DUAL CITIZENSHIP AS A LEGAL CATEGORY

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Forms of citizenship, especially dual citizenship, are a function of national legislation. There is no Law on Dual Citizenship in the Republic of Armenia. The amended Constitution (2005) includes a provision regarding the status of dual citizenship. The provision merely stated that the rights and obligations of dual citizens must be regulated by the law. On the bases of international experience on dual citizenship, the article tries to shows the international conventional and constitutional regulation of the issues of dual citizenship. The author concludes the article by mentioning that the legislative regulation of the dual citizenship in the Republic of Armenia must be solved by taking into consideration the international experience of the issue, on the basis of the 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).

I. HISTORICAL BACKGROUND

The phenomenon of dual citizenship has existed for more than two thousand years. Historically, the concept of dual citizenship developed along with citizenship. The regulation of the issues of dual citizenship and multi-citizenship in general is known since the ancient Greece. As a rule, a citizen of ancient Greece was considered to be a 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 those seeking to hold national uniformity. In Athens (5th 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 centre of the country. Aristotle mentioned that Clisten brought both foreigners and slaves from other cities, creating conditions for equality for citizens and newcomers, which, in their turn, were the preconditions for development of legal dual citizenship. During the expansion of Athens, the opportunities for recognition of dual citizenship were extended. According to historical sources, during the Femistokl period an inflow of meteks and craftsman began, many of whom became citizens of Athens.

During the medieval period, dual citizenship in its practical sense was impossible, taking into account the attitude of the head (monarch) of the state to the citizens. But the dual citizenship was not abolished and continued to exist. H. Hrociy mentions that: "State citizenship is such kind of submission, by the force of which peoples could belong to other person (head of the

state), 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-drawn-out wars.

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

II. FROM PROHIBITION TO RECOGNITION

According to the RA Constitution of 1995 dual citizenship was explicitly banned for the following reasons: the difficulties that could arise from the execution of rights and performance of obligations of the dual citizens; the prospect of 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.[1] An argument in favour of adopting dual citizenship was the existence of a large Diaspora, which should have had opportunities to be involved in the legal, economic and cultural life of Armenia. In particular, this reason formed the fundamental basis for accepting dual citizenship and the future of dual citizens depends on its legislative regulation.

The amended Constitution of 2005 included a provision regarding the status of dual citizenship. The provision merely stated that the rights and obligations of dual citizens must be regulated by the law. Concerning this constitutional provision there are two important questions:

- What is the definition of dual citizenship, and
- What are the rights and obligations of dual citizens.

International conventions are a basis for defining the status of dual citizens. From these, it is necessary to define dual citizenship, which will allow us to regulate the rights and obligations of the dual citizens by legislative means.

There have been various definitions of dual citizenship at the conventional and legal levels. The basis and the order of the dual citizenship recognition are also worthwhile to examine. According to 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."[2] Turkmenistan uses a similar definition.[3] The Latvian law on the Citizenship states that a dual citizen is a person who is the citizen of more than one state. According to the European Convention on Nationality, multi-citizenship means the existence of the citizenship of two or more states for the same person,[4] i.e. the definitions

[1] V. Poghosyan, H. Tovmasyan. *Draft of the reforms of the Constitution of the Republic of Armenia/Brief interpretations*: P. 53. Yerevan -2005.

[2] S. A. Avakyan. *Russia: citizenship, foreigners, external migration*. Sakt-Peterburg, 2003.

[3] Article 9 of the Law on Citizenship of Tukrmenistan /with the amendments of June 14, 2003.

[4] Article 2 of the European Convention on Nationality, 1997.

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,[5] but here it is important to find the unique and comprehensive definition of this term.

On the basis of research of the European and CIS constitutions and above mentioned laws on citizenship dual citizenship could be defined as the phenomenon of a person belonging 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 triple citizenship or multi-citizenship automatically, which entails more difficulties than dual citizenship.

III. THE RIGHTS AND OBLIGATIONS OF DUAL CITIZENS

The other issue that arises is the regulation of the rights and obligations of dual citizens. International experience shows that obligations like military service and taxation are regulated by multilateral and bilateral conventions and agreements. Recognizing the rights of dual citizens in a completely different issue which needs to be tackled. This is an important issue whether or not the rights of the RA citizens will 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 Nationality, dual citizens have the same rights and obligations as the citizens of the state. It means if the Republic of Armenia will ratify this Convention it will be obliged to implement this provision into Law on Citizenship of the Republic of Armenia. By the implementation of these provisions Armenia will create equal opportunities for the dual citizens with the citizens of RA.

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.[6] They found that the citizenship of a person is attributable to his belonging to the military forces of the state. International Lawyer I. Blyunchli mentions: "Military obligation by its character is a political obligation and by this reason cannot be separated from the issue citizenship."[7] This comes to prove that some states require individuals who apply for citizenship to swear an oath of allegiance to that country.

There is no unified approach towards the regulation of issues pertaining to the military obligation of dual citizens in the modern state. Some states regulate those issues by means of multilateral and bilateral treaties. Examples of this would be the international agreements among the United States 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

[5] http://www.concourt.am -Legal Resources-Citizenship.

[6] Aristotel. *Politicy. Athenian Politics*, M. 1997. *History of Europe. Ancient Europe*, M. 1988.

[7] I. Blyunchli. *Modern international law of civilized countries*. P. 245, M., 1877.

Israel (1959), France and Spain (1970), as well as conventions on military service between Argentina and Finland (1963), Argentina and United Kingdom (1963). These treaties contain provisions that dual citizens are obliged to serve in the army of the state in which they lived constantly or predominantly. If a dual citizen has served in one state's military he or she must be considered free from military service in the other one. For instance, the treaty on military service between France and Israel provides that dual citizens must undergo military service in the state of constant residence. In case of residence in a third state, the subjects 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 another state are considered free from military service in the state of their second citizenship.
According to the bilateral treaty between France and Spain, a dual citizen is obliged to serve in the military forces of the state in which he has lived during last 12 months before reaching the age of 18. The regulation of military service issues in these treaties was based on the principle of effective citizenship.

IV. PRINCIPLE OF EFFECTIVE CITIZENSHIP

The principle of effective citizenship was made famous to the international community by the Nottebohm case. Mr. Friedrich Nottebohm 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 for a long period, then he moved to Liechtenstein, where he acquired citizenship—incidentally this was in violation of local laws, because Liechtenstein requires permanent residence to acquire citizenship. According to German law at the time an individual who acquired another citizenship had to give up her/his German citizenship. When Guatemala declared war on Germany, Nottebohm was arrested and his property was confiscated. After the war Liechtenstein applied to the International Court to protect the violated rights of its citizen. Guatemala objected by mentioning that Nottebohm obtained his citizenship in Liechtenstein illegally, and that he had never been a citizen of Liechtenstein. The decisions of the Court on this case were important precedent on the international legal regulation of citizenship issues.

At first, the International Court of Justice refused to hear the argumentation the infringement of Liechtenstein's laws by Nottebohm. The International Court of Justice mentioned, that regulation of the issues of the citizenship is a sovereign right, which means that no other state should interfere in it and it was the internal affair of Liechtenstein—a principle stated in the Codex of Bustamante, the 1930 Hague Convention and other international acts. It was not, however, until the case of Nottebohm that the principle of sovereignty in case of legal resolution of citizenship issues was finally settled in international law.

The second finding of the Court was even more interesting: it refused Liechtenstein's claims concerning the protection of Nottebohm's rights, because the connection of Nottebohm 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 stated the following of quoted principle: "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, citizenship is inefficient.

Since that time the principle of the effective citizenship has been regularly applied by the national courts of many countries, as well as by international arbitration commissions on 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 constant income (where a person works or receives pension etc.), where she/he has real estate, whether she/he is considered on state service or serves in the army, the country she/he is connected by the closest public, family and other connections should be taken into consideration.

In the report on Multi-citizenship at the 6th 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 she/he has, and
- The constant or predominant residence of the person in one of the states, the citizenship of which she/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 requests on diplomatic defense and the ownership of real estate.

It should be mentioned that in case of wars the issues of military obligation are regulated by the Geneva Conventions and Additional Protocols of 1949. According to these legal acts a dual citizen must serve in the army of the state where he constantly lives.

As to the issue of the right to vote and to be elected into pubic office, the place of residence of the dual citizen 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 have political rights with several limitations, which is legal in the framework of international community.[8] For instance, they can only participate in the elections of the self-governing bodies after having resided in the country for some time. This issue is regulated also in different ways, to permit participation in all kinds of elections if the opposite country holds the principle of reciprocity in this. In states where the right to vote and to be elected are prohibited for national security reasons, dual citizens can participate in other spheres of political life such as form associations, hold peaceful and unarmed meetings, rallies, demonstrations and processions participate in other activities.

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

[8] http://www.coe.int (Conventions).

V. CONCLUSION

The legislative regulation of the dual citizenship in the Republic of Armenia must be solved by taking into consideration the international experience of the issue, on the basis of the relevant provisions of the 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).

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