

**FEDERAL STATE BUDGETARY EDUCATIONAL INSTITUTION OF
HIGHER EDUCATION "RUSSIAN PRESIDENTAL ACADEMY OF
NATIONAL ECONOMY AND PUBLIC ADMINISTRATION"**

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PARTICIPATION OF FOREIGN CITIZENS IN CIVIL LAW RELATIONS

Abstract of a Dissertation
for the Degree of Candidate of Laws

Specializations 5.1.3 – Private Law (Civilistic) Sciences

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Moscow, 2025

The relevance of the research topic. The participation of foreign citizens in the civil turnover is an inevitable consequence of the establishment of various contacts between representatives of different states. Attempts at its legal regulation have been made since ancient times. Moreover, in some cases it was due to the desire to limit the presence of foreigners in the private legal sphere, in others, on the contrary, to create the most favorable conditions for their stay in the country. Because of this, the substantive characteristics of the civil status of foreign citizens, which determined the specifics of their participation in civil law relations, have changed significantly over time, demonstrating fundamentally different approaches of states to solving this issue. The processes of mass migration of the population caused by armed conflicts, natural disasters, low living standards and other factors have become particularly important here. However, this does not mean that the issues related to the presence of blood relations between foreigners and citizens of certain States, as well as their participation in the economic life of various countries, have lost their relevance. Currently, the political confrontation of States has a special impact on the content of the civil status of foreign citizens, which is expressed, among other things, in making decisions that often contradict the principles of civil law regulation, which inevitably raises the question of finding a balance between the interests of the state and the individual in the private law sphere, and developing adequate mechanisms for their protection. These circumstances require an analysis of current Russian and foreign legislation, as well as an assessment of doctrinal approaches to determining the specifics of the civil status of foreign citizens in order to identify the factors of its formation, assess its current state and prospects for change. This makes it necessary to consider the specifics of their participation in property, contractual and corporate relations, to assess the specifics of their exercise of intellectual property rights, entrepreneurial and other economic activities not prohibited by law on the territory of a particular country.

The degree of development of the scientific problem. The problems of the participation of foreigners in civil law relations were more or less touched upon by civilists even in pre-revolutionary legislation. In modern jurisprudence, sufficient

attention is also paid to this problem. It is possible to note not only fundamental research on the problems of the civil personality of individuals (I.A. Mikhailova), but also works on the specifics of the realization by foreign citizens of their rights to land (M.A. Bobryashova), the results of intellectual activity (D.V. Matvienko), participation in corporate relations (A.I. Maslyayev, S.S. Chekulaev), the specifics of their entrepreneurial activities (D.V. Shugaev). The work of scientists who are specialists in other branches of law, primarily constitutional law (T.V. Kochukov, M.G. Makovetskaya), is of absolute value for this study. The closest studies on this issue are the works of K.A. Yankevich "Peculiarities of the legal status of foreign citizens in the Russian doctrine of private international law" (2005) and A.L. Oganessian "Civil personality of foreign citizens and stateless persons under Russian law" (2006), S. H. Zaman "Civil status of individuals in Germany, Italy, France and Russia" (2009), which, despite the importance of the conducted research, do not reflect the changes in legislation.

The purpose and objectives of the study. The purpose and objectives of the research are determined by the state of scientific development of this problem. Accordingly, his goal was to solve the scientific problem of determining the specifics of the participation of foreign citizens in civil law relations, taking into account the specifics of their civil status, the factors of its formation, including its change in the context of sanctions policy, in order to identify areas for improving current legislation and the practice of its application. This predetermined the setting of the following tasks:

- 1) definition of the concept and basic elements of the civil status of foreign citizens;
- 2) identification and systematization of factors determining the features of the civil status of foreign citizens in order to identify patterns of its formation;
- 3) determining the specifics of the implementation of the rights of foreign citizens in property relations, taking into account the legal means provided by the legislator to limit them in terms of the exercise of property rights and other property

rights, the specifics of the implementation of the principle of freedom of contract in the case of participation of foreign citizens in it;

5) assessment of the specifics of the regulatory consolidation of the rights of foreign citizens to the results of intellectual activity, as well as their protection in modern conditions;

6) analysis of the specifics of the emergence and implementation of corporate rights of foreign citizens, identification of problems related to the exercise of corporate control by them, as well as the application of liability measures against them for violating corporate obligations;

7) identification of the specifics of the implementation of entrepreneurial rights by foreign citizens and trends in the legal regulation of such relations;

8) establishing the specifics of the exercise by foreign citizens of their rights, duties and responsibilities in bankruptcy, as well as its impact on their civil status.

The object and the subject of the study. **The object** of this research is the social relations regulated by the norms of civil and related branches of law of various states that arise in the process of foreign citizens exercising their rights and obligations under the conditions of legally established guarantees and limits of their implementation. Based on this, **the subject** of the dissertation research was the norms of Russian and foreign legislation that establish the specifics of the participation of foreign citizens in civil law relations, due to the specifics of their civil status, and the practice of their implementation.

The theoretical and methodological basis of the research. The theoretical basis of the research was the works of Russian and foreign scientists devoted to the problems of the formation of the civil status of foreign citizens, the specifics of their participation in civil law relations, which made it possible to demonstrate the existence of various doctrinal approaches to solving problems arising in the field under consideration and, based on their analysis, formulate their own conclusions and proposals. The methodological basis of the research is represented by a set of general scientific and private scientific methods of cognition. Among the first, the leading role is given to the dialectical method, the application of which makes it

possible to show legal phenomena in their interrelation and interdependence with social processes, to identify the determinants of the formation of the civil status of foreign citizens. In the course of the study, using systematic and structural approaches, the analysis of the normative legal framework existing in the doctrine of theoretical approaches was carried out, which made it possible, based on the synthesis of the data obtained, to formulate a number of significant conclusions that ensured the solution of the tasks set. The need to use foreign legislation has led to the use of the comparative legal method. The use of the formal legal method made it possible, among other things, to identify gaps and contradictions in the legislative consolidation of the civil status of foreigners and the specifics of their participation in civil law relations.

The information base of the study is formed by a number of international legal acts regulating the legal status of foreign citizens, including in the context of the current sanctions policy, Russian and foreign legislation regulating various aspects of the participation of foreign citizens in civil law relations. The latter was used by the author as an illustration of possible alternative legislative approaches to the Russian legal order to consolidate the civil status of foreign citizens, which is why the author did not set out the task of a comprehensive analysis of all legal institutions in relation to each mentioned state. The implementation of the relevant provisions led to an appeal to the materials of judicial practice of the Constitutional Court of the Russian Federation, reflecting basic approaches to understanding the specifics of the legal status of foreign citizens and the limits of their rights, as well as the practice of Russian courts, sometimes forced to resolve complex issues arising from existing gaps and contradictions in the legal regulation of these legal relations.

The validity and reliability of the results obtained are confirmed by the methodological and information bases of the study. The theoretical and empirical foundations of the research were collected by the dissertator in the period from 2021 to 2025. The reliability of the results is confirmed:

- study and analysis of a wide range of doctrinal and regulatory sources and judicial practice reflecting the specifics of the participation of foreign citizens in civil law relations;

- the application of a set of methods appropriate to the subject, goals and objectives of the study;

- comprehensive analysis of the features of the civil status of foreign citizens, identification and critical assessment of the factors of its formation, rethinking the legal regimes established for foreign citizens, analysis of changes in legal regulation in this area in the context of sanctions policy, which allowed to formulate interrelated conclusions and logically resulting proposals;

- approbation of the obtained results in journals recommended by the Higher Attestation Commission of the Ministry of Education and Science.

In order to ensure an objective, systematic, comprehensive study of the specifics of foreigners' participation in civil law relations, a comparative analysis of Russian and foreign legislation was carried out, an assessment of doctrinal approaches to solving problems arising from the participation of foreign citizens in civil law relations was given, a critical analysis of the formulated judicial and legal positions was carried out, which allows us to consider the presented material representative, and the data obtained reliable and well-founded.

Provisions submitted for defense and having scientific novelty.

The novelty of the research lies in the theoretical substantiation of the specifics of the participation of foreign citizens in civil law relations, taking into account the specifics of their civil status, the factors of its formation, including its change in the context of sanctions policy. In particular, the author of the work:

- based on the study and analysis of Russian and foreign legislation, the systematization of circumstances determining the specifics of the civil status of foreign citizens has been carried out;

- the peculiarities of the individualization of foreign citizens in civil circulation are analyzed;

- the necessity of allocating, along with the national regime, the most-favored-nation and preferential sanctions regime is justified;
- the restrictions and prohibitions imposed on foreign citizens in property, obligations and corporate relations are systematized;
- the peculiarities of carrying out entrepreneurial activities by foreign citizens without forming a legal entity have been identified;
- a description of the forms and specifics of their participation in bankruptcy proceedings is given.;
- proposals have been formulated to improve legislation.

The following provisions with scientific novelty are submitted for defense:

1. Based on the analysis of Russian and foreign legislation, it is concluded that the substantive characteristics of the civil status of foreign citizens are determined by a system of interrelated factors, among which are: political, due to the different nature of relations between states, which can be characterized by sharp confrontation, be neutral or friendly, up to the establishment of political, less often economic, associations. States in which their citizens are granted special preferences that are not typical for citizens of countries, who are not their participants; economic, including the grounds (purpose) of foreign citizens' stay in the country, since the realization of long-term rights in civil circulation is possible only upon obtaining the right to reside in the country; social, including the presence of historical, cultural and other ties with the state, belonging to family members of a foreign citizen; obtaining refugee status. Depending on the prerequisites for the occurrence of circumstances affecting the civil legal personality of foreign citizens, ordinary and extraordinary factors can be distinguished. The former are conditioned by the very fact that a person has a legal connection with a foreign state, and are an expression of the generally accepted policy of states in this matter, which is why they are characterized by relative predictability. The latter are caused by atypical circumstances of a political, economic or social nature, leading to the adoption of atypical legal decisions that violate the usual dynamics of civil law relations (*the*

provision submitted for protection corresponds to paragraphs 6, 31, 32 of the passport of scientific specialty 5.1.3. – "Private law (civil) sciences").

2. The emerging practice of legal regulation gives grounds to speak about a new type of legal regime established for foreign citizens – the sanctions regime, which is a set of norms establishing prohibitions and restrictions that determine the formation of a specific civil status of foreign citizens based on their legal relationship with an unfriendly state. Its specifics are: 1) the possibility of implementing both a personalized and depersonalized approach; 2) the imposition of sanctions based on the principle of objective imputation; 3) the extrajudicial procedure for the restriction of civil rights and freedoms (*the provision submitted for protection corresponds to paragraphs 9, 15 of the passport of scientific specialty 5.1.3. – "Private law (civil) sciences").*

3. The correlation of the goals of imposing restrictions on the acquisition of property rights by foreign citizens with the methods of their implementation has been revealed, which will streamline the rule-making process when they are established.:

1) the recognition of certain objects of civil rights as national property (for example, land) entails the establishment of a ban on their acquisition by foreign citizens.;

2) ensuring the interests of the national security of the state is carried out in one of the following ways:: a) the establishment of a ban on the acquisition of certain types of property; b) restrictions on the acquisition of property if it is located in a certain place (for example, in the border area); c) compliance with a special procedure for the acquisition of property (for example, obtaining a special permit not required by citizens);

3) the protection of the economic interests of the state entails: a) the introduction of restrictions on the amount of property acquired by a foreign citizen; b) the establishment of conditions for the acquisition of certain types of property by foreign citizens (for example, having a strong connection with the state, including marriage to a citizen of the host country);

4) the implementation of measures to support one's own citizens may involve the establishment of a ban on the acquisition of property in certain ways (for example, as part of free privatization) *(the provision submitted for protection corresponds to paragraphs 6, 9, 15 of the passport of scientific specialty 5.1.3. – "Private law (civil) sciences")*.

4. It has been revealed that there are insufficient grounds for restricting the right of foreign citizens to obtain the status of patent attorney and arbitration administrator, especially in the context of the existence of the single economic space of the EAEU, which would increase the effectiveness of protecting the rights of citizens and organizations. With respect to citizens of other states, this issue can be resolved on the basis of reciprocity *(the provision submitted for protection corresponds to paragraphs 15, 31 of the passport of scientific specialty 5.1.3. – "Private law (civil) sciences")*.

5. In order to protect public interests, it seems advisable to introduce a mechanism for compulsory liability insurance for a foreign citizen authorized to act on behalf of a legal entity that is a member of the collegial bodies of a legal entity or a person who determines the actions of a corporation operating in the financial sector or strategically important areas to compensate for losses caused by his fault to a legal entity *(the provision submitted for protection corresponds to paragraphs 12, 31 of the passport of scientific specialty 5.1.3. – "Private law (civil) sciences")*.

6. It is proved that the existing conflict related to the practical implementation of the provision on the right of a foreign investor to invest in Russia, provided that this is provided for by the legislation of his state of citizenship in the absence of a legally established mechanism for establishing this legal fact, should be resolved based on the presumption of the admissibility of investments in Russia in accordance with the investor's personal law, which will be in effect, until proven otherwise *(the position submitted for defense, corresponds to paragraph 18 of the passport of scientific specialty 5.1.3. – "Private law (civil) sciences")*.

7. The temporary nature of the restrictions imposed in connection with the bankruptcy proceedings of an individual, and the possibility of overcoming them by

following the procedure established by law, gives grounds to attribute the consequences of the introduction of insolvency proceedings to the binding statute of the transaction and to resolve the issue of its validity in accordance with the rules of Articles 1210, 1211 of the Civil Code of the Russian Federation. In turn, the issue of the legal consequences of insolvency established by a foreign court concerning the possibility of carrying out entrepreneurial and other economic activities not prohibited by law on the territory of the host state should be resolved depending on the recognition of a foreign court decision (*the provision submitted for protection corresponds to paragraphs 9, 31 of the passport of scientific specialty 5.1.3. – "Private Law (civilistic) sciences"*).

Theoretical and practical significance of the research. The purpose of the research is to analyze the dynamically developing institution of the civil status of foreign citizens, the specifics of its legal consolidation in Russian and foreign legislation and the analysis of its application practice, the development of theoretical approaches to solving legal problems arising in this area. The provisions formulated in this paper can serve as a theoretical basis for further research in this area. Its practical significance lies in the fact that the conclusions and proposals formulated by the dissertation will create the basis for improving legislation regulating the specifics of the participation of foreign citizens in civil law relations, eliminating contradictions in law enforcement practice in the relevant category of cases. The results of the research can be used in the educational process of universities in teaching civil law, business law, special courses, in the preparation of educational and teaching aids.

Approbation of the research results. The provisions and conclusions of the dissertation are reflected in three scientific articles published in journals recommended by the Higher Attestation Commission of the Ministry of Science and Higher Education of the Russian Federation for the publication of research results; tested during scientific discussions at scientific and practical conferences.

The structure and scope of the dissertation. The structure of the dissertation is determined by its purpose and objectives. The work consists of a logically

structured research structure: a table of contents, an introduction, three chapters, a conclusion, a list of sources and literature used.