THE INTERNATIONAL EXPERIENCE OF SOME ISSUES OF DUAL CITIZENSHIP

/SUMMARY/

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The right of citizenship originates from the provisions[1] of international legal acts, which have already been mentioned on constitutional and legal levels in the majority of the countries. The forms of citizenship, especially dual citizenship, need special regulation.

The right to have double citizenship has existed for more than two thousand years. It has passed all the way from the complete rejection of dual citizenship to its conventional and legislative adoption. Historically, the concept of dual citizenship developed along with the citizenship. The regulation of the issues of dual citizenship and multi-citizenship in general is known since the old Greece. As a rule, a citizen of the old Greece was considered the person, who had inalienable rights, which were the basis of his status. Those who had moved to other cities did not receive citizenship status. The process of granting citizenship and the attitude towards the issues of dual citizenship in ancient Greece resemble the current legislation of several countries, including countries seeking to hold national uniformity. In the Athens (5-th century), after the implementation of territorial reforms, Clisten (Athenian political figure) tried to mix the population of Greece and to improve democratic elements. At that time Athens was populated by people from different Greek cities – Milet, Samos, Cornifa, Megar and Sige, and became the political center of the country. Aristotle mentioned that Clisten brought both foreigners and slaves from other cities, creating conditions for equality for citizens and new comers, which, in their turn, were the preconditions for development of legal dual citizenship. Then, during the development of Athens, the opportunities for recognition of the dual citizenship were extended. According to the historical sources, during the Femistokl period an inflow of meteks and craftsman began. Many of them became the citizens of Athens…

At the medieval period the dual citizenship in its practical sense was impossible, taking into account the attitude of the chief of the state to the citizens. But the dual citizenship didn't abolish and continued to exist. H. Hrociy mentioned, that: "State citizenship is such kind of submission, by the force of which peoples could belong to other person (chief of the state), to some persons or even to other peoples". During this period the temporary and specific dual citizenship arose, which was widely extended especially in the result of long wars.

The modern regulation of the issues of dual citizenship began from Bankropht treaties. These treaties were important historical step for the regulation of the issues of dual (multi) citizenship, that's why the medieval attitudes to gain dual citizenship have changed and the fact of obtaining dual citizenship cannot be considered as a legal offence.

According to the RA Constitution of 1995 the dual citizenship was explicitly banned by the following reasons: the difficulties that could be arise from the execution of rights and performance of obligations of the dual citizens. Another reason was the unacceptable involvement of foreigners into political life of the Republic of Armenia and interference of other states into the domestic and foreign policies of the Republic of Armenia[2]. An argument in favor of adoption of dual citizenship was the existence of a large Diaspora of Armenians, which should have had opportunities to be involved into the legal, economical and cultural life of Armenia. In particular, this reason formed the fundamental basis for legalizing dual citizenship on constitutional level and the future of dual citizens depends on its legislative regulation.

The amended Constitution (2005) includes a provision regarding the status of dual citizenship. The provision merely states that the rights and obligations of dual citizens must be regulated by the law. Concerning this constitutional provision there are two important questions: what dual citizenship (definition) is, and who dual citizens are and what kind of rights and obligations they must have.

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[1] Article 15 of the Universal Declaration on the Human Rights, 1948, Article 24 of the International Covenant on Civil and Political rights, 1966, Article 4 of the European Convention on Citizenship, 1997, Article 5 of the Convention on the liquidation of all forms of racial discrimination, Article 7 of the Convention of Rights of Child, Article 20 of the American Convention of the Human Rights.

[2] V.Poghosyan, H. Tovmasyan. Draft of the reforms of the Constitution of the Republic of Armenia /Brief interpretations: P 53« Yerevan – 2005.

First of all, I would like to draw attention to the issue of whether or not dual citizenship must be recognized only for the citizens of the RA, or its constitutional statement was for the reason of creation of one unique motherland for all Armenians.

Using the international conventional and legislative regulations as a basis for defining the status of dual citizens, it is necessary to find out the exact definition of the dual citizenship, which will allow us to regulate by legislative means the rights and obligations of the dual citizens.

There have been various definitions of dual citizenship on the conventional and legal levels. The basis and the order of the dual citizenship recognition are also interesting. According to the attitude of S.A. Avagyan: "Dual citizenship is the opportunity of the citizen to hold citizenship of another state at the same time on the basis of international treaty and federal law"[3]. For instance, Turkmenistan uses similar definition[4]. The Latvian law on the Citizenship states that the dual citizen is the person who is the citizen of more than one state. According to the European Convention on Citizenship, multi-citizenship means the existence of the citizenship of two or more states for the same person[5], i.e. the definitions of the dual citizenship and multi-citizenship in this convention are identified. We can bring other examples from the laws on the citizenship of different countries[6], but here it's important to find the unique definition of this term.

On the basis of research of the constitutions and abovementioned laws on citizenship, we will try to give the definition of the term "dual citizenship". Dual Citizenship is the belonging of the same person to two states at the same time. This is the definition that must be considered by the legislative institution when the law on the dual citizenship is adopted. The cornerstone of the definition here is the belonging of the person to two states, and not more. If we adopt the other attitude (two or more) we will adopt the right of the multi-citizenship automatically, which entails more difficulties than dual citizenship.

The other issue that arises is the regulation of the rights and obligations of dual citizens. The international experience shows that obligations like military and tax obligations are regulated by multilateral and bilateral conventions and agreements. Another issue is the realization of the rights of dual citizens. In my opinion it is an important issue whether or not will the rights of the RA citizens be equal to the rights of the dual citizens? This refers to political rights (the right to vote and to be elected) in particular.

According to the principles of the European Convention on the Nationality and the European Convention on Citizenship, the dual citizens have the same rights and obligations as the citizens of the state. It means that the RA will be obliged to implement these provisions, but these rights and obligations will be executed in the Republic of Armenia for dual citizens only by affirmation of residence (constantly or mainly). Otherwise, the dual citizens will be granted just a second citizenship, a second passport, without rights and obligations pertaining to it. In case of this kind of symbolic second citizenship there is no need to conclude interstate agreements and conventions.

The procedure of the legislative regulation of the rights and obligations of the dual citizens has several features. Even the ancient democracies have bound the citizenship with military obligation[7]. They found that the citizenship of the person is attributable to his belonging to the military forces of the state. International Lawyer I. Blyunchli mentioned: "The military obligation by its character is the political obligation and by this reason can't be separated from the citizenship"[8]. This is proved that some states nowadays requiring the individuals applying for a citizenship or belonging to military forces to give an oath of fidelity.

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[3] S.A. Avakyan. Russia: citizenship, foreigners, external migration. Sakt-Peterburg, 2003.
[4] Article 9 of the Law on Citizneship of Tukrmenistan /with the amendments of 14.06.2003/.
[5] Article 2 of the European Convention on Citizenship, 1997.
[6] www.concourt.am-Legal Resources-Citizenship.
[7] Aristotel. Politicy. Athenian Politics, M. 1997. History of Europe. Ancient Europe, M. 1988.
[8] I. Blyunchli. Modern international law of civilized countries. P. 245, M., 1877.

There is no unified approach towards the regulation of issues pertaining to the military obligation of dual citizens in the modern state. Some of the states regulate those issues by means of multilateral and bilateral treaties. Examples of this would be the international agreements among USA and some of the European countries – USA and Norway (1930), USA and Sweden (1933), USA and Switzerland (1937), USA and Finland (1939) and the international treaties among the European states – Switzerland and Finland (1958), France and Israel (1959), France and Spain (1970), as well as conventions on military service between Argentina and Finland (1963), Argentina and United Kingdom (1963). Above-mentioned treaties contain provisions that dual citizens are obliged to serve in the state, in which they lived constantly or predominantly. In the case, when the dual citizens have served to the one state they must be considered free from the military service in the other state. For instance, Treaty on the issues of the military service between France and Israel provides that dual citizens must undergo military service in the state of constant residence. According to the treaty, in case of residence in the third state these persons have the right to choose the state of obligatory military service. It is worth mentioning that the individuals who served in one state and have constant residence at the third state are considered free from military service in regard to their second state, but before the period of moving to this second state. In case of such movement they are obliged to serve in the military forces twice.

According to the bilateral treaty between France and Spain, the dual citizen is obliged to serve in the military forces of that state, where he has lived during last 12 months before getting 18.

The regulation of the issues of the military service in these treaties was based on the principle of effective citizenship.

The principle of the effective citizenship is famous to the international community by the case of Nottebome. Fridrikh Nottebom was born in Hamburg. According to German legislation he was considered a citizen of Germany by birth. At the age of 24 he moved to Guatemala on long inhabitation. Then he moved to Liechtenstein, where he gained the citizenship (by the way, with the infringement of local laws, because in order to receive Liechtenstein citizenship it was necessary to live there constantly). According to German laws (of those times), the person receiving another citizenship had to give up his German citizenship. When Guatemala declared war to Germany, Nottebome was arrested and his property was confiscated. After the war Liechtenstein applied to the International to protect the violated rights of his citizen.

Guatemala objected by mentioning that Nottebome has obtained his citizenship in the Liechtenstein illegally, and he has never been a citizen of Liechtenstein. The decisions of the Court on this case were important precedent for the international legal regulation of citizenship issues.

At first, International Court has refused to hear the issues about infringement of Liechtenstein's laws by Nottebome during the process of obtaining the Liechtenstein's citizenship. The Court mentioned, that regulation of the issues of the citizenship is a sovereign right of this state, which means that no other state should interfere in that and this is the internal affair of Liechtenstein. By the way, this principle was not new, it was stated in the Codex of Bustamante, back in 1930 Hague Convention and other international acts. However, it was not until the case of Nottebome that the principle of sovereignty in case of legal resolution of citizenship issues was finally stated in International Law.

The second finding of the Court was even more interesting: it refused the claims of Liechtenstein concerning the protection of Nottebome's rights, because the connection of Nottebome with Liechtenstein during and before his naturalization was formal. The international experience on these cases was the same, i.e. the actual connection between the person and one of the interested states. The Court concluded the following, which is often used in legal literature: "Citizenship is the legal connection, having in its base the fact of public belonging, mutual

interests and feelings with the presence of mutual rights and obligations". Without these qualities, in the point of view of the international law, the citizenship is inefficient.

Since that time the principle of the effective citizenship regularly has been applied by the national courts of the majority of the countries, as well as by international arbitration commissions concerning the issues of dual citizenship. The fact of existence of the connection, which permits to speak about effective citizenship, is stated by the court or arbitration at the hearing of the concrete circumstances of the case, taking into consideration first of all the actual residence (constantly or predominantly). Besides, factors like the source of his constant income (where he works, where receives pension etc.), where he has real estate, whether he is considered on state service or serves in the army, the country he is connected by the closest public, family and other connections should be taken into consideration.

In the report on Multi-citizenship at the 6-th session of the UN International Law Committee the following features of the effective citizenship are mentioned:

- The residence of the person in the state, the citizenship of which he has, and
- The constant or predominant residence of the person in one of the states, the citizenship of which he has.

If the abovementioned features are absent the standards of the effective citizenship become the military service in the appropriate state, the realization of political rights or state service, language, previous request on diplomatic defense and the existence of real estate.

The regulation of the problem of military obligation of dual citizens within European structures (Protocol on the military obligation on the several cases of Dual Citizenship, 1930, Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, 1963, European Convention on the Citizenship, 1997) is already the same.

I would like to mention that in case of wars the issues of military obligation are regulated by the Geneva Conventions and Additional Protocols, 1949. According to these legal acts the dual citizen must serve in that state, where he lives constantly.

At the regulation of the issues of the right to vote and to be elected the residence of the dual citizens is also important. Following the international experience of the regulation of this issue it is necessary to note that not only dual citizens, but also foreigners[9] have the political rights with several limitations, which is legal in the framework of international community. For instance, they can participate only in the elections of the self-governing bodies after having some residence in this country. This issue is regulated also in different ways, to permit participate in all kinds of elections if the opposite country holds the principle of reciprocity in this matter (the mutual principle among the UK and Ireland).

In states, where the right to vote and to be elected are prohibited for national security reasons, the dual citizens can participate in other spheres of political life (form associations, hold peaceful and unarmed meetings, rallies, demonstrations and processions participate in other activities).

There are some other limitations besides limitations concerning the right to vote in some states, i.e. the issue of appointment to responsible positions. These issues are usually regulated by the corresponding laws of the given country.

Finally, I would like to draw your attention to the following conclusion: the legislative regulation of the dual citizenship in the Republic of Armenia must be solved taking into consideration the international experience of the issue, on the basis of the relevant provisions of international conventions and agreements and considering the principle of effective citizenship, since there are several potentially conflicting interests- on the one hand the interests of the individual applying for dual citizenship and on the other hand the interests of the state(s).

[9] www.coe.int (European Treaty Series - No. 144), Convention on the participation of foreigners in public life at local level.

The analysis of the researches of the constitutions and laws of more than 100 states is presented below. The first 26 adopted dual citizenship completely, 32 adopted the dual citizenship with limitations (it is recognized only for the native population and for the representatives of this nation, and for a definite age) and 50 haven't adopted dual citizenship.

States, which have adopted Dual citizenship	*States, which have Adopted dual Citizenship with Limitations*	*States, which haven't adopted Dual citizenship*
Barbados, Belize, Benin, Bulgaria Grenada, New Zealand, India, Ireland, Greece, Israel, Spain, Turkey, Tuvalu, Tunisia, Swaziland, Cyprus, Salvador, Uruguay, Trinidad and Tobago, Colombia, Costa Rica, France, Turkmenistan, Republic of Southern Africa, Republic of Armenia, Hungary.	Australia, Burkina Faso, Germany, Honduras, Italy, Jamaica, Japan, Kazakhstan, Kyrgyz, Kenya, Korea, Latvia, Lesotho, Liberia, Lithuania, Luxembourg, Madagascar, Malta, Mauritania, Moldova, Namibia, Netherlands, Nicaragua, Nigeria, Norway, Pakistan, Panama, Philippines, Portugal, Romania, Russian Federation, Georgia.	Algeria, Andorra, Angola, Austria, Bahamas, Bahrain, Bangladesh, Belarus, Bhutan, Botswana, Denmark, Egypt, Kampuchea, Cameroon, Chad, Chile, Congo, Croatia, Cuba, Czech, Guatemala, Iceland, Indonesia, Laos, Libya, Monaco, Nauru, Nepal, Poland, Qatar, Rwanda, Saudi Arabia, Senegal, Slovenia, Sweden, Sri Lanka, Sudan, Swaziland, Taiwan, Tanzania, Thailand, Tajikistan, Ukraine, Uzbekistan, Vanuatu, Venezuela, Vietnam, Yemen, Zambia, Zimbabwe.