
Legal Defense of Foreign Citizens and Non-Citizens' Economic Rights and Interests from Criminal Offense and Other Incidents

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Abstract:

The paper analyzes issues of defense of foreign citizens' and apatrides' economic rights and interests from criminal offense and wrongful acts within the Russian Federation. Due to situation of political strain, fueled by refugee crisis, obviously national legal system faces new challenges in maintaining human values within its borders.

*The key idea of the paper is a legal capacity to renege from providing the non-citizens of national equality, addressing the *lex personalis* i.e., the law of the alien's home country for meaningful rights and interests' defense.*

The certainty is based on the fact that the legislation of alien's home country could not always correspond with the Russian one and it could not be read as a decline in alien's legal status.

Even a superficial view reveals lots of theoretical and enforcement issues ranging from providing equal defense from criminal or administrative offence to defense from maladministration. Despite the distinctions in national legal systems, common European trend is aimed at highest possible defense of non-citizens' and apatrides' economic interests.

Thus, Russian legal system admits feasible aliens' adjective law limitations as a retaliatory measure for Russian citizens' rights limitation abroad. Authors push for balancing both personal and public interests when determining the legal defense of economic interests of non-citizens in accordance with European practice.

Keywords: *Crime, administrative offense, unlawful acts, legal defense, administrative procedures, non-citizens, foreign citizens, economic interests.*

JEL Classification Codes: *K14, K33, K41.*

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1. Introduction

Foreign citizens and non-citizens are equal to Russian citizens in defending economic interests from the national treatment point of view. This equally refers both to defense from crime and administrative offense. The case of maladministration has its features and issues to be clarified. Stateless persons (apatrides) are individuals without evidence of affiliation to any state or nationality. According to section 10 of Federal Law “*On a Legal Status of Foreign Citizens in the Russian Federation*”, the non-citizen’s identity is certified by:

- 1) foreign-state document that could be recognized by Russian Federation as a document that certifies the non-citizen’s identity;
- 2) temporary residence permit;
- 3) permanent residence permit;
- 4) other Federal Law and International Law documents certifying the non-citizen’s identity.

Other documents include:

- 1) identity for the period of petition pending for recognizing as citizen of Russian Federation;
- 2) notification that request for recognition of refugee status under consideration on the merits;
- 3) refugee identity card.

In the absence of documents, the procedure of identifying the non-citizen is established. Such a legal identity of non-citizens appears as a condition for specific status of the citizens on the legal side including administrative and procedural relations. Relations at entrepreneurship law proceedings are not an exception. The entrepreneurial activity is oft-performed by multi-national citizens trying to optimize the tax treatment of business activity.

Dmitriev and Moiseeva (2014) consider that “*it is necessary to distinct the double-citizenship and multi-citizenship institutions. Multi-citizenship appears when the citizen has nationality of other countries besides the Russian one*”. But what is the difference from double-citizenship? Vanyushin (2012) notes that “*Double-citizenship term should be discerned from multi-citizenship term. Double-citizenship involves international agreement between states, defining the bipatriate state. Multi-citizenship (sometimes marked as second citizenship or double unregulated citizenship) does not involve any agreements and consequently enables every state to enforce the certain citizens’ liabilities*”.

Ostapets (2016) considers that “*it is necessary to discern the double-citizenship and the second (third, fourth) citizenship terms*”. The question arises is what is the

usefulness of such a separation? Obviously, it is in applying such a scale to the issue of limitations connected with the citizenship of another state. It is known that Lawmaker routinely introduces limits for persons with both Russian and foreign citizenship. We could accept with reserve the standpoint of Sheludyakova and Zubareva (2014), highlighting the following that each case of Russian citizen holding another citizenship could be defined as bipatrim legal phenomena.

2. Theoretical, informational, and empirical grounds of the research

Firstly, we note that states do not provide equal economic treatment for citizens and non-citizens. It is utopia to consider the state an interested party in providing equal entrepreneurial treatment for citizens and non-citizens. Supernational bodies like EU are an exception.

Basing on the 46th article of the Russian Federation Constitution, the right of foreign citizens to contest the administrative regulations is not a question. Part 4 Clause 4 of Administrative Procedure Rules do not tail the rights of non-citizens in applying to court, but frames that foreign citizens take full advantages of adjective rights and liabilities equally to Russian citizens and entities except cases provided by Administrative Procedure Rules. The Government of Russian Federation could set retaliatory limits for citizens of states that admit limits for Russian citizens' adjective rights in courts. Thus, foreign citizens are not limited in applying to a court, but could be limited in certain adjective rights.

Subjects should qualify the criteria of administrative and adjective legal standing. If we abstract from common criteria of physical party's adjective legal standing, we could highlight the foreign citizen's or non-citizen's personal law. Even if personal law of foreign state limits the right of physical parties in judicial defense, the right could be accorded in Federal Law procedures. Part 3 Clause 38 of Administrative Procedure Rules marks foreign citizens with common legal capability features (age, no limits in legal capability) as administrative claimants. In fact, the law does not stipulate for any certain patterns of providing the foreign citizens with administrative and adjective capability. Practically, the court does not clarify if the foreign citizen's personal law limits its administrative and adjective capability. Foreign citizens could be limited in capability by personal law, but recognition of the limits is an issue in Russia.

Referring to the situations when foreign citizens are limited in their liabilities in contrast to those highlighted in the Civil Law. According to §1896 of Civil Code, German legal system knows grounds for incapacitation connected with not derangement but other illness that caused immobilization. Likewise the issue could be solved by applying clause 200 of Civil Code of Spain. Special attention should be given to parties with double nationality that could be recognized legally incapable

according to the law of states the parties possess but could not be recognized by the state of second nationality.

Solving such collisions is internationally-contractual specified. Agreements appear to be bilateral or multilateral ones. Among multilateral ones on the issue we are interested not only in the Hague Civil Process Convention in 1954 but Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Cases (entered Jan. 22, 1993, effective May 19, 1994, in Russia Dec. 10, 1994, revised Mar. 18, 1997).

The last one in clause 2 levels up Russian and CIS states' citizens in due-process rights. One may highlight that there was no signs of administrative cases in the text of 1993's Convention. The question is treatment of civil case term, since the Convention's approval there was no special administrative and adjective legal system in most of the states, and administrative legal issues were automatically treated like "civil issues" since Soviet era. Even after the Administrative Procedure Rules were enacted, many websites still treat administrative legal issues as civil issues.

After analyzing ongoing Russia's legal assistance agreements we could realize that the equal legal defense of Russian and foreign citizens of contracting states (part 1 clause 1 of Russia and Poland Justice Ministry Agreement on legal assistance and legal relation order dated Sep 16, 1996) together with direct highlighting of social relations within the frames of such agreements. And mostly there were no references of administrative issues in them. It looks like a trend of national administration interests' defense from foreign subjects. But the trend could change. Bilateral legal assistance agreements became "administrative issues assistance" not so much time ago.

Now we could note only one agreement (we mean the one on cooperation and legal assistance in civil, trade, labor, and administrative cases between Russia and Argentina of Nov. 20, 2000. Clause 1 of the Agreement treats administrative cases only as appeal of officials' actions and state authorities in courts. It is expected that local authorities and other subjects with authoritative powers' administrative cases are outside the scope of current Agreement. Lack of appropriate practices precludes discussing if certain statements of clause 1 could be treated laterally. Thus, we are interested in provision of clause 3, emphasizing the point "*Citizens and residents of state party use rights of legal defense on the territory of another state party equally to its citizens and residents*". Current clause is applicable for legal entities acting in a state parties' jurisdiction under the law. Basically, citizens of Russia and Argentina are equal in their administrative and adjective rights.

Special mention should be made for agreements in administrative cases' legal assistance. In today's administrative law theory the issue of place of administrative cases' proceedings became topical. Anyway, we are concerned with the issue if the

contestation of administrative cases' judgments turns to be judicial proceedings. We consider that adoption of Administrative Procedure Rules does not draw the line in this issue. We note that Administrative Procedure Rules is not complete and comprehensive act in the law proceedings sector with the availability of working rules in case-handling, resulting from Arbitration Procedural Code of Russian Federation public law. We consider that Administrative Offenses Code needs to be revised. The 2013-2016 Projects of the Code, resulted in the Bill 957581-6, refused to eliminate court adjective system from Administrative Offenses Code and did not suggested to balance it with eliminating corresponding norms from Arbitration Procedure Code that acts as basic procedural act in economic disputes resolution in Russia.

We strongly consider that Arbitration Procedure Code should be treated as Code but not as "Semi-Code" and include all types of courts' administrative legal proceedings. Since there is a number of proceedings in administrative dispute resolution, we should take into consideration today's conditions and analyze administrative cases' legal assistance agreements in the context of defining the administrative status of foreign citizens. *"Agreement of legal assistance and customs bodies' cooperation of Customs Union Member States in criminal and administrative violations"* (Astana, Jul. 5, 2010, ed. May 8, 2015) does not govern aspects of individuals and legal entities' procedural status.

Business entities should also comply with common requirements in legal capacity. Administrative Procedure Rules considers foreign and international entities as members entitled to submit a request for arbitration. The Rules do not stipulate that foreign entities should be in "legal entity" status under the national legal system. A line should be drawn between establishing and registering of foreign entities. No wonder that legislative bodies utilize the "establishing" term since number of foreign states do not involve registering of entities. Specifically, § 1 of German Commercial Code defines the merchant's (Kauffman) legal status on the basis of the business activity fact without considering the fact of registration as an entrepreneur.

Registering in State Legal Entities Register in Germany is not obligatory for small entities and is sought by legal entities on their own. The place of legal entity is enshrined in the Convention on legal assistance and legal relations in civil, family, and criminal matters in part 3 clause 23. It highlights the fact that legal capacity of the entity could be defined by the law of the state party it was established in. Incorporation criterion is enshrined in part "a" clause 11 of Agreement of Business Disputes' Resolution (Kiev, 1992). Conflict rules of CIS countries' legal system utilize incorporation criterion as well when determining the legal bodies' nationality.

The similar approach is utilized by the USA. Specific incorporation form is defined for conflict regulation such as actions at the very beginning of the corporation's establishment, choosing and appointing the director and other top-managers (§302 of

the Second Code of Law Conflict). Even passing over this fact, we could stress that foreign jurisdictions limit administrative and procedural capacity of the company via suspending from business on certain territory. First of all, we mean foreign entities, the activity of which is forbidden on the territory of Russia on the basis of Federal Law "On Countering Extremist Activities"(ed. Nov 23, 2015) – a set of nationalist entities established on the territory of Ukraine. Specific lists could include international terrorist organizations.

In Europe such lists are published in the Official Journal of the European Union, USA's lists are published on the US Department of State website, Great Britain's lists are published on the Home Office website. There is also a number of entities that are forbidden abroad but not in Russia. This is the case when operates the national law of the state where the entity is established and forbidden. Provisions of the international agreements, entities' establishment documents as well as prohibitory factors are defined as the international entities' legal standing factors. The clause 105 of UN Charter highlights the fact that UN enjoys benefits and privileges on the UN states' territories to reach its goals. We could find similar highlights at UNESCO, IAEA, and many other Russian-membership international organizations' regulations. Thus, some organizations like NATO do not frame the advocacy in Russian courts.

There is one more fact to take into consideration when analyzing administrative and procedural status of foreign citizens and entities as appellants. Part 4 clause 4 of Administrative Procedure Rules allows foreign citizens and entities to apply to court only for defense of violated administrative rights and interests that are based on authoritative subordination. Thus, foreign citizens could apply to court for economic rights' defense. This one is revealed in part 4 and 5 of clause 5 of Administrative Procedure Rules, first, in defense of rights and interests of minors represented by foreign citizens and second in defense of rights and interests of disabled persons represented by foreigners.

Foreign Association (Entity) could apply to court for defense of general law and rights of all association (entity) members as provided by the Federal Law. After adopting Administrative Procedure Rules, a number of administrative issues in the economy sector is treated according to the Code of Arbitration Procedure without highlighting any features of legal capacity of foreign citizens and entities. As for part 5 clause 3 of Arbitration Procedure Code, norms of Administrative Procedure Rules on similarity of administrative cases with foreign entities, investigated by arbitration courts, could be utilized.

3. Results

In summary, we could not find out actual restraint of administrative and procedural rights neither foreign citizens in Russia nor Russians' rights abroad. If foreign or

international entity is not restricted both in Russia and in the state it was established in, it could potentially have an administrative and procedural legal standing. Administrative Procedure Rules, according to part 8 clause 5, suggests the capability to recognize the administrative and procedural legal standing for entities without this status in the state they were established in.

4. Conclusions and recommendations

When talking about foreign citizens with multiple nationality, living mostly abroad, the court should consider a number of factors to define the non-citizen's personal law including factors of limiting the administrative and procedural legal capability in the states of origin as well as the family's place of origin and living, place of work and property. We consider that correlating grounds of limiting the administrative and procedural capability of non-Russian citizens with legal grounds in Russian Federation should be not an addition-based but a merging-based issue. It means that the court could not go beyond the grounds of the Russian legal system.

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