

ABSTRACT

on the dissertation thesis for degree of PhD
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**«Personal Legal Status pursuant to the Foreign and Kazakhstan's
Legislation: Rather-legal Analysis of Kazakhstan and Great Britain»**

The dissertation examines the legal status of a person based on the experience of the Republic of Kazakhstan and the Great Britain. A comparative analysis of the scientific views of domestic and foreign scientists; reveals the problematic aspects of protecting human rights.

The relevance of the topic of the dissertation. In the era of globalization, the role of the legal status of the individual in solving urgent problems of human civilization is growing. Legal status includes the rights, interests, freedoms and duties of a person and a citizen. In recent years, dramatic changes have occurred in the global legal system and the legal system of Kazakhstan. These changes will serve as the basis for the protection, enforcement and development of human rights. On the one hand, it is a process of integration and regionalization based on world globalization, on the other hand, domestic political and liberal reform processes in Kazakhstan.

There are a number of international documents that significantly contribute to the development of domestic legislation in the field of regulation of the legal status of a person and citizen. Among them, first of all, the Universal Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights of 1966, the International Covenant on Economic, Social and Cultural Rights of 1966 should be noted. Together, all three documents are referred to as the Bill of Rights. Here are proclaimed ideas, views that all peoples and states strive to implement, provide, recognize and comply.

The first Constitution of the Republic of Kazakhstan, adopted on January 28, 1993, for the first time proclaimed the priority of natural rights and freedoms of the individual. This provision was further enshrined in the Constitution of the Republic of Kazakhstan, adopted on August 30, 1995. These rights and freedoms are reflected in other constitutional laws. We especially note the significance of the Law on Citizenship of the Republic of Kazakhstan.

The creation of the Astana International Financial Center (AIFC) is one of the instruments for Kazakhstan to become one of the thirty most developed countries in the world. In his speech, the President of the Republic of Kazakhstan Kassym-Zhomart Tokayev noted that this task is not easy, ambitious. "This requires sustained high-quality economic growth, ensuring the attraction and maintenance of new high-quality investments and technologies. However, we are not afraid of reform. Therefore, for the first time in the territory of the former Soviet Union, English law begins to be successfully applied in our country within the framework of a unified

system of justice. I am convinced that the creation of the AIFC court, consisting of the most honored and respected British judges, will ensure its ultimate success. Today, the AIFC court and the International Arbitration Center (IAC) are starting to write their own story and are developing an element of trust at the local and global levels. It is time to take advantage of our competitive advantages. ”

The International Arbitration Center offers an independent, cost-effective and efficient analogue of legal proceedings, operating in accordance with the best international standards for resolving civil and business disputes in the AIFC. This requires a special study of the rules and regulations of English law regarding the protection of human rights.

Thus, there is an urgent need to develop new scientific and theoretical approaches containing reasonable proposals and recommendations for improving legislation and measures to protect human rights in the Republic of Kazakhstan. All of the above indicates the relevance of the dissertation research.

The degree of knowledge of the problem. The rights, freedoms and duties of man and citizen are studied in the framework of philosophy, sociology, political science, jurisprudence. We note the works of well-known domestic legal scholars dedicated to the study of the legal status of the individual. They: S.S.Sartayev, S.Z.Zimanov, G.S.Sapargaliev, M.T.Baimakhanov, V.A.Kim, Z.K.Kenzhaliev, D.M.Baimakhanova, A.S.Ibrayeva, G.R.Useinova, K.K.Aitkhozhin, S.K.Amandykova, S.N.Sabikenov, A.Sman, A.A.Sabitova, A.Bozhkarauy, V.V.Mamonov, Zh.D.Busurmanov, B.B.Intykbaeva, A.V.Turlayev, Zh.T. Baimukhanbetova and others.

The concept of the legal status of an individual, the history of the development of human rights and freedoms, the theory and practice of citizenship were studied by Russian legal scholars. They: S.A.Avakyan, N.G.Aleksandrova, M.V.Baglay, N.V.Vitruk, N.N.Alekseev, K.D.Kavelin, P.I.Novgorodtsev, L.I.Petrazhitsky, E.N.Trubetskaya, B.N.Chicherin, N.I.Matuzov, E.A.Lukasheva, G.V.Maltsev, B.C.Nersesyants, S.S.Alekseev, B.C.Shevtsov, V.E.Chirkin, Yu.A.Dmitriev, V.I.Ivanova, V.O.Lucin, A.B.Malko, B.A.Maslennikov, N.A.Mikhaleva, V.A.Patulin, F.M.Rudinsky, B.N.Topornin, V.A.Chetvernin, B.S. Ebzeev, A.Kh. Abashidze, K. A. Bekyasheva, I.P. Blishchenko, A.B. Vasilenko and others.

The legal status of the individual as a separate topic was investigated in the writings of British scientists. They: P.Alston, K.Annan, A.Bayefsky, T.H.Marshall, W.Kymlicka, F.Klug, A.Cassese, P.Jones, P.Webb, N.Yuval-Davis, J.Castellino, H.Wray, E.F.Isin, P.K.Wood, B.S.Turner, J.Barbalet, M.Galey, K.R.Arnold, S.R.Amelli, N.Glazer, G.Nielsen, E.Kofman, C.Joppke, T.Faist, R.Koopmans, G.Berb, I. Brownlie, J. Carey, B.E. Carter, M. Doxey, P. Drost, J.Fitzpatrick, B.B. Ghali, J.P. Humphrey, H. Kelsen, B. Kimoon, H.Lauterpacht, L. Leblanc, M. McDougal, J. Merrills, M.Reisman, A. Robertson, Sh.Benhabib and others.

A number of dissertations on the study of human rights also addressed issues such as citizenship, general and special legal status. We note the doctoral dissertation of famous Kazakhstani scientist, Professor D.M.Baymakhanova "Problems of human rights in the system of constitutionalism in the Republic of Kazakhstan".

In the dissertation of A.M.Dyusekova "Problems of implementing the norms of

international covenants and conventions on human rights in the national legislation of the Republic of Kazakhstan" is a comparative analysis of national legislation and international legal documents on human rights.

We also point out A.Sman's doctoral dissertation "The legal status of the individual in the Republic of Kazakhstan (constitutional and legal aspect)". Here we consider the constitutional consolidation of the legal status of the individual in Kazakhstan.

In the dissertation of A.B.Seifullina "Restriction of human rights and freedoms in a state of law (general theoretical problems)", a scientific analysis of the institution of restriction of human rights is carried out.

In the dissertation research of A.B.Zhumagulova "Institute of Human and Citizen Rights: Problems of Theory and Practice" theoretical and practical issues of human and civil rights are described.

In contrast to these works, this dissertation examines the legal status of an individual in the context of globalization on the basis of a comparative analysis of the legislation of the Republic of Kazakhstan and the legislation of the Great Britain.

The aim of the thesis – in the context of globalization, to study the legal status of individuals in the Republic of Kazakhstan and the Great Britain, to develop recommendations for improving the human rights legislation of the Republic of Kazakhstan.

To achieve this goal, the following **tasks** were identified:

- reveal the legal status of a person through the prism of globalization, consider the legal framework for protecting human rights;

- identify features of the formation and development of human and civil rights and freedoms in Kazakhstan, analyze the institution of citizenship;

- determine the features of the legal status of the individual in the Great Britain; identify mechanisms for the implementation of the rights and freedoms of man and citizen;

- conduct a comparative analysis of the legal status of the individual in the Republic of Kazakhstan and the Great Britain; to consider the possibility of implementing the norms of international law and foreign practice in the legislation of the country to improve the institution of citizenship;

- develop recommendations and suggestions for legal practice in order to improve the mechanism for protecting human rights based on a synthesis of the practices of the Republic of Kazakhstan and the Great Britain.

The object of research is social relations arising from the implementation of the legal status of an individual in the Republic of Kazakhstan and the Great Britain.

The subject of the research is the norms and provisions of constitutional legislation governing human rights and freedoms in the Republic of Kazakhstan and the Great Britain, as well as international law.

The methodological basis of the dissertation research is the general and particular methods of scientific knowledge: analysis and synthesis, deduction and induction, dialectical, materialistic; structurally functional, concrete historical, logical, statistical, formal legal, comparative legal.

The theoretical base of the study was the provisions of the messages of the head of state of the Republic of Kazakhstan, monographic studies and scientific works of leading Kazakh and foreign scientists.

The normative base of the study was the provisions of the Constitution of the Republic of Kazakhstan, the legislation of the Republic of Kazakhstan and the Great Britain, state programs, political and legal documents, international declarations, conventions and agreements on human rights.

The practical base of the study was constituted by regulatory resolutions of the Constitutional Council, speeches by the President of the Republic of Kazakhstan, the head of the Supreme Council of the Republic of Kazakhstan, statistical data, and data from a sociological study.

The scientific novelty of the thesis consists in the author's approach to the study of the legal foundations of regulation and protection of human rights and freedoms. In the dissertation, from the point of view of globalization, the essence and significance of the legal status of the individual were investigated; features of the historical stages of the development of the status of a person are revealed; a comparative analysis of the legal status of a person in the Republic of Kazakhstan and the Great Britain.

Scientific novelty is seen in the following results:

1. It is concluded that the legal status of an individual is part of social status and depends on the qualities of a person and citizen. It is proposed to understand the terms “legal status” and “legal status” of an individual as equally significant. The legal status of a person is defined as a set of rights, freedoms and duties, and guarantees for the protection of these rights.

2. The significance of the institution of citizenship for legal status is substantiated. It is determined that the institution of citizenship is a special institution in the constitutional law of the Republic of Kazakhstan and the Great Britain and the basis of modern statehood.

3. It is determined that in the Great Britain, due to the lack of a single Constitution, norms on the rights, freedoms and duties of citizens are not represented in a certain system, are regulated by various laws, precedents and legal practice. By virtue of this, protection in court is an effective protection of rights and freedoms. Within the framework of state protection of human rights and freedoms, the model of the British Ombudsman is of interest.

4. A scientific analysis of the process of applying the norms of English law in the legal practice of Kazakhstan. It is concluded that this process is necessary for the development of investment law, ensuring the supremacy of the Constitution and international law.

5. A scientific analysis of modern concepts of human rights and freedoms has been carried out; The features of such approaches to human rights as liberal (Western), Muslim, Marxist-Leninist (socialist) are defined. It is concluded that the legal status of a person should be one of the basic principles of state and social construction. Developed proposals aimed at improving the institution of citizenship of the Republic of Kazakhstan.

The main provisions to be defended:

1. In the dissertation, the legal status of the individual is the legal status of the individual in the state and society. The legal status of the individual is part of social status and is associated with the personality of the individual. The concepts of “legal status” and “legal status” of an individual are synonyms. The legal status of an individual is determined for a person more than the legal status of a legal entity. The basis of a person’s legal status is his rights, freedoms, interests and obligations in unity. The freedom of man is also his right. The legal status of a person is enshrined in the Constitution and is based on a new concept of human rights. It is based on international legal documents that determine the level and establish general legal standards for human rights and freedoms.

In our opinion, the legal status of a person is the legal status of a person, which reflects his real state in relations between society and the state, including fundamental human rights and freedoms, legitimate interests, the subjectivity of law, citizenship and legal responsibility. This definition complements other definitions that determine the legal status of an individual in the scientific community, and is intended to complement these definitions.

2. Understanding of the legal status in modern legal practice is consistent with the Universal Declaration of Human Rights and constitutional norms. Its main reason is the features of the historical development of Kazakhstan. The science of state law in the Kazakh state began to take shape in the twentieth century. The first Kazakh Soviet constitution, the Basic Laws, established a number of human rights. The basic laws of this period did not determine the legal status of a person and citizen. To improve the rule of law, it is necessary to study and scientifically substantiate the institution of citizenship, since it is the basis of modern statehood. The development of intergovernmental processes will improve the institution of citizenship and develop ways to develop citizenship under Kazakhstani legislation based on analysis of foreign law, as well as identify the role of citizenship in a modern country and society.

One of the important tasks of legal science is the effective and proper development of legal norms to ensure the rights and freedoms of man and citizen by further consolidating the institution of citizenship. The historical development of the institution of citizenship as a legal phenomenon and its occurrence in the modern world necessitates an analysis of this institution. The main component of the idea of citizenship should be considered as the legal basis for the interaction of the individual and the state. The dissertation will discuss ways to improve the institution of citizenship. It is also noted that the institution of the Ombudsman of Great Britain should be implemented in the Republic of Kazakhstan.

3. In the Great Britain, human rights and freedoms are governed by various laws, judicial precedents, and legal customs. Particular attention is paid to ensuring effective judicial protection of rights and freedoms. The history of the development of the legal status of a person in Great Britain dates back to the Middle Ages. This is reflected in the Magna Carta of Freedom of 1215, the Act of Habeas Corps of 1679 and the Bill of Rights of 1689. These acts testify to the emergence and development of British human rights law. As a result, the British came up with the principle: "Subjects have the right to do everything that is not prohibited by law."

Currently, civil rights are guaranteed in the Great Britain: the inviolability of the person and home, freedom of conscience and religion, the confidentiality of correspondence and telephone conversations, as well as the protection of electronic privacy controls. Of particular interest is the model of the British Ombudsman in the field of state protection of human rights and freedoms.

4. In determining the legal status of a person, foreign experience is considered in the content of the dissertation. In our opinion, we would like to make suggestions on improving the legislation of the country governing the area of the legal status of an individual, in particular: to administer justice in our country, we need to introduce the principles of English law, for which we use the practice of English in our judicial practice. This is a reflection of the exercise of the judiciary and human rights in developed democracies. The dissertation is based on the need for further training of judges on the basis of British judicial practice, improving the judicial system in the country, preparing judges for international affairs, which increases the legal status of the individual, further development of the rule of law, civil society and legal awareness and culture of citizens. A scientific analysis of the application of English law in the legal practice of Kazakhstan was carried out. It has been argued that this process is necessary to ensure and develop the rule of law in the Constitution and international law.

5. An important element of the legal regulation of the status of a person and a citizen is the approval of the concept of the status of a person, which determines a person's place in society and the state. Worldview concepts formed by various humanity were developed on the role of man in the life of society and the state, his rights and freedoms. These concepts are secular and religious, have individual and collective, legal and ritual forms and so on. In the modern constitution there are three concepts that identify a person's personality: liberal (Western), Muslim, Marxist-Leninist (socialist). In world constitutions, the concepts of personality status encompass personal, political, economic, social and cultural human rights. In our opinion, in the first place as a person should be a person, his life, security, freedom, secondly, he should be able to participate in public life and state affairs, and thirdly, he should have the right to participate in economic processes.

An updated system that confirms the status of a person should be one of the fundamental principles of state and social structure. It should determine the list and content of fundamental and sectoral human rights, freedoms and duties, state goals, tasks and content of state bodies. These questions are carefully studied and recommendations are given in the dissertation.

The theoretical significance of the study. The results of the study can be used as a basis for determining the legal status of an individual, improving and promoting individual rights in the field of protecting human rights, as well as improving the institution of citizenship and developing the institution of the Ombudsman.

The practical relevance of the study. The results of the study can be used in the process of training lawyers in universities when teaching such subjects as "Theory of State and Law", "Constitutional Law", "Administrative Law", "History of State and Law", in the preparation of relevant textbooks and research projects. They can also be used to improve the norms of constitutional law, in the activities of law

enforcement services, upon receipt or renunciation of citizenship; in the practice of human rights organizations.

In order to improve the current legislation of the Republic of Kazakhstan, conclusions and recommendations can be used that are reflected in the work in the course of legislative activity and practice of human rights organizations.

The results of the thesis can be used to further develop pressing problems, deepen complex scientific and practical research in accordance with modern trends in the constitutional and legal development of Kazakhstani society and build a democratic state of law.

Information about the completeness of publications. The main conclusions and results of the study were reflected in eleven scientific publications. Including: five articles in journals approved by the CCES of the Ministry of Education and Science of the Republic of Kazakhstan, five articles in international scientific conferences and one article published in a journal included in the Scopus database.

Approbation of research materials. The theoretical results and conclusions of the dissertation were discussed at a scientific seminar of the Department of Theory and History of State and Law, Constitutional and Administrative Law of Al Farabi KazNU.

Structure of the dissertation. The dissertation consists of designations and abbreviations, introduction, the main part, which includes three sections and ten subsections, conclusion and bibliography.