

служении обществу, в качестве связующего звена в отношениях государства и народа, так как он призван урегулировать конфликты государственных или индивидуальных интересов, его деятельность направлена на восстановление прав человека, нарушенных органами государственной власти, а также должностными лицами.

Текущие изменения и обновления законодательной базы, регламентирующей компетенцию Института Уполномоченного по правам человека в Казахстане, все больше вызывает значительный интерес среди исследователей и практических работников, а также эскалацию со стороны отдельных представителей гражданского общества. Развитие научных идей приводит к появлению новых взглядов и представлений о различных аспектах деятельности института, в том числе о его функционировании, особенностях формирования, избрания или назначения на уполномоченного лица на должность, применения опыта функционирования в правоприменительной практике зарубежных стран. Частичное обновление полномочий и особенностей их реализации в отношении взаимодействия с государственными органами власти, расширение структуры и внедрение региональных уполномоченных в областях должны привести к положительному результату и укреплению позиций защитника прав человека в обществе.

#### Список литературы:

1. J. Świątkiewicz, Rzecznik Praw Obywatelskich w polskim systemie prawnym, Warszawa 2001, p. 18- 23; J. Arcimowicz, Urząd p. 8; I. Malinowska, Rzecznik p. 60-64; A. Domańska, Pozycja p. 34./ <https://www.humanitas.edu.pl/resources/upload/dokumenty>
2. Radosław Hrynkiewicz. The organizational model, constitutive features and scope of activities of polish ombudsman in protection of rights and freedoms of individuals// September 2020. Roczniki Administracji i Prawa 3(XX):37-54/ <https://www.researchgate.net/publication>
3. Конституционный закон «Об Уполномоченном по правам человека» от 5 ноября 2022 г. № 154-VII ЗПК (в действ. ред.)/ <https://adilet.zan.kz/rus/docs/Z2200000154>.
4. Указ Президента Республики Казахстан «Об учреждении должности Уполномоченного по правам человека» от 19 сентября 2002 г. N 947. (утрат. силу) / [https://adilet.zan.kz/rus/docs/U020000947\\_](https://adilet.zan.kz/rus/docs/U020000947_).
5. Закон Республики Казахстан «Об Уполномоченном по правам человека» от 29 декабря 2021 г. № 90-VII ЗПК (утрат. силу)/ <https://adilet.zan.kz/rus/docs/Z2100000090>.
6. Омбудсмены за рубежом. Выпуск №11 (481) - Трудовое право. Рубрика зарубежная практика// <https://pravo.ua/articles/ombudsmeny-za-rubezhom/>
7. <https://www.gov.kz/memleket/entities/ombudsman-karaganda-oblysy?lang=ru>

## TERMINATION OF CITIZENSHIP IN THE REPUBLIC OF KAZAKHSTAN AND FOREIGN COUNTRIES

*Bilyalova M.I. - PhD, associate professor, Karaganda University named after E.A. Buketov*  
*Abikenova G.B. - m.j.s., senior lecturer, Karaganda University named after E.A. Buketov*  
*Aidarova L.A. - 3rd year student, Karaganda University named after E.A. Buketov*

In the modern world, one of the main elements of the institution of fundamental human and civil rights and freedoms is citizenship. Its peculiarity lies in the fact that only if a person has citizenship, he or she is subject to all the rights, freedoms and duties guaranteed to citizens of a given state.

Citizenship is one of the main features of state sovereignty, and the sovereignty of an individual state, in turn, contains the source of existence and development of citizenship. The institution of citizenship is associated not only with the realization of state sovereignty, but also with the obligation of the state to ensure the protection of the rights and legitimate interests of citizens of this state.

Citizenship can be interpreted as a legal bilateral relationship between a citizen and the state. Such a link is characterized by stability, has a general character and does not depend on whether the citizen is on the territory of the state according to his/her citizenship or not.

The 1948 Universal Declaration of Human Rights states in Article 15: "Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality or denied the right to change his nationality"[1]. Each State independently determines who is its national in accordance with its domestic law, taking into account the norms of international law. The relevant legal norm of the European Convention on Nationality of 1997 is proof of this[2].

Since gaining independence and sovereignty, the Republic of Kazakhstan has clearly regulated the institution of citizenship and, accordingly, its key sub-institutes: the concept and principles of citizenship, admission to citizenship, and citizenship of children. Of particular interest in academic circles is the institution of termination of citizenship.

According to Chapter 3 of the Law of the Republic of Kazakhstan "On Citizenship of the Republic of Kazakhstan" the following grounds for termination of citizenship are provided: renunciation of citizenship, loss of citizenship and deprivation of citizenship. Let us consider each of the listed positions[3].

Withdrawal of citizenship of the Republic of Kazakhstan should be understood as termination of citizenship at the will of any citizen of the Republic of Kazakhstan on the basis of his or her written application. According to article 20 of the Law of the Republic of Kazakhstan "On Citizenship of the Republic of Kazakhstan", renunciation of citizenship may be denied if "the person applying for renunciation has unfulfilled obligations to the Republic of Kazakhstan or property obligations, with which the essential interests of citizens or enterprises, institutions and organizations, public associations located in the territory of the Republic of Kazakhstan are related"[3]. Also, renunciation of citizenship is not allowed "if the person applying for renunciation has been declared a ruling on the qualification of the suspect's act or is serving a sentence under a court sentence that has entered into legal force, or if the renunciation of the person's citizenship of the Republic of Kazakhstan contradicts the interests of the national security of the Republic of Kazakhstan"[3].

The renunciation of citizenship is not allowed if a citizen knows information constituting a state secret and a number of other grounds. For example, the laws on citizenship of Azerbaijan, Tajikistan, Turkmenistan and Uzbekistan provide for such condition: if the renunciation of citizenship contradicts the interests of state security of the republic. Rejection of an application for renunciation of citizenship must be motivated by an authorized body[3].

Loss of nationality should be understood as one of the grounds for termination of nationality, characterized by the absence of the will of the citizen. As a rule, loss of citizenship arises as a result of committing by a person of certain actions of more often prohibited nature, for example, as a result of enrollment of a person in military service, security service, police, justice or other bodies of state power and administration of another state. Loss of citizenship takes place if a citizen of the Republic of Kazakhstan has acquired the citizenship of another state, as a result of the person's participation in foreign armed conflicts, extremist and (or) terrorist activities in the territory of a foreign state. The voluntary will of a child, who is a citizen of the Republic of Kazakhstan, placed for adoption by foreigners, upon reaching the age of majority is also a ground for loss of Kazakh citizenship. Kazakhstani legislation regulates: if "a person who is a citizen of the Republic of Kazakhstan and has acquired the citizenship of a foreign state, within thirty calendar days from the date of acquisition of another citizenship is obliged to report the fact of acquisition of foreign citizenship to the internal affairs authorities of the Republic of Kazakhstan or the foreign missions of the Republic of Kazakhstan and surrender his/her passport and (or) identity card of the Republic of Kazakhstan"[3].

The legislation of some foreign countries does not allow deprivation of citizenship if as a result a person becomes stateless. Such norms are contained in the legislation of a number of countries: Germany, Spain, Sweden[4].

Grounds for deprivation of citizenship in such countries as Great Britain, Bulgaria, the United States of America, France and others include: acquisition of citizenship by fraudulent means, on the basis of knowingly false information, false documents; if a person has engaged in anti-state activities in favor of a foreign state and thereby harms the interests of the state; persons convicted of crimes against the security of the state (France, Great Britain). Deprivation of citizenship at the initiative of the state was widely practiced in the former USSR for reprisals against persons undesirable to the authorities [5].

Persons deprived of citizenship are subject to expulsion from the country - expatriation. Termination of citizenship can also be carried out on other grounds.

The institution of citizenship in the Vatican City State is of certain interest. According to Law No. 3 on the Right of Citizenship and the Right of Residence, citizens of Vatican City are cardinals residing in Vatican City or in Rome; persons permanently residing in Vatican City by virtue of their rank, office, service or occupation; persons granted citizenship by the Supreme Head of the Church; wives, children, parents, brothers and sisters of Vatican citizens, provided that they reside with them and that they are authorized to reside in Vatican City[6].

The authorization lapses: in the case of wives, if the marriage is annulled or declared null and void, and when the spouses are released from conjugal duties and cohabitation; in the case of children, when they reach the age of twenty-five years, unless they are incapacitated and remain dependent on Vatican citizens; in the case of daughters, when they marry. The authorization ceases by operation of law: for brothers, when they reach the age of twenty-five, unless they are incapacitated for work; and for sisters, when they marry. «Citizenship is lost: by cardinals, if for any reason they cease to reside in Vatican City or in Rome; by all citizens, if they voluntarily cease to reside in Vatican City; by the loss of rank, office, service, and occupation for which they were obliged or permitted to reside in Vatican City; by any citizen, if the authorization expires or is revoked» [6].

All «Vatican citizens have identity cards (with the exception of cardinals, persons in their entourage, and the governor - they are exempt from the obligation to have an identity card), and are listed in the Vatican's register of citizens»[6].

Stateless persons or stateless persons are persons who are not citizens of a given state and cannot prove that they have citizenship of another state.

The main reason for the emergence of statelessness is the so-called "negative conflicts" of national legislation on nationality. Such conflicts may occur when one State deprives a person of his/her nationality and he/she is not given the opportunity to immediately acquire the nationality of another State. Statelessness may arise when a person renounces the nationality of one State on his or her own initiative and is unable to acquire the nationality of another State, as well as when a woman's nationality changes by marriage when, under the laws of the country, she loses her former nationality but does not automatically acquire the nationality of her husband. Statelessness may arise for the children of stateless persons.

Lack of nationality puts stateless persons in a less favorable legal position than nationals of the State in whose territory they reside, since stateless persons in all legal systems are restricted in their rights, primarily political rights. However, the rule that stateless persons are protected by the states in whose territory they have permanent residence has now been established as an international custom.

The third ground for termination of Kazakhstani citizenship is deprivation of citizenship. By its content, deprivation of citizenship is a legal sanction of the state against a person who allows unauthorized behavior.

Deprivation of citizenship is also positioned as one of the additional punishments provided for by the Criminal Code of the RK (Article 40.3.1 of the Criminal Code of the RK). Article 50.1 of the Criminal Code of the RK provides the following legal explanation: "Deprivation of citizenship is a forced termination by the state of a stable political and legal relationship with the convicted person, expressing the totality of their mutual rights and obligations"[7]. Paragraph two of the above article

points to the inadmissibility of deprivation of citizenship of the Republic of Kazakhstan in respect of persons who committed a crime at the age of under eighteen years.

Deprivation of Kazakh citizenship is permitted only by court decision for terrorist offenses and offenses under the relevant articles of the Special Part of the Criminal Code, as a result of which other grave harm has been caused to the vital interests of Kazakhstan. According to the law "On National Security", the basic national interests include the inviolability of the constitutional order. In our understanding, this concept also includes the independence, unitarity and presidential form of government of the country[8].

Currently, it is proposed that under other grave harm to the vital interests of the republic to understand the harm caused as a result of committing crimes from 15 articles of the Criminal Code of the RK (Article 160 - planning, preparation, unleashing or waging a war of aggression; Article 162 - production, acquisition or sale of weapons of mass destruction; Article 163 - use of prohibited means and methods of warfare; Article 164 - violation of the laws and customs of war; Article 165 - criminal violation of the norms of international humanitarian law during armed conflicts; Article 1 of the Criminal Code of the RK). [7]. Deprivation of citizenship of the RK is implemented by a court conviction to the authorized body, i.e. the Ministry of Internal Affairs, where a copy of the court decision is transferred.

. Within the framework of administrative procedures of the authorized body, deprivation of citizenship is registered. In return, a stateless person's certificate is issued, which means the restriction of the candidate's legal capacity.

Thus, having considered the grounds for termination of citizenship of the Republic of Kazakhstan and in foreign countries, we can conclude that citizenship is the most important part of the institution of the legal status of the individual, approved in the current Constitution of the Republic of Kazakhstan. Citizenship is the most important condition for extending to a person the full range of rights, freedoms and obligations established by the State for its citizens.

Статья подготовлена в рамках грантового проекта Министерства науки и высшего образования РК № AP14870745 «Гражданство и сокращение безгражданства в Республике Казахстан в условиях развития интеграционных процессов».

#### List of references:

1. Universal Declaration of Human Rights. Adopted by Resolution 217 A (III) of the UN General Assembly of December 10, 1948 [Electronic resource] / [https://www.un.org/ru/documents/decl\\_conv/declarations/declhr.shtml/](https://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml/) Mode of access: (date of address: 15.03.2024).

2. European Convention on Nationality of November 6, 1997 [Electronic resource]/ <https://statelessness.bg/sites/default/files/doc/15.pdf> Mode of access: (date of access: 14.03.2024)

3. The Law of the Republic of Kazakhstan "On Citizenship of the Republic of Kazakhstan" dated December 20, 1991. [Electronic resource]/ <https://adilet.zan.kz/rus/docs/Z910004800/> Mode of access: (date of reference: 14.03.2024)

4. Kondratovich N.M. Institute of citizenship (nationality) in foreign countries. / [Electronic resource]/ [https://law.bsu.by/pub/26/Kondratovich\\_1.pdf](https://law.bsu.by/pub/26/Kondratovich_1.pdf) Mode of access: (date of reference: 17.03.2024)

5. Galalyuk S.S. Termination of citizenship as a legal phenomenon. [Electronic resource]/ <http://elib.mitso.by/bitstream/edoc/2507/1/8-я%20межд..конференция%2С%2022.12.2020г-035-038.pdf> Mode of access: (date of address: 20.03.2024)

6. Constitutional Acts of the Vatican (Vatican City-States) / [Electronic resource]/ [https://legalns.com/download/books/cons/vatican\\_city.pdf](https://legalns.com/download/books/cons/vatican_city.pdf) Mode of access: (date of access: 27.03.2024)

7. Criminal Code of the Republic of Kazakhstan dated July 3, 2014 - - URL: <https://adilet.zan.kz/rus/docs/K1400000226> (accessed 12.03.2023)

8. Law of the Republic of Kazakhstan "On National Security of the Republic of Kazakhstan" from January 6, 2012 № 527-IV. / [Electronic resource]/ <https://adilet.zan.kz/rus/docs/Z1200000527>  
Mode of access: (date of reference: 28.03.2024).

## ИДЕИ КОНСТИТУЦИОНАЛИЗМА В КАЗАХСКОЙ ПРАВОВОЙ МЫСЛИ НАЧАЛА XX ВЕКА

*Рустемова А.К., м.ю.н., Senior Lecturer, Maqsut Narikbayev University*

Аннотация: В настоящей статье рассматривается развитие идей конституционализма в казахской правовой мысли начала XX века, в частности, представителей юридической общественности Жакыпа Акпаева, Ахмета Беремжанова и Райымжана Марсекова. Актуальность темы обосновывается признанием высокой роли осмысления политико-правового наследия казахской интеллигенции в формировании современного конституционализма. В статье прослеживаются выводы о том, что общественные деятели были приверженцами универсальных конституционных ценностей в контексте национального бытия. Подчеркивается, что подобное аксиологическое измерение способствует формированию устойчивой конституционной идентичности, лежащей в основе современного конституционализма.

Ключевые слова: конституционализм, казахстанский конституционализм, ценности конституционализма, конституционная идентичность, конституционные ценности, казахская интеллигенция, казахская правовая традиция, конституционная аксиология.

В настоящее время многие государства переживают процессы модернизации и трансформации в конституционно-правовом строительстве. Между тем, современный конституционализм признаёт особую важность развития аксиосферы национальных конституций, в основе которой - устойчивая отечественная конституционно-правовая традиция и сформировавшаяся система ценностных парадигм.

Среди множества подходов к пониманию конституционализма интерес вызывает определение его в качестве системы фундаментальных ценностей и идей государственно-организованного общества, находящих свое отражение в основном законе. В трудах таких мыслителей как Полибий, Цицерон, Марсилиус Падуанский зарождаются идеи такого политико-правового явления, при этом как единое целое конституционализм складывается и утверждается в результате западных буржуазно-демократических революций XVII-XVIII вв., проявляясь в идеях Дж. Локка, Ш. Монтескье, Ж.Ж. Руссо [1; 107]. В современном значении верховенства конституции над иными нормативными правовыми актами конституционализм стал применяться в американской правовой мысли конца XVIII – начала XIX веков [2; 34].

Конституционализм составляют такие ценности как человек, его жизнь, права и свободы, суверенитет, народовластие, верховенство закона и разделение властей, идеологическое и политическое многообразие и другие. Так, М.Розенфельд выделяет три признака, существенным образом характеризующие конституционализм: ограниченные полномочия власти государства, защита фундаментальных прав и приверженность верховенству права [3; 1307].

Говоря о казахстанском конституционализме, следует подчеркнуть, что глубокому и всестороннему пониманию такого феномена способствует исследование конституционной идентичности Казахстана: национальной культуры, ценностей, традиций, выраженных в правовом измерении. В частности, базис конституционной идентичности составляет понимание приоритетов политико-правового наследия и исторического пути государства в процессе его конституционного развития. Соответственно, погружение в анализ наследия представителей казахской юридической интеллигенции начала XX века представляется одним из путей, способствующих укреплению конституционных ценностей и повышению к