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REVOKING THE DECISION TO ACCEPT UKRAINIAN CITIZENSHIP AS A SANCTION OF CONSTITUTIONAL AND LEGAL RESPONSIBILITY

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Kudriavtseva O.M. Revoking the decision to accept Ukrainian citizenship as a sanction of constitutional and legal responsibility.

The article emphasizes that constitutional and legal responsibility is aimed at legal protection of the Constitution of Ukraine and is closely related to the problems of preventing constitutional offenses. Attention is drawn to the fact that issues of citizenship are closely related to the problems of national security and crime prevention. There are not few cases when citizens of Ukraine also have the citizenship of another country, or even of several countries in addition to the citizenship of Ukraine. The composition of the constitutional offense is considered, it is emphasized that the issue of assessing the objective side of the constitutional offense is decided by the entity empowered to apply the constitutional and legal sanction – to cancel the decision on admission to the citizenship of Ukraine. The reasons for the loss of Ukrainian citizenship and the termination of Ukrainian citizenship as a result of its loss due to the active actions of an adult, aimed at acquiring the citizenship of another state/states, are analyzed. There are signs by which the termination of citizenship differs from the deprivation of Ukrainian citizenship. The powers of the central executive body, which implements the state policy in the sphere of citizenship, regarding the preparation of applications for the loss of Ukrainian citizenship by persons are characterized; Commission under the President of Ukraine on Citizenship; of the President of Ukraine (issuing acts on acceptance of Ukrainian citizenship and termination of Ukrainian citizenship). Attention is drawn to the practice of the European Court of Human Rights, requirements for legislation on Ukrainian citizenship: they should be accessible, clear, and predictable. Defects have been identified in the current Procedure for Proceedings on Applications and Submissions on Ukrainian Citizenship and the Implementation of Decisions, which was approved by the Decree of the President of Ukraine No. 215 of 03/27/2001: an exhaustive list of sources from which the authorities of the State Migration Service

can obtain information on the grounds has not been determined loss of citizenship of Ukraine by a person; an exhaustive list of documents, their form, content, subject of publication, which confirm that a person will not become stateless as a result of the loss of Ukrainian citizenship, has not been defined. Proposals for improving the above procedure and the practice of its application have been developed.

Key words: constitutional and legal responsibility, citizen, citizenship, responsibility, sanction, state authority, unified citizenship, loss of citizenship, termination of citizenship, decision on admission to citizenship.

Кудрявцева О.М. Скасування рішення про прийняття до громадянства України як санкція конституційно-правової відповідальності.

В статті підкреслюється, що конституційно-правова відповідальність спрямована на правову охорону Конституції України та тісно пов'язана з проблемами запобігання конституційним правопорушенням. Звертається увага на те, що з проблемами забезпечення національної безпеки та запобігання злочинам тісно пов'язані питання громадянства. Не поодинокими є випадки, коли громадяни України мають і громадянство іншої країни, або навіть декількох країн окрім громадянства України. Розглядається склад конституційного правопорушення, підкреслюється, що питання про оцінку об'єктивної сторони конституційного правопорушення вирішує суб'єкт, наділений правом застосовувати конституційно-правову санкцію – скасувати рішення про прийняття до громадянства України. Аналізуються підстави втрати громадянства України та припинення громадянства України внаслідок його втрати через активні дії повнолітньої людини, спрямовані на набуття громадянства іншої держави/держав. Наводяться ознаки, за якими припинення громадянства відрізняється від позбавлення громадянства України. Характеризуються повноваження центрального органу виконавчої влади, що реалізує державну політику у сфері

громадянства, щодо підготовки подань про втрату особами громадянства України; Комісії при Президентові України з питань громадянства; Президента України (видавати акти про прийняття до громадянства України та про припинення громадянства України). Звертається увага на практику Європейського суду з прав людини, вимоги до законодавства з питань громадянства України: вони мають бути доступними, чіткими, передбачуваними. Встановлено недоліки чинного Порядку провадження за заявами і поданнями з питань громадянства України та виконання прийнятих рішень, що був затверджений Указом Президента України від 27.03.2001 р. №215: не визначено вичерпного переліку джерел, з яких органи державної міграційної служби можуть отримувати інформацію про підстави втрати особою громадянства України; не визначено вичерпний перелік документів, їх форму, зміст, суб'єкт видання, якими підтверджується, що особа внаслідок втрати громадянства України не стане особою без громадянства. Розроблено пропозиції з вдосконалення вище зазначеного порядку та практики його застосування.

Ключові слова: конституційно-правова відповідальність, громадянин, громадянство, відповідальність, санкція, орган державної влади, єдине громадянство, втрата громадянства, припинення громадянства, рішення про прийняття до громадянства.

Formulation of the problem. Citizenship issues are closely related to issues of national security and crime prevention. According to Art. 4 of the Constitution of Ukraine in Ukraine, there is a single citizenship in Ukraine [1]. A citizen of Ukraine cannot be deprived of citizenship and the right to change citizenship (Part 1, Article 25 of the Constitution of Ukraine). According to clause 26 of Art. 106 of the Constitution of Ukraine the President of Ukraine makes a decision on acceptance of Ukrainian citizenship and termination of Ukrainian citizenship, on granting asylum in Ukraine.

At the same time, there are not isolated cases when citizens of Ukraine receive the citizenship of another country without leaving the citizenship of Ukraine. In addition to the fact that this is a violation of the norms of the Constitution of Ukraine, it leads to the fact that, for example, the citizenship of another country is used not only by conscripts to leave Ukraine in order to avoid mobilization into the Armed Forces of Ukraine. In addition, there are not isolated situations when a person has the citizenship of Ukraine and other countries and at the same time, concealing the second citizenship, in Ukraine is admitted, for example, to state secrets, or is, for example, a judge, etc.

Constitutional and legal responsibility is aimed at legal protection of the Constitution of Ukraine

and is closely related to the problems of preventing constitutional offenses, as well as ensuring national security. As for natural persons, the political nature of constitutional responsibility does not apply to those of them as subjects of legal relations that are not related to the exercise of political power.

The state of development of this problem. In the science of constitutional law, citizenship issues were studied in monographs and textbooks, the authors of which are Yuriy Bysaga [2; 3], Oksana Vasylychenko [4; 5], Lyudmila Deshko [6; 7; 8] and other scientists. Also, the issue of citizenship was investigated by scientists when conducting scientific research on the constitutional and legal status of a person and a citizen (Zorina Kravtsova [9], Vladyslav Fedorenko [10], etc.).

The purpose of the article is to develop proposals for improving the current legislation of Ukraine.

It is well known: the objective side of the offense is the illegal behavior of the subject that does not comply with the norms of constitutional law. The peculiarity of the objective side of a constitutional offense is its enshrining in a specific regulatory norm, which determines the legal position of the guilty subject. Moreover, the issue of assessing the objective side of a constitutional offense, unlike other types of legal liability, is decided by the entity empowered to apply a constitutional and legal sanction [11].

The legal content of the citizenship of Ukraine, the grounds and procedure for its acquisition and termination, the powers of state authorities involved in resolving issues of Ukrainian citizenship, the procedure for appealing decisions on citizenship, actions or inactions of state authorities, their officials and employees are determined by the Law of Ukraine. About the citizenship of Ukraine" [12]. Ukrainian citizenship is terminated: 1) as a result of renunciation of Ukrainian citizenship; 2) as a result of loss of Ukrainian citizenship; 3) on the grounds stipulated by international treaties of Ukraine (Article 17 of the Law of Ukraine "On Citizenship of Ukraine").

In accordance with Part 1 of Art. 19 of the Law of Ukraine "On Citizenship of Ukraine" grounds for loss of Ukrainian citizenship are:

"1) voluntary acquisition by a citizen of Ukraine of the citizenship of another state, if at the time of such acquisition he has reached the age of majority.

Voluntary acquisition of citizenship of another state is considered to be all cases when a citizen of Ukraine, in order to acquire citizenship of another state, had to apply for such acquisition in accordance with the procedure established by the national legislation of the state whose citizenship was acquired.

The following cases are not considered voluntary acquisition of another citizenship:

a) simultaneous acquisition of the citizenship of Ukraine and the citizenship of another state or states by a child by birth;

b) a child who is a citizen of Ukraine acquires the citizenship of his adoptive parents as a result of his adoption by foreigners;

c) automatic acquisition by a citizen of Ukraine of another citizenship due to marriage with a foreigner;

d) automatic acquisition of another citizenship by a citizen of Ukraine who has reached the age of majority as a result of the application of the legislation on the citizenship of a foreign state, if such a citizen of Ukraine has not received a document confirming that he has the citizenship of another state" [12].

Therefore, termination of Ukrainian citizenship as a result of its loss due to active actions of an adult, aimed at acquiring the citizenship of another state, is not deprivation of Ukrainian citizenship. The possibility to change the citizenship of Ukraine is guaranteed by the legislation of Ukraine. The Law of Ukraine "On Citizenship of Ukraine" stipulates that the authority to prepare applications for the loss of Ukrainian citizenship by persons and to send them, together with the necessary documents, for consideration by the Commission under the President of Ukraine on Citizenship Matters is exercised by the central executive body, which implements state policy in the field of citizenship (p. 3 part 1 of article 24)

The President of Ukraine makes decisions and issues decrees on acceptance of Ukrainian citizenship and termination of Ukrainian citizenship.

In accordance with paragraph 87 of the Order [13], for the termination of Ukrainian citizenship due to its loss, the territorial bodies of the State Security Service of Ukraine, diplomatic missions or consular institutions of Ukraine prepare and submit: a) an application for the loss of Ukrainian citizenship; b) a document confirming the person's stay in Ukrainian citizenship; c) one of the following documents: a document confirming the voluntary acquisition by a citizen of Ukraine of the citizenship of another state, together with a document confirming that at the time of such acquisition, the citizen of Ukraine has reached the age of majority; d) a document confirming that a citizen of Ukraine will not become a stateless person as a result of the loss of Ukrainian citizenship.

According to paragraph 104 of the Procedure on identifying the grounds for the loss of Ukrainian citizenship by a person living on the territory of Ukraine, the territorial division of the State Security Service of Ukraine notifies the territorial body of the Security Service of Ukraine of the person's place of residence. The territorial body of the State of Ukraine checks whether there is a reason for the loss of Ukrainian citizenship.

If necessary, the territorial body of the State Security Service of Ukraine may turn to the bodies of the Security Service of Ukraine to verify, within their competence, the existence of grounds for the loss of Ukrainian citizenship. The bodies of the Security Service of Ukraine inform the territorial body of the State Security Service of Ukraine about the results of the inspection no later than within two months from the date of receipt of the application.

In the case of confirmation of the existence of a reason for the loss of Ukrainian citizenship, the territorial body of the State Migration Service of Ukraine prepares a submission on the person's loss of Ukrainian citizenship and sends it to the State Migration Service of Ukraine together with the documents provided for in subparagraphs "b" and "c" of Article 87 of this Procedure.

State Migration Service of Ukraine is the central body of the executive power, which implements state policy in the areas of migration (immigration and emigration), including combating illegal (illegal) migration, citizenship, registration of natural persons, refugees and other legally defined categories of migrants.

State Migration Service of Ukraine considers the application for loss of Ukrainian citizenship and the documents submitted along with it.

In the case of confirmation of the existence of grounds for loss of Ukrainian citizenship, the State Migration Service of Ukraine approves the application for loss of Ukrainian citizenship and sends it together with the submitted documents to the Commission under the President of Ukraine on Citizenship.

Clause 110 of the Procedure stipulates that preliminary processing and preparation of materials on Ukrainian citizenship for consideration by the Commission under the President of Ukraine on citizenship issues is carried out by the relevant structural unit of the Office of the President of Ukraine.

According to paragraph 111 of the Procedure, the Commission under the President of Ukraine on Citizenship issues checks:

- conformity of the design of the submitted documents with the requirements of the legislation of Ukraine;

- document confirmation of the fulfillment of the conditions for a person's admission to Ukrainian citizenship and the person's exit from Ukrainian citizenship, as well as the existence of grounds for the person's loss of Ukrainian citizenship;

- the absence of grounds, in the presence of which the admission of a person to the citizenship of Ukraine or the termination of a person's citizenship of Ukraine is not allowed.

Based on the results of the review, the Commission under the President of Ukraine on Citizenship makes a decision to submit proposals to

the President of Ukraine regarding the satisfaction of applications for acceptance of Ukrainian citizenship, withdrawal from Ukrainian citizenship, applications for loss of Ukrainian citizenship and documents for termination of Ukrainian citizenship on the grounds provided for by international treaties of Ukraine.

However, subparagraph "d" of paragraph 87 of the Procedure does not define an exhaustive list of documents, their form, content, subject of publication, which confirm that a person will not become a stateless person due to the loss of Ukrainian citizenship. Therefore, such a document can also be one according to which a citizen of Ukraine is a citizen of another state. The reasons for such acquisition have no legal significance for assessing the legality of the President of Ukraine's issuance of the Decree on Termination of Ukrainian Citizenship.

At the same time, the practice of the European Court of Human Rights shows that the requirements of the legislation regarding the termination of Ukrainian citizenship as a result of its loss due to the voluntary acquisition by an adult citizen of Ukraine of the citizenship of another state were accessible, clear and predictable for this citizen.

The procedure does not define an exhaustive list of sources from which the authorities of the state migration service can obtain information about the reasons for a person's loss of Ukrainian citizenship. It follows from this that in the presence of relevant appeals and facts, in support of which documents obtained in accordance with the law were submitted, the migration service authorities have all the grounds provided by law for checking such and taking appropriate measures provided for by law.

The current legislation does not contain reservations and restrictions regarding the sources from which the authorities of the state migration service can receive information about the existence of grounds for a person's loss of Ukrainian citizenship.

Conclusions. Defects have been identified in the current Procedure for Proceedings on Applications and Submissions on Ukrainian Citizenship and the Implementation of Decisions, which was approved by the Decree of the President of Ukraine No. 215 of 27.03.2001: an exhaustive list of sources from which the authorities of the State Migration Service can obtain information on the grounds has not been determined loss of citizenship of Ukraine by a person; an exhaustive list of documents, their form, content, subject of publication, which confirm that a person will not become stateless as a result of the loss of Ukrainian citizenship, has not been defined.

In this Regulation, it is necessary to establish:

1) an exhaustive list of documents, their form, content, subject of publication, which confirm that

a person will not become stateless as a result of the loss of Ukrainian citizenship;

2) a comprehensive list of sources from which the state migration service authorities can obtain information about the reasons for a person's loss of Ukrainian citizenship.

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