

ABSTRACT

of dissertation of Nyssanbekova Lyazzat Begimzhanovna submitted for Doctor of Philosophy (PhD) in major "6D 030200 - International Law" on the topic: "International legal personality of individuals: certain relevant issues of theory and practice"

General characteristics of research. The dissertation analyzes general theoretical approaches to understanding the essence of international legal personality of individuals, appeals of individuals to international bodies from the perspective of their international legal personality, international criminal law, geopolitical and other political and legal aspects of recognizing international legal personality of individuals. The paper attempts to clarify this issue by analyzing doctrinal sources, international treaties and experience of states and international organizations. Main goal of the work is to determine international rights of an individual and their sufficiency for recognizing international legal personality of an individual. Author tried to outline the relationship between the interests of international community in the field of protecting human rights and in recognizing its international legal personality, on the one hand, and the international legal framework aimed at protecting such interests, on the other hand. Taking into account significance of the recognition factor in relation to an individual's international legal personality, a subsection on geopolitical aspects of such recognition was introduced.

Relevance of research topic. Evolution and progressive development of international legal system in XX century, and especially after the Second World War, significantly increased the importance of humanitarian values in the process of creating international law. Protecting individuals and groups from any kind of violence which guarantee freedom and dignity has become one of the main concerns of international community. The UN Charter states that "respect for human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" is one of its organizational goals¹. In addition, Member States are required to take joint and independent actions in cooperation with the UN to achieve the goals set forth in the UN Charter. Several universal and regional international agreements have been concluded to protect human rights. These agreements contain various procedures for their implementation. In addition, human rights have become part of customary universal law and are recognized as part of general international law.

Currently, there is no longer any doubt that individual rights exist outside the national jurisdiction of states and relate to the rights of the entire international community. When human rights are violated that are so serious and widespread that they can jeopardize international peace and security, the UN Security Council can take coercive actions to bring an end to these violations and eliminate their consequences. In addition to the UN Security Council, other key UN bodies are

¹The UN Charter <https://www.un.org/ru/charter-united-nations/index.html>

concerned about ensuring human rights. In this vein, a radically new approach of international law to the issue of the international legal personality of an individual is being formed.

In recent decades, there has been a significant expansion of social relations that make up the subject of legal regulation of international law. This process is developing today in two main directions: 1) regulation of new areas of interstate cooperation by international law; 2) the ever-deeper penetration of the regulatory impact of international legal norms into the sphere of domestic relations². Both that and another direction of the development of international law have led to the emergence of the problem of recognition of individual's international legal personality.

The development of the international legal personality of an individual is also affected by the factor that the economic environment has become prevailing. In addition, political and general environment of human development are influenced by globalization and general development of the world. Since, in fact, state borders ceased to exist for a person, and it became possible not only to live, but also to own property, to work in another state, it became necessary to regulate these processes not only within the framework of agreements between states, but also at the global level. Therefore, individual becomes an independent actor on the international arena.

With the change of epochs, the criteria for including (or not including) those or other actors to the list of subjects of international communication (international law) can change significantly, when such criteria had not a legal content, but only a political coloring introduced by the corresponding era³. As some scholars note, it is obvious that in XXI century legal personality of individuals will be expanded, legal personality of other collective entities (international non-governmental entities, transnational corporations, church associations) will be recognized⁴.

All this necessitated a study on the legal personality of an individual in international law as one of the most controversial issues in international legal science. Today in international law, perhaps, there is no theoretical problem on which there would be the same variety of different, mutually exclusive points of view: from the complete denial of the international legal personality of an individual to the recognition of the latter as the only subject of international law. Solution of the issue of international legal personality of an individual depends on conceptual, theoretical and legal approaches to such a social phenomenon as personality and his rights, and, in turn, allows you to take a fresh look at the modern understanding of the legal personality of an individual, to determine his place and role in system of regulation of international legal relations.

The goal of the work is to characterize current legal personality of an individual in international law from theoretical and practical point of view, as well as the development of specific conclusions on existing problem.

To achieve set goal, it is necessary to solve the following **tasks**:

²Kashirkina A.A. Op. cit.

³Kashirkina A.A. Op. cit.

⁴International public law. Textbook / Executive Editor. Prof. Bekyashev K.A. – M. 2004.

–to give a concept and characterize foundations of international legal personality of individuals;

–to present various doctrinal views on international legal personality of individuals;

–to determine the possibility of individuals applying to international bodies of universal and regional nature for the protection of violated rights in the context of recognition of their international legal personality;

–to consider international criminal liability of individuals for the commission of international crimes in the context of the recognition of their international legal personality;

–to analyze the geopolitical and other political and legal aspects of the recognition of international legal personality of individuals.

The object of dissertation research is public relations in the field of recognition of international legal personality of individuals.

The subject of the research is actual theoretical and practical problems of international legal personality of individuals.

The theoretical basis of dissertation work was the research of scientists, on which the author relies in her dissertation.

For a deep understanding of theoretical issues of international and domestic law interaction, the author has studied the work of **scientists** both in the field of theory of international law and in the field of general theory of law. In particular, in the field of general theory of law, the works of such scholars as S.S. Alekseyev, Zh.D. Busurmanov, A.B. Vengerov, V.V. Yershov, N.I. Matuzov, A.V. Malko, S.Yu. Marochkin, L.A. Morozova, U. Ozbekuly, S.N. Sabikenov, V.M. Syrykh, Yu.A. Tikhomirov et al should be mentioned.

The basis of the study in the field of international law was the work of post-Soviet scientists, including Kazakhstani, in particular, S.Zh. Aidarbayev, I.P. Blishchenko, K.A. Bekyashev, P.M. Valeyev, I.N. Glebov, A.Ya. Kapustin, Ya.S. Kozheurov, Yu.M. Kolosov, M.B. Kudaibergenov, I.I. Lukashuk, Yu.N. Maleyev, G.A. Mashimbaeva, L.Kh. Mingazov, R.A. Mullerson, A.A. Sabitova, Zh.T. Sairambayeva, M.A. Sarsembayev, S. Sayapin, A.N. Talalayev, O.I. Tiunov, G.I. Tunkin, E.T. Usenko, D.I. Feldman, S.V. Chernichenko et al.

The authors who studied the problems of protecting human rights should be mentioned, among which S.Zh. Aidarbayev, M.M. Biryukov, B.M. Bukenbayev, Zh.D. Busurmanov, G.M. Danilenko, P.A. Kalinichenko, G.I. Kurdyukov, P.A. Laptev, E.A. Lukasheva, T.N. Neshatayeva, D.I. Nurumov, S.N. Sabikenov, A.A. Sabitov, V.N. Rusinov, G.R. Shaikhutdinova and others.

One cannot fail to mention the works of such representatives of foreign legal science as D. Antsilotti, J. Brownley, X. de Arechaga, as well as authors who studied issues related to the European Convention, by the European Court of Justice - F. Bradley, W. Butler, P. Van Dyke, L. Wildhaber, D. Gomien, E. Grotrein, F. Jacobs, M. Janice, D. Zwaak, R. Kay, N. Mole, M.A. Nowitzki, A. Peters, T. Ochlinger, G. Petzold, O.J. Settem, C. Harby, D. Harris, G. Shermers.

Recently, a number of dissertation research has been defended in Kazakhstan, one way or another connected with international law and the legal status of individual (for example, in the field of international criminal liability of individuals or international and regional systems and mechanisms for protecting human rights), however, these works focus on given to individual parties to the international legal impact, applied, functional and practical aspects. So, in Kazakhstani science, certain aspects of this topic were covered, in particular, A.A. Sabitova in the work for a doctoral degree in legal science on the subject: "International legal problems of protecting the rights of women", (Ph.D.) Bukenbayeva R. M. on the topic: "International system for protecting human rights (some relevant issues of modern development)", in the dissertation for a degree of candidate of legal sciences M.B. Kudaibergenov on the topic "International criminal liability of individuals", in the monograph by D.V. Tatarinov on the topic "Criminal liability for the use of prohibited means and methods of warfare".

Despite the fact that in the works of aforementioned authors certain aspects of this topic were covered, nevertheless, they do not solve many of the problems that inevitably should have arisen over such a long period of absence of comprehensive study of the international legal personality of individuals, especially in light of the changes that has happened and is happening in the world, codification of international law and in the practice of its implementation. Insufficient knowledge of the problem in domestic science, its importance for the development of modern international law determine the need for research in this area.

The methodological basis of dissertation research consists of general scientific (dialectical, description, comparison, analysis and synthesis, generalization, classification) and private-scientific (historical-legal, comparative-legal, formal-legal) methods of scientific knowledge.

Regulatory and informational base of research. In the process of preparing dissertation, a wide range of legal documents was used in the work on the international legal status of individual: international treaties, constituent documents and internal regulatory acts of international organizations, acts of the application of law in the field of human rights and international criminal responsibility, statistics of international organizations, legislation Kazakhstan and foreign countries, information and reference materials.

Scientific novelty of research lies in the fact that it is the first work in the legal science of Kazakhstan of a monographic nature, specially dedicated to international legal personality of individuals. Despite the low level of knowledge of the problem, no **special** research was conducted in Kazakhstan on this topic, apart from individual articles and small paragraphs in textbooks and monographs.

Confirmation of international legal personality of individual may be the admission of individual to international justice as an independently acting entity, a party to the process. Providing an individual with the opportunity to protect his rights on his own behalf, without the mediation of the state in international judicial and non-judicial bodies, gives him the opportunity to compete with states and individual international organizations. Even the fact that the right to exercise an international legal personality is not permissive, but only informative, which does not contradict the provision on the representative functions of the state in relation to private individuals, cannot convince most states of the need to recognize individuals as subjects of international law. The same applies to the institution of international criminal liability of individuals.

Given the key role of recognition institution by states of the international legal personality of individuals, for the first time in legal science, the author introduces into the scientific thesis the need to take into account geopolitical factors in determining legal personality of individuals in international law.

Scientific novelty of research is the most pronounced in the provisions formulated for public defense.

General provisions that will be on the defence.

1. An individual has rights and bear obligations that are formulated and enshrined in international law. So, when formulating the concept of the subject of international law and its distinguishing features, from the point of view of logic, it is necessary to rely on generally accepted views on the theory of law, in which the subject of law is understood as the bearer of subjective rights and obligations. The subject of international law can be defined as an entity possessing international subjective rights and bearing international subjective duties by virtue of international law. Such a general theoretical approach to international legal personality implies methodological unity in determining legal status of various subjects of international law, including individuals.

2. An individual could be recognized as a special, specific subject of international law, participating in a limited circle of international legal relations. The range of rights and obligations of an individual in international law is steadily expanding. The peculiarity of his position is that, despite the possibility of directly, independently exercising his rights, as well as defending his interests before the state, an individual can realize part of his rights only through the state.

3. The norms of international law can be directly applied to legal relations of an individual. So, the individual has the opportunity to apply to judicial and non-judicial institutions to protect their rights and this entails the obligatory issuance of a final decision in this case. The possibility of an individual applying to these institutions provides him with certain rights and obligations, which testify to the full and comprehensive status of an individual under international law, combining both substantive and procedural rights.

4. An individual cannot directly participate in international law-making, however, individual is undoubtedly the direct addressee of certain norms, and, consequently, the subject of international legal relations. At the same time, the absence of the rule-making functions of the individual testifies only to the

specificity of his legal personality, and not to the fact that he does not and cannot have any international legal personality at all.

5. Under certain conditions, under certain serious violations of international law, an individual can held responsibility under international law, regardless of the will of national state and its domestic law..

6. The current state of international relations, which is characterized by the geopolitical confrontation of a number of large states and their allies, does not contribute to the development of their common position on the recognition of the individuality of individual in international law. Given the differences in positions on this important issue, neither in the near nor even in the medium term, achieving consensus among states regarding the recognition of an individual as a subject of international law seems problematic. Thus, if from the point of view of the theory of law all legal prerequisites have been created for the recognition of international legal personality of an individual, from the point of view of the practice of interstate relations such recognition is impossible today.

Theoretical and practical significance of research. Summaries, provisions and conclusions formulated in thesis can be used in further studies on human rights issues in international law and the issues of the institution of international legal personality.

Materials of dissertation can be used in the educational process of higher educational institutions when conducting classes in disciplines related to human rights and their protection in international law, in the field of improving the level of legal literacy of citizens, in the activities of state bodies and non-governmental organizations related to human rights.

Approbation. The main ideas and provisions of research were published by the author in 13 articles, in particular, in 6 articles in Kazakhstani journals recommended by the Education and Science Monitoring Committee of the Ministry of Education and Science of the Republic of Kazakhstan, in 5 articles in collections of international conferences, in 2 articles published in foreign journals included to the Scopus database.

Structure of research. The work in its structure consists of a list of abbreviated generally accepted words, introduction, three sections and eight subsections, conclusion, supplement and a list of sources used. Dissertation consists of 126 pages.