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Citizenship as a legal institution and category of law theory and state

The article demonstrates the theoretical and historical problems of defining citizenship as a legal institution and the definition of its main features. The dynamic nature of this political and legal phenomenon, associated in the law theory with the state, is revealed. In a historical retrospective, using the citizenship institution experience for the state-legal regulation purpose relations between the individual and the state is considered. The studies of citizenship in different historical periods, the variability and institution development in the theories and various authors' approaches are undertaken. The investigation purpose is to identify the main citizenship features by determining the goals and political and legal institution objectives. With the general and special research methods support, the analysis and generalization of historical and theoretical material, political and legal acts that define the concept and signs of citizenship as a legal and theoretical category are carried out. As a result, citizenship is considered as the main and defining republic feature as one of the main state forms. It is a political and legal category requiring legal regulation. The article concludes that citizenship is the main factor in the modern state existence, with a republican government form. The relationship between the individual and the state, mediated in the citizenship form, needs more detailed legal regulation.

Keywords: citizenship, law theory, constitutional law, state, republic, legal institution, human rights, legal regulation, legal category.

Introduction

Citizenship is a political and legal phenomenon that is in continuous development. This raises the scientific definition problem of this phenomenon, considering the changing qualities associated with the changing society necessities and its political organization – states. Thus, it is important to highlight the main features that define citizenship as a legal and political phenomenon, reflecting the relationship between the individual and society, through the interaction of this individual with the state, considered in the law theory and the state as a political organization for the whole society. In modern conditions, society in general and civil society in particular is a necessary condition for the legal state law development while citizenship, through the state institution, determines the conditions for interaction with social institutions and other persons, as well as with civil society and the state institutions. The legal and political science achievements are reflected in the citizenship concept as an important institution that acts as a key factor in the state, formed in the republic form. At the same time, citizenship is an important element of the human rights theory while the citizenship institution is the legal basis for the human rights implementation, as well as their protection and provision. The citizenship state determines the person and citizen rights since it is through the entire state body's system that the protection and implementation of human rights are carried out. Citizenship is not only constitutional law institution but also a category of the law theory, which deals with the ongoing abstract nature of

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legal relations. It is important to consider all the complex legal relationship subjects, to identify the rights and these subjects' obligations, as well as legal liability in violation cases. Citizenship is also an interdisciplinary institution that unites the various branches of law norms and is also a political and legal institution that reflects not only legal but also socio-political aspects of the relationship between the individual and the state.

Methods and materials

The conducted research is based on the use of general, special, and private research methods. With analysis and generalization support, historical and legal sources, individual views, theories, and provisions of scientists, revealing problems of citizenship definition in constitutional law, as well as in the state and law history, are examined. Through induction and deduction, historical aspects and patterns are extrapolated to the modern relationship development between the individual and the state based on certain legal principles. The research basis is a dialectical approach that reflects the variability and dynamics of the development of social relations which are in the development of citizenship heart as a legal and political institution. The metaphysical basis is the relationship principles between citizens, foreigners, and stateless persons as legal relations subjects interacting with each other in the process of exercising their rights and obligations, as well as the goals and objectives of their development as individuals in the legal system. Using the legal methodology, legal principles and legal values are considered, which act as the citizenship foundation as a phenomenon that mediates the relationship between personality and power. The considered legal phenomenon is studied in the inextricable social relations connection, legal principles, and social relations legal regulation in the citizenship sphere. Based on the comparison method, analogy, by studying the historical institutions that take place in the state and law history, the citizenship value is revealed as a political and modern state legal institution organized in the republic form. The concrete historical method made it possible to consider the continuity of the citizenship category and citizenship in a dialectical relationship. This relationship reflects the dynamic nature of the relationship between the individual and power, which is an important modern law and the state development aspect, which makes it possible to effectively influence social relations in the political and legal sphere.

Results

In modern legal science, citizenship is seen as an interdisciplinary institution that determines the relationship between the individual and the state. Through citizenship, the political and individual legal status foundations in modern society are determined, since it is citizenship that determines the legal relationship of a person with the state. The main sign distinguished in these relationships is the sign of the legal connection stability. The European Convention on Nationality defines it precisely as "a stable legal relationship between an individual and the state and does not indicate the person ethnic origin" [1; 123]. A similar definition is given in the preamble to the Law of the Republic of Kazakhstan "On Citizenship", which stipulates that the citizenship of the Republic of Kazakhstan determines a stable political and legal person relationship with the state, expressing the totality of their mutual rights and obligations. Article 1 of the Law on Citizenship states that the Republic of Kazakhstan, through its state bodies and officials, is responsible to the citizens of the Republic, and a citizen of the Republic of Kazakhstan is responsible to the Republic of Kazakhstan. He is obliged to comply with the Constitution and laws of the Republic of Kazakhstan, protect the Republic of Kazakhstan's interests, its territorial integrity, respect the customs, traditions, state language and languages of all nationalities representatives living on its territory, contribute to strengthening the power, sovereignty and Republic of Kazakhstan independence [2]. Exploring the citizenship concept, it should be assumed that the responsibility, denoted by the first law article under consideration, means prospective responsibility, considered in the law theory as a duty. Many academic jurists in modern conditions add prospective responsibility to the rights, freedoms and duties that form the citizen legal status basis, which makes it possible to supplement the citizen legal status concept and specify the citizenship definition. Identification of the main phenomenon features under study allows us to consider this phenomenon as a separate legal category, which has both theoretical and practical significance. Determining specific essential features set makes it possible to isolate citizenship from various similar legal categories. As a political and legal category, citizenship is considered in legal science as a multifaceted phenomenon, manifested in organizational implementation, functional and legal properties.

Discussion

Studies on citizenship point out that determining the citizenship content, its specific properties and meanings is an important task of legal science. Currently, legal science has not developed a unified position on the content of the citizenship concept. However, it should be noted that there are three main semantic meanings of the term "citizenship" well-established in legal science: a) citizenship as a political and legal phenomenon that determines the special relationship nature between a person and a political and social entity - the state; b) citizenship as one of the basic subjective human rights (every person has the right to citizenship [3]); the legal possibility to be in the above-mentioned relationship with the state or to terminate them; c) citizenship as a legal institution. In the last two meanings, the "citizenship" concept does not cause diverse interpretations among legal scholars. Besides constitutional law science, citizenship is considered in both international law institutions and the state and law theory. Citizenship as a legal institution is a set of national and international law norms that set the conditions and procedure for the emergence, change, termination, or implementation of a person's subjective right to citizenship. However, it is problematic to identify the citizenship essence as a political and legal phenomenon [4; 10]. Many scientific investigations have been devoted to revealing the political and legal connection essence for an individual with the state, but there is no unambiguous answer in legal science, and most likely, there cannot be. Since such a multifaceted phenomenon can be considered from different angles and different methodological and ideological approaches point of view.

The citizenship study as a socio-legal institution allows us to reveal the essence of this institution, since, it should be recognized that citizenship is inherent not only in the legal institution features but to a greater extent, it is a socio-political institution. One should consider and analyze the citizenship essence from the socio-political approach, since ignoring this aspect may lead to an inadequate citizenship understanding, reducing it exclusively to the formal legal side: the continuing establishment of a legal relationship between the individual and the state, formalized in the citizenship form. The subjective side of the relations under consideration lies in the citizen's personal perception of his connection with the people and the state. The legal aspect seems to be important and necessary precisely in the relations sphere regulated by legal norms. Accordingly, from the perspective of legal regulation of social relations, the citizenship formal side is decisive. However, real and full-fledged citizenship and a stable legal relationship between an individual and the state are possible only when this state represents something subjectively significant for the individual, if he associates himself with it [5]. The study of the social and citizenship legal aspects is carried out mainly in foreign legal science, which emphasizes the researchers interest not only in the formal side of the citizenship institution, but also in the socio-psychological side, revealing the essential relationship between the individual and the state. Attention should be paid to citizenship as a political category that reflects political relationships in a state-ordered society. Citizenship, as a political and legal category, depends on the political regime that exists in a particular country, since through a combination of methods and management methods, the implementation of rights and obligations that make up the citizenship essence are carried out. In republics with a totalitarian regime, the citizen status means only state affiliation (which, in fact, is identical to the citizenship concept in an absolute monarchy), and the real citizen possibility to influence the government of the state is much less than that of a subject, in particular, a parliamentary monarchy with a democratic political regime. Under totalitarian regime conditions, when there is no civil society, a person cannot be a citizen in the full word sense [6; 68]. In this context, citizenship is understood not only as belonging to a particular state, but also as the rights and obligations set by the individual and the state. Accordingly, citizenship arises and develops in a society that has reached a certain level of social and political development, which occurs in different societies in different historical periods. The fundamental ancient citizenship principle was participation in the formation and state bodies functioning. According to many legal scholars, the term citizenship arises in the ancient period, while others consider it bourgeois relations to be born. For instance, N.I. Matuzov notes that the citizenship institution is relatively new; neither slave-owning nor feudal states knew it. It arose in the first bourgeois revolutions of the era and the first bourgeois state formation [7; 72]. Citizenship as a phenomenon is closely connected with democracy as a government form justifies the state will as the people will. Proceeding from the democracy understanding as democracy, the republic concept as common citizens follows cause. Accordingly, the republic concept is invested as a semantic basis with the citizen's consent about the common interest, as a unifying idea. In general, this is the statehood idea , uniting the people totality into a nation. At the same time, a completely new and at the same time significant, for the law enforcement practice implementation, the statehood idea is formed in jurisprudence as a subjective phenom-

enon that receives its objective expression in political and legal practice. The subjective political and legal relationship perception between a person and the state is of decisive importance in the citizens' behavior since it is the citizenship understanding as a rights and obligations set that allows the state to exert a state-legal impact on citizens from the state side.

Currently, citizenship is characterized by rights equality, duties, and responsibilities. The institution of citizenship concentrates on the political and legal component of the individual legal status, determines the state's influence limits, goals, and objectives. Through the citizenship institution, the modern republic gets the opportunity to identify itself as a law state. The constitutional foundations fix the nationwide nature of the state. Article 3 of the Constitution of the Republic states that the only source of state power is the people [8]. It should be noted that this concept, most likely, should include, first of all, the citizens of the republic, since it is they, exercising their political rights that allow the state to function as a political citizens association. In the Republic of Kazakhstan, the citizenship institution has been formed not only as a formal legal institution, but also as a real political and legal set of rights and obligations understood and recognized by most citizens. Thus, citizenship in a modern state is impossible without liberal democratic reforms, humanism and human rights, and the social functions of the state.

Modern legal science defines citizenship by fixing the stable political concept and legal relationship between the individual and the state, which imposes mutual rights and obligations. Considering this definition as basic, the authors try to develop and supplement it. For example, citizenship in the science of state law is understood as a stable political and legal connection of an individual with a certain state, by virtue of which sovereign state power extends to this person, both within this state and outside its borders [9; 34]. This definition emphasizes the political and legal relationship stability based on state sovereignty and its expansion outside the state territory. D.D. Ostapenko considers citizenship as "the legal person status, due to his belonging to a particular state" [10; 71]. Such an approach was a priority in Soviet times, but even today it reflects an important person's belonging aspect to the state. However, one should agree with the opinion of N.V. Vitruk, who notes that the person's citizenship recognition by the state cannot be put on par with the legal rights and obligations establishment of a person who is a state citizen [11; 43]. Citizenship is a prerequisite for establishing rights and obligations, its basis. Nevertheless, rights and obligations are established for foreigners and stateless persons, which emphasizes that citizenship is the basis for establishing specific rights and obligations that are different from human rights in general, and the rights and foreigner obligations and stateless persons in particular. This thesis is confirmed by the opinion of M.V. Baglai, who notes that citizenship is the legal belonging of a person to a given state, i.e., recognition by the state of this person as a full-fledged subject - legal relations [12; 34]. S.A. Komarov, considering the relationship of the individual with the state, formulates the category - the civil status of the individual, as one of the main legal categories. It relies on the provisions justified by N.V. Vitruk, who writes that as a fixing result the person to a certain state legal affiliation, a person acquires a new legal quality - a state citizen. Since in relation to the state it acts in the specific citizen capacity of this particular state, this legal quality is addressed to him not as a person in general, but as his own citizen. If we are talking about a foreigner or a stateless person, then the state addresses him with slightly different rights and obligations - as a subject of a different legal (civil) status. Thus, N.V. Vitruk emphasizes that the relationship between the state and the individual is primarily mediated by the institution of citizenship [11; 39]. S.A. Komarov believes that the civil state of the individual can be viewed from two points of view. First, as a state-legal institution, that is, a set of state-legal norms regarding the emergence, civil status existence and termination. Secondly, as an objectively existing political and legal relationship between the individual and the state, which acts as a prerequisite and condition for having a legal status. There are at least four types of the person's civil status: a) the citizen status; b) foreign citizen status; c) the stateless person status; d) the person status who has been granted asylum. The allocation of the civil status of the fourth type should be considered as a kind of foreign citizen civil status [13; 69, 70]. Thus, it is the constitutional and legal relations completeness that distinguishes the status of a citizen from another law subject status that does not meet the citizenship signs. In legal science, citizenship is considered a legal relationship, a subjective right, and a legal institution [14; 55]. In the law theory, there is often subjective law understanding only as a specific legal relationship element that arises in the presence of a legal fact that gives rise to this relationship. One of the reasons for the authors' disagreement on this issue is the unequal interpretation of the legal relationship concept - on the one hand, as any social relationship, and on the other hand, only as a specific relationship that complies with the law rules and arises between specific individually defined law subjects [15; 12]. This issue is currently under discussion. However, the division of legal status types of an individual determines the presence of different levels of rights and obligations. They also under-

lie various types of legal relations: general, special and individual, correlating with each other as general, special and singular. In the legal literature, it is also noted that the occurrence way, the manifestation form, and implementation of certain rights are not of fundamental importance for their characterization as subjective [16; 67]. As a result, it is necessary to consider the Concept of Migration Policy for 2022-2026 and the Action Plan for the implementation of the Concept of Migration Policy for 2022-2026 [17], as well as the Concept of Legal Policy of the Republic of Kazakhstan until 2030 [18]. These concepts consistently reveal the interaction basic principles between the individual and the state. Thus, the ideas and concepts totality adds up to the citizenship theory, which complements and develops the human rights theory and the modern legal state theory, emphasizing the democratic nature of the relationship between the individual and the state. The historical stages in citizenship and other forms of development of interaction between the individual and the state predetermined the modern citizenship understanding. The scientific thought development, the analysis of the necessities of modern society interests, the foreign experience generalization and international standards allow us to consider the trends in citizenship development as the main directions for the development of the functions and modern state institutions.

Conclusions

We support the opinion of the authors who prove that specific legal relations are not the only legal relations type, in addition to them, relatively stable social relations arise, which are distinguished by a long-term character. Accordingly, citizenship should be considered as a continuing legal relationship of a general (status) nature, which determines the rights and individual obligations, both in specific legal relationships and as a basis (legal fact) for the new legal relationships emergence. Citizenship combines both status, lasting rights and prospective nature obligations, and specific legal relations that impose mutual rights and obligations on the parties (individual and state).

Citizenship is an interdisciplinary institution that contains the norms of both constitutional law and public international law, private international law, norms defining the civil servants' status, separate norms and migration law institutions and labor law and other branches that relate to the emergence, change and rights and obligations termination from the presence or absence of the citizen status. The law institution is an element of the law system, represented by legal norms set governing a homogeneous social relations group [19; 169]. The law institution is ordered legal norms set that regulate a certain social relations type (group) [20; 67]. Accordingly, citizenship is an interdisciplinary institution, which includes homogeneous legal norms set that determine the foundations of the individual relationship with the state. Through this institution, the political responsibility of the state for this person's action toward other states and international law subjects is also established. Citizenship is a multifaceted legal, socio-political phenomenon, the essence of which is political and social ties, enshrined in the form of legal norms, expressing the unification of the people on the statehood idea basis and other generally recognized goals for their capabilities development and their rights realization and legitimate interests.

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А.В. Турлаев, И.А. Полева, Н.Б. Туякова

Азаматтық мемлекет және құқық теориясының құқықтық институты және категориясы ретінде

Мақалада азаматтықты құқықтық институт ретінде анықтау және оның негізгі белгілерін анықтаудың теориялық және тарихи мәселелері қарастырылған. Құқық теориясында мемлекетпен байланысты бұл саяси-құқықтық құбылыстың динамикалық сипаты ашылған. Тарихи ретроспективада адам мен мемлекет арасындағы қатынастарды мемлекеттік-құқықтық реттеу мақсатында азаматтық институтын пайдалану тәжірибесі қарастырылған. Әртүрлі тарихи кезеңдердегі азаматтықты, әртүрлі авторлардың теориялары мен көзқарастарында бұл институттың өзгермелілігі мен дамуына зерттеу жүргізілуде. Зерттеудің мақсаты — осы саяси-құқықтық институттың мақсаттары мен міндеттерін айқындау арқылы азаматтықтың негізгі белгілерін анықтау. Жалпы және арнайы зерттеу әдістерінің көмегімен азаматтықтың ұғымы мен белгілерін құқықтық-теориялық категория ретінде айқындайтын тарихи-теориялық материалды, саяси-құқықтық актілерді талдау және қорыту жүзеге асырылады. Зерттеудің нәтижесі азаматтықтың түсінігі мен белгілерін анықтау болып табылады, ал азаматтық мемлекеттің негізгі нысандарының бірі ретінде республиканың негізгі және айқындаушы белгісі ретінде қарастырылады. Азаматтық құқықтық реттеуді қажет ететін саяси-құқықтық категория ретінде зерттелген. Мақалада азаматтық басқарудың республикалық нысаны бар заманауи мемлекеттің өмір сүруінің негізгі факторы болып табылады деген тұжырым жасалған. Азаматтық түріндегі делдалдық тұлға мен мемлекет арасындағы қарым-қатынас неғұрлым егжей-тегжейлі құқықтық реттеуді қажет етеді.

Кілт сөздер: азаматтық, құқық теориясы, конституциялық құқық, мемлекет, республика, құқықтық институт, адам құқығы, құқықтық реттеу, құқықтық санат.

А.В. Турлаев, И.А. Полева, Н.Б. Туякова

Гражданство как правовой институт и категория теории права и государства

В статье рассмотрены теоретические и исторические проблемы определения гражданства как правового института и его основных признаков. Раскрыт динамичный характер этого политико-правового явления, связываемого в теории права с государством. В исторической ретроспективе изучен опыт использования института гражданства с целью государственно-правового регулирования отношений личности и государства. Осуществлены исследование гражданства в различные исторические периоды, изменчивость и развитие этого института в теориях и подходах различных авторов. Целью исследования является выявление основных признаков гражданства посредством определения целей и задач, стоящих перед этим политико-правовым институтом. При помощи общих и специальных методов исследования осуществлены анализ и обобщение историко-теоретического материала, политико-правовых актов, определяющих понятие и признаки гражданства как правовой и теоретической кате-

гории. В качестве результата проведенного исследования является определение понятия и признаков гражданства, при этом гражданство рассмотрено в качестве основного и определяющего признака республики как одной из основных форм государства, а также политической и правовой категории, требующей правового регулирования. Авторами сделаны выводы о том, что гражданство является основным фактором существования современного государства с республиканской формой правления. Взаимоотношения личности и государства, опосредуемые в форме гражданства, нуждаются в более детальном правовом регулировании.

Ключевые слова: гражданство, теория права, конституционное право, государство, республика, правовой институт, права человека, правовое регулирование, правовая категория.

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