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HUMAN RIGHTS INSTITUTE UNDER ENGLISH LAW

The article examines the human rights issues, especially citizenship institute based on the experience the United Kingdom. An analysis of the scientific views of domestic and foreign scientists; reveals the problematic aspects of protecting human rights institute.

In the era of globalization, the role of the human rights in solving urgent problems of human civilization is growing. In recent years, dramatic changes have occurred in the global legal system and the legal system of the UK. 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 the UK.

The main focus of the article is to study the legal status of individuals in the UK in the context of globalization, to develop proposals for improving the legislation on human rights in the Republic of Kazakhstan. The article provides for the disclosure of the legal status of the individual through global processes and author's interpretation of it, the legal basis for the protection of human rights, the definition of the features of the formation of human and civil rights and freedoms in the UK, proposals were made for its further development in Kazakhstan.

Key words: human rights, freedoms, citizenship, legal status of individuals, enforcement, government.

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Ағылшын құқығы бойынша адам құқықтары институты

Мақалада Ұлыбритания тәжірибесі негізінде адам құқықтары қарастырылған. Отандық және шетелдік ғалымдардың ғылыми көзқарастарын талдау арқылы адам құқығын қорғаудың проблемалық жақтарын байқауға болады.

Жаһандану дәуірінде адамзат өркениетінің өзекті мәселелерін шешудегі адам құқықтарының рөлі артып келеді. Соңғы жылдары әлемдік құқықтық жүйеде түбегейлі өзгерістер болды. Бұл өзгерістер адам құқықтарын қорғау, сақтау және дамыту үшін негіз болады. Бұл, бір жағынан, әлемдік жаһандануға негізделген интеграция және аймақтандыру процесі, екінші жағынан, Ұлыбританиядағы ішкі саяси және либералды реформалар процестері.

Мақаланың басты түйіні – жаһандану жағдайында Ұлыбританиядағы жеке тұлғалардың құқықтық мәртебесін зерттеу, ҚР-да адам құқықтары туралы заңнамасын жетілдіру бойынша ұсыныстар әзірлеу. Мақалада жаһандық үдерістер арқылы жеке тұлғаның құқықтық мәртебесін ашу және оған авторлық тұрғыдан түсінік беру, адам құқықтары қорғалуының құқықтық негіздері қарастырылды. Ұлыбританияда адам және азамат құқықтары мен бостандықтарының қалыптасу ерекшеліктерін айқындау, азаматтық институтты талдау және оны ары қарай ҚР-да дамыту жөнінде ұсыныстар жасалды.

Түйін сөздер: адам құқықтары, бостандықтар, азаматтық, жеке тұлғаның құқықтық мәртебесі, күшіне ену, мемлекет.

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Институт прав человека по английскому праву

В статье рассмотрены проблемные аспекты соблюдения и защиты прав человека на основе анализа опыта Великобритании. На сегодняшний день в эпоху глобализации возрастает роль прав человека, происходят кардинальные изменения в мировой правовой системе и правовой системе Казахстана. Эти изменения послужат основой для защиты, обеспечения и развития прав человека: с одной стороны, это процесс интеграции и регионализации, основанный на мировой глобализации, с другой – внутривластные и либеральные реформенные процессы в Великобритании.

Целью статьи является исследование правового статуса личности в Великобритании, выработка рекомендаций по совершенствованию правозащитного законодательства Республики Казахстан.

При проведении данного исследования проведен анализ правового статуса личности в Великобритании; выявлены особенности механизма реализации прав и свобод человека и гражданина; рассмотрены возможности имплементации норм международного права и зарубежной практики в национальное законодательство Республики Казахстан для совершенствования института гражданства.

В выводах авторами даны практические рекомендации и предложения по совершенствованию механизма защиты прав человека на основе обобщения практики Республики Казахстан и Великобритании.

Ключевые слова: права человека, свободы, гражданство, правовой статус человека, исполнение, государство.

Introduction

Great Britain takes part in the formation and implementation of the content of the civil concept of the state, in necessary cases takes responsibility for power, and in other cases passes the leadership to professional specialists and migrants, and generally takes a balanced position. This liberal vision of governance means the formulation of citizenship as an actual problem of civil society. (Suvarierol 2015: 13)

The British civil Institute protects the rights of British citizens, British citizens abroad, British foreign citizens, British protected individuals and British citizens. (Mantu 2009: 181) Possession of citizenship in Western countries opens the door to a number of opportunities, including transnational mobilization. The adoption of citizenship in Western countries can act as a tool for increasing social capital through expanded horizontal mobility. A passport can be described as a travel companion and a guarantor of global mobility. Possession of a passport of a Western state is a symbol of hereditary status, which will significantly improve the life opportunities of a person, given to a child from a grandfather, that is, if you take the situation of migrants from the UK, they will be given the opportunity to move to a number of countries.

Literature review

Since citizenship facilitates the implementation of global business and provides huge opportunities, possession of passports of several countries will allow you to move freely. (Tropey 2000:159) Having a British passport, anyone has the right to live and work in this country, participate in social and tax benefits, and participate in the electoral process in the UK. In addition, all countries that are members of the European Union have the right to live and work without restrictions, as well as visa-free travel to many countries of the world, including such major developing countries as the United States, New Zealand, Canada, and Australia. (<http://www.legalcentre.org/Grazhdanstvo-Citizenship.html>)

The process of accepting European citizenship includes not only the membership of one country, but also the relationships that govern the behavior of each subject. Theoretically, not in the transfer of citizenship, it is a value at the time when he received the labor. According to the strict migration policy, the British government has defined obtaining English citizenship as «not a right, but a privilege» and calls for developing knowledge of British culture and advanced language skills.

Material and Methods

The citizenship act 1981 defines the following six categories of citizenship, depending on the territory of the United Kingdom: Citizens of the United Kingdom of Great Britain and Northern Ireland; citizens of the British territories beyond the seas; British citizens abroad; Citizens under the jurisdiction of the United Kingdom (subjects); British citizens overseas in British territories; Citizens of British protection, that is, protected people. The majority of UK residents are citizens of the United Kingdom of Great Britain and Northern Ireland. This category of British citizens has free entry into the country, as well as a number of other rights and freedoms.

Citizens of British territories overseas. Citizenship British overseas territories does not provide a right of free entry to the UK, but provides a simplified procedure of acquiring citizenship of the United Kingdom of Great Britain and Northern Ireland (in registration order). Citizens of Ireland and citizens of member States of the European Union have a special status in the UK. EU citizenship, created under the terms of the Maastricht Treaty of 1992, provides for the right of citizens of EU member States to freely enter and leave the UK. Termination of citizenship is possible in the case of refusal or deprivation, which is formalized by the decision of the Secretary of State for internal Affairs.

Someone who was a citizen of the United Kingdom and its colonial country before 31 December 1982 and is related to the British territory overseas, i.e. parents or grandmother were born in this territory, then they are a citizen of the British territory overseas on 1 January 1983. Someone who was born in a British territory overseas and at the time of birth their parents are citizens of a British territory overseas or legally settled in that territory, then they are a citizen of a British territory overseas.

British citizens overseas, British citizens abroad, British citizens under British jurisdiction, British citizens, British citizens overseas in British territories are entitled to the protection and consular assistance of British diplomatic posts by holding a British passport. However, the EU does not treat these citizens as British citizens, and they do not automatically have the right to live and work in the UK. British citizens abroad. On December 31, 1982, he was a citizen of the United Kingdom and its Otar countries and on January 1, 1983, he was not a British citizen, as well as a citizen of British territories outside the sea, then he is considered a British citizen abroad from January 1, 1983.

Due to the connection with Hong Kong, people who are citizens of British territories outside the sea lost their citizenship on 30 June 1997, as sovereignty was then returned to China. However, in both cases, the person: the first if the person does not belong to any nation and the person is stateless; secondly, if the person was born on or after 1 July 1997 without citizenship, and if one of the parents at the time of birth is a foreign citizen of the United Kingdom or a British citizen outside the British territories, the status of the UK As an alien is maintained. Stateless persons can in both cases register as citizens across the seas of the British territories: In the UK or on British territory overseas; One of the parents is a British citizen abroad.

Until 1949, any person who was closely associated with the United Kingdom was considered a citizen of its jurisdiction (British subjects). Until January 1983, all citizens of Commonwealth countries were considered British citizens. First, if a citizen under the jurisdiction of a British country without citizenship, this means that the United Kingdom and its country, which is not a citizen of the Otar countries, Commonwealth countries, the Republic of Pakistan or Ireland, was a person under the jurisdiction of the United Kingdom on December 31, 1948. Second, citizens who became citizens of the Republic of Ireland on 31 December 1948 and applied to remain a person under the jurisdiction of a British country have been treated as citizens under the jurisdiction of a British country since 1983. (Almakky 2015: 55)

Citizens under UK jurisdiction cannot grant their status to children if they were born on or after January 1, 1983. However, a child born on or after 1 January 1983 in the United Kingdom or on British territory overseas, provided that: If one of the parents is a British citizen; Both parents are not British citizens, British territory overseas, or British citizens abroad; They are citizens under the jurisdiction of the United Kingdom, without the status of a British citizen. Since January 1, 1983, any citizen of another state cannot be a British citizen. This provision does not apply to citizens of the Republic of Ireland.

January 1, 1983: If a citizen of Brunei; If the UK country is protected much earlier than this time; At the time of birth, one of the parents is a citizen of British protection, and a citizen of British protection is considered a stateless citizen both in the UK and abroad on British territory. Citizens of British protection: Acceptance of citizenship of another state; A person gains independence of a state in which

it is closely interrelated, and he is a citizen of this state, loses his status in these conditions. If a person is a stateless person born in the UK or overseas on British territory, and one of the parents is a British citizen at the time of his birth, then he can become a British citizen. Prior to the adoption of a number of special laws aimed at regulating citizenship, starting in 1914, the principle of real subordination of the common law had long been in force in the country. (Common Law doctrine of allegiance)

After the British citizenship act of 1981 in the UK, the policy on citizenship was relatively serious and calm. However, due to such quotes as "multiculturalism has failed", "communities live in parallel", several changes have occurred recently. For example, the citizenship, immigration and asylum act of 2002 required candidates for British citizenship to complete an internship in English, history, law, culture and tradition, then citizenship acquisition procedures were carried out and they took an oath of allegiance to the crown. The borders, citizenship and immigration act introduced the concept of testing in 2009; due to the large number of applicants for British citizenship, it is recommended that they be required to have an active citizenship position. (Stewart 2014: 1024)

European citizens must prove that they have lived and worked in the UK for 6 years in a continuous period to obtain British citizenship, have not spent more than 450 days outside the UK in the past 5 years, and have spent more than 90 days in the past 12 months.

Results and Discussion

First, there is the issue of false marriage, which still does not have a universal effective solution and causes serious difficulties in proving the fact of falsity. Currently, fictitious marriage is considered as one of the main and easiest ways to legalize it in the country of entry. In addition, the state provides the opportunity to receive certain social benefits in cases provided for by law, in marriage with a citizen of the receiving state. To date, one of the easiest ways is to establish whether the simplified procedure for acquiring, residing and acquiring citizenship of the host state depends on the conclusion of marriage, including outside the host state. As a rule, in addition to the requirements for a certain length of marriage, there is a requirement for financial support for family members and the availability of housing.

The migration legislation of the UK regarding the prevention of false marriages is much more de-

veloped than the Kazakh legislation. So, in March 2015, a requirement was made that the duration of filing an application for marriage and matrimony is 28 days (previously, this period was twice as short - 16 days), and if there are reasons why the internal Affairs bodies can extend the period of consideration of the application to 70 days. To obtain a visa as a spouse (partner), the applicant must generally meet one of the following conditions: a UK-recognized civil partnership or marriage status; when applying for a visa as a bride, husband or future partner, you must enter into a marriage or civil partnership within 6 months of your arrival in the UK (and you must prove that all previous marriages or civil partnerships have ended). In this case, the applicant must prove that they speak English and can finance themselves and their dependents. (Yuvaldavis 2008: 304-318)

According to the law, a marriage involving a foreign national is considered false in order to prevent the influence of UK immigration law or immigration rules, or, conversely, to obtain the rights granted by the relevant law, if there is no specific relationship between the parties or one or two parties have married. Since October 2013, the conditions for acquiring British citizenship and the selection criteria have become stricter. Along with some vague criteria («good reputation» and «healthy spirit»), applicants wishing to obtain British citizenship must be over 18 years old, must communicate fluently in English, Welsh (Wales), or Gael (Scotland), and must prove knowledge from the «life in the UK» test with a high result. Each applicant also pays 1,000 pounds. (Faist 2016: 3)

Currently, the cost of applying for British citizenship for children is 22 times higher than in Germany, «the report says» Independent». In 2010, it was 386 pounds, in 2017 - 973 pounds. On average, for a family with three children, the process of accepting citizenship, the migration process comes to 15 thousand pounds. And this caused dissatisfaction with the applicants who met all these requirements, and their number is growing every day. (<https://www.independent.co.uk/news/uk/home-news/british-citizenship-children-cost-expensive-france-belgium-eu-too-much-immigrants-uk-a8107621.html>)

The «life in the UK» test is part of the government's immigration control actions. This test was introduced by the government under the leadership of former Prime Minister Tony Blair. (Brooks 2016: 4). The British citizenship test was introduced as one of the new procedures aimed at addressing issues of integration and social compatibility in migrant communities. (Gray 2014: 300)

The concept of nation and citizenship in different countries is used in different forms, in different directions. For example, in the Anglo-Saxon legal system, the term «nation» has the meaning of a civil concept. The term «citizenship» means a person and citizen who has full rights. The scope of these words extends to countries that depend on the UK.

Starting in 2004, attempts to regulate the procedure for revoking and deporting British citizenship began to operate at the legislative level in the United Kingdom. At the same time, the state authorities had a task to streamline the implementation of two actions simultaneously. In this regard, the citizenship, immigration and housing act of 2002 was amended.

As a result, a person can simultaneously be deprived of citizenship and expelled from the country. If a person is deprived of British citizenship and at the same time is a citizen of another EU member state, then this person is subject to the relevant legal regime for staying in the United Kingdom. However, in most cases, such measures are applied to persons who are not citizens of EU member States. Citizens who have lost their citizenship become third parties subject to the rules of stay on the territory of the country granted to foreigners, and in turn, these rules include various migration control procedures. On the part of the Secretary of state, there were cases when the order to revoke the citizenship of the above-mentioned third parties was also officially transmitted during their stay outside the country.

Events related to terrorist activities in London in 2005 contributed to the emergence of stricter rules and increased rights of public authorities to carry out the deprivation of citizenship. The Prime Minister of the United Kingdom announced anti-terrorist measures in the country, including the deprivation of citizenship and deportation of relevant persons. After these events, the government made drastic changes to the law and added the following lines: «the law may be deprived of their citizenship in cases provided for by law, not only by persons who have taken British citizenship, but also by persons who give birth to British citizens». Since Irish citizens were granted active suffrage in the UK, they received a special status. on February 7, 1992, the European community signed the Maastricht Treaty and developed economic legal relations», citizens of EU member States received the right to enter the territory of the United Kingdom freely.

Under the chairmanship of the Supreme mufti Yerzhan kazhy Malgazhiuly, the first meeting of the group of translators-theologians established under the Spiritual administration of Muslims of Kazakh-

stan took place. Therefore, the concept of citizenship defines its status through a set of rights and obligations, and includes membership in a political community known as a person. However, the relationship between citizenship and national identity for migrants is complex, with issues such as their multi-state affiliation and political integrity. (Yuvaldavis 2008)

Global migration, recognition of various racial, national, ethnic, cultural, linguistic and religious groups, civil equality and structural integration – all this made it difficult to obtain citizenship in almost a number of countries around the world.

In particular, in the United Kingdom, the movement towards nationalism and social unity has emerged in response to globalization and the growth of ethnic, cultural, linguistic and religious diversity. In European countries such as the United Kingdom, the cultural, social and civic life of Muslim citizens becomes difficult. (Banks 2015: 5) The modern comparative experience of eliminating mass denationalization of socially unprotected groups of citizenship, citizenship is a phenomenon focused mainly only on Muslims. (Almakky 2015: 55)

Over the past decade, there has been an explosion of «immigration protests», political mobilization of illegal migrants and migrant activists. In this regard, we need to take a critical look at the concept of citizenship. (Tyler 2013: 143) On 23 June 2016, the British referendum cast doubt on European integration by voting (Brexit), including on European citizenship. Pluralism in matters of culture, national conformity and citizenship has become the main and main focus of Brexit. (Ashcroft 2016: 359) The word Brexit means «Britain's exit from the European Union», caused by the phrase «Britain exit». The people who want to remain in the EU had the position: «it follows from the European civil national citizenship, it does not replace it, on the contrary, it complements it». (Strumia 2016: 109) For the British who expressed a desire to leave the EU during the Brexit vote, first of all, there was protection from the leakage and skinning of refugees due to the EU's too warm policy on migration.

The wide increase in bopatrides, i.e. persons with multiple citizens, is mainly due to the increase in the flow of refugees to European countries in recent years. These countries grant asylum to refugees and eventually acquire citizenship through naturalization. Due to the fact that such persons are not required to renounce their previous citizenship, the number of persons with dual citizenship is increasing. In such cases, the status of dual nationals is not

the primary purpose of refugees. At the same time, as practice shows, today a serious part of society consciously strives for dual citizenship. This social status allows such people to belong to two or more States, that is, it is profitable to grant different rights, freedoms and benefits in different countries.

According to experts, two civil «de jure» (and only «de jure») have an important advantage for the individual and the state, since: The state independently decides with which countries it is possible to reach an agreement on the recognition of dual citizenship, and with which countries it is profitable; The parties to the relevant international Treaty will be able to neutralize the negative consequences of dual citizenship as much as possible; Friendly relations between these countries are being strengthened through dual citizens residing in the territory of the second citizenship state; The range of rights of persons who were bipatrides is growing significantly de jure (freedom of movement between States, the possibility of diplomatic protection of both countries that have taken citizenship on the territory of third countries, the possibility of acquiring real estate in both States with citizenship) and human and civil rights are the highest value for modern States. (Belov 2002: 7)

There are many reasons to disagree with the submitted statement. As practice shows, the dual nationals do not appreciate the state in which they reside. In frequent cases, they always have a «back-up option» to get rid of the shoots, because they are root food. It is impossible to find a patriot among bipatrides in their country of residence in a difficult and difficult moment to believe in them.

The existence of multiple citizenship is subject to negative criticism from scientists, which is a negative phenomenon and is widely discussed at the level of international organizations and government agencies in many countries. If there are differences and differences between States in terms of legal, economic and social development, it is necessary to take into account the fact that both civil citizens violate the principle of personal belonging to the state. In the case of serious conflicts between countries, negative circumstances expressed in the form of distrust of one of the States may pose an immediate threat to persons with dual citizenship.

The right of a person to a nationality is defined in article 15.1, paragraph 1, of the universal Declaration of human rights of 1948, in article 24, part 3, of the International Covenant on civil and political rights of 1966, and in article 7, paragraph 1, of

the Convention on the rights of the child of 1989. (Kartashkin 2002: 11)

Due to the development of social and migration relations, significant changes were made to the citizenship law of 1948, and the law began a new approach to the settlement of civil issues. Thus, the citizenship act was passed as British citizens in 1981 and recognized those who were born and entitled to housing in the UK before coming into force on 1 January 1983. This rule applies to persons who were subjected to British colonization before December 31, 1982, and who also have the right to reside in the United Kingdom. Those born after 1 January 1983 are not granted British citizenship automatically, but by right to blood and right to soil.

Conclusion

As a result of the close connection between the laws in 1948 and 1981, civil legislation has for many decades formed a solid legal basis for the application of legal norms in judicial practice. So that. Although a new citizenship act was passed in 1981 (the British Nationality Act, 1981), the citizenship act of 1948 still has significance in the current legislation. In this regard, when applying legislation regulating civil relations, the provisions of both laws are taken into account.

In the UK, new rules for determining and regulating citizenship came into force in 2002. This was facilitated by the adoption of the law «On citizenship, immigration, and housing». This law gives the Secretary of state for internal Affairs the power to revoke citizenship if the country is threatened or may be threatened by a particular citizen. However, given the provisions of the international Convention on the reduction of statelessness of 1961, such powers of the Secretary of State were limited – if this leads to the stateless person, he can not deprive him of citizenship. (Rabinovich 2014: 19-31) The provisions of the Convention define the prohibition of activities that lead to the loss of citizenship of a citizen of any country to which he is a party. In this regard, this competence of the Secretary of state applies only to bipatrides, that is, to persons who have dual citizenship. In addition, the Secretary of State for home Affairs also takes into account the duration of a person's citizenship when making a decision to terminate British citizenship.

Section 40, paragraph 3, of the citizenship, immigration and asylum Act, 2002, is supplemented by the lines: “if a person finds that there is substantial damage to the vital interests of the United King-

dom, the Secretary of state may revoke that person's citizenship." (Goodwin-Gill 2014: 31)

Due to the fact that the UK is a member state of the EU, legal regulation of legal relations, including issues of citizenship of a person is not only national

law but also EU law. Legal reforms related to the process of migrants acquiring British citizenship are part of the social integration program. This policy is related to the ownership and management of national borders. (Andreouli 2014: 101)

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