

## NATIONALITY AS A COMPOUND FOR CIVIL ESTATE AND REGISTRATION IN ALBANIAN LAW: COURT PRACTICE IN CHANGING NATIONALITY AND PERSONS' RIGHT TO CHOOSE NATIONALITY AND DISCRIMINATION DUE TO NATIONALITY

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### ABSTRACT

The elements of civil estate as dhe interal database that identify the subject "albanian citizen" or foreign and persons without citizenship are registered and managed in the National Register of civil estate that proof the fact of birth, existence and relations between different citizens. The components of civil estate are defined since the Civil Code of Zog 1929. Since than there has been no essential change until the "Registration of civil estates and acts" law of 1979 nr.8750. In the 1979 the government came up with the "Registration of civil estate acts" law that managed registration of civil estate acts for two decades until the outcome of the "Civil Estate Law" in 2002. This law first was amended with the law Nr.9029 of 13.03.2003 and then was essentially amended by law nr.9229 of 29.04.2004 and law nr.9929 of 09.06.2008. Nowadays the elements of civil estate, their acts and registrations are disposed in the new law "About Civil Estate" nr.10129 of 11.05.2009. This work aims to analyse the components of Civil Estate, and their registration according to laws and their changes in times that have improved this components. This work referes to laws and their changes about Civil Estate and database archived in local Court,town library and internet database.

Referring to law literature about this case arise the below questions:

- Does self-declaration of nationality and religion rise encourage discrimination?
- Does self-declaration of nationality have to be involved in national registration while nationality is a component predicted in soecified law?

**Keywords:** Nationality, Civil Estate Components, National Register, Changing Nationality.

### NATIONALITY

Nationality as a civil state element meaning all juridical facts that define person's status in means of right. Nationality first was involved as a civil state element in "Civil State" law number 9029 of 13.03.2003 article 37/1 which is the same with actual law number 10129 of 11.05.2009 article 58.

According to this law children's nationality is defined from parents one, proved in national register of Civil State. Nationality can't be changed except from according to law cases is proved mistaken nationality of parents or we have a court sentence that changes nationality. In any case nationality change is executed by court sentence. When parents have different nationality, children take one of them according to their agreement or approve. When they don't come do an agreement father's nationality is taken temporarily or one of them with the approval of biggest children. The child borned out of marriage when fatherhood is unknown takes mother's nationality. This can be changed when fatherhood is known or proved, so child takes nationality with agreement of both parents or with the will of biggest children with unknown parents take Albanian presumed nationality.

When one of parents is found, or child is grown up, he can take one of parents nationality with his will. Adopted child takes adoptive parents nationality but when he is grown up can change it to his pre-adopted nationality or biological parents nationality.

The ones born by artificial impregnation/fecundation from married women take on of co-husband nationality. According to Albanian law any nationality change from foreign institutions is absolutely invalid.

### **Changing nationality procedure according to Albanian law**

According to albanian law nationality can be changed only by court sentence, involving in any case civil state office. Here are included cases when nationality is mistaken or temporarily defined. In sentence number 418 date 06.04.2006 Civil Tribunal of Supreme Court took in investigation a case with accusing part K.G and accused parts municipality of Saranda and Civil State Office with object: "Changing nationality form albanian to greek".

First instance Court of Saranda Region sentenced: Invalid accuse of K.G as unproved and in discordance with law. Second Instance Court of Gjirokastra approved this sentence but accusing part applied recourse asking change of sentence submitting this arguments:

-Accuse is based on article 37/1 point 1,2 of "Civil State" law so it is legitimated because this articles quotes: Definition of birth act can be changed within a year after child is grown up and after this date can be changed from court.

-Civil State Law number 9092 of date 13.03.2003 in article 37/1 point 1,2 quotes that in this cases you can ask the court to change nationality. Point 2 quotes: Infants nationality in base register is defined with the will of both parents or one of their nationality with the will of child when he is grown up. Civil Tribunal reasons that: Recourse of accusing part doesn't involve any of terms defined in article 472 of Civil Procedure Code. According to this tribunal Second Instance Court number 387 of 23.11.2004 that approved First Instance Court sentence should be valid but its argumentation should be changed. According to deposited database of accusing part K.G figures with greek nationality in Civil State Office of Sarande. As his parents are registered with different nationality albanian and greek he asks the court to change nationality preferring mother's one according to article 37/1 and 37 of Civil State Law. First Instance Court reasons that law that accusing part is refered to is published in 18.04.2003 and doesn't have any retrospective charge towards parts. So he is valid for registrations after his publishment and not before. When accusing part is born and registered law number 5840 of 20.02.1979 predicted both parents will for registration. According to that time law births were proved and considered valid unless court sentenced the opposite. So the court reasons that both parents will is presumed real and accusing part didn't bring any argument to prove the opposite meaning they hadn't agreed. In these circumstances the court decided to prove the accuse invalid because accusing part couldn't raise any pretend according to a law that doesn't have retroactive obligation to parts while that time law predicted other obligations. Second Instance Court considered valid first instance sentence emphasizing that accusing part can't refer to a not applicable law because he can't be obligatory for previous registrations. Civil Tribunal of Supreme Court while considers valid both court sentences changes their argument of unapplicable law number 9092 of 13.03.2003 by adding this one.

When law number 9092 was published another element was involved in civil state, and this was nationality. Between other rights like birth, gender, name, surname, motherhood, fatherhood, citizenship nationality was classified as a non property personal right. In article 10 law predicts removal or changes of the elements above according to family code except

for gender. Article 37/1 of actual law has added to article 37 of previous one that predicted registration and change of name/surname definitions of changing and registration of infants nationality. This article quotes that nationality taken ipso lege from same nationality parents or agreement of parents with different nationality can't be changed. Law predicts two exceptions :

- Mistaken nationality of parents is proved according to law
- Ultimate Court sentence has decided change of motherhood or fatherhood

A special case is when parents don't come to an agreement or one of them passes away. "In case of disagreement or death of one of the parents Civil State Office defines temporarily infants nationality that of the father". So in this case when we don't have both wills law defines fathers nationality as proper. Also lawmaker gives the right to the child when he becomes a grown up to decide what parents should have decide with common will. Article 37/1 in its laast sentence of point 2 defines : "Conclusively infants nationality in register is recorded based on both parents will,nationality of one of them or his decision when he grows up". So law points out as very important childs decision to choose nationality when he grows up if this wasn't decided with both parents agreement.If this article could be interpreted in a different way meaning children could decide their natonality even if there was a parental agreement, children with different nationality parents would be priviledged (their rights are represented from both parents when they have come to an agreement) to compare with children with same nationality parents because these last ones can't change their nationality. It would seem that these children aren't treated equally.

By putting this clause lawmaker defends childs interests only if this interst wasn't represented from parents. According to supreme court based on above reasoning and other facts of this case change of nationality can't be asked. Although law was published when accusing part was being registered, law of 1979 didn't predict notion of nationality and its registration procedure. Registration was executed like all other elemens in civile state office according to article 7 of the law quoting :parents declare childs birth and decide name which presumes their agreement. Turning to our case accusing part could ask nationality change if he proved lack of agreement between parents which wasn't proved so the supreme court judged the accuse invalid. Differently from first and second instance court the above law is applicable and obligatory only when he is published, knowing the right to children after they grow up to change nationality. Although reasoning was different first and second instance court sentence was judged valid.

### **Persons right to choose nationality, ethnic and religious belonging argument**

During years of transition in Albania many people have changed their nationality and religion. If Government would involve questions of declaring nationality and religion in questionnaires. In citizens registration process this would be dangerous for national Albanian interests. In most of cases their will would not be real because it would be conditioned by economic reasons, Free travel abroad, or short-term income and profits. Many Albanians are declared Greeks even they don't belong to greek minority. A question arises here: who does profit from declaration as greek of Albanian people? Artificial raise of greek minority population by this process would make believable the theory of multy-national country and Greeks here would have the juridical status of nation-former the same with the Albanians. Besides nationality declaring as greek orthodox would make this imaginary theory more practicable, not to mention here damages of religious coexist an adorable phenomenon in albania in centuries. Registration of citizens gives us a permanent database of

demographic, social and economic components in national, local and regional instant that would ease planning and managing economic and social development programs and scientific studies.

For example if we want to build a hospital or school or water supply system in a region we should minimally specify demographic development, educational level their access to public service and so on. Ethnicity is a demographic element of a person. Differently from other elements like age, birthplace, gender, civil state, citizenship this characteristic is in the will of the person to be declared. Any person is free to declare or not his religion and ethnicity. Population registration is a common process that UN does all over the world every ten years. UN had sent two kind of questionnaires the important ones "core" and the not so important ones "non core". Second kind involves questions for nationality and religion. Registration of 2011 was the second in the post-communist era and the eleventh since first Albanian state. In previous registrations database about declaring nationality and religion wasn't gathered partly because of the difficulties to get it and partly because of the poverty and other social developments of the time that made answers and statistics not believable. Questions about religious belief are not the main focus of registration process but they are one of the involved ones in Eurostat recommendations as well as in many European countries having on purpose gathering database about demographic characteristics. Declaring religion may encourage separation between religious communities because in some cases this is refused. Common registration is realized every 10 years with a main purpose to describe a demographic, economic and social reality of a country. This process gives an actual photography of social conditions and living standards in a specified moment called "critical moment of registration". Ethnicity is a demographic characteristic of a person that differently from other components like age, gender, birthplace, citizenship etc is to be declared by every person. All people have the right to declare their ethnicity and religion. As nationality is one of the elements of civil state recorded in national register there is no need to involve it in registration process because is a legally known component verifiable from personal certificate.

### **Strasbourg cases about discrimination because of nationality**

European Court of Human Rights is an international juridical mechanism found to guarantee the implementation of European Convention of Human Rights. When human rights are abused and internal courts are passed in all instances a person can refer to European Court of Rights. The convention guarantees obliging application of itself by two instruments. European Human's Rights Committee where people and countries can complain and report cases that human rights are abused. The committee makes a preliminary select of the cases that will go to the court. European Convention of Human Rights treats these cases and leaves sanctions for violators. According to article 35 of the convention the complain can be accepted for treatment when:

1. Internal juridical sources are exhausted. The court can treat the case after complain towards state is exhausted by internal juridical mechanisms of this state. Before treating the complain should be given the state the chance to correct the supposed violation towards person. In this case authorities would have to prove that internal mechanisms of complain aren't exhausted.
2. Six month period. The court will treat the case when six months have passed since ultimate internal court sentence. This condition deals with the necessity to exhaust internal juridical mechanisms and to give person the time to prepare the accuse. The complain can also be anonymous and there is no problem with this because the court pays attention mostly to protecting human rights and not just affirming them.

The court doesn't treat abstract normative but the way law and normative are implemented in a country. Also state's ways of operation and court sentences are treated when they are in discordance with the convent. Eventhough rarely they have treated special cases like "Against homosexuality" law or "against phone spy" law. The court can also call suspension when notices discordance with the convent and in this case is in authorities competence to proceed in order to avoid the discordance. However is impossible for members that have signed the convent and have made it part of interal rights to find discordance between interal law and convent because this is the minimal condition of the states to be part of the convent.

### **Hornbsy against Greece**

Ms. David Honrbsy and Mrs Ada Ann Hornbsy were born in United Kingdom, they live in Rhodes Island and are both qualified teachers in English language. In 5 June mrs Hornbsy asked Education Authorities of Dodecanesus the permission to open a private foreign languages school eventhough she was informed that according to interal law foreing citizens couldn't be given this permission. In 1 April of 1988 they presented two other requests that were again refused. In June of 1988 the applicants asked the Administrative Supreme Court to refuse Education's Office Director decision. In 9 May of 1989 Administrative Supreme Court decided that in accordance with European Court of Rights decisions, members of European Community couldn't be banned from opening foreign schools only because of the note greek nationality. Authorities were asked to obey the sentence and give the permission. Also a court process was initialized towards director of education office of Rhodes were financial compensation for the missed profit was asked. These attempts weren't given any answers until the President in 1994 came up with a decision that members of European Community were given the right to open foreign language rprivate schools with the condition that they would have to pass greek language and history test.

Horbny's complain was taken in consideration by the committee that expressed its opinion of a violence of article 6/1 and passed the case to the court. Greek government objected declaring the complain unacceptable because of the 6 month period defined in article 26 of the convent, meaning that the couple weren't referd to the court six months from the sentence of the regional court and interal sources weren't exhausted. Court of Eueopian Community decided Greece hadn't fullfilled terms of agreement with European Community that gave foreign citizens of a member of E.C to move freely in another member country and in meantime stops all kind of discriminations because of nationality involving the right to open a business. The refusal of the permission to open a so-called "frontistirion" (foreign language school) was defined in article 2/3 of Civil Code of Greece quoting: Noone can be nominated in a charge in civil service if he isn't of a greek nationality. European Court of Rights reasoned that Supreme Administrative Court canceled the decision of the director to refuse the permission but didn't obliged him to give this permission so they decided: Refusal of Greek government pretends. Article 6/1 was violated and as executing article 50 of the convent wasn't ready asked the government and the askers to inform them within three months for any agreement they would come up to.

### **CONCLUSIONS**

Nationality as civil state's element is defined after birth with an agreement between parents or based on a court decision. Children can ask the court when they become grown up, when there is a mistake in the register or when parents have not come to an agreement about infants nationality. Registration of religion, ethnicity and language is an element of the free

will of a person that don't give an accurate information about religious and ethnic origin of Albanian people. Including questions about religion, and ethnicity in the questionnaires of registration procedure would bring negative causes, raise discrimination and threaten religious coliving in Albania.

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