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Some Aspects of Citizenship from the Perspective of International Law

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Abstract: One of the constitutive components of the state is the population. The population of the state represents the total physical entities linked to a State through citizenship, whether residing in the territory of that State or it is in other states. The international regulations and cooperation between states in solving problems on population refer to domains and legal institutions such as: dual citizenship, statelessness, the legal status of foreigners, the right to asylum, extradition, diplomatic protection, human rights, etc. There are relevant for the public international law the issues relating to the conditions under which the legal status of citizens of a state is recognized and it can be enforced against other states, the exercise compatibility of those competences with international law rules. In this paper we have examined issues related to the fundamental right of citizenship in the light of international documents, rules on acquiring citizenship and citizenship conflicts. In preparing the paper we used as research methods the analysis of the problems generated by the mentioned subject with reference to the doctrinal views expressed in the Treaties and specialized papers, desk research, interpretation of legal norms in the field.

Keywords: Universal Declaration of Human Rights; European convention on nationality; Convention on the reduction of statelessness; conflicts of citizenship

1. Introduction

According to the doctrine of classical orientation, three constituents are necessary for a state to exist: a territory, a population and a government (Savenco, 2006, p. 171), and citizenship is a matter of defining the national identity, the nation being equivalent to the people who formed the foundation of national states, the issue of citizenship is an essential attribute of states, the international law having little to say on the matter. Ernest Gellner explained the formation of nations “...*An advanced culture is reflected throughout the society, it defines it and it needs to be supported by the state organization. This is the secret of nationalism.*” (Gellner, 1997, p. 34) In his work *Considerations on Representative Government*, John Stuart Mill stated that “*A portion of mankind may be said to constitute a nationality, 'if they are united among themselves by common sympathies which do not exist between them and any others, which make them co-operate more willingly than with other peoples, to be under the same government, and desire that it should be government by themselves, or a portion of themselves, exclusively.*” (Macartney, 1934, p. 5) Similarly, Karl W. Deutsch believes that at the origin of the modern nation there is the link between people (Deutsch, 1966, p. 105).

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The “population” element is mentioned both in Article 1 of Montevideo Convention of 1933¹: “*The state as a person of international law should possess the following qualifications: a) a permanent **population**; b) a defined territory; c) government; and d) capacity to enter into relations with the other states.*” (s.n.) (Department of International Law)

More recently, in Opinion No. 1 of The **Arbitration Commission of the Conference on Yugoslavia** in November 1991, the state is defined as “*a community which consists of a territory and a population subject to an organized political authority; that such a state is characterized by sovereignty*”. (Pellet, 1992, p. 182)

Genoveva Vrabie defines the population in close relation to the concept of citizenship, stating that it represents that constituent element of the state which includes all individuals linked by a State through citizenship, “whether living in its territory or they are in other states.” (Vrabie, 1995, p. 127)

Expanding globalization phenomenon and the erosion of space continuity, identity, nationality (Spiro, 2011, p. 694) determined for certain issues related to population no longer be solved entirely by its own law of a State, some of which required cooperation into an international framework created by bilateral or multilateral treaties, given the complexity of the problems on population and the impact that they have on the relations between states. (Maftai, 2010, p. 98)

Thus the legal domains and institutions such as: dual citizenship, statelessness, the legal regime of foreigners, asylum, extradition, diplomatic protection, human rights, etc. (Moca & Duțu, 2008, p. 203) were carefully analyzed by states that have proposed legal solutions by international regulations.

In terms of citizenship, there are relevant for the international law the issues arising from the conditions in which the legal status of citizens or aliens of a State is recognized and it cannot be applied to other states or international bodies, and also the exercise compatibility of those powers with the norms of international law. (Miga-Beșteliu, 2005, p. 128)

2. The Right to Citizenship in International Regulations

Citizenship can be defined as the permanent and effective political and legal relation between a physical entity and a certain state that generates rights and obligations for the citizen and the State concerned (Bolinteanu, Nastase & Aurescu, 2000, p. 74) This relationship means that a person belongs to a particular state.

T.H. Marshall identifies three elements of citizenship: civil, political and social. The first issue, according to the author, concerns the rights necessary for individual freedom. The policy element grants the right to the individual for participating in the exercise of political power as a member of a body invested with political authority or as an elector. The third element includes the right to life standard, the right to education, right to health. (Marshall, 2009, pp. 148-149)

The International Court of Justice stated in its judgment that “*According to the practice of States, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of*

¹ This treaty was signed at the International Conference of American States in Montevideo, Uruguay on December 26, 1933. It entered into force on December 26, 1934.

an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State." (The International Court of Justice, p. 23)

The rules on how to obtain and lose citizenship, the legal content of citizenship, the effects are determined by the laws of each state, regulating citizenship is an exclusive attribute of states, regarding the mentioned issues.

The enforceability issues of citizenship of a State towards other States, the fact that State under this bond the state extends its sovereignty over a person who has citizenship of the country outside its borders (Andronovici 1996, p. 166), the protection of social groups determined international cooperation in this field and the adoption of common rules with conventional bilateral or multilateral character, meant to remove the deviations caused by inconsistencies between national laws of states.

The reference document, of fundamental importance for international law, *the Universal Declaration of Human Rights* of 1948, refers to citizenship in article 15 in two prescriptions, a positive and a negative one:

1. *Everyone has the right to a nationality.*
2. *No one shall be arbitrarily deprived of his nationality, nor denied the right to change his nationality.*¹

The International Covenant on Civil and Political Rights recognizes the right of every child to citizenship: "Every child has the right to acquire a nationality." (article 24, paragraph 3)²

Similarly, the Convention on the Rights of the Child guarantees the right of every child to acquire a nationality by article 7, paragraph 1: "The child shall be registered immediately after birth and shall have the right from birth to a name, *the right to acquire a nationality*"³.

Another important document, with regional value, adopted within the Council of Europe states that "Each State shall determine under its own law who are its nationals". This provision is complemented by another rule, which aims at achieving the enforceability of citizenship conferred by the state to an individual: "This law shall be accepted by other States in so far as it is consistent with applicable international conventions, customary international law and the principles of law generally recognized with regard to nationality." (Article. 4, The European Convention on Nationality, 1997)⁴

3. Acquiring Nationality

The legal institution of citizenship belongs to the constitutional law as the enacted rules are an edict of the state, under its sovereignty. (Deleanu, 1976, p. 30)

A) In the comparative law there were recorded the following methods of acquiring nationality:

a) the acquisition as a result of birth;

¹ The *Universal Declaration of Human Rights* was proclaimed by the United Nations General Assembly in Paris on 10 December 1948 General Assembly resolution 217 A (III).

² International Covenant on Civil and Political Rights, Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

³ Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989, entry into force 2 September 1990, in accordance with article 49, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

⁴ The European Convention on Nationality was adopted on 6 November 1997 and entered into force on 1 March 2000, <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?CL=ENG&NT=166>.

b) acquiring citizenship as a result of an individual legal act issued by the competent authority.

a) The doctrine of international law in the field of acquiring citizenship by birth supports its applying from one of the following two principles *jus sanguinis* and *jus soli*.

Jus sanguinis principle requires the acquisition by the child of his parents' citizenship regardless of his birthplace. This principle follows from the principle of nationality and by its application it shall be ensured the unity of the state and its inhabitants, the citizenship being transmitted from parents to child, even if he was born in another country, thus the child becoming a member of the community to which they belonged and its ascendants.¹

According to the principle of *jus soli*, the child acquires the citizenship of the State in which he is born, regardless of the nationality of his parents. This principle gives the State the power to grant citizenship to individuals who are born on its territory. By the notion of territory we must understand both the soil, subsoil, air space, internal waters, territorial waters, and vessels or aircraft under its flag (Jădăneţ, 2009, p. 113).

Two international documents expressly stated the exception of applying this principle in the field of diplomatic and consular relations. Thus, the Optional Protocols concerning Acquisition of Nationality, 1961 and 1963 provide, similarly, that members of the mission and members of the consular post not being nationals of the receiving State, and members of their families forming part of their household, shall not, solely by the operation of the law of the receiving State, acquire the nationality of that State.

b) As a result of a single legal act issued by the competent authority, acquiring citizenship can also be performed by one of the following ways:

- marriage between two persons who have different nationalities;
- by adoption, the child may acquire citizenship of the adopter, if he had not had another nationality or citizenship of a foreign state;
- the recovery or reintegration, it can return to the old citizenship if the former citizen repatriates or if a married woman had lost citizenship obtained through marriage to a foreigner, and later divorced;
- the effect of prolonged stay in the territory of another State than their own;
- as an option, in the case of transfer of territory from one state to another, where people living in the transferred territory, they have the right to choose to keep their citizenship and to obtain citizenship of the new state.

The acquisition of nationality as a result of marriage between persons of different nationalities, traditionally regards only the woman, who automatically acquires the citizenship of the husband. Although we may think that the rule exists in a certain period of development of states, it is still implemented in the Islamic area. Promoting within the international society the principle of equality of the two sexes, and the conclusion of the Convention on the Nationality of Married Women² have excluded the loss of citizenship by the wife, expressly stating in Article 1 that “*each Contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife*”.

¹ Romania applies the *Jus sanguinis* principle in terms of acquisition of citizenship based on origin, article 5, Law no. 21/1991 (published 2010), of the Romanian citizenship, republished in the Official Monitor no. 576 of 13/08/2010.

² The Convention was opened for signature pursuant to resolution 1040 (XI)1 adopted by the General Assembly of the United Nations on 29 January 1957. It entered into force 11 August 1958 by the exchange of the said letters, in accordance with article 6.

The adoption institution produces effects regarding the adopted child's citizenship. As a result of adoption the child loses any blood relation with his relatives and he creates new relationships between the adopted child and adopters. If the child does not have citizenship or a nationality other than that of the adopters, he will acquire the nationality of the latter.

Reacquisition of citizenship is obtained only upon request and it regards the former citizens whose citizenship has been revoked unwillingly, for imputable reasons. The Romanian legislation provides in this regard that “*persons who have acquired Romanian citizenship by birth or adoption and who lost it for imputable reasons or that it was revoked the nationality without their will, as their descendants up to the third degree, upon request, can regain it or it may be granted the Romanian citizenship with the possibility of keeping foreign citizenship and establishing domicile in Romania or maintaining it abroad*” (article 11 of Law no. 21/1991). This applies, for example, to citizens of Republic of Moldova (to which Romania recognized the independence), following the consideration that its territory was Romanian territory occupied by the Molotov-Ribbentrop Pact of 1939. The rules regarding the recovery of citizenship applies also to married woman who have lost citizenship obtained through marriage to a foreigner, being forced to abandon the original citizenship, and later on she divorces.

Another way of acquiring citizenship of a state recognized by international law is acquiring citizenship as a result of a prolonged stay in the territory of a State other than their own. Of course that each state is sovereign in terms of the conditions and procedures for granting citizenship upon request, in the referred case. States may impose requirements such as: knowing the language, history and geography knowledge, the existence of domicile on its territory, reaching a certain period, etc.

The Romanian citizenship acquisition is conditional by the requirements of article 8, paragraph 1 of Law no. 21 of 1991, republished:

(1) The Romanian citizenship can be granted, upon request, to a person without citizenship or alien, if the person meets the following conditions:

- a) he was born and lives in Romania at the date of the demand, or, if he was not born in this land, he lives legally on the Romanian territory for at least 8 years or, in the case of being married and living with a Romanian citizen for at least 5 years of marriage;
- b) he proves by his behavior, actions and attitude, loyalty to the Romanian state, he does not take or support actions against legal order or national security and he declares that in the past he has not taken any such action;
- c) he has 18 years old;
- d) he has insured in Romania the legal means for a decent life, under the conditions established by the law on the aliens' regime;
- e) he is known with good conduct and he has not been convicted in the country or abroad for a crime that makes him unworthy of being a Romanian citizen;
- f) he knows the Romanian language and the basic notions of Romanian culture and civilization, to the sufficient extent for integrating into society;
- g) he knows the Romanian Constitution and the national anthem.

Acquisition of nationality after birth may be conditioned by applying the principle of citizenship effectiveness. The International Court of Justice has defined the effectiveness of citizenship according

to the Nottembohm case: *According to the practice of States, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.*¹ As a result, while recognizing the sovereign right of the state in relation to the citizenship granting, the Nottembohm case gives states the opportunity to raise unenforceability in that there is no close relationship between the state and the citizen. The European Convention on Nationality of 1997 refers to the rule of citizenship effectiveness in article 18, paragraph 2, letter a) stating that the decision on the granting or retention of nationality in cases of State succession, each State Party shall take into account in particular the existence of a genuine and effective link between the person and the corresponding state.

Changing boundaries of states as a result of scrapping or transfer of territory from one state to another can lead to problems concerning the nationality of individuals. State succession can sometimes cause loss of citizenship to certain individuals, because they acquire the status of stateless persons. Of course, under the sovereignty of both states' interests and those of individuals there are regulated national laws and in compliance with international standards in this area. It is necessary in the case of succession, the States concerned shall take all appropriate measures to prevent statelessness situation. (Filipovici, 2010, pp. 34-36)

It is important to mention the work of the International Law Commission, which adopted the draft articles on nationality of natural persons in relation to the succession of States. Although these requirements are not mandatory, the UN General Assembly recommended for the States to take them into account, when they have to solve problems caused by the effects of State succession on individuals in matters of citizenship. According to article 1 of this document: *Every individual who, on the date of the succession of States, had the nationality of the predecessor State, irrespective of the mode of acquisition of that nationality, has the right to the nationality of at least one of the States concerned, in accordance with the present draft articles.*²

4. Conflicts of Nationality

The differences in legal treatment between countries in terms of citizenship (principles, modes of acquisition and loss of nationality) generate the so-called "conflicts of nationality". In this category there are included: multiple nationality and statelessness.

The Hague Convention of 1930 on conflicts of nationality provides that each state has the right to determine by law who are its nationals, and the state law must be upheld by other states, "*under the conditions where they are in agreement with the international conventions, with international customs and the principles of general law recognized with regard to nationality*" (article 1 of the Convention).

The multiple nationality constitutes the legal status of a person holding two states' nationalities at the same time (or more) (positive conflict of nationality) (Selejan-Guțan & Craciunean, 2008, p. 91)

This situation may occur when:

a) a child is born in a State applying the territorial principle (*lex loci*) of parents citizens of a state applying the *jus sanguinis* principle;

¹ International Court of Justice Reports of Judgments, Advisory Opinions and Orders, Nottebohm Case (Liechtenstein v. Guatemala) Second Phase Judgment of April 6th, 1955, p.23, <http://www.icj-cij.org/docket/files/18/2674.pdf>.

² International Law Commission, *Draft Articles on Nationality of Natural Persons in relation to the Succession of States, with commentaries*, 1999, <http://www.un.org/law/ilc/>.

b) in the case of adoption by a foreigner, if the State of whose nationality the adopted child is does not consent the renunciation of citizenship, and the state of the child's adopter grants its nationality automatically, according to the law;

c) in the case of marriage to an alien, if according to his country's legislation, the woman does not lose her citizenship by marriage, and according to the laws of the State of the husband, the wife will automatically acquire his nationality;

d) in the case where a person acquires the citizenship of another state, without having renounced the nationality of origin.

Statelessness is when some people have no nationality or lose their citizenship without becoming citizens of another State, as a result of the inconsistencies of the national laws (negative conflict of nationality). It has no definition in the international legal instruments relating to stateless persons.

Stateless term is defined in article 1 of the Convention relating to the Status of Stateless Persons in the following wording: "*a person that no state considers being a national by applying its law*". There are not included in this category:

- persons receiving protection and assistance from organs or agencies of the United Nations other than the High Commissioner for Refugees, as long as they will benefit from this protection;
- persons considered by the competent authorities of the country where these people have established residence as having the same rights and obligations as the citizens of this country;
- individuals against whom there are reasonable grounds to believe that they have committed a crime against peace, a war crime or a crime against humanity, as defined by the international legal instruments relating to these crimes, that they have committed a serious crime of common law, outside their country of residence before being admitted into the country, that were guilty of agitation against the purposes and principles of the United Nations. (Muraru, Tanasescu, Iancu, Deaconu, & Cuc, 2003, p. 17)

To prevent and reduce the number of such cases, the states have adopted several documents in this matter:

- Convention on the reduction of cases of multiple nationality and on military obligations in cases of multiple nationality (Strasbourg, 6 May 1963);
- Convention relating to the Status of Stateless Persons of 1954¹;
- Convention on the Reduction of Statelessness of 1961²;
- European Convention on Nationality, adopted in 6.11. 1997³.

The mentioned documents recognize the right of every person to citizenship and they establish rules such as:

- States Parties have an obligation not to withdraw citizenship to any person, if by this action it would be created the stateless situation;

¹ Romania joined the Convention on the Status of Stateless Persons, adopted in New York on 28 September 1954 by Law no. 362 of 13 December 2005 published in the Official Monitor of Romania, Part I, no. 1146 of 19 December 2005.

² Romania joined the Convention on the Reduction of Statelessness by Law no. 361/2005, published in Official Monitor no. 1156 of 20/12/2005.

³ Romania has ratified the Convention by Law no. 396 of 14 June 2002 published in the Official Monitor of Romania, Part I, no. 490 of 9 July 2002.

- Children born of parents without citizenship shall acquire the citizenship of the State in which the birth occurred;
- A child born of unknown parents and whose place of birth is not known, he is considered as being born in the State in which the child was found;
- Loss of any form of citizenship cannot have effect unless the person acquires another nationality;
- Any treaty under which a transfer of territory must regulate the citizenship of the inhabitants of the transferred territory;
- Every stateless person has duties towards the country in which he lives, obeying its laws and measures to maintain public order;
- States should apply the same regime to all stateless persons, without discrimination on race, religion or country of origin;
- Stateless persons shall enjoy the same regime as nationals regarding freedom of religion and religious education of their children;
- Stateless persons must be granted the regime applied by the country to foreigners.

5. Conclusions

Citizenship can be described therefore under two ways: status and role. The status (legal and political) that the citizenship incumbents is reflected, on the one hand, in all civil, political and social rights that the state guarantees to its citizens and on the other hand the obligations of the citizen towards the state. The social role of citizenship confers identity to the individual, as part of community to which he belongs and he participates to the public life and he exercises his citizenship status. Although the state is sovereign regarding important aspects of citizenship, having exclusive jurisdiction in the regulation domain of methods of acquiring and losing citizenship, rights and obligations of the citizens, the public international law intervenes in this matter from the perspective of international relations established between states, on the recognition and enforceability of the legal status of citizens, but also the compatibility of national rules with the provisions of international legal instruments relating to the right to citizenship as a fundamental human right. Reporting the citizenship to state currently supports the challenges of regionalization and globalization, which involves the transfer of sovereignty attributes to supranational bodies, therefore restricting state authority, and replacing the idea of physical border, which defines the geographic area of a state with the extinction of territoriality as a sine-qua-non element of the existence of the State. Given that sovereignty, territoriality and the state power increasingly erode and we witness the creation of what Marshall McLuhan called *the global village* (McLuhan, 1964, p. 93), citizenship appears to us, at least from the perspective of public international law as a dynamic concept, having to continually adapt to contemporary realities.

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