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The constitutional and legal status of migrants in the Republic of Kazakhstan: differences in human rights and citizenship

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Abstract. This article analyzes the constitutional and legal status of migrants in the Republic of Kazakhstan in the light of the Constitution adopted in 2026. The study focuses on the fundamental difference between universal human rights, which are presented to everyone without discrimination, and the rights of citizens, with an emphasis on key rights such as freedom of movement, social protection, labor rights, access to education and healthcare.

The author pays special attention to an urgent issue in the field of migration, such as maintaining a balance between the sovereign right of the state to control migration and compliance with international agreements and absolute human rights.

According to the author's conclusions, the constitutional reforms are aimed at strengthening the protection of the interests of the state, including procedures for entry, residence and deportation of migrants. It is also noted about the prohibition of any discrimination and ensuring the basic needs of migrants.

The article examines the key areas of human rights implementation, as well as the difference between the rights granted in these areas for migrants and citizens. According to the author's arguments, the Constitution establishes the priority of citizens' rights, observing the basic principles in the field of human rights. This approach reflects the legal vector of Kazakhstan, aimed at maintaining a balance between the two most difficult issues in the field of migration.

Keywords: migration, Constitution of the Republic of Kazakhstan, human rights, state sovereignty, freedom of movement, differentiation of rights, international standards.

Қазақстан Республикасындағы мигранттардың конституциялық-құқықтық мәртебесі: адам және азаматтардың құқықтарының саралануы

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Андатпа. Мақала жаңадан қабылданған Конституция аясында мигранттардың конституциялық-құқықтық мәртебесін қарастырады. Зерттеу шеңберіне адамдарға тиесілі және танылған абсолютті құқықтар мен Қазақстан Республикасының азаматтарына ғана бекітілген құқықтар айырмашылығы енгізілген. Атап айтқанда, негізгі назар абсолютті құқықтар деп танылған әлеуметтік қорғау, қозғалыс еркіндігі, еңбек құқықтары, денсаулық сақтау мен білім беру аясына аударылған.

Сонымен қатар, зерттеуде Қазақстан Республикасы таныған халықаралық және жергілікті шарттар мен мемлекеттегі көші-қон саласын қадағалауға бағытталған заңды әрекеттері арасында туындайтын күрделі тепе-теңдікті сақтауға бағытталған нормалар қарастырылады.

Автордың пікірінше жаңа Конституция мемлекеттің егемендігі мен көші-қон процестерін қатаң бақылаумен қатар, адамның абсолютті құқықтарын кемсітуге тыйым салады.

Көші-қонның екі негізгі аспектілері арасындағы тепе-теңдікті сақтау қазіргі заманның ең күрделі мәселелерінің бірі болып табылуына қарамастан, Қазақстан ұлттық егемендікті сақтай отырып, халықаралық құжаттардың талаптарын орындауға әрекет жасап, мигранттардың негізгі құқықтарын қамтамасыз етіп, сонымен бірге белгілі бір қиындықтар туғызды.

Түйін сөздер: көші-қон, Қазақстан Республикасының Конституциясы, адам құқықтары, мемлекеттік егемендік, жүріп-тұру еркіндігі, құқықтарды саралау, халықаралық стандарт.

Конституционно-правовой статус мигрантов в Республики Казахстан: разграничение прав человека и гражданских прав

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Аннотация. В данной статье анализируется конституционно-правовой статус мигрантов в Республике Казахстан в свете Конституции, принятой в 2026 году.

Исследование обращено на фундаментальное различие между универсальными правами человека, представленных всем без дискриминации и правами граждан, с акцентом на ключевые права, как свобода передвижения, социальная защита, трудовые права, доступ к образованию и здравоохранению.

Автор уделяет особенное внимание актуальному вопросу в сфере миграции, как сохранение баланса между суверенным правом государства по контролю сферы миграции и соблюдением международных договоренностей и абсолютных прав человека.

Согласно выводам автора, конституционные реформы направлены на усиление защиты интересов государства, включая процедуры въезда, проживания и депортации мигрантов. Также отмечается о запрете какой-либо дискриминации и обеспечении базовых потребностей мигрантов.

В статье рассмотрены ключевые области реализации прав человека, а также разница предоставляемых прав в этих сферах для мигрантов и граждан. Согласно доводам автора, Конституция закрепляет приоритетность прав граждан, соблюдая основные принципы в области прав человека. Данный подход отражает правовой вектор Казахстана, направленный на соблюдение баланса между двумя наиболее сложными вопросами в сфере миграции.

Ключевые слова: миграция, Конституция Республики Казахстан, права человека, государственный суверенитет, свобода передвижения, дифференциация прав, международные стандарты.

Introduction

The new Constitution of the Republic of Kazakhstan [1] marks notable innovations in a sharper separation between rights belonging to all individuals and those reserved exclusively for citizens, accompanied by a reinforced focus on protecting national sovereignty in the context of intensified global migration.

Kazakhstan deeply engaged in Eurasian and CIS, faces the ongoing challenge of meeting labour market demands while safeguarding national security, public order, and the economic interests of its citizens. Against this backdrop, a detailed examination of migrants' constitutional and legal status holds both academic and policy relevance.

Material and methods

This study used a doctrinal and legal research method combined with comparative and normative analysis.

The research is based primarily on a qualitative analysis of legal sources. The main materials include:

The Constitution of the Republic of Kazakhstan (adopted on March 15 ,2026) [1].

International universal and regional human rights documents as Universal Declaration of Human rights (1948) [2], the International Covenant on Civil and Political rights (1966) [3], the Convention on the Rights of the Child (1989) [4], the International Covenant on Economic, Social and Cultural Rights (1966) [5];

Kazakhstan's legislation system of these sphere includes the Law of Population Migration [6], the Labour Code [7], the Law on Education [8], the Code on Public Health and the Healthcare system [9] and Law on Foreigners [10];

Scientific doctrine: monographs, articles and comments by Kazakhstani and foreign legal scholars on human rights, state sovereignty, freedom of movement and the legal status of migrants;

The methodological tools include:

Normative interpretation of constitutional and legislative provisions;

Comparative legal method (comparison of the constitutional formulations “everyone and citizen”, as well as analysis of Kazakh legislation in the light of international standards);

System and structural analysis;

The formal legal method.

Literature review

Scholarly interest in the constitutional and legal situation of migrants in Kazakhstan has grown significantly in recent years.

Tiunov [11] emphasizes that states view the provisions of the Universal Declaration of Human Rights as a benchmark for developing their domestic legislation.

This perspective remains highly relevant for analyzing the interaction between international human rights standards and Kazakhstan's constitutional framework.

The constitutional and legal situation of migrants in Kazakhstan has aroused considerable interest among scientists in recent years. For example, O.I. Tiunov believes that the norms of the Universal Declaration of Human Rights are a legal guideline for States when developing national legislation [11]. A.V. Kudryavtseva notes that due to the absoluteness of the right to movement, restriction of this right is possible only at the legislative level [12]. It should be noted that the proportion of publications is devoted either to a wide range of issues, or theoretical issues or specific narrow issues within the framework of migration legislation. The purpose of this article is to examine the legal status of migrants, enshrined in the country's main law, which simultaneously strengthens sovereign control and preserves the basic means of protecting human rights.

Results and discussion

1. Differentiation of human and civil rights - theoretical and legal foundations.

The inalienable and inherent nature of universal human rights to everyone from birth is recognized by the Universal Declaration of Human Rights (Articles 1 and 13) [2], which is the legal standard for states according to Tiunov [11]. Meanwhile, the rights of a citizen are a special type of rights conditioned by the political and legal connection of an individual with a particular state. The Constitution of the Republic of Kazakhstan applies two different legal formulations: "everyone" (or "everyone who is legally located on the territory of the Republic Kazakhstan") and "citizen of the Republic of Kazakhstan" [1]. It should be noted that this approach corresponds to the generally accepted practice in modern constitutional law, according to which fundamental human rights are guaranteed to all persons under the jurisdiction of the State, while certain socio-economic and political rights are primarily reserved for citizens [13].

2. Freedom of movement and state sovereignty.

One of the recognized absolute human rights is freedom of movement. The norms of article 24 of the Constitution of Kazakhstan proclaim the right of free movement and secure it for any person legally residing in the country [1]. However, this right is limited due to circumstances arising from the sovereignty of the State. The Constitution directly stipulates the exercise of this right by the legality of residence on the territory of the State, a provision reflecting the exercise of Kazakhstan's territorial sovereignty and consistent with widely recognized international principles. The Republic has full powers to control the entry, stay and expulsion of non-citizens and stateless persons. This regulation is a standard feature of government practice all over the world and is considered as a fundamental aspect of sovereign power. Meanwhile, the conflict that arises between the interests of national security and international human rights standards continues to cause controversy among legal scholars. Supporters of sovereignty emphasize the prerogative of the State to determine the conditions of entry, while others place human rights at the core. For example, many scholars support the view that sovereignty gives states supreme authority over their

territory, residents, and political decisions. In the field of migration, this sovereignty is manifested in the right of the state to control its borders and decide who can enter or leave the country [14]. Historically, the powers here are almost absolute and allow states to keep foreigners away for various reasons, from security concerns to protectionism for economic purposes. K. Wellman argued that Immigration control should be understood in the same way that people are free to decide who to invite to their homes. Scholars such as Krasner dispute this view, arguing that it contradicts fundamental human rights and human dignity. In their opinion, borders should be regulated in accordance with human rights obligations that support the principles of universal justice, and not serve as insurmountable barriers [15]. As noted by A.V. Kudryavtseva, there is no absolute freedom of movement, and even in ancient times, when there were no state borders or official restrictions, people faced natural barriers such as climate, geography, and their own physical limitations. In the modern world, freedom of movement is always implemented within the framework established by law [12]. It is worth noting that one of the earliest legal documents explicitly recognizing the right to freedom of movement is the Magna Carta of Great Britain [16]. This charter also gave the State authority over decisions concerning emigrants, stating: “In the future, anyone will be allowed to leave our kingdom and return safely by land or water, while remaining loyal to us, except in cases of war”.

W. Blackstone defined the right to travel as “the right to move, to change to go to any place at will without imprisonment or restrictions, provided that it complies with the law” [17]. Meanwhile, Steinbach argues that the right to unrestricted freedom of movement is an integral part of the concept of one nation and goes back to the founding principles on which the United States was founded. According to him, the concept of freedom of movement includes three separate individual rights:

- the right to leave one's current place of residence and move to another place;
- the right to freely cross various borders;
- the right to settle in a place of one's choice and stay there [18].

We agree with Steinbach's opinion, since the right to movement actually includes these three elements, without which the migration process itself would be incomplete. First of all, migration is a conscious understanding of a person that he does not want to stay in a given place, regardless of the pushing reasons, respectively, he understands where he might like to end up and live, that is, three key procedural points of migration: emigration, migration and immigration.

Dummett argues that a truly powerful right must be unconditional. Consequently, he views the right to immigration as a “weaker, conditional right,” which essentially means that entry should generally be granted unless the receiving State can provide specific reasons for refusal [19].

Similarly, Iglesias Sanchez notes that judicial practice and legislation regarding freedom of movement are much more developed than other rights related to citizenship. Nevertheless, the search for a universal understanding of this right — or a balanced compromise between the interests of the State and the protection of migrants' rights — remains unresolved [20].

The Law of the Republic of Kazakhstan "On Population Migration" establishes 14 specific grounds for refusing entry to foreigners. Most of these grounds are clearly defined and legally justified. Only a relatively broad provision is the first one that allows entry to be refused in the interests of national security, public order and public health [6].

The international legal acts reasonably reserve the right of choice for states, since each government must regulate the economy of its country, protect borders and security, which is one with the security of the country's people and sovereignty. Thus, each state has the privilege to determine the entrance to its territory, just as we control who can enter our homes.

The analysis shows that the right to freedom of movement in the Constitution of the Republic of Kazakhstan (art. 24) [1] is formulated as a universal right belonging to "everyone" who legally resides on the territory of the state. At the same time, this right is not absolute and is legitimately limited by the requirement of legal residence, which serves as a constitutional mechanism for protecting State sovereignty.

Kazakhstan's approach fully complies with modern international standards and the prevailing doctrine of state sovereignty. Most States reserve the exclusive right to regulate the entry, stay and expulsion of foreigners, while maintaining a balance between the universal nature of human rights and national interests in the field of security, public order and socio-economic well-being of their citizens.

The existing academic debate between proponents of strong State sovereignty (Wellman and others) and proponents of a more liberal, human rights-oriented approach (Karens, Dummett) reflects the complexity of this issue. However, the constitutional model chosen by Kazakhstan demonstrates a reasonable compromise: it recognizes freedom of movement as a fundamental human right, while clearly subordinating its implementation to the principles of legality and State control. Kazakhstan has adopted a pragmatic middle ground and acknowledges freedom of movement as a basic human right, but subordinates its implementation to legal requirements and effective governmental oversight. Through this approach, the 2026 Constitution manages to merge universal human rights norms with the legitimate sovereign powers of the state in migration governance.

3. Differentiation of socio-economic rights

3.1. Labour

The analysis of the norms of the Constitution in the field of labor relations shows the differentiation of the rights of citizens and foreigners. The norms of article 27 guarantee everyone the right to fair remuneration for work performed without discrimination and in accordance with international standards in this field. At the same time, the norms of article 31 guarantee the minimum wage exclusively to citizens of the country [1]. Despite the fact that this legal regulation is aimed directly at protecting national interests, the lack of a legal guarantee in the field of minimum wage for foreigners creates practical difficulties and may be perceived as legal discrimination. It should be noted that the Labor Code establishes the principle of non-discrimination and guarantees wages to all employees not lower than the minimum level.

Nevertheless, the absence of this provision in the Constitution and its presence in sectoral legislation may create practical and procedural difficulties and require further harmonization. It should be noted that the Labor Code not only prohibits discrimination in the field of work, but also guarantees the minimum wage in article 4. Article 6 prohibits discrimination on any grounds, including nationality and place of residence [7]. Nevertheless, the provisions of article 31 of the Constitution create a potential legal conflict, since they provide universal guarantees exclusively to citizens of the country. Despite the fact that such differentiation is permissible from a legal point of view and the Labor Code is aimed at more precise and detailed regulation of legal relations, the provisions of the Constitution are norm-forming, which imposes special responsibility on them.

Thus, articles 27 and 31 of the Constitution represent the complex nature of the constitutional and legal status of migrants in Kazakhstan, who are granted labor rights but are not guaranteed a minimum wage threshold.

3.2. Ownership rights

The differentiation of rights is also reflected in the sphere of property and housing rights. Thus, the norms of article 29 of the Constitution enshrine the right of private property for citizens of the country [1]. However, the provisions of article 9 of the Law “On the Legal Status of Foreigners” grant equal rights and impose equal obligations on foreigners permanently residing in the country and having a residence permit [10].

3.3. The right to education

With regard to education, Article 33 of the Constitution guarantees the right to primary education for citizens [1]. Meanwhile, the Law on Education provides that children of migrants and foreign nationals enjoy the same rights as citizens and have free access to primary education (art.8) [21].

This situation indicates that there is a certain conflict between constitutional norms and special legislation.

3.4. Social rights

Migrants legally working in Kazakhstan, as a rule, bear tax and social obligations that are practically equivalent to the citizens of Kazakhstan. Although Article 31 of the Constitution primarily links key social guarantees — such as minimum wages, pensions, and social security in cases of old age, illness, disability, loss of breadwinner, and other legitimate grounds — to citizenship [1], the provisions of the Social Code adopt a broader approach.

In particular, maternity and childcare benefits are granted to permanent residents of Kazakhstan, as well as to foreign citizens entitled to such payments under ratified international treaties (arts.79 and 81). Similarly, state awards for mothers with many children are provided to foreigners and stateless persons permanently residing in the Republic on equal terms with Kazakhstan citizens (art. 93).

Comparable rules apply to state social disability allowances (art. 175), large family allowances (art. 90), caregiver allowances (art. 187), basic pensions, retirement pensions, and other pension payments. These benefits are generally available to

permanently resident foreigners and stateless persons, unless otherwise stipulated by law or international agreements.

Although labour migrants make a substantial contribution to the social security system through taxes and mandatory contributions, the most significant social benefits and pensions remain primarily accessible to holders of permanent residence permits. Temporary migrant workers have considerably more limited access to these guarantees, despite paying comparable amounts into the system [21].

This regulatory model reflects the general logic of the 2026 Constitution: strengthening the socioeconomic protection of Kazakhstani citizens while maintaining differentiated legal status for foreign citizens [1].

Results

The conducted study allows drawing the following key conclusions:

The new Constitution of the Republic of Kazakhstan establishes a clear distinction between universal human rights belonging to “everyone” (or “everyone lawfully present on the territory of the Republic of Kazakhstan”) and rights reserved specifically for citizens of the Republic. This differentiation constitutes one of the central features of the updated Basic Law.

The right to freedom of movement (art.24) is recognized as a universal right for all persons lawfully residing in the country. At the same time, the state retains its sovereign authority to regulate the entry, stay, and exit of foreigners, in full compliance with international standards and the principles of state sovereignty.

A certain degree of ambivalence exists in the regulation of labour and socioeconomic rights. While article 27 guarantees broad universal rights regarding working conditions and remuneration without discrimination, article 31 reserves several important guarantees (minimum wage and certain social security benefits) primarily for citizens [1]. Sectoral legislation, however, often extends broader protections to permanently resident foreigners.

A similar differentiation exists in the sphere of property and housing rights. Article 29 of the Constitution establishes the right to private property as a right of citizens of the Republic of Kazakhstan [1]. At the same time, the Law “On the Legal Status of Foreigners” grants foreigners permanently residing in Kazakhstan (with a residence permit) almost equal rights with citizens in matters of property and housing [10].

In the field of education and social rights, sectoral legislation provides for a broader approach than constitutional provisions. While the Constitution primarily links many socioeconomic rights to citizenship, the Law on Education and the Social Code extend significant rights to permanent residents, and, in some cases, to foreigners subject to international treaties.

Migrants who legally work in Kazakhstan have tax and social obligations that are almost equivalent to the tax obligations of citizens. Nevertheless, the most significant social benefits and pension payments are available primarily to permanent residents of foreigners. Temporary migrant workers have significantly more limited access to these guarantees.

Overall, the 2026 Constitution strengthens the sovereign component in migration regulation while upholding the universal nature of fundamental human rights. The existing discrepancies between constitutional norms and sectoral legislation highlight the objective difficulty of balancing national interests with international human rights obligations.

Conclusion

The adoption of the new Constitution of the Republic of Kazakhstan on 15 March 2026 marked an important stage in the country's constitutional evolution. One of its defining features is the clear differentiation between universal human rights and citizens' rights, which is particularly evident in the regulation of migrants' legal status.

The analysis shows that the 2026 Constitution effectively combines recognition of core universal human rights with a reinforced sovereign approach to migration policy. Remaining discrepancies between constitutional provisions and implementing legislation create legal uncertainty and necessitate further improvement.

A priority task for future legislative development should be the consistent application of the proportionality principle when determining the scope of rights and obligations of foreign nationals depending on their migration status (temporary or permanent), together with reliable mechanisms to prevent indirect discrimination.

Overall, the constitutional and legal status of migrants under the 2026 Constitution represents a reasonable compromise between the universal nature of fundamental human rights and the sovereign right of the state to safeguard its national interests in the face of global migration challenges.

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Authors' contributions

The article was co-authored by Kazakh scholars analyzed Kazakhstan legislation system, International legislation, conductive comparative analysis.

1) Madina Rysmagambetovna Abdramanova – Corresponding author, responsible for the research methodology, data curation, investigation, results, conclusions.

2) Amanzhol Magzumovich Nurmagambetov – responsible for the research methodology, doctrinal analyses and investigation.