

The Macrotheme Review

A multidisciplinary journal of global macro trends

CITIZENSHIP IN DOMESTIC LAW AND ASPIRATIONS TOWARDS EUROPEAN CITIZENSHIP

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Abstract

Everyone has citizenship right. Citizenship is considered the second important right after the right to live because of all the guarantees and benefits derived from membership in political and social formation which is identified with state. The trend of migration that flows to European countries, had caused the necessity of facing the European legislator priority with this institute and the consequences that brings foreigners residence in European states territory. The most important instruments of international law and conventions of citizenship, have the scope of their activities problems related to citizenship issues. The purpose of this paper istreating Albanian legislation citizenship, focusing on the 1998 Constitution, the European Convention on Citizenship, laws, sub legal acts in analytical overview with the ways that should be applied to achive European citizenship. Albanian citizenship, as integral registrar is the only distinguishing element of foreign citizens and stateless persons. Albanian state has defined its policy of citizenship in accordance with domestic and international law, given the protection and guarantee of the constitutional human rights. European countries have adopted a complex normative system according to citizenship, taking into consideration history, tradition and spaces allowed minority's presence. Currently influences and experiences of different countries, have modified the institute of citizenship and national norms that regulate it. Through the paper, i intend to present an approach and harmonization of national legislation with international law. The concept of citizenship is considered as the core of a functional democracy in a country.

Keywords: citizenship, national low, international law, convention, harmonization

1. Entrance

1.1 The importance of the citizenship right in the early period

Citizenship cannot only be seen as a citizen's status, but also as a juridical relationship between the citizen and the state.¹ In many countries citizenship sanction is fixed by constitutional law, while in others it is fixed by an ordinary law. Every juridical institution has its own space to determine the rules of acquiring or losing of citizenship. If we take a close look at the importance of the citizenship's right we will realize that in ancient times citizenship was considered an

¹ Puto A (2002) International Public Law, Dudaj, Tirana, page 266

essential quality. If a person was not entitled to the citizenship he then could not be subject to rights, could not have any juridical rights and rights to act. Roman state provided the conditions to each of the citizen to participate in the public functions.

In this period citizenship status was considered a status which had juridical consequences in both private and public sector. In Rome citizenship gave the right to people to vote in Assembly, the right to be chosen in the public functions as well as the right of taking part in the judgement. The absolute minimum and maximum of the rights the citizenship status offered, was determined by the way the justice subject had acquired his citizenship.² In Illyria too citizenship has had a great importance. Acquiring or losing illyrian citizenship could only be done by the high court decision and in a special solemnity. Only the free citizen was subject to the illyrian rights, he was entitled to the right and the duty, he also benefited of juridical and acting rights.³

2. Ways of acquiring the citizenship in Albania during different historical periods

Albanian organic status considered albanian citizens all of those who were born or settled in Albania before 12th of November 1912 and that under the Ottoman government had had ottoman citizenship.⁴ Lushnje enlarged status of 1922 treated citizens rights and freedoms questions. It was based on their division of two groups: civil rights and political rights. We need to emphasise the fact that political rights were being recognised to the albanian citizens only. One of the Civil Code characteristics during the occupation of Ahmet Zogu was the dual citizenship status prohibition. In connection with the ways of acquiring albanian citizenship, this code recognised:

1. Because of the Birth

a) Each child whose father was albanian

b) Each child whose mother was albanian, when the father is unknown or he does not have the albanian citizenship or another country citizenship, or when the child according to the proper foreign country law, does not get his father's citizenship.

2. Because of the wife's marriage

The foreign wife who got married to the albanian citizen, automatically got the albanian citizenship and could still have that in marriage dissolution's case. Also the Albanian wife who got married to a foreign citizen, lost the albanian citizenship, if the husband's country legislation sanctioned that the marriage union automatically brought the husband's citizenship. This rule did not apply only if in the marriage contract was expressly foreseen that even after the marriage, the wife could still maintain the albanian citizenship.

3. Only with the high court approval

In the Civil Code was foreseen the government could give the albanian citizenship to the foreigner citizens when anticipated in the article clauses.

² Mandro A, (2005), "Roman Law", Emal 2011, Tirana, page 100

³ Luarasi A, (2005) "History of the State and law in Albania", Luarasi, Tirana, page 26

⁴ Luarasi A, (2005) "History of the State and law in Albania", Luarasi, Tirana, page 323

3.1 Citizenship sanction in 1946 – 1998

During the period of years 1946- 1998 the albanian citizenship was being fixed by these legal actions:

- Albanian Republic People's Constitution of 1946
- Law nr.377, of 16.12.1946 “Over the Albanian Citizenship”
- The People's Presidium Parliament Decree, nr 1874, of 07.06.1954 “Over The Albanian Citizenship”
- The Albanian Republic Constitution of 28.12.1976
- Law nr.7491, of 29.04.1991 “About main constitutional regulations”
- President of Republic Decree, nr 255,of 17.07.1992 “For some additional features in the decree nr 1874, of 07.06 .1954 “Over Albanian Citizenship”

In the third chapter of march the fourteen Constitution ,1946, there were some important rights and principles being anticipated⁵, the right to choose and being chosen in all legislative body functions freedom of awareness and worship⁶, freedom of speech,⁷ freedom of press and meeting as well as gathering and public demonstration,⁸ the right of complaints presentation to the government,⁹ military service duty,¹⁰ etc.

The Constitution only sanctioned albanian citizens rights and duties, while the citizenship was fixed by the law nr.377,of 16.12.1946 “Over the albanian citizenship”decreed by the People's Parliament Presidium nr.252,of december the 16th 1946.¹¹ This law prohibited dual citizenship. The citizenship was acquired in these following ways:

1.From the origin, children gained the albanian citizenship:

- a)When both parents were albanian
- b)When one of the parents was albanian , despite the other parent's citizenship and the child was born from a legal marriage towards albanian competent organs.
- c)When one of the parents was albanian, but the child was born and lived with his parents abroad and the parent whose citizenship was albanian declared this within 5 years from the birth of the child at the albanian embassy of the country they lived.

3. Albanian citizenship according to the actual law context

Citizenship is an affirmed right also in the highest act of the albanian state. In the 1998's Albanian Constitution was sanctioned that:

⁵ Article 14 of the Constitution of 1946

⁶ Article 15 of the Constitution of 1946

⁷ Article 16 of the Constitution of 1946

⁸ Article18 of the Constitution of 1946

⁹Article 32 of the Constitution of 1946

¹⁰ Article 36 of the Constitution of 1946

¹¹ Official Journal no. 117, December 27, 1946

“Anybody who is born even the ones who only have one parent having the albanian citizenship, automatically acquire the citizenship. It can be given for other reasons foreseen by law. The albanian citizen cannot lose the citizenship unless he is not willing to do so.”¹²

It is worth mentioning that except of the Constitution there are other legal acts regarding albanian citizenship in the Republic of Albania. The legal acts in power regarding albanian citizenship in the Republic of Albania are:

- Law nr.8389, of 05.08.1998 “Over the albanian citizenship”;
- Law nr.8442 of 21.01.1999 “Over some changes in law nr.8389, of 05.08..1998 “Over the albanian citizenship”¹³
- The common order Security and Public Administration Minister (nr.925 of 03.03.1999), of Foreign Affairs Minister, (nr.337/1 of 08.03.1999), Justice Minister (NR.782/1 OF 25.03.1999) and Finance Minister (nr.583/3 of 05.03.1999) “Over the procedures being followed for acquiring albanian citizenship through naturalization” ;
- Security and Public Administration Minister order (Nr.3583 of 27.11.2001) and Foreign Affairs Minister order (6252 of 10.12.2001) “Over the procedures and documentation benefiting, regaining and giving up to the albanian citizenship”

Citizenship is a juridical relationship between a person and the state where he belongs to and it does not indicate the person's ethnic origin.¹⁴ As part of civil status, albanian citizenship is the only element that makes differ the foreigners and people without citizenship.¹⁵ The Constitution gives competence to President of the Republic to give Albanian citizenship and allow lifting it up. President is the only authority that has this right. The new citizenship law No. 8339, dated 05.08.1998 "On Albanian citizenship" emerged as a need of completing the legal framework regulating citizenship issues. This law must be act in concordance with the recommendations of the European Convention on Nationality, to its ratification. Albanian law might be considered a modern law because the structure and content of the law was based on Italian, French and Dutch.

In this law was sanctioned orientations of the European Convention on Nationality concerning the avoidance and reduction of cases of statelessness, the more citizenship and implementation of children's rights and equality in treatment.

The person who has remained stateless, there are advantages getting it.¹⁶ Referring to law no. 8442, dated 21.01.1999, the previous law was made an improvement, assuring Albanian citizenship to anyone that is born having at least one parent with Albanian citizenship.¹⁷ A child who has been or is found within the territory of the Republic of Albania acquires Albanian citizenship if he is born of unknown parents and as a result the child had remained stateless. If the child's parents become known before the child reaches the age of 14 years, and they are of foreign nationality, in this case Albanian citizenship can be revoked upon the request of parents legally recognized, provided that the child is left without citizenship as a result of this action. A

¹² Article 19 of the Constitution of the Republic of Albania, 1998

¹³ http://www.asp.gov.al/pdf/shtetesia_shqiptare.pdf

¹⁴ Article 1 of the European Convention on Nationality, signed in Strasbourg on 06/11/1997

¹⁵ Article 8 of the Law no. 8950, date 10.10.2002 "On Civil Status"

¹⁶ Article 14 of Law No. 8339, date 05.08.1998 "On Albanian citizenship"

¹⁷ Article 7 of Law no. 8442, date 21.01.1999 "On some amendments to Law no. 8389, date 05.08.1998 "On Albanian citizenship"

child born within the territory of the Republic of Albania from parents with another nationality, who are legally resident in the territory of Albania, may take Albanian citizenship with the consent of parents.¹⁸

4. Harmonization of Albanian citizenship legislation with international standards

Albanian legislation on citizenship aims to have standards approximate to European countries and to provide effective guarantees. Albanian citizenship is regulated by a series of acts, among which special place has the Constitution and Law No. 8389, dated 08.05.1998, amended, "On Albanian citizenship". They have considered the best models of other countries, the basic norms of international acts, the case law of the International Court of Justice as well as doctrinal definitions of the most prominent law. The definitions provided in them permeated by the modern spirit and the intent to better serve the protection of the interests of persons who are or who want to become Albanian citizens. This legislation, part of which, according to the Albanian Constitution, are also international conventions to which Albania is a member, except it takes to protect its citizens, he allows the other citizens or stateless persons who seek to become naturalized Albanian citizenship.

There are provided facilitating conditions especially for persons of Albanian origin up to the second. It is based on Article 3 of the European Convention "On citizenship", 1997, which stipulates that national laws must be in accordance with the conventions, customary rights and the principles of law recognized by all in relation to citizenship.¹⁹ Albanian citizenship has been treated as a legal connection between people who have it and state. From its derive reciprocal rights and obligations on both sides where naturally dominate the state's obligation to protect its citizens against any other country wherever he is. In the case of EU countries, we should not forget that therein granting citizenship through naturalization is aimed to regulate the demographic anomalies due to the aging population and low birth rate, which for the moment, does not exist in Albania. In general overview of legislation of several countries and the interpretation of some international-legal acts, which address issues of citizenship turns out that the conditions that must be met to guarantee the naturalism vary from one country to another. However, two conditions are essential, residence or stay for a certain time in the territory of the the state whose nationality person wants to earn and the second condition is effective relationship with the state. These are not only the basic principles, but also the starting point of the procedures to be carried out by competent authorities for the application of naturalization.²⁰

5. Aspiration towards european citizenship

European citizenship is difficult to define, because the European Union is a new entity in international law and the rights granted to the European citizens are different from those that citizens have in their country. National citizenship is original, while European citizenship is derived and it is considered as second class. European citizenship is enshrined in the Treaty of

¹⁸ Article 8 of Law No. 8339 date 05.08.1998 "On Albanian citizenship"

¹⁹ https://www.google.al/search?q=shtetesia+ksenofon+krisafi&rlz=1C1GPKC_enAL447AL449&oq=shtetesia+ksenofon+krisafi&aqs=chrome..69i57.18120j0j4&sourceid=chrome&es_sm=93&ie=UTF-8

²⁰ https://www.google.al/search?q=shtetesia+ksenofon+krisafi&rlz=1C1GPKC_enAL447AL449&oq=shtetesia+ksenofon+krisafi&aqs=chrome..69i57.18120j0j4&sourceid=chrome&es_sm=93&ie=UTF-8

Rome,²¹ in which the founding states had declared that they wanted a union always close between European peoples.²² European citizenship is proposed as an idea, for the first time during a conference held in November 15, 1972.

According to this idea, European citizenship, which would be added to citizenship that has each of the inhabitants of a state, but will allow citizens of States of the Community, after a period of residence in one of the member states, the enjoyment of political rights as participation in local elections. In the project of the European Union was declared that citizens of the Member States are citizens of the European Union.²³ Citizenship of the European Union is associated with being a citizen of a member state. It can not be acquired or lost divided. Union citizens participate in the political life in accordance with the provisions in the treaty. They enjoy the rights that are recognized by the legal regulation of the union. The European Union's objective is to strengthen the protection of the rights and interests of member states citizens. European citizens have a number of rights such as:

- Freedom of movement and residence in the area of community
- Active and passive electorate in municipal elections in the state of residence
- The right to petition the European Parliament
- Diplomatic and consular protection

The European Court of Justice decided in a decision of 7 July 1992 that the terms of profit and loss of citizenship depend exclusively from the right of each member state. Both of nationalities are complementary and are closely related to each other. In the treaty provisions pertaining to citizenship, giving citizens of the Member States additional rights and protection and did not aim to replace national citizenship in any way.

6. Conclusions

Citizenship is considered an important institution not only in domestic law, but also in the international context. The long road towards achieving European citizenship demands fulfilling of certain quality standards, so that the process of transition will be easily. In this context, if we analyze Law No. 8389, dated 05.08.1998 "On Albanian citizenship" amended the law nr.8442, dated 21.01.1999, we can conclude that this is a modern law. In its contents are presented several advantages compared with previous legislation. Nevertheless, there is still space for improvement in legislation on citizenship, which consist of the absence of sanctions in case of non-implementation of the decree of the president. The fact that Albanian legislation on citizenship is compatible with the European Convention on Nationality, shows that we are on track and too close to our European perspective. First link that connects us with Europe is precisely the approach of legislation and harmonization of standards to guarantee a real affirmation of the citizenship right. European integration is considered a destination and an objective to be realized. In this context, it is worth noting the philosophy of the founders of the union, which is reflected in the approach that the priority should be the union of people instead of states union. We are geographically part of Europe, but it is necessary to convey the highest standards and sustainable culture in the framework of respecting the law and conventions.

²¹ Treaty of Rome, March 25, 1957, was made effective on January 1, 1958

²² Jean Monnet stated that it is not intended union of states, but the unity of people.

²³ Article 3 of the Treaty on European Union

Reference

- Constitution of the Republic of Albania, 1998
- Puto A (2002) "International Public Law", Dudaj, Tirana
- Mandro A, (2005), "Roman Law", Emal 2011, Tirana
- Omari L, Luarasi A "History of the State and law in Albania" (2005), LUARASI, Tirana
- Constitution of the Republic of Albania, 1946
- Law no. 377, dated 12.16.1946 "On Albanian citizenship"
- Decree of the Presidium of the National Assembly, No. 1874, dated 06.07.1954 "On Albanian citizenship"
- Constitution of the Republic of Albania 1976
- Law no. 7491, dated 29.04.1991 "On the main constitutional provisions"
- Decree of President No. 255 date 17.07.1992 "On some additions to Decree No. 1874, date 07.06.1954"
- On Albanian citizenship "
- Law no. 8389, date 05.08.1998 "On Albanian citizenship"
- Law no. 8442, date 21.01.1999 "On some amendments to Law no. 8389, dated 05.08.1998 "On Albanian citizenship"
- The joint Instruction of the Minister of Public Order (no. 925 dated 03.03.1999), of the Minister of Foreign Affairs (nr.337 / 1 date 08.03.1999), of the Minister of Justice (nr.782 / 1 date 03.25.1999) and the Minister of Finance (nr.583 / 3 date 05.03.1999) "On the procedures that will be followed for acquisition of citizenship by naturalization"
- Instruction of the Minister of Public Order (no. 3583 dated 27.11.2001) and Minister of Foreign Affairs (no. 6252 dated 10.12.2001) "For the procedures and documentation of obtaining, regaining and relinquishing of Albanian nationality"
- European Convention on Nationality, signed in Strasbourg on 11/06/1997
- Law no. 8950 date 10.10.2002 "On Civil Status"
- Treaty of Rome, 25 March 1957
- https://www.google.al/search?q=shtetesia+ksenofon+krisafi&rlz=1C1GPCK_enAL447AL449&oq=shtetesia+ksenofon+krisafi&aqs=chrome..69i57j18120j0j4&sourceid=chrome&es_sm=93&ie=UTF-8
- http://www.asp.gov.al/pdf/shtetesia_shqiptare.pdf