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DUAL CITIZENSHIP: UKRAINIAN APPROACH

The article explores the phenomena of dual and multiple citizenship and nationality both in international law and in national legislations. Focusing on Ukrainian approach to this issue, the author analyses the meaning of the principle of single citizenship in Ukraine as well as problems related to its interpretation and application. The article covers the respective provisions of Ukrainian Constitution and legislation. The author concentrates her attention on a number of intrinsic drawbacks of the existing regulation and its practical advantages and disadvantages for Ukrainian State and for persons with dual citizenship. The author comes to the conclusion that Ukrainian legislation needs a more detailed wording of the principle of single citizenship which would articulate its exact meaning in order to avoid conflicting interpretations of this principle and to ensure its correct and uniform application.

Key words: dual citizenship, multiple citizenship, dual nationality, multiple nationality, single citizenship principle

Situations where a person holds passports of two or more States are widespread and become even more frequent today due to active migration processes and overall trend to globalization. Every such case is interesting both in the context of domestic and international law. In the field of national law the predominant issue would be the person's legal status within the territory of a particular State, the most important aspect of which are rights and opportunities to participate in government (e.g. to take part in conduction of public affairs, to vote and to be elected, to have access to the public service). Within the context of domestic law in most cases the applicable terms would be *"dual citizenship"* and *"multiple citizenship",* depending on the number of States recognizing the individual as their citizen. From the perspective of public international law, the most important aspect of the problem would be legal bonds between States and individuals on whom the respective States extend their sovereignty in situations where such bonds connect one person to more than one State. When it comes to international law, the most frequently used terms would be *"dual nationality"* and *"multiple nationality"*.

It should also be noted that the problem is a multifaceted one, with public and private law issues at stake, as well as State-level and individual dimensions. Speaking about public law dimension, first of all we mean issues of State's sovereignty and protection of its nationals abroad (international aspect) as well as mutual political rights and duties of citizens and respective States within the State borders (domestic aspect). The private law dimension is likewise important because citizen/national status also involves implications in the field of private (e.g. civil and family) law. When it comes to the State-level dimension, the most noticeable issues for consideration would be the legal bond between a State and individuals on whom it extends its sovereignty, giving birth to their mutual rights and duties in various spheres both inside and outside the country, as well as interaction between States in situations where they seek to exercise their sovereign rights with regard to the same person – their national. The individual dimension of the problem involves all advantages and disadvantages experienced by a person in connection with his/her dual or multiple citizenship/nationality.

Legal status of a person whereby he/she is a citizen of two (dual citizenship) or more States (multiple citizenship) can be caused by numerous subjective and objective reasons: birth in the territory of a foreign State and/or by parents having nationality of different States, intercountry adoption, international marriage, acquiring a second citizenship voluntarily without relinquishing the first one, "positive conflicts" of national citizenship laws, territorial changes and so forth.

Cases of dual and multiple citizenship become more and more widespread, they exist objectively, regardless of the attitude of a particular State. When a State has a negative approach to dual citizenship, it usually refuses to recognize its legal consequences and envisages in its domestic law a procedure of deprivation of the initial citizenship after a second one is acquired. As regards international law, it only has very limited impact on the above phenomena, since citizenship issues belong above all to the internal

competence of every State[1]. Under the circumstances where it is impossible to reconcile the provisions of all national legislations of the world, prohibiting dual citizenship completely is an unrealistic task.

A person having dual citizenship enjoys some advantages arising from the possibility to use rights and benefits granted to the citizens of either State, including that of having diplomatic protection from "stronger" of the two States. One of currently predominant motives lies in additional advantages when crossing the State borders. At the same time, such status has a significant potential as a source of conflicts over citizens' obligations (notably military service and taxation)[2], which constitute disadvantages for individuals and the States.

Each State strikes its own balance between advantages and disadvantages of dual citizenship and develops its domestic legislation accordingly. In the past, the States' position with regard to this phenomenon was far from being favourable[3]. However, as time passes by such negative attitude has attenuated, and the number of States prohibiting multiple nationality has decreased[4].

We shall now focus on Ukraine's approach to dual citizenship and analyse the respective provisions of the Ukrainian legislation, as well as the practice of its application.

Our point of departure is Article 4 of the Constitution of Ukraine reading as follows: "There shall be a single citizenship in Ukraine. Grounds for obtaining and termination of Ukraine's citizenship shall be determined by law"[5]. Article 2(1) of the Law of Ukraine "On Citizenship of Ukraine" (hereinafter – "Law on Citizenship" interprets the principle of single citizenship contained in the Constitution as follows:

- Individual administrative-territorial units (i.e. the Autonomous Republic of the Crimea and regions ("oblasts") cannot have their own citizenship;

- If an Ukrainian citizen has obtained citizenship of another state, he/she shall be regarded only as a Ukrainian citizen in her/his relations with Ukraine;

- If a foreigner has obtained Ukraine's citizenship, he/she shall be regarded only as a Ukrainian citizen in her/his relations with Ukraine[6].

In this connection a leading Ukrainian researcher of citizenship issues Valentyna Subotenko noticed that Article 2(1) of the Law on Citizenship elaborates on the principle whereby Ukraine recognizes only its own citizenship[7].

As far as we can see from the above-mentioned, Ukraine does not recognize legal consequences of dual citizenship, but does not forbid it as such. In particular, Ukraine's legislation does not set forth a duty of Ukraine's citizens to relinquish any other citizenship. In this connection, one cannot but mention Article 19, paragraph 1, of the Constitution of Ukraine proclaiming: «The legal order in Ukraine shall be based on the principles according to which no one shall be obliged to do what is not stipulated by law».

Certainly, the most problematic situation is that of voluntary acquisition of a foreign citizenship by an adult citizen of Ukraine, since in accordance with Article 19 of the Law on Citizenship such acquisition constitutes a ground for the loss of the Ukrainian citizenship. If this question indeed arises, one should bear in mind the following provisions of the Law on Citizenship:

- President of Ukraine is empowered to decide on the termination of Ukraine's citizenship on the basis of a voluntary acquisition of a foreign citizenship (Article 19);

- Until the respective Presidential Decree is issued, the Ukraine's citizen who acquired a foreign citizenship, enjoys all the rights and bears all the responsibilities of Ukraine's citizenship (Article 20).

Another important thing worth mentioning in this connection is that legal procedure for obligatory

[1] Tubircio, C. (2001). *The Human Rights of Aliens under International and Comparative Law.* The Hague: Martinus Nijhoff Publishers, 18–19.

[2] Shearer, I., Opeskin, B. (2014). Nationalité et apatridie. In Brian Opeskin, Richard Perruchoud, Jillyanne Redpath-Cross (Eds.), *Le droit international de la migration*. Cowansville, 133.

[3] Kraler, A. (2006). The legal status of immigrants and their access to nationality. In Rainer Bauböck (Ed.) *Migration and Citizenship. Legal Status, Rights and Political Participation*. Amsterdam, 59.

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[5] *Конституція України 1996* (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/conv/print1405422113938639> (2015, July, 31).

[6] *Закон про громадянство України 2001* (Верховна Рада України). *Офіційний сайт Верховної Ради України*. <http://zakon4.rada.gov.ua/laws/show/2235-14/conv/print1434030883067690> (2015, July, 31).

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deprivation of Ukraine's citizenship for the voluntary acquisition of a foreign citizenship is practically non-existent. First of all, the Law on Citizenship does not provide for such a procedure. The relevant by-law ("Order of Processing Applications and Petitions on Ukraine's Citizenship and Enforcement of Adopted Decisions"[1]) approved by Presidential Decree No. 215 dated 27 March 2001 does contain some provisions regulating the procedure for obligatory deprivation of Ukraine's citizenship for the voluntary acquisition of a foreign citizenship (Chapter III).

However, the suggested procedure is vague and therefore hardly useful. In particular, the by-law does not indicate the sources from which the competent authorities can receive comprehensive information about all facts of voluntary acquisition of foreign citizenships by the Ukrainian citizens. Evidently, the absence of such an information system opens the door for discrimination and corruption in the course of application of the respective provisions. Gathering such information during the border control could be a sound solution, but current Ukraine's legislation allows the Border Service neither to refuse entrance to Ukraine to any person holding its passport nor to deny a foreigner (or a person holding a foreign passport) exit from its territory.

Another factor making the procedure for obligatory deprivation of Ukraine's citizenship due to the voluntary acquisition of a foreign citizenship practically unenforceable is the list of documents necessary for the deprivation of Ukraine's citizenship. In most cases getting such documents would be a very time- and effort-consuming task. For example, sometimes it is impossible to receive the needed papers due to the lack of mutual legal assistance treaties between Ukraine and other States. In any case, the Order does not provide for the standard patterns of obtaining the required documents by the competent Ukrainian authorities.

One should also bear in mind that Article 19 of the Law on Citizenship contains a series of cases where the acquisition of a foreign citizenship is not considered as voluntary and therefore cannot constitute a ground for the loss of Ukrainian citizenship. The examples include simultaneous acquisition of Ukrainian and foreign citizenship(s) at birth, marrying a foreigner which involves automatic acquisition of foreign citizenship, intercountry adoption, and so forth.

Considering the aforementioned, we can conclude that in Ukraine's law the principle of single citizenship cannot be equalled to the prohibition of dual/multiple citizenship as such. It rather means non-recognition of legal consequences of foreign citizenship(s) in case of individuals having Ukrainian citizenship.

Nevertheless, the author's personal attorney experience shows that there is no uniform approach to interpretation and application of single citizenship principle in Ukraine, which creates disadvantages (from petty annoyances to serious problems) for Ukrainian citizens holding foreign passports. Very often, such persons face negative attitude of State officials wishing to "punish" Ukrainians having dual citizenship – without any legal grounds for such actions. As a result, people find themselves in a "vicious circle" where Ukrainian public servants groundlessly demand that dual citizens relinquish the second citizenship whenever they need to complete usual lawful acts (pasting in a new picture for the respective age to their Ukrainian passport, registering at the place of residence in Ukraine etc.). In the majority of cases such "wish to punish" can be explained by sense of impunity creating fruitful soil for corruption.

On the other hand, it is not always the matter of corruption and/or wishing to "punish" Ukrainians having dual citizenship. Sometimes the reason is complete lack of understanding dual citizenship as a phenomenon, as well as the (misunderstood) principle of single citizenship entrenched in the Ukrainian legislation. One could put up with such ignorance in cases of journalists and lay audience whom the Ukrainian State sometimes intimidates with responsibility for acquisition of foreign citizenship without relinquishing the Ukrainian one in order to prevent dual/multiple citizenship. This can be explained by the fact that legal culture of Ukrainian society is not very high. However, the situation where a judge shows such ignorance is unacceptable. Nevertheless, Ukrainian judges (even of the higher courts) often perceive single citizenship principle as one prohibiting dual citizenship, which results in serious mistakes while considering different categories of cases (above all administrative ones and those dealing with private international law issues).

Similar information showing the trend towards misinterpretation of the principle of single citizenship comes from abroad and also raises concerns. For example, at a conference dedicated to the problems of

[1] *Порядок провадження за заявами і поданнями з питань громадянства України та виконання прийнятих рішень 2001* (Президент України). *Офіційний сайт Верховної Ради України*. <http://zakon4.rada.gov.ua/laws/show/588/2006/conv/print1434030883067690> (2015, July, 31).

Ukrainian labour migrants, Ukrainians residing and working abroad informed the author about the case where an employee of a Ukrainian diplomatic mission was intimidating his compatriots by saying that if they acquire foreign citizenship they would be deprived of any assistance from Ukraine. It is obvious that such an approach contradicts Article 25, paragraph 3, of the Ukrainian Constitution guaranteeing Ukraine's care and protection to its citizens staying abroad.

Unfortunately, Ukrainian public servants both inside and outside Ukraine often forget that Article 4 of the Ukrainian Fundamental Law dealing with single citizenship is preceded by Article 3 reading as follows: "An individual, his life and health, honour and dignity, inviolability and security shall be recognized in Ukraine as the highest social value. Human rights and freedoms, and guarantees thereof shall determine the essence and course of activities of the State. The State shall be responsible to the individual for its activities. Affirming and ensuring human rights and freedoms shall be the main duty of the State".

The analysis of practical aspects of applying Ukraine's legislation on citizenship with regard to individuals having two or more citizenships allows drawing conclusion about the absence of a uniform approach to the principle of single citizenship in Ukraine. This can be explained by a number of reasons. In the first place, the lack of a single approach (even if the alternative one is obviously erroneous) to the interpretation of norms on single/dual/multiple citizenship generates inconsistent practice of applying the same legislative provisions and, as a result, opens a wide window of opportunity for abuse and corruption. Secondly, (and such cases are also extremely widespread) some State officials simply lack sufficient knowledge about the contents of constitutional and international law provisions dealing with citizenship and nationality.

Besides the studied problems of varying interpretations and incorrect application of single citizenship principle as it is enshrined in Ukrainian Constitution and legislation in force, another urgent issue is often raised. Should there be a radical rethinking of dual citizenship issues followed by a profound revision of respective legislative provisions, starting with those contained in the Fundamental Law. Today, after the Revolution of Dignity, annexation of the Crimea by the Russian Federation and in view of current developments in Donetsk and Luhansk regions as well as appointment of persons having dual citizenships to high public offices (ministers and deputy ministers), the respective appeals become more and more loud. However, Ukrainian politicians, decision-makers and civil society have never had a single approach to the issue of dual citizenship.

If we analyse numerous draft laws aimed at "the improvement of regulation of dual citizenship problem in Ukraine", we can clearly see two opposite positions on this issue. The first one is State-oriented and intended to prevent and curtail cases of dual citizenship. The respective draft laws tend to have the following common features:

- Preventing dual citizenship is proclaimed as a goal of Ukraine's legislation on citizenship;
- The notion of "voluntary acquisition of a foreign citizenship" is enlarged;
- The duty to report voluntary acquisition of a foreign citizenship and a punishment (from administrative to criminal) if not reported are introduced;
- Ban to employ persons who acquired foreign citizenship as public servants or servicemen; ban on holding certain posts or to become elected as members of parliament or local councils;
- The Border Service is authorized to communicate information on foreign citizenship of Ukraine's citizens to "a specially empowered body";
- No clear procedure of the termination of Ukraine's citizenship due to voluntary acquisition of a foreign citizenship.

The opposite approach can be characterized as individual-oriented. It usually comes down to the acceptance of dual citizenship as part of objective reality. Generally speaking, the respective draft laws provide for allowing Ukraine's citizens having foreign citizenship(s) not to choose between the existing citizenships.

As already mentioned, when it comes to the issue of dual citizenship, there is no uniform vision of future in Ukraine. However, there is a common denominator, which is understanding of the need for change which can give impetus to a legislative reform. Whichever approach is chosen by Ukraine, the revised legislative provisions should be unequivocal, clear, detailed and practicable, since if a State sets forth prohibitions that are ignored and rules that are impossible to follow, it is a weak State.

In any case, the reform of legislation ideally should start with changing the provisions of Ukrainian Fundamental Law. In particular, if the principle of single citizenship is retained in the restated Constitution, the amended text will need a more detailed wording of the principle which would articulate its exact

meaning in order to avoid varying interpretations of this principle and to ensure its correct and uniform application. That being said, it should also be kept in mind that Article 4 of the Constitution belongs to its Chapter I, which could only be changed at a national referendum following a complicated procedure at the Verkhovna Rada and the Constitutional Court of Ukraine.

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