THE PROBLEM OF DUAL (OR MULTIPLE) CITIZENSHIP IN INTERNATIONAL LAW AND WAYS TO SOLUTION

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Abstract

Differences between the legislation of the states on the rules of acquisition and loss of citizenship play an important role in the emergence of problems of citizenship (bipatrism, apartheid, etc.). For example, the existence of conflicts between "blood law" and "land law", as well as differences of opinion on naturalization, etc. can be noted. In addition, the reasons for the emergence of dual citizenship and statelessness are insufficiently regulated territorial changes that lead to a change in the jurisdiction of states, population migration, the influx of refugees, and so on. need to be attributed. Although dual citizenship can have some negative consequences, there is a growing trend in most European countries to encourage the institution of dual citizenship due to the intensification of integration processes around the world. At the same time, the problems in this area are being successfully resolved..

Keywords: *dual citizenship, blood law, land law, place of birth, state sovereignty, population migration, naturalization, 1997 European Convention, effective citizenship, legal status*.

Introduction.

Citizenship law has a complex internal structure. The norms of civil law are united in different groups, creating a sub-institution related to the institution of citizenship as a whole. Such sub-institutions include, for example, the acquisition and termination of citizenship, the citizenship of children and parents, the citizenship of the subjects of the federation, dual citizenship, and so on. can be attributed.

By its nature, citizenship is directly related to state sovereignty, territorial structure, and the legal status of the individual, as it is a prerequisite for citizens to have rights and responsibilities.

The problem of citizenship is considered one of the most difficult issues in the institution of citizenship. The approach of states to the problem of citizenship is mainly based on the population of the state, ethnographic situation, geographical position, political and cultural characteristics, etc. is determined depending on a number of factors such as.

The main causes of the problem.

The main reasons for the emergence of dual citizenship are changes in the territory and population migration [5, p.15-20]. Under the conditions of feudal formation, especially during the period of dictatorship, population migration was minimal due to the settlement of peasants, and in some countries even the death penalty was imposed for leaving the land. For this reason, the emergence of dual citizenship was a rare occurrence, and in most cases, the impossibility of such a situation manifested itself in the treatment of the lower classes. Among those belonging to the upper class, dual citizenship was common. This is because such individuals often entered into mixed marriages and owned land in various countries to which they were bound by the oath of allegiance.

Active economic and political migration of the population had already begun during the development of capitalism. Today, due to the rapid development of international relations, the migration process has an objectively strengthened trend and is considered the main source of bipatrism (dual citizenship). In modern society, the rapid development of international relations expands the migration process, and therefore states face new challenges, such as the settlement of issues related to dual citizenship.

Another major reason for the emergence of dual citizenship in the modern world is the existence of differences in the legislation of different countries regarding the acquisition and loss of citizenship. Legislation in different countries applies two principles in this regard: "right to blood" (ius sanquini) and "right to land" (ius soli) [3, p.197]. In other words, in the first case, the acquisition of citizenship is determined on the basis of the citizenship of the parents (or one of them). That is, in this case, citizenship is associated with the origin of the person. In the second case, the acquisition of citizenship is related to the fact of birth in the territory of the state concerned. For example, in Latin America, the United Kingdom, and the United States, the principle of "land law" is used to obtain citizenship, and in Germany, Switzerland, Japan, and most other European countries, the principle of "right to blood" is used in matters of citizenship [8, p.21].

Peter J.Spiro, a well-known scholar on citizenship, notes that dual citizenship has gained an unspoken status after globalization, but is no longer supported by states. In any case, dual citizenship must be protected as a human right. In practice, there are cases when dual citizenship hinders stability between states and does not have a positive effect on the solidarity of states. However, for the sake of the rights and interests of the people, legal regulation of such cases is a must [6, p.111].

Thus, a child born to a citizen of a state that exercises "right to blood" will have dual citizenship if he or she is born in the territory of a state that enforces "right to land." Under the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations, "land rights" do not apply only to the children of foreign diplomats and consuls.

Bipatristism also occurs regardless of the child's place of birth, if the legislation of the relevant country allows the transfer of citizenship of a citizen of a country with two or more nationalities to a child on the basis of "blood rights". Dual citizenship is also possible when entering into a marriage with a foreigner, provided that the laws of this country automatically grant the citizenship of the husband (or wife) and do not deprive him of the original citizenship under national law.

In order to reduce the incidence of dual (multiple) citizenship, many countries have abolished the automatic granting of citizenship due to marriage, and the concept of independent citizenship for those who marry foreigners is increasingly supported. Since the 1957 Convention on the Citizenship of Married Women abolishes the principle of automatic change of citizenship of a woman marrying a foreigner, it reduces the likelihood of women being granted dual (multiple) citizenship at the time of marriage.

The Problem of Naturalization.

In most cases, dual citizenship is the result of naturalization: one person acquires the citizenship of another country without losing the citizenship of the country of birth [1, p.26-28].

Sometimes the basis of dual citizenship is the policy of any state aimed at strengthening political influence and trying to "gather" citizens of certain nationalities under one roof. Some authors emphasize that the most pressing problem of the institution of dual citizenship is the difficult legal status of a person holding the citizenship of two or more states, because a citizen has both dual rights and double obligations.

Dual citizenship can also arise for various objective and subjective reasons. The objective reasons for the emergence of dual citizenship can be attributed to the differences in the laws of the states related to the acquisition and loss of citizenship, as well as territorial changes that led to the change of jurisdiction, population migration and refugee flows. As an example of the emergence of dual citizenship, we can cite the uncoordinated actions of the ruling circles (China-Taiwan, Moldova-Transnistria) in the regions, which are formally united, but in fact divided into two or more places.

At the same time, there are international agreements that allow for the establishment of dual citizenship. For this reason, we can say that bipatrism arises both on the basis of the norms of national legislation of different countries, as well as international agreements.

In scientific literature and practice, the term "dual citizenship" is used in at least two senses. According to some experts (Conway W. Henderson, Alfred M. Ball)[2, pp.13-14; 4, pp.135-137], "dual citizenship" is a set of legal norms governing the acquisition of citizenship of another state by a person with the consent of the country of citizenship (on the basis of a permit, agreement or mutual agreement) is an institute. Another group of scholars concludes that bipatristism is a social phenomenon that embodies the state of an individual having two or more nationalities without the knowledge (permission or consent) of the state of his or her citizenship.

Attitudes of states towards the issue of dual citizenship have changed over time. This attitude has gradually changed from attempts to abolish dual citizenship to its regulation and strengthening in international treaties. We can see this trend in the example of agreements adopted by European international organizations.

In the 1960s, Western European member states of the Council of Europe agreed that dual citizenship was undesirable and should be avoided as much as possible. A person who acquires the citizenship of another Member State and is a national of one of the Member States under the 1963 Convention on the Reduction of Citizenship and on Military Service in Cases of Citizenship loses his previous citizenship. In addition, the parties to the Convention undertake to provide information on the acquisition of the citizenship of another Member State by the nationals of the Member States [11]. Clearly, without such an exchange of information, it would be impossible to implement the terms of the Convention.

At present, a number of European countries believe that dual citizenship is appropriate due to the increase in population mobility, the development of migration processes and the relocation of refugees. Refugees are, as a rule, naturalized more often and faster than other migrants, and are rarely required to renounce their previous citizenship as a prerequisite for naturalization. Even countries that have officially declared the abolition of dual citizenship as a target, in practice, are positive about it, highlighting the advantages of this process.

In 1997, European countries adopted the European Convention on Citizenship, preferring a more liberal approach to the issue of citizenship. This Convention contains provisions that will be applicable to most European countries, and in this regard it is important to note the maximum flexibility of the document. Thus, the Convention does not create barriers to citizenship, nor does it require states to recognize citizenship as a general principle.

In some countries, it is believed that a person's citizenship of another country makes it difficult for him or her to fully integrate into the society in which he or she lives. However, there are a number of states that think that this is not a problem and do not oppose the retention of citizenship by the country to which they belong. Member States shall not view the loss or renunciation of the citizenship of another country as a condition for the acquisition or protection of their citizenship. Because in many cases it is impossible to carry out such a procedure. Under the Convention, persons of other nationalities also have equal rights in the country of residence.

The Convention also stipulates that member states in some cases guarantee the protection of different nationalities: children who have acquired several nationalities automatically at birth [10, p.379].

Thus, as mentioned above, the legal regulation of citizenship is the exclusive right of the state to provide opportunities for both its citizens and others to acquire and lose citizenship.

State Sovereignty and Dual Citizenship.

Most post-Soviet countries strongly oppose the introduction of dual (multiple) citizenship and are not interested in obtaining a second citizenship by a significant portion of the population. Most of the countries of the former Soviet Union consider the existence of dual citizenship as an attempt to strengthen the presence of other states (mostly Russia) in their countries. Unilateral recognition of dual (multiple) citizenship by countries leads to conflicts in the future between states on issues of citizenship, as each state prefers to regulate this area within the framework of national legislation.

The complexity of the issue of dual (multiple) citizenship does not allow different states to form a common approach to the issue. For this reason, different approaches to this issue have emerged in international practice.

First, the recognition of dual (multiple) citizenship - dual (multiple) citizenship is freely allowed by the state (Albania, Liechtenstein, Yemen, Canada).

Second, the possibility of dual (multiple) citizenship: when obtaining a new citizenship, a person is not required to renounce the previous citizenship (England, Italy, USA, France).

In Italy, there is no need to renounce previous citizenship during naturalization. However, if a person has dual citizenship from birth, only one of these nationalities is required to be retained when he or she reaches adulthood. If a person chooses Italian citizenship, there is no need to provide evidence of renunciation of the second citizenship. However, the choice of citizenship of another state automatically leads to the loss of Italian citizenship [12].

There is an interesting case in Spain on the issue of allowing dual citizenship. Thus, according to Article 11 of the Spanish Constitution, the state has the right to conclude dual citizenship agreements with Latin American countries and countries with special relations with Spain [9, p.6]. The strictest measures to restrict dual (multiple) citizenship are taken by Germany and Switzerland. The main condition for naturalization here is the renunciation of previous citizenship.

It should be noted that the issue of dual (multiple) citizenship has a number of negative consequences for both states and persons with dual citizenship. As we know, citizenship means a stable political and legal relationship between the state and the citizen, and maintaining loyalty to two or more states at the same time is quite a difficult task.

In international legal practice, there is a rule based on the principle of state sovereignty that in all cases, the state applies to a citizen of another country the relations directly related to its citizens, regardless of the fact of citizenship of another state. Another factor complicating the legal status of a person with dual citizenship is that any state that considers a person to be its own citizen may require him or her to fully perform his or her citizenship duties. In addition, the provision of full citizenship to persons with dual citizenship in the countries of which they have citizenship also leads to a number of undesirable consequences for states.

One of the most undesirable consequences of dual citizenship for states is that the exercise of rights to persons with dual citizenship is not always possible for both states and third countries. Bipatristism also poses a number of challenges to espionage control. For this reason, in some cases, even the presence of dual (multiple) citizenship in the state is considered a serious threat to national security.

In addition to the negative aspects of dual citizenship, there are at least two other serious problems that require international legal regulation in the field of dual citizenship. These are issues of diplomatic protection and military service for persons with dual (multiple) citizenship.

Issues related to the fulfillment of military obligations by bipatrids in both peacetime and martial law have often become the main topic of interstate disputes. A situation may arise in which a person with dual (multiple) citizenship may be called up for military service in the countries of which he is a citizen, in which case the person must serve in the military only in one state. Such persons may be prosecuted by other States of their nationality for evading military service or for military service in a foreign state if they are within the jurisdiction of the State concerned.

States seek to agree on bipartisan military obligations by concluding bilateral and multilateral international agreements that restrict, facilitate or allow dual citizenship. Examples of such agreements are the 1963 Convention on the Reduction of Multi-Citizenship and Conscription in the Case of Multi-Citizenship, the European Convention on Citizenship of 7 November 1997, and many bilateral agreements.

International Legal Framework.

Without going into specifics on each of these international agreements, let us consider the general points emphasized in them.

First of all, it should be noted that all the above-mentioned agreements stipulate that citizens of each of the contracting states must serve in the military in only one of these states. For example, the 1963 Convention on the Reduction of Citizenship and Conscription for Citizenship gives bipatrids the right to serve in one of the countries of their citizenship until they reach the age of 19, otherwise they are called up for military service in the country of their permanent residence [7, p.121]. Similar provisions are reflected in the 1997 European Convention on Citizenship.

Second, if a person with dual citizenship has served in one of the Contracting States under the above-mentioned treaties in accordance with the national law of that State, he shall be deemed to have completed his military service in the other State of which he is a national.

Third, most of these treaties stipulate that a military service performed by one of the Contracting Parties to which the bipatrid is a national is also valid for the other party to which he is a national until the treaty or convention enters into force.

In some cases, the problem of compulsory military service for persons with dual (multiple) citizenship can be partially resolved through domestic legislation. Thus, in most countries, conscription applies only to citizens living in the country, and exceptions are made for citizens permanently residing abroad.

The most difficult situation for an individual in terms of military service may arise in the event of a war between the states of which he is a citizen. From the point of view of international law, it is impossible to give an unequivocal answer to this question. It is possible that due to the fact that he was in the territory of the state where he did not live permanently during the mobilization, this duty will be imposed directly on the citizen.

This approach is explained by the provision in a number of agreements on dual citizenship that the declaration of mobilization in any of the Contracting States in accordance with the principle of "effective citizenship" eliminates the need for that State to fulfill its obligations. However, in such a situation, it is inevitable that after the end of hostilities, the person who fought against the state of which he is a citizen will have negative consequences, even though he fought on the side of the other state of which he is a citizen.

If the obligation to serve in peacetime can be settled on the basis of effective citizenship or the voluntary election of one of the states, in the event of a military conflict, bipatrids may be considered traitors by another state for military service in one of their states and may even be deprived of citizenship. can be deprived.

The ability of persons with dual (multiple) citizenship to participate in the political life of the state and to serve in public administration has often been the subject of various internal disputes. The regulation of these issues is within the competence of the states, and the issue of what rights and freedoms to grant to bipatrids is determined by the states themselves. Thus, in addressing these issues, it is important to take into account a number of factors such as the state's policy on citizenship, economic and political independence, population and ethnographic situation. In almost all countries, the right to public and civic services is enforced. Provisions on the right to serve in the State are enshrined in both the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights. However, in some countries the exercise of this right is restricted due to national security.

As it is known, the main subject that ensures the security of an individual, society and the state is the state itself. There are different approaches in countries regarding the admission of persons with dual (multiple) citizenship to the civil service. For example, there are countries that do not allow people with dual citizenship to be civil servants (Sweden, Greece). Bipatrids who want to become civil servants in Israel must serve in the army of that state, even if they have served in another state. In some Latin American countries, people with dual (multiple)

citizenship automatically lose their citizenship from the moment they are admitted to the civil service.

Conclusion.

In order to objectively assess the institution of dual (multiple) citizenship, it is necessary to take into account the various possible negative consequences, as well as the positive aspects of this institution. There is currently ample scientific analysis highlighting the benefits of dual citizenship. Acquisition of dual (multiple) citizenship by a person usually serves to achieve greater freedom and liberty, although this situation ultimately reduces the level of state control over the actions of bipatrids. Among the positive consequences of dual citizenship are additional guarantees for the protection and exercise of personal rights and freedoms, retention of citizenship in mixed marriages, simplification of residence, re-immigration and mitigation of repatriation. Also, the high proportion of people with dual (multiple) citizenship can help intensify existing interstate relations.

Recognition of dual citizenship has a number of advantages for people who are not in a "superior position" in the country. Thus, in addition to having all the rights in the area where they currently live, this group of people has unimpeded access to the "historical homeland", contact with relatives living there, free education at any time, free medical care, entrepreneurship and the need to if it arises, they have a number of advantages, such as moving there permanently. In a complicated situation created by the disintegration of a once unified state, the prohibition of dual citizenship can create a number of difficulties. For this reason, allowing dual citizenship, even under certain conditions, is a more democratic step than a complete ban on dual citizenship.

When addressing the issue of recognition of dual citizenship, it is necessary to pay attention to the optimal balance of the pros and cons of the institution of dual citizenship in the appropriate context. That is, to be able to jointly resolve all existing difficulties related to citizenship and eliminates the harmful consequences. In this context, it is necessary to encourage the adoption of effective measures to address the problem effectively and, at a later stage, to achieve the establishment of a single legal framework governing the institution of dual (multiple) citizenship.

At the same time, in order to create such a single legal framework governing the institution of dual (multiple) citizenship, it is important, first of all, to have a coordinated and purposeful policy based on a common universal outlook, moral values and moral principles. It is also necessary to try to bring the existing legal systems of states in this area as close as possible. It should be noted that in practice we are witnessing an increasing number of citizens of several countries. As noted above, most states either allow or formally promote dual (multiple) citizenship, as well as successfully address problems in this area. In short, finding a legal solution to this problem based on the expansion of human rights and freedoms should be considered the right way.

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