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## INTERNATIONAL LEGAL STANDARDS OF THE RIGHTS OF FOREIGNERS IN LOCAL GOVERNMENT

### **Summary**

This article analyzes the nowadays existing international legal instruments in the field of municipal and legal status of foreigners. The main trends in the development of international standards in the field of the rights of foreigners are defines; the most important international treaties that provide an opportunity to maximize the use of these rights by foreigners and guarantee it to them are considered.

**Key words:** international standards, foreigners, national treatment, the rights and freedoms of foreigners.

**Formulation of the problem.** Since the mid-twentieth century. the doctrine of human rights has become a universal system of human values, which is crucial not only for each individual developed country, but also for the entire international community. The level of security, protection and guarantee of fundamental human rights advocates the criterion that the basis for assessing the degree of civilization state, and thus her relationship to other members of the international community. The state that considers itself civilized should strive to create an environment in which all persons on its territory will feel secure and equally, regardless of nationality, race and even citizenship. Only on condition that such a policy will be the default (standard) for all countries, there may be a regulatory climate that promotes human rights, the solution of humanitarian problems, the creation of the Commonwealth of law.

**Analysis of recent research and publications.** In the science of constitutional law the legal status of foreigners and stateless persons was devoted to the works of many prominent scientists-lawyers. Among them, first of all, should be called like M.

Baymuratov, O. Bobokal, I. Boyko, L. Halenska, A. Zarzhytsky, T. Kirilova, I. Kovalyshyn, T. Mink, G. Moskal, O. Tiynov, S. Czechowicz, R. Chernolutskaya, W. Jaworski. Quite recently actively studied the rights of foreigners is in local government as members of the local community. However it should be emphasized that international legal standards as an important regulatory component, which should be based on the status of foreigners in any democratic state, was still ignored experts. **The purpose of the article.** The main objective and purpose of the article is to analyze the provisions of international intergovernmental regional treaties concerning the legal status of foreigners as members of communities. With the widespread migration processes that accompany the international community over the last few decades as a result of globalization, the maximum cooperation of States in this field and uniform solutions to common problems is possible only on the basis of international agreements, which establishes a common mechanism of realization of the rights of foreigners and that States Parties to the same As undertake to perform. That is why scientific research is important and has practical value.

**Presenting main material.** International standards for legal status of man today are a number of international instruments of paramount role among them: the Universal Declaration of Human Rights (1948), the International Covenant on Civil and Political Rights (1966), International Covenant on Economic, Social and Cultural Rights (1966), the European Convention on Human Rights and Fundamental Freedoms (1950) and many others. A special feature of these acts is that most of the rules are universal or regional in nature and reinforce the rights and freedoms of every person who is legally staying or residing in the State, including the foreigners.

The main problem in determining the legal status of foreigners is the problem of competing jurisdiction. That foreigner is both subordinated to two law enforcement: state residence (located under its territorial jurisdiction) and state citizenship (matrimonial state. - Ed.) (Personal jurisdiction).

The legal status of foreigners determined by national legislation of the host country of the principles and norms of international law. But now there is no single international treaty document which would regulate the legal status of foreigners

internationally. International cooperation in this area is mainly bilateral interstate level. However, we can mention several multilateral documents that examine specific aspects of the legal status of foreigners.

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For example, Article 13 of the Universal Declaration of Human Rights states: "1. Everyone has the right to freedom of movement and residence within each state. 2. Everyone has the right to leave any country, including his own, and to return to his country " [1].

Notable among international instruments in the field of human rights is the European Convention for the Protection of Human Rights and Fundamental Freedoms, adopted in Rome in 1950. Directly provisions on foreigners contained in Protocol number 7 to the Convention, signed in Strasbourg on 22 November 1984 roku. According to Article 1 of this document, an alien lawfully resident in the territory of a State may be expelled abroad otherwise than pursuant to a decision taken in accordance with the law, and should be able to:

- a) submit reasons against his expulsion;
- b) to have his case;
- c) be represented for these purposes before the competent authority or before a person or persons designated by that authority [2].

In n. 2 of the same article states that an alien may be expelled before the exercise of said rights, if such expulsion is necessary in the interests of public order or driven by considerations of national security.

A special place in the international documents defining the status of foreign nationals, took the Declaration on Human Rights regarding persons who are not citizens of the country in which they live, which the UN General Assembly adopted 13 December 1985 [3].

The Declaration first determined that the term "alien" it refers to any person who is not a citizen of a particular state, that is a foreign citizen, stateless persons, refugees and others. Also in the article. 2 stipulates that the Declaration does not used to foreigners who illegally crossed the border or on the territory of the state, and also provides that every State independently establishes the legal regime of foreigners,

taking into account its international obligations, including in the field human rights. According to Art. 5 Declaration, foreigners are: the right to life and security of person; no alien shall be arbitrarily arrested or detained or be deprived of liberty except by a decision of the competent authority; the right to protection from unlawful interference in private and family life; the right to equality before the courts and all other bodies and institutions administering justice; to marry, to found a family; the right to freedom of thought, opinion, conscience and religion; the right to manifest his religion or belief subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others; right to preserve their native language, culture and traditions; the right to transfer income, savings or other personal money abroad considering internal currency regulations; the right to own property alone as well as in community with others considering domestic law. In addition, foreigners who legally reside in the state have the right to liberty of movement and freedom to choose his residence within a State. They have the right to the protection of state citizenship, for which they should be granted free access to the diplomatic or consular representation of the State of nationality. On the other hand, foreigners are required to comply with the laws of the host country and be responsible for their violation as citizens.

Another important document human rights of foreigners is the European Convention for the settlement number 19, adopted by the Council of Europe in 1955. States parties to the Convention undertook to facilitate the entry into its territory of foreign citizens, allowing them to freely move her, encourage their residence, except that contradict public order, national security, health or morals.

The Convention provided for citizens of the States Parties of national treatment in respect of many aspects of life, including personal and property rights of their judicial and administrative safeguards implementation profitable activities, the issue of wages and working conditions in general, and more.

The Convention on the settlement developed to facilitate the entry of European agreement on the rules governing the movement of persons between member states of

the Council of Europe (hereinafter - CE) number 25 (Agreement on movement), which was opened for signature in 1957 in Paris. It included the simplified movement of persons between Member States of the Council of Europe, to enter the state was required only one document from each contracting State referred to in the Annex to the Agreement. The owner of such a document permitted re-entry into the territory of the State without compliance with any formality even if his nationality is under dispute.

The further development of international standards of human foreigners became European Convention on the Participation of Foreigners in Public Life at Local Level adopted in Strasbourg on 5 February 1992 (hereinafter - Convention 1992). The peculiarity of this international document is that unlike mentioned by us above, whose position regarding the legal status of foreigners mainly concerned the fixing minimum main personal, economic and social rights and freedoms - the right to life, freedom of conscience, religion, freedom of movement, equality before the law and the court, the right to work, to own property and others. The Convention on the Participation of Foreigners in Public Life at Local Level establishes the possibility of a number of political rights to foreigners, however - with certain limitations and only locally. However, the role of this document is not getting smaller, it is appropriate regulations predictor of the future legal status of foreigners in the territory of a united Europe.

1992 Convention on the involvement of foreigners in public life at local level. For those of them who live in the local community, numerous questions of everyday life - such as accommodation, education, utility services, public transport, cultural institutions and sports - depend on decisions taken by local authorities. In addition, foreign citizens are actively involved in the life of the local community and increase its prosperity. So, for countries that share democratic principles of the Council of Europe will just examine the issue of the significant contribution that the sometimes very significant group of citizens, who for a long time living in the territory, can make in decision-making on matters of interest to the This group [4, p.105].

1992 Convention consists of three relatively autonomous parts: 1) Head And enshrines freedom of opinion, assembly and association; 2) Head to establish the right

of foreigners residing permanently in the State, create their representative bodies at the local level, and 3) Chapter C gives the right to vote in local elections (active electoral right. - Ed.) Aliens residing in the territory state within a specified period of time. Another important provision of the Convention is that part 1 Article 1 establishes the right of States Parties joining the Convention apply as all its chapters and partly those chapters, the implementation of which will not conflict with the domestic laws of individual states.

So consider in more detail the content of the Convention on the Participation of Foreigners in Public Life at Local Level. Yes, art. 3 of the Convention provides States Parties foreigners, permanent residents of the territory under the same conditions as its own citizens, the right to freedom of their views, which refers to the right to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of borders, and in the same article provides for the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

It should be noted that these rights for foreigners State Party may restrict in some cases listed in Art. 9 of the Convention, under martial law or state of emergency, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary. However, the main essence of this article of the Convention is that in all the foreign citizens should not be subjected to discrimination against the use of certain rights here. At the same time one can not deny the fact that legislation on the rights of foreign citizens in effect in some Member States, has a certain freedom of choice to impose certain restrictions on their political activities. The wording of Article 9, which, in particular, referred to in Article 3, provides an opportunity to apply to the states under Article 3 rights restrictions stipulated by the European Convention of Human Rights [4, p.107].

Article 5 of the Convention 1992 provides for the right of foreigners to a large number of permanent residents of the State Party to create their advisory bodies or take other arrangements to create mechanisms of cooperation with local authorities and provide a forum for discussion and formulation of the opinions, wishes and concerns foreign residents on matters which particularly affect them in relation to social life at the local level, including the respective responsibilities and activities of the local government. Said article establishes not only an appropriate right of foreigners to kind of association - to create consultative bodies, but also the duty of local authorities not to interfere with and encourage the creation of such bodies. In the Convention does not set a specific number of foreigners-residents which is sufficient to build their bodies. As we see it, the issue to address given each state separately, as the nature and size of local communities in different countries is very different, and therefore the term "significant number" for each of them can be different.

Another issue, which is also under the Convention, each State must be determined independently, this way the formation and nature of such consultative bodies, or it has elected directly by foreigners or have formed associations or otherwise. That is, the Convention not only provided specific management and organizational sequence of actions to Member States on this right as a general orientation and maximum autonomy to each community to decide these issues, taking into account its own traditions and characteristics.

Perhaps one of the most interesting Rights, which has identified Convention 1992 for foreigners residing in the territory of the State Party, the right to vote in local elections, and under Article 6 to be provided as the right to vote for candidates in local authorities along with its own citizens and to stand if it meets the general requirements set for its citizens, ie active and passive suffrage. It is also important that the above article of the Convention provides for a minimum period of residence of a foreigner in the local community, the election authority which he can take part: at least five years. However, in the same century. 6 of the Convention provides that first, by the decision of each state the right to vote in local elections be limited to the right to vote (active

suffrage. - Ed.), And secondly, the term Residence may change as a bigger way and a lower side.

Actually giving foreigners voting rights is an interesting issue that causes much debate in the states of the modern world, so we will focus on it in detail.

At present the national electoral legislation of many countries in the world direct impact exercise rules of international and European law, but a common formula electoral status of foreign citizens are still not developed. Addressing these issues is quite different ways - from complete exclusion of foreigners from electoral life of the state permission to take part in national elections. An example can make the first experience of Brazil, which the Basic Law Art. 14 stipulates that foreigners can not be registered as voters. From such a complete disregard for the impact of foreigners on domestic policy very different experience of the British Commonwealth, which in some cases allows Commonwealth citizens to the formation of the supreme bodies of state power.

The participation of foreign citizens in elections governed by different legal acts of force foreign legal systems. Some countries at the highest constitutional level are prerequisites for the inclusion of foreigners in the number of voters [5]. Yes, Art. 51 of the Basic Law of the Italian Republic in 1947 provides that the Italians, who are not citizens of the Republic, can be equated in law to citizens regarding employment of elected positions. Article 13 of the Spanish Constitution allows foreigners giving voting rights on the basis of reciprocity by virtue of the contract or the law. However, a common regulation of representation of foreigners in the current electoral law, which details and specifies the constitution. And such regulation often has the expansion character. Thus, in order detailing the Spanish Constitution Art. 6 of the Law "On the rights and freedoms of foreigners living in Spain" in 2000 not only confirms the electoral rights of resident foreigners in municipal elections, but also guarantee the rights of those foreign nationals who can not participate in local elections. It is about giving them the right to democratically choose their own representatives to participate in the debates and decisions of municipalities to which they belong. In addition, the



Act establishes the obligation of local administrations draw up lists of foreigners living in their municipalities and have the right to participate in elections [6].

**Conclusions.** Realized our scientific research indicates that a number of fundamental international instruments of human rights enshrined so-called minimum rights and liberties of foreigners, as well as the duty of every State to ensure these rights to all persons lawfully staying or residing in its territory . Each developed democratic state established in law that national legal regime of foreigners which implies that the foreigner (foreign citizen or stateless person) enjoy the same rights, freedoms and obligations as citizens of their own, with some exceptions established in the law .

Despite the advisory nature of many provisions of these international instruments as well as the preservation of States wide discretionary powers to restrict the scope of their application, these documents were an important step in improving the legal status of foreigners and the strengthening of international relations, laid the foundations for further development of international law in this area especially within the EU [7, s.95-99].

Further development of Ukraine towards a democratic state and its full integration into the European community perception impossible without major recognized international standards of human rights in general and in particular certain categories, such as foreigners, stateless persons and others. Thus implementation of these standards into national legislation is one of the priorities of our state today.

### *List of references*

1. Загальна декларація прав людини, прийнята Генеральною Асамблеєю ООН 10 грудня 1948 р. [Електронний ресурс]. – Режим доступу: [http://zakon4.rada.gov.ua/laws/show/995\\_015](http://zakon4.rada.gov.ua/laws/show/995_015)
2. Протокол № 7 до Конвенції про захист прав людини і основоположних свобод від 22.11.1984 р. [Електронний ресурс]. – Режим доступу: [http://zakon2.rada.gov.ua/laws/show/994\\_804](http://zakon2.rada.gov.ua/laws/show/994_804)

3. Декларація про права людини відносно осіб, що не є громадянами країни, в якій вони проживають, прийнята Генеральною Асамблеєю ООН 13 грудня 1985 р. [Електронний ресурс]. – Режим доступу: [http://zakon1.rada.gov.ua/laws/show/995\\_227](http://zakon1.rada.gov.ua/laws/show/995_227)
4. Посібник з питань партисипативної демократії (демократії участі) на місцевому рівні / за ред. В. В. Толкованова. – К. : Крамар, 2011. – С. 105.
5. Трыканова С. А. Реализация избирательных прав иностранными гражданами на выборах органов местного самоуправления в России и Европейском союзе: теория и практика [Електронний ресурс] / С. А. Трыканова // Муниципальная служба: правовые вопросы. – 2010. – № 3. – Режим доступу: [http://www.juristlib.ru/book\\_9422.html](http://www.juristlib.ru/book_9422.html)
6. Про права та свободи іноземців, що проживають на території Іспанії [Електронний ресурс] : Закон від 11 січня 2000 р. № 4/2000. – Режим доступу: <http://www.russpain.ru/resident/res-zakon2.htm>
7. Юлдашев О. Х. Міжнародне приватне право: теоретичні та прикладні аспекти / О. Х. Юлдашев. – К. : МАУП, 2004. – С. 95-99.