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Historical Retrospective on Albanian Statehood from Albanian Independence until Nowadays

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Abstract

While working on this thesis, it has become clear that the Albanian statehood issues, from independence until nowadays, have passed through different governance forms that dictate the legal framework on its regulation. It is immediately noticed civil and political rights respect for citizens that are considered Albanian citizens right after the Albanian state foundation. These rights and other issues such as double citizenship prohibitions, giving up citizenship, naturalization forms, etc. are firstly adjusted from different government laws and regulation, starting from Ismail Qemali government of 1912, until King Zog monarchy. These provisions have been consolidated under the King Ahmet Zogu governance, briefly presented in 1929 code which was compiled by him. Later, during 1945-1990, they were treated by the communist totalitarian regime. They went through many differences during the democratic movement, from 1991 to 1998. In 1998, with the approval of the new Albanian Constitution, these issues were finally crystalized enabling the law approval for citizenship and some regulations, which are still in force nowadays. Today, Albania accedes in some conventions related with citizenship institutions.

Keywords: nationality, naturalization process, double citizenship, jus soli, jus sanguinis, statelessness

Preface

This paper is a brief historical summary about the institution of citizenship. The chronological aspect of it's argument is based upon the establishment of the Albanian state and extends until nowadays, with regard to various issues of human rights and Fundamental Freedoms, but above all to the issues of citizenship. The regulation of citizenship recognizes four phases, which are considered here.

In the 1st paragraph it is specified which persons shall be considered to be Albanian citizens, given that Albania was detached from the Ottoman Empire and became independent in 1912. Then, we become acquainted with the first legal acts which regulated the citizenship issues immediately after the creation of the Albanian state, as well as how the equality of all citizens was stipulated by law.

The 2nd paragraph brings about a consolidated treatment of the Albanian citizenship issues present in the *Code of King Zog* of 1929, where concepts of citizenship rights, such as *jus*

sanguinis, jus soli, naturalization forms etc., are observed. This code clarifies the prohibition of dual citizenship and determines some norms on its removal.

The 3rd paragraph, treats the regulation of the institute of citizenship under the communist regime, during the years 1945-1991, after World War II. During this period of time, the constitutions of 1946 and that of 1976, were sanctioned, where the rights and obligations of citizens were defined. There are also a number of laws and bylaws that regulate the citizenship. Stands out the prohibition of dual citizenship and the removal of Albanian nationality in cases of non fulfillment of public duties.

The last paragraph provides an overview of the current Albanian legislation regarding the acquisition of Albanian citizenship, it's regain and renunciation process and the naturalization through regular residence, marriage, adoption and dual citizenship.

The main object of this paper is the question of the fundamental freedoms and human rights, such as political, civil and social rights. For the completion of this paper, the main sources used are: the Albanian Constitution and its changes during the years, as well as laws and regulations provided in the course of governance, which regulate the Albanian citizenship. As secondary sources were used papers and books by authors who have written about these issues, making their own interpretations on the legal framework mentioned above, which are also included in the bibliography section.

As a synthesis of this work, a final paragraph is submitted in the form of free opinions and conclusions.

I. The origins of the Albanian State and the Albanian citizenship.

The Albanian state was recognized as such, in the international arena, after the declaration of independence, on 28 November 1912. It was in this year that Albania began its existence as an *independent political state*. The main laws approved by the first government were "*Canon of the Jury*", in May 1913 and "*The Appropriate Canon of the Albania Civil Administration*", in November 1913. Based on these two important laws, the right to be elected as part of a jury or the provinces' councils, was given only to the Albanian citizens. The question arises, who was considered an Albanian citizen?

The issues of citizenship were resolved by "*The Organic Statute of Albania*", of 1914, which recognised the Albanian citizenship to all those who were born or mooved in Albania before the 28 November of 1912, under the Ottoman government¹. While "*The Organic Statute of Albania*" determined who was to be called *Albanian citizen*, "*The Extended Statute of Lushnja*", of 1922, layed the first foundations addressing the rights and freedoms of citizens. This legal definition represented a great achievement for that time, and a major step for the integrity of the Albanian citizens. The Statute stipulated, in the group of *civil rights*, equality of every citizen before the law, guaranteeing of the judicial process for each Albanian national, the imposition of fiscal

¹ Omari L., *et al*, Historia e shtetit dhe e së drejtës në Shqipëri, pg. 323, Tirana 2005.

bodies to citizens who exercised a private enterprise, etc. Such rights were recognized to the Albanian citizens, as well as to foreigners living in the territory of the Albanian state, declaring thus that "Everyone, regardless their nationality, enjoy equal civil rights".

In the group of *political rights*, the Statute defined the freedom of speech and freedom of the press, the right of assembly and social organization, the right to appeal, confidentiality of correspondence, etc. Such rights were recognized only to Albanian nationals and not to foreigners, declaring thus that "all Albanian citizens enjoy equal political rights".

It is worth mentioning, that the civil rights that were enjoyed by the Albanian citizens, as well as by foreigners, can be compared with the legal regulation provided to foreigners, by the present law on "Aliens" in Albania. Obviously, the statute shows great similarity with the present law on "Aliens", regarding the treatment of these rights, even though it was formulated about 100 years ago.

II. Citizenship under the provisions of of King's Zog Code of 1929.

The entry into force of the Code of Zog, brought about the consolidation of the citizenship institute position, but above all it forbade the *dual citizenship*. The approved ways of obtaining the citizenship were the '*jus sanguinis*', '*jus soli*' and *naturalization* with all its forms.

The Albanian citizenship, could be obtained *due to the birthplace*, for every child with an Albanian father; for every child with an Albanian mother, if the father was unknown or he didn't have neither Albanian citizenship, nor that of another State, or when the child, under a foreign country law, was not eligible to obtain his father's citizenship. A child born in Albania was eligible to obtain the Albanian citizenship, when both parents were unknown, or didn't have neither an Albanian citizenship, nor that of another state, or when the child, under a foreign country law, was not eligible to obtain his foreign parents' citizenship. Also a child found in Albania, whose parents were unknown, was presumed to have been born in Albania, until the contrary was proved². In the last two sentences, is clearly understood the application of the of *jus soli* principle on the acquisition of the Albanian nationality.

Albanian citizenship was granted to foreigners, through a Council of Ministry decision, passing always through the *process of naturalization*, by fulfilling such conditions, as: at least three years of service for the Albanian state, provided that the foreigner had stayed in Albania for at least five years; the stranger who have served the Albania state for at least three years and was married to an Albanian citizen³. Albanian citizenship was also granted for specific reasons, when the person who received such treatment, was performing services of exceptional importance. In these cases Albanian citizenship were proclaimed by a royal decree.

A very important fact to be mentioned here, is how an Albanian citizen may lose his Albanian citizenship through the provisions of the Code. Emphasis should be put on the fact that the participation of an Albanian national in the administration of a foreign country, or in a foreign military service, without the permission of the Albanian government, would cause him the loss of the Albanian citizenship. Further more, he was also forbidden to enter the land of the Albanian kingdom, unless he gave up his foreign employment or military service. This provisions express the dissent of King's Zog Kingdom about the actions of its citizens outside the Albanian boundaries, without the consent of the government, of holding such positions or services. Consequently, the deprivation of the Albanian nationality, was announced for these persons⁴.

² Article 4, Zog Civil Code of 1929.

III. Issues of citizenship during the monistic totalitarian regime, until 1998.

After the end of World War II, in Albania was established the communist regime. On 14 March 1946 *The Constitution of the People's Republic of Albania* was approved, the third chapter of which treated "The rights and obligations of citizens". The Constitution defined the obligation of citizens to comply with the Constitution and its laws⁵, the principle of equality of the citizens⁶, the right of vote and the right to be elected in all statal bodies⁷, the right of non-infringement of the person⁸, the obligation of performing military service⁹, etc. Thereof, the Constitution sanctioned only the rights and obligations of its citizens, while the citizenship issues were regulated by the Law no. 377, dt. 16.12.1946, "On Albanian citizenship", decreed by *The Presidium of the National Assembly*, no. 252 dt.16.12.1946. This law forbade the dual citizenship¹¹.

Albanian citizenship could also be acquired *through origin*, when both parents were Albanian nationals, when one of the parents was Albanian regardless of the other's parent citizenship and if the child was born from a legal marriage. Consequently, we deduce that the principle of *jus sanguinis* was in the foundation of the Albanian citizenship. The effect of *jus soli* was seen in children born or found in Albania and from unknown parents. The same was true for children born from parents without nationality or if their nationality was unknown. Naturalization, as a way of gaining the Albanian citizenship, was granted as an *ordinary* or *extraordinary* one. In both cases the decision was made by the *Ministry of the Internal Affairs*.

The Ordinary Application Form contained requirements such as: a prayer for naturalization, age of the applicant should be over 18 years, residence in Albania for at least 5 years before the prayer, the applicants had no previous problems in their country of origin, as well as the waiver of the previous citizenship. Lastly, the applicants must pledge loyalty to *The People's Republic of Albania*.

The Extraordinary Form was applied in cases where the naturalization was performed due to special interest of the Albanian state. In these cases was sufficient that the recipient submitted a formal plea and that he/she was 18 years or older.

Loss of Citizenship was quite interesting, because it was based on the provisions of the 1946 law "On the Albanian citizenship". According to it, the Albanian citizenship was considered lost to the citizen who lived abroad, if within 15 years from the day he had turned 18, he had not fulfilled any public duty for The People's Republic of Albania and if during the last 5 years had not appeared before the Albanian representative, or had not notified the *Ministry of Internal Affairs* on their condition. The Albanian nationality could also be removed from any naturalized citizen who had received Albanian citizenship by false statements or had hidden any facts. The citizenship could be removed within 5 years from naturalization, if the person convicted for offenses against the government and the People.

³ Article 7, Zog Civil Code of 1929.

⁴ Article 12, Zog Civil Code of 1929.

⁵ Article 14, Constitution of 1946

⁶ Article 15, Constitution of 1946

⁷ Article 16, Constitution of 1946

⁸ Article 22, Constitution of 1946

⁹ Article 36, Constitution of 1946

¹⁰ Official Bulletin No.117, dt.27.12.1946

¹¹ Article 2, Law No. 377, dt. 16.12.1946. "Anyone having an Albanian citizenship, can not have the citizenship of another state, at the same time".

There existed also the possibility that *the person relinquished the Albanian citizenship* when certain conditions were met, such as: the request for waiver of the citizenship, the citizen was over 18 years old and had completed the statual obligations, or in cases where the citizen could prove that he would be granted a foreign citizenship.

Like the previous Constitution of 1946, the adoption of the 1976 Constitution did not interfere with detailed regulations on the citizenship's issues, but only indicated that "will be citizens of The Socialist People's Republic of Albania, those who had aquired the Albanian citizenship according to the law", which law stipulated the rights and obligations of citizens. Special reference to the institution of citizenship was presented by the Law no. 1903, Dt.20.07.1954, which approved decree no. 1874 Dt. 7/6/1954.

The democratic changes during 1990-1991 regulated the issue of citizenship sanctioned by Law No. 7491 Dt. 29.04.1991 "On the basic Constitutional provisions" where "no one may be deprived of Albanian citizenship without his consent, or the right to renounce the citizenship". But the newest phenomenon as well as the initial approach to European laws, came in 1992, when explicitly was sanctioned the allowance of the *dual citizenship*: "to foreigners with Albanian nationality or origin, based on their request, is granted Albanian citizenship, maintaining or not the nationality of their country"¹².

IV. Legal framework for the Albanian citizenship and adoption of the Constitution of 1998.

The International Conventions ratified by Albania and the laws and bylaws in force about the Albanian citizenship, are the same as almost 15 years ago, where is clearly seen the state's positioning regarding this issue, which regulates a variety of political, civil and social services for individuals.

Taking account of the Citizenship Law of 1998¹³, its provisions have undergone a slight change and are reflected in the amended law on citizenship in 1999¹⁴. The amendments submitted to the latter represent also the constitutional views, the foundations of which are based on the law of 1998. In support of the implementation of the constitutional and legal provisions, a series of bylaws¹⁵ that define documents, procedures and terms related to citizenship issues, were sanctioned. Obviously, the application of the principle of *jus sanguinis* is in the roots of obtainin the Albanian citizenship, whereas in order to be an Albanian citizen it is sufficient to have one Albanian parent. For immigrants born abroad by at least one Albanian parent, it is necessary that the person be registered in the offices of the Albanian diplomatic and consular headquarters. Immediately after registration, the newborn becomes part of the Albanian Civil Registry. In this way this person will be subject to the Albanian diplomatic protection and shall not perish his/her identity as an Albanian national. Regarding the application of the principle of *jus soli*, The Republic of Albania is open to the procedures for citizenship granting, respecting thus the Convention in regard to the Status of Stateless Persons, which was ratified on June 23, 2003, giving the possibility of obtaining citizenship, to every person who is born in the Albanian territory, by foreign parents with a lawfull permit to visit Albania, and with the parental consent. An exception to this rule is made for those born in Albania by parents who are in our country illegally, who even though may want, can not register their child as an Albanian citizen. From

¹² Article 1, Decree of the Presidentit of the Republic no. 255 dt. 17.07.1992 "For some dispositions on Decree no. 1874 dt. 07.06.1954 "On the Albanian citizenship".

this principle also benefit those who are born to stateless parents or with an unknown nationality. Naturalization as an opportunity to establish a legal connection to the aliens with the Albanian state, is conceived in standard levels, where initially the foreigner must address the Albanian state with a request for acquisition of citizenship. Also, he/she must have fulfilled certain conditions, such as having reached adulthood, can prove legal residence in Albania of not less than five years, is capable of providing for his/her living financial support, has already provided housing, not have been convicted of offenses which predict doom with more than three years imprisonment, knows the Albanian language and does not affect the security and defense of the Republic of Albania. Marriage to an Albanian citizen is an opportunity which facilitates the acquisition of Albanian citizenship through a more easy naturalization process. Will suffice only three years of marriage and a year of legal residence in Albania, for a foreign husband to become an Albanian citizen. *Albanian citizen by naturalization* is called the person to whom the citizenship has been granted and who performs the formal oath in the office of the civil servants, stating that he/she will stay loyal to the Albanian state and will respect the Constitution and laws of our country. The granting and revoking of the citizenship is then confirmed by presidential decree and published in the Official Bulletin. To be mentioned as another possibility of gaining Albanian citizenship, is the adoption process, where parents having Albanian citizenship, can adopt a child with a foreign nationality, or a stateless child. The Citizenship is a legal and inseparable attribute of every Albanian citizen. Under no circumstances can it be arbitrarily deprived, with the only exception when this is its holder's own desire. A person can not be stripped of this right, to which he/she is so closely linked, if the person does not relinquishes it after the age of 18, or is equipped with a second citizenship, or have been officially promised another citizenship, based on documents that prove it. To be mentioned as a reminder, in the years 1992-1998, many Albanians, not being aware of the problems that statelessness can lead to, have withdrawn voluntarily from it. This has happened also due to the lack of legal regulation, which sanctioned no criterion for the renunciation, except for the criterion of age. Transitional and final provisions have ended the aforementioned problem being re-allocated Albanian citizenship to all those persons who have renounced the Albanian citizenship before this law went into effect. Finally, the right to regain Albanian citizenship is known to those who are stateless, because another promised citizenship was not given to them, within a reasonable time. Cautionly analyzing the Albanian legal framework on issues of citizenship, we understand that double citizenship is not prohibited in our country. I base this opinion on the following arguments: Firstly, we are all able to recall cases that of Albanian citizens, who have a second citizenship. This justifies the fact that an Albanian citizen can be a citizen of another country¹⁶. Secondly, in the provisions for adoption¹⁷, we find that when a minor alien is adopted, he/she is not deprived of the citizenship of origin. Also, to a foreign spouse who acquires Albanian citizenship, is not imposed the renunciation of his/her former nationality, except for the cases when that would be required by the State of origin.

¹³ Law no. 8389 "On the Albanian Citizenship", approved on 05.08.1998, less than 4 months before the Constitution was approved on 28.11.1998.

¹⁴ Law no. 8442, dt. 21.01.1999 "On some dispositions in Law no. 8389, dt. 05.08.1998 "On the Albanian Citizenship".

¹⁵ There are some directives of the Public Order Minister (no. 925 dt. 03.03.1999), the Foreign Affairs Minister (no. 337/1 dt. 08.03.1999), the Minister of Justice (no. 728/1 dt. 25.03.1999) and the Minister of Finances (no. 583/3 dt. 05.03.1999) "On the procedures to be followed during the Albanian citizenship acquisition".

¹⁶ Article 3, Law no. 8389, dt. 05.08.1998 "On the Albanian Citizenship".

¹⁷ Article 12/1, Law no. 8389, dt. 05.08.1998 "On the Albanian Citizenship".

Conclusions

The origins of the Albanian state have been very difficult because of the way the independence of Albania was achieved, as well as from the severe economic and social problems that this newly formed state was faced with. The establishment of legal frameworks on issues such as citizenship, not only represented a great achievement, but they go even further, equating the civil rights of Albania citizens with those of the other resident foreigners.

The consolidation of the citizenship issues, by King Zog, in the Civil Code of 1929 was a major step in respecting human rights and freedoms. The application of the *jus soli* principle by this Code, was a progressive approach in the attribution of nationality in this form. It is worth noting that citizenship issues were closely linked to the Albanian state and to the interests of Albania. The citizen who, without the permission of the Albanian authorities, launched an overseas administration employment, or a foreign army service, was penalized with the loss of Albanian citizenship.

During the time of King Zog, as well as during the communist regime, the double citizenship was prohibited, while according to the current legal framework of nowadays, the double citizenship is not prohibited. This came mainly as a requirement of the modernization of the concept of citizenship and the nationality internationalization. Thereof, an individual can gain a second citizenship nowadays, because of the naturalization concept (ex. marriage) and there is no reason to give up the original citizenship. The current legal framework sets a good concordance with other European legal systems, especially in the treatment of dual citizenship and in the regulation of the *apatrid status*, which gave to individuals some rights that remained undefined in earlier legislations.

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