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THE GRANTING AND REGAINING OF ROMANIAN CITIZENSHIP IN VIEW OF THE MOST RECENT CHANGES OF THE LAW NO. 21/1991

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***Annotation.** Following the violent protests in the Republic of Moldova against the Communist Party – governing since 2001 – that took place in April 2009, after the release of the parliamentary elections results, the Romanian Government has adopted the measure of simplifying the fundamental and formal conditions for regaining Romanian citizenship through Government Emergency Ordinance (GEO) No. 36/2009 for modifying and completing Law on Citizenship No. 21/1991. This measure is focusing particularly on the citizens of the Republic of Moldova who wish to be granted Romanian citizenship. By presenting the changes brought by GEO No. 36/2009, by comparing them to the other changes made to Law No. 21/1991 in 2007 and 2008, this article tries to answer the question of how the system of granting and regaining Romanian citizenship should be regulated, taking into account the Romanian accession to the European Union and the necessity to discard the consequences of the Ribbentrop – Molotov Pact, which was officially condemned by the Romanian Parliament in 1991. The de lege ferenda proposals made in this article have the purpose to make the system of acquiring Romanian citizenship more transparent and easier to explain to the entitled persons and to the European Union institutions monitoring the legal and illegal migration.*

Keywords: *Romanian citizenship, granting citizenship, regaining citizenship, Government Emergency Ordinance, Republic of Moldova, Romanian Constitution.*

Introduction

Violent protests against the Communist Party –governing since 2001 – took place in April 2009 in the Republic of Moldova, after the release of the parliamentary elections results. As a consequence of contesting these results, both from the opposition and from politically independent young people, who demanded to repeat the electoral process, the government made accusations that Romania had been involved in triggering and supporting the protests. The authorities of the Republic of Moldova have decided to expel the Romanian ambassador from Chişinău and introduced a visa system for Romanian citizens. The relations between Romania and the Moldavian Republic have become more and more strained, reaching an unprecedented level of mistrust.

Following the speech of the President Traian Băsescu in the Parliament, the Romanian Government has taken the measure of simplifying the fundamental and formal conditions that apply for regaining Romanian citizenship through Government Emergency Ordinance (GEO) No. 36/2009 for modifying and completing Law No. 21/1991.¹ This measure was taken focusing particularly on the citizens of the Republic of Moldova who wish to be granted Romanian citizenship, as it offers advantages that follow from the freedom to travel in the territory of the European Union. This article discusses the changes brought by GEO No.36/2009, by comparing them to the other modifications made to Law No. 21/1991² in 2007 and 2008 and tries to answer the question of how the system of granting and regaining Romanian citizenship should be regulated, taking into account the Romanian accession to the European Union and the necessity to discard the consequences of the Ribbentrop – Molotov Pact, which was officially condemned by the Romanian Parliament in 1991.³

1. The Meaning of Citizenship and the Role of the European Union

The granting of citizenship is a sensitive subject, in particular recently when migration has become a global problem. Citizenship is not a fundamental human right, as the right to life is. There is no Constitution that includes citizenship in the chapter dedicated to the rights that are guaranteed. The granting of citizenship is a state's privilege.

1 GEO No. 36/2009. *Monitorul Oficial*. No. 259, 21 April 2009.

2 Law No. 21/1991. *Monitorul Oficial*. No. 98, 6 March 2000.

3 Declaration of the Romanian Parliament on the Ribbentrop – Molotov Pact and its Consequences for the Country. *Monitorul Oficial*. No. 136, 27 January 1991.

In the cases where citizenship gained a status close to that of the fundamental right, the consequences were unfortunate: the emergence of a difficult-to-manage multiculturalism, the aggravation of social conflicts, ethnical discrimination, the lack of perspectives to bring the citizens together in view of common projects, and etc. The states that have not faced such consequences, counted on progressively integrating people who want to obtain citizenship and have not imposed a system for granting the citizenship, while leaving a wide discretion of appreciation for authorities on the basis of clear and transparent procedures.

A citizenship law is not a mere normative writ; it has strong political connotations, because it expresses the contemporary view of the politicians' class on the nation. The question on who is a part of the nation is a political, not a judicial issue. A citizenship law has to establish the conditions in which a state exerts the privilege. The question arises what in this context is understood as the "state." Is it about executive, legislative, or judicial power, or about a combination of the three? Initially, as far as the granting of citizenship is concerned, a "state" was perceived as the executive power. Nowadays, as new mechanisms of mutual control among the powers of the state appear, when citizenship is concerned, the two other powers are also perceived as the "state." Thus it could be explained why there are more systems of granting citizenship where a decision of the executive power on granting or refusal to grant citizenship may be contested in front of judicial authorities, and more systems where the latter are the ones granting citizenship, excluding the intervention of the executive power.

The European Union cannot oblige a state to adopt rules on citizenship, but it has the competence to fight illegal migration and manage legal migration. A common European policy on migration is brought up more often and there are already sufficient grounds to state that this policy is now a part of common EU policies. While there is no *acquis communautaire* on the issue of citizenship, there is one regarding migration. When a Member State loosens conditions for granting citizenship, the European Union expresses concern, not because it could intervene, but because a fear emerges that widening the category of citizens of a member state may have an impact on the EU labour market, when applying the principle of free movement in a unitary manner in the whole territory of the EU member states.

2. Romanian Normative Framework Regarding Citizenship

A citizenship law No. 21/1991, dating from before the adoption of the 1991 Constitution applies in Romania. The Romanian Constitution regulates the issue of citizenship in a separate article 5 in the following manner: *(1) Romanian citizenship is gained, preserved, or lost under the conditions established by the organic law. (2) Romanian citizenship cannot be withdrawn from those who have gained it through birth.*⁴ This means that at a normative level, no connection was made between the rights citizenship implies

4 Constitution of Romania. *Monitorul Oficial*. No. 767, 31 October 2003.

and the way in which it is granted, after the coming into force of the Constitution. The law has been modified several times without affecting its fundamental principles. The last amendment GEO No. 36/2009 was adopted in 2009. This was preceded by other two amendments: in 2007, GEO No. 87/2007⁵ entered into force, and in 2008 amendment by Law No. 70/2008 was passed with modifications.⁶ The changes of 2007 and 2008 did not aim to modify the essential conditions for granting and regaining citizenship, due to the fear to generate disapproval from the European Commission. It was a false logic: as long as the law states that citizenship cannot be granted to people who have been criminally convicted, in Romania or in any other country, the minimal requirements of the European Union are satisfied. In 2009 one of the fundamental conditions of the citizenship was modified, in the sense that Romanian citizenship may be requested by the descendents of those who lost it from reasons independent of their will, up to the third degree relatives (previously, only second degree descendents were allowed to do so). The other fundamental conditions have remained the same.

For granting citizenship, the Romanian law sets as a condition of 8 years since the moment of domicile into the country and 5 years since the moment of marrying a Romanian citizen. On one hand, the law is more permissive as a result on that on regaining citizenship than provisions on the same matter of other member states of the European Union. On the other hand, Romania has one of the most drastic systems for granting citizenship, as compared to states from the same category.

As far as the system for granting Romanian citizenship is concerned, it has been proven over the years that the criteria imposed by the state are not meant to prevent a situation that could not be managed by the state authorities. Therefore, a more ample reflection on revisiting them may be taken into consideration. Romania does not face immigrant flows that can only be controlled by restrictive legislation. When Law No. 21/1991 was adopted and during the entire period of application of this law, it was probably thought that Romanian citizenship might be attractive, even when compared to that of other European states. In fact, the low number of requests for granting citizenship from extra - communitarian people does not justify the initial fear. On the one hand, the European Union will never encourage Romania to change this system due to the reasons listed above; on the other hand, a reform of this regulation does not involve the risk of sanctions from the European Union, from a state, or from any international organization.

The main change made by GEO No. 87/2007 preserved by Law No. 70/2008 is that the granting and regaining of citizenship is no longer done by Government Decree, but by an order from the Minister of Justice. The structure of the Citizenship Commission that analyses the requests was modified through successive changes made to Law No. 21/1991 between 2007 and 2009. Before 2007, the commission was made up of 5 judges from the Bucharest Court of Appeal. The structure of the commission was initially modified by GEO No. 87/2007, so that it had 4 members, law background staff from

5 GEO No. 87/2007. *Monitorul Oficial*. No. 634, 14 September 2007.

6 Law No. 70/2008. *Monitorul Oficial*. No. 283, 11 April 2008.

the Ministry of Justice (the Ministry of Justice and Citizenship Freedoms from 2008), assimilated to magistrates, then the number was increased up to 6 by Law No. 70/2008, and later – to 8 members by GEO No. 36/2009. The interview of an applicant, necessary if the Commission concludes that he fulfills the criteria for granting/regaining Romanian citizenship, has to be scheduled within 6 months since the moment the Commission began analyzing the file. Prior to GEO No. 87/2007, such a term had not been mentioned, and it had a negative impact on the period in which the request was evaluated. After the interview, the Minister of Justice and Citizenship Freedoms issues the order for granting/regaining citizenship. GEO No. 87/2007 did not specify the time limit for issuing of this order. According to Law No. 70/2008, the order has to be issued in 30 days from finding that the legal conditions have been fulfilled, while in case of an order of rejection, it does not have to be issued in the same time interval, but has to be transmitted to the applicant within 90 days from issuance.

According to the present form of Law No. 21/1991, after the most recent changes the Minister of Justice and Citizenship Freedoms is not restrained by the conclusions of the Citizenship Commission's report or by the result of the interview. If the conditions for granting/regaining citizenship are not fulfilled, the Minister of Justice and Citizenship Freedoms rejects the request. Nothing stops him from refusing to issue an order favorable to granting/regaining citizenship despite the acceptance from the Citizenship Commission and/or favorable results of the interview. Therefore, the Minister of Justice and Citizenship Freedoms has gained a considerable discretion margin regarding the granting/regaining of citizenship. His order may be contested in courts, but the probability that a court in Romania will nullify an order from the Minister of Justice is only theoretical.

Law No. 21/1991 did not explain the procedural aspects related to an interview, mentioning only that such interview verified the fulfillment of legal conditions for granting/regaining citizenship. Differences between the legal conditions to be fulfilled for granting citizenship and the legal conditions for regaining it were established in the initial regulation.

Regarding citizenship granting, for instance, a question arises what does the condition from Art. 8(1)(d), mean by the fact that the applicant must “have the living means assured”? Can this be proven by the sole existence of a work contract in Romania? When such a contract exists, but is signed for a shorter period than that stipulated by the Citizenship Law, will the Citizenship Commission have sufficient motives to reject a request for granting Romanian citizenship?

Art. 8(1)(f) established conditions both for granting and for regaining citizenship; both categories of applicants have to have “fundamental knowledge of Romanian culture and civilization”. The question of how a magistrate, or later a civil servant assimilated to magistrates, can verify it, if the fulfillment of this condition was legitimate concerning those who applied for regaining Romanian citizenship. Following GEO No. 36/2009, this category of applicants is no longer requested to fulfill the condition established by Art. 8(1)(f). Those who ask to be granted Romanian citizenship are requested to be familiar with the Romanian Constitution (Art. 8(1)(g), while this is not requested from those

demanding to regain citizenship. It would have been natural for the fulfillment of this condition to be demanded from the other category as well, taking into account the fact that the Romanian Constitution's provisions are different from those of the states from which these people originate (Republic of Moldova, Ukraine, and etc.). In addition, one can presuppose that a civil servant from the Ministry of Justice and Citizenship Freedoms knows the Romanian Constitution better than notions of Romanian culture and civilization. It is advised to give up the condition of having "fundamental knowledge of Romanian culture and civilization because the system imposed by the previous form of the Citizenship Law would set a useless standard for those regaining citizenship. In this particular case (regaining of citizenship) it could be presumed that persons were familiar with the Romanian culture and civilization just as well as the Romanian citizens were. If a citizen of the Republic of Moldova submits a request on regaining of citizenship, he is called to an interview. At an interview, such a person could tell the Citizenship Commission what he had learned in school, what the message of a large part of the Moldovan media was, the message promoted by many books claiming to be scientific, i.e. that there is a Moldovan cultural and linguistic identity, different from the Romanian one. Obviously, by doing so, the person could not reach the minimum standards for passing the interview, but this fact could not be reproached.

The requests of those who want to regain Romanian citizenship will be submitted to the Romanian embassies and consulates, just like before the changes made to the citizenship Law from 2007 to 2009. GEO No. 87/2007 added a provision, upheld by Law No. 70/2008, according to which "requests will be immediately forwarded to the Citizenship Commission." This provision, kept after the 2009 modification, was a mere rhetorical exercise: as long as the actual meaning of "immediately" is not defined, there is no imposed period of time within which these requests must reach the Citizenship Commission. The situation of the citizenship regaining files, which are now handled at the Romanian diplomatic missions from abroad, is complicated. The missions are confronted with an avalanche of such requests, particularly after Romania joined the European Union, and the problem has not been resolved after the 2007 amendment of the citizenship law. GEO No. 36/2009 established a maximum term for the Citizenship Commission to verify the conditions for granting or regaining citizenship: 5 months from the date of submission. The term was established by a resolution of the president of the Citizenship Commission. Therefore, the fact that a clear term for the Romanian diplomatic missions to forward the requests to the Commission is no longer of any importance, as long as the whole procedure, from the registration of the request to the date of verifying the necessary conditions for granting/regaining citizenship, cannot be longer than 5 months. Nevertheless, GEO No. 36/2009 omitted to state what the consequences of exceeding this period are, so that in practice, the situation in which verifying the conditions may take longer than is mentioned in this version of the citizenship law, is possible.

Conclusions

By GEO No. 87/2007 and Law No. 70/2008, the conditions for regaining Romanian citizenship have been simplified. It was chosen to modify the formal, and not the fundamental conditions on granting/regaining of citizenship. GEO No. 36/2009 simplified both the procedure and the fundamental conditions; nevertheless, it was done only by widening the category of beneficiaries, while the whole judicial philosophy adjacent to the reason of regaining Romanian citizenship has remained unchanged.

In the matter of granting and regaining Romanian citizenship, the Romanian lawmaker should be guided by some clear principles that could be taken into account *de lege ferenda*. The granting of Romanian citizenship to non - EU applicants should be hardened, in the sense of modifying the formal, procedural conditions. Granting Romanian citizenship for this category of people should be decided by Romanian tribunals, without the intervention of the government, according to a model which is increasingly applied in Europe. There is, however a fundamental condition that has become pointless with the Romanian adhesion to the European Union: the current possibility for Romanian citizenship to be granted in more favorable conditions to the people who have invested more than 500.000 Euros in Romania. This preferential regime is no longer justified, at least in the case of citizens of the EU member-states: certain investment facilities (the most important), can only be awarded with the approval of the European Commission.

Moreover, the requirements of granting citizenship should be loosened for the EU Member States citizens, including the periods for which they are requested to reside on Romanian territory. For this category of people, the competence of tribunals should also be instituted.

Regaining citizenship is a distinct issue from granting it and logically, the solutions should differ. Other member states of the European Union are not confronted with such a large amount of requests for regaining citizenship. There have been many moments in history when giving up Romanian citizenship was done without a willful agreement: re-drawing border after World War II, the forced emigration of Jewish communities, Transylvanian Saxons and Suabians, losing citizenship by the anti – communist dissidents who were forced to leave the Romanian territory. As a consequence, this exceptional problem should be solved by derogations from the common law – in this case, the law on awarding of citizenship. Thus, in the matter of regaining citizenship, the current procedure, according to which the competence to adopt a decision belongs to a Commission from the Ministry of Justice and Citizenship Freedoms should be kept with some amendments. A maximum period for the whole procedure for regaining citizenship should be established, not just for two periods of the procedure's development (5 months from the request submission for verifying the conditions and 6 months from verifying the conditions for programming the interview). This interval could be for instance a year from the submission of the request; which means that within the interval, the forwarding of the request from the legation, or consulate – if this method was used, to the Citizenship Commission from the Ministry of Justice and Citizenship Freedoms, programming the

interview, the issuance of the order by the Minister of Justice and Citizenship Freedoms, and taking the oath of allegiance towards Romania.

In the case of those studying in Romania and fulfilling the conditions for regaining citizenship, it is not necessary to modify the citizenship law. However the Minister of Internal Affairs should issue an order that regulates the connection between the Romanian residence visa and the duration of the studies. A student who graduates from faculty – including (and particularly) those faculties that apply the Bologna system – and is accepted to a post – of a university, should automatically have his visa extended for at least one year for a master or doctoral degree. It should be done by simply presenting proof of enrollment to doctoral studies in an accredited university.

By applying GEO No. 36/2009, regaining Romanian citizenship can become more transparent and easier to explain to the ones entitled to it and to the European Institutions monitoring the illegal and legal migration. The *de lege ferenda* proposals presented have the same result. As far as granting Romanian citizenship is concerned, modifying the normative framework is imposed, in the sense of a more clear differentiation between applicants from and from outside the European Community. However, before initiating a new change for the normative framework, the law-maker should answer the fundamental question whether regaining Romanian citizenship by those who lost it for reasons beyond their control and by their descendents should be carried out based on more permissive, more restrictive, or on identical criteria to those applied for the citizens of EU Member States.

References

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RUMUNIJOS PILIETYBĖS ĮGIJIMAS IR ATGAVIMAS ATSIŽVELGIANT Į PASKUTINIUS ĮSTATYMO NR. 21/1991 PAKEITIMUS

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Santrauka. Po smurtingų protestų Moldovos Respublikoje prieš komunistų partiją (ji valdė šalį nuo 2001 m.) paskelbus rinkimų rezultatus 2009 m. balandžio mėn., Rumunijos vyriausybė patvirtino priemonę, palengvinančią esmines ir formalias Rumunijos pilietybės atgavimo sąlygas, priimdama nepaprastąjį Vyriausybės dekretą (NVD) Nr. 36/2009 dėl įstatymo Nr. 21/1991 pakeitimo ir papildymo. Ši priemonė skirta visų pirma Moldovos Respublikos piliečiams, kurie siekia gauti Rumunijos pilietybę. Šiame straipsnyje aptariami pakeitimai, kuriuos nustatė NVD Nr. 36/2009, juos lyginant su kitais įstatymo Nr. 21/1991 pakeitimais, padarytais 2007 m. ir 2008 m. Siekiama atsakyti į klausimą, kaip turėtų būti reguliuojama Rumunijos pilietybės suteikimo ir atgavimo sistema, atsižvelgiant į tai, kad Rumunija įstojo į Europos Sąjungą, ir į tai, kad būtina atmesti Ribentropo-Molotovo pakta, kuri 2001 m. oficialiai pasmerkė Rumunijos Parlamentas. Šiame straipsnyje pateiktais de lege ferenda pasiūlymais siekiama padaryti Rumunijos pilietybės suteikimo sistemą skaidresnę ir paprastesnę jos siekiantiems asmenims ir Europos Sąjungos institucijoms, prižiūrinčioms teisėtą ir neteisėtą migraciją.

Straipsnyje nurodoma, kad NVD Nr. 87/2007 ir įstatymu Nr. 70/2008 buvo supaprastintos Rumunijos pilietybės gavimo sąlygos; buvo pasirinkta keisti formalias, o ne esmines pilietybės suteikimo/atgavimo sąlygas. NVD Nr. 36/2009 supaprastino tiek procedūrą, tiek esmines sąlygas, tačiau tikrai praplečiant naudos gavėjų kategoriją, o visa teisės filosofija, susijusi su Rumunijos pilietybės atgavimo priežastimis, liko nepakitusi.

Priimdamas teisės nuostatas dėl Rumunijos pilietybės suteikimo ir grąžinimo, Rumunijos įstatymų leidėjas turėtų vadovautis aiškiais principais, priimtais atsižvelgiant į de lege ferenda. Rumunijos pilietybės suteikimas pareiškėjams iš valstybių, kurios nėra ES narės, turėtų būti sudėtingesnis, t. y. reikėtų pakeisti formalias, procedūrinės sąlygas. Rumunijos pilietybės suteikimo klausimą šiuo atveju turėtų spręsti Rumunijos teismai, nesikišant vyriausybei, pagal vis dažniau Europoje taikomą modelį. Tačiau yra viena esminė sąlyga, kuri tapo beprasmė, kai Rumunija tapo ES nare: Rumunijos pilietybę lengviau gauti asmenims, kurie valstybėje investavo daugiau nei 500 000 eurų. Šis preferencinis režimas nebeturi pagrindo, bent jau tiek, kiek jis taikomas valstybių narių piliečiams: tam tikros investavimo priemonės (pačios pagrindinės) gali būti taikomos tik jas patvirtinus Europos Komisijai. Taigi, teisės aktai dėl Rumunijos pilietybės suteikimo turėtų būti pakeisti, aiškiau išskiriant atvejus, kai pareiškėjai yra iš Europos Bendrijos ir valstybių, kurios nėra ES valstybės narės.

Reikšminiai žodžiai: Rumunijos pilietybė, pilietybės suteikimas, pilietybės atgavimas, Nepaprastasis Vyriausybės dekretas, Moldovos Respublika, Rumunijos konstitucija.

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