

Колодяжна В. Механізм взаємодії джерел міжнародного та національного права в умовах євроінтеграційних процесів. Стаття присвячена висвітленню проблем взаємодії норм міжнародного та національного права. Серед методів і механізмів включення чи реалізації міжнародного права у національну систему права у науці виокремлюють, зокрема, такі: рецепція, трансформація, паралелізація, відсилання, інкорпорація (адопція), обов'язковість *ex proprio vigore*, теорія виконання, адмісія тощо. Відповідно до сучасного міжнародного права національне законодавство повинне тлумачитися і застосовуватися відповідно до норм і принципів міжнародного права. Українське законодавство, зокрема текст Конституції України, потребує подальшого вдосконалення, щоб привести Основний Закон України у максимально повну відповідність із її міжнародно-правовими зобов'язаннями.

Ключові слова: механізм, взаємодія, рецепція, трансформація, паралелізація, відсилання, інкорпорація (адопція), обов'язковість *ex proprio vigore*, теорія виконання, адмісія.

Колодяжная В. Механизм взаимодействия источников международного и национального права в условиях евроинтеграционных процессов. В статье рассматривается проблема взаимодействия норм международного и национального права. Среди методов и механизмов ввода и реализации международного права в национальную систему права в науке выделяют, в частности, такие: рецепция, трансформация, инкорпорация (адопция), обязательность *ex proprio vigore*, теория исполнения, адмиссия и т.д. В соответствии с современным международным правом национальное законодательство должно толковаться и применяться в соответствии с нормами и принципами международного права. Украинское законодательство, в частности текст Конституции Украины, нуждается в дальнейшем совершенствовании, чтобы привести Основной Закон Украины в максимально полное соответствие с ее международно-правовыми обязательствами.

Ключевые слова: механизм, взаимодействие, рецепция, параллелизация, отсылка,, инкорпорация (адопция), обязательность *ex proprio vigore*, теория исполнения, адмиссия.

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Legal Status of European Union Citizens

This article analyzes and evaluates the legal status of European Union (EU) citizens. The main stages of citizenship formation are defined. Founding treaty provisions and acts of secondary legislation concerning the European Union citizenship are examined. Migration and political rights and requirements of EU citizens are described. The notion «EU citizenship» has different sense from the notion «state citizenship», it complements rather than replaces national citizenship, and therefore it has subsidiary character. Implementation of EU citizenship strengthens the international nature of EU, democratizes its political life, as it emphasizes that the goal of the union is about development of personality of its citizens through giving them supplementary rights and freedoms and increases EU supranationality.

Key words: European Union citizenship, citizens of European Union, legal status of citizens, migration rights, political rights.

Formulation of scientific problem and its significance. EU citizenship is aimed to define the legal relation between the citizen and the Union. Its reflection can be found through the rights and duties of the citizens, as well as their participation in the political life of the country. The rights and duties of the citizens are protected by the institutions and member states of EU.

On the current stage of development, the institute of EU citizenship is undergoing the process of formation that is why there are some discussions concerning its proper understanding. In these conditions, the problem of further improvement of its content becomes actual nowadays.

Taking into account Ukraine's orientation towards Europe, it should not stay away from the research of the above mentioned processes, that is why the perspective of obtaining the EU citizenship by the citizens of Ukraine leads to the need of comprehensive study of the theoretical problems of EU citizens' legal status.

Analysis of research of this problem. M. Baymuratov, M. Vitruk, O. Juravka, M. Entin,

P. Kalynichenko, A. Kapustin, S. Kashkin, F. Kogevnykov, I. Lukashuk, V. Muravyov, M. Priston, M. Sarakutza, L. Tymchenko, G. Tunkin, M. Fushe, S. Chernychenko, I. Jakovjuk, S. Jankovskiy and other national and foreign scholars made a research of legal status of EU citizens.

Despite the availability of studies on this issue, the questions of EU citizens' legal status are still actual and require further theoretical research and legislative improvements.

Formulation of goals and objectives of the study. The goal of this study is to analyze the migration and political rights and duties of the EU citizens and to examine the provisions of the treaties as well as secondary legislation on the EU citizenship.

Presentation of the main material and justification of the research results. In the article 20 of the Treaty on the Functioning of the European Union, it is noted that each individual who has the member state citizenship is a citizen of the EU. EU citizenship complements national citizenship, but it does not replace it. Section V of the Charter of Fundamental Rights of the European Union enshrines the rights of EU citizens [1].

EU citizenship defines the special stable and continuous relationships of the individual with European Union that are realized through the political and legal relations with the member state. Legally, it is reflected through the normative fixation of entrance conditions, acquisition and loss of citizenship, under which this person gets the opportunity to use all the guaranteed rights and freedoms and also takes up duties which constitute the legal status of EU citizen. EU member states citizens automatically obtain EU citizenship. They do not have to address certain EU authorities in order to obtain citizenship. The question of presence or absence of member state citizenship, the conditions of its acquisition and termination are solely under the responsibility and competency of EU member states.

The citizens are directly granted with rights and duties that are protected by institutions and member states. At the same time, the peculiarity of this connection is that the norms of European Union legislative system are a priority in relation to national legislation of each member – state.

Formation of EU citizenship institute went through 6 main stages: Paris summit (1974), summit of European Council at Fontainebleau (1984), signature of Maastricht Treaty on European Union (1992), signature of Amsterdam Treaty (1997), signature of Treaty on Constitution for Europe (2004) and signature of Lisbon Treaty (2007).

Treaty on the Functioning of European Union depicts the rights of EU citizens. They can be divided into the following categories: migration – the right for free movement and residence on the territory of the member states (article 21); political rights of the citizen (article 22) provide the EU citizens the right to elect and to be elected to the European Parliament and local authorities in the country, where they are residing; provides the rights to use the protection of diplomatic or consulate institutions of any member – state on the same conditions as the citizens of that country (article 23); proclaims the right of EU citizens to apply with petitions to the European Parliament or to the EU Ombudsman (article 24) [1]. However, it is just the main rights of EU citizens. The remaining rights are defined by the other provisions of the founding acts of EU, EU Charter of Fundamental rights from 7 December 2000, and secondary legislation of the EU, as well as decisions of the Court.

The article 25 of the Treaty on the functioning of European Union states that the Council of Europe on the proposal of European Commission and after consultation with European Parliament may unanimously adopt provisions intended to modify or supplement the rights of the EU citizens [1].

The article 21 of the Treaty on the Functioning of European Union states that each EU citizen has the right for free movement and residence on the territory of the member – states, taking into account the limitations and conditions laid down in the treaties, measures set by the Treaties and measures adopted to implement them.

Chapter 2, article 21 of the Treaty states that if the EU activity is considered as necessary for achieving the goal and if the Treaties are not provided the necessary powers, European Parliament and Council of Europe can adopt the provisions that contribute to the realization of this right. This right is also enshrined in the paragraph 1, article 45 of EU Charter of Fundamental Rights [1]. The right for free movement and choice of residence place within any state is guaranteed to each individual, who legally resides on the territory of this country and according to paragraph 1, article 13 of Universal Declaration of Human Rights of 1948 and paragraph 1, article 12 of International Covenant on Civil and Political Rights of 1966 [2]. However, according to Maastricht Treaty (paragraph 1 article 18) and EU Charter of Fundamental Rights of 2000 (paragraph 1, article 45, paragraph 2, article 52) the EU citizens realize this right within the entire territory of EU.

EU citizens voting rights are stated in the Treaty on the Functioning of European Union (article 22)

and European Union Charter on Fundamental Rights (paragraph 1, article 39). The following principle is enshrined in the Treaty: «Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State» [1].

Chapter 2, article 22 defines the order of realization of electoral rights at the elections to the European Parliament, which is a subject to Council of Europe detailed unanimous decision adopted as a proposal of European Commission after consultations with European Parliament. This can include provisions concerning the exceptions, taking into account the specific problem of the member – state.

Directive 93/109/EU regulates the procedure of realization of active and passive electoral rights on the elections to European Parliament. 20 December 2012 Council of Europe adopted the Directive 2013/1/EU, amending the directive 93/109/EU. EU citizens got the practical opportunity to vote and to stand for elections to European Parliament on the territory of residence state, regardless of national citizenship of the member – state; the electoral rights are realized voluntarily by the citizens. It is important to note that this Directive does not allow the dual use of the voting right and dual nomination of own candidature on the territory of different member states at the elections to European Parliament [3; 4].

Article 22 of the Treaty on the Functioning of European Union and article 40 of EU Charter (2000) guarantees all the EU citizens the right to elect and to be elected on the municipal elections on the territory of the member – state, regardless of possessing or not the national citizenship of the country of constant residency. However, according to article 22 of the Treaty on the Functioning of European Union and also Council Directive 94/80/EU (with the amendments of Directive 96/30/EU), issued basing on the following paragraph «On the order of realization of active and passive election right on the municipal elections of EU citizens according to the place of residence in the EU member – state, the citizenship of which they do not possess» from 19 December 1994 the conditions of implementation of this right can be introduced, while the methods of its realization can provide the exceptions from the general rules, if they are warranted by the specific problems of a member – state [5]. The minimum residency term (Belgium, Germany, Luxemburg, France), submission of the formal application, etc. can be the condition of realization of electoral rights by the citizens of European Union on the municipal elections.

The article 23 of the Treaty on the Functioning of European Union stipulates that each EU citizen on the territory of the third country, where the member – state of the citizen is not represented, enjoys the protection of diplomatic and consular missions of any member – state on the same conditions as the citizen of this country. A similar provision is included into the EU Charter of Fundamental Rights of 2000 (article 46). The legitimacy of normative consolidation of the possibility to use the diplomatic and consular protection of other country raises certain doubts in terms of norms of general international law. The Vienna Convention on Diplomatic Relations of 1961 does not provide the opportunity to provide diplomatic protection to foreign citizens. According to Vienna Convention on diplomatic relations of 1961 (article 6, 46) and also Vienna convention on consular relations of 1963 (article 8, 18) accreditation country can take the responsibility of the protection of interests of the third country and its citizens in the host country, while the consular office of accreditation country can realize the consulate functions in the host country from the name of the third country. However, firstly such protection can be only temporary, while secondly provision of diplomatic protection and realization of consular functions by accreditation country from the name of the third country can be possible in the condition of the consent of the host country [6; 7].

EU citizens' right to submit a petition to European Parliament or to EU Ombudsman is enshrined in the article 24 of the Treaty on the Functioning of European Union and the article 44 of EU Charter on Fundamental Rights. Each EU citizen has the right to address the complaint to the EU Ombudsman, appointed by European Parliament. Similarly to presenting a petition to European Parliament, this right also belongs to every natural and legal person that resides or has the legal address in the member – state (article 228 of the Treaty on the Functioning of European Union, article 43 of the Charter).

Article 228 of the Treaty states that European Ombudsman, appointed by European Parliament is empowered to examine complaints of the EU citizens and other individuals, who reside or who are registered in any of the EU member states. At the same time, the complaint cannot be completely arbitrary. Only the deficiencies in the institutions' activities that according to the point of view of the applicant can prevent from the realization of goals and realization of tasks of European Union can be its subject. It does not necessarily mean that the facts presented in the complaint are directly related to the rights and interests of the applicant (as provided by the Treaty for the cases of complaints) [1]. This procedure is a form of control over the activities of the EU organs and institutes; it encourages the raise of activities and interest of EU ordinary citizens in the realization of the necessary tasks.

Article 24 of the Treaty on the Functioning of European Union states that every citizen has the right

to address into any EU institutions or organs with the written statement, composed in one of the official languages of member – states and to get the answer in the language of the presented inquiry – statement. According to the paragraph 4 article 41 of EU Charter on Fundamental Rights, natural and legal persons who reside or who has a legal address in the EU member – state have the similar right.

The right for good governance is enshrined in the article 41 of the EU Charter of Fundamental Rights of 2000. Except the above mentioned rights of EU citizens for addressing the EU institutions and organs, it also includes the following rights: impartial, fair case examination of EU citizens by the organs and institutions in a reasonable time; to be heard against them, to take individual measures that cause negative consequences; the right for access to materials of own case for compliance with the legitimate interests of confidentiality; professional and commercial secrecy; obligation of administrative organs to motivate own decisions; compensation of EU caused damages to citizens and EU individuals by the organs of EU or their representatives, during the realization of own duties [1].

One of the most complicated problems related to the understanding of the citizenship nature and legal status of individual in EU is the question of duties of its citizens. Critical evaluations concerning the realization of EU citizenship concept can be explained by the uncertainty in such important citizenship attribute as the duties of the citizens.

EU citizenship provides the range of new rights to the citizens of the member – states, therefore they should also follow the duties in relation to EU, as belonging to the specific citizenship provides individual not only rights, but also duties. Taking this into account, chapter 2, article 20 of the Treaty on the Functioning of the EU clearly stipulates that EU citizens must carry out the duties assigned to them, according to the Treaty. However, the duties of the citizens get less attention than rights, as they are not concretized in the relevant section of the Treaty that relates to the single EU citizenship.

Traditionally, citizenship institute provides people not only rights, but also duties. Conscription duty and tax duty are the main duties of the citizen, in relation to national citizenship. Obviously, the intention of securing similar duties for EU citizens would surely cause the opposition from the EU member states, as it would factually mean the transfer of rights to European Union concerning realization of rights, that are considered principal for preserving the sovereign status of state power rights, therefore it once again would concern the painful theme of state sovereignty [8, p. 327].

Talking about European Union, it is difficult even to imagine what are the concrete duties of its citizens. Predicting the possibility of broadening of existing rights, the Maastricht and the Lisbon Treaties do not contain the analogical norm concerning the duties. This fact demonstrates that the notion of citizenship in its traditional meaning as a precondition of EU citizen legal status is not finally formed. In other words, the duties of EU citizens are not formulated yet, while at the same time the rights, proclaimed within this institute are not realized on practice.

Conclusions and perspectives for further research. EU citizenship regulates and draws the direct legal relationship between the EU and the member states. The notion «EU citizenship» has different sense from the notion «state citizenship», it complements rather than replaces national citizenship, and therefore it has subsidiary character. Implementation of EU citizenship strengthens the international nature of EU, democratizes its political life, as it emphasizes that the goal of the union is about development of personality of its citizens through giving them supplementary rights and freedoms and increases EU supranationality.

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Конончук І. Правовий статус громадян Європейського Союзу. У статті досліджено правовий статус громадян Європейського Союзу (ЄС). Визначено основні етапи становлення його громадянства. Зазначено, що громадянство Європейського Союзу покликане визначати правовий зв'язок між громадянином і Союзом, що знаходить своє відображення в правах громадян, їхніх обов'язках та участі в політичному житті. Громадяни безпосередньо наділяються правами й обов'язками, які підлягають охороні з боку інститутів та держав-членів ЄС. Проаналізовано положення установчих договорів, акти вторинного законодавства Європейського Союзу стосовно громадянства. Охарактеризовано міграційні, політичні, права й обов'язки громадян ЄС. Поняття «громадянство Європейського Союзу» має інше значення, у порівнянні із поняттям «громадянства держави», адже воно доповнює, а не замінює національне громадянство і тому має допоміжний характер. Існування громадянства Європейського Союзу зміцнює міжнародний характер цього утворення, демократизує політичне життя, оскільки воно підкреслює, що метою Європейського Союзу є розвиток своїх громадян шляхом наділення їх додатковими правами і свободами.

Ключові слова: громадянство Європейського Союзу, громадяни Європейського Союзу, правовий статус громадян, міграційні права, політичні права.

Конончук І. Правовой статус граждан Европейского Союза. В статье исследуется правовой статус граждан Европейского Союза. Определяются основные этапы становления гражданства Европейского Союза. Отмечается, что гражданство Европейского Союза призвано определять правовую связь между гражданином и Союзом, что находит свое отражение в правах людей, их обязанностях и участия в политической жизни. Граждане непосредственно наделяются правами и обязанностями, которые подлежат охране со стороны институтов и государств-членов ЕС. Проанализированы положения учредительных договоров, акты вторичного законодательства Европейского Союза в отношении гражданства Союза. Охарактеризованы миграционные, политические, права и обязанности граждан Европейского Союза. Понятие «гражданство Европейского Союза» имеет другое значение, по сравнению с понятием «гражданства государства», ведь оно дополняет, а не заменяет национальное гражданство и поэтому имеет вспомогательный характер. Существование гражданства Европейского Союза укрепляет международный характер этого образования, демократизирует политическую жизнь, поскольку подчеркивает, что целью Европейского Союза является развитие своих граждан путем наделения их дополнительными правами и свободами.

Ключевые слова: гражданство Европейского Союза, граждане Европейского Союза, правовой статус граждан, миграционные права, политические права.