

B.A. Taitorina¹, G.U. Balgimbekova²

¹ *Abai Kazakh National Pedagogical University*

² *Karaganda Buketov University*

THE DIFFICULTIES OF REDUNDANCY OF STATELESSNESS IN THE REPUBLIC OF KAZAKHSTAN IN CONDITIONS OF DEVELOPING THE INTEGRATION PROCESSES

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Abstract

The article is devoted to the analysis of the difficulties of the redundancy of statelessness in the Republic of Kazakhstan. The issues of improving the legislation on citizenship and migration are updated in order, firstly, to ensure a decent level of living for stateless people through the economic and legal guarantee of the social rights of stateless people, and, secondly, to develop legal mechanisms for their inclusion in the society to reduce the risk of social conflicts. The article contains an analysis of international legal acts on the status of stateless people and the redundancy of statelessness, national acts of the Republic of Kazakhstan regulating the legal status of stateless people; also the article contains the analysis of foreign and Kazakh literary sources. Based on empirical materials, an analysis of the practical activities of state authorities of the Republic of Kazakhstan on the introduction of a national mechanism for determining statelessness in Kazakhstan was implemented (the legal basis for cooperation between the Ministry of Internal Affairs of the Republic of Kazakhstan with the Ministry of Justice and partners of the UN Refugee Agency was a Memorandum of Understanding signed by the parties). Recommendations for improving legal mechanisms of statelessness's redundancy in the Republic of Kazakhstan are shown in the research.

Keywords: citizenship, statelessness, stateless people, legal regulation, convention, redundancy of statelessness.

B.A. Тайторина¹, Г.У. Балғымбекова²

¹ *Абай атындағы Қазақ ұлттық педагогикалық университеті*

² *Е.А. Бөкетов атындағы Қарағанды университеті*

ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДАҒЫ ИНТРЕГРАЦИЯЛЫҚ ПРОЦЕССТЕРДІ ДАМУЫ ЖАҒДАЙЫНДА АЗАМАТТЫҚСЫЗДЫ АЗАЙТУ МӘСЕЛЕЛЕРІ

Аңдатпа

Мақала Қазақстан Республикасында азаматтықсыздықты қысқарту мәселесін талдауға арналған. Біріншіден, апатридтердің әлеуметтік құқықтарының экономикалық-құқықтық кепілдігі арқылы азаматтығы жоқ адамдардың лайықты өмір сүру деңгейін қамтамасыз ету, екіншіден, әлеуметтік қақтығыстардың туындау қаупін азайту мақсатында оларды қабылдаушы қоғамға енгізудің құқықтық тетіктерін әзірлеу мақсатында азаматтық және көші-қон туралы заңнаманы жетілдіру мәселелері өзектендірілуде. Мақалада апатридтердің мәртебесі және азаматтығы жоқтықты қысқарту туралы халықаралық-құқықтық актілердің, азаматтығы жоқ адамдардың құқықтық мәртебесін реттейтін Қазақстан Республикасының Ұлттық актілерінің, сондай-ақ шетелдік және қазақстандық әдеби дереккөздердің талдауы қамтылған. Эмпирикалық

материалдар негізінде Қазақстанда азаматтығын анықтаудың ұлттық тетігін енгізу бойынша Қазақстан Республикасы мемлекеттік органдарының практикалық қызметіне талдау жүргізілді (ҚР ІМ-нің Әділет министрлігімен және БҰҰ Босқындар агент жөніндегі агенттігінің серіктестерімен ынтымақтастығының құқықтық негізін тараптар қол қойған Өзара түсіністік туралы Меморандум жасады). Зерттеуде Қазақстан Республикасында азаматтығын төмендетудің құқықтық тетіктерін жетілдіру бойынша ұсыныстар ұсынылған.

Түйін сөздер: азаматтық, азаматтықсыздық, азаматтығы жоқ адамдар, құқықтық реттеу, конвенция, азаматтықсызды қысқарту.

Тайторина Б.А.¹, Балгимбекова Г.У.²

¹ *Казахский национальный педагогический университет имени Абая*

² *Карагандинский университет имени Е.А. Букетова*

ПРОБЛЕМЫ СОКРАЩЕНИЯ БЕЗГРАЖДАНСТВА В РЕСПУБЛИКЕ КАЗАХСТАН В УСЛОВИЯХ РАЗВИТИЯ ИНТЕГРАЦИОННЫХ ПРОЦЕССОВ

Аннотация

Статья посвящена анализу проблемы сокращения безгражданства в Республике Казахстан. Актуализируются вопросы совершенствования законодательства о гражданстве и миграции с тем, чтобы, во-первых, обеспечить достойный уровень жизни лиц без гражданства посредством экономико-правовой гарантированности социальных прав апатридов, и, во-вторых, разработать правовые механизмы их включения в принимающее общество в целях снижения риска возникновения социальных конфликтов. В статье содержится анализ международно-правовых актов о статусе апатридов и сокращении безгражданства, национальных актов Республики Казахстана, регулирующих правовой статус лиц без гражданства, а также иностранных и казахстанских литературных источников. На основе эмпирических материалов осуществлен анализ практической деятельности государственных органов Республики Казахстан по введению в Казахстане национального механизма определения безгражданства (правовую основу сотрудничества МВД РК с Министерством юстиции и партнерами Агентства ООН по делам беженцев составил подписанный сторонами Меморандум о взаимопонимании). В исследовании представлены рекомендации по совершенствованию правовых механизмов сокращения безгражданства в Республике Казахстан.

Ключевые слова: гражданство, безгражданство, лица без гражданства, правовое регулирование, конвенция, сокращение безгражданства.

Introduction

Statelessness is a global problem, affecting the fate of more than 10 million people. The occurrence and development of this problem is associated with the collapse of the socialist camp of states: "the collapse of empires and the emergence of independent states in the twentieth century gave rise to an unprecedented number of people who have no nationality and have nowhere to go", and with such circumstances as, for example, the consequences of the two world wars in Europe. The literature combines together ideas about law and politics, citizenship, related to the difficult situation of stateless people (apatride): statelessness required a new understanding of international order in the XX century and later [1]. The trouble of statelessness affects almost all regions of the world, such as Southeast and Central Asia, the Middle East, Africa and even prosperous Europe. In Central Asia, many of the stateless people still have expired Soviet identity document

And in fact, the consequences of statelessness are damaging: they deny stateless persons of legal rights or the possibility of satisfying basic needs, leave them beyond political and economic influence, discriminate against and make them especially unprotectable to exploitation and abuse. Furthermore, the status of statelessness is transferred "by inheritance". This means that children of stateless people born in a country where the law does not provide for the "right of land" are automatically assigned to the group

of stateless people. Not by chance that statelessness is sometimes called an invisible problem because stateless people often remain invisible and unheard in many cases from birth to death. The international community includes state freedom in questions of citizenship, ensuring de-jure and de-facto the state of statelessness [2; 3].

The reasons for encouraging the state to create and improve the system for ensuring the rights of foreign citizens in the social sphere, are a consistently high level of immigration influx, characterized by a significant number of foreign citizens and stateless persons entering the country for education, employment, as well as for humanitarian reasons [4, p.8]. In State programs and national laws, it is obvious to see the connection between the direction and nature of migration flows and the availability of social, educational, medical and other services for stateless people. At the same time, it is necessary to pay an attention to that fact that in conditions of socio-economic and international political instability, external migration has both positive potential and negative one. On the one hand, it promotes the filling of labor resources and replenishment of the state budget. On the other hand, the presence of a large number of stateless people or with uncertain citizenship can become a threat to social stability and international harmony in the state. With this in mind, in modern conditions, the legislator faces the task not only of ensuring a decent level of living for these groups of people through the economic and legal guarantee of the social rights for this group of people, but also, in case to reduce the risk of social conflicts, to develop a mechanism for their inclusion in the host society. These circumstances actualize the implementation of a legal study aimed at identifying the essence and features of the realization of the social rights of stateless people, as well as the search for effective legal mechanisms to ensure them in the conditions of modern state migration policy of the Republic of Kazakhstan.

Materials and methods

In the course of the study were used such kind of methods of cognition like specific historical; institutional; systemic; structural-functional and comparative-legal methods, which are for the formation of the institution of the rights of stateless persons in various branches of legal knowledge were used. Beside this, there were dialectical-subject method of cognition of international legal trends in relation to constitutional and legal processes and phenomena.

Results and discussion

A number of factors can cause statelessness: denial or deprivation of citizenship of minority groups, state succession, absence of birth registration, gender discrimination in citizenship laws, gaps and conflicts of citizenship laws between states. Whatever the reason, statelessness could have serious consequences for people in almost all countries and regions of the world. In reality, most stateless people face a wide range of obstacles in their daily lives.

In the appearing of problems of statelessness, a significant role is played by differences in the laws of states on the procedure for getting and losing citizenship, in particular, the presence of conflicts between the "right of blood" and the "right of land", and differences in the procedure for naturalization, etc. In addition, the causes of dual citizenship and statelessness should be attributed to poorly manage territorial changes, resulting in a change in state jurisdictions, population migration and the influx of refugees [5, p. 10].

The size of legal capacity of stateless people depends not only on the legal component, but also on economic, social and political factors that to some extent affect the content of the constitutional and legal status of a stateless people [6, p. 10].

The legal status of stateless people and the problems of state security are interrelated, the nature of which is twofold. On the one hand, it is necessary to protect the society and the state itself that accepts foreigners. However, on the other hand, the security of foreigners themselves as individuals must also be ensured by all legal methods. At the same time, in every legal source, both international and constitutional, it is possible to find provisions serving this purpose – ensuring security in all its components. This allows point out several levels of security: universal; regional and national. All levels are related to the solution of security issues related to the problems of illegal migration [7, p. 10].

At the international level, statelessness issues are regulated by the Convention on the Status of Stateless Persons, of 1954; the Convention on the Reduction of Statelessness, of 1961; the Convention

on the Status of Refugees, of 1951; and the Protocol thereto, of 1967, in 1999. The international legal status of a stateless people is defined as the legal status of "a person who is not considered a citizen by any state into the force of its law." In accordance with the norms of international law the legal status of stateless people matches with the status of foreigners, with the exception of cases established by the Convention of 1954, when stateless people are given a more favorable position.

Stateless people, by reason of specific international standards in the field of statelessness, should be endowed with the same rights as citizens and foreigners on the territory of states that have acceded to the Convention of 1954. With relation to the acquisition of movable and immovable property and transactions with it, stateless people should be provided with the most favorable position possible and, in any case, no less favorable than foreigners. The same preferences represent the essence of the right of free access to the courts, the right to work, the right to receive state aid and support. A special sound have the provisions of the Convention on labor legislation and social security (article 24), the main of which is to provide stateless people legally living in the territory of the Contracting states with the same provision as is provided to citizens with respect to: a) reward for work, including family allowances, if such benefits are part of remuneration for work, working hours, overtime, paid vacations, restrictions on work at home, minimum age of employees, apprenticeship and vocational training, the work of women and minors and the enjoyment of the benefits of collective agreements, since these issues are regulated by laws or regulations or controlled by administrative authority; b) social security (legal provisions concerning accidents at work, occupational diseases, maternity, illness, disability, old age, death, unemployment, family responsibilities and other cases that, according to domestic laws or regulations, are provided for by the social security system).

It should be mentioned that there are limits, assuming, firstly, the possibility of the existence of an appropriate procedure for the preservation of acquired rights in the process of acquisition; and, secondly, the existence in the regulatory framework of a special procedure for the appointment and receipt of full or partial benefits paid entirely from public funds, and benefits paid to individuals, who have not fulfilled all the conditions for contributions required to receive a normal pension. The Convention contains very significant standards for ensuring the social status of stateless people, such as the exercise of the right to compensation for the death of a stateless people resulting from an accident at work or an occupational disease, while not being affected by the fact that the beneficiary does not reside in the territory of a Contracting state. In addition, the provisions of the Convention on the granting of benefits to stateless people are arising from such agreements, which at any given moment may be in force between these Contracting states and states not participating in the treaty, are significant [8].

The Convention of 1961 of the Redundancy of Statelessness consistently develops the provisions of the Convention of 1954, defining the effective experience and solidarity of the participating states in this area. The granting of citizenship to any person born in the territory of a state, who would otherwise be stateless, is a fundamental rule of international agreements. The conditions for granting citizenship to stateless people are regulated by national laws. It is important to note the norms and provisions of the Convention on the need to regulate in national legislation issues of preventing statelessness in cases of possible future situations of succession of states – legislation inside the state should provide for a preventive norm in a meaningful context, guaranteeing that no person as a result of transformational processes will become stateless [9].

National law contains conditions unique to each State for granting citizenship to stateless persons. The provision on the automatic granting of citizenship by virtue of the principle of "the right of land " upon the birth of a child on the territory of a certain country complies with international standards. A national law may have in its construction other qualifications for granting citizenship: for a person, when initiating a petition before a state body, a time and age qualification, a residence qualification, a lack of criminal record (crimes against state security), and the mandatory status of an apatriote are established. The Convention emphasizes the, subject to its provisions, no such application can be rejected [9].

The determination of statelessness status is the starting point for an effective response to the adoption of legal measures to ensure the protection of stateless persons. Recognition of statelessness

status is very significant because it provides a way to use certain rights, for example, the right to reside. The availability of identity documents promotes the use of a number of rights, such as the right to freedom of movement, the right to education, etc. [10].

In accordance with the Law of the Republic of Kazakhstan dated June 19, 1995 No. 2337 "On the legal status of foreigners", persons who are not citizens of the Republic of Kazakhstan and do not have proof of their belonging to the citizenship of another state are recognized as stateless persons [11]. In general, the legislation of the Republic of Kazakhstan on the legal status of foreigners is based on the Constitution of the Republic of Kazakhstan and defines in accordance with it the basic rights and obligations of foreigners and stateless persons, the procedure for their entry into the Republic of Kazakhstan, stay and movement on its territory and departure from the Republic of Kazakhstan. As a rule, the legal status of stateless persons can also be determined by international treaties of the Republic of Kazakhstan: if an international treaty ratified by the Republic of Kazakhstan establishes rules other than those contained in the law, then the rules of the international treaty apply. Thus, according to paragraph 4 of Article 12 of the Constitution of the Republic of Kazakhstan, stateless persons enjoy the rights and freedoms in the Republic, as well as bear the duties established for citizens, unless otherwise provided by the Constitution, laws and international treaties. This provision fully applies to the block of individual rights for his social security.

Stateless persons permanently residing in the Republic of Kazakhstan have equal rights with citizens of the Republic of Kazakhstan to receive pre-school, primary, basic secondary and general secondary education; to receive free technical and vocational, post-secondary, higher and postgraduate education on a competitive basis in accordance with the state educational order, if they have the education of each of these levels they get it for the first time.

The Law of the Republic of Kazakhstan "On the Legal Status of Foreigners" also regulates the issues of ensuring the health of stateless persons (Article 7): medical assistance is provided to stateless persons located in the territory of the Republic of Kazakhstan if there is a voluntary medical insurance policy, unless otherwise provided by the laws of the Republic of Kazakhstan and international treaties ratified by the Republic of Kazakhstan [12]. The Code of the Republic of Kazakhstan dated July 7, 2020 No. 360-VI "On the health of the people and the healthcare system" (Article 83) contains more detailed rules: stateless persons permanently residing in the territory of the Republic of Kazakhstan have the right to receive a guaranteed amount of free medical care on an equal basis with citizens of the Republic of Kazakhstan; stateless persons temporarily staying in the Republic of Kazakhstan have the right to receive a guaranteed amount of free medical care for diseases that pose a danger to others, according to the list and in the amount determined by the authorized body, unless otherwise provided by the laws of the Republic of Kazakhstan or international treaties ratified by the Republic of Kazakhstan; stateless persons identified and identified as victims of human trafficking in the territory of the Republic of Kazakhstan have the right to receive a guaranteed amount of free medical care according to the list and in the amount determined by the authorized body. Accordingly, stateless persons located on the territory of the Republic of Kazakhstan have the same responsibilities in the field of healthcare as citizens of the Republic of Kazakhstan [12]. The Marriage (Matrimony) and Family Code of the Republic of Kazakhstan has been amended to ensure the registration of all children at birth, regardless of the status of their parents.

Social and pension provision for stateless persons permanently residing in the Republic of Kazakhstan is provided in the same manner as for citizens of the Republic of Kazakhstan. At the same time, when assigning pensions and pension payments and benefits to stateless persons, their work experience abroad may be counted on the grounds and in accordance with the procedure established by legislation and international treaties of the Republic of Kazakhstan.

The introduction of the national mechanism for determining statelessness in Kazakhstan in September 2020 contributed to the official recognition of 1,600 persons with undetermined citizenship as stateless persons, which, accordingly, allowed these persons to gain access to a wide range of social rights. Subsequently, the Ministry of Internal Affairs of the Republic launched a large-scale identification and documentation campaign specifically aimed at identifying the extent of statelessness

and solving the problem of statelessness. The legal basis for cooperation between the Ministry of Internal Affairs of the Republic of Kazakhstan with the Ministry of Justice and partners of the UN Refugee Agency was a Memorandum of Understanding signed by the parties. Just one year of cooperation has shown positive results of the campaign: migration services have registered more than 6 thousand undocumented persons with undetermined citizenship, of which 3,400 have confirmed their citizenship of the Republic of Kazakhstan, and 1,600 have received the official status of stateless persons. In general, about 7000 people currently have the official status of stateless persons in Kazakhstan – about the same number of stateless persons has been steadily varying over the past 5-7 years. Nevertheless, there is a possibility of undocumented persons with undetermined citizenship residing on the territory of Kazakhstan.

In the domestic legal literature, the reasons for statelessness in Kazakhstan are the historical context of the acquisition of independence, gaps in legislation and procedures for its implementation, the human factor (late application of persons to obtain and replace documents, ignorance of laws, fear of punishment, etc.), as well as conflicts arising from different approaches to citizenship issues in Central Asian states [13].

Taking into account the fact that the Republic of Kazakhstan has not joined the 1954 Convention on the Status of Stateless Persons and the 1961 Convention on the Reduction of Stateless Persons, it should be noted that the definition of stateless person itself has not been brought into line with the provisions of key international agreements. By definition, the national legislation of the Republic of Kazakhstan imposes the obligation to prove the status of a stateless person on the stateless person himself, while the international standards contained in the conventions indicate that such an obligation should be distributed between the applicant and the state bodies carrying out the procedure.

The situation of solving the problem of determining and reducing statelessness is compounded by difficulties in determining the exact number of undocumented persons with undetermined citizenship. As a rule, official statistics take into account only those persons who have the official status of a stateless person of the Republic of Kazakhstan. A situation is being created when undocumented stateless persons are practically deprived of access to fundamental rights and freedoms, respectively, they do not have the opportunity to receive social assistance, including in the field of healthcare, education, pensions and benefits, official employment and, moreover, free movement.

No less significant is the problem associated with the granting of citizenship by right of soil to the children of foreign citizens or stateless persons born on the territory of the Republic of Kazakhstan. In accordance with article 14 of the Law of the Republic of Kazakhstan "On the Legal Status of Foreigners", citizenship is granted at birth to children whose parents permanently reside in the country. Citizenship of the Republic of Kazakhstan is not granted to a child born on the territory of the republic, whose parents are stateless persons and temporarily stay in the country, regardless of the reasons for their stay. In this context, the legislation of the Republic of Kazakhstan has not been brought into line with the norms of international law, according to which children of stateless persons born in the territory of a particular State are granted citizenship automatically, without additional conditions.

The legislation of the Republic of Kazakhstan is a gap in terms of preventing statelessness in the event of possible situations of succession of States in the foreseeable future – national law does not provide for preventive norms and provisions for the settlement of these issues. At the same time, the 1961 Convention on the Reduction of Statelessness justifies the need to prevent the possible occurrence of statelessness - no person should become stateless as a result of the transfer of territories to another State (article 10) [8].

Conclusion

The current state of the problem under study gives reason to conclude that the necessary measures should be taken to accede Kazakhstan to the Convention on the Status of Stateless Persons of 1954 and the Convention on the Reduction of Statelessness of 1961, as well as to resolve the issue of bringing the legislation of the republic into line with generally recognized norms and the principles of international law governing the determination of status, the granting of citizenship and the protection of the rights of stateless persons. From the fundamental provisions determining the status of stateless persons, the

granting of citizenship implies, respectively, the possibility of developing rules and mechanisms for providing emergency assistance to stateless persons in the territory of the Republic of Kazakhstan, taking into account the vulnerability of their situation, and determining long-term solutions concerning the future use of stateless persons in the territory of the Republic of Kazakhstan access to medical care, employment, education and social assistance during their stay in the territory of the Republic of Kazakhstan; in general, to the complex of measures for social adaptation and integration of stateless persons in the Republic of Kazakhstan. We consider it necessary to ensure the basic rights of stateless persons temporarily staying on the territory of the Republic of Kazakhstan during the procedure for determining their migration status. In this context, it is advisable to include provisions in the legislation on citizenship and migration on the provision of permission for legal stay for the period of processing documents.

In order to ensure compliance of the legislation of the Republic of Kazakhstan with international standards, it is necessary to eliminate deficiencies in the existing legislation regulating the issues of ensuring the right of stateless persons of the Republic of Kazakhstan. As a priority measure - to include in the Law "On Citizenship" norms ensuring the right of every child at birth registration to acquire the citizenship of the Republic of Kazakhstan.

Reference:

1 Siegelberg, Mira L. *Statelessness: a modern history* // Cambridge, Massachusetts : Harvard University Press; 2020. – 318 p.

2 Conklin W. *Statelessness: the enigma of the international community*, 2014 [Electron. resource] - URL: https://www.persee.fr/doc/rqdi_0828-9999_2015_num_28_1_2175.

3 Berkeley, Bill. "Stateless People, Violent States." *World Policy Journal*, vol. 26, no. 1, 2009, pp. 3–15. JSTOR, [Electron. resource] - URL: <http://www.jstor.org/stable/40210101>.

4 Павловский А.С. *Социальные права иностранных граждан в Российской Федерации: автореф. дисс...к.ю.н.* – Москва, 2004. – 29 с.

5 Керопян А.А. *Международно-правовые проблемы гражданства в условиях глобализирующегося мира: автореф. дисс...к.ю.н.* – Москва, 2002. – 24 с.

6 Малумов А.Ю. *Иностранные граждане и лица без гражданства в Российской Федерации: особенности правового статуса: автореф. дисс...к.ю.н.* – Москва, 2004. – 28 с.

7 Смирнова Е.С. *Проблемы правового статуса иностранных государств в условиях глобализации: автореф. дисс. д-ра юрид. наук.* – Москва, 2008. – 64 с.

8 Конвенция о статусе апатридов. Принята 28 сентября 1954 года Конференцией полномочных представителей, созванной в соответствии с резолюцией 526 А (XVII) Экономического и Социального Совета от 26 апреля 1954 года // https://www.un.org/ru/documents/decl_conv/conventions/apatride.shtml

9 Конвенция о сокращении безгражданства. Принята 30 августа 1961 года // https://www.un.org/ru/documents/decl_conv/conventions/statelessness.shtml

10 «Безгражданство: Принципы анализа недостатков в области защиты» для ситуаций с беженцами // <http://www.unhcr.org/refworld/statelessness.html>

11 Закон Республики Казахстан от 19 июня 1995 года № 2337 «О правовом положении иностранцев» // https://online.zakon.kz/Document/?doc_id=1003764&pos=120;-54#pos=120;-54

12 Кодекс Республики Казахстан от 7 июля 2020 года № 360-VI «О здоровье народа и системе здравоохранения» // https://online.zakon.kz/Document/?doc_id=34464437&doc_id2=34464437#pos=5;-98&pos2=2249;-98

13 Сейтаева Ж.С. *Безгражданство в Республике Казахстан: причины возникновения и пути искоренения* [Электрон. ресурс] - URL: https://online.zakon.kz/Document/?doc_id=34762301&pos=6;-106#pos=6;-106.