ISSN 2713-0525
eISSN 2713-0533

KUTAFIN LAW REVIEW

Volume 11 Issue 4 2024

Issue topics

INTERNATIONAL CLIMATE CHANGE LAW

PUBLIC HEALTH GOVERNANCE

HUMAN RIGHTS, STATE REGULATION OF RELIGION, CRIME AND PUNISHMENT

INTERNATIONAL TRADE COMPLIANCE

CRIMINOLOGY

LEGAL TRANSLATION AND COURTROOM RHETORIC

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KUTAFIN
LAW REVIEW

Volume 11 Issue 4 2024

Founder and Publisher — Kutafin Moscow State Law University (MSAL), Moscow, Russian Federation

ISSN 2713-0525 eISSN 2713-0533

Publication Frequency	4 issues per year
Registered	Federal Service for Supervision in the Sphere of Communications, Information Technologies and Mass Media Certificate PI No. FS 77-80833, dated 7 April 2021. Published since 2014
Website	https://kulawr.msal.ru/
Editorial Office contacts	kulawr@msal.ru + 7 (499) 244-88-88 (# 555, # 654)
Publisher contacts	Kutafin Moscow State Law University (MSAL) 9 Sadovaya-Kudrinskaya St., Moscow 125993, Russian Federation https://msal.ru/en/ msal@msal.ru + 7 (499) 244-88-88
Printing House	Kutafin Moscow State Law University (MSAL) 9 Sadovaya-Kudrinskaya St., Moscow 125993, Russian Federation
Subscription	Free distribution

Signed for printing 21.12.2024. 232 pp. 170 × 240 mm. An edition of 150 copies

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EDITORIAL

Dear Readers and Contributors,

We are honored and privileged to bring to your attention the final issue in 2024. We are not exaggerating admitting that this issue has become the quintessence of all the efforts we made in 2024 to provide our readers and contributors with a transparent forum for exchange of ideas and practices.

In recent decade, the landscape of academic research has evolved significantly. We have witnessed the growing need for interdisciplinary research highlighting challenges and the changing roles of different institutions, which contributes to fostering collaborative efforts among diverse communities and mentalities.

As global challenges become increasingly complex — ranging from state sovereignty and human rights protection to public health crises and AI-powered risks — the need for interdisciplinary approaches has never been more crucial. The Journal's attention and efforts aiming at prioritizing and investing in interdisciplinary research should serve as recognition of its vital pathway to innovative solutions and the rule of law advancement.

Many contemporary challenges do not fit neatly within the confines of traditional academic and practical approaches. For instance, the paper written by **Alexander M. Solntsev, Anastasia M. Otrashevskaya and Parzad N. Yusifova** draws the reader's attention to negative consequences of climate change on the environment. The authors examined this process by analyzing two cases, namely biodiversity degradation and management of chemicals and waste.

Ayub Yusufzai, **Geeta** and **Phagwara Punjab** concluded that, despite oppression of women and promotion of misogyny by regressive edicts enacted by Taliban leadership, cultural determinants shaping gender dynamics, and the disparities between urban and rural contexts, reconciliation of discrepancies is still possible for the sake of safeguarding human rights ideas.

Veer Mayank and **Nidhi Saxena** devoted their research to analyzing the need for reforms in the area of global governance of health that should

be based on implementing the principle of the duty to cooperate rather than making attempts to modify the Westphalian sovereignty.

Igor A. Pibaev, drawing the Reader's attention to the status of religious ministers, argues that they represent one of the elements of implementation of the constitutional right to freedom of religion. Different jurisdictions treat the status of the religious minister differently depending on historical, educational and political factors. However, the significance of their role predetermines the necessity to ensure freedom of their activities.

The contradictions of the modern world cannot but affect cross-border legal relations and transactions with a foreign element. **Beniamin A. Shakhnazarov** sequentially examines the issues of stability and legitimacy of cross-border trade operations, while respecting ethical and legal standards.

The study carried out by **Noor Saad Mohammad** and **Rusul Faisal Dalool** highlights that the system of criminal justice has to develop rapidly since criminals with expertise in information technology are increasingly employing modern scientific and technical methods in their criminal activities. Consequently, it becomes necessary to utilize contemporary evidence and investigative techniques to discourage and eliminate illicit activities.

Miklós Tihanyi, Vince Vári and **Kristina A. Krasnova** have thoroughly examined the concepts of sin and punishment as an intrinsic part of Christian religious teachings in the context of contemporary criminal law. Since restorative justice is the closest to the Christian doctrine of punishment, its distinctive features have been also subjected to scrutiny by the scholars.

The research carried out by **Ahmad S. Haider** and **Ruba Alkhatib** demonstrates the convergence of ideas from various disciplines that together can lead to groundbreaking innovations. For example, the intersection of law, linguistics, cultural studies and computer science has already led to significant advancement in law, linguistic and artificial intelligence.

Courtrooms have long been arenas of drama, where lives of participants are often at stake. Courtroom rhetoric, regardless of the category of the case, shapes the narratives of justice and affects the outcomes of trials. Thus, **Polina E. Marcheva** and **Natalia M. Golovina** have analyzed speeches pronounced in court to provide the Reader with some considerations regarding substantive and pragmatic factors determining persuasiveness of the counsel's speech.

Thus, we voice our hope that we have managed to encapsulate the necessity and urgency of interdisciplinary research based on mutual respect for different opinions and respectful dialogue in today's academic landscape. We believe that the very policy of the Journal serves well for the needs of academic community.

We expect you to find this issue both innovative and inspiring. Our contributors have worked diligently and we encourage you to engage with their work and consider how their ideas can inform your own research and practice.

Sincerely yours,
Natalia M. Golovina
Kutafin Law Review
executive editor

INTERNATIONAL CLIMATE CHANGE LAW

Article

DOI: 10.17803/2713-0533.2024.4.30.633-656

International Legal Problems of the Climate Change Effects on the Environment (on the Examples of Biological Diversity Degradation and Chemicals and Waste Management)

Alexander M. Solntsev, Anastasia M. Otrashevskaya, Parzad N. Yusifova

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***Abstract*:** Climate change is an existential threat to humanity: scientific data shows that every year the average temperature on Earth is getting higher and higher. Within the framework of international law, a set of measures is being taken to mitigate and adapt to the effects of climate change. Given the comprehensive nature of climate change impacts on the environment, detailed legal measures are required in various areas of international cooperation. In this study the authors examined the complexities of legal regulation in two areas of climate change impacts: management of chemicals and waste, as well as preservation of biological diversity and genetic resources. The conducted study identified achievements and problems of international legal regulation in these areas and also showed that for the purposes of synergy of international treaties in the studied areas various decisions are made at periodic conferences of the parties to these international treaties.

***Keywords*:** international environmental law; climate change; United Nations Framework Convention on Climate Change (UNFCCC); Paris Agreement; biological diversity; chemicals and waste; Sustainable Development Goals (SDGs)

***Acknowledgments*:** This article was prepared with the support of a grant from the Russian Science Foundation (project 23-28-01280).

Cite as: Solntsev, A.M., Otrashevskaya, A.M., Yusifova, P.N., (2024). International Legal Problems of the Climate Change Effects on the Environment (on the Examples of Biological Diversity Degradation and Chemicals and Waste Management). *Kutafin Law Review*, 11(4), pp. 633–656, doi: 10.17803/2713-0533.2024.4.30.633-656

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I. Introduction

Today the problems related to climate change have come to the fore and are a matter of concern to the international community. In accordance with the Paris Agreement under the United Nations Framework Convention on Climate Change 2015 (Paris Agreement), the countries agreed "to keep the long-term average global surface temperature below 2 °C compared to pre-industrial levels and to make efforts to limit it to 1.5 °C"[1] by the end of the 21st century. Warming by more than 1.5 °C can lead to serious consequences of climate change and extreme weather conditions. However, we can already see that the situation cannot be kept under control. "June 2024 became the hottest month since records began and the thirteenth month in a row

[1] The Paris Agreement adopted on 12 December 2015, Art. 2. Available at: https://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf [Accessed 10.08.2024].

to set a temperature record. For 12 months in a row, the average global temperature has been around 1.5 °C higher than in the pre-industrial levels. The average sea surface temperature in June was 20.85 °C, which is also the highest value on record."[2]

According to the latest report of the UN Secretary-General on the progress towards the Sustainable Development Goals (SDGs), "despite some reductions in greenhouse gas emissions in developed countries, greenhouse concentrations hit record highs in 2022, with real-time data in 2023 indicating a continued rise. Carbon dioxide levels have surged to 150 % above pre-industrial levels. Public funding for oil, coal, and gas production and consumption more than doubled from 2021 to 2022 and tripled since 2015, hindering progress towards a net-zero transition (Para. 4)."[3]

There is a growing awareness in the world today that climate change increases the risks of natural disasters. "In 2023, 129 countries reported the adoption and implementation of national disaster risk reduction strategies, increasing from 55 countries in 2015. Among these countries, 122 countries have reported promoting policy coherence and compliance with the SDGs and the Paris Agreement as a key element in the strategy."[4]

Greenhouse gases contributing to climate change are also among the most significant atmospheric pollutants that seriously affect human health.[5] "In 2019, air pollution, including greenhouse gases, has caused 4 to 5 million premature deaths (Fuller and Landrigan, 2022, p. 536).

[2] UN News, Climate and Environment "Earth's hottest June on record," 8 July 2024. Available at: https://news.un.org/en/story/2024/07/1151841 [Accessed 10.08.2024].

[3] Report of the UN Secretary-General "Progress towards the Sustainable Development Goals," 2 May 2024, Para. 4. Available at: https://unstats.un.org/sdgs/files/report/2024/SG-SDG-Progress-Report-2024-advanced-unedited-version.pdf [Accessed 10.08.2024].

[4] Report of the UN Secretary-General "Progress towards the Sustainable Development Goals," Para. 30.

[5] The World Health Organization (WHO). Atmospheric air pollution (outdoor air): basic facts. 12 December 2022. Available at: https://www.who.int/news-room/fact-sheets/detail/ambient-(outdoor)-air-quality-and-health?gad_source=1&gclid=EAIaIQobChMIgrq01MbJhwMVzBeiAx0aJSlJEAAYASAAEgJ3RPD_BwE[Accessed 10.08.2024].

Malnutrition, malaria and temperature variation caused by the impact of climate change on the food, water and sanitation situation are expected to additional 250,000 deaths per year between 2030 and 2050. The direct damage costs to health as a result of climate change, mainly in developing countries, is estimated to be between $ 2–4 billion per year by 2030."[6]

It should not be forgotten that the main responsibility lies with the industrialized countries, which have taken on the obligation to help developing countries. "The amount of climate finance provided by the parties to the United Nations Framework Convention on Climate Change listed in Annex I, as support provided to developing countries, increased by 5 % from 2015 to 2020, amounting to $ 41 billion. Although there is a range of estimates and a lack of an agreed accounting methodology on the $ 100 billion per year goal, the goal was not yet met as of 2021. However, recent progress made in the provision and mobilization of climate finance amounted to $ 89.6 billion in 2021."[7] The Organisation for Economic Co-operation and Development (OECD) reports that the commitment was met for the first time in 2022 and reached $ 115.9 billion.[8] But even this amount is like a drop in the ocean, considering that "the UN Framework Convention on Climate Change estimates that nearly $ 6 trillion is needed for developing countries' climate action plans by 2030, underscoring the need to massively scale up finance."[9]

[6] The World Health Organization (WHO). Climate change. Available at: www.who.int/health-topics/climate-change#tab=tab_1 [Accessed 10.08.2024].

[7] Report of the UN Secretary-General "Progress towards the Sustainable Development Goals," Para. 30.

[8] Organisation for Economic Co-operation and Development. Climate Finance Provided and Mobilised by Developed Countries in 2013–2022. 29 May 2024. Available at: https://www.oecd.org/en/publications/climate-finance-provided-and-mobilised-by-developed-countries-in-2013-2022_19150727-en.html [Accessed 10.08.2024].

It should be noted that at the 15th Conference of the Parties (COP15) of the UNFCCC in Copenhagen in 2009, developed countries committed themselves to achieve the collective goal of mobilizing 100 billion US dollars per year by 2020 for actions to combat climate change in developing countries in the context of meaningful mitigation actions and transparency.

[9] The Sustainable Development Goals Report 2024, p. 34. Available at: https://unstats.un.org/sdgs/report/2024/The-Sustainable-Development-Goals-Report-2024.pdf [Accessed 10.08.2024].

Without a doubt, as much legal research as possible is needed today to form an overall picture and to understand to what extent legal mechanisms help to cope with the negative effects of climate change, and to what extent adjustments are needed. This article focuses its analysis on two areas in detail: "chemicals, waste and climate change" and "biological diversity, genetic resources and climate change."

II. Chemicals, Waste and Climate Change

The chemical industry, which has received considerable attention in recent years from many states, is among the factors that are influencing climate change (Sharipova, 2022, p. 19). "The modern economy cannot do without chemical industry products, but at the same time, this sector ranks as the third most polluting industry."[10] According to studies, "this sector contributes about 7 % of global anthropogenic greenhouse gas (GHG) emissions, where CO_2 emissions account for 5.5 %."[11] "It accounts for 10 per cent of the global energy demand and 30 per cent of industrial energy demand; it emits 7 per cent of global greenhouse gases and 20 per cent of industrial greenhouse gases. Production of chemicals doubled between 2000 and 2017 and is expected to double again by 2030 and to triple by 2050, mostly in States that are not members of the Organisation for Economic Co-operation and Development (OECD)."[12]

[10] International Energy Agency. Why is the chemical sector important? Available at: www.iea.org/fuels-and-technologies/chemicals [Accessed 10.08.2024].

[11] The recent major study of the impact of the chemical industry on climate change was conducted in 2018. This is primarily due to the fact that it is difficult to track supply chains to the industry and, as a result, the lack of publicly available data on the movement of chemicals. There is an urgent need for a mass balanced and transparent report on the main movements of chemicals, so that reliable assessment can be carried out of the environmental impact of chemicals and climate change and conditions conducive to reducing emissions and reducing waste.

[12] Report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes "The toxic impacts of some proposed climate change solutions," 13 July 2023, Para. 14. Available at: https://www.ohchr.org/en/documents/thematic-reports/ahrc5425-toxic-impacts-some-proposed-climate-change-solutions-report [Accessed 10.08.2024].

"In 2022, 19 % of the global food production, totaling about 1.05 billion metric tons, was thrown away and wasted, where 60 % comes from households. These wastes lead to significant greenhouse gas emissions, which cost more than $ 1 trillion annually. It should be noted that states have yet to realise the direct link between food waste and climate change. Only 9 out of 193 countries have included food waste in their Nationally Determined Contributions (NDC) under the Paris Agreement as actions to combat climate change."[13]

"The overall NDC indicates that 99 % of the parties to the Paris Agreement have identified domestic climate change mitigation measures as key tools for achieving climate change mitigation targets in priority areas such as energy supply, transport, housing, industry, waste management."[14] With regard to industry, which is the second largest source of global GHG emissions and ranks second in terms of annual GHG emissions growth among priority areas, half of the Parties mentioned appropriate measures, which is less common than in other priority areas (77–93 %).

"The processes of climate change and the increase in emissions and waste from the chemical industry are closely interrelated: on the one hand, chemicals produced as a result of production have an impact on environmental degradation, and on the other hand, climate change significantly predetermines the release of chemicals and changes how toxic chemicals affect human health and the state of the environment."[15]

How does climate change affect chemicals? Firstly, "the increase in average temperature leads to the easier evaporation of certain chemicals and their breakdown into toxic products, which in turn has a negative impact on human health, specifically in the lungs" (Noyes, 2009). Secondly, "climate change increases the risk of air pollution, since volatile organic compounds released by chemical products

[13] The Sustainable Development Goals Report 2024, p. 32.

[14] United Nation Climate Change. Nationally determined contributions under the Paris Agreement. Synthesis report by the secretariat. 14 November 2023, p. 28. Available at: https://unfccc.int/sites/default/files/resource/cma2023_12.pdf [Accessed 10.08.2024].

[15] Chemicals, Wastes and Climate Change Interlinkages and Potential For Coordinated Action, p. 15. Available at: https://mercuryconvention.org/sites/default/files/documents/2021-07/Climate_Change_Interlinkages.pdf [Accessed 10.08.2024].

contribute to the smog formation" (Sambayeva, 2021, p. 186), "which leads to an air quality deterioration — it can negatively affect the lungs or exacerbate respiratory diseases" (Zigler et al., 2018). Thirdly, "climate change increases the number of extreme events (hurricanes, tornadoes, typhoons, fires, etc.), resulting in additional release of toxic chemicals into the air."[16] Fourthly, "there are a number of studies confirming the ability of toxic chemicals to disrupt the adaptation of living organisms (humans and animals) to climate change, since they impede the metabolic process in the human body and can negatively affect, for example, the endocrine system" (Koubassov, 2014, p. 106).

Due to the uncontrolled growth of dirty waste export and import transactions, which began in the 1970s, the international community adopted on 22 March 1989 the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.[17] This treaty "is aimed at protecting human health and the environment by reducing the generation of hazardous waste, maximizing the disposal of hazardous waste, preventing the transportation of hazardous waste to countries that do not have specialized enterprises and facilities for their safe processing, minimizing the transboundary movement of hazardous waste and finding ways to environmentally sound and efficient use of such waste. The list of categories of wastes to be controlled (waste steams) and wastes having as constituents subject to the Convention is set out in Annexes I and II."[18] "The procedure for the disposal or recycling of such waste is established by the national legislation of the States in accordance with the general requirements set out in Art. 4, 13 and Annex V A of the Convention."[19]

[16] Chemicals, Wastes and Climate Change Interlinkages and Potential For Coordinated Action, p. 31.

[17] Available at: http://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx [Accessed 10.08.2024].

[18] Annexes I and II of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal: adopted on 22 March 1989. Available at: http://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx [Accessed 10.08.2024].

[19] Annex V of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal: adopted on 22 March 1989. Available at: http://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx [Accessed 10.08.2024].

Thus, this treaty specifies requirements for management, reduction of the volume, disposal and transportation of hazardous wastes, including those that can potentially have harmful effects on climate change. As a result, proper implementation of the provisions of the Convention (to date, 190 states are parties to it, all UN member states except the USA, San Marino and Haiti)[20] can reduce the impact of chemical waste on climate change.

Another convention regulating the use of chemicals is the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, which was adopted on 10 September 1998.[21] "It promotes common responsibility and joint efforts of the Parties in international trade in hazardous chemicals and pesticides through a more open exchange of information about their properties, establishes certain packaging requirements and labeling for a number of chemicals, requires assistance in their environmentally sound use and safe regulation, and also requires States to inform consumers and the Convention Secretariat in a timely manner of any restrictions or prohibitions on such chemicals and pesticides in order to protect the environment and public health from their potentially harmful effects."[22] Unlike the Basel Convention, the Rotterdam Convention primarily regulates the movement of hazardous chemicals and pesticides rather than their impact on climate change.

The Stockholm Convention on Persistent Organic Pollutants (POPs) adopted on 22 May 2001[23] protects human health and the environment from persistent organic pollutants, "which are organic compounds characterized as toxic substances that accumulate in the environment

[20] Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. Available at: http://www.basel.int/Countries/StatusofRatifications/PartiesSignatories/tabid/4499/Default.aspx [Accessed 10.08.2024].

[21] Available at: https://unece.org/fileadmin/DAM/stats/documents/ece/ces/ge.33/2013/mtg1/RC_Convention_Russian.pdf [Accessed 10.08.2024].

[22] Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade: adopted on 10 September 1998. Art 1, 5, 11, 13.

[23] Available at: https://chm.pops.int/Portals/0/sc10/files/a/stockholm_convention_text_r.pdf [Accessed 10.08.2024].

(water, soil, air, biological objects) with a high level of migration" (Mayorova, 2021). "Such pollutants include pesticides and industrial chemicals that are formed as by-products during some chemical processes or during combustion, and the sound management of POPs is one of the main environmental problems of our time" (Nebytov, 2017).

According to the report "Climate Change and POPs: Predicting the Impacts" "climate change will lead to an increase in the transfer of persistent organic pollutants to the Arctic and other remote regions; will increase the adverse effects of POPs in regions where ambient temperature and salinity levels rise; will lead to a change in the distribution of pollutants, in particular including POPs, in the environment; persistent organic pollutants will interact with physiological, behavioral and environmental adaptation to climate change and, thereby, affect the ability of organisms, populations, communities and ecosystems to withstand and/or adequately adapt to climate change."[24]

In order to "protect the environment, including combating climate change, the Convention defines and approves a list of POPs that must be eliminated and cannot be imported or exported (Annex A 'Elimination'), such substances are subject to a total ban on their use worldwide and are subject to certain time limits for their complete phase-out."[25] Annex B "Restriction," in turn, sets out a list of "substances whose use is authorised for restricted purposes,"[26] while Annex C "Unintentional Production" lists substances that are generated by production processes and for which measures must be taken to reduce and eliminate their emissions (Khamidulina and Vinogradova, 2017).

The Minamata Convention on Mercury, adopted on 10 October 2013, is the most recent international agreement governing the management

[24] Guidance on how to assess the possible impact of climate change on the work of the Persistent Organic Pollutants Review Committee: POPRC-9/8, 25 February 2014, Para. 35. Available at: https://chm.pops.int/Portals/0/download.aspx?d=UNEP-POPS-POPRC.9-POPRC-9-8.Russian.pdf [Accessed 10.08.2024].

[25] Annex A of the Stockholm Convention on Persistent Organic Pollutants: adopted on 22 May 2001. Available at: https://chm.pops.int/Portals/0/sc10/files/a/stockholm_convention_text_r.pdf [Accessed 10.08.2024].

[26] Annex B of the Stockholm Convention on Persistent Organic Pollutants: adopted on 22 May 2001. Available at: https://chm.pops.int/Portals/0/sc10/files/a/stockholm_convention_text_r.pdf [Accessed 10.08.2024].

of chemicals and waste.[27] According to the review prepared by the Arctic Monitoring and Assessment Program in 2021, "climate change affects the behavior of mercury in the Arctic, although great uncertainties remain regarding the long-term effects of mercury exposure on wildlife and humans. The most obvious evidence of the impact of climate change is associated with the release of mercury as a result of melting permafrost and melting glaciers, its subsequent entry into the aquatic environment and through the food chain into the body of marine animals, and then into the human body."[28]

The Convention contains a number of provisions to reduce mercury emissions, wastes and use in industrial processes that can also contribute to climate change. Article 5 of the Convention regulates the process of phasing out the use of mercury and its compounds in certain production processes, Para. 1 Art. 8 of the Convention regulates the process of controlling and reducing emissions of mercury and its compounds in atmosphere, water and soil, however, such a reduction has been established only for 5 sources, Art. 11 of the Convention deals with the problem of environmentally sound management of mercury wastes. Coordinated implementation of the obligations deriving from the provisions of the Convention will lead to an overall reduction in mercury levels in the environment over time, and thereby reduce its impact on climate change.

The process of drafting a convention to combat plastic pollution is currently underway (Wang, 2023; Tessnow-von Wysocki and Le Billon, 2019). The UN Environment Assembly (UNEA) in 2022 resolved to end plastic pollution by adopting the resolution 5/14,[29] which established an Intergovernmental Negotiating Committee (INC) to work towards a treaty. The INC has met five times since 2022 (INC-1, INC-2, INC-3,

[27] Available at: https://www.mercuryconvention.org/sites/default/files/2021-06/Minamata-Convention-booklet-rus-full.pdf [Accessed 10.08.2024].

[28] AMAP Assessment 2021: Mercury in the Arctic, p. 92. Available at: https://www.amap.no/documents/download/6888/inline [Accessed 10.08.2024].

[29] Resolution adopted by the United Nations Environment Assembly on 2 March 2022, 5/14. End plastic pollution: towards an international legally binding instrument. Available at: https://wedocs.unep.org/bitstream/handle/20.500.11822/39812/OEWG_PP_1_INF_1_UNEA%20resolution.pdf [Accessed 10.08.2024].

INC-4 and INC-5),[30] managing to overcome initial procedural challenges and initiating text-based negotiations on a compilation draft text of the future agreement. At the last meeting in 2025, it is planned to adopt the final draft of the convention. There is a number of issues involved in drafting such a convention: environmental (recycling of plastic waste, finding alternatives to plastics), industrial (types of plastics states are ready to limit or ban in the near and distant future), and, of course, climatic issues (plastics' contribution to climate change throughout their entire life cycle, including through greenhouse gas emissions during their production and after emission, when they are exposed to solar radiation or disposed of by open burning). In the ocean, plastic waste releases methane and ethylene and breaks down into plastic microparticles that negatively affect marine organisms such as plankton that absorb carbon dioxide. According to the UNEP report "From Pollution to Solution: a global assessment of marine litter and plastic pollution," published in 2021, "the level of greenhouse gas emissions associated with the production, use and disposal of conventional fossil fuel-based plastics is forecast to grow to approximately 2.1 gigatons of carbon dioxide equivalent (GtCO2e) by 2040, or 19 per cent of the global carbon budget (the total annual emissions budget allowed while limiting global warming to 1.5 °C, despite the fact that in 2021 this figure was 3 %)."[31]

Thus, "despite the presence of international legal instruments, binding and recommendatory, regulating the issues of reducing emissions and reducing waste from the chemical industry, attention to this issue continues to grow, as the average temperature on our planet increases every year" (Arts and Gupta, 2004). The approaches to addressing climate change and managing chemicals and waste should be interrelated and include efforts to reduce greenhouse gas emissions, promote proper disposal and recycling of chemicals, compounds and

[30] Intergovernmental Negotiating Committee on Plastic Pollution. Available at: https://www.unep.org/inc-plastic-pollution [Accessed 10.08.2024].

[31] Report of the UN Environment Programme "From Pollution to Solution: A global assessment of marine litter and plastic pollution," 21 October 2021, p. 62. Available at: https://www.unep.org/resources/pollution-solution-global-assessment-marine-litter-and-plastic-pollution [Accessed 10.08.2024].

their waste, apply low-carbon emitting technologies and eliminate illegal trade in hazardous waste. An analysis of the main treaties that deal with the management of chemicals has shown that universal international agreements regulate only certain stages of the life cycle of a chemical, with the exception of the Minamata Convention on Mercury. The Basel, Rotterdam and Stockholm Conventions do not contain provisions prohibiting or restricting the production, trade and use of large quantities of chemicals in production processes or products. The Minamata Convention, in turn, is imperfect, since it does not set thresholds for mercury waste, mercury emissions are regulated with respect to only five sources (coal-fired power plants; coal-fired industrial boilers; smelting and roasting processes used in the production of non-ferrous metals; waste incineration facilities; cement clinker production facilities). The lack of appropriate international legal regulation leads to the formation of 7 % of global anthropogenic greenhouse gas emissions, which have an impact on climate change.

III. Biological Diversity, Genetic Resources and Climate Change

Biodiversity, as a life-support system for humanity, is of exceptional importance. "Biodiversity and climate change are closely linked, and each of them affects each other: biodiversity is threatened by anthropogenic climate change, but biodiversity resources can also mitigate the effects of climate change on people and ecosystems" (Fitzmaurice, 2021).

"The risk of species extinction continues to worsen, as evidenced by a 12 % deterioration in the aggregate Red Book index between 1993 and 2024 (and 4 % since 2015). Recently, a comprehensive reassessment of the risk of extinction of amphibian species was carried out, which showed that for amphibians, the most serious drivers increasing the risk of extinction are the effects of climate change, habitat conversion and invasive fungal disease."[32]

It was not so long ago that scholars doubted the possibility of legal regulation of relations related to climate change and the conservation

[32] Report of the UN Secretary-General "Progress towards the Sustainable Development Goals," Para. 129.

of biological diversity, pointing out to the following arguments: the legal regime of climate change and the legal regime of biodiversity operate in different directions, which do not allow linking the policy of biodiversity and climate change with the decision-making process (Scheffers and Pecl, 2019); as a result of overlapping legal regimes, there is a significant risk that climate change policies will be incompatible with biodiversity conservation goals and that biodiversity policies may interfere with the achievement of climate change policy goals (Hodas, 2008). However, we see today that "soft law instruments regulating relations in the field of climate change and conservation of biological diversity are being adopted at the universal level of the COP Convention on Biological Diversity" (Trouwborst, 2022) in more detail year after year. Thus, at COP-5, "the risks of climate change were highlighted, in particular for coral reefs and forest ecosystems, at COP-7, States were urged to manage ecosystems in order to increase their resilience to extreme climatic events, helping to adapt to climate change, then, in 2006, COP-8 emphasized the importance of integrating biodiversity issues into all relevant national policies, programmes and plans in response to climate change."[33] The authors posit that the important phenomenon of interdisciplinarity, synergy, and interconnection between conventions, which through the cumulative effect, will be able to increase the effectiveness of joint solutions to the problem of climate and biodiversity. "COP-8 noted the need to organize complementary activities to be carried out by the secretariats of the "three Rio Conventions" (The United Nations Framework Convention on Climate Change 1992 (UNFCCC), The United Nations Convention to Combat Desertification in Those Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa (UNCCD) and The Convention on Biological Diversity (CBD)), Parties and relevant organizations" (McDonald and McCormack, 2021).

"Today, the extreme climate situation is increasingly causing irreversible losses of natural ecosystems and biodiversity. Half of the biological species studied to date have moved to colder areas, hundreds

[33] COP Decisions. Biodiversity and Climate Change Decisions. Available at: https://www.cbd.int/climate/decision.shtml [Accessed 10.08.2024].

of other species are on the verge of extinction due to the retreat of glaciers, melting permafrost, ocean oxidation, sea level rise, reduced precipitation, desertification and land degradation. Over the last century, fifty percent of the world's wetlands have been destroyed."[34] It is extremely important to restore wetlands, given the ability of wetlands "to contribute to ecosystem-based adaptation to climate change and to sequester and store carbon as important responses for climate change mitigation."[35] This scientific evidence is reflected in international instruments,[36] "including the resolutions of the COP of the Ramsar Convention (resolution XIV.17 "The protection, conservation, restoration, sustainable use and management of wetland ecosystems in addressing climate change,"[37] resolution XI.14 "Climate change and wetlands: implications for the Ramsar Convention on Wetlands,"[38] resolution XIII.14 "Promoting conservation, restoration and sustainable

[34] Intergovernmental Panel on Climate Change. AR6 Synthesis Report (SYR), Longer report, 19 March 2023, p. 84. Available at: https://www.ipcc.ch/report/ar6/syr/downloads/report/IPCC_AR6_SYR_LongerReport.pdf [Accessed 10.08.2024].

[35] 14th Meeting of the Conference of the Contracting Parties to the Ramsar Convention on Wetlands "Wetlands Action for People and Nature" (Wuhan, China, and Geneva, Switzerland 5–13 November 2022). Resolution XIV.17 "The protection, conservation, restoration, sustainable use and management of wetland ecosystems in addressing climate change." Available at: https://www.ramsar.org/sites/default/files/documents/library/xiv.17_climate_change_e.pdf [Accessed 10.08.2024].

[36] Moreover, it is argued that peatlands may become the main terrestrial ecosystems capable of absorbing carbon dioxide from the atmosphere in the near future. This will happen due to the fact that forests, traditional CO2 storage sites on our planet, are rapidly losing a similar function. "Long-term research by the international team of researchers have convincingly proved that wetlands have a more significant climate-regulating function compared to forests. Peatlands contain twice as much carbon as all terrestrial forest ecosystems in the world. They cover only 3 % of the planet's surface, but store one-third of soil carbon that is accumulated on the land of our planet," the Siberian scientists noted in the study.

[37] 14th Meeting of the Conference of the Contracting Parties to the Ramsar Convention on Wetlands "Wetlands Action for People and Nature" (Wuhan, China, and Geneva, Switzerland 5–13 November 2022). Resolution XIV.17.

[38] 11th Meeting of the Conference of the Parties (Bucharest Romania, 6–13 July 2012). Resolution XI.14 "Climate change and wetlands: implications for the Ramsar Convention on Wetlands." Available at: https://www.ramsar.org/meeting/11th-meeting-conference-parties [Accessed 10.08.2024].

management of coastal blue-carbon ecosystems,"[39] emphasizing the value of certain types of wetlands as natural carbon sinks), as well as in the 4th Ramsar Strategic Plan 2016–2024, which recognizes the important ecosystem services that provide wetlands to contribute to halting biodiversity loss, food security, healthy living, water quality and supply, water security, disaster risk reduction, adaptation and mitigation of climate change.[40]

As part of the overall NDC, it was indicated that the number of parties to the Paris Agreement that identified synergies between adaptation and mitigation, especially in the sectors of terrestrial and marine ecosystems and biodiversity, agriculture, energy, water resources and health, amounted to 27 %. "Examples of synergistic effects include increasing the sustainability of mangroves and algae (environmental solutions) to reduce flooding and increase carbon uptake; enhancing carbon stocks in forests through the restoration and conservation of local forest species; introducing climate-smart agriculture and agroforestry practices to diversify crops, promote soil conservation, and control diversification and increased carbon sequestration; using renewable energy sources; improving reservoir systems and pumped storage facilities to ensure water safety; reusing treated wastewater to promote conservation of freshwater resources; and reducing respiratory diseases by decreasing the use of fossil fuels."[41]

The current practice in the field of access to genetic resources and the fair and equitable sharing of benefits from their use (hereinafter referred to as "ABS") indicates the need for systematization of the regulatory framework and institutionalization. We have analyzed the

[39] 13th Meeting of the Conference of the Parties (Dubai United Arab Emirates, 21–29 Oct. 2018). Resolution XIII.14 "Promoting conservation, restoration and sustainable management of coastal blue-carbon ecosystems." Available at: https://www.ramsar.org/meeting/13th-meeting-conference-parties [Accessed 10.08.2024].

[40] Available at: https://www.ramsar.org/sites/default/files/hb2_5ed_strategic_plan_2016_24_e.pdf [Accessed 10.08.2024].

[41] Nationally determined contributions under the Paris Agreement, 14 October 2023, p. 167. Available at: https://unfccc.int/documents/632334 [Accessed 10.08.2024].

existing international legal mechanisms for regulating access to genetic resources for food production and agriculture that play a crucial role in adapting to climate change, as confirmed by particular international instruments, mechanisms and practices. The issues raised above correspond to the SDGs, since all the goals are directly or indirectly related to climate change and the use of genetic resources.

"Countries continue to make progress in ratifying and implementing access to genetic resources and benefit-sharing instruments. By July 2024, 101 States had reported on their legislative, administrative or policy measures under the Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits from their utilization to the Convention on Biological Diversity."[42]

Food security and climate change remain among the most serious challenges facing the global community (Abashidze and Solntsev, 2019), and these two issues are directly interconnected. To date, between 702 and 828 million people have experienced food shortages.[43] "The number of extreme weather events (abnormally hot weather, droughts, floods or storms) that pose a threat to human health and life over the period 2015–2020 appeared in 52 % of states, such climatic phenomena have a significant impact on food security, increase the burden on agro-food systems."[44] The maintenance of food production in such conditions has already been reflected in such universal documents as the UNFCCC[45] and the Paris Agreement, which also recognizes "the fundamental priority of safeguarding food security and ending hunger, and the particular

[42] CBD website. National report analyzer. Available at: https://absch.cbd.int/en/reports/analyzer [Accessed 10.08.2024].

[43] The State of Food Security and Nutrition in the World — 2022. Repurposing food and agricultural policies to make healthy diets more affordable, FAO, IFAD, UNICEF, WFP and WHO, Rome, 2022. Available at: https://openknowledge.fao.org/server/api/core/bitstreams/67b1e9c7-1a7f-4dc6-a19e-f6472a4ea83a/content [Accessed 10.08.2024].

[44] The State of Food Security and Nutrition in the World — 2022. Repurposing food and agricultural policies to make healthy diets more affordable, FAO, IFAD, UNICEF, WFP and WHO, Rome, 2022.

[45] The United Nations Framework Convention on Climate Change (UNFCCC): adopted on 9 May 1992, Art. 7. Available at: https://www.un.org/ru/documents/decl_conv/conventions/climate_framework_conv.shtml [Accessed 10.08.2024].

vulnerabilities of food production systems to the adverse impacts of climate change."[46]

Agricultural and food systems have a special role to play in combating climate change. Transformations are needed in these systems at the global, regional and national levels, including crops, livestock, forestry, fisheries, aquaculture, food supply chains and biodiversity. "The Food and Agriculture Organisation of the United Nations (FAO) and the Commission on Genetic Resources for Food and Agriculture (GRFA)... established in 1983 within this organisation, play a special role in the context of the development of documents, mechanisms, measures and procedures to support research and development on genetic resources for food and agriculture."[47]

It is worth highlighting the FAO study "The role of genetic resources for food and agriculture in adaptation to and mitigation of climate change,"[48] the main findings of which testify that "that in all sectors it is necessary to use GRFA wisely to promote adaptation to climate change and mitigate its consequences and also that the potential for the use of GRFA remains largely untapped."[49]

It should be noted, in order to develop adaptation methods, the risks posed by climate change to food and agriculture. The main risks among them are the following: 1) temperature increase can lead to infection and

[46] Preamble of the Paris Agreement and The United Nations Framework Convention on Climate Change (UNFCCC).

[47] The Commission on Genetic Resources for Food and Agriculture. Available at: https://www.fao.org/cgrfa/en/ [Accessed 10.08.2024].

For more information on FAO's work, see FAO's Work on Climate Change, FAO's Work on Climate Change. CGRFA/WG-AnGR-12/23/7 Inf.1. Commission On Genetic Resources for Food and Agriculture. Intergovernmental Technical Working Group on Animal Genetic Resources for Food and Agriculture, Twelfth Session, Rome, 18–20 January 2023. Available at: https://www.fao.org/3/cc3852en/cc3852en.pdf [Accessed 10.08.2024].

[48] The Role of Genetic Resources for Food and Agriculture in Adaptation to and Mitigation of Climate Change. FAO Commission on Genetic Resources for Food and Agriculture. FAO, 23 May 2022, p. 107. Available at: https://www.fao.org/3/cb9570en/cb9570en.pdf [Accessed 10.08.2024].

[49] Report of The Commission on Genetic Resources for Food and Agriculture. CGRFA-18/21/Report. P. 17. Eighteenth Regular Session of the Commission on Genetic Resources for Food and Agriculture 27 September — 1 October 2021. Available at: https://www.fao.org/3/nh331en/nh331en.pdf [Accessed 10.08.2024].

spread of diseases among livestock, plants, and to microbial growth); 2) temperature increase, changes in precipitation patterns, and drought have a negative impact on crop yields, as well as nutrient content of plant resources has a negative impact on the fight against hunger; lack of necessary resources leads to population reduction of certain species or complete disappearance, reduction of biota; 3) changes in ecosystem lead to the disappearance of sedentary organisms that can only live in a certain area and ecosystem (for example, corals) and a change in the habitat of mobile organisms (for example, migration of certain fish species with increasing water temperature); 4) the increasing burden on agri-food systems leads to the fact that states, agro-industrial enterprises and farmers need to optimize production, which implies additional costs and expenses, labor costs (individual states are already facing insufficient drinking water or food, climate change only increases the volume of necessary products, such limited access or complete lack of access to individual types of resources can lead to an increase in prices and the corresponding availability of necessary resources for the population); 5) new climatic conditions make some breeds and varieties unsuitable for the regions, forcing optimization of food value chains, making it more difficult to maintain biodiversity and implement the ABS measures.

In addition to the above-mentioned documents, international legal framework has already been developed to solve the problems under consideration: the 1992 Convention on Biological Diversity,[50] the 2010 Nagoya Protocol on Access to Genetic Resources and Benefit-Sharing,[51] the 2000 Cartagena Protocol on Biosafety,[52] that govern legal relations

[50] Convention on Biological Diversity: adopted on 5 June 1992. Available at: https://www.un.org/ru/documents/decl_conv/conventions/biodiv.shtml [Accessed 10.08.2024].

[51] The Nagoya Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization: adopted on 29 October 2010. Available at: https://www.cbd.int/abs/doc/protocol/nagoya-protocol-ru.pdf [Accessed 10.08.2024].

[52] Cartagena Protocol on Biosafety to the Convention on Biological Diversity: adopted on 29 January 2000. Available at: https://www.un.org/ru/documents/decl_conv/conventions/pdf/cartagena.pdf [Accessed 10.08.2024].

related to biological diversity and use of genetic resources at the universal level.

"FAO has also developed an international legal framework for adaptation to climate change the International Treaty on Plant Genetic Resources for Food and Agriculture 2001,"[53] "the Second Global Action Plan on Animal Genetic Resources FAO 2011,"[54] "Voluntary Guidelines to Support the Integration of Genetic Diversity into National Climate Change Adaptation Planning 2015,"[55] "FAO Resolution No. 7/2022 'Farmers' rights' 2022,"[56] etc.

The objectives of the 2001 International Treaty on Plant Genetic Resources for Food and Agriculture are "the conservation and sustainable use of plant genetic resources for food and agriculture and the fair and equitable sharing of the benefits arising out of their use, in harmony with the Convention on Biological Diversity, for sustainable agriculture and food security." In accordance with Para. 2 Art. 10, this Treaty "establishes a multilateral system, which is efficient, effective, and transparent, both to facilitate access to plant genetic resources for food and agriculture, and to share, in a fair and equitable way, the benefits arising from the utilization of these resources, on a complementary and mutually reinforcing basis." It can be noted that the key documents related to genetic resources aim at the sustainable use of resources, which would be a measure for adaptation to climate change.

It is also worth noting that for nearly twenty years the UN has been actively engaged in the drafting of an instrument to "promote the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction. Thus, on 19 June 2023, the

[53] Available at: https://www.wipo.int/wipolex/ru/text/195806 [Accessed 10.08.2024].

[54] Available at: https://www.fao.org/3/i2624r/i2624r00.pdf [Accessed 10.08.2024].

[55] Voluntary Guidelines to Support the Integration of Genetic Diversity into National Climate Change Adaptation Planning. Commission on Genetic Resources for Food and Agriculture, Food and Agriculture Organization of the United Nations, 24 November 2015. Available at: https://www.fao.org/3/i4940r/i4940r.pdf [Accessed 10.08.2024].

[56] Available at: https://www.fao.org/3/nk242ru/nk242ru.pdf [Accessed 10.08.2024].

Intergovernmental Conference on an international legally binding instrument based on the UN Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity in Areas beyond National Jurisdiction was held in New York. It adopted the Agreement based on the UN Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity in Areas beyond National Jurisdiction."[57] The Agreement was opened for signing on 20 September 2023.

Thus, it can be observed that now there is a sufficient number of legally binding mechanisms in the area of climate change adaptation that emphasize the special role of genetic resources for food and agriculture, but one should also keep in mind their "vulnerability" in case of incorrect and inefficient use of such resources.

The international community and individual states can effectively use already available tools and methods related to GRFA in order to adapt to climate change. These include 1) national and international programs for the development of early warning systems, exchange of information on characteristics and assessment; 2) breeding programs (distribution of drought-resistant, disease-resistant breeds, crossing of locally adapted and exotic species); 3) conservation, protection, restoration of ecosystems (marine ecosystems as carbon sinks, forests); 4) optimization of production, breeding, public-private partnership, farm support; 5) introduction of conservation agriculture, reduction of the use of inorganic fertilizers and pesticides; 6) ensuring the implementation of the ABS regime in accordance with the requirements of international law, taking into account possible risks, so as to avoid the recurrence of such phenomenon as "Columbian exchange;" 7) maintaining indigenous peoples and their traditional knowledge related to genetic resources, as it is indigenous peoples in many regions, such as Latin America and the Caribbean, who play a key role in preserving habitat conditions.

Thus, it can be noted that the international community has already developed a fairly broad legal framework and certain mechanisms for the use of GRFA as a tool for adaptation to climate change, but

[57] Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXI-10&chapter=21&clang=_en#EndDec [Accessed 10.08.2024].

its application remains insufficiently effective due to the increasing agricultural burden arising from climate change, as well as the lack of clear goals, guidelines, and national implementation mechanisms, especially in developing countries.

IV. Conclusion

Today, the negative effects of climate change are reflected in various spheres of life: from increased disaster risks to people's ill-health caused by excessive heat and burning forests. In these circumstances, legal professionals and researchers engaged in natural sciences should jointly develop and propose legal mechanisms that will be able to link climate issues with other aspects at the international and national levels. This article shows how the processes of gradual expansion of regulation of the subject of international treaties occur by taking separate measures at periodic conferences of the parties to these treaties. The authors emphasize that international co-operation of states in this sphere will be further developed precisely within the framework of synergistic action of various international treaties, SDGs, and various soft law instruments. As stated in the UNEP resolution 6/4, adopted on 1 March 2024, it is necessary to "enhance synergies, cooperation or collaboration, as appropriate, when implementing their respective obligations and commitments under Multilateral Environmental Agreements and other relevant environmental instruments, while respecting their individual mandates, thereby contributing to the effective implementation of national environment policies and actions, delivering global environmental benefits, contributing to the achievement of 2030 Agenda for Sustainable Development and the Sustainable Development Goals, considering the best available science, indigenous knowledge, traditional knowledge, and local knowledge."[58]

[58] Resolution 6/4 "On promoting synergies, cooperation or collaboration for national implementation of multilateral environmental agreements and other relevant environmental instruments": adopted 1 March 2024. Available at: https://www.unep.org/environmentassembly/unea6/outcomes [Accessed 10.08.2024].

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PUBLIC HEALTH GOVERNANCE

Article

DOI: 10.17803/2713-0533.2024.4.30.657-684

Global Governance of Health and Sovereignty: An Agenda for Reforms

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Abstract: The world has been plagued by pandemics earlier leading to the evolution of several mechanisms and institutional structures for controlling the spread of pandemics. Creation of the World Health Organization was a development emerging from the efforts to control the spread of diseases and it was charged with the mandate of governance of health at a global level. The spread of Covid-19, however, shows that the present structure of the governance of global health is ill-suited to the task. The paper discusses the present architecture of the global health governance. It discusses the impact of the concept of *Westphalian sovereignty* on this global health architecture and advances the suggestion that the global health governance architecture should be based on the principle of *the duty to cooperate* rather than attempts to modify the *Westphalian sovereignty* that forms the basis of international relations with the opt-out mode of ratification of treaties.

Keywords: health governance; Sovereignty; Duty to Cooperate; International Health Regulations; World Health Organization

Cite as: Mayank, V. and Saxena, N., (2024). Global Governance of Health and Sovereignty: An Agenda for Reforms. *Kutafin Law Review*, 11(4), pp. 657–684, doi: 10.17803/2713-0533.2024.4.30.657-684

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I. Introduction

Public health in supranational terms had been the concern of countries[1] from at least the 14th century when the term "quarantine" was coined to protect domestic populations against "foreign" diseases such as plague.[2] Trade and social relations between countries led to diseases spreading through sailors and travelers, who travelled from one country to another.[3] This necessitated steps by countries to isolate suspected travelers to prevent the spread of diseases in their respective jurisdictions.[4] However, in spite of the measures adopted, the diseases continued to spread.[5]

While the diseases had been in existence from the early times and had been traversing far and wide, yet there are only a couple of instances, separated by extended timelines, of such diseases travelling

[1] Domestic public health has always been the concern of the respective countries.

[2] World Health Organization, (2004). Globalization and Infectious Diseases: A Review of the Linkages. TDR/STR/SEB/ST/04.2. Special Topics No. 3, Social, Economic and Behavioural Research (SEB) UNDP/World Bank/WHO Special Programme for Research and Training in Tropical Diseases (TDR), World Health Organization.

[3] World Health Organization, (2004).

[4] World Health Organization, (2004). "By the 7th century, China had a well-established policy of detaining sailors and foreign travelers suffering from plague."

[5] World Health Organization, (2004).

across nations, resulting in pandemics causing global misery and deaths (LePan, 2020). The incidence of movement of diseases increased with the emergence of faster means of communication, when travel became faster and more frequent between different nations across the globe (Sheel, 2020). The increase in rate of globalization, through the Internet and trade linkages is further likely to increase the incidence of epidemics[6] and the implications of such increased incidences of epidemics would be huge in terms of economic costs.[7]

Spread of communicable diseases is dependent upon the agency of transmission. If the transmission channels are identified and inhibited, the chain of transmission can be broken. Transmission is also dependent upon the immunity of the host, population of the pathogen and the environmental factors. Depending upon the route of transmission and the factors increasing the susceptibility to infections, methods can be devised that could control the rate of infection and thereby the degree of disease in a population. Globalization has an impact on the social, environmental and biological factors that are important in disease epidemiology.[8] The rapidly changing environments — human, economic, social, etc., — render the policies for disease control and prevention increasingly outdated, thereby requiring continuous revisions.[9] In such an environment, it is necessary that a global body be vested with functions to control the spread of diseases at a global level. The next part of this section looks at the emergence and functioning of the WHO — the specialized United Nations agency vested with the function of looking into the health aspects.

[6] World Economic Forum 2019. Outbreak Readiness and Business Impact: Protecting Lives and Livelihoods across the Global Economy. White Paper published by World Economic Forum in collaboration with Harvard Global Health Institute. The document says that the "The number and diversity of epidemic events has been increasing over the past 30 years, a trend that is expected to intensify," because of "increasing trade, travel, population density, human displacement, migration and deforestation."

[7] World Economic Forum 2020. Global Health Security: Epidemics Readiness Accelerator. World Economic Forum website. Available at: https://www.weforum.org/projects/managing-the-risk-and-impact-of-future-epidemics [Accessed 09.09.2023].

[8] World Health Organization, (2004).

[9] World Health Organization, (2004).

II. Emergence of Global Health Governance

The roots of the emergence of the WHO lay in the pandemics that had ravaged the world during the modern times,[10] and which could not be controlled by the quarantine measures that were resorted to by the countries. The countries realized that controlling epidemics independently is beyond the capability of any individual state and, therefore, a joint effort by different nations is mandatory.

The emergence of new diseases and the transmission of diseases from foreign shores was a foregone conclusion with increasing international trade and commerce. Industrial revolution at the beginning of the 20th century had resulted in the development of large cities that had large populations of laborers living in close vicinity of each other (Clift, 2013), which increased the likelihood of transmission of disease. Increased trade and commerce due to the development of technologies and through fast moving ocean carriers brought closer the erstwhile countries that used to be far separated due to the width of the oceans. This led to the transmission of diseases to shores that were out of the way of such transmission since the diseases, that would have earlier manifested themselves in the sailors due to the long time on the oceans, remained hidden now making the detection and spread of such diseases difficult (Clift, 2013).

As the result of this realization, the States convened international sanitary conferences during the period of 1851–1900.[11] These sanitary conferences were hosted amongst the European States as they were the primary States that were engaged in trading and colonial relations with other states and hence had greater susceptibility to incoming pestilence.

However, following the lead of the European nations, a group of "South American" states also entered into an agreement amongst themselves in the 1880's.[12] Similarly in 1902, a group of "American republics" entered into an agreement at Washington D.C. (Clift, 2013).

[10] These diseases were Cholera, The Third Plague; Yellow Fever; Russian Flu in the 19th Century and the Spanish Flu in the early 20th Century.

[11] 10 sanitary conferences were organized during the period. The 11th sanitary conference was organized in 1903.

[12] World Health Organization, (2007). The World Health Report 2007: A Safer Future: Global Public Health Security in the 21st Century World Health Organization.

The result of those agreements and conferences was the establishment of "Pan American Sanitary Bureau" in the United States and "Office International d'Hygiène Publique" (OIHP) in Europe.[13] These meetings and conferences also led to the agreement on the International Sanitary Convention that was signed in 1903 (Clift, 2013). The Convention required the participating States to inform other States of the first appearance of the disease with pandemic potential in their areas (these diseases specifically included plague, cholera and yellow fever)[14] and this information was followed by actions taken by the States concerned to prohibit entry of articles from the contaminated areas.[15] The emergence of international sanitary regulations and the health organizations pointed to a new emerging reality of international cooperation between the States on matters of health and for the control of spread of diseases.

Although limited to their respective continents, those organizations could be called as a precursor to the League of Nations Health Organization that was established after the First World War to address the health challenges in different countries that were brought about by the destruction of the health infrastructure in those countries due to the war, resulting in rapid spread of the epidemics.[16]

The League of Nations Health Organization was succeeded by the World Health Organization in 1948 and it first adopted the International Sanitary Regulations that were later replaced by the International Health Regulations of 1969. The health regulations were later revised in 2005 (Gostin et al., 2015).

However, the transition from the League of Nations Health Organization to the World Health Organization was not a simple procedure. There were three organizations that existed during the period. The first organization was founded in the Americas and it was called the Pan American Sanitary Bureau (PASB) later renamed to the

[13] OIHP was later dissolved.

World Health Organization, (2020a). Archives of the Office International d'Hygiène Publique (OIHP). World Health Organization website. Available at: https://www.who.int/archives/fonds_collections/bytitle/fonds_1/en/ [Accessed 15.08.2023].

[14] World Health Organization, (2020a).

[15] International Sanitary Convention, 1951, 35 Stat. 1770; Treaty Series 466.

[16] World Health Organization, (2007).

Pan American Sanitary Organization (PASO) and finally to the Pan American Health Organization (PAHO). The second organization was named the Office International d'Hygiène Publique (OIHP) and it was based in Paris. The last organization was named the League of Nations Health Organization (Clift, 2013).

Subsequent to the coming to the existence of the League of Nations Health Organization, the OIHP was given an advisory capacity to the League Health Organization.[17] After the emergence of the WHO, the OIHP was dissolved.[18]

Subsequent to the Second World War, at the United Nations Conference in San Francisco in 1945, an idea was floated for the establishment of an international health organization. For establishing a health organization, the International Health Conference was convened from 19 June to 22 July 1946.[19] The Conference resulted in the establishment of the WHO and the integration of the OIHP, League of Nations Health Organization and the United Nations Relief and Rehabilitation Administration (UNRRA) activities with the activities of the WHO (Clift, 2013).

In April 1948, the first World Health Assembly was convened in Geneva (Clift, 2013). Over the years, the WHO has not remained the exclusive body for managing health at the global level. A large number of other bodies emerged — private as well as inter-governmental in nature. As a part of its efforts to reduce poverty and promote development, the World Bank entered into the health field and started funding new initiatives. Similarly, other bodies and initiatives have also come into operation for managing health at the global level. A few of them could be recounted here: the Joint United Nations Programme on HIV/AIDS (UNAIDS), the GAVI Alliance (formerly the Global Alliance for Vaccines and Immunization), the Global Fund to Fight AIDS, Tuberculosis and Malaria (The Global Fund), and UNITAID; Medicines for Malaria Venture or the Drugs for Neglected Diseases initiative (Clift, 2013).

[17] World Health Organization, (2007).

[18] World Health Organization, (2020a).

[19] World Health Organization, (2020b). Constitution. World Health Organization website. Available at: https://www.who.int/about/governance/constitution [Accessed 15.07.2023].

In addition, several new initiatives have come up within the WHO, such as Stop TB Partnership or Roll Back Malaria in partnership with national governments and non-governmental organizations (Clift, 2013). Private entities have also become a part of the global health governance architecture because of the funding support that they provide, namely: the Bill and Melinda Gates Foundation (Clift, 2013). The World Health Organization that came into existence had its structure and governance model suited to the task at hand, namely, controlling the spread of diseases and ensuring health for everyone. The next section deals with the structure and the governance of the World Health Organization.

III. The Structure and Governance of World Health Organization

The World Health Organization has a structure with separate bodies having different sets of powers to fulfill the mandate of the organization. The structure and functions of different bodies that constitute the World Health Organization have to be viewed keeping in mind that the organization was operating in the context of wide differences between the health governance capacities of different countries that emerged after the Second World War. And the organization sought to regulate an activity which the States regarded as laying exclusively within their sovereign domain. The WHO is composed of three organs:[20]

a. The World Health Assembly
b. The Executive Board and
c. The Secretariat.

III.1. The World Health Assembly (WHA)

The World Health Assembly (WHA) is the supreme governing body of the WHO. It is composed of delegates representing the Member States.[21] The powers of the World Health Assembly as stated underneath reflect the importance that members have attached to the function of the World Health Organization. It has been provided with the powers of

[20] Constitution of the World Health Organization, 1946.
[21] Constitution of the World Health Organization, 1946.

adoption of conventions or agreements on matters within the competence of the organization.[22] It has the authority to adopt regulations on a host of matters[23] that, though largely technical in nature, are reflective of the importance that the members place upon the technical competence of the organization as regards health governance and the role of the organization in preventing the spread of diseases.

From a utilitarian point of view, this part of the mandate of the World Health Organization to make regulations concerning technical matters can be stated to be the *raison d'être* of the World Health Organization. The other functions of the World Health Organization are merely supportive to this main function.

Finally, it has the powers to make recommendations to any member on matters that fall within the competence of the organization.[24] A cumulative analysis of the powers of the World Health Assembly leads to the conclusion that, while adoption of the regulations on technical matters is the primary function of the Health Assembly, it has been vested with the authority and necessary legal powers, to the extent possible under international law, to secure enforcement of those regulations. It does not have the powers to direct its members as it would run counter to the norms of sovereignty, but it was provided with the powers to recommend (Dupuy, 1990; Thürer, 2009).[25]

The functions of the WHA, beside the routine organizational functions[26] and functions related to it being the supreme decision-

[22] Constitution of the World Health Organization, 1946, Art. 19.

[23] Constitution of the World Health Organization, 1946, Art. 21.

[24] Constitution of the World Health Organization, 1946, Art. 23.

[25] Recommendations are not required to be adopted or followed compulsorily by the party concerned but recommendation do carry a certain amount of moral sanctity which forces a member to carry out the recommendation and non-observance of the recommendation carries with it reputational costs.

[26] The following are the functions of the World Health Organization.

— to name the Members entitled to designate a person to serve on the Board;

— to appoint the Director-General;

— to review and approve reports and activities of the Board and of the Director-General and to instruct the Board in regard to matters upon which action, study, investigation or report may be considered desirable;

— to establish such committees as may be considered necessary for the work of the Organization;

— to supervise the financial policies of the Organization and to review and approve the budget.

making body of the WHO, also include the functions for ensuring health governance at the global level. These functions include bringing to the attention of the member and of international organizations,[27] including interaction with the General Assembly and other bodies of the United Nations, matters related to health. The WHO acts on the recommendations of international organizations and reports to them on the actions taken on their recommendations.[28] It conducts research on matters related to health and undertakes action on matters that advance the objective of the World Health Organization.[29]

From the above discussion, it is evident that the role of the World Health Assembly is to undertake all actions that have a bearing on the advancement of the objective of the World Health Organization, which is of global health governance. The WHA was provided with overarching powers of entering into treaties and agreements, enacting regulations, and providing recommendations to the members on the implementation of the objectives related to global health governance. The functions that the body was vested with does justice to the powers that the WHA was provided with to implement the recommendations given to the WHA by the General Assembly and other bodies of the United Nations. In addition, the WHA needs powers to carry out the objectives of the Organization.

III.2. The Executive Board (the Board)

The Executive Board of the WHO is the executive body of the WHO tasked with the primary function of carrying into operation the policies as decided by the WHA. The Board is composed of 34 persons, designated by an equal number of Members who have been elected on the principle of equitable geographical representation.[30] Article 29 provides that the powers of the Board shall be the powers that were delegated to it by the WHA and it shall exercise those powers on behalf of the WHA.[31]

[27] Constitution of the World Health Organization, 1946, Art. 18(g).
[28] Constitution of the World Health Organization, 1946, Art. 18(i).
[29] Constitution of the World Health Organization, 1946, Art. 18(k) and (m).
[30] Constitution of the World Health Organization, 1946, Art. 24.
[31] Constitution of the World Health Organization, 1946, Art. 29.

The function of the Board is primarily to act as the executive organ of the WHA[32] and carry out into action the decisions and the policies of the WHA.[33] It also acts as an advisory body tasked with the function of advising the WHA on questions that are referred to it by the Assembly[34] or even on its own initiative.[35] Another important function that the Board executes is initiating emergency measures within the competence of the organization, to deal with emergency situations or when immediate actions are required.[36] Under its emergency measures powers, it may authorize the Director-General with the powers for epidemics control, providing health relief in case of calamities and organizing research activities to address an urgent health issue.[37]

III.3. The Secretariat

The Secretariat is composed of the Director-General and technical and administrative staff of the organization,[38] with the Director-General being the chief technical and administrative officer of the organization. The Director-General is also an ex-officio secretary of the Health Assembly, the Executive Board, Commissions and Committees of the Organization and the Conferences that are convened by the Organization.[39] Besides primary administrative functions,[40] the Director-General, subject to the agreement with the members, may have direct access to the health departments of the Member States and to their governmental and non-governmental health organizations.[41] In a similar fashion, the Director-General may also establish relations with international organizations whose activities come within the competence of the Organization.[42]

[32] Constitution of the World Health Organization, 1946, Art. 28(b).
[33] Constitution of the World Health Organization, 1946, Art. 28(a).
[34] Constitution of the World Health Organization, 1946, Art. 28(d).
[35] Constitution of the World Health Organization, 1946, Art. 28(e).
[36] Constitution of the World Health Organization, 1946, Art. 28(i).
[37] Constitution of the World Health Organization, 1946, Art. 28(i).
[38] Constitution of the World Health Organization, 1946, Art. 30.
[39] Constitution of the World Health Organization, 1946, Art. 32.
[40] Constitution of the World Health Organization, 1946, Art. 31.
[41] Constitution of the World Health Organization, 1946, Art. 33.
[42] Constitution of the World Health Organization, 1946, Art. 33.

III.4. Regional Organizations

Regional organizations within the overall framework of the WHO are provided for in the constitution of the WHO for meeting the specific needs of an area.[43] Such geographical areas may be demarcated by the WHA, where a regional organization can be established by the WHO.[44] These regional organizations, while being an integral part of the WHO[45] and its office subject to the general authority of the Director-General of the organization,[46] are independent in their sphere of action.

Regional organizations have a regional committee and a regional office.[47] States in the region are members or associate members of the regional organization.[48] A regional director is appointed by the Board in agreement with the regional committee[49] and a regional office is an administrative organ of the regional committee.[50] The regional committee is subject to the general authority of the Director-General[51] and, in addition to its functions as the administrative organ of the regional committee, it carries out the decisions of the WHA and the Board.[52]

The functions of the regional organizations are regional in nature. Besides the management of routine activities of the regional office, they deal with activities related to health in the region, which is likely to promote the objectives of the organization in the region. A regional office is required to cooperate with the regional bodies of United Nations Organization and other specialized agencies on matters of regional health importance.[53]

[43] Constitution of the World Health Organization, 1946, Art. 44.
[44] Constitution of the World Health Organization, 1946, Art. 44(b).
[45] Constitution of the World Health Organization, 1946, Art. 45.
[46] Constitution of the World Health Organization, 1946, Art. 51.
[47] Constitution of the World Health Organization, 1946, Art. 46.
[48] Constitution of the World Health Organization, 1946, Art. 47.
[49] Constitution of the World Health Organization, 1946, Art. 52.
[50] Constitution of the World Health Organization, 1946, Art. 51.
[51] Constitution of the World Health Organization, 1946, Art. 51.
[52] Constitution of the World Health Organization, 1946, Art. 51.
[53] There are several other functions but these are important functions as far as regional bodies are concerned.

IV. Health Governance through International Health Regulations

The International Health Regulations (IHR), due to the adoption mechanism of the regulations at the WHO, form a different type of the Treaty Law that forms the foundation of international law.[54] The adoption mechanism of the conventions, agreements, and regulations at the WHO is based upon the opt-out mechanism. The regulations enter into force for all members, once they have been adopted by the World Health Assembly, except for members that have notified the Director-General of their reservations to the regulation or the rejection of the regulations.[55] Even the entry of reservations may not preclude the entry into force of the regulation against the concerned member if the reservations are not such that they are incompatible with the purposes of the treaty (Edwards, 1999).[56]

The IHR came into existence in 1969 and they were later modified in 2005 (Gostin et al., 2015). These regulations were adopted by the WHO under Art. 21 of its Constitution (Gostin et al., 2015). International borders are not much helpful in controlling the spread of diseases; coordination at the international level is required to prevent such spread. In such circumstances, it is necessary that any outbreak of such diseases is notified immediately and steps are taken to prevent its spread. The IHR of 1969 came up for achieving the purpose of preventing the

[54] Under Art. 21 of the Constitution of the World Health Organization, the WHO has the authority to adopt regulations. Art. 21 provides for the following.

"The Health Assembly shall have authority to adopt regulations concerning:

(a) sanitary and quarantine requirements and other procedures designed to prevent the international spread of disease;

(b) nomenclatures with respect to diseases, causes of death and public health practices;

(c) standards with respect to diagnostic procedures for international use;

(d) standards with respect to the safety, purity and potency of biological, pharmaceutical and similar products moving in international commerce;

(e) advertising and labelling of biological, pharmaceutical, and similar products moving in international commerce."

[55] Constitution of the World Health Organization, 1946, Art. 22.

[56] This is allowed by Art. 19 of the Vienna Convention on the Law of Treaties, 1969, 1155 UNTS 331.

spread of diseases.[57] However, the IHR failed to serve their purpose since the development of technology had shortened the time taken for international trade and travel, which in most cases is quite a short period compared to the incubation period for the diseases. Similarly, the development in communication technologies also revolutionized the transmission of information and almost instantaneous transmission of information can result in a spread of panic that can lead to great harm to trade and commerce. Since the incubation period of any disease is comparatively long compared to time taken for travel, it is difficult to screen out carriers of diseases unless highly sensitive tests are carried out. The results of the tests arrive only a few days later. In such circumstances, it became necessary to revise the IHR, which was done in 2005, and revised regulations came into force in 2007.

The revised IHR "provide[s] a legal framework for reporting significant public health risks and events that are identified within national boundaries and for the recommendation of context-specific measures to stop their international spread, rather than establishing pre-determined measures aimed at stopping diseases at international borders."[58] Article 2 of the International Health Regulations states that the purpose of IHR is to "prevent, protect against, control and provide a public health response…" and it is restricted to public health risks without imposing unnecessary restriction on travel and trade.[59]

The salient features of the revised IHR of 2005 can be discussed as follows:[60]

a. The scope of the IHR has been broadened to include "illness or medical condition, irrespective of origin or source, that presents or could present significant harm to humans," from specific diseases or specific manner of transmission. This definition of disease moves away from defining diseases only in terms of infectious diseases. It is

[57] World Health Organization, (2007).

[58] World Health Organization, (2007).

[59] World Health Organization, (2016a). Meeting Report. WHO Informal Consultation: Anticipating Emerging Infectious Disease Epidemics. WHO/OHE/PED/2016.2.

[60] International Health Regulations (2005), 2509 UNTS 79.

broad enough to include within its ambit the harm resulting from even accidents or acts such as nuclear incidents.[61]

b. Under the Regulations State Parties are obliged "to develop certain core capacities" for surveillance and response. The core capacities that need to be developed have been provided in Annex 1 of the document. The revised IHR have shifted the focus from introducing measures to control the spread of diseases through measures taken at the port of entry to developing core capacities among states so that the diseases are controlled at their source and for ensuring the objective of "health for all."[62]

c. State parties are also obliged, under Art. 6, to report to the WHO, on the basis of predetermined criteria, as provided in Annex 2 of the document, any incident that could constitute a "public health emergency of international concern." The State Party concerned shall also have to provide, under Art. 7, all relevant public health information.

d. The Regulations also provide that the WHO has authority to take into account the reports from non-official sources,[63] but before taking any action, verification of such a report has to be sought from the States concerned.[64] The provision was included in the IHR in response to the approach of the states of delayed reporting of such events of international importance because of the perception that it would have an adverse effect on their economy by limiting travel and trade to and from their country.[65]

e. The regulations also provide for the procedures for the determination of an event constituting a "Public Health Emergency of International Concern" by the "Director — General." The regulations similarly provide for the declaration of "temporary measures" by the "Director General" after seeking the views of the emergency committee.[66]

[61] World Health Organization, (2007).

[62] World Health Organization, (2007).

[63] World Health Organization, (2016b). International Health Regulations, World Health Organization, Art. 9.

[64] World Health Organization, (2016b), Art. 10.

[65] World Health Organization, (2007).

[66] World Health Organization, (2016b). Art. 12.

f. The IHR under Art. 12 calls upon the State parties to ensure that the "human rights" of the travellers are observed and unnecessary hardships are minimized for them.

g. Article 4 of the regulation provides for the establishment of National IHR points and WHO IHR Contact points. The purpose of the points is to ensure communication between the national and international contacts so that timely information and effective strategies can be provided for management of diseases and implementation of the regulations.

While the revised IHR is a development on the original IHR, yet there are several drawbacks that have become evident over a period. Some of these are:[67]

a. The revised IHRs are still focused on incident based "public health emergencies. They have to be reframed to look into all "public health emergencies" such as those owing to climate change, development of microbial resistance. These emergencies develop over a period of time, sometimes for a period of decades.

b. The present regulations have for their focus a response at an international level — a global coordinated response headed by the WHO (Evaborhene et al., 2023).[68] The regulations need to develop national capacities — not just core capacities — but capacities so that pestilence can be managed within the States themselves.

c. The new regulations would have to be based on a shared knowledge infrastructure and a highly trained multilateral global response team that has ample resources, both financial and political, to tackle the disease before its spread.

d. The new regulations would be based on the ability to predict a pestilence before it erupts and a global health response has to be managed at the United Nations level instead of the World Health Assembly level.

[67] World Health Organization, (2016a).

[68] A global response to spread of diseases which was the intention of the drafting of the IHR was not visible in the global response to the Covid-19 pandemic largely due to the fragmentation of the world order with States going their individual ways to counter the pandemic leading to a national rather than a global response.

However, the IHRs failed to serve the purpose for which they were drafted (Lazarus et al., 2024).[69] The health regulations failed at all level — States did not inform the global body timely of the spreading pestilence (Taylor, 2002); a global response to the spreading pandemic was severely lacking with States adopting a nationalist response rather than a global one and the WHO appeared severely handicapped in coordinating the national responses (Gostin et al., 2023). The absence of coordination was visible in the Access to Covid-19 Tools Accelerator (ACT-A). ACT-A was brought into existence to reduce the inequitable access to medicines. However, it failed to serve the purpose, since the geopolitical tensions and nationalist policies of the Member States severely undermined the capacity of the WHO to deliver a structured global response (Gostin et al., 2023).

V. The Principle of Sovereignty and International Health Governance

Microbes, of course, do not recognize geographical boundaries (Aginam, 2002). Hence, the concept of sovereignty is alien to the spread of diseases. Global health issues should not be allowed to be held hostage to the *Westphalian* concept of sovereignty. The resistance on the part of China to report the incidence of disease (Covid-19) and its subsequent attempts to prevent investigation into the origins of the disease[70] may be attributed to the recognition of sovereignty as an essential part of

[69] It is also important to note here that IHRs came into operation in the environment of a bipolar world order and the later amendments took place when unipolar hegemonic world order was at its peak. The new reality of a multipolar world order would necessary require some changes to the structure of the treaty where instead of a global center for disease response and preparedness, multiple centers should be present whose activities may be coordinated at a global level.

[70] BBC News Service. 24 April 2020. Coronavirus: China rejects call for probe into origins of disease. BBC News Services website. Available at: https://www.bbc.com/news/world-asia-china-52420536 [Accessed 19.09.2023]. Later on, China did allow the WHO investigators to visit China for Covid-19 Investigation; Associated Press. 10 July 2020. WHO Experts to visit China to plan Covid-19 investigation [Online]. The Times of India World. Available at: https://timesofindia.indiatimes.com/world/rest-of-world/who-experts-to-visit-china-to-plan-covid-19-investigation/articleshow/76891951.cms [Accessed 19.09.2023].

Chinese Statehood and, therefore, China's internal health rules are not to be amenable to dictates from international organizations (Stevenson and Cooper, 2009).

Globalization has resulted in increased transnational linkages, which has led the dilution of the watertight compartmentalization that characterized the conception of state sovereignty (McGrew, 2001).

These transnational linkages were not confined to the ideas circulated among the States through the transnational epistemic communities, but these linkages progressively started extending to trade, finance, etc. There has been a resultant loss to the state authority due to these transnational linkages and this has been reflected in the fashion States are expected to cooperate in controlling health crises, since the pathogens causing health crises can easily travel on the back of interstate travel and interstate trade. In this new world order, it is difficult for a State to provide security or governance effectively on its own without cooperation with other States (Slaughter, 2004).

Another corresponding development that has moved in parallel with the dilution of state sovereignty is the emergence of other actors on the global level that deal with the governance of health. These actors work on a supra-national level and are composed of private parties rather than the sovereign States (Fidler, 2007). They derive their legitimacy not on the workings of international law, but the legitimacy that the larger global society provides to their actions by acknowledging their work, recommendations, etc.

The Pandemic Fund (earlier known as the Financial Intermediary Fund for Pandemic Prevention, Preparedness and Response) can be referred to as an example (Boyce et al., 2023). It would work as a partnership of donor countries and co-investor countries and civil society organizations. The governing board of the Pandemic Fund would be composed of 21 members with 18 seats reserved for donor/co-investor countries, one seat reserved for each "civil society organization" from the global north and the global south respectively and one seat reserved for philanthropies.[71] The World Bank would serve as a trustee

[71] World Bank Group, (2024). The Pandemic Fund [Online]. World Bank Group. Available at: https://fiftrustee.worldbank.org/en/about/unit/dfi/fiftrustee/fund-detail/pppr [Accessed 16.11.2024].

of the Fund, whereas the Technical Advisory Panel would be headed by a representative from the WHO. The implementing agencies of the Fund include not only the inter-governmental organization alone, but also public-private partnerships such as the Coalition for Epidemic Preparedness Innovations (CEPI).[72] This emergence of the heterogeneity of actors in the field of health governance is leading to a transition from a Westphalian model of sovereignty to a post-Westphalian model of sovereignty.[73]

This emerging model of sovereignty is different from the Westphalian model. It is based on following the universal norms of transparency in governance, and the norm of maintaining transparency is imposed upon all nation states (Stevenson and Cooper, 2009). This model does not exclusively rely upon the information provided by the States but also upon other sources of information diluting the very concept of the state exclusivity in its internal affairs.[74]

As regards the norms affecting health governance, the post-Westphalian model emphasizes upon predicating global governance of health on the firmament of human rights, following the global norms of health governance and maintaining transparency in those norms (Stevenson and Cooper, 2009). Following the global governance norms implies that state sovereignty is diluted entailing certain sovereignty costs (Hathaway, 2008), which is reflected in essential state authority being delegated to international institutions (Hathaway, 2008, p. 115).

Generally, once certain authority over the erstwhile sovereign matters of State is granted to an international institution, it extends itself and abstracts too much power from the state authorities and vests it with itself under the international law (Hathaway, 2008, p. 115). This vesting of State authority is supported by the emerging non-state actors on the global governance firmament who support it because the States concerned have failed to provide effective governance to their people.

[72] CEPI, (2024). CEPI website. Available at: https://cepi.net/cepi-officially-launched [Accessed 16.11.2024].

[73] These actors are such as the Bill and Melinda Gates Foundation.

[74] World Health Organization, (2020c). Global Partnerships: A network of networks. World Health Organization website. Available at: https://www.who.int/csr/about/partnerships/en/ [Accessed 19.09.2023].

This leads to a certain level of distrust among the developing countries regarding the intentions of the developed countries in following the post-Westphalian model of governance (Mayank and Saxena, 2020).

The developing countries doubt that the developed countries are using the norms of the new model to control the internal governance architecture of the developing countries and this is a disguised attempt to promote colonialism through the backdoor (Stevenson and Cooper, 2009). This perception is further exacerbated by the decline in the accessed contributions by the Member States; entities providing voluntary contributions have started playing a greater role in the governance of the WHO (Eckl and Hanrieder, 2023) particularly through the financing of consulting services provided to the WHO (Eckl and Hanrieder, 2023).

The resistance of States, based on the principle of sovereignty where States regard following the rules set by international organizations as affecting their essential attributes of sovereignty, has to be addressed as far as global health governance is concerned. It is necessary to identify principles and strategies to overcome the resistance of the States to following the common principles or strategies provided by the international organizations (Stevenson and Cooper, 2009). There are three strategies to address sovereignty with the requirement of global cooperation (Stevenson and Cooper, 2009). First, instead of attempting to make the national health systems homogenous according to a global order, the heterogeneity of national health systems should be recognized and respected along with the requirement of national authorities to regulate the system according to their needs and capacity, so long as the essential elements or the fundamental principles of the global health governance that affect the spread of disease from one nation to another are recognized. Second, services of transnational epistemic communities should be utilized to embed the recognized norms of health governance within the national architecture of health governance. The last strategy states that the structural inequities between different international regimes have to be addressed to build trust between different stakeholders of global governance of health (Stevenson and Cooper, 2009).

VI. The Two Axes of International Health Governance

The international health governance as of now is organized along two axes: 1. the horizontal governance pattern; and 2. the vertical governance pattern. Horizontal governance implies regulating health threats through bilateral or regional agreements (Fidler, 2003). Vertical health governance on the other hand is the regulation or governance of health by international health agencies at the global level. Vertical health governance is regarded as a better scheme when it comes to reduce the spread of the disease (Gostin, 2004) and the World Health Organization attempts to attain the objective of vertical health governance through the aid of the International Health Rules. This vertical health governance is sought to be promoted through the "opt-out" mechanism to ratification of conventions, agreement and regulations set forth in the WHO constitution. Opt-out mechanisms provide a greater observance of the rules by the member parties in contrast to the traditional opt-in mechanism of acceptance of treaties wherein parties have to accede to a treaty to be considered to be bound by the term of the treaty (Taylor, 2002).[75]

In the case of the opt-out mechanism the parties are automatically bound by the terms of the treaty unless they provide an explicit direction to be considered not to be bound by a treaty. In cases of health, it is difficult for a party to opt-out of a treaty in the light of the negative publicity that it would generate and therefore the chances of parties accepting the terms of the treaty is considerably high in the case where opt-out mechanism is adopted for treaty adoption (Fidler, 2005, p. 325). On the other hand, it is also to be understood that regulations do not have the same significance as the treaty law (Amerasinghe, 2005). The international health regulations constitute the secondary law of the WHO and do not have the primary authority of the treaty law (Bogdandy and Villarreal, 2020).

[75] Though the organization has adopted the opt-out mechanism for bringing in international rules, yet its opaqueness in working is hindering the very structure of governance it was trying to promote. States would ignore rules that are legislated through the opt-out mechanism if the organization also adopts the method of opaqueness in its governance.

This normative authority of the WHO in creating laws for international health governance through the opt-out mechanism is highly unusual in international relations, since it requires its members to indicate their rejection of an agreement that has been negotiated within the auspices of the WHO in order not to be bound by the agreement (Gostin et al., 2015). Where a member does not accede to the agreement, the member has to indicate its reasons for doing so. This mechanism is different from the mechanism that is followed in other international organizations in the sense that a positive accession to the agreement or the treaty is required for the party to be obliged to carry out its duties under the agreement and this indicates the importance of vertical governance of health in international affairs (Gostin, 2004).

While the IHR has been accepted at the international level through the opt-out principle as detailed above, but still while the states do not opt-out of the WHO conventions, regulations, etc., for fear of incurring reputational costs, they rarely follow the dictates of these regulations. Spagnolo calls it a pathological lack of compliance (Spagnolo, 2018). He offers that countermeasures can be used by an international organization in such cases, however such a mechanism of using counter measures do not even exist within the structure of the WHO and the WHO can at the most, suspend the rights of the offending member to take part in the activities of the organization (LePan, 2020).

Such an action may not even have an impact on the Member States as the recent announcement of withdrawal of the United States from the WHO exemplifies (Letzter, 2020). On the other hand, the same may also have an impact on the finances of the WHO (Letzter, 2020).[76] The articles of the Constitution of the WHO provide for a very limited set of actions that the organization can undertake against States that indulge in violations of the health regulations.[77] This non-observance of the IHR and absence of an effective mechanism to ensure such compliance begs the question what the remedies are, when, because of the non-

[76] The US is the largest contributor to the funds of the WHO.

[77] Article 7 only provides for the suspension of voting rights and privileges to which a member is entitled. Invoking Art. 7 against a member may only lead to a loss of face for the member concerned. Thus, the only option that the organization is left with the naming and shaming of the member concerned.

observance of the mandate of the IHR, the entire world may start facing problems. States may avoid opting-out of the conventions, agreements, and regulations of the WHO out of reputational costs that it entails, but merely having an international regulatory document without the necessary will or resources to see through its implementation is not likely to produce optimal results (Mayank and Saxena, 2023, pp. 148–164).

VII. Suggestions and Conclusions

Gostin suggests that a new conception of global health is required, and this new conception should be based on the rule of international law (Gostin, 2004, p. 2623) so that it avoids the limitations of sovereignty and horizontal governance (King and Lugg, 2023).[78] Additionally, a new conception requires the States to move away from insistence on sovereignty turning to a non-coercive model for promoting global health governance adopted to encourage the States to play their roles in collective health security (Calain, 2007). To attain this objective, the international health governance architecture may utilize the normative order that has been promoted by the regime of the international environmental law enshrined in the principle of *the duty to cooperate*.

The principle of *the duty to cooperate* has its emergence in the field of International Environmental Law, wherein States have an obligation to prevent transboundary harm resulting from activities within their jurisdictions, along with an obligation to cooperate to reduce the risk of harm through cooperation (Jervan, 2014). The principle of the duty to cooperate has emerged through various judgments of the International Court of Justice exemplified by the three cases, namely: *Trail Smelter case,*[79] *the Corfu Channel case*,[80] and *the Lake Lanoux case*.[81] In all

[78] It is also important to understand here that criticism of a technocratic institution such as the WHO, which is regarded as one of the most legitimate institution would increase during the period of crisis such as that of "Covid-19" and this criticism should not become the sole grounds of initiating reforms.

[79] United States v. Canada (Trail Smelter Arbitration). Arbitral Trib., 3 U.N. Rep. International Arbitration Awards 1905 (1941*)*.

[80] Corfu Channel Case (United Kingdom v. Albania) (Merits) [1949] ICJ Rep. 4.

[81] Spain v. France (1956) 24 I.L.R. 101.

the three cases, the common thread was that the States cannot carry out activities or permit their territories to be used for activities that may have an adverse transboundary effect. International environmental treaties have also advocated the principle of the duty to cooperate. Thus, Art. 21 of the Stockholm Declaration[82] states:

States have, in accordance with the Charter of the "United Nations" and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction.

Whereas, principle 22 of the same Declaration calls upon the States to:

Cooperate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction.

Pathogens in one State have the potential to cause harm in another State. Under the prevailing international norms of prevention of transboundary harm, States have the obligation to prevent such transboundary harm by ensuring cooperation with the concerned States employing such methods as information sharing. Under the reigning principle of sovereignty, a State may set lax health standards for its citizens, thereby leading to the spread of diseases or may impose excessively strict standards that may lead to restrictions on travel and affect human rights of individuals (Gostin, 2005, p. 413).

Similarly, assertions of sovereignty may take the form of denying cooperation in preventing or taking steps for controlling the spread of the disease. The effect of action at the level of one State under the rubric of sovereignty which demands non-interference in those matters can affect the health in another State as is visible in the trans-boundary harm that is caused in environmental matters.[83]

[82] United Nations Conference on the Human Environment, UN Doc A/RES/2994 (15 December 1972).

[83] United States v. Canada (Trail Smelter Arbitration).

Therefore, in the field of international health governance, the principle of sovereignty should be tempered with the normative order of the duty to cooperate (Gostin et al., 2024). International law does provide a State with the authority to regulate its internal affairs under the principle of sovereignty, but the same international law has also vested a State with the duty to cooperate. In the Pulp Mills case,[84] the Court had stated that "the procedural duties to notify, inform and cooperate were grounded in a principle of prevention, which as a customary rule had its origin in "the due diligence that is required of a State in its territory." Thus, instead of following the opt-out mechanism prescribed in the Constitution of the WHO for adoption of conventions, agreements, and regulations, the duty to cooperate principle of the international environmental law would better acceptability among nations. The opt-out mechanism imposes a threat of negative publicity and reputational costs. States cannot be held as free when they are forced to follow the dictates of an international organization through the threat of negative publicity. On the other hand, the duty to cooperate does not impose the threat of negative publicity and encourages a State to contribute to the extent of its capacity demonstrating better chances of encouraging compliance. States can be encouraged to adopt the duty of cooperation in international health governance through the circulation of ideas in the transnational epistemic communities in the same fashion as it is carried out in the field of environmental governance. This could very likely address the lack of non-compliance (Kavanagh et al., 2023)[85] with the mandates of IHR as well the absence of the principle of vertical governance in the field under consideration.

[84] Pulp Mills on the River Uruguay (Argentina v. Uruguay) (Judgment) ICJ Rep 2010, p. 14.

[85] In the pandemic treaty, however, the proposals are to create a Conference of Parties (COP) that would work similarly to peer review mechanisms of the FSB followed by an implementation and compliance committee authorized to issue recommendations based on the submissions received from the parties.

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HUMAN RIGHTS, STATE REGULATION OF RELIGION, CRIME AND PUNISHMENT

Article

DOI: 10.17803/2713-0533.2024.4.30.685-717

Taliban Discrimination against Women: Comprehensive Analysis of Main Factors

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Abstract: Gender discrimination and misogyny targeting women in Afghanistan have deep historical roots, yet the Taliban's imposition of systematic, organized, and violent oppression has exacerbated this issue significantly. This paper delves into the fundamental factors driving the Taliban's discriminatory practices against Afghan women. Employing a mixed-method approach combining both doctrinal and non-doctrinal legal research, data for this study were gathered from written sources and 12 in-depth interviews conducted with religious scholars, *Sharia* law faculty members, law school professors, and women's rights activists. Drawing from scholarly literature and interview insights, numerous factors underpin the Taliban's oppression of women and promotion of misogyny. This paper specifically examines four primary causal factors: the influence of madrasas on societal norms and educational resources, the imposition of regressive edicts by Taliban leadership, cultural determinants shaping gender dynamics, and the disparities between urban and rural contexts.

Keywords*:* Discrimination; Educational Resources; Cultural Factors; Pashtunwali

Cite as: Yusufzai, A., Geeta and Kataria, G., (2024). Taliban Discrimination against Women: What are the main factors? *Kutafin Law Review*, 11(4), pp. 685–717, doi: 10.17803/2713-0533.2024.4.30.685-717

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I. Introduction

Following the ousting of the Taliban regime by the United States and its allies in 2001, Afghanistan witnessed a remarkable surge in the enrollment rate of girls in primary schools, soaring from a previous negligible presence to an impressive 80 %.[1]

Significant advancements were made in Afghanistan over the past two decades following the overthrow of the Taliban regime. Infant mortality rates were halved, as reported by UNICEF,[2] and legislation was enacted to outlaw forced marriages. However, despite these notable strides, skepticism persists among observers regarding the extent of progress achieved by Afghan girls and women. The return of the Taliban to power in 2021 has posed a severe threat to these hard-won gains. With the Taliban's resurgence, schools catering to girls beyond the sixth grade and universities admitting female students were shuttered. Additionally, thousands of women lost their positions in both governmental and non-governmental organizations, relegating many to domestic spheres. This regression underscores the fragility of women's rights in Afghanistan amidst shifting political landscapes (Kayen, 2022, p. 24).

[1] UNICEF, 2022. Const inaction: girls's education in Afghanistan, s.l.: UNICEF, p. 1.

[2] UNICEF, 2018. Levels & Trends in Child Mortality, s.l.: UNICEF, p. 30.

The Taliban's actions following their return to power in 2021 included the dissolution of the Ministry of Women's Affairs, replacing it with the Ministry for the Propagation of Virtue and the Prevention of Vice. These moves effectively restricted women from participating in the workforce and imposed stringent limitations on their mobility, prohibiting women from undertaking long journeys without a male guardian (*Muharram*) both within and outside Afghanistan. The catalogue of transgressions against the rights of women and girls by the Taliban continues to expand, reflecting a disturbing trend of regression in gender equality and women's empowerment (Hadili, 2022).

The issue of women's rights in Afghanistan has been both sensitive and paramount, undergoing significant fluctuations throughout the 20th century to the present day. Changes in this domain have often encountered staunch opposition from Afghanistan's patriarchal and traditionalist society, manifesting in highly conservative movements or leveraging religious interpretations to mobilize public sentiment against reforms. Notably, the Taliban, during both their previous rule from 1996 to 2001 and their resurgence since August 2021, have conspicuously rejected the concept of women's rights.

This paper aims to analyze the principal factors driving the Taliban's systematic discrimination against women in Afghanistan. Discrimination against women, as delineated by the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), encompasses any differentiation, exclusion, or restriction based on gender that undermines the recognition of women's human rights and fundamental freedoms. Such discrimination aims to undermine the equality of women with men, irrespective of marital status, across all spheres of life, including political, economic, social, cultural, civil, and beyond.

In essence, this paper seeks to unravel the complex dynamics fueling the Taliban's discriminatory practices against Afghan women, shedding light on the multifaceted challenges impeding gender equality and women's empowerment in the country.[3]

[3] Convention on the Elimination of All Forms of Discrimination against Women. UN Women Official Website. Available at: https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm [Accessed 24.11.2024].

This study employs a mixed-method approach, integrating both doctrinal and non-doctrinal legal research methodologies. Data collection involves gathering information from written sources as well as conducting 12 interviews with a diverse range of stakeholders, including religious scholars, *Sharia* law faculty professors, law school professors, and women's rights activists. To maintain confidentiality and respect the sensitivity of the topic under investigation, the identities of the interviewees are not disclosed; only the number of participants is referenced. This methodological framework ensures a comprehensive exploration of the factors underpinning the Taliban's discrimination against women in Afghanistan while safeguarding the anonymity and privacy of those contributing to the study.

II. Discrimination against Women in Afghanistan: A Historical Context

Fundamentalism has existed in Afghanistan for many years under the shadow of warlords, mullahs, and their loyal disciples, and they have created their methods and interpretations of Islam (Kolhatkar, 2002, p. 13). In rural areas, women are seen as weak and pitiable beings (Farooqi, 2018, p. 106). On the other hand, unconscious fear of women is seen in folk beliefs and stories as emotional, cunning, unfaithful, dangerous, and lustful creatures many times more than a man (Noorzai, 2022, p. 2).

In Afghanistan, when the family's son becomes young, the woman must obey the son after the husband. This custom is prevalent in most Afghan families, and the closer we get from the cities to the village, the stronger this custom becomes. An Afghan woman grows up in a family where she is taught that she is less valuable than her brother is and she is forced to obey him. Living in such an environment has caused violence against women to be institutionalized in families and society, and misogyny has become the identity of women and society (Arjang, 2020).

This does not mean there have been no attempts to improve women's status in Afghanistan. After the independence of Afghanistan in 1919, women's rights were important for King *Amanullah* and the

royal family, and for this reason, in addition to controversial issues such as the introduction of the hijab, he also paid attention to women's fundamental rights such as the education and development of women's talents. *Amanullah* established a high school for girls in 1922 and in 1926, he sent a few female students to Turkey to continue their education (Kia, 2019, p. 25).

With the fall of *Amanullah* in January 1929, the protection of power and law was removed from Afghan women, and this process continued until the third decade of Mohammad Zahir Shah's rule. In the fourth decade of Mohammad Zahir Shah's rule — which is known as the decade of democracy due to the approval of the new constitution in 1964, the freedom of parties and the press, and the prohibition of the royal family from interfering in power — the improvement of women's status accelerated, and the protection of women by law and power increased even more. In 1966, Afghanistan joined the United Nations Covenant on Political Rights during Prime Minister Noor Ahmad Etemadi (Naji, 2021).

With the gaining of power of the People's Democratic Party of Afghanistan in 1978, the support for women increased, and the revolutionary leaders legalized the women rights and legal equality of men and women by issuing a decree; the education of women became mandatory, and even old illiterate women were required to participate in special literacy classes (Ahmad, 2006, pp. 28–29).

With the fall of the Democratic Republic of Afghanistan in 1992, *Mujahideen groups* (Islamist Guerrillas) entered Kabul. The *Mujaheddin* government (Islamic State of Afghanistan) was a concrete example of a government in haste because, after three months, they got involved in civil wars and did not get a chance to announce and apply a specific policy toward women. The successive street wars made women stay home, and almost the majority of the educated citizens of Afghanistan fled the country (Kabeer et al., 2011, p. 6). It should be noted that after the occupation of Afghanistan by the former Soviet Union in 1979, the Americans supported the Islamist groups in the 1980s (Gibbs, 2006, p. 254) and facilitated the invasion of fundamentalist Islamists from all over the Middle East into Afghanistan (Grau, 2004, p. 139).

The presence of extremist Islamists strengthened the spirit of misogyny in Afghanistan. Especially with the formation of the Taliban, restrictions on women increased. During the first period of their rule in 1996–2001, the Taliban seriously restricted women's rights and carried out various types of violence against women (Drumbl, 2004, p. 354). With the fall of the Taliban emirate in 2001, under the shadow of the Islamic Republic and the 2004 Constitution, it became favorable for women (Grenfell, 2004, p. 23). The 2004 Constitution required the state to uphold international human rights norms, but it also included some Islamic provisions that represent the perspectives of both human rights organizations and Islamic Groups. Protective or women-specific provisions were created to uphold women's rights (Shah, 2005, p. 244).

The Afghan government, with the support of the international community, was able to take measures to build capacity and support women. The government made significant achievements in the legislative sector and with practical measures, one of which was the formalization of the dignity and rights of Afghan women. Women entering society and playing their roles, such as entering government offices, allowed them to display their capacity and ability (Khavari and Simber, 2022, pp. 150–156).

The US-led multinational occupation of Afghanistan ended in mid-2021 with the imposition of a regime that completely subjugated and isolated the Afghan people. With the arrival of Taliban in Kabul, the republic and democracy half-term ended. Women were quickly excluded from society and replaced by a male-dominated Taliban government. Despite the pressures of the international community and domestic opposition, it applies discriminatory and violent policies against women (Sahill, 2023).

II.1. Women's rights under the Islamic Emirate of the Taliban

Following the resurgence of the Taliban regime on 15 August 2021, the paramount leader of the Taliban issued a directive nullifying the existing legal framework in Afghanistan, thereby mandating the enforcement of Sharia laws by the personnel of the Islamic Emirate

(Kadir and Nurhaliza, 2023, p. 3). The leader of the Taliban articulated that the legislative constructs established during the republic period (2001–2021) were deemed as human-derived, influenced by the populace's volition, and hence rendered obsolete. Emphasizing the exclusive application of Sharia principles within the Taliban's Islamic Emirate, he underscored the exclusion of popular will in legal matters. The annulment of substantive and procedural legal frameworks lays the groundwork for a broad interpretation of Sharia regulations by the Taliban authorities (Rahimi, 2022, p. 8).

Since assuming control of Afghanistan for the second time, the Taliban has primarily promulgated directives and edicts focusing on the imposition of constraints upon women.[4] Over twenty such directives have been issued, often without prior notification or consultation. Notably, the Taliban's measures targeting women encompass four principal domains: exclusion from political participation, limitations on presence or engagement in public spheres, proscription of ongoing education, and curtailment of employment opportunities. These restrictions represent fundamental encroachments upon women's rights, despite the Taliban's assurances of governing with greater leniency compared to their prior tenure in power.[5]

II.2. Women's Rights in International Documents

The evolution of international documents pertaining to women's rights delineates three distinct epochs, each encapsulating varied perspectives on women's rights and societal positioning. The initial period, denoted as the "supportive period," depicts women as a demographic either unable or discouraged from partaking in certain endeavors, relegated to subordinate roles. Following this, the "separate group" era emerges, characterizing women as a distinct cohort necessitating specialized attention and advocacy due to perceived injustices. Termed the "reformation" phase, it advocates for legal amendments aimed at

[4] UN, 2023. Afghanistan: Human rights "in a state of collapse," warns Türk. Available at: https://news.un.org/en/story/2023/09/1140637 [Accessed 24.11.2024].

[5] ACAPS, 2023. Update on Taliban decrees and directives affecting the humanitarian response, s.l.: ACAPS.

addressing gender disparities. Lastly, the "period of non-discrimination" emerges, advocating for a gender-neutral approach wherein women and men are regarded impartially. Norms within this phase repudiate the notion of women as a distinct subgroup, advocating instead for gender equality and equitable treatment across genders.[6]

International documents reflecting this perspective address certain women-specific issues while overtly rejecting sexual discrimination or disparate treatment based on gender. A notable example of this evolutionary trajectory is evident in the Charter of the United Nations. Articles 55 and 56 of the Charter underscore this ethos, emphasizing the promotion of universal respect for human rights and fundamental freedoms without discrimination based on sex. Furthermore, provisions such as Art. 13, 62, and 76 establish diverse institutions, including the Economic and Social Council, aimed at fostering gender equality and advancing women's rights within the framework of international cooperation and development. The Universal Declaration of Human Rights (UDHR), the Convention on Civil and Political Rights, the Convention on Economic, Social, and Cultural Rights, and other international documents emphasize the equal rights of human beings (both women and men), and the member countries of the conventions are committed to implementing its provisions in the laws. Articles 1 and 2 of the UDHR emphasize that all human beings are born free, they are equal in terms of dignity and rights, and enjoy all the rights and freedoms listed in the declaration.[7]

Throughout history, concerted efforts and initiatives have been undertaken to secure women's attainment of individual and civil rights, underscored by the enactment of laws, treaties, and covenants that undermined the significance of this endeavor. Among these, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) holds a paramount position, serving as a benchmark for adjudicators in member states regarding the entitlements afforded

[6] OHCHR, 2014. Women's Rights are Human Rights, New York and Geneva: Nunited Nations Publications, pp. 1–7.

[7] The Universal Declaration of Human Rights. UNO official website. Available at: https://www.un.org/en/about-us/universal-declaration-of-human-rights [Accessed 24.11.2024].

to women. Ratified by the United Nations General Assembly on 18 September 1979, this Convention conveys a central message advocating for the absolute equality of men and women, advocating for the eradication of all distinctions across legal, political, and social realms, save for instances of "affirmative action" aimed at redressing historical imbalances and fostering gender parity. The primary objective of CEDAW is to eradicate all forms of gender-based discrimination, thereby fostering a more equitable and inclusive society. Afghanistan has signed and ratified the ICCPR, ICESCR, CEDAW, and other human rights conventions. Hence, as a signatory to these conventions, the Taliban are obligated to adhere to women's human rights standards. However, the Taliban's ideology starkly contrasts with the principles outlined in international documents pertaining to human rights.

III. Key Causes of Discrimination against Women by the Taliban

Discrimination against women and entrenched misogyny in Afghanistan have historical roots, yet the Taliban's approach to gender inequality exhibits systematic, organized, and often violent manifestations, exerting a profound and detrimental impact on women's lives (Burhani, 2020, p. 212).

One of the most contentious topics surrounding the Taliban in contemporary discourse pertains to their stance on women and their corresponding conduct towards them. The Taliban's perception of women, which informs their political and social interactions with women, is entrenched in an antiquated mindset. Despite drawing from traditional sources, this perspective has lost relevance and efficacy over centuries and has largely become obsolete. The global consensus, spanning across diverse religious and governmental frameworks, has embraced the notion of women's participation in modern society, relegating the Taliban's viewpoint to the margins of mainstream discourse (Mohaq, 2022).

The treatment of women by the Taliban in Afghanistan is widely regarded as shocking, unacceptable, and in direct contravention of

established international agreements. There are four primary rationales underlying the Taliban's discriminatory practices against women.

Firstly, they relegate women solely to their physical attributes, viewing them merely as vessels for fulfilling men's sexual desires. Consequently, women are confined to domestic roles and expected to cater to men's needs within the confines of the home.

Secondly, the Taliban's pervasive illiteracy contributes to their perception of women as devoid of intellectual capabilities. This lack of education leads to a dismissal of women's cognitive faculties and further perpetuates gender-based discrimination.

Thirdly, the Taliban's adherence to a traditional interpretation of religion fosters misogynistic attitudes. Their narrow understanding of religious doctrines, coupled with a dearth of exposure to scientific principles, engenders discriminatory practices against women.

Lastly, there are political motives driving the Taliban's discriminatory policies against women. Leaders within the Taliban espouse a deliberate policy of gender discrimination, viewing misogyny as integral to their political agenda. They capitalize on entrenched gender norms within Afghan society and cultivate misogyny as a means of garnering support, particularly in rural areas where traditional values hold sway (Interviewee 1, 2022).

The second interviewee also delineated four distinct factors contributing to the Taliban's predisposition towards discrimination against women, encompassing social, political, religious, and intelligence dimensions.

Firstly, the Interviewee underscored the upbringing of Taliban members within misogynistic familial and societal milieus, which imprint deep-seated gender biases.

Secondly, the political rationale posits that the Taliban seek to secure widespread acceptance among rural populations by delineating stark contrasts between their governance model and previous regimes. Discriminatory policies against women serve as a means to reinforce this divergence.

Thirdly, the Taliban's adherence to traditional interpretations of religious doctrine perpetuates gender-based discrimination. Their

conservative readings of religious texts reinforce patriarchal norms and serve as a legitimizing framework for discriminatory practices.

Lastly, the intelligence factor alludes to the limited exposure of Taliban members to diverse perspectives and educational opportunities. This lack of intellectual engagement contributes to narrow-minded views regarding gender roles and reinforces discriminatory attitudes towards women (Interviewee 2, 2022).

Another interviewee elucidated that the Taliban's discriminatory practices against women are grounded in their adherence to Pashtun custom, known as *Pashtunwali*, and a subsequent interpretation of religious texts dating back to the second century. This reliance on *Pashtunwali* and the interpretive frameworks established over centuries has entrenched gender-based discrimination and misogyny within Taliban ideology and societal norms. These traditional customs and interpretations serve as foundational pillars shaping the Taliban's attitudes towards women, perpetuating discriminatory practices and reinforcing patriarchal structures within Afghan society (Interviewee 10, 2022).

Drawing from academic sources and interviews, it becomes evident that there are numerous factors contributing to the Taliban's discrimination against women and perpetuation of misogyny. However, this paper seeks to delve into the examination of four fundamental causes underlying these phenomena.

III.1. Educational Resources, Madrasas Environment

One of the repercussions stemming from the Soviet intervention and subsequent occupation of Afghanistan was the emergence of resistance against Soviet forces and their allied government in the country. Notably, this period witnessed a significant surge in the emphasis on religious education, leading to the ascension of religious scholars, or Mullahs, to positions of considerable influence. Formerly occupying lower rungs within the societal hierarchy, these religious figures found themselves elevated to prominent roles. The heightened social standing accorded to religious scholars prompted families to increasingly enroll their children in religious schools, reflecting the shifting societal dynamics and the

growing importance attributed to religious education during this period of conflict and upheaval (*Madrasa*) (Muzda, 2024, pp. 31–32).

Afghan Islamist Jihadi groups, operating from bases in Pakistan, undertook the establishment of numerous Madrasas during this period, with financial support flowing in from Arab and Western nations (Khan and Waqar, 2021, p. 271).

Within the Madrasas, children were raised in environments characterized by masculine norms, often experiencing minimal interaction with their families. Under the tutelage of their teachers, known as "Mullahs," they imbibed values centered around obedience and reverence. The atmosphere within these religious institutions fostered a sense of uniformity among students, with young Taliban members becoming accustomed to such regimented conditions (Barfield, 2010, p. 255). Women were systematically barred from accessing Madrasas, reflecting the deeply entrenched gender disparities within Taliban-controlled territories. Educated and urban women were viewed with suspicion, perceived as threats to the prevailing social order. Throughout the Taliban regime, women were systematically deprived of their fundamental rights, relegated to subservient roles and denied opportunities for education and participation in public life (Muzda, 2004, p. 33).

It is important to acknowledge that prior to their rise, certain Afghans had already undergone religious education in Pakistani Madrasas. Among these, the Madrasas associated with Jamiat Ulema Islam boasted greater resources and prestige. Consequently, the Afghan Taliban exhibited a keen interest in enrolling in such institutions. These Madrasas played a pivotal role in supplanting the divisive influence of politics masquerading as religious ideology within the minds of the Afghan Taliban, shaping their worldview and ideological orientation (Rahman, 2013, p. 2).

Indeed, it is evident that beyond the family unit, the social environment and educational institutions wield considerable influence over the development of individuals' personalities. These external factors contribute significantly to shaping individuals' beliefs, values, and behaviors, ultimately playing a pivotal role in shaping their identity and worldview (White and Wafa, 2011, p. 57). Books and educational

content serve as powerful tools in shaping students' behavior and beliefs. Within the curriculum taught in Madrasas, women are often portrayed as inherently inferior to men, perpetuating the ethos of misogyny and undermining the value of women in society. This messaging, ingrained in educational materials, reinforces gender-based discrimination and contributes to the marginalization of women within these educational setting (Burhani, 2020, pp. 216–217). In his treatise on women's education, the leader of the Taliban's Supreme Court asserts that religious teachings dictate that women should remain confined to their homes and refrain from venturing outside. According to his interpretation of religious sources, women's educational pursuits should be limited to subjects pertaining exclusively to religion. This viewpoint reflects the Taliban's conservative stance on women's roles and education, advocating for a narrow scope of learning that reinforces traditional gender norms and the relegation of women to domestic spheres (Haqani, 2021, pp. 276–279).

Moreover, textbooks utilized in Afghan religious schools have remained largely unchanged for centuries, lacking revisions or updates to address the evolving needs of subsequent generations and contemporary demands. These outdated educational materials fail to meet the requisite standards of efficiency and relevance, falling short of aligning with the advancements of the scientific realm. The traditional educational system in Afghanistan exhibits inflexibility, demonstrating a reluctance to engage with external influences and vehemently resisting any form of educational innovation. This entrenched conservatism impedes progress and hinders the integration of Afghan education into the broader global landscape (Azghari, 2011, p. 190).

The Taliban espouse a distinct interpretation of religious doctrine, characterized by an extreme and stringent adherence to religious rules. This interpretation diverges significantly from mainstream interpretations and is marked by an uncompromising and rigid approach to religious principles (Borchgrevink and Kristian, 2010, p. 3). For instance, the decrees issued by Taliban leaders concerning women's rights predominantly focus on issues related to marriage and inheritance rights. However, other crucial aspects of women's rights, such as access to education, healthcare, employment opportunities, and

participation in public life, have received inadequate attention. This selective approach underscores the Taliban's narrow interpretation of women's rights, which fails to address the broader spectrum of fundamental rights and freedoms essential for women's empowerment and full participation in society.[8]

One of the reasons behind the Taliban's discrimination against women can be attributed to their stringent interpretation of religion and their particular understanding of Islamic principles. This rigid interpretation leads them to enforce oppressive measures against women, grounded in their interpretation of religious doctrines.

Additionally, the low literacy rates among the Taliban and their limited understanding of both religion and contemporary knowledge stem from the environment in which they were raised. Growing up in environments that prioritize traditional interpretations of religion over formal education, Taliban members often lack exposure to diverse perspectives and critical thinking skills. This limited educational background contributes to their narrow worldview and reinforces discriminatory attitudes towards women (3, 6, 8, 9, and 11). As one of the interviewees claimed (a women's rights activist), "The Taliban's misogyny is deeply rooted in their interpretation of a conservative form of Islam, shaping rigid gender roles within their ideology.

Women are often viewed through a narrow lens, limiting their roles to traditional domestic spheres. The strict enforcement of these beliefs, coupled with a hierarchical structure, consolidates their discriminatory policies. To address misogyny within the Taliban, a multifaceted approach is essential. Engaging with religious scholars to foster a more inclusive interpretation of Islam, promoting religious tolerance, and advocating for women's rights within Islamic principles are crucial steps. This requires a nuanced strategy to encourage internal reflection and change within the Taliban" (Interviewee 12).

Furthermore, the *Deobandi School* founded in northern India in 1867 and later spreading to Pakistan, played a significant role in shaping the ideological underpinnings of groups like the Taliban.

[8] BBC Persian, (2021). The order of the Taliban leader was issued on "women's rights." BBC website. Available at: https://www.bbc.com/persian/afghanistan-59505030 [Accessed 24.11.2024].

Initially established with the aim of resisting Western cultural influences and promoting *Hanafi* beliefs, the *Deobandi* movement fostered a conservative interpretation of Islam that has influenced the worldview of many Taliban members. The teachings and ethos of the *Deobandi School* have contributed to the Taliban's strict adherence to traditional religious principles and their resistance to Western values, further perpetuating their discriminatory attitudes towards women (Nelson, 2021, p. 5).

Originally, *Deobandiyyah* emerged as an educational movement centered on the discussion of *Hanafi* jurisprudence and *Matridi* theology. However, over time, it has evolved into a dominant discourse and trend within the world of Hanafi Islam, garnering followers across the globe. Today, it is perceived as a revered authority to be followed unquestioningly. Darul Uloom "Haqqania" situated in the northwest of Pakistan was established approximately fifty years ago in the city of Akora Khattak in Khyber Pakhtunkhwa province. This institution serves as a bastion for the propagation of *Deobandi School's* ideology. Its renown extends beyond religious and jurisprudential debates, as it has become intricately entwined with regional and international affairs, particularly those of South Asia and Afghanistan. "The Haqqani network, as a political-military group that operates mostly in Afghanistan, is among the trained groups of this Darul Uloom." Darul Uloom Haqqanieh is the training place for Taliban and the Taliban receive ideological and intellectual training here. The atmosphere of this school is free of modern science and modern needs. The only educational material that is more important is the discussion of Salafism and reference to "Salaf Saleh," hadithism and opposition to intellectual sciences (Mousavi, 2022). Consequently, the Madrasa environment and the curriculum imparted within these institutions contribute to the cultivation of misogynistic attitudes and discriminatory behaviors among Taliban students.

III.2. Mandatory Orders of the Taliban Leader

The directives and decrees issued by the Taliban leader hold absolute authority and are deemed obligatory for all members. Within Taliban ideology, the leader is referred to as Amir al-Momineen, equating his

authority with that of the righteous caliphs. The power vested in the Taliban leader emanates from two primary sources: religious doctrine and cultural tradition. According to Taliban ideology, adherence to the leader's commands is considered mandatory, with any defiance perceived as a transgression against religious principles (Burhani, 2020, p. 221).

During their formative period, the Taliban solidified their ideological foundation by convening approximately two thousand religious scholars (Maulvis) from across Afghanistan to pledge allegiance to Mullah Omar, the first leader of the Taliban, in Kandahar. This allegiance marked a commitment to follow their emir's directives unconditionally.

Subsequently, the Taliban leader implemented stringent measures curtailing women's rights across various spheres through executive orders. These decrees resulted in the denial of women's access to education, employment, and freedom of movement, thereby severely restricting their participation in societal affairs (Telesetsky, 1998, p. 296).

Indeed, with the passage of time and the benefit of hindsight, the political maneuvers and actions of the Taliban over the last two years can be analyzed more comprehensively.[9] The group's leadership council decided on policy over most of their insurgency by a clandestine consensus unknown to their combatants. Although the emir was usually given the last word in propaganda and philosophy, military considerations largely shaped the movement's choices. However, after August 2021, the *Amir* progressively started to assert a more comprehensive definition of his authority.[10] The ruling on girls' schools in March 2022 marked his comeback to the forefront of the Taliban. From that point on, his meddling in the day-to-day operations of ministries grew steadily (Watkins, 2023).

Since 15 August 2021, the Taliban has issued more than anything recommendations and decrees regarding the imposition of restrictions on women. More than 20 orders have been issued, and restrictions have

[9] ICG, 2023. Taliban Restrictions on Women's Rights Deepen Afghanistan's Crisis, Brussels: International Crisis Group. P. 3.

[10] ICG, 2023. Taliban Restrictions on Women's Rights Deepen Afghanistan's Crisis, Brussels: International Crisis Group. P. 12.

been imposed without prior orders or recommendations. The Taliban's actions against women include four main areas: exclusion from politics, restriction of presence or activity in public space, prohibition of continued education, and restriction of the right to work.[11]

One of the factors contributing to the misogyny of the Taliban and their discriminatory treatment of women is rooted in their interpretation of religious obligations. On one hand, they cite the religious mandate to "enjoin good and forbid evil," which they interpret as justification for imposing strict codes of conduct, particularly regarding women's behavior. On the other hand, their obedience to the orders of the Amirul Mu'min, or leader of the faithful, reinforces their commitment to upholding traditional gender roles and restricting women's rights in accordance with their ideological framework (Interviewee 6).

III.3. Cultural Factors including Pashtunwali

A significant influence shaping the worldview of the Taliban and their treatment of women is *Pashtunwali*, the traditional code of conduct followed by the Pashtun tribes. As the majority of Taliban members hail from Pashtun backgrounds, their adherence to *Pashtunwali* norms deeply influences their attitudes and behaviors towards women. P*ashtunwali*, with its emphasis on such concepts as honor, hospitality, and *purdah* (segregation of sexes), reinforces traditional gender roles and expectations, contributing to the marginalization and subjugation of women within Taliban-controlled territories (Doalat Abadi et al., 2019, p. 87).

The cultural fabric of Pashtun society is significantly shaped by the renowned *Pashtunwali* tradition, which is subsequently influenced by Islamic teachings. *Pashtunwali* encompasses a broad spectrum of behavioral norms and human relations that govern the lives of Pashtuns, including those within the Taliban. Various interpretations exist regarding the nature of *Pashtunwali*; while some regard it as customary law predating formal governance structures, others perceive it as both

[11] BBC News, (2023). 20 orders of the Taliban that have systematically restricted women. BBC website. Available at: https://www.bbc.com/persian/articles/cyokld42xexo [Accessed 10 5 2023].

an ideology and customary law. This multifaceted understanding underscores the complex interplay between cultural heritage, religious beliefs, and societal norms within Pashtun communities, exerting a profound influence on the attitudes and actions of groups like the Taliban (Mir Ali and Mohsini, 2018, p. 193).

Indeed, some scholars have characterized *Pashtunwali* as the embodiment of the principles that define a true Pashtun. According to this perspective, being a genuine Pashtun necessitates adherence to the values and ideals encapsulated within P*ashtunwali*. Thus, living and acting in accordance with these ideals is considered essential for a Pashtun to be deemed virtuous and honorable within their community. *Pashtunwali* serves as a guiding framework that shapes the conduct and identity of Pashtuns, emphasizing the importance of upholding traditional customs and values in both personal and communal life (Mir Ali and Mohsini, 2018, p. 194). The main principles of *Pashtunwali* are: *Melmastya* (hospitality), *Badal* (revenge), *Nanwatay* (providing asylum), *Tarboorwali* (agnatic rivalry), *Siyali* (competition within an extended family), *Nang* (honor), *Namus* (the chastity of women) and *Jirga* (council of the elders) (Khan et al., 2019, p. 266).

Namus and *Nang* are two main elements of *Pashtunwali*. Considering the position of women in the tribal society, the veil and honor are mandatory components of Pashtun, which are related to the honor of the family, especially women. Hijab or curtain is often used as a border and separates the space between men and women. According to *Pashtunwali*, sexual dignity and the general behavior of women are very important elements for a man's honor. Girls and women whom a *Pashtun* man is responsible for should always act according to Pashtun social traditions. As mentioned, the Taliban have been greatly influenced by the *Pashtunwali*. Although in some cases *Pashtunwali* and Sharia law are different (Marsden, 1998, p. 86). For example, according to Sharia law, the proof of adultery requires the presence of four righteous witnesses (Quran, Surah Nisa, verses 15–16), while in *Pashtunwali*, the existence of a rumor is enough to prove this case because, according to this law, the honor of the family is much more important than observing the moral and customary situation (Marsden, 1998, p. 86). With the effectiveness of the *Pashtunwali*, the Taliban are very strict with women.

Women should stay away from strange men and be accompanied by a *mahram* (Marsden, 1998, p. 86).

As the former head of the Supreme Court of the Taliban in his book states that the education of girls with boys contradicts Sharia law, he addresses the Afghan fathers and asks them what rational and religious justification allow them to let their daughters to be with boys in schools or universities and the boys look at their daughter's beauty and enjoy. He added that mixed education is a blind imitation of Westerners and is against the honor and dignity of Afghans and Muslims (Haqani, 2021, p. 281).

Indeed, such perspectives highlight the significant influence of *Pashtunwali* on the Taliban's ideology and policies, particularly regarding women's rights. Following their resurgence to power, the Taliban have adhered steadfastly to traditional practices, including their approach to women's rights, mirroring policies from their previous tenure. *Pashtunwali* emphasizes the notion that the protection of society is intricately linked to the safeguarding of women, and societal honor is contingent upon the honor of women. Within the Taliban's patriarchal system, women are viewed as the custodians of men's honor, and their behavior is expected to uphold and preserve this honor. Consequently, the Taliban's policies regarding women are shaped by a patriarchal worldview that prioritizes the perceived honor of men above the rights and autonomy of women (Burhani, 2020, p. 213).

The social background of the Taliban plays a significant role in fostering their misogynistic attitudes. Many Taliban members hail from Pashtun communities, where the cultural norms of *Pashtunwali* contribute to the perpetuation of misogyny. Additionally, Afghan villages, where the Taliban draw much of their support, tend to be traditional and patriarchal in nature, further reinforcing gender-based discrimination.

Moreover, the influence of intelligence services, particularly those of neighboring countries, exacerbates the volatile situation in Afghanistan. These intelligence agencies may exploit the unrest within Afghanistan to further their own agendas, potentially exacerbating existing social tensions and contributing to the perpetuation of misogyny and discrimination against women (Interviewee 4).

It is absolutely crucial to acknowledge that the prevailing culture in Afghan society is deeply patriarchal. Patriarchy, characterized by the concentration of physical and economic power in the hands of men, shapes societal norms and influences the treatment of women. Historically, men have been the primary beneficiaries of power and privilege, leading to the marginalization and subjugation of women. This entrenched patriarchal system has influenced the education and empowerment of women, often in ways that align with men's interests and perpetuate gender disparities.

Indeed, the Taliban phenomenon cannot be divorced from the broader cultural context of Afghanistan. While foreign influences may have played a role in their formation, they are ultimately a product of Afghan society and are shaped by its cultural norms and values. As such, the patriarchal culture inherent in Afghan society undoubtedly influences the Taliban's attitudes and actions towards women, further exacerbating gender inequality and discrimination (Kolhatkar, 2002, p. 13).

Misogyny has become deeply entrenched in our culture, permeating societal attitudes to such an extent that the notion of a woman holding leadership positions is still met with skepticism and resistance. Examples from previous governments in Ghor and Daikundi provinces underscore this pervasive bias. In Daikundi, protests erupted over the appointment of a woman as governor, with some individuals questioning the suitability of a woman for such a role. Similarly, religious scholars in Ghor expressed their disapproval of the appointment of Sima Jovindeh as governor through a formal resolution.

Moreover, even when women are nominated for prominent positions, they often face significant obstacles and opposition. Anisa Rasouli, the first woman nominated to the Supreme Court of Afghanistan, encountered opposition in the House of Representatives, highlighting the systemic barriers women face in ascending to positions of authority and leadership. These instances underscore the urgent need to challenge and dismantle the institutionalized misogyny that continues to hinder women's participation in governance and leadership roles in Afghanistan (Rahimi, 2015).

IV. Difference between Urban and Rural Living Standards

According to statistics from Afghanistan's Central Bureau of Statistics, there is a notable disparity in living standards between urban and rural areas. The data reveals that a significant majority, approximately 71.3 percent of the population resides in rural areas, where access to basic amenities and services may be limited. In contrast, approximately 24 percent of the population resides in urban centers, where infrastructure and resources tend to be more readily available. Additionally, a small percentage, approximately 4.7 percent, are nomads, whose living conditions may vary depending on their mobility and access to resources. This urban-rural divide underscores the socioeconomic disparities prevalent within Afghan society, with rural populations often facing greater challenges in accessing essential services and opportunities for socioeconomic advancement (Azad, 2019).

The disparity between urban centers and rural villages in Afghanistan is indeed significant and has been a source of numerous challenges throughout the country's history. This divergence in development, infrastructure, and access to essential services has contributed to social, economic, and political inequalities, exacerbating tensions and perpetuating disparities across various facets of Afghan society. These disparities have posed significant obstacles to efforts aimed at fostering national unity, economic growth, and social cohesion, highlighting the need for comprehensive strategies to address the urban-rural divide and promote equitable development across the country (Kargar, 2021).

After the Bonn Agreement of 2001, the government concentrated all welfare-economic-security facilities in the cities without having a precise sociological analysis of the social context of Afghanistan, and the villages, which include 70 percent of the population of Afghanistan, remain far away from all security welfare facilities. A point that was and is the main challenge of Afghanistan (Nadim, 2021).

Women's rights in Afghanistan have often been likened to a conflict between centralized state elites and Islamic scholars living in rural erases (Kandiyoti, 2007, p. 173). As noted, the Taliban predominantly originate from rural areas of Afghanistan, where there exists a pervasive

sense of skepticism towards urban environments. Many rural residents hold the belief that urban settings foster irreligion and secularism, a sentiment that gained traction following the 1978 coup. This suspicion extends to individuals educated in secular schools, viewed with distrust by those from rural backgrounds.

Moreover, the absence of girls' schools in rural villages further underscores the conservative attitudes prevalent in these areas. When the Taliban transition to urban centers, they carry with them the same rural mindset, which influences their perception of urban values. Consequently, there is a concerted effort to impose rural norms and values onto urban environments, reflecting a resistance to embracing urbanization and modernization.

This inclination to revert urban areas to a village-like setting reflects a broader trend among rural populations in Afghanistan, highlighting the enduring influence of traditional values and the challenges associated with reconciling rural and urban lifestyles (Muzda, 2004, p. 109). The religious ideology of the Taliban was a combination of *Salafi* and *Pashtunwali* Islam. Their religious interpretations were often specific and tended to cover local customs in the framework of religion (Barfield, 2010, p. 261).

During the initial tenure of the Taliban government, their Foreign Minister conveyed to the United Nations delegation that they were bound by certain obligations to their military personnel. This included the stipulation of preventing women from engaging in work or pursuing education. The minister suggested that altering this policy would prompt military personnel to return to their villages. This statement underscores the Taliban's prioritization of maintaining the loyalty of their fighters over advancing women's rights, demonstrating their entrenched commitment to conservative gender norms and the subjugation of women within Afghan society (Muzda, 2004, p. 110).

During the Taliban's second term in government, the Minister of Education articulated that there existed reluctance among communities in remote areas to send girls aged 16 and above to school. In the interview, he further elaborated that this reluctance stems not from an aversion to education for girls *per se*, but rather from concerns regarding their mobility outside the home. He emphasized that Afghan culture

places significant importance on preserving the modesty and honor of women, leading to sensitivity surrounding their movement beyond the confines of the household. This statement highlights deeply ingrained cultural norms that shape attitudes towards women's education and mobility within Afghan society, underscoring the complexities inherent in promoting gender equality in such contexts (Kawa, 2022).

The statements made by the Taliban Minister of Education have been widely criticized and deemed as insulting to the people of Afghanistan by a significant portion of the population. Many view these remarks as dismissive of the aspirations and rights of Afghan girls and women, and as perpetuating harmful stereotypes about their role and place in society. The suggestion that communities in remote areas are opposed to girls' education based solely on concerns about their mobility overlooks the multifaceted reasons behind barriers to education for girls, including systemic inequalities and cultural biases.

Moreover, the implication that Afghan culture inherently restricts the education and mobility of girls is seen as an oversimplification and misrepresentation of Afghan society, which has a rich and diverse cultural heritage. Such statements not only undermine efforts to promote gender equality and education but also reinforce harmful stereotypes that further marginalize women and girls. As a result, there has been widespread condemnation of these views, with calls for greater respect for the rights and dignity of all Afghans, regardless of gender.[12]

The assertion by the Taliban Minister of Education that the education process in Afghanistan over the past two decades did not align with the principles and culture of Islam and the Afghan people has sparked considerable controversy and disagreement. Many within Afghanistan and the international community have strongly refuted this claim, arguing that education initiatives during this period aimed to expand access to education for all Afghans, including girls and women, and promote inclusive and modern curricula that are in line with international standards.

[12] Radio Azadir website, (2022). Afghans disagree with the statements of the Taliban's Acting Ministry of Education regarding girls' schools. [Mokhaleft Afghan ha ba Ezeharat Sarparest Vazart Moaref Talban dar Moord Makatab Dokhtaran] Available at: https://da.azadiradio.com/a/32031561.html (In Farsi) [Accessed 24.11.2024].

Moreover, the suggestion that the education system under the Taliban's previous rule is more aligned with Islamic principles and Afghan culture is contested by many, given the Taliban's history of imposing strict and narrow interpretations of Islamic teachings and restricting access to education, particularly for women and girls.

Overall, the Minister of Education's remarks reflect the Taliban's efforts to justify their policies and actions by invoking religious and cultural rhetoric, but they are met with skepticism and criticism from those who advocate for inclusive and equitable education for all Afghans.[13]

Indeed, the speeches made by Taliban officials underscore the influence of rural or village culture on their policies and attitudes towards women. The Taliban's adherence to conservative cultural norms, often rooted in rural or traditional values, significantly shapes their approach to governance and social policies, particularly concerning women's rights and roles in society. This adherence to rural culture manifests in their emphasis on gender segregation, strict dress codes, and limitations on women's mobility and participation in public life.

The statements made by Taliban officials reflect their efforts to justify and uphold these policies by framing them within the context of cultural and religious norms. However, these policies are often at odds with the principles of gender equality and human rights, leading to criticism and opposition from both within Afghanistan and the international community.

Overall, the speeches of Taliban officials highlight the ongoing tension between traditional cultural practices and modern aspirations for gender equality and social progress in Afghan society.

After 2001, numerous programs were implemented with the aim of establishing new and democratic structures and organizations to foster collective action in villages across Afghanistan. These initiatives sought to promote community participation, governance transparency, and the empowerment of local populations. Key objectives included

[13] News, Shafqana, 2022. Taliban Minister of Education: People do not want to send their daughters to school. [Vazir Moaref Talban: Mardam Nemi Khahand Dokhtaran Khod ra bah Mokteb Befrestand.] Available at: https://af.shafaqna.com/FA/535786 (In Farsi) [Accessed 24.11.2024].

strengthening local governance mechanisms, enhancing civic engagement, and promoting grassroots development initiatives.

Through these programs, efforts were made to establish democratic village councils, known as *shuras*, and community-based organizations that could facilitate decision-making processes at the local level. Additionally, capacity-building activities aimed to empower villagers with the knowledge and skills necessary to participate effectively in local governance structures and take ownership of development projects in their communities.

These post-2001 programs represented a concerted effort to decentralize governance, promote participatory democracy, and empower communities to address their own needs and priorities. While challenges persisted, particularly in regions affected by conflict and insecurity, these initiatives played a crucial role in laying the foundation for grassroots development and inclusive governance in Afghanistan (Pain and Stuge, 2015, p. 2).

Indeed, the lack of security in rural areas significantly hindered the success of programs aimed at fostering democratic structures and collective action in villages. Rural life in Afghanistan is deeply rooted in tradition, with a strong emphasis on preserving cultural heritage and adhering to traditional practices passed down through generations. In contrast, urban life is characterized by cultural innovation and diversity, reflecting the influence of modernization and urbanization.

The differences between urban and rural life extend to various aspects of daily life, including behavior, speech, clothing, and cultural norms. These disparities often result in conflicting perceptions and attitudes between urban and rural populations, leading to negative stereotypes and tensions between the two groups.

The Taliban, predominantly hailing from rural backgrounds, are influenced by traditional values and customs, which shape their policies and attitudes towards women. Their opposition to urban culture, perceived as a departure from traditional values, further exacerbates their adherence to conservative gender norms and contributes to misogyny and discrimination against women.

Overall, the complex interplay between urban and rural cultures in Afghanistan underscores the challenges of promoting social cohesion

and inclusive governance in a diverse and divided society. Efforts to address these disparities must take into account the cultural, social, and economic factors that shape attitudes and behaviors in both urban and rural areas (Interviewees 8, 9, and 10).

During the author's visit to a village under Taliban control in 2020, the author observed firsthand the prevalence of misogyny, particularly evident in mosque education. This observation leads us to believe that mosque education serves as a primary factor in shaping the minds of children and society towards adopting misogynistic attitudes. The teachings and narratives propagated in mosque education often reinforce gender stereotypes and perpetuate traditional notions of women's inferiority.

An interviewee described that an important factor contributing to discrimination against women in Afghanistan, and subsequently among the Taliban, is the commodification and objectification of women. In our village, women are often viewed as men's property, treated as objects to be acquired or obtained. This dehumanizing perspective decreases women's position as a subject in society.

The regularization of such arrogances not only continues gender discrimination and inequality but also similarly raises a culture of control of Afghan men over women's bodies and lives. This mindset provides an opportunity for the systematic suppression of women, reinforces discriminatory beliefs and behaviors in our society and provides the ground for the growth of extremist groups such as the Taliban. Identifying the root causes of misogyny requires challenging patriarchal norms and promoting gender equality through education, support, and social participation will be beneficial over time (7 Interviewees).

V. Conclusion and Recommendations

To conclude, this research substantiates that the Taliban's prejudice against women is caused by several factors. The four variables this study looked at are especially significant among them. Through analysis, this study has shown the main conclusion.

First, the *Madrasas* and *Madrasa* curricula where the Taliban were trained have played an important role in the formation of discriminatory

attitudes of this group against women. The educational content of these *Madrasas* is based on conservative interpretations of Islam, which severely limits the role of women and deprives them of many social and individual rights. The textbooks of *Madrasas* have not only helped promote discriminatory views but have also allowed the Taliban to use these views as the ideological basis of their policies and actions against women. In general, the training of the Taliban in such environments has strengthened restrictive attitudes towards women. This factor is one of the most important elements in understanding and analyzing the Taliban's behavior towards women and shows how education and ideology can become a powerful tool to justify and apply discrimination.

Second, the mandatory orders of the Taliban leader have played a significant role in strengthening and stabilizing misogynistic thoughts among the Taliban. The leader's orders are considered as the ideological and political basis of the Taliban's behavior against women. These orders give legitimacy to the Taliban to apply these thoughts in the country. With these orders, the Taliban leadership suppresses any changes and attitudes in favor of women's rights and institutionalizes discrimination against women as an integral part of the Taliban's identity and performance. Additionally, the Taliban leader's coercive orders serve as a powerful control tool through which the leadership can maintain the group's ideological cohesion and severely repress any dissent or deviation from the misogynist ideology. These orders send the message to Taliban members that following misogynistic views is not only necessary but also a religious and ideological duty. Consequently, these orders not only reinforce misogynistic thoughts among the Taliban but also turn them into a tool to control and suppress women in society.

Third, Afghanistan's cultural factors, especially *Pashtunwali*, have had a deep effect on the formation and strengthening of misogynistic thoughts among the Taliban. *Pashtunwali*, as an unwritten cultural code and values, plays a vital role in the social and cultural structure of Pashtun-inhabited areas. This culture, which emphasizes concepts such as "honor" and "zealousness," introduces women as the bearers of honor and prestige of the family and tribe, and considers any behavior or freedom outside the traditional framework as a threat to these values. This conservative view of the role of women has encouraged the Taliban

to impose restrictions on the rights and freedoms of women. The Taliban relies on the *Pashtunwali*. These restrictions are not only a religious duty, but also a way of preserving tribal culture and traditions justify. Correspondingly, *Pashtunwali* strengthens patriarchal relations and confirms their legitimacy. Thus, it provides a context for the Taliban to build their misogynistic ideology on a stronger foundation. Hence, this culture acts not only as an independent cultural force but also as a key factor in the Taliban's ideology, which ultimately leads to further limitation of women in Afghanistan.

Fourth, the difference between urban and rural life in Afghanistan has profound effects on the formation of the Taliban discrimination against women. In Afghanistan villages, people are strongly loyal to tribal traditions and values, and social changes take place slowly. Traditions in rural areas have limited the role of women. The men of the family strictly control their social and personal freedoms. This situation makes the misogynistic ideology of the Taliban easily fit into the local culture and gain more acceptance. From this point of view, rural life by protecting traditional values and strengthening patriarchal structures provides a suitable ground for the acceptance and expansion of Taliban's misogynistic thoughts. In contrast, urban life creates a different environment with greater access to education, media, and broader social interactions. As centers of social change and progress, cities usually have more open and modern views of women's rights and roles. These differences make the Taliban's misogynistic thoughts face more resistance in urban environments. Recognizing these differences, the Taliban usually try to exert tighter control over urban areas and suppress any women's movement or activity that conflicts with their ideology. This harsher treatment of women in urban areas reflects the threat that the Taliban feel in the face of more open and egalitarian views in urban settings, which in turn leads to the reinforcement of a misogynist ideology in response to these threats.

Consequently, it can be argued that to improve the situation of women in Afghanistan and to counter the misogynistic thoughts of the Taliban, continuous and persistent efforts are necessary. The international community, human rights activists, and Afghan civil society should all take measured steps with complete patience toward the formation

of extensive reforms in the four key areas of the school curriculum: political and religious leadership, culture, and the difference between rural and urban areas. The first step in creating a legitimate cooperative system is to reform the country's education system, to revise *Madrasa* curricula and undertake serious reforms in this field. The promotion of school curricula and religious schools should be arranged. As a result they promote the values of gender equality, human rights, and women's participation in society. These programs should specifically emphasize the importance of women's role in social and economic development and avoid educational content that reinforces discriminatory views. It is very important to train teachers to work with a specific purpose in this field and to develop educational leaders who emphasize these values. In addition, providing girls with more access to education in rural areas through scholarships and support programs can help change attitudes in these areas.

Finally, focusing on strengthening urban communities as leading foci of social transformations can play an essential role in fighting against misogynistic ideas and supporting women's rights in the leadership of government and culture, highlighting the necessity of creating dialogue and cooperation between religious and political leaders and reformers. Religious and traditional leaders who have great influence in local communities should be encouraged to offer interpretations of Islam that are more compatible with women's rights and aim to challenge extremist interpretations. Promoting a culture of dialogue and interaction between urban and rural communities can also help change attitudes. Creating cultural, economic, and educational exchange programs between these communities can help resolve cultural differences and enable the acceptance of human rights ideas.

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Article

DOI: 10.17803/2713-0533.2024.4.30.718-740

The Legal Status of Religious Ministers: Foreign and Russian Experience of Normative Legal Regulation

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Abstract: Religious ministers are among the subjects implementing the constitutional right to freedom of religion. Their status is regulated both by the "internal law" of religious associations and by the norms of the constitutional law of a particular state, which determines the complexity of the study. The aim of this paper is to make a comparative study of the most significant legislative bases of the legal status of religious ministers in fifty-seven countries. The research will allow us to verify the hypothesis about the validity of singling out the sub-institution of religious ministers within the framework of the complex constitutional legal institution of freedom of religion. For the comparative analysis, the author uses five criteria that make it possible to consider the limits of the autonomy of religious organizations with regard to the appointment of their ministers and the guarantees of securing their status: the requirement of citizenship, the binding obligation to notify the authorities of their appointment, the maintenance of registers of ministers, the peculiarities of instituting criminal proceedings with regard to the interaction with religious associations and the restrictions on their activities. The author uses formal-dogmatic and functional methods together with the comparative legal method. Conclusions are drawn on the ways of consolidating certain aspects of the status of religious ministers in regulatory legal acts and, taking into account certain comparative criteria, the options of state regulation with the most restrictive effect are determined.

Keywords: ministers of religion; clergy; status; autonomy; religious organizations; law; freedom of conscience

***Acknowledgments*:** The study was carried out within the support of the Russian Science Foundation, grant No. 23-78-01013 "Legal Status of Clerics in Russia and Foreign Countries: Metamorphosis of State Regulation and Challenges of Modernity." Available at: https://rscf.ru/project/23-78-01013/

Cite as: Pibaev, I.A., (2024). The Legal Status of Religious Ministers: Foreign and Russian Experience of Regulatory Regulation. *Kutafin Law Review*, 11(4), pp. 718–740, doi: 10.17803/2713-0533.2024.4.30.718-740

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I. Introduction

There are many religions in the world with their own doctrines, rites and ceremonies, as well as, with some exceptions, individuals authorized to practice them. The religious picture of the world that emerged in the course of the 20th century is undergoing serious changes: on the one hand, secularization processes are intensifying; on the other hand, in a number of regions, the religious factor is amplifying its influence turning into a dominant one. It is frequently used by extremist organizations to recruit new members and to incite and exacerbate inter-ethnic and inter-confessional conflicts. This is largely facilitated by geopolitical conflicts that generate migration processes.[1] In this context, many problems arise in ensuring the balance of interests between different groups of believers.

The right to freedom of religion is considered in constitutional legal science as a complex legal institution (Pchelintsev, 2012, pp. 28–29). The subjects of implementation of this right include religious ministers, whose legal status is only beginning to attract the attention of individual researchers (Andreev, 2014; Pavlyuk, 2022). The complexity of this study lies in the ambivalence (duality) of their position, which is regulated both by the "internal law" of religious associations and by the norms of constitutional law of a particular state. At first sight, the grounds and procedure for granting, changing or terminating the status of a religious minister should be regulated only by the internal regulations of religious associations. Thus, in drafting the text of the First Amendment to the United States Constitution, the Founding Fathers of the United States (the Fore-Framers) had to listen to the voices of Baptists who were dissatisfied with the restriction on religious freedom imposed by state laws. Among other things, the Framers of the Constitution emphasized that the meaning of the First Amendment presupposed the right of religious associations to freely choose their ministers without any hindrance or supervision by the state (McLoughlin, 1971, p. 363). The

[1] For example, on 28 October 2023, in connection with the conflict between Israel and the Gaza Strip in London, thousands of Muslims demonstrated their support of Palestine. Available at: https://rg.ru/2023/10/28/den-protesta-v-londone-policejskij-v-bolnice-sidiachaia-zabastovka-v-vaterloo.html [Accessed 08.01.2024].

European Court of Human Rights (hereinafter referred to as ECtHR) in its judgment dated 22 January 2009 in the case "Holy Synod of the Bulgarian Orthodox Church (of Metropolitan Inokentiy) and Others v. Bulgaria" concluded that the question of which church leadership is canonical and, therefore, legitimate, should be officially resolved within the religious community itself.[2] Such an approach is possible in states that affirm the principle of separation of religious associations from the State.

But even among the existing models (types) of secular states (Ponkin, 2004), there is a different "degree of decisiveness" in asserting the principle of "neutrality" of the State in relation to religion (Ovsepjan, 2017, pp. 34–37), and as a consequence, among the countries of North and South America, Europe, Asia and Africa there are quite a few of those that have included certain aspects of the legal status of religious ministers in the subject of constitutional regulation.

In one of the previous works, the author analyzed the approaches of some countries, including the Russian Federation, in terms of legislative innovations aimed at countering the spread of religious extremist ideology by religious ministers (Pibaev, 2022). At the same time, the range of possible state actions on legal regulation of activities of religious personnel is much broader than reduction of the level of religious extremism. The State may take measures to restrict collective freedom of religion (the freedom of activity of ministers of religion is considered precisely in this respect, especially in the practice of the European Court of Human Rights), on the basis of national interests, for example, to protect health and morality, the rights and freedoms of other individuals.

Thus, the present work is aimed at the comparative study of the most significant legislative bases of the legal status of religious ministers. The study will make it possible to verify the hypothesis about the validity of singling out the subinstitute of religious ministers within the framework of the complex constitutional legal institute of freedom of religion, including both essential and necessary guarantees of the

[2] European Court of Human Rights. [Fifth Section]. Holy Synod of the Bulgarian Orthodox Church (Metropolitan Inokentiy) and Others v. Bulgaria. Application No. 412/03, 35677/04. Judgment of 16 September 2010. § 20.

independence of religious associations in determination of the status of religious ministers, conditioned by the nature of religious freedom, as well as models of constitutional design, assuming state intervention.

II. Methodology

The regulatory framework of the conducted research is the legislation and law enforcement practice, as well as the experience of the relevant practice of implementation of norms of the following foreign countries: Argentina, Armenia, Australia, Austria, Azerbaijan, Belarus, Bolivia, Bosnia and Herzegovina, Bulgaria, Canada, Chile, Colombia, Croatia, the Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Georgia, Great Britain, Greece, Hungary, India, Israel, Italy, Japan, Latvia, Lithuania, Luxembourg, Mexico, Monaco, Montenegro, Netherlands, New Zealand, Nicaragua, North Macedonia, Norway, Paraguay, Peru, Poland, Portugal, Romania, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tajikistan, Turkey, Ukraine, the USA, Vietnam, and, together with the above, the Russian Federation. 57 countries represent different legal systems, all continents of the world, which properly ensures the objectivity of the results of the comparative legal analysis of foreign experience.

The author used the formal-dogmatic method to identify the consolidation of certain aspects of the status of religious ministers in the norms of constitutional law. The functional method helped to reveal reasons for the choice of specific legal regulation in particular countries.

On the basis of the stated thematic horizon, we have identified and used the existence of requirements in the legislation as the leading criteria for comparison (*tertium comparationis*):

a) on citizenship for leaders, religious ministers of religious associations (or vice versa, establishing the election (appointment) as the head of a religious association as a ground for acquiring citizenship);

b) on the coordination of candidates with competent authorities;

c) on the control over religious ministers;

d) on the cosolidation of peculiarities of bringing religious ministers into court (to legal responsibility) in the form of the obligation to inform heads of religious associations when initiating criminal proceedings

against religious ministers, or the obligaion to obtain the consent of a religious organization to initiate criminal proceedings against a religious minister;

e) on the existence of provisions limiting the civil rights of religious ministers and determining the legal validity of religious rites and sacraments performed by them.

In this paper we will consider the limits of the autonomy of religious organizations with regard to the appointment of their ministers and guarantees of ensuring their status. Norms of legislation of foreign countries, which are not cited in the paper, are assumed as establishing the autonomy of religious associations in determining the examined aspects of the status of religious ministers.

III. Regulatory Consolidation of Certain Aspects of the Status of Religious Ministers

III.1. Citizenship qualification (citizenship requirement or status)

According to the author's approach, "citizenship qualification" is understood as a statutory requirement that a religious minister must have state citizenship in order to occupy the position of a leader or a responsible person of a religious association. Lack of citizenship can be seen as a spatial condition for invited foreign religious ministers to carry out activities within a religious association.

In accordance with Art. 21 of the Law of the Azerbaijan Republic of 20 August 1992 No. 281 (as amended on 16 May 2017) "On Freedom of Religion"[3] (hereinafter referred to as the Law of the Azerbaijan Republic) conditions of activity for Islamic clergy are introduced: the conduct of rites and ceremonies related to the Islamic religion can be carried out only by citizens of the Republic of Azerbaijan. Also, in general,

[3] Law of the Azerbaijan Republic dated 20 August 1992 No. 281 (as amended on 16 May 2017, current edition — 20 December 2022) "On Freedom of Religion" [Dini etiqad azadlığı haqqında Azərbaycan Respublikasının qanunu] Available at: https://scwra.gov.az/az/view/pages/112/ (The current edition dated 20 December 2022 is in limited access: https://online.zakon.kz/Document/?doc_id=31117455&pos=6;-106#pos=6;-106) [Accessed 08.01.2024].

there is a ban on the dissemination of religious beliefs by all persons (hence, including religious ministers) who have foreign citizenship or are apatrides, with the exception of clergy invited by a religious center in Azerbaijan.

In accordance with Art. 13 of the Law of the Republic of Belarus of 17 December 1992 No. 2054-XII "On Freedom of Conscience and Religious Organizations" (as amended on 22 December 2011 No. 328-Z)[4] only a citizen of the Republic of Belarus may be the head of a religious organization.

In practice, in case of reaching "tacit agreements" with the country's leadership, this provision was ignored. This was the case with the Russian citizen Metropolitan of Minsk and Zaslavl, Patriarchal Exarch of All Belarus Pavel, from 25 December 2013 to 25 August 2020, who did not have Belarusian citizenship.[5] The current Metropolitan Veniamin is a citizen of the Republic of Belarus.

Another case related to the implementation of this norm concerned the head of the Archdiocese of Minsk and Mogilevsk of the Roman Catholic Church, Metropolitan Tadeusz Kondrusiewicz who had Belarusian citizenship. Following a number of critical statements about the results of the presidential elections in the Republic of Belarus, on 31 August 2020, he was banned from entering Belarus from Poland without explanation when he was attempting to enter the country from Poland. On 15 September 2020, the Department of Citizenship and Migration of the Ministry of Internal Affairs of Belarus claimed that his passport had been declared invalid due to the verification for the Belarusian citizenship. On 24 December, he was eventually allowed to enter the country, but on 3 January 2021, having reached the age of 75, he resigned.

In Greece, in order to hold the position of the Mufti of Thrace, in addition to Greek citizenship, one must be a member of the Muslim minority in Thrace and reside permanently in one of the regional units

[4] Available at: https://base.spinform.ru/show_doc.fwx?rgn=1854 [Accessed 08.01.2024].

[5] Social activists spoke out against the Russian at the head of the Belarusian Church. Available at: https://lenta.ru/news/2014/01/31/against/ [Accessed 08.01.2024].

of Evros, Rodopi and Xanthi (Law No. 4964/2022 of 17 November 2022 "On Modernization of Muftiates in Thrace" (Art. 137–162).[6]

The Law "On the Latvian Orthodox Church" of 3 December 2008 (as amended on 10 September 2022)[7] provided for the rule that "Only church clerics and citizens of Latvia whose permanent place of residence has been in Latvia for at least 10 recent years may become the Head of the Church, metropolitans, archbishops, bishops and candidates for these positions."

The Agreement of 19 July 1980 between the Holy See and the Republic of Peru[8] stipulates that the archbishops and bishops of the Roman Catholic Church residing in the country must be citizens of Peru (Art. 7).

Article 19 of the Portuguese Law No. 16/2001 of 22 June 2001 (as amended on 31 December 2012) "On Religious Freedom"[9] established, "A minister of worship must have the Portuguese citizenship or, being a foreigner and not a citizen of a Member-State of the European Union, must have a temporary or permanent residence permit in Portugal."

Maintenance of Religious Harmony Act of Singapore of 1990 (as amended on 7 October 2019; amendments came into effect on 1 November 2022)[10] defined in Art. 16D restrictions on the citizenship of responsible officials of religious groups. Thus, Para. 2 sets out the

[6] Law 4964/2022. Art. 137–162, Part C "Modernization of The Muftiates in Thrace." Official Government Gazette of the Hellenic Republic, Issue A' 150. 30 July 2022. Available at: https://www.minedu.gov.gr/publications/docs2020/Law_4964-2022_on_Muftiates_Art._137-162_ENG.pdf [Accessed 08.01.2024].

[7] Law "On the Latvian Orthodox Church." 3 December 2008 (as amended on September 10, 2022 No. 2022/175A.1). Latvijas Vēstnesis. 188. 3 December 2008. Available at: https://likumi.lv/ta/id/184626-latvijas-pareizticigas-baznicas-likums [Accessed 08.01.2024].

[8] Agreement of 19 July 1980 between the Holy See and the Republic of Peru [Acuerdo entre la Santa Sede y la Republica del Peru]. Decreto Ley No. 23211 de 24 Julio 1980. Available at: http://textos.pucp.edu.pe/pdf/1019.pdf [Accessed 08.01.2024].

[9] Portuguese Law No. 16/2001 of 22 June 2001 (as amended on 31 December 2012) "On Religious Freedom" [Lei No. 16/2001 de 22 Junho 2001 — Lei da Liberdade Religiosa (alterações — Lei No. 66-B/2012, de 31 December 2012)]. Available at: https://dre.pt/dre/legislacao-consolidada/lei/2001-34483475 [Accessed 08.01.2024].

[10] Maintenance of Religious Harmony Act, 30 November 1990. Available at: https://sso.agc.gov.sg/Act/MRHA1990?ProvIds=P11-#pr2- [Accessed 08.01.2024].

duty of a religious group in Singapore not to appoint a person who is neither a Singaporean citizen nor a permanent resident of Singapore as a responsible official of a religious group.

The law of Austria for legally recognized denominations and churches "On the Official Recognition of Religious Societies" of 20 May 1874 (the amended law is still in force — *the author's note*)[11] provides for the possibility to be a pastor of a religious community only for Austrian citizens whose moral and civil conduct is irreproachable and whose general education is confirmed by at least the completion of secondary school (§ 10). Loss of citizenship in accordance with § 12 entails a claim by the Austrian government for removal from office.

In accordance with the Law of Ukraine of 23 April 1991 No. 987-XII "On Freedom of Conscience and Religious Organizations" (as amended on 3 March 2022)[12] (Part 4 Art. 24) (hereinafter referred to as the Law of Ukraine), clergymen, religious preachers, mentors, other representatives of foreign organizations, who are foreign citizens and stay temporarily in Ukraine, may engage in preaching religious doctrines, perform religious rites or other canonical activities only in those religious organizations at the invitation of which they arrived, and with the official approval of the state body that registered the charter (regulations or guidelines) of the relevant religious organization.

In the Russian Federation, in the Federal Law "On Freedom of Conscience and Religious Associations" of 26 September 1997, No. 125-FZ (hereinafter Federal Law No. 125) there are no special rules on citizenship for religious ministers, but under the general requirements for founders (participants) it can be determined that a religious minister who is a foreign citizen or a stateless person in respect

[11] Law on the Official Recognition of Religious Societies of 20 May 1874 No. 68/1874 (text as of 10 February 2023, no changes indicated). [Gesetz vom 20. Mai 1874, betreffend die gesetzliche Anerkennung von Religionsgesellschaften]. Available at: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10009173 [Accessed 08.01.2024].

[12] Law of Ukraine of 23 April 1991 No. 987-XII "On Freedom of Conscience and Religious Organizations" [Закон України від 23 Квітня 1991 року № 987-XII "Про свободу совісті та релігійні організації"]. Ведомости Верховной Рады УССР, 1991 г., № 25, ст. 283. Available at: https://zakon.rada.gov.ua/laws/show/987-12#Text [Accessed 08.01.2024].

of whom a decision has been made that his (her) stay (residence)[13] in the Russian Federation is undesirable, in accordance with Part 3 Art. 9 of Federal Law No. 125, may not be a founder (establisher) of a local religious organization.

The opposite approach (establishing election (appointment) of the head of a religious association as grounds for acquiring citizenship) is enshrined in the legislation of the Republic of Armenia with regard to the head of the Armenian Apostolic Church. The provision of Art. 22 of the Law of the Republic of Armenia "On Freedom of Conscience and Religious Organizations" of 17 June 1991 (as amended on 14 April 2011)[14] states, "A person elected as the Catholicos of All Armenians shall acquire citizenship of the Republic of Armenia." There is a historical example of the implementation of this norm. On 4 April 1995, Karekin II, Catholicos of the Great House of Cilicia, a native of Syria, was elected as Supreme Patriarch and 131st Catholicos of All Armenians at the Armenian Church Representative Assembly, taking the name of Karekin I (he exercised his authorities until his death in 1999).

The analysis of the approaches given above allows us to highlight the reasons for consolidating the stated norms. In our opinion, they can be grouped as follows:

a) the intention to avoid negative foreign influence, first of all, to protect citizens from the influence of extremist ideology carriers, extreme forms of religious views (Azerbaijan, Russia);

b) political tension between countries, disagreements on international issues, and as a consequence, the desire of the heads of the states to have their own "national" and autocephalous churches (Latvia, Ukraine);

[13] A pastor is expelled from Russia because of his sermons. Available at: https://www.pravmir.ru/smi-iz-Rossii-vyidvoryayut-pastora-iz-za-ego-propovedey/ [Accessed 08.01.2024].

[14] The Law of The Republic of Armenia on Freedom of Conscience and Religious Organizations of 17 June 1991. Հայաստանի Հանրապետության Օրենքը Խղճի Ազատության Եվ Կրոնական Կազմակերպությունների Մասին, 17.06.1991]. Available at: http://www.parliament.am/legislation.php?sel=show&ID=2041&lang=arm$$ http://www.parliament.am/legislation.php?sel=show&ID=4132&lang=arm [Accessed 08.01.2024].

c) historical reasons related to previous conflicts between representatives of different religions — Christians and Muslims (Greece);

d) the need to increase the level of trust of "the flock" (people of the congregation) to religious ministers (the desire to have clergymen of one nationality or exclusively citizens of the country (Armenia, Belarus (Ovsepjan, 2017, p. 39),[15] Peru, Portugal, Singapore).

Peculiarities of the historical development of the State, the nature of relations between the State and religious organizations, the degree of guaranteeing religious freedom determines the approaches of states in establishing the "citizenship qualification" for religious ministers.

III.2. The Binding Obligation to Notify Competent State Authorities when Appointing, Transferring and Dismissing Religious Ministers (until the Decision is Cancelled)

Another significant mechanism of influence on the activity of religious ministers is mandatory notification of authorized state bodies by religious organizations in case of a change in their position and obtaining consent for their appointment. In this case, as well as with the establishment of the "citizenship qualification," one of the goals is to prevent the spread of views aimed at undermining the constitutionally established order of the country, and to increase the level of loyalty of religious ministers.

However, it is also possible that such an obligation exists solely for the official reflection of authorized representatives of religious organizations by state bodies in their registers.

According to the above-mentioned law of the Republic of Azerbaijan, citizens of the Republic of Azerbaijan who have received religious education abroad may be allowed by the Caucasus Muslim Board with the consent of the relevant executive authority to conduct rites and ceremonies related to the Islamic religion (Art. 21).[16]

[15] Zh. I. Ovsepjan pointed out to another reason, "The Constitution of Belarus emphasizes increased attention to ensuring state sovereignty."

[16] Law of the Azerbaijan Republic dated 20 August 1992 No. 281.

In Bulgaria, foreign clergymen may participate in religious services after notifying the Department of Religious Affairs of the Council of Ministers (Art. 29, Para. 6).[17]

The Law of Vietnam "On Freedom of Conscience and Religion" No. 02/2016/QH14[18] in Art. 33, Para. 1 stipulates, "A religious organization shall notify in writing the Government Committee for Religious Affairs at the central level of persons ordained or appointed as monks, abbots, abbesses, nuns of the Vietnamese Buddhist community; pastors of Protestant organizations; senior coordinators of CaoDai churches; senior teachers (mentors) of the Vietnamese Buddhist community, other equivalent positions of other religious organizations no later than 20 days from the date of ordination or appointment." Under Part 2 it continues, "In cases of the assumption of an office or appointment of high-ranking persons not specified in Para. 1 of this Article, religious organizations shall, not later than 20 days from the date of entering the office or nomination of candidates, notify in writing the specialized agencies for religious affairs of the provinces in which they reside and carry out religious activities." Part 4 contains indications on the possibility of refusal to approve candidates of religious ministers.[19]

[17] Law of Bulgaria dated 20 December 2002 (as amended on 1 August 2023 No. 66) "On Religions" [Закон за вероизповеданията]. Available at: http://lex.bg/laws/ldoc/2135462355 [Accessed 08.01.2024].

[18] Law on Freedom of Conscience and Religion No. 02/2016/QH14 [Luật Tín ngưỡng, tôn giáo 2016, số 02/2016/QH14]. Available at: https://luatvietnam.vn/chinh-sach/luat-tin-nguong-ton-giao-2016-111021-d1.html [Accessed 08.01.2024].

[19] In the event that a person ordained or appointed as a high ranking minister does not comply with the provisions of Art. 32, Para. 2 of this Law (Persons to be ordained, appointed, elected shall have full civil capacity; they shall not be subject to administrative measures in the field of belief or religion; they shall not have a criminal record and shall not be a person charged with a criminal offence in accordance with the provisions of the Law on Criminal Procedure), the competent state authority shall be obliged to demand in writing to nullify the results of the ordination or appointment of high ranking persons.

Religious organisations shall, within 20 days from the date of receipt of the written application, cancel the results of the investiture or appointment of high-ranking persons and notify in writing the competent State authorities specified in Para. 1 and 2 of this Article about the cancellation of the results of the ordination or appointment.

Article 51 lays down the specifics of the appointment of religious ministers associated with foreign states, "The investiture, appointment, elections involving foreign elements specified in Para. 1 of this Article shall be approved in advance by the state administration body of the central level that is in charge of faith or religion."

According to Art. 5 of the Singapore Government Ordinance dated 3 November 1911 (as amended on 12 July 1997) "On the Bishop of Singapore" "a notification in the Gazette of the appointment of any person to exercise the office of Bishop of Singapore shall be conclusive evidence that such a person was duly authorized to exercise the said office."[20]

In accordance with Art. 30 of the Law of Ukraine, the Central Executive Body, which implements the state policy in the sphere of religion, ensures realization of the state policy regarding religions and the church by officially approving the possibility of engaging in preaching and other canonical activities, performance of religious rites by clergymen, religious preachers, mentors, other representatives of foreign religious organizations, who are foreign citizens and temporarily stay in Ukraine.

The Agreement of 28 July 1976 between the Holy See and the Government of Spain (on the ratification by Spain of the Agreement between the Holy See and the Spanish State, signed at the Vatican on 28 July 1976) on the Renunciation of Privileges and on the Appointment of Bishops[21] (hereinafter referred to as the Spanish Agreement) provides that by a general rule (Art. 1) the appointment of archbishops and bishops is the exclusive competence of the Holy See, however, under Part 2 "before proceeding to the appointment of archbishops-residents, bishops and coadjutors with the right of succession, the Holy See shall

[20] Bishop of Singapore Ordinance. Available at: https://sso.agc.gov.sg/Act/BSO1911 [Accessed 08.01.2024].

[21] Agreement of 28 July 1976 between the Holy See and the Government of Spain on the Renunciation of Privileges and on the Appointment of Bishops [Acuerdo entre la Santa Sede y el Estado Español, hecho en la Ciudad del Vaticano el 28 de julio de 1976]. Instrumento de Ratificación de España al Acuerdo entre la Santa Sede y el Estado Español, hecho en la Ciudad del Vaticano el 28 de julio de 1976. Boletín Oficial del Estado. 24 Septiembre 1976, No. 230, pp. 18664–18665. Available at: https://www.boe.es/buscar/doc.php?id=BOE-A-1976-18294 [Accessed 08.01.2024].

notify the Spanish Government of the appointment if there are specific objections of a general political nature, the assessment of which would be consistent with the prudent consideration of the Holy See."

The Federal Law of Austria dated 6 July 1961 "On External Legal Relations with the Evangelical Church" (as amended on 31 December 2020)[22] (hereinafter referred to as the Law of Austria) notes that the leadership of the Protestant Church must immediately inform the Federal Ministry of Education of the appointment of its members (§ 8).

The Russian legislation contains the necessity for a religious organization to notify the Ministry of Justice of the Russian Federation (territorial bodies) only when it comes to the appointment, change, termination of the powers of a religious minister as the head of a local or centralized religious organization (Art. 8, Clause 9, Para. 1 of the Federal Law No. 125). In this case, it must be done within seven days,[23] in case of failure to fulfill the obligation, administrative responsibility is imposed (Art. 14.25 of the Code on Administrative Offenses of the Russian Federation).

It should be noted that the enshrinement of the powers of public authorities in the legislation concerning the disapproval of the appointment of religious ministers, as in Vietnam, can be seen as an interference in the autonomy of religious associations, in particular, in their right to determine independently the order of the appointment of their religious personnel. For this reason, countries with such restrictions in their legislation are identified as states having problems in ensuring constitutional freedom of religion. The exception to this is the existence of coordination arrangements in concordat law between the Roman Catholic Church and individual states, reflecting the historical particularities of the conclusion of the agreement.

[22] Federal Law of Austria dated 6 July 1961 "On External Legal Relations with the Evangelical Church" (as amended on 31 December 2020). [Bundesgesetz vom 6. Juli 1961 über äußere Rechtsverhältnisse der Evangelischen Kirche StF: BGBl. Nr. 182/1961]. Available at: https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10009255 [Accessed 08.01.2024].

[23] The period was three days until 24 July 2023. Federal Law of 24 July 2023 No. 360-FZ "On Amendments to Certain Legislative Acts of the Russian Federation."

III.3. Maintenance of Registers of Religious Ministers

Such registers may be one of the options to monitor activities of religious ministers if the laws of the state give them the opportunity to perform legally significant actions, for example, the conclusion of marriages.

Thus, Art. 14, Para. 1, of the Greek Law of 2014, No. 4301/2014 (as amended on 21 July 2022) "On the legal status of religious communities and their organizations in Greece and other provisions on the competence of the General Secretariat for Religious Affairs" defines the competence of the Ministry of Education and Religion, which is charged with the obligation to maintain the electronic register of religious ministers who perform religious rites with civil consequences, regardless of the fact whether they belong to a religious community organized according to some legal form, or belong to a community without a status of a legal entity. Registration of each religious minister with indication of his identification data and of the religious community to which he belongs shall be carried out by the latter on the basis of an appropriate application, to which the biographical data (CV) of the minister and the names of religious disciplines (theological sciences) he may have shall be attached. <…> Part 2 provides: "The Register of Ministers of Religion is the official source of information on the status of the Minister of Religion for the local competent registers and on the acts they register in their books, and It is freely accessible to them through the website of the Ministry of Education and Religious Affairs, in order to enable direct control over the granting of this status to the persons who have drawn up the relevant act in accordance with Art. 1367 of the Civil Code."[24]

Thus, the main purpose of this register is the need for state authorities to have information about religious ministers who may

[24] Greek Law No. 4301/2014 of 2014 (as amended on 21 July 2022) "On the legal status of religious communities and their organizations in Greece and other provisions on the competence of the General Secretariat for Religious Affairs" [Νόμος Νο. 4301/2014 "Οργάνωση της νομικής μορφής των θρησκευτικών κοινοτήτων και των ενώσεών τους στην Ελλάδα και άλλες διατάξεις αρμοδιότητας Γενικής Γραμματείας Θρησκευμάτων και λοιπές διατάξεις"]. ΦΕΚ. 7 October 2014. Available at: https://www.kodiko.gr/nomothesia/document/99058/nomos-4301-2014 [Accessed 08.01.2024].

solemnize marriages with legal consequences. For the same purpose, the Law of Latvia obliges the Latvian Orthodox Church (Art. 18) to submit in writing to the Ministry of Justice a list of those persons who meet the status of church clergy. In addition, religious ministers included in the list under Art. 12 may exercise their ministry in the National Armed Forces, airports, ports, road (above-ground) transport stations, medical, health, social institutions, prisons and other places where regular church assistance is not available.

In Bulgaria, following the 2019 innovations, the Central Directorate of the Religious Organization must keep registers of clergy and employees of religious institutions and provide access to this information to the staff of the Directorate of "Religions" (for Religious Affairs) of the Council of Ministers (Art. 29 Part 4).[25]

Religious organizations and their representatives do not always approve of the state's desire to carry out official registration of clergy. In particular, Bulgarian activists of the Human Rights Protection Group sent a critical response to the draft law of 2019. Their position was based on the Guidelines for Review of Legislation Pertaining to Religion or Belief of the Organization for Security and Cooperation in Europe (2004).[26] Section 2(F)1 of the OSCE Guidelines states that "Intervention in internal religious affairs by engaging in substantive review of ecclesiastical structures, imposing bureaucratic review or restraints with respect to religious appointments, and the like, should not be allowed."[27] In their view, the rule contradicts Art. 38 of the Constitution of the Republic of Bulgaria and reminds of the communist Law on Confessions, which required maintenance of such registers in order to control and put pressure on clergy because of their beliefs and sermons (Pibaev, 2022, p. 118).

[25] Directorate "Religions" of the Council of Ministers. Available at: http://veroizpovedania.government.bg/functions [Accessed 08.01.2024].

[26] Opinion of the Advocacy and Human Rights Protection Group; Freedom for everyone on the Bill to amend the Religions Act, No. 853-14-10. Available at: https://www.parliament.bg/bg/parliamentarycommittees/2593/standpoint/9756 [Accessed 08.01.2024].

[27] Guidelines for Review of Legislation Pertaining to Religion or Belief (2004). Available at: https://www.osce.org/ru/odihr/13994 [Accessed 08.01.2024].

III.4. The Binding Obligation to Inform Heads of Religious Associations when Initiating Criminal Proceedings against Religious Ministers (Austria, Montenegro, Spain) and to Obtain the Consent of a Religious Organization to Bring a Criminal Case against a Religious Minister

Article 8 of the Agreement between the Serbian Orthodox Church and Montenegro dated 3 August 2022[28] establishes the obligation, in case of initiation of criminal proceedings or proceedings on an offense (tort) against clergymen or religious figures of the Church, when the body of public authority conducting the proceedings shall notify the competent archbishop thereof.

Part 2 of Para. 12 of the Austrian Law specifies that prosecutors must notify the leadership of the Evangelical Church of the commencement of preliminary investigation (court procedure) and the consideration of criminal proceedings against officials of the Evangelical Church without unreasonable delay. A noteworthy feature is the provision of Part 5 of the said paragraph, "In every criminal case brought by state authorities against officials of the Evangelical Church, respect appropriate to the prestige of the church and cult shall be shown."

Article II, Para. 2 of the Spanish Agreement also states, "If a clergyman or religious official is brought to criminal responsibility, the competent authority shall notify the ordinary (the church officer — *note of the author*) concerned. If the defendant is a bishop or a person equivalent to him in canon law, the notification shall be made to the Holy See."[29]

In some countries, in particular in Israel, special legal protection is accorded to religious judges — Dayans, who are often at the same time religious ministers — rabbis. According to Judges Act of Israel of 1955 "criminal investigation against a Dayan will not be initiated unless with

[28] Agreement between the Serbian Orthodox Church and Montenegro dated 3 August 2022 [Темељни уговор између Црне Горе и Српске Православне Цркве] Available at: http://www.nspm.rs/crkva-i-politika/radna-verzija-temeljnog-ugovora-izmedju-vlade-crne-gore-i-spc.html [Accessed 08.01.2024].

[29] Agreement of 28 July 1976 between the Holy See and the Government of Spain on the renunciation of privileges and on the appointment of bishops.

the consent of the Attorney General, and no charges will be filed against a Dayan but by the Attorney General" (Art. 25(a)).[30]

The stated norms are intended to protect the interests of a religious organization and provide its leadership with the possibility of immediate response and application of measures prohibiting temporarily the ministry of clergy until the end of investigative actions or court proceedings.

III.5. The Opportunity to Perform Certain Religious Rites Only after Prior Notification, Imposition of Liability for Performing Religious Rites without Authorization

Currently, 11 of 28 states in India (Neha, 2017, p. 136)[31] have enacted laws criminalizing forced conversion to another religion, restricting the ability of religious ministers to carry out their activities. Article 10(2) of Madhya Pradesh Law on Freedom of Religion No. 5 dated 27 March 2021 states, "Any religious priest and/or any person who intends to organize conversion shall give 60 days prior notice to the District Magistrate of the district where such conversion is proposed to be organized in such form as may be prescribed."[32] The penalty for this violation is imprisonment for a term of three to five years and, in addition, a fine of not less than fifty thousand rupees may be imposed. There is no point in quoting extracts from all the laws because they are virtually identical, with a few peculiarities. For example, in the state of Uttarakhand, the period of notification has been reduced to 30 days.[33] In practice, the stated provisions are used to prevent the exercise of the Christian faith and the arrest of Christian clergymen.

[30] Judges Act of 16 May 1955 (as of 18 September 2023) [סיניידה קוח, טשת"ו-1955] Available at: https://www.nevo.co.il/law_html/law00/71521.htm [Accessed 08.01.2024].

[31] The Indian Constitution in Art. 25 guarantees the right to freedom of religion, but it does not explicitly mention the right to convert to another religion.

[32] Madhya Pradesh Law on Freedom of Religion No. 5 dated 27 March 2021 Available at: https://www.indiacode.nic.in/bitstream/123456789/16921/1/mpfreedomofreligionact2021.pdf [Accessed 08.01.2024].

[33] An Indian priest jailed under "anti-conversion" laws has been released. Available at: https://gnc.news/2023/12/27/464901 [Accessed 08.01.2024].

Under Civil Union Act 2006 of the Republic of South Africa (as amended on 31 October 2022) [34] any religious organization may notify (apply in writing to) the Minister to designate a religious minister as a marriage officer, i.e., a person authorized to solemnize marriages (civil units) in accordance with religious belief and with legal recognition (in terms of the given Act). Accordingly, in order to protect the interests of a religious organization, Art. 14 of the law provides for the liability for solemnization of a civil union by a person who is not an authorized religious minister in the form of a fine or, in default of payment, imprisonment for a period not exceeding 12 months.

According to the Marriage Act 1961 No. 12 of Australia (as amended on 1 September 2021), disciplinary measures may be taken against a religious minister who no longer meets the requirements for Registrars (marriage officers), up to and including removal from the Register (Art. 33 and 39(1)). [35]

Special legal protection is provided for in Art. 23(4) of the Law of Romania dated 28 December 2006 No. 489/2006 (as amended in 2014) "On Freedom of Religion and the General Regime for Regulating Religious Associations": "In the exercise of the duties or any other function that requires the exercise of the duties of a priest (clergyman), without the permission (authorization), or the express consent given by the religious organizations, the priest shall be punished according to the penal law." [36] Its purpose is to protect religious associations from possible abuses, illegal actions committed by ministers on its behalf. The blanket rule redirects to Art. 348 of the Criminal Code of Romania,

[34] Available at: https://www.saflii.org/za/legis/consol_act/cua2006139/ [Accessed 08.01.2024].

[35] Available at: https://www.legislation.gov.au/Details/C2021C00449 [Accessed 08.01.2024].

[36] Law of Romania dated 28 December 2006 No. 489/2006 (as amended in 2014) "On freedom of religion and the general regime for regulating religious associations" [Legea No. 489/2006 privind libertatea religioasa si regimul general al cultelor]. Monitorul Oficial. Partea I. 8 January 2007. No. 11. Available at: https://www.dreptonline.ro/legislatie/lege_libertate_religioasa_regimul_cultelor.php [Accessed 08.01.2024].

which provides for such acts with imprisonment for a term from three months to one year or a fine. [37]

The constitutionality of Clause 4 Art. 23 was questioned in 2020. Gheorghik Vătre and Nicolaeu Golaşteanu, who were prosecuted under this article, believed that there was a legal ambiguity in the concepts of "a priest" and "the exercise of the duties of a priest without the permission." The Constitutional Court of Romania concluded that, regardless of the title given to its employees by each denomination, the social value protected by means of criminalizing the act of exercising a profession or activity without the permission (authorization) is the same (Para. 27 of the judgment[38]).

Furthermore, the Court noted that in the given case the applicants had been prosecuted for carrying out their duties unlawfully as priests of the Romanian Orthodox Church. But the title "priest" was specific to that religious denomination, so the applicants had been able to foresee the consequences arising from the failure to comply with the criticized norm and adapt their conduct accordingly (Para. 28 of the judgment). As a result, the Romanian Constitutional Court recognized the contested provision as being in conformity with the Constitution.[39]

The imposition of strict conditions for the activities of religious ministers, such as in India, can only be seen as an unconstitutional variant of legal regulation that disproportionately restricts freedom of religion. The provisions of the laws of the Republic of South Africa, Australia and Romania, as stated, pursue the opposite objective of protecting the interests of religious associations.

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[37] Available at: https://lege5.ro/Gratuit/gezdmnrzgi/codul-penal-din-2009?pid=41993049#p-41993049 [Accessed 08.01.2024].

[38] Decision of the Constitutional Court of Romania of 16 July 2020 No. 607 "On the unconstitutionality of the provisions of Para. 4 Art. 23 of Law No. 489/2006 "On Freedom of Religion and the General Regime of Religious Associations" [Decizia No. 607 din 16 iulie 2020 referitoare la excepţia de neconstituţionalitate a dispoziţiilor Art. 23 alin. (4) din Legea nr. 489/2006 privind libertatea religioasă şi regimul general al cultelor]. Available at: https://legislatie.just.ro/Public/DetaliiDocument/236129 [Accessed 08.01.2024].

[39] Decision of the Constitutional Court of Romania of 16 July 2020 No. 607 "On the unconstitutionality of the provisions of Para. 4 Art. 23 of Law No. 489/2006 "On Freedom of Religion and the General Regime of Religious Associations".

IV. Conclusion

Summarizing the outlined approaches of foreign and domestic legislators and the practice of implementing norms, we can come to some conclusions.

First of all, it should be recognized that all the regulatory legal acts studied in 57 countries contain provisions on religious ministers — legal regulation of the status of religious ministers has become widespread. The normative regulation of the status of ministers of religion is set out either in special normative (regulatory) legal acts dedicated to the implementation of the right to freedom of religion, or in normative legal acts regulating social relations arising in connection with the determination of the legal status of a particular confession (Finland, Latvia), or in the absence of reference norms in special laws — in agreements (conventions, concordats) (Montenegro, Spain, Peru).

The conducted analysis, in our opinion, allows us to affirm the validity of the hypothesis on the justification of singling out the sub-institute of ministers of religion within the framework of the complex constitutional legal institute of freedom of religion. Taking into account the existing classifications, it can be attributed to the permanently operating mixed sub-institutions containing both regulatory and protective norms (Orehov, 2016, p. 43).

Further, it should be taken into account that the ways of the regulatory consolidation vary. They can be classified into three groups. Firstly, there is a wide range of norms dedicated to the legal status of religious ministers (Art. 32–36 of the Law of Vietnam). Secondly, there are separate articles dealing with their legal status (§ 9 of the Law of Austria "Protection of Church Officials," Art. 18 of the Law of Latvia "List of Church Clergy"). Thirdly, there are no special structural elements devoted entirely to their status (the Act of Australia, the Act of the Republic of South Africa), there are only separate norms. In addition, both religious ministers of all registered denominations (Russia, Romania) and certain religious associations (for example, Azerbaijan, Latvia, Spain) can be the subject of regulation.

On the basis of certain comparative criteria, we believe that the most restrictive effects are the following: the establishment of the

"citizenship qualification (requirement)," the opportunities provided for public authorities not to approve the appointment accepted (filled) by an authorized person of a religious association, and the complicated procedure of the performance of rites and ceremonies by religious ministers. Finally, it should be noted that in a constitutional democratic state, the recognition of freedom of religion as a fundamental human right makes it possible to ensure freedom of activity for religious ministers, restricting it only by means of laws and for constitutionally significant purposes. At the same time, historical and national peculiarities of the development of the State, doctrinal aspects of religion can have such a strong influence that it becomes impossible to give universal models for the legal regulation of the status of ministers of religion and solutions to potential conflicts, leaving a wide scope for activity of constitutional review bodies and other courts.

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Article

DOI: 10.17803/2713-0533.2024.4.30.741-760

Ethics of Sin and Punishment

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Abstract: The aim of the paper is exploring the ethical foundations and approaches to crime and punishment relying on the close moral roots of criminal law. Our further aims are to prove value-based approach to the basic concepts of criminal law. Primarily we intend to apply legal theoretical methods to perceive the relationship between criminal law and morality. Our ethical approach is based on Christian ethics relying on Greek and Jewish foundations. We seek comparison of the ethical conceptual possibilities of crime and punishment and the basic concepts of criminal law. We find out that the term *crime* is not used in criminal law, but it builds on this fundamentally ethical concept. The indeterministic conception of criminal guilt as the basis of blameworthiness also appears in St. Augustine's ethics, based on Greek and Jewish legal and ethical considerations. The social necessity and proportionality of punishment is based on the foundations of Christian social teaching. Some elements of the Restoration appearing in the modern criminal law approach reflect the values of the ethics of Christian punishment. According to the Christian approach the punishment is good if the sinner comes repentant and it leads to reconciliation between commitment and victim.

***Keywords*:** ethics basis of criminal law; sin; punishment; restorative justice

Cite as: Tihanyi, M., Vári, V. and Krasnova, K.A., (2024). Ethics of Sin and Punishment. *Kutafin Law Review*, 11(4), pp. 741–760, doi: 10.17803/2713-0533.2024.4.30.741-760

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I. Introduction

Within the framework of this paper, we focus primarily on the ethical, especially the Christian sociometric content of the concepts of sin and punishment. In legal thought, sin and punishment are first and foremost legal concepts. However, this pair of concepts is also an intrinsic part of Christian religious teachings. One of the most influential factors in the development of moral norms in societies has been the norms of the Christian religion. Different dogmatic systems give different meanings to concepts. Law and morality are more or less closely related. According to Bittar's model, the moral root of law is best evidenced by human dignity (Bittar, 2002). All that law says about man is morality transformed into law. However, this morality is not naturally neutral from the ideologies prevailing in a given society. The content of the right to human dignity is based on moral considerations, i.e., on ethical considerations that are also influenced by ideologies. The recognition or non-recognition of the foetus as a human being is a mapping of a slice of social morality of what public opinion holds about the value of human life.

II. The Relationship between Criminal Law and Morality

Nowhere is the relationship between law and morality perhaps closer than in criminal law. This is true even if applying criminal law to enforce the criminal law's imperative sometimes goes against moral norms (Diamond, 1996). Criminal law does not use the concept of crime. Still, it derives its basic concepts, such as guilt, crime, or the responsibility for crime as utilised in science, from this essentially

moral and ethical concept. However, the basis of criminal law concepts is still a crime. This, in turn, raises the legitimate need to examine the content of the religious norms, which have a decisive influence on the moral norms and convey the concepts of crime and punishment. By the twenty-first century, religious norms had lost much of their generality and were relegated to the followers of a particular religion as directly enforceable social norms. At the same time, they are indirectly reflected in the content of moral rules. Morality, on the other hand, now regulates social relations, affecting the individual, his will and his actions. In other words, it includes all of these in the subject of its evaluation. This is an essential difference from law since the latter cannot affect the will until it has a form of expression that is perceptible to the outside world. It is the exact point that characterises the values of both morality and religion.

Standing on the foundations of Kant's philosophy, it can be said that moral precepts are norms that must be followed unconditionally. These commanding norms are, according to Kant, imperatives that demand unconditional obedience. Following moral norms does not tolerate considerations of practical ends (a lie remains a lie in all cases, even if it serves good ends) (Kant, 1991). Religious norms are analogous to this. The commandments "Thou shalt not kill" and "Thou shalt not steal" do not tolerate exceptions. And criminal prohibitions are based on precisely these worded commandments (Finszter, 2012).

There is a significant difference on the consciousness side. If we condemn human behaviour from an ethical point of view, this is based on the assumption that the person who performed the act knew what they were doing and could have known that they should not have done it. Moral responsibility also implies awareness and freedom of choice. It is also the basis of legal responsibility (Turay, 2000). In Christian norms, ignorance of the "law" is apt to exculpate of error and deception. The differences between the various systems of norms could be enumerated at length. Still, these few considerations are sufficient to justify Imre Békés in saying that a formal comparison of sin and guilt in legal and religious terms is unlikely to yield much (Békés, 2001). The basis for comparing content rather than form is the Christian ethical view that man has free will. And through his conscience, he can distinguish

between the right and wrong. These two capacities form the basis of individual responsibility. It is here that, through the influence of Christianity on European culture, the indeterministic moral ethic of the man is rooted, according to which the man is responsible for his actions and not an unconscious instrument of some inscrutable divine will.

The ethical basis of the individual's free will, discretion and responsibility is already to be found in the world of legal responsibility. A close connection between morality and criminal law is perhaps best illustrated by the Nuremberg trials of war criminals. Here, the question arises as to whether a man acting under the law and obeying an order under the law can be condemned for obeying an evil and inhuman law rather than the requirement of humanity that he should have refused to obey the order. Justice and righteousness are only related concepts if we define the interpretative framework accordingly. The interpretative framework of this research is the values of the Christian religion. Therefore, we will also examine the common root of criminal law and morality from this perspective.

The value system on which the social value judgements are based should theoretically be reflected in the criminal law of the country concerned. To simplify the question, we can say that "good criminal law" is morally and ethically accepted and followed by the society. The basis for this acceptance may be the high degree of congruence between the values that are followed mainly by the society in question and the values protected by the criminal law system. In other words, a "good criminal law" protects the system of values that is generally accepted and followed by society and that, as such, is considered worthy of criminal law protection and that is protectable by criminal law.

There are, of course, acts that are regulated in almost identical ways in different social systems, regardless of time and place. The commandments "Thou shalt not kill" and "Thou shalt not steal" generally punish the perpetrators of crimes against life and property, irrespective of the political and social system. At the same time, however, some acts are strongly influenced by political and social changes in a given state. Such crimes are typically crimes against the state (Barna, 2015). But they also include some crimes against public order and drug offences. Inevitably, historical and social events, changes and trends in crime

leave their mark on the thinking of the criminal legislator. As a result, the relationship between criminal law and morality has become much looser in the 21st century (Domokos, 2019).

The basic concepts of criminal law include guilt and crime. However, the concept of crime is not used in criminal law at all. Crime is primarily a moral issue, whereas criminality is an artificial legal phenomenon. However, it is hard to deny that it has solid moral roots. The question of which acts are criminalised by the legislator is not only a matter of criminal policy but also a moral issue.

III. The Ethics of Crime

One of the means of criminal defence is, by its very nature, the threat of punishment, which may deter the offender from engaging in criminal conduct. By making an act an element of criminal law, the State provides protection for the protected legal object. On the other hand, the means of criminal protection include imposing a penalty and its application. Thus, crime and punishment are central concepts in criminal law. But the same observation is also accurate from a theological point of view. It is, therefore, necessary to examine the issues of crime and punishment from the perspective of Christian theology. This study is not fundamentally theological, therefore, we will only point out the most critical aspects of this issue, which are more or less generally agreed upon among the main branches of Christianity.

Since Christianity is rooted in the Old Testament, on the one hand, and historically influenced by Greek culture, on the other, it is worthwhile to give a brief overview and examine the interrelationship between them.

Research on the Old Testament reveals very few theoretical-theological claims about sin. The main reason and explanation for this is that, although the Book of Psalms does show a perceptible expression of universality, they invariably tend to be based on a personal story-telling in which the speaker voices a complaint, which leads to the conclusion that the Old Testament tends to employ a form of speech that is most appropriate to the phenomenon of sin, which is no other than confession (Rad, 2000).

In the Old Testament, the word *caddíg* is used to describe a person who is not guilty, was originally derived from a legal term because initially Jewish law used this word to describe a person who faced a charge. Still, in the proceedings, this charge was found to be unfounded. Therefore, this term can be identified with the person declared innocent by the court.

The Book of Prophet Isaiah also includes the help given to the powerless and weak (Koskai, 1996). In 1 Kir 8,32, the word *caddíg* is joined with the word *rásá* in the original text. The basic meaning of this word is *evil, ungodly*. This term is the opposite of *caddíg*, the person in whom the guilt of the accusation has been established; that is, his guilt has been found in the proceedings. Later, these legal terms passed into religious language. In Genesis 3, in the story of the First Sin, the narrative points to the true essence of sin, which is nothing less than the act of opposing God's will, of breaking His commandments by putting man's will above God's will. The transition between the theological use of *caddíg* and *rásá* appears here. A *rásá* is accused of putting his own will, his ideas first, over the divine will, of breaking God's law, and these accusations are found to be well-founded against man. In the Old Testament, several other terms denote sin, most profoundly expressed by the word *pesa*. This noun means "to rise against someone, to rebel." Rebellion as a sin appears several times in Scripture. In addition, the terms *backa* and *awón* are also used. The meaning of *hátá* is *to err*, to miss the mark, and from this concept developed the concept of missing the mark God set before man and thus sinning, which is identical to the Greek *hamartia*. The root *awón* means *to go astray*; going astray, the perpetrator is not emotionally guilty, whereas *áwón* implies a negative emotional attitude. In the case of the *dua*, only the act is contrary to God's will, whereas in the case of the *awón*, the person himself is also contrary (Pap, 2008). The latter implies a psychological connection between the individual and his act, with a positive emotional charge, whereas the *dua* means a negative emotional charge.

Jewish law and the rules of Jewish religious life derive from the same source (Talmud and Torah). Sin is a violation of these rules. Since all legal rules are derived from God's revelation and commandment, to violate these rules is to violate God's ordinances and, ultimately, God.

The sinner's punishment was retribution for the law or religious precept that was deliberately infringed.

The ancient Greek language used several terms for the concept of sin. One is "*hamartema*" (*hamartia* in another sense), most commonly found in drama. It is a tragic misdeed by the protagonist by not correctly calculating the consequences of his actions. However, several distinct layers of this term, at least three, can be identified. The first layer is identified with a misapprehension of goals, the second — with a lapse of judgment or wrong action, and the third — with a lapse of the law, or even more so, a sinful action. In the latter meaning, evil action implies moral sin. These three meanings have developed in succession over time. Therefore, in early Christianity, the term had the latter meaning (Bremer, 1969).

The other term is "*adikia*." This term is most commonly used to denote *lawlessness*. It is equivalent to the Latin term "*iniuria*" that is equal to the Latin term "*iniuria*" in written human law. With some clarification, exploring the deeper layers of the meaning of this term, it is used in some cases in an absolute sense to denote unrighteousness and wickedness. In these cases, it refers to actions and behaviour that do not conform to moral standards. More theological weight is given to those cases in which the term is directly and recognisably used as the opposite of what is just, right and righteous. In this case, the measure of injustice is the justice of God (Bartha, 2000).

The third term is "*Siberia*" that has a religious connotation because it means not having sufficient respect for the gods. The fourth term used is "*kakia*." It is essentially the opposite of virtue and is most closely associated with vice. Finally, we find a particular concept of sin. This is the word "*hubris*." The sin of *hubris* means that one crosses the boundary between man and the gods and enters the territory of the gods. It manifests in a feeling that what man does or happens to him is too much for man's being, that it can no longer be continued (Maróth, 1996). It is essentially a kind of *hubris* in which man considers himself much more than his human nature justifies. The desire to do more, to compete, is a natural human behaviour, which is more a Greek virtue, but beyond a certain point, one no longer wishes to compete not with other humans but with the gods. This is *hubris*. An example is the story

of Daedalus and Icarus. One can argue about whose *hubris* caused the tragedy of Icarus. Did Daedalus, the master builder, overthink himself when he wanted to fly, or Icarus, who, despite his father's admonition, soared higher and higher as if there were no limits in front of him? Instead, Daedalus's *hubris* is the root cause of Icarus' punishment since he wanted to create and create as a master builder, imitating the gods.

An overview of the Greek concepts of crime leads us to conclude that everything we think of as criminal guilt today is a peculiar mixture of *hamartia* and *adikia*. The close relationship of criminal law with morality shows similar features to *hamartia*. The violation of criminal law norms, being a written law, leads to the area of *adikia*.

In the Christian theological sense, sin means separation from God. Man is a created being, and God created him in his image. Man's responsibility towards God stems from this state of creation. Man must fulfill the will of the creator. Sin is essentially the refusal of this moral commitment (Békés, 1996). The consequence is the disturbances surrounding man, death, and ultimately damnation. Man's sin is that he has broken his relationship with God. He refused to obey the god anymore.

Furthermore, man's sins are what he says, thinks, omits, or acts in this state. In the state of sin, one can only sin. However, it is an essential truth in the Holy Scriptures that we are not guilty because we sin but because we have become sinners (Csuka, 2000). In other words, sin itself is a characteristic of man, a compelling reason, because he cannot act otherwise than sinfully. Sinful acts (offenses) are already the consequence of this characteristic, e.i., sin. Everything a person does in this state is a sin because he does everything without God.

Moreover, what is not of faith is sin. What Man does apart from God, independently of Him, not out of faith, is sin. Sin is, therefore, not a legally interpreted reality in the Bible. In the Bible, sin is not a question of morality but a disobedience of faith (Csuka, 2000). The origin of sin is not to be found in man. According to the Bible, the first sin happened in heaven, in the spiritual world, when Lucifer, the archangel, took God's place and rebelled against God. To do this, he won over the man because if the man becomes like God, then there is no more dependence between them and no relationship between the

creator and the created (Csuka, 2000). According to Christian theology, this is where sin comes from. It is difficult for modern lawyers under the rule of law to understand that all people are sinners and all sins stem from this sinful nature, which makes Man unable "not to sin."

Augustine dealt mainly with the appearance of the origin of sin in his doctrine of original sin. According to Augustine, God did not create man with sin. Even children's souls have the shadow of sin from birth (Farkas, 2002). Nevertheless, where does the bad come from? — asks Augustine, to which he gives the answer that the root of sin can be traced back to our free will, and he adds that our suffering arising from sin is a sign of God's justice. He himself writes about this in his Confessions, "Because when I wanted something or did not want it, I knew with complete certainty that it was not someone else, but myself, who wanted it or did not want it, and I almost discovered that this was the reason for my sins. I also saw that what I do against my will is not (free) action, but (compulsion, i.e.) suffering, so it cannot be my sin, but my punishment; and that you do not judge me unjustly, I easily believed as soon as I thought of you and your justness" (Farkas, 2002).

It follows that man is the cause of his sins; he is the forger of his sins, for which God cannot be held responsible. St. Augustine puts it this way: "Because everything good comes from God, consequently everything comes from God, and consequently, all nature also comes from God. Since this turning, which we call the sinner, is also a downward movement and everything that leads downward originates from nothing, then watch where it is going, and you can be sure it is not towards God. Since this holddown is voluntary, it is within our power. If you are afraid of it, do not want it; if you do not, it will not happen" (Szent Ágoston, 1989). This teaching of St. Augustine represents the roots of an indeterministic penal concept. It does not regard man as a toy of some external power but as a being with an independent will and reason responsible for his actions. Man, in his free will, turned away from God, from the unchanging good towards the changing evil, and, therefore, this turning away is not forced but is followed by a voluntary, worthy, and just punishment, namely: misfortune. Here, it is essential to note that one should not understand fate by misfortune, but human misfortune, sin, that the first pair of people abandoned a specific good

for an unavoidable evil. According to this, the most just punishment is if a person loses what he did not want to use well (*see* sinful), but if he had wanted to, he could have done it despite all the difficulties.

IV. The Ethics of Punishment

The Jewish law collections can be formally divided into two large groups: one is the casuistic laws, and the other is the apodictic laws. The main characteristic of the laws mentioned later is that they express a command or a prohibition, and those laws did not take mitigating circumstances into account. Thus, in most cases, the price for the crime was imposed with the death penalty. Today, we would call this punishment system merciless, since the people of the time did not consider the cause of the crime, its gravity, or the degree of guilt. Since the Jewish laws were mainly concerned with religious and ethical issues, the blood of every spilled person cried out to God. Therefore, murder is a sin against the God who gave life. Thus, it can only be made good by the death of the guilty person, regardless of the degree of guilt (Soggin, 1999).

In contrast, casuistic laws show a more lenient assessment. What is most characteristic of them is that they try to determine in advance all the possible types of situations that may occur as a result of an act or an omission, so that they can judge and adjudicate the crime in question. Its name can also be traced back to this concept, since this law was created based on specific cases. About half of the laws in the Book of the Covenant could be classified in this category. It takes into account aspects that have been known since ancient times. The casuistry procedure is never used for laws related to cults or ethics. This is where the distinction between sacred and secular law begins (Soggin, 1999). The difference between the two laws is shown by the fact that religious and ethical issues characterize the content of the apodictic laws. In contrast, as a parallel to this, the casuistic laws are more secular. We will discuss the latter in more detail below.

A frequent criticism of Jewish law is the cruelty of the Talio principle. The development of Jewish law covers an extremely long period. In this long time interval, the essential characteristics of

statehood also changed. Although the legal bases were little exposed to changes, the application of different legal institutions changed over time. It is enough to refer to the trial of Jesus, where the Jewish high council could no longer apply the death penalty. They could be tried for blasphemy. However, according to their religious laws, there was no longer a legal possibility to impose the death penalty applicable for this reason (Sáry, 2004). The legal principle that operated in the world of nomadic peoples later lost much of its practical significance (Bernard, 1973). Therefore, the identification of the cruelty of the Talio principle with the principles of Jewish criminal law is only apparent, and it is not at all a question of the fact that according to Jewish legal regulations, a guilty person should be blinded.

In the Second Book of Moses, we read "An eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot, burning for burning, the blue spot for blue spot" (Moses, 21.20). At the same time, in the passages preceding and following this, we find pretty detailed criminal law provisions, where various crimes are primarily punished by compensation, and the perpetrators of intentional acts against life are ordered to be punished by death. The perpetrator of negligent homicide had the opportunity to seek a city of refuge. The perpetrator of intentional homicide could even be dragged away from the altar to be executed. Interestingly, the murder of enslaved people fell under a different judgment: "If someone strikes his male or female slave with a stick in such a way that he dies in his hands, he must be punished. Nevertheless, if he stays alive for a day or two, do not blame his master because it is his own money" (Moses, 21.20).

Thus, the unintentional homicide of slaves[1] did not go unpunished. However, the Mosaic laws do not provide for exact punishment (Moses, 21.20). Furthermore, if the enslaved person dies only later as a result of the beating, the master does not even have to answer because no intent to kill can be inferred.[2] In this case, Jewish law did not perceive the act

[1] We have deliberately avoided the term careless because the result beyond intention, i.e., in today's terminology, the death that occurs as a result of bodily injury that causes death should also be understood as belonging here.

[2] Mózes öt könyve és a Haftárák. Available at: http://enok.uw.hu/hertz/HRTZj.pdf (In Hungarian) [Accessed 25.11.2024].

as negligent homicide but as bodily injury causing death. In this case, the perpetrator's intention was at most (but certainly not) to cause injury. In the case of enslaved people, only the intentional act of killing was — in an unspecified way — punishable. In the case of acts against a person committed to the detriment of free Jewish citizens, injuries resulting from a fight resulting from a quarrel were an exception to the Talion principle, and bodily injury causing death was ordered to be punished as murder. Two conclusions can be drawn from this regulation.. One is that the Jewish law considered the "Do not kill!" — commandment is valid for all people. This commandment also protected enslaved people. At the same time, there is a second conclusion, according to which there are huge differences between the human dignity of the Gentile enslaved people and the Israelites.

It emerges from the rules of Jewish law that the Talion principle, apart from the exceptions discussed above, was more of a theoretical tool of the ancient court to collect compensation. The amount expressed the harm the wrongdoer intentionally caused his neighbor.[3] At the same time, in the third book of Moses, the talion principle appears again specifically as a punishment for bodily harm: "If someone commits bodily harm against his fellow countryman, let him be dealt with as he did: a fracture for a fracture, an eye for an eye, a tooth for a tooth. Let them do the same to him as he has done" (Moses, 24.20).

In essence, Jewish law orders the Talion principle to be applied to intentional homicide and bodily harm as long as the victim is a free Jewish citizen. Jewish criminal law attributes a threefold purpose to punishment. Punishment as retaliation is not revenge and is expressly prohibited by law. Its primary goal is to correct the criminal and prevent him from committing another crime. Furthermore, if repair is not possible because the crime committed is so severe that no other punishment can be substituted, the death penalty is prescribed, and only physical destruction remains. A secondary goal is to deter other members of society from committing crimes. The law aims to deter people from committing crimes through the severity of the punishments. The third

[3] *See* http://zsido.com/fejezetek/a-zsido-jog/ (In Hungarian) [Accessed 24.11.2024].

goal is to obtain atonement for the wrongdoer. The perpetrator also sins against God. According to the Talmud, suffering on Earth cleanses you of sin and alleviates spiritual pain in the afterlife (Szathmáry, 2003).

The intermingling of legal materials and liturgical elements can already be felt in the Five Books of Moses, collectively known as the Pentateuch. In the Ancient East, they did not make a distinction, and they did not sharply separate the cult from the everyday life of the citizens (Soggin, 1999). In the Middle East, law was considered sacred and inviolable from the beginning, as it was directly or indirectly derived from the deity (Soggin, 1999). The separation of "church" and state is unthinkable since religion was the most essential basis of the existing order. The law becomes sacred because the gods always mediate it to the people. It is a consequence of the divine origin of the law that the main consequence of its violation is that it will automatically be considered sacrilege. This explains the frequent death sentences because, at that time, it was the greatest crime committed by man.

Among the classical Greek philosophers, Plutarch, in the first century, outlines a model in which he looks for the motivations responsible for the proliferation of crimes. He sees the reasons for the errors related to the punishment: in the delay and disproportionateness of the punishment. In the case of disproportionate punishment, the punishment is too large or too small compared to the crime. A disproportionately large punishment for a minor offense multiplies sins in the same way as a small punishment for a major crime. People consider the former to be unfair and think on the basis of "I will be punished anyway," while concerning the latter, minor crimes can multiply significantly because they are "paid with nothing" for the big ones as well. If crimes are not punished, it encourages the perpetrators to commit more crimes; they may think that what they have committed is not a crime since they were not punished for it. If the punishment comes too late, it can no longer be interpreted as a response to the crime but as a stroke of fate that cannot be related to the crime committed or is not related to the crime to which it originally referred. When the same punishments follow the same harmful actions, they dissuade people from committing the crime (Gyenisné, 2003).

The belated punishment has neither an educational nor a deterrental effect, since no one considers this "blow of fate" as a consequence of the crime. At the same time, Plutarch admits that a divine punishment is sometimes delayed (Plutarkhosz, 1985). In Christian theology, punishment appears as a necessary consequence of sin; however, grace as God's response to sin allows man to avoid the most severe consequences.

The awareness of sin in the individual is the sense of guilt that arises from man's moral being. Guilt is the manifestation of moral responsibility in a person's conscience arising from violating an ethical commitment. Guilt also means rejecting sin, that is, the state when the individual faces his sins and condemns them himself. Guilt is a punishment in itself, as it is a sign of admitting that what a person has done is contrary to God's order (Békés, 1996).

As a result of sin, in a person's life appears shame. The first pair of people also wanted to hide from God because they knew they had sinned against His command. There is a sharp difference between an apology and a confession. Self-judgment appears in confession, which the individual often wants to avoid, even though a person is truly in his place when he honestly judges himself before God and confesses his sins (Békés, 1996). This theological idea appears in the 32nd Psalm: "I confessed my transgression to you. I did not cover my sin. I decided to confess my unfaithfulness to the Lord, and you forgave my sin that I committed."

Sin is not without consequences, even if one receives the grace of forgiveness. These actions cannot be undone, so the consequences must be considered. External punishment is a burden that the guilty person bears because he embraces the weight of his actions with his inner sense of guilt. Guilt is the conscious tolerance of the abnormal feeling of life but accompanied by revulsion and self-contempt, created by guilt and the conscience's recognition (Békés, 1996). The ultimate consequence of sin is death, separation from God, and its final form — damnation. However, death is not the last word. God loves the person who is separated from him, so he offers him the possibility of grace in his son, Jesus.

With his death on the cross, Jesus took upon himself the sin and punishment of the man. Grace is the release from the burden and from the most serious consequence of sin — damnation. However, this also requires the active action of the person to confess (Bonhoeffer, 1999). God's answer to sin is grace, which humanity gained at the cost of the sacrifice of his son. It is grace that God said yes despite the man's sin (Bridges, 2019).

For Christian theology, the man is a sinner, and since he cannot find a way out of this situation by himself, he needs redemption and grace. The redeemed person is then freed from the burden of sin. A person who has received grace experiences the closeness of God, the state from which he fell due to sin. Desiring and striving for this state, he tries to settle his sins. He tries not to waste grace. It does not mean that he will no longer sin, but it does mean that if he recognizes his sin, he will leave it afterward. "Mercy does not view sinners as simply undeserving, but as persons who can never deserve it.... It is not that we do not deserve mercy, but that we deserve hell" (Storms, 1984). Sin lies in man's self-righteousness, and self-righteousness is impiety. God's answer to sin is that we must die. Grace, therefore, the gospel's content is simply that Jesus took it upon himself in his birth and stood for man's sin in his death (Barth, 1996).

Therefore, the process of sin-guilt-confession-grace strengthens one's moral responsibility for one's own actions. The churches announce this way to the condemned, conveying that if they settle with their sins, there is another way. We cannot earn this grace by our merits because it is through the merits of Christ that it can be a part of our lives, and we cannot lose it because of our lack of merit, the grace that was freely given if it were not free, then it would not be grace.

Calvin emphasizes the need for justice to be fair and proportionate. According to his admonition, the exercisers of power must refrain from two extremes: excessive strictness because this causes more harm than healing and excessive leniency because this destroys many innocent people (Kálvin, 1991). This was a very progressive ethical concept in that era. After all, for the man of the Middle Ages, sin was a rebellion against authority and, thus, against God, which justified any punishment. Furthermore, for ordinary people, the most cruel executions acquired a

natural beauty. The period before Calvin was characterized by extremity: either severe punishment or complete exemption; the transition between these two was very slight (Huizinga, 1979).

V. Conclusion

Criminal law does not use the term crime, but at the same time, it is very much based on this fundamentally moral and ethical term. Everything that criminal law describes with guilt is firmly rooted in St. Augustine's teachings on sin. Punishment is a social necessity according to Christian ethics and criminal law, and sufficiently defined proportionality aspects must be considered when imposing it. The legal standard of proportionality depends on the prevailing ideologies, ethical principles, and the quantitative and qualitative characteristics of crime in the society. Christian ethical proportionality mostly depends on different religious attitudes (Unnaver and Cullen, 2005).

Restorative justice is closest to the Christian doctrine of punishment, along with the clarifications that will be formulated later. In addition to reducing recidivism, this justice process seeks to repair the harm caused by the act, so that the offender is held accountable for his actions rather than punished (Braithwaite, 2002). The remorse, repentance, and, in suitable cases, the forgiveness of sins that appear in restorative justice reflect everything that theology teaches about the issue of sin in the relationship between Man and God. Just as the only way for a guilty person to avoid the most severe consequences of sin is to stand before God with repentance, in the same way, confronting the offender with his sin, making amends, and forgiving the victim allows for avoiding punishment. Sins committed to the relationship between God and the man offend God, and only the atoning sacrifice of Jesus could atone for them. In the same way, all the sins committed in human-human relationships require reparation because each sin hurts the individual, as a whole, in his individuality. There is no intercessor between the man and the man like Jesus between God and the man, so in this connection, the perpetrator must make amends for his sins against the victim.

One of the pillars of restorative justice is the involvement of communities. There is a well-known standing acording to which

communities gave up the exercise of informal social control over time because the state performed this function for them. Therefore, restorative justice requires rethinking the role of the society (Bazemore and Marune, 2009). This role of social control also fits into the Christian concept of the society. The Calvinist model of society precisely recognizes the institution of community control. You can also find judging among the original functions of the Reformed Presbytery. The congregations elect the members of the presbytery; in this case, the community administered justice through elected officials. This differs from the primitive community sanctions of the pre-penal law era. At the same time, it expresses an entirely different quality than the sitters' role in the social justice system known today. The presbytery effectively exercised the control function of the community within a legally regulated framework.

Based on this, it can be concluded that on a Christian ethical basis, any restorative solution where the offender's repentance appears, and in response to this, a pardon can be approved instead of a sentence.

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INTERNATIONAL TRADE COMPLIANCE

Article

DOI: 10.17803/2713-0533.2024.4.30.761-787

Legal Approaches in International Trade Compliance

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Abstract: Modern conditions imply the need for compliance procedures, the use of civil law instruments of due diligence, assurances and guarantees, etc., for the implementation of international trade relations, including various kinds of economic restrictions. Compliance with the requirements of international trade law has a significant impact on the development of industrial and trade relations complicated by a foreign element. The process of ensuring compliance with the requirements of international trade law refers to international trade compliance. When implementing international trade compliance procedures, it is important to ensure legal monitoring and control over export-import relations, in particular, international trade transactions, logistics, settlements, customs procedures, administrative and other mandatory requirements of the national legislation of exporting and importing countries, etc. In a dynamically changing environment, international trading companies must adapt to the new rules in order to ensure stability and legitimacy of cross-border trade operations, while respecting ethical and legal standards.

The purpose of the paper is to study international trade compliance and determine its legal nature, propose the most effective legal compliance practices in the field of international trade and good practices for working with various regulatory requirements, develop proposals for

optimizing legal educational programs in the field of international trade compliance, suggest new ideas for the use of automated solutions in the field of compliance and systematization of sanctions and anti-sanction restrictions.

Keywords: international trade compliance; classification; harmonized system; valuation activities; customs procedures; compliance procedures; foreign economic activity; export-import operations

Cite as: Shakhnazarov, B.A., (2024). Legal Approaches in International Trade Compliance. *Kutafin Law Review*, 11(4), pp. 761–787, doi: 10.17803/2713-0533.2024.4.30.761-787

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I. Introduction

Modern conditions for the implementation of international trade relations, including various kinds of economic restrictions, imply the need for compliance procedures, the use of civil law instruments of due diligence, assurances and guarantees, etc.

Compliance with the international trade law standards has a significant impact on the development of industrial and trade relations complicated by a foreign element. The process of ensuring compliance with the requirements of international trade law refers to international trade compliance.

Law, as a system of rules and norms regulating public relations, plays a particularly significant and fundamental role in the implementation of compliance procedures in international trade, since international trade, as the basis of the world economy, is in most cases comprehensively regulated by the rules of law of various levels and jurisdictions. Indeed, international trade compliance is based on the process of ensuring compliance of activities under consideration with the requirements of the rules of law. In modern conditions, international trade compliance, in a broader sense, can also include trajectories for challenging economic restrictions and adopted regulatory legal acts. In view of the above, the formation of legal competencies and the constant improvement of legal literacy of compliance managers is also an important element of the formation of effective compliance programs.

According to the definition of the International Chamber of Commerce, international trade compliance includes the rules, regulations and best practices of exporting and importing goods, operating within the framework of the laws, rules, regulations and requirements of each of the participating countries (Wiggett and Scrimgeour, 2020).

When implementing international trade compliance procedures, it is important to ensure legal monitoring and control over export-import relations, in particular international trade transactions, logistics, settlements, customs procedures, administrative and other mandatory requirements of the national legislation of exporting and importing countries.

The legitimacy of certain international trade relations depends on the requirements of the national legislation of a particular State. The legitimization of international trade relations is also influenced by geopolitical and economic factors, including the factors mediated by the relations between specific countries and integration associations.

Thus, in the modern world, parallel imports implemented in compliance with the international principle of exhaustion of intellectual property rights can and should become a mechanism for the free trade development, ensuring international competition and protecting the interests of consumers around the world (Shakhnazarov, 2023, p. 720).

When carrying out export-import operations, it is necessary to analyze and take into account current trends in international trade

regulation. For example, it is important to take into account that the trade-restrictive or discriminatory effect of non-tariff measures is increasing in the world (Nabeshima and Obashi, 2021); strict technical barriers to trade drive exporters out from markets that create more obstacles (Fontagné and Orefice, 2018). The paper highlights that technical (formalized) regulations can both improve a well-being and facilitate the development of markets, as well as hinder trade; and the effects of technical regulation that impede trade are especially alarming for developing countries (Essaji, 2008). However, it is worth noting that, although not all standards and requirements for imported products reduce trade volumes (Buono and Lalanne, 2012), some of them act as a barrier to trade, increasing the cost of exports: they can reduce the number of competitors in the market, the number of categories of goods available to consumers, and they may affect different exporters unequally (Fontagné et al., 2015). It is also necessary to investigate the impact of financial development on the structure of the trade balance, in particular, on the share of exports in relation to a specific business activity (Beck, 2002).

International trade compliance exists, among other things, as a guarantee that companies engaged in international trade develop international practices of ethical behavior (Aiman, 2015). In modern conditions of a protectionist trade policy development, international compliance also exists to protect the economic interests of competing States.

The implementation and enforcement of compliance procedures in the field of international trade requires companies to comply with international export legislation, trade and financial legislation. And it is legal expertise and legal analytics that play a key role in these processes.

II. Methodology

Developing international trade relations mediated by the processes of globalization in the conditions of widespread economic constraints acquires new vectors, trajectories and forms. With regard to the compliance procedures, the most recent contractual, settlement, logistics and other solutions in the field of foreign trade make the participants

resort to the latest legal approaches, which primarily mediates the need to use in this paper the comparative method aimed at determining ways to verify and ensure compliance with regulatory requirements in the field of international trade. The comparative research method in the indicated context continues the logic of the comparative methodology for the implementation of compliance procedures. The formal legal research method is used to define the terms in the area under consideration.

Based on the results of a formal legal analysis of existing regulatory methods, the author substantiates the need to adapt the activities of international trading companies to the changing rules of international trade according to their dynamics in order to ensure the stability and legitimacy of cross-border trade operations, while observing ethical and legal standards.

III. Risks of Non-Compliance with Procedures in International Trade

Since compliance with the effective rules in the field of international trade is becoming more complicated due to external reasons, the consequences of non-compliance with the relevant requirements are also becoming more complicated.

The lack of an international trade compliance system in a trading entity and its non-compliance with international trade rules exposes participants of international trade relations to fines, penalties and delays in deliveries. This may also damage business reputation of suppliers. Thus, it is advisable to have reliable procedures to monitor compliance with the requirements of relevant regulatory legal acts, to prevent and mitigate risks. In this context, it is worth noting that the risks in the field of international trade can be very different. They can be related to law and include both an intentional and unintentional violation of the requirements of the national legislation of the State where trade relations are implemented or of any another State. They can be operational when employees or the staff of management bodies fail to comply with local regulations, internal policies and rules of the company, resulting in losses or technical errors in the company's operating activities (operational risks in some cases may exist even in

the event of force majeure). They can be reputational, related to the defect of the company's business reputation, in particular, due to the publication of defaming information about the company, its founders (participants), and employees. Such risks can be global (industry-specific), corporate (affecting a specific company) or local (affecting a specific employee or group of people in the organization).

International trade compliance involves ensuring compliance with international export, trade and financial legislation. Business activity that meets the requirements of international trade compliance involves strict compliance with the rules and regulations for importing and exporting the goods, as well as monitoring such compliance. Compliance with international trade requirements covers various aspects of international trade, including classification, certification, trade risks, taxes and import duties, product testing, licensing and approval of imports in a particular country, personnel training and retraining.

Every global business has a global supply chain; therefore, subjects (participants) of international trade relations often have to interact with several government authorities when trading in the same country. In some cases, it is necessary to comply with sanctions restrictions in accordance with the foreign policy of their countries.

The liability risks under the US OFAC Rule 50 provide an example of the need for complex analysis to eliminate or minimize sanctions risks. This Rule widens and expands the possibilities for identifying sanctioned (blocked) entities, since any company 50 percent (or more) of which is owned by blocked persons is also subject to sanctions restrictions.

There are numerous cases when a company is fined due to the ignorance of the law or carelessness, which is confirmed by the statistics of fines imposed for violating sanctions — a measure that is more lenient as compared with blocking individuals, but still quite significant in the context of international trade. For example, from 2009 to 2020, the US Department of the Treasury fined 216 violators. Only in 32 cases did the regulator revealed willful violations, while in 80 cases the regulator alleged recklessness of companies and management (Timofeev and Khomenko, 2020). In other cases, various forms of carelessness,

management errors, failures in transaction audits etc., were also discovered.

In addition, in the context of determining the risks of international trade, it is worth considering the fact that regulators pay attention not only to egregious violations of sanctions restrictions. They also take into account minor violations and various nuances, and interpret the effect of sanctions broadly, which was proved, for example, in the *Haverly case* where a fine was imposed on Haverly Systems, Inc. based on a specific and non-obvious interpretation of US legislation. Payments for Haverly Systems' services were delayed due to delays in filing tax documents, but the regulator interpreted the delay as Haverly Systems actually providing a loan to Rosneft, that is, as a violation of OFAC Directive No. 2, 2017 as amended under Executive Order 13662.

Among EU countries, Germany, for example, does not impose sanctions unilaterally, but applies UN and EU sanctions. However, Germany maintains a discrete national export control regime used in limited circumstances to impose unilateral export control measures, sometimes referred to as "German sanctions" abroad. Following the adoption of the German Sanctions Enforcement Act I ("SEA I") in May 2022 containing measures that could be implemented in the short term to improve the effectiveness of sanctions enforcement in Germany, Germany adopted the Sanctions Enforcement Act II ("SEA II") in December 2022. The adoption of this Act led to a structural modernization of sanctions enforcement in Germany. Germany does not maintain a list of sanctioned persons and entities, but uses the consolidated list of persons, groups and entities subject to EU financial sanctions. Searching and consolidating the lists of hundreds of sanctions is a labor-intensive process. Thus, companies often rely on compliance service providers. Compliance requirements in the current German environment include various types of checks with varying degrees of complexity, depending on the type of a company. The most comprehensive compliance requirements are found in the German financial services industry, where companies must conduct sanctions checks at several stages of a life cycle of a relationship (Schwarz et al., 2023).

In the context of determining the maximum risk level of international trade transactions in Germany, it is worth noting that

violations of EU sanctions and German foreign trade law, including the German export control regime, can be classified as criminal or administrative offences. Intentional violations are criminal offences. For example, under Section 17(1) AWG (Foreign Trade and Payments Act), an arms embargo violation is a criminal offence punishable by up to 10 years in prison. In addition, a fine determined depending on the individual financial situation/income of the perpetrator and the offence may be imposed.

We can also refer to one more case as an example that a normative focus can also be given to EU law as a whole. For example, on 12 April 2024, the Council of the European Union adopted the Directive criminalizing the breach of sanctions at the European Union (EU) level. In the European Union, although sanctions are adopted by the Council of the European Union, compliance with them remains the responsibility of each EU Member State. Due to the lack of a uniform sanctions regime, there are differences between EU Member States, with some considering breaches of EU sanctions to be criminal offences and others considering them to be subject only to administrative penalties (Naugès et al., 2024). Therefore, the Directive establishes a framework for defining criminal offences and sets thresholds for fines for breaches of EU sanctions. The Directive provides that certain breaches of EU sanctions shall constitute a criminal offence, in particular: making funds or economic resources available to a person; failure to freeze assets; trade, import, export, sale, purchase, transfer, transit or transportation of prohibited goods; provision of prohibited or restricted economic and financial services; circumvention of EU sanctions, etc.

It is important to understand that EU Member States may decide that infringements of EU sanctions involving funds or economic resources, goods, services or, more generally, activities of less than EUR 10,000 do not constitute criminal offences.

The Directive also harmonizes the standard of liability applicable to criminal offences. As far as natural persons are concerned, the infringements listed in the Directive will constitute criminal offences if committed intentionally. Trade, import, export, sale, purchase, transfer, transit or transport of prohibited goods, at least where such conduct

concerns items included in the EU Common Military List or dual-use items, will also constitute a criminal offence if committed with serious negligence.

The analysis and accurate interpretation of the measures outlined constitutes an essential tool for preventing and minimizing the risks associated with the violation of European sanctions restrictions when conducting international trade. Preventing the risks of liability under the relevant Directive is possible with a clear understanding of its meaning in combination with law enforcement practice.

A well-structured system of compliance with relevant legal requirements guarantees uniformity in the context of standardization of goods, requirements for ethical, environmental, price and quality control. Undoubtedly, this contributes to the creation of a transparent, fair and secure global supply chain.

The system and plan for the implementation of international trade compliance procedures allows enterprises to have a competitive advantage. Their products that comply with the law have an advantage over those that do not comply with the law.

Compliance with the rules of international trade reduces risks in the implementation of export-import relations in other ways, e.g., protection and improvement of the business reputation of the company and employees; reduction of risks of financial losses, fines and penalties; prevention of delay, suspension of customs procedures, customs investigation, saving time; guarantees of customer orientation and improved quality of customer service.

Indeed, the consequences of non-compliance with international trade rules range from delays in deliveries in the case of minor violations to financial liability and, in some cases, criminal liability for culpably committed socially dangerous acts.

Compliance with trade requirements is an excellent balancing factor: every business, regardless of whether it is large or small, must comply with the requirements of international trade law.

Effective implementation of international trade compliance procedures requires coordinated efforts of various departments and employees of the company — from law departments to operational and

sales departments. The burden of compliance with the requirements for international trade lies with the business owner. To this end, international trade processes should be constantly reviewed to avoid non-compliance.

IV. Harmonization in International Trade Compliance

Compliance with trade requirements is of great importance because it ensures harmonization and unification of trade practices worldwide. Trade requirements include a number of legal requirements and obligations applicable to all enterprises to protect consumers, suppliers and the enterprises themselves.

Optimizing trade compliance processes involves tracking, monitoring and analyzing certificates, time requirements, customs regulations, and necessary documentation and payment terms in different regions and States. Hiring a customs broker can also simplify the legal support for export-import operations, which in most cases would significantly minimize the risks of non-compliance with international trade rules. Effective risk management and a systematic approach to international trade compliance also involves maintaining communication with logistics business partners in different countries in order to ensure compliance with all import rules and export requirements.

Thus, international trade compliance involves analysis and monitoring of a number of requirements and rules of international trade, carrying out appropriate procedures, the consideration of which for the purposes of this study should be carried out separately.

Thus, one of the most important elements of international trade compliance is the classification of goods.

In the context of compliance procedures, it is advisable to verify the assignment of the correct commodity (codes of the commodity nomenclature of foreign economic activity) and tariff codes for goods in order to simplify customs clearance. An incorrectly assigned product code can result in incorrect payment of import duties.

A correct classification of goods is fundamental to compliance with customs regulations, as well as to establishing the correct rates of duties, origin of goods, export controls and many other customs procedures.

As for the legal regulation of relations based on the classification of goods in the context of international trade, descriptions and goods coding are actively used in this area. The Harmonized System was developed and adopted on the basis of the International Convention on the Harmonized Commodity Description and Coding System (Brussels, 14 June 1983). The Convention entered into force on 1 January 1988.

For the Russian Federation, this Convention entered into force on 1 January 1997 under Resolution of the Government of the Russian Federation No. 372 dated 3 April 1996. No. 372.

The Harmonized Commodity Description and Coding System is a standard nomenclature for naming and classifying goods maintained and administered by the World Customs Organization (WCO). The system includes more than 5,000 product groups; each of the products is identified by a six-digit code that has a legal and logical structure and is supported by clearly defined rules to provide a unified classification.

Assessing the unifying nature of the provisions of the Convention, it is important to note that the contracting parties under the Convention are obliged to use the headings and subheadings of the harmonized system without any addition or modification, apply the classification rules prescribed in the harmonized system, calculate and make publicly available import and export trade statistics in accordance with the Harmonized System (HS).

Taking into account the above and the fact that the system is used by more than 200 states as a basis for the formation of customs tariffs and for the collection of international trade statistics, we can conclude that in the field of description and coding of goods for the purposes of international trade, maximum unification of rules has been achieved, which, in turn, allows for the harmonization of customs procedures in general at the international level and contributes to the simplification and development of international trade.

More than 98 % of goods in international trade are classified according to the HS, despite the fact that a little more than 150 countries have signed the International Convention on the Harmonized Commod-

ity Description and Coding System, and some States use the Harmonized System only to develop their own nomenclature, without signing the Convention.[1]

To classify a particular product, a six-digit code is used. It has the following structure: XX — Chapter to which a specific product belongs; XXXX — heading within that Chapter; XXXXXX — subheading.[2]

The Eurasian Economic Union, in turn, also joined the Convention under consideration, which led to the use of the harmonized system as the foundation for the Common Commodity Nomenclature of Foreign Economic Activity of the Eurasian Economic Union (EAEU). It is noteworthy that the EAEU Customs Code uses a ten-digit code, since member states of the Convention are allowed to use a larger number of symbols to classify products within countries.

The harmonized system consists of 21 Sections and 99 Chapters (3 of which are reserved) and includes all products traded globally.

The classification is based on various distinctive features of the product, such as origin, function, chemical composition and component material.

Speaking about the importance of a harmonized commodity description and coding system for the purposes of international trade compliance, it is worth mentioning the function of organizing the regulation of international trade relations and convergence of approaches to the classification of goods in order to ensure the stability and sustainability of foreign trade, and, primarily, export-import operations.

[1] Application of customs codes to classify goods. IFCG Encyclopedia online. Available at: https://clck.ru/3B44vP (In Russ.) [Accessed 04.02.2024].

[2] The Harmonized Commodity Description and Coding System. The HS term definition. Alta-Soft website. Available at: https://www.alta.ru/information/glossarium/%D0%B3%D0%B0%D1%80%D0%BC%D0%BE%D0%BD%D0%B8%D0%B7%D0%B8%D1%80%D0%BE%D0%B2%D0%B0%D0%BD%D0%BD%D0%B0%D1%8F_%D1%81%D0%B8%D1%81%D1%82%D0%B5%D0%BC%D0%B0_%D0%BE%D0%BF%D0%B8%D1%81%D0%B0%D0%BD%D0%B8%D1%8F_%D0%B8_%D0%BA%D0%BE%D0%B4%D0%B8%D1%80%D0%BE%D0%B2%D0%B0%D0%BD%D0%B8%D1%8F_%D1%82% D0%BE%D0%B2%D0%B0%D1%80%D0%BE%D0%B2/ (In Russ.) [Accessed 04.02.2024].

In addition, a correct classification of tariffs that is the legal obligation of importers and exporters is of particular importance in ensuring financial foundations of international trade. The correct classification of tariffs makes it possible to determine the appropriate rates of duties, taxes and benefits. Permits, licenses and other requirements related to obtaining documents necessary for carrying out a specific activity may be determined by the tariff classification. It is important to understand that trade documentation and data transmission can be standardized using the tariff classification. The tariff classification of goods in this context is also an important tool for collecting, comparing and analyzing trade statistics for business planning and trade negotiations. Failure to comply with the relevant requirements can lead to delays in deliveries, increased inspections, fines and other administrative penalties, or even confiscation of goods (Wiggett and Scrimgeour, 2020).

It is worth noting that disagreements may arise regarding the tariff classification not only internationally, but also at the national level. There are many examples of court cases when different interpretations of the provisions of the Harmonized System at the national level have led to challenging appeals regarding the classification of the Harmonized System.[3]

Given the complexities associated with the classification of the Harmonized System and the potential impact on compliance and revenue collection, governments around the world have introduced various ways to provide guidance for the interpretation of the provisions of the Harmonized System. The World Customs Organization has established Standard 9.9 of the General Annex to the Revised Kyoto Convention on Simplification and Harmonization of Customs Procedures of 1973 that provides for preliminary decisions so that importers are confident in the tariff classification of goods before importing the goods.

In addition, the World Customs Organization publishes Explanatory Notes that provide users with an official interpretation of the Harmonized System. Although explanatory notes are not mandatory in all countries,

[3] International Federation of Customs Brokers Associations. The importance of the HS to tariff classification: thoughts from the IFCBA. Available at: https://mag.wcoomd.org/magazine/wco-news-86/the-importance-of-the-hs-to-tariff-classification-thoughts-from-the-ifcba/ [Accessed 05.02.2024].

they are widely used to improve the uniformity of understanding and application of the Harmonized System worldwide.

Legal Notes that are legally binding in nature should also be taken into account. For example, under Legal Notes the term "Babies' garments and clothing accessories" means articles for young children of a body height not exceeding 86 cm (heading 61.11), Section 10 does not include cereals that have been peeled or otherwise processed; rice, paddy or rough, semi-milled or wholly-milled whether or not polished or glazed, is classified under Heading 1006.

The Harmonized System Committee of the World Customs Organization (and the Harmonized System Review Sub-Committee), in addition to overseeing the five-year cycle of changes to update the Harmonized System, is tasked with regulating disputes regarding interpretation and providing classification opinions to be included in the Compendium of Classification Opinions. It also provides classification opinions and recommendations regarding new technologies such as 3D printers and drones.

Moreover, dispute resolution procedures established under the Harmonized System play an important role in facilitating international trade. Although the Harmonized System, as a multi-purpose goods classification system, has many different applications, it will still be used to collect import duties and taxes for revenue and/or for trade policy purposes (including protection of domestic industry). This monetary function, of course, creates the potential for disputes between duty collecting authorities and duty payers. In this context, the Harmonized System Committee is an effective dispute resolution mechanism that, as an international dispute resolution authority, can consider disputes between customs administrations regarding classification issues.

V. Customs Legal Relations and Other Aspects of International Trade Compliance in the Context of Restrictive Measures

Special attention should be paid to the issues of functioning of the World Customs Organization in the context of geopolitical transformation, as well as sanctions against Russia. Thus, the European

Union (EU) tried to suspend the participation of Russia and Belarus in the World Customs Organization. On 20 May 2022, the EU, the EU member States and their international partners in the World Customs Organization (WTO) issued the Joint Statement condemning Russian aggression against Ukraine assisted by Belarus in the strongest possible terms and re-emphasizing the damage caused by such actions.

The Joint Statement also calls for action in a number of areas, namely, to limit or otherwise effectively suspend the participation of the Russian Federation and the Republic of Belarus in the work of the World Customs Organization. It was also proposed to replace any Russian or Belarusian chairmen and deputy chairmen of the working bodies of the World Customs Organization, including the Policy Commission, the Finance Committee and the Audit Committee.

Restricting/suspending the participation of representatives of the Russian Federation and the Republic of Belarus in all working bodies of the World Customs Organization and their access to the premises and participation in the activities of the World Customs Organization was also required in the Statement. An attempt was also made to suspend all financing programs supported by the World Customs Organization for the Russian Federation and the Republic of Belarus and to stop providing the Russian Federation and the Republic of Belarus with access to information on law enforcement or terrorism.

With this joint Statement, the participating States, which account for 60 % of global GDP and 40 % of world trade, tried to form a request for restrictive actions by the World Customs Organization against the Russian Federation, as well as demonstrate hypothetical damage to international cooperation between customs authorities, as well as to their coordinated efforts to promote safe and legitimate trade.

It was expected that over the next few weeks, more members of the World Customs Organization would declare their support for the Joint Statement and specific actions to implement relevant requests, which would be effective in cooperation with other members of the organization.

At the same time, it is important to note that at the session of the World Customs Organization, held on 23–25 June in Brussels, it

was possible to adopt a "fairly balanced" resolution, which calls on all parties "not to destroy the customs infrastructure."

The Federal Customs Service of the Russian Federation previously reported that at the session of the Customs Co-operation Council of the World Customs Organization in Brussels, the Russian Federation was decisively aimed to prevent the inclusion of "political issues not directly related to the work of customs authorities" in the organization's agenda. At the same time, Russia called for discussing "such intractable problems as customs infrastructure, the security of our customs posts and the destruction of global logistics chains" (Davydov, 2022).

International customs cooperation, representing the basis for the normal functioning of the world economy and sustainability of international trade, should not be subject to any political influence. It becomes increasingly important to master internal governance and multi-stakeholder collaboration, to build a compliance strategy that mitigates regulatory, reputational and resiliency risks (Wood, 2024). Only the restrictions established at the global international law level, provided for by international treaties (in which all parties to a particular political conflict participate) can be legitimate and binding in nature.

Speaking about possible consequences of incorrect tariff classification, it is worth noting that incorrect application of the tariff classification can lead to the situation when the supplies of a particular item of trade relations will be brought under control and "nvestigated" by customs authorities. Incorrect classification of tariffs can also lead to fines and penalties at ports of entry and delays in deliveries. If the product is classified incorrectly and a special permit or other documents are required, the shipment of the goods may be delayed until the permit is received or its import into the country may be prohibited. Incorrect classification of tariffs can also lead to overpayment or underpayment of customs duties.

When importing and exporting, it is also necessary to take into account the nature of the origin of the goods. Preferential origin refers to goods that are subject to reduced-duty or duty-free benefits or preferential tariffs when goods come from certain countries in accordance with their Free Trade Agreements (FTA).

For example, if one State makes a Free Trade Agreement providing duty-free access for certain goods with another State, there is no import duty on the export of goods to the relevant country. Conversely, standard duties will be levied on goods of non-preferential origin. The rules related to the identification of origin are specific and may differ in relation to different countries with which the importer is connected (Melia, 2019).

In this context, it is advisable to check the country of origin and the relevant terms of the free trade agreement, pre-check the compliance of goods with the FTA rules based on percentage and regional rules. In some cases, it is required, for example, to ensure a minimum percentage of local production or assembly in order to consider that the product was produced in the country.

The activity of the World Trade Organization (WTO) forms one more important area of international trade regulation. Dispute resolution within the WTO is in crisis and we witness the need to reform the WTO dispute settlement system — reforms that might institutionalize and reintroduce flexibility lost due to precedent extensions (Kucik et al., 2023).

VI. International Trade Compliance and Contractual Relations

Monitoring and analysis of contractual terms is another important element of international trade compliance. For instance, it is necessary to clearly understand and monitor compliance with the terms of Incoterms (if applied) — a set of international trade terms and rules that establish the terms of delivery of goods between buyers and sellers in international trade transactions, in particular, conditions predetermining distribution of responsibility between the buyer and seller, as well as the moment of transition of the risks of accidental loss, etc. The relevant conditions are often included in cross-border sales contracts and determine the delivery process, costs, risks and responsibilities.

The Incoterms rules are also important for the international business standardization, since this tool makes international trade transactions less complicated and reduce the likelihood of financial and legal problems. Incoterms regulate how goods are to be transported and transferred and who is responsible for transportation and insurance costs and determine the moment when obligations in relation to the goods transfer from the seller to the buyer.

Incoterms is an effective tool for reducing costs and increasing revenues, as it allows for a fair distribution of obligations and risks between the parties involved in the transaction. In addition, the use of Incoterms can facilitate international trade activities, make them faster and more efficient, giving companies an advantage in the global market.

Detailed analysis of licensing activities is also important in the implementation of international trade compliance procedures. When exporting or importing goods located in a particular State under special legal regimes due to the permissive nature of their turnover (such as, for example, live animals and medicines), it is necessary to provide for obtaining an appropriate license or permit in advance.

It is advisable to pay special attention to the planning of customs administration procedures. In cases where goods are selected for customs investigation and further inspections by customs authorities, the customs administration and planning will ensure unhindered compliance with the customs rules and permission to import the relevant goods.

Comprehensive counterparty verification (due diligence or screening) also appears to be an integral element of international trade compliance.

Thus, it is advisable for the participants of international trade to choose counterparties selectively and with due diligence. Verification of potential customers, suppliers and employees, as well as verification of incoming payments and operational activities of the company, help prevent business, civil, administrative and criminal risks. Screening should be carried out regularly, and not only at the beginning of the implementation of new international trade transactions.

VII. Evaluation Activities in International Trade Compliance

Certain risks of international trade activities can also be avoided by applying proper evaluation procedures. Carrying out a correct assessment of the goods and providing the results of such an assessment to the relevant government authority with a receipt and invoice attached are often extremely important for the purposes of efficient and effective fulfilment of export-import operations. For example, Para. 2 Art. 51 of the Customs Code of the EAEU defines that the basis for calculating customs duties, depending on the type of goods and the types of rates applied, consists of the customs value of goods and (or) their physical characteristics in kind (quantity, weight, including the primary packaging of goods inseparable from the goods before its consumption and (or) in which the product is presented for retail sale, volume or other characteristic of the product), unless otherwise established by the EAEU Customs Code. According to Para. 1 Art. 53 of the Customs Code of the EAEU, the rates applicable on the day of registration by the customs authority of the customs declaration are applied to calculate customs duties and taxes. This allows the customs authorities to determine a customs duty and import tax or VAT (value added tax).

It is worth noting here that the customs authorities are constantly improving customs procedures also in terms of customs declaration. Thus, since 3 April 2023 the Federal Customs Service (FCS) has launched an experiment on customs monitoring. Companies participating in the experiment are required to provide customs authorities with the access to their goods accounting systems in order to compare the information contained in their systems with the information from customs declarations. The main task in this case is to collect information on the indicators of customs declaration (implementation of foreign economic activity) of the participating entity. As a basis for customs monitoring, it was logically proposed to compare one of these indicators with the same indicators in the same quarter of the previous year.

With regard to the actual problem of the correct valuation of goods, it is very important to ensure proper compliance with the requirements. Incorrect assessment leads to overpayment or underpayment of taxes and fees, risks of violation of regulatory requirements and risks of prosecution.

VIII. Training in Trade Rules Monitoring and Bringing Activities in Line with them

It is worth noting that each state maintains unique and diverse import and export rules in accordance with the requirements of the World Trade Organization or any free trade agreement, defining the country of origin of goods. The identification, analysis and accounting of regulatory legal acts requiring careful compliance with these standards, as well as the alignment of activities with such standards, is important for the purposes of ensuring sustainability of international trade in general and specific international trade transactions in particular.

In fact, organization of the international trade compliance system and training of employees in compliance procedures is becoming a necessity for various companies around the world.

Programs training experts in international trade compliance are indispensable in raising awareness and competencies of employees, as well as providing recommendations regarding legitimate and unhindered cross-border trade operations, which ultimately prevents the risks of violations of mandatory requirements of regulatory legal acts and risks of imposing civil, administrative or criminal responsibility on the participants of international relations.

Training and retraining programs for compliance managers (officers) focused on the formation of competencies in the field of ensuring compliance with requirements applied in international trade employ information technologies and multimedia resources, which allows training more employees, optimizing and teaching effectively the knowledge and skills in the field of international trade compliance and highlighting the difficulties of implementing international trade relations.

In such educational programs, it is proposed to focus on such learning outcomes as developing skills in identifying legal norms, including working with (legal) databases, reference systems, legal information portals, search and analytical services, legal research, legal analysis of regulatory legal requirements, comparing legal norms effective in one jurisdiction, assessing the extraterritorial nature of legal norms, analyzing the risks of violating international trade rules. It also

seems important to invite business community, legal advisers, lawyers and current compliance managers, relevant associations and unions to review educational programs.

It is advisable to develop tailored educational programs (syllabi and curricula) in the field of international trade compliance. Training can take many forms. What is appropriate for one organization may not be appropriate for another. Organizations operating in multiple jurisdictions will undoubtedly require a more detailed training plan than a small organization based only in, for example, the UK (Ullah and Turner, 2024). Training may include providing relevant employees with precise information regarding internal controls, policies and procedures, internal face-to-face or webinar training in sanctions obligations (for the staff and individual employees), legal and regulatory requirements, internal controls and reporting obligations (both internal and external). Such programs may also include external tailored training for individuals working in key positions in risk management and compliance and in high-risk areas within the business (Ullah and Turner, 2024). On-site and external educational trajectories, including training in production and trade organizations, can be a truly effective tool, since it encourages to visually and personally perceive external practices, exchange experiences with external colleagues.

In the context of growing dependence of international trade on information technology in general, it is extremely important to ensure IT compliance (Ghiran and Bresfelean, 2012), which involves the analysis and accounting of databases, the use of information tools and special applications in the implementation of international trade activities. Thus, the use of blockchain technology can provide authors with an effective means of protection of their works in international trade simultaneously in many States. For example, *Binded* service allows registering an image in blockchain in compliance with the requirements of American legislation applied to the registration of copyright objects by the United States Copyright Office of the Library of Congress that is a reliable "authoritative" procedure to prove the copyright of creators (copyright holders) of works (Shakhnazarov, 2022, p. 208).

In modern conditions, there is a need to automate administration of compliance processes using special IT solutions and best practices

(Kharbili et al., 2008). However, the problem of lack of trust in the correctness and completeness of their compliance with regulatory requirements when using software solutions remains, since technological systems designed to manage risks themselves, if used incorrectly, can create various risks, covering some illegal actions (Bamberger, 2010).

If we talk about Russia's sanctions agenda in the context of international trade and in general, then the development of a separate automated solution to systematize anti-sanctions measures taken in Russia in the context of the imposed sanctions seems to be one of the appropriate digital solutions in the field of compliance. A key tool here may be a service for summarizing anti-sanctions documents, analyzing compliance with anti-sanctions requirements (from personal, sectoral, in particular, currency restrictions, anti-crisis legal decisions in the field of international trade, to any legal relations with an "unfriendly element"), taking into account mandatory introduction of the digital stamp "anti-sanctions regulatory legal act" or "anti-sanctions the act" (depending on the nature of the document) and analytical tools that assign a stamp, systematize the appropriate regulatory array with a stamp and pre-assess compliance with the requirements.

In the given context, it seems appropriate to amend the RF Government Resolution of 13 August 1997 No. 1009 "On Approval of the Rules for the Preparation of Regulatory Legal Acts of Federal Executive Bodies and Their State Registration" (as amended by the RF Government Resolution of 19 February 2024 No. 186) and to add provisions according to which acts issued by federal executive bodies that fall under the category of "anti-sanction regulatory legal act" or "anti-sanction act" are registered in a special register according to an appropriate classification. Anti-sanction regulatory legal acts are included in the plans for the preparation of draft regulatory legal acts for the next calendar year, approved annually by the heads of federal executive bodies. An act of state authorities is classified as "anti-sanction" if this act is aimed at implementing anti-crisis legal decisions in the context of sanctions, retaliatory restrictions, including retorsion, regulates any kind of relations complicated by an "unfriendly element" and is adopted in the context of countermeasures to sanctions imposed on Russia. It is proposed to assign the maintenance of the register of acts of executive and legislative authorities, related to the category of "anti-

sanction regulatory legal act" or "anti-sanction act," to the Ministry of Justice of the Russian Federation.

Conceptually, implementation of international trade compliance systems in international trade enterprises around the world can contribute to the formation of global trade ethics, as well as a culture of good faith behavior. The introduction of continuous learning initiatives into the international trade compliance system ensures continuous compliance with the established requirements.

As noted above, compliance with international trade rules is often a difficult and complex task, since companies engaged in international trade face a complex and heterogeneous regulatory environment and differing requirements imposed by different administrative authorities, even within the same country. These rules are often not harmonized, even despite the efforts of international organizations, which creates serious problems related to their compliance. In addition, the teams of departments and offices of international trade compliance face internal pressures to optimize global supply chains, while meeting expectations for faster delivery and maintaining strict compliance standards set by government authorities.

Compliance with the rules of trade should be the responsibility of the organization's employees. Therefore, it is advisable to identify and apply the relevant applicable regulatory requirements related to trade. In this context, companies often employ one experienced compliance specialist to ensure compliance with trade legislation. A compliance officer can also be employed as a reporting officer in the field of money laundering in trade operations and as an officer explaining to other employees the procedure for compliance with regulatory requirements related to trade.

However, effective compliance with international trade rules usually involves implementation of a compliance system by an organization in a number of departments (in particular, in the activities of legal, operational and trade departments) in order to reduce the risks of violations of national and international trade rules (Porter, 2020).

Thus, in the process of ensuring compliance with the rules of international trade, it is important to carry out the following procedures: 1) checking counterparties for international trade transactions; 2) establishing a clear procedure for identifying and

controlling trade transactions with counterparties; 3) introducing a procedure for profiling full risks associated with the implementation of trade transactions or the intention to carry them out; 4) introducing a procedure for checking the prices of contracts related to the import or export of goods or services; 5) determining the procedure for processing and explaining unclear, coded or verbal provisions in a foreign language for the company; 6) introducing the procedure for checking the goods for their compliance with the relevant trade policy.

It is also advisable to establish a clear procedure for identifying a dual purpose and dual use of goods, including determining import or export licensing requirements; to identify the end-use and the end-user; to verify the goods for their compliance with the UN Security Council Resolutions.

IX. Conclusion

Thus, international trade compliance primarily comes down to the process of ensuring that the company's export and import operations comply with the applicable law and relevant regulatory legal acts and policies. International trade rules enforcement covers a wide range of public relations, including trade agreements, tariffs, customs regulations, export controls, sanctions, and anti-corruption laws.

It is important for the companies engaged in international trade to be able to identify legal requirements and rules relevant and applicable to the companies' business activities and to introduce policies and procedures ensuring compliance with such rules, based on clear accounting, timely reporting and internal audit aimed at identifying and resolving any problems related to their compliance with trade rules.

Taking into account the nature of international trade operations and their even minimal connection with specific States, in addition to the development of programs for compliance with international standards of trade and customs operations, a differentiated approach to international trade compliance is also justified. This approach involves taking into account regulatory requirements of individual States and independent monitoring of compliance with the requirements of the State with which the relationship is connected in the absence, in most cases, of a detailed international legal regulation (based on international agreements) of

export-import operations based on comprehensive software solutions adapted to the requirements of each jurisdiction.

It is advisable to use automated compliance solutions to summarize sanctions and anti-sanctions documents, analyze compliance with restrictive requirements in the field of international trade paying special attention to the mandatory introduction of the digital classification of "sanctions" or "anti-sanctions" instruments and analytical tools that carry out the classification.

Unstable global trading environment and dynamic changes in the regulatory and law enforcement constitute a separate set of problems. Countries are changing their sanctions and anti-sanctions policies in response to the foreign policy of counterparties, which leads to rapid changes in national rules governing compliance processes in global international trade.

In a dynamically changing environment, international trading companies have to adapt to the new rules in order to ensure stability and legitimacy of cross-border trade operations, while respecting ethical and legal standards.

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CRIMINOLOGY

Article

DOI: 10.17803/2713-0533.2024.4.30.788-809

Contemporary Methods of Criminal Evidence: Examining Modern Scientific Techniques and Their Legal Implications

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Abstract: The study focuses on the topic of contemporary methods of criminal evidence, which holds significant importance within the area of criminal justice. Modern scientific evidence serves as a crucial foundation for determining the occurrence or non-occurrence of criminal incidents. It is utilized as a key tool to substantiate or refute claims in criminal cases. Given the current societal context undergoing rapid evolution, particularly the rise of information technology, it is imperative to remain updated on the advancements in this field. Criminals with expertise in information technology are increasingly employing modern scientific and technical methods to perpetrate crimes. Consequently, it becomes necessary to utilize contemporary evidence and investigative techniques to mitigate such crimes effectively. This approach facilitates the identification and apprehension of offenders, thereby ensuring appropriate punishment and the attainment of justice in a timely manner.

***Keywords*:** Iraq; Iraqi law; criminal evidence; brain print; DNA fingerprint; iris scan; voiceprint

Cite as: Mohammad, N.S. and Dalool, R.F., (2024). Contemporary Methods of Criminal Evidence: Examining Modern Scientific Techniques and Their Legal Implications. *Kutafin Law Review*, 11(4), pp. 788–809, doi: 10.17803/2713-0533.2024.4.30.788-809

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I. Introduction

Scientific evidence plays an important role in criminal investigations and adjudication, as it is a way to identify the perpetrators as quickly as possible, protect the rights of the victims, and ensure the imposition of appropriate punishment on the perpetrators of the crime. Police departments apply these techniques as reliable motive evidence to help them identify the offenders, while judges use scientific evidence to make informed decisions. In fact, the evolution of criminal techniques has made it more challenging to identify the offenders. Scientific data indicates violations of fundamental human rights, making it very challenging for the legal system to uncover the truth. Technological development has been accompanied by an enhancement of criminal strategies as well as developments in the methods used to uncover evidence, enabling criminals to use the most up-to-date scientific tools to commit their crimes. This development has two aspects, one of which is adopting novel investigative methods that were not previously available to attain previously known scientific evidence. On the other hand, it is based on modifying and developing the use of traditional methods in a way that increases their effectiveness and reliability.

Thus, the study aims to explain the fundamental and indispensable role of modern scientific evidence in addressing crimes committed by professional criminals. The frequency of such crimes, along with

increasing technology advancements, demands the use of sophisticated scientific procedures in criminal investigations.

New crimes have arisen, and the ways in which they are committed have improved technologically as a result of the scientific and technical advancements that have impacted society and warranted legal systems to adapt and innovate. Therefore, it is the duty of all Arab laws in general and Iraq in particular to keep pace with this development to detect crimes. Nonetheless, it is accurate to say that the inability to address these crimes will push society into a state of lawlessness, representing "the law of the jungle." Therefore, the relevance of our study on this critical topic is justified, especially in combating cross-border terrorist crimes. These topics, especially Iraqi law, must adapt to keep up with the developments in our society and the frequent commission of such crimes. Therefore, we urge our legislators to update the legal system. A special law, or addition or amendment of a legal article under the Iraqi Penal Code addresses these technologically advanced crimes in terms of investigative and trial procedures.

The problem with the research is that the criminal justice system in Iraq does not often rely on modern evidentiary techniques such as genetic fingerprints, brain fingerprints, and dental fingerprints because of the courts' predominant reliance on traditional means of proof, which are deemed sufficient to prove reality. In this research, we will study the reasons that led to the judicial system's reluctance to accept contemporary methods. Additionally, this study will also explore the best strategies that enable the judiciary to embrace modern methods of advanced evidentiary practices.

The first section of the paper covers the idea of proof and scientific evidence, which examines the origins of evidence techniques and their growth in criminal justice. The second section elaborates on the distinct sorts of contemporary criminal proof, which are further broken down into two categories. It also addresses the challenges and issues faced by the judiciary when considering the reliability of modern evidence while deciding how to resolve a criminal case. The objective of this analytical research is to fill the void between conventional and contemporary methods to gather criminal proof, delivering practical insights that will help the judiciary successfully adjust to developing issues.

II. The Concept of Proof and Scientific Evidence

The primary goal of proof in criminal matters is to uncover the truth in judging the accused while delivering justice. This means that establishing evidence requires establishing the occurrence of the crime and attributing it to the accused. The proof in this matter is the result that is achieved by using various means and methods of proof to gather the evidence that the judge uses to extract the truth of the facts presented to him in accordance with the law (Abdullah and Khattab, 2017). The modern methods of proof have become prominent in the field of criminal justice, in addition to the traditional methods. We must develop evidence-gathering techniques as crimes have become advanced with technological advancements. We must always develop methods of proof that are compatible with criminal development. Adapting and improving criminal proof-gathering techniques ensures conformity with more complex criminal activities, raising the overall efficacy of the judicial system.

Given the complementarity of the evidence concept, the criminal judge has discretionary authority to weigh the evidence in line with their personal beliefs, which are established in the fullest freedom of decision-making. Preceding evidential force continues to exist. For instance, the Yemeni legislation offered the criminal prosecution judges the freedom to rule in accordance with their convictions and provided them a constructive role in seeking the truth. Rather than listing all forms of proof in the criminal case, Art. 32 of the Penal Procedures outlines specifically listed evidentiary categories associated with the criminal cases (Hosni, 1992, pp. 62–63).

Based on the aforementioned information, we will split this subject into two parts: the first part will address the meaning of proof and the attributes of scientific evidence, while the second part will address the legal implications of integrating scientific evidence into the criminal justice system. These analyses try to illustrate the transforming potential of new evidence methodologies in modern criminal probes and judgments.

II.1. The Definition of Proof, Scientific Evidence, and their Characteristics

Linguistically, the term "proof" refers to a condition of verification, consistency, and accuracy. It stems from the idea of confirming or proclaiming something as genuine or fixed. The reverse meaning of proof denotes elimination or instability. For example, expressions such as "fix the thing," "prove," or "establish proof" imply permanence, need, and confirmation. Likewise, "so-and-so has proven" implies an attribute or truth that is clearly established and substantiated (Oxford English Dictionary, 1993).

For the legal terminology, it is defined as "establishing evidence of the occurrence of the crime and its attribution to the perpetrator of the crime" (Al-Kilani, 1995). Some scholars have further defined it as "establishing evidence of the occurrence of the crime and its attribution to the accused. It is intended to prove the facts to show the point of view of the lawmaker and the truth of his intent. Research in this relates to the application of the law and its interpretation, which is the Work of the court" (Mahmoud, 1988, p. 421).

Others defined it as "the establishment of evidence by the competent authorities of a certain fact in the ways specified by the law in accordance with the rules to which it is subject" (Al-Zoghbi, 2002, p. 377).

Whenever a technical expert provides reports based on scientific judgment regarding particular facts, it is considered scientific evidence. Thus, scientific evidence is defined as follows: it is the evidence whose source is a scientific opinion about a material or verbal report, or expert analysis (Muhammad, 2006, p. 152).

Furthermore, the features of proof derived from science fall in line according to the definition given above, scientific evidence is any evidence that a criminal judge uses to establish the veracity of a particular piece of evidence in order to construct a decision in the case at hand. It relies on contemporary methods to demonstrate the commission of the crime after reaching a conviction based on that particular piece of evidence. For example, the judge considers contemporary scientific evidence, such as DNA testing, computer-generated evidence, and

biometric identifiers like voice, iris, and fingerprint analysis, which are examples of criminal tests.

In order to accomplish social justice, scientific evidence — which is just a way of establishing a connection between the criminal and the crime — is one of the most crucial components of criminal proof that minimizes the possibility of a court's mistake. It displays the data obtained by contemporary scientific techniques that improve the accuracy of legal investigations, considerably contributing to the quest for social justice (Farghaly, 2011). The appearance of scientific evidence in criminal proof may lead to an increased role of experts in doing an illustrious job of demonstrating their technical and scientific expertise. In fact, scientific evidence is the result of scientific and practical experiments and methods carried out by a technical specialist. However, medical evidence or the use of contemporary cutting-edge technology in testimony in deriving these types of evidence typically calls for the availability of highly technical, eminent, and uncommon skills as well as the legal framework that supports its admissibility (Arhouma, 2007, p. 41).

A wide range of modern scientific methods is used in the field of detection of criminal proof for addressing contemporary crimes, including cybercrimes, forgery crimes, and even traditional crimes. Among this modern scientific evidence is the evidence derived from genetic fingerprint examination (Khalifa et al., 2023, p. 128). The evidence derived from biometric identifiers, such as voice, ear, and iris fingerprints, as well as, other modern scientific evidence has revolutionized the realm of criminal proof (Musa, 2011, p. 353).

Accordingly, scientific evidence may affect the basic human rights stipulated in the Constitution of the Republic of Iraq of 2005 and the rest of the constitutions of other countries. Scientific evidence confronts the discoveries made by science to reveal the truth, and thus the judiciary's work is extremely difficult as it necessities the reconciliation of two critical objectives: 1. punishing the offender; and 2. protecting individual rights.

Therefore, the use of modern scientific methods, particularly in invasive procedures, must be limited to some people because of the risk of violation of their rights. On the other hand, this evidence must

be subject to stringent oversight and effective control. Competent regulatory frameworks must guarantee that such evidence is used only when accompanied by strong safeguards to avert infringement of individual rights (Al-Saghir, 2002, pp. 3–4).

II.2. The Legal Implications of the Scientific Evidence

The legal nature of the scientific evidence leads one to conclude that, in cases where its application is not tied to a particular accused it rather serves as a procedural tool. For example, in the case of lie detectors, which are employed to reveal the accused's psychological state during questioning or to hypnotize the accused to elicit statements — they become an inference procedure rather than definitive adjudicatory protocols.

We note that the latter trend criticizes the first trend because this trend gave absolute status to scientific forensic evidence by resembling scientific truth. The latter is subject to change and the errors of the natural sciences are less than the errors of the human sciences. In the field of scientific evidence, the focus shifts from the events and phenomena that depend on material science principles or immutable laws to the facts and the extent of their attribution to the accused. Thus, the decision is made through judicial rulings, not through the formulation of general scientific principles or laws, and this represents the opinions of the majority of jurists in France and England (Nokes, 1952).

The scientific methods that are used in scientific evidence collection may be apparent and announced to those who confront them, such as anesthesia, hypnosis, a lie detector, genetic fingerprinting, and fingerprinting of all kinds. Conversely, they may be hidden, meaning that they may be used secretly by those who confront them, such as audio recording and monitoring telephone communications (El-Gammal, 2013, p. 155).

Scientific evidence is subject to the discretion of the criminal judge (i.e., the emotional conviction of the criminal judge). This guide is subject to two things:

— The scientific validity of the electronic evidence.

— The circumstances in which the evidence was found.

The first matter is not addressed or is not subject to the judge's discretion because the value of the evidence is based on precise scientific foundations, and here the judge has no freedom to discuss established scientific facts. However, the second factor is within the judge's discretion because it is at the core of their judicial function. Judges need to assess whether the evidence is consistent with the facts of the occurrence and, if discrepancies exist, construe them in favor of the accused under the concept of reasonable dissent.

The mere availability of scientific evidence does not bind the judge to deliver a conviction or acquittal. Instead, the judge must assess the evidence's credibility and significance in the context of the case, alongside other factors.

Scientific evidence is therefore not a mechanism designed to assess the judge's persuasion regarding an unconfirmed issue. Rather, it is evidentiary support based on a foundation of science and knowledge, and the judge may interpret it in light of the surrounding circumstances and facts (Mustafa, 2011, pp. 249–250).

III. The Types and Role of the Modern Methods in Criminal Proof

The criminal laws have clarified the traditional means of proof, including confession, witness testimony, expert opinions, and evidence. However, some criminal laws have not managed the integration and regulation of modern scientific evidence, and some of them argue that the principle of free proof is what makes room for the judge's emotional conviction in accepting or excluding some evidence (Hassan, 2012, p. 1). This notion stems from the fact that the judge is the expert of experts and the ultimate arbiter of facts (Fouad, 1939, p. 223). However, when confronted with technical or specialized issues, the judges must seek the assistance of experts in technical matters, and this modern scientific expertise is an example of genetic fingerprint analysis and biometric identifiers of all kinds, such as ear, tongue, voice prints, and other modern scientific evidence, serving as a pivotal tool in criminal investigations.

With the rapid development of civilization, the role of scientific evidence in criminal proof has increased multifold, and the role of this scientific progress has profoundly impacted diverse fields of science.

We will divide this discussion into two parts. The first part deals with fingerprints and their role in criminal proof, while the second part talks about the problems and difficulties in using modern means in criminal inquiries and the role of the Iraqi legislators in comparison with some other laws.

III.1. Types of Fingerprints

The scientific progress in the field of criminal proof has resulted in its reliance on modern scientific methods to uncover the truth in the commission of the crime in order to reach and achieve justice. In the beginning, the discovery of the crime relied on forensic techniques and criminal expertise of various kinds, fingerprint examinations, and the assistance of police dogs to identify or reach the perpetrator of the crime (Champod and Chamberlain, 2013, p. 57).

However, the technological development that has affected society no longer relies on traditional scientific methods and means of criminal proof. Rather modern methods have emerged that are embraced in most countries for criminal investigations, and we will discuss them in detail.

A. Genetic fingerprint

The genetic fingerprint is the personal identification card that God Almighty has bestowed on a person's limbs because it contains many lines and features that remain unaltered and cover the tips of our fingers, the palms of our hands, and the soles of our feet from birth until a certain period after death (Al-Droubi, 2006, p. 7). The genetic fingerprint is a process of isolating DNA from its biological sources using special enzymes that break down the cells so that it has a specific sequence (Al-Saghir, 2002, p. 59).

Accordingly, from a legal perspective, genetic fingerprinting is defined as one of the scientific methods used to prove or deny the act committed by the accused, whether from a civil or criminal perspective

(Cherril, 1959, p. 13). This process is conducted by a scientifically competent expert in forensic medicine based on his referral by the competent judicial authorities to examine the samples or traces taken from the crime scene and compare them with the samples of the suspect or the accused.

Considering the genetic fingerprint as evidence in criminal cases is relatively recent. The use of genetic fingerprinting allows the resolution of many crimes, and as a result, investigations were opened, whereby the genetic fingerprint exonerated many people, and vice versa, convicted actual perpetrators. Genetic fingerprinting was the main reason for identifying the perpetrator of the crime, in the Sam Shepard case (Hosni, 2009, p. 109).

In this case, in 1955 Ohio State Court found the perpetrator guilty of killing his wife by beating her to death. The case became a matter of public concern, and the doctor's husband decided to close it in response to media pressure since it raised the potential that a third person may have been present when blood traces from that person were discovered on the victim's bed during resistance. After serving ten years in jail, Sam retried in 1965 and he was acquitted. However, many people were not persuaded of this until 1993, when Sam's only son requested that the case be reopened and a genetic fingerprint test be used to show that the blood on the bed did not belong to Sam Shepard. However, because it was the longest trial in 2000 history, he was found guilty by genetic fingerprinting of the blood of a family acquaintance. As a result, we see how genetic fingerprinting plays a part in identifying the perpetrator of the aforementioned incident. Here, we observe that it served as the decisive proof in identifying the criminal.

We highlight that some European and Arab countries have acknowledged the genetic fingerprint as conclusive evidence or a key piece of corroborative evidence in proving the perpetrators of the crime. It has been used in various fields to prove filiation, resolve murders, rape, and other crimes. Nonetheless, the extraction of fingerprints must be done by scientific experts with high practical precision. Highly qualified specialists using specialized equipment for this purpose ensure the accuracy and reliability of the results.

B. Fingerprints

Fingerprints are defined as the prominent ridges and grooves located on the tips of the fingers (Hoover, 1954, p. 6), featuring unique patterns that leave their mark when fingers come into contact with surfaces and objects, especially smooth ones (Hamdi, 1961, pp. 145, 153). Some scholars define fingerprints as the impressions left by the papillary lines of the phalanges of the fingers visible due to sweat secretions (Al-Jubouri, 1984, p. 32). We note that fingerprints hold special importance in the field of criminal investigations, owing to their inherent uniqueness because the fingerprints of the same hand of the same person do not match, and even identical twins, despite sharing DNA, have distinct fingerprints (Hanna, 2011, pp. 114, 116).

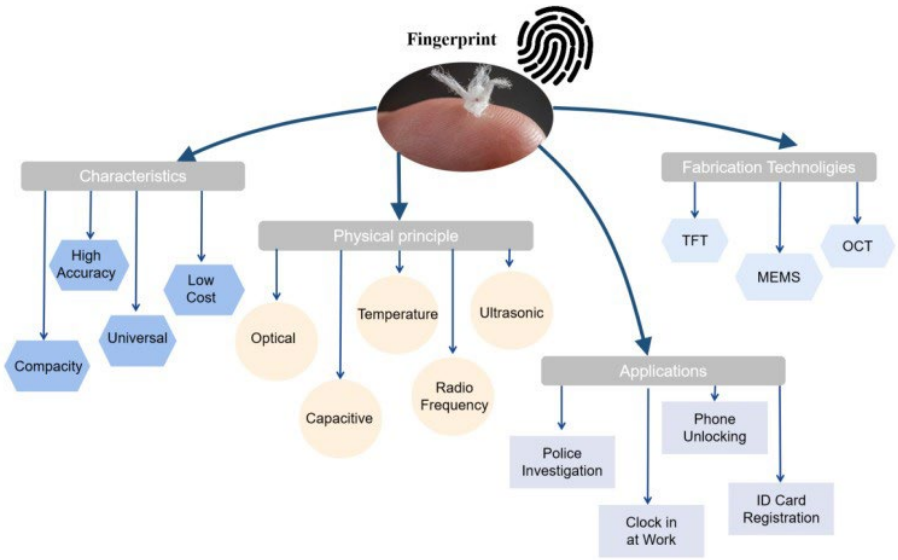

Figure 1. The diagram summarizes the properties, underlying ideas, and technologies used in the production of fingerprint sensors for various uses. OCT (optical coherence tomography), MEMS (micro electromechanical system), and TFT (thin film transistor) (Yu et al., 2023).

Among the most important crimes in which the fingerprint played a role in discovering crime in Jordan involved investigators who solved three murders and robberies that occurred on different dates and regions using exceptional analytical skills and fingerprint evidence. These crimes were similar in terms of their occurrence wherein the victims' necks were slit apart in all three crimes and a letter was sent anonymously through mail to one of the investigating officers responsible for investigating these crimes. The investigator treated this letter with caution and forensic scrutiny. The investigator examined this letter because it revealed the details and narration of the events of the crime committed by the perpetrator. This letter was examined by the forensic laboratory to match the fingerprints that might be found. The result of the laboratory examination revealed the fingerprint of an unknown third person, and after examination, it was revealed the involvement of an acquaintance. It was between a girl and a young man who had a romantic relationship. The young man secretly married that girl after she divorced her previous husband. After analyzing the letter and cross-referencing, the fingerprint was matched with the letter found in the file of the young man who had a prior criminal record. Thus, the investigator was convinced that the young man and the girl were the ones who carried out the killings.

The theft was done for the victims in the three cases. By collecting information, it was found that the girl and the young man had left the Hashemite Kingdom of Jordan, however, the address of the country they were in was found. After coordination with Interpol, they were brought to Jordan by one of the tourism marketing institutions, and they were in possession of free promotional passports to travel. They killed the victims by slitting their necks and then the theft process was completed. That is why the fingerprints on the letter were the only essential and key piece of evidence that unraveled many unknown crimes committed earlier. This case highlights the importance of fingerprint analysis in present-day criminal investigations, emphasizing its dependability and efficacy in securing justice (Al-Dabbas, 2007, pp. 123, 129).

C. Voice Fingerprint

Voice fingerprint is one of the most recent fingerprints that has appeared in the field of criminal evidence. Every person has a unique voice pattern that is different from the voice of another person. Therefore, identifying the perpetrator through their voice has become a valuable tool of scientific evidence, contributing to development in the field of identity verification and forensic science (Hanna, 2011, p. 262).

Thus, the voice fingerprint is prominent in the technical field, especially in military applications, where it is used as a means of criminal proof, in particular, while investigating terrorist operations. However, we noticed through our study that the voice fingerprint oscillates between two sides of experts in terms of its scientific use as evidence in criminal proof. The first side of critics questions the validity of using voice fingerprinting as a means of proving that sound is subject to change using electronic devices through electronic devices and manipulation. Thus, many scientists specializing in the field of sound analysis have proven that the voice fingerprint method lacks scientific robustness in criminal investigations thus falling short of being accepted in a court of law (Al-Dabbas, 2007, pp. 123, 129).

D. Brain fingerprint

Brain fingerprinting is defined as an investigative technique that helps stimulate perception by measuring the brain's electrical wave and its responses to words, phrases, and images on the computer screen. It relies on the notion that hidden signals of information about the crime remain in a person's internal memory through which all information is recorded and analyzed by automated computer systems (Azmi, 2006).

Brain fingerprinting is considered one of the new discoveries in the world of forensic science, as it determines the extent and manner of the suspect's knowledge of the crime because it is a technique that helps analyze the nature of the electrical responses of the suspect's brain while confronting him with information linked to the crime (Hosni, 2009, p. 140). For example, if the killer is presented with a physical object from the site of the crime, the brain records their recognition in

an involuntary way, and their reactions to it using electrodes attached to the head that monitor the brain's activity in the form of electrical waves. Conversely, if there was a person who was not present at the crime scene, they would exhibit no such recognition (Hanna, 2011, p. 262). This fingerprint is used in foreign countries in the areas of intelligence and counter-terrorism operations.

III.2. The Problems and Difficulties in Using Modern Means of Criminal Proof and a Statement of the Iraqi Legislator's Position on Them Compared to the Laws of Other Countries

The crime scene is the place from which all evidence emerges, and the use of modern evidence intends to reveal the mystery of the criminal in how he committed the crime and identify the perpetrator by establishing evidence despite the accused's keenness to destroy evidence and information. Modern forensic techniques entail a high degree of accuracy and honesty due to their link with the material traces of the crime scene. The crime represents the sincerity of the motive and the summary of experience and laboratory results, which places it in a distinguished position compared to information obtained by other less scientific means.

The law permits proof by all means, and the material evidence resulting from certain scientific research is established due to its permanence and objectivity. Forensic evidence such as fingerprints, voice, genetic fingerprints, and ear and eye scans, remain unaffected by change no matter how circumstances change. These biometric identifiers accompany a person from the cradle to the end. Since scientific evidence indicates that the fingerprint is considered evidence of proof of identity, the analogy that makes the fingerprint and the eyeprint original is therefore relevant in determining people's identity for criminal investigations (Hosni, 2009, p. 459).

Here, we note that the position of Arab and foreign legislation regarding modern means of proof differs from one country to another according to the procedural law of each country. Jordanian legislation does not stipulate in the Code of Criminal Procedure that the DNA fingerprint is valid, as the judges in the State of Jordan, based on the

principle of free proof in force and in effect there, resort to taking the genetic fingerprint and ruling on it based on the aforementioned principle. It can then also be taken into account by seeking the assistance of experts in proof in criminal cases (Hassan, 2012, p. 148).

Articles 27–226 of the Jordanian legislation stipulated and considered the genetic fingerprint as an independent piece of evidence in criminal cases based on the aforementioned law. The use of the genetic fingerprint was specified in three areas or cases: criminal investigations, identity verification, and judicial proceedings.

Iraq, akin to the rest of the Arab criminal legislation, does not explicitly stipulate the consideration of the genetic fingerprint and the rest of the fingerprints but rather considers them on the basis of the principle of emotional conviction that reaches the end in pronouncing the ruling.

This conviction is generated by the judges through the availability of modern scientific evidence or when they come across such evidence to base their final decision while issuing their ruling on the case presented before them.

The Iraqi law states in Art. 213/A that: "The court shall decide the case based on its conviction based on the evidence presented in any stage of the investigation or trial, which is the confession, witness testimony, investigation records, other official statements, reports of experts and technicians, and evidence. Other legally prescribed."[1]

The Iraqi legislator also stipulated in the Code of Criminal Procedure in Art. 70 that the investigating judge or investigator may force the accused or the victim of a felony or misdemeanor to undergo a physical examination and submit their photograph, fingerprint, or blood, hair, nails, or anything else that would be useful to the investigation. The examination of a female's body must be compulsorily done by a female investigator.

It is clear from these penal texts that the Iraqi legislator was granted asylum by collecting the genetic fingerprint and other fingerprints, which include the fingerprints of the brain, voice, fingers, and other scientific evidence, that are the same as other criminal evidence affecting the personal freedom of the accused (the individual). Hence, while

[1] The Iraqi Code of Criminal Procedure No. 23 of 1971, as amended.

collecting samples, all care must be taken into account. The personal rights of the individual need to be secured because the principle of law presumes the innocence of all human beings.[2]

From the above-mentioned details, the judge's authority granted by law and supported by the previously mentioned texts allows them to rule on modern criminal scientific evidence. This power is based on the principle of mixed proof, which allows the judges to evaluate this modern scientific evidence and separate modern scientific evidence in line with their emotional conviction. Since these fingerprints fall within the realm of scientific medical expertise, the judge is considered an expert by evaluating this evidence and basing their judgment and decision on it.[3]

In fact, I made a field visit to the Directorate of Criminal Evidence Investigation. This visit examined the most recent techniques utilized in criminal evidence, such as the voice fingerprint, which is referred to as digital evidence (Electronic Crime Division).

This fingerprint is proven effective through a system specialized in matching voices, containing a set of filters specialized in clarifying and isolating voices and performing matching and emulation with the criminal statements sent by the judges. Regarding the photos and video recordings, matching is carried out through the aforementioned system, utilizing a comprehensive database of these people and their photos.

Social media sites (Facebook, Instagram, etc.) are places where the competent authority contacts the appropriate judge to request authorization to investigate content on these sites. The problem with this situation is that there is no law that specifically addresses it because some foreign laws, including American law, allow every person the freedom to express their opinions on social media.[4]

[2] The Constitution of the Republic of Iraq for 2005 stipulated in Art. 19/F5 that "the accused is innocent until proven guilty in a fair legal trial." The basic principle of human beings is innocence, and thus it is a constitutional right before it is a legal right.

[3] I made a field visit to the Directorate of Criminal Evidence Investigation in accordance with the task facilitation letter, No. 18136 dated 9 April 2023, issued by the College of Law and Political Science/Iraqi University.

[4] An interview with the pioneer programmer and cybercrime expert: Mahmoud Iyad Safaa El-Din — Cybercrime Division — a field visit to the Directorate of Criminal Evidence Investigation on Thursday, 19 October 2023.

The second type of modern means of criminal proof and entry into Iraq is the dental fingerprint, which is one of the internationally approved fingerprints, and through it, we presume that:

1. We can obtain the embryonic map (DNA) from teeth grinding.

2. We can obtain a forensic dental fingerprint from the traces of teeth left on the victim's body and compare it with the dental database in place in the Arab and international markets. Arab countries have been working with this examination since 2007, and Britain is the leading country in this examination and the first in the world.

3. We can estimate the victim's age by dental impression.

4. We can determine the sex of the victim if the body is completely mutilated, charred, with unknown features, or completely rotten, considering the teeth are the most resistant and solid part to influential external conditions.

5. Through the forensic dental fingerprint, we can identify the patterns of violence, including violence against children, women, or the elderly, and distinguish them from cases of murder and rape.

The method of examining the dental fingerprint involves the Alo-PG device, which takes x-rays of the palms and stores them in a special dental database for humans.

More than 60 % of the unidentified bodies after the mall bombing incident in the United States were identified, and 973 victims were identified in the first year itself using the dental registry.

This method is considered one of the advanced methods in Iraq as a means of criminal proof and is presented as a project that is being studied and applied on the ground.[5]

Moreover, experts confirmed that there is no defect in this technique, but there is a postponement in legislation in keeping pace with modern progressions, particularly, when we look at the kinds of crimes committed and the tools used. For this reason, it is necessary to enact the cybercrime law as quickly as possible. In addition, there is an urgent need to enhance the skills of employees in this field through targeted training courses and developing the curriculum of police institutions.

[5] An interview with Chemical pioneer and forensic laboratory expert: Wissam Ibrahim Abbas — field visit to the Forensic Investigation Directorate on Thursday, 19 October 2023.

IV. Conclusions and Recommendations

After completing the research, several results and recommendations have been recorded as follows:

Conclusions

Modern scientific evidence has gained wide recognition in the criminal justice field because it has contributed to the discovery and resolution of many crimes committed in society as evidence of proof or denial. At the same time, despite its advantages, it affects the personal rights of the individual, which is its only flaw.

We noticed that genetic fingerprinting is one of the modern scientific methods that is used as evidence of innocence or an accusation in the field of criminal evidence. The result derived from the genetic fingerprint after collecting and analyzing the samples in the correct manner is considered evidence that has substantial scientific and technical force and is granted authority as proof in some legislation, including Iraq, especially when corroborated by other evidence.

The modern scientific evidence used in criminal proof, including fingerprints, voiceprints, eyes, and other biometric identifiers, helps investigators prove the identity of the perpetrators of crimes through the presence of traces of the perpetrators' fingerprints at the crime scene. The judge may resort to using this modern scientific evidence, provided they adhere to procedural safeguards. There is no harm in the judge resorting to medical or scientific matters derived from the crime scene or any place related to the crime, as they may affect the resolution of the criminal case and at the same time influence the rights of the accused potentially leading to serious implications, such as convictions or mitigating defenses.

It is noteworthy that the judge has the discretionary power to apply these contemporary scientific procedures, which are classified as technical medical knowledge, depending on their emotional convictions in the context of the criminal case's resolution.

Recommendations

We call on the Iraqi legislator to explicitly stipulate the adoption of modern scientific evidence in criminal investigations. Even though the judge has discretionary authority to evaluate the evidence and take it into account, formal legislative backing would regulate its implementation and confirm its legality.

This is what we noted as stipulated in Art. 213/A, 70 of the Amended Code of Criminal Procedure No. 23 of 1971. However, we suggest that the Iraqi legislator explicitly stipulate, in light of the previously mentioned law, that modern scientific evidence be taken into account in criminal investigations.

Articles 213/A, 70 should read as follows, in our opinion: The court will base its verdict regarding a criminal case on its belief derived from the evidence put forth at any stage during the investigation or trial, including the confession, testimonies, and evidence. In addition, legally required evidence, such as contemporary scientific evidence, shall be used in criminal prosecutions as valid proofregarding the wording of the same law's Art. 70, we propose the following.

The investigating judge or investigator may force the accused or victim of a felony or misdemeanor to undergo a physical examination that might require collecting his photograph, fingerprint, or a small amount of his blood, or hair. The genetic fingerprint, eye fingerprint, ear fingerprint, brain fingerprint, or anything else that is useful to the investigation is collected in order to conduct the necessary examination on them.

Based on interviews with experts in the field of forensic evidence, we suggest organizing specialized cultural and educational programs of a scientific and legal nature focusing on the use of modern scientific methods or evidence in criminal investigations. Specialists must be equipped with knowledge so that they know how to demand the use of these scientific methods as evidence of innocence or accusation in resolving a criminal case. These courses must be held by highly qualified competent people from technical and scientific fields. Additionally, we suggest that these courses must be held in the Forensic Medicine Department, the Forensic Evidence Department, and other relevant

institutions. Training courses, workshops, and seminars accessible to all state department employees must be announced and managed by the Forensic Medicine Department and the Forensic Evidence Department as teams specialized for this purpose.

Spreading comprehensive cultural awareness among the security services with all their formations regarding information related to modern scientific evidence in criminal investigations so that the right personnel or interest holder can invoke it and use it for resolving criminal cases effectively.

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LEGAL TRANSLATION AND COURTROOM RHETORIC

Article

DOI: 10.17803/2713-0533.2024.4.30.810-842

Subtitling English Legal Acronyms into Arabic: Human vs Machine

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***Abstract*:** The development of artificial intelligence (AI) and machine translation (MT) technologies made the process of translation easier. The study examines the translation strategies used by Netflix, Google Translate (GT), ChatGPT (GPT), and Gemini (GEM) to render 30 English legal acronyms into Arabic. Adopting the taxonomy suggested by Al-Hamly and Farghal to translate reduced forms, the analysis showed that every translator (human, MT, and AI) uses different strategies to render the acronyms into Arabic. The findings showed that the majority of the English legal acronyms were unpacked and translated literally "Translation Alone Unpacking." GPT employed this strategy the most at 50 %, followed by Netflix and GT at 26.6 % each and GEM at 13.3 %. The second most frequently used translation strategy is "Cultural Substitution" that was utilized by Netflix (40 %), followed by GPT (23.3 %), and GEM and GT at 16.6 % each. The analysis showed that GT has more cases of mistranslation than the other investigated systems. The study concludes that artificial intelligence tools have advanced significantly and are now almost as good as humans. Therefore, when translating legal acronyms, combining machine translation with human intervention will likely improve accuracy and cultural sensitivity while saving time, cost, and effort.

***Keywords*:** English; Arabic; Legal translation; Acronyms; Machine Translation; Google Translate; Artificial Intelligence; ChatGPT; Gemini

***Acknowledgements*:** This research received grant no. (56/2023) from the Arab Observatory for Translation (ALECSO affiliate), which is supported by the Literature, Publishing & Translation Commission in Saudi Arabia.

Cite as: Haider, A.S. and Alkhatib, R., (2024). Subtitling English Legal Acronyms into Arabic: Human vs Machine. *Kutafin Law Review*, 11(4), pp. 810–842, doi: 10.17803/2713-0533.2024.4.30.810-842

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I. Background of the Study

Translation facilitates communication by allowing people from diverse backgrounds to exchange information and overcome cultural and linguistic boundaries. (Nida ana Taber, 1974, p. 12) argued that "Translating consists in reproducing in the receptor language the closest natural equivalent of the source-language message, first in terms of meaning and secondly in terms of style." In our increasingly interconnected world, translation bridges the linguistic divides and enhances mutual understanding.

Audiovisual translation (AVT) is a new field of translation arising from the significant explosion of multimedia content and technological

advancements (Haider and Shohaibar, 2024; Saed et al., 2024; Saideen et al., 2024). AVT entails converting the spoken and written components of audiovisual AV materials, such as series, movies, television shows, and video games, to different languages. AVT converts verbal and non-verbal elements of AV materials from one language to another (Chiaro, 2012).

The term "machine translation" (MT), which was initially used in the 1950s, describes the process of translating between natural languages. Because MT systems are quick and inexpensive, many people use them frequently even though they may not be as accurate as professional translators (Hadla et al., 2014). The accuracy of MT depends on the words' selection and the system's overall output. Dealing with semantic, syntactic, morphological, and other grammatical complexities makes the translation process more challenging. However, these complexities become further complicated between languages, such as English and Arabic, which have asymmetries and a wide range of cultural, linguistic, and systematic dissimilarities (Oladosu et al., 2016).

English and Arabic legal languages are intricate due to the complicated structure of legal expressions and the substantial distinctions between the legal, cultural, historical, and religious systems. English legal language is based on its common law norms. In contrast, Islamic law, or Sharia, influences the Arabic legal language, incorporating religious doctrines and cultural practices unique to Muslim societies (Weld-Ali et al., 2023). Due to this divergence, distinct legal concepts and terminologies emerge, often with no direct equivalent in the other language. Conciliating these differences necessitates linguistic proficiency and a thorough understanding of the fundamental principles of both legal systems.

Legal translators face many difficulties when translating from one legal language into the legal vocabulary of the target language, particularly when translating between a language pair like Arabic and English (Šarčević, 1997, p. 235) says, "Because of the inherent incongruency of the terminology of different legal systems, legal translators cannot be expected to use natural equivalents of the target legal system that are identical with their source terms at the conceptual level."

Acronyms form an integral part and hold an invaluable place in language owing to their prominence and dynamism. Several text types use acronyms for brevity euphony and to entice readers to learn what the letters stand for (Newmark, 1987). They frequently use acronyms

to shorten the names of government agencies, military branches, and organizations. Therefore, there is a need for shorter names due to the recent centuries' rapid advancements in science and technology. When translating legal acronyms from English to Arabic, acronyms provide a special challenge. There are significant differences between the two languages' phonetic and grammatical structures. It is critical to recognize the difficulties that come with acronyms. Their nature may expose them to ambiguity, with some acronyms representing multiple things or being regarded as technical or specialized (Zahariev, 2004).

This study investigates the strategies used in subtitling legal acronyms from four English series into Arabic, streaming on Netflix, by compiling a parallel corpus of English script and its Arabic translation. In addition, it compares the strategies utilized by professional subtitlers, MT, and AI services in rendering legal acronyms to determine whether MT and AI can render legal acronyms appropriately into Arabic.

This study attempts to answer the following two research questions:

Q1: How do human Netflix subtitlers compare to MT Google Translate and AI systems like Gemini and ChatGPT in subtitling legal acronyms into Arabic?

Q2: What are the differences in the frequency of translation strategies used by humans, MT Google Translate, and AI systems Gemini and ChatGPT in rendering English legal acronyms into Arabic?

It is worth noting that this manuscript is part of a larger, funded research project on the subtitling of legal expressions between English and Arabic (Alkhatib and Haider, 2024).

II. Literature Review

This section is two-fold. The first part reviews the theoretical background relevant to AVT, legal language, and acronyms. The second part discusses some empirical studies related to the topic under investigation.

II.1. Theoretical Framework

This section delves into AVT, explaining its definition, different types, and restrictions. The following subsection discusses legal language, the differences between the Arabic and English legal systems, and the legal acronyms.

II.1.1. Audiovisual Translation

Screen translation is distinct from print translation. Books, newspapers, and other written products have been intended to be read. Print translations may include pictures, photographs, graphs, and diagrams to illustrate or supplement the verbal content. Conversely, screen products are characterized as completely AV, such as films, TV series and serials, sitcoms, and documentaries. The terms "media translation," "multimedia translation," "multimodal translation," and "screen translation" are among the interconnected terms that include AVT. All these terms refer to the interlingual transfer of audio and visual elements (Chaume, 2018).

AVT is the wide umbrella that includes several types, with subtitling being the most common. On the other hand, subtitling is defined by Shuttleworth and Cowie (1997, p. 161) as "the process of providing synchronized captions for film and television dialogue." Synchronization is regarded as one of the most important features in AVT, and it is essential when subtitling because the translated text or audio must coincide with the original dialogue's timing. When translating colloquialisms, humor, and cultural allusions, AVT must be culturally adaptive to the target audience. To ensure that translations fit within time and screen constraints, AVT must also preserve the original content's visual and aural coherence. In order to make a message understandable and relatable to people of different languages and cultural backgrounds, translators must strike a balance between accuracy and creativity. This is why their work demands accuracy.

II.1.2. Legal Language

Legal terminology is regarded as an essential component of legal discourse and is used to assess translators' competence and ensure the accuracy of translated legal texts (Alwazna, 2019). Translation can be challenging in many areas, but legal translation is particularly difficult. Arabic and English legal languages are renowned for their extreme formality and precision. It requires precise terminology to remove ambiguity, which is essential to prevent even small translation errors from potentially disastrous legal outcomes.

The fundamental distinction between the two legal systems is found in their roots. Common Law is the tradition of English legal systems, which mainly rely on precedent from earlier court rulings. On the other hand, Arabic legal systems are mostly founded on interpretations of the law and religious law Sharia. Situations arise where legal concepts in one system may not have a direct equivalent in another due to this fundamental difference. Mellinkoff (1963, p. 3) names the language used in legal texts as "the language of law." According to Tiersma (2000), legal language deviates significantly from everyday speech, unlike the technical language used in any other profession, while still adhering to English's general rules.

Among the various types of translation (commercial, technical, literary, media, etc.), legal translation is a subset. Idioms, phrases, and expressions are all part of legal language or the study of legal terminology. Depending on its functional categories, this legal language has a variety of writing styles, including academic legal writing, juridical writing, and legislative writing. Academic legal writing refers to the legal terminology used in law courses, essays, and academic publications. Legislative reports deal with legal papers, conventions, and parliamentary activity, whereas juridical writing deals with the language of court decisions (Šarcevic, 2000). All aspects of the meaning are attempted to be achieved and limited in the legal document. It should be precise, succinct, and unambiguous to prevent misunderstandings.

Professional translators face numerous challenges when attempting to find a comparable equivalent in the English legal system. Some translators' unfamiliarity with translation theories and strategies results in problems and errors in translation. When translating legal documents from Arabic to English, many significant challenges arise. The first impediment is terminology. Legal terms such as "habeas corpus" may not have a direct translation in Arabic. The translator must find a culturally appropriate term that accurately conveys the same legal concept. Sentence structure is also a challenge. Arabic legal documents tend to be more verbose and ornate than English legalese, which is typically concise. A skilled translator is required to accurately translate this style while maintaining clarity in the TL. Finally, cultural context is essential. Legal systems are deeply rooted in a culture's traditions and values.

II.1.3. Acronyms

English acronyms are vital components of our contemporary communication as they provide a practical and effective means of condensing difficult words and phrases (Grange and Bloom, 2000). These acronyms are pronounced as single words rather than individual letters, and they are created by combining the first letters of the words that make up a longer phrase (Harley, 2004). The acronyms found in the selected series and movies have a notable connection to fields like finance, economics, administration, and criminality. The fact that these series and movies primarily focus on financial matters and crime detection makes this connection more obvious.

Acronyms are distinguished by their brevity and efficiency, acting as condensed versions of phrases or series of words, with each letter representing a component of the original term. They are frequently used to simplify complex or lengthy expressions, making communication more efficient and convenient. Acronyms frequently gain widespread recognition and adoption, particularly in technology, government, and healthcare (e.g., NASA, NATO, and MRI). They can vary in formation, sometimes using the initial letters (e.g., FBI for Federal Bureau of Investigation).

II.1.4. Machine Translation

Translation is one of the many areas of life that has been profoundly impacted by globalization. The need for efficient translation techniques increased as media and communication expanded internationally, giving rise to AVT. With the introduction of new features and technologies, AVT signaled a change from antiquated, static translation techniques to more contemporary, dynamic ones. With this shift, multimedia content like movies, TV series, and online videos could be translated and made available to a worldwide viewership. The translation process has undergone even more revolutions with the introduction of MT and the development of artificial intelligence (AI) over time (Akasheh et al., 2024). MT is defined as “the process that utilizes computer software to translate text from one natural language to another” (Alawneh and

Sembok, 2011, p. 343). These technologies have greatly improved the speed and accuracy of translations by introducing automated, effective, and frequently real-time translation capabilities. This evolution shows how technology is continuing to reshape and advance the field of translation, reflecting the ongoing transformation of translation practices in response to our globalized world.

The AI revolution in translation studies has dramatically altered our understanding and approach to language mediation. Language analysis, translation theory, and cross-cultural communication have all seen new horizons opened up by powerful machine learning algorithms. AI-driven audio and video content subtitles are now created using advanced machine learning and natural language processing NLP techniques. These technologies enable AI to analyze a wide range of data inputs, including audio, video, spoken words, sign language, and paralinguistic elements, producing precise subtitles with precise timing. MT has emerged as a cornerstone in translation, utilizing computational algorithms and AI to automatically convert verbal and nonverbal elements from a source language SL to a target language TL.

Using computational algorithms, MT significantly accelerates the translation process by automatically translating text from an ST to a TT. This translation system originated in the 1950s (Hutchins, 2005, pp. 501–511). Initially, it was used to provide raw output based on a statistical analysis of the submitted source text ST to give a basic comprehension of the ST. MT systems were designed to replace humans, however this approach did not work. Because of the many errors resulting from lexical and syntactic ambiguity in the translation output, MT developers eventually lost interest in employing MT systems (Juan, 1994).

Computer-assisted translation (CAT), which recognizes the necessity of a human translator to examine and revise the translations produced by this kind of computer-based software, was developed in response to MT's failure. Neural machine translation (NMT), rule-based machine translation (RBMT), and statistical machine translation SMT are the three categories into which MT systems can be divided.

GT switched from the SMT to the NMT system in 2016. An artificial neural network is used by the NMT system to forecast the probability of a variety of words; often, entire sentences are represented in a single integrated model. This system does not require large amounts of space memory. In NMT models, deep learning and representation learning are employed.

II.2. Empirical Studies

The current subsection provides an overview of some previous studies related to the main topic of the study. Translating legal documents was extensively investigated due to its complexity, even for professionals. Alshehab and Rababah (2020) examined the translations of 20 students of Jadara University in Jordan to recognize the problems in translating legal terms from English into Arabic. To gather information, they employed a test consisting of 194 legal English sentences. After evaluating the data using a content analysis methodology, they calculated the frequency and proportion of lexical errors produced by translation students. The findings showed that the largest percentages of errors were legal in adverbs, followed by coupling, polysemy, and homonymy.

El-Farahaty (2016) argued that the asymmetry between Arabic and English poses a number of linguistic, cultural, and systemic difficulties for legal translators. The researcher aimed to identify the most prevalent issues with translating legal materials between Arabic and English. The study found that the translator should be able to determine the precise meaning of frequent terms in a legal context. Translators should examine comparable works and seek advice from experts. When it comes to technical terms, they could try to think about the lexical items instead of translating them directly or using specialized dictionaries. It is important for translators to either paraphrase or find a roughly equivalent expression in the target language when translating archaic terms. There are many different legal interpretations for abstract terms, which make them quite intricate. Because of this, the legal translator should interpret them literally and refrain from trying to make them clear, even if doing so creates an ambiguous text. The translation of

religious and cultural concepts in documents could be accomplished by translators using methods such as "expansion, adaptation, transposition, and structure shift.

Fakhouri and Daragemeh (2008) examined the significance of pragmatic and functional elements in legal translation. Nine versions of the examined legal documents — which included leases, employment contracts, and real estate sales — were produced after three of them were translated by skilled and experienced translators. After getting the nine translations, a comparative analysis has been done to reveal the strategies and approaches each translator used to render the most challenging legal parts. The application of Speech Act theory to the analysis of regulatory act translation was also explored in this study. The researchers pointed out the importance of incorporating pragmatic and functional factors in translation, emphasizing that effective communication is the foundation of legal translation. The findings showed that legal jargon translation spans a continuum from literal to dynamic translation. The literal translation is appropriate for context-independent technical terminology, but context-dependent terms need context-specific techniques. The results also showed that simplifying doublets, triplets, and stylistically synonymous binominals is advised. For legal formulations, the literal translation is useless. Hence, functional equivalents should be used. The study also showed that contracts can have redundant references removed or altered without losing meaning.

After the revolution of MT systems, many scholars geared their research toward it. Wiesmann (2019) examined MT's legal document translation capabilities alongside translation pedagogy. The researcher assessed DeepL Translator and MateCat by translating many legal documents without using translation memory. The assessment considered the TT's readability, significance, and coherence with the original content. The results did not support increased post-editing of machine-translated legal papers during training. This indicates that improved techniques, more robust legal knowledge, and an awareness of the differences between machine and human translation in translation training are necessary.

Concerning acronyms, Abdul-Razzaq (2009) argued that advancements and knowledge in all fields of life have led to the appearance of many terms used to designate various concepts and discoveries. The necessity of condensing large names and terms of concepts into smaller ones becomes apparent because using them in their entirety leads to difficulties, disruptions, and wastage of time and energy when speaking, writing, and printing. The researcher concluded that there are some methods to translate the acronyms of international news agencies into Arabic: you can either show the Arabic abbreviated form as a word or the English abbreviated form letter by letter. Acronyms for global satellite television can be translated into Arabic in two ways: by indicating the lexical meaning and by indicating the English abbreviated form letter by letter. Acronyms from world newspapers can be translated into Arabic in two ways: by indicating both the lexical meaning and an Arabic transliteration of the English form. Acronyms of the United Nations and other world organizations can be translated into Arabic in three ways: by indicating the lexical meaning, the English abbreviated form letter by letter, and the Arabic abbreviated form as a word. The researcher notices that both translation and transliteration can be used to deal with acronyms.

III. Sources and Methods

This study is qualitative and quantitative in nature; therefore, this section focuses on the methods and apporaches used in this study as well as on the approcahes to materials and data collection.

The significant variations in linguistic patterns, cultural contexts, and legal structures make transferring information from English into Arabic challenging. As Germanic, English has relatively simple syntax and grammatical rules, while Semitic Arabic has complex morphological patterns and a highly inflected grammatical system. To maintain meaning and nuance, this discrepancy requires cautious handling. Furthermore, the cultural backgrounds of Arabic- and English-speaking communities differ greatly, which affects how certain expressions are understood and applied. It may be necessary for the translator to find

culturally appropriate translations or explanations for expressions that are colloquial or culturally specific in Arabic when they don't have direct equivalents in English.

Arabic has fewer acronyms and initialisms than English despite the fact that they are widely used there. Arabic acronyms emerged relatively recently due to globalization and contact with other foreign languages, particularly English, through media radio, TV, newspapers, social media, trade, science, and technology. Native Arabic speakers create acronyms in their own unique and spontaneous way (Al-Jarf, 2021). Arabic acronyms, like English acronyms, are made up of the first letters of longer phrases or compound nouns, such as the names of organizations, companies, industries, trade names, businesses, educational institutions, government agencies, and more. They are utilized as well in medicine, technology, social media, politics, economics, and the common language. Although acronyms are used in Arabic, they are generally less common than in English. This makes the task of translating English acronyms into Arabic engaging. Dealing with specialized fields, such as legal acronyms, adds another level of complexity. Here, the stark disparities between the legal systems are important. Whereas Arabic legal systems heavily incorporate Sharia Law, English legal systems frequently rely on Common Law. These underlying differences can make translating legal acronyms especially difficult.

The current study primarily concentrates on television series aired in English on Netflix and has subtitles in Arabic. The study dives into four English series based on judicial and legal themes: "How to Get Away with Murder," "Suits," "The Judge," and "The Lincoln Lawyer," all of which use legal terms heavily. The researchers retrieved the subtitles of each season's top five most-watched episodes on the platform.

Google Translate (GT) facilitates communication between speakers of an astounding variety of languages by bridging language barriers. This free service covers spoken conversations, written text, and web pages. There are many free MT systems available online. Nonetheless, GT is the most widely utilized and well-liked one (Aiken and Balan, 2011). GT keeps improving its accuracy in translating nuances of human

languages (Al-Salman and Haider, 2024). Despite its shortcomings, GT is invaluable for individuals navigating a multilingual world.

The AI revolution has upended the translation field due to globalization and the increased need for AV content. According to Tate, Doroudi, Ritchie, Xu, and Warschauer (2023), ChatGPT (GPT) demonstrated a significant ability to generate responses and translate between languages as it has been trained on enormous amounts of data, which enabled it to comprehend and create translations and texts with remarkable accuracy. It has been proven that GPT is able to assist in learning foreign languages (Yan, 2023).

Gemini (GEM), a new AI designed and developed by the Google subsidiary DeepMind, was released to overcome highly complex tasks (Farghal and Haider, 2024). This new AI design encompasses Gemini Ultra, Gemini Pro, and Gemini Nano. All these models were trained extensively on large data on multimodal and multilingual data, including data from books, images, audio, video, and code (Buscemi and Proverbio, 2024).

This study analyzes the translation strategies employed by human, MT, and AI systems when encountering legal acronyms from English into Arabic. The researchers used the approach suggested by Al-Hamly and Farghal (2013) to analyze the strategies used to translate the legal acronyms into Arabic. Seven strategies could be employed in the subtitling, mainly:

(1) borrowing,
(2) translation using common terms unpacking,
(3) translation + acronym,
(4) Arabic generic word + borrowing,
(5) borrowing + acronym,
(6) translation + borrowing, and
(7) Cultural Substitution as listed in Table 1.

It should be noted that the researchers added some strategies as observed, mainly "Explicitation," "Explicitation Unpacking + Omission," "Cultural Substitution + Borrowing," "Explicitation + Borrowing," and "Transliteration."

Table 1. Strategies Used for Translating Acronyms

No.	Strategy	Explanation	English Example	Arabic Translation
1	Unpacking + Omission	The English source term is simply translated into Arabic while removing part of it	LAPD	لوس أنجلوس
2	Borrowing Alone	The English term is borrowed and written using Arabic alphabet	CIA	السي آي إيه
3	Cultural Substitution	The reduced form is translated using culturally equivalent elements in the target language	DA	المدعي العام
4	Explicitation	Making implicit information explicit in the target text	ID	بطاقة الهوية
5	Mistranslation	This can lead to inaccurate information and confusion	AI	AI الذكاء الاصطناعي instead of Artificial Intelligence
6	Translation Alone Unpacking	The English source term is translated into Arabic full form in translation	WHO	منظمة الصحة العالمية
7	Translation + Borrowing	The English term/phrase is both translated and borrowed	CIA	وكالة المخابرات المركزية CIA
8	Cultural substitution + borrowing	The reduced form is translated using culturally equivalent elements in the target language, and the term is borrowed	IRS	بدائرة الضرائب IRS
9	Explicitation + Borrowing	making implicit information explicit in the target text while preserving the borrowed acronym in the target text	DUI	القيادة تحت تأثير الكحول DUI
10	Transliteration	Translating text between writing systems while trying to keep the original sounds as much as possible	HIPAA	هيبا

IV. Analysis and Findings

This section is both qualitative and quantitative in nature. The first part, quantitative, lists the strategies and their frequencies; it goes into detail about the most commonly used strategies by the services under investigation. The second part is qualitative, examining Netflix, GPT, Google Translate, and GEM's strategies for translating legal acronyms into Arabic.

IV.1. Quantitative Analysis of Acronyms

The current subsection aims to highlight the strategies used along with their frequencies. Additionally, it investigates the most commonly employed strategies and percentages by humans, MT, and AI. This quantitative analysis is designed to facilitate detecting any percentages of mistranslations. Drawing on the data provided in Table 1, Table 2 lists the strategies used to render each acronym.

Table 2. Strategies in Rendering English Acronyms

No.	Term	Acronym	Netflix	GT	GPT	GEM
1	Chief Executive Officer	CEO	3	3	3	3
2	District Attorney	DA	3	2	3	3
3	Deoxyribonucleic Acid	DNA	4	4	4	4
4	Federal Bureau of Investigation	FBI	1	6	6	6
5	Assistant District Attorney	ADA	3	5	3	3
6	Transportation Security Administration	TSA	5	6	5	5
7	Initial Public Offering	IPO	3	6	3	3
8	Medical Examiner	ME	3	2	3	3
9	Emergency Receipt	ER	6	6	6	6
10	Immigration and Customs Enforcement	ICE	6	2	6	7
11	Driving While Intoxicated	DWI	6	5	6	7
12	Law School Admission Test	LSAT	6	2	6	7
13	Department of Justice	DOJ	3	3	3	3
14	Securities and Exchange Commission	SEC	3	3	3	8

15	Food and Drug Administration	FDA	6	7	6	7
16	Temporary Restraining Orders	TRO	3	2	6	8
17	Limited Liability Company	LLC	6	6	6	6
18	Chief Operating Officer	COO	3	3	1	5
19	Health Insurance Portability and Accountability Act	HIPAA	1	2	10	7
20	Internal Revenue Service	IRS	3	3	6	8
21	Gunshot Residue	GSR	2	2	6	7
22	Driving Under the Influence	DUI	4	5	4	9
23	Bureau of Alcohol, Tobacco, Firearms and Explosives	ATF	4	2	6	6
24	Global Positioning System	GPS	3	7	6	7
25	Los Angeles Police Department	LAPD	1	1	1	7
26	Bachelor's Degree/Doctor of Philosophy	BS/PhD	1	1	1	1
27	Massachusetts Institute of Technology	MIT	2	6	6	7
28	As Soon As Possible	ASAP	3	6	6	7
29	Identification	ID	6	4	4	7
30	Drug Enforcement Administration	DEA	6	6	6	7

The "Translation Alone Unpacking" strategy is the most commonly used, accounting for 29.1 % of the translations. This indicates direct Arabic equivalents for acronyms and highlights a deliberate attempt to preserve their legal status. The "cultural substitution" strategy comes in second place, accounting for 24.1 %, and it entails replacing a concept or expression of the source culture with one that is familiar and appropriate in the target culture. Moreover, the "Translation + Borrowing" strategy comes in third place, accounting for 11.6 % of the investigated acronyms. This approach considers the possibility that some viewers may not be aware of the acronym's direct equivalent.

The fourth commonly used strategy is "Borrowing Alone," which applies to 8.3 % of the cases, and it appears noticeably more frequently in translations produced by GT. However, it is crucial to highlight that using legal terms may not be the best option, especially considering how complex the legal system is for Arab audiences. The

"Unpacking +omission" strategy also comes in fourth place, accounting for 8.3 % of cases. This combines translating the acronym into its Arabic equivalent but, at the same time, removing parts of the acronym. Explicitation strategy comes in fifth place, being employed in 6.6 % of the instances. It makes implicit information explicit in the TT.

The "Cultural Substitution + Borrowing" and "Explicitation + Borrowing" strategies have been used to a limited range of 3.3 % and 1.6 %, respectively. The "Cultural Substitution + Borrowing" strategy aims to combine translating a source term into a term that is culturally related to the target audience's culture and language while also borrowing the acronym in the TL. The "Explicitation + Borrowing" strategy involves making the acronym more explicit to the target audience while providing them with a foreign acronym. Notably, a 5.8 % mistranslation rate was observed, primarily in translations generated by GT. The last strategy is transliteration, which has been used only once by GPT to render one acronym, HIPAA.

Table 2 shows how MT, AI, and Netflix translators employ various translation strategies to handle acronyms. GT employed the "Translation Alone Unpacking" strategy 50 %, suggesting that it can effectively preserve the legality of acronyms for its audience. By comparison, the percentages for Netflix, GPT, and GEM demonstrate 26.6 %, 26.6 %, and 13.3 %, respectively. This implies that these translators translate acronyms in a way that strikes a balance between literal translation and simplified language, keeping in mind that their audience is non-legal experts.

By employing it, Netflix favors the cultural substitution strategy the most (40 %). This indicates the human ability to consider the targeted audience's culture and preferences. Following Netflix, GPT also applies this strategy at 23.3 %, surpassing GEM at 16.6 % and GT at 16.6 %.

GEM prefers the "Translation + Borrowing" strategy, accounting for 40 %. Following GEM, GT used it only at 6.6 %. It should be noted that Netflix and GEM never used this strategy, considering their time and space limitations and preference for applying other strategies.

GT prioritizes using the "Borrowing Alone" strategy, accounting for 26.6 %. It should be noted that GT as MT might not understand legal

acronyms; therefore, it left the acronym as it is for the target audience. Following GT, Netflix used this strategy only at 6.6 %, and GPT at 3.3 %. GEM never used this strategy.

Netflix used the "Unpacking + Omission" strategy, which accounted for 13.3 % of the translation. This approach was chosen to address the need for simplified acronyms so the target audience could understand them better. However, omission is a delicate process that can reduce understanding if used excessively or incorrectly. GPT also employed this strategy in 10 % of cases, followed by GT at 6.6 %. GEM showed less preference for this strategy, applying it only at 3.3 %.

Considering the target audience and prioritizing their experience on the Netflix platform, Netflix translators opted for the "Explicitation" strategy to explain the implicit ST expressions at 10 %. GT and GPT employed this strategy at 6.6 %. However, GEM only used it in 3.3 % of its translations.

Notably, GEM was the only service that applied the "Cultural Substitution + Borrowing" strategy, accounting for 13.3 %. In contrast, Netflix, GPT, and GT did not use this method. As for "Explicitation + Borrowing," GEM only used this strategy at 3.3 %. Netflix, GPT, and GT show no preference for using it to render English legal acronyms into Arabic.

Through quantitative analysis of the acronyms, cases of mistranslation (23.33 %) were investigated mainly in GT translations at 10 %, followed by GEM at 6.6 % and Netflix and GT at 3.3 % per each.

Acknowledging the human element inherent in Netflix's translations and distinguishing it from AI and MT systems is imperative. AI websites like GPT and GEM coexist with MT systems like GT. Interestingly, the accuracy comparison shows that MT systems like GT mistranslated more words when rendering acronyms than AI, like GEM and GPT. Additionally, Netflix translators skillfully manage subtitling restrictions with a human touch, exhibiting a keen understanding of time and space constraints. Because it recognizes that it may impact the viewing experience, Netflix employs the cultural substitution strategy more than machine-driven approaches.

IV.2. Qualitative Analysis of Acronyms

As Table 2 shows, some acronyms were consistently translated using the same strategy, whereas others used two, three, or even four strategies. For instance, Netflix, GT, GPT, and GEM used a consistent approach when rendering acronyms such as DOJ, DNA, and LLC. The Department of Justice DOJ has consistently been rendered into Arabic as وزارة العدل, preserving the organization's official and acknowledged title in the TL.

Some acronyms were translated using two different strategies: DA, SEC, and FBI. The phrase هيئة الأوراق المالية والبورصات, which is recognized as the canonical Arabic equivalent of the acronym SEC, is produced by Netflix translators, GT, and GPT that consistently employ "Cultural Substitution" strategy. On the other hand, GEM included the "Cultural Substitution+ Borrowing" strategy in its translation. It translated the term using the cultural substitution and also enclosed the original English acronym in parenthesis, resulting in هيئة الأوراق المالية والبورصات SEC.

After analyzing Netflix translations, it is obvious that their translators successfully rendered the acronyms to their audience. Netflix translators mostly used the "cultural substitution" strategy to render the acronym, as Table 3 shows.

Table 3. Translating English Acronyms by Netflix

Strategy	Frequency	Examples	
		ST	TT
Translation Alone / Unpacking	8	DEA	دائرة مكافحة المخدرات
Cultural Substitution	12	CEO	المدير التنفيذي
		IRS	دائرة الضرائب
		DA	المدعي العام
		ASAP	على الفور
		SEC	هيئة الاوراق المالية والبورصات
Borrowing Alone	2	MIT	إم آي تي

Unpacking + Omission	4	BA, PhD	هاروتكدلاو ,سويرولكلب
Explicitation	3	DUI	لقيقداة تحت تأثير الشرب
Mistranslation	1	TSA	ةحايسلا نم ادارة

Cultural substitution is the strategy Netflix uses the most, forming 40 % of the instances. For example, CEO, DA, and IRS have been translated as المدير التنفيذي,المدعي العام, دائرة الضرائب. The term IRS has been culturally substituted as دائرة الضرائب since this term is used in many Arab countries to refer to خدمة الإيرادات.الداخلية This strategy makes the content more engaging and culturally relevant, which not only promotes better understanding but also improves the entire viewing experience.

The "Translation Alone / Unpacking" strategy is Netflix's second most used strategy. It aims to render the acronym by the established equivalent in the TL; hence, Netflix translators are conscious that their audiences are mostly Arab. This strategy is applied eight times. For example, DEA, ER, and ICE were rendered directly into Arabic asدائرة مكافحة المخدرات, وفيات الطوارئ, والكلية المهرجانات. The acronym DEA refers to إدارة مكافحة المخدرات and was rendered by Netflix as دائرة مكافحة المخدرات; hence, they succeeded in rendering the term into its direct equivalent.

Netflix used the "Unpacking + Omission" strategy in rendering 4 out of 30 acronyms. For instance, the acronyms BA and PhD were unpacked to the target audience while removing some parts of the acronym; therefore, it was translated as سويرولكلب, واهاروتكدل. This method ensures that viewers can easily understand the educational qualifications discussed without understanding specific English abbreviations. The selective omission aids in streamlining the information, making it more accessible and relevant to the intended audience, thus improving their overall viewing experience.

As for "Explicitation," Netflix employed it to render three instances presenting 10 % of the acronyms. For instance, the acronym DUI was rendered into Arabic by using explicitation in clarifying the type of influence as القيقداة تحت تأثير الشرب. This strategy provides a clear and detailed explanation of what DUI means, allowing the audience to understand the term's context and severity better. Netflix guarantees that viewers will not be confused about the intended meaning. To ensure that the intended message is accurately and

understandably conveyed, this strategy helps bridge linguistic and cultural gaps. With its diverse global audience in mind, Netflix strives to provide relatable and approachable content, reflected in explicit content.

As for the strategy of "Borrowing Alone," Netflix rendered only one acronym applying this approach; therefore, MIT was rendered as إم آي تي in Arabic. The rendition of this acronym as إم آي تي might not be understandable by the majority of the viewers, although a few might recognize the term. For the audience to gain a deeper comprehension, it becomes imperative that the institution's name be thoroughly unpacked during the allotted screen time. Thus, prioritizing "Borrowing Alone" over the viewer's experience may hinder the understanding and enjoyment of the AV product.

Due to the high standards of professionalism, Netflix demands from its translators, barely one mistranslation was detected when rendering the acronym TSA. While TSA refers to Transportation Security Administration, rendering it into Arabic as ادارة امن السياحة shifts the meaning from transportation into tourism.

Table 4 shows how Google Translate rendered the investigated acronyms.

Table 4. Translating English Acronyms by GT

Strategy	Frequency	Examples		
		No.	ST	TT
Translation Alone / Unpacking	8	1	ASAP	في أسرع وقت ممكن
		2	ER	غرفة الطوارئ
		3	LLC	شركة ذات مسؤولية محدودة
Borrowing Alone	8	4	ME	ME
		5	ICE	ICE
		6	ATF	ATF
Unpacking + Omission	2	7	LAPD	شرطة لوس أنجلوس
		8	BA, PhD	درجة البكالوريوس, والدكتوراه
Translation + Borrowing	2	9	FDA	إدارة الأغذية والعقاقير FDA
Explicitation	2	10	ID	بطاقة الهوية
Cultural Substitution	5	11	IRS	مصلحة الضرائب
Mistranslation	3	12	DUI	وثيقة الهوية الوحيدة

According to Table 4, GT succeeded in rendering eight acronyms into their established equivalent in Arabic, such as LLC ةيلوؤسم تاذ ةكرش مدودحم. The "Translation Alone / Unpacking" strategy demonstrates that GT can deliver some acronyms into their legal correspondence. GT used this strategy the most.

Another strategy GT used in rendering the acronyms was "Borrowing Alone." This strategy was opted for eight times in rendering the acronyms. GT's attempt to use obscure legal acronyms has not proven successful. Since most viewers will find it difficult to understand these acronyms, the communication breaks down rather than gets easier. This emphasizes how crucial it is to select vocabulary that is understandable and well-known to a wider audience in order to facilitate effective and clear communication. Borrowing the following acronyms, ME, ICE, and ATF, for the Arab audience, who are watching the series for entertainment reasons could definitely interrupt their viewing experience. On some occasions, the audience might feel uncomfortable, which might lead to impressions of the translator's adequacy.

GT adopted the "Cultural Substitution" strategy in rendering CEO and IRS. This approach renders the meaning of the acronym using another cultural equivalent in the TL. IRS can be directly translated as بئارضلا ةرئاد or بئارضلا ةحلصم in Arabic. This abbreviation is only associated with the United States, where it designates the regulatory authority responsible for tax collection and compliance with tax laws.

According to Table 4, GT employed the "Unpacking + Omission" strategy in rendering LAPD, BA, and PhD. These acronyms were unpacked in Arabic, and some parts of the acronyms were removed. This strategy simplifies the delivery, making translations easier to comprehend and more accessible to the audience by ensuring that important information is conveyed without unnecessary complexity. This strategy considers the space limitations by removing parts that might not affect the viewer's experience.

The "Translation + Borrowing" strategy, which combines borrowed acronyms with unpacked translations to make foreign terms more familiar to the target audience, does not consider screen space constraints. For example, the acronym FDA was translated as ةيذغألا ةرادإ ريقاقعلاو, which includes both the unpacked meaning and the original acronym. This approach effectively bridges the gap between the SL and

TL, ensuring the audience understands the acronym while becoming acquainted with the original term. However, dual presentation can be inconvenient, especially in situations with limited space, potentially resulting in cluttered and less readable text on the screen.

GT used the "Explicitation" strategy twice, aiming to improve clarity by elaborating on acronyms. For example, "ID" was translated as ةقاطب ةيوهلا identity card to ensure that the audience understands it refers to the physical card itself. This strategy provides explicit information that may not be immediately apparent from the acronym alone, improving comprehension and reducing ambiguity. Expanding acronyms into more descriptive terms aids in conveying the precise meaning, ensuring that the target audience understands the term's context and significance. While explicitation improves clarity, it can also result in longer translations, which may not be appropriate for contexts where brevity is required.

While rendering some legal acronyms, GT could not overcome the legal barrier and could not decode the legal significance. Hence, four acronyms were mistranslated, which might mislead the audience into false information and incorrect understanding of the scenes. For instance, mistranslating DUI as وثيقة الهوية الوحيدة instead of القيادة تحت تأثير الكحول would distort the entire meaning and the understanding of the scene by producing an unrelated translation.

GPT has quickly become a go-to resource for many translators, revolutionizing the translation industry in a short span. GPT, as an AI, opted mostly for "Translation Alone Using Common Terms Unpacking" when rendering the acronyms. Table 5 shows how ChatGPT rendered the investigated acronyms.

Table 5. Translating English Acronyms by GPT

Strategy	Frequency	Examples		
		No.	ST	TT
Translation Alone / Unpacking	15	1	ASAP	نكمم تقو عرس أي ف
		2	GPS	عقاولما ديدحت ماظن
		3	FDA	ءاودلاو ءاذغلا قرادإ

Cultural Substitution	7	4	IPO	اكتتابات
		5	ME	طبيب الطب الشرعي
Unpacking + Omission	1	6	COO	المدير الرئيسي
Explicitation	3	7	DNA	الحمض النووي
		8	DUI	القيادة تحت تأثير الكحول
Transliteration	1	10	HIPAA	هيبا
Mistranslation	1	11	TSA	إدارة الأمن النقابي

In rendering 15 acronyms to their established equivalents in Arabic, GPT successfully maintained the legal and formal features of the acronyms to the target audience. For instance, the acronyms ASAP, GPS, and FDA were translated to their standard equivalent in Arabic as في أسرع وقت ممكن, نظام تحديد المواقع, إدارة الغذاء والدواء which maintain the touch of the legal aspect of the context. This approach reflects the institution's specificity and stature by making the term instantly recognizable and understandable in its translated form.

GPT used the "Cultural Substitution" strategy in rendering seven acronyms, mainly IPO and ME, as.اكتتابات, طبيب الطب الشرعBy using terms that the audience is more familiar with within their own linguistic and cultural context; this method improves comprehension and relevance. The exact meaning or connotations of the original term may be slightly modified, yet cultural substitution increases accessibility and understanding.

To improve accessibility and comprehension, GPT translated three acronyms, including "DUI," using the "Explicitation" strategy. For example, "DUI" has been transformed into القيادة تحت تأثير الكحول driving under the influence of alcohol. This strategy entails outlining details implicit in the original acronym to guarantee that the target audience fully understands the intended meaning. By including الكحول alcohol in the translation, GPT indicates that the influence is specific to alcohol, eliminating any ambiguity. This additional information helps convey the offense's exact nature, making the translation more precise and informative for Arabic speakers. While explicitation may result in longer translations, it significantly improves comprehension by providing context that is not immediately apparent from the acronym.

GPT used the "Unpacking + Omission" strategy only once to render the acronym COO into Arabic. This strategy delivers the intended meaning to the audience while removing parts of the acronym as.المدير يسيئرلا GPT guarantees that the audience grasps the role's primary function without using the word "operating," which may be unneeded when conveying the main idea in Arabic. This strategy focuses on the most significant component of the acronym, making the translation easier to comprehend to the target audience. It improves understanding by streamlining the term while minimizing the potential confusion resulting from a direct, literal translation of the entire acronym. This method is especially effective at ensuring that the translated term is concise, easy to understand, and fits seamlessly into the Arabic-speaking audience's linguistic and cultural contexts.

GPT used the "Transliteration" strategy for transforming the acronym "HIPAA" into Arabic as ابيه. It maintains the sounds of the ST expression in the TT while using the TL writing system. While this strategy saves space and keeps the text concise, it may sacrifice some level of audience comprehension. The "Transliteration" strategy may prevent complete comprehension unless the audience is familiar with the original acronym.

A mistranslation occurred when GPT translated "TSA" into Arabic as يباقنلا نمألا ةرادإ Labor Union Security Administration. "Transportation Security Administration," a US government organization in charge of transportation system security, is what the initial acronym "TSA" stood for. Nevertheless, GPT's translation does not adequately convey this meaning. As an alternative, "TSA" is translated as يباقنلا نمألا ةرادإ," which means "Labor Union Security Administration." This example demonstrates the significance of context and accuracy in translation. When it comes to technical or specialized phrases, mistranslations like these might lead to audience confusion or misunderstanding. For translation models like GPT to ensure reliable translations, the context and meaning of the text they are translating must be taken into account; otherwise, they risk misinterpreting words or acronyms out of context. Table 6 shows how Gemini rendered the investigated acronyms.

Table 6. Translating English Acronyms by GEM

Strategy	Frequency	Examples		
		No.	ST	TT
Translation Alone / Unpacking	4	1	ATF	فرقة مكافحة الجريمة والتحقيق والأسلحة النارية والمتفجرات
		2	ER	غرفة الطوارئ
Cultural Substitution	5	3	ADA	المدعي العام المساعد
		4	ME	الطبيب الشرعي
Translation + borrowing	12	5	MIT	معهد ماساتشوستس للتكنولوجيا MIT”
		6	ICE	وكالة الهجرة والجمارك ICE.
Explicitation + Borrowing	1	7	DUI	القيادة تحت تأثير الكحول DUI
Unpacking + Omission	1	8	BA, PhD	بكالوريوس والدكتوراة
Explicitation	1	9	DNA	الحمض النووي
Cultural Substitution + Borrowing	4	10	IRS	دائرة الضرائب IRS
Mistranslation	2	11	TSA	إدارة من السياحة

GEM used a strategy known as “Translation Alone / Unpacking” to translate four acronyms into Arabic, including “ATF” and “ER.” The acronyms were directly translated into Arabic and broken down into more descriptive terms to improve comprehension. For instance, “ATF,” was translated as فرقة مكافحة الجريمة والتحقيق والأسلحة النارية والمتفجرات. Similarly, “ER” was translated as غرفة الطوارئ. This strategy seeks to convey the full meaning of the acronym by breaking it down into terms widely understood in the TL. Using familiar terms, GEM ensures the translation is understandable to the Arabic-speaking audience, improving clarity and comprehension. However, while this approach improves comprehension, it may result in longer translations, which may be an issue when space is limited. Nonetheless, by prioritizing accuracy and clarity, GEM effectively bridges the linguistic gap between the SL and TL, providing culturally and linguistically appropriate translations for the Arabic-speaking audience.

GEM's translations demonstrate the strategy of "Cultural Substitution" in five instances, such as the translation of the acronym "ADA" into Arabic as مساعدة المدعي العام." This strategy entails replacing the original term with a culturally equivalent term in the TL, ensuring that the translation is linguistically correct, culturally relevant, and understandable to the intended audience. Using cultural substitution, GEM effectively adapts the translation to the target audience's cultural and linguistic norms, improving comprehension and ensuring the translated text remains culturally relevant. This strategy enables GEM to deliver translations that are not only accurate but also culturally sensitive, resulting in improved communication and engagement with the Arabic-speaking audience.

GEM primarily used the "Translation + Borrowing" strategy to translate 12 acronyms, including "ICE" and "ATF," putting both the translated term and the original acronym in parentheses to avoid potential mistranslations and help the target audience become familiar with foreign expressions. While this approach ensures accuracy and cultural sensitivity, it may result in longer text on the screen, potentially causing clutter once the meaning has been adequately conveyed through translation. Despite this limitation, the strategy effectively balances accuracy, clarity, and cultural sensitivity, thereby increasing the effectiveness of the translated content. GEM used the explicitation + borrowing strategy in translating the acronym DUI into Arabic as "DUI القيادة تحت تأثير الكحول." This strategy explicitly specifies the type of influence involved (alcohol), giving the audience more context and clarity. Second, by putting the original acronym in parentheses, GEM ensures that the audience recognizes and becomes familiar with it, avoiding any potential confusion or mistranslation. This strategy enhances the understanding while exposing the audience to foreign terms and acronyms, resulting in clearer and more accurate communication.

Additionally, GEM used the "Cultural Substitution + Borrowing" strategy to translate four acronyms, including IRS مصلحة الضرائب." This approach involves substituting the original term with a culturally equivalent term in the TL, such as مصلحة الضرائب," while also including the original acronym in parentheses. By doing so, GEM ensures that the translation is culturally relevant and understandable to the audience

while also introducing them to the foreign acronym for ease of recognition. This strategy improves comprehension and audience engagement by matching the translation to the cultural context of the target audience while retaining the original term for reference and recognition.

The "Unpacking + Omission" strategy was used to translate the acronyms "BA" and "PhD" into Arabic as سوي رول اكب and اةارو تك دلا. This method entails unpacking the acronyms into their full or more descriptive forms while removing any parts that may be redundant or less important for understanding in the TL. In this case, the full forms of "BA" and "PhD" were used to convey the educational qualifications they represent, but the specific fields or disciplines associated with these degrees were left out. By simplifying the translations in this way, GEM ensures clarity and accessibility for the audience, allowing them to understand the essential meaning conveyed by the acronyms without unnecessary complexity or detail.

GEM used "Explicitation" to translate the acronym "DNA" into Arabic as الحمض النووي." This method entails expanding the acronym into its full and descriptive form to ensure the audience's clarity and understanding. This strategy is especially useful for technical or specialized terms such as DNA, where providing the full term improves comprehension, particularly for those unfamiliar with the abbreviation.

The acronym TSA was mistranslated as ةحايسلا نمأ ةرادإ instead of لقنلا نمألا ةرادإ." This discrepancy suggests a translation error in which the intended meaning of the acronym was misconstrued or misinterpreted. The term TSA typically refers to the Transportation Security Administration in English, which corresponds to لقنلا نمألا ةرادإ in Arabic, related to transportation security. However, the mistranslation ةحايسلا نمأ ةرادإ refers to tourism security, which deviates from the intended meaning. This discrepancy emphasizes the importance of careful consideration and context-awareness during the translation process to ensure accuracy and fidelity to the original text.

The thorough investigation exposes the subtle differences in translation approaches and their corresponding frequency in the Arabic translation of English legal acronyms. Moreover, it clarifies an important observation: Three of the acronyms are mistranslated by GT. Remarkably, GPT utilizes the "Translation Alone Unpacking" more

frequently than any other service 50 %, with Netflix and GT closely behind. Crucially, the analysis highlights the various approaches that were used: some acronyms can be translated using just one strategy, while others need to be translated using up to four different strategies. This sheds light on the complexities and subtleties of the translation process, highlighting the necessity of thorough thought and assessment to produce accurate and efficient translations.

V. Conclusion

This study investigated the strategies used in translating English legal acronyms from four English series into Arabic by four services, mainly Netflix, GT, GPT 4, and GEM. The researchers provided a quantitative and qualitative analysis of the strategies and detected any mistranslations along with their percentages.

The results indicate that Netflix takes into account the target audience and considers their viewing experience by prioritizing the "Cultural Substitution" strategy. Employing cultural substitution brings the AV content closer, makes it more relatable, and avoids any mistranslations that might break down the comprehension. GPT primarily utilized "Translation Alone/Unpacking" the most. This demonstrates their preference for directly translating the legal acronyms without omissions or additions. As for GT, the analysis revealed that it opted for the borrowing alone strategy most frequently. Borrowing the legal acronyms as they are to the target audience without unpacking the meaning or explanation would hinder the target audience's understanding when dealing with acronyms, particularly the specialized acronyms as legal. Utilizing the borrowing alone strategy might indicate Google's deficiency in recognizing the legal. Consequently, it rendered the acronyms as they are to the target audience. Hence, this borrowing alone strategy is due to its deficiency in understanding and decoding the acronym. The results showed that GT has a higher incidence of mistranslations than the other services investigated. GEM's translation is characterized by its efforts to explain the acronyms and prioritize explicitation over time and space limitations. This finding is supported by the strategies that GEM employed. GEM utilized the translation + borrowing strategy to render a good number of cases. This strategy

guarantees the target audience's understanding but does not abide by the spotting limitations.

Translating legal language between two different legal systems and cultures is complicated; however, it becomes more complicated when rendering legal acronyms. Therefore, improving the precision and efficacy of translating legal acronyms from English into Arabic is required by adopting different translation approaches incorporating both "Translation Alone" and "Cultural Substitution." By applying these strategies, acronyms will be easily understood by the intended audience and more culturally related. Furthermore, to enhance the quality of the translations, it is advisable to involve legal experts in the process to offer crucial insights that would upgrade the subtleties.

Adopting a comprehensive translation approach for legal acronyms carries valuable consequences for communicating and understanding legal acronyms in Arabic-speaking countries. These strategies can lessen misunderstandings and improve the clarity of legal proceedings by improving the accessibility and understandability of legal documents. Additionally, it emphasizes how crucial cultural sensitivity is to legal translations, promoting improved intercultural communication and collaboration. Arabic-speaking populations may benefit from improved legal practices and a rise in confidence in the legal system as a result.

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Article

DOI: 10.17803/2713-0533.2024.4.30.843-859

The Art of Persuasion in the Courtroom: A Reflection on Courtroom Rhetoric, Possible Risks and Technological Advancements

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Abstract: This paper explores the intricate relationship between classical rhetoric, legal rhetoric and the inherent risks faced by advocates during courtroom speeches. It delves into the fundamental principles of persuasive communication within legal contexts and legal discourse, examining how choice of language, structure, tone and voice level can significantly influence trial outcomes and perceptions pf decision-makers and the audiences. The analysis highlights various rhetorical strategies employed by advocates while also addressing potential pitfalls, including the risk of misinterpretation, emotional overload, and the lack of trust on behalf of a judge. Through case studies and expert insights, the paper provides a comprehensive understanding of how effective rhetoric can navigate the complexities of legal discourse while mitigating associated risks. Ultimately, it aims to equip advocates with the necessary tools to enhance their representation practices within the courtroom setting.

Keywords: legal rhetoric; advocate; courtroom pragmatics; speech; persuasion; risks for advocates

Cite as: Marcheva, P.E. and Golovina, N.M., (2024). The Art of Persuasion in the Courtroom: A Reflection on Courtroom Rhetoric, Possible Risks and Technological Advancements. *Kutafin Law Review*, 11(4), pp. 843–859, doi: 10.17803/2713-0533.2024.4.30.843-859

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I. Introduction

It is a long-standing perception that a courtroom is an arena of drama, where lives of participants are often at stake. And it is a courtroom where the power of language wields significant influence. Thus, courtroom rhetoric stands as a formidable tool, shaping the narratives of justice and affecting the outcomes of trials.

At its core, courtroom rhetoric is the art of persuasion — a delicate balancing act that requires an understanding of both the rational and emotional facets of human decision-making. Courtroom counsels employ techniques that appeal to *ethos*, *pathos*, and *logos*, creating arguments designed to resonate with decision-makers (judges and jurors) on multiple levels. *Ethos* establishes credibility in a sense that a lawyer's qualifications, experience, and moral character can significantly affect the decision-makers. *Pathos* evokes emotions creating deep connections via emotional pleas that leave lasting impressions. *Logos* appeals to logic when presenting clear evidence and sound reasoning reinforces arguments, compelling decision-makers in the courtroom to consider the facts dispassionately.

II. Methodology

During the last decade, we have witnessed revival of interest in legal rhetoric among legal professionals in Russia. The availability of monographs, treaties, and textbooks on both classical rhetoric and legal rhetoric does not reduce the demand for reflections on the peculiarities of delivering speeches in courtroom from the practitioners. Practice-oriented training declared as a priority by higher schools and law faculties have made a considerable contribution to the students' search for courtroom counsels sharing their experience and real-life recommendations based on their courtroom practice (Voronov, 2013, p. 135).

In this paper we have attempted to analyze the speeches prepared and delivered in courts and define the most important factors that should be taken into account while training law students and preparing legal practitioners for delivering speeches in court. Due to confidentiality reasons, we cannot reveal either names or the most obvious facts of the cases considered. However, we believe that this study can be of particular interest because we provide some considerations and recommendations given by one of the clients who is also a qualified lawyer with a long experience of representing clients in courts of different instances, whose participation in preparing materials of the case provided the authors with valuable remarks and considerations.

For the purposes of this study, we use the term *advocate* in the sense prescribed by the effective legislation. Under Art. 2 of Federal Law No. 63-FZ dated 31 May 2002 (as amended 22 April 2024) "On the Practice of Law and the Bar in the Russian Federation," an advocate is a person who has qualified in the manner prescribed by Art. 9 hereof as a lawyer and who is entitled to engage in the practice of law. An advocate is an independent legal counsel. In the context of providing legal assistance, an advocate shall *inter alia* represent a client in constitutional proceedings; take part as a client's representative in civil and administrative court proceedings; take part as a client's representative or defender in criminal and administrative offence proceedings; take part as a client's representative in proceedings before an arbitration, international commercial arbitration tribunal (court)

and other conflict resolution authorities; represent a client before public authorities, courts and law enforcement agencies in foreign jurisdictions, international judicial authorities and non-governmental entities in foreign jurisdictions, unless otherwise provided for by the legislation of foreign jurisdictions, constituent instruments of international judicial authorities and other international organizations or treaties of the Russian Federation.

To be admitted to practice law as an advocate, a person must obtain a law degree or a postgraduate law degree in higher schools or educational institutions properly accredited to provide legal education and train lawyers. He must also have at least two years of practice of law or have completed his apprenticeship in a legal practice.

Under Para. 9 Art. 53 of the Code of Criminal Procedure of the Russian Federation, an advocate (a defense lawyer) has the right to participate in a criminal case in the courts of the first, second, cassation and supervisory instances, as well as in the consideration of issues related to the execution of a sentence. To participate means to act while defending the client. A defense speech of a defense layer is one of such forms of his defense aimed at protecting the constitutional rights of his client. A speech pronounced in court should show the results of the lawyer's mental activity regarding the accusation, the position of the public prosecutor, it should reflect the evidence examined in court, their analysis from the point of view of the unified position of an advocate and his client.

The scope of the study does not provide us with the opportunity to investigate the issue of the advocate's personality, since this issue requires a detailed and independent consideration. However, we insist that the advocate's personality, his professionalism and pursuit of client's interests can be a subject matter of an independent study.

III. The Development of the Concept of Legal Rhetoric

For almost 2,500 year, classic rhetoric has successfully adopted to the interests of legal discourse. The classical model is still successfully applied in legal theory and in courtroom practice. Rhetoric as an educational tool provides legal professionals with instructions how

to focus on invention, disposition (arrangement), elocution (style), and pronunciation. Although judicial oratory represents — along with deliberative oratory and epideictic oratory — one of the main types of oratory, at the modern stage we can speak about some new features characterizing legal rhetoric in general and judicial oratory in particular.

Rhetoric has been taught for ages, and rhetoricians have developed different models, explaining interaction between an orator, audience and information and how they influence each other. Aristotle's model of communication comprising of *ethos* (orator), *logos* (message) and *pathos* (audience) is one of the most popular. Among Russian scholars, we can name E.A. Nozhin who claimed that, "public speaking is a type of direct communication when there are no spatial and temporal barriers between the communicator and the audience (Nozhin, 1978). Analyzing different genres of public speaking, he argues that judicial eloquence is the most difficult type of oratory because both a defense lawyer and a prosecutor have to not only operate with paragraphs of the laws and codes, but also turn to the moral and ethical principles and norms of society, seeking a fair court decision.

Academician Alexandrov claims that an orator creates information by means of three channels. The audience using three analyzers perceives information. Communication channels and analyzers together represent the direct connection between orator and audience. At the same time, there is also feedback, which allows creating a closed loop of the system. Only high-quality preparedness of the orator, information and audience will make it possible to effectively use communication channels and analyzers (Alexandrov, 2003).

In his assay on legal rhetoric, Michael Frost, providing a comprehensive overview of works devoted to different aspects of legal rhetoric, highlights that "Most of these commentators are interested in how classical rhetorical principles help discover or explain the internal logic and persuasive value of legal discourse" (Frost, 1999, pp. 635).

Although a lot of attention has been paid to classic rhetoric during the last few decades, very few "modern rhetoricians or scholars devote much attention to how classical rhetoric applies to modern judicial or legal discourse" (Frost, 1999, pp. 635). A widely respected legally trained Belgian philosopher Chaim Perelman was one of those few

who analyzed judicial uses of legal precedent in order to "illuminate connections between classical and modern methods of legal argument."

Chaim Perelman emphasized the importance of rhetoric in the courtroom as a means of persuasion, arguing that legal reasoning is not merely a rational process but it also involves emotional and ethical appeals to an audience. He believed that the effectiveness of courtroom rhetoric lies in its ability to resonate with the values and beliefs of the audience, thus shaping their perceptions of justice and truth. Perelman contended that the art of persuasion is central to legal practice, highlighting that successful advocates must engage both logic and rhetorical techniques to effectively argue their cases (Perelman and Olbrecht-Tyteca, 1991). Thus, Perelman's works demonstrated a notable departure from the general neglect of the topic of legal discourse (Frost, 1999, pp. 635).

Olga Malyukova in her recent work emphasizes that "the laws of rhetoric that apply in all spheres of its use, including jurisprudence, include the law of the correlation between a word and a deed, the law of adequate description, the law of complete and finalized narration and the law of argumentative speech in natural language." All the listed laws may be infringed and are infringed by the orator. A complete description and a complete narrative is not always possible, argumentative speech is often replaced by sophisms and paralogisms (Malyukova, 2023, p. 121).

IV. The Logical Structure of a Court Speech as a Foundation for Courtroom Speech Analysis

The main objective of the courtroom counsel is to persuade the decision-maker to decide in the most favorable manner for the client. One of the key element in persuasion is the logical structure of a court speech, whether for defense or prosecution. The logical structure allows the counsel to convey arguments and persuade the decision-maker (Ivakina, 2006). The structure may vary depending on the legal system, type of case, and audience. However, following a logical progression can enhance argument clarity and persuasiveness. The most common framework of the logical structure of the speech usually employs:

1. Introduction.

— Greeting to acknowledge the court.

— Purpose statement to state clearly the objective pursued by the counsel.

— Overview to outline in brief the main points that will be addressed.

2. Statement of the Case.

— Statement of the facts presenting the key facts of the case. The facts need to be relevant to the case and clear.

— Providing necessary background information to contextualize the case.

3. Thesis (or Issue) Statement

— Clearly articulating the main argument or position a counsel is advocating (e.g., the evidence overwhelmingly supports the defense).

4. Presentation of Evidence.

— Chronological/logical order. Evidence presentation can be logically or chronologically structured.

— Summarizing key points from witness testimonies

— Discussing any physical evidence, visual aids, or documents that support the argument.

— Providing relevant expert testimonies that support the case.

5. Counterarguments.

— Acknowledging the opposing views and presenting the strongest points made by the opposing side.

— Methodically refuting the opposing views with logical reasoning and evidence.

6. Emotional appeal provides for strategical incorporation of emotional elements that resonate with the decision maker (if appropriate), reinforcing the logical argument.

7. Conclusion.

— Summarizing key points, recapping the main arguments and evidence.

— Restatement of thesis (or legal issue). Reiterating the main position or call to action.

— Final Appeal provides for a compelling statement encouraging the decision maker to reach the desired decision.

V. Pragmatic Issues in Courtroom Speech Analysis

Pragmatic issues in courtroom speech refer to practical aspects that influence how language is used, understood, and interpreted in the context of courtroom settings. Key pragmatic issues include:

Understanding the contextual meaning. The meaning of the statements can change based on the courtroom setting, the participants involved, and the specific legal context. Lawyers must be aware of how their language will be perceived by decision makers, effected communities and opposing counsels.

Understanding the performative nature of courtroom language. In legal settings, speech acts (e.g., requests, assertions, promises, etc.) have specific implications and outcomes. For example, making an objection can lead to immediate consequences.

Understanding the specificity of the courtroom audience. Legal professionals have to tailor their speech to different audiences, including judges who require formality and jurors and members of the public who may need simplification for better understanding or emotional pleas to meet their expectations. For the sake of effective communication, an advocate is required to vary the formality and complexity of language.

The use of legal jargon and technical language (legal terminology). Legal terminology can create barriers to understanding for non-professionals. Courtroom counsels have to balance the use of legal terminology with the need for clarity to ensure that every participant of the trial on whom the outcome of the case depends, understands the arguments presented.

The use of nonverbal communication. Body language, tone of voice, and facial expressions play a significant role in courtroom speech, affecting how the message is received. Effective use of nonverbal cues can enhance persuasion or indicate confidence.

Turn-taking and interruptions. The courtroom has structured rules about who speaks when. Understanding these dynamics is essential for effective communication, as interruptions can lead to misunderstandings or even legal repercussions.

One more pragmatic issue that we would like to focus on is *the use of (cross)-examination techniques*, since in (cross)-examination lawyers

employ specific rhetorical strategies designed to challenge witnesses' credibility or memory. The pragmatics of questioning — including how questions are posed and the timing of objections — can significantly impact the trial outcome.

Moreover, courtrooms are often diverse settings. Courtroom counsels must be cognizant of cultural differences that may affect communication styles, perspectives on authority, and the interpretation of gestures or expressions. Cultural sensitivity becomes one of the key requirements for successful courtroom counsels (Abramova et al., 2023).

Influencing decision-makers' perception by means of emotional appeals. Attorneys may strategically use *pathos* in speech to evoke empathy or reinforce their arguments. The counsel's emotional appeal and understanding of the emotional landscape is becoming more and more critical for the trial outcomes.

Good awareness of legal protocols regarding such issues as when and how to object involves understanding of legal standards and procedural rules. Pragmatic competence in this domain can determine the effectiveness of an argument, the admissibility of evidence, credibility of the witness, etc.

However, when we dwell on the issues regarding the use of language in the courtroom, clarity and precision are the most vital in legal contexts. Ambiguous statements can lead to misinterpretations that inevitably affect the outcome of a case. Advocates must strive for clarity while still being persuasive.

Moreover, courtroom interactions are dynamic. Lawyers may need to adapt their arguments in real-time based on feedback or reactions from the judge.

There is one more issue that is pragmatic in nature, bit is can have decisive impact on the outcome of the case. Nowadays courtrooms can be equipped with many devices including video cameras, computers, microphones, etc. Of course, they are intended to improve the quality of proceedings. However, if any of the devices, for example, a microphone is out of order or if it goes out of order during the session, the smoothness of the proceedings and the persuasiveness of the advocates can suffer.

By being aware of the pragmatic issues, legal professionals can enhance their effectiveness in conveying arguments, persuading

decision-makers and affected communities, and adhering to legal and procedural protocols during courtroom proceedings.

Thus, pragmatically, the key element of successful courtroom speech is preparation, preparation for possible technical drawbacks and potential questions from a decision-makers, for dealing with diverse and sensitive audience, for the need to define legal terms that may confuse the audience, etc. An advocate must demonstrate confidence and composure through maintaining eye contact and a firm tone to convey credibility, which can be achieved by rehearsing the speech multiple times to refine delivery and enhance natural flow.

VI. External Factors Influencing the Courtroom Speech

Indeed, while preparing for court proceedings, an advocate pays attention to a number of external factor that are sometimes not directly associated with the case, for example, the personality of the judge. Thus, before going to court an advocate can visit different websites, ask colleagues for information and advice, search for information about how the judge appointed to deal with the case conducts (handles) the proceedings, what he pays attention to, whether he listens to the parties or prefers to resolve the issues independently. Sometimes the judge prompts the counsels of the parties with what he might need to be submitted.

External factors of primary importance include the case itself. What is the category of the case? Which court will deal with the case? If we speak about higher courts, the timing assigned for sessions can be very limited, especially if we are talking about criminal cases. Thus, in the Moscow city court, 10 minutes are assigned for one session, and several advocates of one client or several clients with several advocates can participate. If, for example, several counsels participate in the proceedings, they can prepare the speech all together, but then they share the parts of the speech in order to provide the court (a decision-maker) with as much information as possible.

Regarding civil cases, if we are speaking about a civil case in the court of first instance it can happen so that the legal issue can be resolved during only one session. A speech for such a session can be prepared

as a single unit, with the preparation carried out uniformly. Regarding another categories of cases, e.g., challenging the fines, the focus is put on whether the procedure of holding a perpetrator liable was complied with. If it is highlighted that the procedure was not complied with, the only one sentence can be enough to win the case. On the contrary, if the speech is too long, and an advocate makes too many favorable statements regarding his client, the court can be reluctant to decide in favor of the client.

VII. Oral Speech v. Written Submissions: A Formality or a Necessity

Now we come to one of the most important issues regarding preparation for the court sessions. The speech to be pronounced in the courtroom should be written down. A written form gives a counsel a number of advantages. First, timing, stress and procedural rules can prevent the counsel from delivering the whole speech prepared. Thus, some important issues can be missed, which can be detrimental to the client's case. Second, a written speech can be submitted and attached to the case files providing the judge with the opportunity to consult the submissions, clarify counsels' cases, and focus on participants' priorities.

The speech prepared by the advocate for the court session is not the only speech prepared by the advocate, especially in criminal cases. A responsible advocate must get prepared for every court session and write down his statements in order to place them in a case file. It is better to write down everything relevant to the client's case, so that after speaking, in addition to excerpts, attach the full text of the speech to the case materials.

Moreover, a written form helps an advocate structure the case, use concise and clear language, and not get confused if the judge asked questions. Well-structured statements help advocates chose the most appropriate sequence in accordance with the statements' relevance and importance, some statements can be mitigated and the others can be pronounced with more stress. Moreover, it is not only the judge who listens to the speech, but other people as well, e.g., journalist.

A prepared written text of the speech supports an advocate in reaching his purpose and defending his client. Everyone understands that in the courtroom only the minimum amount of statements will be made, and all the participants try to consolidate everything said in courtroom in a written form. Thus, preparation is also needed to put everything what the judge needs to know in writing. We prepare not to make a speech but to put everything relevant to the case in writing and arrange the materials of the case in a certain order, which can help to save time and efforts of the counsels and the judge.

Of course, it is quite possible, that the advocate can be not prepared, and when the judge asks an advocate regarding his attitude towards a certain issue, such an advocate if he does not have a written statement can be interrupted and stopped by the judge, which looks unacceptable.

Along with the statements prepared in writing, we also suggest that a counsel should use the microphone, if available. First, the microphone will help to speak louder. Second, using the microphone we will receive a recording of good quality that can be requested and used by the counsels in their work.

VIII. Risks Arising due to Ineffective Speech Skills of an Advocate

What are the reasons for the ineffectiveness of the lawyer's performance? What kind of performances are the judges waiting for? In order to answer these questions, a survey of judges of courts of general jurisdiction was conducted (Bespalova, 2011). According to the results of the survey, 75 % of judges report that they become interested in speeches in advance if an advocate demonstrates professionalism and obvious skill in the process. During the court session, the judge's attention can be attracted due to several reasons, e.g., if he is interested and if he trusts the speaker or if the information provided by the speaker is important for the judge and for making a decision, if the information is new and can influence the process of making a decision.

The reasons that prevent judges from listening to the advocate's speech include the following (in descending order):

1. a judge knows 100 % of what an advocate is going to speak about;

2. an advocate speaks “about nothing;”

3. speech is not substantiated properly by regulatory acts and legislation;

4. speech is meaningless;

5. an advocate works for the public.

6. the position of the defense is presented perversely, the evidence of the prosecution is not evaluated or refuted.

A judge will also be reluctant to listen to the speech that is protracted, if an advocate repeats clichés and speech patterns, or if an advocate is too emotional.

Dwelling on the issue of trust to an advocate making a speech in court, Bespalova classifies actually opposite qualities of an advocate as factors that impede or destroy trust:

1. Dishonesty. A dishonest person will not inspire trust and confidence.

2. Inconsistency. If a person is inconsistent and illogical, he will not know how to keep his word.

3. Unreliability and bias in relationships with others.

4. Disloyalty, unfriendliness.

5. Reserved demeanor, inability to present and share goals, tasks, decisions and information with others.

Possessing one of these qualities and demonstrating it, an advocate will unsuccessfully enter into professional communication, which will undoubtedly prevent him from solving his professional task assigned to him. However, trust, like perception, in business relations has successive phases of its development. And in fact, developing and gaining trust among legal practitioners can also constitute one of the necessary strategies in the career of a successful advocate.

IX. Courtroom Technologies Used to Increase Persuasiveness: Do They Enhance or Deteriorate Classical Courtroom Rhetoric?

Modern technology can enhance the application of classical rhetoric in legal arguments by enabling more dynamic forms of engagement and persuasion. For example, digital platforms facilitate the sharing

of multimedia elements, such as videos or infographics, which can illustrate complex legal concepts more vividly than traditional text (Hunter, 2024). Social media can amplify persuasive messages, allowing for wider dissemination and feedback loops that refine arguments based on audience reactions. Furthermore, data analytics tools can help legal practitioners tailor their rhetoric to specific audiences by analyzing demographic and psychographic profiles, increasing the rhetorical effectiveness of their arguments.[1]

However, technology can also complicate the application of classical rhetoric by introducing new challenges. The vast amount of information available online can lead to information overload, making it difficult for legal arguments to stand out and effectively resonate with the audience. The rise of misinformation can undermine the credibility of arguments and, consequently, the *ethos* of the speaker. Additionally, the impersonal nature of online interactions may diminish emotional connections that are vital in rhetoric, hampering the appeal to the audience's values and beliefs.

Technology has significantly enhanced legal rhetoric in various ways in recent cases. One prominent example is the use of artificial intelligence (AI) in legal research, where platforms use natural language processing to analyze vast amounts of legal data, allowing attorneys to design more precise and persuasive arguments based on relevant legislation, jurisprudence and case law. Although very few now, the cases involving arguments provided by algorithms and how they can be dealt with by advocates in courtroom can be of interest for the professionals due to the fact that traditional causes of action as well as traditional narratives of justice can be inapplicable in current situation (Alexander et al., 2024).

The integration of virtual reality (VR) and augmented reality (AR) in trials has already become a reality in a number of jurisdictions. A VR simulation (immersive technology) used to recreate the crime scene, allowing jurors to experience the environment directly, can provide a powerful rhetorical tool, enhancing the emotional and contextual appeal

[1] UNESCO official website. Exploring the Impact of Virtual and Augmented Reality in Courts. Available at: https://www.unesco.org/en/articles/exploring-impact-virtual-and-augmented-reality-courts [Accessed 08.12.2024].

of the arguments of the party resorting to it (Leonetti and Bailenson, 2010, p. 1074)).

Moreover, social media analytics have become increasingly important in shaping legal narratives. In high-profile cases.[2] Thus, in a notorious case *the US v. Elizabeth A. Holmes* attorneys monitored public sentiment through social media platforms. This data helped them tailor their messaging to counteract negative perceptions and effectively engage with the jury's preconceived notions.

X. Conclusion

Nowadays any person interested in rhetoric, oratory and eloquence has access to numerous speeches pronounced by outstanding political figures, public officials, judges and justices, and advocates. Many of these speeches can be studied in terms of their structure, methods used by the speaker to increase emotional stress, features of introduction, conclusion, etc. The focus from the point of view of their analysis can be put both on the construction of the speech and its delivery, on which speech efficiency depends. To assess the effectiveness of the speech the following key evaluation criteria should be taken into account: 1. Whether the position in the case is clearly stated and the answer to the "question of law is given;" 2. Whether articles of regulatory acts and laws are correctly selected and articles are quoted only in the part related to the case; 3. Whether specific facts and examples from the case file are given; 4. Whether it is convincingly explained how the facts and examples given are related to the cited rule of law; 5. Whether a logical conclusion was made and whether this conclusion shows how the cited facts and rules of law support their position in the case or refute the opposite position, whether it contains proposals for a court decision.

The list of criteria is not exhaustive and can be extended. Since "inexperienced lawyers and law students do not have that background to draw on and could certainly benefit from a greater familiarity with the comprehensive, coherent, and experience-tested classical system,

[2] See United States v. Elizabeth A. Holmes, et al., (No. 18-CR-00258-EJD). Available at: https://caselaw.findlaw.com/court/us-dis-crt-n-d-cal-san-jos-div/2200995.html [Accessed 08.12.2024].

which offers detailed advice for handling a legal case from the initial issue and fact determinations to the final courtroom techniques and strategies. [...] rhetoric has always been an educational tool geared to meet the practical demands of the legal profession (Frost, 1999).

However, the practice of law has proven the necessity to provide institutional formalization by writing down and arranging speeches and case files in a certain order in accordance with the rules developed and approved by generations of courtroom practitioners, using technical devices and following the technical advancements for the purpose of acting in the best interests of the clients.

Understanding key concepts of classic rhetoric, legal discourse and courtroom pragmatics, an advocate will succeed in pursuing his objective — to convince the court in correctness of his standing in the best interests of the client.

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