QUO VADIS ROMANIAN CITIZENSHIP

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Abstract: In presenting some considerations on the legal institution of citizenship, we will make some brief historical and doctrinal forays into the concept, a brief x-ray of the legislation and public administration institutions involved in this matter, then we will present some perspectives on the constituent dimensions and also on the reverberations of the connection between the Romanian citizenship and the „citizenship” of the European Union, in regards to the present and its possible future.

Key words: Citizenship, Romania, National Authority for Citizenship, legal framework

1. Brief historical incursions (unde venis)

Citizenship analysis has varied over time, doctrine stating that “in the science of constitutional law, the notion of citizenship has two meanings”: one of a legal institution, “that is, a grouping of legal norms with a common object of regulation”, and the other one being the term itself which “characterizes the legal condition (state) created for those persons who have the quality of citizen”.

In regards to its historical dynamics, citizenship was consolidated in the direction of a special relationship between an individual and the state to which he belonged, the logic of this construction being rather a timeless one, with sources as far back as possible in time, which are discharged in the great mass of the people living on the same territory, sharing a certain common set of moral-religious values, common language, similar customs, a consolidated sense of belonging to the same large ethnic family.

In its contemporary form, citizenship has evolved to express the natural person's belonging to the state of which he is a citizen.

On the other hand, citizenship is traditionally associated with the exercise of rights and the possibility of acquiring any other rights recognized by the law of a state.

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The conceptualization of citizenship as the possession of rights was strongly influenced in doctrine by the theories analyzed by T. H. Marshall. According to it, citizenship is the way to ensure that every person is treated as a full and equal member of society, this materializing through the ability of a person to be the holder of an unlimited number of rights.

Citizenship conceived as political participation has a long history in political theory. Thus, in his work, „Politics”, Aristotle constructs the legal pattern of the Athenian citizen starting from the fundamental principle according to which everyone is equal by virtue of the quality of the ruler of the law or its creator. Together with the writings of adherents and analysts of the politics of the Roman Republic from 510–27 BCE, the Greek model and its Roman republican variants inspired those theories of citizenship that emphasize political participation as its defining element.

The Roman model of citizenship is structured around the principle that all are equal under the power of the law, a meaning that will later be translated into the approaches of doctrinaires who grant equal legal status the supreme attribute of citizenship. It has been demonstrated that Romanian law is of particular importance regarding the establishment of a complex and thorough legal framework of the institution of citizenship, constituting a nuanced normative system, which had a special influence on the subsequent evolution of this institution. As the specialists in the field emphasize, the quality of citizen (status civitatis) constitutes, after freedom, the second element of the legal capacity of the natural person. Only Romanian citizens had the full political and civil rights recognized by the Romanian state: jus suffragii (the right to vote); jus honorum (the right to be elected to public positions); jus militae (the right to serve in a Roman legion); jus provocations (the right to challenge a capital punishment imposed by a magistrate); jus commercii (the right to possess, acquire and pass on goods by will); jus conubii (the right to marry according to Roman law).

After the fall of the Roman Empire, Europe regressed from the democratic regimes (as “democracy” was understood in the Antiquity) developed by Ancient Greece and Rome, to quasi-tribal regimes and only in happier cases to consolidated monarchies. Consequently, Europe entered a period of political and social turmoil that lasted as long as the states were poorly organized. It can be seen that the poor organization of all states in the feudal period has a common denominator: the ignoring or even total abandonment of the system based on citizenship and rights recognized by the state by virtue of citizenship. Early feudalism established a system of granted rights/obligations based on the criterion of loyalty to a person (nobilis), and only subsidiarily those to the state were considered, anyway mediated by the lord of the domain where the individual lived. The weaknesses of such a system become catastrophic for economic and social development, often even leading to the demise of the state itself.

The revival comes later, in the Latin states of the eleventh century and was presented in Machiavelli’s work „Principles”, for which citizenship was one of the central elements of politics. Participation in public life also becomes essential in the theory of Rousseau’s republicanism whereby the outcome of collective desires could only belong to people who had citizen status. Civil republicanism, similar from this point of view to liberalism,
supports the status quo of active citizenship, which is maintained as long as citizens freely express themselves in society to achieve their desires.

For some theorists, including Professor Duncan Kelly, the state is the right place (locus) to create the institution of citizenship, but many analysts insist on the fact that citizenship is increasingly becoming a notion that asserts itself beyond national borders. Citizenship is built around the identification function that it intrinsically has, as a result of which the individual’s sense of belonging to society and to the values it cultivates is born.

In this context, the emotional side of citizenship and the way in which people develop affective bonds of solidarity with a certain group by perceiving belonging to a collectivity are noted. With reference to this aspect, Aristotle assumed that a tacit agreement, the so-called “harmonia”, depended on a form of civic friendship among citizens who could express their will and could live together only in a closely knit community. Thus, a *sine qua non* condition is born, meaning that citizens need to know each other and share common values and interests. Only when they are so close can they be able to decide the best qualities for the seats in the Senate, to select the right men for them, to settle the disputed rights harmoniously, and to adopt the collective policies unanimously.

It has also been demonstrated that contemporary debates on citizenship are also fueled by historical research on the true nature of the connections admitted in the past. A distinction is made today between two fundamental criteria for establishing citizenship at birth: biological ancestry (*jus sanguinis*) and place of birth (*jus soli*).

Some researchers demonstrate that *jus sanguinis* prevailed in primitive societies, being an indicator of the closed character of the given society, while *jus soli*, which prevailed in the feudal era, is rather an indicator of the open character of the society.

**2. Doctrinal analysis summary highlights**

Regardless of the theoretical perspective from which it is approached, citizenship refers both to the relationship between the state-organized community and the individual, and to the relationship between individuals viewed *ut singuli*. These connections involve two approaches: a theoretical one, which analyzes how the mentioned relationship should be, and an empirical one, which examines the meaning of this relationship starting from an inductive generalization.

The main theories regarding citizenship proposed by doctrine over time are the following:

Firstly, the *liberal conception*, which positions the individual as the main element around which all arguments are presented. The liberal theory of citizenship emphasizes the equality of rights that every citizen possesses and how only this equality enables individuals to pursue their goals and objectives. So, for liberals, a system of differentiated rights and freedoms does not represent freedom for all, since the law and implicitly rights must be universal.

Secondly, the *communitarian theory* is totally opposed to the liberal one in many aspects, since, for communitarians, the individual is not placed before the community. As such, they argue that liberal theory fails to adequately consider the importance of
duty or loyalty to society, ignores the social nature of individuals, and, in emphasizing rights, ignores responsibilities and obligations owed to the community. The essential argument is that liberal theories of citizenship allow the pursuit of individual goals without limitations to the detriment of the overall social formation and community.

Finally, the third theory of citizenship is the republican one. It defines participation in governance as the main foundation for promoting the civic good. It is critical both from a liberal perspective, which it considers too fragmented, and from a communitarian perspective, as it does not accept that individual identity should be placed above civic goals.

In any context the theories have in common that citizenship should be seen as a unified concept, with civil, political and social aspects that have a continuous impact on each other. There is also a theoretical connection between all these aspects as they are built on the principle of equal status by rights. With reference to these rights, in perhaps the most influential work that analyzes the concept of citizenship, “Citizenship and Social Class”, theorist and sociologist Thomas Humphrey Marshall emphasizes the unitary nature of citizenship and the need to consider civil, political and social rights in full correlation with each other and not in isolation.

Professor Charles Rousseau defines citizenship as “the permanent political and legal link between a natural person and a certain state. This connection is expressed by the totality of mutual rights and obligations between a person and the state of which he is a citizen, and moreover, it is a special legal connection reflected internally, preserved and extended wherever the person is in the state of origin, in another state, at sea, in the air or in the cosmos”.

In the Romanian doctrine, it has been decided that the rules related to this are largely integrated with constitutional law, which, by definition, regulates the relations between the state and the citizen, by establishing the main rights, freedoms and duties of the latter, as well as by setting the conditions which must be met in order to be elected or appointed to a leadership or representation position.

Professor Ștefan Deaconu defines citizenship as “the connection and belonging of a natural person to a certain state”. Professor Tudor Draganu defines citizenship as “the legal situation resulting from the belonging of a natural person to a determined state, characterized by the fact that it has the full range of rights and obligations provided for by the constitution and laws, including political ones, the obligation of loyalty to the homeland and that of defending her”. Also, professors Ioan Muraru and Elena Simina Tănăsescu define that the Romanian citizenship is the quality of the natural person that expresses the permanent socio-economic, political and legal relations between the natural person and the state, proving its belonging to the Romanian state and giving the natural person the possibility to be the holder of all the rights and duties provided by the Constitution and the laws of Romania. Thus, the uninterrupted character of the relationship between the individual and the state-organized society is emphasized, a relationship that represents the condition of acquiring all the rights and assuming all the obligations stipulated in the legislation of a country.
3. Legislative milestones. Acquisition (by birth, adoption, granting on application, reacquisition) and loss (renunciation and withdrawal) of citizenship (*Ubi sumus*)

Found under various legal guises throughout the duration of the Romanians in this geographical space, resettled as an insurmountable pillar in all the fundamental normative acts, uninterruptedly, just as the existence of the Romanian State is uninterrupted from the 19th century to the present, Romanian citizenship was regulated for the first time in agreement with the Civil Code of 1864, which established *jus sangvinis* as the main way of acquiring Romanian citizenship, and acquisition by naturalization was a subsidiary method, regulated by art. 16 of the Code. Loss of citizenship was correlated in art. 17-20 of the same Civil Code with naturalization acquired in another state, receiving a public office from a foreign government without the legal consent granted by the Romanian state, entering foreign military service in the absence of approval by the Government of Romania, respectively through the marriage of a Romanian female citizen with a foreign citizen.

Also noteworthy is the law of 1877 for granting Romanian citizenship to officers of Romanian origin who served in foreign armies (Of.G. no. 117/26 May 1877), Law no. 28 of 24 February 1924 (Of.G. no. 41/February 24, 1924). Next comes Law no. 33 of 19 January 1939 (Of.G. no. 16/19 January 1939) which uses the terminology “nationality”, then Decree 125 of 1948 which returns to the terminology of citizenship. The same terminology, indisputably more modern and widely used in the profile legislation of the states after the Second World War, namely that of citizenship, is also found in the laws that followed until the current law in force: Decree no. 33/ 1952, Law no. 24/1971, then Law no. 21/1991 (Of.G. no. 44/1991) currently in force. The current law underwent several changes, through Law no. 192/1999 (Of.G. no. 611/December 14, 1999) and it was then republished in the Of.G. no. 98/March 6, 2000, then amended by GEO no. 68/2002 (Of.G. no. 424/June 18, 2002), approved by Law no. 542/2002, later amended by GEO no. 43/2003 (Of.G. no. 399/9 June 2003, approved by Law no. 248/2003 (Of.G. no. 414/13 June 2003). The Law was later republished in the Of.G. no. 576/2010, in the context of the adoption of GEO no. 5/2010 on the establishment, organization and operation of the National Authority for Citizenship (Of.G. no. 93/February 10, 2010).

On November 6, 1997, the European Convention on Citizenship was adopted by the Council of Europe in Strasbourg and was ratified by Romania, through Law no. 396/2002 (Official Gazette no. 490 of July 9, 2002).

As a general rule, laws and constitutions confer all rights only on citizens, while persons who do not have this status (foreigners, including stateless persons) have only a part of these rights, other than the exclusively political ones, because only citizens can and have the right to exercise power and thus only they participate in governance. At the same time, only citizens can exercise all fundamental duties. Each state is obliged to determine through its own legislation who are its citizens.

According to the provisions of Law no. 21/1991 of Romanian citizenship, the methods of acquiring citizenship are regulated by art. 4 - Romanian citizenship is acquired through: birth, adoption and on request.
Art. 24 of the Law regulates the ways of losing citizenship by withdrawal of Romanian citizenship, approval of renunciation of Romanian citizenship, or in other cases provided by law.

Art. 8 of Law 21/1991 with subsequent amendments and additions, regulates the granting of Romanian citizenship on the cumulative fulfillment of several conditions by the foreign or stateless applicant:

a) was born and resides, at the date of the application, on the territory of Romania or, although he was not born on this territory, he has resided under the law on the territory of the Romanian state for at least 8 years or, if he is married and cohabits with a Romanian citizen, for at least 5 years from the date of marriage;
b) proves, through behavior, actions and attitude, loyalty to the Romanian state, does not undertake or support actions against the legal order or national security and declares that he has not undertaken such actions in the past either;
c) has reached the age of 18;
d) has secured legal means for a decent existence in Romania, under the conditions established by the legislation on the regime of foreigners;
e) is known for good behavior and has not been convicted in the country or abroad for a crime that makes him unworthy of being a Romanian citizen;
f) knows the Romanian language and possesses elementary notions of Romanian culture and civilization, to a sufficient extent to integrate into social life;
g) knows the provisions of the Romanian Constitution and the national anthem.

Reacquisition of citizenship is based on the provisions of art. 11 of the Law and is a process through which persons who were Romanian citizens and lost their citizenship for reasons beyond their control or who had this citizenship revoked against their will, as well as their descendants up to the third degree, upon request, may regain or they can be granted Romanian citizenship, with the possibility of keeping their foreign citizenship and establishing domicile in the country or maintaining it abroad, if they meet some of the conditions provided for in art. 8.

Renouncing a citizenship can also be a difficult process, often accompanied by conflicting and strong emotional feelings. From a subjective perspective, the act of renouncing a citizenship can be considered both an act of betrayal and an act of emancipation, depending on the context and the individual's reasons.

Reasons for renouncing can range from acquiring another citizenship and maintaining dual citizenship to disagreement with state policies or actions.

As for the withdrawal of citizenship, this can often be dictated by the interests of the state and its domestic and foreign policy. Withdrawal of citizenship can be a powerful tool to control and discipline citizens, often used for political and geopolitical purposes.

Revocation of citizenship - between security and justice - is an action by which the state revokes the citizenship of an individual in certain circumstances:

a) being abroad, commits particularly serious acts that harm the interests of the Romanian state or damage the prestige of Romania;
b) abroad, enlists in the armed forces of a state with which Romania has broken diplomatic relations or with which it is at war;
c) obtained Romanian citizenship through fraudulent means;
d) is known to have links with terrorist groups or has supported them, in any form, or committed other acts that endanger national security.

In paragraph 2 of art. 24 of the Law, the indissoluble link between the individual and the State on whose territory he is born is found under the irreducible and unconditional formula: “Romanian citizenship cannot be withdrawn from the person who acquired it by birth.”


4. General aspects regarding the National Authority for Citizenship – organization and operation

The legislator entrusted responsibilities in the matter of citizenship - directly or through tangential issues - to the Ministry of Justice through the National Authority for Citizenship, to the Ministry of Foreign Affairs through the Consular Directorate that coordinates Romania’s diplomatic missions abroad, to the Ministry of Internal Affairs - to the General Directorate for Population Records, to the Directorate General of Passports, the General Inspectorate for Immigration, the General Inspectorate of the Romanian Police, the Center for International Police Cooperation - INTERPOL and, respectively, the General Directorate of Internal Protection, but also the Romanian Intelligence Service and the Romanian Foreign Intelligence Service.

The Government of Romania as a delegated legislator, capitalizing on the provisions of art. 115 par. 4-6 of the Constitution, opted for the establishment of a specialized institution, called the National Authority for Citizenship, whose legal framework for organization and operation is constituted by GEO no. 5/2010 (Of.G. no. 93/February 10, 2010).

This institution keeps records of requests for granting, reacquiring, renouncing and withdrawing Romanian citizenship, ensures the necessary conditions for carrying out the activity of the Commission for Citizenship, draws up the draft orders of the President of the Authority regarding the granting, reacquisition, withdrawal and renunciation of Romanian citizenship, as well as the draft orders rejecting these requests, drafts
citizenship certificates and completes the procedure for their rectification, ensures the solemnity of the oath of allegiance to Romania and keeps records of the persons who have sworn the oath of allegiance, collaborates with authorities of the central public administration and with international institutions with attributions in the field of citizenship, being empowered to conclude collaboration protocols, alongside other objectives corresponding to the Authority’s field of activity.

The Citizenship Commission, an entity without legal personality within the National Authority for Citizenship, verifies the fulfillment of the conditions provided by law for granting, reacquiring, withdrawing or renouncing Romanian citizenship.

5. Some critical observations on the dimensions of the legal institution of citizenship

The principles underlying the regulation of Romanian citizenship are:

a) The principle of equality of citizens before the law;
b) The principle according to which Romanian citizens enjoy the protection of the Romanian state;
c) The principle according to which Romanian citizenship cannot be withdrawn from those who acquired it by birth;
d) The principle whereby only Romanian citizens enjoy all the rights recognized by the Constitution and the laws and are required to fulfill all the obligations stipulated by them;
e) The principle according to which the conclusion, declaration of nullity, annulment or dissolution of marriage between a Romanian citizen and a foreigner does not affect the citizenship of the spouses.

The scientific research on the problems related to the institution of citizenship is of major interest for the science of the constitutional law of Romania which develops both on the basis of scientific research and on the basis of the experience of the organization and functioning of executive public authorities such as the National Authority for Citizenship.

Citizenship is a contested concept (there are many different approaches to the concept) because, as we have seen, the traditions and meanings of citizenship vary throughout history and across Europe according to different countries, cultures and ideologies. All these different ideas about citizenship coexist in a fruitful and at the same time troublesome tension with economic, social and political implications. Any of these different concepts, from the perspective of the individual, challenges the concept of citizenship because it involves a permanent interaction and negotiation between the personal needs, interests, values, beliefs, attitudes and behaviors of each citizen and the community in which they live and of which they are a part.

The institution of citizenship is built from its individual and collective dimensions and from the inside and outside of their expressions.

• **The individual dimension of citizenship** includes personal values and perspectives - from the inner expression - and individual behavior, rights and responsibilities - from the outer expression.
- The collective dimension of citizenship covers collective values, notions and concepts - in the inner expression - and cultural, social, political and economic structures - in the outer one.

6. Connections between Romanian citizenship and European Union citizenship according to the Treaty on the European Union, modified by the Treaty of Lisbon

The first regulation regarding the citizenship of the Union was introduced by the TEU (Maastricht Treaty) within the framework of the TCE (Part Two, in art. 17-22, TEU) which expressly provides that “a citizenship of the Union is established” and continuing with specifying that „any person who has the citizenship of a member state is a citizen of the European Union”.

The citizenship of the European Union complements the national citizenship, without replacing it, making it possible to exercise some of the rights of the citizen of the Union on the territory of the member state in which he resides (and not only in the country from which he comes, as previously provided by the TEU).

According to the principle of representative democracy, citizens of the Union have the following prerogatives:
- every citizen has the right to participate in the democratic life of the Union. Decisions are made as openly as possible and at a level as close as possible to citizens (art. 10 para. 3);
- the formation of European political consciousness and the expression of the will of the citizens of the Union through the contribution of political parties at the European level is aimed at (art. 10 para. 4)
- citizens and representative associations are given the opportunity by the institutions to make their opinions known and to exchange opinions publicly, in all areas of action of the Union (art. 11 para. 1);
- at the initiative of at least one million citizens of the Union, nationals of a significant number of member states, the Commission can be invited to present, within the limits of its powers, an appropriate proposal in matters where these citizens consider that a legal act is necessary for the Union, in order to apply the treaties (art. 11 para. 4)

The involvement of European citizens in the life of the Union is realized through their representation in the national parliaments.

Therefore, the principle of representative democracy is also emphasized through the active contribution of national parliaments to the smooth functioning of the Union, as follows:
- a) by the fact that they are informed by the institutions of the Union and by receiving notifications regarding draft legislative acts of the Union in accordance with the Protocol on the role of national parliaments within the European Union;
- b) by observing the principle of subsidiarity in accordance with the procedures provided for in the Protocol on the application of the principles of subsidiarity and proportionality;
- c) by participating, within the area of freedom, security and justice, in the evaluation mechanisms of the implementation of Union policies in this area;
d) by participating in treaty review procedures (in accordance with art. 48 new TEU);
e) by the fact that they are informed about the applications for joining the Union (in accordance with art. 49 new TEU);
f) by participating in interparliamentary cooperation between national parliaments and with the European Parliament (in accordance with the Protocol on the role of national parliaments within the EU).

Provisions supplementing rights enter into force only after they have been approved by the member states in accordance with their constitutional norms (art. 25 TfEU).

In addition to the obligations provided for in the treaties, citizens of the Union enjoy, among other things:

a) the right of free movement and residence on the territory of the member states.
b) the right to elect and be elected applies to any citizen of the Union who resides in a member state and who is not a national thereof. This right includes two aspects: local elections and elections for the European Parliament:
c) the right to enjoy, on the territory of a country where the member state whose nationals are not represented, protection from the diplomatic and consular authorities of any member state, under the same conditions as the nationals of this state.
d) the right to address petitions to the European Parliament, to address the European Ombudsman (according to art. 288 TfEU) and the right to address the institutions and consultative bodies of the Union in any of the languages of the treaties and to receive an answer in the same language (art. 20 paragraph 1 d and 24 TfEU).
e) the right to present a citizen's initiative in accordance with art. 11 TEU, including the minimum number of member states from which the citizens presenting such an initiative must come (art. 24 TfEU).
f) the right of access to the documents of the institutions, bodies, offices and agencies of the Union, regardless of their medium, subject to the principles and conditions established by art. 15 para. 1 TfEU.

Giving legal force to the Charter of Fundamental Rights of the European Union, adopted on December 7, 2000 in Nice, adapted by the European Council on December 12, 2007 in Strasbourg, strengthens the confidence of the citizens of the member states - by recognizing the rights, freedoms and principles - in the prerogatives that the citizenship of the Union European Union bestowed on them starting with the Treaty of Maastricht, from 1993. In support of this concern, in order to strengthen the rights of Union citizens, the Union accedes, through the Treaty of Lisbon, to the European Convention for the Protection of Human Rights and Fundamental Freedoms, a document of great legal importance, which makes these rights the foundation of the European Union citizenship.

7. Strategic perspectives on Romanian citizenship

In the global geopolitical context in which we find ourselves at the beginning of 2024, represented by a very difficult period for humanity due to the existence of major risks of expansion of armed conflicts between different states, it is essential not to omit the analysis of the risks and vulnerabilities given by the status of citizen of Romania.
Starting from the conceptual notion of Romanian citizen in the year 2024, we note that this status does not confer rights and obligations only on national territory, since through Romania’s accession to the European Union and, implicitly, through the consolidation of the status of a Romanian citizen with that of a European citizen, we find that the importance and prerogatives thus acquired can lead to certain risks and strategic vulnerabilities to the integrity of the European Union.

At the same time, this aspect also applies to the military alliance to which Romania is an active party - the North Atlantic Treaty Organization ("NATO").

Analyzing this concept, we note that the role of the Romanian citizen to participate in the protection of the national space and the interests of Romania cannot be separated from the protection of all the member states (and, implicitly, the citizens) of the European Union and NATO.

Some essential aspects that have attracted our attention are inextricably integrated in the sphere of ensuring national and international protection and security from the perspective of the rights and freedoms of citizens conferred by the status of Romanian citizen, obviously referring to the ability to freely pass through the territory of the European Union states, which can lead to the possibility of facilitating cross-border security vulnerabilities.

Thus, in the paradigm of “Romanian citizenship, quo vadis” from the perspective of reducing the strategic risks and vulnerabilities involved in the status of Romanian citizen at the national and international levels, we appreciate that it is essential for Romania, through the National Authority for Citizenship, as well as through the other institutions with attributions related to the process of acquiring, reacquiring and withdrawing Romanian citizenship, to rebuild the legal and institutional mechanism for managing the issue of granting, re-granting, withdrawing and relinquishing Romanian citizenship.

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