

## **LEGAL ASPECTS OF CITIZENSHIP DEPRIVATION IN RUSSIA**

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Annotation: The author of the article considers the issue of citizenship deprivation. The definition of citizenship is given according to several sources. International experience is taken into consideration in details in order to make conclusions on the point under discussion. Some vivid examples are given to prove the facts of the decision-making process of citizenship deprivation. Finally, the author gives personal attitude to the problem and makes concluding statements.

Key words: citizenship, deprivation, constitution, treason, crime, legal rights.

Should a person struggling with arms against his country be deprived of citizenship? And what can be said about treason? What would happen if a person reveals country's secrets or betrayed his or her homeland? Can these matters be considered as the grounds for citizenship deprivation? The great majority of people would agree with that.

Nevertheless, one should not forget that it is impossible today. Article 6 para. 3 of the Russian Constitution stipulates: "The citizen of the Russian Federation may not be deprived of his nationality nor denied the right to change it."

Thus, it is clearly seen that it is impossible to deprive a person of citizenship, even if he/she committed a crime against his/her country. What a nuisance!

Is that right? Is there common sense? Some people have just one answer for that and that is "no".

Let's have a look at international experience.

Formal exile of citizens for criminality, immorality or treason is generally regarded as a relic. In Ancient Greece, exile was an alternative to execution. In late eighteenth and nineteenth century England, exiling convicts to remote Australia

served imperial objectives of colonial expansion and the domestic goal of relieving pressure on overcrowded prisons. The fiction of terra nullius, along with the absence of border control, indulged the belief in an infinite expanse of unclaimed and unoccupied territory to which undesirables could be expelled. By the start of the twentieth century, penal colonies were no longer necessary or even useful. As the twentieth century progressed, exile of citizens became understood as the prerogative of tyrants, or a deplorable excess committed in “the delirium of war”. The denationalization and deportation of Japanese Canadians from internment in Canada to Japan following World War Two remains a shameful episode in Canadian history. However, the demise of exile was matched by the ascent of deportation (or more accurately, deportability) in the late twentieth and early twenty-first century [3].

It is necessary to say that governments of some countries have redefined the meaning of the notion “a citizen”. Though citizenship is often thought of as an inalienable right, the emergence of the "homegrown" terrorist has called into question whether certain citizens deserve the protection that citizenship status provides.

Wikipedia defines citizenship as “the status of a person recognized under the custom or law as being a legal member of a sovereign state or belonging to a nation” [4].

In the laws of any country, deprivation of a person’s nationality against his or her will shall be regarded as an extreme measure on the basis of a court decision, and only with respect to a particular person. It is important that deprivation of civil rights generally does not extend to family members. For a person, deprivation of citizenship can mean a huge mass of unforeseen troubles. Let us point out some of them:

1. Deprivation of all benefits and allowances in the territory of the state, including already earned pensions.
2. Inability to find a legal job in the public and even private sector.
3. It is impossible to open accounts in the banking system or have insurance.
4. There will be problems with registration at the place of residence and in health care.

5. Automatic ban on entry into many countries of the world, as it is not allowed to enter the country without a passport.
6. Lack of consular support in other countries.

Any person will not be able to do anything of the mentioned above actions without documents, without a person's passport to be exact. And a person who is deprived of citizenship does not have it, of course.

Citizenship deprivation also shares a certain affinity with the sovereign's other technique for the permanent elimination of wrongdoers: namely, the death penalty. When tethered to expulsion, citizenship revocation affects a kind of "political death".

Citizenship is the highest and most secure legal status one can hold in a state, but it is not inviolate. States that prohibit dual nationality may revoke the citizenship of a person who naturalizes elsewhere. Many states also retain the power to denaturalize a citizen who obtained citizenship through fraud or misrepresentation.<sup>1</sup> Over a dozen European Union Member States provide for loss of citizenship for extended residence abroad on the basis that the citizen lacks a genuine link or, in the words of the *Nottebohm Case (Liechtenstein v Guatemala)*, the "social fact of attachment" to the country of citizenship. This disdain for the "nominal citizen" was also deployed tactically in 2004 to resolve the case of Yaser Hamdi, an alleged al Qaeda combatant who was born in the United States but spent his life in Saudi Arabia and was captured in Afghanistan in 2001.<sup>2</sup>

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<sup>1</sup>Denaturalization refers to the non-consensual deprivation of citizenship acquired by naturalization, while denationalization encompasses deprivation of citizenship, however acquired. The classification only matters where the rules for citizenship revocation differ as between naturalized and birthright citizens. Renunciation of citizenship refers to voluntary surrender of citizenship by the individual. The US practice of expatriation historically blurred revocation and renunciation by deeming certain conduct to amount to constructive renunciation.

<sup>2</sup>US law does not provide for loss of citizenship based on residence abroad, but it arrived at the same result when it agreed to release Hamdi from detention in exchange for Hamdi surrendering his US citizenship and agreeing to deportation to Saudi Arabia under strict conditions. For an interesting critical analysis of the Hamdi case, see Peter Nyers, "The Accidental Citizen: Acts of Sovereignty and (Un)making Citizenship" (2006) 35:1 *Economy & Society* 22.

Russia's occupation of the Crimea and ATO in Donbas raised the issue of deprivation of citizenship of part of the population of Ukraine for the first time:

- Who became citizens of another country by voting in a referendum on March 16, 2014 r. in the Crimea on the accession of the Peninsula to Russia (otherwise, even the head of the Crimea Aksenov, if he retained the Ukrainian passport, has all the rights of Ukrainian citizens);

- Betrayed his Homeland, with arms in the hands of fighting against Ukraine in the ranks of the terrorist organizations of the DPR and LPR. In numerous video documents they directly declare that they are not citizens of Ukraine, they are citizens of DNR, they burn the Ukrainian flags, on their tanks there are such inscriptions as «on lions», «on Kiev» (at the same time they legally were not deprived of their citizenship, and they are citizens of Ukraine).

Hence it is not surprising that on December on the website of the Verkhovna Rada of Ukraine there was a bill providing procedure of deprivation of nationality of the persons accused of Commission of the crimes directed against safety of the state brought by seven extra fractional deputies-members «freedom» Oleg Tyagnibok. Moreover, in September of the current year, a similar bill was introduced by deputies from Batkivshchyna, but it was subsequently withdrawn. Thus, deputies propose in article 19 of the law of citizenship of Ukraine, which lists the grounds for deprivation of citizenship, to introduce a new paragraph: introduction to the legal force of a court conviction for committing crimes related to infringement of territorial integrity and inviolability of Ukraine, high treason, sabotage, espionage.

Taking into consideration other actions connected with citizenship deprivation we would like to mention that in mid-2014, an Australian Member of Parliament introduced a private member's bill that would enable dual citizens who support terrorism to be stripped of citizenship. Besides that, legislators in the Netherlands and Austria have also signaled interest in new legislation. In 2010, US Senator Joe Lieberman introduced the Terrorist Expatriation Act, which would have expanded the

acts evincing intent to renounce US citizenship.<sup>3</sup> Despite the prevailing post-9/11 securitization mentality, the initiative failed to attract support.

In France, citizenship can only be revoked within 10 years of its acquisition in the Commission of one of the following crimes:

- ❖ conviction for an offence against the security of the state;
- ❖ conviction for a criminal offence;
- ❖ conviction for evading obligations imposed by the law of conscription;
- ❖ espionage in favour of a foreign state, incompatible with the rank of Frenchmen and detrimental to the interests of France;
- ❖ conviction in France or abroad for acts considered by the French law as acts entailing a sentence of more than 5 years' imprisonment;

The US suggests its own list of 10 points for deprivation of American citizenship:

- ✓ if a person serves in a foreign army;
- ✓ if it is proved that a person committed treason;
- ✓ if a person passed the naturalization process in another country (although recently the state Department officially recognizes dual citizenship);
- ✓ if a person made an oath of allegiance to another state;
- ✓ if a person works in the government of another state and determines the policy of that state;
- ✓ if a person went through the naturalization process with a lie or an evil intent;
- ✓ if a person began to engage in the process of naturalization, being dismissed from the military service of another art with wording dismissed with disgrace;
- ✓ if a person has not been able to answer all the questions honestly and completely undergoing naturalization;

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<sup>3</sup>US, Bill S 3327, Terrorist Expatriation Act, 111th Cong, 2010.

- ✓ if during the five-year naturalization period a person has been involved in the activities of organizations prohibited by the naturalization services;
- ✓ if within ten years after the completion of naturalization, a new citizen took advantage of the 5th amendment to the U.S. Constitution and refused to testify before the relevant congressional Committee.

One more country we would like to speak about is Great Britain. The home secretary, Theresa May, has increased the use of powers to strip jihadists fighting in Syria of their British nationality.

Up to 240 Britons are believed to be in Syria and May has targeted 20 dual-nationals this year using "deprivation of citizenship orders", which take immediate effect.

The Home Office said: "Citizenship is a privilege, not a right, and the Home Secretary will remove British citizenship from individuals where she feels it is conducive to the public good to do so."

"If those deemed threats to national security are not actually alien in law, then they must be alienated by law." – A. Macklin<sup>4</sup>

Nevertheless, one should not forget that State power to revoke citizenship is circumscribed by international and regional legal commitments. Article 15(1) of the Universal Declaration of Human Rights (UDHR) proclaims that every person has a right to nationality but fails to stipulate an addressee of the right.<sup>5</sup> Article 15(2) states that "no one shall be arbitrarily deprived of . . . nationality", but leaves arbitrariness

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<sup>4</sup>Professor of Law and Chair in Human Rights, University of Toronto. The author thanks Talene Thomasian for excellent research assistance, the participants at the crimmigration conference convened at Queen's Faculty of Law in November 2013, as well as Amar Khoday and the three anonymous reviewers who provided constructive commentary and suggestions.

<sup>5</sup>Universal Declaration of Human Rights, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948), art 15(1).

undefined. Since the UDHR is a declaration, it may exert less legal force in positivist terms than conventions and treaties.

Well, if there is no constitution, you cannot break it. But we are not British and we have the constitution of the Russian Federation we should follow.

But there are articles in it, the meaning of which contradicts common sense and common practice of those countries that are considered to be quite democratic all over the world.

An example of a completely unfair decision is the case of Skripal. He was co-opted to the military intelligence (GRU) from the Airborne Troops. In the early 1990s, he was posted as a GRU officer at the embassy in Malta. In 1994, he landed a position in the military attaché's office in Madrid, Spain.

According to Russian prosecutors, he began working for the United Kingdom's Secret Intelligence Service (MI6) in 1995 and passed on state secrets, such as the identities of Russian intelligence agents. After his retirement, he worked in the Household Department of the Russian foreign ministry, while continuing to work for MI6. He was alleged to have blown the cover of 300 Russian agents. Skripal was sentenced to thirteen years in a high-security detention facility; he was also stripped of his military rank and medals.

Russian nationals imprisoned for espionage, were freed as part of a spy swap for the ten Russian agents arrested in the United States as part of the Illegal's Program, after being pardoned by the President of Russia, Dmitry Medvedev.

But the most interesting thing in this situation that Skripal was not deprived of citizenship of the Russian Federation.

So, the question that arises is why and when should a person be deprived of citizenship?

✓ Experts believe that citizenship is the citizen's respect for his Homeland and rights. The country cannot be considered strong where citizens do not respect the symbols of the state flag, emblem, anthem, and passport. "They appreciate only what can be lost forever"- taught ancient. "This should never happen again," experts say. Every citizen of the country should

understand that treason is not only a serious crime involving 10-15 years of imprisonment, but also the loss of citizenship in the country. You will not have a homeland after you betray it.

✓ The adoption of the deprivation of nationality act would deter the betrayal of a number of hesitant individuals who would realize that separatism, terrorism and treason were the worst crimes in their country.

✓ Historical and moral justice. A person who betrays his or her Homeland and country has no moral right to participate in elections. “Why should his vote be taken into account in the election of the future President or Parliament of the state?”

One should, nevertheless, consider the problem from the other angle. Some experts are convinced that it is just a waste of time. Deprivation of citizenship is nothing for these people.

Thus, this process can be considered meaningless. It is just a symbolic norm to show that they are strangers. But there is a criminal law and appropriate penalties for this purpose.

Will the traitor’s life change after deprivation of citizenship? I do not think so. If he betrayed his country, he would not want to live there and enjoy the rights and obligations guaranteed by the Constitution.

Did Skripal stay in Russia after all the events? No, he moved to the UK. He enjoyed his life and would not even be upset if he was deprived of citizenship.

Furthermore, we should remember that people like terrorists will find a way around to get into the country without citizenship. But there will be one problem - it will be harder to recognize them.

So, the question of deprivation of citizenship is quite complicated and every person can have his/her own position on this matter. From our point of view, our government should implement some effective penalties for such serious crimes, up to death penalty. The deprivation of citizenship itself is useless and should not be considered as a real punishment.



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