

Function of the Right to Freedom of Movement in the Human Rights Protection System and its Importance for National Security*

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Abstract

This article aims to thoroughly analyze the function of the right to freedom of movement within the human rights protection system and correlate it with national security interests. To achieve this purpose, two primary research objectives were established: first, to assess the functional role of the right to freedom of movement within the universal human rights protection framework; and second, to evaluate its significance and implications for the national security system of the Republic of Kazakhstan. The validity and reliability of the research results are ensured through a comprehensive methodological approach, which encompasses a theoretical analysis of contemporary scientific literature, the formal legal method, an analysis of legal technology, and the examination of relevant doctrine and regulatory documents. This study successfully clarifies the functional role of the right to freedom of movement as an essential foundation for the fulfillment of other civil, economic, and social rights. Based on these theoretical findings, the authors propose a constructive new approach to defining the right to freedom of movement. This approach balancedly accommodates the protection of individual liberties while accounting for proportional restrictions necessary to maintain sovereignty, public order, and national security in Kazakhstan. The findings offer academic contributions as well as practical recommendations for refining legal policy in developing nations.

Keywords: Ratification; Subjective Rights; Principle of Proportionality; Legal Guarantees; Right to Freedom of Movement.

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A. INTRODUCTION

In the modern context of the national legal system of the Republic of Kazakhstan, the issue of observing the right to freedom of movement constitutes an urgent problem. Kazakhstan has ratified several international legal treaties and agreements and assumed relevant obligations to protect human rights. At the same time, Kazakhstan does not abandon the balance of national and international legal interests, which is reflected in its restrictive policy on a wide range of national security policy issues (Fedorchuk et al., 2025; Petrov et al., 2024). The ratification of several international legal instruments in the field of human rights standardization by the Republic of Kazakhstan (RK) imposes obligations on Kazakhstan to comply with their requirements, provided that these do not contradict the Constitution of the RK. Among these rights, the most important is the right to freedom of movement, which has found constitutional and legal consolidation. Kazakhstan has a human rights commission and an ombudsman in this area. Generally, the fundamental law permits the movement of citizens, both within and outside Kazakhstan.

In some cases, the ban on freedom of movement applies in the case of administrative penalties. Kazakhstan accepts refugees with temporary residence status. Cases of forced deportation of foreign citizens have been noted. The institution of compulsory registration at the place of residence restricts the right to freedom of movement, which deprives citizens and non-citizens of Kazakhstan of several legal guarantees. There is also a special regime for visiting certain territories in Kazakhstan.

According to estimates by researchers and practitioners, Kazakhstan's administrative legislation and law enforcement practice regarding the implementation of this right receive contradictory assessments. In addition, there are disputes among researchers and practitioners about the priority of international law over the national law of Kazakhstan. Admittedly, there is no common understanding among researchers of the components of the right to freedom of movement. Historically, the administrative system of citizen registration aimed to tie a person to their place of residence and employment (Kuzovkina, 2017). According to Kazakh researchers, at present, Kazakh regulatory legal acts do not provide for the institution of registration (Sapargalieva, 1998). However, the bodies of the Ministry of Internal Affairs of the RK (MVD RK) currently refer to the requirements of a by-law of the Government of the RK, the practice of citizens' registration, which is of a notification (informational) nature (Cabinet of Ministers of the Republic of Kazakhstan, 1993b). The existence of such registration cannot be a condition

either for the exercise of the right to free movement or for its restriction. Administrative penalties are applied to stateless persons and foreign citizens (Article 492 of the Administrative Code of the RK (KoAP RK)), which can be imposed by any government body (except a court) if these persons reside in the country without registration. If, according to formal grounds, violations were committed during registration, then it can be canceled by the bodies of the MVD RK. Thus, the institution of registration is admittedly overly formalized in Kazakhstan.

For these reasons, the legal issue of the role of the right to freedom of movement in the human rights protection system and the assessment of its importance for the national security system of Kazakhstan are considered pressing issues.

The purpose of this paper is to analyze the function of the right to freedom of movement in the human rights protection system. For these purposes, the following research objectives were established: first, to assess the functional role of the right to freedom of movement within the human rights protection system and, second, to evaluate its significance for the national security system of Kazakhstan.

B. METHODS

The reliability and validity of the results are ensured through a theoretical analysis of scientific literature, the formal legal method, an analysis of legal technology, and a comprehensive examination of regulatory documents. This systematic methodological approach guarantees an accurate evaluation of the role of the right to freedom of movement within the human rights protection system and national security.

C. RESULTS AND DISCUSSION

Researchers focus on the theoretical problems of regulating the right to freedom of movement. The concept of the right to freedom of movement encompasses a whole range of rights. In international jurisprudence, efforts are being made to develop a unified legal concept that integrates rights in the field of freedom of movement into a comprehensive system of personal rights with both territorial and subjective characteristics (Solonchenko, 2004; Tolkacheva, 2005). However, it should be cautiously acknowledged that these attempts are

not entirely without drawbacks. At the same time, productive legal constructions can also be found in the scientific literature.

Thus, the study by N.A. Limonova (2000) emphasizes the idea that the term "freedom of movement" encompasses both national and international legal opportunities and human and civil rights, enabling citizens to move freely within their country's territory and in foreign countries. This concept is closely related to the freedom of the individual, with their claims to independence, the manifestation of their will, and sovereignty based on awareness of the degree of societal development. Freedom of movement itself means the absence of restrictions and a legally established right to voluntary movement of a person, including the determination of their place of stay and residence, within the framework of national legal systems and jurisdictions. In Kazakhstan, the right to personal freedom is not absolute and is not limited by national norms. Its legal structure is complemented by international legal standards, contractual norms, and the legal provisions of the Constitutional Court of the RK.

However, the legislator makes the right to freedom of movement dependent on the legal guarantees established by the states acting as guarantors, providing such guarantees (provisions) fixed at both the national and international legal levels, allowing for the implementation, guarding, and protection of the right to freedom of movement (Solovev et al., 2024). The functional role of the right to freedom of movement is revealed through the functional approach, which implies the implementation, protection, and enforcement of this right. According to the Constitution of the RK, an important formal legal basis for this is the legal presence in Kazakhstan. Nevertheless, when it comes to the national security of the country, to understand the functional role of this right, it must be recognized that these functions are insufficient. More attention needs to be paid to other, more important aspects of law enforcement practice.

In addition, the exercise of the right to free movement in Kazakhstan is subject to reasonable restrictions: "1) it should not violate the rights and freedoms of other citizens; 2) it should not encroach on the constitutional order; 3) it should not violate public morality" (Sapargalieva, 1998, p. 121). The use of this right should not violate the foundation of the constitutional order or the interests of Kazakhstan and its citizens. Thus, indirectly, the Kazakh legislator indicates and obliges citizens to comply with national security requirements in various aspects through compliance with the restrictions established by law for citizens, foreigners, and persons illegally staying in the country (including illegal migrants, foreign citizens with expired visas, and other categories). A separate

group of restrictions is established and applied to these categories of persons, as defined in the by-laws of the Government of the RK (Cabinet of Ministers of the Republic of Kazakhstan, 1993a). For example, these restrictions apply regarding the need for unrestricted movement in an area that requires special permission from the MVD RK. The country's government approves the list of such territories. An example of such a restrictive approach is the long-standing document "Rules of stay in the city of Almaty" for foreigners, which has now become invalid.

However, there are situations in law enforcement practice where there is a dysfunction in the implementation, guarding, and protection of citizens' rights to freedom of movement at the national level. Based on this, it is necessary to recognize the more complex legal nature of implementing the right to free movement, a mechanism that non-governmental organizations can facilitate.

There is no particular need to list international legal standards governing the exercise of the right to free movement, as these have been extensively discussed in numerous legal studies (Klimova et al., 2024; Grudtsina et al., 2025). However, their effect at certain territorial levels enshrines the right to free movement and restricts it in cases determined by law (Beskorovaynaya et al., 2025; Ibragimova, 2018). Thus, a team of Kazakh researchers led by academician Sapargaliyev emphasizes that, among other cases established by law, the importance of respecting the interests of national security and the preservation of state secrets is crucial in the use of restrictions on the exercise of the right to free movement. Thus, the researcher highlights the priority of state and social values over human rights, including the right to free movement, in situations where their implementation conflicts with national security interests. These restrictions are most fully effective in high-security facilities and border areas of Kazakhstan. The next group of restrictions on the exercise of this right is determined by the need to maintain public order during operational and investigative measures, as well as during states of emergency.

Another reason that might restrict free movement in Kazakhstan's territory is the health status of its citizens. A separate group of restrictions pertains to the service and labor activities of military personnel, whose free movement is significantly limited by laws and statutory documents. Another group of restrictions is determined by the requirements of the administrative and migration legislation of the RK, which restricts the rights of foreigners and persons applying for repatriation. Thus, restrictive measures are envisaged for both national security purposes and to protect the rights and freedoms of other citizens, ensuring the compatibility of these rights and freedoms with other personal rights and freedoms. However, as Sapargaliyev rightly points out, the

exceptions to this group of restrictions are those determined by local public authorities to ensure the performance of state functions, as they have no legal effect.

It is more difficult to implement the right to the free movement of citizens of the RK at the international level because there are situations when emergencies arise in other countries. The Government of the RK restricts (or does not recommend) its citizens' travel by not issuing exit visas (passports), as it cannot ensure their safety. In such situations, when setting restrictions, other conditions may be considered (for example, having underage children in Kazakhstan, disability, being underage, going through military service, having access to state secrets, etc.). A separate list of restrictions on free movement is defined for foreigners (criminal liability and conviction for it, non-enforcement of court decisions, property obligations, terrorism, incitement to hostility, deportation, etc.) (Zhdanova, 2023). Collectively, this list of restrictions for Kazakh citizens and foreigners is aimed at exercising the right to free movement in the interests of national security and public order in Kazakhstan. Foreigners and citizens of Kazakhstan also have the opportunity to appeal against restrictions on the right to free movement in an administrative manner.

The Law of the RK "On population migration" and the KoAP RK are of fundamental importance for regulating the right to free movement, especially in the context of the migration service's work with foreign citizens (Parliament of the Republic of Kazakhstan, 2011). The introduction of the term "oralman" (ethnic Kazakh) into legal circulation has defined a new vector of problems related to the realization of the rights of foreign citizens to free movement who plan to reside in the country permanently. For violating the right to free movement, the KoAP RK (Parliament of the Republic of Kazakhstan, 2014) establishes the administrative responsibility of officials for actions or omissions that result in restrictions on the right to free movement. Thus, it should be recognized that the right to freedom of movement serves both regulatory and indicative functions concerning state public authorities in the RK, which act as guarantors of national security.

Several departmental regulations and bylaws are of particular importance in regulating the exercise of the right to free movement by citizens. In particular, we are talking about Law No. 28-I of the RK, "On administrative supervision of persons released from places of imprisonment" (Parliament of the Republic of Kazakhstan, 1996). The legislator prohibits this category of citizens from leaving their homes and traveling outside their place of residence without notifying the MVD RK. In some cases, the legislator restricts the prohibition on free movement

to a foreign country based on the provisions of an employment contract, which may include a provision regarding the admission of an employee to state secrets. In such situations, citizens of the RK usually voluntarily undertake the obligation to restrict their travel abroad (Ministry of Internal Affairs of the Republic of Kazakhstan, 2020). Such trips require obtaining the necessary permission from state authorities and relevant organizations (Klimova et al., 2024; Rogov et al., 2018). This provision suggests that the exercise of the right to freedom of movement also performs control and preventive functions.

D. CONCLUSIONS

Summing up the results, it can be concluded that the term "right to freedom of movement" should be understood as the ability of a person and a citizen to choose and carry out their own way of movement, as well as the ability to avoid illegal restrictions by government bodies and public authorities. At the same time, the right studied in the paper is limited by other rights and freedoms of citizens, as well as by measures applied to ensure the national security of the RK. The right to freedom of movement is the legal basis for the emergence of various types of legal relations, including constitutional, administrative, criminal, migration, labor, information, and social, as well as protective, in the RK. The legal structure of this right is thus implemented and, at the same time, limited through a multi-level system of legal guarantees in compliance with the principle of proportionality.

Based on the opinions of various researchers, it has been established that the functional role of the right to freedom of movement is to implement, guard, and protect this right. The use of this right should not violate the basis of the constitutional order, the national interests of the RK, and the public interests of its citizens. The state and non-governmental associations can provide the mechanism for implementing the right to free movement. The priority of state and public values over the right to free movement is noted in situations where the implementation of this right compromises national security interests. The right to freedom of movement performs regulatory and indicative functions concerning state public authorities in the RK, acting as a guarantor of national security. Regarding citizens of Kazakhstan and foreigners, the exercise of this right serves informational, control, and preventive functions through the implementation of several established administrative restrictions.

An analysis of national and international documents, expert opinions, and practical comments on the Constitution of the RK suggests that in Kazakhstan's national human rights system, the importance of the right to freedom of

movement for national security tasks is to provide feedback from stakeholders, to which the state is obliged to respond through legal means since it has ratified the need to comply with international obligations that do not contradict the Constitution of the RK. This is primarily manifested in the publication of reports on the observance of human rights and the reaction to the activities of non-governmental organizations that provide a legal assessment of the state's human rights activities.

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