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ПОНЯТИЕ ГРАЖДАНСТВА И ЕГО ЗНАЧЕНИЕ ДЛЯ МЕЖДУНАРОДНОГО ПРАВА

К.Ж. Карлуш

Университет Агостиньо Нето и Католический университет Анголы
(г. Луанда, Республика Анголы)

Резюме. *Статья содержит актуальные вопросы правового статуса института гражданства с позиции анализа международно-правовых норм. Сделан акцент на рассмотрении правовых категорий гражданин (citizen) и подданный (subject).*

На протяжении долгих столетий регулированием вопросов гражданства занимались государства внутри своей территории. Хотя в современном обществе изменений по данному вопросу пока нет. Организационно-процедурные вопросы приобретения и прекращения гражданства регулируются национальным законодательством государств с учетом рекомендаций международного права. В наше время растет роль международного права в определении правового статуса гражданина с учетом его принадлежности к конкретному государству.

Автор пришел к выводам, что понятие «гражданство» и понятие «подданство», по сути, означают принадлежность конкретного индивида к конкретному государству, однако гражданство характерно для государств с республиканской формой правления, в отличие от подданства, преобладающего в государствах с монархической формой правления. Международное законодательство раскрывает сущность элементов и понятий, входящих в состав института международного гражданства. В частности, п. а ст.2 Европейской конвенции о гражданстве ETS № 166 содержит определение гражданства как правовой связи (отношений) между физическим лицом и государством, вне зависимости от происхождения физического лица. П.б ст.2 Европейской конвенции о гражданстве ETS № 166 раскрывает сущность понятия «множественность гражданств», под которой понимают «одновременное наличие у одного и того же лица двух или более гражданств». В соответствии с п.1 ст. 1 Конвенции о статусе «апатридов», международным правом предусмотрен особый статус лиц «апатридов» как субъектов, не являющихся гражданами конкретного государства.

Ключевые слова: *институт гражданства и подданства, международное право.*

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THE CONCEPT OF CITIZENSHIP AND ITS SIGNIFICANCE FOR INTERNATIONAL LAW

Kete J. Carlos

Agostinho Neto State University and UCAN
(Luanda, Republic of Angola)

Abstract: *The article contains topical issues of the legal status of the institution of citizenship from the perspective of the analysis of international legal norms. Emphasis is placed on the consideration of the legal categories of citizen and subject.*

For many centuries, the regulation of citizenship issues has been handled by States within their territory. Although there are no changes on this issue in modern society yet. Organizational and procedural issues of acquisition and termination of citizenship are regulated by the national legislation of States, taking into account the recommendations of international law. Nowadays, the role of international law in determining the legal status of a citizen, taking into account his belonging to a particular State, is growing.

The authors came to the conclusion that the concept of "citizenship" and the concept of "citizenship", in fact, mean that a particular individual belongs to a particular state, but citizenship is characteristic of states with a republican form of government, in contrast to citizenship prevailing in states with a monarchical form of government. International legislation reveals the essence of the elements and concepts that make up the institute of international citizenship. In particular, paragraph a of Article 2 of the European Convention on Citizenship ETS No. 166 defines citizenship as a legal connection (relationship) between an individual and the State, regardless of the origin of the individual. Paragraph b of Article 2 of the European Convention on Citizenship ETS No. 166 reveals the essence of the concept of "plurality of nationalities", which is understood as "the simultaneous presence of two or more nationalities in the same person". In accordance with paragraph 1 of art. 1 of the Convention on the Status of Stateless Persons, international law provides for a special status of "stateless persons" as subjects who are not citizens of a particular State.

Keywords: *institute of citizenship and citizenship, issues of international legal significance*

By itself, the concept of citizenship is defined as a stable legal relationship of an individual with the state, expressed in the totality of their mutual rights and obligations. A number of international scholars understand citizenship as belonging to a person to the state. In addition, citizenship is a stable legal link, since even if a citizen leaves abroad for permanent residence, his citizenship does not automatically terminate, as a rule.

The legislation of different countries contains different terminology regarding the institution of citizenship. In republican states, the term "citizenship" is used, in countries with a monarchical form of government, the term "citizenship" is more often used. In addition, along with the terms citizen and subject, the term national is also widely used in Anglo-American theory and practice, meaning from a legal point of view as "a person with a certain nationality".

The policy of modern States regarding the acquisition and termination of citizenship has changed little compared to the last century. The norms of national legislation also determine the procedural issues of acquisition and termination of citizenship. It should be noted that the norms of national and international law in the legal issues of the institution of citizenship largely complement each other. The tandem was initiated by the Hague Convention on Certain Issues Related to the Conflict of Laws on Citizenship, 1930, which defines the aspect issues of States regulating the problems of moments of citizenship and their recognition by other States. This provision contains a reference to the International Court of Justice of the United Nations in the Nottebohm case of 1955.

The international legal doctrine defines the institution of citizenship in different ways, in particular, citizenship is defined as belonging of a person to a state, as a political and legal union of a person with a specific country, as the state of a person in a state. In the history of international legal relations, various concepts of civil status have been encountered. For example, citizenship was considered from the position of a person's membership in the state, a certain subordination to a particular state. As noted by J.J. Rousseau citizenship is a contractual relationship of members of a single territory, giving the right to participate in the exercise

of state power, in fact, the endowment of sovereign power. The ideas of Rousseau and other like-minded people of the concept of the natural law school to a certain extent left their mark on the "Declaration of the Rights of Man and Citizen" of 1789. A similar approach is contained, for example, in the work "American Political Dictionary" published in 1962. The authors of this book, I. Plano and M. Grinberg, gave the following definition of the concept of "citizen": "this is a person who is a natural–born or naturalized member of a state, who owes allegiance to this state and has the right to protection and privileges from its laws." The theorist S.A.Komarov understands citizenship as a person's membership in the state as a union of individuals who are in a stable, permanent, specially designed political and legal relationship with the state.

Russian political and legal thought has formed a special idea of the institution of citizenship, comparable with the modern classification of legal theories and political doctrines. The study of the views of pre-revolutionary scientists allows us to rely on the national intellectual tradition, which bears both the imprint of the identity of Russian history and has been influenced by general civilizational processes. One of the ideologists who initiated the generally accepted understanding of the institution of citizenship today is the Russian statesman of the XIX century N.M. Korkunov, who built the concept of citizenship within the framework of the doctrine of subjects of state law. The thinker highlighted the differences in the legal status of the subject, in his opinion, the subject has legal relations with the state, a foreign citizen has actual relations. The stay of a citizen of another state within another state, according to the scientist, always remains only a fact and is never a right for him. Moreover, as N.M. Korkunov noted, the state itself is not obliged to tolerate him on its territory. If it finds his stay inconvenient for any reason, it can expel him at any time, and with his expulsion, all relations with the State are terminated.The legal relation of a subject to the state –, consisting of::

1) it is an institution of the monarchical state and denotes the political and legal relationship of the subject with the monarch;

2) the legal relationship is characterized not by mutual and equally binding, as in citizenship, but by a unilateral nature: the subject bears only duties to the monarch, and the monarch has only rights in relation to the individual;

3) in historical retrospect, the institution of citizenship preceded the emergence of the institution of citizenship, which first appears in the era of bourgeois revolutions.

Thus, based on the above, we note that the concepts of citizenship and the concept of citizenship, in fact, mean that a particular individual belongs to a particular state, but citizenship is characteristic of states with a republican form of government, in contrast to citizenship prevailing in states with a monarchical form of government.

In the theory of international law, the Universal Declaration of Human Rights of 1948, which enshrined the right of every person to citizenship, played a huge role in regulating the institution of citizenship.

The first act of international significance that codified the principles and norms of citizenship is the European Convention on Citizenship ETS No. 166 (Strasbourg, November 6, 1997).

Among the most significant international acts regulating the legal status of citizenship, in addition to the above, should be attributed:

1) The Convention Regulating Certain Issues Related to the Conflict of Laws on Nationality (The Hague, April 12, 1930);

2) Convention on the Status of Stateless Persons (adopted on September 28, 1954 by the Conference of Plenipotentiaries convened in accordance with resolution 526 A (XVII) Of the Economic and Social Council of 26 April 1954);

3) Convention on the Status of Married Women (adopted by General Assembly resolution 1040 (XI) of January 29, 1957);

4) The Convention on the Reduction of Cases of Multiple Citizenship and on Military Duty in Cases of Multiple Citizenship (Strasbourg, May 6, 1963).

These normative acts of the international level are united by the fact that they establish the fundamental principles of citizenship, which should include:

1) everyone has the right to citizenship;

2) statelessness should be avoided;

3) no one may be arbitrarily deprived of his citizenship;

4) neither the marriage, nor the dissolution of marriage between a citizen of the state and a foreign citizen, nor the change of citizenship by one of the spouses does not entail the automatic termination of citizenship by the other spouse.

International legislation legalizes the legal status of individual entities that make up the institution of citizenship in the international arena, let's look at them in more detail.

Paragraph a of Article 2 of the European Convention on Citizenship ETS No. 166 legalizes the concept of citizenship, meaning "the legal relationship between a person and the state and does not indicate the ethnic origin of this person" [6]

1) The provisions on the nationality of each State Party should be based on the following principles:

2) everyone has the right to citizenship;

3) statelessness should be avoided;

4) no one may be arbitrarily deprived of his citizenship;

5) neither the marriage, nor the dissolution of marriage between a citizen of the participating state and a foreigner, nor the change of citizenship by one of the spouses during marriage entail automatic consequences for the citizenship of the other spouse [6].

In accordance with paragraph 1 of Article 1 of the Convention on the Status of Stateless Persons, a "stateless person" is a person who "is not considered a citizen by any State by virtue of its law" [2].

Paragraph b of Article 2 of the European Convention on Citizenship ETS No. 166 reveals the essence of the concept of "plurality of nationalities", which is understood as "the simultaneous presence of two or more nationalities in the same person". In international law, the plurality of nationalities is also called dual citizenship, and persons with this status are called "bipatrides".

In addition, international legislation legalizes the concept of a foreign citizen. In particular, a foreign citizen means a person who is located on the territory of a particular state, who is not its citizen, but has proof of belonging to the citizenship of another state. The passport of a citizen (subject) of a foreign state acts as such proof. The term "foreigners" has a wide practice of application, used in the legislation of a number of countries. This term has a collective character, its systematic interpretation gives an understanding that the circle of persons who are foreigners does not include citizens of a particular state, but only foreign citizens and stateless persons (stateless persons) located on the territory of this state. The internal legislation of a number of States identifies several categories of foreigners with a specific legal status, these include:

1) permanently residing in the territory of the state;

2) temporarily staying in the state;

3) having diplomatic immunity;

4) refugees, etc.,

Thus, the following conclusions can be drawn. The concepts of citizenship and citizenship, in fact, mean that a particular individual belongs to a particular state, but citizenship

is characteristic of states with a republican form of government, unlike citizenship, which prevails in states with a monarchical form of government. Among the most significant international acts regulating the legal status of citizenship are: the Universal Declaration of Human Rights (adopted by resolution 217 A (III) of the UN General Assembly on December 10, 1948); The European Convention on Nationality ETS No. 166 (Strasbourg, November 6, 1997); the Convention Regulating Certain Issues Related to the Conflict of Laws on Nationality (The Hague, April 12, 1930); the Convention on the Status of Stateless Persons (adopted on September 28, 1954 by the Conference of Plenipotentiaries convened in accordance with resolution 526 A (XVII) of the Economic and Social Council of 26 April 1954); Convention on the Status of Married Women (adopted by General Assembly resolution 1040 (XI) of 29 January 1957); Convention on the Reduction of Cases of Multiple Citizenship and on Military Duty in Cases of Multiple Citizenship (Strasbourg, May 6, 1963).

In addition, international legislation reveals the essence of the elements and concepts that make up the institute of international citizenship. In particular, paragraph a of Article 2 of the European Convention on Citizenship ETS No. 166 legalizes the concept of citizenship, meaning "the legal relationship between a person and the state and does not indicate the ethnic origin of this person." Paragraph b of Article 2 of the European Convention on Citizenship ETS No. 166 reveals the essence of the concept of "plurality of nationalities", which is understood as "the simultaneous presence of two or more nationalities in the same person". In accordance with paragraph 1 of art. 1 Convention on the Status of Stateless Persons "stateless person" is a person who "is not considered a citizen by any State by virtue of its law."

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