

Comparative analysis of conditions for granting and losing Albanian citizenship

Fjorda Shqarri

University of Tirana, Albania

Abstract

Citizenship is a juridical concept that explains the relation that a person has with the state, a legal relationship from which derive mutual rights and obligations for both the state and the individual. Issues related to citizenship, such as its granting, loss or revocation, are regulated by the domestic law of each state.

In Albania has been approved recently the new law on citizenship, which has changed the conditions and for granting citizenship and has tried to correct some of the problems arising from the practical implementation of the previous law.

This paper aims to analyze from the perspective of a qualitative methodology, based on research on literature and relevant legislation, changes brought in issues related to citizenship by the Law No. 113/2020 "On the citizenship" in the Republic of Albania, and making a comparative analysis with the previous law in order to understand the advantages and disadvantages of each of them.

Keywords: citizenship, granting citizenship, loss of citizenship, revocation of citizenship, conditions.

Introduction

Population is an essential component for the state existence,¹ without population the state can't be called a subject of international law². The legal concept of population is a interaction between international law and domestic law, because population as a state component, laws regarding treatment of population, laws about human rights are provided in treaties.

On the other hand, the population of a state includes both citizens of that state, foreigners and stateless persons whose fundamental rights are recognized and respected, but norms that have to do with the granting of citizenship, the treatment regime for foreigners, the loss of citizenship and similar matters are always regulated by the domestic law, as this is a sovereign right of a state (Puto, 2008). This is the reason why we can make a general classification of the general principles used to grant or lose citizenship, but we cannot pretend unified norms and practices regarding the conditions and criteria used by each country in this regard.

Citizenship is a legal connection that the individual has with his state, a legal relationship from which derive mutual rights and obligations for both the individual and the state (Puto, 2008). In Albania this legal relationship is defined by the

¹ Montevideo Convention on the Rights and Duties of States, art. 1: "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 other states."

² Arbitral Commission of European Conference for former Yugoslavia, Opinion No.1 "the state is a community characterized by a territory and population which are subject of the power of an organized political authority, characterized by sovereignty".

Constitution of the Republic of Albania, Law "On citizenship" and bylaws in its implementation. Until July 2020 was in force the Law No.8389, dated 5.8.1998 "On Albanian citizenship", which due to problems encountered in its implementation in practice, was replaced by Law No.113, dated 29.7.2020 "On citizenship", which has brought some new regulations in the granting and losing citizenship process in Albania.

I. Provisions Of the Constitution of The Republic of Albania 1998, as amended, regarding citizenship, as part of general principles of fundamental rights and freedoms

The Constitution addresses issues related to citizenship in the second part where fundamental rights and freedoms are addressed to. The citizenship is mentioned at the general principles where it is treated in the aspect of persons as holders and beneficiaries of rights (Omari, Anastasi, 2017) as well as in the context of the right to obtain and retain Albanian citizenship.

In the first aspect, the Constitution states that the rights and obligations provided in the Constitution should apply equally to Albanian citizens as well as to foreigners and stateless persons, except in cases when the Constitution itself relates the exercise of certain rights and obligations with the Albanian citizenship.

So, on the one hand, in principle, there is no distinction in terms of having the rights and exercising the obligations arising from citizenship, this also due to the fact that Albania is a part of a various treaties that impose the obligation to guarantee rights of foreigners and stateless persons. On the other hand, the Constitution makes an exception for case when certain rights are an exclusive attribute of having Albanian citizenship, such as the possibility to be elected as president of Republic of Albania.

Granting and losing citizenship is provided in article 19, according to which: "1. *Whoever is born with even one of the parents with Albanian citizenship, automatically acquires Albanian citizenship. Albanian citizenship is acquired for other reasons provided by law.* 2. *An Albanian citizen cannot lose his citizenship, except when he renounces it.*" From this article we understand firstly that Albanian citizenship can be acquired by birth and by naturalization and secondly that in acquiring citizenship by birth is used *ius sanguinis* (the principle of blood) and that those persons who have at least one Albanian parent acquire this citizenship automatically, without any further procedure of granting or confirming this citizenship. On the other hand, this provision creates the possibility that more detailed rules for other reasons of acquiring citizenship to be provided by law.

The second paragraph provides that the only way for a person to lose Albanian citizenship is when he voluntarily wants to leave this citizenship. What can be noticed in this provision is that unlike the first paragraph where other reasons for acquiring citizenship are evasive and can be provided by law, for the loss of citizenship is not mentioned. Can we say that as long as the possibility of other causes for losing citizenship is not expressly prohibited in the Constitution, they can be added by law? We could make such a reasoning if the phrase "*except when he renounces it*" was not found in the Constitution, as this expression is precisely the prohibition to add other ways of losing Albanian citizenship.

II. Changes related to the conditions of granting citizenship

Citizenship can be acquired through birth or through naturalization in a second moment different from birth. The principle of blood, through which the newborn child acquires the citizenship of his parents regardless of the territory where he is born, or the principle of blood, through which the newborn child acquires the citizenship of the state can be used to acquire citizenship by birth. the territory of which he was born, regardless of the nationality of his parents. These principles are not mutually exclusive and can be used simultaneously, as is the case with many countries, including our country.

Article 4 of the Law "On Citizenship" provides that Albanian citizenship is acquired by birth, origin, birth in the territory of the Republic of Albania, naturalization and adoption. Actually, adoption and origin as reasons for gaining Albanian citizenship can be absorbed by the concept of naturalization as a way of acquiring citizenship, even without being explicitly described, as in both cases we have the acquisition of Albanian citizenship at a later moment from birth.

Regarding the acquisition of citizenship by birth according to the principle of blood, apart from what was provided in the previous law, the right to register as an Albanian citizen has been added as a right without prescription, regardless of the age that the applicant may have. Such a change has come as a result of the problems previously appeared with persons who were over 18 years old and had Albanian parents, but for various reasons could not register before this age in the offices of the Civil Registry in Albania³. The actual law preserves, as mentioned above, the acquisition of citizenship on the basis of the principle of territory for children born or found within the territory of Albania, in cases the child risks becoming a stateless person, but from this provision it seems as if the child is born from parents with foreign citizenship, whose state uses the principle of blood and the child can acquire their citizenship, it is not necessary to obtain Albanian citizenship. The previous law provided for the acquisition of citizenship by origin together with all the conditions and criteria for the acquisition of Albanian citizenship by naturalization, and for persons who had an origin of up to two Albanian generations the only convenience was that the required time of stay in Albanian territory was reduced by five years to three years.

In the current law, the acquisition of citizenship by origin is provided as a separate provision to give special importance to this category and on the other hand for persons of Albanian origin up to three generations, can benefit Albanian citizenship, it is enough not to pose a risk to public order and security, as well as not to have been convicted by a judicial decision in Albania or other countries for criminal offenses that according to our penal legislation are punishable by not less than 3 years of deprivation of liberty. The right to acquire citizenship due to adoption and marriage is also recognized, and the law has also recognized the possibility for a person who has a minor child with Albanian citizenship, to acquire it too.

Regarding the conditions and criteria for acquiring citizenship by naturalization, the

³ Report of Project- Law "On Citizenship", pg.2, <https://www.parlament.al/Files/ProjektLigje/20190830104416Relacioni%20SHTETESIA.pdf>

current law has brought some changes, among which we can mention the extension of the mandatory period of stay in Albanian territory from five years to seven years and only if the applicant has a valid residence permission in the Republic of Albania. Also, to the requirement for having a place for residence has been added the requirement that this residence should be in accordance with the approved standards of residency in the Republic of Albania, while the income that the individual has must correspond to the minimum standard of living in our country. Another change is related to the knowledge's of the Albanian language that the person must possess, which must be certified by educational institutions while previously it was not required and also is required that the person has knowledge of the history of Albania certified by Institutions of Higher Education.

The current law preserves the categories of persons for whom facilitating conditions are applied, such as stateless persons as well as those for whom our state has a national interest in the field of education, science, art, culture, sports, etc., also in the category of the latter is required the drafting of special programs related to the verification and control of compliance with the conditions. Regarding the acquisition of citizenship by naturalization we must say that this process starts with a request of the person seeking to obtain citizenship and can be granted only by decision of the competent bodies.

III. Changes related to loss of citizenship

Loss of citizenship is the moment when a person officially terminates the relationship he has with his state, so the loss of citizenship consists in the termination of the legal relationship of citizenship and consequently the termination of rights and obligations for both parties. The doctrine has elaborated some of the ways of losing citizenship, such as the voluntary renunciation of citizenship, the revocation of citizenship, the expiration of the term or renunciation.

The Constitution of the Republic of Albania, as mentioned above, regarding the loss of citizenship provides that *"an Albanian citizen can not lose Albanian citizenship, except when he renounces it"* and in the same line went the previous legislation, recognizing the renunciation by the individual's own will as the only way to lose Albanian citizenship.

If we look at the current law "On Citizenship" we will understand that according to Article 12 of this law the loss of Albanian citizenship occurs not only as a result of renunciation but also as a result of revocation by the competent authorities. According to the law, this can happen when it is proven that the citizen has presented forged documents for acquiring citizenship or when this citizen is involved in activities or is a member of organizations whose activity aims to violate national security and constitutional order. In both cases we are talking about persons who have acquired Albanian citizenship not by birth but by naturalization. The situation when the person uses forged documents to obtain citizenship was provided in the previous law, but was not considered a case of revocation of citizenship, which seems more as a form of sanction, but a revocation of the decision to grant citizenship.

For the second situation, it is foreseen that the person can be deprived of citizenship

for involvement in such activities only when this is confirmed by the competent bodies. From this we notice that there is a contradiction between Article 19 of the Constitution and Article 13 of the law "On citizenship", as Article 19 of the Constitution itself does not leave room for extended interpretation and does not create opportunities to add by law other ways of losing citizenship. Prediction of the ways of losing citizenship should have been done more carefully and in accordance with the constitutional provisions, not only that in principle there are contradictions between them, but because a decision to revoke citizenship in these conditions would constitute a violation of rights and freedoms guaranteed to the individual in this Constitution, given that the acquisition and loss of citizenship are provided for in the general principles of protection of fundamental rights and freedoms in the Constitution. The decision to revoke citizenship in these conditions can be appealed not only in the Administrative Court as provided by the law in question, but also in the Constitutional Court in accordance with Article 131/1 / f).

In the previous law there was a special provision, according to which Albanian citizens could have more than one citizenship. So, dual citizenship was expressly allowed. Meanwhile in the current law such a provision is missing and there is only one provision according to which the acquisition and revocation of Albanian citizenship is done based on the right of every person to enjoy at least one citizenship. However, this provision shows more the tendency of the legislation to avoid statelessness in accordance with international legal obligations than to replace the provision that allowed dual citizenship. It is true that there is in fact no prohibition expressed in the text of the law for an Albanian citizen to be able to obtain another citizenship.

However, Article 14 of the Law "On Citizenship" provides that "... 2. *The child no longer enjoys Albanian citizenship when he is adopted by foreign parents and acquires their citizenship ...*" and again here we are facing a series of problems. First, it must be said that here we are facing a revocation of citizenship without the will of the child himself or his adoptive parents, which is contrary to the meaning of Article 19 of the Constitution. Secondly, in this case, otherwise the situation of revocation of citizenship by the competent bodies seems as if we have an automatic exit from Albanian citizenship. Third, from this prediction we can interpret that the tendency is for an Albanian minor child not to enjoy both Albanian citizenship and that of the adoptive parents.

Regarding the renunciation of Albanian citizenship, are provided conditions which must be met before such a decision is taken, so that the applicant has the legal capacity and capacity to act and is aware of the importance of the action that he is committing, not to be left stateless, and on the other hand not to use the loss of Albanian citizenship as a way to avoid both civil and penal responsibility. Regarding the conditions of renunciation of Albanian citizenship, there is no substantial change from the previous legislation, except that it has been added that the person requesting the renunciation has settled all financial obligations that he may have towards his spouse, minor children or other dependents.

A special situation that finds legal regulation is the acquisition of citizenship, which in the previous law was enabled to persons who had left Albanian citizenship due to the promise that they would acquire another citizenship and then did not acquired it.

For this category, the law provided that they had to make the request and submit the relevant documentation, while in the current law the reacquisition of citizenship is not conditioned by the reasons that pushed the person to renounce Albanian citizenship before, but only those persons must have reached the age 18 years old and have the ability to act as well as not to pose a threat to national security and constitutional order and not to have been convicted of criminal offenses for which the criminal law provides a sentence of not less than 3 years of imprisonment.

Conclusions

The current law "On citizenship" has made a number of changes regarding the strengthening of the criteria for granting Albanian citizenship and on the other hand has created facilities for specific categories such as persons who are of Albanian origin or the ones wanting reacquisition of citizenship.

In this law, the issue of compliance with the constitutional provisions regarding the manner of loss of Albanian citizenship should have been considered as a priority and the issue of dual citizenship should have been clarified, as in special provisions is not clearly understandable the motive for revocation of Albanian citizenship of certain categories as minors who are adopted by foreign nationals.

References

- Puto A., Public International Law, 2008.
- Shaw M, International Law, 2017.
- Montevideo Convention On the rights and duties of states 1933.
- Opinion No.1 of Arbitral Commission of European Conference for former Yugoslavia.
- Constitution of Republic Albania 1998, as amended.
- Law No.8389, dated 5.8.1998 "On Albanian citizenship".
- Law No.113, dated 29.7.2020 "On citizenship".
- Report of Project- Law "On Citizenship".
- <https://www.parlament.al/Files/ProjektLigje/20190830104416Relacioni%20SHTETESIA.pdf>