
IN THE QUESTION OF THE CONCEPT OF "INDIVIDUAL" IN THE THEORY OF LAW AND INTERNATIONAL LEGAL REGULATION

Lyazzat Begimjanovna Nyssanbekova
Elmira Serikkeldinovna Abdrakhmanova
Gulmira Amangeldievna Mashimbaeva
Zhuldyz Talgatovna Sairambaeva
Kazakh National University named after Al-Farabi,
Kazakhstan, 050000, Almaty, Karasay batyra Street, 95a
Moldir Abaevna Rahmetova
Zhetysu State University named after I.Zhansugurov
Kazakhstan, 050060, TaldyKorgan, I.Zhansugurov Street, 187a

ABSTRACT

The article discusses the concept of "individual" as there is no clarification of this term in the regulatory acts and in the legal literature. The author refers to the analysis of the provisions of the general theory of law, through their prism to consider the notion of "individual" for deeper understanding of these features. Essentially used in jurisprudence designation "individual" is identical to the concept of "human being", "natural person". The author offers some reflections of legal scholars on this issue. Thus, some authors favor the withdrawal from scientific circulation of concept of "individual" replacing it by such terms as "citizen", "non-citizens", "legal personality", etc. This article has the intention to generalize existing theoretical interpretation and provide author's vision on this issue.

KEYWORDS: individual, a person, subject of rights, legal personality

INTRODUCTION

The regulation of public and private relations of powerless subjects using the conflict rules was and always will be the most important and fundamental issue for many institutions of international law, including for the legal status of individuals. In considering such an element of a status of the individual as a place of residence, it should be noted that the use of this special legal term has no widespread understanding and recognition.[1]

The term "individual" in the legal literature and regulations is used in different ways. In this regard, to determine the legal status of an individual in the law it is necessary to find out the notion of "individual".[2]

Beginning the consideration of the question about an individual, it is necessary to review the origin of the concept of "a person," which first appeared in Roman law. Roman lawyers didn't subdivide the subjects of law to physical and legal persons. In the texts of primary sources they (individuals and legal entities) are not even mentioned.

There are several reasons. First, civilian turnover in Rome was founded primarily on the legal capacity of individual humans, they owned the main role in

it. Second, the notion of identity in the Roman tradition separated from the notion of the individual as well as the Romans knew the will of capable, but not the legally incompetent person, such as slaves. Third, this concept has developed later in European law reception times. In Rome, there was one concept-persona. [3]

The technical term "person" i.e. persona (from the Latin language - "mask") - a term used in the abstract and in those cases where it is necessary to designate detached legal capacity.

"Person", "personality", "impersonate" – these are the words denoting the relation to a man, person. Impersonate, i.e. to give to a thing or to an abstract concept the personality.

The modern law, being based on the principle of equality of rights of citizens does not know such a distinction, nevertheless, a distinction is made in connection with citizenship, age, sex, marital status. It is significant that this thesis does not withstand criticism even in relation of the person, which is often identified with the subject of the law.

Meanwhile, it is necessary to distinguish a man as a biological individuality from representation of him in the legal definition, i.e. physical person. Certainly these concepts are related, but not identical. The man does not the subject of law itself, it makes those legally organized civil society institutions. Technically this is done by the fiction of an individual.

It is well known that there was a time when the person wasn't recognized as the subject of law, and for his recognition the number of conditions was necessary, to which most people did not fit, such as slaves, serfs. Even today, the debate is focused on whether it is possible to consider the incapacitated person as the subject of law, i.e. does not having legal personality and exercising their rights by proxy.

Therefore, an individual is not a person, he becomes the person by virtue of possessing legal personality. These are fictions, mediators between the real world and the world of law. Although G.F. Shershenevich writes: "Individual - is a subject of law, which coincides with a man ..." [4]

Agrees with him Zhyullio de la Morander defines who says that: "individuals are human beings, as they, each separately, are subjects of law".[5]

Parlett also points out that the study of 'individuals' is primarily aimed at the study of the legal status of 'natural human persons' unlike other non-state formations, in particular legal entities. [6] However Savigny believed that the real subject of the law is only a person as "volesposobnaya personality" and that subjective right - it might volitional sphere of manifestation of "freedom" of the individual. Gelder has brought to its logical conclusion the thesis that "subject to the law can only be a capable person." [7]

It is well known that the problem relates to the subject of the right of the central legal science, as there is no consensus approach to the concepts of "legal entity", "person", "subject Matter."

In Roman law, and in the civil law doctrine of feudalism the concept of "legal entity" and "person" did not match, because the servant does not possess legal personality and is not the subject to the neither "jus civile" law, nor "jus gentium", he was considered as a thing.

In bourgeois right under legal subjects were understood people who are called "individuals" and the union of people or organizations which are called "legal entities." [8]

The separation of concepts like the "subject of rights" and the "person" in modern conditions is unthinkable. However, for in-depth understanding of these features it is advisable to apply to the analysis of the provisions of the general theory of law, through their prism to consider indicated in the title of the legal phenomenon that plays an important role in shaping the regulatory framework of any branch of the law. There is nothing "seditious" that the concept of "legal entity" expresses the legal abstraction.

On the contrary, it is through the category of "subject of law" which generally reflects the different categories of persons provided by the legal norms, there is the only possibility to reveal the contents of a particular branch of law. For example, civil law covers such subjects as the buyer and seller, landlord and tenant, etc.

Criminal procedure law establishes the existence of the following subjects: the accused, the suspect, victim, etc. As administrative law, by virtue of a wide range of social relations regulated by it, the list of his subjects is huge.

Consequently, we are talking about legal abstractions which generally determine, who is subjected to the certain norms. Of course, the degree of generalization with respect to a particular type of the subject of law may be different, for instance: a soldier, a soldier of some kind of troops, military of specific military rank, etc. [9]

In our view, under the subject of law is advisable to understand the abstract person (natural or legal),

which is endowed with a certain amount of abstract legal rights and obligations. This will make the necessary clarity in the interpretation of legal concepts under consideration.

Cesare Sanfillino argues that "the subject, which, on the one hand, the is the addressee of objective law, and on the other - the bearer of a subject of law, who has the legal name of "person". This person has a personality that is recognized by law and it could therefore be called "legal personality" in the broad sense. Consequently, the concept of "legal entity" and "person" is the same. [10]

It is well known that the classical definition of legal subjects associated with such concepts as natural and legal persons. The concept of "natural person" (from the Greek "physis" and the Latin "persona") refers to individual subject of law, in contrast to the subject of law - public formation, known as a legal entity. Essentially, the designation "natural person" used in jurisprudence is identical to the concept of "person", "individual". Individual - this single human representative of the human race, who has a peculiar mental and physical features. Individuals involved in a relationship as people, persons. Individuals and their public formation can be given different legal status, allowing them to be members of different relations, while the legal status may or may not include the category of citizenship of the person.

For example, an individual being a citizen of Republic of Kazakhstan, may be involved in the most common legal employment relations - the legal relationship of employer and employee in the field of entrepreneurship. However, not all authors unanimously are in favor of using the definition of "individual".

Thus, some authors are in favor of withdrawal from circulation of scientific concept of "natural person" as the term is increasingly reflects the natural characteristics of the subject as a psychophysical individuals, not its public quality.

The use of such term as "citizens" which is used in the legislation and in the literature is inappropriate, since its literal interpretation doesn't allow us to apply it to any foreign nationals or stateless persons. In this sense, the term "individuals" covers a broader concept.

The scientist S.S. Alekseev has previously advocated for the introduction of such a term. [11] D.N. Bachrach, deepening the knowledge of the subjects of the mentioned system, rightly pointed out that a more detailed differentiation of subjects is required. He suggested, in particular, dividing citizens into Soviet citizens, foreigners and stateless persons. [12]

It was stated that the difference between the branches of the law can be seen in whom they admit their subjects.

In International Private Law to determine the legal status of individuals, their rights and duties in the

territory of a particular state the national legislation of that state is applied. In particular, Art. 12 of Civil Code of Republic of Kazakhstan under individuals implies citizens of the Republic of Kazakhstan, foreigners and stateless persons.

It should be noted that the term "foreigner" is used by the legislation to refer the category of individuals, and not to identify a specific organization. By virtue of what the category does not include foreigners, foreign legal entities. However, some authors, in particular, Koretsky consider that "in the legal abstraction legal entities such as persons as individuals, foreign legal entities - such as foreigners, as well as foreign individuals." [13]

In most regulations in the international protection of human rights regarding to the persons who are not nationals of the country in which they reside, the terms "persons who are not nationals of the country in which they reside", "persons who are not citizens of the country in which they are staying, "not citizens", "foreigners " and etc. is applied.

Analysis of international agreements shows that the meaning of all these formulations is the same, but each of them has certain nuances. In the result of in-depth analysis of materials of international practice and national legislation of the majority of UN members, on 28th session of the UN General Assembly in 1977, it was concluded that the term "persons who are not nationals" means individuals who are not citizens of the country where they are located and are foreigners in accordance with the domestic law of that country.[14]

In the case of *Kiobel against Royal Dutch Petroleum* Ko 621 F.3d (2d Cir.2010), the court noted that 'international person is the one, which has a legal personality in international law, which is someone, who is a subject of international law, having the rights, duties or powers established in international law and the general ability to act at the international level. International person means a natural person, who has the status of a person under international law. Concept of international human comes from international law.' [15]

Rightly points out N.I. Matuzov , 'in a modern civilized society there can't be people, who are not endowed with the general legal capacity... The duty of every state is to properly ensure this quality and protect it." [16]

Accordingly, we believe that the individual is a certain person who has rights and duties, which are provided by international law and are eligible for guaranteed protection of their rights at the international level. Therefore, to our mind, the main feature of 'individual' is the ability to act the international level.

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