

Crimea beyond rules

Issue N° 3

Right to nationality
(citizenship)

Thematic review of the human
rights situation under
occupation



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РЕГІОНАЛЬНИЙ ЦЕНТР ПРАВ ЛЮДИНИ

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REGIONAL CENTRE FOR HUMAN RIGHTS

Regional Centre for Human Rights - NGO, the nucleus of which consists of professional lawyers from Crimea and Sevastopol, specializing in the field of international human rights law.

rchr.org.ua



Ukrainian Helsinki Human

Rights Union

Ukrainian Helsinki Human Rights Union - non-profit and non-political organization. The largest association of human rights organizations in Ukraine, which unites 29 NGOs, the purpose of which is to protect human rights.

helsinki.org.ua



CHROT - expert-analytical group, whose members wish to remain anonymous.

Some results of work of this group are presented at the link below :

precedent.crimea.ua

Dear readers,

Crimean events at the beginning of 2014 have challenged the post-war system of international security. They stirred up the whole range of human emotions - from the loss of vital references to the euphoria, from joyful hope to fear and frustration. Like 160 years ago, Crimea attracted the attention of the whole Europe. In this publication we have tried to turn away from emotions and reconsider the situation rationally through human values and historical experience. We hope that the publication will be interesting to all, regardless of their political views and attitudes towards those events.

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Introduction

The periodic review "Crimea beyond rules", prepared by joint efforts of several organizations and invited experts, aims to help the international community, human rights organizations, international and national bodies and structures as well as anyone who wants to better understand the human rights situation in Crimea.

Each review is themed around a specific topic and includes a number of analytical articles, references to international regulations, standards and legislation relating to the chosen themes as well as analysis of prospects for potential complaints or those already filed with the international bodies for the protection of human rights. The series of thematic reviews "Crimea beyond rules" is devoted to the study and description of violations of human rights and rules of international humanitarian law resulting from the continuing aggressive expansion on the side of the Russian Federation in respect of Crimea as a part of the territory of Ukraine.

During the occupation and subsequent annexation of the Crimean peninsula, the Russian Federation announced all Ukrainian nationals living in Crimea its subjects. Residents of the occupied territory faced a difficult choice. On the one hand, by obtaining Russian passports, they formally took the oath of allegiance to the State which had committed an act of aggression against their sovereign-country. On the other hand, during a short period of time (in fact - 18 days) they could try to submit the "declaration about the willingness to retain the nationality of Ukraine" to one of the four offices which accepted such declarations in Crimea. In this case, they suddenly became foreigners at home and were severely limited in their rights.

Using the imperfection of international standards in this ng situations of statelessness and resolving cases of dual nationality. Arbitrary change and imposition of a nationality became a new challenge to which the world was not ready. Having imposed its nationality, the Russian Federation «forced into loyalty» the population of the occupied peninsula under threat of criminal liability (see. Art. 275 of the Criminal Code «High Treason»).

It is important to understand that the situation in Crimea is fundamentally different from the current practice of issuing passports of the Russian Federation nationals on the so-called «unrecognized territories» (Transnistria, Abkhazia and South Ossetia). Thus, residents of the «unrecognized territories» may obtain Russian nationality only on its own initiative, by addressing the competent bodies with the appropriate application. In Crimea, the Russian authorities themselves decided the nationality issue for more than 2.3 million people, declaring them subjects of the Russian Federation.

The situation regarding the nationality which arose from the annexation of Crimea should also be distinguished from cases of secession of territories and the succession of States. In cases of secession or succession there takes place an entirely legitimate transfer of the territory under the control of another State which is in accordance with international law. At the same time, the occupation and subsequent annexation of Crimea by the Russian Federation were carried out with gross violation of these norms, of what the international community has been consistently informing since March 2014 and calling on the authorities of the Russian Federation to return control over Crimea to Ukraine. Because of this, any attempt to apply to Crimea the relevant rules concerning the secession or succession of states are inadmissible.

In the post-war world, a person is more and more recognized as a subject of international law. That is why a change of nationality of Crimean residents can and should be considered in the context of relations of four actors: Ukraine, as the country of existing nationality, Russia, as the country that imposes its nationality, the actual resident of the Crimean peninsula and the third countries.

The existing practice of various international judicial bodies concerns cases of violations related to the deprivation of nationality or refusal in its granting. So, in cases related to the imposition of nationality there can be set new precedents. More information about these and other issues can be found in the current review.

International law assumes that the occupation is a temporary regime. We are also convinced that the need for such reviews is provisional. Being optimistic, we believe that the main task of these materials should be apprehension of what had happened and generalization of experience in order to prevent further human rights violations in Crimea or other regions of the world.

The authors of the review: the team of human rights activists, experts and scholars from *Regional Centre for Human Rights* (rchr.org.ua), *Ukrainian Helsinki Human Rights Union* (helsinki.org.ua), as well as *expert and analytical group CHROT*.

International standards

The Universal Declaration of Human Rights

The Universal Declaration of Human Rights was adopted and proclaimed by resolution 217 A (III) of the UN General Assembly on 10 December 1949 and is an act of the so-called «soft law». However, compliance with the obligations under the Declaration is the subject of continuous monitoring by the international community, even if its provisions are not reflected in the texts of other, more binding international instruments.

In particular, along with other documents, the Declaration provisions are the foundation of the Universal Periodic Review (UPR), and its violation can be the reason for individual appeals to the United Nations Human Rights Council in accordance with the Human Rights Council Resolution 5/1 of 18 June 2007 (former procedure 1503).

Article 15 of the Universal Declaration of Human Rights guarantees the right of every person to a nationality, and also prohibits the arbitrary deprivation of the nationality or the right to change it.

The full text of the document can be found following the link¹.

International Covenant on Civil and Political Rights

The Covenant was adopted by resolution 220 A (XXI) of the UN General Assembly on 16 December 1966. Ukraine (at that time - the USSR as an independent member of the UN) signed the Covenant on 20 March 1968 and ratified it on 19 October 1973.

Russia, not being an independent member of the UN, has inherited the obligations under the Covenant as the legal successor of the Soviet Union. The Soviet Union signed the document on 18 March 1968. Presidium of the Supreme Council of the USSR ratified it on 18 September 1973.

The document entered into force in Ukraine and the Soviet Union (and respectively in the Russian Federation) simultaneously, on 23 March 1976.

ARTICLE 24

[...]

3. *Every child has the right to acquire a nationality.*

The full text of the document can be found following the link².

Convention relating to the Status of Stateless Persons

The Convention was adopted in New York on 28 September 1954 by the Conference of Plenipotentiaries convened in accordance with resolution 526 A (XVII) of the Economic and Social Council on 26 April 1954. It entered into force on 6 June 1960. It was ratified by Ukraine on 11 January 2013 and entered into force for it on 23 June 2013.

The Russian Federation is not a party to the Convention.

The Convention provides a definition of the concept of a stateless person, declares rights, obligations of persons who are not citizens of any state, by setting that the treatment of such persons can not be worse than that of the citizens of the state in which they find themselves (e.g. in terms of freedom to practice their religion), or to foreign nationals residing in the territory of such state. It also regulates the issues of movable and immovable property, copyrights and industrial rights of stateless persons, their associations and the right to appeal to the courts (Chapter II). In addition, Chapters III and IV regulate the employment and social security, and Chapter V regulates administrative measures (freedom of movement, identity

1 <http://www.ohchr.org/en/udhr/pages/language.aspx?langid=eng>

2 <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

documents, travel documents, taxes, removal of property, deportation, naturalization).

The full text of the document can be found following the link³.

Convention on the Reduction of Statelessness

The Convention was adopted and signed in New York on 30 August 1961 pursuant to resolution 896 (IX), adopted by the General Assembly of the United Nations on 4 December 1954. The Convention entered into force on 13 December 1975. It was ratified by Ukraine on 11 January 2013 and entered into force for it on 23 June 2013.

The Russian Federation is not a party to this Convention.

The Convention requires States to grant their nationality to a stateless person and prohibits to deprive a person of his nationality, if such deprivation would render him stateless. An exception is made in the context of loyalty relations: the demonstration of disloyalty by nationals empowers the State to deprive them of nationality regardless of the consequences.

ARTICLE 8

1. *A Contracting State shall not deprive a person of his nationality if such deprivation would render him stateless.*

2. *Notwithstanding the provisions of paragraph 1 of this article, a person may be deprived of the nationality of a Contracting State:*

(a) In the circumstances in which, under paragraphs 4 and 5 of article 7, it is permissible that a person should lose his nationality;

(b) Where the nationality has been obtained by misrepresentation or fraud.

3. *Notwithstanding the provisions of paragraph 1 of this article, a Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:*

(a) That, inconsistently with his duty of loyalty to the Contracting State, the person:

(i) Has, in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or

(ii) Has conducted himself in a manner seriously prejudicial to the vital interests of the State;

(b) That the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.

The full text of the document can be found following the link⁴.

International Convention on the Elimination of All Forms of Racial Discrimination

The Convention was adopted by resolution 2106 (XX) of the UN General Assembly on 21 December 1965, signed on 7 March 1966 and entered into force on 4 January 1969. The Ukrainian Soviet Socialist Republic signed the Convention on 7 March 1966. The Presidium of the Supreme Soviet of the Ukrainian SSR ratified it on 21 January 1969, and on 7 April 1969 it entered into force for Ukraine.

Russian Federation, not being at that time an independent member of the UN, inherited the obligations of the Convention as the legal successor of the USSR. The Soviet Union signed the document on 7 March 1966. The Presidium of the Supreme Soviet of the USSR ratified it on 22 January 1969, and on 4 March 1969 it entered into force.

3 <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

4 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/Statelessness.aspx>

ARTICLE 1

[...]

2. *This Convention shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens.*

3. *Nothing in this Convention may be interpreted as affecting in any way the legal provisions of States Parties concerning nationality, citizenship or naturalization, provided that such provisions do not discriminate against any particular nationality.*

[...]

ARTICLE 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

[...]

(d) *Other civil rights, in particular:*

[...]

(iii) *The right to nationality;*

[...]

The full text of the document can be found following the link⁵.

The Convention on the Rights of the Child

Convention was adopted by resolution 44/25 of the UN General Assembly on 20 November 1989 and entered into force on 2 September 1990. The Ukrainian Soviet Socialist Republic signed the Convention on 21 February 1990, and ratified the decision of the Verkhovna Rada of the Ukrainian SSR on 27 February 1991. For Ukraine, the Convention entered into force on 27 September 1991.

The Russian Federation, not being at that time an independent member of the UN, has inherited the obligations of the Convention as the legal successor of the USSR. The Soviet Union signed the document on 26 January 1990, the Supreme Soviet of the USSR ratified it on 13 June 1990 and on 15 September 1990, the Convention entered into force.

The Convention is particularly interesting, because it considers nationality as one of the elements of identity. It is difficult to assume that upon reaching adulthood, a nationality becomes irrelevant. This provision can be used as a key to the consideration of certain issues of nationality in the context of the right to respect for private life.

ARTICLE 7

1. *The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.*

2. *States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.*

ARTICLE 8

1. *States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.*

[...]

The full text of the document can be found following the link⁶.

5 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>

6 <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>

The Convention on Certain Questions relating to the Conflict of Nationality Laws

The Convention was signed in the Hague on 12 April 1930. It entered into force on 1 July 1937 from the date of the deposit of instruments of ratification or accession on behalf of ten members of the League of Nations or non-members of the League of Nations states. The Soviet Union at the time did not sign and ratify it; respectively, Ukraine and the Russian Federation are not parties to this international treaty, but its provisions could be used as a source of customary law.

Chapter I of the Convention establishes the general principles applicable to matters relating to the Conflict of Nationality Laws. These include, in particular:

- the right of each State to determine under its own law who are its nationals. At the same time, this law shall be recognized by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognized with regard to nationality (Art. 1);
- the right of each State to determine any question as to whether a person possesses the nationality of a particular State in accordance with the law of that State (Art.2);
- the right of each State to regard as its national a person having two or more nationalities (Art. 3);
- an inability of the State to afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses (Art. 4);
- the right of a third State to treat a person having more than one nationality as if he had only one, the nationality of the country in which he is habitually and principally resident, or the nationality of the country with which in the circumstances he appears to be in fact most closely connected (Art. 5);
- the right of a person to renounce one of two nationalities if this nationality was acquired without any voluntary act on his part (Art. 6).

The full text of the document can be found following the link⁷.

UN General Assembly Resolution 55/153 of 30 January 2001 On nationality of natural persons in relation to the succession of States

Resolution was adopted on the basis of articles on nationality of natural persons in relation to the succession of States prepared by the International Law Commission the Article 3 of that document expressly provides that «the present articles apply only to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations.»

The resolutions of the UN General Assembly following the occupation of Crimea recognized that the actions of the Russian Federation violated the principles of international law.

Thus, the Russian Federation has no legal grounds for references to articles on nationality of natural persons in relation to the succession of States in support of their actions in relation to the imposition of nationality of the Russian Federation to all nationals of Ukraine who resided and were registered in the territory of the Crimean peninsula at the time of its annexation and occupation by the Russian Federation.

The full text of the document can be found following the link⁸.

7 <http://eudo-citizenship.eu/InternationalDB/docs/Convention%20on%20certain%20questions%20relaing%20to%20the%20conflict%20of%20nationality%20laws%20FULL%20TEXT.pdf>

8 http://www.un.org/ga/search/view_doc.asp?symbol=A/RES/55/153

Declaration on the human rights of individuals who are not nationals of the country in which they live

The Declaration was adopted by resolution 40/144 of the UN General Assembly on 13 December 1985.

The Declaration proclaims the right of aliens to life and security of person, to protection from interference with privacy and family life, including in respect of home and correspondence; the right to be equal before the courts; the right to choose a spouse, to marry, to found a family; the right to freedom of thought, opinion, conscience and religion, as well as other rights as defined in Part 1 of Article 5 of the Declaration.

Part 2 of the same Article declares the following rights of aliens: the right to leave the country; the right to freedom of expression; the right of peaceful assembly; the right to own property alone as well as in association with others, subject to domestic law.

Article 8 defines the rights of aliens lawfully residing in the territory of a State. They, in particular, have the right to appropriate working conditions, fair wages and equal remuneration for work, the right to join trade unions, the right to health protection, medical care, social security, social services, education and recreation.

The full text of the document can be found following the link⁹.

The European Convention on Nationality

The Convention was signed on 6 November 1997 and entered into force on 1 March 2000. Ukraine signed the Convention on 1 July 2003, ratified it on 20 September 2006. The Convention entered into force for Ukraine on 1 April 2007.

The Russian Federation signed this Convention on 6 November 1997, but has not ratified it.

The Convention establishes guarantee of the right to a nationality for each person as well as a guarantee in order to avoid cases of statelessness, arbitrarily deprivation of nationality, lack of automatic consequences in relation to a nationality of a spouse, regardless of change in marital status or change of the nationality by the other spouse (Art. 4). This can be considered as an element of respect for the will of persons while changing the nationality.

It also sets out the grounds for the acquisition and deprivation of nationality, especially loss of nationality at the initiative of the individual, a simplified procedure for the recovery of nationality by former nationals, procedures relating to nationality, cases of multiple nationality, rights and duties related to multiple nationality.

It should be noted that the ratification of this Convention has been made by Ukraine with reservations. In particular, in the Law of 20 September 2006 N° 163-V «On ratification of the European Convention on Nationality» Ukraine declared that it excludes Chapter VII from the scope of the Convention.

The provisions of this chapter provide that persons possessing the nationality of two or more parties to the Convention shall be required to fulfil their military obligations in relation to one of those States Parties only.

In practice, this may mean that persons who had to obtain a Russian passport in the occupied territory of the Autonomous Republic of Crimea and Sevastopol and were called up for military service in the Armed Forces of the Russian Federation, after the performance of such a service can be conscripted for military service in the Armed Forces of Ukraine. However, this clause does not matter in relation to the Russian Federation, because the Russian Federation is not a party to that Convention. Attention should also be paid to the explanatory report at the end of the text of the Convention on the official website of the Verkhovna Rada of Ukraine.

⁹ http://www.un.org/ga/search/view_doc.asp?symbol=a/res/40/144

The text of the Law on ratification can be found following the link¹⁰.

The full text of the Convention in English can be found following the link¹¹.

The full text of the Convention in Ukrainian, with the explanatory report mentioned above can be found following the link¹².

The UN General Assembly Resolution the action of Israel in the Syrian Golan

The UN General Assembly has repeatedly assessed the Israeli practices in the occupied territories (see, for example, this resolution). Special attention shall be drawn to the Resolution A/RES/55/134 of 8 December 2000, which urged to refrain from imposing Israeli citizenship and Israeli identity cards on the Syrian citizens in the Syrian Golan occupied by Israel.

Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)

The Convention was signed in Rome on 4 November 1950 and entered into force on 3 September 1953.

Ukraine ratified the Convention on 17 July 1997. The Convention entered into force for Ukraine on 11 September 1997.

Russia ratified the Convention on 30 March 1998. The Convention entered into force for the Russian Federation on 1 August 1998.

The European Court of Human Rights has repeatedly stressed that the Convention does not protect the right to a nationality. Indeed, the Convention does not contain a provision, which would fully or partially reproduce the provisions of Art. 15 of the UDHR. However, the Court has repeatedly considered cases, where it recognized that in some situations, issues related to the deprivation of nationality may affect matters within the scope of Art. 8 of the Convention (right to respect for private and family life) and even discrimination (Art. 14 in conjunction with Art. 8 of the Convention).

In particular, the interest in this aspect is presented in the cases *Genovese v. Malta*, no. 53124/09, § 30, 11 October 2011 and *Kuric and Others v. Slovenia*, no. 26828/06, 26 June 2012.

Nevertheless, it appears that the imposition of Russian nationality as a result of the occupation of Crimea may also raise new issues in the context of Art. 8 of the Convention. In particular, this may be related to issues of national identity and forced loyalty (see, in particular, comments on the Convention on the Rights of the Child and on Art. 275 of the Criminal Code of the Russian Federation).

Judgments of the European Court of Human Rights

A brief summary of the three most typical judgments of the European Court regarding important human rights issues in the context of citizenship, is given below. The Court itself notes in these judgments that initially ECtHR denied the admissibility of cases related to issues of citizenship, given that “the Convention does not guarantee the right to citizenship.” Nevertheless, the case law has evolved whereby the issues of this category have come in view of the Court. These cases are characterised by the fact that

the Court does not evaluate national authorities’ actions or decisions on determination of the applicants’ citizenship as such, but carefully considers consequences of these decisions and their impact on the lives of the applicants in the context of Article 8 of the Convention. In particular, the Court found no violation of Art. 8 of the Convention in cases *RAMADAN v. MALTA* and *GENOVESE v. MALTA*, since the decisions of national authorities were rather formal, and had no real impact on the lives of the applicants. For example, in the case

10 http://www.un.org/ga/search/view_doc.asp?symbol=a/res/40/144

11 <http://www.coe.int/ru/web/conventions/full-list/-/conventions/rms/090000168007f2c8>

12 http://zakon3.rada.gov.ua/laws/show/994_004/

RAMADAN v. MALTA the applicant, even though deprived of his Maltese citizenship, was not expelled from the country, deprived of his job, he had no documents seized and did not suffer any other serious consequences. Similarly, the case GENOVESE v. MALTA concerned only a request of the applicant's mother for her child to be granted Maltese citizenship despite the fact that they resided in Scotland . In contrast, in the case KURIĆ AND OTHERS v. SLOVENIA the consequences of the authorities' decisions were enormous for applicants and affected all their lives.

In the context of the situation of the imposition of Russian citizenship to residents of Crimea the consequences of such decision can be significant for possible lodging of complaints with the European Court. Technically, the attribution of Russian citizenship to Crimean residents looks like granting them additional rights, and not depriving of them. But in fact, these "additional rights" are a heavy burden for many people. Many people perceive the imposed identification of Crimean Ukrainians as citizens of the Russian Federation in the context of the ongoing conflict very painful. But these consequences are not limited to the inner discomfort only: like any other citizens of the Russian Federation (and citizens only!), they are liable under Art. 275 of the Criminal Code of the Russian Federation for treason against the State in the event of demonstrating loyalty to Ukraine. This means that if they are not required to be directly loyal to the Russian authorities, still they must refrain from any active manifestation of disloyalty. However, it should be understood that those of the Crimean people who decided and managed to declare "the desire to keep the existing citizenship of Ukraine" found themselves in the position of the applicants in the case KURIĆ AND OTHERS v. SLOVENIA.

CASE OF RAMADAN v. MALTA
(21 June 2016, Application no. 76136/12)

The case was examined by the European Court of Human Rights upon the complaint about the applicant's deprivation of Maltese citizenship in the context of Art. 8 of the Convention. The applicant was deprived of his citizenship on the grounds that he had obtained it by fraud. As a result, he became an apatriote (a stateless person).

In this regard, the Court emphasized that an arbitrary denial of a citizenship might in certain circumstances raise an issue under Art. 8 of the Convention because of the impact of such denial on the private life of the individual. Although, in this case the Court found no violation of the Convention, the conclusion that the consequences of changes of nationality *ratione materiae* fall within the Art. 8 of the Convention is significant in the context of this review. The Court also underlines that the private life is a concept that is wide enough to embrace aspects of a person's social identity.

In this case, the Court reiterated that the Convention does not guarantee the right to citizenship. However, in this case likewise in others, the Court draws attention not to the fact of deprivation of citizenship, but on the related (derived) changes in the applicant's private life.

The full text of the judgment can be found following the link¹³.

CASE OF GENOVESE v. MALTA
(11 October 2011, Application no. 53124/09)

The case was examined by the European Court of Human Rights upon the complaint about the refusal of the Maltese authorities to recognize the applicant's right to Maltese citizenship. The applicant was an illegitimate son of a citizen of the United Kingdom and a citizen of Malta. The father refused to acknowledge the applicant to be his son and his mother had to prove the paternity in court. Nevertheless, in spite of the fact established in court, that the father of the child was a citizen of Malta, the Maltese authorities refused to recognize the child as its citizen.

On highlighting that the right to citizenship is not as such a Convention right, the Court also noted that its denial in the present case was not such as to give rise to a violation of Article

13 <http://hudoc.echr.coe.int/eng?i=001-163820>

8 of the Convention. Nevertheless, the Court concluded that the impact of citizenship on social identity was such as to bring it within the general scope and ambit of Article 8 of the Convention in the aspect of the right to respect for private life.

The full text of the judgment can be found following the link¹⁴.

CASE OF KURIĆ AND OTHERS v. SLOVENIA
(12 March 2014, Application no. 26828/06)

This case was examined by the Grand Chamber of the European Court of Human Rights upon the complaint of several former citizens of Yugoslavia against the actions of Slovenia, as a result of which the applicants lost their status of citizens and the formal right to stay in this country. Although the individual situation of each applicant differed, they were all united by the fact that they were living in Slovenia at the time of the proclamation of independence of the Republic (after the dissolution of Yugoslavia) and did not express their will regarding its future status (did not acquire citizenship of Slovenia, and did not apply for a permission to stay). After a while, the Slovenian authorities cleared the records of the applicants as persons legally residing in the country, whereupon they were deprived of many rights, which they enjoyed previously and which were granted to the citizens (the right to work, social benefits, access to health care, the ability to replace lost documents, etc.), and in some cases they even run a risk of expulsion. Thus, the authorities' decision on the applicants' status as citizens or residents of the country had a profound impact on the whole range of their rights.

The Court concluded that the impact of such decision of the authorities on personal and family life of the applicants did not comply with the guarantees of Article 8 of the Convention.

The full text of the judgment can be found following the link¹⁵.

The American Convention on Human Rights

The Convention was adopted at the Inter-American Conference on Human Rights on 22 November 1969 in San Jose. It entered into force on 18 July 1978.

This Convention establishes a regional human rights protection system similar to the European one. The text of the Convention reflects the specific approach to human rights typical for the American continent. At the same time, the right to a nationality was included to the catalog of human rights as a separate item after the Universal Declaration of Human Rights. In this issue American Convention differs from the European Convention on Human Rights, where the European Court with great difficulty recognizes the right to a nationality as a circumstance pertaining to personal or family life (see the relevant section in the analytical materials).

ARTICLE 20. RIGHT TO NATIONALITY

1. Every person has the right to a nationality.
2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.
3. No one shall be arbitrarily deprived of his nationality or of the right to change it.

The full text of the Convention can be found following the link¹⁶.

Convention with respect to the laws and customs of war on land **(The Hague Convention IV)**

This Convention is one of the documents adopted at the Peace Conferences in the Hague in the years 1899 and 1907. The document was adopted on 18 October 1907. For the Russian

14 <http://hudoc.echr.coe.int/eng?i=001-106785>

15 <http://hudoc.echr.coe.int/eng?i=001-111634>

16 http://www.hrcr.org/docs/American_Convention/oashr5.html

Federation the document came into force on 21 November 1909, for Ukraine – on 29 May 2015. Adoption of the Convention was seen as the embodiment of the rules of customary international law. Consequently, they are also binding for states that are not formally parties to the Convention. The rules laid down in the Regulation, have been partially confirmed and developed in the Additional Protocols of 1977 to the Geneva Conventions of 1949.

ARTICLE 45 OF REGULATIONS RESPECTING THE LAWS AND CUSTOMS OF WAR ON LAND (THE HAGUE REGULATION).

It is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power.

The full text of the Convention can be found following the link¹⁷.

The Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War

The Fourth Geneva Convention was adopted on 12 August 1949 under the auspices of the International Committee of the Red Cross. It entered into force on 21 October 1950. The participants of the Convention (as well as the other three Geneva Conventions, adopted on the same day in 1949) are all the nations of the world. The Convention contains provisions on the protection of the civilian population in the context of armed conflict, in particular the occupation.

Article 67 of the GC IV provides that the occupying military courts shall take into consideration the fact the accused is not a national of the Occupying Power. It is customary to interpret this provision in the sense that persons who prior to the occupation had nationality of a State possessing sovereignty over the relevant territory retain it¹⁸.

Forced recruitment of residents of the occupied territory into the armed forces of the occupying Power is a serious violation of international humanitarian law and a war crime (see. Wagner precedent¹⁹, Berger precedent²⁰, Article 147 of the GC IV, Art. 8 (2) (v) of the Rome Statute of the International Criminal Court²¹).

ARTICLE 47

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory, into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying Power, nor by any annexation by the latter of the whole or part of the occupied territory.

ARTICLE 68

[...]

The death penalty may not be pronounced against a protected person unless the attention of the court has been particularly called to the fact that since the accused is not a national of the Occupying Power, he is not bound to it by any duty of allegiance.

[...]

The full text of the Convention can be found following the link²².

17 <https://ihl-databases.icrc.org/ihl/INTRO/195>

18 Dinstein Y. *The International Law of Belligerent Occupation*. — Cambridge, 2009. — P. 53.

19 http://www.worldcourts.com/ildc/eng/decisions/1946.05.03_France_v_Wagner.pdf

20 http://www.worldcourts.com/imt/eng/decisions/1949.04.13_United_States_v_Weizsaecker.pdf#search=%22weizsaecker%22

21 https://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf

22 <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AE2D398352C5B028C12563CD002D6B5C&action=openDocument>

Robert Wagner Case

In the summer of 1940, Robert Wagner was appointed by Hitler to be a Gauleiter²³ and at the same time the imperial viceroy in occupied France Alsace for the purpose of germanization and nazification of the region. Prior to that, Wagner served as Gauleiter and the governor of Baden. In the early years of the German occupation he made many attempts to encourage the Alsatians to voluntarily serve in the German army. In general, for the German side the idea of recruiting volunteers failed (only about 2,300 people, mostly Germans of Alsace responded to the call). The solution to this problem was the introduction of conscription.

Conscription was introduced in Alsace by the Order of 25 August 1942. In accordance with section 1 of the Order compulsory military service in the German armed forces for all Alsatians of German nationality was introduced in Alsace. The Order was made public simultaneously with the Decree on acquisition of German nationality by all Alsatians. This Decree was issued by the Minister of Internal Affairs of the Third Reich on 23 August 1942, and also was applied to the population of Lorraine and Luxembourg. These measures were approved by the Supreme Command of the Wehrmacht, in particular, Hitler and Keitel. Consequently, the spread of German citizenship entailed an obligation for the population of these territories to serve in the German army.

On 29 July 1945 Wagner was arrested by US occupation forces and handed over to the French authorities. On 23 April 1946 he was brought before the Permanent Military Tribunal in Strasbourg. The Tribunal charged Wagner, in particular, with the instigation of the French to take up arms against France, as well as with organization of recruitment of the French into the enemy (German) army. As a result, on 3 May 1946 the tribunal sentenced Robert Wagner to death and confiscation of all property in favor of the people.

Gottlob Berger Case

Gottlob Berger was brought to trial by the American Military Tribunal at Nuremberg in the case of «Wilhelmstrasse». On 1 April 1940, Berger was appointed Chief of the SS Main Office, and in July 1942 became Himmler's liaison officer for the Ministry of the Occupied Eastern Territories. Also, at various times he served as commander of the reserve forces, the head of the Service for Prisoners of War in Germany, the chief of staff of the German Volkssturm (People's Volunteer Corps) and General of the Waffen-SS.

Regarding Berger through a judicial process in the clearest possible terms, it was noted that, "the program implemented in Serbia and Croatia was also carried out in Latvia, Lithuania, Poland, Russia, Luxembourg, Alsace and Lorraine. Without a doubt, defendant Berger is guilty of committing crimes against humanity by the fact that he and his departments were involved in forcing the citizens of these countries to the Germanization or other methods for the purpose of recruitment into the German armed forces".

On 11 April 1949 the American Military Tribunal sentenced Gottlob Berger to 25 years in prison.

These precedents again prove the fact that the right to a nationality and violation of this right is closely linked to other human rights violations, right up to international crimes, which is the forced recruitment of inhabitants of the occupied territory into the armed forces of the occupying Power.

Nottebohm Case²⁴

International Court of Justice in its famous judgment in the Nottebohm case of 6 April 1955, said that it is the sovereign right of each State to decide who are its nationals, provided

²³ Gauleiter was the party leader of a regional branch of the National Socialist German Workers' Party

²⁴ <http://www.icj-cij.org/docket/files/18/2674.pdf>

that this process must be properly regulated by international law. International Court of Justice has upheld the principle of «effective nationality», that which accorded with the facts and based on stronger factual ties between the person concerned and one of these States whose nationality is involved. These factors include the habitual residence of the individual concerned but also the centre of his interests, his family ties, his participation in public life, attachment shown by him for a given country and inculcated in his children, etc.

Case of Yean and Bosico v. Dominican Republic²⁵

The Inter-American Court of Human Rights in its judgment in the case of Yean and Bosico v. Dominican Republic acknowledged the ethnic discrimination of citizens of the Dominican Republic of Haitian descent and confirmed, as enshrined in the aforementioned American Convention on Human Rights, the right of every person to citizenship as a prerequisite for equal enjoyment of all rights in the society. Inter-American Court in its decision also noted that the regulation of nationality issues is the responsibility of the state, but international law imposes certain restrictions on the implementation of such powers. The Court upheld this argument in another case of *Ivcher-Bronstein v. Peru*²⁶, but also noted²⁷ that the right to a nationality is an inalienable right of all people and has an important influence on the legal existence of a natural person.

Joint statement of the participants of the Conference of European Constitutional Courts concerning respect for territorial integrity and international law in administering constitutional justice of 10 September 2015 (Batumi Declaration)

The Constitutional Court of the Russian Federation played its role in the formal recognition of the annexation, having considered the so-called “treaty on the accession of Crimea” in terms of its constitutionality, and spoke in favor of the legality of admitting the so-called “Republic of Crimea” and the “City of Federal Importance Sevastopol” to the Russian Federation (see the relevant section in the Russian legislation). At the same time the Constitutional Court of the Russian Federation also assessed provisions regarding citizenship of the Crimean residents (see below the section in the Russian legislation).

The position of the Constitutional Court of the Russian Federation was condemned by some participants of the Conference of European Constitutional Courts, which was held in Batumi in September 2015. In particular, on 10 September 2015, there was signed the so-called Batumi Declaration, which noted that the Constitutional Court of the Russian Federation formally had a decisive role in the process of annexation of the Crimean Peninsula, and without its judgment the annexation could not be recognized as lawful under national Russian legislation (the illegality of the annexation in the context of international law is not in question in the text of the declaration).

The full text of the document can be read below in this review

JOINT STATEMENT CONCERNING RESPECT FOR TERRITORIAL INTEGRITY AND INTERNATIONAL LAW IN ADMINISTERING CONSTITUTIONAL JUSTICE

As it is known, on 19 March 2014, the Constitutional Court of the Russian Federation passed the judgment in the case «On the verification of the constitutionality of the

25 <http://www.refworld.org/docid/44e497d94.html>

26 http://www.corteidh.or.cr/docs/casos/articulos/seriec_74_ing.pdf

27 http://www.corteidh.or.cr/docs/opiniones/seriea_04_ing.pdf

international treaty, which has not yet entered into force, between the Russian Federation and the Republic of Crimea on the accession of the Republic of Crimea to the Russian Federation and the formation of new constituent entities within the Russian Federation». By that unprecedented judgment, the Constitutional Court of the Russian Federation recognised that the agreement between the Russian Federation and the so-called «Republic of Crimea», located in the territory of Ukraine, is an international treaty, as well as that the so-called «Republic of Crimea» has the status of an international legal entity.

It is important to note that the Constitutional Court of the Russian Federation formally has a decisive role in the process of the annexation of foreign territories. Under Paragraph 1 of Article 8 of the Federal Constitutional Law of the Russian Federation «On the Procedure of Admission to the Russian Federation and Creation of a New Subject of the Russian Federation in Its Composition», an international treaty on the accession of a new entity to the Russian Federation may be ratified only after the Constitutional Court of the Russian Federation rules such a treaty to be in compliance with the Constitution of the Russian Federation. Thus, under the Russian legislation, the above-mentioned judgment was necessary in order to formally annex part of the territory of Ukraine — Crimea and the City of Sevastopol. Without that judgment, the annexation of Crimea and the City of Sevastopol could not be formally accomplished. Therefore, the Constitutional Court of the Russian Federation, by adopting its judgment of 19 March 2014 within one day after the so-called «Treaty» was signed, performed an instrumental role in accomplishing and justifying the annexation of Crimea.

We recall that, under international law, such annexation of a foreign territory is a manifestation of aggression and cannot be justified by any consideration.

In this context, it should be noted that not a single European state has recognised this annexation and that the general international consensus as to the illegality of the «Crimean referendum» and the annexation of Crimea is, inter alia, expressed in United Nations General Assembly Resolution no. 68/262 «The territorial integrity of Ukraine» (2014), Parliamentary Assembly of the Council of Europe Resolutions no. 1988 «Recent developments in Ukraine: threats to the functioning of democratic institutions» (2014), no. 1990 «Reconsideration on 2

substantive grounds of the previously ratified credentials of the Russian delegation» (2014) and no. 2034 «Challenge, on substantive grounds, of the still unratified credentials of the delegation of the Russian Federation» (2015), European Parliament Resolution no. 2014/2699(RSP) «On Russian pressure on Eastern Partnership countries and in particular destabilisation of eastern Ukraine» and the OSCE Parliamentary Assembly Resolution «The continuation of clear, gross and uncorrected violations of OSCE commitments and international norms by the Russian Federation» (2015). The conclusions concerning the illegality of the «Crimean referendum» were also stated in the Opinion of the European Commission for

Democracy through Law (Venice Commission) on «Whether the decision taken by the Supreme Council of the Autonomous Republic of Crimea in Ukraine to organise a referendum on becoming a constituent territory of the Russian Federation or Restoring Crimea's 1992 Constitution is compatible with constitutional principles» (2014).

We consider that the judgment of 19 March 2014 of the Constitutional Court of the Russian Federation amounts to a grave violation of international law (the universally recognised norms of international law, including those consolidated in the 1945 Charter of the United Nations, the 1970 Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, the 1975 Final Act of the Conference on Security and Cooperation in Europe). Consequently, it may be concluded that this judgment is not in accordance with the fundamental principle of the rule of law, which obliges courts to

comply with the general principles of law, the main principles of international law and the values of democratic constitutional order,

We reiterate that the Statute of the Conference of European Constitutional Courts makes the full membership of European Constitutional Courts in this organisation conditional upon the conduct of judicial activities by its members in accordance with the principle of judicial independence, the fundamental principles of democracy, the rule of law and the duty to respect human rights (Paragraph 1 (a) of Article 6),

We, therefore, invite the members of the Conference of European Constitutional Courts to consider adopting the «Declaration on respect for territorial integrity and international law in administering constitutional justice», which has been proposed by the Constitutional Court of Ukraine.

This Joint Statement is open for signature to the memberS of the Conference of European Constitutional Courts,

Batumi, 10 September 2015

SIGNED BY:

1. On behalf of the Constitutional Court of Ukraine,
Head of Delegation *[Signature]* Stanislav Sherchuk
2. President of the Constitutional Court of
the Republic of Lithuania
[Signature] Dainius Žalimas
3. Andrzejczyk Rafał, president of the
Constitutional Court of Poland.
4. George PAPUA SHVILI *[Signature]*
President, Constitutional Court of Georgia
5. On behalf of the Constitutional Court of Moldova
Alexandru Taras *[Signature]*
6. На ім'я представництва правосуддя в територіальних
репрезентативних органах управління територіальною
адміністрацією в рамках конституційного права, а саме
в особі суддів конституційного суду, які на
своїх посадах виконують обов'язки держави,
які є частиною конституційного обов'язку,
які є частиною обов'язку держави виконувати
обов'язки держави, які є частиною
обов'язку держави, які є частиною
обов'язку держави *[Signature]* *[Signature]*
7. *[Signature]* H.M. NICOLATOS
President Supreme Court of Cyprus.

Laws and regulations of Ukraine

Constitution of Ukraine

Date of approval and number: 28 June 1996, no. 254k/96-VR

Effective date: 28 June 1996

ARTICLE 4.

There is single citizenship in Ukraine. The grounds for the acquisition and termination of Ukrainian citizenship are determined by law.

ARTICLE 25.

A citizen of Ukraine shall not be deprived of citizenship and of the right to change citizenship. A citizen of Ukraine shall not be expelled from Ukraine or surrendered to another state. Ukraine guarantees care and protection to its citizens who are beyond its borders.

ARTICLE 26.

Foreigners and stateless persons who are in Ukraine on legal grounds enjoy the same rights and freedoms and also bear the same duties as citizens of Ukraine, with the exceptions established by the Constitution, laws or international treaties of Ukraine. Foreigners and stateless persons may be granted asylum by the procedure established by law.

ARTICLE 33.

Everyone who is legally present on the territory of Ukraine is guaranteed freedom of movement, free choice of place of residence, and the right to freely leave the territory of Ukraine, with the exception of restrictions established by law.

A citizen of Ukraine may not be deprived of the right to return to Ukraine at any time.

The full text of the Constitution can be found following the link²⁸.

Law of Ukraine “On the Unified state demographic register and the documents confirming citizenship of Ukraine, certifying the identity or its special status”

ARTICLE 13.

Titles and types of documents issued with the application of the Unified state demographic register.

1. Documents, execution of which is provided by this Law with the application of the Register, in accordance with their purpose are divided into:

1) documents certifying the identity and confirming citizenship of Ukraine:

- a) a Ukrainian passport;*
- b) a Ukrainian international passport;*
- c) a diplomatic passport of Ukraine;*
- d) a service passport of Ukraine;*
- e) a seafarers' identity document;*
- f) a crew member certificate;*
- g) an ID card to return to Ukraine;*
- h) a Ukrainian temporary certificate.*

The full text of the Law can be found following the link²⁹.

Law of Ukraine “On Citizenship of Ukraine”

Date of approval and number: 18 January 2001, no. 2235-III

28 http://www.coe.int/t/dghl/cooperation/ccpe/profiles/ukraineConstitution_en.asp

29 <http://zakon2.rada.gov.ua/laws/show/1601-18>

Effective date: 1 March 2001

Contents: the Law regulates the procedure for acquisition of citizenship, defining the grounds for such an acquisition (Art. 6), as well as the procedure for termination of citizenship (Art. 17 voluntary termination of citizenship of Ukraine).

The citizenship of Ukraine is based, in particular, on the principles of a single citizenship, prevention of statelessness, impossibility of deprivation of citizenship, retention of citizenship, regardless of the citizen's place of residence (Art. 2).

The full text of the Law can be found following the link³⁰.

The Law of Ukraine “On Securing the Rights and Freedoms of Citizens and the Legal Regime on the Temporarily Occupied Territory of Ukraine”

Date of approval and number: 15 April 2014, no. 1207-18

Effective date: 27 April 2014

Contents: Part 1 of Art. 6 of the Law secures the rights of citizens residing in the temporarily occupied territory for issuance of documents certifying Ukrainian citizenship.

Part 4 of Art. 5 determines that compulsory automatic enrollment of Ukrainian citizens, who reside in the temporarily occupied territory, to the citizenship of the Russian Federation is not recognized by Ukraine and is not ground for deprivation of Ukraine's citizenship.

The full text of the Law can be found following the link³¹.

The Law of Ukraine «On Creation of the Free Economic Zone «Crimea» and on Peculiarities of Exercising Economic Activity in the Temporarily Occupied Territories of Ukraine»

Date of approval and number: 12 August 2014. no. 1636-VII

Effective date: 27 September 2014

Contents: Art. 8.3. of the Law stipulates that state guarantees concerning benefits and social assistance do not apply to citizens who live in the territory of the FEZ Crimea and are either stateless or have citizenship of a foreign state, as well as to the citizens of Ukraine who also have the citizenship of the occupying state. Transitional provisions of the Law established that foreigners and stateless persons, citizens of Ukraine who live in the temporarily occupied territory of Ukraine or temporarily staying in the other territory of Ukraine are recognized non-residents for the purpose of customs formalities.

The full text of the Law can be found following the link³².

Law of Ukraine “On ensuring the rights and freedoms of internally displaced persons”

Date of approval and number: 20 October 2014, no. 1706-VII

Effective date: 22 November 2014

Contents: IDPs can receive documents certifying their identity, special status and citizenship if they appeal to the central executive body at the place of their factual residence (Art. 6).

The full text of the Law can be found following the link³³.

30 http://www.coe.int/t/dghl/standardsetting/nationality/National%20legislation/Ukraine%20LawCitizenship%20consol%20June05_ENG.pdf

31 <http://mfa.gov.ua/en/news-feeds/foreign-offices-news/23095-law-of-ukraine-no-1207-vii-of-15-april-2014-on-securing-the-rights-and-freedoms-of-citizens-and-the-legal-regime-on-the-temporarily-occupied-territory-of-ukraine-with-changes-set-forth-by-the-law-no-1237-vii-of-6-may-2014>

32 <http://zakon4.rada.gov.ua/laws/show/1636-18>

33 <https://www.brookings.edu/wp-content/uploads/2016/07/Ukraine-IDP-Law-November-2014.pdf>

Laws and regulations of the Russian Federation

Constitution of the Russian Federation

Date of approval: 12 December 1993

Effective date: 01 October 1993

Contents: Art. 6 stipulates that the citizenship of the Russian Federation shall be acquired and terminated according to federal law; it shall be one and equal, irrespective of the grounds of acquisition. Every citizen of the Russian Federation shall enjoy in its territory all the rights and freedoms and bear equal duties provided for by the Constitution of the Russian Federation. A citizen of the Russian Federation may not be deprived of his or her citizenship or of the right to change it.

Art. 62 of the Constitution allows dual citizenship for Russian citizens.

The full text of the Constitution can be found following the link³⁴.

Law of the Russian Federation of 28 November 1991 no. 1948-I “On Citizenship of the Russian Federation”

The Law on Citizenship was adopted in connection with the proclamation of independence by the Russian Federation in 1991. In 2002, the text of the Law was redrafted (see below).

Of a particular interest are the provisions on granting Russian citizenship to former USSR citizens residing in the territory of the Russian Federation on the date of entry into force of this Law. Persons of this category had the right to declare their unwillingness to have citizenship of the Russian Federation during a year after the Law came into force. In comparison, the residents of Crimea were given less than a month to think about this decision, and the period, during which the opportunity to “express the desire to keep the citizenship of Ukraine” existed de facto, was less than 18 days.

ARTICLE 13. RECOGNITION OF CITIZENSHIP OF THE RUSSIAN FEDERATION

1. All former Soviet citizens permanently residing in the territory of the Russian Federation on the date of entry into force of this Law shall be recognized as citizens of the Russian Federation, unless they declared their unwillingness to have Russian citizenship within one year after that day.

The full text of the document can be found following the link³⁵.

Federal Constitutional Law “On Admitting to the Russian Federation the Republic of Crimea and Establishing within the Russian Federation the New Constituent Entities of the Republic of Crimea and the City of Federal Importance Sevastopol”

Date of approval and number: 20 March 2014, no. 6-FKZ

Effective date: 21 March 2014

Contents: Art. 4 of the FCL regulates the recognition of citizenship of the Russian Federation for the citizens of Ukraine and stateless persons who permanently reside in the territory of the Republic of Crimea or Sevastopol. Thus, all Ukrainian citizens and stateless persons who reside in the territory of the Republic of Crimea or Sevastopol shall be recognized as citizens of the Russian Federation. Persons willing to retain their nationality or remain stateless must declare this within 1 month after admitting the Republic of Crimea to the Russian Federation. Otherwise, citizens shall be recognized as citizens of the Russian Federation without any second citizenship. In addition, the Law imposes restrictions for holding positions in state

34 <http://www.constitution.ru/en/10003000-01.htm>

35 http://www.democracy.ru/library/laws/federal/1948-I_fz/

and municipal bodies by the Russian citizens who have a second citizenship or the right of permanent residence in a foreign country. Art. 11 of the Law also guarantees the citizens of Ukraine and stateless persons residing in the territory of the Republic of Crimea at the time of admitting the Republic of Crimea to the Russian Federation the right to social assistance only in case they acquire Russian citizenship.

Typical form of declaration that was strictly recommended to fulfill by those Crimeans who wanted to avoid Russian citizenship:

	От гражданина _____
	Дата рождения _____
	Место рождения _____
	Проживающего по адресу _____
	Паспорт _____

Заявление

Я _____

заявляю о желании сохранить имеющееся у меня гражданство Украины (статус лица без гражданства) для себя и своих несовершеннолетних детей

В связи с чем отказываюсь от признания себя гражданином (своих несовершеннолетних детей) Российской Федерации и в соответствии со статьей 5 Договора Российской Федерации и Республики Крым о принятии в Российскую Федерацию Республики Крым и образования в составе Российской Федерации новых субъектов (Москва, 18 марта, 2014 год) С правовым статусом иностранного гражданина, лица без гражданства и необходимостью оформления соответствующих документов, а также правовыми последствиями принятого мною решения ознакомлен.

_____ (дата)

_____ (подпись)

FMS of Russia
From a citizen_____

Date of birth_____

Place of birth_____

Residing in_____

Passport details_____

Declaration

I _____
declare the willingness to retain my citizenship of Ukraine (status of a stateless person) for
myself and my minor children _____

In light of this, I refuse to be recognized (to recognize my minor children) as a citizen of
the Russian Federation according to the Article 5 of the Agreement between the Russian
Federation and the Republic of Crimea on admitting to the Russian Federation the Republic of
Crimea and establishing within the Russian Federation the new constituent entities (Moscow,
March 18, 2014).

I am aware of a legal status of a foreigner, a stateless person and necessity to make relevant
documents, as well as legal consequences of my decision.

(date)

(signature)

Federal Law “On Citizenship of the Russian Federation”

Date of approval, number: April 19, 2002, no. 62-FZ

Effective date: 1 July, 2002

Contents: Art. 4 of the Law contains the principles concerning the citizenship of the Russian Federation and the rules that regulate relations in the field of the Russian citizenship. In addition, it defines grounds, conditions and procedure for acquisition and termination of citizenship of the Russian Federation. Art. 6 of the FL allows dual citizenship for Russian citizens. The list of grounds for acquisition of citizenship of the Russian Federation is not exhaustive (Art. 11: at birth, on reinstatement in the citizenship, on admission to the citizenship, etc.).

Arts. 18 and 19 of the Law contain grounds and regulate the manner of renunciation of citizenship of the Russian Federation on the basis of free will of a person. Art. 20 provides that renunciation of citizenship shall not be permitted if a person: a) owes an incomplete obligation towards the Russian Federation, established by the federal laws; b) is under indictment in a criminal case in the Russian Federation or under a sentence of conviction which has taken effect and is pending execution; c) possesses no other citizenship and guarantee for the acquisition thereof.

The full text of the Law can be found following the link³⁶.

³⁶ http://www.consultant.ru/document/cons_doc_LAW_36927/

Presidential Decree of the Russian Federation “On approval of the Regulations on the order of consideration of issues of citizenship of the Russian Federation”

Date of adoption and number: 14 November, 2002, no. 1325 (revised on 4 August, 2016).

Contents: It regulates the procedure for submission and review of documents for renunciation of citizenship of the Russian Federation.

The following data must be provided among other things in an application for renunciation of citizenship: series, number, date of issue of a Russian passport and the authority which has issued this document. A copy of passport must be enclosed to this application.

Thus, the exercise of the right to renounce Russian citizenship is impossible for persons who have refused to obtain Russian passports and whom the Russian Federation, nevertheless, considers its citizens.

The full text of the Decree can be found following the link³⁷.

The Agreement between the Russian Federation and the Republic of Crimea on the Admitting of the Republic of Crimea in the Russian Federation and on Establishing New Constituent Entities within the Russian Federation

Date of signature: 18 March 2014

Date of ratification: 21 March 2014

Effective date: 1 April 2014

Contents: the Agreement specifies that the citizens of Ukraine and stateless persons permanently residing on the day the Republic of Crimea was admitted to the Russian Federation are recognized as citizens of the Russian Federation. An exception are persons who, within one month from the date of acceptance of the Republic of Crimea into the Russian Federation declare their desire to maintain their existing citizenship or otherwise remain stateless. Changes regarding the period of notice have been made to the Federal Law «On Amendments to Art. Art. 6 and 30 of the Federal Law «On Citizenship of the Russian Federation” and Certain Legislative Acts of the Russian Federation». The term has been extended to January 1, 2016.

The full text of the Agreement can be found following the link³⁸.

Decision of the Russian Federation Constitutional Court on 19 March 2014 no. 6-II “On the constitutionality of the International Agreement, not yet in force, between the Russian Federation and the Republic of Crimea on admitting to the Russian Federation the Republic of Crimea and establishing within the Russian Federation the new constituent entities”

Date of approval: 19 March 2014

Contents: The Court considered the request of the President of the RF on the constitutionality of the International Agreement concluded between the RF and Crimea. The Court found that the Agreement corresponds to the Constitution of the RF. It was found that the provision on granting citizenship of the RF and the obligation to notify dual citizenship or statelessness is not inconsistent with the Constitution, because it does not compel to renounce another citizenship or remain stateless while ensuring, if desired, the right to acquire Russian citizenship without taking any actions for this purpose.

The full text of the decision can be found following the link³⁹.

37 http://www.consultant.ru/document/cons_doc_LAW_39607/0b46424cde96ea7d9427d2c3d28d0bac40dd8cb4/

38 <http://pravo.gov.ru/proxy/ips/?docbody=&nd=102171897&rdk=&backlink=1>

39 <https://goo.gl/dtHuRw>

Federal Law of the RF “On amendments to Art. 6 and 30 of the Federal Law “On citizenship of the Russian Federation” and certain legislative acts of the Russian Federation”

Date of approval and number: 23 May 2014, no. 142-FZ

Effective date: 4 August 2014

Contents: The Federal Law introduces amendments to some legislative instruments regarding Russian citizens who reside within the boundaries of the Russian Federation and who have another citizenship or the right of permanent residence in another country. These citizens shall be obliged to notify in writing of any other citizenship or the right of permanent residence within 60 days from the date of acquisition of a second citizenship or the right of permanent residence. The procedure for notification of such citizenship is also regulated. Violation of the established procedure for notification shall entail the imposition of an administrative fine (Art.19.8 of the Code of Administrative Offences). The Criminal Code was amended imposing liability in the form of a fine, forced labor for failure to fulfill a notification obligation (Art. 330.2 of the Russian Criminal Code). Citizens who acquire Russian citizenship in accordance with the Agreement on admitting to the RF the Republic of Crimea no. 6-FKZ shall be deemed to have the Russian citizenship only, in case of filing an application for their reluctance to be citizens of a foreign state. The deadline for notification of a second citizenship and punishment for violation of the established procedure for notification, as well as punishment for failure to notify and concealing dual citizenship is effective from 1 January 2016 (Art. 6 of the Federal Law of the RF “On citizenship”).

The full text of the document can be found following the link⁴⁰.

Federal Law “On amendments to Art. 6 of the Federal Law “On citizenship”

Date of approval and number: 19 December 2014, no. 507-FZ

Effective date: 31 December 2014

Contents: Art. 6 of the Federal Law “On citizenship” is supplemented with part 3, which states that citizens who have multiple citizenship and file no notice within 60 days of their foreign citizenship or the right of residence in a foreign state shall be obliged to submit such notification not later than 30 days from the date of entry into the territory of the RF. Citizens who arrive in the Russian Federation in a manner not requiring a visa and on the date of entry into force of this Law are citizens of that foreign state only shall submit a notification of another citizenship or the right of permanent residence in other country prior to January 1, 2016.

The full text of the Law can be found following the link⁴¹.

Federal Law “On amendments to the Federal Law “On the legal status of foreign citizens in the Russian Federation” and certain legislative acts of the Russian Federation”

Date of approval and number: 14 November 2014, no. 357-FZ

Effective date: 24 November 2014

In accordance with this Law, foreign citizens staying lawfully in the territory of the Russian Federation, arriving in the Russian Federation in a manner not requiring a visa and reaching the age of 18 shall be entitled from January 1, 2015 to be employed on the basis of a work permit both by individuals and legal entities. Thus, the Crimean people who are not citizens of the Russian Federation in accordance with the Russian laws shall be obliged to obtain a work

40 <https://rg.ru/2014/06/06/grajdanstvo-dok.html>

41 <https://rg.ru/2015/01/12/grazhdanstvo-dok.html>

permit. Clarifications on the employment can be found following the link⁴².

The full text of the Law can be found following the link⁴³.

Decree of the Russian Government dd. October 29, 2015 no. 2197-r on the establishment of quotas for issuing permits for temporary residence in the Russian Federation to foreign citizens and stateless persons

In accordance with this Decree, in 2016, the Crimean Federal District (including the “Republic of Crimea” and Sevastopol) was provided with 1900 temporary residence permits for foreign citizens and stateless persons (1500 for Crimea and 400 for Sevastopol).

The full text of the document can be found following the link⁴⁴.

Criminal Code of the Russian Federation

The Criminal Code of the Russian Federation contains two articles that are of direct relevance to citizenship.

First of all, it is Art. 275 of the Criminal Code of the Russian Federation, which provides for liability for high treason. The subject of the offense under this Article is a citizen of Russia. This provision, in addition to direct collection of information constituting a state secret, provides for liability for rendering any assistance to a foreign state, an international or foreign organization, or their representatives in activities against the security of the Russian Federation. Obviously, in the context of the conflict between the Russian Federation and Ukraine the imposition of Russian citizenship predetermines the prosecution of Crimean people for any active demonstration of loyalty to Ukraine. Given that the classification of the activities to such that are directed against the security of the Russian Federation is carried out in a quite subjective way, this provision predetermines repressions against the Crimean people.

Moreover, the provisions of Art. 330.2 of the Criminal Code of the Russian Federation provide for liability for failure to notify the Russian authorities of the citizenship (nationality) of another state. In fact, it is a means of control over possible loyalty of citizens to other countries.

ARTICLE 275. HIGH TREASON

High treason, that is act of espionage committed by a citizen of the Russian Federation, disclosure to a foreign state, an international or foreign organization, or their representatives of information constituting a state secret that has been entrusted or has become known to that person through service, work, study or in other cases determined by the legislation of the Russian Federation, or any financial, material and technical, consultative or other assistance to a foreign state, an international or foreign organization, or their representatives in activities against the security of the Russian Federation -

shall be punished by deprivation of liberty for a term of twelve to twenty years with or without a fine in an amount of up to five hundred thousand rubles or in the amount of the wage or salary, or other income of the convicted person for a period of up to three years and with restriction of liberty for a term of up to two years.

Note. A person who has committed crimes stipulated in this Article, or Articles 276 and 278 of this Code, shall be relieved from criminal liability if he has facilitated the prevention of further damage to the interests of the Russian Federation by informing the governmental authorities of his own free will and in due time, or in any other way, if his actions contain no other corpus delicti.

42 <http://mtrud.rk.gov.ru/rus/info.php?id=622731>

43 http://www.consultant.ru/document/cons_doc_LAW_171225/

44 <http://government.ru/media/files/WSuem3sXQhKEsRQIJ4CNsW2M1J94eeup.pdf>

ARTICLE 330.2. FAILURE TO COMPLY WITH THE OBLIGATION TO NOTIFY OF THE CITIZENSHIP (NATIONALITY) OF A FOREIGN STATE OR A RESIDENCE PERMIT OR ANY OTHER VALID DOCUMENT CONFIRMING THE RIGHT TO PERMANENT RESIDENCE IN A FOREIGN COUNTRY (PROVIDED BY THE FEDERAL LAW OF 04.06.2014 NO. 142-FZ)

Failure to comply with the obligation determined by the legislation of the Russian Federation to notify the relevant territorial body within the federal executive body authorized to exercise the functions of control and supervision in the field of migration about the citizenship (nationality) of a foreign state or a residence permit or any other valid document confirming the right to permanent residence in a foreign country - shall be punished by a fine in an amount of up to two hundred thousand rubles or in the amount of the wage or salary, or other income of the convicted person for a period of up to one year or by compulsory labor for a term of up to four hundred hours.

The full text of the document can be found following the link⁴⁵.

Ruling of the Constitutional Court of the Russian Federation of 4 October 2016 no. 18-P in the case regarding the verification of constitutionality of Part 1, Article 4 of the Federal Constitutional Law “On admitting to the Russian Federation the Republic of Crimea and establishing within the Russian Federation the new constituent entities of the Republic of Crimea and the City of Federal Importance Sevastopol” upon A.G. Olenev’s complaint

The reason for this decision was the problem that had arisen with respect to getting a Russian passport by persons who actually lived in Crimea, but were not registered there.

When considering this case, the Constitutional Court of the Russian Federation referred to the principle of respect for the will of certain persons. According to the authors of this review, this position does not fit well with the other part of this decision: the Constitutional Court substantiates its findings with the Russia’s succession to the Crimean Peninsula and considers the connection of “new citizens” with the annexed territory as a ground for granting citizenship (this idea is borrowed from the UN General Assembly Resolution on Nationality of Natural Persons in Relation to the Succession of States). The contradiction in the position of the Constitutional Court is that if the same principles apply to persons who were officially registered in Crimea, then their will to be recognized as Russian citizens was rudely ignored, as they were subjected to mass collective naturalization as something that comes together with the annexed territory.

The full text of the document can be found following the link⁴⁶.

45 http://www.consultant.ru/document/cons_doc_LAW_10699/2ca391674eaaa02069722fa3f13cbb41cce0a95d/

46 <http://doc.ksrf.ru/decision/KSRFDecision247212.pdf>

Laws of the so-called “Republic of Crimea”

Constitution of the Republic of Crimea

Date of ratification: 11 April 2014

Effective date: 12 April 2014

Contents: Part 3 of Art. 62 of the Constitution defines the head of the Republic of Crimea as a citizen of the Russian Federation without citizenship of a foreign state or a residence permit or any other document confirming the right of permanent residence of a Russian citizen in a foreign country.

The full text of the Constitution of the “RC” can be found following the link⁴⁷.

47 <https://rg.ru/2014/05/06/krim-konstituciya-reg-dok.html>

German Czechoslovakian treaty relating to citizenship and options of 20 November 1938⁴⁸

This treaty was adopted with the aim to resolve issues of citizenship between Germany and Czechoslovakia as a result of the occupation of the territory of the latter in October 1938. Since the end of World War II, due to the insignificance of the Munich agreement on the division of Czechoslovakia in 1938 all the acts that took the form of an international treaty, in particular, the said contract would be recognized as invalid.

Despite an early invalidation of the Treaty, there is reason to believe that its adoption largely affected the «post-war» fate of many Germans living in the occupied territories of Czechoslovakia. We are talking about the forced eviction of the German minority in Czechoslovakia who acquired German citizenship before the end of World War II. The eviction of the civilian population, being illegal from the point of view of modern international law, was made on the basis of decrees of Czechoslovak president Edvard Beneš.

Thus, in accordance with Beneš Decree of 2 August 1945 regarding the change of the Czechoslovak citizenship for persons of German and Hungarian ethnic origin, citizens of Czechoslovakia of German or Hungarian national origin who acquired German or Hungarian citizenship by the order of the occupation authorities, lost the right to citizenship of Czechoslovakia on the day of acquiring this citizenship.

The text of the treaty of 20 November 1938

The governments of Germany and Czechoslovakia, willing to settle the issues of citizenship and options arising from the reunification of Sudeten German areas with the German Reich, authorized:

on behalf of the German Government – Ministerialdirektor of the Ministry of Foreign Affairs, Mr. Dr. Friedrich Gauss, and Ministerial Adviser in the Reichsministerium, Mr. Dr. Hans Globke.

On behalf of the Government of Czechoslovakia - Mr. Dr. Antonin Koukal, Ministerial Adviser of the Ministry of Justice in Prague,
who agreed on the following provisions:

§1.

Those citizens of Czechoslovakia who as of 10 October 1938 were living in one of the communities reunited with the German Reich, from 10 October 1938 acquire German citizenship while losing Czechoslovak citizenship, if they

a) were born before 1 January 1910 in the territory, reunited with the German Reich,

or

b) lost their German citizenship on 10 January 1920,

or

c) are the children or grandchildren of a person who is subject to the conditions of a) or b)

or

d) are the wives of persons who are subject to the terms of paragraphs a), b) or c)

Citizens of Czechoslovakia of German national origin, who as of 10 October 1938 resided outside the territory of the former state Czechoslovakia from 10 October 1938 receive German citizenship while losing Czechoslovak citizenship, if they as of 10 October 1938 had the right to citizenship in one of the communities reunited with the German Reich.

A wife does not acquire German citizenship if a husband does not acquire it.

§2.

The German Government is entitled up to 10 July 1939 to require persons of not German

⁴⁸ The translation is made by the NGO “Regional Centre for Human Rights”

national origin who, according to the provisions of this Treaty shall remain citizens of Czechoslovakia and moved to the territory, reunited with the German Reich, since 1 January 1910, as well as their descendants with Czechoslovak citizenship, to leave the German Reich during the three-month period.

The Government of Czechoslovakia takes these persons in its territory.

The Government of Czechoslovakia is entitled up to 10 July 1939 to require persons of German national origin, who by the time this Treaty enters into force are citizens of Czechoslovakia and moved to the territory of the modern Republic of Czechoslovakia since 1 January 1910 as well as their descendants to leave the territory of the Czechoslovak Republic during the three-month period.

At the same time, these persons are deprived of citizenship of Czechoslovakia. The German government takes them into its territory. This provision shall not apply to persons who have received Czechoslovak citizenship after 30 January 1933 and until the date indicated had been citizens of Germany or Austria.

§ 3.

Persons not of German national origin, who under the provisions of § 1 acquire German citizenship, have until 29 March 1939 the right to opt for Czechoslovak citizenship.

§ 4.

Persons of German national origin, who remain citizens of Czechoslovakia, have until 29 March 1939 the right to opt for German citizenship. This provision shall not apply to persons who received Czechoslovak citizenship after 30 January 1933 and until the date indicated had been citizens of Germany or Austria.

§ 5.

One can inform about the willingness to opt:

- a) in favor of Czechoslovak citizenship in the territory of the Czechoslovak Republic in the Ministry of Internal Affairs in Prague,
outside the Czechoslovak Republic in the competent executive authority of Czechoslovakia;
- b) in favor of German citizenship in the territory of the German Reich in the lower competent administrative authority,
outside the German Reich in the authorized German consulate.

§ 6.

The territorial competence of the authorities referred to in § 5 is determined by the place of residence, and in the absence of residence, place of location of an optant.

If the application of option is submitted to the territorially incompetent authority, other than specified in § 5, then the latter passes it to the territorially competent authority. The date of submission of the application shall be the date of its receipt in the first instance.

§ 7.

Application of option is submitted to the authority referred to in § 5 being recorded or in writing. Signature under the application submitted in writing must be certified by the official representative of the State whose citizenship is chosen, by the court or the notary.

Application of option may also be submitted by an authorized representative. The signature under a power of attorney must be certified by any of the instances referred to in the paragraph 1.

Certification is exempt from fees, taxes, stamp duties and other charges.

§ 8.

The competent authority of the state whose citizenship is selected, checks the prerequisites for the option. In the Czechoslovak Republic, this checking is reserved for the Ministry of Interior in Prague.

If the conditions for the option are met, the authority shall immediately issue a certificate of option for an optant, and notify the authority designated by the other Government.

In the certificate of option there should be also specified family members subject to the option.

The option enters into force at the time an application of option is received by the authorities dealing with the choice of citizenship.

The procedure of option does not provide for any fees, taxes, stamp duties and other charges.

§ 9.

Any person having reached the age of 18 may submit the application of option.

The wife does not have the right to opt for their own; option by the husband covers a wife. This rule does not apply if the marriage is dissolved in court.

For persons under 18, for persons over 18 years, for whom there are grounds for depriving them of their legal capacity, as well as for persons who are deprived of legal capacity or over whom a temporary custody (guardianship) is established, option could be made by their legal representatives, even if the latter has no right of option. In order to assess the grounds for the application of option under this paragraph, the date of submission of the application of option to the authorities dealing with the choice of citizenship is fundamental.

§ 10.

The option is irreversible.

However, if persons for whom the legal representative has exercised the right of option, reach the age of 18 years before the expiry of the option period or until the expiration of that period the basis of their legal representation is no longer valid, they can cancel option within the time limit. The abolition of the option is covered by the provisions of §§ 5-7, respectively.

§ 11.

According to this Treaty, a place of residence of a person is the place where the person has settled with the intention of long-term residence.

If a person has more than one place of residence, the place that he indicates as his place of residence, is fundamental.

§ 12.

Persons who are required to leave the territory of the German Reich or the Czechoslovak Republic, as prescribed under § 2, as well as optants that until 3 March 1940 move their place of residence to the State in favor of which they have opted, are permitted to take all movable property, which they had as of the date of this Treaty, and they are exempt from any duties. An exception is cash, securities and collections that are of particular historical or cultural significance to the country of export. Consideration of these issues should be specified by a special agreement.

§ 13.

To check and resolve all issues that arise in the execution of this Treaty, a Mixed Commission is created, to which each of two Governments shall send an equal number of representatives.

This Commission is particularly charged with the responsibility of:

1. the development of proposals to facilitate the exchange of populations, as well as

clarification of fundamental questions that arise in this exchange;

2. the verification of doubt in regard to citizenship.

The Commission may appoint a sub-committees on specific issues if necessary.

§ 14.

This Treaty shall enter into force on 26 November 1938.

Done in duplicate, in the German and Czechoslovak languages.

Berlin, 20 November 1938.

Friedrich Gauss

Antonin Koukal

Hans Globke

[Source: The monthly magazine of Foreign Policy 5 (1938), no. 9, pp 1213-1216].

The Treaty in the original language can be found following the link⁴⁹.

Resolution of the Crimean Supreme Council on legislative initiative for the right of citizens of the Republic of Crimea to dual citizenship

18 December 1992, N° 223-1

1. In accordance with Article 1 of the Law of Ukraine “On citizenship of Ukraine” and Article 21 of the Constitution of the Republic of Crimea to consider it necessary to propose to the Supreme Council of Ukraine and the President of Ukraine to speed up decision-making on the exercise of the right to dual citizenship by the Crimean citizens.

2. To temporarily suspend in the territory of the Republic of Crimea the execution of decisions by the law enforcement bodies on citizenship of Ukraine in relation to the Crimean citizens, who haven’t still decided on their belonging to Ukraine.

3. To instruct the Permanent Commission of the Supreme Council of Crimea for legislation, lawfulness and system of justice to prepare proposals on the practical exercise of the right of the Crimean citizens to dual citizenship.

The full text of the document can be found following the link⁵⁰.

49 <http://www.forost.ungarisches-institut.de/pdf/19381120-1.pdf>

50 <http://precedent.crimea.ua/documents/postanovlenye-verhovnoho-soveta-kryima-o-zakonodatelnoy-ynytsyatyve-po-voprosu-realyzatsyy-prava-hrazhdan-respublyky-kryim-na-dvojnoe-hrazhdanstvo-ystorycheskye-materyaly/>

The Russian authorities exploit the “automatic obtaining of nationality” for prosecuting pro-Ukrainian activists. The best-known examples are cases of **Oleg Sentsov** and **Aleksandr Kolchenko** who were arrested and transferred to the territory of the Russian Federation on suspicion of committing criminal offenses. Both are citizens of Ukraine and during the occupation lived in Crimea. The Office of the United Nations High Commissioner for Human Rights highlighted in its report of July 15, 2014 (para. 188):

“It would appear that since Sentsov did not explicitly renounce Russian citizenship within the deadline provided under Russian legislation, he is automatically considered to have become a Russian citizen.”

Particularly, the “Kolchenko’s case” should be mentioned in the context of nationality, as it indicates the compulsory nature of the “automatic nationality” of the Russian Federation, which does not depend on the will of a person. The court denied the retention of the Ukrainian citizenship by Kolchenko, despite the fact that Kolchenko while being in custody in Moscow could not apply for Russian citizenship and obtain a Russian passport. Kolchenko confirms that he has taken no actions to obtain Russian citizenship. The only document that has been certifying his identity since the time of his arrest is his Ukrainian passport. Kolchenko considers himself a citizen of Ukraine, and Ukraine recognizes Kolchenko’s Ukrainian citizenship.

The court decided to deny the retention of the Ukrainian citizenship by Oleksandr Kolchenko. The court’s decision to deny the retention of the Ukrainian citizenship contradicts international law, Russian and Ukrainian legislations. Therefore, Kolchenko is deprived of the right to nationality, despite the fact that no one can be deprived of nationality arbitrarily. In addition, the judgment violates Article 16 of the International Covenant on Civil and Political Rights of 1966, which guarantees that everyone shall have the right to recognition everywhere as a person before the law. Thus, Kolchenko’s legal personality is based on his Ukrainian nationality, and his legal nexus as a national of Ukraine remains unchanged outside Ukraine. In this case, the court, deciding in the name of the Russian Federation, unreasonably refuses to recognize Oleksandr Kolchenko’s legal personality (*Report of the Crimean Human Rights Field Mission for January 2015, p. 16*).

Eventually, the North Caucasus District Military Court sentenced Oleg Sentsov and Oleksandr Kolchenko to 20 and 10 years of imprisonment in a strict regime penal colony, respectively, as Russian citizens. At the same time, Kolchenko with assistance of his lawyer Svetlana Sidorkina filed a complaint to the European Court of Human Rights about the compulsory imposition of the Russian nationality.

This “automatic” acquisition of Russian nationality by nationals of Ukraine in Crimea is illegal, since the internal procedures of the Russian Federation for its acquisition fail to comply with the applicable international conventions, customary international law and the principles of the nationality law (in particular, see *The European Convention on Nationality, Nottebohm case*).

Those Crimeans who for one reason or another have not declared their «desire to preserve their existing citizenship of Ukraine», but still do not wish to be considered as citizens of the Russian Federation, faced a “curious” situation. Often in this situation, these people do not apply for the issuance of Russian passports, while continuing to use the passport of citizen of Ukraine.

Some of these people have applied for a residence permit as citizens of Ukraine. Mainly, this situation ends with failure. Denial is usually motivated by the fact that, in accordance with the law of 6-FKZ applicants are considered as citizens of Russia, and a residence permit may be granted only to foreign nationals.

Those Crimeans who try to renounce the imposed citizenship of the Russian Federation also end up in a complicated situation. Russian legislation makes no exception for Crimeans,

and thus they have to undergo the procedure of renouncing the citizenship in a general way. This procedure, among other things, requires a RF passport. Thus, here is a vicious circle: in order to get rid of the imposed citizenship, you must first recognize yourself a citizen of Russia and formally apply for a passport.

If Crimeans do not have a «document confirming the legality of staying in the territory of Russia» (Russian passport or residence permit) this leads to restriction or deprivation of many of their rights. Without Russian passport or a residence permit it is impossible be formal employment, apply for health services, social benefits and pensions.

Imposition of citizenship as a new human rights violation and a way of implementing aggressive expansion by the Russian Federation in the context of the occupation of Crimea

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Introduction

After the occupation of the Crimean Peninsula the Russian Federation collectively naturalized the population of Crimea. This fact raises a number of questions that have no ready answers in today’s environment. Firstly, it is a way of seizing the territory together with the population. Secondly, it is interference in Ukraine’s internal affairs and nationality relationship that existed between the Crimean residents and the Ukrainian state. Finally, Russia has violated international human rights standards, interfering in the internal sphere of an individual. It is this aspect – the violation of human rights by means of imposition of nationality – that is a focus of this study.

It should be realized that the occupation and actions directed at the appropriation of the occupied territory is a phenomenon that happened perhaps for the first time in the European system of human rights protection. The similar situation, which can be compared to Crimea, is the Turkish invasion of Northern Cyprus. However, the current level of economic, legal, information, cultural and other relations rises new issues which did not exist or were not so high-profile during the invasion of Cyprus. Furthermore, Cyprus still remains the so-called unrecognized territory that Turkey has never tried to make a part of its own country.

Crimea also differs from other unrecognized territories, including Transnistria, Abkhazia and South Ossetia⁵¹. The Russian Federation has been carrying out the “passportization” of the population in these territories for quite a long time already. However, the main difference from the Crimean situation is that the expression of individual’s will is needed in order to obtain Russian nationality in these territories and there is no temporal limitation. In other words, those who are unwilling to acquire Russian nationality can avoid it. But in Crimea there was held quick collective passportization, during which there was no possibility to consciously respond to the situation.

In the postwar time contemporary international law addressed the issues of eliminating statelessness⁵² and resolving cases of dual nationality. However, the issue of protection against arbitrary imposition of nationality has so far remained unnoticed by the international community. It is time when these issues must also take their rightful place in international discussions.

Historical background

In early 2014, Russia committed an act of military aggression against sovereign Ukraine and tried to annex part of its territory - the Crimean Peninsula. The beginning of the active phase

51 See, for example, Human Rights in the Occupied Territories of Georgia: Information Note Distributed by the Delegation of Georgia during OSCE Review Conference - Human Dimension Session (Warsaw, 30 September - 8 October 2010). – Access mode: <http://www.osce.org/home/73289?download=true> (date of reference: 01/11/2016).

52 See, for example, materials of the United Nations High Commissioner for Refugees (UNHCR) about the campaign to stop statelessness. – Access mode: <http://www.unhcr.org/pages/53174c306.html> (date of reference: 01/11/2016).

of such actions should be considered the third decade of February⁵³.

The occupation was carried out under the protection the so-called “green men” - armed men without insignia. Later in the documentary “Crimea: The Way Back Home”, Russian President Vladimir Putin recognized that those were the Armed Forces of the Russian Federation⁵⁴. According to numerous press reports, many of the participants of the occupation were awarded with a medal “For the return of Crimea”, but the official list of the medaled persons is not available⁵⁵.

On 27 February 2014, by a decision of the Verkhovna Rada of the Autonomous Republic of Crimea (ARC), captured and controlled at the time by the armed men, there was scheduled an all-Crimean referendum⁵⁶. The initial date of the referendum was set on the day of presidential elections in Ukraine – 25 May 2014. Then the referendum was rescheduled for 30 March and finally - for 16 March 2014. The latter was the date when the referendum took place⁵⁷.

Reliable data on the results of voting is not available, and public statements of those involved in its organization and conduct contain contradictory information⁵⁸. Despite that fact, on 18 March 2014, (in two days after the referendum) an agreement “on admitting to the Russian Federation the Republic of Crimea and establishing within the Russian Federation the new constituent entities” (hereinafter - “Agreement”) was signed⁵⁹.

The next day the Constitutional Court of the Russian Federation by its decision dd. 19 March 2014 no. 6-P acknowledged this Agreement as such that corresponds to the Constitution of

53 On 23 February 2014, on the Nakhimov Square in the city of Sevastopol there was held a rally, during which a Russian citizen Oleksiy Chaly was “elected” as the so-called “people’s mayor”. Then the city was surrounded by checkpoints. Later, on 26 February 2014, in front of the building of Verkhovna Rada of Crimea, that was taken over by people unknown at that time, there was held a meeting of pro-Russian and pro-Ukrainian forces (the latter included the Crimean Tatars). However, the medal “For the return of Crimea”, legalized by the Order of the Ministry of Defense of the Russian Federation no. 160 of 21 March 2014 bears the dates 20.02.14 - 18.03.14. The Verkhovna Rada of Ukraine by the Law of 15 September 2015 specified the date of the beginning of the occupation: the beginning of the occupation is officially considered to be 20 February 2014.- Access mode: <http://zakon0.rada.gov.ua/laws/show/1207-vii>.

54 Andriy Kondrashov: Film “Crimea: The Way Back Home” (All-Russian State Television and Radio Broadcasting Company, 2015).- Access mode: https://russia.tv/brand/show/brand_id/59195/ (date of reference: 01/11/2016). The film has English subtitles. Regarding the participation of Russian troops, please, watch from 1:05:00.

55 According to the site life.ru: ca. three hundred Russian citizens were awarded with a medal “For the Return of Crimea”.- Access mode: <https://life.ru/t/новости/151348> (date of reference: 01/01/2016).

56 Resolution of the Autonomous Republic of Crimea “On holding of the all-Crimean referendum”.- Access mode: <http://crimea.gov.ru/act/11689> (date of reference: 01/11/2016).

57 During this short period, not only any public debate was not organized, but also Ukrainian and Crimean Tatar activists were severely persecuted. See, for example, the report of the Office of the United Nations High Commissioner for Human Rights on the situation of human rights in Ukraine dd. 15.04.2014, prepared after the visit of Assistant Secretary General for Human Rights Ivan Šimonović to Crimea: “the presence of paramilitary and so called self-defence groups as well as soldiers in uniform without insignia, widely believed to be from the Russian Federation, was not conducive to an environment in which voters could freely exercise their right to hold opinions and the right to freedom of expression. There have also been credible allegations of harassment, arbitrary arrest, and torture targeting activists and journalists who did not support the referendum. Furthermore, seven persons were reported as missing <...> While the Tatar community was promised numerous concessions, including Government positions as well as the recognized status as indigenous peoples, the majority of the members of the community chose to boycott the referendum. OHCHR was informed by representatives of Crimean Tatars that no more than 1,000, out of a population of 290,000-300,000, participated in the 16 March referendum” (para. 6) .- Access mode: http://www.ohchr.org/Documents/Countries/UA/Ukraine_Report_15April2014.doc (date of reference: 01/11/2016).

58 According to the statement of Mykhaylo Malyshev, the so-called “Head of the Crimean Parliament Commission on organization and holding of the referendum” 1 million 250 thousand 426 people voted in Crimea. This is without Sevastopol <.> With Sevastopol the number of people voted made up 1 million 724 thousand 563 people.” (Quoted by the Newspapers: “Crimea has chosen Russia.” – Access mode: https://www.gazeta.ru/politics/2014/03/15_a_5951217.shtml (date of reference: 01/11/2016). According to this statement, more than 474 thousand people voted in Sevastopol, while the total number of population (including children who do not have the right to vote) was a little over 385 thousand people.

59 On the peninsula, in compliance with Article 133 of the Constitution of Ukraine, there were established two administrative units equal in status - the Autonomous Republic of Crimea (hereinafter - ARC) and the city of Sevastopol, which had been existing in that form since declaration of independence of Ukraine in 1991. The two administrative units had the same status, and none of them was subordinate to the other. Nevertheless, the referendum was also conducted in the city of Sevastopol. By tangent rule the terms regarding the city of Sevastopol were included in the “agreement”.- Access mode: <http://kremlin.ru/events/president/news/20605> (date of reference: 01/11/2016).

the Russian Federation⁶⁰.

On 21 March 2014, Russian President Vladimir Putin signed the law on ratification of the Agreement and the Federal Constitutional Law no. 6-FKZ “On admitting to the Russian Federation the Republic of Crimea and establishing within the Russian Federation the new constituent entities of the Republic of Crimea and the City of Federal Importance Sevastopol” (hereinafter - the Law 6-FKZ)⁶¹.

This Law came into force on 1 April 2014. Since that time, its provisions began to be formally applied by the occupation authorities on the Crimean Peninsula. However, it should be noted that according to Article 1 of the “Agreement” the so-called Republic of Crimea deemed to be admitted to the Russian Federation from the date of signing of this Agreement, i.e. from 18 March 2014.

The occupation has been followed by numerous violations of human rights: freedom of movement, property rights, freedom of speech, freedom of religion, the right to a fair trial and so on. At the same time, some of these violations themselves are also international crimes: for example, transfer of the Crimean residents from the occupied territory and vice versa, transfer of the civilian population of the Russian Federation to the occupied territory significantly changes the population profile of the peninsula. Conscription of residents of the occupied territory into the Russian Armed Forces is another example of such an offense. A prerequisite for this and other offenses is arbitrary imposition of Russian nationality, which is being analyzed below.

International legal qualification of the Russian Federation’s actions in Crimea

The UN General Assembly Resolution 3314 of 14 December 1974 defines aggression as the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State or in any other manner inconsistent with the Charter of the United Nations⁶².

The Ukraine’s territorial integrity is guaranteed by a package of international legal agreements from the UN Charter to the Final Act of the Conference on Security and Cooperation in Europe.

According to the so-called Budapest Memorandum⁶³ signed by the Russian Federation along with Great Britain and the United States, the signatories made a commitment to respect the independence and sovereignty and the existing borders of Ukraine and refrain from the threat or use of force against the territorial integrity or political independence of Ukraine, ensuring that none of their weapons will ever be used against Ukraine except in self-defense or otherwise in accordance with the Charter of the United Nations⁶⁴.

The UN General Assembly Resolution 68/262 on Ukraine’s territorial integrity of 27 March 2014 called upon all States, international organizations and specialized agencies not to recognize any alteration of the status of the Autonomous Republic of Crimea and the city of Sevastopol on the basis of the referendum held on 16 March 2014 and to refrain from any

60 See the Judgment of the Constitutional Court of the Russian Federation of 19 March 2014 no. 6-P.- Access mode: <https://rg.ru/2014/03/19/ks-site-dok.html> (date of reference: 01/11/2016). On 10 September 2015, at the Conference of European Constitutional Courts in Batumi there was signed the so-called Batumi Declaration, which noted the crucial role of the Constitutional Court of the Russian Federation in legalizing the occupation and annexation of the Crimean Peninsula.

61 Federal Constitutional Law no. 6-FKZ “On admitting to the Russian Federation the Republic of Crimea and establishing within the Russian Federation the new constituent entities of the Republic of Crimea and the City of Federal Importance Sevastopol”. - Access mode: <http://www.consultant.ru/cons/cgi/online.cgi?req=doc&base=LAW&n=200047&fld=134&dst=100136,0&rnd=0.46997960940071615#0> (date of reference: 01/11/2016).

62 UN General Assembly Resolution no. 3314 of 14 December 1974.- Access mode: http://www.un.org/ru/documents/decl_conv/conventions/aggression.shtml (date of reference: 01/11/2016).

63 Memorandum on Security Assurances in Connection with Ukraine’s Accession to the Treaty on the Non-proliferation of Nuclear Weapons of 5 December 1994.- Access mode: http://zakon4.rada.gov.ua/laws/show/998_158 (date of reference: 01.11.2016).

64 Memorandum on Security Assurances in Connection with Ukraine’s Accession to the Treaty on the Non-proliferation of Nuclear Weapons.- Access mode: http://zakon2.rada.gov.ua/laws/show/998_158 (date of reference: 01/11/2016).

action or dealing that might be interpreted as recognizing any such altered status⁶⁵.

External conditions in which Crimeans had to choose their citizenship

According to Article 4 of the Federal Constitutional Law no. 6-FKZ “from the date of the admitting to the Russian Federation the Republic of Crimea and establishing within the Russian Federation the new constituent entities Ukrainian nationals and stateless persons who had been permanently residing in the Republic of Crimea and the City of Federal Importance Sevastopol were recognized as nationals of the Russian Federation, except for persons who within one month thereafter declared their willingness to retain their and (or) their minor children’s other nationality or remain stateless.”⁶⁶

As mentioned above, according to the “Agreement” the “Republic of Crimea” is deemed to be admitted to the Russian Federation from the date of signing of the “Agreement”, i.e. from 18 March 2014. Thus, starting exactly from that date the term envisaged by Art. 4 of the Law 6-FKZ was restricted. That term ended on April 18. But since the legislation of the Russian Federation started being applied on the peninsula from 1 April 2014, according to the Law no. 6-FKZ, as mentioned earlier, so the general term for the submission of that application de jure was reduced to 18 days.

As of 4-9 April 2014, in Crimea there were operating only two offices of the Federal Migration Service (FMS) , which received applications, in Sevastopol and Simferopol. As of 10 April, 9 FMS offices were operating in: Sevastopol, Simferopol, Yalta, Bakhchisaray, Bilogorsk, Yevpatoriya, Saki, Kerch and Dzhankoy⁶⁷. It was reported by the Human Rights Monitoring Mission in Ukraine (hereinafter – HRMMU) in its periodic report on the human rights situation in Ukraine of 15 May 2014⁶⁸.

In total, ca. 3500 persons filed applications “declaring their will to keep their and (or) their minor children’s other nationality or remain stateless.”⁶⁹

As indicated in the report of the Commissioner for Human Rights in the Republic of Crimea in 2014, “transitional period”, the time allotted for integration of the <...> region from the established system of law and governance into the system of public institutions of the Russian Federation <...> is characterized by internal contradictions, inconsistency, interchange of progressive development phases, often combined with conflicts in the application of laws. This leads to the fact that an ordinary person is lost in a variety of new rules of life different from those, which he got accustomed to.”⁷⁰

That is not to say that the inhabitants of Crimea were fully deprived of possibility to express their will to acquire Russian nationality. However, the conditions in which they had to choose (instantaneous loss of familiar landmarks in everyday life, lack of adequate information about consequences, extremely short term, infrastructural constraints, etc.) did not enable to make an informed choice⁷¹. Observations show that the majority of Crimeans did not try to make their choices and acquired the status of Russian nationals “with the tacit consent” after the

65 UN General Assembly Resolution of 27 March 2014 no. 68/262 “Territorial integrity of Ukraine”.- Access mode: <http://www.un.org/ru/documents/ods.asp?m=A/RES/68/262> (date of reference: 01/01/2016).

66 Law no. 6-FKZ, ibid.

67 For comparison: offices of the Federal Migration Service in which one could apply for a Russian passport, have been established within the network of similar offices of the State Migration Service of Ukraine. These offices were located, as a rule, within walking distance of the place of residence of citizens in big cities.

68 Para. 27 of the periodic report of the UN Human Rights Monitoring Mission in Ukraine on the situation of human rights in Ukraine of May 15, 2014.- Access mode: http://www.un.org.ua/images/stories/Report_15_May_2014ua.pdf (date of reference: 01/11/2016).

69 See the Report of the Commissioner for Human Rights of the Russian Federation for 2014, p. 99.- Access mode: <http://ombudsmanrf.org/www/upload/files/docs/appeals/doklad2014.pdf> (date of reference: 01/11/2016).

70 Report of the Commissioner for Human Rights in the Republic of Crimea in 2014, p. 4.- Access mode: <http://crimea.gov.ru/textdoc/ru/7/act/393pr.pdf> This document is of great evidentiary value, since the credentials of the author L.E. Lubinaya as the Commissioner for Human Rights are recognized by the Russian Government.

71 The term “informed choice” is used by analogy with the fixed term “informed consent to medical treatment”, which provides for such consent on the basis of sufficient and timely information about the nature of medical treatment, the associated risks and possible consequences.

expiry of the 18-day term⁷².

In the meantime, any option of choice, which had to be made by the Crimeans, led to a deterioration in their situation: they had to choose between a significant restriction of rights (up to a complete loss of legal personality) and the oath of allegiance to the aggressor state.

Consequences of renunciation of Russian nationality

Applying to renounce Russian nationality automatically led to the fact that this person acquired the status of a foreigner with the relevant restrictions (related to employment, the right to social benefits, migration control, prohibition of participation in political activities and to be engaged in public life, etc.). But unlike the common situation when a foreigner deliberately moves to a foreign country and agrees to relevant limitations, this category of Crimean residents found themselves to have a status of foreign nationals at home. The further stay on the peninsula became entirely dependent on the discretion of the occupation authorities as to permission to stay.

The former nationals of Yugoslavia in Slovenia faced similar problems. The European Court of Human Rights in the case *Kurić and Others v Slovenia*⁷³ concluded that such situation entails a loss of legal personality, and declared it incompatible with Article 8 of the European Convention on Human Rights <respect for privacy>. In addition, the Court also held that the applicants had been subjected to discriminatory treatment on the ground of national origin⁷⁴.

At the time of the disintegration of Yugoslavia, all nationals had dual nationality - of Yugoslavia itself (which was used effectively) and one of the republics, it was composed of (before the disintegration that nationality was purely nominal and did not influence the possibility of living in another republic and participating in the elections). After the disintegration of Yugoslavia, the former Yugoslav nationality lost its meaning. Instead Slovenia provided a certain period to all those willing to get their own nationality or a permission to stay. After the deadline, those who did not use the right provided were “erased” from the register of residents. Applicants for various reasons did not use the opportunity to determine their status in the republic and found themselves in the category of “the erased”. This led to the fact that they were in a position that the ECtHR defined as the loss of legal personality when they had the severely limited ability to exercise their rights or even were fully deprived of them.

Consequences of acquiring the status of Russian citizens

It is much harder to understand the situation of the persons who in the period up to 18 April 2014 had not submitted the above said application and thus acquired the status of Russian citizens regardless of subsequent obtaining a passport or avoidance of getting it. “New citizens” avoided the problems associated with the loss of legal personality. In fact, they have received a full range of rights enjoyed by Russian nationals by birth in Russia.

In this aspect it looks as if the Russian Federation has done its best and made the Crimean inhabitants equal to any national of Russia. But in fact this is not true. Since the acquisition of nationality involves not only getting a set of rights but also certain duties and the possibility of imposing restrictions by the state. Therefore, the situation that has signs of external equality, actually has a negative impact on “new nationals” having Ukrainian identity, who are now obliged, for example, to use arms to defend the Russian Federation, which, in turn, is in

72 According to the observations of the NGO “Regional Center for Human Rights” there are recorded a large number of people in Crimea and those who left the occupied territory, who did not submit an application regarding unwillingness to obtain Russian nationality, but also did not apply for obtaining a Russian passport. We should understand that pursuant to the Russian laws such persons are also considered nationals of the Russian Federation, despite the lack of proper documents. See further, for example, O. Kolchenko’s example.

73 Case of KURIĆ and others v. SLOVENIA.- Access mode: <http://hudoc.echr.coe.int/eng?i=001-111634> (date of reference: 01/11/2016)

74 According to the UN Convention on the Elimination of All Forms of Racial Discrimination the discrimination on the ground of national origin is a form of racial discrimination.

conflict with Ukraine.

Nationality also includes the creation of certain loyalty relationship that affects the private life and may cause a serious internal conflict in a person. Such situation may raise the question about violation of the right to respect for private life under Article 8 of the European Convention on Human Rights. It is the analysis of compliance of Russia's actions on imposing nationality with international standards that we are going to focus on.

We should make a reservation: this relates to nationals of Ukraine who were loyal to their homeland and lived in Crimea at the time of occupation (regardless of whether they left the occupied territory thereafter or continue to live there). For those who welcomed the fact of annexation and the status of Russian nationals, the problem does not exist: they have just taken the opportunity.⁷⁵

Arbitrary imposition of nationality as a new challenge

When we talk about imposition of nationality as an entirely new challenge, it should be emphasized that existing precedents are related only to the history of the World War II. The Permanent Military Tribunal at Strasbourg and the U.S. Military Tribunal at Nuremberg sentenced consequently Robert Wagner (1946)⁷⁶ and Gottlob Berger (1949)⁷⁷ for actions related to Germanization of the population in the occupied territories and its mobilization as German nationals. However, these cases concerned the imposition of nationality as one of the objective elements of war crimes or crimes against humanity and related to the violation of international humanitarian law. According to Art. 45 of the Regulations concerning the Laws and Customs of War on Land (1907) it is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power⁷⁸.

Prerequisites for viewing the imposition of nationality in the context of human rights violation arise with the adoption of core international human rights treaties. Due to the development of an international catalogue of human rights standards a person was recognized as international legal personality and ceased to be exclusively a toy in the hands of the sovereign. Hence there arose a need to take into account person's will in matters that previously were only within the scope of interstate politics.

In its Advisory Opinion OC-4/84 of 19 January 1984 regarding the proposed amendments to the naturalization provision of the Constitution of Costa Rica the Inter-American Court of Human Rights noted that, despite the fact that it is traditionally accepted that the conferral and regulation of nationality are matters for each state to decide, contemporary developments indicate that international law does impose certain limits on the broad powers enjoyed by the states in that area. And thus the manners in which states regulate nationality matters cannot today be deemed within their sole jurisdiction; those powers of the state are also circumscribed by their obligations to ensure the full protection of human rights. The classic doctrinal position, which viewed nationality as an attribute granted by the state to its subjects, has gradually evolved to the point that nationality is today perceived as involving the jurisdiction of the state as well as human rights issues (para 32, 33)⁷⁹.

The classic case on nationality is the so-called case of *Nottebohm* reviewed by the International Court of Justice⁸⁰. In this case the Court drew a conclusion that today has

75 This material is devoted to consideration of issues of nationality in terms of human rights and exactly in this context there were made reservations. However, the forced extraterritorial collective naturalization of nationals of the other state also violates international public law in terms of inter-State relations.

76 Access mode: <https://www.phdn.org/archives/www.ess.uwe.ac.uk/WCC/wagner1.htm> (date of reference: 01/11/2016).

77 Access mode: [http://www.worldcourts.com/imt/eng/decisions/1949.04.13_United_States_v_Weizsaecker.pdf#search=%22gottlob berger% 22](http://www.worldcourts.com/imt/eng/decisions/1949.04.13_United_States_v_Weizsaecker.pdf#search=%22gottlob%20berger%22) (date of reference: 01/11/2016).

78 Access mode: <https://www.icrc.org/rus/resources/documents/misc/hague-convention-iv-181007.htm> (date of reference: 01/11/2016).

79 Access mode: http://www.corteidh.or.cr/docs/opiniones/seriea_04_ing.pdf (date of reference: 01/11/2016).

80 *LIECHTENSTEIN v. GUATEMALA*, International Court of Justice (ICJ), 1955.- Access mode: <http://www.icj-cij.org/docket/files/18/2674.pdf> (date of reference: 01/11/2016).

become classic: “Naturalization is not a matter to be taken lightly. To seek and to obtain it is not something that happens frequently in the life of a human being. It involves his breaking of a bond of allegiance and his establishment of a new bond of allegiance. It may have far-reaching consequences and involve profound changes in the destiny of the individual who obtains it. It concerns him personally, and to consider it only from the point of view of its repercussions with regard to his property would be to misunderstand its profound significance. In order to appraise its international effect, it is impossible to disregard the circumstances in which it was conferred, the serious character which attaches to it, the real and effective, and not merely the verbal preference of the individual seeking it for the country which grants it to him.” (p. 24)

Although, in the above case issues of nationality are considered in the context of international relations, the definition of this phenomenon given by the International Court of Justice enables to consider it through the system of international human rights standards as well.

International standards for nationality as the right included in the international catalogue of human rights

Nationality is viewed as a category contained in the catalogue of human rights in compliance with the Universal Declaration of Human Rights. Under Article 15 of the Declaration everyone has the right to a nationality and no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

The International Covenant on Civil and Political Rights somewhat narrows the context and reads only the child’s right to acquire a nationality (Art. 24).

The right to a nationality is regulated in more details by Article 20 of the American Convention on Human Rights. Its provisions guarantee every person the right to the nationality of the state in whose territory he was born, and prohibits arbitrary deprivation of nationality or of the right to change it.

The European Convention on Human Rights, in contrast to these international instruments, does not at all contain provisions on nationality. The European Court noted that the right to a nationality is not as guaranteed by the Convention, although under certain conditions the issue of violation of Article 8 may arise in the context of nationality.

In particular, in the case *Genovese v. Malta* (Application no. 53124/09, 11 November 2011, § 30) the ECtHR noted: “The Court ... reiterates that the concept “private life” is a broad term not susceptible to exhaustive definition. It covers the physical and psychological integrity of a person. It can therefore embrace multiple aspects of the person’s physical and social identity. <...> The provisions of Article 8 <respect for private life> do not, however, guarantee a right to acquire a particular nationality or citizenship. Nevertheless, the Court has previously stated that it cannot be ruled out that an arbitrary denial of citizenship might in certain circumstances raise an issue under Article 8 of the Convention because of the impact of such a denial (deprivation) on the private life of the individual.”⁸¹ In this judgment, the Court noted that Malta had violated Article 14 <prohibition of discrimination> in conjunction with Article 8 of the Convention <respect for private life>, as its Citizenship Act prevented an illegitimate child to acquire Maltese citizenship even though his father was Maltese, while children born to a married couple could inherit citizenship of one of parents.

It should be emphasized that the whole case-law of international judicial and quasi-judicial bodies, where the issue of human rights violations in the aspects related to nationality was raised, refers first of all to negative actions of states (deprivation of nationality, denial to

81 Access mode: <http://hudoc.echr.coe.int/eng?i=001-106785> (date of reference: 01/11/2016).

renounce nationality or other similar acts)⁸². The situation of imposition of nationality, as happened in Crimea, has not been the subject of legal assessment to be conducted by international bodies yet⁸³. This new phenomenon has not also been the subject of theoretical study to be carried out by research workers⁸⁴.

And though the European Court of Human Rights addresses nationality issues very carefully, Crimean situation is a favorable opportunity to review the preliminary findings and develop practices in this regard.

Although, as it has been repeatedly noted, the European Convention contains no guarantees on the right to nationality, a status of nationals can be considered as aspect of the right to privacy guaranteed by Article 8 of the Convention. In particular, self-identification is a manifestation of a private life. According to Article 8 of the Convention on the Rights of the Child a nationality is an element of the child's identity. There is no reason to state, especially considering the position of the International Court of Justice in the *Nottebohm's* case regarding the fundamental nature of nationality in the life of each person that nationality loses such meaning for an adult person.

In other words, the fact that the ECtHR does not contain provisions that guarantee a person the right to nationality, in no way excludes that the arbitrary imposition of nationality cannot give rise to circumstances which are incompatible with the guarantees provided by Article 8 of the European Convention on Human Rights <right to respect for private life>.

The arbitrary imposition of nationality on Crimean inhabitants, therefore, on the one hand, is forcing the legal relationship between the inhabitants of Crimea and the Russian Federation, on the other hand represents interference of the Russian Federation in the relationship that emerged earlier and existed between the residents of Crimea and the Ukrainian state. Due to this, actions of the Russian Federation directed at the imposition of nationality are not within its sovereign jurisdiction. Rather the opposite: Russia violated its obligations under the Budapest Memorandum, interfered in the internal affairs of Ukraine and relations between the Ukrainian state and its nationals.

Before the occupation there were no effective relations between the Crimean residents and Russia, which could be the ground for the formalization of nationality relations. It is rather the opposite: the occupation and imposition of nationality became a prerequisite for certain relationship between the Crimean inhabitants and the Russian state. Such relations are undesirable for many Crimean people.

The possibility of reviewing this issue in the context of human rights gives each victim of Russian aggression the opportunity to protect their rights when everybody can directly appeal to international judicial and quasi-judicial bodies (including the ECtHR and the UNCHR). The use of these mechanisms does not depend on the political will inside the state and allows everyone to initiate a dialogue not only in the context of international relations but also in humanitarian dimension.

Situation as viewed by the Constitutional Court of the Russian Federation

By its Judgment no. 18-p of 4 October 2016 the Constitutional Court of the Russian Federation tried to analyze the decision of the Russian Government relating nationality taking

82 See, for example, decisions of the ECtHR in the cases *Riener v. Bulgaria* (no. 46343/99, 23 May 2006), *Petropavlovskis v. Latvia* (no. 44230/06, § 83, ECHR 2015), *Karashev v. Finland* (dec.), no. 31414/96, *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, *Savoia and Bounegru v. Italy* (dec.), no. 8407/05, 11 July 2006; *Dragan and Others v. Germany* (dec.), no. 33743/03, 7 October 2004; *Menesson v. France*; *Fedorova v. Latvia* (dec.), no. 69405/01, 9 October 2003; *Dadouch v. Malta*; *Slepčik v. the Netherlands and the Czech Republic* (dec.), no. 30913/96, 2 September 1996, and so on.

83 Now specialists of the NGO "Regional Center for Human Rights" are preparing an application to the ECtHR and the United Nations Human Rights Committee regarding discrimination and violation of the right to respect for private life through the Russia's imposition of nationality.

84 For more detailed information about modern approaches we encourage you to read *The Changing Role of Nationality in International Law* (Routledge Research in International Law) - Access mode: https://www.amazon.com/Changing-Role-Nationality-International-Law/dp/B00EVWK2G0/ref=sr_1_1_twi_kin_2?s=books&ie=UTF8&qid=1466688841&sr=1-1&keywords=The+changing+role+of+nationality+in+international+law&selectObb=rent. (date of reference: 01/11/2016).

into consideration the norms of international law.

In this case, the subject to the proceedings of the Constitutional Court of the Russian Federation was the right of Ukrainian nationals and stateless persons who resided in Crimea without official registration to acquire nationality under the Law no. 6-FKZ.

The Constitutional Court referred to the European Convention on Nationality (Strasbourg, 6 November 1997), the Russia's succession with respect to Crimea and the UN General Assembly Resolution 55/153 of 12 December 2000 "Nationality of natural persons in relation to the succession of States"⁸⁵. Let us try to consider, how the supreme body of constitutional justice of Russia has interpreted them.

First of all, significant is the reference to the European Convention on Nationality, which though is signed by Russia, is not however ratified yet. Since the Convention is not ratified by Russia, the reference to its provisions is essential in terms of recognition of its binding nature at least in the form of customary law. On referring to the Convention, the Constitutional Court cited its preamble, which states that account should be taken both of the legitimate interests of States and those of individuals. However, the Court did not go beyond citing, that is why the issue concerning the way of applying the indicated principle to the Crimean situation remains open.

Nevertheless, the above analysis of Russia's actions in Crimea shows the disregard for the rights and interests of individuals in the occupied territory and the arbitrary imposition of nationality. Thus, Russia has violated provisions of international law which binding nature for the Russian Federation is recognized by the Constitutional Court of the state.

Regarding the reference to the Russia's succession with respect to Crimea, the Constitutional Court of the RF mentioned the UN General Assembly Resolution 55/153 of 12 December 2000 "Nationality of natural persons in relation to the succession of States". Article 3 of the Declaration provides that its provisions apply only to the effects of a succession of States occurring in conformity with international law and, in particular, with the principles of international law embodied in the Charter of the United Nations.

As it has been already noted, the UN General Assembly Resolution of 27 March 2014 called upon all States to refrain from actions aimed at the disruption of the territorial integrity of Ukraine, including any attempts to modify Ukraine's borders and not to recognize any alteration of the status of the Crimean Peninsula. Under such conditions the rules of international law exclude the possibility of Russia's succession to Crimea, and therefore the reference to the UN General Assembly Resolution 55/153 of 12 December 2000 is also irrelevant⁸⁶.

Finally, the Constitutional Court, referring to the Resolution 55/153, has given considerable prominence to the person's connection with a particular territory. However, this approach reduces the status of people to serfs who are captured together with the land.

At the same time, it is necessary to mention again that in *Nottebohm's* classic case the focus in issues of nationality was put on the effective links of a person not with the territory, but the state itself. A different approach would mean that people could not reside long outside their country of nationality, as it would inevitably result in their naturalization: increase in length of stay in a particular territory would lead to the strengthening of links with this territory and weakening of links with the territory of origin. Author is unaware of origins of the concept of nationality based on a connection with the territory, but its flaws have been demonstrated.

However, if we apply the principle of effective connection with the state itself, not the

85 Access mode: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N00/568/59/PDF/N0056859.pdf?OpenElement>. (date of reference: 01/11/2016).

86 The statement on succession generates many other objections: the capture of Crimea occurred without taking into account the sovereign will of the Ukrainian state; Ukraine, which owns the peninsula, continues to exist; there is no "people of Crimea", who could have the right to self-determination, however, there is a multiethnic population of the peninsula; the Republic of Crimea and especially the city of Sevastopol have never been subjects of international law and were not recognized by anyone to be such during a short period in March 2014, and therefore could not conclude international agreements, etc. This also deprives Russia of the possibility to refer to many other international agreements and principles of international law as they also cannot be applied because of a violation of fundamental obligations under the UN Charter.

territory, it is necessary to stress once again that at the time of the occupation there was no connection between the population of the peninsula and the Russian Federation, sufficient for the nationality relations. At the same time, the imposition of nationality inevitably created such links.

It is worth to mention one more time that the above decision of the Constitutional Court was made in the context of the right of persons, who do not have a registered place of residence in Crimea, to a nationality under the Law no. 6-FKZ. And in fact, following the above logic the Constitutional Court of Russia tried to confirm this right of theirs. However, these principles themselves cannot be applied to the naturalization of other nationals, and that is why they themselves enable to conclude that Russia has violated international law.

Thus, the existing attempts to legitimize the presence of the Russian Federation in Crimea roughly and obviously run against the rules of international law violated during the occupation.

Ukraine's reaction to Russia's actions

According to Art. 5 of the Law of Ukraine “On guaranteeing the rights and freedoms of nationals and on the legal regime in the temporarily occupied territory of Ukraine” the forced automatic acquisition of the nationality of the Russian Federation by the Ukrainian nationals residing in the temporarily occupied territory is not recognized by Ukraine and is not accepted as a ground for loss of nationality of Ukraine⁸⁷.

At the same time, Ukraine's position to some extent is inconsistent. For example, according to the para. 12.7 Art. 12 of the Law of Ukraine “On creation of the free economic zone “Crimea” and peculiarities of economic activities in the temporarily occupied territory of Ukraine” bank savings guarantees are not applicable to nationals of the Russian Federation. This provision was practically extended to Crimean residents who have to submit a declaration of having no nationality of the Occupying Power. There can be also foreseen the issues regarding the access of the Crimean residents to public service, classified information and others related to security and the vulnerable situation in which the residents of Crimea found themselves due to the imposed nationality.

This indicates that Ukraine cannot entirely ignore the actions of the Russian Federation directed at the collective naturalization of the Crimean population and is compelled to take into account this fact, even declaring its legal nullity.

Practical consequences of collective naturalization

The most vulnerable group of nationals of Ukraine who have suffered negative consequences of Russia's actions are children deprived of parental care. According to the Office of the Ukrainian Parliament Commissioner for Human Rights, as of 01.08.2014 there were 4228 of such children in Crimea. Since the beginning of the occupation the authorities of the Russian Federation took control over administration of the institutions that provided care for such children. On the grounds of “respecting the best interests of the child” in favor of these children there was not filed any application “declaring willingness to keep their existing ... other nationality.”⁸⁸

Persons who at the time of the occupation were held in custody belong to another vulnerable group. The administration of places of detention did not properly secure their right to refuse to be recognized Russian citizens as well. Thus they were deprived of consular protection and the right to be transferred to the Ukrainian authorities for serving their sentences. The

87 Law of Ukraine “On guaranteeing the rights and freedoms of nationals and on the legal regime in the temporarily occupied territory of Ukraine.”- Access mode: <http://zakon0.rada.gov.ua/laws/show/1207-vii> (date of reference: 01/11/2016).

88 See the statement of Head of the Department on Observance of the Rights of the Child, Non-discrimination and Gender Equality A. Filipyshyna of 05/06/2015 submitted to the Secretariat of the Ukrainian Parliament Commissioner for Human Rights.- Access mode: <http://www.ombudsman.gov.ua/ua/all-news/pr/5615-sm-aksana-filipishina-prava-ditini-v-krimu-pochali-porushuvati-vid-samogo/> ; <http://health.unian.net/country/1085947-ukrainskim-detyam-sirotam-v-kryimu-prinuditelno-prisvaivayut-rossiyskoe-grajdanstvo.html> (date of reference: 01/11/2016).

most famous manifestation of this problem is a situation in which political prisoners Oleh Sentsov and Oleksandr Kolchenko found themselves⁸⁹. Referring to the fact that they have acquired Russian nationality, Russian authorities refused to transfer them to Ukraine under the Convention on the Transfer of Sentenced Persons (1983). Deputy Minister of Justice of Ukraine S. Petukhov published the information about it on his Facebook page⁹⁰. However, this problem actually concerns hundreds of Ukrainian prisoners who as of today are being transferred from Crimea to the territory of the Russian Federation.

The amended Law “On nationality of the Russian Federation” is in force from 04.06.2014⁹¹. According to Art. 6 of the Law nationals of the Russian Federation (except for those permanently residing outside the Russian Federation), who also have another nationality or a permanent residence permit in a foreign country, must notify in writing a territorial body of the Federal Migration Service of these circumstances. Russian nationals permanently residing outside of Russia shall submit such a notification within thirty days after entering the territory of Russia. Russian passport is a prerequisite for such an application. No exceptions are made for Crimean residents who at the time of the occupation had Ukrainian nationality, moreover these provisions became binding upon them from January 1, 2016⁹². Failure to abide by these regulations results in criminal liability under Art. 330.2 of the Criminal Code of the Russian Federation. Violation of notification terms results in administrative liability.

This itself can be viewed as a violation of the right to respect for private life, as these legal provisions are a requirement to report a loyalty relationship with other state. In the context of Crimea such interference cannot have a legitimate purpose. In addition, in this way Russia actually forces the Crimean residents to get passports of the Russian Federation and declare their loyalty to Ukraine.

A number of other provisions of the legislation and administrative practice also force the Crimean residents to obtain Russian passports. As stated in the aforementioned report of the Commissioner for Human Rights in the Republic of Crimea, the absence of a Russian passport “makes it impossible to exercise almost all the rights and freedoms set forth in the Constitution. In particular, these include inability to work, ineligibility for social security...” The cases of social benefits termination in Crimea for Ukrainian nationals who have not received a Russian passport or a residence permit, as well as problems with employment of such nationals started to be recorded by the Regional Center for Human Rights after the so-called “transition period” from January 1, 2015⁹³.

Conclusions

With the occupation of Crimea there emerged a situation when almost all residents of the occupied territory were recognized Russian nationals without the effective links with the country of their “new nationality”. The emergence of such links was not a prerequisite for granting the status of nationals, but on the contrary, its consequence.

Formally having the possibility to choose a nationality, but not actually being able to make an informed choice because of lack of time, information, and other circumstances, the nationals of Ukraine found themselves at a crossroads facing two equally bad options: to lose

89 O. Sentsov and O. Kolchenko were detained in Simferopol in May 2014 on charges of involvement in the terrorist group, brought to Moscow and later sentenced under Articles 205 and 205.4 of the Criminal Code of the Russian Federation to 20 and 10 years of imprisonment respectively. They did not submit the application regarding renunciation of Ukrainian nationality, as well as did not receive Russian passports. They do not recognize themselves as nationals of the Russian Federation. However, the Russian Government refuses to transfer them to the authorities of Ukraine in order to serve their sentence, referring to the fact that they have acquired the status of Russian nationals under the Law no. 6-FKZ.

90 Access mode: <https://www.facebook.com/photo.php?fbid=1796566357285662&set=a.1434318470177121.1073741828.100007969451473&type=3&theater> (date of reference: 01/11/2016).

91 Access mode: http://www.consultant.ru/document/cons_doc_LAW_36927 (date of reference: 01/11/2016).

92 Access mode: <https://web.archive.org/web/20160209125758/http://www.82.fms.gov.ru/press/news/item/51894/> (date of reference: 01/11/2016).

93 Access mode: <http://crimea.gov.ru/textdoc/ru/7/act/393pr.pdf> (date of reference: 01/11/2016).

legal personality and become foreigners at home or to refuse their own Ukrainian identity and swear allegiance to the aggressor state. The given circumstances and in particular the collective nature of naturalization of persons outside the sovereign territory of Russia indicate that the will of the nationals did not have a significant impact on results. The absence of a special status for the inhabitants of the occupied territories and making them equal to ordinary foreigners complicate or make the residence in Crimea impossible for Crimeans without obtaining a Russian passport.

The collective extraterritorial nationalization undermines the value of nationality institute in international law, because it allows to degrade the nationals' legal connection with the state, depriving them of all the privileges they had due to that connection (for example, the right to consular protection). These actions enable to bring the population of a certain territory under control of authorities of the aggressor state, threaten the world order and are a means of aggressive expansion of the Russian Federation.

In Crimea, there was created a dangerous precedent for which contemporary international law appeared unprepared. Mainly addressing the issues of eliminating statelessness, international law has left the issue of arbitrary imposition of nationality almost entirely neglected. This issue today requires attention from the international community and development of new additional principles because it has a significant impact both in the context of foreign policy relations and public international law as well as in the context of human rights.

The possibility of reviewing the situation in the context of international human rights standards gives each victim affected by Russia's actions the opportunity to directly appeal to international judicial and quasi-judicial bodies in order to protect his rights and initiate a dialogue at international level.

Recommendations to the international community:

- With assistance of the institute of special rapporteurs of the international organizations to provide a detailed examination of the situation regarding the imposition of Russian nationality on residents of the occupied territory of the Crimean Peninsula.
- To attract international expert institutions to develop recommendations on resolving the situation resulting from the imposition of Russian nationality on residents of the occupied territory of the Crimean Peninsula.
- To attract international expert institutions to develop universal standards for ensuring the rights of persons subjected to naturalization protecting them against the arbitrary actions of the state, taking into account such nationals' will and protecting their rights.
- With assistance of consular services to ensure control over the non-recognition of the status of Russian nationals obtained by nationals of Ukraine who live in the occupied territory of the Crimean Peninsula (for example, in terms of impermissibility of issuing visas to such people as Russian nationals through the relevant consular institutions, in terms of prohibition for consular institutions of the Russian Federation to provide such nationals with consular assistance, their extradition to the Russian Federation or at the request of Russia, etc.).

Consequences of human rights violations by the Russian Federation in the occupied territories of the Autonomous Republic of Crimea and the city of Sevastopol (the question of citizenship)

International Covenant on Civil and Political Rights (hereinafter - the Covenant) provides an example of the general principle of equality that underlies international human rights law (IHRL) in its relation to non-citizens, and the limited nature of the exceptions to this principle. According to part 1 of Article 2 of the Covenant, each State party:

«undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, **national or social origin**, property, birth or other status”.

Moreover, Article 26 of the Covenant states that:

“All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, **national or social origin**, property, birth or other status”.

International Court of Justice, the Human Rights Committee of the United Nations, as well as states in practice believe that the provisions of the Covenant apply also in the occupied territories⁹⁴.

The UN Human Rights Committee explains that:

«The rights enshrined in the Covenant apply to **everyone**, irrespective of reciprocity, and **irrespective of his or her nationality or statelessness**. Thus, the general rule is that each one of the rights of the Covenant must be guaranteed **without discrimination between citizens and aliens**.»

The Human Rights Committee also noted that the right of non-citizens can be accompanied only by such limitations that may be lawfully imposed under the Covenant. More specifically, the Covenant permits to the States to draw distinctions between citizens and non-citizens with respect to two categories of rights: political rights explicitly guaranteed to citizens (participation in public affairs, right to vote and to be elected and to have access to public service), and freedom of movement⁹⁵.

Similar to Part 1 of Article 2 of the Covenant, Part 2 of Article 2 of the International Covenant on Economic, Social and Cultural Rights declares that States parties guarantee the rights enunciated in that Covenant «without any discrimination as to race, color... **national or social origin** ... or other status»⁹⁶.

In its turn, the Committee on the Elimination of Racial Discrimination, in its recommendation XXX on discrimination against non-citizens indicated that⁹⁷:

«States have an obligation to guarantee equality between citizens and non-citizens in the enjoyment of their civil, political, economic, social and cultural rights to the extent recognized under international law and as set out in particular in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on civil and political Rights».

As a result of violations of international law by the Russian Federation in the context of the imposition of Russian citizenship to citizens of Ukraine, those who reside in the occupied territories of Crimea do not enjoy those rights that had to be guaranteed under international law. Moreover, in the context of the occupation of the AR Crimea and Sevastopol they are very often at risk of their own safety and well-being (criminal and administrative liability, discrimination, especially on ethnic grounds, etc.)

1. A passport of a citizen of the Russian Federation is a prerequisite for the realization of a significant number of rights to residents of Crimea. Namely, it is more complicated for him to receive all kinds of social benefits, obtain a driver’s license, register a vehicle, be employed

94 Sassoli, “How Does Law Protect In War”, Volume I, Outline of IHL (3rd Edition), p. 357.

95 See General Comment number 15 (1986) of the Human Rights Committee on the position of aliens under the Covenant.; With regard to freedom of movement, Article 12 (1) provides “the right to liberty of movement and freedom to choose his residence” only to persons who are “lawfully within the territory of a State”, i.e., apparently permitting restrictions against migrants without proper documents.

96 http://www.ohchr.org/Documents/Publications/noncitizensen_ru.pdf

97 <http://www.refworld.org/docid/45139e084.html>

in certain positions (public institutions), obtain of land plots, free medical care, re-registration of ownership⁹⁸. This was openly declared by the official representatives of the authorities of the Russian Federation.

Office of the United Nations High Commissioner for Human Rights in its report of 15 April 2014 on the human rights situation in Ukraine noted⁹⁹:

«Measures such as the introduction of Russian citizenship will complicate the lives of those who want to preserve their Ukrainian citizenship in Crimea and will raise questions about the legality of residence, the loss of social and economic rights, including the right to work.»

Commissioner for Human Rights in the Republic of Crimea (“Ombudsperson”), in his report for 2014 confirmed this fact:

*«It is not necessary to explain the legal consequences of the absence of the passport of the State in which as person resides. This makes for a person impossible to implement **almost all the fundamental rights and freedoms** (emphasis is the author’s note), set forth in the Constitution. In particular, it leads to impossibility to be employed, to receive social security, which could lead to lower standards of living and an increase in the crime rate. Therefore, I believe that immediate measures should be taken to address the problems of citizens related to the possibility of obtaining passports”.*¹⁰⁰

The Ombudsperson in this report also notes that according to information received in the Office of the Federal Migration Service for the Republic of Crimea for the period from March 2014 there were issued 1,560,162 passports of Russian citizens. Given that the approximate population of Crimea is about 2.3 million. That is to say that as of the end of 2014 slightly less than 1 million people are not passportized in Crimea¹⁰¹. Hence, so many people do not enjoy a significant number of their rights, either being opposed to the imposition of Russian passports, or due to objective reasons (mentioned in the first section) being unable to obtain Russian citizenship.

2. Federal Law of the RF no. 142-FZ «On Amendments to Articles 6 and 30 of the Federal Law» On Citizenship of the Russian Federation” and Certain Legislative Acts of the Russian Federation» **was adopted on 04.06.2014**. This law establishes the possibility of criminal liability for concealing the existence of a second citizenship (for Crimeans, this norm of law of the Russian Federation will take effect from 1 January 2016)¹⁰². After that date, all the citizens of Ukraine who are registered and living in Crimea will have to report if they have Ukrainian citizenship. Whereby concealing of information on citizenship entails serious liability up to criminal (art. 330-2 of the Criminal Code)¹⁰³. If the citizens inform about their dual citizenship after the scheduled date or indicate incomplete or obviously inaccurate data, they will face administrative responsibility - a fine of 500 to 1000 rubles. All the internally displaced persons from Crimea can also get under these rules. On 21 September 2015 on the official website of the Federal Migration Service of Russia there was published a clarification on the notification about the other citizenship and renouncing the Ukrainian citizenship by Crimeans¹⁰⁴.

Taking into account the above mentioned, it can be assumed that if the situation does not change in Crimea regarding citizenship the residents of Crimea who have preserved Ukrainian

98 A striking example is the situation with the judges in the territories occupied by the Russian Federation. According to article 4 of the Federal Constitutional Law of the Russian Federation No 6ZH, before the setting up of federal courts in the territory of Crimea, the justice on behalf of the Russian Federation is dispensed in these areas by the courts which were operating at the time of the occupation, and the judges of these courts are receiving the status of persons who replace judges of these courts. The condition for the admission of these persons to justice was obtaining of Russian citizenship, the transfer of passport of Ukraine to the Russian authorities, as well as the submitting to the Russian authorities of a declaration about renunciation of Ukrainian citizenship.

99 http://www.un.org.ua/images/stories/Report_15_April_2014_en.pdf

100 <http://crimea.gov.ru/textdoc/ru/7/act/393pr.pdf> .

101 <http://crimea.gov.ru/textdoc/ru/7/act/393pr.pdf>

102 <http://www.rg.ru/2014/06/06/grajdanstvo-dok.html>

103 http://www.consultant.ru/popular/ukrf/10_45.html

104 <http://www.82.fms.gov.ru/press/news/item/51894/>. Archive: <https://web.archive.org/web/20160209125758/http://www.82.fms.gov.ru/press/news/item/51894/>

passports, may face further problems connected with informing about «dual» citizenship.

3. In accordance with the Decree of the Government of the Russian Federation «On the distribution among the constituent entities of the Russian Federation of quotas for the issuance of temporary residence permits in the Russian Federation for 2015 for foreign citizens and stateless persons» no. 2275-r of 14 November 2014, there was established the quota for residents of Crimea (the citizens of Ukraine and other states) for the issuance of permits for temporary residence in the Russian Federation for 2015. The quota for Crimea is 1500 permits, of them 400 permits for the city of Sevastopol¹⁰⁵ (in 2014 this quota was 5,000 permits for the AR Crimea and 400 for Sevastopol).

Citizens of Ukraine who do not wish to obtain Russian citizenship, but wish to constantly continue to live in Crimea, are limited in their ability to get a temporary residence permit in the territory over which the sovereignty of Ukraine is extended. Thus, those persons who exceed the allocated quota will not be able to get the documents in order to continue to reside permanently in Crimea.

Restrictions and other quotas regarding where non-citizens may live in the state, particularly the restrictions and quotas which may be associated with an element of coercion, can violate their right to freedom of movement¹⁰⁶.

4. In a particularly vulnerable position were orphans and children in the care or custody of state authorities. According to official data as of 08.01.2014, there were 4228 of such children in Crimea. Administration of all the institutions of Crimea began to collaborate with the Russian authorities. Children are effectively deprived of the right to choose citizenship (obtaining of Russian passports is provided upon reaching the age of 14). On **05.06.2015** the Head of the Department for observance of the rights of the child, non-discrimination and gender equality of the Secretariat of the Commissioner for Human Rights of Verkhovna Rada of Ukraine Aksana Filipishina informed about this problem during a press conference on «Violations of children's rights in the occupied Crimea»¹⁰⁷.

105 <http://government.ru/media/files/7CP91bGabOg.pdf>

106 European Commission against Racism and Intolerance, Second report on Denmark (CRI (2001) 4, paras. 18–25).

107 <http://www.ombudsman.gov.ua/ua/all-news/pr/5615-sm-aksana-filipishina-prava-ditini-v-krimu-pochali-porushuvati-vid-samogo/>; <http://health.unian.net/country/1085947-ukrainskim-detyam-sirotam-v-kryimu-prinuditelno-prisvaivayut-rossiyskoe-grajdanstvo.html>

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The publication is aimed at representatives of international organizations, diplomatic missions, government bodies and professional legal community, who need information on the practical application of international human rights standards under occupation of the Crimea.

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