

Considerations on the issue of multiple citizenship

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Abstract

This paper addresses the topic of citizenship, considered an issue of internal law, on the grounds that the state, based on the principle of national sovereignty, is the one that sets, on the one hand, the criteria and methods for obtaining or losing its citizenship, and, on the other hand, the rights and obligations of the persons who have/acquire its citizenship based on these. The emergence of the cases of dual/triple citizenship or of statelessness may be regarded as the result of concepts and regulations of the states, which are sovereign in the case of granting and withdrawing citizenship.

Keywords: *citizenship, national membership, nationality, multiple citizenship, statelessness, affiliation*

Preliminaires

The institution of *citizenship* and the status of citizen express first and foremost the steadfast connection between the individual and the state, which, in general, is defined as national membership; in order to name it citizenship, the scope of the definition should be more restricted [1]. It may be considered that citizenship is only the national membership where the relationship between the individual, called citizen, and the state considers reciprocal rights and obligations: the citizens constitute the state [2], they are its members, they participate in the leadership of the state, and the state represents the expression of the will of citizens. The condition opposing that of citizenship in a national membership is that of obedience, encountered under form of slavery [3]. If in citizenship the rights prevail, in obedience the obligations are the ones which prevail.

National membership (ressortissance, French) represents the individual affiliation to a particular state. As a consequence, there will be as many national memberships (and as many citizenships) and as many kinds of nationals (and citizens) as there are states. In relation to the nationals of a particular state, the nationals of other states and the stateless persons are called foreigners [4]. Therefore, the opposite condition of “national” is that of “not-affiliated-to-a-state”, referred to as *stateless* (without country, Greek), *apolit* (stateless, Greek) or *heimatlos* (without country, German).

It is worth mentioning that citizenship refers not only to the legal relationship between the individual and the state (given by the objective right), but also to the

quality of the individual bound to the state through that legal connection (based on the subjective right) [5].

The relation citizenship - nationality

In Romania, to explain the concept of “citizenship” used by the fundamental law requires some clarifications concerning the delimitation of *citizenship* from *nationality*, considering the fact that the latter has been employed for a certain period of time in the Romanian law [6]. In the legal language both notions are employed - *nationality* and *citizenship* – fact which raises some questions. Is citizenship synonymous with nationality or does it represent a separate legal category? A possible answer to this question was given by Professor Paul Negulescu, in 1927, in his Constitutional Law Course, where he offered some clear explanations of what nationality stands for: *“That human group consisting of the reunion of several families living in a particular territory and subject to the same authority represents the people. But if this group of people, living under the same authority, has a common conscience, given by the fact that its members and their descendants have lived together for a long time on the same territory, suffering various influences and being animated by the same ideal, we no longer have a people, but a nation. If, in a nation, we find unity of race, language, religion, we call it nationality”*. [7] We conclude that nationality is the result of unity of race, language and religion of those living under the same authority in a given territory, considering and that they have a common conscience and history, a common ideal [8]. These issues delineate *nation* from *nationality*.

An observation that deserves to be highlighted is related to the fact that citizens, having teamed up to form a single political body – the people – also establishing the regime to be adopted, sign a “pact of allegiance” with those who have the authority in exchange for their protection and the protection of the commons [9]. However, difficulties arise when attempting a more accurate determination of the relationship between the individual and the political community to which he or she belongs, of his or her capacity of integration in the group to which he or she belongs, the recognition of his or her identity as a citizen.

Nationality should be considered an attribute of the person, i.e. any person belongs to a group that is delimited by another through the unity of language, culture, religion, ethnicity, customs etc. A nation represents all those who share this attribute

[10], it is the result of the common destiny of certain individuals, based on specific elements of cohesion and solidarity. [11]

Between *citizenship* and *nation* there is a historical connection [12], as within the nation legitimacy and the democratic practices are built [13]. In the modern sense, the notion of *citizen* was first used in “The French Declaration of the Rights of Man and of the Citizen” of 1789, although in the legislation of the states the term “*citizenship*” had existed since 1795, but only in 1948 it began to be established consistently [14]. A “citizen” is the natural person receiving citizenship, a term used with other wider or narrower meanings [15]: *person, national, subject, active citizen*.

Citizenship is the special legal status of the individual, a situation resulting from that person’s affiliation to a particular state and that gives fullness of existence and the exercise of the rights and obligations under the constitution and laws of that state [16]. Most constitutions and laws [17] currently use the term “citizenship” to describe this affiliation, although, initially, citizenship was designated by the term “*nationality*” [18], a term which can be seen today in the Constitution of France (1958) in Article 34.

Modern citizenship is informal, open [19], in close relation to the fact that “the relationship between state and the citizen is not given in the definition of a citizen of the state... it is a theme of freedom”[20].

Aspects generated by multiple citizenship

“*What is citizenship?*” and “*What does it mean to be a citizen?*” are two complex questions, born on the foundation of postmodernism and globalization, driven by new challenges, as the nation-state borders have become increasingly permeable [21].

A fundamental premise from which the formal-legal approach of citizenship starts is that it represents exactly the “reflection of the society in which it is built” [22]. If we analyze it in terms of context, as a concept in continuous dynamics, citizenship allows the capturing of specific differences which outline a framework defined in both space and time.

It is commonly recognized and accepted that citizenship is exclusively a matter of internal law since the state, based on the principle of national sovereignty, determines, by itself, the criteria and methods for obtaining or losing its citizenship, as well as the rights and obligations of its citizens based on these qualities [23]. At

international level, only the state, as a primary subject of international law, is recognized such jurisdiction, as confirmed by the international customary law and the conventional and jurisdictional international practice.

The plurality of states, each with its own conceptions and regulations, but sovereign when granting and withdrawing citizenship, together with the mobility of people from one state to another are two of the premises for the situations of dual/triple citizenship, i.e. subjects of mixed nationality, or of statelessness, when people remain without any citizenship, being thus considered *stateless*, *apolit* or *heimatlos* [24].

In some cases, dual citizenship can lead to a number of complications for the person concerned and to certain conflicts of interest in the relationship between the two respective states. Such a situation arises in connection with the exercise of diplomatic protection by one of the two states against another. In international practice, in such cases, there has been observed a general tendency to establish and foster, between the two citizenships in conflict, the real and effective one, or the so-called “dominant citizenship”.

The conflict of citizenship may occur as a consequence of the mismatch of laws of various states in connection with the acquisition of citizenship. We have in regard the situation contrary to dual citizenship, namely statelessness, a feature of people who have no citizenship, or those who lose their original citizenship, without acquiring the citizenship of another state. In order to avoid conflicts of citizenship, national laws of the states regarding citizenship must be in full compliance with international law.

As such, in international law, be it public or private, numerous concepts and theses were promoted, and also there appeared conventions and resolutions of international organizations, aimed at avoiding statelessness and the plurality of citizenship. These aimed to promote the right of every person to have a citizenship from birth, a citizenship to return to in case they would lose a possible citizenship acquired in their lifetime. Thus, two fundamental principles were emphasized: the need for each individual to have a citizenship (citizenship universalization) and only one (unique citizenship), principles enshrined in Article 15, paragraph 1 of the Universal Declaration of Human Rights as: “*Everybody has the right to a nationality (citizenship)*” and “*no one shall be arbitrarily deprived of their citizenship, nor denied the right to change their citizenship*”.

It was found that *the solving of problems caused by the phenomena of multi-citizenship or statelessness can not be done only by national laws*, as improved as they may be, but by international conventions [25], whose object is not confined to the resolution of conflicts of citizenship starting with their termination, but also contain the solving of situations that may arise, considering at the same time, the future needs of each state community [26].

An important role went to ***The Hague Conference***, which concluded, on 12 April 1930, an ***International Convention*** and three protocols, the stated goal being to eliminate conflicts of citizenship in absolute respect of the right of each state to determine/establish their nationals. According to this Convention, each Contracting Party has to respect the nationals of other countries, as each of these determines them. Although the Convention was a step forward in terms of the modern approach to the issue of conflicts of citizenship, it was not ratified, remaining important through the studies generated by its preparatory work, and also through extensive dialogue between the parties involved in these works.

Another international document that addresses the issue of citizenship is the ***Convention on the Nationality of Married Women*** of 29 January 1957 [27], to which Romania adhered by Decree no. 339/1960. According to Article 1 of the Convention, *“neither the celebration nor the dissolution of a marriage between marriages, shall automatically affect the nationality of the wife”*.

In the matter of international law, without concluding bilateral agreements to resolve conflicts of citizenship, there have also been conventions limited to the engagement of the parties to communicate to each other the citizenships granted to the nationals of the other party.

In case of multiple citizenship difficulties appear in terms of determining the obligations of “giving” and “doing” of the persons concerned. The obligations of “giving” concern, inter alia, the payment of taxes, an issue resolved by bilateral agreements between states to eliminate double taxation or for the finding of tax avoidance. The obligations of “doing” are primarily aimed at military obligations, which were the subject of ***The Convention on the reduction of cases of multiple nationality and military obligations in cases of multiple nationality (1963)*** where Romania did not participate. The Convention was ratified by 13 countries: Germany, Austria, Belgium, Denmark, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Norway, Great Britain and Sweden [28].

This document has established the principle of the binding and automatic loss of the citizenship of origin for the nationals of the signatory states, who voluntarily acquire the citizenship of another state among the parties. By “voluntary acquisition”, within the meaning of the Convention, it is understood naturalization, option or withdrawal. Thus, any person holding the citizenship of at least two of the signatory states can renounce at least one of the citizenships in their possession, with the consent of the state whose citizenship is renounced.

The Convention of 1963 was amended by two protocols, one in 1977 and another in 1993. The former followed two aspects: to simplify the procedures of renunciation to one of the citizenships and to clarify the possible deficiencies of interpretation arising in pursuance of the provisions concerning military service. The latter contains provisions that facilitate the retaining of the citizenship of origin in case of acquiring a new citizenship. According to it, any person who acquires the citizenship of one of the parties, can retain their citizenship of origin, provided that the person be born or reside in the country of the citizenship to be acquired or for them to have had their habitual residence before being 18 years old. Also, it was allowed to retain their citizenship of origin, in case the acquisition of the new citizenship occurred through marriage.

The Convention of 1963 and the following protocols have not been ratified by all states. This determined that the initial convention was applied between the states that have not adhered to the subsequent protocols.

The European Convention on Nationality, signed in Strasbourg on 6 November 1997 [29], establishes principles and rules on the matter of citizenship of natural persons and rules that determine the military obligations in cases of multiple citizenship to which the internal law of the parties must comply. According to the Convention, it is deemed as “multiple nationality” only the simultaneous possession of two or more citizenships by the same person (Article 2 letter b) [30]. On the competence of the state regarding citizenship, the Convention provides in Article 3 that each state shall determine under its own law who its nationals are and this law shall be accepted by the other states, provided it is in accordance with the applicable international conventions, with the customary international law and with the principles of general law recognized with regard to citizenship. The Convention establishes as a principle of legislation in the field the avoidance of statelessness, requiring the states

parties to not allow the renouncing to citizenship if by this the applicant would remain stateless, at least for the citizens who do not normally live abroad.

Despite the existence of these Conventions, multiple citizenship is treated quite differently in the national law of the European states [31]. If in accordance with the English law dual citizenship is allowed almost unrestrictedly, the German law allows it only exceptionally.

The causes of dual citizenship include *the adoption of a national by a foreign citizen*. If the legislation of the person who adopts provides that the adoption confers the citizenship of the adopter to the adopted, then the adoption may lead to the situation of dual citizenship.

Another common situation is *the adoption of an under aged foreigner, which results in the acquisition of the citizenship of the adopter by the adopted*, as long as the legislation of the country of the adopted does not provide for loss of citizenship of origin.

Also, other situations that can lead to dual citizenship are *the voluntary acquisition of a foreign citizenship by a national* and *the voluntary acquisition of citizenship by a foreigner*.

The numerous debates that took place at international level in order to eliminate gender discrimination in national legislation on citizenship contents have led to the elimination of those provisions which automatically granted the nationality of the husband to the woman who held a different citizenship. Currently, the provisions contained in national legislations consider the acquisition through marriage only of naturalization, according to simplified procedures. Thus, *marriage has the same effects as the voluntary acquisition of citizenship by foreigners*.

Another aspect worth mentioning is that, according to the 1963 Council of Europe Convention, all laws provide the opportunity for people who have more citizenships to voluntarily renounce one of them.

Conclusions

Multiple citizenship, along with statelessness, is currently considered a special problem, closely related to human rights. Given the finding that, within the national state which recognizes it as its own, respectively which confers it, a citizenship constitutes mainly an advantage, multiple citizenship can be considered a real

privilege at international level, as its owner, compared with all the other people who have a single citizenship, is privileged.

If a person refuses to express their option among several citizenships that are provided, the criteria by which to determine their citizenship should be clearly set out.

In case of conflicts of citizenship, i.e. the certification of several citizenships where the states fail to reduce to one, the criteria [32] to determine the citizenship should be developed by all states party to the conflict, which would limit the conflict only to the states concerned.

The regulation of these criteria would effectively reduce conflicts of citizenship, without bringing into question any harm to the sovereignty of the states, namely of their right to regulate, under the international conventions to which they acceded, the entry and establishment on their territory, the asylum, expulsion and the right to grant citizenship.

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