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## **Citizenship as a constitutional legal category**

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. This article examines the issues of constitutional and legal regulation of citizenship in the legislation of the Republic of Kazakhstan and foreign countries. The author considers the main points of view on the notion of citizenship, its nature and significance.

*Key words:* citizenship, nationality, constitutional category, constitutional legal institute, constitutional law, Constitution.

The institute of citizenship has essential value for development of the state and is one of the main constitutional and international legal categories. Citizenship is one of conditions of increase of level of unity of the nation, development of patriotism, biggest trust of the people to the power. Citizenship is also necessary condition for more active work of citizens on development of the state and the state — on protection of the citizens.

Citizenship — is an interdisciplinary institute, that consists of a plurality of uniform legal standards that define the basis of relations with the state of the person. Legal provisions on citizenship as the basic rules are included in the constitutional law because they reinforce the foundations of society and state structures in which citizenship acts as of the foundations of statehood.

Citizenship can be described not only as a constitutional-legal category, but as a cross-cutting category containing norms of constitutional and public international law, private international law, the rules for determining the status of civil servants, some norms and institutions of immigration and labor law and other sectors, linking the emergence, change and termination of the rights and obligations of the presence or absence of citizen status.

Priority of national or international law is defined in the constitutional norms, and regulatory issues relating to nationality are solved by Constitution and constitutional norms in the first place, and by international law - in the second. Legal norms of national and international law both recognize the need to establish political and legal relationship of a person with a particular State with which he establishes the legal and political relations. Through this institution political responsibility for the actions of the state of the person in front of other states and international entities is established.

Citizenship has not only features of the legal institution, but also of the socio-political one. Subjective aspect of citizenship is the personal perception of a citizen of his relationship with the people and the state. We also need to take into account such aspects of citizenship as active and conscious involvement of the citizen in the affairs of the political community; psychological sense of oneself as a citizen; form of consolidation of the highest virtue of the voluntary and full participation in society's life; commitment to one's political community — state. This can be called individual loyalty's towards his state. Devotion and loyalty of citizens to its nation and the state is the basis of citizenship as a socio-political institution.

Citizenship as a political legal category depends on the political regime of the country, as the way of the rights and obligations are implemented constitutes the essence of citizenship. In republics with a totalitarian regime citizen status means only the nationality of the person; however, one cannot be a citizen in the full sense of the word. In this context, citizenship means not only belonging to a particular state, but a set of rights and responsibilities of the individual and the state.

Citizenship is related to democracy, as it is a form of government where the state's will is the people's will. From viewing of democracy as people's rule, follows the concept of a republic as a common cause of the citizens. Accordingly, the concept of the republic is embedded with a semantic basis consent of the citizens about the public interest, as a unifying idea. In general, it is the idea of statehood, which unites people into one nation.

Consequently, citizenship appears indispensable component of modern legal, democratic and social state, the development of citizenship determines the political development of public relations, and the ways to improve the state as the representative of political ideas and goals of citizens.

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 under no circumstances may be deprived of citizenship of the right to change his citizenship, and may not be exiled from the territory of Kazakhstan» [1].

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».

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].

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).

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 bounda-

ries of 31 December 1937 as a refugee or expellee of German ethnic origin or as the spouse or descendant of such person» [3; 120].

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.

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».

The procedure for acquisition of Mexican «nationality» is recognized in article 30 of the Constitution of Mexico, while pursuant to article 34 «men and women who, having the status of Mexicans, likewise meet the following requirements are citizens of the Republic: I. Having reached eighteen years of age, if married, or twenty-one years of age if unmarried; II. Having an honest means of livelihood». Consequently, the word «Mexican» does not signify belonging to a given ethnic group, it means belonging to the particular state, the point is that such wording not only addresses all «Mexicans», but «citizens» [3; 140].

In history the citizenship institute made itself known in slave-owning states, inhabited by people who assessed them as free citizens. The allegiance institute existed during a feudalism epoch, exercised over the society by the monarch, feudal dependent on him. In the constitutional state the institute of citizenship, replacing former allegiance, became a premise to ensure an equal treatment of all members of the society.

Currently, the term «allegiance» is used only in monarchic countries, and now it is synonymous with the word «citizenship». In a number of monarchies (for example, in Spain, Belgium, Netherlands) the term «allegiance» has been replaced by the term «citizenship» in national constitutions and legislation [3; 140].

In the Large encyclopaedic dictionary of Dodonov V.N. and Yermakov V.D. it is determined that «citizenship is judicial tie between an individual and the government of the country. In monarchist countries the term «citizenship», generally, corresponds to the term «allegiance». These refer to the relationship between state and persons under its jurisdiction: the state recognizes and guarantees human rights and fundamental freedoms, ensures legal protection and patronizes its own nationals abroad; in turn, a citizen must comply with the laws and regulations of the state, and fulfil other legal obligations defined by the law. Combination of all these mutual rights and obligations determines policy and law status of a citizen, distinguishing him from foreign nationals and stateless persons. Allegiance is the term applied to denote a citizenship in the states with monarchic form of government [4; 136].

The legal encyclopedic dictionary of Alexeyev A.Ye. and Anufriyeva L.P. interprets citizenship as the legal relations between an individual and one particular state, characterized by their mutual rights, obligations and responsibility before each other. Combination of all these mutual rights and obligations determines policy and law status of a citizen, distinguishing him from foreign nationals and stateless persons. Citizenship as one of the institutes of constitutional right represents a totality of legal norms, establishing principles and governing relations concerning the citizenship. In monarchic countries term «citizenship» absolutely complies with the term «allegiance» [5; 78, 79].

Civil status is a fundamental legal prerequisite, as well as an important element of legal personal identification in society at large. The fundamental principles of political and legal status of person in the contemporary society are identified by means of citizenship institute, since it is the citizenship implies that an individual is a member of the state. The basic feature offered under these mutual relations is an indicator of sustainability of this legal relationship.

The science of constitutional law highlights three approaches to a concept «citizenship»: 1) political and juridical phenomenon determining the specific nature of mutual relations of human and socio-political entity — state [6; 32]; 2) the fundamental subjective right, i.e. the statutory opportunity of individual to be in the above mentioned relations with the state or to call for their immediate end [7]; 3) legal institution.

In soviet jurisprudence many high-level scholars were engaged in studying the citizenship institute, each with his own position. One can emphasize the following conclusions, based on scholarly findings around the concept and essence of citizenship. Therefore, citizenship implied that an individual belongs to the state, determining the legal status of national not only inside the state, but also outside of this state through international communication [8; 112]. As Vitruk N.V. has pointed out, «person as a member of the state should not be understood figuratively as a membership of the nation, but as a sense of belonging to the state-organized society. It should be understood that such belonging of personality to the state-organized society is legally-binding through citizenship» [9; 57].

A number of soviet political scientists for several decades suggested that citizenship demonstrates whether a person is a member of a state, over whom the state exercises its full sovereignty. This interpretation of a citizenship demonstrated by eminent scientists in their works (Voevodin L.D., Lepeshkin A.I., 60-s and 70-s of the XX century) [10].

In the 70–80-s of the last century had been expressed the view, which rests on an understanding of citizenship as a genuine link between the state and an individual, specifying the legal situation within and outside the state, in international communication [11]. This position is characterized by the equality of citizens as social subjects. This can be explained by the fact that nationals of any state in most cases are the full members of this state, enjoying their legal and social rights, legally resident in this state under normal conditions. Vitruk N.V. has noted that a «permanent residence in the territory of the state is the most typical and long-term evidence of actual connection between an individual and the state. The existence of such link is legally secured by the institute for citizenship» [12; 37, 38].

In Russian legal literature citizenship is seen as a steady judicial-political bond that connects an individual to a specific state, by which the sovereign power has jurisdiction over this person, within the territory of the state or outside its borders [13; 96]. This definition underlines that the sustainability of policy and law relationship, based on the assumption of state sovereignty, and its spread outside the national territory. It may nevertheless be noted that the right to citizenship and full recognition by the state may not be set alongside with the political rights and duties of the national [14; 32]. Citizenship is the prerequisite for the establishment of rights and obligations, forms its basis.

Another Russian author, Baglai M.V., understands the term «citizenship» as legal belonging of an individual to this state, i.e. recognition of this person by the state as a full and equal subject of constitutional and legal relations [15; 265]. It underlines the notion that institute for citizenship is crucial for establishment of specific rights and responsibilities which are distinct from human rights, in general, and rights, freedoms and obligations of foreigners and stateless persons, in particular.

In Kazakh legal literature institute for citizenship is also the subject of this survey. For example, reflecting the view of Professor Sapargaliyev G.S., the concept «citizenship» according to Kazakh legislation consists of three elements: 1) bond between the state and individuals has to be sustainable in the long term, but not temporal. A man cannot accept or renounce citizenship because of personal choice; 2) the individual's relationship to this or that government is of judicial-political nature; 3) the mutual rights and duties are established between the state and citizen [16; 95]. The significance of institute for citizenship is highlighted by the fact that structuring element of the individual's constitutional status, as a legal concept, rely on the following

competencies: 1) citizenship; 2) basic rights, freedoms, legitimate interests and duties; 3) warranties of legal status [16; 85].

Baishev Zh. defines: «Kazakh citizenship establishes the legal relations between an individual and the state, determines all of their mutual rights and responsibilities. Citizenship represents the legal status, characterized by persistence, constancy and continuous nature of relations between a person and the state» [17; 24].

Sagindykova A.N., describing the legislative regulation of citizenship, compares the definition of citizenship laid out within Kazakh and Russian nationality laws. Thus, in Law of the Republic of Kazakhstan on citizenship is determined as the stable political and legal relationship of an individual with a state and reflects their mutual rights and obligations. Pursuant to the federal act «On Russian Federation citizenship» of May 31, 2002, citizenship of the Russian Federation means a stable legal relation of a person with the Russian Federation that manifests itself in an aggregate of their mutual rights and duties [18]. A similar resolution was also observed in previous Law on Russian citizenship (of 1991).

Sagindykova A.N. considers legislative wording of the Russian law more appropriate: «substitution of the expression «judicial-political relationship» (as it is in the case of Russia) for the term «legal relation» which in turn would lead to the release of a citizenship qualification from estimated policy approaches, often complicating the implementation of citizenship right, the rights to acquire, change or retain their nationality» [19; 137].

Therefore, giving the estimation of institute for citizenship must be taken into account a socio-political factor of citizenship relations. Citizenship is intercommunication between general population or specifically by individuals from civil society. The relationship between citizen and state are derived from institute for citizenship. From the legal standpoint, legal bond between the state and individuals are the key determinants. From a regulatory viewpoint of social relations a formal side of citizenship is the defining one. However, the real and full citizenship, a strong and stable judicial-political tie between an individual and the government is only possible if this state presents to every individual something which is subjectively meaningful for him, if he associates himself with it [20; 115].

In the science of constitutional law citizenship is seen as a relationship. In the theory of law it is not uncommon to view the subjective right only as an element of a defined legal relationship that arises in the presence of a legal fact, which causes this relationship. Citizenship should be regarded as lasting relationship of a general nature, that defines the rights and duties of an individual in particular legal relationship, and as a basis, or a legal fact that causes the emergence of new legal relations. Citizenship status combines lasting rights and duties, and specific relationship that are imposed on the individual and the state mutual rights and obligations.

Citizenship is considered in legal science as a subjective right. Subjective right is the possible, permissible behavior that citizen is guaranteed by law. Right in the subjective sense encompasses not only a system of rights (permissions, powers, claims) coming from the rules of objective law, but also a system of legal duties, i.e. a set of necessities, imperatives, stipulated by the laws of the state [21; 253].

The right of citizenship is an essential prerequisite for one to have all his constitutional and other rights and freedoms, and carry out respective responsibilities, as well as to protect one's rights and interests, not only within the country but also abroad through diplomatic and other existing interstate communication forms. Possession of citizenship is a universal condition for having a fully legal status [22; 152].

Citizenship is also a political concept disclosing political intercommunications in the state-organized society. Notions about citizenship were generated during the ancient times, driven by economic, political, social and ideological factors, and it was laid the foundation for understanding the concept of state and republic as a common undertaking of free citizens, a growing understanding of democracy as the authority of the people. Subjective perception of individual's judicial-political relationship to the government has a major influence on the behavior of citizens, since a common understanding of citizenship, as mutual rights and obligations, allows legally impact on the lives of citizens.

Thus, citizenship is an integral component of the democratic legal state, developing strong democratic institution for citizenship being one of the key objectives, which predetermines political development of public relations. Citizenship may be described as political on the content and legal on the form link between an individual and the state, which is a legal prerequisite, and essential element of the legal status.

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### Азаматтылық конституциялық-құқықтық категория ретінде

Азаматтылық институты азаматтық қоғамды қалыптастыруға, мемлекет пен қоғамның дамуына қажет. Адам құқықтары мен бостандықтарын дамыту мен қамтамасыз ету үшін бағытталған конституционализмнің теориясы мен тәжірибесінің негізгі мәселесі болып табылады. Мақала Қазақстан Республикасының және шетелдердің азаматтылығы жөнінде зерттеуді жүзеге асырды. Автор азаматтылықтың түсінігі, мәні және белгілері төңірегінде туындаған негізгі нақты көзқарастарды қарастырды.

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### Гражданство как конституционно-правовая категория

В статье показано, что институт гражданства имеет важное значение для развития государства и общества, формирования гражданского общества. Автором отмечено, что развитие и обеспечение прав и свобод человека посредством конституционного института гражданства является одной из главных проблем теории и практики конституционализма. Исследованы вопросы конституционно-правового регулирования гражданства в законодательстве Республики Казахстан и зарубежных стран. Автором представлены основные точки зрения по проблемам понятия гражданства, его сущности и значения.

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### Развитие института гражданства: современные тенденции и конституционно-правовой опыт стран СНГ

В статье рассмотрена одна из научных проблем развития института гражданства как в Республике Казахстан, так и в странах постсоветского пространства. Проанализированы исторические предпосылки появления конституционно-правового института гражданства на разных этапах формирования государственности. Определены перспективы конституционно-правового регулирования на основе исторических и теоретических положений по дальнейшему совершенствованию, с учетом конституционно-правового опыта стран СНГ.

*Ключевые слова:* институт гражданства, права человека, государство, право, гражданин.

Зарождение и историческое развитие гражданства позволяют рассмотреть становление этого явления в динамике как в Республике Казахстан, так и в странах Содружества и других зарубежных странах и определить перспективы его дальнейшего развития.

Зарождение гражданства связывается с возникновением античного государства в форме рабовладельческой республики, развивающейся в рамках западного типа государства со всеми определяющими этот тип государства признаками. В различных источниках тип государства определяется