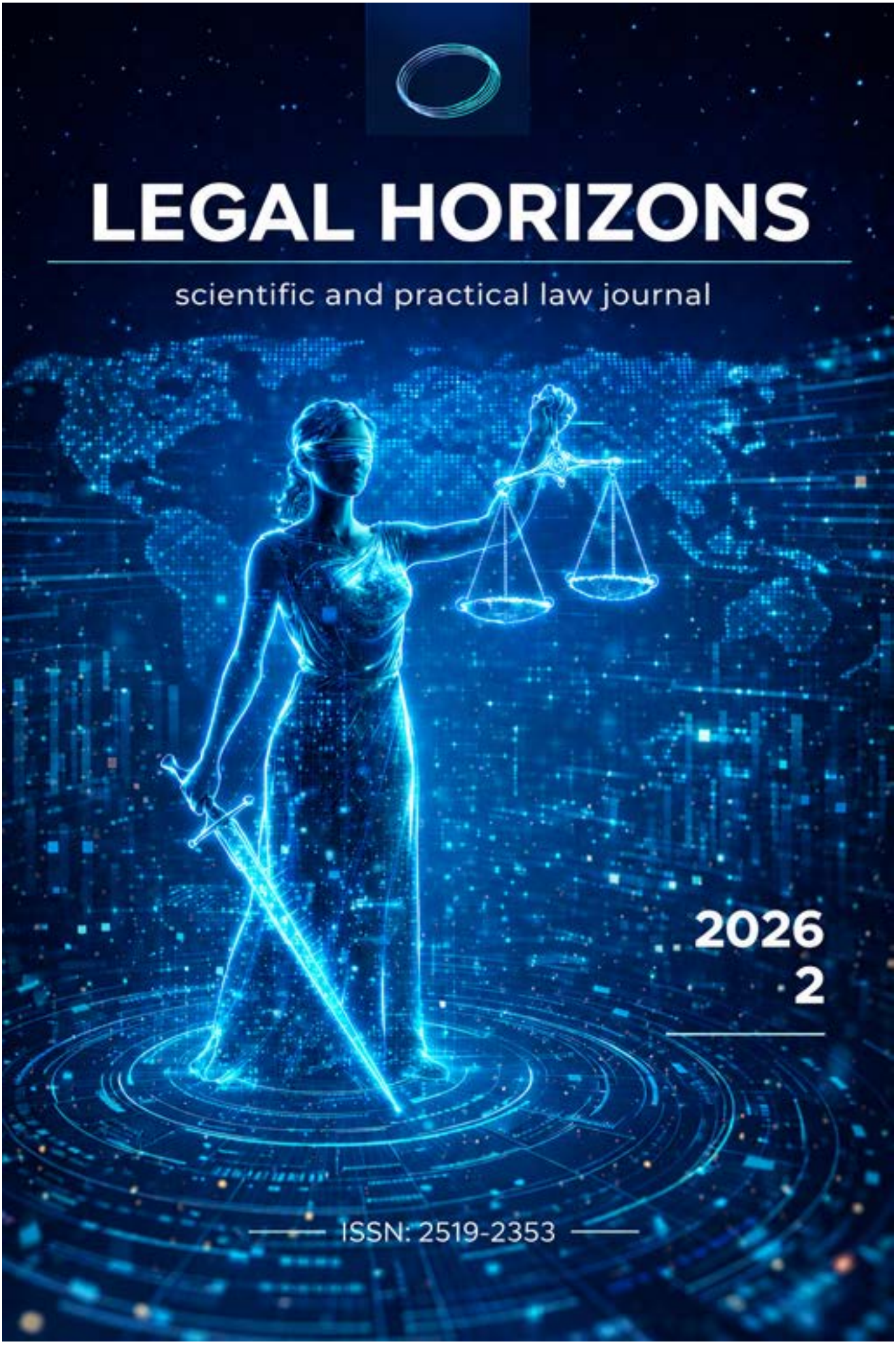

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FOREWORD

The Editorial Board is pleased to present Volume 29, Issue 2 (2026) of LEGAL HORIZONS, an issue that reflects the growing complexity of contemporary legal systems and the increasing interconnection between national, regional, and international legal orders. The contributions assembled in this issue address a broad spectrum of legal challenges arising from economic transformation, technological innovation, armed conflict, environmental protection, migration, religious security, and the evolution of legal institutions. Collectively, they demonstrate how legal scholarship continues to respond to rapidly changing social realities while advancing theoretical understanding and practical solutions.

The issue opens with **"Peculiarities of detecting criminal offences in the sphere of economic Activity,"** in which Bozhyk examines contemporary approaches to detecting and investigating economic crimes. The article analyzes procedural, evidentiary, and organizational aspects that influence the effectiveness of criminal justice mechanisms in combating increasingly sophisticated financial misconduct.

Issues of international and regional security are further explored in **"Legal support for countering the cross-border spread of religious extremism: The experience of Central Asian states,"** where Zhetpissov and Yerbolatov analyze the legal frameworks adopted by Central Asian countries to address the transnational spread of religious extremism. Their comparative study highlights the importance of regional cooperation, harmonized legal regulation, and compliance with international human rights standards in responding to cross-border security threats.

Historical legal development remains an important source of understanding for modern jurisprudence. In **"Ecclesiastical judiciary during the period of the Hetman state,"** Hryhorchuk, Shevchenko, and Honcharov examine the institutional organization, jurisdictional principles, and interaction between ecclesiastical and secular courts during one of the formative periods of Ukrainian statehood. Their research enriches contemporary legal history by shedding light on the evolution of judicial institutions.

The consequences of armed conflict and the search for effective remedies are addressed in **"International compensation models for compensation for damage caused by armed aggression as tools for the protection of human rights,"** where Shevchenko and Badakhov evaluate existing international compensation mechanisms designed to provide redress for victims of armed aggression. The authors assess the strengths and limitations of these models and consider their role in strengthening accountability and protecting fundamental human rights.

Migration governance and national security form the focus of **"Migration policy in the context of national and religious security: A comparative legal analysis of the Kazakhstan model and international experience."** In this contribution, Shagieva and Bexultanov compare Kazakhstan's migration framework with international legal standards and foreign practices, offering valuable insights into balancing migration management, security concerns, and the protection of individual rights.

The challenges of financial innovation are examined in **"Regulatory arbitrage in european union digital finance: development dynamics and Implementation Risks,"** where Voievodina explores how regulatory arbitrage develops within the European Union's digital financial ecosystem. The article discusses the opportunities and risks associated with regulatory divergence while emphasizing the need to preserve market integrity, legal certainty, and effective supervisory oversight.

The issue concludes with **"Biological criteria for serious widespread harm in defining ecocide: Operationalizing ecological indicators for the purposes of international criminal law,"** in which Naboichenko proposes scientifically grounded biological criteria for assessing serious environmental harm within the emerging legal concept of ecocide.

By integrating ecological indicators into legal analysis, the study contributes to the ongoing development of international environmental criminal law and strengthens discussions concerning accountability for large-scale environmental destruction.

Taken together, the articles published in this issue illustrate the multidimensional nature of contemporary legal scholarship. They combine doctrinal, comparative, historical, and interdisciplinary perspectives while addressing problems that transcend national borders and require innovative legal responses. The diversity of topics reflects the journal's commitment to promoting research that not only advances legal theory but also informs legislative development, judicial practice, public administration, and international cooperation.

The Editorial Board expresses its sincere gratitude to all authors for their valuable scholarly contributions and to the reviewers whose expertise and commitment to rigorous peer review have ensured the high academic standards of this issue. We also thank our readers for their continued interest in LEGAL HORIZONS and hope that the research presented in this volume will contribute meaningfully to ongoing legal discourse and inspire further academic inquiry into the challenges facing modern legal systems.

— Editorial board,
LEGAL HORIZONS

Anatolii Shevchenko,
Editor-in-Chief
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CONTENTS

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PECULIARITIES OF DETECTING CRIMINAL OFFENCES IN THE SPHERE OF ECONOMIC ACTIVITY

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Abstract

The article establishes that the latent character of unlawful acts in the sphere of economic activity necessitates active searching for primary information, which conditions both the detection process and the methodology for verifying operational intelligence. For each serious and particularly serious criminal offence (or group thereof) in the sphere of economic activity, it is necessary to identify discrete structural elements that make it possible to construct an abstract model of the criminal unlawful act a model containing orienting information indicating that the detected objects are related to a criminal offence, i.e., a formal correspondence is established between the information obtained and the abstract model of the unlawful act formed in the mind of the detecting subject. Accordingly, the following search elements are characteristic of each category of criminal offences in the sphere of economic activity: the sphere of economic activity (commercial, non-commercial, banking, financial, etc.); objects (economic entities; fictitious enterprises; registration and licensing authorities; sites of illegal production; supervisory and audit bodies; persons preparing, committing, or having committed an offence, witnesses, agents); items (agreements; cash funds; tax returns; tax reporting documents and others; bank cards and accounts; accounting records; consignment notes; orders; invoices; delivery notes; payment orders; stamps and seals; facsimile signatures; passports, etc.); documents (the list of which and the search indicators they contain are contextualised according to the stage of economic activity); subjects (operative officer, investigator, detective, etc.); sources of operational intelligence and tactical methods of obtaining it. The process of gathering primary materials requires information on specific financial transactions (cash flow in the settlement account, cash flow in correspondent accounts of non-resident banks). Fulfilling the tasks in this direction consists in the comprehensive use of the capacities of supervisory and law-enforcement authorities regarding the circumstances of acquiring criminally derived income and the mechanism of its subsequent legalisation, including: gathering of primary materials by the pre-trial investigation body (interviews; requests for business accounting documents; submission of queries; use of automated information retrieval systems; use of covert intelligence data; obtaining information constituting banking secrecy); ordering documentary examinations of the activities of business entities (documentary audits and inspections). The developed algorithms of action are indicative for ascertaining the circumstances to be established during the investigation of criminal offences in the sphere of economic activity and are subject to individual adjustment taking into account the circumstances of the criminal proceedings and the investigative situation that has arisen.

Key words: economic crime, economic activity, detection, investigation, criminal

proceedings, investigative (search) actions.

Introduction

Economic crime remains one of the most significant threats to the sustainable development of modern states, undermining financial stability, reducing public confidence in state institutions, and weakening national economic security. The rapid digitalisation of economic relations, expansion of cross-border financial transactions, widespread use of electronic payment systems, and increasing complexity of corporate structures have fundamentally transformed the mechanisms for committing criminal offences in the sphere of economic activity. At the same time, these developments have considerably complicated the process of detecting such offences, which are typically characterised by a high degree of latency, sophisticated concealment mechanisms, and extensive use of legally legitimate business instruments for unlawful purposes (Trach, 2023). The relevance of this issue has become particularly evident in Ukraine under conditions of martial law and large-scale economic transformation. Significant public expenditures, international financial assistance, reconstruction projects, humanitarian aid, and emergency procurement procedures have created additional opportunities for the misuse of financial resources and the development of increasingly sophisticated economic crime schemes. Simultaneously, law enforcement agencies are required to investigate offences committed within rapidly changing regulatory and economic environments while ensuring compliance with procedural guarantees and international standards of criminal justice.

Unlike conventional criminal offences, economic crimes rarely leave obvious material traces at the initial stage of their commission. Their detection primarily depends on the identification, collection, and analytical assessment of fragmented financial, accounting, organisational, and operational information (Cherniavskyi et al., 2017). Consequently, the effectiveness of criminal proceedings is largely determined before the formal commencement of investigative activities, namely during the process of detecting indicators of criminal conduct and verifying the initial operational information. Failures at this stage often result in delayed investigations, destruction of evidence, dissipation of criminal assets, and reduced prospects for successful prosecution.

Although considerable scholarly attention has been devoted to the investigation of economic crime, existing research predominantly focuses on procedural aspects of pre-trial investigation, forensic methodologies for particular categories of offences, or evidentiary issues (Bondarenko, 2019). Comparatively less attention has been paid to the theoretical and methodological foundations of detecting criminal offences in the sphere of economic activity as an independent stage of criminal intelligence and investigative practice. In particular, insufficient attention has been devoted to the systematisation of search elements, the identification of relevant information sources, and the development of practical algorithms that would enable law enforcement authorities to recognise criminal indicators at the earliest possible stage.

This research seeks to address this gap by examining the specific characteristics of detecting criminal offences in the sphere of economic activity from both procedural and criminalistic perspectives. Particular attention is devoted to identifying the principal search elements associated with different categories of economic offences, analysing the sources of operationally significant information, and determining the sequence of actions necessary for the effective collection and verification of primary materials. The study further considers the role of documentary evidence, financial transactions, banking information, and interagency cooperation in ensuring the timely identification of criminal activity.

The purpose of this article is to develop a comprehensive methodological approach to detecting criminal offences in the sphere of economic activity by identifying their

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characteristic search elements, systematising sources of primary information, and substantiating practical algorithms that improve the effectiveness of pre-trial investigation during its initial stage. The scientific novelty of the study lies in the integrated analysis of detection as a distinct component of criminal proceedings and in the development of a structured model for organising the search and verification of information concerning economic criminal offences under contemporary conditions of economic digitalisation, increasing financial complexity, and evolving methods of criminal concealment.

Materials and Methods

The methodological framework of this study is based on an interdisciplinary combination of general scientific, special legal, and forensic research methods. Such an approach made it possible to comprehensively examine the process of detecting criminal offences in the sphere of economic activity by integrating theoretical legal analysis with criminalistics and practical aspects of law enforcement.

The empirical basis of the research consists of the current criminal procedural legislation of Ukraine, legislative acts regulating economic activity, banking operations, financial monitoring, and the activities of law enforcement agencies, as well as scientific publications devoted to criminal procedure, criminalistics, operational-search activity, financial investigations, and the methodology for investigating economic crime. Particular attention was paid to scholarly works addressing the initial stage of pre-trial investigation, the organisation of investigative activities, and mechanisms for obtaining primary operational information.

The formal legal (doctrinal) method was employed to analyse the provisions of criminal procedural legislation governing the commencement of pre-trial investigation, procedural mechanisms for obtaining evidence, temporary access to documents, and the legal regulation of banking secrecy. This method enabled the identification of the legal framework within which criminal offences in the sphere of economic activity are detected and documented.

The system-structural method was applied to identify the principal elements of the mechanism for detecting economic criminal offences and to establish the relationships between operational information, documentary evidence, financial transactions, participants in criminal proceedings, and procedural decision-making. This approach facilitated the construction of a comprehensive model of the detection process and the classification of the main search elements characteristic of different categories of economic crime.

Comparative legal analysis was used to evaluate various methodological approaches proposed in Ukrainian criminalistics concerning the organisation of investigative activities at the initial stage of criminal proceedings. The comparison of doctrinal positions made it possible to identify common theoretical principles and distinguish those methodological recommendations that remain effective under contemporary conditions of economic digitalisation and increasingly sophisticated financial crime schemes.

The methods of analysis and synthesis were employed to systematise information concerning sources of operationally significant data, categories of documentary evidence, financial transactions, and organisational measures used in detecting criminal offences in the sphere of economic activity. Analytical decomposition of individual procedural elements followed by their synthesis into a unified methodological framework enabled the formulation of practical algorithms applicable to investigative practice.

The logical and functional methods were used to determine the sequence of actions performed by investigators and operational officers during the initial stage of criminal

proceedings, to establish causal relationships between investigative actions and evidentiary objectives, and to assess the role of financial documentation, banking information, and interagency cooperation in detecting criminal conduct.

The study also employed the method of scientific generalisation, which made it possible to formulate conclusions regarding the characteristic features of economic crime detection, identify the principal factors influencing the effectiveness of investigative activities, and propose a structured methodological approach to organising the search for primary information concerning criminal offences in the sphere of economic activity.

The combination of these research methods ensured the consistency, objectivity, and scientific reliability of the findings and enabled the development of practical recommendations aimed at improving the effectiveness of detecting economic criminal offences under contemporary conditions characterised by financial digitalisation, increasing complexity of economic relations, and the transformation of criminal concealment techniques.

Results and Discussion

The current state of Ukraine's economy is characterised by macroeconomic instability and periodic crisis phenomena that foster the expansion of the shadow economy. Particularly dangerous is its fictitious component, associated with the illegal withdrawal of financial resources from legitimate economic circulation, the redistribution of substantial profits in favour of individual business entities, and the transfer of capital beyond the country's borders. Such processes adversely affect the state of economic security and exacerbate socioeconomic problems.

The complex economic situation, wartime challenges, political instability, and the expansion of temporarily occupied territories directly affect the dynamics and structure of criminal offences in the sphere of economic activity. The methods of committing such acts, the mechanisms of concealment, and the forms of utilising financial resources are undergoing transformation. Additional factors complicating an effective response by the law-enforcement system include insufficient coordination between law-enforcement bodies, imperfections in regulatory frameworks, high levels of corruption risks, and the proliferation of shadow economic schemes.

The Criminal Procedure Code of Ukraine (2012) initiated a substantial reform of the pre-trial investigation procedure. Subsequent amendments to criminal procedural legislation testify to the ongoing modernisation of criminal justice mechanisms. The necessity of such changes is explained by the need to create an effective system for countering contemporary forms of economic crime that would combine guarantees of the protection of individual rights with the efficiency and effectiveness of criminal proceedings (Vakulik, 2013).

Concurring with scholarly approaches regarding the essence of pre-trial investigation, it should be noted that it constitutes activity regulated by criminal procedural law, conducted by authorised bodies and directed at identifying the indicators of a criminal offence, establishing implicated persons, gathering and verifying evidentiary information, as well as ensuring lawfulness and the protection of the rights of participants in criminal proceedings (Tatarov, 2012).

The initial stage of an investigation is of decisive importance for the subsequent effectiveness of criminal proceedings, since it is at this stage that active searching, recording, and securing of evidentiary information takes place. In practice, its conduct is complicated by the limited volume of primary information, insufficient training levels among certain law-enforcement officers, and the high latency of criminal offences in the sphere of economic activity (Trach, 2023).

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As V.S. Kuzmichov notes, the initial stage of investigating criminal offences in the sphere of economic activity is used to denote certain stages of the pre-trial investigation process itself, at each of which the investigator carries out investigative (search) actions and organisational measures to establish the event of the criminal offence (Kuzmychov, 2005).

Countering criminal offences in the sphere of economic activity remains one of the most problematic areas of law-enforcement activity. A significant portion of such acts is characterised by a high degree of concealment, since managers of enterprises or financial institutions frequently refrain from contacting law-enforcement authorities due to the risk of reputational damage. Furthermore, business entities do not always ensure proper management of claims and litigation, which negatively affects the evidential process. Persons involved in committing economic criminal offences actively employ mechanisms for disguising unlawful activity: engaging fictitious enterprises, drawing up sham transactions, falsifying financial documentation, using electronic means to conceal illegal operations, and laundering criminally derived funds (Cherniavskyi et al., 2017).

One of the most essential requirements for the decision to initiate pre-trial investigation is its promptness. A timely response enables procedural actions to be brought closer to the moment of commission of the criminal offence, which increases the effectiveness of recording evidence and establishing the circumstances of the event. Delays in commencing an investigation create conditions for concealing or destroying traces of the criminal offence, losing evidentiary information, and complicating the establishment of truth in the proceedings. Over time, the scene changes, material traces are lost, and witnesses may forget important circumstances or become unavailable to the investigation. A particular danger is posed by the deliberate actions of offenders aimed at concealing unlawful activity and eliminating evidence (Mykheenko et al., 1999).

It is universally recognised in criminal process that proper and timely determination of the subject matter of proof substantially affects the organisation of pre-trial investigation. Under such conditions, the activities of the investigator and the prosecutor acquire greater consistency, purposefulness, and effectiveness, facilitating the establishment of circumstances that are material to the criminal proceedings. Unjustified expansion of the scope of proof leads to the extension of pre-trial investigation timeframes, an increase in procedural costs, and excessive accumulation of information that is not materially significant to the case. At the same time, groundless narrowing of the subject matter of proof may result in incomplete and one-sided investigation, create the impression of a biased attitude on the part of the prosecution towards the suspect, and adversely affect the outcome of judicial proceedings. Ultimately, this may cause an insufficiency of evidence for the court to render a lawful and reasoned decision (Baulin, 2015).

The key circumstances that complicate the investigation of unlawful acts in the sphere of economic activity include: shortcomings in the existing criminal legislation; insufficient levels of coordination and information exchange between law-enforcement bodies; corruption risks and obstruction by interested parties; the necessity of simultaneously proving the commission of the predicate criminal offence; the use by offenders of complex mechanisms for legalising illegally obtained funds; the absence of effective methodological guidance on investigation; and improper organisation of the investigator's work at the initial stage of pre-trial investigation (Bondarenko, 2019).

In this connection, the typical algorithm of action for pre-trial investigation bodies must begin with:

1) examining the system for organising production (issues of management organisation, procurement systems, performance of work, payroll calculation and disbursement procedures, documentary and accounting records);

2) determining the nature and extent of damage caused by the criminal offence (taking into account price dynamics, the inflation index, norms, and tariffs);

3) detecting and securing traces of the criminal offence (examination of various categories of documents, inspection and survey of sites of economic works, storage of materials, equipment, etc.);

4) establishing connections with other offences (all episodes of criminal activity, indicators of related and concomitant criminal offences);

5) identifying the causes and conditions that facilitated the commission of the criminal offences (Tishchenko, 2007; Orlov et al., 2004).

At the same time, where indicators of criminal offences in the sphere of economic activity committed by a person with abuse of official position are detected, a somewhat different sequence of actions must be followed, in particular:

– familiarise oneself with the regulatory framework governing the activities of officials or persons entrusted with property, as well as the sources of financing for particular economic processes, with a view to subsequently determining the tactics of action;

– verify the validity of estimates and plans, including by comparing them with the volume and cost of work actually performed and the corresponding data in reporting, and obtaining information on financial transactions involving budget funds;

– request copies of financial, economic, and other documents concerning the performance of economic works, the quantity of materials actually used and available in the warehouse, their conformity with the nomenclature specified in the design and estimate documentation, and workers' remuneration;

– establish, by obtaining statements from workers, foremen, and persons who compiled and signed materials write-off acts, the actual scope of work performed, on whose instructions such work was carried out, what materials were used, who supplied the materials, in what quantities, etc.;

– measure the completed work in situ to determine the actual quantity of materials used, conduct inventories and other control measures;

– submit requests to banking institutions (branches of the State Treasury Service) to whose accounts funds were transferred under works contracts and payment orders for work performed (or fictitiously performed);

– inspect and examine seized documents for traces of material and intellectual falsification.

The principal areas of searching for indicators of unlawful acts are:

6) state authorities, specifically: (a) state authorities that may hold information on unlawful acts by economic entities; (b) state authorities that hold information on indicators of specific criminal offences related to the involvement of organised groups in economic activity; (c) state authorities that carry out the registration and licensing of economic entities; (d) primary financial monitoring entities — banking institutions and their counterparties in the course of financial transactions;

7) financial transactions (cash flow in the settlement account, cash flow in correspondent accounts of non-resident banks);

8) documents. Of significant importance in the detection of unlawful acts in the sphere of economic activity is the simultaneous examination of all categories of documents in which information concerning the circumstances to be established is reflected (Cherniavskyi, 2010).

The primary focus of investigative (search) actions in such criminal proceedings consists in establishing the persons implicated in the commission of the criminal offence, as well as identifying forged or falsified documents that were used in concluding a credit agreement and submitted to the creditor for the purpose of obtaining financing. Such documents may include: decisions or directives of the head of the banking institution

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regarding the granting of credit; conclusions of the credit department on the advisability of lending and the assessment of the borrower's creditworthiness; minutes of meetings of the credit committee or other collegial body of the bank; orders for the opening of a loan account and the transfer of credit funds; credit agreements and annexes thereto; pledge agreements; and documents evidencing the fictitious nature of the economic entity's activity.

The latter category may include certificates concerning the founders of the enterprise, documents on the non-issuance of seals, licences, or certificates, records of failure to submit tax reporting or cessation of cash flow in accounts, acts attesting to the absence of the enterprise at its registered address, court decisions annulling registration documents, falsified balance sheets, forged certificates of financial condition or documents on ownership of property pledged as collateral, as well as guarantee letters bearing indicators of falsification (Cherniavskyi, 2003)..

Criminal offences in the sphere of bank lending constitute a distinct category of intentional socially dangerous acts in the sphere of economic relations, which encroach upon that part of such relations arising between a bank (creditor) and a client (borrower) on the basis of a credit agreement regarding the bank's monetary funds transferred to the borrower on the terms of time-boundedness, payment, repayment, security, and targeted use. The subject of encroachment is the bank's credit resources in the form of monetary funds.

Moreover, pursuant to Part 1 of Article 60 of the Law of Ukraine "On Banks and Banking Activity", information concerning the activity and financial status of a client that became known to the bank in the course of servicing the client and in its relations with the client or third parties in the provision of bank services constitutes banking secrecy. The content of banking secrecy comprises information on clients' bank accounts, on transactions carried out in favour of or on the instructions of the client, agreements concluded by them, the financial and economic status of clients, information relating to the commercial activity of clients or commercial secrets, any plans, inventions, product samples, and other commercial information (Verkhovna Rada of Ukraine, 2000).

The specificity of investigating criminal offences in the sphere of economic activity consists in the necessity of accessing information constituting banking secrecy. A bank is not entitled to refuse to present or provide documents or copies thereof, or other items referred to in a court ruling on temporary access to objects and documents (Article 164 of the CPC of Ukraine) (Criminal Procedure Code of Ukraine, 2012).

Thus, subjects combating crime in the sphere of economic activity face new tasks regarding the definition of strategic directions for their activities and the search for new approaches commensurate with contemporary realities and capable of proving effective. In this direction, the search for new ideas and approaches to creating a qualitatively new mechanism for detecting criminal offences in the sphere of economic activity is of paramount importance.

The initial stage of investigation is directed at the intensive search, detection, and securing of evidence. The difficulties at the initial stage are caused by the insufficient quality and quantity of primary materials, as well as the low qualifications of investigators and operative officers. Surveyed investigators confirmed that criminal proceedings for predicate offences are typically closed at the stage of pre-trial investigation (44% and 49% respectively) or referred to court, yet without trial prospects (38% and 47%). Factors objectively complicating the investigation process include: imperfections in the existing criminal legislation (identified by 54% of respondents); inadequate levels of interaction among law-enforcement bodies and information exchange (45%); manifestations of corruption and obstruction by interested parties (42%); and the need to simultaneously carry out a complex of procedural (overt and covert) actions.

The following circumstances are subject to establishment:

1) examination of the system for organising production (issues of management organisation, procurement systems, performance of work, payroll calculation and disbursement procedures, documentary and accounting records);

2) determination of the nature and extent of damage caused by the criminal offence (taking into account price dynamics, the inflation index, norms, and tariffs);

3) detection and securing of traces of the criminal offence (examination of various categories of documents, inspection and survey of sites of economic works, storage of materials, equipment, etc.);

4) establishment of connections with other offences (all episodes of criminal activity, indicators of related and concomitant criminal offences).

However, where indicators of criminal offences in the sphere of economic activity committed by a person with abuse of official position are detected, a somewhat different sequence of actions must be followed, in particular: familiarise oneself with the regulatory framework governing the activities of officials or persons entrusted with property, as well as the sources of financing for particular economic processes, with a view to subsequently determining the tactics of action; verify the validity of estimates and plans, including by comparing them with the volume and cost of work actually performed and the corresponding data in reporting, and obtaining information on financial transactions involving budget funds; request copies of financial, economic, and other documents concerning the performance of economic works, the quantity of materials actually used and available in the warehouse, their conformity with the nomenclature specified in the design and estimate documentation, and workers' remuneration; establish, by obtaining statements from workers, foremen, and persons who compiled and signed materials write-off acts, the actual scope of work performed, on whose instructions such work was carried out, what materials were used, who supplied the materials, in what quantities, etc.; measure the completed work in situ to determine the actual quantity of materials used, conduct inventories and other control measures; submit requests to banking institutions (branches of the State Treasury Service) to whose accounts funds were transferred under works contracts and payment orders for work performed (or fictitiously performed); inspect and examine seized documents for traces of material and intellectual falsification.

Accordingly, the current state of economic crime demands the improvement of mechanisms for detecting and investigating criminal offences in the sphere of economic activity. The effectiveness of countering such acts largely depends on the proper organisation of the initial stage of pre-trial investigation, timely obtaining of evidentiary information, and the comprehensive use of procedural and criminalistics means.

The formation of contemporary methodological approaches to the investigation of economic criminal offences, adapted to the conditions of digitalisation of financial processes, the development of shadow economic schemes, and the transformation of methods of concealing unlawful activity, is of special significance.

4. Conclusions

The conducted research demonstrates that the effectiveness of combating criminal offences in the sphere of economic activity largely depends on the quality of their detection during the earliest stages of criminal proceedings. The latent nature of economic crime, the increasing complexity of financial transactions, the use of sophisticated mechanisms for concealing unlawful activity, and the digitalisation of economic relations significantly complicate the identification of criminal indicators and require the application of comprehensive methodological approaches by law enforcement authorities.

The study substantiates that the process of detecting criminal offences should be

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regarded as an independent and systematic component of pre-trial investigation rather than merely a preliminary procedural stage. Its effectiveness is determined by the timely identification, collection, verification, and analytical assessment of operationally significant information obtained from financial transactions, accounting documentation, banking records, regulatory authorities, business entities, and other relevant information sources. The integrated use of these sources enables investigators to establish formal correspondence between the available information and the characteristic features of particular categories of economic criminal offences, thereby facilitating the prompt initiation of criminal proceedings and the preservation of evidentiary information.

The research identifies the principal search elements that characterise criminal offences in the sphere of economic activity, including the sphere of economic relations in which unlawful conduct occurs, the relevant objects and subjects of criminal activity, documentary and financial evidence, sources of operational information, and tactical methods of obtaining evidentiary data. Their systematic classification contributes to improving the organisation of investigative activities and supports the development of practical algorithms for detecting economic crime under contemporary conditions.

The findings further demonstrate that effective detection of economic criminal offences requires close interaction between investigators, operational units, financial monitoring institutions, banking organisations, supervisory authorities, and other competent public bodies. The growing digitalisation of financial processes and increasing complexity of illicit financial schemes necessitate broader use of analytical methods, digital information resources, financial intelligence instruments, and interagency information exchange while maintaining compliance with procedural safeguards and the protection of individual rights.

The scientific contribution of this study lies in the systematisation of methodological approaches to detecting criminal offences in the sphere of economic activity through the identification of characteristic search elements, the classification of primary information sources, and the substantiation of practical algorithms applicable during the initial stage of criminal proceedings. Unlike existing studies that predominantly focus on investigative procedures after criminal proceedings have commenced, this research conceptualises detection as a distinct methodological component that substantially influences the overall effectiveness of criminal investigation.

The practical significance of the research consists in the possibility of applying the proposed methodological recommendations in the activities of investigators, detectives, operational officers, prosecutors, and other law enforcement practitioners involved in combating economic crime. The proposed approach may also be used in professional training programmes and for improving methodological guidance concerning the investigation of criminal offences in the sphere of economic activity.

Future research should focus on developing digital forensic methodologies for detecting economic crime, integrating artificial intelligence and financial analytics into criminal intelligence processes, strengthening interagency information exchange, and adapting investigative methodologies to emerging forms of cyber-enabled economic crime and virtual asset-related offences.

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LEGAL SUPPORT FOR COUNTERING THE CROSS-BORDER SPREAD OF RELIGIOUS EXTREMISM: THE EXPERIENCE OF CENTRAL ASIAN STATES

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Abstract
The article examines the legal support for countering the cross-border spread of religious extremism in the states of Central Asia in the context of intensified migration processes, globalization and the growth of modern security challenges. It is substantiated that the transnational spread of destructive religious ideologies poses a complex threat to national and regional security, which requires the improvement of legal mechanisms of state response, the development of interstate cooperation and the harmonization of approaches to countering extremism. The methodological basis of the study is the system-structural, structural-functional, comparative-legal and logical-semantic methods, which allowed for a comprehensive analysis of national legislation, international legal approaches and practice of the states of Central Asia in the field of countering religious extremism. Particular attention is paid to the analysis of the legal nature of extremism, the features of the regulatory regulation of migration policy and legislation on countering extremist activity in the Republic of Kazakhstan, as well as a comparative assessment of the approaches of other Central Asian states to ensuring national security. It has been established that the effectiveness of the legal mechanism for countering the cross-border spread of religious extremism depends on a comprehensive combination of preventive, administrative-legal, criminal-legal and international-legal instruments. Based on the results of the study, a conclusion was formulated on the need to improve national legislation in the field of countering extremism, strengthen coordination between state bodies, develop regional cooperation between Central Asian states and implement international standards in the field of preventing radicalization and cross-border security threats.

Keywords: religious extremism; cross-border threats; countering extremism; legal support; national security; migration policy; Central Asian states.

1. Introduction

The contemporary development of international migration processes, globalization, digital communication technologies, and transnational social networks has significantly transformed the nature of security threats faced by modern states (Radio Azattyq, 2022). Among the most complex challenges is the cross-border dissemination of extremist ideologies, including religious extremism, which increasingly transcends national boundaries and exploits migration channels, information networks, and social vulnerabilities. In the context of growing global interconnectedness, the activities of extremist groups and radical movements can no longer be considered solely domestic issues, as they frequently involve transnational actors, international financing mechanisms, cross-border recruitment networks, and the circulation of radical narratives through both physical and virtual spaces.

The states of Central Asia occupy a strategically important geopolitical position at the intersection of Europe, the Middle East, South Asia, and East Asia. This geographical location, combined with historical, cultural, and religious factors, creates both opportunities and risks associated with regional mobility and cross-border interaction (Krivtsanova, 2021). Since gaining independence, the Central Asian republics have experienced profound political, economic, and social transformations accompanied by significant migration flows, labor mobility, urbanization, and the gradual integration of their economies into global markets. These processes have contributed to the intensification of regional and international migration, increasing the movement of people, ideas, cultural practices, and religious beliefs across state borders.

At the same time, the expansion of migration processes has generated new legal and security challenges. While migration itself represents a natural and largely positive social phenomenon that promotes economic development and intercultural dialogue, it may also create conditions that facilitate the transmission of radical ideologies and extremist narratives (Heathershaw and Montgomery, 2014) Individuals and groups influenced by extremist interpretations of religion may exploit migration routes, diaspora networks, informal social structures, and digital communication platforms to disseminate destructive ideas, recruit supporters, and establish transnational connections. Consequently, migration and religious security have become increasingly interconnected areas of public policy requiring comprehensive legal regulation and coordinated state responses.

The problem of religious extremism remains particularly relevant for Central Asian states due to several interconnected factors. First, the region shares extensive land borders characterized by intensive economic, social, and cultural interaction. Second, the proximity of Central Asia to areas affected by armed conflicts, political instability, and terrorist activity has contributed to concerns regarding the possible penetration of radical ideologies into regional societies. Third, the return of individuals from foreign conflict zones, the activities of transnational extremist organizations, and the growing influence of online radicalization have created additional challenges for national legal systems and law-enforcement institutions (Lemon, 2019). Under these conditions, ensuring an effective balance between the protection of constitutional rights and freedoms, freedom of religion, migration management, and national security has become one of the most important tasks of contemporary state policy.

Recent global developments have further intensified the relevance of these issues. Political instability in various regions of the world, armed conflicts, humanitarian crises, and economic disparities have contributed to unprecedented levels of population mobility (Blazek, 2014). These circumstances increase the importance of developing effective legal mechanisms capable of preventing the spread of extremist ideologies without undermining fundamental human rights and democratic principles. In this

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regard, the experience of Central Asian states deserves particular attention because these countries have developed diverse approaches to regulating migration processes, religious activities, and counter-extremism policies while operating under comparable historical and socio-cultural conditions.

The legal regulation of countering religious extremism in Central Asia has evolved significantly over the past two decades. The states of the region have adopted specialized legislation aimed at preventing extremist activities, combating terrorism, regulating religious associations, and strengthening border security. Simultaneously, governments have sought to improve migration governance systems, enhance information exchange among competent authorities, and expand international cooperation in the field of security. However, despite these efforts, the effectiveness of legal mechanisms remains the subject of ongoing academic and practical debate. (Heller and Mumma, 2023). The transnational nature of extremist threats demonstrates that isolated national measures are often insufficient and must be supplemented by regional and international cooperation, harmonization of legal standards, and coordinated preventive strategies.

The complexity of religious extremism as a legal and social phenomenon also contributes to the necessity of further scientific research. Extremism cannot be reduced solely to criminal behavior or security concerns. It encompasses ideological, political, social, cultural, and psychological dimensions that require interdisciplinary analysis. Moreover, the legal understanding of extremism remains controversial in both academic literature and legislative practice. Differences in legal definitions, methods of classification, and approaches to identifying extremist activity may create difficulties for law-enforcement agencies and hinder effective interstate cooperation. Therefore, the development of a coherent theoretical and legal framework for understanding religious extremism constitutes an important prerequisite for improving national and regional security mechanisms (McDaniel et al., 2019)

The purpose of this article is to examine the legal foundations for countering the cross-border spread of religious extremism in the states of Central Asia and to assess the effectiveness of existing legal mechanisms aimed at preventing radicalization and ensuring national security. Particular attention is paid to the interaction between migration processes and security challenges, the evolution of anti-extremism legislation, and the role of interstate cooperation in addressing transnational threats. The study seeks to identify the principal legal risks associated with the dissemination of destructive religious ideologies across borders and to formulate recommendations for improving national legislation and regional coordination mechanisms.

The scientific novelty of the research lies in the comprehensive legal analysis of the relationship between migration processes and the cross-border spread of religious extremism within the Central Asian region. Unlike studies focusing exclusively on domestic manifestations of extremism, this article examines the transnational dimension of the phenomenon and evaluates the capacity of contemporary legal systems to respond to emerging security challenges. Furthermore, the research substantiates the necessity of strengthening regional legal cooperation, harmonizing anti-extremism legislation, and implementing integrated preventive measures aimed at reducing the risks of radicalization while preserving the fundamental rights and freedoms guaranteed by democratic constitutional systems.

2. Literature Review

The interaction between migration processes and religious factors has attracted increasing scholarly attention in recent decades. However, studies addressing this issue are characterized by considerable methodological diversity and are situated within different academic traditions, including legal studies, sociology, political science, migration studies, religious studies, and security research. Consequently, the relationship between migration, religion, and security remains a multidimensional research field

requiring an interdisciplinary approach.

One of the most developed areas of research concerns the legal and social vulnerability of migrants in host societies. A number of scholars emphasize that migrants often encounter difficulties related to limited knowledge of their legal rights, insufficient understanding of the legal system of the receiving state, language barriers, and restricted access to public institutions. These factors may significantly affect their ability to adapt to new social environments and exercise their rights effectively. Such issues have been examined by Blazek (2014), who analyzed the relationship between migration, vulnerability, and social exclusion, as well as by Heller and Mumma (2023) and McDaniel, Rodriguez, and Wang (2019), who explored the role of integration policies and institutional support mechanisms in facilitating migrants' inclusion within host societies. These studies suggest that migrants' vulnerability is frequently associated with their pre-migration social capital, educational background, and economic circumstances, which may limit their opportunities for successful integration.

Another important direction of contemporary scholarship focuses on the socio-cultural consequences of migration. Researchers have increasingly emphasized that migration involves not only the movement of people but also the transfer of cultural values, religious traditions, identities, and social practices. In this regard, migration may contribute to significant transformations within receiving societies, particularly in multicultural environments characterized by intensive intercultural interaction. Gaertner and Dovidio (1989) note that intercultural contacts may generate both positive integration effects and social tensions resulting from differences in cultural and religious norms. Consequently, migration has become an important factor influencing social cohesion, identity formation, and the dynamics of intergroup relations.

Special attention in the literature has been devoted to the challenges faced by second-generation migrants and migrant children. Research conducted by Levecque and Rossem (2015), as well as Toselli, Gualdi-Russo, Marzouk, Sundquist, and Sundquist (2014), demonstrates that migrant youth may experience difficulties associated with social adaptation, identity formation, and psychological well-being. Educational institutions often become the primary arena in which these processes unfold. Feelings of exclusion, alienation, and uncertainty regarding cultural belonging may emerge during interactions between migrant children and members of the host society. These experiences may affect not only their social integration but also their broader perceptions of identity, community, and social participation.

The opposite perspective within migration studies focuses on the protection of migrants' rights and the role of religion in facilitating integration processes. Scholars increasingly recognize that religious institutions frequently serve as important mechanisms of social support, cultural preservation, and community building among migrant populations. Lisovskaya (2019), Penninx (2019), and Kogan, Fong, and Reitz (2020) emphasize that freedom of religion and the protection of religious rights constitute essential components of successful integration policies. Their findings suggest that the recognition of religious diversity and the accommodation of legitimate religious practices may strengthen social inclusion and contribute to social stability within multicultural societies.

Migration has also become an important subject of research within diaspora studies, ethnic studies, and race relations. Contemporary Western scholarship examines migration from historical, anthropological, political, cultural, and religious perspectives. Simultaneously, social scientists increasingly investigate migration through the lenses of social policy, law, economics, ethnicity, and race. Particularly noteworthy are studies addressing the integration experiences of migrant communities in European countries. Hickman and Ryan (2020), for example, analyze the position of Irish migrants within British society, while Ryan (2018) examines the differentiated integration of Polish migrants in London. These studies demonstrate that integration processes are highly contextual

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and influenced by a complex interaction of legal, social, economic, and cultural factors.

The European experience has generated a substantial body of legal scholarship concerning the relationship between migration, religious diversity, and constitutional rights. Contemporary demographic and socio-cultural transformations have stimulated renewed debates regarding the interpretation of fundamental rights, particularly freedom of conscience and freedom of religion. Bosso (2022) argues that increasing migration has challenged traditional understandings of constitutional identity and state sovereignty, generating new legal questions regarding the inclusion of migrant communities within constitutional democracies. Similarly, Alicino (2022) demonstrates that contemporary European legal systems are increasingly confronted with the task of balancing religious freedom with public security concerns and broader societal interests. These debates illustrate the growing complexity of legal regulation in multicultural societies and the need for adaptive legal frameworks capable of addressing emerging challenges.

The reviewed scholarly trajectories indicate that migration research has gradually evolved from a predominantly socio-economic perspective toward a more comprehensive analysis incorporating issues of identity, religion, social integration, constitutional rights, and security. Nevertheless, despite the extensive body of international literature, the interaction between migration processes and religious policy remains insufficiently explored within the Central Asian context.

The available literature concerning Kazakhstan and other Central Asian states primarily focuses on issues of migration management, religious regulation, and national security as separate research domains. Studies examining the mechanisms of radicalization and the spread of extremist ideologies have made valuable contributions to understanding contemporary security threats in the region. In particular, Karimova [19] investigates the mechanisms through which radical ideologies are disseminated, while Azilkhanov [20] identifies contemporary factors contributing to the emergence of religious extremism in Kazakhstan. These studies provide important insights into the dynamics of radicalization and the risks associated with extremist activities.

At the same time, a review of the existing literature reveals a significant research gap. While migration, religion, and extremism have each been examined independently, there remains a lack of comprehensive interdisciplinary studies analyzing the interrelationship between migration processes, religious policy, and the cross-border dissemination of extremist ideologies. Existing research rarely addresses the legal mechanisms through which states may simultaneously protect migrants' rights, ensure freedom of religion, and prevent the spread of destructive religious narratives that threaten public security and constitutional order.

This gap becomes particularly significant in light of contemporary regional developments. The increasing intensity of migration flows, the expansion of transnational communication networks, and the growing influence of digital platforms have transformed the nature of security threats associated with religious extremism. Under these conditions, migration may serve not only as a demographic and economic phenomenon but also as a potential channel through which radical ideologies, extremist narratives, and transnational religious movements cross national borders.

Therefore, there is a need for a comprehensive legal analysis capable of integrating migration governance, religious policy, national security regulation, and counter-extremism legislation into a unified analytical framework. Such an approach is particularly relevant for Central Asian states, where migration dynamics, religious transformation, and security challenges increasingly intersect. The present study seeks to address this gap by examining the legal mechanisms aimed at countering the cross-border dissemination of destructive religious ideologies and religious extremism while ensuring the protection of fundamental rights and freedoms within the framework of contemporary constitutional democracies.

3. Materials and Methods

The methodological framework of this study is based on a combination of general scientific and special legal research methods that ensure a comprehensive analysis of the legal mechanisms for countering the cross-border spread of religious extremism in the states of Central Asia. Given the interdisciplinary nature of the research problem, which encompasses issues of national security, migration governance, religious policy, and international cooperation, the study employs a set of complementary methodological approaches aimed at revealing the legal nature of religious extremism and evaluating the effectiveness of existing regulatory instruments.

The empirical basis of the research includes national legislation of the Central Asian states regulating migration processes, religious activities, counter-extremism measures, and national security issues. Particular attention is devoted to the legal framework of the Republic of Kazakhstan, as well as to a comparative analysis of relevant legislative acts adopted in Kyrgyzstan, Uzbekistan, Tajikistan, and Turkmenistan. In addition, the study examines international legal instruments, regional agreements, strategic policy documents, and recommendations of international organizations concerning the prevention of extremism, radicalization, and transnational security threats.

The study relies on the dialectical method as a general scientific approach that enables the examination of religious extremism as a dynamic social and legal phenomenon evolving under the influence of political, economic, social, and cultural factors. This approach facilitates the identification of the interrelationship between migration processes, religious transformations, and contemporary security challenges within the Central Asian region.

A system-structural method was applied to analyze religious extremism as a complex multidimensional phenomenon and to determine the place of legal mechanisms within the broader system of national and regional security. The use of this method made it possible to identify the structural elements of the legal framework governing migration, religious activities, and counter-extremism policies, as well as to reveal the interconnections between preventive, administrative, criminal-law, and international legal measures.

The formal-legal method served as one of the principal research tools. It was employed to examine the content of legislative provisions, legal definitions, and regulatory mechanisms related to extremism, terrorism, migration management, and freedom of religion. Through this method, the study evaluates the consistency of legal norms, identifies potential gaps in regulation, and assesses the adequacy of existing legal instruments for addressing contemporary transnational threats.

The comparative-legal method was used to compare the legislation and legal practices of the Central Asian states in the field of countering religious extremism. This approach enabled the identification of common regional trends, distinctive national features, and best practices that may contribute to the improvement of legal regulation and interstate cooperation. Comparative analysis also facilitated the assessment of the degree of harmonization among national legal systems and their compliance with international standards.

The logical-semantic method was applied to clarify and interpret key conceptual categories, including “religious extremism,” “radicalization,” “cross-border threats,” “migration security,” and “counter-extremism activities.” The use of this method contributed to the development of a coherent conceptual framework necessary for a comprehensive legal analysis of the studied phenomenon.

Furthermore, the study employed the method of legal modeling to formulate proposals aimed at improving legislation and institutional mechanisms for preventing the cross-border dissemination of extremist ideologies. This method enabled the development of recommendations concerning the enhancement of migration control

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mechanisms, the strengthening of regional legal cooperation, and the implementation of preventive measures designed to reduce the risks of radicalization.

The research also incorporates elements of document analysis, including the examination of official reports, statistical data, strategic policy documents, and analytical materials published by governmental institutions, international organizations, and research centers. Such materials were used to assess contemporary trends in migration processes, regional security dynamics, and the evolution of extremist threats in Central Asia.

The combination of the aforementioned methods ensured a comprehensive and objective examination of the legal support for countering the cross-border spread of religious extremism and allowed for the formulation of scientifically grounded conclusions regarding the further development of national and regional legal mechanisms in this field.

4. Results

4.1. Cross-Border Migration and the Dissemination of Radical Religious Ideologies in Central Asia

The issues of migrants and their rights are actively addressed in contemporary research and require a holistic understanding of the development of social processes in a rapidly changing world influenced by socio-political events, as well as analysis of possible futures or forecasts that could lead to global transformations and changes in both political and cultural-civilizational realities. The cultural-civilizational foundation of any society is also based on religious values. The Palestinian-Israeli conflict, which unfolded in recent months of this year, is triggering new waves of migration worldwide, along with the Russian-Ukrainian conflict, and is highlighting several civilizational fault lines, posing a number of risks for states hosting migrants (forced migrants) with diverse political and religious beliefs. In the current context, Kazakhstan faces a number of challenges related to certain global socio-political and humanitarian crises (e.g., the events in Afghanistan in 2021, the military conflict in Ukraine, and the Middle East conflict), which will have certain consequences related to both illegal and forced migration, along with the spread of destructive religious movements. Previously, in addressing the threat of the spread of destructive religious beliefs, there was experience associated with the war in Syria, which led to the migration of a number of radicalized Kazakhstanis and their families to the conflict zone, followed by their subsequent return to the country, followed by rehabilitation for family members (usually women and children), and criminal punishment for participants in the hostilities (Radio Azattyq, 2022). In the context of the risks of cross-border threats, the President of Kazakhstan, in his 2021 Address to the Nation, expressed concern about the situation in Afghanistan and globally: "...We must prepare for external shocks and the worst-case scenario." Modeling external risks has become extremely relevant...", which prompts a reconsideration of the issues of the danger of illegal migration with the timely adoption of a set of measures to prevent the risks and penetration of destructive elements into the region (Krivtsanova, 2021). It should be emphasized that the identified risks are of a pan-regional nature: the Central Asian states – Kyrgyzstan, Tajikistan, Uzbekistan and Turkmenistan – face, to varying degrees, similar threats of cross-border penetration of destructive religious ideas (Heathershaw and Montgomery, 2014). The experience of Central Asian countries in countering radicalization and reintegration of citizens returning from conflict zones can serve as a source of comparative analysis and the development of coordinated regional security mechanisms (Lemon, 2019).

The security implications of contemporary migration processes cannot be assessed exclusively through demographic, economic, or humanitarian perspectives. In recent decades, migration has increasingly become associated with a wide spectrum of transnational security challenges, including organized crime, human trafficking,

illicit financial flows, terrorism, and the dissemination of extremist ideologies. Although the overwhelming majority of migrants do not pose any threat to public security and contribute positively to the economic and social development of host societies, the growing scale of cross-border mobility has created additional opportunities for extremist actors to exploit migration routes, migrant communities, and transnational social networks for ideological and organizational purposes.

The states of Central Asia are particularly vulnerable to such risks due to their geographical location, extensive land borders, historical interconnections, and intensive migration exchanges. Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan, and Turkmenistan are situated at the crossroads of several major migration corridors linking East Asia, South Asia, the Middle East, Russia, and Europe. These migration routes facilitate legitimate economic and cultural exchanges; however, they may also be utilized by individuals and groups seeking to disseminate radical religious narratives or establish links with extremist organizations operating beyond national borders.

An important characteristic of contemporary extremist movements is their ability to adapt rapidly to changing political and social conditions. Unlike traditional extremist organizations that relied primarily on hierarchical structures and territorial control, modern extremist networks increasingly operate through decentralized mechanisms. They actively use migration channels, family ties, religious communities, educational exchanges, and digital communication technologies to spread ideological influence. As a result, the threat posed by religious extremism can no longer be understood solely as a domestic issue confined within the territorial boundaries of a particular state (Levecque and Van Rossem, 2015).

Particular concern arises from the fact that radical ideologies frequently exploit existing social vulnerabilities among migrant populations. Difficulties associated with social integration, economic uncertainty, language barriers, discrimination, and identity crises may create favorable conditions for ideological manipulation. Individuals experiencing social exclusion or marginalization can become more susceptible to narratives that offer simplified explanations of complex social problems and provide a sense of belonging, solidarity, and purpose. In this context, extremist organizations often present themselves as alternative communities capable of addressing the psychological and social needs of vulnerable individuals.

At the same time, it would be methodologically incorrect to establish a direct causal relationship between migration and extremism. Such an approach risks stigmatizing migrant communities and oversimplifying a highly complex social phenomenon. Contemporary research increasingly demonstrates that radicalization is influenced by a combination of political, social, economic, cultural, psychological, and ideological factors. Therefore, migration should be viewed not as a direct cause of extremism but rather as one of several contextual factors that may interact with other vulnerabilities and facilitate the cross-border transmission of radical ideas under certain circumstances

The legal dimension of this issue deserves particular attention. Existing migration legislation in many states was primarily designed to regulate population movements, labor migration, residence permits, and border control procedures. However, the emergence of transnational extremist threats has demonstrated that traditional migration governance mechanisms may be insufficient for addressing contemporary security challenges (Toselli,et al., 2014). The increasing complexity of migration flows requires the development of integrated legal frameworks capable of simultaneously protecting human rights, facilitating lawful mobility, and preventing the exploitation of migration channels by extremist actors.

The experience of Central Asian states illustrates this challenge. Since the beginning of the twenty-first century, governments throughout the region have undertaken significant efforts to strengthen border security, improve migration management systems, and modernize anti-extremism legislation. Nevertheless, the effectiveness of

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these measures is often constrained by the transnational nature of extremist activities. Radical organizations frequently operate across multiple jurisdictions, taking advantage of legal differences among states, gaps in information exchange mechanisms, and inconsistencies in national regulatory approaches. Consequently, isolated domestic measures may prove insufficient in responding to threats that transcend national boundaries.

An additional factor contributing to the complexity of the problem is the increasing role of information and communication technologies. The dissemination of extremist ideologies no longer depends exclusively on physical migration or direct interpersonal contacts. Digital platforms, social media networks, encrypted messaging applications, and online religious forums have significantly expanded the reach of extremist propaganda. Today, radical narratives can be transmitted across borders instantaneously, reaching audiences regardless of their geographical location. Consequently, the phenomenon of cross-border extremist influence increasingly combines both physical and virtual dimensions. (Penninx, 2019)

This transformation has important implications for legal regulation. Traditional border-control measures are designed primarily to monitor the movement of persons and goods. However, the contemporary security environment requires legal instruments capable of addressing the transnational circulation of extremist content, online recruitment practices, and digital radicalization processes while maintaining compliance with internationally recognized standards of freedom of expression and access to information. The challenge therefore lies in balancing legitimate security interests with the protection of fundamental rights and freedoms. (Kogan et al., 2020)

The return of individuals from conflict zones in the Middle East has further intensified discussions regarding the relationship between migration and security. Several Central Asian states have implemented repatriation and reintegration programs for citizens who had resided in territories previously controlled by extremist organizations. These initiatives demonstrated that security-oriented responses alone are insufficient for addressing the long-term consequences of radicalization. Rehabilitation measures, educational programs, psychological support, and social reintegration mechanisms constitute essential components of a comprehensive strategy aimed at preventing the re-emergence of extremist influence (Hickman and Ryan, 2020).

Another important finding emerging from recent regional developments is that effective counter-extremism policies cannot be based solely on repression and criminal-law enforcement. Preventive approaches focused on education, social inclusion, community resilience, and intercultural dialogue have increasingly become central elements of contemporary security strategies. This shift reflects a broader understanding that sustainable prevention of radicalization requires addressing the underlying social conditions that may contribute to the attractiveness of extremist ideologies.

The transboundary nature of migration and religious interaction also underscores the importance of regional cooperation. The states of Central Asia share common historical experiences, cultural traditions, and security concerns. Migration flows frequently involve movements between neighboring countries rather than exclusively external migration from distant regions. As a result, the effectiveness of national legal measures depends substantially on the degree of interstate coordination (Ryan, 2018). Enhanced cooperation in areas such as information exchange, border management, law-enforcement collaboration, judicial assistance, and harmonization of anti-extremism legislation may significantly improve the capacity of states to counter transnational extremist threats.

Furthermore, the legal regulation of religious activities occupies a particularly sensitive position within this broader framework. Democratic constitutional systems must ensure freedom of conscience, freedom of religion, and equality of religious communities before the law. At the same time, states possess a legitimate interest in

preventing the use of religious institutions, organizations, and educational structures for the dissemination of extremist ideologies. The resulting tension between religious freedom and security considerations represents one of the most complex legal challenges confronting contemporary policymakers and legal scholars.\Against this background, the study of the relationship between migration processes and the spread of religious extremism acquires special significance for Central Asian states. The analysis of existing legal mechanisms demonstrates that contemporary security threats require multidimensional responses combining migration governance, counter-extremism legislation, international cooperation, educational initiatives, and preventive social policies. Only a comprehensive legal approach that integrates national security objectives with the protection of constitutional rights and freedoms can provide a sustainable foundation for countering the cross-border dissemination of destructive religious ideologies in the modern world

The foregoing considerations demonstrate that migration and religious security should not be examined as isolated policy domains. Rather, they constitute interconnected components of a broader legal and institutional framework aimed at ensuring social stability, protecting constitutional order, and safeguarding national security. It is therefore necessary to examine how contemporary scholarship conceptualizes these relationships and evaluates the effectiveness of existing mechanisms for preventing radicalization and religious extremism. This requires a review of the relevant scientific literature addressing migration, integration, religious identity, and the legal dimensions of countering extremist activities.

4.2. Legal Conceptualization of Religious Extremism and Counter-Extremism Legislation in Kazakhstan

Religious extremism represents one of the most significant contemporary challenges to national security, constitutional order, and social stability in the Republic of Kazakhstan. In the context of ongoing geopolitical instability, armed conflicts, increasing migration flows, and the growing influence of transnational radical movements, the prevention of extremist activity has become a key priority of state policy. The threat posed by religious extremism extends beyond individual criminal acts, affecting the broader foundations of public order, interfaith harmony, and national cohesion. (Bosso, 2022)

The relevance of this issue has increased considerably in recent years due to the changing nature of contemporary security threats. Extremist organizations increasingly operate through transnational networks, exploit digital communication technologies, and utilize migration channels to disseminate radical ideologies. Consequently, the effectiveness of state countermeasures depends not only on law-enforcement capabilities but also on the existence of a coherent legal framework capable of identifying, preventing, and suppressing extremist activities while simultaneously safeguarding constitutional rights and freedoms (Alicino, 2022). A prerequisite for effective counter-extremism policy is a clear understanding of the legal nature and conceptual foundations of extremism. As many scholars have observed, successful prevention and suppression of extremist activities require precise legal definitions and consistent doctrinal interpretations. The absence of conceptual clarity may hinder law-enforcement practice, create inconsistencies in judicial decision-making, and complicate the development of preventive measures. Therefore, the legal regulation of extremism occupies a central position within the broader system of national security governance.

The concept of extremism originates from the Latin term extremus, meaning “extreme,” “outermost,” or “beyond limits.” In its broadest sense, extremism may be understood as adherence to radical views or positions that substantially depart from socially accepted norms (Karimova, 2020). However, such a general interpretation is insufficient for legal purposes because it encompasses a wide spectrum of beliefs

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and behaviors that do not necessarily constitute unlawful conduct. For this reason, contemporary legal systems seek to establish more precise definitions that distinguish between legitimate expressions of opinion and activities that threaten public security, constitutional order, or the rights of others.

Kazakhstan has developed a relatively comprehensive legislative framework for addressing extremist threats. A key element of this framework is the Law of the Republic of Kazakhstan "On Countering Extremism" of 18 February 2005. This legislation provides the principal legal foundation for counter-extremism policy and establishes the conceptual boundaries of extremist activity. Importantly, the law differentiates among political, national, and religious extremism, thereby recognizing the multidimensional character of the phenomenon and allowing state institutions to apply specialized preventive and enforcement measures depending on the nature of the threat.

The adoption of a specialized anti-extremism law reflects an important development in Kazakhstan's legal response to emerging security challenges. (Pravovyye mery protivodeystviya ekstremizmu, 2012) By establishing a unified legal framework, the legislature created the basis for coordinated action by law-enforcement agencies, judicial institutions, and other state bodies responsible for protecting national security. The existence of a clear legal definition also contributes to greater consistency in law-enforcement practice and facilitates the implementation of preventive measures aimed at countering radicalization.

At the same time, the legal understanding of extremism remains the subject of considerable scholarly debate. Contemporary research demonstrates that extremism cannot be reduced solely to criminal behavior. Rather, it constitutes a complex social, political, ideological, and legal phenomenon characterized by hostility toward democratic values, constitutional principles, and the rule of law. Many scholars emphasize that extremist movements frequently pursue political objectives or seek to produce political consequences through the use of violence, intimidation, or ideological manipulation (Azilkhanov, 2022).

From a socio-legal perspective, extremism is often interpreted as a form of rejection of established mechanisms of social and political governance. Extremist violence differs from ordinary criminal violence because it is usually supported by a specific ideological framework that seeks to justify unlawful actions and promote alternative social or political orders. Consequently, extremist activity combines ideological, organizational, and operational dimensions that require a multidimensional legal response (Lazarev, 2017).

Particular attention should be paid to the distinction between legitimate political dissent and extremist activity. Democratic constitutional systems recognize the right of individuals to criticize public authorities, advocate political change, and participate in public affairs. Moreover, legal theory acknowledges the existence of a broader concept of resistance to oppression under exceptional circumstances involving serious violations of fundamental rights and constitutional principles. Therefore, not every act of political opposition or protest may be classified as extremist. The critical distinction lies in the use or advocacy of violence, coercion, hatred, or unconstitutional means aimed at undermining democratic institutions and public security (Kolokolov, 2015).

The events of January 2022 in Kazakhstan significantly intensified public and academic discussions regarding the manifestations of extremism and radicalization. These events demonstrated how social tensions, political grievances, and organized extremist activities may interact to produce serious threats to public order and national stability. The January crisis highlighted the necessity of strengthening both preventive and legal mechanisms aimed at identifying and neutralizing extremist risks before they escalate into large-scale disturbances.

According to official assessments, a number of extremist organizations remain prohibited within the territory of Kazakhstan. Among the most widely known are

organizations such as Hizb ut-Tahrir, Tablighi Jamaat, At-Takfir wal-Hijra, the Muslim Brotherhood, and the Islamic State. The activities of such organizations illustrate the transnational nature of contemporary extremist threats and the challenges associated with preventing the dissemination of radical ideologies across state borders.

The relationship between migration processes and the spread of extremist ideas requires careful legal assessment. It would be inappropriate to conclude that migration itself causes extremism (Oros, 2018). Nevertheless, historical experience demonstrates that periods of intensive migration, weak institutional oversight, and socio-economic instability may create opportunities for the penetration of radical ideological influences. During the early years of Kazakhstan's independence, economic difficulties, institutional transformation, and the relative openness of the religious sphere facilitated the activities of foreign missionaries representing a variety of religious movements, including some with radical orientations. In addition, educational migration to foreign religious institutions occasionally exposed certain individuals to extremist interpretations of religion.

These developments illustrate the importance of maintaining an effective balance between freedom of religion, freedom of movement, and national security interests. Contemporary migration governance therefore requires not only administrative control mechanisms but also educational, informational, and preventive measures aimed at strengthening social resilience against extremist influences.

The multidimensional nature of extremism has led scholars to propose various theoretical models explaining its structure (Sergun, 2018). One influential approach conceptualizes extremism as consisting of four interconnected elements: a specific state of consciousness, an ideological system, a set of practical actions aimed at implementing that ideology, and an organizational structure supporting such activities. This framework is particularly useful because it demonstrates that extremist activity extends beyond isolated criminal acts and includes broader processes of ideological formation, recruitment, mobilization, and organizational development.

Religious extremism constitutes a particularly dangerous form of extremist activity because it often seeks to exploit deeply held beliefs and identities (Vorobyev, 2015). The dissemination of destructive religious narratives may contribute to the emergence of intolerance, social polarization, and hostility toward other religious or ethnic groups. In its most dangerous manifestations, religious extremism promotes hatred, justifies violence, and encourages actions directed against individuals or communities perceived as ideological opponents.

The analysis conducted in this study demonstrates that contemporary manifestations of religious extremism increasingly combine offline and online methods of influence. Radical actors actively employ social media platforms, encrypted communication channels, online publications, and digital propaganda to recruit supporters and disseminate extremist content. Consequently, effective counter-extremism legislation must address not only traditional forms of extremist activity but also emerging digital threats.

The current legal framework of Kazakhstan provides a substantial basis for combating extremist activity. Nevertheless, the evolving character of contemporary security threats requires the continuous modernization of legislation, enhanced coordination among state institutions, and the development of preventive strategies focused on education, social inclusion, and community resilience. Experience demonstrates that reliance solely on criminal-law measures is insufficient for addressing the root causes of radicalization.

Therefore, effective counteraction to religious extremism requires a comprehensive approach integrating legal regulation, migration governance, educational initiatives, information security measures, and international cooperation. Such an approach is particularly important for Kazakhstan and other Central Asian states, where migration dynamics, religious transformation, and regional security challenges increasingly

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intersect within a shared geopolitical environment.

4.3. Regional Legal Mechanisms for Countering Cross-Border Religious Extremism in Central Asia

The growing transnational character of religious extremism has demonstrated the limitations of purely domestic approaches to national security. Contemporary extremist organizations increasingly operate beyond state borders, utilizing migration routes, digital communication technologies, financial networks, and transnational ideological platforms. Under such circumstances, effective counteraction to religious extremism requires not only the development of national legal instruments but also the establishment of coordinated regional mechanisms capable of addressing common security threats. (Burkovskaya, 2006)

The states of Central Asia face similar challenges associated with the cross-border dissemination of extremist ideologies. Common historical experiences, geographical proximity, intensive migration exchanges, and shared security concerns create conditions in which extremist threats affecting one state may rapidly influence neighboring countries. Consequently, the effectiveness of national counter-extremism policies depends significantly on the level of regional cooperation and the degree of harmonization among legal systems.

A comparative analysis of the legislation of Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan, and Turkmenistan demonstrates the existence of common approaches to combating extremism. All states of the region recognize extremism as a threat to constitutional order, public security, and national sovereignty. National legal systems generally provide criminal liability for participation in extremist organizations, financing extremist activities, dissemination of extremist materials, incitement of religious hatred, and recruitment for terrorist or extremist purposes. Nevertheless, despite these similarities, substantial differences remain regarding legal definitions, procedural mechanisms, and institutional arrangements responsible for countering extremist threats. (Oros, 2018)

One of the principal challenges affecting regional cooperation is the absence of fully harmonized legal definitions of extremism and related concepts. Differences in the interpretation of religious extremism, radicalization, extremist propaganda, and extremist organizations may complicate interstate cooperation in criminal investigations, extradition procedures, and information exchange. In practice, activities classified as extremist in one jurisdiction may not always receive identical legal treatment in another. Therefore, further harmonization of legal terminology represents an important prerequisite for strengthening regional security mechanisms (Lisovskaya, 2019).

Particular importance is attached to the development of effective systems of information exchange among law-enforcement agencies, intelligence services, border authorities, and migration institutions. The transnational nature of contemporary extremist networks requires timely identification of individuals involved in radical activities, recruitment operations, financing schemes, and cross-border movements associated with extremist organizations. In this regard, information-sharing mechanisms constitute one of the most effective preventive instruments available to national governments.

Border security remains another critical component of regional counter-extremism strategies. The geographical characteristics of Central Asia, including extensive land borders and remote territories, create significant challenges for migration management and security monitoring. While the vast majority of cross-border movements are legitimate, state authorities must simultaneously prevent the movement of individuals associated with extremist organizations, foreign terrorist fighters, and transnational criminal groups. Consequently, modern border management increasingly combines

traditional control measures with advanced risk-assessment systems, biometric technologies, digital databases, and interagency cooperation mechanisms (Penninx, 2019).

At the same time, contemporary security threats cannot be addressed exclusively through border-control measures. The increasing role of digital communication technologies has transformed the methods through which extremist ideologies are disseminated. Social media platforms, encrypted messaging applications, video-sharing services, and online religious forums enable extremist actors to reach audiences across national borders without any physical movement of persons. As a result, legal responses to religious extremism must increasingly address cyberspace as an important arena of ideological influence and recruitment.

The legal regulation of online extremist activity presents a particularly complex challenge for democratic states. On the one hand, governments possess a legitimate interest in preventing the dissemination of materials promoting violence, hatred, or terrorist activities. On the other hand, restrictions imposed on digital content must remain consistent with constitutional guarantees of freedom of expression, freedom of religion, and access to information. Therefore, the development of legal mechanisms aimed at combating online radicalization requires a careful balance between security considerations and the protection of fundamental human rights.

Recent experience in Central Asia also demonstrates the growing importance of preventive approaches to countering extremism (Karimova, 2020). Traditional law-enforcement measures remain necessary; however, contemporary research increasingly confirms that criminal sanctions alone cannot eliminate the social, ideological, and psychological factors contributing to radicalization. Consequently, governments throughout the region have begun to place greater emphasis on educational initiatives, public-awareness campaigns, community engagement programs, and the promotion of religious literacy.

Particularly noteworthy are efforts aimed at preventing the radicalization of vulnerable social groups. Young people, migrants, socially marginalized individuals, and persons experiencing identity-related challenges may be especially susceptible to extremist narratives under certain conditions. Preventive strategies therefore seek to strengthen social inclusion, improve access to education, promote critical thinking skills, and enhance resilience against manipulative ideological influences. Such measures complement traditional law-enforcement activities and contribute to the long-term prevention of extremist recruitment.

Another significant dimension of regional counter-extremism policy concerns the rehabilitation and reintegration of individuals returning from conflict zones. The experience of Kazakhstan and several neighboring states demonstrates that comprehensive reintegration programs may serve as effective tools for reducing future security risks (Azilkhanov, 2022). These initiatives typically combine legal accountability with psychological assistance, educational support, vocational training, and social adaptation measures. The underlying rationale is that sustainable security outcomes require not only punishment for unlawful conduct but also the successful reintegration of individuals capable of abandoning extremist beliefs.

From a legal perspective, the rehabilitation of returnees reflects a broader shift toward preventive and human-centered approaches within contemporary security policy. Rather than focusing exclusively on repression, governments increasingly recognize the importance of addressing the root causes of radicalization and creating conditions that reduce the likelihood of re-engagement in extremist activities. Such approaches are consistent with international trends in countering violent extremism and demonstrate the growing importance of multidisciplinary strategies.

An additional challenge facing Central Asian states concerns the relationship between migration governance and security policy. As discussed in the previous sections,

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migration itself should not be viewed as a direct cause of extremism. Nevertheless, inadequate migration management may create opportunities for the cross-border dissemination of radical ideologies and facilitate the activities of extremist networks. Consequently, legal frameworks regulating migration should be integrated into broader national security strategies while maintaining compliance with international human rights obligations.

The findings of this study indicate that effective counteraction to cross-border religious extremism requires the interaction of four interconnected components. First, states must maintain effective criminal-law mechanisms capable of suppressing extremist activities and ensuring accountability for unlawful conduct. Second, migration-control and border-management systems should prevent the exploitation of migration channels by extremist actors. Third, preventive measures aimed at reducing the social and ideological causes of radicalization must receive greater institutional support. Fourth, regional and international cooperation should be strengthened through enhanced information exchange, legal harmonization, and coordinated security policies.

Therefore, the future development of legal mechanisms in Central Asia should be oriented toward greater regional integration in the field of security governance. Harmonization of anti-extremism legislation, modernization of digital-security frameworks, expansion of preventive programs, and strengthening of interstate cooperation may significantly improve the capacity of states to address emerging transnational threats. Given the shared security challenges confronting the region, no single state can effectively counter cross-border religious extremism in isolation. Sustainable solutions require coordinated legal responses based on common principles, mutual trust, and long-term regional partnership.

5. Conclusions

The conducted study demonstrates that the cross-border dissemination of religious extremism represents one of the most complex contemporary security challenges facing the states of Central Asia. The transnational nature of modern extremist activity, facilitated by migration processes, digital communication technologies, and international ideological networks, requires a comprehensive legal response that extends beyond traditional law-enforcement measures and incorporates preventive, educational, and regional cooperation mechanisms.

The findings of the research indicate that migration should not be regarded as a direct cause of religious extremism. Rather, migration constitutes a multifaceted social phenomenon that, under certain conditions, may facilitate the transmission of radical ideological influences across state borders. Factors such as social exclusion, inadequate integration policies, economic vulnerability, identity-related challenges, and limited access to educational opportunities may increase susceptibility to extremist narratives among certain individuals and groups. Consequently, effective migration governance should be viewed as an important component of broader national security strategies aimed at preventing radicalization while simultaneously protecting the rights and freedoms of migrants.

The study further demonstrates that religious extremism represents a multidimensional legal and social phenomenon that cannot be reduced exclusively to criminal conduct. Contemporary manifestations of extremism combine ideological, organizational, informational, and operational components that require corresponding multidimensional legal responses. The analysis confirms that the effectiveness of counter-extremism policies largely depends on the existence of clear legal definitions, coherent legislative frameworks, and institutional mechanisms capable of addressing both traditional and emerging forms of extremist activity.

The analysis of Kazakhstan's legislative framework indicates that the Republic of Kazakhstan has established a relatively comprehensive system of legal regulation in the field of countering extremism. The Law of the Republic of Kazakhstan "On Countering Extremism," together with related criminal, administrative, and migration legislation, provides an important legal foundation for preventing and suppressing extremist activities. At the same time, the evolving character of contemporary security threats necessitates the continuous modernization of legal instruments, particularly in relation to online radicalization, transnational recruitment networks, and the dissemination of extremist content through digital platforms.

A significant finding of the study concerns the growing importance of preventive approaches in contemporary counter-extremism policy. The research confirms that reliance solely on punitive and coercive measures is insufficient for addressing the underlying causes of radicalization. Sustainable prevention requires the implementation of educational initiatives, programs aimed at strengthening religious literacy, community engagement mechanisms, social inclusion policies, and rehabilitation measures for individuals vulnerable to extremist influence. Such approaches contribute to increasing societal resilience and reducing the attractiveness of radical ideologies.

The comparative analysis of regional developments reveals that the effectiveness of national counter-extremism policies is closely connected to the level of interstate cooperation. Given the shared security challenges confronting Central Asian states, isolated domestic measures cannot fully address the transnational character of contemporary extremist threats. The study therefore substantiates the necessity of strengthening regional legal cooperation through enhanced information exchange, coordinated border-management mechanisms, mutual legal assistance procedures, and greater harmonization of anti-extremism legislation.

Particular attention should be devoted to the development of legal mechanisms for countering online radicalization and extremist propaganda. The increasing use of digital technologies by extremist organizations requires the modernization of national legal frameworks and the adoption of regulatory approaches capable of preventing the dissemination of extremist content while preserving fundamental rights and freedoms guaranteed by constitutional and international legal standards.

Based on the conducted analysis, it is concluded that the effectiveness of legal support for countering the cross-border spread of religious extremism depends upon the interaction of four interconnected elements: effective criminal-law regulation, efficient migration and border-management systems, comprehensive preventive and educational measures, and sustained regional cooperation. The absence or weakness of any of these components substantially reduces the overall capacity of states to respond to contemporary extremist threats.

The scientific significance of this study lies in its comprehensive examination of the relationship between migration processes, religious policy, and the cross-border dissemination of extremist ideologies within the Central Asian region. Unlike approaches that consider these issues separately, the present research demonstrates their interdependence and highlights the necessity of integrated legal solutions capable of addressing both security concerns and the protection of fundamental human rights.

In view of the findings obtained, further improvement of national and regional legal mechanisms should be directed toward the harmonization of anti-extremism legislation

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within Central Asia, the strengthening of interstate cooperation, the modernization of digital-security regulation, and the expansion of preventive measures focused on social integration and resilience against radicalization. The implementation of such measures may contribute to enhancing regional security, protecting constitutional order, and ensuring sustainable social development throughout the region.

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ECCLESIASTICAL JUDICIARY DURING THE PERIOD OF THE HETMAN STATE

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Abstract

The article provides a comprehensive historical and legal analysis of church justice in the Ukrainian Hetmanate (Zaporozhian Army) of the 17th–18th centuries. The legal nature of church courts, their institutional features and place in the system of judicial bodies of the contemporary society are studied. Particular attention is paid to the interaction of church and secular justice, as well as the mechanisms for delimiting their jurisdiction. The competence of church courts is analyzed, in particular in the field of marital and family relations, moral and ethical offenses and disciplinary responsibility of the clergy. The types of cases that were subject to consideration by church courts are highlighted, and the procedural features of the implementation of justice are also characterized, including the use of testimony, oaths and church punishments. The influence of canon law and Byzantine legal tradition on the formation and development of church justice in the Hetmanate is revealed. It is established that church courts functioned as a relatively autonomous institution, but were in close relationship with state power and secular courts. The importance of church justice as an important element of the legal system of the Ukrainian Hetmanate, which ensured the regulation of social relations on the principles of morality and religion, is substantiated. It is proved that the activities of church courts contributed to the formation of legal culture, strengthening social discipline and maintaining public order. It is concluded that church justice played a significant role in the formation of the Ukrainian legal tradition and had a significant impact on the development of justice institutions in subsequent historical periods.

Keywords: church justice; canon law; Hetmanate; church courts; Zaporozhian

Army; history of law; Byzantine legal tradition; Middle Ages.

1. Introduction

The formation of the Ukrainian Hetmanate (Zaporozhian Army) in the middle of the 17th century. was accompanied by the formation of its own system of state administration and legal regulation, in the structure of which judicial institutions occupied an important place. Of particular importance among them was church justice, which ensured the regulation of social relations not only on the basis of legal norms, but also in accordance with the moral and religious principles of the society of that time. Under the conditions of the dominance of the Christian worldview, the church acted not only as a spiritual center, but also as an important subject of law-making and jurisdictional activity, exerting a noticeable influence on various spheres of social life (Ohloblyn, 1960).).

Church courts were an integral part of the Hetmanate's justice system and considered a significant number of cases related to marital and family relations, moral offenses, violations of church discipline, as well as certain categories of property disputes. Their activities were based on the norms of canon law, formed under the influence of the Byzantine legal tradition and adapted to Ukrainian socio-political realities. At the same time, the practice of church justice demonstrated a complex interaction of canonical prescriptions with the norms of customary law, the provisions of the Lithuanian Statutes, Magdeburg law and acts of the hetman's power, which determined the multi-level nature of the legal system of the Ukrainian hetman's state. Unlike secular judicial bodies, church courts performed not only jurisdictional, but also educational, disciplinary and preventive functions. Through the mechanisms of church influence, compliance with moral norms, maintenance of social discipline and the formation of appropriate models of behavior were ensured. In this context, church justice acted as an important instrument of social regulation, which combined legal and spiritual means of influencing social relations (Lototskyi, 1931).

At the same time, the activities of spiritual courts were not isolated from secular power. During the 17th–18th centuries, there was a constant process of delimitation of competence between church and secular jurisdictions, which was often accompanied by conflicts regarding the jurisdiction of certain categories of cases. This issue became particularly relevant in the context of the gradual strengthening of the Hetman administration and the further integration of the Hetmanate into the political and legal space of the Moscow state, which led to the transformation of the legal status of the Orthodox Church and its judicial bodies.

The relevance of the study is due to the need for a comprehensive rethinking of the place of church justice in the legal system of the Hetmanate, the definition of its jurisdictional boundaries, procedural features and role in the formation of the Ukrainian legal tradition. Despite the significant scientific interest in the history of the state and law of Ukraine in the early modern period, the activities of church courts remain insufficiently researched. The scientific literature is dominated by works devoted to general issues of the state structure and judicial system of the Hetmanate, while the legal nature of the ecclesiastical courts, the peculiarities of their functioning, the relationship between ecclesiastical and secular jurisdiction, as well as the practice of considering certain categories of cases require further scientific understanding.

The purpose of the article is to conduct a comprehensive study of church justice in the Ukrainian Hetmanate as an important element of the legal system of early modern Ukrainian society. Within the framework of achieving this goal, it is planned to determine the legal nature of spiritual courts, their place in the system of judicial bodies and the peculiarities of their functioning.In addition, the purpose of the article is to clarify the role of church justice in the formation of the legal culture and moral and ethical principles of the Hetmanate society. In the context of the study, it is also planned to determine the

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influence of canon law on the development of the legal system and its interaction with customary and secular law.

As a result, the study is aimed at forming a holistic scientific understanding of church justice as a complex and multifaceted legal institution that played an important role in the formation of Ukrainian statehood.

Of particular scientific interest is the study of the procedural activities of ecclesiastical courts, in particular the procedure for considering cases, the system of evidence, the meaning of oaths and testimonies, as well as the nature of ecclesiastical sanctions. No less important is the determination of the role of canon law as the normative basis of ecclesiastical proceedings and the clarification of the mechanisms of its interaction with secular legislation. The study of these issues allows not only to understand more deeply the peculiarities of the functioning of the legal institutions of the Hetmanate, but also to trace the historical origins of individual elements of Ukrainian legal culture.

Thus, the study of church justice in the Ukrainian Hetmanate has important historical, legal and theoretical significance, as it contributes to a comprehensive understanding of the processes of the formation of Ukrainian statehood, the development of the national legal tradition and the formation of relations between church and secular authorities in the early modern period.

2. Literature Review

The issues of church justice in the Ukrainian Hetmanate are at the intersection of historical and legal, church and canonical and state and legal studies. Certain aspects of the activities of spiritual courts were covered both in the works of classics of Ukrainian historical science and in the works of modern researchers of the history of the state and law of Ukraine.

Of fundamental importance for the study of the socio-political system of the Hetmanate are the works of Kostomarov, Ogloblyn, Yavornytsky, Smolii and Yakovenko. The aforementioned studies revealed the peculiarities of the functioning of government institutions, the formation of Ukrainian statehood and the role of the Orthodox Church in public life. At the same time, the issues of church jurisdiction and the activities of spiritual courts were considered mainly in the context of the general characteristics of state-church relations and were not the subject of an independent comprehensive analysis.

Of great importance for the study of the normative principles of church justice are the scientific works of Lototsky, devoted to the sources of Ukrainian church law and the peculiarities of their development. A significant contribution to the study of state-church relations was made by Matselyukh, Matselyk and Matveeva, who analyzed the evolution of the legal status of the Orthodox Church, the peculiarities of the formation of church-legal institutions and the influence of canon law on the development of the Ukrainian legal system. The works of these authors contain important conclusions regarding the sources of church law and the transformation of church jurisdiction in different historical periods.

A separate group of studies is made up of works devoted to the judicial system of the Ukrainian Hetmanate. In particular, P. Zakharchenko and M. Miroshnychenko studied the peculiarities of the judicial system and the organization of the trial in the Zaporozhian Army, paying attention to the place of spiritual courts in the general system of justice. Their works substantiate the existence of a separate church jurisdiction and characterize the main categories of cases that fell within the competence of spiritual courts. At the same time, the procedural features of the implementation of church justice remained covered only fragmentarily.

An analysis of the scientific literature shows that most studies focus on general issues of the history of statehood, the development of the judicial system of the

Hetmanate, or the formation of state-church relations. In contrast, specialized historical and legal works devoted directly to church justice as an independent legal institution are rare. The issues of the organization and structure of church courts, the features of their jurisdiction, procedural forms of considering cases, the system of evidence, and church sanctions remain insufficiently researched.

The problem of the ratio of church and secular jurisdiction in the Hetmanate requires special attention. The scientific literature lacks a unified approach to determining the boundaries of the competence of spiritual and secular courts, as well as mechanisms for resolving jurisdictional conflicts between them. The issues of the practical implementation of canonical legal norms in the activities of church courts and their interaction with secular authorities remain insufficiently studied.

In addition, domestic historical and legal science lacks comprehensive studies devoted to the evolution of church justice at different stages of the development of the Hetmanate, in particular in the period after the subordination of the Kyiv Metropolis to the Moscow Patriarchate and the further strengthening of the influence of Russian legislation on the activities of church institutions. Insufficient attention has also been paid to the analysis of the specific judicial practice of spiritual courts, which complicates a full understanding of their role in the justice system of early modern Ukraine.

Thus, the analysis of scientific works indicates the presence of a significant body of research devoted to the history of statehood, church law, and the judicial system of the Hetmanate. At the same time, a number of issues related to the legal nature of church justice, the peculiarities of its functioning, the procedural mechanisms of administering justice, and the relationship between church and secular jurisdiction require further comprehensive historical and legal research.

3. Materials and Methods

The source basis of the study is the normative-legal and historical-legal monuments that regulated the activities of church courts in Ukrainian lands in the 17th–18th centuries, in particular the monuments of canon law, the Kormchi books, the church statutes of princes Volodymyr and Yaroslav, the provisions of the Lithuanian statutes, acts of Magdeburg law, hetman universals, as well as other documents that determined the legal status of the Orthodox Church and the procedure for exercising church jurisdiction. Of great importance for the study were the scientific works of domestic historians and jurists devoted to the history of the state and law of Ukraine, the judicial system of the Hetmanate, state-church relations and the development of canon law.

The methodological basis of the study is a complex of general scientific, special-legal and historical-legal methods of cognition, the application of which provided a comprehensive analysis of church justice in the Ukrainian Hetmanate.

The leading method of the study was the historical-legal method, with the help of which the process of formation and evolution of church justice was traced, the main stages of its development and the features of its functioning in the conditions of the formation of Ukrainian early modern statehood were determined. The use of this method made it possible to study the influence of socio-political processes on the transformation of church jurisdiction and the change in the legal status of religious courts.

The system-structural method was used to consider church justice as a component of the legal system of the Hetmanate and to determine its relationships with secular judicial and administrative institutions. Thanks to this, it was possible to establish the place of religious courts in the structure of justice bodies and characterize the features of their competence.

The formal-legal method was used to analyze the normative sources of church law, to clarify the content of the legal norms that determined the procedure for the activities of church courts, as well as to establish the features of their legal regulation. This method was used to investigate the nature of the jurisdiction of the ecclesiastical

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courts and the main categories of cases that fell under their jurisdiction.

The comparative legal method allowed us to compare the ecclesiastical judiciary with the system of secular justice of the Hetmanate, to determine the common and distinctive features of their organization and functioning, and to trace the interaction of canonical, customary and secular law in the process of administering justice.

The hermeneutic method was used to interpret historical and legal sources, in particular monuments of canonical law, acts of the hetmanate and other documents that regulated the activities of ecclesiastical courts. Its application contributed to a more complete understanding of the content of legal regulations and the features of their practical application.

The methods of analysis and synthesis provided the systematization of scientific approaches to understanding the nature of ecclesiastical judiciary, generalization of the results obtained and formulation of conclusions regarding its role in the legal system of the Ukrainian Hetmanate. The use of these methods in combination made it possible to comprehensively investigate the organizational and legal foundations of the activities of church courts, the features of their jurisdiction, procedural activities and interaction with secular authorities.

The use of the above complex of methods ensured the objectivity, scientific reliability and comprehensiveness of the research results, and also allowed to form a holistic idea of the place and role of church justice in the legal system of the Ukrainian Hetmanate of the 17th–18th centuries.

4. Results and Discussion

4.1. Historical and legal prerequisites for the formation and organizational structure of church justice

The conducted research shows that the church justice of the Ukrainian Hetmanate did not arise as a fundamentally new institution after 1648, but was the result of a long evolution of the legal traditions of Kyivan Rus, the Lithuanian-Polish period and Orthodox canon law. Its normative basis was the Kormchi Knigi, the Nomokanon, the church statutes of Princes Volodymyr and Yaroslav, as well as local legal customs that developed over several centuries. (Matseliukh, 2019) It was this normative heritage that ensured the institutional continuity of church justice in the transitional period from the Polish-Lithuanian Commonwealth to the Hetmanate and determined its place in the general system of the legal order of that time. The origins of church justice date back to the times of Kyivan Rus, when under the influence of Constantinople, Byzantine canon law was received through church collections, in particular the "Kormcha Kniga" (Ohloblyn, 1960; Lototskyi,1931). The jurisdiction of church courts of that early period was determined by the norms of the "Pravda Yaroslavovichi", according to which the church court was subject to the cases of all clergymen - clergy, their families, church servants, people living in monastery and church estates - as well as issues related to paganism, family and marital relations, etc. (Pravda Yaroslavovychiv, n.d.) Thus, already in the Old Russian period, a model had developed in which church jurisdiction covered a wide range of social relations, which went far beyond the limits of purely religious regulation. In the Lithuanian-Polish period, church justice underwent transformation under the influence of Western European legal tradition, but did not lose its institutional independence. As established in the scientific literature, the entry of Ukrainian territories into the Grand Duchy of Lithuania and the Kingdom of Poland did not eliminate the existing system of church jurisdiction, although the latter underwent some changes due to transformations in state-church relations and other socio-political circumstances. At the same time, the tendencies characteristic of the Catholic Middle Ages did not allow Orthodox Christianity to lose its privileged status on Ukrainian lands: the state authorities of the Polish-Lithuanian Commonwealth, despite the confessional confrontation, retained certain legal positions for the Orthodox Church compared to other religious minorities

(Matseliukh, 2019). After the formation of the Hetmanate, there was a partial restoration of the traditions of Orthodox justice, which strengthened the role of church institutions in public life and gave them a new impetus for organizational development (Yavornytskyi 1990). The Hetmanate authorities purposefully took measures to restore and organize church justice, which was preserved in the people's memory as a phenomenon of ancient and legitimate tradition (Smolii et al., 1998). This process took place in the general context of the formation of a multi-level judicial system, within which church courts occupied a special place: they functioned not only as bodies for resolving legal conflicts, but also as an instrument for maintaining moral order and religious discipline in society. It was the need to ensure an appropriate level of morality that prompted church courts, originally focused on regulating purely religious relations, to extend their jurisdiction to a wider range of public affairs. The system of church courts of the Hetmanate was built on the principle of internal hierarchy and included three functional levels. The lower level was the parish courts, which operated at the level of villages and communities under the leadership of priests, village chieftains or elders. They considered minor civil and domestic disputes, as well as family cases, guided by the norms of customary law and morality. Parish courts played the role of first instance in most cases that arose directly in the church community, and were closest to the everyday life of parishioners. The middle level was the episcopal, or consistory, courts - bodies with broader competence, which acted as an appellate instance for decisions of parish courts and considered cases that, in their complexity or significance, went beyond the parish level. Finally, the monastery courts operated within the internal life of monasteries, regulating disciplinary relations within monastic communities (Yakovenko, 1998).

As Zakharchenko and Miroshnychenko (2023) note, the cases of the clergy and laity in church and family and matrimonial matters were subject to the jurisdiction of the ecclesiastical courts, which considered individual civil cases with the participation of lay persons, as well as civil and criminal cases of church ministers, even when one of the participants in the process was a lay person. This feature indicated that the ecclesiastical jurisdiction in the Hetmanate was not limited to the closed corporate environment of the clergy, but had the character of a public legal institution integrated into the general system of justice. The functioning of the ecclesiastical courts was based on the norms of canon law formed under the influence of the Byzantine legal tradition, which, however, were applied taking into account local legal customs and the realities of Cossack society. Thus, the analysis shows that the system of church courts of the Hetmanate was the result of a synthesis of several legal traditions: Old Russian, Byzantine and Lithuanian-Polish. This system was distinguished by a developed hierarchical structure and provided for the consideration of both clergy cases and certain categories of lay cases, functioning as an independent subsystem in the general structure of the judiciary of the Cossack state.

4.2. Jurisdiction and procedural features of church justice in the Hetmanate

It has been established that during the 17th–18th centuries. there was a gradual narrowing of the competence of church courts. If at the initial stage of the Hetmanate's existence, the ecclesiastical courts considered a wide range of family, moral and religious cases, then over time a significant part of their powers passed to the regimental, hundred and city courts. This trend was not accidental: it reflected a more general process of strengthening the military-administrative power of the Cossack state and the gradual displacement of the church from the public legal sphere. The author's analysis of the court decisions of the Hetmanate showed that the main types of crimes that remained within the jurisdiction of church courts included crimes against faith, church, family and morality. For their commission, a differentiated system of punishments was applied, the characteristic feature of which was the consideration of the specific circumstances of the case and the individualization of the measure of responsibility in accordance with the gravity of the committed act. Criminal actions against the clergy - encroachment

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on life or health, theft of church property, adultery - were classified as crimes of great gravity and in some cases were punishable by the death penalty, and in some cases by quartering.

At the same time, certain categories of cases that formally related to the religious sphere were transferred to the exclusive competence of secular bodies. In particular, cases of serious crimes against faith, primarily witchcraft, were attributed to the jurisdiction of secular courts. The procedural and legal basis of responsibility for these crimes was regulated by the norms of Magdeburg law - the Grodsky Statute, which provided for criminal liability for apostasy and witchcraft (Porzadek sadow mieiskich, 1629). Such a distinction was due to the specifics of the social worldview of that time: patriarchal society, limited in knowledge about natural processes, associated natural phenomena - storms, droughts, floods - with the supernatural activity of specific individuals. This gave the relevant cases a vivid public-legal character and, accordingly, required a reaction from the state, and not only the church authorities. The procedural activity of the church courts of the Hetmanate had a distinct specificity, which fundamentally distinguished it from secular proceedings.

Proceedings in church courts combined written and oral forms: written proceedings were used mainly in episcopal courts when considering appeals and complex cases, while parish proceedings were mostly oral in nature and were based on customary procedure. The key role in the evidentiary activity of church courts was played by witness testimonies. Oral testimony was of paramount importance, especially in cases of moral offenses, where the establishment of factual circumstances often depended entirely on the testimony of members of the church community. The oath served as an independent means of proof and at the same time a moral and religious obligation: breaking the oath was equated with a grave sin, which gave this procedural institution a special persuasive force. Along with oral forms of proof, written documents were widely used in episcopal courts - letters, acts, certificates of spiritual authority - which indicates the gradual formation of a written procedural culture in the system of church justice. The peculiarity of the church process was manifested primarily in the system of sanctions. Punishment in the church court had a clearly expressed moral and corrective, and not only punitive, character. The system of church sanctions included repentance, the imposition of penance, and excommunication. Repentance as a form of responsibility implied a public confession of guilt before the church community and carried an element of social condemnation. Penance was a certain complex of spiritual exercises - prayers, fasts, bows - intended for the spiritual purification and correction of a person. Excommunication from the church was the most severe punishment: it actually excluded the convicted person from the religious and social life of the community, which under the conditions of the 17th-18th centuries. had extremely serious practical consequences. Unlike secular justice, the purpose of church punishment was not only to achieve justice and prevent crime, but also to spiritually correct a person, reconcile him with God and the church community. This determined the special nature of the evidence in the church process: the court assessed not only the factual circumstances of the case, but also the moral state of the parties, their behavior in the church community, attitude to religious norms and duties. The process in the church court, therefore, had a distinct moral and ethical orientation, which distinguished it fundamentally from the practice of secular judicial bodies.

Although the church courts operated autonomously, their procedural activities were closely linked to secular authorities. In some cases, the decisions of the church courts were implemented with the assistance of the secular administration, which indicates the functional integration of these institutions into the general justice system of the Hetmanate. However, this interaction had a certain asymmetry: the church depended on the secular authorities in matters of forced execution of its decisions, while secular bodies retained independence in determining the boundaries of church jurisdiction.

Thus, the church justice of the Hetmanate was distinguished by a unique procedural structure, which combined elements of canon law, customary tradition and practical needs of Cossack society. The gradual narrowing of the jurisdiction of church courts in favor of military-administrative bodies did not destroy the procedural originality of the church process, but significantly limited the scope of its practical application.

4.3. Interaction between Church and Secular Authorities and Transformation of Church Judiciary after 1686

The study showed that the relationship between church and secular authorities in the Ukrainian Hetmanate was based on the principle of mutual support, but in the field of justice this interaction was clearly asymmetrical: the advantage gradually and steadily passed to the military-administrative bodies of the Hetmanate. The catalyst for this process was the national liberation war led by B. Khmelnytsky against the Polish-Lithuanian Commonwealth (1648–1676), which radically changed the balance of power between the church and the Cossack administration. In the first period of the Hetmanate's existence, the mechanism of interaction between church institutions and the Cossack administration was indeed based on the principle of mutual support. The Hetmanate provided material support for the church, protected its property and privileges, the Hetmanate universals of that time broadly regulated issues of church life and protected the clergy from the abuses of the Cossack elders and ordinary Cossacks [6, pp. 88–89]. In return, the church provided ideological legitimation to the new state power, sanctifying Cossack statehood with the authority of the Orthodox tradition. However, in the field of justice, this balance did not lean in favor of the church from the very beginning.

The Hetmanate universals did not establish a clear demarcation of jurisdiction between church and secular courts, which gave rise to legal uncertainty and numerous conflicts of competence. Later, the military-administrative power of the Hetmanate began to almost completely replace the church even in matters that had not previously caused discussions about jurisdiction. In fact, the church courts were left with the right to consider only intra-church cases, while the entire array of cases of a public or mixed nature was transferred to the regimental, hundred and city courts. A striking example of such a redistribution of jurisdiction is the case of the Samara Monastery, in which Father Veniamin, the monastery's canon, was forced to apply to the Poltava regimental court, rather than to the church court, with a demand to punish those guilty of robbing and murdering monks. In this case, representatives of the church acted only as plaintiffs and witnesses, while judicial power belonged entirely to secular bodies. This case illustrates the general trend: even in cases directly related to the protection of church property and the life of the clergy, the church turned out to be deprived of its own effective legal instruments and was forced to rely on the will of the Cossack administration. A turning point in the history of the church judiciary of the Hetmanate was the subordination of the Kyiv Metropolis to the Moscow Patriarchate in 1686. This decision, caused by a complex combination of foreign political circumstances, had far-reaching consequences for the legal status of Ukrainian church courts.

As Matveeva notes in the article "Sources of Ukrainian National Law of the Hetmanate," the tsarist government formally preserved Ukrainian church courts, since Ukrainian church law differed less from Russian than secular law. The sources of law of the Orthodox Church remained the Kormchi Knigi, the Nomokanon, and church statutes, and the contractual articles of 1654 stipulated that the rights granted from ancient times by princes and kings to clergymen "were not violated in any way." By a charter of 1686, the Russian patriarch was forbidden to interfere in the activities of Ukrainian church courts and accept complaints about their decisions [10, p. 154]. However, formal guarantees of autonomy turned out to be fragile. Already in the 18th century. the situation changed dramatically: Russia's interference in the activities of the courts of the Ukrainian Orthodox Church increased, and Russian legislation became increasingly

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established among the main sources of church law. The Spiritual Regulations became the main source of church law; to it were added the Monastery Regulations, the Statute on Church Succession, decrees of the imperial authority, resolutions of the government Synod, as well as the resolutions of the Patriarch and the resolutions of the Eastern emperors recorded in church books; finally, the Steering Books were now used in the context of general imperial church law [10, p. 154]. It has been established that after the subordination of the Kyiv Metropolis to the Moscow Patriarchate, the church judiciary of the Hetmanate gradually lost its autonomous character. If during the second half of the 17th century. it still retained relative independence, relying on traditional canonical sources and local legal customs, then during the 18th century. the complete integration of Ukrainian ecclesiastical courts into the general imperial legal system took place. This transformation meant not only a change in the normative basis of church judiciary, but also the actual liquidation of its institutional independence: Ukrainian church courts became an element of a single all-Russian system of governance of the Orthodox Church, controlled by the Holy Synod.

Thus, the system of church justice of the Hetmanate underwent a radical transformation: from a relatively independent institution, based on the domestic canonical tradition, to a component of the general imperial legal system. This process took place in two stages: first, a gradual narrowing of jurisdiction in favor of the Cossack administrative bodies within the Hetmanate itself, and then, incorporation into the Moscow church-legal system as a result of 1686 and subsequent reforms of the 18th century. Both vectors of transformation led to the same result: church justice, which at the beginning of the Hetmanate's existence played a noticeable role in public life, gradually turned into a purely intra-church institution with minimal public-legal significance.

5. Conclusion

The conducted comprehensive historical and legal study of church justice in the Ukrainian Hetmanate (Zaporozhian Army) of the 17th–18th centuries allows us to formulate a number of scientifically substantiated conclusions that reflect both the theoretical and practical significance of the institution under study.

Firstly, it was established that the church justice of the Hetmanate did not arise as a fundamentally new legal institution after 1648, but was the result of a long evolution of the legal traditions of Kyivan Rus, the Lithuanian-Polish period and Orthodox canon law. Its normative basis was the Kormchi Knigi, the Nomokanon, the church statutes of Princes Volodymyr and Yaroslav, as well as local legal customs. It was this normative heritage that ensured the institutional continuity of church justice in the transitional period from the Polish-Lithuanian Commonwealth to the Hetmanate. Therefore, church justice should be considered not as a contingent element of the Cossack legal system, but as an organic continuation of the centuries-old canonical legal tradition, adapted to new socio-political conditions.

Secondly, it is proven that the system of church courts of the Hetmanate was distinguished by a developed hierarchical structure, which included three functional levels: parish courts as bodies of primary consideration of small civil, domestic and family cases; episcopal (consistory) courts as an appellate instance with broader competence; monastery courts, which regulated the internal disciplinary life of monastic communities. This three-level structure ensured the coverage of a wide range of social relations and testified to the maturity of church justice as an independent legal institution integrated into the general system of justice of the Cossack state.

Thirdly, the analysis of the competence of church courts showed that during the 17th–18th centuries. there was a gradual but steady narrowing of their jurisdiction. At the initial stage of the Hetmanate's existence, the church courts considered a wide range of cases - matrimonial and family, moral and religious, disciplinary cases concerning the clergy, as well as certain categories of property disputes. Over time, a significant

part of these powers passed to the regimental, hundred and city courts. Such crimes as witchcraft and blasphemy, which previously belonged to the church jurisdiction, were transferred to the competence of secular bodies and were regulated by the norms of Magdeburg law. This process reflected a more general trend of strengthening the military-administrative power of the Cossack state and the gradual displacement of the church from the sphere of public justice.

Fourth, it was found that the ecclesiastical justice of the Hetmanate had a distinct procedural identity, which fundamentally distinguished it from the practice of secular judicial bodies. The trial in the ecclesiastical courts combined oral and written forms: witness testimony and oaths were the central means of proof, while in the episcopal courts, written documents were actively used - letters, acts and certificates of spiritual authority. The system of sanctions included repentance, penance and excommunication, and their purpose was not only punishment, but also spiritual correction and reconciliation of the individual with the church community. It was this moral and corrective orientation of the process that determined its special significance in the conditions of a society in which religious and legal norms were inextricably linked.

Fifth, a study of the interaction between church and secular authorities showed that these relations were built on the principle of mutual support, but in the field of justice they were clearly asymmetrical. The Hetman administration provided material protection for the church and its privileges, while the church provided ideological legitimization for Cossack statehood. However, the lack of a clear normative demarcation of jurisdiction between church and secular courts gave rise to legal uncertainty and systematic conflicts of competence. The case of the Samara Monastery is a telling example: even in matters of protecting church property and the life of the clergy, church representatives were forced to apply to the regimental court as plaintiffs, and not as subjects of jurisdiction. This illustrates the actual subordination of church justice to the military-administrative bodies of the Hetmanate.

Sixth, it is established that the subordination of the Kyiv Metropolis to the Moscow Patriarchate in 1686 was a turning point in the institutional history of church justice. Despite the formal guarantees of autonomy enshrined in the contractual articles of 1654 and the charter of 1686 prohibiting interference in the affairs of Ukrainian church courts already in the 18th century. these guarantees proved to be unviable. The main source of church law increasingly became Russian legislation: the Spiritual Regulations, the Monastic Regulations, decrees of the imperial authorities and resolutions of the Synod gradually supplanted traditional canonical sources. As a result, Ukrainian church courts were integrated into the general imperial church-legal system controlled by the Holy Synod, and finally lost their institutional independence.

Summing up the results of the study, it should be emphasized that the church judiciary of the Hetmanate played an important role in the formation of the Ukrainian legal tradition, ensuring social discipline and preserving the moral and religious principles of the social order. The spiritual courts functioned as an independent legal institution with their own regulatory framework, hierarchical structure and procedural specificity, which indicates the maturity and self-sufficiency of the church judiciary as an element of the legal system of the Cossack state. At the same time, the progressive narrowing of their competence and subsequent incorporation into the general imperial legal system of Russia after 1686 made it impossible to preserve the institutional independence that had been formed over the previous centuries. The study of this experience remains relevant for modern science, as it allows us to more deeply understand the processes of formation of Ukrainian justice, the origins of interaction between the state and the church, and the specifics of the evolution of legal institutions in conditions of external pressure on state sovereignty.

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INTERNATIONAL COMPENSATION MODELS FOR COMPENSATION FOR DAMAGE CAUSED BY ARMED AGGRESSION AS TOOLS FOR THE PROTECTION OF HUMAN RIGHTS

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Abstract

The article provides a comprehensive analysis of international compensation models for compensation for damage caused by military actions, with a special emphasis on the activities of the International Criminal Court. The legal nature of reparations as a tool for restoring the violated rights of victims as a result of international crimes is investigated. The main types of reparations are disclosed, in particular, restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition, as well as the features of their application in international practice. The mechanisms for implementing reparations in the activities of the ICC are analyzed, including the role of the Trust Fund for Victims. Particular attention is paid to the analysis of the Court's modern practice, which demonstrates the gradual formation of a comprehensive approach to compensation for damage. International compensation mechanisms operating outside the ICC are investigated, in particular, the activities of the UN Compensation Commission and the creation of the Register of Damages for Ukraine as an element of the future compensation system. Their legal nature, functional features and significance for the formation of an effective compensation model are determined. Separately, the main problems of implementing international compensation mechanisms are analyzed, including limited financial resources, the complexity of implementing decisions, and institutional restrictions. It is established that existing mechanisms do not always provide full and timely compensation for victims. In this regard, the need to improve international compensation models through their institutional integration and expansion of funding sources is substantiated. Special emphasis is placed on the relevance of the researched issues for Ukraine in the context of armed aggression and the need to form an effective system of compensation for damage. As a result, a conclusion is formulated on the expediency of combining mechanisms of international criminal justice and specialized compensation instruments. It is substantiated that a comprehensive approach to compensation for damage is a key prerequisite for restoring the rights of victims and ensuring justice

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Keywords: international criminal law, reparations, compensation for damage, International Criminal Court, armed conflict, military conflict, Ukraine.

1. Introduction

Modern military and armed conflicts are accompanied by large-scale violations of human rights and the norms of international humanitarian law, which creates an urgent need to form effective, fair and accessible mechanisms for compensating victims. The massiveness and systemic nature of such violations, their long-term consequences for individuals and communities, as well as the complexity of bringing perpetrators to justice, make the issue of not only punishment, but also the restoration of violated rights, compensation for material and non-material losses, and the rehabilitation of victims relevant. In this context, international compensation models acquire special importance as tools for restoring justice, aimed at ensuring a balance between the interests of victims, the state and the international community. They include various forms of reparations - from individual monetary compensation to collective recovery programs, symbolic measures of recognition and guarantees of non-repetition. The development of such models takes place within the framework of international criminal law, international humanitarian law and human rights law, which determines their complex and interdisciplinary nature (Kanienberh-Sandul, 2022).

A special role in the formation of modern approaches to compensation for damage is played by international judicial institutions, which not only establish the fact of the commission of international crimes, but also form standards of reparations (Vazhna,2016). In this context, the International Criminal Court plays a key role, the activities of which combine the functions of bringing to individual criminal responsibility and ensuring compensation for damage to victims. The introduction of reparations mechanisms in its practice has become an important step in the development of international justice focused on the victim. At the same time, the effectiveness of such mechanisms remains limited due to a number of objective and subjective factors, in particular the complexity of identifying victims, limited financial resources, problems with the implementation of court decisions, as well as dependence on the political will of states (Voitsikhovskyi et al., 2025). This necessitates the search for alternative and additional compensatory instruments, including those outside the framework of international criminal justice.

This issue is of particular relevance in the context of modern international conflicts, in particular in connection with the aggression against Ukraine, which caused significant human losses, destruction of infrastructure and large-scale economic losses. Under such circumstances, the issue of forming an effective international compensation model capable of ensuring real compensation for damage goes beyond the limits of a purely theoretical discourse and acquires practical significance.

Thus, the study of international compensation models for compensation for damage caused by military actions, taking into account the practice of the International Criminal Court and other international mechanisms, is an important direction of modern legal science, aimed at increasing the effectiveness of the protection of the rights of victims and the development of international justice.

Despite the development of international criminal justice, the problem of effective compensation for damage caused by military actions remains one of the most complex and controversial in modern legal science and practice. The scale of violations accompanying armed aggression, as well as their complex nature (combination of material, moral and environmental damage) significantly complicate the formation of universal and effective compensation mechanisms.

Existing international instruments for compensation for damage are characterized by fragmentation, limited financial resources, complexity of access procedures for

victims and difficulties in implementing decisions. A significant part of compensation mechanisms is ad hoc in nature and is created to resolve specific situations, which makes it impossible to form a stable and predictable system for restoring the rights of victims.

An additional problem is the gap between the establishment of international criminal responsibility and the actual receipt of compensation by victims. Even in cases of decisions issued by international judicial institutions, their implementation often depends on the cooperation of states, the availability of assets of convicted persons or the political will of the international community. As a result, victims are often left without effective compensation, which undermines trust in international justice.

This problem becomes particularly acute in the context of modern armed conflicts, primarily in Ukraine, where the amount of damage caused is unprecedented. This highlights the need to find new approaches to the formation of compensation models that would combine the capabilities of international criminal justice, interstate mechanisms and national legal instruments.

Thus, there is an objective need for a comprehensive scientific study of international compensation models aimed at identifying their shortcomings, identifying areas for improvement and forming an effective system of compensation for damage caused by military actions.

The purpose of the article is a comprehensive study of international compensation models for compensation for damage caused by military actions, taking into account modern trends in the development of international law. Special attention is paid to determining the role of the International Criminal Court in the formation and implementation of effective reparations mechanisms for victims of international crimes. The study is intended to analyze the legal nature, types and features of the application of compensation instruments in international practice. A separate task is to identify problems in the functioning of existing compensation mechanisms and assess their effectiveness. The study is also aimed at determining the prospects for the development of international compensation models, in particular in the context of modern armed conflicts. Special emphasis is placed on the possibilities of implementing relevant mechanisms in the legal system of Ukraine. As a result, it is intended to form scientifically based proposals for improving the system of compensation for victims.

The scientific novelty lies in the comprehensive approach to the analysis of international compensation models, which combines institutional and functional approaches. The paper argues that the effectiveness of compensation mechanisms depends on their integration into the broader system of international justice, and also proposes the author's vision of the role of the ICC as an element of the global system of compensation for damage.

2. Literature Review

The issue of compensation for victims of international crimes and armed aggression is at the intersection of several branches of international law international criminal law, international humanitarian law and human rights law, which determines the interdisciplinary nature of scientific research in this area. Despite a significant array of scientific publications, a comprehensive comparative analysis of international compensation models in the context of the activities of the International Criminal Court and their applicability to the situation in Ukraine remains insufficiently developed in domestic legal science. The fundamental principles of international legal responsibility of states and mechanisms for compensation for damage have been studied mainly in foreign doctrine (Vazhna, 2016). The adoption by the UN International Law Commission of the Articles on the Responsibility of States for Internationally Wrongful Acts in 2001, which codified the principle of full compensation for damage as a universally binding consequence of a wrongful act, was decisive for the development of this area. This document and the practice of its application in the decisions of the International Court

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of Justice of the United Nations in particular in the cases of Nicaragua v. USA, Hungary v. Slovakia, Democratic Republic of the Congo v. Uganda and Costa Rica v. Nicaragua have formed the normative and doctrinal basis on which modern researchers rely when analyzing the compensatory obligations of states. Among domestic scholars who have made a significant contribution to the study of the legal nature of international responsibility and reparations, Voitsikhovsky, Kolomiets and Vatamanyuk should be highlighted first of all. In their joint work, dedicated to compensation for damage as a form of international legal responsibility of Russia for armed aggression against Ukraine, a comprehensive analysis of the compensatory mechanism was carried out in the context of the experience of the UN Compensation Commission and the possibilities of its adaptation for Ukraine were substantiated. The authors convincingly prove that the UNCC model, which provided payment of over 52.5 billion US dollars for over 2.7 million claims of victims of Iraqi aggression, can serve as a guideline for the formation of a similar mechanism for damages caused by the Russian Federation.

A separate area of scientific research is the analysis of the activities of the International Criminal Court as an institution that combines the functions of criminal prosecution and provision of reparations. A significant contribution to the development of this issue was made by Vyhna, who studied the issue of defining the concept of the international crime of aggression and the effectiveness of the ICC mechanisms in protecting human rights. The author argues that the adoption of a unified definition of aggression at the universal convention level is a necessary prerequisite for increasing the effectiveness of the fight against this crime, in particular in terms of bringing to justice and compensating victims.Kanyenberg-Sandul in her research analyzes the evolution of the international justice system and determines their role in shaping standards of responsibility for international crimes.

The legal nature of restitutionary and compensatory measures as instruments for restoring violated rights was studied by Kozachenko and Musychenko. In their joint work, it is substantiated that restitution and compensation are independent types of criminal law measures that have deep historical roots in Ukrainian law, but remain insufficiently developed in current legislation. These conclusions are of direct importance for understanding the mechanisms of compensation for damage in the context of international criminal justice.

The issue of forming an effective system of international legal protection of Ukraine in conditions of armed aggression is the focus of attention of a number of domestic specialists in public international law - in particular Chentsov, Vysotsky, Tsirat and other researchers who analyze the legal instruments for holding the aggressor state accountable at various international platforms. Their works form an important theoretical context for understanding the place of Ukraine in the system of international compensation mechanisms. At the same time, an analysis of the scientific literature indicates the presence of significant gaps in the study of the issue under study. First, most of the existing works focus either on general issues of international responsibility of states, or on the analysis of individual mechanisms - the ICC, the ECHR, the UNCC - outside their systemic relationship. Second, a comparative analysis of various compensation models from the standpoint of their institutional effectiveness and practical accessibility for victims remains practically absent in domestic doctrine. Thirdly, the issues of integrating international compensation mechanisms with national legal instruments of Ukraine require a separate scientific study taking into account current regulatory changes - in particular, the ratification of the Rome Statute and the creation of a Register of Damages for Ukraine.

Thus, despite the existence of separate thorough studies on related issues, a comprehensive analysis of international compensation models for damages from armed aggression, which would combine institutional, functional, and comparative approaches with a focus on the needs of Ukraine, remains a relevant scientific task, to

which the proposed study is devoted.

2. Materials and Methods

The source base of the study is a complex of international legal acts, judicial practice and doctrinal sources, which together provide the necessary normative and empirical basis for the analysis of international compensation models.

The basis of the normative base is universal international legal acts that define the principles of state responsibility and mechanisms for reparation for victims of armed aggression. First of all, these are the Articles on the Responsibility of States for Internationally Wrongful Acts, adopted by the UN International Law Commission in 2001, which codify the general principle of full reparation for damage as a mandatory consequence of a violation of international law. An equally important source is the Rome Statute of the International Criminal Court of 1998 - the main normative act that regulates both criminal prosecution for international crimes and reparations mechanisms for victims, including the activities of the Trust Fund for Victims. The Geneva Conventions of 1949 and their Additional Protocols are used as a fundamental source of international humanitarian law, which enshrines the obligations of the parties to the conflict to protect the civilian population and compensate for the damage caused. The UN Charter and Security Council resolutions, on the basis of which the UN Compensation Commission (UNCC) was established, constitute the normative basis for the analysis of out-of-court compensation mechanisms.

A separate group of sources consists of international agreements and institutional documents that directly relate to the compensation mechanism for Ukraine, in particular the founding documents of the Register of Damages for Ukraine (RD4U), established in 2023 under the auspices of the Council of Europe, as well as treaty articles 1654 and relevant resolutions of the UN General Assembly on the consequences of the aggression of the Russian Federation against Ukraine.

The empirical basis of the study is the practice of international judicial institutions. The key decisions of the International Court of Justice of the United Nations are analyzed, in particular in the cases of "Nicaragua v. USA", "Hungary v. Slovakia", "Democratic Republic of the Congo v. Uganda" and "Costa Rica v. Nicaragua", which have formed doctrinal standards of compensation for damage in international law. The practice of the ICC in terms of the award of reparations and the activities of the Trust Fund for Victims is studied. The UNCC statistical data on the results of its activities after the aggression of Iraq against Kuwait - in particular, on the volumes of payments made and the number of applications considered - which serve as a comparative reference point for assessing the effectiveness of compensation mechanisms are also used. The doctrinal basis is the works of domestic and foreign specialists in the field of international criminal law, human rights law and international humanitarian law.

The methodological basis of the study is a complex of interrelated general scientific and special legal methods, the application of which in combination ensured the comprehensiveness and scientific reliability of the results obtained.

The dialectical method was applied as a general philosophical approach, which allowed us to consider international compensation mechanisms not as static legal constructs, but as institutions that are in constant development under the influence of changes in the international legal order, the transformation of armed conflicts and the evolution of law enforcement practice. It is through this lens that we can trace how the system of international compensation for damage gradually became more complicated and institutionally enriched from the 1949 Geneva Conventions to the establishment of the ICC in 1998 and the creation of RD4U in 2023.

The system-structural method was used to analyze international compensation models as elements of a single multi-level system of international justice. Thanks to this method, the functional relationships between the individual institutional components

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of this system were established, and the place of each of the mechanisms in the general architecture of compensation for damage to victims of armed aggression was also determined.

The formal-legal method was used to analyze the normative content of international legal acts primarily the Rome Statute, the Articles of the UN Charter on State Responsibility, the Geneva Conventions, and the founding documents of compensation bodies. This method made it possible to accurately establish the content of legal norms that determine the grounds, procedure, and limits of compensation for damage to victims, as well as to identify conflicts and gaps in the current regulatory framework.

The comparative-legal method was used to compare various international compensation mechanisms with each other according to the criteria of legal nature, institutional structure, accessibility for victims, and practical effectiveness. A comparative analysis of the UNCC experience in compensating for damage from Iraqi aggression and the mechanism being formed for Ukraine made it possible to identify both common features and fundamental differences that are of practical importance for developing an optimal compensation model.

The hermeneutic method was used to interpret the practice of the ICC in terms of awarding reparations, as well as to interpret the decisions of the International Court of Justice, which formulated key doctrinal standards of compensation for damage. This method proved to be particularly productive in the analysis of the decision in the Chorzów Factory case, where the Permanent Chamber of International Justice formulated the principle according to which compensation is an inherent consequence of the breach of an international obligation. The methods of analysis and synthesis provided the systematization of scientific approaches to understanding the nature of international compensation mechanisms, the generalization of the results of the study of individual institutions and the formulation of conclusions on ways to improve the system of compensation for damage, taking into account the needs of Ukraine. The comprehensive application of the above methods ensured the internal consistency of the study, the objectivity of its results and the validity of the formulated conclusions and proposals.

3. Results and Discussion

International compensation models represent a multi-level system of legal mechanisms aimed at compensating for material and non-material damage caused as a result of international crimes and armed aggression. Such models are formed at the intersection of international criminal law, international humanitarian law and human rights law, which determines their complex and interdisciplinary nature. They can be implemented both at the individual and collective levels, and their main goal is not only to compensate for the damage caused, but also to restore violated rights, rehabilitate victims and ensure justice. The normative basis of the modern system of international compensation for damage is the Articles on the Responsibility of States for Internationally Wrongful Acts, adopted by the UN International Law Commission at its fifty-third session in 2001 and submitted to the General Assembly as part of the Commission's report (A/56/10). Article 31 of this document establishes the general principle that the responsible State is obliged to make full reparation for the damage caused by the internationally wrongful act, including any material or moral loss [3]. The obligation to make full reparation is the second general obligation of the responsible State arising from the commission of an internationally wrongful act. The doctrinal basis for this principle was laid down by the Permanent Court of International Justice in the Chorzów Factory case, where the court formulated the fundamental principle that a breach of an obligation entails an obligation to make reparation in due form, and that reparation is an integral part of the failure to apply the Convention [3]. The further

development of this principle is reflected in the practice of the International Court of Justice — in particular in the cases of Nicaragua v. USA [8], Slovakia v. Hungary [9], Democratic Republic of the Congo v. Uganda [10] and Costa Rica v. Nicaragua [11] — which confirm that reparation is a universal obligation of a state that has violated international law, regardless of its consent to recognize such a violation. In accordance with the erga omnes principle, a violation of a peremptory norm of international law poses a threat not only to an individual state, but also to the entire system of international legal order [12, p. 10]. An important stage in the formation of the normative framework for international reparation was the adoption of the Geneva Conventions on August 12, 1949 in Geneva at a Diplomatic Conference with the participation of representatives of more than 60 states of the world. Today, the Geneva Conventions and their Additional Protocols are the foundation of international humanitarian law and unite all states in the world [1]. It is these documents that laid the principle of responsibility for harm caused to the civilian population during armed conflicts, and thereby prepared the ground for the further development of international compensation mechanisms. International mechanisms for the protection of human rights provide for various forms of reparations, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Each of these forms has its own legal nature and specific application depending on the nature of the harm caused. Restitution is aimed at restoring the previous state that existed before the commission of the wrongful act; compensation covers material and moral damages that cannot be compensated through restitution; rehabilitation involves the provision of medical, psychological and social assistance to victims; satisfaction provides a symbolic recognition of responsibility; guarantees of non-repetition are preventive in nature and are aimed at preventing future violations.

To implement international compensation mechanisms, it is fundamentally important to establish a causal link between the unlawful act and the damage caused, as well as to determine the circle of persons entitled to compensation. As noted by O. V. Kozachenko and O. M. Musychenko, restitution and compensation are a new type of criminal law measures for modern national criminal legislation, although the historical development of the legislation that operated on Ukrainian lands indicates the existence of similar measures in previous historical eras [2, p. 463]. This conclusion emphasizes that compensation mechanisms have deeper roots than is commonly believed and are not a purely new creation of international law. The central place in the modern system of international compensation is occupied by judicial institutions, primarily the International Criminal Court. Its activities began on the basis of the Rome Statute, adopted on July 17, 1998 in Rome by 120 states [4; 5]. For the first time in history, states have recognized the jurisdiction of the permanent international criminal court as an independent body to prosecute persons who have committed the most serious crimes. The Rome Statute entered into force on July 1, 2002; Ukraine ratified it on August 21, 2024, and for it it entered into force on January 1, 2025. The fundamental feature of the ICC is that it combines the functions of criminal prosecution and providing reparations to victims through the mechanism of the Trust Fund for Victims. As K. A. Vyhna notes, the ICC is one of the most significant institutions of international criminal law, which is constantly developing and influences the mechanisms for investigating international crimes and protecting human rights. The author also points to the urgent problem of the lack of a unified definition of aggression at the universal convention level, which reduces the effectiveness of the fight against this crime [6, p. 33]. Along with the ICC, the International Court of Justice, the principal judicial organ of the United Nations, plays an important role in the system of international justice, in accordance with Article 92 of the UN Charter [7]. O. K. Kanenberg-Sandul characterizes the modern system of international justice as one that is implemented through the International Court of Justice, the European Court of Human Rights, and the International Criminal Court, each of which performs specific functions in the general architecture of human rights protection and accountability [13,

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p. 319]. The common denominator for all these institutions is the principle confirmed in numerous decisions: reparation is a universal and unconditional obligation of the offending state, the implementation of which does not depend on its good will. Along with judicial institutions, specialized extrajudicial mechanisms play an important role in the system of international reparation. The most striking example of their effectiveness is the United Nations Compensation Commission (UNCC), established after Iraq's armed aggression against Kuwait in 1991. The Commission, operating under the mandate of the UN Security Council, considered over 2.7 million applications and made payments totaling over 52.5 billion US dollars. Financing was provided by deductions from Iraqi oil exports, which guaranteed the stability and predictability of payments. As A. V. Voytsikhovsky, Y. M. Kolomiyets and R. V. Vatamanyuk note, this experience has proven the effectiveness of a compensation mechanism based on the principles of international law, a specialized institutional structure and the availability of a guaranteed source of funding [12, p. 14]. It was the UNCC model that largely determined the approach to the creation in May 2023 in The Hague of the Register of Damage for Ukraine (RD4U) - an international mechanism under the auspices of the Council of Europe, designed to document claims for compensation for damage caused by the aggression of the Russian Federation [14]. The register accepts applications from state bodies, legal entities and individuals, stores data in a secure database and ensures their further use in a future compensation fund or legal proceedings. Applications are submitted through a digital platform developed jointly with the Ukrainian authorities. RD4U is the first international mechanism of its kind, purposefully focused on compensation for damage caused by the aggression of a specific state, and constitutes the legal basis for future compensation payments, and also records the scale of destruction for the purposes of legal liability and historical memory. Despite the development of the institutional framework, the implementation of international compensation mechanisms faces a set of systemic problems. Firstly, limited financial resources and the absence of guaranteed sources of their formation make it impossible to provide full and timely compensation in cases of large-scale armed conflicts. Secondly, the complexity of identifying and verifying the circle of victims makes it difficult for real victims to access compensation procedures. Thirdly, the implementation of decisions of international judicial institutions depends on the cooperation of states and the availability of assets of convicted persons, which in practice often makes their implementation impossible. Fourth, political factors can block or significantly slow down the functioning of even technically advanced compensation mechanisms. Taken together, these problems demonstrate that the modern international compensation system does not yet provide full and effective compensation in the context of large-scale armed aggression. This necessitates the further improvement of existing mechanisms, the expansion of their financial base and institutional integration — primarily in the context of the formation of a full-fledged compensation system for Ukraine.

4. Conclusions

The conducted study of international compensation models for compensation for damage caused by armed aggression allows us to formulate the following scientifically substantiated conclusions.

Firstly, it was established that the legal basis of the modern system of international compensation for damage is the principle of full reparation, codified in the Articles of the UN Charter on the Responsibility of States for Internationally Wrongful Acts of 2001 and confirmed by the long-standing practice of international judicial institutions - from the Chorzów Factory case to the decisions of the International Court of Justice in the cases of "Nicaragua v. USA", "Democratic Republic of the Congo v. Uganda" and others. In accordance with the erga omnes principle, a violation of peremptory norms of international law is a threat to the entire international legal order, and not only to a

separate affected state, which imposes a collective duty of response on the international community. This principle serves as the foundation on which all specific compensation mechanisms are built.

Secondly, the analysis of the forms of reparations showed that restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition form a complementary system, the effectiveness of which is ensured only if they are applied comprehensively. None of these forms separately is able to fully restore the violated rights of victims: restitution is not always physically possible, monetary compensation does not eliminate moral damage, and guarantees of non-repetition lose their meaning without real punishment of the guilty. That is why the modern doctrine and practice of the ICC are moving in the direction of comprehensive reparation programs that combine material and non-material elements.

Thirdly, the role of the International Criminal Court as an institution that, for the first time in the history of international law, combined the functions of criminal prosecution and reparations within a single mechanism was examined. The Trust Fund for Victims has become an important tool that allows for compensation even in the event of the insolvency of the convicted person. At the same time, the practice of the ICC has revealed significant institutional limitations: the length of proceedings, the narrowness of personal jurisdiction and the dependence on the cooperation of states significantly narrow the practical accessibility of this mechanism for victims. The ratification of the Rome Statute by Ukraine in 2024 and its entry into force on January 1, 2025 open up new legal opportunities, but their implementation requires systematic and consistent work at the national level.

Fourth, a comparative analysis of non-judicial compensation mechanisms — primarily the UN Compensation Commission and the Register of Damages for Ukraine — has shown that specialized bodies with a clear mandate, guaranteed funding and simplified access procedures are able to provide much more effective compensation than traditional judicial institutions. The experience of the UNCC, which has reviewed over 2.7 million applications and made payments worth over $52.5 billion from deductions from Iraqi oil exports, is convincing evidence that large-scale compensation is practically feasible given the political will and institutional certainty. This experience should serve as a guide in the formation of a full-fledged compensation mechanism for Ukraine.

Fifth, a set of systemic problems has been identified that limit the effectiveness of existing international compensation mechanisms: the lack of stable sources of funding, the complexity of identifying victims, the difficulties of enforcing decisions, and the dependence on the political will of states. These problems are structural, not accidental, and cannot be eliminated within the framework of a separate mechanism without reforming the overall architecture of the international compensation system.

Summarizing the results of the study, it should be emphasized that an effective compensation system for Ukraine cannot be built on the basis of only one instrument. It requires a comprehensive approach that organically combines the capabilities of the ICC, the International Court of Justice, the ECHR, the Register of Damages, and the future specialized compensation fund, formed, among other things, from the frozen assets of the aggressor state. It is such an integrated model, based on proven international experience and taking into account the scale and specificity of the damage inflicted on Ukraine, that is the only realistic basis for ensuring fair and full compensation for millions of victims.

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MIGRATION POLICY IN THE CONTEXT OF NATIONAL AND RELIGIOUS SECURITY: A COMPARATIVE LEGAL ANALYSIS OF THE KAZAKHSTAN MODEL AND INTERNATIONAL EXPERIENCE

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Abstract

The globality and dynamics of migration flows observed over the past decades have led to increased interest in the study of institutional structures and regulatory mechanisms aimed at guaranteeing and protecting the legal status of migrants, as well as observing the interests of the state in the context of national security and religious stability. In this regard, the article pays attention to the study of the concept of the migration policy of the Republic of Kazakhstan and its role in the development of measures to respond to national security challenges arising as a result of the migration of people from different regions of the world belonging to different denominations. It is substantiated that migration is an objective social regularity, historically inherent in all societies and maintaining its relevance due to the natural desire of individuals to improve living conditions, determined by socio-economic and political factors. The authors, using various scientific research methods, believe that this trend emphasizes the need to develop and improve the state migration policy based on the analysis of law enforcement practice and the activities of state bodies that ensure the realization of the constitutional right of citizens to freedom of movement, choice of place of residence, and freedom of conscience. It is concluded that the state should form a system of measures to influence migration processes, based on a complex of principles, normative provisions and methodological approaches, taking into account the provision of national security interests. Along with the analysis of the Kazakhstan Concept, the article conducts a comparative legal analysis of approaches to the regulation of migration and religious security in a number of foreign states (Germany, Canada, Singapore, Turkey), which allows to identify universal regularities and specifics of national models of migration policy in the context of ensuring stability.

Keywords: Migration, migration policy, migrants' rights, national security, right to freedom of conscience.

1. Introduction

Migration policy is one of the key directions of modern state policy, ensuring regulation of migration processes, protection of the rights and legitimate interests of migrants, as well as observance of state interests in the sphere of public, national and

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economic security. Institutional mechanisms of migration policy are directed not only to the organization of the processes of entry, stay and integration of migrants, but also to the formation of a stable model of interaction between the state, society and persons participating in migration processes. That is why researchers consider migration policy as one of the priority directions of the state's political and social-economic activity (Rybakovskii and Martynenko, 2013). emphasizing that, despite its belonging to demographic policy, it has an impact on almost all spheres of public life (Crepaz, 2022). Such an approach is also confirmed by modern foreign scientific doctrine, according to which the effectiveness of the social state model is largely determined by the peculiarities of the implemented migration policy (Concept of the migration policy of the Republic of Kazakhstan for 2023–2027, 2023). In the conditions of globalization, the growth of international mobility of the population, armed conflicts and the strengthening of transnational threats, the migration policy acquires a new dimension, going beyond the traditional regulation of migration flows. Its interrelationship with issues of national and religious security is becoming more and more obvious. Mass migration is accompanied by the transfer of cultural, ethnic and religious identities, which has a direct impact on the confessional structure of the host society, the processes of social integration and the level of social stability. In the absence of effective mechanisms for the adaptation of migrants, there are risks of the formation of closed ethno-confessional communities, the spread of radical religious ideologies, the strengthening of inter-confessional tensions and the emergence of threats to national security. In this regard, the migration policy is not only an instrument for regulating the movement of the population, but also an important mechanism for preventing risks associated with religious extremism and the destructive use of freedom of religion. By means of migration legislation, procedures for the selection and verification of migrants, integration programs, requirements for knowledge of the language and the legal system, as well as interaction with religious organizations, the state is able to significantly influence the provision of social stability and interfaith harmony. At the same time, religious policy becomes an important element of integration policy, allowing to ensure the implementation of the constitutional right to freedom of conscience while maintaining a balance between human rights and national security interests. This issue is particularly relevant for the Republic of Kazakhstan, which is a multi-ethnic and multi-confessional state located at the intersection of significant migration routes. The adopted Concept of the migration policy of the Republic of Kazakhstan for 2023–2027 established the strategic directions of the state regulation of migration processes, focused on improving the management of various categories of migrants, developing integration mechanisms and ensuring sustainable social and economic development. At the same time, the analysis of the content of the Concept indicates the need for a more comprehensive understanding of the relationship between migration policy and the provision of national and religious security, as well as an assessment of the compliance of the Kazakhstani model with modern international approaches to the regulation of migration. A comparative and legal analysis of foreign experience shows that states that successfully ensure the stability of migration policy consider the issues of migrant integration and security as complementary elements of a single state strategy. Thus, German legislation links legal migration with mandatory integration measures; the Canadian model combines a system of selecting qualified migrants with a multi-level assessment of potential threats to national security; Singapore implements a complex model of maintaining interreligious harmony through a combination of migration regulation and state control mechanisms in the religious sphere. This experience represents significant scientific and practical interest for evaluating the effectiveness of the Kazakh model of migration policy and determining the direction of its further improvement.

Despite a significant amount of research devoted to migration policy, issues of complex interaction between migration, national and religious security remain

insufficiently developed. In the scientific literature, studies of either the legal regulation of migration or the provision of national security prevail, while the comparative legal analysis of the mechanisms of accounting for the religious factor in the formation of the state migration policy is limited. This determines the relevance of this research. The purpose of the article is to conduct a comparative legal analysis of the Concept of Migration Policy of the Republic of Kazakhstan in the context of ensuring national and religious security, as well as identifying opportunities for using international experience to improve the Kazakh model of migration regulation. To achieve the set goal, the following research tasks are defined: to analyze the relationship between migration policy and the provision of national and religious security; study the legal nature and content of the Concept of Migration Policy of the Republic of Kazakhstan for 2023–2027; carry out a comparative legal analysis of the approaches of Germany, Canada, Singapore and Turkey to the regulation of migration in the context of security; determine the peculiarities of the Kazakh model of migration policy and assess the degree of its compliance with modern international standards; formulate proposals for improving the migration legislation and strategic documents of the Republic of Kazakhstan taking into account international experience.

2. Literature Review

Modern scientific literature considers migration policy as a complex institution of state management, located at the intersection of demographic, economic, social and legal policies. At the same time, in recent decades, the research focus has gradually shifted from the traditional understanding of migration policy as a tool for regulating migration flows to its perception as one of the key mechanisms for ensuring national security, social stability and sustainable development of the state. Classical studies in the field of migration policy were mainly focused on the study of patterns of international population migration, factors of migration mobility and state regulation of migration processes. One of the most fundamental studies remains the work of V.A. Iontsev, who considers international migration as an objective social phenomenon accompanying the development of states regardless of the historical period and level of their economic development (Iontsev, 1999). The author emphasizes that the state migration policy must take into account the diversity of forms of migration and is based on a combination of international legal standards and national interests. The development of this scientific tradition can be traced in the works of Rybakovsky and Martynenko (2013), who consider migration policy as an independent direction of state policy, possessing its own system of goals, principles and implementation tools. According to researchers, the effectiveness of migration policy is determined by the state's ability to simultaneously regulate migration flows, ensure the protection of migrants' rights, and meet the needs of the country's social and economic development. A similar position is taken by Okladnikova (2014), which emphasizes the need for a differentiated approach to different categories of labor migrants and emphasizes the importance of the mechanisms of their adaptation in the host society. A separate direction of research is devoted to the relationship between migration policy and the social state model. In the collective monograph Handbook on Migration and Welfare, edited by Crepaz (2022), migration policy is considered through the prism of the functioning of social welfare institutions and state responsibility for the integration of migrants. The authors show that modern European states are gradually moving away from an exclusively liberal understanding of freedom of movement, strengthening demands for the social and legal integration of migrants. As a result, the effectiveness of migration policy begins to be assessed not only by the quantitative indicators of migration, but also by the state's ability to prevent social segregation, ensure intercultural dialogue and maintain social stability. A significant contribution to the development of the theory of state migration policy was made by Canadian researchers Simmons and Keohane (1992). Analyzing the evolution of the Canadian immigration

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policy, the authors came to the conclusion that its content is determined not only by the economic interests of the state, but also by the need to ensure the public legitimacy of the decisions made. According to researchers, migration policy is the result of interaction between state institutions, political actors, ethnic communities and civil society organizations. This approach significantly expanded the traditional understanding of migration policy, considering it as an element of public administration based on the search for a balance between state interests and the protection of human rights. Along with the development of the institutional approach in the scientific literature, a direction of research connecting migration policy with ensuring national security was gradually formed. One of the first to consistently substantiate this relationship was Weiner (1995), who showed that migration processes are capable of having a direct impact on the political stability of states, the effectiveness of the functioning of state institutions, and the security of national borders. According to his concept, migration policy becomes part of the general strategy of state security, as it allows the state to control the scale and nature of migration flows.

The modern development of this concept is presented in the work of D. FitzGerald [14], devoted to the policy of providing asylum in developed democratic states. The author shows that modern states are increasingly using migration legislation as a tool to prevent potential security threats, strengthening border control, identity verification procedures, and migrant selection mechanisms. At the same time, the researcher draws attention to the need to maintain a balance between the protection of human rights and the provision of national security, since excessive tightening of the migration regime can lead to the restriction of the internationally recognized rights of refugees and persons in need of international protection. Further development of the safety-oriented approach can be traced in the study by Burda, Gerasimova and Ochacha (2019) . The authors consider migration policy as an independent instrument for ensuring state security, emphasizing that modern migration strategies must take into account not only economic and demographic indicators, but also the risks of the spread of extremism, organized crime, illegal migration and other transnational threats. Researchers note that the effectiveness of migration policy is determined not by the number of restrictive measures, but by the state's ability to create a complex system of managing migration processes, including mechanisms for integration, monitoring and interagency cooperation. However, the analysis of the existing literature shows that much less attention is paid to the study of the relationship between migration policy and religious security. Most authors consider the issues of the religious identity of migrants only as one of the elements of integration policy, while the independent influence of migration on changing the religious space of the host state remains insufficiently studied. The number of comparative legal studies analyzing the use of migration policy as a tool for preventing religious extremism while simultaneously observing the right to freedom of conscience is particularly limited. In the scientific literature of the Republic of Kazakhstan, issues of the formation of the state migration policy were studied mainly from the standpoint of improving the legal regulation of migration processes. Yes, Dzhansaraeva (2015) considers the concept of migration policy as the basis for the formation of a unified state migration management strategy focused on solving demographic, economic and social problems. At the same time, the issues of the relationship between migration policy and religious security are considered only fragmentarily in the specified studies. The modern Kazakh model of migration policy is enshrined in the Concept of Migration Policy of the Republic of Kazakhstan for 2023–2027, which provides for a comprehensive approach to the regulation of internal and external migration, the development of migrant adaptation mechanisms, and the improvement of state management of migration processes. However, the analysis of the content of the Concept shows that the issues of religious security have not received independent normative approval as one of the strategic directions of migration policy, despite their direct connection with ensuring national

security. A comparative and legal analysis of foreign models confirms the existence of different approaches to solving this problem. In Germany, the development of migration policy is accompanied by mandatory integration programs and legal mechanisms for the social adaptation of migrants, which is reflected in the annual reports of the Federal Office for Migration and Refugees (BAMF) (Federal Office for Migration and Refugees, 2023). The Canadian model is based on the principles of multiculturalism enshrined in the Multiculturalism Act (Canada. (1988), but at the same time provides for a multi-level system of checking migrants and assessing potential national security risks. Singapore uses a more centralized approach, combining liberal regulation of migration with state control of the religious sphere through the Maintenance of Religious Harmony Act [6]. Turkish legislation also provides for special mechanisms for regulating migration and international protection of foreigners, aimed at minimizing threats to state security [12].

Thus, the analysis of scientific literature testifies to the gradual transformation of scientific knowledge about migration policy: from understanding it as a tool for regulating migration flows to a complex model of public administration that ensures social integration, sustainable development and national security. At the same time, existing studies are mainly focused either on the institutional and legal mechanisms of migration regulation, or on issues of national security. Complex comparative and legal studies devoted to the interrelationships of migration policy, national and religious security, especially as applied to the modern model of the Republic of Kazakhstan, remain unique. It is this scientific lacuna that determines the relevance of this research and determines the necessity of conducting a comparative legal analysis of the Kazakh model of migration policy taking into account international experience.

2. Materials and Methods

The methodological basis of the research was a complex of general scientific and special legal methods of cognition, the application of which allowed to comprehensively investigate the relationship between migration policy and the provision of national and religious security, as well as to conduct a comparative legal analysis of the Kazakh model of migration regulation and foreign experience. The material basis of the research was made up of international scientific publications on the problems of migration policy, national security and integration of migrants; normative legal acts of the Republic of Kazakhstan and foreign states; strategic documents regulating migration policy, as well as official analytical materials of state bodies. The main object of the study was the Concept of the migration policy of the Republic of Kazakhstan for 2023–2027, which was analyzed in comparison with foreign models of legal regulation of migration implemented in Germany, Canada, Singapore and Turkey.

The theoretical basis of the study was made up of the works of domestic and foreign scientists devoted to the theory of migration, state regulation of migration processes, national security, multiculturalism, integration of migrants and ensuring freedom of conscience. Special attention was paid to studies revealing the institutional nature of migration policy, as well as the interrelationship of migration with modern challenges of public and state security. The comparative legal method was of key importance in the study, which allowed to compare the legal approaches of various states to the regulation of migration and to determine the peculiarities of the Kazakh model. The comparison was made according to several criteria: strategic goals of the migration policy; mechanisms for regulating the entry and stay of foreigners; methods of integration of migrants; instruments of national security; peculiarities of legal regulation of the religious sphere in the conditions of migration processes. The use of this method made it possible to reveal both the universal regularities of the development of modern migration policies and the national peculiarities of their implementation.

The formal and legal method was used in the analysis of normative legal acts of the Republic of Kazakhstan, Germany, Canada, Singapore and Turkey. Its use provided

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an opportunity to determine the content of legal norms regulating migration relations, reveal the peculiarities of enshrining the principles of the state migration policy and establish the place of issues of national and religious security in the system of the relevant legislation. The system method was used to study migration policy as a complex interdisciplinary institute, the functioning of which is determined by the interaction of legal, political, social, demographic, and religious factors. Such an approach made it possible to consider migration policy not in isolation, but as an integral part of the mechanism for ensuring the national security of the state.

The methods of analysis and synthesis were used in the study of scientific literature, strategic documents and legislation, which made it possible to determine the main directions of the development of modern migration policy, to highlight its key functions and to establish the relationship between the mechanisms of migration regulation and the provision of religious stability. By means of induction and deduction, general conclusions were formulated regarding the regularities of the formation of the state migration policy based on the study of individual national models.

Documentary analysis was used in the study of the Concept of the Migration Policy of the Republic of Kazakhstan for 2023–2027, the annual report of the German Federal Office for Migration and Refugees (BAMF), the legislation of Canada, Singapore and Turkey, as well as other official documents defining the state policy in the field of migration. The analysis of the documents made it possible to establish the peculiarities of the regulatory consolidation of the mechanisms of migrant integration and ensuring public safety in various legal systems.

When interpreting the results of the research, a problem-analytical approach was used, focused on identifying existing gaps in the legal regulation of the migration policy of the Republic of Kazakhstan. Based on the comparison of domestic legislation with international experience, proposals were formulated to improve the concept of migration policy of the Republic of Kazakhstan in terms of more comprehensive consideration of issues of national and religious security.

The use of the set of specified methods provided a complex nature of the study, allowed to objectively assess the current state of the legal regulation of the migration policy of the Republic of Kazakhstan and to determine promising directions for its improvement taking into account the best foreign practices.

3. Result and Discussion

3.1. Institutional and legal characteristics of the Concept of Migration Policy of the Republic of Kazakhstan

Analysis of the Concept of Migration Policy of the Republic of Kazakhstan for 2023–2027, approved by the Resolution of the Government of the Republic of Kazakhstan dated November 30, 2022 No. 961 (Iontsev, 1999), allows us to define it as a comprehensive strategic document of a program type that performs the function of long-term planning, institutional structuring and regulatory orientation of state policy in the field of migration. In modern public administration theory, such documents belong to the category of policy frameworks, which not only define the goals of state policy, but also form the architecture of its implementation through a system of indicators, principles and interdepartmental coordination. A feature of this Concept is its integrative nature, since it combines demographic, economic, social, legal and security components of state policy in one document. This approach indicates Kazakhstan's transition to the model of "integrated migration governance", within which migration processes are considered not as an isolated phenomenon, but as a structural element of the overall system of state development. Structurally, the Concept includes five interconnected blocks: a document passport, an analytical section, a review of international experience, a strategic vision of migration policy development, as well as a system of principles, priority areas and

target indicators. Such a multi-level structure is characteristic of modern state strategies of medium and high levels of institutional capacity, as it allows for both normative certainty and practical measurability of policy results. The analytical block of the Concept performs an important function of diagnosing the state's migration system. It presents a description of the historical stages of migration processes in independent Kazakhstan, an analysis of state programs for resettlement and adaptation of the population, and the identification of key problems in the migration sphere. Among such programs, the initiatives "Mangilik el zhastary – Industry", "Serpin – 2050", "With a diploma to the village", "Strong regions – a driver of the country's development" stand out, which reflect the state's attempts to use migration tools to address regional imbalances, personnel shortages and demographic challenges.

It is important to emphasize that the Concept not only records the current state of the migration system, but also forms its normative and target development model until 2027. In this context, it performs the function of strategic programming, ensuring the connection between long-term national priorities and specific mechanisms for their implementation. Of particular importance is the inclusion in the Concept of a section dedicated to international experience. It analyzes the approaches of such states as the Russian Federation, China, the USA, Estonia, Kyrgyzstan, Germany and Israel. This indicates Kazakhstan's desire to implement the principles of comparative legal analysis (comparative policy learning), which is an important tool for modernizing state policy. In particular, the use of international experience allows adapting best practices in the field of migrant integration, labor migration management, and border security. The strategic vision of the Concept is based on three key components of the migration system: external immigration, external emigration, and internal migration. Such a three-component model allows for a systematic classification of migration processes and is characteristic of modern state policies that seek differentiated management of different types of population mobility.

Within each of these components, the Concept identifies seven priority areas for the development of migration policy. These include: improving the legal regulation of migration processes; increasing the efficiency of labor migration management; optimizing internal population resettlement; developing integration mechanisms; ensuring security and control at the border; improving the system for granting migration status; and creating conditions for the return of citizens and their reintegration. From the point of view of institutional theory, such detail indicates a high level of sectoral differentiation of state policy. This means that Kazakhstan's migration policy functions not as a single centralized system, but as a set of interconnected subsystems, each of which has its own goals, tools and implementation mechanisms. Particular attention should be paid to the fact that the Concept provides for a clear system of target indicators that allow assessing the effectiveness of its implementation. This corresponds to the principles of evidence-based policy, when state decisions are based on measurable indicators and are subject to regular monitoring and correction. Such an approach increases the transparency of state administration and reduces the risks of inefficient use of resources.

From the point of view of the theory of public administration, the Concept also demonstrates the transition to a model of multi-level governance, in which policy implementation is carried out not only by central executive bodies, but also by regional structures. This is confirmed by the fact that, on the basis of the Concept, central state bodies develop departmental action plans, and local executive bodies develop regional implementation programs. Such vertical integration of politics is a key element of effective public administration in complex social systems.

In general, the institutional and legal analysis of the Concept allows us to conclude that it performs not only the function of regulating migration processes, but also acts as a tool for strategic planning of state development. It forms a normative basis for

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interagency coordination, ensures the alignment of migration policy with economic and demographic priorities, and also creates prerequisites for the integration of the security dimension into the field of migration management.

3.2. Structural model of migration policy of Kazakhstan and target-instrumental mechanism of its implementation

Analysis of the Concept of Migration Policy of the Republic of Kazakhstan for 2023–2027 allows us to determine that its basic architecture is built on a three-component model of regulating migration processes, which includes external immigration, external emigration and internal migration. Such a structure reflects the state's desire to systematize migration flows in accordance with their direction, legal status and functional load on the socio-economic system. From the perspective of migration governance theory, such a trichotomy is typical for states with an average level of migration intensity, where migration processes have not yet reached a critically high scale, but already require comprehensive management. It is important to emphasize that such a model avoids policy fragmentation and ensures integrated management of population mobility as a single systemic process. External immigration in the Concept is considered as the regulated entry of foreign citizens and stateless persons into the territory of the state for the purpose of employment, education, family reunification or obtaining protection. The emigration component, in turn, is associated with the departure of citizens of Kazakhstan abroad, including both labor migration and long-term resettlement. Internal migration covers the processes of territorial redistribution of the population between the regions of the country, which is of key importance for leveling regional development imbalances.

Within the framework of this model, the Concept details seven interrelated priority areas that perform the function of operationalizing strategic goals. These include: improving the regulatory and legal regulation of migration processes; optimizing labor migration management mechanisms; stimulating internal population mobility; developing institutions for the integration and adaptation of migrants; ensuring effective border and migration control; improving procedures for granting legal status; and creating conditions for the voluntary return and reintegration of citizens. From the point of view of institutional analysis, such a structure reflects the transition from the classical administrative model of migration management to a more complex multi-level system that combines regulatory, service and security functions of the state. This means that Kazakhstan's migration policy functions simultaneously as an instrument of social management, economic planning and an element of the national security system. The target architecture of the Concept is built in such a way as to ensure a balance between the openness of the migration system and its controllability. On the one hand, the state declares its desire to simplify administrative procedures, increase labor mobility and create favorable conditions for the integration of migrants. On the other hand, considerable attention is paid to security issues, border control, digitalization of migration flow accounting and improvement of the identification system. In this context, it is important to note that the Concept actually implements the principle of selective permeability of the migration system, when the state does not completely open or close the borders, but differentiates access depending on the category of migrants, their legal status, professional qualifications and potential risks.

The central element of the target block is the desire to optimize the distribution of migration flows between regions. This is especially important for Kazakhstan as a large state with uneven population density and significant regional disparities in development. Internal migration in this case acts as a tool for correcting the demographic and economic balance between regions. An important component is also the policy of integration and adaptation of migrants, which involves creating conditions for their inclusion in the socio-economic processes of the host society. In modern migration

theory, this direction is considered as a key factor in the long-term stability of the migration system, since it is the level of integration that determines the degree of social cohesion and the reduction of potential conflict risks. It is necessary to emphasize separately the importance of mechanisms of return migration and reintegration of citizens. The concept provides for creation of conditions for return of citizens to the country of origin and their inclusion in the national labor market. This corresponds to modern approaches to circular migration, which consider migration as a cyclical process, and not a one-time movement. In the system of policy implementation tools, digital technologies of migration management occupy an important place, including biometric identification, electronic registries and automated systems of migration data processing. This indicates the gradual technologization of public administration, which corresponds to global trends of digital governance.

The target structure of the Concept of Migration Policy of the Republic of Kazakhstan is characterized by multidimensionality and a combination of socio-economic, demographic and security guidelines. The main strategic goal is the formation of an effective system of migration process management aimed at ensuring national development priorities. At the same time, an analysis of the text of the Concept allows us to state that this goal is mainly of an economic and demographic nature, while the security component is present mainly implicitly. The key policy goals include: reducing administrative barriers in the field of migration; ensuring transparency and fairness of procedures for granting migration status; increasing the efficiency of migration flow management; developing integration institutions; improving the system of control over the stay of foreigners; stimulating the return of citizens; and increasing the level of security of the state border. From the point of view of public administration theory, these goals reflect the transition to a results-based policy model, in which the effectiveness of public administration is assessed through a system of quantitative and qualitative indicators. This approach allows for not only normative but also empirical measurement of policy implementation results. Of particular importance is the institutional mechanism for implementing these goals, which is based on a vertically integrated management system. Central executive bodies develop strategic and departmental plans, while local executive bodies ensure their adaptation to regional conditions. Such a model complies with the principles of multi-level governance and contributes to increasing the effectiveness of policy implementation at all levels of public administration.

Instrumentally, the implementation of goals is ensured through a combination of administrative, legal, economic and information mechanisms. Administrative instruments include regulation of the entry and stay of foreigners, quotas and licensing. Legal mechanisms ensure the determination of the status of migrants and the procedures for obtaining it. Economic instruments are aimed at regulating labor migration and stimulating regional development. Information mechanisms include digital platforms, databases and systems for monitoring migration processes. In the context of the security dimension, it is important to note that the Concept integrates the principle of a risk-based approach, when management decisions are made taking into account potential risks associated with migration flows. This includes screening applicants, assessing migration risks, and using analytical tools to forecast migration trends. In summary, it can be stated that the target-instrumental system of Kazakhstan's migration policy is complex, multi-level, and functionally differentiated. It combines elements of social engineering, economic regulation, and security control, forming a holistic model of managed migration that meets the modern challenges of the globalized world.

3.3. Functional model of migration policy and its connection with national and religious security

A functional analysis of the Concept of Migration Policy of the Republic of

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Kazakhstan for 2023–2027 allows us to consider it as a multi-level system of state regulation, combining classical administrative functions with elements of security and social integration management. Within the framework of the studied Concept, migration policy is not limited only to the regulation of population movement, but performs the role of an institutional mechanism for stabilizing the social system of the state in the conditions of global migration transformations.

A generalization of the provisions of the Concept allows us to distinguish five basic functions of state migration policy: regulatory, mediative, adaptive, compensatory (mobilization) and controlling. Each of these functions reflects a separate dimension of the state's influence on migration processes, but together they form a holistic system for managing population mobility. The regulatory function is basic and consists in forming the regulatory and legal architecture of migration processes. It covers the establishment of rules for entry, stay, employment and integration of foreigners, as well as determining the legal status of various categories of migrants. In this context, the state acts as the main institutional regulator, forming the boundaries of permissible population mobility. The mediating function is aimed at reducing social tensions that may arise as a result of the intensification of migration flows. It involves harmonizing the interests of the host society and migrants, as well as minimizing the conflict potential in interethnic and intercultural interaction. In modern conditions, this function is of particular importance, since migration is increasingly considered a factor of social diversification.

The adaptation function ensures the integration of migrants into the socio-economic structure of the host society. It includes access to education, the labor market, social services and legal protection mechanisms. In the scientific literature, it is the level of adaptation that is considered a key indicator of the stability of the migration system, since insufficient integration can lead to the formation of social isolation and segmentation of society. The compensatory (mobilization) function consists in using migration as a tool for resolving demographic and economic imbalances. It is especially relevant for states with regional uneven development, where migration flows can serve as a mechanism for redistributing labor resources and supporting economic growth.

The controlling function provides institutional monitoring of migration processes and is implemented through a system of border control, visa regimes, registration procedures and digital identification tools. In modern conditions, this function is increasingly associated with the technologization of public administration, including the use of biometric systems and automated databases. Taken together, these functions form a multidimensional model of migration policy, which simultaneously performs socio-economic, legal and security tasks. This allows us to consider migration policy as an element of the general system of state administration, which has an inter-sectoral nature.

The relationship between migration policy and the system of national and religious security requires separate consideration. In the modern scientific paradigm, security is increasingly interpreted not only as the protection of state borders, but also as a complex state of social stability, which includes cultural, religious and identification components. Within the framework of the securitization theory, migration can acquire a security dimension when political institutions consider it as a potential source of risks for the stability of the state. At the same time, it is important to emphasize that securitization does not mean the automatic criminalization of migration, but rather forms mechanisms of increased managerial control. In the case of Kazakhstan, migration policy functions as an indirect tool for ensuring national security. This is manifested through several interrelated mechanisms. Firstly, legalization and simplification of migration procedures contribute to reducing the share of unregulated migration, which increases the state's ability to monitor and identify potential risks. Secondly, strengthening border control and the use of digital technologies increase the effectiveness of state supervision over the movement of persons.

Thirdly, integration and adaptation policies reduce the level of social marginalization of migrants, which in theoretical models of social stability is considered one of the key factors in preventing social disintegration. The lack of access to social institutions can create conditions for the formation of parallel social structures, which potentially affect the growth of social tension.

The religious dimension of security in this context is associated with the need to ensure a balance between freedom of religion and preventing the use of religious institutions in destructive or radicalizing practices. Migration flows, especially cross-border ones, can act as a channel for the transnational spread of ideas, which requires the state to form preventive mechanisms for social integration and information policy. In this aspect, the information and educational function of migration policy acquires strategic importance, since it is aimed at forming an inclusive social environment, reducing the level of xenophobia and preventing social polarization. In combination with legal and administrative mechanisms, this forms a multi-level system of social risk prevention. It is also important to note that modern states are increasingly applying a risk-based approach to migration management, when decisions on the admission, stay or integration of migrants are made on the basis of an assessment of potential risks. In this context, the Kazakhstan model demonstrates a gradual transition to such an approach, combining humanitarian and security instruments. In general, the functional model of Kazakhstan's migration policy testifies to its multidimensionality and institutional complexity. It simultaneously performs the functions of social regulation, economic planning and security management. Such multifunctionality is characteristic of modern states operating in conditions of globalized population mobility. In general, it can be stated that migration policy in the Concept acts not only as a tool for managing population movements, but as an integral part of the national resilience system. Its effectiveness is determined by the state's ability to ensure a balance between the openness of the migration system, social integration and security control.

3.4. Comparative legal dimension of migration policy and generalization of research results

A comparative legal analysis of the migration policy of the Republic of Kazakhstan in the context of international experience allows us to determine the degree of convergence of its functional mechanisms with the practices of leading states, as well as to identify the specifics of the institutional design of migration management in the post-Soviet legal system. In general, the results of the study indicate that the basic functions of Kazakhstan's migration policy are universal in nature, but their regulatory consolidation and institutional implementation significantly depend on the political and legal model of the state.

In the Republic of Turkey, migration policy is largely integrated into the security management system, which is reflected in the Law on Foreigners and International Protection of 2013. This regulatory act provides for expanded risk assessment procedures for the entry of persons from regions of increased instability, which demonstrates a high level of securitization of the migration sphere. In this case, migration policy performs not only an administrative, but also a preventive security function aimed at minimizing external threats. In the Federal Republic of Germany, migration policy is based on the model of integration constitutionalism, where the adaptation of migrants to the norms of the rule of law is central. Mandatory integration courses, which include legal, language and value modules, perform the function of socializing migrants within the framework of a democratic legal order. This approach reflects the priority of the adaptation function of migration policy over the control function, although the latter remains highly developed through a system of digital and administrative monitoring. The Canadian model of migration policy combines the principles of multiculturalism

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with a high level of selectivity of the immigration system. The legislative framework of Canada provides for strict criteria for selecting migrants according to professional, social and security parameters, which allows the state to simultaneously meet economic needs and maintain social stability. In this context, the Canadian model demonstrates a balance between openness and controllability of the migration system.

A comparison of these models with the Kazakhstan Concept allows us to conclude that the Republic of Kazakhstan is forming a hybrid model of migration management, which combines elements of administrative control, social integration and security monitoring. Such a model is typical for countries with a transitional economy and a high level of regional socio-economic differentiation. A feature of the Kazakhstani approach is the dominance of the state as the main subject of migration policy, which corresponds to the state-centric model of governance. At the same time, elements of multi-level governance are gradually being introduced, which involve the participation of regional authorities and social adaptation institutions in the implementation of migration policy.

From the point of view of institutional theory, it can be stated that the migration policy of Kazakhstan is in the phase of institutional consolidation, when there is a transition from fragmented regulation to a systemic and program-targeted management model. This is manifested in the formation of a single Concept, the development of departmental and regional plans, as well as the implementation of a system of target performance indicators. The generalization of the research results allows us to highlight several key scientific conclusions. First, the Concept of Migration Policy of the Republic of Kazakhstan is a comprehensive strategic document that integrates socio-economic, legal and security components of public administration. Second, its structure reflects a three-component model of the migration system (immigration, emigration, internal migration), which provides differentiated management of different types of migration flows. Third, the functional model of migration policy includes regulatory, mediating, adaptive, compensatory and controlling functions, which together form a multidimensional system of state influence on migration processes. Fourth, Kazakhstan's migration policy performs not only a socio-economic, but also an indirect security function, which is manifested in the mechanisms of control, integration and prevention of social risks.

It should be emphasized separately that the relationship between migration policy and national and religious security is systemic. In modern conditions of global population mobility, migration processes are becoming one of the key factors influencing the social stability of the state. Accordingly, an effective migration policy must ensure a balance between freedom of movement, social integration and security control.

In theoretical terms, this allows us to consider migration policy as an element of the national resilience system, which ensures the state's ability to adapt to external and internal challenges without losing social and institutional stability. This approach corresponds to modern trends in the development of public administration in the context of globalization and increasing population mobility.

In general, the analysis conducted allows us to conclude that the migration policy of the Republic of Kazakhstan for 2023–2027 is a systematically organized instrument of public administration, which combines the functions of regulation, integration and security. Its implementation is aimed at forming a controlled, predictable and socially balanced migration system that meets the strategic interests of the state in the context of global transformations.

4. Conclusions

Taking into account the above, we consider it important to specify the purpose of the Concept to ensure national security and propose the following formulation: "The purpose of the Concept of the Migration Policy of the Republic of Kazakhstan for 2023-2027 is effective legislative regulation and management of migration processes aimed at

ensuring national security and national priorities in the field of demographic, economic, social, political, cultural and religious development of the Republic of Kazakhstan." In addition, Kazakhstan, as a secular state with a multi-ethnic and multi-confessional population, faces challenges associated with the penetration of non-traditional religious currents, some of which may carry risks of religious extremism and destabilization of the socio-cultural environment. Therefore, we offer a number of recommendations aimed at minimizing these risks through systemic measures in the field of religious policy, information control, and social adaptation. 1. Strengthening of informational and educational work to increase the level of religious culture aimed at increasing the religious literacy of the population. The promotion of religious culture corresponds to the concept of "religious education", which promotes the formation of critical thinking and resistance to manipulative religious narratives. In the conditions of migration processes, low information can contribute to marginalization and susceptibility to radical ideas. The development of educational modules integrated into programs of social adaptation of migrants, as well as into school and university courses on the basics of religious studies, is required. It is necessary to ensure a balance between education and respect for freedom of conscience. Emphasis on "traditional" religions can lead to the stigmatization of non-traditional religious currents not related to extremism. 2. Development of a regulatory framework for regulating the activities of religious organizations and strengthening control. It is expected to tighten the legislation in the field of registration and activities of religious associations, as well as to strengthen control over their meetings to prevent the spread of extremist attitudes. Strengthening control may include the introduction of additional requirements for transparency of funding, staffing and content of sermons. However, strict control can reduce the risks of radicalization, but also contribute to the "entry" of religious activity into an uncontrolled space (for example, into a closed online community). Excessive regulation may violate the right to freedom of assembly and religious practices, guaranteed by the Constitution and international treaties. The normative base should be clearly differentiated: measures directed against extremism should not be automatically applied to all non-traditional religious trends. It is expedient to introduce a monitoring system based on risk assessment, rather than total control. 3. Strengthening the monitoring of information about religion in social networks. Given that the majority of people receive information about religion through social networks, it is proposed to strengthen the monitoring of online content to identify and block destructive religious materials. In parallel with monitoring, digital media literacy of the population should be developed so that users can independently critically evaluate religious content.

4. Strengthening the work of local executive bodies on the adaptation of migrants, it is proposed to intensify their work on their integration, including cultural and religious aspects. Problems of spiritual adaptation are connected not only with religious identity, but also with cultural shock, social isolation and economic difficulties. Effective adaptation requires a comprehensive approach, including language courses, legal assistance and intercultural dialogue. Successful adaptation reduces the vulnerability of migrants to radical ideas, offering alternative ways of social integration and identity building. Thus, the proposed recommendations can become the basis for a systemic policy of counteracting destructive non-traditional religious currents, but they require adaptation to the principles of the rule of law and modern socio-cultural realities of Kazakhstan. International practice confirms the validity of the proposed recommendations. Thus, the German experience of the "Willkommenskultur" ("Welcome Culture") program demonstrates that informational and educational measures in combination with mandatory integration courses make it possible to significantly reduce the level of social tension in the migrant environment. Singapore's experience of mandatory registration of religious organizations and monitoring of their activities shows that regulatory regulation, provided it is clearly differentiated from total control over religion,

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can effectively neutralize destructive religious influences without violating the right to freedom of conscience. Finally, the Canadian practice of "charter communities" and intercultural dialogue testifies to the high effectiveness of participatory adaptation mechanisms, provided there is a strong regulatory framework. The inclusion of this comparative legal dimension in the law-making and law-enforcement practice of Kazakhstan is a promising direction for further improvement of the concept of migration policy.

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REGULATORY ARBITRAGE IN EUROPEAN UNION DIGITAL FINANCE: DEVELOPMENT DYNAMICS AND IMPLEMENTATION RISKS

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Abstract

Regulatory arbitrage remains a recurring concern in the regulation of EU digital finance, particularly as crypto-asset markets develop within the MiCA framework. This article asks why such arbitrage persists and what risks it creates for regulators and supervisors. It argues that regulatory arbitrage cannot be reduced to opportunistic behaviour by individual market participants. Instead, it emerges from gaps in the EU digital-finance framework itself, where legal categories often struggle to keep pace with evolving technological and business models. Based on doctrinal legal research and qualitative functional analysis of European Union legislative, regulatory and supervisory materials, the article develops a working definition of regulatory arbitrage tailored to digital finance. It identifies the main drivers of arbitrage, including overlaps between legal regimes, difficulties in classifying digital products, the strategic use of token design and platform architecture, supervisory divergence within the EU and regulatory lag. The article also analyses the principal risks generated by arbitrage, including weaker investor and consumer protection, reduced market integrity, operational and cyber vulnerabilities, financial-stability concerns, competitive distortions and supervisory blind spots. It concludes that an effective response requires not only more detailed rules, but a coherent, function-oriented approach to legal qualification, stronger supervisory convergence and a regulatory framework capable of adapting to technological and business-model innovation.

Keywords: crypto-assets; legal qualification; supervisory convergence; market integrity; financial stability.

1. Introduction

Over the past few years, digital finance in the European Union has evolved from a peripheral segment of the financial market into one of the key areas of regulatory transformation. This shift reflects more than the growing role of crypto-assets. Digital business models, tokenisation and platform-based services have increasingly reshaped financial intermediation, often cutting across the previously distinct categories of investment activity, payment services, electronic money and crypto-asset services. The European Commission acknowledged this development already in 2020, when the Digital Finance Package set out an approach designed to support innovation while safeguarding financial stability and an adequate level of investor and consumer protection (European Commission, 2020b, 2020c).

The adoption of Regulation (EU) 2023/1114 on markets in crypto-assets (hereinafter - "MiCA") became the European Union's most systematic attempt to respond to the

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challenges of digital finance through the creation of a special harmonised regime for crypto-assets and crypto-asset service providers (hereinafter - "CASPs") (Regulation (EU) 2023/1114, 2023). At the same time, MiCA did not create a fully self-contained regulatory space; instead, it operates alongside other existing EU regimes, in particular the regimes established by Directive 2014/65/EU on markets in financial instruments (Markets in Financial Instruments Directive; hereinafter - "MiFID II"), Directive (EU) 2015/2366 on payment services in the internal market (Second Payment Services Directive; hereinafter - "PSD2") and Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions (Second Electronic Money Directive; hereinafter - "EMD2"), as well as alongside the supervisory approaches of the European Securities and Markets Authority (hereinafter - "ESMA") and the European Banking Authority (hereinafter - "EBA") with regard to the qualification of specific digital products and the supervision thereof (Directive 2014/65/EU, 2014; Directive (EU) 2015/2366, 2015; Directive 2009/110/EC, 2009). For this reason, digital finance in the EU remains a sphere in which the legal qualification of a product or service directly determines the scope of obligations, the type of licensing, the requirements for the organisation of activities, and the model of supervisory oversight.

Against this background, regulatory arbitrage becomes particularly important. The academic literature generally describes it as the structuring of activities, transactions or products in a way that exploits gaps, differences or inconsistencies between legal regimes, while leaving the underlying economic function largely unchanged (Langenbucher, 2021). Digital finance is especially exposed to this dynamic. The technological architecture of a product, its token design, corporate structure and cross-border organisation may all be adjusted to bring the activity closer to a more favourable regulatory perimeter, even where these choices are also justified by commercial or technological considerations. Such conduct should not be reduced to bad faith on the part of market participants, since much of it follows from the interaction between innovative business models and a fragmented legal architecture.

MiCA's harmonising effect has not removed this risk; rather, the risk has appeared in new forms. ESMA's recent guidelines on distinguishing crypto-assets from financial instruments are one indication of this, as is the broader emphasis EU institutions now place on supervisory convergence, future-proof regulation and openness to new technological and business-model solutions (ESMA, 2025). The trajectory of EU legislation itself suggests that the difficulty lies less in the absence of rules than in the consistent application of those rules to hybrid digital structures (Divissenko, 2023).

It therefore remains important to examine how regulatory arbitrage emerges in EU digital finance and what risks it poses for legal certainty, supervisory effectiveness, investor protection and the integrity of the internal market. The central claim of this article is that such arbitrage is not an accidental by-product of isolated loopholes, but a systemic outcome of several partially overlapping regulatory logics that respond differently to the same, or functionally similar, digital phenomena. This requires analysis beyond the individual provisions of MiCA or MiFID II and calls for a broader account of how legal qualification, technological form and economic substance interact in digital financial activity.

Existing studies have looked at regulatory arbitrage in financial markets generally and at crypto-asset regulation as a separate field, with less attention paid to how MiCA, MiFID II, PSD2 and EMD2 interact as a source of arbitrage within the EU digital finance framework. This article examines that interaction, asking how overlapping regulatory regimes, difficulties in legal qualification and supervisory divergence create conditions for arbitrage in digital finance, and what risks this creates for investor protection, market integrity, legal certainty and supervisory effectiveness.

2. Materials and Methods

This article relies on doctrinal legal research combined with a qualitative analysis of how legal qualification, technological design and overlapping regulatory regimes interact to produce regulatory arbitrage in EU digital finance.

The principal materials are EU legislative acts and official regulatory or supervisory documents relevant to digital finance, including MiCA, MiFID II, PSD2 and EMD2, together with selected materials issued by the European Commission, ESMA, EBA, the European Central Bank, the Financial Stability Board and the International Organization of Securities Commissions. Academic literature on regulatory arbitrage, digital finance, legal qualification and crypto-asset regulation is used to supplement these sources.

Three questions guide the analysis and shape both the choice of sources and the structure of the article: how regulatory arbitrage in EU digital finance can be understood in light of existing scholarship, which structural features of the EU framework create room for such arbitrage, and what legal, supervisory, market and financial-stability risks arbitrage strategies generate.

The materials mainly cover the period from 2020 to 2025. This period spans the European Commission's Digital Finance Package, the legislative development and entry into force of MiCA, and more recent interpretative and supervisory materials on token qualification, supervisory convergence, multifunction intermediaries and the links between crypto markets and traditional finance. Earlier theoretical sources are used where necessary to clarify the conceptual foundations of regulatory arbitrage.

Several analytical methods are combined. A doctrinal reading of the relevant EU regimes is used to establish how their wording, scope and internal logic may generate overlap, exclusion or uncertainty, with particular attention paid to MiCA's relationship with MiFID II, PSD2 and EMD2. A functional approach then asks whether digital products or services with different legal structures may nevertheless perform the same or a similar economic function. This is especially important in digital finance, where token design, platform architecture, custody arrangements and the allocation of operational roles may affect legal qualification without changing the underlying economic substance of the activity.

The article also draws comparisons within EU regulation itself, rather than across national legal systems, in order to identify cases where the same, or a similar, digital phenomenon may be treated differently depending on its formal classification. Finally, the literature is used to assess different accounts of regulatory arbitrage, including its treatment as avoidance of stricter rules, as a form of regulatory competition and as a structural consequence of divergence between legal form and economic substance. On that basis, the article develops a working definition suited to EU digital finance.

Taken together, this methodology aims less at describing the applicable legal framework than at explaining why partially overlapping regulatory logics create structural incentives for arbitrage in digital finance. Particular attention is therefore paid to the relationship between the legal form of digital financial products and their economic function, and to the risks arising from fragmented legal architecture and uneven supervisory application.

3. Result

Definitions of regulatory arbitrage vary across the literature, but they share a common point: the term refers to situations in which differences, gaps or inconsistencies between regulatory regimes are used to obtain a more favourable legal outcome, while the economic substance of the activity remains broadly unchanged (Langenbucher, 2021). In this sense, regulatory arbitrage concerns not only the choice between different jurisdictions, but also the structuring of activity within a single legal order in such a way that it falls under a lighter or less burdensome regulatory regime.

Katja Langenbucher proposes that regulatory arbitrage should be considered in at least two dimensions. On the one hand, it may be perceived as unwanted

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avoidance of a legal regime, that is, the avoidance of a less favourable regulatory regime through the special structuring of a transaction or activity. On the other hand, it may also be understood as a form of regulatory competition, where market participants choose, among different legal regimes or sectors of regulation, the one that ensures lower regulatory costs. Within this approach, Langenbucher separately distinguishes repackaging-arbitrage, where activity is repackaged within one regime, and moving-places arbitrage, where a more favourable result is achieved through the choice of another jurisdiction (Langenbucher, 2021).

Jan Friedrich and Matthias Thiemann formulate an even stricter emphasis, as in their view regulatory arbitrage often means formal compliance with rules while simultaneously violating their spirit. This distinction matters for financial law because it separates the external legal form of a product or service from its actual economic function, a separation that, according to Friedrich and Thiemann (2021), lies at the heart of many arbitrage structures in the financial sector.

Elizabeth Pollman's work on technology and regulatory arbitrage offers a useful lens for digital finance: she defines regulatory arbitrage as structuring activity to exploit gaps or differences in regulations or laws, and argues that the technology sector is especially prone to it. Digital business models are highly adaptive, built on intangible assets, easy to scale across borders, and frequently sit outside existing legal categories. In digital finance, then, regulatory arbitrage often reflects a mismatch between new technological models and an existing regulatory architecture, alongside any deliberate search for advantage (Pollman, 2019).

Andrea Minto, Stephanie Prinz and Melanie Wulff take a different angle, treating regulatory arbitrage as a risk to regulatory objectives such as financial stability, and not merely as a technique for circumventing rules. On their account, what matters is the existence of an arbitrage opportunity together with the likelihood that it will be used and the consequences this could have for the relevant regulatory goal. This risk-based view is particularly relevant to digital finance, where a product's legal qualification shapes licensing requirements, the level of investor protection, the quality of supervision and the resilience of the market (Minto, Prinz & Wulff, 2021).

Drawing on these approaches, this article understands regulatory arbitrage in EU digital finance as the strategic structuring of a product, service, corporate model or cross-border activity so as to fall within a more advantageous regulatory regime, or to avoid a stricter one, while the economic function of the activity remains broadly unchanged. This definition is broad enough to cover both jurisdictional arbitrage and arbitrage between different sectors of financial regulation, yet precise enough to apply to the hybrid digital structures found in the contemporary market for crypto-assets and digital financial services.

Turning to the causes of regulatory arbitrage in EU digital finance, the most fundamental is arguably the fragmentation of the regulatory architecture. MiCA created a special harmonised regime for crypto-assets, but the EU does not treat digital finance as a self-contained sphere; rather, it sits at the intersection of several regulatory logics. The European Commission's Digital Finance Package already proceeded on this basis, recognising that new digital products may perform several functions at once, for instance, serving as an access key to a service, as a payment instrument, or as a financial instrument (European Commission, 2020c). It is precisely such multifunctionality that creates a situation in which the applicable legal regime depends not so much on the overall economic purpose of the product as on its legal qualification. For its part, MiCA was conceived as a separate regime intended to ensure legal certainty, support innovation and fair competition, as well as consumer protection and financial stability, but it does not absorb the entire sphere of digital finance. Accordingly, regulatory arbitrage arises already at the level of the structure of the law itself, where models that are similar in economic function may be brought closer to different regulatory perimeters.

The second key cause is the hybrid nature of digital financial products and the complexity of their legal qualification. Nikita Divissenko emphasises that MiCA is built on an activity-based and risk-based logic and on the "same activity, same risk, same rule" approach. However, it is precisely the innovativeness of crypto-assets that makes the boundaries of the regulatory perimeter vulnerable to constant pressure from new use cases and new business models (Divissenko, 2023). In his view, one of the main weaknesses of the future effectiveness of MiCA lies in the ability of the regime to capture innovations that fall outside existing categories, as well as to respond to the risks of re-characterisation and re-qualification of tokens. This problem has already received practical confirmation at the level of ESMA, which in 2025 was compelled to issue separate Guidelines on the conditions and criteria for the qualification of crypto-assets as financial instruments (ESMA, 2025). The very fact that such Guidelines have appeared indicates that the qualification boundary between crypto-assets and financial instruments is not self-evident and therefore itself becomes a point of potential arbitrage (Zetzsche, Annunziata, Arner, & Buckley, 2021).

The third cause is the high adaptability of technological business models, which allows market participants not merely to respond to regulation, but actively to design products towards a desired legal outcome. It is precisely this that Elizabeth Pollman emphasises, defining regulatory arbitrage as structuring activity to take advantage of gaps or differences in regulations or laws. Pollman shows that technology companies are especially prone to arbitrage, given their capacity to quickly alter contractual architecture, operational design and corporate structuring while the basic economic function of their activity remains broadly unchanged (Pollman, 2019). In digital finance, a product's legal qualification therefore depends on more than its economic function alone: it also turns on the specific combination of legal and technical characteristics involved, including the rights embedded in the token, the model of access to the asset, how the platform and interface are organised, and how operational, governance and control functions are allocated among participants in the ecosystem (IOSCO, 2023a). Token design and platform architecture can accordingly serve technological or business optimisation, but they can equally be used to secure a more advantageous regulatory outcome (Garrido, 2023).

A fourth cause lies in regulatory and supervisory divergence within the EU itself, despite the formal harmonisation of rules. Even before the current crypto framework took shape, the European Commission's Expert Group on Regulatory Obstacles to Financial Innovation pointed to systemic obstacles such as regulatory fragmentation, an uneven playing field and inconsistent approaches to new financial models (Expert Group on Regulatory Obstacles to Financial Innovation, 2019). The adoption of MiCA did not resolve this problem; rather, it shifted attention to the issue of supervisory convergence. This is directly confirmed by the ESMA statement of 17 October 2023, in which the authority emphasised the need for a coordinated approach by national competent authorities to the transition to MiCA and to the future application of the new regime (ESMA, 2023). Where the regulatory text is uniform, but practices of interpretation and application remain heterogeneous, this creates additional incentives for structural or jurisdictional arbitrage even within the internal market.

The fifth cause is the regulatory lag in relation to the pace of innovation. As the Expert Group on Regulatory Obstacles to Financial Innovation has shown, in the sphere of technology-driven financial services the key problem lies not only in the content of individual rules, but also in the ability of the regulatory framework as a whole to remain accommodative to innovation without deepening regulatory fragmentation (Expert Group on Regulatory Obstacles to Financial Innovation, 2019). Dirk Zetzsche, Ross Buckley, Janos Barberis and Douglas Arner emphasise that post-crisis regulation together with rapid technological change profoundly challenges the existing regulatory paradigm and therefore requires new, more flexible and more coherent models of regulatory

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adaptation (Zetzsche et al., 2017). The European Commission in the Digital Finance Strategy likewise proceeded on the basis that the existing financial services framework must be made fit for the digital age and therefore requires constant adjustment under the influence of digitalisation (European Commission, 2020a). This means that arbitrage in digital finance often arises not because of a complete absence of law, but because of the temporal gap between the emergence of a new technological model and the moment when a sufficiently clear and established legal qualification appears for it. The faster tokenised and platform-based solutions develop, the stronger the temptation becomes to exploit this transitional state for one's own benefit.

Accordingly, the causes of regulatory arbitrage in EU digital finance cannot be reduced merely to the bad-faith conduct of individual market participants. These are structural factors, arising from the combination of fragmented legal architecture, the hybrid nature of digital products, the adaptability of technological business models, heterogeneous supervisory application and a persistent gap between innovation and legal qualification. Together, they make digital finance a particularly favourable environment for arbitrage strategies and explain why addressing such strategies cannot rely simply on adding more rules.

Certain examples of regulatory arbitrage can be traced in the practice of large companies entering the crypto market of the European Union, both before and after the beginning of the application of the MiCA Regulation. In particular, one should mention one of the largest crypto-exchanges, Binance, which in 2023 announced its withdrawal from the Dutch market after it had failed to obtain authorisation as a provider of services related to virtual assets in that jurisdiction (Reuters, 2023a). Almost at the same time, Binance withdrew its application for a licence in Germany, following reports that the local regulator was not prepared to grant the company authorisation to carry out crypto-custody activities ((Reuters, 2023b). This reflects the fragmentation that existed among European states before the adoption of the MiCA Regulation, since one and the same large platform could face impossibility or significant difficulties in entering the market in some Member States, while at the same time maintaining a presence or registrations in other EU jurisdictions.

After the introduction of MiCA, the problem did not disappear, but changed its form. Instead of the multiplicity of national regimes, the choice of the Member State of authorisation acquired key importance, since a licence of a crypto-asset service provider obtained in one Member State opens the possibility of providing services in other EU Member States through the passporting mechanism. For this reason, the issue of the quality, depth and strictness of the national authorisation assessment became central to preventing regulatory arbitrage. Already at the stage of transition to MiCA, ESMA emphasised the need for supervisory convergence, that is, a coordinated approach of national competent authorities to the authorisation and supervision of service providers (ESMA. (2023, October 17).

The most explicit confirmation of the problem of divergent approaches among different states was the public conflict between France, Italy and Austria, on the one hand, and Malta, on the other, which took place in September 2025, when the French regulator AMF, together with the Italian Consob and the Austrian FMA, supported the transfer of supervision over large crypto companies to the level of ESMA. The reason for this was concern that different Member States may apply MiCA unevenly, while crypto companies are able to choose jurisdictions with softer or faster licensing standards for their own benefit. In public discussion, this was directly described as regulatory shopping, that is, the search for a weaker or more convenient regulatory link within the single market (Reuters, 2025a). At the same time, the Maltese regulator MFSA opposed the centralisation of supervision at ESMA level, stating that such centralisation could create an additional bureaucratic layer and reduce the effectiveness of regulation (Reuters, 2025b). Accordingly, this case demonstrates that the risk of regulatory shopping and

arbitrage after MiCA is not merely theoretical; rather, it has become the subject of an open political and regulatory discussion between Member States.

A separate practical example of the connection between token design, stablecoin arrangements and regulatory arbitrage can be seen in the example of such crypto-assets as USDT, USDC and EURC, as well as Coinbase's reaction to the requirements of MiCA. Pursuant to the provisions of the MiCA Regulation, the offer or admission to trading of e-money tokens in the European Union is possible only provided that the issuer is a credit institution or an electronic money institution and has also complied with the requirements concerning the notification and publication of a crypto-asset white paper. Accordingly, for stablecoins pegged to a single official currency, what becomes decisive is not only their economic function as a "stable" digital asset, but also the legal structure of the issuer, the reserve model, users' redemption rights and the manner in which such a token is admitted to the EU market. This problem manifested itself after MiCA began to apply to ARTs and EMTs, when, in January 2025, ESMA, together with the European Commission, published guidance on non-MiCA-compliant asset-referenced tokens and e-money tokens, stating that service providers should restrict services that facilitate the acquisition of such tokens by users in the EU (ESMA, 2025b). In this context, USDT became an example of a stablecoin access to which through licensed European platforms began to be restricted due to the absence of a MiCA-compliant structure. By contrast, Circle announced the issuance of USDC and EURC in the EU in accordance with MiCA requirements, effectively adapting the issuer model and the token structure to the EMT regime (CoinDesk, 2024).

Coinbase stated that it would restrict, for users in the European Economic Area, services concerning stablecoins that do not comply with MiCA and would offer a transition to compliant stablecoins, in particular USDC and EURC (Reuters, 2024). Accordingly, the example of USDT, USDC and Coinbase demonstrates that the regulatory outcome for functionally similar stablecoins depends on the combination of token design, the status of the issuer, the reserve and redemption model, as well as CASPs' decisions on admitting or restricting such assets on their platforms. For this reason, stablecoin arrangements are one of the most illustrative practical examples of how technologically similar digital assets may receive different legal consequences within a single regulatory space.

The consequences of regulatory arbitrage in digital finance go well beyond the formal circumvention of a less favourable legal regime.

Its risks manifest themselves in at least five interrelated dimensions: investor protection, market integrity, financial stability, supervisory effectiveness, and equal competitive conditions within the EU internal market. It is precisely this multidimensional nature that explains why contemporary international and European institutions increasingly regard regulatory arbitrage not as a technical problem of classification, but as a source of broader policy risks. This follows, in particular, from the approaches of the International Organization of Securities Commissions, the Bank for International Settlements, the European Central Bank, and the analytical materials of the European Parliament.

First, regulatory arbitrage creates risks for investors and consumers, since it makes it possible to remove economically similar products or services from the scope of stricter standards of disclosure, conduct, custody, or conflict-management. In its Policy Recommendations for Crypto and Digital Asset Markets, the International Organization of Securities Commissions expressly states that many retail investors trade through centralised intermediaries and entrust them with the custody of their crypto-assets, while a significant number of such CASPs have demonstrated an unwillingness to comply with frameworks aimed at investor protection and market integrity and, in many cases, have even structured their activities so as to avoid these requirements (IOSCO, 2023b). In its Bulletin Crypto shocks and retail losses, the Bank for International Settlements adds an empirical dimension to this problem: according to Giulio Cornelli, Sebastian Doerr,

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Jon Frost and Leonardo Gambacorta, the majority of users of crypto apps in almost all of the jurisdictions studied likely suffered losses from their investments in Bitcoin (Cornelli, Doerr, Frost, & Gambacorta, 2023). The median investor lost approximately USD 431, which amounted to nearly half of the funds invested (Cornelli et al., 2023). This points to an important conclusion: arbitrage between regimes is not neutral, and it can directly lower the level of protection actually available to end users.

Regulatory arbitrage also undermines market integrity and enforcement effectiveness. Taking stock in October 2025 of how its recommendations on crypto and digital asset markets had been implemented across twenty jurisdictions, IOSCO called for greater consistency in implementation, a reduction in opportunities for regulatory arbitrage, and stronger enforcement practices (IOSCO, 2025). This assessment matters because it shows that the risk of arbitrage persists even where standards and recommendations already exist. The problem remains where rules are applied differently in practice, cross-border information exchange is uneven, and regulators struggle to respond to global CASPs operating across borders. Accordingly, arbitrage in digital finance causes not only private investor losses, but also an institutional erosion of regulatory capacity.

Thirdly, regulatory arbitrage is capable of generating risks to financial stability, especially where the crypto ecosystem becomes increasingly intertwined with functions typical of traditional finance. In its report on multifunction crypto-asset intermediaries, the Financial Stability Board emphasises that the vulnerabilities of such intermediaries largely coincide with the vulnerabilities of the traditional financial system, in particular leverage, liquidity mismatch, technology and operational vulnerabilities, and interconnections (Financial Stability Board, 2023). At the same time, the combination of several functions within a single intermediary may further amplify these risks. Certain scholars support this conclusion, in particular, Heike Joebges, Hansjörg Herr and Christian Kellermann show that the growing integration of the crypto system with the traditional financial system, as well as the transfer of banking functions into the unregulated sphere of digital finance, increase the likelihood of systemic financial instability and adverse consequences for the real economy (Joebges, Herr, & Kellermann, 2024). At the same time, empirical studies of the connectedness between crypto and traditional financial markets, in particular the study by Julián Andrada-Félix, Adrian Fernandez-Perez and Simón Sosvilla-Rivero, indicate that such links are not linear or equally strong in all periods. However, volatility spillovers between them intensify under conditions of general economic and financial instability (Andrada-Félix, Fernandez-Perez, & Sosvilla-Rivero, 2020). Accordingly, regulatory arbitrage in this area is dangerous not only at the level of an individual product or service: where integration between sectors deepens, it may transform from a micro-regulatory problem into a factor of macro-financial vulnerability.

Fourthly, an important consequence of regulatory arbitrage is the deepening of operational, technological, and cyber risks, especially where digital models combine elements of decentralisation with centralised points of control. In the 2025 European Parliament briefing Digital Assets: EU regulatory framework, market uptake, risks and challenges, it is expressly stated that many alternative digital assets have effectively reintroduced risks by imitating the business models of traditional centralised financial institutions (European Parliament, 2025). The same document emphasises that stablecoins combine decentralised public ledgers with a high degree of centralisation in matters of minting and reserve management and at the same time resemble money market funds, but with increased operational and cyber risks. This means that arbitrage through platform architecture or the allocation of roles among different actors may not only alter the legal qualification of a product, but also create additional technical points of vulnerability.

Fifthly, regulatory arbitrage undermines equal competitive conditions and legal

certainty within the EU internal market. In digital financial markets, as Rainer Kulms observes, regulation and private-law structures interact particularly closely, while digital disruption itself sharpens the issue of regulatory competition and the ability of the legal system to respond adequately to new market models (Kulms, 2022). In such circumstances, different structuring of functionally similar products or services may lead to economically similar models being subject in practice to different regulatory burdens and therefore competing not only on the basis of quality or efficiency, but also on the basis of the attractiveness of their regulatory wrapper. In one of its reports on the call for evidence, ESMA expressly stated that, in order to scale digital finance within the EU, legal certainty is needed to reduce regulatory arbitrage and market fragmentation within the EU (ESMA, 2022). The same vector is apparent in the legislative logic of MiCA, since, as already noted above, the new regime was intended to ensure legal certainty for crypto-assets not covered by existing EU legislation, replace existing national frameworks, and establish uniform rules at EU level (Hallak, 2023). Accordingly, if some market participants bear the full compliance burden of the harmonised regime, while others achieve a similar economic result through different product structuring, a different mode of access to the asset, or a different jurisdictional nexus, this leads not only to a distortion of competition, but also to uncertainty as to which standards actually apply to functionally similar services.

A separate, but extremely important, consequence is the emergence of supervisory "blind spots". In the 2025 Financial Stability Review, the European Central Bank directly points to data gaps regarding crypto exposures, especially in the less-regulated non-bank financial intermediation sector, as well as to limited visibility of leverage and indirect contagion channels (European Central Bank, 2025). In this context, regulatory arbitrage is problematic for two reasons: it allows a lighter regime to be selected, and part of the resulting risk may fall outside supervisory visibility. This is especially true in digital finance, where the boundaries between the issuer, the interface, the protocol, the reserve manager, the custodian and the marketing provider can be blurred or spread across several jurisdictions. The legal and supervisory assessment of risk may then lag behind its actual configuration.

The consequences of regulatory arbitrage in EU digital finance go beyond the formal question of choosing an incorrect or more advantageous legal regime. They are reflected in a real reduction in investor protection, a distortion of market integrity, growing operational and cyber vulnerabilities, new contagion channels between crypto and traditional finance, and supervisory blind spots that delay the identification of risk. For this reason, regulatory arbitrage in this field deserves to be treated as one of the central problems of contemporary digital finance regulation, rather than as a peripheral side effect of innovation.

The findings of this article suggest that regulatory arbitrage in EU digital finance is best understood as a structural consequence of how several partially overlapping regulatory regimes, the hybrid nature of digital financial products, the adaptability of technological business models and the uneven application of supervisory standards interact with one another. The article thereby confirms and develops the line of academic argument linking regulatory arbitrage to the divergence between legal form and economic substance, and to the ability of market actors to structure economically similar activities in legally different ways.

From a broader regulatory perspective, the adoption of MiCA represents a major step towards harmonisation, but it does not by itself remove the conditions that make arbitrage possible. The problem persists because digital finance in the EU remains situated at the intersection of multiple legal regimes, covering financial instruments, payment services, electronic money and crypto-assets. Legal certainty therefore depends both on the existence of special rules and on how consistently functionally similar products and services are qualified across the regulatory framework. This is part

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of why supervisory convergence has become so central to the post-MiCA environment.

The implications of regulatory arbitrage extend beyond questions of formal legal classification. Where it allows functionally similar activities to operate under different compliance burdens, the result can include weaker investor and consumer protection, distortions of competition, reduced market integrity, higher operational and cyber vulnerabilities and lower supervisory visibility. Regulatory arbitrage is therefore better regarded as a broader problem of regulatory effectiveness in technologically dynamic markets, not merely as a technical challenge of legal drafting. These findings support a more coherent, function-oriented approach to legal qualification, stronger supervisory coordination, and a regulatory framework better able to respond to evolving digital business models.

Future research could build on this analysis by examining more closely how national competent authorities apply the relevant qualification criteria in practice, how cross-border supervisory divergence develops under MiCA, and how emerging forms of digital finance, including multifunction intermediaries and increasingly complex token-based ecosystems, may generate new forms of arbitrage beyond the categories currently recognised in European Union law.

Conclusions

Regulatory arbitrage in EU digital finance is best understood as a systemic phenomenon rather than as an accidental consequence of individual loopholes in the law. It arises at the intersection of fragmented regulatory architecture, the hybrid nature of digital financial products, the adaptability of technological business models, heterogeneous supervisory application and a persistent gap between innovation and its legal qualification. The analysis shows that, even after the adoption of MiCA, the problem remains relevant; what has changed is the form it takes. Digital-market conditions give participants room to do more than choose between existing legal regimes: they can actively construct products, platforms and corporate models that move closer to a more advantageous regulatory outcome. Regulatory arbitrage is therefore a matter of legal technique, but it also points to deeper structural limitations in how digital finance is currently regulated.

No less important is that the consequences of such arbitrage extend far beyond the formal circumvention of a less burdensome regime. As the analysis shows, it is capable of reducing the actual level of investor and consumer protection, undermining market integrity, intensifying operational and cyber risks, creating conditions for financial instability, as well as distorting the competitive environment and deepening legal uncertainty within the EU internal market. For this reason, an effective response to regulatory arbitrage cannot be reduced merely to the formal multiplication of rules or the mechanical expansion of the regulatory perimeter. Rather, it must be based on a more consistent and function-oriented approach to the qualification of digital financial products, on the strengthening of supervisory convergence, international coordination, and the ability of the law to respond in a timely manner to new technological and business-model configurations. Only under such conditions will the EU regulatory framework be able simultaneously to support innovation and minimise the risks generated by the use of differences between legal regimes in the sphere of digital finance.

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