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ANALYSIS OF THE CONNECTION OF THE NATIONAL LEGISLATION WITH THE EUROPEAN UNION STANDARDS IN THE FIELD OF CITIZENSHIP

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This article will analyze the need to connect national legislation to European Union standards in the field of citizenship. The European standards in the field of citizenship will be analyzed from the point of view of national and international acts, to conclude the need for a modern regulation of national and international legislation in the field of citizenship. Each individual has the right to citizenship and no one can be arbitrarily deprived of his or her citizenship or the right to change their nationality.

Keywords: *European standards, international acts, the right to citizenship*

ANALIZA NECESITĂȚILOR DE RACORDARE A LEGISLAȚIEI NAȚIONALE LA STANDARDELE UNIUNII EUROPENE ÎN DOMENIUL CETĂȚENIEI

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În articolul respectiv se va cerceta necesitatea de racordare a legislației naționale la standardele Uniunii Europene în domeniul cetățeniei. Se vor analiza standardele europene în domeniul cetățeniei prin prisma actelor naționale și internaționale, pentru a concluziona necesitatea unei legiferări moderne a legislației naționale cu cea internațională în domeniul cetățeniei. Fiecare individ are dreptul la cetățenie și nimeni nu poate fi lipsit în mod arbitrar de cetățenia sa sau de dreptul de a-și schimba cetățenia.

Cuvinte-cheie: *standarde europene, acte internaționale, dreptul la cetățenie.*

Introduction. The right to citizenship is enshrined in the Universal Declaration of Human Rights, art. 15, according to which each an individual has the right to citizenship, this right cannot be withdrawn by anyone, and if the individual wishes to change his citizenship, he has full freedom to do so, being constrained by no one and nothing. It is considered that this Declaration was the basis for the contemporary definition of citizenship, according to which the citizen actively participates in the political life of the state, the citizen owns a whole set of rights and free-

doms, and the state in turn is endowed with a string of correlative obligations towards the citizen, therefore human rights form the foundation of the legal status of the citizen and at the same time determine the limits of the state power action.

Purpose of the investigation.

The purpose of the investigation is the need for complex multi-aspect research of the institution of citizenship in conjunction with European Union legislation and standards, resulting in the disappearance of those pragmatic and partial treatments of citizenship over time.



Results obtained and discussions. The European standards in this field are firstly found in the European Convention on Nationality, ratified by the Decision of the Parliament of the Republic of Moldova on October 14, 1999 no. 621-XIV, a fact that registers it at the sources of national law. Nationality law in the Republic of Moldova is a modern legislation, with nothing below the level of the most advanced regulations in the field, in which the criteria based on it are well and balanced articulated, in order to function efficiently in the international flow, taking into account also the international documents to which RM is part of it.

The international acts, referred to in art. 4 of the Constitution of the Republic of Moldova, namely: The Universal Declaration of Human Rights, international covenants and treaties enshrines the principle that each individual has the right to citizenship and no one can be arbitrarily deprived of his or her citizenship or the right to change his or her nationality. The basic principle is that people have the right to citizenship, but forget that people according to the principle of law and international treaties have the right to citizenship and not more. In the Republic of Moldova, as the ways of acquiring citizenship are regulated, we do not pay such attention anymore. But, for example, in Lithuania, where plurality of nationality is not allowed, on the basis of this principle, the obligation to create rules of law appears so that any person can acquire citizenship, because only a second one is allowed under national law.

The Nationality Law of Republic of Moldova of 10.08.2000, with the subsequent modifications, the provisions of the European Convention on citizenship were taken into account. Inspired by modern laws and international practice, the law stipulates successively, within separate chapters, general provi-

sions, the acquisition of citizenship, the procedure of granting citizenship, proof of citizenship, the loss of citizenship, the procedure of withdrawal or approval to renounce citizenship, final provisions and transients. Regarding the Law of 1991, the Law of 2000 marks an essential change of orientation, by recognizing the dual citizenship (art. 24) and expressly stipulates that the conclusion, declaration of invalidity, annulment or dissolution of the marriage between a Moldovan citizen and a foreigner does not have any effect on the citizenship, spouses. According to the law, the ways of obtaining citizenship of the Republic of Moldova are: birth, adoption, naturalization, repatriation and option. Birth is a way of gaining citizenship based on the effects of law. It is the most important way of acquiring citizenship. International practice and national systems of law know two basic principles of acquiring citizenship by birth, namely: - The principle *jus sanguinis* (the right of blood). The child, by birth, automatically obtains the citizenship of the parents or one of the parents, if they have different citizens, the place of birth having no significance [1]. Although, after ratifying the Convention, our country modified the national law of the right to citizenship in accordance with the convention, which coincided with the adoption of new Law on the citizenship of the present moment, the necessity of connecting some legal norms on citizenship to the EU standards is required, which we will refer to below.

Starting from the that the right to citizenship is a fundamental right enshrined in the constitution, and quality of citizen of the Republic of Moldova confers exclusive political rights by which the citizen participates in the management of the state (through the representative bodies), however, our legislation does not provide an impor-

tant norm that would confer the citizen's right to legislative initiative. By the right to the legislative initiative the citizen can influence the public decision – making process. However, the Constitution of the Republic of Moldova provides this right only to the Members of Parliament, the President of the Republic of Moldova, the Government, the People's Assembly of the GTA in Gagauzia. In this context, we mention the opinion of the researchers Gh. Costachi and I. Guceac, who considers that since the people are the holder of national sovereignty (Constitution of the Republic of Moldova, art. 2), it is necessary to legislate in the Constitution the forms of direct intervention of the people in the legislative process, such as: the popular veto, the right to legislative initiative [2]. For example, in Romania, citizens can participate in the political life of the country and by applying the right of legislative initiative, enshrined in the Romanian Constitution, art. 74 (1), according to which the right to legislative belongs to the Government, the deputies and the senators or to a number of at least 100, 000 citizens with voting rights, representing at least a quarter of the counties of the country.

Which is right, Moldovan citizens have the right to initiative to revise the constitution, enshrined in art. 141 paragraph (1) of the Constitution of the Republic of Moldova, as follows:

(1) The revision of the Constitution may be initiated by:

a) a number of at least 200,000 citizens of the Republic of Moldova with voting rights. Citizens who initiate the revision of the Constitution must come from at least half of the administrative-territorial units of level two, and in each of them at least 20,000 signatures must be registered in support of this initiative [3].

Applying the right to legislative initiative, the citizen can directly



influence the legislative process, but in practice this right is very difficult to apply because of the difficulty of reaching the quorum established. However, the citizens' initiative may tend, as the case may be, either to revise the Constitution, or to adopt or just modify some laws, materializing in the submission to Parliament of a legislative proposal that, emanating from a significant number of citizens with the right to vote, it constitutes a signal for the Parliament in the sense that, besides the intrinsic value of the provisions of law that form the legislative proposal and which enjoys the support of an important part of the population of the country, they reveal a problem worthy to be considered by the legislative forum. The fact that citizens initiate a legislative change or even the adoption of a new law in a certain area is a powerful indicator for the Parliament, which must analyze it responsibly and, even if, for various reasons, it does not transform it into law in the proposed form, it must take into account the significance of this popular initiative, namely that the citizens' initiative was generated by a real problem, which a part of the population of the country supports.

It should be mentioned that the citizen's legislative initiative is an important instrument of participatory democracy within the EU, enshrined in art. 11 (4) of the Treaty on EU, art. 24 (1) of the Treaty on the Functioning of the EU, EU Regulation no. 211/, art. 197a of the Rules of Procedure of the European Parliament [4]. Having said that, we consider it necessary to emphasize that the holder of sovereignty and the only source of power in the Republic of Moldova according to art. 1 paragraph (2) of the Constitution, is the people. And a means of strengthening the sovereignty is the extension of the constitutional practice of the Republic of Moldova of such an institution of direct democ-

racy, as is the "popular legislative initiative" .such institutions for the Republic of Moldova is based on the fact that, under the obvious discrepancy between the quality of the legislative activity and the level of citizen's expectations, the popular legislative initiative could become one the forms of effective influence of the society, the citizens on the legislator. Moreover, the citizens deserve this right starting from the theory of population democracy, respectively, being necessary the constitutionalization of the forms of direct intervention of the people in the legislative process (through the direct regulation of the right to legislative initiative). [5]

The right to have the citizenship of the Republic of Moldova and to preserve it is a norm established by the Constitution of the Republic of Moldova, which guarantees this right, and the law of citizenship enshrines the acquisition of this citizenship by the very fact of birth, based on the principles *ius sanguinis and ius soli*. The Constitution of the Republic of Moldova, although not expressly stipulating that citizenship cannot be withdrawn: (2) No one may be arbitrarily deprived of his citizenship nor of the right to change his citizenship. In our vision it is required to introduce in the Constitution of the Republic a norm that would expressly provide - the citizenship of the Republic of Moldova acquired by birth cannot be withdrawn. By way of example, we recall in this context the Constitution of Romania which contains such a norm (art. 5, paragraph (2), as well as in Law no. 21/1991 of Romanian citizenship, art. 25, paragraph (2) - Romanian citizenship cannot be withdrawn to the person who acquired it by birth, in this context we mention that the law in force does not contain such a norm, and Article 23 stipulates the grounds for withdrawal of citizenship, of which it was previously mentioned, and

we deduce from the text of the law that the legislator, when establishing these grounds, did not refer to the persons who acquired the citizenship of the Republic of Moldova by birth, we consider that modifications can be made in this article and expressly stipulate the impossibility to withdraw the citizenship of those who have acquired it by birth, this is a fundamental principle and unanimously recognized in international practice.

As I mentioned, the vast majority of the constitutional law specialists in the Republic of Moldova stressed as a major novelty when the new law on citizenship was adopted - the issue of double or multiple citizenship (plurality of citizens). At the same time, considering this norm as a way of liberalizing the institution of citizenship, the specialists highlight a series of problems that appear in reality regarding the nominated norm, or most opinions concern the need to modify or improve this norm.

For example, the researcher L.Zaporojan considers that it is necessary to amend art. 24 of the law in force, renaming it "Plurality of citizens" and excluding paragraph (1). According to L.Zaporojan, it is not fair to say that plurality of citizens was fully liberalized in the Republic of Moldova, given that this is not allowed in all situations, because art. 24 does not expressly stipulate that the plurality of citizens in the Republic of Moldova is admitted [6]. From the text of art. 24 it is understood that in our country the plurality of citizens is allowed only in the cases expressly provided by the Citizenship Law. Having said that, we consider that the wording of Article 24 should not be modified, given that the plurality of citizens is an exception. As a rule, persons belonging to the state of the Republic of Moldova have only nationality – the citizenship of the Republic of Moldova. This rule derives from the unitary



character of our state, or among the characteristics of the unitary state is the phrase “one citizenship” [7]. And the European Convention on Citizenship in its text only provides for cases where a state must allow the plurality of citizens, so the Moldovan legislator followed the rules of the of amicably resolving problems that arisen ever time. To this end, the European Convention on Citizenship has been established, which establishes principles and rules regarding the citizenship of citizens, to which the national law of the States Parties must comply” [8]. A proposal regarding the modification of the cuurent regulation of multiple citizenship in the Republic of Moldova belongs to the author T.Cîrnaț. The researcher considers that for the recovery of the situation regarding the multiple citizenship in our country it is necessary to adopt the Law on the multiple citizenship and to include in art. 17 of the Constitution of the Republic the provision that the state recognizes the plurality of citizens.

The admission of the plurality of citizens in the Republic of Moldova became legal after the European Convention on Citizenship was signed in Strasbourg on November 3, 1998, which provides for double citizenship in cases of mixed marriages, the birth of children from mixed marriages, the birth of children, citizens of the Republic of Moldova, by foreign nationals. On March 1, 2000, the Convention entered into force for the European states that ratified it. It should be mentioned that the Convention does not favor the plurality of citizens, referring only to the case of children who automatically acquired different citizens at birth and if the second citizenship was automatically acquired through marriage; in addition, states have the freedom not to admit dual citizenship.

However, it is certain that the

state must ensure the principle of equality and non-discrimination also for persons with dual citizenship, if it has accepted in its legislation the plurality of citizens. But in reality, although the Republic of Moldova has accepted in its legislation the plurality of citizens, it has previously made some legislative changes through the Law for the modification and completion of some legislative acts no. 273-XVI of 07.12.2007, by which a provision was introduced, obviously discriminatory, according to which persons with dual citizenship are not entitled to hold certain public functions in the state. This aspect was also found by the European Court of Human Rights in the case of Tanase and Chirtoaca v. RM, pronounced on November 18, 2008. However, the Constitutional Court, by the Decision of 26.05.2009, recognized the changes made by Law no. 273-XVI from 07.12.2007. In conclusion, we have only to find, as stated in the commentary on the Constitution of the Republic of Moldova, that the state of the Republic has reserved the right to stipulate in its legislation that some public functions in the political, diplomatic, military field, etc. they can only be occupied by persons who are exclusively citizens of the Republic of Moldova [9].

In this context, the researcher Gh. Ciocârlan proposes, because there have been registered abuses against citizens who have dual citizenship, which served as sanction on the part of the ECHR, to introduce in the Constitution of the Republic of Moldova art. (3) a regulation that would guarantee those who hold dual citizenship equal rights, without discrimination in the occupation of public functions and dignities [10].

In this sense we bring the example of Romania, which when ratifying the European Convention on citizenship made following reservation regarding the ap-

plication of art. 17 paragraph 1: “Romanian citizens residing in Romania who have another citizenship, enjoy on the territory of Romania the same rights and have the same obligations as the other Romanian citizens, in accordance with the provisions of the Romanian Constitution” [11]. And art. 16, paragraph 3 of the Romanian Constitution, states: “The public functions and dignities, civil or military, can be occupied, according to the law, by persons who have Romanian citizenship and domicile in the country. The Romanian state guarantees equal opportunities between women and men for the occupation of the these functions and dignities” [12]. From the foregoing, we specify that such a norm should be included in the legislation of our country, which would place Moldovan citizens with plurality of citizens in the same rights as those who do not have dual citizenship, if we still consider that in our country they have priority the norms of international treaties to which RM is a party. In support of the above, we invoke as an example art. 11 paragraph (1) of the Law on the Constitutional Court of the Republic of Moldova: Judge of the Constitutional Court may be the person who holds the citizenship of the Republic of Moldova has his domicile in the country, has superior legal training, high professional competence and at least 15 years old in the legal activity, in the higher legal education or in the scientific activity [13]. So, the fact that a candidate for the position of judge of the Constitutional Court falls under the condition imposed by law, that he has his domicile in the country, would allow him to apply for this position, despite the fact that he holds another citizenship. In this case, the constitutional norm will be respected that all citizens are equal and have the same rights.

In this regard we mention the



opinion of the researcher L. Zaporojan, who invoked some inadvertent, referring the norm of article 25 of the Law on citizenship to the norm article 17 of the European Convention on citizenship, namely: according to the Convention of the citizens of the State party who possess another citizenship and live in this territory, they have the same rights and obligations as the other citizens. The author considers that use of various terms in various laws of the Republic of Moldova regarding access to public functions: “living legally”, “living”, “living in the country”, “living or permanently living in the territory of the Republic of Moldova” creates confusion [14]. Therefore, we conclude that in our country there is no adequate legal framework that would regulate the institution of plurality of citizens, which would not prejudice neither the interests of the state, nor the fundamental rights and freedoms of citizens. It should be recalled here that the European Convention on Citizenship, although it defined the concrete cases when the plurality of citizens is possible, did not limit the states to establish in its national law whether the persons possessing the citizenship of another state could retain or renounce the citizenship of the concrete state. Thus, if the Republic of Moldova allowed and defined the cases when plurality of citizenship is possible in our country, it turns out that citizens with plurality of citizenship are in the same rights as other citizens, without any restrictions.

In art. 36 of the Citizenship Law specifies the documents necessary for acquiring and regaining the citizenship of the Republic of Moldova. At the same time, paragraph (3) of the nominated article states that: The public authorities holding information on the fact that the applicant does not meet the conditions for granting the citizenship of the Republic of Moldova will com-

municate them to the Commission for the issues of citizenship and political asylum of the President of the Republic of Moldova [15]. Regarding this paragraph, he expresses his opinion A. Arseni, considering that the legislator has applied the extensive method, so this norm contradicts the articles 28,29,30 in which the attributions of the bodies empowered with solving the problems of citizenship and determined competences are presented. Thus, it is not necessary to involve other bodies of the public administration in this process [16]. We believe that this article should not have been included in the law.

The establishment of the citizen status through an organic law, as provided by the constitution of art. 17 and the reference to the principle of granting primordially to the international treaties to which RM is a party means a constitutional guarantee of citizenship, the right to have a citizenship.

In general, we express the opinion that the Republic of Moldova is in compliance with its legislation in the world trends regarding the institution of citizenship.

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