

ADEPT

LEGAL COMMENTARIES

DUAL CITIZENSHIP RESTRICTIONS: CONCERN WITH PUBLIC INTERESTS OR FEAR OVER OWN CITIZENS

Sergiu Grosu, October 15, 2007

After long and contradictory debates, the parliamentary majority passed on October 4, 2007 in the first reading the draft law on modification and completion of some legislative acts, which aims to "restrict Moldovan citizens from holding the citizenships of other states when they run public posts." The draft law envisages more than 20 organic laws, covering in fact all public offices in the Republic of Moldova. The Government, as developer of this initiative, acknowledges that the withdrawal of the interdiction on holding of a foreign citizenship from Constitution and further from the law on citizenship was an essential step to "democratise the citizenship institution and an important step to respect the human rights and fundamental freedoms." At the same time, initiators consider that "the trend of Moldovan citizens to obtain the citizenship of other states is linked to their desire to enjoy some travel facilities in the European area, social insurance indemnities, family integration, unconditional employment, education," etc., and this situation "produces some political-legal obligations toward these states, an issue capable to challenge a conflict of interests in case of commitments toward both states."

Parliamentary and extra-parliamentary opposition representatives, political and legal experts criticise this initiative, describing it as capable to fuel the social splitting, to encourage staff sorting on political, social and even national criteria^[1].

I. Genesis of the initiative

The draft was worked out and registered as a legislative initiative in early 2007, shortly after Romania's accession to the European Union, and many experts fear that the agitation produced by this event after Romanian authorities had received more than 800,000 citizenship applications of Moldovan citizens^[2] produced the "normative reaction" of the Chisinau authorities. The Government had had an inadequate reaction at the beginning, trying awkwardly to obstruct the applications and launching later incomprehensible statements regarding travel possibilities in the EU area^[3], but this struggling produced reverse reactions of the population. Although the communication to the draft law does not directly envisage the Moldovan-Romanian relations, the context and the wordings "*the*

trend of Moldovan citizens to obtain the citizenship of other states is linked to their desire to enjoy some travel facilities in the European area, social insurance indemnities, family integration, unconditional employment, education..., "in order to settle the situation in the country" indicate for sure the state envisaged by these interdictions.

The fact that Article II of the Law # 232/05.06.2003 concerning modification and completion of the law on Moldovan citizenship (adopted with the purpose to ensure the conformity with constitutional norms modified under the Law # 1469/2002) obliged the Government to adjust its normative acts and raise proposals on adjustment of legislation to this law to the Parliament within 3 months is a decisive argument that the legislative initiative is spontaneous. Meanwhile, the law on citizenship was modified and completed four times and the Government supported by the same parliamentary majority was not changed. Therefore, if a consistent policy of principle, a true care for public interests existed, the change would have been made long ago and it would have been appreciated adequately, because the situations and legal regulations would have developed concomitantly. If the Government considered at that stage that it was unnecessary to introduce the restrictions, it means that it accepted the situation and allowed anybody to hold a plurality of citizens, and it had no plans to introduce any bans in general.

II. Composition and substantiation of the draft

The proposed amendments and completions aim to oblige the candidate to a public post or a public functionary to hold "the Moldovan citizenship only." The "*domicile inside of the country*" completes this requirement sometimes^[4].

According to lawyers, the draft formally unfits the legislative technique requirements^[5], in particular:

- It does not signal the existing faults and the insufficiency of present regulations in the area; it lacks a scientific-practical argumentation;
- It does not estimate the number of persons who possibly will face a conflicting situation;
- It does not provide serious analyses of the impact.

The restrictions have not been introduced when the plurality of citizenships was allowed, so that the further implementation of the restrictive norms could affect important legal principles: the consecutiveness, the stability and the predictability.

The conflicts of interests presumed by developers of this draft are not clearly estimated or stressed, so that it is impossible to establish if these are: the compulsory military service or the Homeland defence service; the obligation to pay taxes and fees; the possibilities of attending massive manifestations; the interdictions to be a member of a foreign party, etc. The absence of regulations

to settle these conflicts of interests among public functionaries before enforcement of this law is another proof that the reason is subjective.

Although ensuring the compatibility with the community legislation is a mandatory condition for drafting legislative acts, the draft and the communication do not contain references to the necessary regulations of the community legislation and the compatibility of the draft law with the community regulations is not estimated. The Government cites provisions of the November 6, 1997 European Convention on Citizenship, assuring that the national legal framework respects them. However, a deeper analysis reveals that the interdiction on public functionaries to hold multiple citizenships violates the Article 17 of the Convention (rights and obligations resulting from the dual citizenship), which says that: "*1) Citizens of the Party State who hold a foreign citizenship have the same rights and obligations in the Party State which they reside as the citizens of this state do.*" Article 17 (2) of the Convention does not justify the interdictions stipulated by this draft law and limiting the access to a public office is unjustified as well.

The fact that the Government did not ask a preliminary expertise of the Council of Europe on this draft and the parliamentary majority turned down a proposal seeking the expertise fuels certain suspicions and reveals fears of authorities that European forums would not support or would even criticise their intentions.

III. Legal, political and moral aspects of the modifications

1. The draft does not correspond to all regulations of the national legislation^[6]:

- a. Conditioning the access to public posts with exclusiveness of the Moldovan citizenship could be interpreted as a breach of the Constitution, as Articles 16 and 19 of the Supreme Law stipulate that all Moldovan citizens are equal in front of the law and public authorities, while foreigners and stateless people have the same rights and obligations as Moldovan citizens do, with some exceptions stipulated by law. The Constitution makes a difference between *foreign* citizens and *stateless* people, but it does not make a difference between holders of a dual or multiple citizenships and "*exclusive*" citizens of the Republic of Moldova. The state protects its citizens, but accordingly to the draft, the rights of own citizens will be reduced to the rights of foreigners and stateless people, and holders of multiple citizenships will become an intermediary category between foreigners and citizens, with this norm being interpreted as a repressive measure against own citizens.
- b. Article 39 of the Constitution allows Moldovan citizens to participate in administration of public affairs directly and via their representatives and it stipulates that "**under the law, every citizen is ensured access to a public post.**" The accordance of the restrictions with this constitutional norm is not completely ensured.

- c. The Article 54 of the Constitution bans the Republic of Moldova to adopt laws capable to suppress or reduce the human and citizens' rights and fundamental freedoms and the exercise of the rights and freedoms "cannot be restricted but accordingly to the law, in line with unanimously recognized norms of the international law and if the restrictions are necessary for the interests of national security, territorial integrity, economic welfare of the country, public order, against massive troubles and crimes, for the protection of rights, freedoms and dignity of other persons, against disclosure of secret information or for guaranteeing the authority and impartiality of the judiciary." The restriction must be "proportional to the situation which produced it and it cannot affect the right or the freedom." Accordingly to the communication and draft, the restrictions are not proportional, justified and they unfit these criteria.
- d. The amendment to the Article 13 of the law on public service aims to extend the restriction on all persons who fall under incidence of this law, and it envisages a very large range of functions: see in this regard the Annex 1 to the law on public service and the single classifier of public posts (GD # 151 from February 23, 2001). At the same time, it does not aim to modify certain laws which establish the status of important public functionaries: the Law # 768-XIV from February 2, 2000 on status of local councilor, the Law # 344-XIII from December 23, 1994 on special legal status of Gagauzia (Gagauz-Yeri); the Law # 333-XVI from November 10, 2006 on status of penal officer; the Law # 162-XVI from July 22, 2005 on status of military; the Law # 93 from April 5, 2007 on Civil Protection and Emergency Service; the Law # 108-XIII from May 17, 1994 on state border of the Republic of Moldova (concerning border guard troops), etc.

2. The absence of provisions on a control mechanism for candidates to public offices is the main omission of the draft. The failure to guarantee the rights of public functionaries who already hold foreign citizenships is even worse. In the virtue of the non-retroactivity principle of the law, these persons should not be controlled or restricted, but there is no special legal guarantee in this respect. However, if a guarantee is introduced, subjects of the law will face an unfair treatment, and even the time criterion is applicable for different treatment (it depends when a foreign citizenship was obtained).

3. The imperfect regulations could harm the public and private interests:

- The public service is affected through sorting, controls, moral and psychological reprimands;
- The principle of stability of public functionaries in their offices is affected;
- The ban of activity of some persons who were invested with considerable public and private resources (education, training) affects the society and the state;

- Holders of several citizenships will try to hide this situation, being provoked to illegal actions;
- The renunciation to a foreign citizenship is often a difficult and expensive procedure and the subjects face serious damages.

IV. Conclusions

- a. The modality of promoting the interdictions, generality of the formal motivation, the lack of conclusive and convincing arguments regarding the "dangerous" absence of these restrictions impose the conclusion that creating possibilities to sort out the candidates and functionaries (on political, administrative or even national criteria) is the main goal of the modifications, and omitting the inclusion of complete and intrinsically related norms could encourage a biased, selective application of the new regulations.
- b. The faulty promotion of the modifications reveals a certain fear of authorities towards own citizens, a non-confidence towards the effect of the policy promoted at governmental level and over possibility to be shared and supported entirely and constantly by all representatives of the public sector. The Government wants this way to impose a certain fear to people and to put them in a dilemma: would they lose the possibilities to affirm themselves in their country if they had one more guarantee from another state?
- c. The proposed regulations do not have a perfect composition with an intrinsic connection: they do not clearly regulate the situation of the present holders of multiple citizenships; they do not establish mechanisms of control and application of the necessary sanctions in case of disobedience with the restrictions. The implementation of the new provisions on persons who have already gained a foreign citizenship could produce instability, could affect the confidence of these citizens towards Moldova.
- d. The restrictions will not make the citizens love their Homeland more; they will not increase the number of people who want the Moldovan citizenship in order to serve it with a special belief. Finally, these awkward attempts will not reduce the number of those who leave Moldova and look for a better life and Government. On the contrary, the number of those who leave the country will be completed by potential or acting functionaries who will take with them their experience, skills, leaving the "exclusive" citizen love at home.

¹ See speeches delivered by representatives of parliamentary factions OMA, CDPP, DPM, unaffiliated lawmakers, etc., at plenary sittings.

² Statement by Romanian president delivered in an interview with the TV channel Realitatea TV on January 31, 2007, www.presidentcy.ro.

³ Statement by MFAEI regarding travelling in Schengen area published at www.mfa.md.

⁴ This formula is already giving birth to jokes, with the word "Country" being often used as a synonym for Romania.

⁵ Report # 228 from 05.06.2007 on corruption expertise of the draft, www.capc.md.

⁶ See the expertise report at www.capc.md.