

LEGAL – POLITICAL DISCOURSE ON THE REGULATION OF DUAL CITIZENSHIP IN LITHUANIA

Introduction

In the background of various legal problems faced with in Lithuania one issue undoubtedly still remains one the most urgent ones for the Lithuanian society worldwide – the issue of regulation of dual Citizenship.

The urgency of the question mentioned has been witnessed by a number of public discussions during the recent years and constant debates in the Parliament which raised the issue of the regulation to the highest level. In 2006 a group of Members of the Parliament of the Republic of Lithuania and the Vilnius Regional Administrative Court requested the Constitutional Court of Lithuania (CCL) to investigate whether some of the articles of the Republic of Lithuania Law on Citizenship which created opportunities for obtaining dual citizenship were not in conflict with the Constitution of the Republic of Lithuania.

As CCL found that the Constitution provides dual Citizenship only in rare exceptions, the articles of the Law on Citizenship relating to dual Citizenship were announced to be in conflict with the Constitution. Despite the *vacatio legis* created, there were no modifications made during the four following years. Consequently, the day when the judgment was announced marked the beginning for the legal political discourse regarding the challenge of regulation of dual citizenship. This discussion became the biggest one of the decade engaging a considerable part of the Lithuanian society in Lithuania and all the Lithuanians worldwide.

Four years of political – legal dispute and lack of proper legislation inevitably indicates the challenge of successful regulation of dual citizenship in Lithuania which gives a strong basis for the legal – political discourse and its importance to be analyzed.

I. THE MAIN POINT OF THE RULING OF THE CCL

In the ruling of 13th of November, 2006 some of the provisions of the Law on Citizenship were recognized to be in a conflict with the Constitution. The regulation established in Paragraph 2 of Article 18 of the Law which granted the right to double citizenship to all the persons of Lithuanian origin was decided to be incompatible with Paragraph 2 of Article 12 of the Constitution either, wherein it is established that with the exception of individual cases provided by law, no one may be a citizen of both the Republic of Lithuania and another state at the same time.¹ Furthermore the CCL underlined that the provision of Article 12 of the Constitution means that these cases of double citizenship must be *extraordinarily rare*, thus not permitting cases of double citizenship to appear as a widespread phenomenon².

¹ Ruling of the Constitutional Court of the Republic of Lithuania on 13th of November, 2006 “on the compliance of the provisions of legal acts regulating the citizenship relations with the Constitution of the Republic of Lithuania”// Valstybės žinios, 2006, No. 123-4650

² Ruling of the Constitutional Court of the Republic of Lithuania on 30th of December, 2003 “on the compliance of President of the Republic of Lithuania decree No. 40 “On granting citizenship of the Republic of Lithuania by way of exception” of 11 April 2003 to the extent that it provides that citizenship of the Republic of Lithuania is granted

II. LEGAL – POLITICAL DISCOURSE ON THE REGULATION OF DUAL CITIZENSHIP IN LITHUANIA

Ruling of the CCL and the new *vacatio legis* caused a huge resonance – the discussion engaged lawyers, journalists, groups of the Parliament members, linguists and other concerned people, especially the ones who have lost Lithuanian citizenship and those residing in foreign states. During the period of four years more than one solution was suggested unsuccessfully:

- referendum
- revision of some articles of the Constitution³
- creation of the *Lithuanian Charter*, etc.

Finally on 4th of November, 2010 the Parliament confirmed a new project of the Law on Citizenship suggesting more opportunities of obtaining dual citizenship.

Followed by the signature of the President the Law could have crowned the long lasting discussion on the issue. However the President's veto on 18th of November left the issue unsolved because of the potential conflict of the Law with the Constitution.

Additionally, the ruling of CCL revealed the focus of the discussion is not only adequate regulation of citizenship, but the absence of a unanimous opinion in relation to the interpretation of Article 12 of the Constitution. *Individual* cases explained linguistically could mean nothing but a number of individual cases possible. However, what is the relation of this explanation to the data in the preoperational outlines of the Constitution where *individual* cases of dual citizenship are meant to be *rare* cases only?⁴ These different models of interpretation became popular while supporting and rejecting arguments for and against the extension of dual citizenship.

to Jurij Borisov by way of exception with the Constitution of the Republic of Lithuania and Paragraph 1 or Article 16 of the Republic of Lithuania Law on Citizenship"// Valstybės žinios, 2003, Nr. 124-5643

³ It was suggested to revise Article 32 of the Constitution of the Republic of Lithuania by the Justice of the Constitutional Court of the Republic of Lithuania, Egidijus Šileikis (more information can be found at <http://www.temide.info/dvigubos-pilietybes-rebusas-visai-nesudetingas>).

It was suggested „to supplement Article 32 of the Constitution with the provision "A person who acquired the citizenship of Lithuania by birth shall not lose it against his will". Paragraph 2 of Article 148 of the Constitution provides that the provisions of Article 12 of the Constitution may be altered only by referendum. It means that the Seimas, while enjoying the powers to amend other provisions of the Constitution, cannot amend those other provisions of the Constitution in a way so that the legal regulation competing with the legal regulation established in Article 12 of the Constitution would be established therein. Should the Seimas adopt such amendments to the Constitution and establish the legal regulation which would compete with the legal regulation established in the provisions of Article 12 of the Constitution, there might appear a legal situation where, even though the provisions of Article 12 of the Constitution (the provisions which can be altered only by referendum) are not formally amended, the same provisions would be "neutralised" by the law on amending the Constitution. Thus, the legal regulation entrenched in the provisions of Article 12 of the Constitution would be distorted and denied. The Constitution prohibits that the Seimas adopt such amendments to the Constitution." *Sinkevičius V.* „Double citizenship: an analysis of the proposal to supplement Article 32 of the Constitution“// Jurisprudencija, 2008 3(105); 16-26

⁴ *Sinkevičius V.* „Double citizenship: an analysis of the proposal to supplement Article 32 of the Constitution“// Jurisprudencija, 2008 3(105); 16-26

Other arguments and positions relating the regulation of dual citizenship

Besides the legal arguments mentioned above there exists a number of legally ungrounded argumentations which are being used by the concerned groups.

Obviously the main group supporting the extension of dual citizenship consists of expatriates who are actively participating in the discourse claiming that:

- interpretation of *individual* cases only as *rare* cases only is *illegal*⁵
- emigrants are being discriminated considering them as inferior to other citizens, etc.⁶

However, though the majority of arguments are controversial in a legal sense, they are formulated to appeal to one's conscience and include other sensitive issues.

During the discussion appealing arguments can be easily found among parliamentarians as well.⁷

Meanwhile the groups that are opposing the permission of dual citizenship base their arguments mainly on the ruling of the CCL and Article 12 of the Constitution explaining that it allows dual citizenship in very rare cases only. However, beside these legitimate arguments, non legitimate argumentation can also be found even in parliamentarians' speeches. Members of the Parliament do not avoid naming dual citizenship as *slaving for two masters* or *betrayal of Lithuania*. Some of the arguments despite of being legally ungrounded are widely spread and discussed nationwide; in this way they significantly impact public opinion about the adequate and *Constitution friendly* regulation of the dual citizenship.

It should be noted that a discussion at the Parliament was not only on the number of cases of dual citizenship allowed but also on the countries of residence where an expatriate could be allowed to preserve the Lithuanian citizenship. This question was followed by several public positions, e.g. dual citizenship should be allowed only for those residing in the country belonging to the European Union (EU) or North Atlantic Treaty Organization (NATO) meanwhile another opinion is that the right of dual citizenship should be guaranteed only for those residing in EU. Overall it becomes obvious that this attempt to differentiate emigrants in relation to the country chosen caused even sharper discussions upon the question of granting privilege to some of the expatriates.

III. THE NEW LAW ON THE CITIZENSHIP AS AN ATTEMPT TO DEAL WITH THE ISSUE

On 2nd of December, 2010 the Parliament of the Republic of Lithuania confirmed the new Law on the Citizenship including the remarks and corrections of the President.

Adoption of the suggestions of the Head of State harmonized the heated discussion at least for a while. The Parliament rejected the article which would have legalized dual citizenship for those who had left Lithuania after March, 1990 and obtained citizenship of a EU or NATO country. According to the rejection, the new Law provides an opportunity to have dual citizenship for those who left

⁵ *Narušienė R.* Citizenship and the new project of the Law on Citizenship (<http://archyvas.bernardinai.lt/index.php?url=articles/93506>)

⁶ Same source.

⁷ Just after the adoption of the new Law on Citizenship a member of the Parliament claimed that "*it is unforgivable to ostracize one's countrymen in a nonreturnable way*"; "*civilized countries do not behave in this way*", etc.

Lithuania only before 1990. So despite the project of the Law in November, 2010 which was favorable for the concerned expatriates, a presidential veto had led the Parliament to the decision which was far from satisfying Lithuanian emigrants.

However it is obvious that the decision of legislature even does not reflect the unanimous opinion of the members of the Parliament: during the voting procedure there were almost 50% of those voting *for* the rejection of the presidential veto (for – 49, against – 55). Furthermore, while voting for the new Law on Citizenship there were even 40 of abstaining ones and 21 were against, thus making the number of supporters higher only in 4 votes (for – 65). Regardless of the fact that simple majority is enough to accept the Law, the proportions of the votes indicate the still existing lack of the unanimous decision. Additionally it remains doubtless that the decision made does not satisfy emigrants of Lithuania.

Conclusions

In order to ensure the trust in the government and state itself the discourse on the sensitive legal political questions is essential; discourse can be one of the instruments controlling and ensuring justice in political and legal processes.

Special attention should be paid for the clearness and publicity of the public communication as the power to control it can transform the dialogue to the instrument hiding the real issues and problems of the state. Appearance of the controlling power of discussion can settle the situation where discourse instead of being a source of justice would be used to demonstrate the power and influence. The new Law on Citizenship could be treated only as a conditional: despite the fact that the acceptance of the Law can be treated as a prolonged and highly anticipated decision on the sensitive and urgent issue, voting results, long lasting discussions and desperation of emigrants makes it undeniable that the unanimity of the opinions and a successful interpretation of the Constitution nationwide still is a serious challenge in Lithuania.