UDC 341.01

PROBLEMS OF DEVELOPMENT OF THE INSTITUTION OF CITIZENSHIP IN INTERNATIONAL LAW

Kashuba Oleksandra Andriyivna
1st year student of the Faculty of Consulting and International Business
Simon Kuznets
Kharkiv National University of Economics
Kharkiv, Ukraine
Науковий керівник
Matvieieva Anastasiia Volodymyrivna
Ph.D., senior researcher
Associate Professor of Law
National Aerospace University
«Kharkiv Aviation Institute»
Kharkiv, Ukraine
Associate Professor of Legal Regulation of Economics
Simon Kuznets Kharkiv
National University of Economics
Kharkiv, Ukraine

Abstract: The article is devoted to the problem of formation of the institution of citizenship, identification of its main sources and the relationship between international and national law.

Keywords: citizenship, institute of international law, sources of international law, national legislation.

In recent decades, in some major blocs of public relations, regulated by both national and international law, the influence of the latter began sharply grow. This manifested itself in the development of new legal principles in these areas and in the development of better mechanisms for implementing such norms and principles.

This can be attributed primarily to the international legal regulation of human rights and freedoms, one of which, as it is known that there is a right to citizenship enshrined in Universal Declaration of Human Rights, International Covenant on civil and political rights, the Convention on the Rights of the Child, etc.

The institution of citizenship replaced the institution of citizenship, which under feudal absolutism symbolized the complete dependence of man on the monarch and his duty to be «under the control» of his master and obediently carry out his will.

In modern conditions, the term «citizenship» is used only in monarchical countries as a synonym for citizenship. Since the XVIII century, when the state recognized man as a free and equal participant in social relations, an active participant in the exercise of sovereign power of the state, the term «citizenship» has been finally enshrined in law [1].

From a legal point of view, citizenship acts, on the one hand, as a phenomenon of objective law and, on the other, as a phenomenon of subjective law. In the first case, citizenship is an institution of law. In the second case, we are talking about citizenship as a recognized (fixed) law of a person is belonging to a particular state. In this capacity, individual rights regarding citizenship (its acquisition, termination, etc) mediate citizenship.

In the most general form, citizenship is a legal status of a person due to his belonging to a certain state. Many scholars who study the concept of citizenship define it as one of the fundamental human rights, thanks to which a citizen becomes a full member of society, thus bringing a relevant and well-founded desire, common to all world political practice, to reduce statelessness, streamline and universalize the institution of citizenship at the level of generally accepted principles and norms of international law [2].

A person, depending on his political and legal relationship with the state, may be: stateless person (stateless person); bipatrid (two or more citizenships); citizen (one citizenship).

Citizenship issues relate primarily to the field of domestic law. Therefore, citizenship is primarily an institution of the internal law of each state. At the same time, it is also an institution of international law, since issues of citizenship are regulated by states based on not only domestic, but also international law.

However, citizenship as a legal phenomenon is the same: there is no domestic concept of citizenship, unlike international law.

Since questions of citizenship belong both to the institution of constitutional law of individual states and to the institution of international law, the laws of each country, as well as international treaties, which are concluded by each country, international acts, declarations, etc., deal with these issues.

The provision of civil rights in full is associated with the category of citizenship. In international law, norms are enshrined in which everyone has the right to citizenship (Article 15 of the 1948 Universal Declaration of Human Rights, Article 24 of the International Covenant on Civil and Political Morals of 1966, Article 7 of the 1989 Convention on the Rights of the Child g.).

Although the national law of individual states it cannot be a direct source of international law, yet it is precisely this law the basis of international legal protection of rights human – almost all international norms human rights, enshrining a list of fundamental rights and freedoms, were borrowed from law states [3, p. 21-31].

However, later international law began seriously influence national legal systems in order to modify them in order to improve the mechanisms protection and defense of human and civil rights.

Acquisition of citizenship can take place in a general and exceptional manner. The main and most common way to acquire citizenship in a general manner is to

acquire citizenship by birth, i.e. birth in a certain territory from parents who are citizens of a certain state, independent of the will of the individual.

Principles for determining citizenship by birth:

– blood principle (jus sanguinis) – the citizenship of a newborn is determined by the citizenship of his parents, regardless of the place of birth of the child (Arab states, Afghanistan);

– the principle of soil (ius soli) – the place of birth of the child is determining, and the citizenship of his parents does not matter (USA, Latin American states). This principle is enshrined in Art. 20 of the American Convention for the Protection of Human Rights, in Art. 1 Argentina Citizenship Act. To a certain extent, the principle of soil is always supplemented by the principle of blood - as a rule, in relation to the children of citizens of these states born abroad;

– synthesis of both principles (most countries of the world) – the blood principle prevails, but if the parents are unknown or stateless, then the soil principle applies (India, France, Great Britain, Russia, China).

Another way to acquire citizenship in a general manner is naturalization (admission to citizenship). Naturalization (rooting) is an individual citizenship at the request of the person concerned. The naturalization procedure is regulated by national legislation, which should not contradict the generally recognized principles of international law. Through naturalization, citizenship can be obtained for both stateless persons and citizens of foreign countries. The Universal Declaration of Human Rights enshrines the principle of freedom of choice of citizenship (Article 15).

Earlier, when a woman married a foreigner, she automatically lost her citizenship and acquired her husband's citizenship. It is now generally accepted that a woman's citizenship does not change due to marriage (1957 Convention on the Citizenship of a Married Woman). The Convention provides that a woman's citizenship cannot be automatically changed if she marries a foreigner, divorces such a woman, changes in her husband's citizenship during marriage. If desired, a woman can acquire the citizenship

of her husband "in a special simplified naturalization procedure." Similar rules are contained in the 1997 European Convention on Citizenship.

Reintegration is the restoration of citizenship of a person who has lost such citizenship for any reason. Reintegration is of particular importance for those states whose legislation provides for a complicated procedure for granting citizenship.

National law mainly regulates loss of citizenship. Separate provisions on this are also present in international treaties.

Withdrawal from citizenship is the loss of citizenship by decision of the competent authority of the state, issued at the request of the person concerned. The individual, on his own initiative, raises the question of his withdrawal from citizenship before the competent authorities of his state. National law governs the exit procedure.

Deprivation of citizenship is carried out at the initiative of the state if an individual commits actions detrimental to the state as a whole, its sovereignty and security. Deprivation of citizenship is a sanction containing an element of punishment. The 1948 Universal Declaration of Human Rights and Freedoms (Art. 15) prohibits "arbitrary" deprivation of citizenship. The term “arbitrary” means that deprivation is in principle permissible, but can only take place legally.

Many states have adopted constitutional and special rules regarding the obligation of the state to ensure the protection of the legitimate rights and interests of its citizens abroad. The basis of this approach is Art. 16 of the International Covenant on Civil and Political Rights of 1966: "Every person, wherever he is, has the right to recognition of his legal personality."

Dual citizenship (bipatrism) or multiple citizenship is the legal status of a person holding the citizenship of two or more states. A person may obtain a second citizenship both with the knowledge of the state in which he received the first citizenship, and without his knowledge. The main reason for dual citizenship is the discrepancy between state laws on the grounds for acquiring and losing citizenship. One of such cases is connected with the conflict of the principles of "blood right" and "soil right" laid down in the laws

of various states when acquiring citizenship by birth. In addition, a woman may have dual citizenship when she marries a foreigner, if the national legislation does not deprive her of her citizenship after marriage, and the laws of the country of the spouse automatically grant her the citizenship of her husband.

In this case, there is a clash of various principles enshrined in the laws of the state: the principle of family unity (the wife follows the citizenship of the husband) and the principle of equality of parties to the marriage (marriage does not entail a change in the citizenship of the spouses). The principle of family unity is enshrined in Spanish law. The principle of equal rights of the parties to the marriage is in the legislation of most states, including the Russian Federation. Dual citizenship may arise because of adoption, as well as in cases of naturalization due to a mismatch between the grounds of naturalization and the grounds for loss of citizenship.

In the case when dual citizenship comes automatically, it presents certain inconveniences for those who possess it - each state has the right to consider the bipatrid exclusively as its citizen, which follows from the sovereignty of the state. Bipatrid, exercising the rights and obligations in relation to the state of which he is a citizen and in whose territory he is located (taxation, civil duties, military service, etc.), will be forced to exercise the rights and obligations in relation to another state, of which he is also a citizen if will be on its territory. Both states whose citizenship the person has the right to protect him against each other. However, at the same time, each of these states has the right to reject any attempt by the other to protect their citizen under the pretext that he also has his citizenship. Especially often, the subject of interstate disputes regarding persons with dual citizenship is the question of their military service. In this case, both states claim to fulfill a military duty by a person. The issue can be resolved either through direct diplomatic negotiations, or by concluding an international treaty on the military service of persons with dual citizenship.

It is impossible to completely exclude cases of dual citizenship. However, they can be reduced. This can be achieved both by domestic means and by international

legal. Among the domestic methods of reducing dual citizenship are, in particular, the following methods. Legislation of a number of states gives individuals the right to choose citizenship and, therefore, renounce one of their citizenships.

With regard to the prevention of dual citizenship when a woman marries, in the vast majority of national systems, a principle has now been introduced according to which a woman marrying a foreigner does not affect her citizenship.

Children, both of whose parents were citizenship of both parties at the time of the birth of the child, acquire the citizenship of these parties from the moment they are born, however, before these children reach the age of 18, their parents can choose one of the parties to them by renouncing the citizenship of the other in the form a joint written application A person who has reached the age of 18 and who was a citizen of both parties may retain both citizenships or choose citizenship of one of the parties by renouncing the citizenship of the other giving a written application for renunciation of citizenship within one year after reaching 18 years.

The norm is also not uninteresting, according to which a person possessing the citizenship of two states acquired without any voluntary action on his part can refuse one of them if there is a permission of the state whose person he wants to renounce his citizenship.

Finally, it should be borne in mind that international treaties regulate the right to options, that is, a person’s free choice of his own citizenship, as already mentioned.

Stateless persons (stateless persons) are persons residing in the territory of a certain state, but not being its citizens and not having evidence of their belonging to the citizenship of a foreign state.

The main reason for statelessness is the "negative" conflicts of national citizenship laws. There may be a wide variety of options for such a collision. A person loses citizenship in one state due to the cancellation of the decision on admission to citizenship, but is not able to acquire citizenship in another state. The same thing can happen when a person leaves citizenship on his own initiative, as this does not guarantee

the automatic acquisition of citizenship of another state. Statelessness can occur in a woman when she marries a foreigner, if the law provides for the loss of previous citizenship.

For example, when a woman with Liberian citizenship marries a Swedish citizen, she becomes stateless, as she automatically loses her previous citizenship, but does not automatically receive a new one. Due to the fact that in Art. Section 20 of the Liechtenstein Citizenship Act of November 14, 1933 established that a woman ceases to be a Liechtenstein citizen if she marries a foreigner, her marriage to a U.S. citizen will automatically result in her losing her original citizenship without automatically obtaining a new one. Statelessness can occur from the moment a person is born. For example, if a citizen of a state where the principle of "soil law" (Argentina) is in effect has a baby in another country where the principle of "blood law" (Sweden) is in effect, then he becomes a stateless person.

Since stateless people do not have a stable legal relationship with a particular state, this puts them in a less favorable position compared to citizens of the state in whose territory they live. They, as a rule, are limited in political rights and cannot claim protection by any state. In a number of countries, stateless labor and social security laws do not apply to stateless persons. States regulate the legal status of stateless persons both through national legislation and through international treaties.

In the international legal sphere, issues of statelessness are addressed in two main directions: regulation of the legal status of stateless persons and regulation of the reduction of cases of statelessness.

The legal status of stateless persons is reflected in the Convention on the Status of Stateless Persons of September 28, 1954 (entered into force June 6, 1960), referring to stateless persons as a person who is not considered by any state as a citizen by virtue of the law of that state. Parties to the Convention have undertaken to apply its provisions to stateless persons without discrimination of any kind on the basis of their race, religion or country of origin. On the other hand, each stateless person has obligations in relation to

the country where he is located, which implies submission to its laws, as well as measures taken to maintain public order. With regard to such rights as the right to movable and immovable property, copyright and industrial rights, the right of associations, employment, housing issues and a number of others, stateless persons legally residing in the territory of a contracting state are given the most favorable position, in any case no less than that which is usually granted to foreigners under the same circumstances.

Stateless persons have the right to choose a place of residence and free movement within the territory of the state, subject to all the rules usually applicable to foreigners. At the same time, stateless persons are equated with citizens of their country of usual residence with regard to the right of free appeal to courts, primary education, government assistance, remuneration for work, social security. Thus, the Convention enshrines the principle according to which stateless persons enjoy a certain set of rights in the territory of that state where they have permanent residence. Parties to the Convention have committed themselves not to expel stateless persons lawfully residing on their territory for reasons of national security or public order. The expulsion of such stateless persons is possible only pursuant to decisions made by the court. Finally, the Convention obliges states to facilitate, to the extent possible, the assimilation and naturalization of stateless persons, which aims to reduce the number of stateless persons.

Despite recognition of the right to a nationality, there are currently at least 10 million people who do not have a nationality and are therefore stateless. While statelessness is a global problem, it is particularly prevalent in South East Asia, Central Asia, Eastern Europe, the Middle East, and several countries in Africa. Estimates show that the countries with the greatest number of stateless persons residing within their borders are Cote d'Ivoire, Estonia, Kuwait, Latvia, Myanmar, Russia, Syria, Thailand, and Uzbekistan [4].

Regulation of the reduction and prevention of statelessness is the goal of a number of international agreements. This primarily refers to the Convention on the Reduction of

Statelessness of August 30, 1961 (entered into force on December 13, 1975, the former USSR was not involved). The Convention establishes a provision that a contracting state shall not deprive a person of his citizenship if such deprivation of citizenship makes him stateless. It grants its citizenship to a person born on its territory who otherwise would not have citizenship. Consequently, the Convention establishes the acquisition of citizenship by stateless children on the principle of "soil law" - they receive citizenship at the place of birth. The loss of citizenship by a woman who married a foreigner is determined by the acquisition of a new citizenship. No one should become stateless as a result of the transfer of territory by one state to another. The contract completing such a transfer must contain guarantees of statelessness for persons residing in the transferred territory. As for birth on a ship or on an aircraft, it is considered to have taken place on the territory of the state whose flag the vessel is flying, or on the territory of the state where the aircraft is registered. A number of provisions of the Convention on the Citizenship of a Married Woman dated February 20, 1957 are devoted to the prevention of statelessness. The Convention provides for the exclusion of the automatic influence of marriage and divorce by a woman on her citizenship. Acquisition of citizenship by a husband or his renunciation of citizenship does not prevent the retention of a woman's citizenship. A number of provisions regarding the prevention of statelessness are also contained in the Convention, which regulates some issues related to the conflict of laws on citizenship of April 12, 1930. So, Art. 13 of the Convention established that in cases where minor children do not acquire the citizenship of their parents as a result of naturalization of the latter, they retain their citizenship.

LIST OF USED LITERATURE:

1. Інститут громадянства: поняття та характеристика: Електронний ресурс. URL: https://osvita.ua/vnz/reports/law/9731/
2. Журавка О.В. Міжнародно-правова характеристика інституту громадянства : автореф. дис... канд. юрид. наук. Х., 1999. Електронний ресурс. Режим доступу: URL: http://www.libs.com.ua/
3. Карташкин В. А. Права человека в международном и внутригосударственном праве. М., Ин-т государства и права РАН. 1995. 135 с.
4. Citizenship & nationality. URL: https://ijrcenter.org/thematic-research-guides/nationality-citizenship/