

Citizenship in the context of globalization

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Abstract

Citizenship is considered as a legal relationship in the basis of which is a social fact, a feeling and solidarity interest, combined with reciprocity of rights and obligations.¹ Citizenship is a legal expression for the fact that the person who posses that, attributed to him by the law or by an act, is more closely associated with the population of the state of his citizenship than the population of any other state.

At the moment obtaining the citizenship, it is also granted the possibility to exercise the right in international level, by the states, for the diplomatic protection of its citizens in cases when they are punished. This justifies and legitimizes the requirements of states for granting citizenship in terms of performance and behavior², imposing restrictions such as military service; payment of tax liabilities or exercise of jurisdiction.

Citizenship is considered a fundamental category for the understanding of liberal democracy. It is considered a strategic element to understand the organization and functioning of democratic institutions (Zolo, 1994, IX). Citizenship is considered an important element as, through the sociological legal approach, it helps us to link individual rights to the political environment. It also affects the analysis of the relationship between the state level of the rights protection and the international one on which it depends, in an increasingly global society, the possibility of the effective enjoyment of the rights and freedoms.

If we were to ask a simple question of who was considered a citizen, we would immediately create a circle of people who have relations with the state in terms of family background or territorial affiliation. This category of persons, considered as citizens, is easily distinguished by foreigners because they are subject to the legislation of another country, and consequently posses the rights and also must fulfill the obligations established in their own country. Thus, citizenship is a subjective status that implies membership in a political community, and results as the owner of a range of rights recognized and guaranteed by the same community.

Keywords: Citizenship, Context, Globalization.

Introduction

The legal concept of "state" refers to three aspects. First, the objective aspect indicates the internal and external sovereignty of state power. The second aspect comes out from the territorial point of view showing the territory in which this sovereignty is being exercised. The third is the social aspect that refers to a number of individuals belonging to and are also defined as "the people of the state".

A person can be an owner, within the territorial sphere of the state, a legal position established by legal standards.

Now days, terms like "population of a country" and "nation" are used to mean each other, or as equivalent to each other. Indeed, the term nation has a specificity with political and cultural hues, this because it supports not only a political community,

¹ <http://www.encyclopedia-juridica.biz14.com/it/d/cittadinanza/cittadinanza.htm..>

² Ibidem.

but also a community belonging to a particular ethnic, or at least linguistic, cultural or historical identity (Zolo, 1994, 11). Besides this, the creation processes of the states and nations are different and not parallel. A combination of these can be found only around the eighteenth century (Panella, 2009, 21).

The international system for the protection and promotion of human rights, whose foundations are in the United Nations Charter (De Stefani, 2000, 58), has brought about a deep change in the structure and order of international law. From an inter-state definition, according to which the subjects in the international arena were only the states, we have approached near an international system based on the values of democracy; a transnational system and a system of obligations not only towards each another but, due to their character establishment character, *erga omnes*³. In this way the violation of the obligations can be ascertained and sanctioned by any member of the "international community" or by special international institutions established by agreement between states or created by other non-governmental organizations.

In juridical terms, citizenship is the condition of a natural person (called a citizen) in which the laws of a state fully recognize civil and political rights (Puto, 2004, 265). Citizenship can be seen as a citizen's status, but also as a legal relationship between the citizen and the state. Persons who do not have the nationality of a state are foreigners if they have that of another state and they are stateless if they have no nationality⁴. According to the Albanian legislation, citizenship is defined as "a stable legal relation, expressed in the mutual rights and duties of the natural person and the Albanian state. Albanian citizenship is acquired, recovered, lost or abandoned in accordance with the provisions of this law, which respects the recognized norms and principles of international law in the field of citizenship accepted by the Republic of Albania"⁵. Citizenship is closely related to democracy. Being a citizen presumes the active participation in the political activity of a community, of a state, possessing both rights and duties. In democracy, every citizen is a holder of a part of the political sovereignty. There are three aspects of citizenship defined in the constitution of every democratic country (Papisca & Mascia, 1997):

- a) The political aspect that is expressed on the political participation reflected in the right to vote, the right to be elected, and the right of legal protection of the person everywhere he or she is.
- b) The civil aspect, which includes fundamental rights and freedoms, such as property rights, equality in front of the law, freedom of speech, etc.
- c) The social aspect, which results in the creation of social and economic rights such as the union right, in order to be protected, and the right to a healthy

³ Decision of the International Court of Justice, *Light and Power Ltd. (Belgium and Spain)*, year 1970, 33-rd paragraph: "An essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature, the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*."

⁴ <http://shtetiweb.org/2013/01/16/ceshte-shtetesia/>.

⁵ Legal determinations are made by Law no. 8389, dated 5.8.1998 "On Albanian Citizenship" as amended by law no. 8442, dated 21.1.1999 "On Amendments to Law No. 8389, dated 5.8.1998" "On Albanian Citizenship".

environment.

2. General ways of obtaining citizenship

Citizenship symbolizes the respect of the rights and duties of every citizen, which allows him to have a harmonious and stable life in the community. Every citizen exercise citizenship in his own way, but always according to the way established by the laws and integrated in the entirety of the customs of the society to which he belongs (De Stefani, 2000, 58).

In order to be considered a citizen, an individual must meet the conditions set out in the state-approved legal instruments relating to citizenship or that an individual is granted citizenship by a decision taken by the relevant national authorities. These instruments may be the constitution, the president's decree or a citizenship decision. Most people are considered citizens based on two main principles (Papisca & Mascia, 1997):

- Principle of obtaining citizenship by birth. At this point it is worth mentioning that there are some subcategories that define citizenship, because not every state uses the same criteria. They are applicable separately or combined, as follows:
 - According to the principle of blood, *ius sanguinis*, children who are born from parents with a nationality of a given state also acquire the citizenship of their parents at the moment of birth.
 - Under the principle of land, *ius soli*, children born in the territory of a given state receive the citizenship of that country in which they were born, regardless of the citizenship of their parents.
- Naturalization is a way of gaining post-birth citizenship. In this way another nationality is acquired, changing the previous citizenship, by renouncing, or gaining a second nationality, having dual citizenship. The main ways of naturalization are:
 - By marriage, where one of the spouses, mostly women, acquires the citizenship of the other spouse at the time they get married. However, different countries, besides this criterion, in addition demand other requirements such as the cohabitation, the consent of the party obtaining the citizenship. Separation or invalidity has no effect, generally, on the obtained citizenship.
 - By the children adoption process, through which the child obtains the citizenship of the adoptive parents. But this has limitations regarding the age of children and the age difference between parents and children.
 - By the settlement in a certain territory, after a certain period of time. These are the cases when people through transference obtain the citizenship (Puto, 2004, 270).

Whenever an administrative procedure allows for discretion in granting citizenship, applicants for citizenship cannot be considered citizens until their applications have been completed and approved and the citizenship of that state is being granted in accordance with the law. Individuals who have not acquired citizenship automatically or by an individual decision due to the effect of the laws of any state are recognized *de jure* as stateless persons: persons who are stateless in relation to the applicable law.

In the European framework, the notion of European citizenship has emerged, which

is available to all persons who have the nationality of any EU member state. Recently, it is being discussed about the notion of multicultural citizenship, which presupposes the recognition of cultural rights of the minorities.

A special situation of a natural person when he / she has no citizenship, may have come under the following circumstances:

- When the child is born from parents who have no citizenship.
- The person abdicates the citizenship of a state and does not obtain any other one.
- Children born out of wedlock, in some countries, especially Islamic ones, are considered as stateless citizens, etc.

Statelessness may come from a number of causes, including the conflict of laws, territorial transfer, marriage laws, administrative practices, discrimination, lack of birth registration, denationalization (when a state deprives one's nationality) and the renouncement (when an individual refuses the protection from a state⁶). Statelessness is considered as a state of inferiority according to the rights point of view because individuals who do not have citizenship do not have electoral rights, but they must obey the laws of the state where they are situated and they must meet all obligations.

3. Globalization and Citizenship

The evolution of the concept of citizenship also serves as a preparatory stage to present problems and remarks related to this concept nowadays. It is clear to all that the contemporary era makes the dealing with citizenship issues inevitable and, in general, the forms of individual membership in local communities. It is essential to examine from a legal point of view what are the "limits" currently marking the differences between nations, and what is the degree their sustainability is being respected under the current conditions of a positive legal order.

It should be noted that, citizenship determines the fate of the people. This is an undisputable right, abstract, and yet influential right that potentially affects all aspects of an individual's life. Citizenship affects the size of the family, the interpersonal relationship, the affective and the professional sphere. Freedom and ability to self-determination are conditioned by the ability to create secure and sustainable connections to the surrounding environment. The insecurity of relations with the territory and the community that is located there, when this does not coincide with a free choice of person, denies the opportunity to the persons to organize their lives around a certain system of relationships, which form a necessary precondition for displaying its capacity (D'Agostino, 2000, 2).

From that moment on, power over the territory is considered as a central element in western countries jurisprudence. Territory, boundary determination and territorial division are considered to be a fundamental element of the legal system, on the basis of which the principle of legality is established (Schmitt, 1991, 334). Power over the territory creates a dual right, internal and external (Schmitt, 1991, 335).

The use of the internet allows the borders of states to break through and enter even within the walls of the house. Speed is the essence of the modern era, which defines

⁶ Shtetësia dhe Pashtetësia: Doracak për Parlamentarët. Carol Batchelor dhe Phillippe Leclerc. UN-HCR. ISBN 92-9142-262-2. Page 10.

what is called a "compression of space and time", in which it is the same human condition to attain multiform transformations (Bauman, 2010, 4).

It seems that the conditions are right to pass from a centuries-old tradition where people place their roots based on the territory, into a life without sustainable territorial references, dynamically divided between physical space and virtual space (Bauman, 2010, 20); a new kind of occupation, which is based on the multiplication of places where modern humans can exercise their personal and professional activities. It is well known the reaction of the right to these phenomena, where the crisis of states is above all a crisis of laws (Galvano, 2006, 313), a crisis of acts that constitute the expression of state sovereignty (Rossi, 2010, 40).

The very concept of sovereignty, before the state's inability to govern issues beyond their dimensional possibilities, becomes an echo of what it was, and of course it is, the accurate observation that no one can ever see new ideas that are intended to take its place (Rossi, 2010, 26).

The dynamism and the speed of the economy do not have an equivalent reflection with the right (Resta, 2016, X). In the legal sphere, dynamism is seen more as synonymous with chaos and rapid rate amortization. In the legal sphere what has always triumphed is being "static", as seen as a more compelling tool for the security and longevity of norms. However, every effort from the right to be strengthened, giving up making rapid changes to adapt to economic and social reality, is a deviation from the right mission. This deviation or inconsistency with economic and social changes would result instead of an "insecure law" before an "unlawful" law, before a legal vacuum intended to be filled by the law of the jungle

In front of this situation, different researchers express different opinions. Some see globalization as a great opportunity for establishing a new worldwide order. The thesis given by Kelzen for *Maxima Civitas* (Resta, 2016, 201), which is accomplished through the dismantling of state sovereignty, seems more real today. It is hypothesized, but also coveted, as a tool of achieving friendship between states. It is therefore considered as an inspirational value for a model law that "abolishes statehood with closed borders and looks towards the new form of globalization. But the universalism of human rights is opposes by the selfishness and informal competences to govern and establish their power.

Thus, citizenship is seen as an institute that needs to be overcome because of a greater adherence to the guarantee and implementation of human rights, the respect of which, not by chance, relates to the crisis that goes through the citizenship (Cardia, 2005, 54). There are many doubts about the legal significance of nationality in today's globalist context. If a state legal order does not contain any applicable rule only to the citizens of that state, then citizenship is an insignificant legal institute (Kelzen, 1994, 246). In this way, the indisputable connection between the state and civilization should be emphasized. The state may exist without citizenship, even without considering the absolute condition of the state that denies any right to its citizens.

The need to abandon the concept and logic of citizenship is supported by many authors, noting the privileged nature of this institute. According to these authors, nowadays citizenship of rich countries is the last privilege due to status, the last factor of discrimination instead of inclusion and equality, the last relic of personal

postmodern differences (Allegretti, 1999, 520). Taking into consideration the human rights means having the courage to pull them out from citizenship as belonging to a particular community within a state, ensuring protection not only internally but also outside and against states.

These aspirations to overcome the situation for the realization of a planetary constitution are implicit in the sensitivity that the role of states, albeit weak, persists in good and bad, have an important central role. This role has recently been demonstrated by the actions that many countries have taken in overcoming the negative effects that the economic crisis has caused (Baccelli, 2010, 124). It is also seen in the context of the rights, particularly in case of social rights, which are a "non-globalizing" category (Baccelli, 2010, 216), but which preserve an entirely radical dimension in relation to the state. Thus, we can mention, as a non-globalizing category the right to education, to healthcare, the right to social assistance, which continue to be guaranteed exclusively at the state level, either as a service provided by the state or as a privatized service but monitored by state authorities.

To the situation pictured above we must also add the tensions generated by globalization, which have extended the cultural differences between different nations, true or presumed, on the basis of which various separatist and divisive movements have emerged and been inspired⁷.

Following the demand for the right to self-determination of nations, political fragmentation is being affirmed, with the creation of new politically independent territories⁸, but always weaker and less equipped with resources and capacity to oppose the globalized economic trends⁹. In this context, the theory of overcoming the statehood, focusing only on its "exclusively" approach to the combination of the foreign city, may be premature compared to the need to empower "comprehensive" skills (Robertson, 1995, 25).

Also, if carefully viewed the effects that globalization has on humans, it can be easily understood that these are very asymmetric and therefore result in radical inequalities. Only a few people can become global in the full and true meaning of the word, while the others are being "nailed" in their own countries - a condition that is not enjoyable or affordable in a world where globalist people determine the rules of play and of life (Bauman, 2010, 5).

The great freedom of movement that allows an individual to pass on and to emancipate from a relationship with a particular territory in the transition to an "infinite terrestrial space dimension" does not affect all people only small elite of people who represent a considerable percentage of the world's wealth. For the rest of the population, the human condition remains inseparable to territoriality (Rossi, 2017, 95), with an aggravating circumstance of increasing and extending the distance from extraterritorial centers and separated from the local constraints in which they are products (Bauman, 2010, 5).

For these reasons, it is not surprising that among the consequences of globalization

⁷ www.astrid-online.it.

⁸ Sabino Cassese, La funzione costituzionale dei giudici non statali. Dallo spazio giuridico globale all'ordine giuridico globale. <http://www.irpa.eu/wp-content/uploads/2011/06/Cassese2.pdf>

⁹ Sabino Cassese, La funzione costituzionale dei giudici non statali. Dallo spazio giuridico globale all'ordine giuridico globale. <http://www.irpa.eu/wp-content/uploads/2011/06/Cassese2.pdf>.

there is also the intensification of migratory flows (Habermas & Taylor, 2008, 210). If it were true that the phenomenon of the displacement of the economy goes in the direction of reassessing the importance of the territory, then it would not be understood why a progressively bigger proportion of people should be forced to abandon their country of origin seeking a better life elsewhere (Badie, 1995, 4). The growth of the immigration actually points to the opposite, that the countries are not at all neutral about the fate of the people, but continue to have an important role in each of the individual's life.

4. The Albanian Issues related to the Citizenship Globalization

The right to have a nationality is a right not much addressed from the state institutions or non-governmental organizations. The issue for which there has been a high sensitivity and has consistently been lobbied, and as a consequence there have been changes in the legislation, initially involving civil society, is the issue of the unregistered children where as a result of the registration failure one of the denied rights is also the right to Albanian citizenship.

Legal national aid in civil cases in the country has been offered and continues to be provided mainly by non-profit organizations. Although there is a state commission for providing legal aid, practically this institution has been so far ineffective in covering with free legal aid the need for communities to experience. Thus, even in this regard, we cannot say that the state offers a solid basis for representing statelessness issues.

Also from what has been ascertained, non-governmental organizations and international organizations established in Albania are mainly involved in refugee issues and asylum seekers in the Republic of Albania. From the general analysis made and the presentation of the legal framework, it is therefore understood that there are no statistics on how many stateless persons were born in Albania and how many of them have been able to acquire the Albanian citizenship or another nationality. Also, there are court cases about the lack of access to the right to acquire citizenship.

The Albanian legal framework has experienced significant improvements in recent years, but there are still issues which are not clear yet and need further improvement, such as statelessness cases¹⁰. In this area, national legislation is not compatible with international standards due to the lack of appropriate legal acts that hamper the implementation of a necessary process by the relevant institutions.

The current legal basis includes entirely the international legal framework, which is mainly represented by international conventions ratified by Albania. Consequently, there are gaps and inaccuracies in the domestic legislation that must be addressed to achieve compliance with international and European standards in the field of children statelessness in order to meet the requirements for the European accession agreement.

Statelessness is not yet considered an issue in the country. In this context, there should be a clear distinction between civil registration and statelessness so that it can be understood by the relevant authorities as well. There is no operative status for stateless

¹⁰ Addressing Statelessness in Albania as a protection tool, Gap Analyses Framework, UNHCR Albania Report 2013 Mapping Statelessness Report, Common outline for Albania, 2011.

persons. Moreover, there is no specific law on statelessness and no appropriate legal framework for statelessness. A specific statute on statelessness would contribute to an appropriate legal framework even though the Convention on the Status of Stateless Persons is already adopted. The gaps in obtaining identity documents and services may also be caused by the lack of citizenship. Stateless persons in the country should also be affected by the lack of identification documents.

The lack of a law on statelessness in Albania creates legal gaps for stateless persons to stay legally in the country. This mostly affects on the services access for stateless persons. They are mainly treated as vulnerable groups by civil society projects. The population census is not able to provide detailed data for stateless persons living in the country. No other state survey has been attempted so far by other sources for stateless persons. There is also a lack of detailed information on the number and reasons for statelessness. Due to the lack of an official strategy and legal framework for stateless persons, a socio-economic profile based on age, sex, religion, etc. has not been drafted and elaborated.

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