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Research Article

PROTECTION OF ENTREPRENEURIAL FREEDOM AS A RULE-OF-LAW CRITERION: ADMINISTRATIVE DISCRETION AND JUDICIAL REVIEW IN KAZAKHSTAN

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ABSTRACT

Background: *Freedom of entrepreneurship serves as a practical rule-of-law criterion because regulatory intervention directly affects private actors' autonomy, property interests, and legal certainty. In Kazakhstan, this freedom is constitutionally protected, but its practical effect depends on how administrative bodies justify restrictive measures and how courts review their legality, evidentiary basis, and proportionality. The article examines the relationship between administrative reasoning, discretionary decision-making, and judicial protection in disputes affecting entrepreneurial activity. It focuses on the extent to which courts can transform formal guarantees into effective protection against unjustified restrictions.*

Method: *The study combines limited doctrinal analysis with an illustrative examination of one published administrative ruling. The Constitution establishes the legal status of entrepreneurial freedom. At the same time, selected provisions of the Administrative Procedural and Process-Related Code and the*

Entrepreneurial Code provide general criteria governing discretion, proportionality, procedure, and supervision. The Energo-upravlenie LLP ruling is the only case analysed individually. The empirical component is limited to one published judicial ruling. The World Justice Project Rule of Law Index 2025 is used solely as an external institutional benchmark. The study does not use a continuous official dataset of judicial statistics or conduct longitudinal statistical analysis. The study does not claim comprehensive normative coverage, representative case-law analysis, or statistical generalisation. The study did not conduct cross-to-case or intervention-group comparisons, correlation analysis, regression modelling, sensitivity testing, double coding, or intercoder reliability assessment. A generic prospective coding protocol is provided separately in the supporting materials deposited on Zenodo. It was not mapped onto Kazakhstan's legislation, tested against national judicial practice, or used in the empirical analysis.

Results and Conclusions: *The selected ruling documents a dispute concerning an unscheduled tax inspection and the judicial review of the contested administrative acts. The doctrinal analysis identifies five functional areas of regulatory discretion: initiation of intervention, evidentiary assessment, selection and intensity of the measure, procedural participation and reason-giving, and subsequent administrative or judicial correction. It permits reconstruction of the procedural path, the legal positions presented in the proceedings, and the judicial outcome recorded in the published text. The ruling does not establish that the intervention was based on vague statutory grounds, insufficient evidence, or an incomplete assessment of necessity and balancing, because the judicial act did not expressly determine these issues. Such criteria are retained only as elements of an author-developed analytical framework for future application to a broader body of judicial materials. The proposed legal measures include clearer regulatory triggers, evidentiary thresholds, structured reasoning requirements, accessible risk-assessment criteria, and institutional feedback from review outcomes. The case-specific conclusion is therefore limited to the institutional availability of judicial review in a dispute affecting entrepreneurial activity.*

1 INTRODUCTION

Freedom of entrepreneurial activity is both an economic right and a constitutional constraint on public power. The constitutional guarantee establishes the normative basis of protection, while administrative legislation and judicial review determine its practical effect. This study focuses on the transition from formal constitutional recognition to effective protection against arbitrary regulatory intervention. Constitutional adjudication forms part of the broader institutional context but is not examined as an independent empirical mechanism.

Kazakhstan's legislation recognises administrative discretion but subjects it to legality, statutory purpose, proportionality, and procedural safeguards. The research problem concerns the practical implementation of these requirements where an authority selects

a restrictive supervisory measure. The legality of a formally available power depends on the applicable legal grounds, the evidentiary record, and the reasoning required by the relevant legislation.

The article examines whether entrepreneurial freedom in Kazakhstan operates as a rule-of-law criterion through constrained administrative discretion, reasoned decision-making, and substantive judicial review. The study aims to systematise the principal functional areas in which regulatory bodies exercise discretion under Kazakhstan's administrative and entrepreneurial legislation, distinguish *ex ante* safeguards from judicial control, and formulate targeted measures to strengthen legal certainty. The selected ruling is used only to illustrate the institutional availability of judicial review and not to validate case-specific index scores. The study assumes that the actual protection of entrepreneurial freedom depends less on formal guarantees than on the consistent judicial application of reason-giving, proportionality, and legitimate expectations.

The central research question is how Kazakhstan's legislation structures the initiation, justification, selection, and review of regulatory measures affecting entrepreneurial activity.

The theoretical framework combines the rule-of-law doctrine, the theory of administrative discretion, the principle of proportionality, and the protection of legitimate expectations. Together, these approaches allow evaluation of whether restrictions on entrepreneurial freedom are lawful, justified, and institutionally controlled.

2 METHODOLOGY

2.1. Research Materials and Scope of Analysis

The study uses three categories of materials: a limited normative framework, one primary judicial ruling, and contextual analytical materials. These categories perform different functions and are not treated as a unified normative-empirical dataset.

The normative framework includes only three sources. The Constitution of the Republic of Kazakhstan[1] is used only to establish the legal status of entrepreneurial freedom. The Administrative Procedural and Process-Related Code[2] provides the general principles governing administrative discretion, proportionality, procedural participation, reason-

1 Constitution of the Republic of Kazakhstan (adopted 15 March 2026) <https://adilet.zan.kz/eng/docs/K2600000000> accessed 4 August 2026.

2 Administrative Procedural and Process-Related Code of the Republic of Kazakhstan 350-VI ZRK (adopted 29 June 2020) <https://adilet.zan.kz/eng/docs/K2000000350> accessed 4 August 2026.

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giving, and judicial review. The Entrepreneurial Code[3] identifies the general forms and risk-based logic of state supervision over business activity. The article does not provide a comprehensive article-by-article analysis of these acts or of sector-specific legislation.

The Commercial Code, consumer-protection legislation, and other sectoral statutes are not included in the source base because the present study does not analyse them systematically. References to subordinate regulation are limited to the general role of risk criteria and supervisory guidance and do not constitute a separate doctrinal analysis of individual by-laws.

The primary judicial material is the ruling of the Judicial Collegium for Administrative Cases of the Supreme Court of the Republic of Kazakhstan dated 21 February 2024 in administrative case 6001-24-00-6пп/1, involving Energo-upravlenie LLP.[4] It is used only for a limited reconstruction of one administrative dispute and is not treated as representative of Kazakhstan's administrative case law.

We excluded informational publications for the first quarter of 2024 and the first half of 2025 from the empirical analysis because they cover non-comparable reporting periods and use different indicators, categories, and denominators. Therefore, they cannot support horizontal comparisons, calculations of absolute or relative changes, or conclusions about judicial trends.

The informational material about cassation proceedings in 2022 was also excluded because its quantitative indicators could not be verified through an official judicial statistics source.

The World Justice Project Rule of Law Index 2025 is used separately as an external contextual benchmark.[5] It does not replace official judicial statistics and is not used to assess changes in Kazakhstan's administrative justice over time.

International scholarship is used to develop the doctrinal criteria of legality, necessity, proportionality, legal certainty, reason-giving, and judicial control. It does not form part of the empirical dataset.

The study has no longitudinal statistical period. Materials published in different years are not compared as a time series and are not used to assess changes in Kazakhstan's judicial practice.

3 Entrepreneurial Code of the Republic of Kazakhstan no 375-V ZRK (adopted 29 October 2015) <https://www.adilet.zan.kz/eng/docs/K1500000375> accessed 4 August 2026.

4 Administrative case 6001-24-00-6пп/1 (Supreme Court of the Republic of Kazakhstan, 21 February 2024). The ruling is available through the official Bank of Judicial Acts of the Judicial Cabinet of the Supreme Court of the Republic of Kazakhstan. It can be located by its case number. See *Bank of Judicial Acts* <https://office.sud.kz/courtActs/index.xhtml> accessed 4 August 2026.

5 '2025 WJP Rule of Law Index: Kazakhstan' (*World Justice Project*, 2026) <https://worldjusticeproject.org/rule-of-law-index/country/2025/Kazakhstan> accessed 4 August 2026.

***Table* 1. Research Materials and Their Analytical Role**

Material	Status in the study	Analytical role	Limitation
Constitution of the Republic of Kazakhstan	Normative source	Establishes the constitutional status of entrepreneurial freedom	No comprehensive constitutional analysis
Administrative Procedural and Process-Related Code	Normative source	Defines general limits of administrative discretion and judicial review	Selected provisions only
Entrepreneurial Code	Normative source	Identifies general forms of state supervision over business	No sector-by-sector analysis
Supreme Court ruling dated 21 February 2024, case 6001-24-00-6пп/1, involving Energo-upravlenie LLP	Primary judicial material	Limited reconstruction of one administrative dispute	Not representative of national case law; the complete administrative record was not examined
WJP Rule of Law Index 2025	External contextual source	Describes the broader institutional environment	Does not measure Kazakhstan's administrative courts

Note: The materials perform distinct normative, illustrative, and contextual functions. Only the Energo-upravlenie LLP ruling is analysed as an individual judicial case.

2.2. Research Design and Methodological Logic

The study uses constitutional-law analysis to identify the legal status of entrepreneurial freedom and its function as a constraint on public power. The legislation is analysed doctrinally and is not classified as empirical data. Systemic interpretation links this guarantee to administrative legislation and procedural safeguards. The statutory analysis distinguishes four dimensions: the legal source of authority, the purpose for which discretion is granted, the procedural safeguards governing its exercise, and the intensity of subsequent judicial review. On this basis, the analysis maps discretionary authority across five functional areas: initiation of regulatory intervention, factual and evidentiary assessment, selection and intensity of the measure, procedural participation and reason-giving, and administrative reconsideration or judicial correction. This classification is

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functional rather than sector-specific and does not claim to cover every form of regulatory authority established by Kazakhstan's legislation. International legal scholarship is used through a functional transferability test. A foreign concept is included only where it addresses a regulatory function also recognised in Kazakhstan's legislation, can be reformulated as an analytical criterion, and does not require institutional equivalence between the compared systems. The external materials identify standards such as reason-giving, proportionality, legal certainty, legitimate expectations, and judicial review; they do not provide rules directly applicable in Kazakhstan or constitute a full comparative-law analysis. Constitutional design is not treated as an independent object of analysis. Case-based assessment reconstructs the legal and procedural elements expressly recorded in the selected ruling. Author-developed evaluative criteria are kept analytically separate from the court's findings and conclusions.

The present study applies doctrinal interpretation, functional legal mapping, descriptive examination of contextual materials, and reconstruction of one illustrative judicial dispute. It does not perform cross-case comparison, intervention-group comparison, correlation analysis, regression modelling, sensitivity testing, double coding, or intercoder reliability assessment. The supporting materials deposited on Zenodo contains a generic prospective coding protocol for future research.[6] The present study does not examine the normative incorporation or practical application of its individual dimensions in Kazakhstan. The protocol was not applied to national legislation, administrative practice, or a body of judicial cases and produced no empirical findings.[7]

2.3. Case Selection and Unit of Analysis

The unit of analysis is the ruling of the Judicial Collegium for Administrative Cases of the Supreme Court of the Republic of Kazakhstan dated 21 February 2024 in administrative case 6001-24-00-6пп/1.[8] Energo-upravlenie LLP initiated the case against the Committee of State Revenue of the Ministry of Finance of the Republic of Kazakhstan and the Department of State Revenue for Pavlodar Region.

We selected the ruling because it identifies the contested supervisory measures, the procedural history, the parties' recorded arguments, and the judicial outcome. It is accessible through the official Bank of Judicial Acts by searching for case 6001-24-00-6пп/1.

6 Indira Ilyassova and others, 'Protection of Entrepreneurial Freedom as a Rule-of-Law Criterion: Administrative Discretion and Judicial Review in Kazakhstan' (*Zenodo*, 19 August 2026) <https://doi.org/10.5281/zenodo.22018727> accessed 4 August 2026.

7 Jarrod Hepburn, 'The Legal Justification for the Doctrine of Legitimate Expectations in International Investment Law' (2025) 36(1) European Journal of International Law 43 <https://doi.org/10.1093/ejil/chaf017> accessed 4 August 2026.

8 Administrative case 6001-24-00-6пп/1 (n 4).

The available material does not include the complete inspection order, the full statement of claim, all administrative records, the complete sector-specific legal framework, or any subsequent appellate or cassation ruling. The case is used only for a limited reconstruction and does not support case-specific or national generalisation.

2.4. Analytical Procedure Applied in the Present Study

The analysis was conducted in four stages. First, selected provisions of Kazakhstan's Constitution, the Administrative Procedural and Process-Related Code, and the Entrepreneurial Code were interpreted doctrinally to identify the legal status of entrepreneurial freedom and the general limits of administrative discretion.

Second, the identified standards were organised into five functional areas: initiation of regulatory intervention, factual and evidentiary assessment, selection and intensity of the measure, procedural participation and reason-giving, and administrative or judicial correction. This stage produced a functional legal mapping rather than a quantitative case classification.

Third, the Energo-upravlenie LLP ruling was examined through a limited factual and procedural reconstruction. Only information expressly contained in the available published text was used. The analysis did not reconstruct or infer missing administrative acts, claim materials, legal grounds, evidence, or judicial findings.

Fourth, the World Justice Project Rule of Law Index 2025 was examined descriptively as an external institutional benchmark. The analysis did not include quantitative indicators from the 2022 cassation material or the 2024–2025 informational publications. The analysis also did not construct a sectoral typology of dominant discretionary powers. The World Justice Project (WJP) rankings were not normalised, averaged, weighted, or treated as judicial statistics.

Statutory procedural actions, including requests for reasoned positions under Articles 91(5) and 138(5) of the Administrative Procedural and Process-Related Code, were not coded as indicators of deficient administrative reasoning, reasoning quality, or judicial intensity. Such conclusions require substantive examination of the court's review of facts, discretion, and proportionality.

The study did not compare cases or intervention groups. The study also did not apply correlation analysis, regression modelling, sensitivity testing, double coding, or intercoder reliability assessment. These procedures require a larger and independently coded judicial dataset. The supporting materials deposited on Zenodo present the prospective data structure, coding scales, reliability protocol, and modelling rules that future research may test.

The prospective coding framework comprises the Motivation Index (MI), Proportionality Index (PI), Trust Protection Index (TPI), Judicial Intensity Index (JII),

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Discretionary Risk Index (DRI), and Legal Protection Index (LPI). None of these indices was used to assign scores to the Energo-upravlenie LLP ruling or to the contextual materials examined in the present study.

No threshold-based typology of legal regimes was constructed, and the selected ruling was not assigned to any legal-regime category.

The study does not use personal data. The study examines judicial materials without identifying individuals or reproducing confidential information.

2.5. Limitations

First, the empirical component is limited to one published judicial ruling. The study does not use official longitudinal judicial statistics. The study excluded informational materials for the first quarter of 2024 and the first half of 2025 because their reporting periods, indicators, and denominators are not comparable. The article draws no conclusion concerning temporal dynamics or national judicial trends.

The dataset is insufficient for case-to-case comparison, intervention-group comparison, correlation analysis, regression modelling, or sensitivity testing. Examining one ruling does not permit testing causal relationships among administrative reasoning, proportionality, legitimate expectations, discretionary risk, and judicial review. The study also does not establish validated threshold values or classify legal regimes based on the proposed indices. No coding team was formed because a multi-case coding dataset was not created. Intercoder reliability was, therefore, neither calculated nor claimed.

The study does not claim representative coverage of Kazakhstan's administrative case law or support conclusions about recurring judicial patterns across different categories of regulatory disputes. Nor does the study examine procedural barriers, the admissibility or legal classification of administrative claims, or the consistency of judicial practice. The study draws no conclusions about how these factors affect the effectiveness of judicial protection.

Second, the Energo-upravlenie LLP case serves as an illustration rather than a representative sample of regulatory disputes in Kazakhstan. The prospective framework in the supporting materials deposited on Zenodo outlines how future multi-case research might code administrative reasoning, proportionality, legitimate expectations, discretionary risk, and judicial review. The present study did not test its measurement properties, weighting structure, intercoder reliability, construct validity, or sensitivity.

The study also does not establish whether MI, PI, TPI, JII, DRI, or LPI correspond to distinct legal institutions recognised by Kazakhstan's legislation. Their normative basis and practical application require separate article-by-article and case-law analysis.

The published ruling does not expressly address every element of the proposed MI, PI, TPI, JII, and DRI framework. Silence in the judicial text is therefore not coded as a substantive

defect. The article distinguishes between facts and conclusions stated by the court and analytical criteria developed by the authors.

The available material also does not reproduce the complete contested administrative acts, the full grounds of the claim, the sector-specific provisions governing the authority's supervisory powers, or the complete legal reasoning supporting the judicial outcome. These omissions prevent a case-specific assessment of administrative justification, proportionality, or discretionary risk.

Specifically, the published ruling does not provide sufficient information to determine whether the entrepreneur relied in good faith on an established administrative practice, whether such reliance qualified for legal protection, or whether the inspection caused recoverable economic loss. TPI is therefore not calculated for the selected case.

The study does not quantify litigation costs, compliance expenses, operational delay, reputational effects, or lost business opportunities associated with administrative intervention. It identifies the possible transaction burden of *ex post* protection conceptually rather than measuring its magnitude.

The study focuses on Kazakhstan and does not assume direct comparability with the European Union or the foreign jurisdictions discussed in the literature. International sources are used only where they identify a function also present in Kazakhstan's administrative framework, such as reason-giving, proportionality, legitimate expectations, or judicial control. Differences in constitutional structure, sources of law, judicial competence, and administrative procedure limit the transferability of specific doctrines and outcomes.

The study does not analyse decisions of the former Constitutional Council or the Constitutional Court. It makes no independent claim about the effectiveness of constitutional adjudication in protecting entrepreneurial freedom. Constitutional justice is considered only as part of the broader institutional framework within which administrative judicial protection operates.

Finally, international indices are used only as an external institutional benchmark. They help contextualise the legal environment but cannot establish legal causality. The article's main conclusions are grounded in legal norms, documented judicial reasoning, and case-based analysis.

The WJP rankings are used as published. The study does not transform ordinal country ranks into normalised scores or use them to calculate an integrated measure of judicial or entrepreneurial protection.

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3 LITERATURE REVIEW

The study uses international scholarship through a functional rather than transplant-oriented approach. The reviewed sources do not provide rules directly applicable in Kazakhstan. They identify analytical standards relevant to controlling administrative discretion, including legality, reason-giving, evidentiary sufficiency, proportionality, predictability, legitimate expectations, and judicial review. Their relevance to Kazakhstan depends on whether the national constitutional and administrative framework performs the same regulatory function.

Scholarship on entrepreneurial freedom generally distinguishes formal recognition of economic rights from their effective protection against public intervention. Across legal systems, recurring analytical requirements include foreseeability, a lawful regulatory purpose, reasoned decision-making, proportionality, and access to judicial review. These requirements are relevant to Kazakhstan because its legislation also recognises administrative discretion while subjecting its exercise to statutory purpose, proportionality, procedural safeguards, and judicial control. The literature is used to formulate evaluative criteria rather than to import foreign legal rules.[9]

Kazakhstan provides the primary legal context for the study.[10] The constitutional guarantee of entrepreneurial freedom establishes the general normative basis, while the Administrative Procedural and Process-Related Code and the Entrepreneurial Code regulate administrative discretion, supervisory intervention, procedural participation, proportionality, and judicial protection. Constitutional review and administrative adjudication perform different functions. The Constitutional Court assesses the constitutionality of normative legal acts, whereas administrative courts review public intervention in individual disputes.

Scholarship has also examined the institutional development of constitutional review in Kazakhstan by comparing the Constitutional Court with the former Constitutional Council and by assessing the Venice Commission's evaluation of the subsequent reform of the Constitutional Court. Other scholarship has offered a more critical historical interpretation of the transformation and institutional role of constitutional review bodies in Kazakhstan.

9 Xiezhong Cheng, 'Soft Law in the Prevention and Control of the COVID-19 Pandemic in China: Between Legality Concerns and Limited Participatory Possibilities' (2021) 12(1) European Journal of Risk Regulation 7 <https://doi.org/10.1017/err.2020.111> accessed 4 August 2026; Mariolina Eliantonio and Oana Ştefan, 'The Elusive Legitimacy of EU Soft Law: An Analysis of Consultation and Participation in the Process of Adopting COVID-19 Soft Law in the EU' (2021) 12(1) European Journal of Risk Regulation 159 <https://doi.org/10.1017/err.2020.119> accessed 4 August 2026.

10 European Commission for Democracy through Law (Venice Commission), *Kazakhstan: Opinion on the Draft Constitutional Law on the Constitutional Court* (CDL-AD(2022)028, 25 October 2022) <https://www.coe.int/en/web/venice-commission/-/opinion-1099> accessed 4 August 2026.

These debates provide institutional background only and are not treated as an independent object of empirical analysis in the present study.[11]

International literature is relevant only where it addresses functions also present in Kazakhstan's legal system. Scholarship on proportionality structures the relationship between regulatory purpose, the selected measure, and the burden imposed on an entrepreneur. Research on reason-giving and judicial review informs the distinction between formal legality and substantive control of discretion. Studies of legitimate expectations clarify how predictability may be affected by changes in administrative practice. These concepts remain subject to Kazakhstan's legislation and institutional structure.

The Energo-upravlenie LLP ruling is not treated as evidence that the court examined all of these standards. It is used only to reconstruct the dispute and demonstrate the institutional availability of administrative judicial review. The international literature supports the theoretical framework but does not supplement facts or judicial findings absent from the published ruling.

Proportionality literature provides a functional standard for assessing restrictive public measures. Its transferable contribution lies in distinguishing suitability, necessity, and balancing, rather than in any jurisdiction-specific outcome. Applied to Kazakhstan, this framework helps explain the statutory requirement that administrative intervention correspond to its lawful purpose and should not impose a burden exceeding what is necessary. It does not determine the result of a particular dispute unless the relevant facts and reasoning are expressly available in the judicial record.[12]

Research on emergency regulation during the COVID-19 pandemic is relevant as a stress-test of administrative legality rather than as a direct model for Kazakhstan. These studies show how urgent governance may expand executive flexibility, rely on abbreviated procedures, and weaken transparency. The transferable conclusion is

11 Nora Webb Williams and Margaret Hanson, 'Captured Courts and Legitimized Autocrats: Transforming Kazakhstan's Constitutional Court' (2022) 47(4) Law & Social Inquiry 1201 <https://doi.org/10.1017/lsi.2021.85> accessed 4 August 2026.

12 Borja Sánchez Barroso, 'Beyond the Principle of Proportionality: Controlling the Restriction of Rights under Factual Uncertainty' (2023) 9(2) Oslo Law Review 74 <https://doi.org/10.18261/olr.9.2.1> accessed 4 August 2026; Fabrizio Cafaggi and Paola Iamiceli, 'Uncertainty, Administrative Decision-Making and Judicial Review: The Courts' Perspectives' (2021) 12(4) European Journal of Risk Regulation 792 <https://doi.org/10.1017/err.2021.47> accessed 4 August 2026; Lukas H Meyer and Santiago Truccone, 'Legitimate Expectations and Compensation in Changing Circumstances' (2025) 29(4) Journal of Ethics 635 <https://doi.org/10.1007/s10892-025-09514-y> accessed 4 August 2026; Niels Petersen, 'Alexy and the "German" Model of Proportionality: Why the Theory of Constitutional Rights Does Not Provide a Representative Reconstruction of the Proportionality Test' (2020) 21(2) German Law Journal 163 <https://doi.org/10.1017/glj.2020.9> accessed 4 August 2026; Piero Ríos Carrillo, 'Proportionality, Comparability, and Parity: A Discussion on the Rationality of Balancing' (2023) 29(4) Legal Theory 257 <https://doi.org/10.1017/S1352325223000186> accessed 4 August 2026.

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limited: urgency does not remove the need for a legal basis, evidence, reason-giving, and proportionality. The specific institutional arrangements developed in the European Union or individual European states are not treated as applicable to Kazakhstan without separate national analysis.[13]

Scholarship on soft law is relevant because administrative expectations may be shaped not only by formally binding acts but also by guidance, risk criteria, recommendations, and internal regulatory practices. Foreign studies show that such instruments may improve administrative flexibility while creating uncertainty where their legal status, publication, or reviewability remains unclear. Because such instruments may influence administrative behaviour without possessing the status of formally binding law, their effectiveness and legitimacy also depend on the clarity of their legal basis, the quality of the reasons supporting them, and the extent to which affected parties can understand and challenge their practical effects.[14] For Kazakhstan, this literature supports examination of whether risk-assessment criteria and supervisory guidance are accessible, predictable, and connected to statutory authority. It does not justify treating European soft law doctrines as direct sources of Kazakhstan law.

13 Alberto Alemanno, 'The European Response to COVID-19: From Regulatory Emulation to Regulatory Coordination?' (2020) 11(2) European Journal of Risk Regulation 307 <https://doi.org/10.1017/err.2020.44> accessed 4 August 2026; Alberto Alemanno, 'Towards a European Health Union: Time to Level Up' (2020) 11(4) European Journal of Risk Regulation 721 <https://doi.org/10.1017/err.2020.106> accessed 4 August 2026; Ronan Cormacain and Ittai Bar-Siman-Tov, 'Global Legislative Responses to Coronavirus' (2020) 8(3) Theory and Practice of Legislation 253 <https://doi.org/10.1080/20508840.2020.1816261> accessed 4 August 2026; Vincent Delhomme and Tamara Hervey, 'European Union's Response to the Covid-19 Crisis and (the Strengthening of) EU Rule of Law' (2022) 41 Yearbook of European Law 48 <https://doi.org/10.1093/yel/yeac011> accessed 4 August 2026; Iris Goldner Lang, '"Laws of Fear" in the EU: The Precautionary Principle and Public Health Restrictions to Free Movement of Persons in the Time of COVID-19' (2023) 14(1) European Journal of Risk Regulation 141 <https://doi.org/10.1017/err.2020.120> accessed 4 August 2026; Klaus Meßerschmidt, 'COVID-19 legislation in the light of the precautionary principle' (2020) 8(3) Theory and Practice of Legislation 267 <https://doi.org/10.1080/20508840.2020.1783627> accessed 4 August 2026; Kai P Purnhagen and others, 'More competences than you knew? The web of health competence for European Union action in response to the COVID-19 outbreak' (2020) 11(2) European Journal of Risk Regulation 297 <https://doi.org/10.1017/err.2020.35> accessed 4 August 2026.

14 Corina Andone and Florin Coman-Kund, 'Persuasive Rather than "Binding" EU Soft Law? An Argumentative Perspective on the European Commission's Soft Law Instruments in Times of Crisis' (2022) 10(1) Theory and Practice of Legislation 22 <https://doi.org/10.1080/20508840.2022.2033942> accessed 4 August 2026; Mariolina Eliantonio, Emilia Korkea-Aho and Steven Vaughan, 'EJRR Special Issue Editorial: COVID-19 and Soft Law: Is Soft Law Pandemic-Proof?' (2021) 12(1) European Journal of Risk Regulation 1 <https://doi.org/10.1017/err.2021.1> accessed 4 August 2026; Emilia Korkea-Aho and Martin Scheinin, '"Could You, Would You, Should You?" Regulating Cross-Border Travel Through COVID-19 Soft Law in Finland' (2021) 12(1) European Journal of Risk Regulation 26 <https://doi.org/10.1017/err.2020.112> accessed 4 August 2026.

Literature on legitimate expectations clarifies a different aspect of legal certainty. It examines whether an individual or business reasonably relied on an official representation, authorisation, or stable administrative practice and whether a subsequent change required transitional or compensatory protection. In Kazakhstan, this concept must be interpreted through national administrative legislation and the factual record of each case. Foreign scholarship is used only to develop the proposed TPI coding dimensions and does not establish that protected reliance existed in the Energo-upravlenie LLP dispute.[15]

Comparative research on judicial review contributes three functional criteria relevant to the Kazakhstan context.[16] First, a court may distinguish formal competence from the lawful exercise of discretion. Second, review may examine whether the authority connected the factual record to the legal ground for intervention. Third, judicial scrutiny may address proportionality and procedural fairness where national law authorises such review. Studies from the Czech Republic, Spain, the United Kingdom, and other jurisdictions illustrate these possibilities, but their doctrinal tests and institutional outcomes are not directly transferable.

Research on Article 16 of the Charter of Fundamental Rights of the European Union (CFREU) is used only to clarify the distinction between recognition of entrepreneurial freedom and its permissible regulation in the public interest. Article 16 CFREU is not presented as a legal source applicable in Kazakhstan. Its relevance is conceptual: formal recognition of business freedom does not exclude regulation, but it increases the importance of legality, predictability, and reasoned judicial control.[17]

***Table* 2. Functional Relevance and Limits of International Scholarship for Kazakhstan**

Literature cluster	Transferable analytical contribution	Relevance to Kazakhstan	Limit of application
Proportionality	Suitability, necessity, and balancing	Interpretation of restrictions and selection of regulatory measures	Foreign proportionality outcomes do not determine national cases

15 Hepburn (n 7).

16 Jeovan Silva and Tomas Aquino Guimaraes, 'Clashes and Agreements Between Regulatory Agencies And Courts: The Influence on Regulatory Governance' (2024) 90(3) International Review of Administrative Sciences 529 <https://doi.org/10.1177/00208523231210478> accessed 4 August 2026.

17 Eduardo Gill-Pedro, 'Whose Freedom is it Anyway? The Fundamental Rights of Companies in EU Law' (2022) 18(2) European Constitutional Law Review 183 <https://doi.org/10.1017/S1574019622000153> accessed 4 August 2026; Hilary Hogan, 'The Origins and Development of Article 16 of the Charter of Fundamental Rights' (2023) 2(4) European Law Open 753 <https://doi.org/10.1017/elo.2023.53> accessed 4 August 2026.

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Literature cluster	Transferable analytical contribution	Relevance to Kazakhstan	Limit of application
Administrative reason-giving	Connection between facts, legal grounds, purpose, and measure	Assessment of the reviewability of administrative acts	Requires confirmation in Kazakhstan's legislation and case materials
Soft law and guidance	Transparency, publication, legal status, and reviewability	Evaluation of risk criteria, instructions, and supervisory guidance	EU soft law doctrines are not direct sources of Kazakhstan law
Legitimate expectations	Public basis for reliance, good faith, predictability, and transitional safeguards	Development of the proposed TPI framework	Protected reliance must be established from national law and facts
Judicial review	Distinction between formal and substantive control of discretion	Analysis of administrative courts as an *ex post* safeguard	Foreign standards cannot be attributed to Kazakhstan's courts without evidence
Freedom to conduct a business	Relationship between economic freedom and public interest regulation	Conceptual interpretation of entrepreneurial freedom	Article 16 of the EU Charter is not applicable law in Kazakhstan
Emergency regulation	Risks of accelerated decision-making and reduced transparency	Identification of rule-of-law risks under urgent regulation	Pandemic governance is contextual and not directly generalisable

Note: compiled by the authors. International scholarship is used functionally and does not replace analysis of Kazakhstan's legislation or judicial practice.

The reviewed literature supports a limited analytical framework rather than a comparative evaluation of national legal systems. Its contribution lies in identifying criteria that can be tested against Kazakhstan's legislation and documented practice. The article does not assume institutional equivalence between Kazakhstan, the European Union, or individual foreign states. Where the national sources do not support a conclusion, the foreign literature is not used to fill the evidentiary gap.

4 RESULTS: NORMATIVE FRAMEWORK, INSTITUTIONAL CONTEXT, AND CASE-BASED OBSERVATIONS

4.1. Statutory Limits and Functional Areas of Administrative Discretion in Kazakhstan

Kazakhstan's Administrative Procedural and Process-Related Code expressly recognises administrative discretion as the authority to select among several legally permissible decisions. This authority is limited. Article 11 requires an administrative body to remain within statutory boundaries and to use discretion consistently with the purpose for which the power was granted.[18] The Code also subjects restrictive administrative action to proportionality and requires a fair balance between the affected party's interests and the public interest.

The Entrepreneurial Code supplements these general requirements.[19] Its principles require the intensity of state regulation to correspond to the degree of risk posed to legally protected interests. The Code also structures state control through risk-assessment criteria and distinguishes preventive control, scheduled measures, and unscheduled inspections. An unscheduled inspection must therefore be connected to a legally recognised ground and to specific facts requiring regulatory intervention.

The two codes perform different but complementary functions. The Entrepreneurial Code regulates the legal forms and grounds for supervisory intervention, while the Administrative Procedural and Process-Related Code sets out general requirements governing administrative decision-making and judicial review. These statutory standards provide the article's doctrinal framework. The selected ruling, however, is not treated as having expressly determined compliance with every standard identified in this framework.[20]

The statutory analysis identifies five principal functional areas of discretion relevant to supervisory intervention. These areas do not represent separate branches of law. They describe the successive decisions through which a regulatory measure is initiated, substantiated, selected, implemented, and subsequently reviewed. This classification allows us to distinguish the existence of legal authority from how that authority is exercised.

18 Administrative Procedural and Process-Related Code of the Republic of Kazakhstan 350-VI ZRK (n 2) art 11.

19 Entrepreneurial Code of the Republic of Kazakhstan no 375-V ZRK (n 3).

20 Luis E Mejía, 'Judicial review of regulatory decisions: Decoding the contents of appeals against agencies in Spain and the United Kingdom' (2021) 15(3) Regulation & Governance 760 <https://doi.org/10.1111/rego.12302> accessed 4 August 2026.

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***Table* 3. Principal Functional Areas of Administrative Discretion in Kazakhstan**

Functional area	Discretionary decision	Principal legal constraint	Risk to legal certainty
Initiation of regulatory intervention	Whether the statutory circumstances justify inspection, preventive control, or another regulatory response	Legally recognised trigger, statutory purpose, competence, and risk-based criteria	Intervention initiated on insufficiently specified grounds
Factual and evidentiary assessment	Which facts are relevant and whether the available information is sufficient for action	Completeness of fact-finding, verifiability of information, and connection between facts and the legal ground	Different authorities may apply inconsistent evidentiary thresholds
Selection and intensity of the measure	Which legally available measure should be used and how burdensome it should be	Proportionality, suitability, necessity, and correspondence between risk and regulatory intensity	Insufficient explanation of the legal and factual basis for selecting the measure
Procedural participation and reason-giving	How the affected entrepreneur is heard and how the final decision is explained	Prior participation, consideration of objections, identification of the legal basis, and reasoned administrative act	Formal observance of procedure without sufficient explanation of the decision
Administrative reconsideration and judicial correction	Whether the contested act should be maintained, modified, withdrawn, or annulled	Administrative appeal, judicial review, legality, procedural fairness, and statutory limits of discretion	Protection becomes dependent on *post factum* correction after costs have arisen

Note: compiled by the authors from the Administrative Procedural and Process-Related Code and the Entrepreneurial Code of the Republic of Kazakhstan. The classification is functional and non-exhaustive.

The mapping shows that discretion arises not only when an authority selects a final measure. It also appears at earlier stages: initiating intervention, assessing information, determining evidentiary sufficiency, and organising procedural participation. Legal certainty depends on the continuity of safeguards across the entire administrative process. A clear statutory basis may lose much of its preventive effect where evidentiary thresholds, measure-selection criteria, or reasoning requirements are applied inconsistently.

The functional mapping supports four targeted measures. First, sectoral and subordinate rules should specify the factual triggers and minimum evidentiary requirements applicable to intrusive supervisory measures. Open-ended risk categories should include verifiable criteria explaining when intervention is justified.

Second, administrative acts affecting entrepreneurial activity should clearly identify the relevant facts, applicable legal provisions, statutory purpose, reasons for selecting the measure, and responses to the entrepreneur's material objections, and address alternative measures only when applicable sector-specific legislation requires their consideration.

Third, risk-assessment criteria, checklists, methodological guidance, and changes in administrative practice should be published in an accessible and sufficiently stable form. This would improve predictability without eliminating the flexibility required for sector-specific regulation.

Fourth, judicial and administrative review outcomes should be used as institutional feedback. Recurring grounds for annulment or modification should inform revision to regulatory guidance, internal procedures, and reasoning standards. This would gradually shift protection from *post factum* correction toward preventing legally defective intervention.

Within the prospective framework in the supporting materials deposited on Zenodo, the proposed measures address regulatory triggers, evidentiary thresholds, measure-selection criteria, and prior procedural safeguards. Their applicability must be assessed under the relevant sector-specific legislation.

These proposals are general doctrinal directions and are not findings derived from the Energo-upravlenie LLP ruling. The study does not determine whether the applicable sector-specific legislation required consideration of alternative measures in that dispute.

4.2. External Institutional Context

The study does not compare judicial indicators for the first quarter of 2024 and the first half of 2025. The available publications use non-equivalent indicators and cover different reporting intervals; therefore, they cannot be used to calculate changes or identify temporal

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trends. The World Justice Project Rule of Law Index 2025 is retained only as an external institutional benchmark and is not treated as judicial statistics.[21]

Informational publications reproduced on non-governmental resources are not treated as official judicial statistics because their status, completeness, numerical precision, and temporal comparability cannot be independently confirmed. Accordingly, the analysis does not report the derived ratios proposed in an earlier draft. We also excluded a preliminary numerical result derived from those materials because its denominator, the number of cases decided on the merits, could not be independently verified. Under Articles 91(5) and 138(5) of the Administrative Procedural and Process-Related Code, submitting a reasoned position is a statutory procedural requirement where judicial proceedings may be initiated without a mandatory pre-trial appeal. The court's request reflects the exercise of a procedural power and duty. It does not, by itself, indicate inadequate reasoning in the contested administrative act or a need for stronger administrative justification.

The World Justice Project Rule of Law Index 2025 is used only as an external institutional benchmark and not as a measure of the performance of Kazakhstan's administrative courts. It is also not used as an external contextual benchmark. Its factor rankings illustrate the broader institutional environment in which administrative disputes arise, but they do not measure the effectiveness of Kazakhstan's administrative courts or establish causal relationships.

No conclusion about stability or change over time is drawn from these materials.

The supporting materials deposited on Zenodo include the proposed case registry, coding variables, index structure, and reliability requirements. We did not populate the registry in the present study, and we did not conduct any index-based comparisons or inferential analyses.

The WJP Index serves as an external benchmark because entrepreneurial freedom depends not only on national judicial statistics but also on the institutional environment in which regulatory decisions are made and challenged. Its factor-based structure is more relevant than the general country ranking alone, as business resilience is shaped by the interaction between enforcement quality, judicial effectiveness, limits on public power, and corruption control (Table 4).[22]

21 '2025 WJP Rule of Law Index: Kazakhstan' (n 5).
22 ibid

***Table* 4. Kazakhstan in the WJP Rule of Law Index 2025: Overall Position and Regional Context**

Indicator	Value
Overall ranking	66 out of 143
Regional ranking (Eastern Europe & Central Asia)	5 out of 15

Note: compiled by the authors.

Kazakhstan's 2025 WJP profile is mixed. For this study, the relevant factors are regulatory enforcement, civil justice, constraints on government powers, and the absence of corruption. For entrepreneurial freedom, the same decisive factors are applicable as they capture predictability, protection of economic interests, limits on public authority, and corruption-related discretion (Table 5).[23]

***Table* 5. Kazakhstan: Factor Rankings in the WJP Rule of Law Index 2025**

Factor	Rank (out of 143)
Civil Justice	36
Order and Security	42
Regulatory Enforcement	59
Absence of Corruption	64
Criminal Justice	67
Open Government	80
Fundamental Rights	98
Constraints on Government Powers	101

Note: compiled by the authors. The WJP rankings are reproduced in their original form. No normalisation, averaging, or composite score was applied because country ranks are ordinal positions and do not represent equal numerical intervals between institutional performance levels. Accordingly, no numerical threshold or category such as a "medium level" of institutional protection is assigned.

23 ibid

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The factor rankings suggest an institutional asymmetry. Kazakhstan's relative position in civil justice is stronger than its position in constraints on government powers. For entrepreneurial regulation, this configuration may increase the practical importance of judicial review where prior institutional controls are less effective. The rankings, however, do not establish that judicial protection fully compensates for weak *ex ante* constraints, nor do they measure the costs businesses bear before a dispute is resolved.

4.3. Limited Reconstruction of the Energo-upravlenie Case

The ruling of the Judicial Collegium for Administrative Cases of the Supreme Court of the Republic of Kazakhstan dated 21 February 2024 in administrative case concerns a claim brought by Energo-upravlenie LLP against the Committee of State Revenue of the Ministry of Finance and the Department of State Revenue for Pavlodar Region.[24] The claimant challenged Order 165 of the Committee of State Revenue dated 25 March 2022 and Directive 28 of the regional Department of State Revenue dated 6 April 2022 concerning an unscheduled thematic tax inspection.

The inspection covered the period from 1 January 2019 to 31 December 2021 and related to corporate income tax and value-added tax obligations. The published ruling records that the first-instance court partially granted the claim and annulled the contested order and directive. The Supreme Court ruling of 21 February 2024 left in force its earlier cassation ruling dated 15 June 2023 and dismissed the Prosecutor General's appeal.

However, the materials examined in this study do not reproduce the full content of those acts, the complete grounds stated in the claim, the complete administrative record, or the full legal reasoning supporting annulment. The study also does not examine any subsequent appellate or cassation review.

The available material does not permit the authors to determine the exact statutory or evidentiary grounds on which the contested acts were annulled. It also does not establish that the court found incomplete administrative reasoning, insufficient proportionality, vague legal grounds, or high discretionary risk.

Accordingly, no MI, PI, TPI, JII, DRI, or LPI value is assigned to the dispute. The case demonstrates only that a supervisory measure affecting entrepreneurial activity was judicially challenged and that the first-instance court granted partial relief.

24 Administrative case 6001-24-00-6пп/1 (n 4).

5 DISCUSSION

The results show that entrepreneurial freedom functions as a rule-of-law criterion through two practical dimensions: the predictability of administrative intervention and its reviewability before courts. Formal constitutional recognition is insufficient. What matters is whether intervention is reasoned, proportionate, evidence-based, and subject to substantive judicial control.

The legislative analysis shows that Kazakhstan's law contains identifiable standards governing discretion. The Administrative Procedural and Process-Related Code limits discretion by legality, statutory purpose, proportionality, and procedural fairness, while the Entrepreneurial Code regulates the grounds and forms of supervisory intervention. The selected case demonstrates the institutional availability of judicial review but does not establish a specific failure of administrative reasoning, proportionality, or measure selection.

The functional analysis identifies five points at which legal certainty may be affected: initiation of intervention, evidentiary assessment, selection of the regulatory measure, procedural participation and reasoning, and subsequent correction. This finding confirms that discretion is not confined to the final administrative act.

It is distributed across the regulatory process, and the applicable safeguards differ depending on the decision being made.

The proposed measures are limited to improving the clarity of regulatory grounds, evidentiary requirements, administrative reasoning, risk criteria, and institutional feedback. They do not establish that alternative measures were legally required in the dispute at hand.

Within Kazakhstan's institutional architecture, constitutional and administrative reviews perform distinct functions. Constitutional review concerns the conformity of normative legal acts with constitutional guarantees. Administrative courts examine the legality, evidentiary basis, reasoning, and proportionality of public intervention in individual disputes. The present findings concern the second mechanism and should not be generalised to constitutional adjudication.

The WJP indicators provide only broad external context. They do not establish a causal relationship between *ex ante* institutional constraints and the role of administrative courts. The present study does not claim that judicial review compensates for weaknesses in prior regulatory controls.

Such dependence produces an institutional cost. Even effective judicial review occurs only after the entrepreneur has faced an inspection, restriction, compliance burden, or legal dispute. Litigation consumes judicial resources and imposes delay, professional expenses, operational disruption, and uncertainty on the business. The available materials do not

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quantify these costs, but the distinction between preventive and corrective protection matters for evaluating institutional design.

The prospective coding protocol is not included in the substantive findings. The study does not demonstrate the normative recognition or practical operation of its dimensions in Kazakhstan.

The selected ruling confirms that an entrepreneur may challenge a supervisory administrative measure before the administrative courts. Beyond this procedural and institutional observation, the judicial act does not support a case-specific conclusion concerning the sufficiency of the statutory grounds, evidence, administrative reasoning, or proportionality assessment. These matters remain doctrinal criteria proposed by the authors and should not be presented as findings of the court.[25]

At the conceptual level, protecting legitimate expectations remains important because judicial annulment and regulatory predictability serve different functions. Annulment may remove or invalidate a contested measure. In contrast, reliance protection concerns whether an entrepreneur could reasonably organise its conduct based on an official position, established practice, authorisation, or other public representation.

Where a TPI value of zero is validly established, it would indicate that none of the identified reliance safeguards is present. In such circumstances, a favourable judicial outcome may not, of itself, address the disruption, compliance costs, delay, or possible loss of business opportunities incurred before judgement. However, the existence and recoverability of lost profits require separate evidence and cannot be inferred from the annulment of an administrative act alone. The selected ruling does not determine these matters.

International scholarship supports the analytical distinction between preventive regulation and corrective judicial review, but it does not determine how these mechanisms operate in Kazakhstan. Its conclusions are used only where they correspond to functions established by national legislation. The Kazakhstan-specific findings remain limited to the statutory framework, the contextual institutional indicators, and the procedural content expressly recorded in the selected ruling.[26]

25 Barroso (n 12); Petersen (n 12); Ríos Carrillo (n 12).

26 Cafaggi and Iamiceli (n 12); Cheng (n 9); Eliantonio and Ştefan (n 9); Pavel Ondřejek, 'Judicial Review of Restrictions on the Right to Conduct Business in the Czech Republic During the COVID-19 Pandemic: Lessons for Future Crises' (2026) 17(S1) European Journal of Risk Regulation 261 <https://doi.org/10.1017/err.2025.10055> accessed 4 August 2026; Dalia Vasarienė and Lyra Jakulevičienė, 'Freedom to Conduct Business During the COVID-19 Pandemic' (2021) 26(1) Tilburg Law Review 16 <https://doi.org/10.5334/tilr.246> accessed 4 August 2026.

6 CONCLUSION

The study indicates that the protection of entrepreneurial freedom should be examined through the relationship between *ex ante* regulation and *ex post* judicial review. The available materials do not permit a statistical assessment of this relationship across Kazakhstan's judicial system. The conclusion is limited to the doctrinal framework and the institutional availability of review demonstrated by the selected ruling. The study does not assess procedural admissibility, claim classification, or the stability of judicial practice, as these matters fall outside its evidentiary and methodological scope.

This configuration provides access to legal protection but shifts some regulatory risk to the stage after administrative intervention. An entrepreneur may obtain a favourable judicial outcome only after incurring procedural, financial, and operational costs. Judicial correction therefore cannot substitute for clear regulatory triggers, evidentiary thresholds, and measure-selection standards.

The policy priority is to strengthen preventive legal safeguards without weakening substantive judicial review. Within the proposed methodology, this requires a revised DRI focused on *ex ante* constraints, while JII remains a separate measure of *ex post* judicial control.

The statutory analysis identified five principal functional areas of discretion: initiation of regulatory intervention, factual and evidentiary assessment, selection and intensity of the measure, procedural participation and reason-giving, and administrative or judicial correction. This classification shows that legal uncertainty may arise at several successive stages, not only in the final administrative act.

Legal certainty may be strengthened through more precise regulatory triggers, minimum evidentiary thresholds, structured reasoning requirements, accessible risk-assessment criteria, and systematic incorporation of review outcomes into administrative guidance.

The Energo-upravlenie LLP ruling provides a limited illustration of first-instance judicial review. The available materials do not contain the complete contested acts, claim materials, sector-specific legal analysis, or full judicial reasoning. The study therefore draws no case-specific conclusion concerning administrative justification, proportionality, discretionary risk, or the legality of particular supervisory powers.

The analytical indices in the supporting materials deposited on Zenodo constitute a prospective methodological framework, not a result of the present study. Validating them requires a broader sample with complete administrative acts, evidentiary materials, party submissions, and judicial reasoning addressing every coding criterion.

The framework provided in the supporting materials deposited on Zenodo is a prospective coding protocol, not a causal model. It does not establish a national mechanism of entrepreneurial protection or demonstrate relationships among its components. Validation

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would require a broader analysis of legislation and multiple complete administrative and judicial case files. Accordingly, the revised study proposes neither a typology of legal regimes nor a case-specific regime classification.

The conclusions are based on a limited normative framework and one illustrative ruling. They should not be interpreted as a comprehensive assessment of Kazakhstan's commercial, consumer-protection, sectoral, or subordinate legislation, or as a representative evaluation of national administrative case law.

The prospective coding criteria are derived from the reviewed literature but have not been normatively mapped onto Kazakhstan's legislation or tested against national administrative and judicial practice. They should therefore be treated as a proposal for future methodological development.

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The data and materials supporting the findings of this study are derived from publicly available normative, judicial, statistical, and analytical sources cited in the manuscript. These include legislation of the Republic of Kazakhstan, the ruling of the Judicial Collegium for Administrative Cases of the Supreme Court of the Republic of Kazakhstan dated 21 February 2024 in administrative case 6001-24-00-6пп/1, and the World Justice Project Rule of Law Index 2025. The ruling is publicly accessible through the official Bank of Judicial Acts of the Judicial Cabinet of the Supreme Court of the Republic of Kazakhstan. We did not use informational publications reproduced on non-governmental resources as a quantitative dataset. We did not use personal data or confidential materials. The supporting materials deposited on Zenodo reproduce the prospective coding framework. This study did not produce a populated multi-case registry, coded dataset, intercoder reliability file, regression dataset, sensitivity analysis, or validated case-specific calculation sheet.

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Keywords: *Entrepreneurial Freedom; Rule of Law; Administrative Discretion; Judicial Review; Proportionality; Legal Certainty.*

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ЗАХИСТ СВОБОДИ ПІДПРИЄМНИЦЬКОЇ ДІЯЛЬНОСТІ ЯК КРИТЕРІЙ ВЕРХОВЕНСТВА ПРАВА: АДМІНІСТРАТИВНИЙ РОЗСУД ТА СУДОВИЙ КОНТРОЛЬ У КАЗАХСТАНІ

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АНОТАЦІЯ

Передумови. *Свобода підприємницької діяльності є практичним критерієм верховенства права, оскільки втручання органів публічної адміністрації у здійснення підприємницької діяльності безпосередньо впливає на автономію, майнові інтереси та правову визначеність суб'єктів приватного права. Конституція Казахстану гарантує свободу підприємницької діяльності, однак її практична дієвість залежить від того, як органи публічної адміністрації обґрунтовують обмежувальні заходи та як суди перевіряють їхню законність, доказову базу і пропорційність. У статті досліджено взаємозв'язок між адміністративним мотивуванням, дискреційними рішеннями та судовим захистом у спорах, що стосуються підприємницької діяльності. Основну увагу зосереджено на тому, наскільки суди здатні перетворювати формальні гарантії на дієвий захист від необґрунтованих обмежень.*

Методи. *Дослідження поєднало обмежений доктринальний аналіз із розглядом одного опублікованого судового рішення, яке ілюструє застосування механізмів судового контролю у публічно-правовому спорі. Конституцію використано для визначення правового статусу свободи підприємницької діяльності, тоді як окремі положення Адміністративного процедурно-процесуального кодексу та Підприємницького кодексу використано для визначення загальних критеріїв здійснення адміністративного розсуду, дотримання принципу пропорційності, процедурних вимог і механізмів контролю. Судове рішення у справі ТОВ «Енерго-управління» є єдиним судовим рішенням, яке аналізується окремо. Емпіричний компонент дослідження обмежено одним оприлюдненим судовим актом. Індекс верховенства права Світового проєкту з правосуддя за 2025 рік (World Justice Project Rule of Law Index 2025) застосовано лише як зовнішній інституційний орієнтир. У дослідженні не використано повного масиву офіційних статистичних даних про діяльність судів і не проведено лонгітюдного статистичного аналізу. Робота не претендує на вичерпне нормативне охоплення, репрезентативний аналіз судової практики або статистичне узагальнення. Порівняння різних судових справ чи груп справ, визначених за характером регуляторного втручання, кореляційний аналіз, регресійне моделювання, аналіз чутливості, подвійне кодування та оцінювання міжкодувальної узгодженості не проводилися. Загальний протокол кодування для майбутніх досліджень*

наведено окремо в додатку А, розміщеному в додаткових матеріалах на платформі «Zenodo». Протокол не адаптували до законодавства Казахстану, не перевіряли на матеріалах національної судової практики та не застосовували в емпіричному аналізі.

Результати та висновки. *Обране судове рішення фіксує спір щодо позапланової податкової перевірки та судового контролю оскаржуваних адміністративних актів. Доктринальний аналіз виокремлює п'ять функціональних сфер реалізації дискреційних повноважень органами регулювання: ініціювання втручання, оцінювання доказів, вибір та інтенсивність заходу, процедурна участь і мотивування, а також подальше усунення помилок в адміністративному або судовому порядку. Це дає змогу реконструювати правові позиції учасників провадження, перебіг та результат розгляду справи, зафіксований у тексті опублікованого рішення. Зазначене рішення не використовується для доведення того, що втручання ґрунтувалося на нечітких законодавчих підставах, недостатності доказів або відсутності належної оцінки необхідності та пропорційності втручання, а також балансу між приватними та публічними інтересами, оскільки ці питання не були прямо вирішені в судовому акті. Такі критерії збережено лише як елементи авторської аналітичної моделі для майбутнього застосування до ширшого масиву матеріалів судової практики. Запропоновані правові заходи передбачають чіткіші регуляторні підстави, стандарти доказування, структуровані вимоги до мотивування, прозорі критерії оцінки ризиків та механізми інституційного врахування результатів адміністративного й судового перегляду. Отже, висновок щодо конкретної справи обмежується констатацією наявності інституційної можливості здійснення судового контролю у спорі, пов'язаному з підприємницькою діяльністю.*

Ключові слова: *свобода підприємницької діяльності; верховенство права; адміністративний розсуд; судовий контроль; принцип пропорційності; правова визначеність.*

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