

исполнительного производства по решению суда об обращении взыскания на предмет залога, сторонами исполнительного производства в силу ст. 15 Закона РК «Об исполнительном производстве и статусе судебных исполнителей» являются банк - взыскатель и супруг – залогодатель [3]. Второй супруг - собственник не приобретает статуса ответчика по гражданскому делу, в последствии не приобретает статуса должника в исполнительном производстве. Данный факт исключает его возможность реализовать принадлежащие ему соответствующие материальные и процессуальные права, это приводит к возникновению исковых требований об обжаловании состоявшихся торгов. Исковое требование обосновывается тем, что, являясь собственником имущества, истец был лишен преимущественного права выкупа, был лишен права оспорить результаты оценки имущества и права на самостоятельную реализацию предмета залога. В тех случаях, когда супруги в момент реализации имущества состоят в браке и проживают одной семьей, недобросовестность второго супруга, осведомленного о юридической судьбе совместного имущества, очевидна. Однако в некоторых случаях, когда брак между супругами на момент реализации расторгнут, и супруг - истец действительно не знал и не мог знать об обращении взыскания на общую квартиру, возникают определенные спорные вопросы при рассмотрении дел.

Учитывая изложенное, во избежание затруднений при разрешении судебных споров, связанных с судебной реализацией залога – совместной собственности супругов, считаем необходимым закрепить на законодательном уровне порядок обращения взыскания на залоговое имущество, приобретенное супругами в период брака.

1 Гражданский Кодекс Республики Казахстан (Общая часть) // https://online.zakon.kz/Document/?doc_id=1006061

2 Кодекс Республики Казахстан «О браке (супружестве) и семье» // https://online.zakon.kz/Document/?doc_id=31102748

3 Закон РК «Об исполнительном производстве и статусе судебных исполнителей» // https://online.zakon.kz/Document/?doc_id=30617206

4 Нормативное Постановление Верховного Суда РК № 1 от 31.03.2017 г. «О применении судами некоторых норм законодательства об исполнительном производстве» // https://online.zakon.kz/Document/?doc_id=39549074&show_di=1

CONSTITUTIONAL BASIS OF THE INSTITUTION OF CITIZENSHIP

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The Constitution of the Republic of Kazakhstan is the legal basis for the formation of national legislation focused on universally recognized norms of international law. Domestic Basic Law as a whole corresponds to the world trends in the development of constitutional law, due to the general globalization and internationalization of law. The 1995 Constitution of the Republic of Kazakhstan [1] enshrined the most important guarantees for the development of Kazakhstan as a democratic legal state, in which the rights and freedoms of man and citizen are recognized, respected and protected. The ownership of all power in the country to

its multinational people is the main principle of state and public life, an integral part of the foundations of the Kazakhstan constitutional system.

Citizenship is essential for the development of state and society, the formation of civil society. Development and ensuring human rights and freedoms through constitutional institute of citizenship is one of the main problems in the theory and practice of constitutionalism. Citizenship is one of the fundamental institutes of constitutional law. Hence the significance of citizenship, the Constitution of the Republic of Kazakhstan (1995) included this institute in the context of section 2 "The individual and citizen". According to article 10 of the Constitution of the RK: "1. Citizenship of the Republic of Kazakhstan shall be acquired and terminated as prescribed by law, shall be indivisible and equal regardless of the grounds of its acquisition. 2. A citizen of the Republic of Kazakhstan cannot be deprived of his citizenship, of the right to change his citizenship, and may not be exiled from the territory of Kazakhstan." [1] The Constitution of the Republic of Kazakhstan includes norms that guarantee the implementation of constitutional rights and freedoms of citizens. Thus, in accordance with paragraph 1 of Article 12 of the Kazakhstan's Constitution, human rights and freedoms are recognized and guaranteed in the Republic of Kazakhstan in accordance with the Constitution. In accordance with paragraph 1 of Article 39 of the domestic Basic Law, human and civil rights and freedoms can be limited only by laws and only to the extent necessary in order to protect the constitutional system, protect public order, human rights and freedoms, health and morality of the population. The constitutional frameworks of citizenship are developed and specified in the Law of the Republic of Kazakhstan "On citizenship of the Republic of Kazakhstan", dated December, 20, 1991. In the preamble to the existing Law citizenship of the Republic of Kazakhstan determines stable political and legal ties of state with person expressing their rights and obligations in aggregate. [2].

A confirmation of the general focus on the protection of the fundamental values of the state and society was the introduction of amendments and additions to the Constitution of the Republic of Kazakhstan dated March 10, 2017 No. 51-VI. The constitutional legislation on the legal status of the individual took the path of protecting the stability of the constitutional system and the inviolability of human and civil rights and freedoms in Kazakhstan. In accordance with these changes, amendments were made to paragraph 2 of Article 10 of the Basic Law: "deprivation of citizenship is allowed only by a court decision for committing terrorist crimes, as well as for causing other grave harm to the vital interests of the Republic of Kazakhstan". Global threats and challenges, encroaching on the foundations of the country's national security, led to these changes. Our state seeks to ensure the stability of the foundations of the constitutional system and the inviolability of human and civil rights and freedoms. In accordance with paragraph 2 of Article 10 of the Constitution of the Republic of Kazakhstan, deprivation of Kazakhstan's citizenship is allowed only if a number of conditions are met: by a court decision; for committing terrorist crimes, as well as for causing other grave harm to the vital interests of the Republic of Kazakhstan. Thus, the provisions of Article 15 of the Universal Declaration of Human Rights that "no one can be arbitrarily deprived of their citizenship" [3] are respected. Deprivation of citizenship does not contradict international standards of human rights and freedoms, is exceptional and is provided for by the Constitution and other laws, in order to protect the fundamental values of the state and society, listed in Article 39 of the Constitution of the Republic of Kazakhstan.

The guarantees pertaining to the defence and protection of civilians outside Kazakhstan are established in an article 11 of the RK Basic Law: "1. A citizen of the Republic of

Kazakhstan may not be extradited to a foreign state unless otherwise stipulated by international treaties of the Republic. 2. The Republic shall guarantee its citizens protection and patronage outside its boundaries." Renunciation of dual nationality is enshrined in article 10, paragraph 3 of the Constitution of the RK: "Foreign citizenship of a citizen of the Republic shall not be recognized."

In determining constitutional status of the individual Constitution of the Republic of Kazakhstan (1995) includes different categories of legal status of constituents: in some cases the terms "everyone", "no one", including foreigners, stateless persons and persons with dual or multiple nationalities are used. For instance, "Everyone shall have the right to life." (article 15, paragraph 1 of the Constitution of the RK); "No one shall be subject to any discrimination for reasons of origin, social, property status, occupation, sex, race, nationality, language, attitude towards religion, convictions, place of residence or any other circumstances." (article 14, paragraph 2 of the Constitution of the RK). Other articles of the RK Basic Law state about "citizens of the Republic of Kazakhstan", which means that specific rights and freedoms, as well as duties are available for Kazakhstani citizens only. Thus, foreign nationals in the Republic of Kazakhstan cannot vote, cannot hold state apparatus posts, do not perform the military service duties, etc. Namely, article 23, paragraph 1 of the Constitution of the RK notes that "citizens of the Republic of Kazakhstan shall have the right to freedom of forming associations". Therefore, the Constitution of the Republic of Kazakhstan draws a distinction between human rights and citizens' rights in the terminology of the corresponding articles.

This issue appears to be resolved in a similar manner in other national Constitutions. For example, article 39 paragraph 1 of the Constitution of the Republic of Bulgaria states that: "Everyone shall be entitled to express an opinion or to publicize it through words, written or oral, sound or image, or in any other way.", and article 45 provides that "all citizens shall have the right to lodge complaints, proposals and petitions with the state authorities." Under the Constitution of the Russian Federation the "citizens of the Russian Federation shall have the right to participate in managing state affairs both directly and through their representatives" (article 32 paragraph 1), according to the Constitution of Finland, "every Finnish citizen who has reached eighteen years of age has the right to vote in national elections and referendums" (section 14). Paragraph 4, article 21, of the Constitution of the Czech Republic is worded as follows: "Citizens shall have access, on an equal basis, to any elective and other public office".

To identify human rights actors sometimes in constitutions may be applied impersonal formulas such as "recognized the right", "guaranteed the right". Under this arrangement, it is emphasized that this right or freedom refers to all individuals. for instance, under paragraph 62 of the Fundamental Law of Hungary, enshrined: "Hungarian Republic acknowledges that everyone shall have the right to peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests."; paragraph 1 article 19, of the Constitution of the Czech Republic reads: "The right of peaceful assembly is guaranteed"; in Federal Constitution of the Swiss Confederation freedom of expression and of information is guaranteed (article 16, paragraph 1), and freedom of assembly is guaranteed (article 22, paragraph 1).

Many constitutions in the world recognize such statements that distinguish rights of the citizen and rights of the individual by means of indicating the nationality. For example, article 5 of the Basic Law for the Federal Republic of Germany (1949) establishes: "Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures, and to inform himself without hindrance from generally accessible sources. Freedom

of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship." Article 23, paragraph 1 of the Spanish Constitution guarantees: "Citizens have the right to participate in public affairs, directly or through representatives freely elected in periodic elections by universal suffrage." Federal Constitution of the Swiss Confederation (1999) provides that: "1. Freedom of assembly is guaranteed. 2. Every person has the right to organize meetings and to participate or not to participate in meetings" (article 22). Fundamental human rights are reflected in the relevant constitutional provisions.

At the same time, civil rights could be determined differently. In particular, article 11 of the Basic Law for the Federal Republic of Germany provides that: "All Germans shall have the right to move freely throughout the federal territory"; article 33 defines that: "1. Every German shall have in every Land the same political rights and duties. 2. Every German shall be equally eligible for any public office according to his aptitude, qualifications, and professional achievements." Article 29, paragraph 1 of the Spanish Constitution stipulates that: "All Spaniards shall have the right to individual and collective petition, in writing, in the manner and subject to the consequences established by the law." Federal Constitution of the Swiss Confederation, with its article 24, paragraph 1 declares that: "Swiss citizens have the right to establish their domicile anywhere in the country", and article 143 ensures: "Any person eligible to vote may be elected to the National Council, the Federal Council or the Federal Supreme Court." These statutes clearly define the rights of a citizen.

Sometimes the definition of belonging to a specific nation is defined with such terms as "all Germans", "every Spanish citizen" instead of using the words "citizens", "a citizen". It should be understood that in Western countries the term "nation" means not ethnic, but political and public community, human substratum of the state. Chapter 1, article 116 of the Basic Law for the Federal Republic of Germany (1949) states: "Unless otherwise provided by a law, a German within the meaning of this Basic Law is a person who possesses German citizenship or who has been admitted to the territory of the German Reich within the boundaries of 31 December 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such person." In some constitutions a word "people" is used to describe the citizen as a subject of rights. Thus, according to the chapter III: "Rights and Duties of the People" of the Constitution of Japan: "The people shall not be prevented from enjoying any of the fundamental human rights. These fundamental human rights guaranteed to the people by this Constitution shall be conferred upon the people of this and future generations as eternal and inviolate rights (article 11)"; "the people have the inalienable right to choose their public officials and to dismiss them (article 15, paragraph 1)". Similar provisions are to be found in article 74 of the Constitution of the Republic of Iceland: "People shall have the right to form associations for any lawful purpose, including political groups and trade unions, without having to seek prior authorization", "people shall have the right to assemble unarmed."

Thus, the constitutional regulation of the institution of Kazakhstan's citizenship is characterized by stability and corresponds to generally recognized international norms in the field of human rights and freedoms. The Constitution of Kazakhstan laid a good foundation for the improvement of the legal system of the country, including taking into account international law. In order to give special status to the universally recognized principles and norms of international law on human rights and freedoms, it would be possible to include in the Constitution of the Republic of Kazakhstan the provision that the rights and freedoms of a person and a citizen in the Republic of Kazakhstan are recognized and guaranteed in accordance with

generally recognized principles and norms of international law and in accordance with Constitution.

References

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ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДАҒЫ МЕМЛЕКЕТТІК ҚЫЗМЕТ ҚАЗІРГІ ДАМУ КЕЗЕҢІНДЕ

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Мемлекет – белгілі бір аумаққа иелік етіп, сол жердегі халықтың еркін дамуына мүмкіндік беретін, қоғам табиғатынан туындайтын ортақ істерді атқаруға қажетті басқарудың жоғарғы дәрежеде ұйымдасқан жүйесі, саяси билік ұйымы. Егемендікке, заңдастырылған зорлықты пайдалануға монополияға ие және қоғамды басқаруды арнайы механизмдер (аппарат) арқылы жүзеге асыратын қоғамдағы саяси билікті ұйымдастырудың еркеше түрі, саяси жүйенің орталық институты. Мемлекет – басқару функциясын орындайтын және соның көмегімен қоғамның тіршілік – тынысын қамтамасыз ететін, оған қажетті жағдайлар мен алғышарттар жасауға ұмтылатын адамзат қоғамын ұйымдастырудың айрықша нысаны. Мемлекет – адамзат қоғамы дамуының нәтижесінде пайда болған саяси ұйым. Мемлекет – қоғамды басқару міндетін атқаратын, адамдардың, топтардың, таптардың қарым – қатынастарын реттеп отыратын, заңдарды қабылдайтын саяси ұйым.

Мемлекет қызметі дегеніміз - мемлекеттің алдына қойған мақсат- міндеттері жүзеге асырудың басты бағыттары. Мемлекет қызметі 2 түрге бөлінеді: ішкі және сыртқы болып. Ішкі қызметтерге экономикалық, әлеуметтік, қаржылық бақалау, адам құқықтары мен бостандықтарын қорғау, экологиялық қызметтер жатады. Сыртқы қызметтеріне оның өзге мемлекеттермен және халықаралық ұйымдармен дипломатиялық қарым қатынас орнатуы және сырттан төнген қауіптен Отанды қорғау қызметтері жатады.

Қазақстан Республикасының мемлекеттік қызметі дегеніміз – мемлекеттік қызметшілердің мемлекеттік органдарда мемлекеттік биліктің міндеттері мен функцияларын іске асыруға бағытталған лауазымдық өкілеттіктерді атқару жөніндегі қызметі [1].

Мемлекеттік қызмет белгілі бір іс - әрекеттің түріне қатысты, яғни кәсіп, мамандық, біліктілік, лауазымға қатысты жұмыстың орындалуы. Кәсіп – еңбек қызметінің кең саласы. Мұнда мемлекет қызметкері өз мамандығына сәйкес бар білімін, талабын