

УДК 341.1/8

REALIZATION OF THE HUMAN RIGHT TO FREEDOM OF MOVEMENT IN FOREIGN COUNTRIES AND KAZAKHSTAN

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Keywords: Freedom of movement, right, immigration, legal regulation, cases

Introduction

The history of freedom of movement was originally developed within the framework of the right of persons to enter another country. There is also another point of view, according to which the right to freedom of movement is the result of the development of the fight against the restrictions of immigration policy [1, p. 27].

Based on the content of Article 12 of the ICCPR, the main components of the right to free movement and freedom of choice of residence can be distinguished:

- 1) free movement and choice of place of residence within the territory of the state;
- 2) the right to leave and the right to enter one's own country.

Restriction of freedom of movement and freedom of choice of residence is possible only if it: a) is prescribed by law, b) is necessary to protect state security, public order, public health or morality or the rights and freedoms of others (persons), c) is compatible with recognized in the Covenant by other rights.

Main part

In the Republic of Kazakhstan, freedom of movement and freedom of residence are guaranteed by Article 21 of the Constitution of the Republic of Kazakhstan.

The movement of citizens within the country is regulated by such regulatory legal acts as the Law of the Republic of Kazakhstan dated July 22, 2011 "On migration of the population" (hereinafter - the Law "On population migration"), Rules for the registration of internal migrants.

A.2 Art. 51 of the Law "On Migration of the Population" imposes an obligation on citizens to register at the place of residence and at the place of temporary stay in accordance with the

procedure established by the Government of the Republic of Kazakhstan. For non-compliance by citizens with the registration procedure provides for administrative liability [2].

Foreign legal regulation of the procedure for registering citizens at the place of residence is carried out as follows:

The system of registration of citizens at the place of residence (resident registration) is of two types: mandatory and optional. Today, only a small percentage of states do not use the registration system of their own citizens (in the UK, for example, as registration at the place of residence is provided only for foreigners and stateless persons).

It should also be noted that in most European countries there is no division of the address of residence into place of residence and residence, usually registration is considered as a single concept. Often, citizens of European countries are required to register with the municipal authorities upon arrival in another city or moving to another address within a specified time. In some cases, registration is required only if a certain period of stay of a citizen is exceeded (for example, if a person arrives for a period of more than 3-4 months).

So, in Denmark, when moving to another city, citizens are obliged to inform the municipality about this through NemID, their virtual identification card, within 5 days. Information about the move can be submitted in advance - no earlier than 4 weeks before the move. Violation of this requirement entails a fine. Within 2-3 weeks after notification of the municipal authorities, citizens receive a new health insurance card [3].

In Luxembourg, if a person arrives for a period of more than 3 months, it is obliged to declare its location in the office for registration of the population of the local municipality. Must be registered within 8 days from the day of arrival. Registration will allow using various administrative procedures, for example, registering children at school and registering in the electoral lists for local elections [4].

In Germany, the address of residence is divided into primary and secondary residence (principal and secondary residence).

The main place of residence, according to Art. 21 of the Federal Registration Act, is considered a place of residence, which is primarily used by a person. When changing their place of residence, citizens are required to register a new address within 2 weeks. When registering, the following documents are presented: passport, registration form, rental agreement, birth certificate of children, marriage certificate, and for foreigners from third countries (not from the EU) - a temporary residence permit.

Art. 19 of the Federal Registration Act imposes an obligation on the supplier of the residence to cooperate with registration. In case of refusal of this person to provide confirmation, the person who needs to register must immediately inform the authorities that register [5].

An analysis of the ECHR practice under paragraph 3 of Article 2 of Protocol No. 4 showed (34 cases) that in most cases restrictions on movement are imposed as preventive measures against accused or suspected persons (*DeTommaso v. Italy*, *Miażdżyk v. Poland*, *Rosengren v Romania*, *Antononkov and Others v. Ukraine*, *Olivieira v. The Netherlands*, *Labita v. Italy* and others).

In such cases, the ECHR explores the following issues: 1) legality, 2) the need for such a measure in a "democratic society" to achieve legitimate goals; 3) the validity of these measures by protecting public interests and order; 4) the proportionality of such measures. The court tries not to provide a specific definition of these criteria, and therefore, in each case, these criteria are considered individually in relation to the case (for example, as in the case of *Olivieira v. The Netherlands*).

The ECHR considered the proportionality of restrictions in the context of various legal relations and cases: a travel ban for persons suspected of having connections with the mafia (*Labita v. Italy*); the seizure and subsequent confiscation of the passport of a person not involved in criminal proceedings (*Baumann v. France*); prohibition of bankruptcy on a change of residence during the bankruptcy process (*Luordo v. Italy*); seizure of a passport for refusing to pay a fine to the customs service (*Napijalo v. Croatia*); preventive measure against a suspect in a criminal case

(Fedorov and Fedorova v. Russia, Antonenkov and Others v. Ukraine, Ivanov v. Ukraine, Hajibeyli v. Azerbaijan, Makedonski v. Bulgaria, Pfeifer v. Bulgaria, Prescher v. Bulgaria, Miazdzyk v. Poland); restriction on movement for refusing to pay tax arrears (Riener v. Bulgaria); restriction of movement imposed due to possession of information constituting a state secret (Bartik v. Russia, Soltysyak v. Russia); court orders prohibiting the export of minors to another country (Diamante and Pelliccioni v. San Marino); a travel ban imposed for violation of immigration rules of another country (Stamose v. Bulgaria), a travel ban due to non-payment of debts by a court order to a private person (Ignatov case, Gochev case).

Freedom of movement is closely linked to freedom of choice of residence. In the case of *Tatishvili v. Russia* (*Tatishvili v. Russia*), in which the applicant, being a stateless person (only had a USSR passport), could not obtain registration at her chosen place of residence [6]. The refusal of the national authorities to register the applicant at the chosen place of residence, in the opinion of the ECHR, exposed her to the risk of administrative penalties and fines against her. P. 45 Decisions of the ECHR in the present case, the Court refers to the cases before it, namely *Denizchi and Others v. Cyprus* and *Bolat v. Russia*, and indicates that “The requirement to notify the internal affairs authorities every time the applicants wished to change their place of residence or visit family friends was an interference with their right to freedom of movement.” At the same time, the cases cited by the Court as analogues have their own specifics.

The *Denizci and others v. Cyprus* case examined a statement by Turkish Cypriots alleging that their forcible removal from territory under the control of the Republic of Cyprus to the northern part of Cyprus was an unjustified violation of their freedom of movement around territory of the Republic of Cyprus, as well as freedom of choice of place of residence. In this regard, they also argued that during their stay in the Republic of Cyprus they were under the strict supervision of the police; their movements were controlled, and permission was required to leave the city where they lived [7].

1) In most cases examined by the ECHR regarding restrictions on their freedom of movement, the applicants are persons suspected or accused of committing crimes, or persons against whom there are fears that they will break the law in the future. Freedom of movement, in the context of the ECHR, may be restricted by the state for reasons of national security or public peace, to maintain public order, prevent crime, protect health or morality, or to protect the rights and freedoms of others. The validity of these restrictions is thoroughly examined and studied by the Court.

Conclusion

The following problems were identified in the framework of the concluding observations procedure of the UN HRC: control of departure from the country and entry by keeping a checklist of citizens, a registration system (the inability to receive social services at the wrong address of residence), restrictions on the freedom of movement of certain ethnic groups, and the situation of persons without residence (nomadic groups of persons), a measure of punishment in the form of exile.

Forcing the compulsory registration of citizens at the place of stay may constitute an interference in the sphere of personal freedoms if the citizen prefers not to use his rights.

On the other hand, as was noted in the Responses of the Republic of Kazakhstan to the list of questions on the second periodic report of the Republic of Kazakhstan (Clause 22), “The main task of registration is to monitor the processes of internal migration, taking into account the number of living citizens to determine the capacity potential of each settlement in the development of state and regional development programs. Based on these calculations, it is planned to create jobs, build schools, hospitals, and develop engineering and technical infrastructure” [8].

This approach is also applied in many European countries, which also provides for administrative liability for violation of registration provisions. Basically, foreign countries do not divide the address of residence into the main and temporary, citizens are required to register in any case if they are at the new address of residence.

Based on the foregoing, we believe that the compulsory temporary registration of citizens (administrative responsibility for its violation) in the Republic of Kazakhstan does not violate Article 12 of the ICCPR and Article 2 of Protocol No. 4 of the ECHR.

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