IRSTI 06.77.59 https://doi.org/10.26577/CAJSH.2020.v6.i2.08

J. Castellino[1], Zh.T. Sairambayeva [2], Z.M. Baimagambetova[2], A.A. Otynshiyeva [2]

[1]Middlesex University, UK, London
[2]Al-Farabi Kazakh National University, Kazakhstan, Almaty,
e-mail: aidana-best91@mail.ru

HUMAN RIGHTS IN KAZAKHSTAN AND THE UNITED KINGDOM: LEGAL-COMPARATIVE ANALYSIS

Abstract. The article examines the human rights issues based on the experience of the Republic of Kazakhstan and the United Kingdom. A comparative analysis of the scientific views of domestic and foreign scientists; reveals the problematic aspects of protecting human rights.

In the era of globalization, the role of the human rights in solving urgent problems of human civilization is growing. In recent years, dramatic changes have occurred in the global legal system and the legal system of Kazakhstan. These changes will serve as the basis for the protection, enforcement and development of human rights. On the one hand, it is a process of integration and regionalization based on world globalization, on the other hand, domestic political and liberal reform processes in Kazakhstan.

The main aim of the articles in the context of globalization, to do a comparative analysis of human rights in the Republic of Kazakhstan and in the UK, to develop further recommendations for improving the human rights legislation of the Republic of Kazakhstan.

Key words: human rights, freedoms, legal status of individuals, enforcement, implementation, government.

Introduction. There are a number of international documents that significantly contribute to the development of domestic legislation in the field of regulation of the legal status of a person and citizen. Among them, first of all, the Universal Declaration of Human Rights of 1948, the

International Covenant on Civil and Political Rights of 1966, the International Covenant on Economic, Social and Cultural Rights of 1966 should be noted. Together, all three documents are referred to as the Bill of Rights. Here are proclaimed ideas, views that all peoples and states strive to implement, provide, recognize and comply.

The first Constitution of the Republic of Kazakhstan, adopted on January 28, 1993, for the first time proclaimed the priority of natural rights and freedoms of the individual. This provision was further enshrined in the Constitution of the Republic of Kazakhstan, adopted on August 30, 1995. These rights and freedoms are reflected in other constitutional laws. We especially note the significance of the Law on Citizenship of the Republic ofKazakhstan.

The creation of the Astana International Financial Center (AIFC) is one of the instruments for Kazakhstan to become one of the thirty most developed countries in the world. In his speech, the President of the Republic of Kazakhstan Kassym-Zhomart Tokayev noted that this task is not easy, ambitious. "This requires sustained high-quality economic growth, ensuring the attraction and maintenance of new high-quality investments and technologies. However, we are not afraid of reform. Therefore, for the first time in the territory of the former Soviet Union, English law begins to be successfully applied in our country within the framework of a unified system of justice. I am convinced that the creation of the AIFC court, consisting of the most honored and respected British judges, will ensure its ultimate success. Today, the AIFC court and the International Arbitration Center (IAC) are starting to write their own story and are developing an element of trust at the local and global levels. It is time to take advantage of our competitive advantages."

The International Arbitration Center offers an independent, cost-effective and efficient analogue of legal proceedings, operating in accordance with the best international standards for resolving civil and business disputes in the AIFC. This requires a spe-

 Printed in Kazakhstan

cial study of the rules and regulations of English law regarding the protection of human rights. Thus, there is an urgent need to develop new scientific and theoretical approaches containing reasonable proposals and recommendations for improving legislation and measures to protect human rights in the Republic of Kazakhstan. All of the above indicates the relevance of the research.

Literature review. The rights, freedoms and duties of man and citizen are studied in the framework of philosophy, sociology, political science, jurisprudence. We note the works of well-known domestic legal scholars dedicated to the study of the legal status of the individual. They: S.S.Sartayev, S.Z.Zimanov, G.S.Sapargaliev, M.T.Baimakhanov, V.A. Kim, Z.K. Kenzhaliev, D.M. Baimakhanova, A.S.Ibrayeva, S.K.Amandykova, S.N.Sabikenov, A.Sman, Zh.D.Busurmanovandothers.

The concept of the legal status of an individual, the history of the development of human rights and freedoms, the theory and practice of citizenship were studied by Russian legal scholars. They: S.A.Avakyan, N.G.Aleksandrova, M.V.Baglay, N.V.Vitruk, N.N.Alekseev, L.I.Petrazhitsky, E.N.Trubetskaya, B.N.Chicherin, N.I.Matuzov, G.V.Maltsev, B.C.Nersesyants, V.E.Chirkin, A.B.Malko, B.A.Maslennikov, N.A.Mikhaleva, V.A.Chetverninandothers.

The legal status of the individual as a separate topic was investigated in the writings of British scientists. They: P.Alston, K.Annan, A.Bayefsky, T.H.Marshall, W.Kymlicka, F.Klug, A.Cassesse, P.Webb, N.Yuval-Davis, J.Castellino, H.Wray, E.F.Isin, P.K.Wood, B.S.Turner, E.Kofman, C.Joppke, T.Faist, R.Koopmans, M. Doxey, M. McDougal, J.Merrils, A.Robertson, Sh.Benhabib and others.

A number of research on the study of human rights also addressed issues such as citizenship, general and special legal status. We note the doctoral dissertation of famous Kazakhstani scientist, Professor D.M. Baymakhanova “Problems of human rights in the system of constitutionalism in the Republic of Kazakhstan”. (Баймаханова, 2009)In the paper of A.M.Dyusekova“Problems of implementing the norms of international covenants and conventions on human rights in the national legislation of the Republic of Kazakhstan” is a comparative analysis of national legislation and international legal documents on human rights. (**Дюсекова, 2008)**

We also point out A. Sman›s doctoral dissertation “The legal status of the individual in the Republic of Kazakhstan (constitutional and legal aspect)”. Here we consider the constitutional consolidation of the legal status of the individual in Kazakhstan.In the paper of A.B. Seifullina “Restriction of human rights and freedoms in a state of law (general theoretical problems)”, a scientific analysis of the institution of restriction of human rights is carried out. In the research of A.B. Zhumagulova “Institute of Human and Citizen Rights: Problems of Theory and Practice” theoretical and practical issues of human and civil rights are described. In contrast to these works, this article examines the human rights in the context of globalization on the basis of a comparative analysis of the legislation of the Republic of Kazakhstan and the legislation of the UK.

Material and Methods.A person is a part of a society with common interests. Human rights and freedoms are the rights and freedoms of an individual recognized by the world community, enshrined in international legal instruments, socially and legally guaranteed, unlimited or prohibited by anyone. Natural law is associated with the emergence of man and human society. The first ideas about the existence of certain human rights began to form in the ancient world. It is mentioned in the works of Socrates, Plato, Aristotle and other thinkers of antiquity. The concept and essence of natural law at that time was much different from today’s concept.

According to Aristotle, the division of human beings into slaves and free people was given by nature, because nature itself freed some people and gave them the right to own, and enslaved other people, who had to submit to the former.

In the ancient Roman state, lawyers developed many concepts of natural law. In the works of ancient Roman jurists, the law was divided into «jus civile» - civil rights in terms of positive law, «jus gentium» - the law of peoples, «jus naturale» - the law of nature or natural law, natural law.

The famous ancient Roman jurist Ulpian defined natural law as follows: «Natural law is a law taught by nature to all living things: this right is not only for the human race, but also for animals and birds.» Thus, unlike in ancient Greece, in ancient Rome, natural law was shown to be legally justified and defined.

At present, the theory of natural law is widely discussed. Many researchers consider natural law as a socio-legal phenomenon and analyze it as a positive legal precondition. In addition, in the modern Republic of Kazakhstan, natural human rights are supported by the state, and the relevant provisions are included in the Constitution of the country.Currently, there are two main directions in the theory of natural law: The first is recognized as a neotomistic theory. This direction was created by a new interpretation of the

medieval scholar Thomas Aquinas.According to him, the source of natural law is God. This conclusion was supported by J. Mariten, V. Katrain, I. Messner. Natural rights include:

1) the right to life;
2) the right to liberty;
3) the right to equality;
4) the right to dignity of a person;
5) the right to personal inviolability;
6) the right to health care;
7) the right to privacy, the right to a favorable environment;
8) the right to communicate;
9) property rights;
10) the right to security and etc.

However, the classification of some of these rights as natural rights in the legal literature is also controversial. For example, property may be segregated in certain circumstances.

In addition to the term «natural», the terms «indivisible», «universal», «fundamental», «basic» are used in the definition of these rights. A special place among natural rights is given to the right to life. This «first right» is at the top of the natural legal pyramid, because if a person loses his life, the rest of the rights lose their meaning.

Everyone's right to life is enshrined in Article 15 of the Constitution of the Republic of Kazakhstan. For the first time in our history, this is reflected in the Constitution. Along with the right to life, the right to honor and dignity, the right to personal inviolability are enshrined in international human rights instruments, as well as in the Constitution of the Republic of Kazakhstan (Амандыкова, 1998).

All other natural rights are recognized as secondary natural rights arising from the primary. For example, the right to health, the right to a favorable environment can be considered as a component of the right to life.Freedom of movement and freedom of speech are components of the concept of freedom.

Among these natural rights, the right to life, liberty, honor and dignity of the individual and personal inviolability can be identified as a fundamental human value and put in a hierarchical order.Social benefits that are recognized as the object of natural law can be considered as follows: Life is the biological life of man as the owner of life, as well as the process of his social activity.

Freedom is a person›s activity, behavior, actions based on his own desires, inner beliefs, interests and needs. Dignity of a person is his social status, which is characterized by self-esteem, the violation of which causes negative moral concern, and sometimes leads to legal liability.Personal inviolability is the inadmissibility of a search of a person›s body, home, personal belongings, records or other aspects of his or her personal life without his or her permission.

The basic principles of the relationship between the state and the masses, which ensure the enjoyment of certain benefits by man, allow him to act voluntarily, are human rights and freedoms. Human society has long focused on this issue.Aristotle, for example, divided human rights into «natural» and «conditional.» He puts natural human rights above the conditional rights established by the state.

In the Middle Ages, human rights and freedoms were interpreted as charity, amnesty. As the most important of the principles, they stressed that people have equal rights to live freely and safely, to own property, that the people are the main owner of power, that power should be branched out, that power should serve the interests of the people.

The ancient Greek philosophers said that all people are born equal. Therefore, it is believed that all of them have equal natural rights.He put natural law above the law established by the state.He believed that natural law should be an example of conditional law.This is because conditional law changes more often and they arise as a result of government work and agreement between people.However, in the era of feudalism, a completely different concept of human rights emerged.

The natural right to be equal from birth has been abolished. The law itself was interpreted as a mercy of khans and kings to their subjects.Each class had its own rights. As we understand it today, human rights are closely linked to liberalism, which was born in the age of capitalism.The Liberals sought to limit the power of the monarchy through parliament, expand suffrage, and promote political freedom.

The author of the famous pamphlet «Human Rights» T. Payne is one of the founders of the concept of human rights. According to Payne, "free and equal individuals with inalienable rights are superior to the state. Therefore, in order for a state to be recognized as legitimate and «civilized,» it must be created with the consent of all individuals. This agreement must be formalized in the constitution and ratified by parliamentary representative mechanisms. Civilized governance systems are constitutional systems of government that are free and have power with the active consent of individuals. «Such governments do not have rights, they have responsibilities only to their citizens».

Individualism, based on the balance of personal freedom and private property, has been a significant stimulus for the development of the productive forces, social development and the formation of po-

litical democracy. History has shown that there can be no freedom of the individual without a variety of sources of livelihood and without economic freedom of choice.Modern thinkers defended personal freedom, advocated private property, and believed that individual freedom was based on private property.

Such a normal situation, in which everyone has the right to do nothing, leads to the violation of the highest spiritual values of man, and thus to the violation of the natural laws of man. Therefore, external forces are needed to prevent such violations, including violations of natural rights. Such a force, according to the thinker, is the state. Under natural conditions, people live on the basis of moral principles, but moral norms do not provide complete safety for people.

After all, any human being is by nature self-centered. In the pursuit of self-interest, he seeks to undermine the values of others, regardless of their interests. Transition to the state means the transition to a higher institution that protects the natural and artificial rights of the individual.

The state is a more stable and promising community than a natural society. The state determines the nature of the individual. Hence, natural rights are replaced by civil rights and freedoms. The protection and full provision of civil rights and freedoms is the responsibility of public authorities. In his writings, F. Aquinas states that «all laws are the fruit of God›s wisdom.»It has been made available to mankind in two main forms: «religious law» (for example, the Koran or the Bible), and «natural law», which forms the concept of God.

Charles-Louis Montesquieu, author of the world-famous work On the Spirit of Law, followed the theory of natural law. According to Montesquieu, the laws of human existence arise from human nature, so they can be called natural. These laws describe the natural state of people in pre-state life. By nature, a person is kind, peaceful and open, does not violate the rights of others, is kind. It is changed by society, so it can be concluded that the balance can be maintained only through the protection of human rights.

According to Montesquieu›s philosophy, human freedoms must be paramount. To take any action within the limits permitted by law, to use all your opportunities, is related to the concept of human freedoms. It is wrong for a citizen to think that this is his freedom if he is acting illegally. This will not lead to security, the rule of law and civil society, he wrote. He saw in natural law the result of people›s desire to find solutions that equate personal well-being with public good. These actions were first fully implemented in the Declaration of the Rights of Man and of the Citizen in 1789, and it should be noted that the word «law» is significantly closer between the subjective and objective meanings. Objective law, the rule of law is the main purpose of protecting the individual, ensuring his prosperity and freedom, in short, allowing him to exercise «his rights. «Nevertheless, these ideas are still used and have not lost their appeal in today›s world.

Along with the positive right, that is, the laws adopted by the state, a person is given a high, true, natural right from birth. This is called the unwritten right, which is a set of natural and inalienable human rights. The source of human rights is not in the laws, but in human nature, these rights come from birth or from God.

There are several features that characterize the theory of natural law:

- human rights belong to a person from birth;
- they are an integral part of man;
- Human rights represent the most important social opportunities of a person (Coulton, 2012).

Classical natural-legal thinkers (Aristotle, Augustine, Thomas Aquinas) considered natural law as a variable, ie «unconditional» law that does not change more than «conditional» law. The question of the causes and significance of the historical development of positive law has been reduced to the level of ideas about the variability of human rights, as imperfect as the nature of any human being.However, with the accumulation of knowledge, the problem of explaining the historical development of law became clearer. Later, scientists developed a «theory of application» of human rights, according to which the eternal principles of natural law are explained by changes in the human mind and living conditions, thus creating important concepts of «second generation or secondary» natural law, which are important in a particular socio-historical context (Сырых, 2007).

As before, the «primary» natural law was accepted as the absolute source of any right, and the «secondary» law was accepted as a relatively imperfect right. The imperfection of the historically variable law remained a dogma. There are many scientists who have studied the concept of human rights, freedoms, responsibilities, their types and classification. In general, in terms of types, human rights are, first of all, universal - that is, any person can be the owner of the right. Secondly, rights are unconditional - this means that everyone has rights and it is impossible to take them away from a person. Third, human rights are egalitarian - this reaffirms that everyone›s rights are equal and equal.Fourth, human rights are considered to be individual - that is, human rights belong to each person, each individual and protect them from

various violations that may occur in society, recognizing the important role of society for the individual. Fifth, human rights can be called fundamental or fundamental - that is, human rights protect fundamental and essential elements of human nature, and sixth, human rights are indivisible and inseparable - all human rights must be protected and respected, they complement each other and they meet the requirements legitimizes with positive and negative responsibilities.

It is important to understand the importance of human rights issues.The main tool for building a civilized state governed by the rule of law is the protection of human rights and freedoms.To do this, any state has experienced many difficulties over the years, which means that human life, human rights and freedoms, personal dignity, respect for human rights and freedoms are an inalienable value, so the main task of the state is to respect human rights. At the same time, it is appropriate to quote the words of the German philosopher Hegel: «Man does not live for the state, the state lives for man.»In different historical epochs, natural rights have been divided into categories. In general, it is impossible to distinguish the general concepts inherent in all stages of development of this theory (Fuller, 1956).

Today, natural human rights are divided into the following types:

- The right to life. This category is often called natural biological rights.Today, human life is the highest social value protected by the state;

- The right to liberty. In this case, the concept of «freedom» means the ability to do something that does not contradict the law and does not violate certain rules established in society;

- the right to honor. This category also includes moral values. The dignity of the individual is the obligation to respect and self-esteem, as well as respect for others;

- property rights. Anyone can own property;

- the right to privacy. The principle that a person cannot be imprisoned without a reason (for example, committing a criminal offense). The natural-legal theory of law is based on the recognition of two types of law: natural and positive.

Positive law is a set of universally binding norms recognized by the state and operating within its borders.In the field of jurisprudence, this category is considered as a system of principles introduced at the legislative level. Today, natural and positive rights are contradictory. Positive legal benefits are established by the state, controlled and guaranteed by regulations. Natural rights are inherent in human beings from birth. They do not depend on anyone's will.

The legal image of the world consists of interacting and interacting national legal systems. Each country has its own legal system.Therefore, if there are more than two hundred states in the world, it means that there are more than two hundred national legal systems.Many scholars have contributed to the study of modern legal systems. For example, the French comparativist Rene David pointed out three positions that reveal the value of comparative law. He formulated the history of law, the study of national law, the best legal forms of relations in international relations and the benefits of comparative jurisprudence for mutual understanding of peoples.The modern world is characterized by the interconnectedness and harmony of the peoples that unite mankind.

Many legal systems can be grouped into different groups or by different criteria. For example, German scientists K. Zweigert and G. Ketz cites legal style as the main criterion, linking it with five factors:

1. Historical formation and development of the legal system;
2. The dominance of the doctrine of legal thought and its features;
3. legal institutions with their own peculiarities;
4. legal sources and methods of their discussion;
5. ideological factors.

S.S. Alekseev identifies four main legal families: the Romano-Germanic legal family, the Anglo-Saxon legal family, the dominant religious and communal legal system in a number of Asian and African countries, the legal systems exposed to the ideology of authoritarian political regimes.The most effective type of legal system was shown by Rene David, who showed three types of legal systems:Romano-Germanic legal system, general legal family and socialist legal family.Rene David also mentions a number of non-basic legal systems in his writings, which are based on religious dogmas, ancient customs and norms.These include Rene David: Muslim law, Indian law, the legal system of the Far East, Africa and Madagascar.Currently, the Anglo-Saxon legal system exists in England, the United States, Canada, New Zealand, Australia, Northern Ireland and other countries.The concept of the Anglo-Saxon legal family is different.

Many scholars do not like to call it the «Anglo-Saxon family», they think that it is better to combine English and American law and call it a «common law family». Such contradictions connect England with the conquest of Normans in 1066, which resulted in many changes in the history of the English legal system. The independent development of the English legal system is characterized by the fact that it was not influenced by Roman reception, lack of codifications,

developed in an autonomous way, not under the influence of continental European law. The history of Anglo-Saxon or general law can be considered as the history of English law, as English law prevailed and remained a historical model for them as a result of the spread of British law to other countries. There are opinions that common law developed in three ways: the first - with its formation, the second - general law was supplemented by fair law, and the third - with the discussion of statutes. Lawyers point to four stages in the development of the Anglo-Saxon legal system: The first period is the early Middle Ages up to 1066. During this period, England did not have a central system of government, all power was in the hands of Anglo-Saxon kings. Therefore, this period was characterized by different laws and customs of barbaric tribes.

The second period is the period from XI to XV centuries. As a result of the Norman conquest, common law began to develop, which was established by the royal court. During this period, a precedent began to be formed, which later became the main link in the English legal system.

The third period was the reign of the Tudor dynasty, which lasted from 1485 to 1832. This time was considered the heyday of English law. In addition to the rules of common law, the rules of justice were introduced into English law, which was formed as a result of the functioning of the Westminster royal courts. During this period, the role of laws passed by Parliament increased, laws became a source of law and its supremacy was defined.

The fourth stage dates back to the XIX century and continues to this day. At the beginning of this period, various legal and judicial reforms were carried out. These reforms have increased the importance of substantive rights as well as procedural rights. Various regulations have been systematized and many acts have been repealed.Thus, in the 70s of the XIX century, England underwent a comprehensive judicial reform, which was implemented in relation to all judicial activities.

The Supreme Court will be empowered by three courts, and common law and justice will be merged to form a mixed legal system, now known as common law. In 2005, England adopted an act of constitutional reform and introduced a new judicial system. This Supreme Court was empowered to hear appeals to all courts in England, Wales, and Northern Ireland. At present, the main source of English law remains the judicial precedent, which is a universally binding, valid, court decision on a particular case. This is the peculiarity of their legal norms. And legal creativity here is characterized by a complex structure and detailed design. The structure of law in the Anglo-Saxon legal family is much different from the concept of the Romano-Germanic legal family. Precedent in English law is a rule of law, and it is mandatory (Ewing, 2005).

England still does not have a written constitution, which is replaced by parliamentary acts. The state of the legislature as a source of law is unsatisfactory, as parliamentary acts are discussed by the courts and become court precedents. The distinctive features of legal knowledge in this legal family correspond to the formula: «The means of judicial protection are more important than the law. «The form of the claim, procedural rules, evidence, brevity of motivation, strict ritual of the decision, oral and continuous litigation - are the features of English law.

There is no definition of «British law» in the literature, but the term «English law» is used instead. English law includes the law of England and Wales. In addition to English law (with elements of Roman law), Scottish law and Northern Irish law also apply in the UK. When we talk about the law of UK, we are talking about the law of England, that is, the law of England and Wales.

Rene David, a classic of comparative jurisprudence, states: "The scope of English law is limited to England and Wales.It is not the right of either the United Kingdom or the United Kingdom, as Northern Ireland, Scotland, the English Channel and the Maine Peninsula are not subject to English law. "It is well known that the main types of legal systems in the world are the general legal system (Anglo-Saxon legal system) and the continental legal system (Romano-Germanic legal system). There are many differences between them, the two are recognized as different legal systems.

English law belongs to the common law system, and Kazakhstani law belongs to the continental legal system, which is based on Romano-Germanic law. English law is often referred to as case law. But this is not true, because case law is a major part of English law. However, English law was formed by the courts, which at that time ruled on the basis of custom. In time, court decisions and precedents became binding on lower courts. However, along with case law, the law of equity was established in England.It is set up by the Lord Chancellor's courts to hear complaints about justice. The Lord Chancellor's Court was not bound by case law.

In 1873, the Law on the Judicial Structure was adopted. This law affirmed that justice prevails over common law. There is also the concept of statutory law in English law. Formally, acts of Parliament take precedence over judicial precedents. In practice,

however, case law has been recognized as fundamental. Along with laws, the main source was authorized laws. Authorized laws are acts based on the law adopted by governmental organizations. In this case, the court may terminate the provisions of the authorized law if it is overstated or procedural violations occur. In English law, the law is not divided into private and public. Rene David writes: "As we have seen, there are many differences in the structure of law.

As far as we know, the division of law into private and public, we do not find in English law, their rights are not divided into civil law, commercial law, administrative law, social security law. Instead, we see that in English law, first of all, the law is divided into general law and the law of justice.

Continuing his thoughts, R. David states: "In English law it is impossible to find the concepts of parental power, usufruct, legal entity, enormous power, abuse of power. But there are a lot of concepts that we do not know: entrustment, satisfaction of the opponent, estoppel, trespass, etc. The meaning of these terms is not translated into other languages, we do not know the terms. If it needs to be translated, it loses its meaning. The meaning of «agreement» in English law does not correspond to the meaning of «agreement» in French law, the English law of justice - equity does not correspond to the French «justice»; administrative law is not administrative law, and civil law is not civil law" (Finnis, 1994).

One of the reasons why English law was incompatible with continental law was that continental law was derived from Roman law, and English law could not incorporate Roman law for many reasons. First, Roman law was private in nature and could not be applied by the tsarist-Westminster courts, as they resolved public law disputes within their jurisdiction. Second, the reception of Roman law was hampered by local customs and traditions in England that were incompatible with Roman law. Thirdly, this was due to the peculiarities of the development of England's legal system, which was necessary to stay within the framework of evolutionary and general law (Marochini, 2012).

One of the unique features of English law is the high level of independence of the judiciary.It means that the common law is judicial law. The courts form the law and it is recognized as the real power. Various steps and proposals have been made and are still being made to introduce the principles and elements of Anglo-Saxon law into the law of Kazakhstan and the CIS countries. During the implementation of legal reforms in Kazakhstan, American consultants have been actively working to introduce elements of common law into our system.

As a result, in 1998, under the influence of American consultants, the Law on Joint Stock Companies was adopted. But this law did not work. Because it did not fit into our legal system, in 2003 it was repealed and replaced by a new law. This law was a legal document based on the continental legal system. However, we had to move away from concepts that are alien to us, in particular, the introduction of the institution of trust property - trust - did not fit into our legal system.

The Russian government has also made some efforts to implement this institution, but these steps have not been implemented. Because we do not understand the difference between common law and continental law, the concept of a closed joint stock company has emerged. A closed joint-stock company in general law turned out to be a limited liability company in continental law.

Initially, the introduction of elements of the Anglo-Saxon legal system into the continental legal system was really very difficult and confusing. There were various conflicts, because our morals, traditions, the psyche of the people, the elements of power did not come to Anglo-Saxon at all. From all this it is clear that many elements of English case law do not fit into the Kazakhstani legal system. Therefore, we need to pay special attention to the implementation of English law and get only where it is needed, what comes to our legal system. Special attention should also be paid to the implementation of various institutions of English law. It is necessary to be very careful when using the institution of legal entities, because in English law there is no such thing as a «legal entity».

There are similarities between the institution of representation and contract law, and there are interesting elements that benefit Kazakhstani law. Currently, legal families continue to develop. Each state, forming its own legal system, together constitutes international law. The combination of the domestic state system with the international legal system has a certain peculiarity: international legal norms prevail over national legal norms. Creating an international union, most countries around the world agree. Thus, international law can be a factor in improving the domestic law of the state. This is especially true in the regulation of human rights, as the constitutions of many countries meet international standards. The development of legal systems is influenced not only by the processes of economic, social and other integration that contribute to the development of the national legal system, but also by the evolution of the sources of law. The intensification of integration processes is reflected in the international grouping of countries.

The European Union has achieved the highest re-

sult of international cooperation. If we analyze the current processes on the European continent, we can see the Europeanization of the legal field. The European Union is gradually pushing national rights out of the legal space and into European legal institutions as a whole. Such a process can also be called harmonization, that is, in order to bring the legal systems closer together, various contradictions are eliminated and common legal institutions and norms are established. At present, the development of legal systems is closely linked with structural changes in the economies of developed countries, changes in their social structure, and changes in the political system (Margot, 2003).

There is a connection between the Romano-Germanic legal system and the Anglo-Saxon legal system. As a result of such interaction, it can be seen that in the family of common law, along with case law, the role of positive rights is growing and becoming the main source. When considering the development of legal systems, it should be borne in mind that the legal system is closely linked with globalization. Old legal theories will be replaced by new «legal models», which will be based on a new legal culture, a new ideology, new methodological research aimed at recognizing the legal environment of man (Dorf, 1996).

To understand legal systems, the categories of «legal knowledge», «lawmaking», «law enforcement» must be key. Factors that contribute to the development of legal systems, such as consolidation, unification and harmonization, help legal systems to be closely interconnected and interact with each other, to take advantage of the positive achievements of other legal systems. This is currently the case in the United Kingdom and the United States. In these countries, along with precedent, there are laws.

Results and Discussion.The scientific noveltyof the article consists in the author's approach to the study of the legal foundations of regulation and protection of human rights and freedoms. In the paper, from the point of view of globalization, the essence and significance of the legal status of the individual were investigated; features of the historical stages of the development of the status of a person are revealed; a comparative analysis of the legal status of a person in the Republic of Kazakhstan and the UK.

It is concluded that the legal status of an individual is part of social status and depends on the qualities of a person and citizen. It is proposed to understand the terms "legal status" and "legal status" of an individual as equally significant. The legal status of a person is defined as a set of rights, freedoms and duties, and guarantees for the protection of theserights.

It is determined that in the UK, due to the lack of a single Constitution, norms on the rights, freedoms and duties of citizens are not represented in a certain system, are regulated by various laws, precedents and legal practice. By virtue of this, protection in court is an effective protection of rights and freedoms. Within the framework of state protection of human rights and freedoms, the model of the British Ombudsman is ofinterest.

A scientific analysis of the process of applying the norms of English law in the legal practice of Kazakhstan. It is concluded that this process is necessary for the development of investment law, ensuring the supremacy of the Constitution and international law.

A scientific analysis of modern concepts of human rights and freedoms has been carried out; The features of such approaches to human rights as liberal (Western), Muslim, Marxist-Leninist (socialist) are defined. It is concluded that the legal status of a person should be one of the basic principles of state and social construction. Developed proposals aimed at improving the institution of citizenship of the Republic of Kazakhstan.

In the work, the legal status of the individual is the legal status of the individual in the state and society. The legal status of the individual is part of social status and is associated with the personality of the individual. The concepts of "legal status" and "legal status" of an individual are synonyms. The legal status of an individual is determined for a person more than the legal status of a legal entity. The basis of a person's legal status is his rights, freedoms, interests and obligations in unity. The freedom of man is also his right. The legal status of a person is enshrined in the Constitution and is based on a new concept of human rights. It is based on international legal documents that determine the level and establish general legal standards for human rights andfreedoms.

One of the important tasks of legal science is the effective and proper development of legal norms to ensure the rights and freedoms of man and citizen by further consolidating the institution of citizenship. The historical development of the institution of citizenship as a legal phenomenon and its occurrence in the modern world necessitates an analysis of this institution. The main component of the idea of citizenship should be considered as the legal basis for the interaction of the individual and the state. The article will discuss ways to improve the institution of citizenship. It is also noted that the institution of the Ombudsman of the UKshould be implemented in the Republic of Kazakhstan.

In the UK, human rights and freedoms are gov-

erned by various laws, judicial precedents, and legal customs. Particular attention is paid to ensuring effective judicial protection of rights and freedoms. The history of the development of the legal status of a person in the UKdates back to the Middle Ages. This is reflected in the Magna Carta of Freedom of 1215, the Act of Habeas Corps of 1679 and the Bill of Rights of 1989. These acts testify to the emergence and development of British human rights law. As a result, the British came up with the principle: "Subjects have the right to do everything that is not prohibited bylaw" (Goodpaster, 1973).

Currently, civil rights are guaranteed in the UK: the inviolability of the person and home, freedom of conscience and religion, the confidentiality of correspondence and telephone conversations, as well as the protection of electronic privacy controls. Of particular interest is the model of the British Ombudsman in the field of state protection of human rights and freedoms.

In determining the legal status of a person, foreign experience is considered in the content of the work. In our opinion, we would like to make suggestions on improving the legislation of the country governing the area of the legal status of an individual, in particular: to administer justice in our country, we need to introduce the principles of English law, for which we use the practice of English in our judicial practice. This is a reflection of the exercise of the judiciary and human rights in developed democracies. The research is based on the need for further training of judges on the basis of British judicial practice, improving the judicial system in the country, preparing judges for international affairs, which increases the legal status of the individual, further development of the rule of law, civil society and legal awareness and culture of citizens. A scientific analysis of the application of English law in the legal practice of Kazakhstan was carried out. It has been argued that this process is necessary to ensure and develop the rule of law in the Constitution and internationallaw.

An important element of the legal regulation of the status of a person and a citizen is the approval of the concept of the status of a person, which determines a person's place in society and the state. Worldview concepts formed by various humanity were developed on the role of man in the life of society and the state, his rights and freedoms. These concepts are secular and religious, have individual and collective, legal and ritual forms and so on. In the modern constitution there are three concepts that identify a person's personality: liberal (Western), Muslim, Marxist- Leninist (socialist). In world constitutions, the concepts of personality status encompass personal, political, economic, social and cultural human rights. In our opinion, in the first place as a person should be a person, his life, security, freedom, secondly, he should be able to participate in public life and state affairs, and thirdly, he should have the right to participate in economicprocesses.

An updated system that confirms the status of a person should be one of the fundamental principles of state and social structure. It should determine the list and content of fundamental and sectoral human rights, freedoms and duties, state goals, tasks and content of state bodies. These questions are carefully studied and recommendations are given in the article.

Conclusion. In the research the following scientific conclusions were reached by the author: Human rights were the result of a certain stage in the development of society, in which public consciousness reached a level of understanding of the importance of the preservation of each person for all social perspectives. Rights were also the result of a society that had conquered a certain socio-economic level that allowed it to meet human needs. Of course, the state, due to its weak economic, political, social and other development, cannot meet all the vital needs of man. However, for the development of a progressive rule of law and society, the perspective ideas implemented in the policy of the human state give grounds to say that the field of human and civil rights is inexhaustible and especially important.

The legal status of the individual is one of the most important political and legal categories, which is closely linked with the social structure of society, the level of democracy, the rule of law, human nature. The analysis of the three generations of human rights and freedoms is based on the inconvenience of the hierarchy of rights in terms of their significance. The interaction between the legal status of man and the rule of law takes place in the framework of the processes of organic communication in the legislation of the Republic of Kazakhstan on universal and universal human values of world civilization, which allows to assess the legal status of man and his position in society and the state (Зиманов, 2008).

The ways in which human rights and freedoms are enshrined and reflected in law vary, but in most cases their main source is constitutions. The issue of the status of the individual is one of the main issues in the content of the constitution. Constitutional regulation of the status of a person and a citizen is basic, fundamental, as well as primary, derivative, basic, as it determines the content of laws and other legal acts relating to the status of an individual.

In fact, for the first time the constitutional enshrinement of human and civil rights and responsi-

bilities was enshrined in the 1937 Constitution of the Kazakh SSR. The next Constitution of the Kazakh SSR of 1978 further strengthened the legal status of man and citizen. However, the current Constitution of the independent Republic of Kazakhstan, adopted on August 30, 1995, for the first time declared man, his rights and freedoms as the highest value, became the basis not only for international principles of human and civil rights, but also for accession to a number of international conventions.

The creation of the legal status of a person and a citizen in the UK is associated with the formation of constitutional law. The fundamental rights and freedoms of various categories of citizens should be considered not only in the classical legal acts of the «unwritten» constitution of the United Kingdom, but also in the absence of a consolidated Constitution as constitutional acts in the Great Charter of Freedom in 1215, the Petition of Rights in 1628, the current European Convention on Human Rights, 1998 reflected in the Act on Human Rights (Howard, 1987).

International law promotes the formation of basic principles of civil law regulation, such as the right to citizenship, the prohibition of voluntary deprivation of citizenship. These general principles are aimed at the convergence of national legal systems on matters of citizenship, serve as a criterion for the legitimacy of domestic acts of citizenship and are the link between the institution of citizenship in constitutional and international law. In the UK, there are three types of specialized government human rights institutions dealing with human rights, working independently of each other - the Ombudsman (Parliamentary Commissioner), the Commission on Human Rights, and the Special Commissioner for the Protection of Certain Types of Subjective Rights and Legal Interests. The institution of the Ombudsman in the British Commonwealth has a number of general characteristics: a) a public institution that is an individual institutionally connected with the Parliament; b) only complaints related to "bad management" ("administrative violations committed") are considered; (c) The main form of its human rights activities is the settlement of disputes between a particular citizen and the organization of public power by agreement with the parties and the submission of proposals for the elimination of violations of subjective rights and legitimate interests.

According to the legal doctrines of the Republic of Kazakhstan and Britain, the most important elements that form the basis of a person›s legal status are citizenship (citizenship, citizenship), the principles of legal status and the basic rights and freedoms of direct citizens. The general principles of the legal status of an individual predetermine the basic boundaries of a person›s legal status in all areas of the exercise of his legal capacity, regardless of the regulation of public relations in any public sphere. Fundamental rights, freedoms and responsibilities form the basis, core, core of the legal status of man, which is determined by the integrity of the norms of all areas of Kazakhstani and British law.

It is necessary to increase the number of institutions, bodies and organizations that protect human and civil rights and freedoms in the Republic of Kazakhstan. It is necessary to pay attention to the quality, function, optimal solution of issues in accordance with the law. It would not be wrong to say that the legal protection of any issue through appropriate legislation, the ratification of international legal treaties in the state, the opening of a large number of quality commissions to advise on the implementation of the law - a solid step towards improving human rights and freedoms.

There are some recommendations for the actual application of research results. The positive aspects of the institution of the Ombudsman of the United Kingdom should be introduced into the practice of our country. In particular, the Decree of the President of the Republic of Kazakhstan dated September 19, 2002. About the Commissioner for Human Rights, approved by the Decree N 947 to include in the rules the position of "Parliamentary Commissioner for Administrative Affairs", "Commissioner for Pensions", "Commissioner for Press Complaints", "Commissioner for Trade Union Affairs" to consider complaints of citizens against negative governance. It is necessary to introduce the principles of English law in the country for the administration of justice. The prestige of British judges is so high that they resolve not only domestic but also international disputes. British judges are considered to be the strongest judges in the world. We need to improve the skills of judges on the basis of improving the judicial system of the country, so that we can train judges to decide cases not only at the national level, but also at the international level.

References

Amandykova S.K. Konstitucionnoe pravo Respubliki Kazahstan: Ucheb. posobie dlya yurid. fakul'tetov. – Karaganda, Bolashak-baspa, 1998. – s.60.

Bajmahanova D.M. Problemy prav cheloveka v sisteme konstitucionalizma v Respublike Kazahstan: avtoref. d.yu.n.: 12.00.02. - Almaty, 2009. – s.15

Dyusekova A.M. Problemy implementacii norm mezhdunarodnyh paktov i konvencij po pravam cheloveka v nacional'nom zakonodatel'stve Respubliki Kazahstan: PhD diss: 12.00.00. - Almaty, 2008. – s.20

Zhumagulova A.B. Institut prav cheloveka i grazhdanina: problemy teorii i praktiki: avtoref.kand.yur.nauk: 12.00.02. - Almaty, 2006. – s.38

Zimanov S.Z. Қazaktyn biler soty-biregej sot zhүjesi. - Almaty: Atamura, 2008. – 216 b.

Sejfullina A.B. Ogranichenie prav i svobod cheloveka v pravovom gosudarstve (obshcheteoreticheskie problemy): avtoref.kand. yur.nauk: 12.00.02. - Almaty, 2006. – s.18

Sman A. Pravovoe polozhenie lichnosti v Respublike Kazahstan (konstitucionno-pravovoj aspekt): avtoref.d.yu.n.: 12.00.02. - Almaty, 2008. – s.8

Syryh V.M. Teoriya gosudarstva i prava: uchebnik dlya vuzov. – 3-e izd. – M.: ZAO YUsticinform, 2007. – s.351

Teoriya gosudarstva i prava: Kurs lekcij/Pod red. N.I.Matuzova i A.V.Mal'ko. – M., 2003.- s.7

Coulton N. God, the Bible and human rights // Ecclesiastical Law Journal. – 2012. – 14(2). – p.284

Dorf M.C. Incidental burdens on fundamental rights. - Harvard Law Review: JSTOR.-1996.№ 109(6). – R.1175-1180

Ewing K.D., Tham Joo-Cheong. The continuing futility of the Human Rights Act, // Public law. – 2005. – p.693

Finnis J. Natural Law and Legal Reasoning: in his Natural Law Theory/ Contemporary Essays.- Oxford. – 1994.- p.88

Fuller L.L. Human Purpose and Natural Law// The Journal of Philosophy.- 1956.- №53(22).- p.699

Goodpaster G.S. The Constitution and Fundamental Rights/ Ariz. L. Rev. HeinOnline,1973. – №15. — p.480

Howard R.E., Donnelly J. What are human rights// in International handbook of human rights / Greenwood press. – 1987. –№1 (36). – p.2

Margot E. S. Globalisation of Responsibility: Interdependence and Cooperation in the Protection of Human Rights in International Law // The London School of Economics and Political Science. – 2003. – p.55

Marochini M. Indivisibility And Interdependence Of Human Rights – Should There Be Limits To The European Court Of Human Rights Reading Significant Socio-Economic Elements Into Convention Rights? // The University of Dundee. – 2012. – p.34-38.

Дж. Кастеллино[1], Ж.Т. Сайрамбаева[2], З.М. Баймагамбетова[2], А.А. Отыншиева[2]
[1]Университет Миддлсекс, Великобритания, г. Лондон
[2]Казахский национальный университет им. аль-Фараби, Казахстан, г. Алматы,
e-mail: aidana-best91@mail.ru

**Права человека в Казахстане и Великобритании:
сравнительно-правовой анализ**

Аннотация. В статье рассмотрены проблемные аспекты соблюдения и защиты прав человека на основе сравнительного анализа опыта Республики Казахстан и Великобритании. На сегодняшний день в эпоху глобализации возрастает роль прав человека, происходят кардинальные изменения в мировой правовой системе и правовой системе Казахстана. Эти изменения послужат основой для защиты, обеспечения и развития прав человека: с одной стороны, это процесс интеграции и регионализации, основанный на мировой глобализации, с другой – внутриполитические и либеральные реформенные процессы в Казахстане.

Целью статьи является исследование правового статуса личности в Республике Казахстан и Великобритании, выработка рекомендаций по совершенствованию правозащитного законодательства Республики Казахстан.

При проведении данного исследования проведен сравнительный анализ правового статуса личности в Республике Казахстан и Великобритании; выявлены особенности механизма реализации прав и свобод человека и гражданина; рассмотрены возможности имплементации норм международного права и зарубежной практики в национальное законодательство Республики Казахстан для совершенствования института гражданства.

В выводах авторами даны практические рекомендации и предложения по совершенствованию механизма защиты прав человека на основе обобщения практики Республики Казахстан и Великобритании.

Ключевые слова: права человека, свободы, правовой статус человека, исполнение, реализация, государство.

Дж. Кастеллино[1], Ж.Т. Сайрамбаева[2], З.М. Баймағамбетова[2], А.А. Отыншиева[2]
[1]Миддлсекс университеті, Ұлыбритания, Лондон қ.
[2]Әл-Фараби атындағы Қазақ ұлттық университеті, Қазақстан, Алматы қ.
e-mail: aidana-best91@mail.ru

Қазақстандағы және Ұлыбританиядағы адам құқықтары: салыстырмалы-құқықтық талдау

Аңдатпа. Мақалада Қазақстан Республикасының және Ұлыбританияның тәжірибесі негізінде адам құқықтары қарастырылған. Отандық және шетелдік ғалымдардың ғылыми көзқарастарына салыстырмалы-құқықтық талдау арқылы адам құқығын қорғаудың проблемалық жақтарын байқауға болады.

Жаһандану дәуірінде адамзат өркениетінің өзекті мәселелерін шешудегі адам құқықтарының рөлі артып келеді. Соңғы жылдары әлемдік құқықтық жүйеде және Қазақстанның құқықтық жүйесінде түбегейлі өзгерістер болды. Бұл өзгерістер адам құқықтарын қорғау, сақтау және дамыту үшін негіз болады. Бұл бір жағынан, әлемдік жаһануға негізделген интеграция және аймақтандыру процесі, екінші жағынан, Қазақстандағы ішкі саяси және либералды реформалар процестері.

Мақаланың басты түйіні жаһандану жағдайында Қазақстан Республикасындағы және Ұлыбританиядағы жеке тұлғалардың құқықтық мәртебесін зерттеу, Қазақстан Республикасының адам құқықтары туралы заңнамасын жетілдіру бойынша ұсыныстар әзірлеу болып табылады.

Мақалада жаһандық үдерістер арқылы жеке тұлғаның құқықтық мәртебесін ашу және оған авторлық тұрғыдан түсінік беру, адам құқықтарының қорғалуының құқықтық негіздері қарастырылды. Қазақстанда адам және азамат құқықтары мен бостандықтарының қалыптасу ерекшеліктерін айқындау, азаматтық институтын талдау және оны ары қарай дамыту жөнінде ұсыныстар жасалды. Ұлыбритания мемлекетінде жеке тұлғаның құқықтық мәртебесінің ерекшеліктерін ашу, адам мен азамат құқықтары мен бостандықтарын жүзеге асыру механизмдерінің қамтамасыз етілуі анықталды.

Түйін сөздер: адам құқықтары, бостандықтар, жеке тұлғаның құқықтық мәртебесі, күшіне ену, жүзеге асыру, мемлекет.