

PROCESSES OF INTEGRATION AND DOUBLE CITIZENSHIP

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INTEGRACIJOS PROCESAI IR DVIGUBA PILIETYBĖ

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THE SUMMARY (THESES)

1. When relations of citizenship are regulated, it is very important to assess new actual situations, new needs of society and the state and to react to them adequately. The ever increasing integration of states, big emigration of citizens of the Republic of Lithuania, virtually unrestricted opportunities to get jobs in almost all states of the European Union, the increasing number of mixed marriages and of the children born in such families, as well as other circumstances create preconditions for the increase in dual citizenship. At present approximately 65 percent of European Union states allow their citizens to be citizens of other states at the same time; about 30 percent of such states tolerate dual citizenship (they have a rather liberal viewpoint of dual citizenship), and only 15–20 percent of the states virtually prohibit dual citizenship.

2. It is important that the Law on Citizenship define as to what persons are citizens of the Republic of Lithuania, in what situations a citizen of the Republic of Lithuania may be also a citizen of another state, since citizenship is not only a formal legal category, it is always inseparably related with the issues of sovereignty, national identity, political order, and the rights and freedoms of persons. Only citizens of the Republic of Lithuania, i.e. the state community—the civil Nation—have the right to create the State of Lithuania, i.e. only citizens have the right to decide what sort of the State of Lithuania there should be, to establish the constitutional order of the State of Lithuania, the structure of the institutions implementing state authority, the basics of legal relations between the person and the state, to establish the system of national economy etc. While implementing the rights and freedoms of citizens, citizens participate in implementing the sovereignty of the Nation.

3. While regulating the citizenship relations from the very restoration of the State of Lithuania in 1918, the view was upheld that, as a rule, a citizen of Lithuania may not also be a citizen of another state at the same time, and that dual citizenship was allowed only in individual cases established in the law. The absolute prohibition of dual citizenship was provided for only in the 1922 Constitution, wherein it was established that “no one is allowed to be a citizen of Lithuania and of another state at the same time” (Article 9). In 1990, upon restoration of the independent State of Lithuania, also the view was upheld that dual citizenship was allowed only in individual cases provided for in the law—the Provisional Basic Law (the Provisional Constitution) established that “as a rule, a citizen of Lithuania may not be concurrently a citizen of another state” (Paragraph 2 of Article 13). The Constitution which is valid at present (Article 12) also entrenches the principle of prohibition of dual citizenship, however, it is not absolute—with the exception of individual cases provided for by law, no one may be a citizen of both the Republic of Lithuania and another state at the same time. In its ruling of 13 November 2006, the Constitutional Court held that, under Article 12 of the Constitution, dual citizenship may not be a wide-spread phenomenon.

4. The development of legislative regulation of citizenship after the entry of the 1992 Constitution into effect shows that the legislator gradually widened the circle of the persons who were allowed to be citizens of the Republic of Lithuania and of another state at the same time. In 2006, when a legal dispute arose regarding the compliance of some provisions of the Law on Citizenship with the Constitution, the Law on Citizenship used to contain the legal regulation whereby the absolute majority of citizens of the Republic of Lithuania, regardless of where they lived—in Lithuania or another foreign state—were allowed to be citizens of another state at the same time as well. By its ruling of 13 November 2006, the Constitutional Court recognised such legal regulation as being in conflict with the Constitution. As long as Article 12 of the Constitution entrenches the principle that with the exception of individual cases provided for by law, no one may be a citizen of both the Republic of Lithuania and another state at the same time, the legislator is not allowed to establish any such legal regulation whereby the number of such cases is so big that the cases of dual citizenship are a wide-spread,

but not rare phenomenon. No matter how the concept of the provisions of Article 12 of the Constitution presented in the Constitutional Court ruling of 13 November 2006 is assessed—it is possible to agree or disagree with it—however, it is the official construction of the Constitution and official concept thereof, and no one, save the Constitutional Court itself, can change it.

5. The concept of the provisions of Article 12 of the Constitution presented in the Constitutional Court ruling of 13 November 2006 also means that most of those citizens of the Republic of Lithuania, who departed to other states to settle there, provided they acquire citizenship of some other state, they will not be able to retain citizenship of the Republic of Lithuania. The construction of the provisions of Article 12 of the Constitution caused big dissatisfaction among Lithuanian emigrants, especially among those citizens of the Republic of Lithuania, who recently emigrated from Lithuania.

6. Article 12 of the Constitution can be amended only by referendum. When one looks for ways how, by not calling a referendum on amending Article 12 of the Constitution, to amend the Constitution so that cases of dual citizenship would not be rare ones, there are proposals that, e.g., Article 32 of the Constitution be supplemented with the provision “A person who acquired citizenship of the Republic of Lithuania by birth may not lose it against his will”, or to supplement Article 18 or 32 of the Constitution with the provision “Not a single citizen of Lithuanian descent, nor his children can lose, against their will, citizenship of the Republic of Lithuania acquired by birth, even with acquisition of citizenship of another state”. Such proposals are unacceptable and are in conflict with the Constitution. The fact that the Constitution itself establishes that the provisions of Article 12 can be amended only by referendum means that the Constitution considers these provisions as very important and fundamental ones in the life of society and the state, that a special protection of these provisions is entrenched in the Constitution itself, and that they cannot be amended by the Seimas. The fact that the provisions of Article 12 can be amended only by referendum means that the Seimas, while enjoying powers to amend other provisions of the Constitution, cannot amend those other provisions of the Constitution in the manner whereby one would establish a legal regulation competing with the legal regulation

established in the provisions of Article 12 of the Constitution, while the latter provisions may be amended only by means of a referendum. If the Seimas adopted such amendments and established a legal regulation competing with that entrenched in the provisions of Article 12 of the Constitution, whose amendment is possible by referendum only, there would appear a legal situation where, even if the provisions of Article 12 of the Constitution, which may be amended only by means of a referendum, are not formally amended, these provisions would be “neutralised” by the law on the amendment of the Constitution adopted by the Seimas. Thus, the legal regulation entrenched in the provisions of Article 12 of the Constitution, which may be amended only by means of a referendum, would be distorted and denied.

7. The main discussion issue regarding the new draft Law on Citizenship is this: how many situations is one allowed to legislatively establish, where a citizen of the Republic of Lithuania is permitted to have citizenship of another state at the same time. In other words, how broad could be the limits established by the law permitting dual citizenship. The draft Law on Citizenship chose the date of 11 March 1990 as the dividing line. The drafters chose this date only because they were bound by the concept of Article 12 of the Constitution presented by the Constitutional Court rulings, whereby dual citizenship may not be a wide-spread phenomenon (in other words, the legislator is not allowed to provide for so many “individual cases” where a citizen can have citizenship of another state at the same time and where dual citizenship would become a wide-spread phenomenon). It is to be assumed that the said dividing line was chosen because no other more convincing and more objective criterion was found how, while expanding possibilities to be a citizen of the Republic of Lithuania and another state at the same time, not to violate the requirement established in Article 12 of the Constitution. According to the press, more than a million individuals of Lithuanian descent live abroad at present and about 400 thousand citizens of the Republic of Lithuania left Lithuania after the restoration of the independence. If the draft Law on Citizenship provided that not only the persons who left or were exiled from Lithuania until 1990, but also the persons who left Lithuania after the restoration of independence, are allowed to have dual citizenship, it would mean that the law would again establish the legal regulation whereby dual citizenship becomes

(might become) a widespread phenomenon; it would also mean that the law would again establish the legal regulation which was recognised unconstitutional by the Constitutional Court ruling of 13 November 2006. It is noteworthy that, under the Constitution, the legislator may not overcome a ruling of the Constitutional Court by repeatedly adopting the law or separate provisions thereof which were recognised unconstitutional by Constitutional Court rulings.

8. If the legislator was really committed to follow the provision that dual citizenship may be a widespread phenomenon, and this would be so if, alongside the cases specified in the draft Law on Citizenship, one would provide that also the persons who left Lithuania after 11 March 1990 are allowed to have dual citizenship, it would be necessary to correspondingly amend the provisions of Article 12 of the Constitution. This can be done by referendum only. No matter how the legislative regulation of the relations of citizenship of the Republic of Lithuania will be amended in the future, one must pay heed to the provisions of the Constitution, including those which entrench equality of rights of all persons and non-discrimination on ethnical grounds.

9. The regulation of citizenship relations in European Union states shows that they have an increasingly liberal view towards dual citizenship and are abandoning the formerly strict prohibition of dual citizenship (e.g. Sweden 2001 Law on Citizenship). Most of European Union states can react to the new factual situation caused by the state integration due to the fact that their constitutions do not regulate dual citizenship relations—the legislator is allowed to regulate these relations.

The author is preparing the research article based on the presentation for the journal *Baltic Journal of Law & Politics*.