

**Concept paper
Of the Law of the Republic of Armenia on
'Granting dual citizenship status of the Republic of Armenia
to Armenians of Abroad'**

1. Basis for adoption of the law on dual citizenship

In the 21st Century, when relationships between states are subject to significant changes, when people take a fresh look at a number of regional and global processes, some questions are raised in relation with citizenship legislation, which is an important integral part of the human rights system. A number of issues related with citizenship are raised due to the increase of migration between different countries and the recent establishment of new states. A large number of people have relations with more than one state, which is the main factor that warrants the introduction of changes to civil rights and duties. Dual citizenship had been adopted in legislation of different states during the second half of the 20th century. This process resulted in a number of international conventions, bilateral and multilateral agreements. In this aspect, it is very important that there is an opportunity to introduce dual citizenship in the Republic of Armenia.

The necessity of dual citizenship for the Armenian people has emerged by our national historical conditions, because we represent a people, which, because of the Genocide committed on the territory of its motherland, in the end of the 19th and the beginning of the 20th century has been forced to disperse across the globe. The Armenian Diaspora is a unique phenomenon in world history and Armenians living abroad for many decades have managed to retain their national culture and the self-consciousness with the ideal of repatriating to an independent state. Each Armenian with national dignity wishes that Armenia become the motherland for all Armenians, that the whole collective potential of our people concentrate in the Republic of Armenia and be utilized for the achievement of national and state priority goals. Today less than 1/3 of Armenians live in their Motherland. This situation requires efforts towards establishment of a united system of national identity, which will include strong relationships for resolving ethnic, cultural, linguistic, religious issues. The united system of national identity will form a collective responsibility towards the Motherland and the future of the Armenian nation, based on national and historical memories.

The International Covenant on Civil and Political Rights (16 December 1966) stipulates that all peoples have the right to freely determine their political status and freely pursue their economic, social and cultural development. This can be fulfilled both in the frames of self-determination and through wide international cooperation. The strengthening of cooperation within the frames of national identity and the creation of the prerequisites to further such activities is a rightful objective. This is in conformity with international legal norms and derives from objectives incorporated in the Declaration for the Independence of Armenia and the Preamble of the Constitution of the Republic of Armenia.

Dual citizenship is a unilateral duty by the Republic of Armenia, to make Armenia, in accordance with international legal norms, the spiritual motherland of all Armenians and through assisting repatriation, to resolve partially the complications of history.

With the Constitution of the Republic of Armenia adopted in 1995, the possibility to gain dual citizenship was barred. Amendments made to the Constitution of the

Republic of Armenia by the legislative act of 5 December 2005 made it possible to introduce dual citizenship legislation in Armenia. In the context of constitutional amendments, the establishment of dual citizenship requires to make changes in the legal basis and to regulate legal features of its implementation.

Adoption of the law on dual citizenship of Armenia will essentially regulate legal relationships arisen from dual citizenship status of Armenians living abroad. Granting dual citizenship to Armenians living abroad will assist in the implementation of yet another constitutional norm: to unite all Armenians around the world for the creation of a single and united motherland, to strengthen the links with the Armenian Diaspora, to protect the Armenian historical and cultural heritage on the territory of foreign countries and to develop Armenian cultural and educational activities.

The 1991 Belovezhskaya Pushcha Agreement on the Establishment of the Commonwealth of Independent States (CIS) became the starting point for the declaration of the newly independent states and for the process of the establishment and development of their citizenship. In the early stages of the establishment of the CIS, its participant states made an attempt to retain a united legal system by introducing, on consultancy basis, a legislative act on the “Coordinated principles of regulation of citizenship issues”, which declared basic principles of citizenship, such as the right to have a citizenship, non-admissibility of discrimination based on citizenship etc. Later on, some CIS countries signed a number of bilateral agreements to regulate legally dual citizenship and some attempts had been made to introduce legislative initiatives in this field.

Dual citizenship is fraught with a number of legally hard-to-resolve fundamental issues, as it is difficult to fulfill all the rights and duties derived from the citizenship of two different states. The law of the Republic of Armenia on “Granting dual citizenship status of the Republic of Armenia to Armenians of Abroad” will give Armenians the possibility to gain citizenship of the Republic of Armenia through a simplified procedure by providing proof of their ethnic Armenian origin. It is obvious that the dual citizenship not only would create a basis for all Armenians to unite around Armenia, but also would provide stimulus for the formation of the all-Armenian potential and economic development.

It's important to note that even as the main reason for the constitutional enactment of the institution of dual citizenship is conditioned by one of the main directions of the internal and foreign policies of Armenia, -- namely the intention to strengthen the safeguards for the links with the Armenians abroad --, Armenian citizens, as well as foreign citizens, may also obtain dual citizenship status, with some specific features which would be subject to legislative regulation by the laws of the Republic of Armenia “On Citizenship” and “On the legal status of foreigners”.

2. The subject of regulation and main concepts the framework

The subject of the framework is to regulate the legal relationships during the organization of the process of granting dual citizenship status of the Republic of Armenia to Diaspora Armenians and derived from the implementation of rights and duties based the dual citizenship.

In the law, it is necessary to draw up a list of the main concepts, taking into consideration that a number of concepts utilized in the law have rarely been used or are unknown in the Republic of Armenia.

Particularly it is important to formulate the following main concepts to be used in the law:

Dual citizenship: A person's simultaneous belonging to both Armenian citizenship and the citizenship of other countries (or a person, who has citizenship of two or more states or the belonging of a person to two or more states)

Dual citizenship status: This gives the possibility to a person to have rights and duties on equal basis with the citizens of the Republic of Armenia

Effective citizenship: Strong and steady relation between a person with dual citizenship and the state, where he/she fulfills his/her rights and duties.

Voting right of a person with dual citizenship: A dual citizenship holder has a right to elect and be elected to public office, with the fulfillment of some specific norms.

Military service of a person with dual citizenship: A dual citizenship holder is obliged to participate in the defense of the Republic of Armenia as required by the law.

Authorities regulating dual citizenship issues: The President of the Republic of Armenia, the Republic of Armenia Presidential Commission on Citizenship Issues, the Government of the Republic of Armenia

3. The objectives and tasks of the framework and the principles of regulation

The main objective of the framework is to create complete and equal possibilities for dual citizenship holders to fulfill their rights and duties as prescribed by law for the citizens of Armenia.

The main principles of granting dual citizenship are listed below:

- Justice
- Legal equality
- Exclusion of discrimination
- Lawfulness

The main tasks for granting dual citizenship status are:

- To create links between Diaspora Armenians and their roots of identity and to discover and protect the opportunity to demonstrate their national potential;
- To legally regulate fulfillment of the rights and duties of dual citizenship holders, as well as to provide state infrastructure for that purpose.

4. Legislative acts on the status of dual citizenship

- a) The Constitution of the Republic of Armenia (article 30.1)
- b) Law on the Citizenship of the Republic of Armenia (amendments required)
- c) The Law of the Republic of Armenia on "Granting dual citizenship to Armenians living abroad" or the Law of the Republic of Armenia on "Dual citizenship"
- d) The Law of the Republic of Armenia on "Military service" (amendments required)
- e) The Law of the Republic of Armenia on "Alternative service" (amendments required)
- f) Election code (amendments required)

- g) Family code (amendments required)
- h) Civil code (amendments required)
- i) Criminal code (amendments required)

5. Rights and responsibilities of dual citizenship holders (Voting rights, military service and tax duties)

Participating in a number of European institutions the Republic of Armenia has undertaken a number of conventional responsibilities, which are an integral part of the complete legal system of the Republic of Armenia. In this respect, it is important for the Republic of Armenia to follow international procedures of regulating of dual citizenship, which requires including the following principles into the state legislation.

First of all, dual citizenship holders have the same rights and duties as the citizens of the given country, as required by the principles of the European Convention on Nationality (Item 1 Article 17, CoE), which states that nationals of a state party in possession of another nationality shall have, in the territory of that state party in which they reside, the same rights and duties (*inter alia*, personal, social-economic and cultural) as other nationals of that state party. This means that the Republic of Armenia assumes direct responsibility to fulfill the mentioned requirements, but those rights and duties will be granted to the dual Armenian citizenship holders *only after they have established residency -- mainly or permanently -- in Armenia*, otherwise they would just be granted a second citizenship (with a second passport and will be considered by each state as only their citizen). Cases when equality principles cannot be applied are described in Item 2 Article 17 of the European Convention on Nationality. In such cases, a participant state uses international law principles of diplomatic or consular protection of its citizens, who simultaneously have citizenship of another country, as well as when in cases of multi-citizenship principles of international private law apply.

Legal regulation of the rights and duties of dual citizenship holders has some additional features: states can sign bilateral agreements on coordination and legal regulation of the rights and duties of dual citizenship holders. Nevertheless, the main principles emanating from international multilateral agreements (Protocol on military service in some cases of dual citizenship, 1930; Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, 1960; European Convention on Nationality, 1997 and other international legislative acts), must be included in the legislation of the Republic of Armenia, i.e. in case of regulating of military service issues of dual citizenship holders. Hence, the following statements could be made:

- Dual citizenship holders have to carry out military service in the *country of permanent residency*. Nevertheless, before the age of 19 they have the right to carry out voluntary military service in the other country of their citizenship, for the length of the period provided by the law of the country of their permanent inhabitancy. In fact, the states agree that dual citizenship holders should be drafted in the country where they have permanently resided until the age to be drafted and this would release him/her from military service in the other country of his/her citizenship. In some cases, dual citizenship holders are provided with right of choice.
- Persons who permanently live in a country, which participates in an international agreement, but do not hold its citizenship, or live in a non-participant country, may carry out military service *at their will* in any participant country of their citizenship.

- In such cases, in accordance with the afore-mentioned regulations, persons, who had served their military service, are released from military service in all participant countries.

- Persons, who until coming into force of international agreements, have served military service, are considered to have served in the second participant state as well.

- If a person holding dual citizenship has already served military service in the country of his/her permanent residency and then migrates for permanent residency to another country of his/her citizenship, is considered as a reserve soldier of the country of his/her last permanent residency.

- In case of a military call-up in either of the two countries, those states are released from complying with the principles mentioned above.

If a dual citizenship holder's countries are in a state of war, the person is drafted to the military forces of the country of his/her permanent residence, to avoid making him/her enemy of both countries. Although it is important to note that the international practice on this issue is almost not regulated, except for the 1949 Geneva Conventions and their additional protocols, but even these documents do not completely regulate this issue.

To sum up, dual citizenship holders, who have already served military service in another country, are released from military service of the Republic of Armenia, i.e. a dual citizenship holder is subject for draft of one country only. At the same time for persons who are Armenian citizens and who apply for citizenship of another country, are obliged to fulfill military service in the military forces of the Republic of Armenia.

As for *voting rights*, dual citizenship holders can exercise that right only after establishing residency in the Republic of Armenia mainly and uninterruptedly. As the international practice of regulating this issue demonstrates, not only dual citizenship holders, but also foreign citizens are allowed to fulfill their political rights with some limitations and the international community considers it rightful. For example, in case of residency for a certain period in a country providing dual citizenship, such persons have the right to participate in the elections of local authorities.

In cases when dual citizenship holders reject neutrality towards the country of their residence, depriving them of voting rights is a natural protective measure for each country.

In some countries, there are some restrictions for dual citizenship holders, which limit not only their right to be elected to public office, but also the right to be appointed to some public positions.

The amended Constitution of the Republic of Armenia does not provide any limitations on voting rights, hence dual citizenship holders will be allowed to fulfill their voting rights. An alternative is to make amendments to the Election Code of the Republic of Armenia, so that State elections could be held only on the territory of the Republic of Armenia.

Tax obligations of dual citizenship holders are subject to regulation in accordance with international agreements. It is essential to exclude double-taxation of dual citizenship holders. With that purpose a number of bilateral agreements (on the exemption of double-taxation as well as prevention of income tax avoidance) will be

required, as well as the principle of effective citizenship has to be applied, i.e. payment of taxes and other obligations must be carried-out in the country, where the dual citizenship holder mainly or permanently lives or where he/she fulfills his/her activity or where his/her source of revenue is located.

In case there is no bilateral agreement between two countries on avoidance of double taxation, dual citizenship holders pay taxes in the country, where the greater part of their property is located.

6. The right to hold dual citizenship and the possibility of its limitation

The right to have more than one country's citizenship is a naturally arisen right, which as well as any other right can be used by its holder either to favor or damage state or society, depending on different circumstances. The right to have more than one country's citizenships is also secured by the principles of international multi-lateral agreements on regulation of dual citizenship.

The right to have more than one country's citizenship as well as other rights can be limited in a democratic society in case of its misuse or threat to the security of the Republic of Armenia.

7. Legal ground for gaining dual citizenship

A person of Armenian origin, who is a citizen of another country, can obtain the citizenship of the Republic of Armenia by providing facts, which can prove his Armenian roots, and in accordance with the procedures provided by the law.

8. Marriage and divorce of dual citizenship holders

Amendments to the Family Code of the Republic of Armenia are required, which will regulate issues arisen by wedlock relations of dual citizenship holders. We repeat that:

- A person, who is married with a citizen of the Republic of Armenia, can obtain Armenian citizenship in simplified order.
- Issues arisen by divorce of dual citizenship holders has to be resolved in accordance with the legislation of the country of their permanent residence for the latest /---/ years.

9. Citizenship of descendants of dual citizenship holders

Issues related to citizenship of descendants of dual citizenship holders are resolved in accordance with the principles adopted by Council of Europe in 1977 (resolutions regarding the citizenship of married couples holding different citizenships and the citizenship of off-springs of such marriages).

Issues of citizenship of descendants of dual citizenship holders are regulated in accordance with the will of parents. In case the parents have not come to an agreement, the issues of the citizenship of the descendants of dual citizenship holders are resolved by their own decision upon coming of age.

10. Diplomatic protection of dual citizenship holders

Issues of diplomatic protection of dual citizenship holders are regulated by bilateral or multilateral agreements. Nevertheless, it is important to provide a clause in the law, according to which a dual citizenship holder may be under diplomatic protection of only one state.

If a dual citizenship holder requires diplomatic protection while on the territory of a third country, then the third country's authorities take into account the possibility of diplomatic protection by the country with which the dual citizenship holder has well-documented relations. In such cases, the principle effective citizenship is taken into consideration.

11. Right of legal defense of dual citizenship holders

In relation with the right of legal defense of dual citizenship holders one can point at the record of international courts and arbitrations regarding dual citizenship holders, however these are special instances, and there are no general legal and legislative principles.

In such instances, it is reasonable to apply the effective citizenship principle, which presumes residential qualification.

12. Renouncing the citizenship of one of the two states

Dual citizenship holders may renounce, by their free will, the citizenship of one of the two states they hold the citizenship of, if they decide to maintain stable legal links with just one states of their choice.

In case a state does not recognize dual citizenship, then the citizen of that state is given the possibility to decide which country's citizenship he/she intends to retain or what new citizenship he/she wants to obtain.

13. Exception of obtaining dual citizenship after the law coming into effect

After the law on "Granting dual citizenship status of the Republic of Armenia to Diaspora Armenians" comes into effect, a person, who renounces his/her Armenian citizenship and obtains the citizenship of another country, would be forbidden to apply for dual citizenship of the Republic of Armenia. This clause will prevent Armenian citizens from attempting to obtain dual citizenship following the steps described below: a person resigns the Armenian citizenship to obtain citizenship of another country and later applies to the Armenian authorities to gain dual citizenship of the Republic of Armenia.

14. Obtaining dual citizenship on illegal basis

Obtaining dual citizenship on illegal basis is subject to criminal liability, in accordance with the corresponding clauses of the Criminal Code of the Republic of Armenia.

15. Perspectives of the dual citizenship

The developments of the citizenship institution in an era of globalization are bringing about changes in the approach of all states, which aim to introduce the concept of “citizen of the world”. In this respect, it is important to study the development of the citizenship institution of the European Union, which is provided by Maastricht agreement, the not-ratified European Constitution and other legislative acts. Citizenship of the EU will provide its citizens with an opportunity to enlarge the scope of their rights and freedoms. It is important to foresee cooperation between Armenian dual citizenship and European citizenship in the law on “Granting dual citizenship status of the Republic of Armenia to Diaspora Armenian”.

**ARF-Dashnaktsutyun Faction
in the National Assembly of Armenia**