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Current problems of the influence of international legislation statutes on the institution of citizenship in foreign countries

This article analyzes the international human rights legislation that regulates the right to citizenship and has influenced this institution in several foreign countries. The citizenship as a constitutional and legal institution is a set of norms of national and international law that sets up the conditions and procedures for establishing, changing, terminating and realizing the subjective rights of people with disabilities to citizenship. Further consistent and purposeful development of constitutional and legal norms guaranteeing human rights and freedoms by further strengthening the institution of citizenship is one of the most important tasks of constitutional law. Determining the nature of citizenship as a political and legal phenomenon, as well as political and legal relations between a person and a state, is problematic, but there is no clear answer in the legal doctrine given that such a stratified phenomenon can be viewed from different angles taking into account different methods and ideological approaches. Based on the study and analysis of foreign legislation in the field of application of international legal acts regulating the issue of citizenship, it is possible to develop methods for the development of this system. When studying the problem by the method of comparative jurisprudence, an analysis of the existing legal framework in the Republic of Kazakhstan and foreign countries was carried out and international legal acts in the field of regulation of citizenship issues were studied. The purpose of the article is to understand the importance of the role of international law in influencing the status of people (citizenship) in modern states and societies.

Keywords: constitutional law, international law, human rights, state, institution of citizenship, citizen, nationality, democracy, law, constitution.

Introduction

In modern international law, considerable attention is given to the issue of citizenship, although citizenship is a constitutional institution part of the internal legal system of a particular state. Citizenship as a legal system is governed by national legal norms and, in fact, is one of the foundations of state sovereignty. In the doctrine of international law, there is no consensus on the place of the institution of citizenship in the system of international law. This situation seems to be a natural consequence of an unclear approach to the system of international law. The importance of citizenship in international law has not changed throughout history. The development of the international legal system of citizenship and other norms of international law concerning the legal status of individuals took place in parallel with the development of interstate relations and an in-

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crease in population movements, which increased the likelihood of disputes between states over the legal status of individuals or groups of individuals [1].

A paramount and urgent issue, both in general and in relation to the protection of human rights, is to ensure the right to citizenship. The international community under the auspices of the UN has strengthened the objective nature of citizenship in the development of international legal aspects of the regulation of this institution. Owing to the efforts of the United Nations, the right to citizenship is a fundamental human right: proclaimed in Article 15 of the 1948 Universal Declaration of Human Rights, this right is an inalienable human right and therefore, a degree of democracy. This state can be judged by how it is implemented in practice [2]. This right is also enshrined in Article 24 of the International Covenant on Civil and Political Rights (1966) [3], Article 7 of the Convention on the Rights of the Child (1989) [4] and Article 4 of the European Convention on the Rights of the Child nationality (1997) [5].

As a result of the dynamic process of development of national legal institutions in the context of a better rule of law, there is a need for research and scientific substantiation of the influence of international law on the establishment of citizenship as the basis of a modern state. In this sense, identifying the common and distinctive features of the institution of citizenship in the practice of different countries and comparing them with international legal norms, one can draw up a more detailed picture of the state of this institution and deduce the main directions of its development in modern conditions. The historical development of the institution of citizenship as a legal phenomenon and the emergence of the institution of citizenship in the modern world emphasize the need for the development and analysis of this institution. Citizenship is seen as a fundamental component of the concept of the state, which legally establishes the relationship between the individual and the state. Citizenship is a legal institution that forms a set of legal norms governing relations arising from legal relations between a person and a state. Traditionally, the exercise of state jurisdiction was limited to people, property and activities on the territory of the state, with the exception of citizens traveling abroad, who now increasingly exercise sovereign rights and state powers outside the territory of the state. This is because of an increase in the number of trips abroad and the globalization of the world economy, in cross-border crime and in the number of people without documents.

Experimental

To make a comprehensive analysis of the impact of international law on the institutions of foreign citizenship, we studied international treaties and foreign laws, as well as analyzed and studied the content of materials prepared by Kazakh and foreign scientists with experience in international and constitutional law. Thus, the methodological basis of the study was the general scientific method of cognition, methods of formal legal, analytical systematic and comparative logical analyses and research.

Discussion

The grouping and systematization of the statutes of international law are analyzed in sufficient detail in the work of D.I. Feldman [6; 25]. At the same time, it should be noted that in the science of international law there are two most common approaches. The first of these is based on the fact that citizenship, as an integral category of the State, is directly related to the population of the country. Consequently, in international law, the institution of citizenship should be considered within the framework of international legal regulation of the legal situation of the population. The second is based on a broad understanding of the subject matter of international law such as international humanitarian law, which regulates the cooperation of States in the field of human rights and freedoms. For example, in the “Course on International Law”, international legal questions of citizenship are studied within the framework of one of the main institutions of international law: population and international law. D.B. Levin, without clearly describing the norms relating to the legal situation of the population, considered the international legal norms governing the relations of states with regard to population issues as a “part” of the system of international law, highlighting the international legal regulation of citizenship in it [7; 14]. One of the options for an approach in which citizenship is regarded as an international legal institution is the well-founded assertion of the connection of the population of the State (including the relationship of citizenship) with the concept of State sovereignty. For example, I.I. Lukashuk considered citizenship as part of a set of rules governing the personal supremacy of the state. In his opinion, citizenship is an integral part of the concept of the personal supremacy of the state and a principle according to which state jurisdiction is exercised [8; 78]. It should be noted that, subsequently, I.I. Lukashuk changed his point of view regarding the place of the norms governing citizenship, referring them to the sub-institution of the Institute “Population of the State” [9; 369]. Other authors attribute the institution of citizenship to hu-

manitarian law, since it is the citizenship, according to these authors, that forms the basis of human and civil rights [10; 340]. Scholars, who study the protection and safeguarding of human and civil rights, consider citizenship in the international human rights system as a right to citizenship or an integral part of international human rights. It should be noted that many international human rights instruments establish the right to citizenship, as well as the rights of citizens, the possession of which can be considered as the international legal basis for citizenship as an institution of public international law. Such acts include almost the entire system of international law: universal, regional, and special international acts on human rights and affecting the institution of citizenship as an essential component of the international legal status of a citizen. As a special distinct category, one should consider a number of international conventions dealing specifically with the institution of citizenship, including special international conventions and two or three third-party agreements dealing with the relationship of citizenship of neighbouring states.

Other major agreements include the 1951 Convention relating to the Status of Refugees, 1954 Convention relating to the Status of Stateless Persons, 1957 Convention on the Citizenship of Married Women, the 1961 Convention on the Reduction of Statelessness, the Optional Protocols on the Acquisition of Citizenship to the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations, the 1964 International Commission on Civil Status Convention on the Exchange of Information concerning the acquisition of nationality, the International Convention on the Elimination of Racial Discrimination, the 1966 International Covenant on Civil and Political Rights, the 1967 European Convention on the Adoption of Children, the 1969 American Convention on Human Rights, the 1973 International Commission on Civil Status Convention on the Reduction of Statelessness, 1979 Convention on the Elimination of All Forms of Discrimination against Women and 1989 Convention on the Rights of the Child [11].

The Convention on the Rights of the Child of 20 November 1989, which was ratified by a decision of the Supreme Council of the Republic of Kazakhstan on 8 June 1994, is one of the special international instruments governing human rights and dealing with issues of nationality. The Convention establishes rules for the acquisition of nationality by a child, as well as the State party's enjoyment of rights under international instruments, including respect for the right to citizenship. The Convention on Protection of Children and Cooperation in Respect of Aliens in Respect of Intercountry Adoption of 29 May 1993 addresses the nationality of the child. These and other conventions are intended to protect the citizenship of the child as a subject of law in need of special protection. It is through the institution of citizenship can be realized the attempts in international legal relations to protect the rights of the child.

The Universal Declaration of Human Rights of Stateless Persons of their country of residence, adopted by the United Nations General Assembly in its resolution 40/144 of 13 December 1985, should also be included in documents dealing with the issue of nationality. This Declaration proclaims the principles and norms that guarantee the human rights of persons who do not have the citizenship of their country of residence. A comparative analysis of the provisions of the Declaration allows to conclude that it concerns the definition of the rights and obligations of foreigners legally residing in the territory of the state. The provisions of the Declaration as a whole clarify the principles and norms concerning the basic civil and economic obligations and rights of foreigners, which form the basis of the constitutional and legal status of people.

It should be noted that the system of international legal establishment of the institution of citizenship consists of special international treaties devoted to legal institutions related to the institution of citizenship. Such institutions incorporate the following international legal institutions: statelessness, dual citizenship, refugees, migrants, and other international personal statuses depending primarily on the presence or absence of citizenship. This is, for example, the 1954 Convention relating to the Status of Stateless Persons. It states that in accordance with the Charter of the United Nations and the Universal Declaration of Human Rights of 1948, the principle is realized that all people must enjoy fundamental rights and freedoms without any discrimination. The preamble to the Convention states that stateless persons who are also refugees are covered by the Convention relating to the Status of Refugees of 28 July 1951 and that there are many stateless persons not covered by the Convention. In Article 1 of the Convention, the term “stateless person” means a person who is not considered as a national by a State by virtue of its laws.

An important aspect of international relations in the field of the legal regulation of the institution of citizenship is the legal status of refugees, internally displaced persons and displaced persons. In international law, the concept of “refugees” penetrates after the First World War. The refugee problem has been reflected in a number of international treaties. Within the framework of the United Nations, the Office of the High Commissioner for Refugees (UNHCR) has been established to facilitate its decision. The Charter of the Office was adopted by UN General Assembly resolution 428 (V) of December 14, 1950. On July 28, 1951, the

multilateral Convention relating to the Status of Refugees was concluded on December 16, 1966. The General Assembly took a note of the Protocol relating to the Status of Refugees, which provided for some amendments to the convention. It entered into force on November 4, 1967. In the 1961 Convention relating to the Status of Refugees, the term "displaced persons" is not found. In recent years, UNHCR has tended to apply it to certain categories of "internal" refugees, that is, persons who have involuntarily left a part of their country and had to settle in another part of it. Sometimes they are called "internally displaced persons".

Thus, the presence or absence of citizenship of a person located in the territory of a State emphasizes the nature of the political and legal connection. However, the reasons and conditions for the emergence and development of this relationship with the State play a crucial role. This is due to the fact that the status of "refugee" offers additional social and legal guarantees compared to stateless persons, where the existence of any reasons for lack of citizenship is not recognized as a significant factor.

Results

In the doctrine of constitutional and international law, the institution of citizenship as a whole has evolved as a result of the development of scientific and theoretical ideas, which in practice are rarely reflected in national and international law. Universal and special treaties establish legal norms governing legal relations of a special kind and serve to protect certain categories of citizens. In this regard, special international agreements are of great importance.

Among the special conventions concerning the system of citizenship, the Convention on the Nationality of Married Women concluded on January 29, 1957 should be mentioned. This convention refers to Article 15 of the Universal Declaration of Human Rights and provides that the constitution or the dissolution of a marriage between a citizen of the state and a foreigner, or a change in the husband's citizenship during marriage does not automatically affect the wife's citizenship (Article 1). The Convention was ratified by Kazakhstan on December 30, 1999. The Convention on the Elimination of All Forms of Discrimination against Women, ratified by Kazakhstan, was included in the system of special international treaties on citizenship issues. It can be concluded that the constitutional system of citizenship of Kazakhstan corresponds to the international legal system of citizenship.

An important special international act is the Convention on the Reduction of Statelessness. This convention was adopted on August 30, 1961 by the Conference of Plenipotentiaries, held in 1959 and reconvened in 1961 in accordance with General Assembly resolution 896 (IX) of December 4, 1954, entered into force on December 13, 1975. The Convention establishes the conditions for granting nationality to stateless persons.

The development of modern international relations is due to evolving laws, and, accordingly, the development of regional systems governing issues of citizenship should be recognized as a logical phenomenon aimed at streamlining interstate relations in the field of citizenship. Arab and Turkish treaties have become a major regional system of nationality treaties. In 1952, a number of Arab States concluded the Convention on the Nationality of Arabs Living Outside Their Homeland. Almost all Arab countries belonging to the League of Arab States have participated in this Convention. As a criterion for determining the citizenship of a person who comes from States parties to the League of Arab States, The Convention established the principle of place of origin, the principle of denationalization in naturalization in another State member of the League of Arab States. Citizenship by reason of place of origin is acquired by birth, in addition to the will of the person. In this case, two principles apply, which can speak both separately and in a combined version: "blood law" and "soil law". In 1954, the States members of the League of Arab States concluded the Treaty on Nationality, which established rules aimed at eliminating dual citizenship [12].

A significant aspect of regional international cooperation in the field of citizenship is the development of this institution within the framework of the Commonwealth of Independent States. Citizenship in the CIS countries is considered within the framework of constitutional law, and in the Commonwealth countries citizenship is understood as a stable political and legal connection of the individual with the state. This is the key institution of constitutional law of each post-Soviet state, since it involves the determination of an individual's belonging to the state through the institution of citizenship, determined by a legal norm in a legislative act, usually of a constitutional nature. Citizenship issues are also regulated by international political and legal acts: the Declaration of the CIS Heads of State on International Obligations in the Field of Human Rights and Fundamental Freedoms of September 24, 1993, the CIS Convention on Human Rights and Fundamental Freedoms of May 26, 1995, as well as bilateral treaties on citizenship issues. Such agreements include the Agreement between the Russian Federation and the Republic of Kazakhstan on a simplified proce-

dure for the acquisition of citizenship of the Russian Federation by persons arriving for permanent residence in the Republic of Kazakhstan and citizens of the Republic of Kazakhstan arriving for permanent residence in the Russian Federation dated January 25, 1995. This is due to the above-mentioned interstate acts, as well as acts of the CIS Interparliamentary Assembly. These acts are of an advisory nature, however, being the basis for the development of national legislation of the CIS countries. They play a big role. Model legal acts are developed taking into account the practice and needs of individual States, and as a result, agreed general principles and approaches with respect to certain legal institutions are embodied in legislative acts, leading to some coherence in the legal regulation of certain relations without any pressure or imposition of standards of some republics on others. Within the framework of the Commonwealth of Independent States, the advisory act of the CIS Inter-Parliamentary Assembly "On Agreed Principles for the Regulation of Citizenship" of December 29, 1992, which defines the general principles for the formation of legislation in the field of citizenship, and the practice of its implementation, is of decisive importance in matters of citizenship. It is aimed at improving the level of protection of human rights in the CIS, reducing cases of statelessness, facilitating contacts between people, and establishing and maintaining friendly and good-neighbourly relations with all states.

"Citizenship determines a person's stable political and legal relationship with the State, expressing a set of their mutual rights and obligations. Citizenship is an inherent attribute of state sovereignty" [13]. Such a generalized expression of the prevailing trend of understanding citizenship and its role, as noted by A.V. Mitskevich, can be considered acceptable in content. It is undoubtedly better at expressing the democratic content of human and State relations than the old formula of "person belonging to the State" [14; 16]. The CIS Inter-Parliamentary Assembly recognized the normative importance of such principles as the right of everyone to citizenship and its modification; equality of nationality; the inadmissibility of deprivation of citizenship and discrimination in matters of citizenship on grounds of social origin, property status, racial and national affiliation, sex, education, language, attitude to religion, political and other beliefs, type and nature of occupation. The acquisition of citizenship by stateless persons is encouraged (Article 5). It is established that the lack of a source of livelihood, the appearance of a chronic disease, criminal record should not affect the solution of issues of citizenship. It is emphasized that children born on the territory of one of the States members of the Commonwealth should not become persons without citizenship in the territory of another CIS State. The resolution of citizenship issues by the competent authorities should facilitate family reunification (Article 8). It is emphasized that individual nations, nationalities and national minorities should not be infringed upon in regulating issues of citizenship (Article 9). It is recognized that it is lawful for a State to protect its citizens outside its territory in accordance with international law (Article 10). The principle remains undeniable that the conclusion or dissolution of marriage with a person belonging to another State, as well as residence abroad for any period of time, usually does not entail the termination of citizenship [15; 20, 21]. Thus, this act is of decisive importance for the institution of citizenship in the post-Soviet space, since it determines the fundamental ideas and principles in the relationship between the individual and the state. From a legal point of view, through citizenship the status of an individual and the scope of his basic rights and obligations are determined.

The acquisition of citizenship in a foreign state is regulated, on the one hand, by the norms of national law, and on the other hand, by the norms of international law. Thus, the Institute is both an institution of national law and an institution of international law. Many important issues of citizenship are increasingly becoming the subject of international conventions that complement the rules of citizenship enshrined in national constitutions. Therefore, the norms of national legislation governing the institution of citizenship can be divided into the following groups: 1) constitutional norms (principles of citizenship, protection of citizens, general procedures for the recognition, acquisition and termination of citizenship, etc.); 2) laws on citizenship (based on the Constitution and regulating in more detail all issues of this institution); 3) applications regulating the procedural aspects of the recognition, acquisition and termination of citizenship, and other issues directly related to this. The content of the institutions of citizenship in foreign countries is determined by the provisions of the Constitution, special laws and generally accepted principles and norms of universal and regional international law. It should be noted that the national legislation of each country in matters of citizenship is substantially integrated with the principles and norms of international conventions and regional multilateral international treaties, which, from a scientific perspective, are considered as prerequisites for the formation of a single legal space. Thus, N.A. Mikhaleva emphasizes that when regulating the citizenship of the Commonwealth of Independent States, the norms of the customary law of the CIS are relevant, in particular the recommended legal act of the CIS Interparliamentary Assembly of December 29, 1992 "On

agreed principles for regulating citizenship" and bilateral agreements of the Community countries on citizenship [16].

These include the Agreement between the Russian Federation and Kazakhstan "On simplifying the procedure for acquiring citizenship by citizens of the Russian Federation arriving for permanent residence in the Republic of Kazakhstan and citizens of the Republic of Kazakhstan arriving for permanent residence in the Russian Federation" dated January 20, 1995 [17]; Agreement between the Russian Federation and the Republic of Kazakhstan on the legal status of citizens of the Russian Federation permanently residing in the territory of the Republic of Kazakhstan and citizens of the Republic of Kazakhstan permanently residing in the territory of the Russian Federation, dated January 20, 1995 [18]. Accordingly, a common understanding of citizenship, the basis and the procedure for its acquisition has uniform conceptual approaches in the countries of the post-Soviet space, primarily due to the history of development, and secondly to socio-economic, cultural ties.

Conclusions

An analysis of the norms of international law on the institution of citizenship made it possible to define citizenship in two different concepts. "Citizenship" as an institution of national law and, at the same time, "citizenship" as an institution of international law. It is important to emphasize that the system of citizenship through international law not only complements national legal norms, but also allows regulating relations that go beyond national law and affect the legal systems of other countries and international organizations. The development of citizenship as an international institution allows to state the need for its integration, first at the regional and then at the global level.

As a result of the analysis, it is possible to integrate the concept of citizenship adopted in Kazakhstan and in the post-Soviet space as a "stable political and legal connection" with such characteristics as "real and effective ties" and "substantial ties" between a person and a state, as is done in the main international contracts. It was noted that in order to improve the law on citizenship, Article 1 of the law may be devoted to the terms used in the law and the definition of citizenship of the Republic of Kazakhstan, taking into account the characteristics specified in the generally recognized international legal acts on citizenship. Article 2 of the Law of the Republic of Kazakhstan on Citizenship may determine the principles of Kazakhstani citizenship, which should be formed and formulated on the basis of international principles enshrined in the main conventions of the United Nations.

Based on the UN principles in the field of citizenship, the development of citizenship as a regional institution must be improved, and the development of this institution is necessary for further integration. Therefore, for the development of this institution, it is necessary to adopt a new model law on citizenship in Russia within the framework of the work of the Inter-Parliamentary Assembly, which should be carried out on the basis of universal and regional international treaties in accordance with the provisions of the United Nations conventions that influence and regulate relations in the field of citizenship in this context. Analysis of international law in the field of citizenship shows that these international norms have a direct impact on the content of the Institute of Citizenship. It establishes the rules for the treatment of citizens by the state in matters of citizenship. This influence can take two forms: first, by directly granting citizens the rights based on the norms of international law; and secondly, by imposing on states the obligation to enact laws that are consistent with the norms of international law. The principle of citizenship, enshrined in the Convention on the Reduction of Statelessness of 30 August 1961, is reflected in both the Citizenship Act and the Immigration Act. This sequence can be reflected in national legislation, since the development of the principles and characteristics of citizenship leads not only to the institution of citizenship, but also to the development of all constitutions.

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Халықаралық заңнама нормаларының шет елдердегі азаматтық институтына ықпал етуінің қазіргі мәселелері

Мақалада кейбір шет елдердегі азаматтық институтына ықпал ететін, азаматтық алу құқығын бекітетін адам құқықтарына арналған халықаралық құқықтық актілерге талдау жүргізілген. Бұл ретте, азаматтылық конституциялық-құқықтық институт ретінде адамның азаматтық алуға субъективті құқығының пайда болуының, өзгеруінің, тоқтатылуының немесе іске асырылуының шарттары мен тәртібін белгілейтін ұлттық және халықаралық құқық нормаларының жиынтығы болып табылатынына назар аударған. Азаматтық институтын одан әрі бекіту арқылы адамның құқықтары мен бостандықтарын қамтамасыз ету жөніндегі конституциялық-құқықтық нормаларды дәйекті және мақсатты дамыту конституциялық құқық ғылымының аса маңызды міндеттерінің бірі. Азаматтықтың мәнін саяси-құқықтық құбылыс ретінде, сондай-ақ жеке адамның мемлекетпен саяси-құқықтық байланысын анықтау күрделі сұрақ болып табылады, бірақ заң ғылымында нақты жауап жоқ, өйткені мұндай көп қырлы құбылысты әртүрлі әдіснамалық және идеологиялық көзқарастар тұрғысынан қарастыруға болады. Мақала авторлары азаматтық алу мәселелерін реттейтін халықаралық құқықтық актілерді қолдану саласындағы шетелдік заңнаманы зерттеу және талдау, осы институттың даму жолдарын анықтауға мүмкіндік берген. Мәселені зерттеу кезінде салыстырмалы-құқықтық әдіс пайдаланылды, оның көмегімен азаматтық мәселелерін реттеу саласындағы халықаралық заңнама актілерін зерттеуді қоса алғанда, Қазақстан Республикасының, шет елдердің қолданыстағы заңнамалық базасын талдау жүзеге асырылды. Мақаланың мақсаты — қазіргі мемлекет пен қоғамдағы адамның мәртебелік жағдайына (оның азаматтығына) әсер ететін халықаралық заңнама рөлінің маңыздылығын зерделеу.

Кілт сөздер: конституциялық құқық, халықаралық құқық, адам құқығы, мемлекет, азаматтық институт, азамат, ұлт, демократия, заң, конституция.

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Современные проблемы влияния норм международного законодательства на институт гражданства в зарубежных странах

В статье проанализированы международные правовые акты, посвященные правам человека, закрепляющие право на гражданство, которые оказали свое влияние на данный институт в некоторых зарубежных странах. При этом обращено внимание на то, что гражданство как конституционно-правовой институт является совокупностью норм национального и международного права, ставящих условия и порядок возникновения, изменения, прекращения или реализации субъективного права лица на гражданство. Последовательное и целенаправленное развитие конституционно-правовых норм по обеспечению прав и свобод человека посредством дальнейшего закрепления института гражданства является одной из важнейших задач науки конституционного права. Проблемным является выявление сущности гражданства как политико-правового явления, а также политико-правовой связи личности с государством, однако однозначного ответа в юридической науке нет, поскольку такое многогранное явление может рассматриваться под разным углом зрения, с точки зрения разных методологических и идеологических подходов. На основании исследования и анализа зарубежного законодательства в области применения международных правовых актов, регулирующих вопросы гражданства, авторы статьи попытались выработать пути развития данного института. При исследовании проблематики использован сравнительно-правовой метод, с помощью которого осуществлен анализ существующей законодательной базы Республики Казахстан, зарубежных стран, включая исследование актов международного законодательства в сфере регулирования вопросов гражданства. Цель статьи — осмысление значения роли международного законодательства, влияющего на статусное состояние человека (его гражданство) в современном государстве и обществе.

Ключевые слова: конституционное право, международное право, права человека, государство, институт гражданства, гражданин, нация, демократия, закон, конституция.

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