

# CITIZENSHIP, FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

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**Abstract:** *In this paper we have addressed some of the key issues related to citizenship, as a legal notion and in particular Albanian citizenship. Citizenship expresses a political-legal connection of an individual to a particular state. Through it, flow the specific rights and obligations that the person fulfils during his life. Practically, citizenship entitles us to our rights and obligations and the loss of it deprives us from many of them. Citizenship is a high moral and constitutional value for each country. In this way the state not only identifies its citizens but also protects them wherever they are. The authors have made a brief study regarding to the history of citizenship in Albania since the time of establishment of the Albanian state to nowadays. The line that the Albanian state pursued for obtaining citizenship was generally that of jus sanguinis and giving priority to the jus criterion only in exceptional cases. We have also stopped in the rights that derive from our citizenship, including political, civil, economic and cultural rights.*

**Keywords:** *citizenship; human rights; individual; constitution.*

## Citizenship, as a whole of rights and obligations

The meaningful content space of the concept of citizenship is wide and nested. In its interior contradictions arise between models or other forms of "citizenship". The contrast between a form of "passive citizenship" and a form of "active citizenship" is very important. The first expression refers merely to titularity, that is to the maintenance of a number of rights, while the second expression refers to the exercise of these rights, participation in public life and, in particular, political life. "Citizenship", in its legal sense, defines the institute, on the basis of which determines the full belonging of the individual to his national state. Citizenship represents a status that is acquired by the ways defined by the positive law and which receives from the positive right the measure of its legal significance. Citizenship is a "container" of variable content that supplies a nested human perception within a national community in historical terms and different territorial environments. Citizenship expresses the state's response to the needs of civil society and is characterized by the definition of the freedoms guaranteed to the

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individual, the relationships between individuals and the support given to the underprivileged entities.<sup>1</sup>

Citizenship is a positive legal status, which means that a whole set of rights and obligations are attached. Citizenship in the French revolutionary tradition in its beginnings has a tradition filled with demands on human rights and citizenship. In this revolutionary tradition of being a citizen means having a whole set of fundamental rights. In many countries (US is a good example), citizens' rights are provided in basic state documents such as the Constitution. In the UK, citizenship is often portrayed as a value at birth, as a whole of progressive rights, accumulated gradually over the centuries.

In fact, modern citizenship, as well as the rights and obligations associated with it, have always taken different forms according to historical and national contexts. In many cases the questions arise; has citizenship been the product of radical downward pressure or gradual concessions from above? Has citizenship been seen as a mechanism that promotes active public involvement or as a means of protecting the integrity of the individual from the intrusive interference of the state? The answer to these questions comes from the evolution of extending the rights of citizens to their own rights, political-civil rights, and socio-economic rights. Gaining civil rights in the eighteenth century and political rights in the nineteenth century enabled social rights to be acquired in the twentieth century. The latter creates the idea of the social state, of the state that guarantees the necessary vital minimum and social welfare for all its citizens. Although rights in modern societies have multiplied, obligations have also been multiplied. If we focus on the fundamental element of political citizenship, the vote, we will see that it is often seen as both a right and an obligation: whether a civil obligation, namely, something that needs to be done by a good citizen or as a legal obligation, something that the citizen is obliged to do so by law. In fact, it is somewhat unusual to find a form of citizenship, which can be considered complete only based on the rights of citizens, without any reference to the respective obligations. Military service has often been the obligation of the citizens. Goran Therborni (1977), for example, links the development of universal voting right in Western Europe with the military mobilization of the population in the early twentieth century. For a long time, the alleged inability of women to perform military service was used as an excuse for excluding them from citizenship. In the US, it can be said that the very wide range of social rights enjoyed only by veterans is relate to this logic. But there are other forms of obligations that correspond to citizenship rights. Of course, maternity is often used as a reason to exclude women entirely from citizenship, with the justification that they have mainly personal responsibilities (for spouse and family) that did not deserve involvement in the public sphere of citizenship. When a woman was granted citizenship, she often

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<sup>1</sup> Joana Asimi Sorraj, *Disertacion Për Mbrojtjen E Gradës Shkencore "Doktor" "Kombësia, Shtetësia Dhe Të Drejtat E Njeriut"*, Fakulteti I Drejtësisë, Universiteti I Tiranës, Tirane 2017, Pg.33.

relied on conditions less favourable than those enjoyed by husbands, as is proved by the William Beveridge model. He divided the rights related to the concept of citizenship into three categories: civil, political and social rights.

1. Civil rights (called negative freedoms), which have as a domestic demand a non-interfering behaviour on the part of the state. These rights include personal freedom, movement, association, unity, conscience and religion, equality before the law, the presumption of innocence, the right of citizenship, etc.

2. Political rights, referring to the participation of citizens in state government, either directly between referendums and petitions, or indirectly, by electing their representatives or running for the respective elections.

3. Social rights (called positive freedoms), which correspond to obligations that must be met by the state and the public authorities. They include social protection rights against diseases, unemployment, the right to health, the right to work, the right to education, etc.<sup>2</sup>

### **Background of the citizenship in Albania**

According to the 1929 Civil Code in the period of King Zogu 1, Albanian citizenship was acquired in the following ways:

- He is an Albanian citizen from birth.
- Child with Albanian father.
- A child with an Albanian mother, when his father is unaware or does not have Albanian citizenship, nor of any other state, or when a child does not pursue a foreign nationality under the law of his state.
  - The child born in Albania, when both parents are not known or do not have Albanian citizenship either in another state or when the child does not pursue the citizenship of foreign parents under the law of their state.
  - The child found in Albania whose parents are not known is presumed to have been born in the Kingdom until the opposite is proved.
  - If he makes military service in Albania or agrees to work for the Albanian state.
  - If after reaching the age of 20 is in the kingdom and in the 21st year declares that he chooses the Albanian citizenship.
  - If he has been in Albania for at least 10 years and does not declare in the deadline indicated above that he will retain foreign citizenship.<sup>3</sup>

The provisions of this Article apply also to a foreigner when his father or mother, or his paternal grandfather, has been an Albanian citizen of birth.

Albanian citizenship by decision of the Ministerial Council can be concretized:

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<sup>2</sup> Idem pg.36

<sup>3</sup> Civil Code in ZOGU 1 Kingdom.

– Foreigner who has served the Albanian state for three years, even in a foreign country.

– Foreigner who resides in Albania for at least 5 years.

– A foreigner who has been living in Albania for three years and who has done important services or who has been married to an Albanian citizen.

– After a year of residence, the one who would have been able to become an Albanian citizen according to the law, if he did not leave without making the declaration expressed to him.

– After a year of residence for the purpose of not returning to a foreign country, those foreign nationals, who are Albanians of tribe and language.

The decision of the ministerial council granting citizenship does not have the effect if the person to whom it is given does not wish to swear before the prefect of the country where he stands, or before the authorities who make the decision to be loyal to the king and to respect the laws of the state.

Citizenship can be given by royal decree to the one who has rendered services of extraordinary importance to Albania. Albanian nationals who were born and residing in a foreign country who considers her as a native citizen retains Albanian citizenship, but after reaching adulthood or emancipating she may withdraw from this nationality.

Loses Albanian citizenship and is not entitled without the permission of the government to enter the land of the kingdom, he, who by accepting a civil servant in a foreign country without the permission of the Albanian government or having entered force in the military service of a foreign state, discourages from office or service although the government has announced that it will drop it within a certain deadline.

Citizenship in the “Popular Republic of Albania” after 1945 was governed by the domestic laws of international treaties. Anyone who has Albanian citizenship cannot at the same time have the citizenship of another state.

Albanian citizenship was won:

– By the origin

– Birth in Albania

– With naturalization

– According to the provisions of international treaties<sup>4</sup>

Albanian citizenship may be abolished to people of nationality of peoples whose states have been in war with the Albanian people, if they, during this war or even earlier with their attitude to the interests of the people and the “Popular Republic of Albania” have violated their duties as a citizen.

Albanian citizenship can be removed even any naturalized citizen who has acquired Albanian citizenship with false statements or has hid important facts about his or her stay or within five years from the date of naturalization is punished for acts against power and people.

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<sup>4</sup> Albanian citizenship law in 1946

It may also be deprived of nationality and Albanian nationals who are abroad and cause damage to the national and state interests of the Popular Republic of Albania or have acted in that way during the National Liberation War or refuse to perform their duties as a citizen.

Citizenship shall be abolished in the cases referred to in the first and second paragraphs of the preceding article by a decision of the Ministry of Internal Affairs, and in the case of the third paragraph of this Article by a court decision in the cases expressly provided by law or by decision of presidium of the popular assembly.

Loss of citizenship under the first paragraph of the above article extends to the other spouse and to the children if they do not prove to have had any relation with that which has been deprived of their nationality and that they themselves have had good behaviour or are Albanian nationality.

Loss of citizenship under the second paragraph of the above article extends to children under 18 who have acquired Albanian citizenship because of the naturalization of their parents. The 1998 Albanian constitution has provided a complete and clear definition of the quality or content of what needs to be understood by citizenship.

The acquisition of Albanian citizenship, as provided by the individual, is not dependent on the will of the individual to whom it is attributed. So, it is not a consent (even if later) of the individual's remitter. Albanian citizenship, even maybe the first status an individual gets, is enough for one of his parents to be Albanian. This fundamental conception of Albanian citizenship, formulated in the constitution, makes this latter with a strong conservative consistency of the concept "Albanian people".

The analysis of the legislation of other countries gives an overview of the ways of acquiring citizenship, according to which these legal choices are unified. Laws that define citizenship or profitability follow four legal criteria:

1. The right to blood (the child receives the citizenship of the parent due to birth).
2. The right of the territory (the citizenship of a state is obtained from the child of a foreign national who is born in the territory of that state).
3. Marriage (acquires the citizenship of a foreign national who has married a national of that State).
4. Naturalization (the alien can acquire citizenship based on his / her claim, usually the place of residence).

These are the four main criteria embodied in the legislation of states that discipline citizenship. What is different is what criterion prevails. Immigration states privilege the right to blood, while immigration rights entitle to the territory.

On the contrary, there is an asymmetry in treatment regarding the loss of Albanian citizenship. There is a metamorphosis of its transformation from a status for reasons not dependent on the individual, a right that can be best disposed of by the individual as a private right. The only public authority, whose consent is required in this depositing measure, is the President of the Republic. Ultimately,

the treatment made by our constitution for citizenship is probably one of the most modern and most visionary. It keeps and conserves fanaticism with Albanian genealogy, enriches Albanian territory with individuals who unite in its cause sincerely and treats the Albanian individual as dignified and full-fledged destiny of his own, the greatest virtue in this world, and this happens in institutional relationship with the head of state.

Albanian citizenship is obtained by:

- a- Birth
- b- Naturalization
- c- Adoption

Earning citizenship by birth<sup>5</sup>. Who is born even if one of the parents of Albanian citizenship gains the Albanian citizenship.

A child born or found within the territory of the Republic of Albania acquires Albanian citizenship if he is born of unknown parents and consequently the child would remain stateless.

If the child's parents become acquainted before the child reaches the age of 14 and they are of foreign nationality, Albanian citizenship may be removed upon the request of legally recognized parents, provided that the child does not remain stateless as the consequence of this action.<sup>6</sup>

Citizenship is naturalized when a foreigner who has applied for Albanian citizenship with naturalization acquires it if he / she has reached the age of 18, has legally resided in the territory of the Republic of Albania continuously, for no less for five years, has a flat and disposes of sufficient income and has never been convicted in his State or in the Republic of Albania or in any third country for criminal offenses for which the law provides penalties of not less than 3 years imprisonment.<sup>7</sup>

### **The rights and obligations of citizens deriving from Albanian citizenship**

Freedom of citizens' political rights are largely determined in the third chapter of our constitution. Among these freedoms and rights, which are powerful democratic tools that ensure the active participation of Albanian citizens in the direction and resolution of the most important issues of the country are the election rights that every citizen who has reached the age of 18 even on the day of the election has the right to elect and be elected. His vote is equal and free.<sup>8</sup>

Everyone has the right to be collectively organized for what purpose legitimate purpose. It was also guaranteed freedom of peaceful assembly and free of arms and

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<sup>5</sup> Article 6 of Law no. 8389, dt 5.8.1998 "FOR ALBANIAN STATE", as amended.

<sup>6</sup> Idem, Article 8.

<sup>7</sup> Idem, Article 9.

<sup>8</sup> Article 45 of the Constitution of the Republic of Albania.

participation in these gatherings. One of the fundamental rights in this area is that anyone, alone or together with others, may address requests for complaints or remarks to public bodies that are required to respond to the terms of the conditions set by law. These freedoms and rights are an integral part of the fundamental freedoms and rights of our citizens.

They use them widely in the field of state administration to consider various issues of their organization and activity, to make proposals regarding further refinement of the legal regulation of these issues, to criticize flaws and authenticated errors in the affairs of public bodies of official persons or other employees. For their part, public bodies are obliged to take all appropriate measures to ensure citizens the effective enjoyment of the above constitutional rights and freedoms and to ensure that their use does not contradict the general interests of the society and nor with the legitimate interests of particular citizens.

The rights and freedoms of citizens related to ensuring their participation in public administration, both in organizational and functional terms, derive from the principles set out in our constitution such as:

- a) Warranty for the right to information.<sup>9</sup>
- b) The right to choose a place of residence and not to be prevented from coming abroad.<sup>10</sup>
- c) The right not to be expelled from Albanian territory.

Economic, social and cultural freedoms and rights<sup>11</sup> relate to meeting the material and cultural needs of citizens. All the freedoms and rights of this group are of great importance. They are foreseen in the fourth chapter of the Constitution and part in the fifth chapter, as objectives of the Albanian state. These freedoms and rights provide citizens with the material conditions to live in prosperity, enable them to increase their creative ability and professional capability, raise their educational and cultural level, and put it into service to society. After the right to work (which is regulated in detail by labour norms) the most important rights of this group are: The right to education. "Everyone has the right to education" stipulates Article 57 of the Constitution. This fundamental right of citizens is of great importance, both for the realization of the personal interests of citizens as well as society as a whole.

Everyone has the right to social security in old age or when he is unable to work, according to a system set by law (Article 52 of the Constitution). Although this second right is regulated in detail by the labour legislation, it is in some respects concerned with constitutional legal regulation. Such an adjustment is made, for example, for the issue of pensions and material means, which do not derive or derive in part from labour relations.

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<sup>9</sup> Article 23.

<sup>10</sup> Article 38.

<sup>11</sup> Articles 49-60 of the Constitution of the Republic of Albania.

The Constitution of the Republic of Albania sanctions that every citizen who has reached the age of 18, even on Election Day, has the right to choose and to be elected (Article 45/1). Also, the right of election to councils and mayors only are those who are permanently resident in the territory of the respective local government unit (Article 109/3).

### **Conclusions**

Citizenship is defined as "a stable legal relation", expressed in the mutual rights and duties of the natural person and the Albanian state.

Albanian citizenship is acquired, recovered, lost or disposed of in accordance with the provisions of the law which respects the recognized norms and principles of international law.

Citizenship symbolizes respect for the rights and duties of every citizen, which allows him to have a harmonious and sustainable life in the community. Every citizen exercises in his own way citizenship, but always in the way that it is established by the laws and integrated in the entirety of the customs of the society to which he belongs.

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