

# APPEARANCES AND REALITIES CONCERNING THE DISCRIMINATORY NATURE OF CERTAIN PROVISIONS OF THE CITIZENSHIP LAWS

S.G. BARBU<sup>1</sup> D. CERBU<sup>2</sup>

**Abstract:** *The conferral of citizenship constitutes an exclusive prerogative of public authority vested in the Romanian state, exercised under the principle of national sovereignty and in pursuit of the public interest. An individual applying for citizenship does not hold a subjective right in this regard but merely a legal vocation, which is conditional upon the cumulative fulfilment of the requirements established by law. The laws regarding citizenship that will be presented enshrine this approach, integrating provisions aimed at maintaining a balance between the state's interest in determining the criteria and conditions for acquiring citizenship and the acknowledgment of historical, cultural, or social ties justifying the granting or reacquisition of citizenship.*

**Key words:** *citizenship, public authority, acquisition and reacquisition, legislative exceptions, legal protection.*

## 1. Introduction

The institution of citizenship, by its very nature, lies at the intersection between state sovereignty and the principle of equality before the law. National legislations naturally establish distinctions among various categories of individuals with respect to the acquisition of citizenship, such distinctions being generally justified by considerations of public interest, national identity, or historical redress. At times, such distinctions take the form of positive discrimination, namely preferential legal treatment granted to certain categories of persons for the purpose of safeguarding historical, ethnic, cultural, or linguistic ties with the respective state.

## 2. The Conceptual Framework of Positive Discrimination

In international law, positive discrimination constitutes a justified derogation from the principle of formal equality, permitted where a differential legal treatment is based on

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<sup>1</sup> *Transilvania University of Brașov*, Associate professor PhD, [sg.barbu@unitbv.ro](mailto:sg.barbu@unitbv.ro), Lawyer

<sup>2</sup> Specialized legal personnel assimilated to judges and prosecutors within the Ministry of Justice

an objective and reasonable justification, pursues a legitimate aim, and complies with the principle of proportionality. It does not possess an arbitrary character but rather functions as an instrument for correcting de facto inequalities or for acknowledging a pre-existing legal, historical, or cultural connection between the state and the individual concerned. As established by the European Court of Human Rights in its case law "The principle of equality of treatment is violated if the distinction has no objective and reasonable justification. The existence of such justification must be assessed in relation to the aim and effects of the measure under consideration, regard being had to the principles which normally prevail in democratic societies. A difference of treatment ... must not only pursue a legitimate aim: Article 14 (art. 14) is likewise violated when it is clearly established that there is no reasonable relationship of proportionality between the means employed and the aim sought to be realized" (CEDO, Case relating to certain aspects of the laws on the use of languages in education in Belgium, judgment of 23 July 1968, Series A no. 6, p. 34, para. 10). Thus, states may establish differentiated legal regimes for certain categories of citizenship applicants, such as former citizens, their descendants, or individuals belonging to the same ethnic group, without such differentiation being regarded as discriminatory. In these cases, preferential treatment represents a legitimate expression of the state's sovereign right to determine the criteria for membership in its political community, in accordance with the principles enshrined in the European Convention on Nationality (Strasbourg, 1997), in particular Article 5 on non-discrimination and Article 6 concerning the rules on the acquisition of nationality. Therefore, positive discrimination in matters of citizenship does not constitute a form of exclusion but rather a legal acknowledgment of a historical proximity that justifies differentiated treatment based on ties of origin, language, and culture with the state.

### **3. The Romanian Citizenship Law**

#### **3.1. Short description**

The Romanian Citizenship Law No. 21/1991 establishes the legal framework governing the acquisition, reacquisition, renunciation, and revocation of Romanian nationality, thereby defining the essential normative structure of legal membership within the Romanian state. Enacted during the nation's transition from a totalitarian regime to a democratic order, the law firmly entrenches the *jus sanguinis* principle as the cornerstone of citizenship acquisition, in line with Romania's constitutional heritage and international legal standards. Over time, this legislative act has undergone numerous amendments and revisions, reflecting both social and political transformations and the alignment required by European Union law in the field of nationality. In its jurisprudence, the Constitutional Court of Romania has emphasized that the granting of citizenship constitutes "a matter of domestic jurisdiction, among the most discretionary prerogatives of the state, and an expression of its sovereignty." This position corresponds to the consistent case law of the Court of Justice of the European Union, which has reaffirmed the exclusive competence of Member States in matters of nationality ("it is for each Member State, having due regard to Community law, to lay

down the conditions for the acquisition and loss of nationality.", Case C-369/90, *Micheletti and Others v. Delegación del Gobierno en Cantabria, para. 10*).

### **3.1. General Provisions**

Article 8 of Law No. 21/1991 constitutes the general provision regulating the acquisition of Romanian citizenship upon request, establishing the substantive conditions to be fulfilled by foreign nationals and stateless persons seeking to become Romanian citizens. Through its content, the article expresses the principle that the granting of citizenship does not represent a subjective right of the individual, but rather a public authority prerogative exercised by the state in virtue of its sovereignty. Consequently, the conferral of citizenship is conditioned by the cumulative fulfilment of legal requirements intended to demonstrate the applicant's integration into the political and social community of the Romanian state, as well as his or her loyalty to its fundamental values. The legal text establishes, in paragraph (1), the general conditions that must be met: lawful residence in Romania for a period of at least eight years, or at least five years in the case of persons married to Romanian citizens; proper and loyal conduct toward the Romanian state, without committing acts that could endanger public order or national security; lawful and sufficient means of subsistence; and knowledge of the Romanian language, as well as of the essential elements of the Constitution and the national anthem. Article 8 therefore serves as a framework provision from which all other regulations concerning the acquisition of citizenship derive. In relation to this general rule, the legislator has subsequently established a series of exceptions or simplified procedures, justified by reasons of public or historical interest, which represent expressions of positive discrimination in favor of certain categories of persons.

### **3.2. Special Provisions**

Article 8 paragraphs (2) and (3) of the Romanian Citizenship Law introduce a mitigation of the general requirement of long-term residence, without, however, completely eliminating it. While applicants are ordinarily required to have legally resided in Romania for at least eight years, the law allows for this period to be reduced by up to three years in favor of certain categories of persons. Thus, under paragraph (2), the legislator grants a more favorable regime to those who, in addition to meeting the general conditions, can demonstrate genuine involvement in Romania's economic, educational, or civic life and who fall within one of the expressly mentioned situations, such as being a citizen of a Member State of the European Union, the European Economic Area, or the Swiss Confederation, or being a person born on Romanian territory to parents who held legal residence there. Paragraph (3) establishes a distinct form of preferential treatment for persons who have acquired refugee status in Romania. In this case as well, the general eight-year residence requirement may be reduced by up to three years, provided that the applicant has made notable efforts toward integration, demonstrated through outstanding academic or professional

achievements or through significant civic engagement. In both situations, the provision does not entail the elimination of the long-term residence condition but rather constitutes a normative solution through which the legislator acknowledges that certain individuals, by virtue of their position within the European legal framework and their strengthened connection with Romania, justify a reasonable shortening of the waiting period required for the acquisition of citizenship. Likewise, pursuant to Article 8<sup>1</sup>, Romanian citizenship may be granted, through a simplified procedure, to stateless persons or foreign nationals who, through their sustained activity, have made an exceptional contribution to the promotion of Romanian culture, civilization, or spirituality. In this case, the legislator acknowledges not a pre-existing legal bond, but rather a cultural and symbolic one, justified by the merits demonstrated in preserving and promoting the values of the Romanian state. Article 8<sup>2</sup> reflects another dimension of differentiation, allowing the granting of Romanian citizenship to stateless persons or foreign nationals who can make a significant contribution to promoting Romania's image through outstanding achievements in sports. This is conditional upon their representing Romania in national teams, in accordance with the regulations of international sports federations, and upon their fulfilment of certain general conditions set out in Article 8 paragraph (1), specifically those under letters (b), (c), and (e). Although Article 8<sup>2</sup> of Law No. 21/1991 was conceived as a form of positive discrimination intended to reward athletic excellence and the contribution of athletes to enhancing Romania's international image, its legal analysis also reveals potential deviations from the principle of equality enshrined in Article 16 paragraph (1) of the Constitution. In practice, the preferential treatment granted to athletes, who may acquire Romanian citizenship through a simplified procedure that derogates from the general requirements concerning domicile, length of residence, or the knowledge-verification interview, creates an unjustified difference in treatment compared to other categories of applicants who, despite making equally valuable contributions in fields of public interest, are not afforded a similar legal regime. Moreover, the procedure established by law for assessing the fulfilment of the conditions for granting citizenship to athletes is elliptical, as it fails to clearly define the criteria for determining what constitutes "outstanding performance." This normative ambiguity may lead to unequal treatment among applicants in comparable situations, granting the authorities an excessively broad margin of discretion and thereby transforming an exception to the rule into a potential arbitrary privilege. Therefore, although the legislator's intention was to acknowledge and reward international athletic achievements, the current wording of Article 8<sup>2</sup> risks contravening the principle of equality before the law and producing an effective discrimination among applicants, insofar as it favors a specific professional category without an objective and reasonable justification, as required by the jurisprudence of CEDO. Article 10 regulates the possibility for individuals who have lost their Romanian citizenship, as well as their descendants up to the second degree, to reacquire it upon request, while retaining their foreign citizenship and with the freedom to establish their domicile either in Romania or abroad, provided that they duly meet the requirements set out in Article 8 paragraph (1) letters (b)–(e) and demonstrate knowledge of the Romanian language. Within this framework, the legislator abandons the criterion of

residence duration in Romania and the verification of knowledge regarding Romanian culture, civilization, the provisions of the Constitution, and the national anthem, favoring instead the existence of a prior legal bond with the Romanian state, transmissible up to the second generation. Article 11 applies to individuals who were formerly Romanian citizens but lost their citizenship "for reasons not attributable to them" or whose citizenship was withdrawn "without their consent," as well as to their descendants up to the third degree. It recognizes their right to reacquire Romanian citizenship while retaining their foreign citizenship and without being required to establish domicile in Romania, provided that they meet a limited set of conditions, those set forth in Article 8 paragraph (1) letters (b), (c), and (e)—and demonstrate knowledge of the Romanian language. Paragraphs (4) and (5) of Article 15<sup>1</sup> represent the intersection of two requirements that permeate the entire Law No. 21/1991: on the one hand, the need for a minimum level of linguistic integration for persons reacquiring citizenship under Articles 10 and 11, and on the other hand, the reparatory and favorable nature of these procedures. Article 15<sup>1</sup> paragraph (4) provides that the granting of citizenship under Articles 10 and 11 is conditional upon the applicant's knowledge of the Romanian language, which may be demonstrated either by a language proficiency certificate at least at level B1 of the Common European Framework of Reference for Languages (CEFR), issued by Romanian academic or cultural institutions, or by educational documents attesting to at least three years of study in the Romanian language. At the same time, paragraph (5) of Article 15<sup>1</sup> establishes two exceptions to the requirement of demonstrating knowledge of the Romanian language, each raising distinct issues in relation to the principle of equality. The first category consists of former Romanian citizens applying for the reacquisition of citizenship under Articles 10 or 11. The second category, comprising individuals aged 65 and over, reveals, however, a form of effective discrimination, as the exception lacks an objective justification and is not directly related to the purpose of the procedure. The mere attainment of a certain age does not constitute a guarantee of attachment to the state or of cultural connection with it, and the elimination of the language proficiency requirement may, in practice, lead to the granting of citizenship to persons without a minimal capacity for civic and linguistic integration. Another aspect that raises serious concerns regarding the coherence and equality in the application of the law concerns the interview for verifying applicants' knowledge. Although its purpose is to assess the degree of cultural and civic integration, the wording of the provision is elliptical and lacks clear criteria, both as to the content of the examination and the manner of evaluation. The law does not establish objective standards concerning the level of proficiency in the Romanian language or the knowledge of elements of Romanian civilization and culture, nor does it define the degree of detail of the questions or the grading criteria. Consequently, the margin of discretion afforded to the Citizenship Commission within the National Citizenship Authority becomes excessively broad, and the outcome of the interview often depends on purely subjective assessments, which may lead to unequal treatment among individuals in comparable situations and create a state of apparent discrimination.

### **3.2. Proposals**

In order to eliminate these deficiencies and prevent discriminatory treatment in the procedure for granting citizenship, it is necessary to adopt a much more precise regulation, endowed with superior legal force, governing the manner in which the knowledge-verification interview is conducted. At present, the content and evaluation criteria are left entirely to the discretion of a regulation issued by the President of the National Citizenship Authority, an administrative act possessing a lower legal status than the law. Such a solution contravenes the principle of the supremacy of the Constitution and the law, as enshrined in Article 1 paragraph (5) of the Romanian Constitution, since matters that directly affect the exercise of an individual's rights and obligations must be determined by clear and foreseeable legal norms adopted by Parliament. In this regard, the Constitutional Court of Romania, in Decision No. 385/2023, held that "the Constitutional Court elevates predictability and clarity to the level of essential conditions for the quality and constitutionality of the legal norm. Thus, not only must the formulation of a normative act enable the interested person to reasonably foresee the conduct to be adopted, but clarity and predictability are *sine qua non* elements of constitutionality. Consequently, the Constitutional Court tends to confer increasing force to this requirement, emphasizing not only the quality of the normative formulation itself, but also its coherence with other legal acts and its capacity to be effectively and efficiently applied." In the same vein, the assessment during the interview of the applicant's knowledge of history, geography, general culture, and the Romanian language reveals another serious shortcoming of the current regulation, since these areas are non-legal in nature and require specialized expertise that exceeds the legal training of the members of the Citizenship Commission. In the absence of a clear methodological framework and professional evaluation committees, the examination acquires a formal and inconsistent character, often reduced to a superficial verification process that carries a significant risk of subjectivity. From this perspective, a restructuring of the evaluation mechanism is required through the establishment of an independent specialized committee composed of experts in the linguistic, historical, and cultural fields, tasked with conducting the preliminary assessment of applicants' knowledge. The results of this evaluation would then be transmitted to the Citizenship Commission, which would continue with the strictly legal examination of the application file. Such a solution would provide the procedure with consistency, transparency, and credibility, while preventing potentially discriminatory approaches by the current commission members, who may hold divergent and non-uniform perceptions of the notions of Romanian culture, civilization, or history.

## **4. The Citizenship Law of Republic of Moldova**

### **4.1. Short Description**

The new Citizenship Law of the Republic of Moldova has been promulgated and published in the Official Gazette and is set to enter into force on December 24, 2025. This legislative act holds fundamental importance both for national security and for

strengthening the legal framework aimed at preventing and combating the fraudulent acquisition of citizenship, while integrating recent European experience in matters of administrative control and integrity. Through its content, the law redefines citizenship not only as a legal status but also as a duty of loyalty and responsibility of the individual toward the state and society. Among the major innovations is the elimination of the possibility of submitting applications through intermediaries, including on the basis of powers of attorney, establishing the obligation that the applicant personally file the citizenship application. The new regulation is aligned with the legislative practices of several European states, including Romania, Belgium, Poland, Sweden, Austria, Cyprus, and Croatia, thereby confirming a broader tendency toward harmonization with international standards on the acquisition of citizenship. In the same spirit, the law establishes a general obligation for the applicant to demonstrate knowledge of the Romanian language and of the Constitution of the Republic of Moldova, irrespective of the legal basis of the application. The assessment of linguistic and constitutional competencies is not merely formal but is intended to ensure the applicant's effective integration into society. In parallel, mechanisms for verifying identity, controlling the authenticity of documents, assessing financial capacity, and confirming good reputation and the absence of criminal records have been strengthened. These safeguards were introduced in response to the alarming increase in attempts to obtain citizenship fraudulently, with more than one hundred cases of forged documents or false information being identified in the past three years alone.

#### **4.1. General Provisions**

Article 14 regulates, in a detailed manner, the acquisition of citizenship of the Republic of Moldova by naturalisation, setting out the general conditions under which a foreign national, a stateless person, or a beneficiary of international protection or political asylum may apply for the conferral of citizenship. The provision proceeds from the premise that naturalisation constitutes a form of progressive legal and social integration and establishes, as substantive requirements, that the applicant be over 18 years of age, possess lawful permanent residence on the territory of the Republic of Moldova, demonstrate knowledge of the Romanian language and of the provisions of the Constitution, and have lawful sources of income. In addition to these requirements, the applicant must meet at least one of the conditions relating to the duration and nature of residence: a defined number of years of continuous lawful residence within the state's territory, a period of residence during minority, cohabitation within a marriage with a citizen of the Republic of Moldova, or co-residence during the past three years with parents who already hold Moldovan citizenship. Article 14 also defines the minimum standard regarding lawful sources of income, providing that such income is deemed sufficient where the applicant's net monthly earnings are at least equivalent to the minimum national wage and where the activity generating that income has been carried out for a period of at least three years prior to the submission of the application.

#### **4.2. Special Provisions**

Article 10 of the new Citizenship Law of the Republic of Moldova regulates the circumstances in which a person may be recognised as a citizen on the basis of a blood, territorial, or historical connection, even if they do not currently possess documentary proof of citizenship. The provision stipulates that persons of full age who have knowledge of the Romanian language and of the Constitution, and who can demonstrate a legal or genealogical link with the Moldovan state, arising from birth, descent, or historical affiliation with territories that have, at various points in time, formed part of the historical space of the Republic of Moldova, may be recognised as citizens of the Republic of Moldova. Article 15 of the Citizenship Law of the Republic of Moldova first provides that the specific procedure for assessing the applicant's knowledge of the Romanian language and of the provisions of the Constitution shall be established by a governmental act, that is, through secondary legislation, thereby granting the executive the authority to organise and standardise the examination process. At the same time, the article introduces three categories of persons to whom this requirement does not apply: individuals with severe or pronounced disabilities that make it difficult to learn the language and the Constitution; persons who are granted citizenship "in the interests of the Republic of Moldova"; and children under the age of 14. Article 16 regulates the granting of citizenship "in the interests of the Republic of Moldova" establishing a special regime distinct from naturalisation. The text provides that the citizenship of the Republic of Moldova may be conferred upon citizens of other states if such conferral serves the interests of the Republic of Moldova, by decree of the President of the Republic of Moldova. Citizenship granted "in the interests of the Republic of Moldova" thus constitutes a special form of acquisition. However, the provision gives rise to a form of apparent discrimination, owing to the lack of clarity in the legal norms governing it. These "interests" are insufficiently defined in the law, which generates a lack of foreseeability and places the provision within the category of legal regulations that produce apparent discrimination.

### **5. The Citizenship Law of Italy**

#### **5.1. Short Description**

Italian citizenship is regulated by Law No. 91 of 5 February 1992, together with its implementing regulations, Presidential Decree No. 572 of 12 October 1993 and Presidential Decree No. 362 of 18 April 1994. Compared to the previous legislation, this statute marked a paradigmatic shift, placing greater emphasis on individual intent in the acquisition and loss of citizenship, as well as on the recognition of the possibility of holding multiple citizenships simultaneously. The Italian legal regime of citizenship is founded upon four fundamental principles: the transmissibility of citizenship by descent (*jus sanguinis*), the acquisition of citizenship by birth on the territory of the state in residual cases (*jus soli*), the acceptance of dual or multiple citizenship, and the express manifestation of will as a determining element in the acquisition or loss of this status.

### **5.1. General Provisions**

Article 9 of Law No. 91/1992 regulates the acquisition of Italian citizenship by decree of the President of the Republic. The provision establishes a differentiated minimum period of lawful residence required for the submission of an application, setting, as a general rule, a period of at least ten years of continuous residence for nationals of non-EU states and four years for EU citizens. By contrast, no residence requirement is imposed on foreign nationals who have served the Italian state for at least five years, including outside the national territory, which constitutes a form of apparent discrimination. The statute does not provide any indication as to the meaning of "service to the Italian state," thereby creating the possibility of arbitrary interpretation by the authorities responsible for applying the law. In addition to these cases of naturalisation upon request, paragraph (2) of Article 9 provides for a distinct procedure through which Italian citizenship may be conferred *ex officio*, by decree of the President of the Republic, in situations involving exceptional services rendered to the state or where there exists a compelling public interest justifying the conferral of citizenship. In such cases, the initiative lies with public authorities, prominent individuals, or associations capable of demonstrating that the prospective beneficiary meets the legal requirements. This mechanism likewise constitutes a form of apparent discrimination, as the statute fails to establish criteria or even guiding principles for assessing what may be deemed "exceptional services rendered to the state."

### **5.2. Special Provisions**

The legal framework governing the reacquisition of Italian citizenship is set out in Article 13 of Law No. 91/1992, which regulates the possibility for individuals who have previously lost their citizenship to reacquire it, subject to specific conditions expressly defined by the statute. Accordingly, a special regime is provided for Italian women who married foreign nationals before 1 January 1948 and who, by operation of the law then in force, automatically lost their Italian citizenship upon acquiring that of their husbands. These women may reacquire Italian citizenship by means of a simple declaration, even if they do not reside in Italy, the procedure being carried out through the competent consular offices. Through the amendments introduced by Decree-Law No. 36/2025, as converted by Law No. 74/2025, Article 17 of Law No. 91/1992 has been supplemented with transitional provisions reopening the deadline for the reacquisition of citizenship in favour of former Italian citizens who were either born in Italy or resided continuously for at least two years on Italian territory and who lost their citizenship prior to 15 August 1992 under the former Law No. 555/1912. This possibility is strictly time-limited: it may be exercised only between 1 July 2025 and 31 December 2027 and does not apply to individuals who voluntarily renounced Italian citizenship after 16 August 1992. The temporal restriction of this mechanism amounts to a form of effective discrimination for those who fall within the substantive conditions of the provision but are unable, for objective or subjective reasons, to submit a request before 31 December 2027. Likewise, Law No. 379/2000 provided for the possibility of recognising Italian citizenship in favour

of persons born and formerly residing in the territories of the former Austro-Hungarian Empire that became part of Italy after the First World War, as well as their descendants. Applications could be submitted until 20 December 2010, either to the Italian consular offices for applicants residing abroad or to the civil registry of the municipality of residence for those residing in Italy. The assessment of applications was carried out by an interministerial committee established within the Ministry of the Interior, which issued an opinion on the fulfilment of the legal requirements, followed by the formal recognition issued by the same ministry. This mechanism likewise constitutes a form of effective discrimination against individuals who satisfy the substantive legal criteria but were unable to file their applications by the deadline of 20 December 2010.

## 6. Conclusions

In conclusion, although Romania, the Republic of Moldova, and Italy differ in their legislative particularities, they share several essential structural features: the imposition of a minimum period of residence on the territory of the state, the requirement to demonstrate knowledge of the national language, culture, and civilisation, as well as the possibility of reacquiring citizenship for former citizens or their descendants originating from territories that historically belonged to these states. These elements reflect a shared vision of legal belonging; however, their practical application reveals significant distinctions between apparent discrimination, which may be justified by a legitimate social objective, and effective discrimination, which arises from arbitrary derogations, elliptical procedures, or unclear evaluative criteria. Accordingly, in order to mitigate the risk of unequal treatment and to ensure compliance with the principle of equality, it is necessary to strengthen and clarify the legislative framework governing naturalisation and reacquisition of citizenship. Only through a normative structure that is clear, predictable, and coherent can citizenship be reaffirmed as a genuine expression of civic integration and identity-based belonging, rather than the product of administrative practices susceptible to arbitrariness.

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