
Tamás Korhecz

On dual citizenship

Abstract

The constitutional expert from the region of Voivodina claims that the present Hungarian citizenship regulations openly discriminate against Hungarians living in regions outside the Hungarian borders. While expatriates who left the territory of present day Hungary can easily regain their citizenship (that they had given up by their own accord), the Hungarians living in the regions of historical Hungary and who are also ex-Hungarian citizens, need to undergo lengthy procedures of residence and repatriation, even though they have never renounced their Hungarian citizenship.

Citizenship is a special legal institution existing between the state and the inhabitants living in its territory; it contains mutual rights and obligations i.e. it is a complex legal relationship. Usually it exists on the principle of *ius soli* i.e. obtained by birth or *ius sanguinis* i.e. by the citizenship of the parents, but frequently it can also be acquired by nationalization following emigration or immigration.

Citizenship is a relatively novel legal institution closely related to the formation of modern bourgeois democratic states. The liberal democratic bourgeois model of state based on the sovereignty of the people was the achievement of the French Revolution and the formation of the USA. The new state-model practically ousted or basically changed the till then prevailing absolute monarchy as the form of government during the course of the 19th c. Citizenship is an important element of this form of government as this is what expresses the equality of the inhabitants and their belonging together to a political community (a political nation); on the basis of the sovereignty of the people the community is not the subject of the state but the sole source of the power of the state. The nation state is the defining form of the liberal bourgeois state, its essence being that the state can be equalled with the nation (Hungary with

the Hungarians, Romania with the Romanians, etc.). The modern nations are almost without exception based on ethnic groups and their common characteristics, e.g. mother tongue, religion, historic traditions, common provenance, etc. This concept of nation state results in the dichotomy that citizenship frequently means not only the relationship between state and its permanent inhabitants but also is a legal relationship between ethnic and culturally based groups as part of the nation and the state too. In multi-ethnic states in the triangle set up of state - ethnically based nation - citizenship there appear several problems that prove to be difficult to solve. The problems of the three cornered pattern will rise when there is a populous minority living in a nation state, i.e. there are citizens whose language, culture, traditions, identity differs from those of the state-forming majority nation. Such situations are the rule in the East Central European region with the result that the state and nation based on the ethnic nation regularly become the hotbed of national exclusion, oppression and conflicts.

Dual citizenship and the Hungarian nation-policy, autonomy

The question of dual citizenship has been an unavoidable topic in the life of Hungarian communities living outside the Hungarian borders, i.e. the political demand towards the Hungarian Parliament for a legislation that would render possible for citizens of Hungarian nationality living in foreign countries to obtain Hungarian citizenship under more favourable conditions. The decade long dispute was heated by dogmas and exaggerations and avoided several important questions raised by an expectable mass application for dual citizenship. Those advocating dual citizenship hope for a quick solution of the problems of Hungarians living in minority, the reuniting of the nation, while those in opposition scare with a possible collapse of the Hungarian economy followed by the eventual settling over of the new citizens. There was a referendum on the question on the 5th of December, 2004 that failed due to the lack of interest of the voters. The motivation behind this “nay” was a wish that “they should stay put” rather than the differences between national policies.

The purpose of the present paper is not to provide any answers to any of the questions or dilemmas raised by dual citizenship it only tries to point out ideas, arguments and counterarguments that have not been raised during the sentimental, superficial and boundless political debates going on for years on end.

When it is considered to establish the legal foundation of the granting of citizenship based on ethnical belonging to the nation for Hungarians in the hundreds of thousands or even millions, the following arguments are mentioned: we belong to the Hungarian nation; we are Hungarians therefore it is natural for Hungary, the state of the Hungarians to accept us as its citizens; the Trianon treaty cut off 1/3 of the Hungarians with the 2/3 of the territory, thus those living outside of the borders of Hungary became the citizens of other states without asking for it, without leaving their birthplace; it is the patriotic duty of Hungary to show solidarity by granting citizenship, expressing care for the separated members of the nation; there is the example of Croatia, Spain, Germany, Romania, etc. with legislation that allows the nationalisation of 'fellow nationals'. Apart from patriotic feeling it is undeniable that the Paris treaty had cut off areas with Hungarian majority that was their birthplace for over thousand years under the pretext of national self-determination, in reality the design was only to punish the losers and satisfy the appetite of the 'hungry' small new countries. After ninety years and another World War, after several unsuccessful attempts at revision, and past Communism, the region now is part of the European Union. After ninety years there are still two million Hungarians living outside the borders of Hungary in neighbouring countries and still it cannot be declared that their situation has been satisfactorily settled for the long term, e.g. those living in the region south of the Hungarian border. At the beginning of the 21st c the question is what remedy do we want to find for the legal situation of millions of Hungarians living outside of Hungary, what help could be offered by granting them Hungarian citizenship?

In the last twenty years the basic principle of the Hungarian national policy of those outside Hungary was to be successful at their birthplace. To create the conditions where Hungarians could be equals and could stay as Hungarians in their ancient country without the necessity to leave. To fulfil an aim is practically impos-

sible without minority rights inclusive of various forms of national autonomy, without the possibility of allowing Hungarians to become co-nation in their “new” country. Wherever in Europe the conflicts have been satisfactorily solved it was through co-nation status and various forms of autonomy. It is no wonder that larger Hungarian communities outside the border declared autonomy to the target of their political aim. However, the striving for autonomy and collective rights are alien to the nation concept adopted by Romania, Slovakia, Ukraine, Croatia and partially Serbia too. The ethnically formed nation and nation-state finds even the existence of other ethnic elements an obstacle that has to be done away with during the process of nation-building, i.e. the confirmation of such ‘obstacles’ by the institution of autonomy, the establishing of the co-nation status, a multi-ethnic state is considered totally unacceptable. It means that to make Hungarian collective rights and Hungarian autonomy become possible, these countries should abandon or considerably modify their prevalent model of nation-state. And thus the essence of the problem has been revealed: there is an irreconcilable opposition between the fact that the Hungarians outside the border require autonomy that preconditions the modification of the model of the nation-state to become co-nation and at the same time want Hungarian citizenship on the basis of ethnically belonging to the Hungarian nation-state. It is not only an inconsistency of theory and practice but the fact is that in concept an ethnically based nation-state is irreconcilable with minority rights and autonomy; thus the institution of dual citizenship on ethnic, cultural basis and autonomy for the birth country cannot form part of the same national policy. If we preserve the idea of the nation state in the area of East Central Europe the present multi-ethnic, multi-national set up is unacceptable and should be discontinued. Such a discontinuation has various rough or more refined ways with rich traditions used in the last ninety years: hastening assimilation by the state; artificial re-drawing of the ethnic map of regions with minority inhabitants; changing ethnic maps by state assisted migration; by ethnic-based land distribution; genocide, population exchange; re-drawing of state borders, etc. Another way is when nation states facilitate e.g. Hungarians to unite with their ethnic-cultural nation through citizenship and/or settle down in their “own” nation-state and leave their birth country. The alternative

would be to abandon the nation-state model and change over from states harbouring nationalities to multi-ethnic states and provide the populous national communities with strong national identity - in our case Hungarians – with internal self-determination in their territory. In the first place EU should be the framework to take advantage the freedom of mobility of persons and goods, the possibilities due to wide regional cooperation reaching across state boundaries that could help to create such maintainable and working state systems and policies where both the majority and the minority could feel at home for the long term. In this process Hungary would have an important role as patron for the Hungarians outside its borders. Present day Hungary and its inhabitants and the Hungarians living in neighbouring states are strongly connected to each other, thus it is Hungary's historical responsibility to achieve that the Hungarians could be equals as Hungarians in their ancient birth place and would not happen by legally binding the to the Hungarian state – facilitating or urging them to resettle – but by helping the states of the region to abandon the nation-state concept impending Hungarians in their existence. This could only be successful and convincing if Hungary itself would reconsider its own prevailing ethnically based nation-state model.

One person, two states – on practical difficulties and problems to be solved

Apart from the above-mentioned arguments let us examine the practical legal questions that could crop up if the Hungarian legislation would allow a more favourable process for Hungarians living outside the borders of Hungary, that they could receive Hungarian citizenship without the requirement of settling down in Hungary, with secure livelihood, restrictions of age, schooling and with a clean record. It is difficult to estimate the exact number of persons to be nationalized but it might be hundreds of thousands probably about the number of Hungarian cardholders.

According to the basic rule citizenship is a legal situation between a person and a state with mutual rights and obligations. The legislation and administration of a state is based on this rule, i.e. it defines the persons coming under its legislation either as its own citizens or

as foreigners. Though the introducing of EU citizenship has somewhat modified the traditional two-way approach, the basic rule has remained unchanged. It is this basic rule, the basis of legislation would be modified, or would get into difficulties as it were, by the institution of dual citizenship; such persons would enter the countries' legislation who are citizens and foreigners at the same time. The dual citizenship could threaten law and order that is based on the idea that one person has one citizenship and one domicile; it could be changed but not without considerable confusion. It is not a novelty that persons could have more than one citizenship and is not a rarity either; it is the result of personal mobility and the difference in the law by which persons can obtain their citizenship. Till it remains the exception it would not disturb the efficient working of the state, only would cause incidental disturbances. The question is how would the states be able to manage the situation when the inhabitants of a region, or that of a city would want to lead their life in two states, when the exception would become large scale.

An analysis of the practice of present dual citizens might explain what kind of life situations would be created if hundreds of thousands of Hungarians would apply for it.

There are several tens of thousands of Hungarian – Serbian, Hungarian – Romanian, Hungarian – Slovakian dual citizens and their majority lead a dual life. The relevant data would indicate that only the minority of them have an active and a passive citizenship. There are only few such dual citizens who legally emigrated from Romania, Serbia or Transcarpathia and gave up their residence there, have renounced their right of vote or approached the foreign representation of their birth country as an emigrant living permanently in their new country (in our case in Hungary). Just as those who immigrated to Hungary and later returned to their birthplace did not report to the Hungarian state that they would (again) permanently live in their birthplace. Usually most of the dual citizens have residence in both countries with passports, identity cards, tax numbers, their right to vote, i.e. these persons are doubly registered. The situation has mostly practical advantages for them: they can vote in two countries, get employment without limitation, have health care, various social and family support, can take out credit, etc. The states rarely have the appropriate mechanisms to prevent the enjoyment of the advan-

tages provided by dual citizenship, as the state works by the principle that a person has only one citizenship; even if dual citizenship is legally regulated the chief rule is that the state considers the dual citizen its own subject and thus cannot prevent them from finding a domicile, apply for social and family assistance even as a civic right. Here are two examples to show how unprepared the states are in solving the problems caused by dual citizenship and two domiciles. In the summer of 2009 the problem occurred whether the new customs and traffic regulations in Serbia would allow a Serbian – Hungarian citizen to use a car in Serbia since it had been registered in Hungary. The traffic administration had difficulties in interpreting the regulation: it was verified that the person had his residence in Serbia, where the law does not allow Serbian citizens the use of a foreign registered car, the person also had proof of a domicile in Hungary and that gave him the right to use a Hungarian car. In everyday life the latter interpretation seems to gain ground but what would happen if tens of thousands of Serbian dual citizens would use Hungarian cars in Serbia because the price and costs of cars are lower there. The other example is connected to the successor states of the former Yugoslavia. It is known that Croatia granted hundreds of thousands of Croatian nationals the Croatian citizenship without requiring them to leave their original domicile in Bosnia-Herzegovina. As a result there are hundreds of cases appearing before the jurisdiction of both countries when criminals with dual citizenship committed crime in one country and escaped into the other abusing the article of the constitution that mutually prohibits extradition. The best-known example was that of Branimir Glavaš sentenced for war crimes. Besides the above examples there are other problems too, e.g. how can a person of dual citizenship enter his country with a foreign passport or could a Serbian – Hungarian citizen claim the back payment of Hungarian VAT when he submits his claim using his Serbian passport at the border station.

In addition there are the legal restrictions that can discriminate dual citizens in certain life circumstances. It is not widely known that in Serbia dual citizens cannot be members of security services; thus in case of mass application for dual citizenship Hungarian nationals would automatically be excluded from such professions and that would hinder the realisation of equality at the birth country.

Certainly the existing problems can legally and administratively be surmounted and regulated to satisfaction, judging by the example of the Hungarian – Serbian contract about the avoidance of dual taxation that contains detailed tax regulation concerning dual citizens with dual residence.

However, to escape serious disturbance in the operation of the countries in question might be that caused by the eventual masses of dual citizens, certain regulations should be amended, various international contracts to be created, and it also would be necessary to create such a close cooperation and data exchange between the countries that could minimize the eventual harm caused by dual citizenship with double domicile.

So many questions, suggestions, dilemmas not treated yet, let alone solved.

Epilogue

The above suggestions that need thorough analysis and consideration do not mean that the present regulation of Hungarian citizenship, the naturalization of Hungarians living outside the borders of Hungary were satisfactory or even acceptable. The Hungarians can acquire their Hungarian citizenship only through lengthy legal processes that are necessarily preceded by obtaining a job, a residence and permanent settlement in Hungary. There are very strict and sometimes contradictory requirements and they do not correspond to the policy of responsibility taking and the claims of the unity of the Hungarian cultural nation as declared in the constitution, since there are countries where legislation allows a quick naturalization of persons who are culturally, linguistically, historically connected to the majority population of the country. The present Hungarian citizenship regulations openly discriminate against Hungarians living in regions outside the Hungarian borders. While expatriates who left the territory of present day Hungary can easily regain their citizenship (that they had given up by their own accord), the Hungarians living in the regions of historical Hungary and who are also ex-Hungarian citizens, need to undergo lengthy procedures of residence and repa-

triation, even though they have never renounced their Hungarian citizenship.

It is no question that the legislation about Hungarian citizenship needs to be revised but there is still the fear that everyday political and party-political interests and considerations would hinder acumen and the forming of valid questions in the future too.

Minorities history

THE NINETY YEARS OF THE TRIANON PEACE TREATY

