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ON THE ISSUE OF DETERMINING A CHILD'S NATIONALITY: NATIONAL, INTERNATIONAL, AND FOREIGN LEGAL REGULATORY MECHANISMS

Abstract. This article is devoted to a comprehensive study of the legal mechanism for determining a child's nationality in light of constitutional guarantees and international human rights standards. The purpose of the study is to identify problems and systemic contradictions between the current norms of the national legislation of the Republic of Kazakhstan and the international obligations of the state in the area of ensuring the child's right to ethnic self-identification. The analysis is based on the provisions of the Constitution, regulatory decisions of the Constitutional Court, the Code of the Republic of Kazakhstan «On Marriage (Matrimony) and Family», and international treaties ratified by the Republic of Kazakhstan. To ensure completeness and objectivity, the experience of the CIS countries and non-CIS countries was analysed, in particular, the legal consolidation of national identity in Israel and Bosnia and Herzegovina - countries in which constitutions formalize the special status of «titular» nations. The experience of Canada and Belgium was considered, whose legislative practice allows us to assess the risks of applying a similar model in multinational states, including Kazakhstan. The study found that the automatic determination of nationality based on the origin of parents creates the preconditions for discrimination, especially in relation to orphans and stateless persons, and substantiated that the existing regulatory model requires revision in order to ensure the voluntary nature of ethnic self-identification and prevent confusion between the concepts of nationality and citizenship.

The study is based on a combination of general scientific and specialized methods: deduction, historical, comparative legal, and systemic analysis, case studies, and a doctrinal approach. The empirical basis was formed by the normative legal acts of the Republic of Kazakhstan, international legal documents (including the Convention on the Rights of the Child and the Convention on the Reduction of Statelessness), as well as decisions of

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the European Court of Human Rights and materials of law enforcement practice of the CIS states.

The results of the study can be used for further reform of family and marriage legislation of the Republic of Kazakhstan. The results of the conducted research may be useful for the scientific community, legislative bodies, and human rights organizations.

Keywords: nationality, child, ethnic self-identification, citizenship, discrimination, statelessness, right to self-determination.

Introduction

The issue of determining a child's nationality encompasses not only legal aspects but also touches on a wide range of social and political issues related to the realization of human rights in the areas of ethnic self-identification, national self-determination, equality, and non-discrimination. Therefore, examining the current legal mechanism for its compliance with the Constitution of the Republic of Kazakhstan and international obligations is particularly relevant given the country's multinational population.

The scientific relevance of this study is substantiated by the fact that Article 65 of the Code of the Republic of Kazakhstan «On Marriage (Matrimony) and Family», which regulates the procedure for determining a child's nationality, has generated legal debate regarding its compliance with Article 19 of the Constitution. The constitutional provision of this article regulates the right of every individual to independently determine their nationality and also enshrines the freedom to indicate or not indicate it. Legal dissonance arises in cases of absence, uncertainty, or deprivation of the rights of a child's parents, which leads to the risk of violating the child's rights. Based on this, nationality is studied from two aspects: on the one hand, as ethnicity, on the other, as a political and legal connection of an individual with the state (citizenship), which is especially important in the context of legal regulation of identity.

Thus, the issue of determining a child's nationality is highly sensitive, as it lies at the intersection of legal, ethnopolitical, and sociocultural processes, reflecting not only individual identity but also the principles of statehood, equality, and human rights.

Methods and Materials

In the process of scientific research, a complex of methods was used: deduction, historical, comparative legal and systemic analysis, case study and doctrinal approach.

The use of the historical method made it possible to trace the formation and development of the category of «nationality» in the legal context - from its institutionalization in the Soviet period to modern trends in the CIS countries and foreign countries. This method allowed us to identify patterns that define the dual nature of the concept of «nationality» as an ethnocultural and legal characteristic of individuality. The deductive method was used by the authors in analysing international UN standards, the Convention on the Rights of the Child, the Convention on the Reduction of Statelessness, etc., and determining the compliance of the regulatory legal acts of the Republic of Kazakhstan with them.

The comparative legal method was applied in the analysis of the provisions of the legislation of the Republic of Kazakhstan and the norms of international law, as well as the practice of foreign states on the issue of determining the nationality and citizenship of a child. A systems analysis method was used to identi-

fy internal consistency (or inconsistencies) between the provisions of Article 65 of the Family Code of the Republic of Kazakhstan, the Constitution, and Kazakhstan's international obligations. A case study approach was used to analyze decisions of the European Court of Human Rights (in particular, Ciubotaru v. Moldova and Sejdić and Finci v. Bosnia and Herzegovina), which illustrate standards of legal protection for ethnic self-identification. The authors used a doctrinal approach to evaluate scientific positions and legal concepts concerning issues of ethnicity, citizenship and self-identification.

Results and Discussion

The modern legal understanding of the category of «nationality» in Kazakhstan is largely determined by the historical experience of the Soviet period. An examination of the specifics of its formation and evolution in the post-Soviet space allows us to more accurately assess the legal nature and significance of this category in determining the nationality of a child.

The category of «nationality» in the post-Soviet legal context continues to perform a dual function – to be not only an ethnocultural marker, but also a legal identifier of an individual. It is reflected in official documents, is used when applying for citizenship, and can influence the scope of rights and opportunities granted. Issues of legal recognition of national identity in post-Soviet countries remain the subject of academic and public debate. Research in this area allows us to trace the historical origins of this category, as well as to identify contemporary contradictions between the personal right to ethnic self-identification and state instruments for recording or, conversely, levelling ethnicity in the public legal sphere.

The main problem is that the freedom of ethnic self-determination proclaimed in constitutions is implemented unevenly in practice and is often accompanied by restrictions on the expression and preservation of national identity. The issue of determining the nationality of children born in interethnic families or in situations of migration across state borders is particularly complex. In various jurisdictions, this choice may depend on the parents' citizenship, place of birth, or the child's own personal will in the future, which often gives rise to additional legal and identification difficulties.

The development of the modern concept of nationality is largely determined by the Soviet historical experience, which was studied in detail by A.K. Bayburin [1; 458]. In the 1920s and 1930s, the Soviet state institutionalized the category of nationality, endowing it with legal significance and enshrining it in passports, birth certificates, and other official documents. Initially, such a measure was in line with the policy of indigenization, aimed at supporting national cultures and forming the personnel elites of the union republics. Over time, however, nationality evolved into an instrument of bureaucratic accounting and social regulation, influencing the distribution of access to educational, professional, and other resources. In Soviet legal practice, a child's ethnicity was determined by the nationality of the parents, although only one of them could be indicated in documents, which excluded the possibility of official recognition of mixed identity. Thus, ethnicity was formed not as an expression of personal self-perception, but as a result of state regulation.

According to A.K. Bayburin, it is precisely this tradition of rigidly defining and politicizing ethnicity that has

had a lasting impact on the modern perception of the category of nationality: any documentary indication of ethnicity in the post-Soviet space is still often perceived not as a neutral statement of fact, but as an expression of government interference in personal self-determination [1; 461].

Modern Russian constitutional and legal doctrine enshrines freedom of personal self-determination (Article 26 of the Constitution of the Russian Federation)[1], including the right of an individual to independently determine their nationality. However, as N.A. Zainitdinov notes, the practical mechanisms for implementing this right remain unequal [2; 46-53].

The standard Russian passport does not have a «nationality» column, but republics with official languages have special inserts where representatives of the «titular» peoples can indicate their ethnicity. This creates an unbalanced situation: some groups receive an official means of expressing their identity, while others -primarily Russians and residents of regions without such inserts - are deprived of this opportunity. The lack of a record of nationality in state documents relegates the issue of ethnicity to the realm of personal relationships and family upbringing, depriving it of legal formality. The author proposes to establish the option of indicating nationality for all citizens on a voluntary and equal basis, which would eliminate regional differences and prevent the hierarchization of ethnicity [2; 46-53].

In turn, D.Sh. Pirbudagova and M.M. Gamzatova consider the right to national identity in its individual and collective dimensions [3; 41-45]. In their opinion, self-determination of an individual is impossible outside the cultural context of a group, which includes language, traditions, forms of education, social and educational institutions. This is of fundamental importance for children: nationality cannot be reduced to a single choice at birth registration; it is formed through socialization. Therefore, the formal neutrality of the state (for example, refusing to record nationality in documents) does not ensure equality unless there is a cultural and linguistic infrastructure that allows a child to inherit their ethnic identity. The authors insist on strengthening national and cultural autonomies and supporting bilingual education.

The Belarusian model is based on the principle of non-interference of the state in the process of determining nationality. Article 50 of the Constitution of Belarus[2] enshrines the right to preserve one's national identity and prohibits coercion to indicate it. In this case, the child's nationality is not recorded in identification documents, and the choice of ethnic self-identification is postponed to a later age, when personal self-awareness is formed. This model reduces the risk of politicization of ethnicity, but requires sustainable state support for cultural diversity so that children truly have a choice.

The particular challenges of determining a child's nationality and ensuring their legal status are particularly acute for stateless persons. As N.V.Polyakova emphasizes, ethnic identity does not provide full legal protection for stateless persons: in the absence of citizenship, access to basic rights is limited, and identity verification procedures remain lengthy

[1] The Constitution of the Russian Federation (adopted by popular vote on 12/12/1993 with amendments approved during the nationwide vote on 07/01/2020) // URL: https://www.consultant.ru/document/cons_doc_LAW_28399/.

[2] Constitution of the Republic of Belarus No. 2875-XII dated March 15, 1994 // URL: https://president.gov.by/ru/ gosudarstvo/constitution.

and complex [4; 260]. If a child is born to stateless parents, their ethnicity is not accompanied by a legally defined status, creating a double uncertainty-both identity-related and legal.

In this context, the principle of non-discrimination, enshrined in the Law of the Republic of Tajikistan «On the Rights of the Child»[3], is particularly relevant. It guarantees the equality of all children, regardless of their origin or legal status. This approach reflects states' international obligations to ensure equal legal protection and emphasizes the need to simplify legalization procedures so that no child is left outside the legal framework.

Moreover, in a number of post-Soviet states, ethnicity is actually beginning to function as a surrogate marker of civil and legal affiliation. In situations of statelessness or unsettled foreign status, ethnic identity is often used by government agencies as a benchmark for determining «natural» citizenship. This is particularly evident in repatriation programs for individuals «with historical roots» (for example, the «Oralman/Kandas»[4] program in Kazakhstan or the «Compatriots»[5] policy in Russia), where belonging to a particular nationality becomes not only a cultural but also a legally significant basis for obtaining simplified legal status. However, such practices increase the risk of blurring the line between nationality and citizenship, as nationality can become a condition for access to a basic set of rights, which contradicts the principles of equality and non-discrimination. For stateless persons, this creates additional vulnerability, as the recognition or non-recognition of their ethnicity by the authorities can directly impact their ability to obtain documents, residence permits, or access social services.

Thus, an analysis of scientific approaches shows that the category of «nationality» in the post-Soviet legal space retains a special status, acting not only as an expression of ethnocultural identity, but also as an element of legally significant self-identification. Historically, nationality was institutionalized as a fixed characteristic of personality, which laid the foundation for a model of externally imposed belonging and continues to influence modern mechanisms for its determination. Currently, freedom to choose one's nationality is legally declared, but the actual conditions for its implementation remain heterogeneous and depend on the cultural and linguistic environment, family socialization patterns, and regional state policy. Determining the nationality of children and individuals in borderline legal situations remains particularly challenging. For example, parents are of different ethnicities or stateless. In some cases, nationality can assume a substitute function, serving as a guideline when making decisions about documentation and access to social support mechanisms, creating the risk of substituting legal status for ethnicity. Therefore, an effective regulatory model must combine voluntary self-determination, equal access to cultural resources, and protection from administrative or discriminatory use of ethnicity, ensuring that nationality is an expression of personal and

[3] The Law of the Republic of Tajikistan «On the Rights of the Child» // URL: https://online.zakon.kz/Document/?doc_id=3378671.

[4] «On approval of the Rules for granting or extending the status of Candace» Order of the Minister of Labor and Social Protection of the Population of the Republic of Kazakhstan dated July 22, 2013 No. 329-O-M // URL: https://adilet.zan.kz/rus/docs/V1300008624.

[5] Federal Law of the Russian Federation «On the State Policy of the Russian Federation in relation to Compatriots Abroad» dated 05/24/1999 N 99-FZ // URL: https://www.consultant.ru/document/cons _doc_ LAW_ 23178/.

cultural identity, not a tool for distributing rights and opportunities.

A comparison of these trends with the national legislation of the Republic of Kazakhstan allows us to identify certain discrepancies between the proclaimed constitutional principles of freedom of ethnic self-determination and their practical implementation. This is most clearly evident in the current version of Article 65 of the Code of the Republic of Kazakhstan «On Marriage (Matrimony) and Family»[6], which establishes the automatic determination of a child's nationality solely based on the nationality of the parents. In particular, such a mandatory norm excludes:

- free national self-identification unrelated to origin, depriving orphans and abandoned children who lack reliable information about their parents of the opportunity to exercise this right;

- creates an unequal legal status between children depending on the availability of information about their parents, which creates signs of discrimination on social and ethnic grounds;

- ignores personal beliefs, ethnocultural identity, and the potential transformation of an individual's sense of self throughout life.

This provision violates paragraph 1 of Article 19 of the Constitution of the Republic of Kazakhstan[7], which enshrines the right of every person to independently determine their nationality. Nationality is not a formal attribute reflected in parents' documents, but the result of a deep personal awareness of one's belonging to a particular ethnocultural community, formed under the influence of language, culture, traditions, upbringing, and life experience [5].

This approach reflects a balance of objective and subjective factors in determining citizenship. In this case, objective factors such as ethnic origin through parents or family line are taken into account, but the importance of socio-cultural self-identification is also recognized. Furthermore, recording citizenship in official documents may entail legal consequences, including the right to repatriation, state support, participation in the quota system, and protection of the rights of representatives of national minorities [6]. Therefore, any criteria established by the state in this area must be justified, not arbitrary, and must not limit the exercise of rights enshrined in the Constitution of the Republic of Kazakhstan.

Consequently, citizenship is a deeply personal category, not reducible solely to biological origin. Enshrining in legislation a single method for determining a child's citizenship violates the principle of constitutional equality and the prohibition of discrimination and personal autonomy, as it hinders the child's exercise of the right to ethnic self-determination in the future. Moreover, this violates international standards, in particular the provisions of Article 8 of the Convention on the Rights of the Child[8], which enshrines the right to preserve individuality, including citizenship.

On April 16, 2025, the Constitutional Court of the Republic of Kazakhstan adopted a regulatory resolution on verifying the compliance of Article 65 of the Code of the Republic of Kazakhstan «On Marriage (Matrimony) and Family» with the Constitution of the Republic of Kazakhstan.

[6] The Code of the Republic of Kazakhstan «On Marriage (Matrimony) and Family» dated 26 December, 2011. № 518-IV // URL: https://adilet.zan.kz/eng/docs/K1100000518.

[7] Constitution of the Republic of Kazakhstan. Constitution adopted on August 30, 1995 at the republican referendum // URL: https://adilet.zan.kz/eng/docs/K950001000_.

[8] The Convention on the Rights of the Child was adopted by General Assembly resolution 44/25 of November 20, 1989 // URL: https://www.un.org/ru/documents/decl_conv/conventions/childcon.shtml.

The essence of this article is that the determination of a child's citizenship is carried out on the basis of the citizenship of the parents, and if the parents have different citizenships, it is at the discretion of the child.

A study of international experience and progressive foreign practice on this issue allows us to conclude that the provisions of Article 65 of the Code of the Republic of Kazakhstan «On Marriage (Matrimony) and Family», in the absence of flexible mechanisms, may give rise to the following legal conflicts and potential grounds for declaring it unconstitutional:

1.Restriction of personal choice and ethnic self-identification (contrary to Article 19 of the Constitution of the Republic of Kazakhstan). According to the constitutional norm, every person has the right to freely determine their national identity, which includes both maintaining the ethnicity of their parents and making an independent choice, especially upon reaching adulthood.

However, Article 65 of the Civil Code establishes that when registering the birth of a child, his citizenship is determined solely on the basis of the citizenship of the parents. This approach does not take into account situations where a child may not share the ethnocultural identity of the parents or have no information about them at all (for example, in cases of abandonment of newborns, lack of information in official civil status documents, or parental refusal).

2.This provision may be considered contrary to the principles of constitutional equality and personal autonomy, since it does not provide the child with the opportunity to exercise the right to ethnic self-determination in the future. Furthermore, it violates international standards, in particular the provisions of the Convention on the Rights of the Child (Article 8), which enshrines the right to preserve individual identity, including nationality.

Thus, taking into account the constitutionally enshrined principle of freedom of self-identification, Article 65 of the Code in its current version needs to be revised and brought into line with international human rights standards.

Legal uncertainty in the absence of parents, since the norm does not provide for a clearly regulated procedure for determining the nationality of a child left without parental care, or in the event of their death, unknown status, abandonment of the child, or the inability to establish the ethnicity of the parents based on documents [7; 1170].

This gap in legal regulation creates legal uncertainty, which contradicts the principle of legal certainty, a fundamental element of the rule of law and constitutional order. As a result, children in such situations find themselves in a vulnerable position, which may result in:

- restrictions in obtaining legal documents that require an indication of ethnicity;
- difficulties in realizing the right to education, medical care, and social protection, especially in programs where ethnicity is significant.

Thus, the lack of a procedural mechanism for determining a child's nationality in such cases requires legislative regulation to eliminate the legal vacuum and ensure equal access to basic rights and guarantees.

Establishing a rigid link between a child's nationality and the ethnicity of their parents excludes the possibility of freely choosing their ethnic identity, which can be regarded as an indirect restriction based on origin.

In particular, the impossibility of

indicating a nationality different from the ethnicity of the parents may conflict with Article 19 of the Constitution of the Republic of Kazakhstan, which grants everyone the right to determine and indicate their nationality. From the point of view of international law, this contains signs of discrimination on the basis of lack of ethnicity, which violates Articles 14 and 19 of the Constitution of the Republic of Kazakhstan, the Convention on the Rights of the Child (Articles 2 and 7). The above-mentioned articles of the Convention enshrine the protection of the child from discrimination on any grounds and the right to acquire a nationality, as well as the obligations of states to protect these rights in accordance with their laws and international obligations, especially in cases where otherwise the child might be left stateless.

The Republic of Kazakhstan has accepted international obligations to protect the rights of the child from discrimination and statelessness by signing a number of international documents. In international practice, the issue of determining the citizenship of a child in cases where the citizenship of the parents is unknown and the person has the right to self-determination is considered in order to prevent statelessness and ensure the rights of the child. These standards are contained in the Convention on the Rights of the Child and the Convention on the Reduction of Statelessness (1961)[9], which oblige states to grant citizenship to children born on their territory who would otherwise remain stateless. The International Covenant on Civil and Political Rights[10] (Article 26) explicitly establishes a prohibition of discrimination and respect for the ethnic, cultural and personal identity of the child.

If a child, being a citizen of Kazakhstan, cannot choose a citizenship that does not correspond to the ethnic origin of his parents, this may be considered a restriction based on origin. Without additional provisions regulating the right to national self-identification in cases of absence of parents, and without taking into account the opinion of the child (upon reaching a certain age), Article 65 may contradict the Constitution of the Republic of Kazakhstan (Articles 19 and 14) and the country's international obligations. This creates grounds for a constitutional and legal examination of the relevant norm.

In most foreign countries, the citizenship (ethnicity) of citizens is not regulated by law and is not recorded in documents in the context in which we, citizens of the post-Soviet space, understand it. International practice insists that the official recording of citizenship in state documents is a dangerous discriminatory instrument. Based on this, international law identifies it in two meanings: «nationality» as «citizenship» through the legal connection of a specific person with a specific state. The second meaning is achieved through a person's ethnocultural self-identification, that is, the protection of a person's right to freely determine their ethnicity.

In this regard, we support the position of M. Foster and T.R. Baker that racial (national) discrimination is both a cause and a consequence of statelessness, and that national legislation and practice of individual states can simultaneously entrench and support such discrimination [8; 92].

Undoubtedly, the granting of citi-

[9] The Convention on the Reduction of Statelessness of August 30, 1961 // URL: https://www.un.org/ru/documents/decl_ conv/conventions/statelessness.shtml.

[10] The International Covenant on Civil and Political Rights of December 16, 1966 // URL: https://www.un.org/ru/documents/decl_conv/conventions/pactpol.shtml.

zenship is an exercise of the sovereign right of the state, which is enshrined in the fact that states themselves determine the legislative mechanisms for its implementation. Nevertheless, the principle of non-discrimination against individuals on any basis is consistent with the international principle of «jus cogens», that is, imperative force. Thus, states, when exercising their sovereign right in matters of regulating citizenship, are obligated, first and foremost, to proceed from their international obligations under ratified international treaties. If we turn to the fundamental international human rights documents, we see that the Universal Declaration of Human Rights[11] (Article 15) of 1948, the International Covenant on Civil and Political Rights (Article 24) of 1966, and the Convention on the Rights of the Child (Article 7) regulate the issue of «nationality» by defining «citizenship» as belonging to a particular state. Another issue is that these same international documents enshrine the individual's right to ethnic self-identification. Thus, Article 27 of the International Covenant on Civil and Political Rights guarantees persons belonging to national minorities the right to preserve and develop their culture and use their language. Regarding similar rights for minors and young children, these guarantees are enshrined in Article 30 of the Convention on the Rights of the Child.

Regarding the regulation of this issue at the regional level, the European Convention on Human Rights (Article 8) of 1950 considers the issue of ethnic self-identification as an element of an individual's private life. The European Court of Human Rights[12] considered this issue in the case of Ciubotaru v.Moldova (2010, application no. 27138/04)[13]. The case of Ciubotaru v. Moldova concerned the refusal of the Moldovan authorities to satisfy the applicant's request to change the entry on official documents regarding his ethnicity from «Moldovan» to «Romanian», citing the applicant's inability to provide evidence of his Romanian identity. The authorities insisted on the provision of evidence such as information about his parents or official documents confirming his Romanian nationality. The European Court has ruled that the state's requirement for «objective proof» of ethnicity is contrary to the principle of self-identification and violates a person's right to respect for private life. As a result, a violation of Article 8 of the Convention was found, and it was concluded that the state has no right to impose ethnicity or hinder its free expression.

Article 14 of the European Convention expressly prohibits discrimination on the basis of nationality, as demonstrated, in particular, by the European Court of Human Rights' decision in the case of Sejdić and Finci v.osnia and Herzegovina (2009, applications nos. 27996/06 and 34836/06)[14]. The case concerned the constitutional ban on representatives of the Roma and Jewish minorities from running for public office. The applicants complained that, despite having experience comparable to that of the country's highest officials, they were constitutionally barred from running for these positions solely be-

[11] Declaration of Human Rights of 1948 // URL: https://www.un.org/ru/documents/decl_conv/declarations/declhr.shtml.

[12] The European Convention on Human Rights // URL: https://www.echr.coe.int/documents/d/echr/convention_ENG.

[13] Case of Ciubotaru v. MOLDOVA. 27138/04 // URL: https://hudoc. echr.coe. int/app/conversion /pdf/?library=ECHR&id=001-.

[14] Case of Sejdić and FInci v. Bosnia and Herzegovina - HUDOC // URL: https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=001-.

cause of their ethnic origin. The Constitution of Bosnia and Herzegovina explicitly provides that only representatives of the «constitutional peoples» - Bosniaks, Croats, and Serbs - may be elected to the highest government positions. The European Court found a violation of Article 14 of the Convention, taken together with Article 8, emphasizing that exclusion based on ethnicity affects issues of personal identity.

The Constitution of Bosnia and Herzegovina is unique in that it is an annex to the 1995 Dayton Agreement, which ended the civil war. The Constitution has international legal status, being part of the peace treaty and guaranteed by the international community. Another unique feature is its enshrinement of the priority of the three titular ethnic groups - Bosniaks, Serbs, and Croats. This priority is expressed in the formation of the highest organs of state power taking into account ethnic parity.

The Preamble itself states that the Constitution of Bosnia and Herzegovina is adopted on behalf of the Bosniaks, Serbs, and Croats as peoples (including those who constitute the population of the country) and the citizens of Bosnia and Herzegovina[15]. For example, Article IV of the Constitution defines the procedure for forming the Parliamentary Assembly as follows: «The House of Peoples shall consist of 15 deputies, two-thirds of whom represent the Federation (including five Croats and five Bosniaks), and one-third of whom represent the Republika Srpska (five Serbs). The Croat and Bosniak deputies appointed by the Federation shall be elected, respectively, by the Croat and Bosniak deputies of the House of Peoples of the Federation. Deputies from the Republika Srpska shall be elected by the People's Assembly of the Republika Srpska».

Similarly, Article V defines the procedure for forming the Presidency of Bosnia and Herzegovina, which shall consist of three members: one Bosniak and one Croat, each elected directly from the territory of the Federation, and one Serb elected directly from the territory of the Republika Srpska.

Article VII of the Basic Law of the country establishes that the Central Bank of the state is also formed taking into account the priority of the three ethnic groups. Thus, the Presidium appoints three members of the first Board of Governors of the Bank: two from the Federation (one Bosniak and one Croat, each with one vote) and one from the Republika Srpska. Thus, the principle of forming the highest organs of state power presupposes the existence of a «vital national interest» mechanism, allowing each ethnic group to block decisions if it believes its rights are being violated.

As for other ethnic groups living in the territory of Bosnia and Herzegovina, the Constitution defines their status as others. The constitutional enshrinement of the special status of «titular» nations and the limitation of other ethnic groups' political rights, from the point of view of international law, are discriminatory and need to be revised. We agree that the uniqueness of the Constitution of Bosnia and Herzegovina was determined by the military conflict and served as a «temporary compromise» to end the military conflict. Self-determination and independence of conflicting ethnic groups was assumed, but today, many provisions need to be revised, taking into account the principle of a «civic nation» rather than «constitutive peoples». Constitutional reforms

[15] URL: https://legalns.com/download/books/cons/bosnia_and_herzegovina.pdf.

must be based on international law, which provides for the protection of fundamental human rights, while preserving mechanisms for protecting the cultural and linguistic identity of ethnic groups, without infringing on the political rights of other citizens. The issue of constitutional recognition of «titular» nations is a sensitive one, not only because it is inconsistent with international law on issues of discrimination, human rights, and equality, but also because it poses the risk of creating a precedent for other states to follow.

There are more than ten states in the world that enshrine the principle of «constitutive peoples» in their fundamental laws, including Lithuania, Mongolia, Croatia, Estonia, Slovakia, and Israel.

The experience of Israel, which adopted the «Basic Law: Israel - the Nation-State of the Jewish People» in 2018, is of interest for research. Article 1 of this law states: «The State of Israel is the national state of the Jewish people, in which they exercise their natural, cultural, religious and historical right to self-determination»[16]. This constitutional provision alone violates several provisions of international instruments on non-discrimination and equality.

For example, the Constitution of Israel enshrines the right to self-determination as a unique and exclusive right of the Jewish people. However, Article 1 of the UN Charter[17], the International Covenant on Civil and Political Rights and international law in general recognize the right to self-determination for all peoples living on the territory of a given state. According to András L.Páp, the example of Israel most clearly demonstrates how the definition of a titular (ethno)national majority is the core of nation-building and the nationalist project, since nationalism is also interpreted in the context of ethnic kinship in the diaspora. Various forms of constitutional nationalism for the diaspora, such as the Law of Return, the Basic Law on the «nation-state», status laws, and policies of ethnicized external citizenship, should serve as sources for further analysis, especially if there is an asymmetry in how the state classifies and operationalizes the ethnicity of minorities, «others», in relation to the majority that constitutes the nation [9; 217].

Violations of the principle of non-discrimination against citizens of non-Jewish origin are seen in the recognition of the exclusivity of the Jewish people. As is known, 23% of the population of Israel are representatives of other nationalities[18]. This violates not only the principle of non-discrimination but also the right of peoples to self-determination, which is also a norm of international law, classified as «jus cogens». As is well known, international norms require states to ensure the collective rights of minorities not only with respect to rights such as the preservation of language, culture, and traditions, but also to ensure equal access and participation in the political life of the state. Thus, the Israeli Constitution, like the Basic Law of Bosnia and Herzegovina, creates a hierarchy based on ethnicity, which contradicts key international human rights documents that enshrine the equality of peoples and condemn discrimination on any basis.

While international law supports and guarantees the concept of freedom of self-determination, the states

[16] Basic Law: Israel is the national State of the Jewish people // URL: https://main.knesset.gov.il /ru/activity/ pages/basiclaw.aspx?lawid=13.

[17] The UN Charter // URL: https://www.un.org/ru/about-us/un-charter/full-text.

[18] The population of Israel // URL: https://www.tadviser.ru/index.php/.

we have examined destabilize the situation with their constitutional provisions on non-discrimination and equality for representatives of non-titular nations. Thus, the problem of determining a child's nationality is much deeper and goes beyond a single issue, touching not only on civil but also political and socio-cultural aspects.

Returning to the issue of determining a child's nationality, in international practice, determining a child's nationality in the absence of parents is most often regulated with the aim of preventing statelessness and ensuring the rights of the child. Looking at international practice regulating this issue, we see various approaches.

According to Belgian law, a child born in Belgium to foreign parents may acquire Belgian citizenship subject to certain conditions aimed at preventing statelessness. These provisions are enshrined in the Belgian Nationality Code (Code de la nationalité belge)[19], which was reformed in 1984. Specifically, the articles concerning the acquisition of citizenship by birth in Belgium provide for the following cases:

1. A child born in Belgium and who did not have any other citizenship before reaching the age of 18 automatically acquires Belgian citizenship.

2. A child born in Belgium and who lost their only other citizenship before reaching the age of 18 also acquires Belgian citizenship.

Polish law is based on the principle of jus sanguinis (right of blood), which grants citizenship to children if at least one parent is a Polish citizen. According to the Citizenship Act of 2 April 2009[20] (which entered into force on 15 August 2012), a child born or found on the territory of Poland acquires Polish citizenship if both parents are unknown, their citizenship is unknown or they are stateless (Articles 14(2) and 15). This provision is aimed at preventing statelessness among children born in Poland.

Conclusion

Thus, the study revealed the following. The provisions of Article 65 of the Marriage and Family Code of the Republic of Kazakhstan, as currently amended, are formally consistent with the Constitution of the Republic of Kazakhstan; however, they do not fully ensure the realization of the child's right to ethnic self-identification, especially in the context of international standards. Moreover, the lack of a flexible mechanism for determining a child's citizenship in the absence or unknown status of parents, as well as the rigid linking of citizenship to the ethnic origin of the parents, may contradict the constitutional provisions of Articles 14 and 19, as well as the international obligations of the Republic of Kazakhstan enshrined in the Convention on the Rights of the Child and other fundamental international documents.

The experience of many progressive countries is based on the practice of eliminating mandatory documentary recording of a child's ethnicity and recognizing it as an element of private life that must be respected. In post-Soviet countries, the «nationality» column is retained, but the freedom to indicate or not indicate ethnicity is granted.

At the same time, there are states (Israel, Bosnia and Herzegovina) where, even with the constitutional enshrinement of the status of the

[19] URL: https://diplomatie.belgium.be/en/belgians-abroad/nationality/being-granted-belgian-nationality-age-18?utm_source =chatgpt.com.

[20] URL: https://karta-pobytu.pl/ru/baza-wiedzy/ustawa-z-dnia-2-kwietnia-2009-r-o-obywatelstwie-polskim/.

«titular» nation, there is a high risk of institutionalizing ethnic hierarchy and discrimination.

The conducted analysis allows us to draw conclusions that can be taken into account when aligning national legislation with constitutional guarantees and international obligations of the Republic of Kazakhstan:

1. Develop an alternative legal mechanism for establishing a child's citizenship in the absence of information about the parents, in cases of deprivation of parental rights. The primary goal of legal regulation should be to overcome the legal vacuum that arises in cases of death, absence, or unknown identity of a child's parents, deprivation of parental rights, or abandonment of the child.

2. Provide for a gradual transition from a model of rigid definition of ethnicity to a flexible model that takes into account the right to self-determination, ethnic self-identification and non-discrimination.

3. Continue efforts to align national legislation with the Republic of Kazakhstan's international obligations under international treaties on the prevention of statelessness and the protection of children's rights. Legal reform should be based on the principles of non-discrimination and respect for the cultural and ethnic diversity of society, as well as the right to self-determination and ethnic self-identification.

International practice demonstrates the commitment of states to preventing statelessness among children, especially in cases of parental absence. The Republic of Kazakhstan may consider amending its national legislation to automatically grant citizenship to children born on its territory without parents, in order to comply with international standards and ensure the protection of children's rights.

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БАЛАНЫҢ ҰЛТЫН АНЫҚТАУ ТУРАЛЫ МӘСЕЛЕГЕ: ҚҰҚЫҚТЫҚ РЕТТЕУДІҢ ҰЛТТЫҚ, ХАЛЫҚАРАЛЫҚ ЖӘНЕ ШЕТЕЛДІК ТЕТІКТЕРІ

Аңдатпа. Мақала конституциялық кепілдіктер мен адам құқықтарын қорғаудың халықаралық стандарттары тұрғысынан баланың ұлтын анықтаудың құқықтық тетіктерін жан-жақты зерттеуге арналған. Зерттеудің мақсаты Қазақстан Республикасы ұлттық заңнамасының қолданыстағы нормалары мен баланың этникалық өзін-өзі сәйкестендіру құқығын қамтамасыз ету саласындағы мемлекеттің халықаралық міндеттемелері арасындағы проблемалар мен жүйелі қайшылықтарды анықтау болып табылады. Талдау Конституцияның ережелеріне, Конституциялық Соттың, «Неке (ерлі-зайыптылық) және отбасы туралы» Қазақстан Республикасы Кодексінің нормативтік қаулыларына және Қазақстан Республикасы ратификациялаған халықаралық шарттарға негізделген. Толықтығы мен объективтілігін қамтамасыз ету үшін ТМД елдерінің, алыс шет елдердің тәжірибесі, атап айтқанда, Израильде, Боснияда және Герцеговинада ұлттық бірегейлікті құқықтық бекіту - Конституциялар «титулды» ұлттардың ерекше мәртебесін рәсімдейтін елдер талданды, Қазақстанды қоса алғанда, Канада мен Бельгияның тәжірибесі қаралды, олардың заңнамалық тәжірибесі көпұлтты мемлекеттерде ұқсас модельді қолдану тәуекелдерін бағалауға мүмкіндік береді.

Зерттеу барысында ата-аналардың шығу тегі бойынша ұлтты автоматты түрде анықтау, әсіресе жетім балалар мен азаматтығы жоқ адамдарға қатысты кемсітушілікке алғышарттар жасайтыны анықталды және қолданыстағы реттеу моделі этникалық өзін-өзі сәйкестендірудің еріктілігін қамтамасыз ету және ұлт пен азаматтық ұғымдарының араласуына жол бермеу мақсатында қайта қарауды қажет ететіндігі негізделген.

Зерттеу жалпы ғылыми және арнайы әдістер кешеніне негізделген: дедукция, тарихи, салыстырмалы-құқықтық және жүйелік талдау, case-study және доктриналық тәсіл. Эмпирикалық негізді Қазақстан Республикасының нормативтік құқықтық актілері, халықаралық-құқықтық құжаттар (оның ішінде бала құқықтары туралы Конвенция және азаматсыздықты қысқарту туралы Конвенция), сондай-ақ Адам құқықтары жөніндегі Еуропалық соттың шешімдері және ТМД мемлекеттерінің құқық қолдану практикасының материалдары құрады.

Зерттеу нәтижелері Қазақстан Республикасының отбасылық-неке заңнамасын одан әрі реформалау үшін пайдаланылуы мүмкін. Жүргізілген зерттеу нәтижелері ғылыми қоғамдастық, заң шығару қызметі органдары, құқық қорғау ұйымдары үшін пайдалы болуы мүмкін.

Түйінді сөздер: ұлт, бала, этникалық өзін-өзі сәйкестендіру, азаматтық, кемсітушілік, азаматтығы жоқ, өзін-өзі анықтау құқығы.

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К ВОПРОСУ ОБ ОПРЕДЕЛЕНИИ НАЦИОНАЛЬНОСТИ РЕБЕНКА: НАЦИОНАЛЬНЫЙ, МЕЖДУНАРОДНЫЙ И ЗАРУБЕЖНЫЙ МЕХАНИЗМЫ ПРАВОВОГО РЕГУЛИРОВАНИЯ

Аннотация. Статья посвящена комплексному исследованию правового механизма определения национальности ребёнка в свете конституционных гарантий и международных стандартов защиты прав человека. Цель исследования заключается в выявлении проблем и системных противоречий между действующими нормами национального законодательства Республики Казахстан и международными обязательствами государства в сфере обеспечения права ребёнка на этническую самоидентификацию. Анализ основан на положениях Конституции, нормативных постановлениях Конституционного Суда, Кодекса Республики Казахстан «О браке (супружестве) и семье», и международных договорах, ратифицированных Республикой Казахстан. Для обеспечения полноты и объективности был проанализирован опыт стран СНГ, стран дальнего зарубежья, в частности, правовое закрепление национальной идентичности в Израиле, Боснии и Герцеговине - странах, в которых конституции формализуют особый статус «титульных» наций, рассмотрен опыт Канады и Бельгии, законодательная практика которых позволяет оценить риски применения аналогичной модели в многонациональных государствах, в том числе и в Казахстане.

В ходе исследования установлено, что автоматическое определение национальности по происхождению родителей создаёт предпосылки для дискриминации, особенно в отношении детей-сирот и лиц без гражданства и обосновано, что существующая модель регулирования требует пересмотра с целью обеспечения добровольности этнической самоидентификации и недопущения смешения понятий национальности и гражданства.

В основу исследования положен комплекс общенаучных и специальных методов: дедукции, исторического, сравнительно-правового и системного анализа, case-study и доктринального подхода. Эмпирическую основу составили нормативные правовые акты Республики Казахстан, международно-правовые документы (в том числе Конвенция о правах ребёнка и Конвенция о сокращении безгражданства), а также решения Европейского суда по правам человека и материалы правоприменительной практики государств СНГ.

Результаты исследования могут быть использованы для дальнейшего реформирования семейно-брачного законодательства Республики Казахстан. Результаты проведённого исследования могут быть полезны для научного сообщества, органов законодательной деятельности, правозащитных организаций.

Ключевые слова: национальность, ребенок, этническая самоидентификация, гражданство, дискриминация, безгражданство, право на самоопределение.

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Дәйексөз келтіру үшін. Абдакимова Д.А., Саидзода И.Х., Акимжанова М.Т. Баланың ұлтын анықтау туралы мәселеге: құқықтық реттеудің ұлттық, халықаралық және шетелдік тетіктері // Қазақстан Республикасының Заңнама және құқықтық ақпарат институтының Жаршысы. Ғылыми-құқықтық журнал. 2025;80(4): DOI – https://doi.org/10.52026/2788-5291_2025_80_4_284.

Авторлардың қосқан үлесі:

Барлық авторлар мақаланың негізгі ережелерін талқылауға белсенді қатысты, оның мазмұнын дайындықтың барлық кезеңдерінде келісіп.

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