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COUNTER-ADMINISTRATIVE THREATS TO DUAL CITIZENSHIP IN UKRAINE

Євген Курінний. КОНТРАДМІНІСТРАТИВНІ ЗАГРОЗИ ПОДВІЙНОГО ГРОМАДЯНСТВА УКРАЇНИ. Розглянуто питання особливостей контрадміністративних загроз подвійного громадянства в українській державі. Зокрема, наголошується, що за час функціонування українського інституту громадянства накопичено значний практичний досвід, наявні певні помилки та невиправдана безпечність, як з боку держави та її очільників, так і окремих громадян, що вже призвели або можуть призвести до матеріалізації низки явних та прихованих загроз. Однією з таких загроз є подвійне громадянство в Україні.

Зазначається, що наявність у громадянина паспортів різних держав призводить до явного дисбалансу його прав і обов'язків. У такої людини виникає реальний вибір користуватися у тій чи іншій життєвій ситуації додатковою кількістю прав громадянина однієї з країн та одночасно уникати виконання покладених на неї обов'язків громадянина конкретної держави на власний вибір (наприклад, сплата податків або служба в армії).

Загрози національній безпеці, що виникають із набуттям громадянами України громадянства іншої держави, за їх приналежністю до соціальних сфер пропонується поділити на три блоки загроз: адміністративного (владно-управлінського); оборонного та демографічного характеру.

Контрадміністративні загрози подвійного громадянства розглядаються як різновид антисоціальних та антидержавних загроз, що суттєво ускладнюють, а в окремих випадках унеможливають належне функціонування інституту громадянства в Україні, перешкоджаючи таким чином повному та своєчасному втіленню у життя окремих груп об'єктивно існуючих суспільних потреб, які мають або повинні мати відповідну правову регламентацію.

Констатується, що проблема подвійного громадянства в Україні, ще довго може не втрачати своєї актуальності, тому серед можливих варіантів відповідних дій, потрібно обрати найбільш дієвий та ефективний. Таким оптимальним підходом є здійснення давно затребуваного часом та суспільством комплексу системних реформ, які не будуть обмежуватись локальними та здебільше декоративними змінами українського соціально-політичного ландшафту. Необхідні насамперед цивілізаційні, світоглядні трансформації серед більшості українців, але вже не у межах чинної та фактично збанкрутілої четвертої пострадянської української республіки.

Relevance of the study. The existence of the institution of citizenship is one of the main features of any modern state. Around the turn of the 18th and 19th centuries, since the spread of capitalist relations in the world and the introduction of the republican form of government in the countries of declared democratic changes (primarily the United States and France), the monarchy began to be supplanted by in contrast to the outdated feudal citizenship and was characterized by the presence of mutually binding ties between a particular state and its citizens.

The final establishment of the modern world institution of citizenship is connected with the end of the Second World War, when a large number of European monarchies ceased to exist, and the remaining ones finally acquired their constitutional restrictive format. Therefore, existing now in such countries as Great Britain, Belgium, the Netherlands and others, citizenship has undergone a corresponding «modernization» and in its democratic essence, little different from the citizenship of the recognized classical republics – France, USA, Germany, etc.

According to Article 5 of the Constitution of our state, Ukraine is a republic. It has been

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29 years since our country gained independence, and 30 years have passed since Ukrainian citizenship. On the one hand, this is a historical moment, and on the other – a fairly long period of time, exceeding the term of one human generation. During the operation of the Ukrainian Institute of Citizenship, considerable practical experience has been accumulated, certain mistakes and unjustified carelessness have been made, both by the state and its leaders and by individual citizens, which have already led or may lead to a number of obvious and hidden threats.

Citizenship of Ukraine is a stable, unlimited legal relationship of a person with the Ukrainian state, based on the legal recognition of this person as a citizen of Ukraine, as a result of which the person and the state acquire mutual rights and obligations to the extent provided by the Constitution and laws of Ukraine.

Signs of citizenship as a certain connection of a person with the state are:

- 1) legal nature;
- 2) infinity in space and time;
- 3) the maximum nature of mutual rights and obligations.

This connection is manifested in its extension to the relevant person of the sovereign power of the state, regardless of its place of residence – in the state or abroad.

The system of constitutional and legal norms governing the issue of citizenship is the main constitutional and legal institution – the institution of citizenship. The sources of this institute are:

- 1) the Constitution of Ukraine.
- 2) Law of Ukraine «On Citizenship of Ukraine» of January 18, 2001.
- 3) current international legal agreements of Ukraine on citizenship.
- 4) bylaws.

The norms of these acts, based on the recognition of citizenship as a natural human right, enshrine the principles of citizenship and regulate the acquisition and termination of citizenship, the powers of public authorities and other organizations involved in citizenship and their resolution [1, p. 81].

Article 2 of the current Law of Ukraine «On Citizenship» of January 18, 2001 contains seven principles on which Ukrainian legislation on citizenship is based, the first of which is the principle of a single citizenship – citizenship of the state of Ukraine, which excludes citizenship of administrative-territorial units of Ukraine. If a citizen of Ukraine has acquired the citizenship (citizenship) of another state or states, then in legal relations with Ukraine he is recognized only as a citizen of Ukraine. If a foreigner has acquired the citizenship of Ukraine, then in legal relations with Ukraine he is recognized only as a citizen of Ukraine.

These norms are an attempt to detail the constitutional provision that there is a single citizenship in Ukraine (Article 4 of the Basic Law of Ukraine) and serve as an example of failed lawmaking (Articles 2 and 3 of Article 2 of the Law of Ukraine «On Citizenship»), because they actually legalize the acquisition of multiple citizenship in Ukraine.

Unfortunately, the practice of the existence of the Ukrainian state only confirms the above thesis. Even in the absence of official statistics, using mostly empirical approaches, it can be argued that more than one hundred thousand Ukrainian citizens have, in addition to a Ukrainian passport, a document confirming their citizenship of another state (especially in areas of compact ethnic minorities) in Zakarpattya, Bukovina, temporarily occupied territories of Donetsk and Luhansk regions).

This state of affairs poses real threats to Ukraine's national security, in particular, it negatively affects the organization of the work of various public administrations, the country's government apparatus in general, and the institution of public (public) service directly related to them.

These key areas form the basis of the administrative system of our state, the proper functioning of which depends primarily on the optimal administrative and legal support. Therefore, all risks and threats to this system are anti- or counter-administrative in nature and require appropriate legal response, a key place in which should play administrative and legal tools, as the main legal means of forming and direct implementation of public policy in this direction.

Recent publications review. The issue of threats of multiple citizenship in Ukraine in the disturbed context has not been studied by domestic scholars, so consideration of the problem of counter-administrative threats of dual citizenship in our country in terms of demand for systemic change is the main **objective** of this work. The theoretical basis of this work can be considered as original ideas and scientific developments of such recognized masters of

Ukrainian administrative and legal science as V. B. Averyanov, Yu. P. Bytyak, I. P. Holosnichenko, R. A. Kalyuzhny, T. O. Kolomojets, V. K. Kolpakov.

Discussion. First, it should be noted that the constitutional provision on a single citizenship in Ukraine is designed to ensure a single legal status for all citizens, the same legal relationship of every citizen with the state, everyone understands their belonging to Ukraine. Recognition of a single citizenship in our country is aimed at eliminating the basis of political and legal conflicts that exist in states where the constitutions define the institution of dual citizenship. This institution creates contradictions, legislative inconsistencies due to the different rights and freedoms that dual citizens can actually enjoy at the place of residence and to which they are entitled in accordance with the procedure in force in their ethnic homeland, of which they are also recognized. Also, a single citizenship in Ukraine is a necessary condition for the stability of the political and social situation in the country, reduces the likelihood of interethnic confrontation [2, p.32].

Having a passport of different countries leads to a clear imbalance of his/her rights and responsibilities. Such a person has a real choice to enjoy in one or another life situation an additional number of rights of a citizen of one of the countries and at the same time to avoid fulfilling the duties of a citizen of a particular state of his choice (for example, paying taxes or serving in the army).

These circumstances provoke inequality between citizens who have single or multiple citizenship. This is especially noticeable when a person has the citizenship of clearly «different» countries – the United States and Ukraine, EU member states and Ukraine, and so on. In such a situation, a person will always be faced with the question of choice, and in most cases this choice will clearly not be in favor of our state. In other words, Ukrainian citizenship will have a purely nominal meaning and will be mentioned only in exceptional cases, which have a predominantly conjectural basis.

The desire of some Ukrainians to have a different citizenship (especially a more successful and authoritative state in the world) is not always justified, especially from the standpoint of morality. However, for the sake of objectivity, it should be noted that this step is often prompted by the low level of social organization of Ukrainian society and the state, which significantly complicates the possibility of proper self-realization. Thus, in terms of human development, Ukraine is below the average level of Europe and Central Asia and this indicator has not improved in 10 years. This is stated in the World Bank report.

Ukrainian youth do not have the opportunity to grow into productive adults. A newborn child in our country can only get 63% of the productivity of an adult with a sufficient level of education. The World Bank notes that this figure is higher among countries with similar levels of economic growth, but at the same time it is lower than in Europe and Central Asia. To solve this problem, large investments are needed in education, health care and social protection. For example, in Poland a child can expect to achieve 75% productivity, and in Tajikistan – 50%.

The Human Development Index is an indicator for assessing human development in different countries around the world. For its formation the following criteria are taken into account: a) long and healthy life, b) access to knowledge; c) a decent standard of living. Healthy living is measured by the average life expectancy in the country, education – the number of years spent on education by people under 25 years. And the standard of living is calculated by gross national income per capita in dollars.

In 1990, Ukraine had an Index value of 0.705, and in 2018 the figure rose to 0.750. However, this is still below the average level in Europe and Central Asia. During the 29 years of independence, life expectancy in Ukraine increased by 2.3 years, and the average number of years of study increased by 2.6 years [3].

The spread of multiple citizenship is also facilitated by the employment of Ukrainians, the number of such people fluctuates annually in the range of 7-9 million, over time, some workers move their families abroad, which leads to a significant reduction in the working population in Ukraine. According to the national government, about 4 million Ukrainians (almost 10 percent of the population) have emigrated from Ukraine in the last 10 years alone [4].

The problem of dual citizenship in today's Ukraine should be seen as global, with artificially created «favorable» foundations – the permanence of systemic crises, the absence of civil society and the rule of law, Ukraine's almost chronic failure and its secondary role in the international arena. In addition, the state is not yet very responsive to the challenges. Instead of reducing and eliminating the determinants that lead to the spread of illegal dual citizenship, some albeit unsuccessful steps are being taken to ensure its effective legal consolidation, which in

the conditions of actual Russian aggression is an almost suicidal measure that will only increase relevant threats to Ukraine's national security.

Threats to national security that arise with the acquisition of citizenship of another state by citizens of Ukraine, according to their belonging to the social area, can be divided into the following three blocks:

1. Administrative (power-administrative) nature, these are the counter-administrative threats related to the functioning of the components of the state-government apparatus – representatives of various branches of government, implementing their own, defined by law public (state) – official powers.

2. Defense character – a kind of threats associated with the service in the Armed Forces of Ukraine and the direct provision of defense capabilities, state security and inviolability of state borders of Ukraine.

3. Demographic nature (concerning the threats of irreversible changes in the age structure of the population and its qualitative characteristics associated with the trends of brain drain abroad and the emigration of able-bodied, mostly young Ukrainian citizens).

The proposed threat groups are closely related to each other and have corresponding hierarchical links (for example, lowering their level in the first block should facilitate similar processes in the second and third). That is counter-administrative threats in comparison with other varieties can be considered as fundamental and it is to neutralize them in the first place should be directed by the authorities. This is explained both by the significant volumes of this group and the importance of the content of social relations that make it up.

Counter-administrative threats of dual citizenship can be defined as a type of anti-social and anti-state threats that significantly complicate, and in some cases prevent the proper functioning of the institution of citizenship in Ukraine, thus preventing the full and timely implementation of certain groups of objectively existing social needs must have appropriate legal regulations.

The existing practice of poly-citizenship among Ukrainians, in accordance with the subjects of their carriers, allows to classify them according to the following types: a) establishment group (domestic high-ranking officials, people's deputies, representatives of business elites, etc.); b) local-ethnic category (residents of the respective national minorities who live compactly within certain administrative-territorial entities, primarily in western Ukraine); c) the category of individuals (ordinary, ordinary citizens who have acquired the citizenship of another state using a variety of motivational grounds); and d) a group of residents of the occupied territories (collaborators and persons who were actually imposed Russian citizenship without disclaiming the Ukrainian one).

The modern Ukrainian state by the characteristics and results of its activities has the characteristics of an atypical state formation (the main feature of which is incomplete, improper performance of its functions in comparison with the developed and successful countries of the world). This fact makes Ukraine uncompetitive both among the vast majority of other European states and neighboring countries, regardless of their location.

These factors make conditions that undoubtedly complicate the solution of the important issue of dual citizenship in Ukraine. Therefore, in order to get the desired result, it is necessary to take into account the above and not try to solve this political and legal problem in one or two organizational and legal steps.

The main feature of the legal support of counter-administrative threats to the institution of citizenship in Ukraine is that the decisive role in them is given to administrative and legal tools, characterized by both a significant amount of its arsenal and functional universality. In particular, it consists of all kinds of legal norms – substantive and procedural, regulatory and protective. Under favorable circumstances, able to timely and fully ensure the implementation of various measures aimed at neutralizing the above threats.

In our opinion, there are two main approaches to counteracting the counter-administrative threats of dual citizenship: repressive-coercive and organizational-stimulating.

The first, for the most part, can be used in the implementation of tactical (current) measures given its ancillary nature (primarily in relation to high-ranking officials and other representatives of the domestic establishment who have the citizenship of other countries). The second is used mainly to address long-term, strategic goals and objectives in this area of public relations. The optimal and effective option is the integrated use of these approaches, because it is this mixed format that will be able to ensure the onset of the expected positive solution to the problem of dual citizenship in Ukraine.

Conclusion. Based on the above, it can be stated that among the features that must be taken into account when solving this important and difficult issue, we should take into account the atypical of the current Ukrainian state, the permanence of systemic crises that characterize our present, the presence of a dangerous hostile northeastern neighbor. In the continuation and intensification of political, socio-economic destabilization in our country, as well as potential resistance from a large part of the domestic establishment which is primarily concerned with the realization of their own private or corporate interests rather than objectively existing social needs.

Therefore, the problem of dual citizenship in Ukraine may not lose its relevance for a long time and pose a real counter-administrative threat to our society and state. To eliminate the grounds for this statement, it is necessary to choose the most effective and efficient among the possible options for appropriate action. In our opinion, such an optimal approach is the implementation of a long-demanded system of systemic reforms, which will not be limited to local and, for the most part, decorative changes in the Ukrainian socio-political landscape. First of all, the majority of Ukrainians must undergo civilizational and ideological transformations, but no longer within the framework of the current and in fact bankrupt fourth post-Soviet Ukrainian republic. Such a radical measure will not only help address the relevant threats of dual citizenship in Ukraine, but also help to finally get rid of our fluctuations and uncertainties in the time and space of existence in which we will finally live and not exist as now.

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Abstract

The article deals with a topical issue – the peculiarities of counter-administrative threats of dual citizenship in our country. The essence of the principle of single citizenship in Ukraine and the content of the main groups of threats to national security from multiple citizenship, as well as the circumstances that contribute to its spread have been revealed. The original definition of the relevant counter-administrative threats and the best option for counteracting them in the conditions of modern Ukraine have been offered.

Keywords: *institution of citizenship, dual citizenship, counter-administrative threats, atypical state, national security, administrative and legal tools.*