

Statehood and Citizenship in the Czech Republic

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Abstract

The issue of citizenship is always discussed when statehood is undergoing a transformation. In the Czech Republic, the existing legal framework as regards both procedures and legislation is undoubtedly the result of a statehood concept that dates back more than 15 years and is undeniably out-of-date, considering the historical context. Today, there are new standards of international law, new customs and new global trends in understanding citizenship. In the context of Czech law, we must consider whether there is any real foundation and need for the existing, purely formal concept of naturalization and whether the concept of exclusive citizenship, the requirement to renounce citizenship and the loss of citizenship following naturalization can hold up in light of new trends. From the procedural point of view, citizenship is still a marginal topic for law experts. Therefore, a more intensive expert discussion in the media can help do away with certain deficiencies as regards requirements ensuing from the rule of law.

When considering the legal framework of citizenship, it is also necessary to take into account legislation covering foreigners and asylum issues as it implies important preconditions for the functioning of the law on citizenship itself. In this respect, we must also reflect on the inherent logic of foreigners' law as an integration system of standards.

Citizenship and what it tells us

Regardless of the target reader group, nearly all papers on citizenship sooner or later delve into the recurring and ubiquitous issue of how to define citizenship. This paper is no exception and we must therefore repeat that citizenship is a legal relation of a permanent nature between an individual and a state that is to a certain degree specific, difficult to be compared with other legal relations, usually not based on mutual voluntariness and changes to it are subject to a certain degree of conservatism. To illustrate the above and move beyond theoretical postulates, we would like to add that citizenship is a status that is very much subject to theoretical deliberations yet implies sociological and practical dimensions as well. As regards the practical level, citizenship of the country in which an individual resides guarantees a much better position than any other residency status. Although formally speaking, many residency regimes guarantee many rights on an identical level, the resulting legal and actual position is never equivalent. Citizenship ensures an irrevocable right to remain in the given country, while all other residency statuses depend on permission which may be revoked in the future. We must note in this respect that the possibility to remain as the ultimate aspect of freedom of choice cannot be perceived only in the context of a country respecting the rule of law. With respect to historical experience with changes occurring over time, we must perceive it in the context of all political or legal regimes. Citizenship is therefore the highlight of an individual's legal existence; the absence or existence of which has a

major impact on the citizen's self-reflection within the society, his or her identification with the society, definition of his or her relationship with the society, etc. We must also note that an exclusion from a territorial community, regardless of the legal form of such exclusion, is historically speaking one of the harshest penalties available.

It is clear from the above that citizenship is an important legal attribute, but also that in a dynamically changing society, it is necessary to pay attention to the legally defined procedure which changes the attributes of citizenship with respect to every individual as well as to the sociological impact on affected individuals. The same is true for the impact on society as a whole or its parts. Classic jurisprudence theories define population as one of the main attributes of a state. Although it would be a simplification in light of these theories to equate the population with the citizenry, we cannot ignore the fact that the legal framework of citizenship is one of the aspects that may be measured when assessing the relationship between the state's power and the definition of citizenry. Statehood itself is a complex phenomenon that is difficult to describe in detail. However, the legal framework of citizenship is one of the manifestations of statehood that is easy to measure and at the same time provides a fairly clear idea about the nature of statehood. To put it simply, citizenship law is one of the measurable aspects of the nature of a state with its information value being rather high.

Different approaches in different countries

The above is true from both a historical and geographical perspective. The legal frameworks of citizenship in individual countries provide fairly precise information about the way the given country views identity related to citizenship, the country's position as regards migration, the importance given to facticity of social relations in the context of administration, the emphasis on ethnicity, etc. As regards the historical perspective, much about the situation in the given state at a certain period of time can be deduced from the then-valid legal framework covering citizenship or the legislation covering residency statuses as well as from specific policies. To demonstrate the validity of the preceding statement, a small number of examples will be more useful than elaborate research. In neighboring Germany, which has historically tended towards the concept of nation as a community of blood, naturalization is a quite complicated procedure linked to integration into the society based on requirements stemming from middle-class ethics (financial self-sufficiency, moral standing, acceptance of majority attitudes) and by far exceeding the average standard of the majority, let alone its legal minimum. On the other hand, persons of German descent can be naturalized in a much simpler procedure. In France, which emphasizes the principle of civic society negating the importance of ethnicity, many of its aspects can be ethnically ascribed (language, lawful social norms, etc.). The naturalization procedure corresponds to the procedure of a person 'officially becoming French'. In the United Kingdom - which in dealing with issues related to status operates with two different concepts (citizenship and subjection to the queen) - the relevant legal framework reflects the country's membership in the

Commonwealth. The current regime of naturalization reflects changes in the government's policy which, under the label of multiculturalism, strives at defining British statehood so that it is not tied solely to English tradition. In the United States, a country that erects strong barriers to prevent migration flows into the country, foreigners' law coupled with the law on citizenship function as a corrective mechanism regulating the integration of past migrants. For the most part, naturalization reflects the actual status of integration of immigrants in the context of the country's immigrant traditions. Another telling example is the legal framework of citizenship in post-Soviet republics which use it to articulate value judgments about the past or about the social reality of the present. For example, the Baltic countries have rather strict naturalization laws, while the Russian Federation prior to 2000 made it possible for all former Soviet citizens to acquire citizenship in a very simple procedure.

Developments related to citizenship in the Czech Republic

To illustrate the historical context, we offer the development of the citizenship law on the territory of today's Czech Republic including the entities that controlled it during WWII. The Austro-Hungarian citizenship law basically stipulated a legally adjusted position of the emperor's subjects. While the citizenship law of Czechoslovakia between the wars was a shift towards the civic concept, dual citizenship was still prohibited and naturalization was purely a police-administrative matter. From today's point of view, the legislative effort aimed at regulating the unity of citizenship of married couples seems peculiar. During the German occupation, one can hardly speak of a citizenship regime. Rather, we may assess the status policy of the Third Reich which implemented a very diverse system of primary statuses to reflect its doctrine of inequality based on ethnic and racial origin. After WWII, Czechoslovakian laws dealt with the German and Hungarian minorities by legally depriving them of citizenship. The later displacement of these minorities was a fact, not a legally regulated act. After the 1948 coup d'état, the possibility was introduced to take away citizenship from persons residing outside of the country's territory. Paradoxically, the law no longer prohibited dual citizenship, but this was mainly due to the fact that emigrants were stripped of citizenship right away and appropriate international agreements were signed with 'friendly' nations. After 1989, the government granted citizenship to all those who had lost it after 1948 and annulled the option of taking away citizenship.

Of course, there are exceptions to the above principles including the Slovak law on citizenship in force after 1992, which was very liberal although the country was not in many other aspects. What can be said when assessing legal framework of citizenship in a specific time and place can be also said about changes to such framework. Germany, which during the last decade underwent a change of the citizenship concept reflecting the changes in its society as a whole, is a perfect example of this phenomenon.

Brief assessment of the situation in the Czech Republic

In the light of the above, we may proceed to evaluate the Czech law on citizenship or Czech statehood as a whole based on the amendments passed between 1993 and the present and argue against the current legal framework or consider other possible amendments to it. With its birth in 1993, the Czech Republic passed a new law to regulate the more or less complex issue of citizenship. The new law set a starting point by defining citizens of the new country as persons who had been citizens of the federal entity known as the Czechoslovak Socialist Republic. In practice, status was determined based on place of birth prior to 1953 and based on the status of parents for those born later. However, this initial status did not correspond to the actual makeup of the population and was augmented by a corrective mechanism enabling one to opt for the citizenship of the new country. However, the optional regime would be hardly fitting in light of today's recognized criteria ensuing from the rule of law: it introduced retroactive conditions and its actual impact was discriminatory. Furthermore, it excluded some eligible persons settled in the territory. The legislation's impact on the Roma population of the Czech Republic was one of the factors facilitating the arrival of social exclusion which the society as a whole is now forced to deal with. Compared to the previous legislation, the standard citizenship regime introduced the exclusive citizenship principle, with the new acquisition regime being much stricter. As regards the application of the new legislation, it has become customary not to provide reasons for refusal to grant citizenship or to merely state that the applicant is not legally entitled to be granted citizenship. This, coupled with the non-existence of an administrative judiciary, gave rise to clerical tyranny targeting especially those applicants who were not able to take defensive measures (e.g. letters to the media) due to their social standing, after legal instruments proved to be futile. The conditions of naturalization have been formulated in a formal manner without reflecting facticity. For example, an individual with a long-term residency permit residing in the Czech Republic could (and still can) apply for citizenship, while an individual with a different residency status residing in the country for a longer period of time could not apply (and still cannot apply in spite of being eligible to do so under international law). Overall, the citizenship regime was a manifestation of an immature, highly formalistic state with many xenophobic traits. Application of the regime was a manifestation of an inferior legal culture at all levels including the central government. A characteristic feature of the regime is the mandatory fluency in the Czech language which is in contradiction with the civic and non-ethnic concept of the Czech state. This only further illustrates the fact that the Czech Republic - in spite of being defined as a state of citizenry (including in the constitution) - is very far from being such a state and comes much closer to being an ethnically defined state, which demographically speaking it undoubtedly is. Ascribing ethnic features to a civic society is merely an elegant way of circumventing the contradiction between ethnic facticity and civic normativeness at the expense of the original meaning of the rules establishing such normativeness. On a number of

occasions, the act on citizenship has been scrutinized by the Constitutional Court, which rejected all pleas for this section of the act to be repealed. This means nothing less than the Constitutional Court as a body of the state failed to cross the boundaries defined by the times and society.

Future development

The Czech Republic of today is somewhat more developed, and the same is true for its citizenship law and practice. Legislation has changed, remedying the most striking inadequacies, and practice has also improved, with some administrative decisions now containing signs of logical reasoning. In fact, the situation has progressed so far that the Ministry of Interior, the body responsible for citizenship issues, agreed to take part in a debate about reviewing the current legislation pertaining to citizenship and produced an analysis of the relevant citizenship legislation. It was around that time that a judge of the Supreme Court, together with a colleague, published an article in the second issue of the magazine *Právnik* (“Lawyer”) in which they attempted to summarize legal arguments supporting the notion that granting of citizenship is not exclusively in the hands of public servants and that based on legitimate expectations and under certain circumstances, the legal position of applicants comes close to having the *right* to be granted citizenship. In other words, if an application is rejected, reasons must be given other than there is no legal right or entitlement to citizenship. Furthermore, such reasons must be legally as well as factually credible. We may see the article as an indication provided by the highest judicial institution as to how it generally perceives a legal issue – this is of course acceptable not only with respect to the predictability of judicial proceedings. Providing the grounds for refusal is important not only for those implementing legal standards, but also for other state bodies and above all the Ministry of Interior. It is clear from the above that certain experts feel the need for open discussion which, however, should be felt even more strongly by the Ministry of Interior. What we have in mind here is the publishing of the analysis and a detailed public debate about it prior to producing the final draft to be presented to the government.

Although the above-mentioned analysis signals a positive change in some respects, it is still seriously hampered by the failure to understand the purpose of citizenship legislation. One positive development is certainly the gradual departure from the concept of exclusive citizenship. This concept, previously justified on the grounds of practical considerations (which were never documented), is in fact increasingly proving to be discriminatory with respect to the acquisition of citizenship because granting citizenship is linked to very different legal regimes, most of which cannot be controlled, reviewed and often even ascertained. As regards loss of citizenship, application of the single citizenship principle has led only to discrepancy between administrative records and reality.

The analysis is wrong in adhering to a number of existing legislative principles or pushing for their augmentation. First, it is necessary to refuse the condition of permanent residency for submitting a relevant application for citizenship. Permanent residency is the result of a state-granted permission and its provision is usually not based on integration or other legally recognizable reasons for granting citizenship. Another mistake of the analysis is the foreseen extension of the required length of permanent residency from five to seven years for citizens of non-EU member states. The only logical and justifiable solution would be to grant citizenship not based on permanent residency but rather based on actual regular residency which is either not illegal or the illegality of which cannot be fairly attributed to the applicant (e.g. children). The existing as well as the expected future situation is also in contradiction with international obligations of the Czech Republic because the European Convention on Nationality stipulates that a due application for citizenship may be submitted by all persons regularly living in the given country for over ten years, although the unofficial Czech translation tries to suggest otherwise. Practically speaking, we cannot ignore demographic and political implications because the growing number of people who are not full-fledged members of society eligible to take part in public affairs and enjoy relevant guarantees equals a threat to the stability of the state and democracy.

Yet another mistake would be to shift the criteria for acquiring citizenship towards economic self-sufficiency, absence of public funding needs and even stricter assessment of compliance with prescribed legal standards that provide for the unhindered execution of public administration as foreseen in the cited document. The relevant legal and other norms that are to become the referential framework for considering applications have nothing in common with the moral qualities or integration potential of anyone, unlike the Civic Code and the Criminal Code. In this sense, we are witnessing a dangerous substitution of moral qualities and utility for the society for conformity and discipline. Although conformity and discipline may seem highly praiseworthy to a public servant who feels the need for a clearly identifiable sign to serve as the basis for making a decision, their significance as regards integration policies is rather limited. Should citizenship and foreigner laws put emphasis on such values, integration policies would in the end create conditions for immigration and integration of average persons with little imagination and little added value for society. Furthermore, the requirement of economic self-sufficiency and absence of public funding needs borders on being unconstitutional as the principle of solidarity is constitutionally recognized and its application to a person under generally recognized norms cannot be viewed as detrimental to such person, even if it would be for the purpose of one department of law. Such an approach is an attack on human dignity because it produces a legally justified stigma based on poverty. When discussing these arguments, we must also note that such a requirement would strengthen the impermeability of the poverty line as the absence of citizenship may be one of its causes. As a result, the application of such a requirement would be wrong for purely pragmatic reasons.

Citizenship policies also leave a lot to be desired as regards security. While the current legislation is not perfect, the key problem lies in its application for it is in conflict with the law. The law provides for assessing an application for citizenship with respect to threats to the country's security. This assessment, however, is either not implemented at all or implemented outside of law. The Ministry of Interior's decisions to reject applications for citizenship do not contain the reasoning of the institution leading to refusal in spite of the fact that the law states that only confidential information is to be excluded from files. However, considering the principles of administrative proceedings, it is not possible to apply the principle of confidentiality to reasons for a decision. The government should consider whether a reason should be used and coherently described in the decision or not described and used at all. Security criteria may not be applied without providing due reasons because a decision based on these criteria cannot be reviewed. Also, the jurisprudence of the Constitutional Court so far should be taken into account as similar decisions have been made in criminal proceedings. The security assessment of an application must also change toward a more comprehensive assessment of the given case as a whole in the light of potential security risks, as is customary in the area of security policy. We must note in this respect that in many cases, a frustrated applicant may be the gravest of security risks when he acts under the impression that his application was refused for some mysterious or low reasons. If such thinking spreads across immigrant groups, a policy like this would have a major impact on the loyalty of entire communities and on their attitude towards the Czech Republic. For security and other reasons, it is therefore necessary to formulate citizenship policy in the most transparent manner possible in order for results to correspond to legitimate expectations. If this is not the case, the Czech Republic may expect the appearance of significant groups of disloyal persons representing a major security risk without there being a real reason to hold it against them from a human point of view. Disloyal communities of residents in any country represent one of the biggest global security risks. Policies related to citizenship and foreigners are a factor which has determined and shaped loyalty or disloyalty from the very beginning. In the future, security considerations are consequently likely to be a reason for granting rather than refusing citizenship.

In view of the criticism presented above, it seems appropriate to cite a positive example of how citizenship policy should look. Citizenship policy should be closely interconnected with foreigner or immigration policies and the respective decision-making processes should better reflect reality and pay less attention to the right number of official certificates and deadlines. The strongest obstacle to immigration must be built at the very beginning of the integration process around the possibility to relocate to the country using qualification criteria. In the process of integration, the state should base its actions on the actual situation at hand. The pinnacle of legal integration, i.e. acquisition of citizenship, must be based on actual residency in the country as the fundamental prerequisite. The law should specify significant reasons for rejecting an application with their nature actually being significant – they must not be clerical banalities. The Czech Republic is a sovereign state that can afford ignoring the fact that

an applicant has a different citizenship and refrain from founding its decisions on procedures taking place in a different country. I would like to conclude by saying that regardless of the final nature of the legal framework and policies related to citizenship, they will be very telling with respect to the nature of the Czech state and society.

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