



## FORMATION OF RIGHT TO MIGRATION IN WESTERN COUNTRIES

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### Annotation

The article examines, analyzes and comments on the history of the emergence and development of the first migration law in countries such as the United Kingdom, Germany, France and Russia.

**Keywords:** migration, country, status, citizenship, law, document, clearance, registration, guarantee, law, freedom.

Unlike medieval Eastern society, the feudal Western model of development was characterized by the full formation of all institutions of migration law. Consequently, slavery in the West played an important role in social production, and efforts to abolish slavery continued unabated. The period of the Western Renaissance, as well as the emergence of the political, social and philosophical-legal views of the Enlightenment scholars at the end of the Middle Ages, raised the science of law to a completely new level. This process served to shape the right to migrate from customary law to natural law. The analysis of the law of migration and the formation of its institutions on the example of England, Germany, France and Russia from Western countries clearly proves our opinion.

England. The invasion of the British Anglo-Saxon Germanic tribes in the 5th century forced some of the local Celtic tribes, unwilling to submit, to move to the northern part of the island and some to surrender and merge with the Germanic tribes. Thus, seven Anglo-Saxon kingdoms emerged in Britain.

A study of English feudal documents revealed that Lord Clarendon in 1166 and Lord Nortgenton in 1176 expelled the foreigners on the basis of a decision made by King Henry II Plantagenet of England, and forbade them to be granted asylum for more than one night. Historically, this set of 16 articles was called the Clarendon Constitutions.



Establishment of immigration control In the UK, the practice of transitioning from restriction to the principle of permitting until the end of the Normandy period, the gradual admission of migrants under certain conditions and the issuance of travel documents to them was introduced.

In the Middle Ages, it was the English citizens who initially achieved certain positive changes in the civil legal status of the individual. In 1215, the Grand Charter of Freedom (lat. Magna Carta or Magna Charta Libertatum), a political-legal document consisting of 63 articles, was adopted in England (Fig. 19).

Figure 19. The great charter of freedom. British Library.

Article 39 of the constitution states: "No one shall be held guilty of any penal offense on account of any act or omission which did not constitute a penal offense, under national or international law, at the time when it was committed." Thus, the right to free movement and choice of residence must be strengthened by the norm of compulsory deportation from the territory of the country and recognized as the first historical manifestations of the right to migration.

The institution of the passport-visa, which was recognized in medieval migration law as an identity document or travel document, is mentioned in most historical literature as appearing in the early seventeenth century. However, Ukrainian scholars (SM Gusarov, AT Komzyuk, O. Yu. Salmanova) noted that the first decision to introduce a passport was made by the British Parliament in 1414, and its entries were made in Latin until 1772. However, this study has not been proven with a clear source and detailed data. An analysis of manuscripts and archival documents in the British Library showed that, in fact, permits for free movement were established in 1414 and were associated with the name of Henry V. During his reign, in 1414, the British Parliament passed the Safe Conducts Act (1414) to introduce the first document similar to a modern passport.

Thus, by introducing a document proving his identity and country of origin, the King was able to ensure the free and safe movement of his citizens during the journey.

From 1855 onwards, passports became the usual type of document issued only to Britons. With the outbreak of World War I, a law was passed on the legal status of British and foreign nationals, and in 1914 a place for a personal photograph was marked on the passport pages.

Germany. As a result of the division of the Frankish Empire and the conclusion of the Treaty of Verdun in 843, the East Frankish Kingdom - the German state - was formed.

In Western European countries, the influence of the church on litigation and law enforcement practice has intensified since the early Middle Ages. In the Bavarian reality (lat. Lex Baiuvariorum), a set of customary rights exercised by the Bavarian tribes of Germany in the VII-VIII centuries, the powers of the clergy to conceal criminal refugees and grant them the right to asylum were further expanded ( Fig. 24).

Figure 24 The Bavarian Truth, a manuscript from the early ninth century. University of Munich Library.

The ruler of the Holy Roman Empire, Frederick II (1194-1250), passed a law on state peace in Mainz on August 15, 1235, and this set of rules became known in history as the Statute of Mainz. The law consists of 29 articles and was first published not only in Latin but also in German (Figure 25).

Figure 25. Manuscript of the Statue of Mainz with a portrait of Frederick II. Dresden State and University Library.<sup>7</sup>

The Mainz Statute described the restriction of the free movement of Germans and foreigners as an aggression against the peace of the state. In the German legal system, freedom of movement is recognized as a right that encompasses the ability to move freely, regardless of residence, occupation, and whether one can find a new place. At the same time, freedom of movement was a prerequisite for the effective exercise of rights such as the right to family life, the right to choose a profession and the inviolability of property.

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The right of the citizens of the German Empire to migrate was closely connected with the right to work at the same time. They were able to move freely, work, and start a family throughout all parts of the empire. These rights and freedoms were enshrined in the 1514 Treaty of Tübingen, the 1548 Treaty of the Earth, and the 1555 Treaty of Augsburg. In particular, the Augsburg Treaty of Religious Peace enshrined the right of the princely population to emigrate at the level of the law of the Holy Roman Empire.



The constitutional norm on migration law analyzed above is also reflected in the current Basic Law of the Federal Republic of Germany. According to Article 11 of the Basic Law: "(1) All Germans enjoy the right to freedom of movement throughout the territory of the Federation. (2) This right may be restricted by law or in the manner prescribed by law and only in cases where a person does not have sufficient means of subsistence and as a result may create special obligations to society, as well as the existence of a Federation or one of the countries it can be used to counter threats or to combat epidemics and epizootics, natural disasters or catastrophes, to protect young people from neglect or to prevent criminal prosecution."

In our opinion, the peculiarity of the constitutional norm that guarantees freedom of movement in Germany is that, unlike the basic laws of other countries, it lists the specific grounds for restricting the right to migration one by one. We believe that the German experience can be a worthy example, especially in amending the constitutions of the post-pandemic period that began in 2019.

France. As a result of the decline of the Roman Empire, barbarians, that is, Germanic tribes, moved to its territory in the IV-V centuries. It is called the "Great Migration" in history. Gaul (now France), the richest province of Rome, was conquered by the Germans from the East, and the rest by the Visigoths, Burgundians, Franks, and other tribes. Among these tribes, the Sali Franks occupied more territory.

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Medieval France played an important role in the evolution of immigration law. In particular, it is noteworthy that the term passport for the establishment of state control over citizens originated in France. The word "passport" required the authorities to provide a "pass" (fr. "Pass") to exit or cross the port. During the reign of King Louis XIV of France and his successor Louis XV, passporting in the country developed rapidly. This trend in France soon spread to other major countries and was covered by the whole of Europe in the early nineteenth century.

Russia. Russian scholars have put forward various ideas on the origin and formation of migration law. In particular, S.V. Penkin, who studied the emergence



of freedom of choice of residence and movement, noted that the labels that allowed to move from one place to another date back to the VIII century. However, the written sources identified when we study the historical aspects of migration law in ancient times completely refute this idea. Indeed, we have clearly proved that such labels exist in various forms and appearances in countries from Ancient Rome to Ancient China.

Some aspects of the migration activity of the ancient Russian state can be seen in the XI-XII centuries. The adoption of Christianity and the spread of written monuments led to the emergence of various chronicles, works, and documents. In addition, the arrival of traders and artisans, the establishment of international relations required the conclusion of interstate agreements and treaties. The freedom of movement of traders is regulated by agreements concluded in Pskov, Smolensk and other similar major cities.

From the 13th century onwards, labels issued to foreign nationals served to prove their identities. Although these labels do not provide the right to freedom of movement, they can be included in the list of permitting sources that regulate social relations in the field of migration. It is these labels that are mentioned in the Novgorod chronicles, which testify to the introduction of the first passport system on the territory of Russia in the XIII century.

Our analysis showed that in Russia there was a practice of granting asylum before the passport system. In particular, in the beginning of the XI century Lavrentev's chronicle of 1101 contains information about forced evictions or asylum for refugees. However, the right to asylum was officially enshrined in the 1918 Constitution of the RSFSR.

One of the first normative documents regulating the movement on the territory of Russia was the Label of the King of "All Russia" and Grand Duke Mikhail Fedorovich, adopted in 1615, according to which the ruler allowed all Don Cossacks to see freely with their relatives, without trade goods and goods provided the right to come and go.

The requirement to have an identity document with him when moving in the territory of the Russian state or when leaving the territory of the country first appears in the document of King Alexei Mikhailovich of Chapter VI of the Council of 1649 "On travel documents to other countries". This label corresponds to the modern "passport to travel abroad."

According to the Cathedral Charter of 1649, there were 3 types of identity documents: 1. a certificate for travel to other countries; 2. Label for officials of



Siberia and the Lower Volga; 3. label for foreign nationals. Such control was established to protect the interests of the state, and non-compliance with the order could be punishable by even the death penalty.

In 1710, the concept of "passport" was first used in the instructions of the governor of Astrakhan. Nine years later, the decree of Peter I of October 30, 1719, served as the basis for the process of official passportization in Russia to become national in nature. According to him, no one can go anywhere without a "passport" or "movement letters" issued by the boss. Individuals who walked without a license plate were found to be "bad people or outright thieves".

In accordance with the above analysis, we can fully agree with the opinion of N.A. Limonova that "Peter I is the real founder of the passport system in Russia."

Catherine II also made a significant contribution to the further formation of the legal status of citizens. His appeal of 1762 provided for the right of foreigners to immigrate freely to Russia and introduced the basic principles of the passport system. Passports were originally the main means of state control over the movement of the population, but by July 22, 1763, they also became an additional mechanism of fiscal significance, ie the collection of taxes and duties. In order to prevent counterfeiting, stamped passports have been in circulation since 1803. In 1812 a regulation on passports was adopted.

Thus, the issues of the passport system are regulated by such basic documents as the regulations on residence certificates issued in 1893 and the regulations on passports issued in 1895. At the same time, the system of issuing permits to enter and leave the Russian Empire was developed and implemented by the Ministry of Internal Affairs.

Based on the above historical processes, it can be concluded that some institutions of migration law, such as the passport system, emerged and developed not from the interests of the population, but from the financial and police needs of countries.

### References:

1. Мiгрaтciйнe пpaвo Укpaїни: пiдручник / [S. M. Gusarov, A. T. Komzyuk, O. Yu. Salmanova ta їn.]; for zag. ed. d-ra yurid. nauk, chl.-kor. NAPrN Укpaїни S.M.Gusarova. - Xarkїv: Дiм реклами, 2016. - S.7. (296 p.)
2. Thomas Edlyne Tomlins, John Raithby. Safe Conducts Act 1414 [2 Hen. V. - A.D. 1414 Statute I, Chapter VI]. The Statutes at Large, of England and of Great Britain: from Magna Carta to the Union of the Kingdoms of Great Britain and Ireland. II. London: George



3. История государства и права зарубежных страны: В 2 ч. Ch. 1 / Pod obshch. ed. d. yu. n., prof. O. A. Jidkova and d. yu. n., prof. N. A. Krashennikovoy. - 2-e izd., Ster. - M.: Norma, 2004. - S.395. (624 p.)
4. История государства и права зарубежных страны: В 2 ч. Ch. 1 / Pod obshch. ed. d. yu. n., prof. O. A. Jidkova and d. yu. n., prof. N. A. Krashennikovoy. - 2-e izd., Ster. - M.: Norma, 2004. - S.424. (624 p.)
5. Schmidt-Bleibtreu / Hofmann / Hopfauf. GG. 11. Aufl. 2007. Art. 11. Rn. 7; Durner // Maunz-Dürig, GG. Stand: 2010. Art. 11. Rn. 92 ff.
6. Randelzhofer. A. Bonner Comment on Grundgesetz / Dolzer (Hsrg.). Bd. 2. Stand: 3/1991. Art. 11. Rn. 9.
7. Міграційне право України: підручник / [S. M. Gusarov, A. T. Komzyuk, O. Yu. Salmanova ta ін.]; for zag. ed. d-ra yurid. nauk, chl.-kor. NAPrN України S.M.Gusarova. - Xarkiv: Dім reklami, 2016. - S.7. (296 p.)
8. John Torpey. The control of passports and the circulation of liberties. Le cas de l'Allemagne au XIXe siècle, Genèses, 1998, n° 1. - R.53-76.
9. Randelzhofer A. (Anm. 4). Einleitung zum Art. 11. Rn. 4.
10. Basic Law of the Federal Republic of Germany [Text] / Editor-in-Chief, preparer and author A.Saidov. - Tashkent: Akademnashr, 2019. - P.67. (400 p.)
11. Ukaz Voennoy Kollegii ot 30 oktyabrya 1719 g. «O poimke beglyx dragun, soldat, matrosov i rekrut» // Polnoe sobranie zakonov Rossiyskoy Imperii. T. V. Spb., 1830.