

Brief Considerations on Citizenship from the Perspective of the Council of Europe

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Abstract: *Citizenship is of paramount importance within the recent legal space. Without a good knowledge of its conceptual foundation, of the mechanisms it encompasses as well as of its interferences with the wide range of human rights documents that have regulated it over time, we cannot have a clear picture of how to understand its evolution. Thus, this research approach aims at analyzing the notion of citizenship as it is seen through the filter of the regional protection mechanism of the Council of Europe, especially focusing on identifying the main documents that consecrated it. Therefore, starting from the general framework of the human rights protection, we narrow the line of analysis by exposing the main coordinates the European Convention on Nationality emphasizes, this document being relevant not only for defining the notion but also for regulating some areas in which citizenship appears as a central element. Last but not least, the paper underlines the connection of the European Convention on Human Rights (ECHR) with citizenship. This emblematic document is remarkable not because it defines the notion, because we already know that this it has no concerns in this field, but more particularly because of the way in which it creates a proper context for the European Court of Human Rights to rule by also taking into consideration some aspects regarding the notion of citizenship. This process automatically creates a bridge between the concept of citizenship and the previously mentioned document, which becomes extremely relevant for the present analysis.*

Keywords: *citizenship, nationality, human rights, regional protection system, Council of Europe.*

How to cite: Curelușă, L.-F. (2023). Brief considerations on citizenship from the perspective of the Council of Europe. *European Journal of Law and Public Administration*, 10(2), 16-23. <https://doi.org/10.18662/eljpa/10.2/205>

Introduction

Choosing to analyze citizenship by referring to the way in which the Council of Europe understands to approach, through the documents consecrated under its dome, this concept so recurrent in national, but especially international legal literature, was not something accidental. Citizenship comes to weigh a lot in the balance regarding the protection of rights and freedoms. However, it is also important to understand the particularities of this shielding system, as seen through the filter of the Council of Europe - an exponent of the European regional mechanism of protection of human rights. Thus, without evoking the typicality of this system, it is important to underline, among other things, that it does not advance the criterion of citizenship in offering protection but, as stated in the legal literature: “the protection of human rights is not conditioned by the individual's citizenship in a member state of this organization, an aspect that allows the application of the principle of the pre-eminence of law” (Voiculescu & Berna, 2023, p. 191). Regarding this, it is important to underline the distinction which the doctrine makes regarding the fundamental rights as opposed to citizen rights. Thus, while “fundamental rights are recognized to all persons who live on the territory of a state [...] Citizenship rights are granted and guaranteed only by virtue of the link established between the person having this quality and his state of belonging” (Ciucă, 2019, p. 87).

Therefore, without going into the depth of the effective protection system, I will try to contour as well as evoke the purpose of the main documents that took shape under the umbrella of the Council of Europe, whose content focused on addressing the issue of citizenship – as central core of this paper. Consequently, the present approach begins with an exposition regarding the European Convention on Nationality, a document that on the one hand dedicated its content to defining and contextualizing the notion of citizenship and on the other hand to systematizing the most important domains in which it occurs. Observing an obvious link that is created between this first reference document and the ECHR, analyzing this overlap appears to be an absolutely inherent approach, which will be reflected in the second section, along with a separate exposition of the Convention and its implications, in the absence of a *de facto* consecration of the notion of citizenship.

European Convention on Nationality - some implications regarding the notion of citizenship.

The European Convention on Nationality emerged on the 6th of November 1997. As an instrument elaborated by the Council of Europe, one of its purposes was to clarify a series of insufficiently regulated concepts or mechanisms related to citizenship which arose in time. From the very beginning, it is clear that the official name of the document which is subject of the analysis is “European Convention on Nationality” and maybe some will perhaps wonder how is this document connected with the idea of citizenship. Without launching into a discussion worth being elaborated *in extenso* in another context, a series of clarifications are still required. There is obviously a connection between nationality and citizenship. That this is, in some legal systems, put under the sign of synonymy, it is an issue already debated and stated. As we know, the recurrent situation of the occasional juxtaposition of the two notions is not a new element, this fact being attributed to the legal system in which these legal terms are instrumented. Therefore, as stated in legal doctrine, “in the Romano-Germanic system it is possible to accept synonymy” (Ciucă, 2019, p. 82). However, in order to make a defining distinction between citizenship and nationality, the judicial considerations regarding nationality, as they were stated in the *Nottebohm Case* obviously come to my mind. By paraphrasing the way in which the International Court defined nationality, one idea in particular becomes relevant and this relates to that sense of belonging, that profound connection that is being put under a legal dome, a relationship governed by emotions, where the rights and correlative duties are of paramount importance (International Court of Justice, *Nottebohm Case*, p. 23).

Although the text of the analyzed document reflects the ubiquitous use of this concept of „nationality”, it is important to underline the meaning given to this notion in the content of Article 2.a. from the European Convention on Nationality. In few words, it reflects the connection between a human being and a state which is not related at all to the ethnic origin of that individual (Council of Europe, 1997a, Article 2.a). Therefore, in order to better clarify this terminological discussion, a clear vision is embraced by the provisions stated in the Explanatory Report, a document whose main purpose is to somehow “detangle” the formalism of the Convention on Nationality. Consequently, its provisions clearly stated that, as far as the Convention is concerned, as well as the effects it produces “the term nationality and citizenship are synonymous” (Council of Europe, 1997b, par. 23).

Broadly speaking, the document concludes a series of principles and a set of rules applicable to citizens, respectively to those situations when the

question of plurality of citizens arises. The Explanatory Report states at par. 12 of the introductory part that the object of this protection instrument covers the full range of aspects associated with the concept of citizenship. Some of these relate to the principles applied, the way in which citizenship can be acquired or lost, the procedural rights involved, the levers of recovering citizenship, some features regarding multiple nationality and other relevant provisions directly connected to citizenship (Council of Europe, 1997b, par. 12).

How emblematic this Convention on Nationality is within the human rights protection domain becomes even more obvious when specialists state that it “demonstrates and consolidates a gradual transition from an understanding of citizenship as privilege to an understanding of citizenship as right in international law on nationality” (Pilgrim, 2011, p. 1). The quintessence of this idea is the actual nucleus of the paper because it not only validates the actual evolution of citizenship but also contextualizes it and emphasizes once more what an important role it plays on the international arena. This is the starting point for a further conclusion this paper aims at, the one which reiterates the fact that there is also a great impact of citizenship in the human rights domain, an idea which will be exposed in another section, when talking about another human rights document, so relevant for the evolutionary conceptual path of citizenship.

The impact of this Convention in the human rights protection sphere is indubitable. This can be confirmed both by its scope and by the awareness of those states which are members of the Council of Europe and other signatory States regarding the not accidental vicinity of this document to the provisions of another reference document in the human rights field, fact which was stated even in the Preamble of the European Convention on Nationality. And by this I am particularly referring to the provisions regarding private and family life, which are consecrated in the Article 8 of the ECHR, instrument which I will further analyze taking into consideration the implications that arise regarding the issue of citizenship.

Citizenship and the European Convention on Human Rights.

As per the legal doctrine, The Convention for the Protection of Human Rights and Fundamental Freedoms represents an instrument which „postulates equality between people and protects individual rights, having as its object the integrity and freedom of the person” (Sudre, 2010, p.7 in Ciucă, 2017, p. 75). Having strong implications regarding the evolutionary slope of human rights protection, the Convention can be perceived as a regional extension of what the Universal Declaration of Human Rights - the

UN instrument that lays the cornerstone in the sphere of human rights - managed to outline in the form of the catalogue of rights displayed. However, as stated in the legal literature, “The Convention is not intended to replace national human rights protection systems but to represent an international guarantee that is added to the right of appeal in each state. This guarantee is realized through the possibility of individuals who consider themselves violated in their rights, to initiate proceedings [...] against the government they consider responsible.” (Voiculescu & Berna, 2023, p. 421)

Making a parenthesis, even the provisions of the previously mentioned Explanatory Report reconfirm the fact that the Convention is emblematic for this matter. This way, even if its text does not reflect an actual consecration of citizenship, however, as per Article 3 of its Fourth Protocol, there are certain indicators which evoke the presence of the notion. More exactly, these provisions regulate the situations of the nationals of a state and the fact that their expulsion from that territory is prohibited (Council of Europe, 1963, Article 3).

Therefore, the intersection with the idea of citizenship, a concept redeemed and analyzed in the present approach, goes beyond the lack of effective conceptualization. Thus, the above-mentioned Report indicates that the intersection of citizenship with the ECHR’s provisions are reflected in the application of its following articles: Article 3 - which regulates the prohibition of torture, Article 6 – which underlines the right to a fair trial, Article 8 – where a particular accent is put on the right to respect for private and family life, Article 14 - which encompasses aspects regarding the prohibition of discrimination, as well as Article 4 of Protocol No. 4 to the Convention – which postulates that the collective expulsion of aliens is prohibited (Council of Europe, 1997b, par. 16), without forgetting Article 3 of the same Protocol, which I previously related to.

I will therefore focus on Article 8 of the Convention, which dedicates its applicability to matters regarding private and family life. This way, this instrument evokes the fact that the individual has the right to respect for his private and family life as well as for his home or his correspondence (Council of Europe, 1950, Article 8). Accordingly, it has been mentioned by the legal doctrine that “the notion of private life has been subject of the jurisprudence of the European Court of Human Rights which, over the years, has broadened its scope” (Voiculescu & Berna, 2023, p. 448).

In order to emphasize the juxtaposition of the Convention’s provision with the problematics of citizenship, an opinion which was stated in doctrine became relevant for the discussion and this underlines the fact

that “although the right to a nationality is not itself protected by the Convention, one might ask whether a refusal of the right could - in certain special circumstances and quite independently – violate another right already covered by the Convention” (Ersbøll, 2007, p. 249 in Lagoutte, S., Sano, H-O, Scharff Smith, P. (Eds.) 2007). I therefore understand that, although not enshrined *de facto*, citizenship enjoys the protection of the Convention.

Nonetheless, some interferences of the Convention with the idea of citizenship have also materialized under the auspices of The European Court of Human Rights’ jurisprudence. This way, the Strasbourg Court stated that although citizenship is not effectively enshrined in the Convention, as we have already established above, however, there are some levels that relate to it, bringing to the fore the idea that “citizenship is an element related to the person's identity” (European Court of Human Rights, *Zeggai v. France*, par. 28). In the same idea, The Strasbourg Court also stated that “even though the Convention and the Protocols thereto do not guarantee a right to a given nationality as such, any arbitrary deprivation of nationality might in certain circumstances raise an issue under Article 8 of the Convention because of its impact on the private life of the individual” (European Court of Human Rights, *Gboumid and Others v. France*, par. 43). The deprivation of citizenship issue (“*déchéance de nationalité*”) was a recurring theme in the jurisprudence of the European Court that is why it focused upon the *sine qua non* conditions in order to place such a case under the umbrella of Article 8 of the Convention. Consequently, the Court underlined that there were two essential issues that had to be taken into consideration: “whether the revocation was arbitrary; and what the consequences of revocation were for the applicant” (European Court of Human Rights, *K2 v. the United Kingdom*, par. 49).

Considering all the arguments exposed, I am of the opinion that the protection system which the Convention manages to envision certainly reflects how important citizenship is for the human rights domain, despite the fact that this document does not regard citizenship as its central point of reference, as in the case of the European Convention on Nationality, whose purpose was, even from the beginning, to provide a complete regulation frame for the concept of citizenship.

Conclusions

Citizenship – as a complex link that establishes between the citizen and the state - has been an intensely debated notion. However, the aim of this paper was to observe it in a different context, while interfering with the idea of human rights. Thus, this approach briefly describes how the Council of Europe has developed its protective mechanism in matter of individual

rights, especially underlining the way in which the problematic of citizenship appears in two documents elaborated under its dome. Therefore, pointing out at the European Convention on Nationality, whose purpose was to regulate, define and describe particular situations in which citizenship might be granted or lost and reaching on to the point of relating to the European Convention on Human Rights, as an instrument which did not regulate at all the notion of citizenship, the analysis took shape and reached a relevant conclusion. Therefore, even if not enshrined *de facto* in the Convention, citizenship is still a matter of discussion within the European Court of Human Rights' jurisprudence, fact that underlines its obvious interference with the provisions of the Convention.

References

- Ciucă, A. (2017), *Persoana fizică în dreptul internațional public. Prolegomene*, [The natural person in public international law. Prolegomena]. Lumen Publishing.
- Ciucă, A. (2019), *Statut personal și naționalitate în dreptul internațional privat* (Ediția a II-a, re-editată) [Personal status and nationality in the international private law (2nd edition, reedited)]. Lumen Publishing.
- Council of Europe. (1950), *European Convention on Human Rights (Convention for the Protection of Human Rights and Fundamental Freedoms)*, Council of Europe, https://www.echr.coe.int/documents/d/echr/convention_ENG
- Council of Europe. (1963), *Protocol No. 4 to the Convention for the Protection of Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto*, Council of Europe, <https://rm.coe.int/168006b65c>
- Council of Europe. (1997a), *European Convention on Nationality*, Council of Europe, <https://rm.coe.int/168007f2c8>.
- Council of Europe. (1997b), *Explanatory Report on the European Convention on Nationality*, Council of Europe, <https://rm.coe.int/16800ccde7>.
- Ersbøll, E. (2007), *The Right to a Nationality and the European Convention on Human Rights*. In Lagoutte, S., Sano, H-O, Scharff Smith, P. (Eds.) (2007), *Human Rights in Turmoil*, pp. 249-270, Koninklijke Brill NV. https://brill.com/display/book/edcoll/9789047411215/Bej.9789004154322.i-299_013.xml
- European Court of Human Rights, *Ghoumid and Others v. France* - [52273/16](https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-203534%22%5D%7D), [52285/16](https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-203534%22%5D%7D), [52290/16](https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-203534%22%5D%7D) et al., Judgement 25.6.2020 [Section V], para. 43, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-203534%22%5D%7D>

- European Court of Human Rights, *K2 v. the United Kingdom (dec.)* - [42387/13](#), Decision 7.2.2017 [Section I], para. 49, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-172143%22%7D%7D>
- European Court of Human Rights, *Zeggai v. France*, - [12456/19](#), Arrêt 13.10.2022 [Section V] para. 28, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-219704%22%7D%7D>.
- International Court of Justice, *Nottebohm Case (Liechtenstein c. Guatemala)*, (Second phase), Judgement of April 6th, 1955, p. 23, <https://www.icj-cij.org/sites/default/files/case-related/18/018-19550406-JUD-01-00-EN.pdf>
- Pilgrim, L. (2011), *European Convention on Nationality (ECN) 1997 and European nationality laws*, EUDO CITIZENSHIP Policy Brief No. 4, European Union Democracy Observatory on Citizenship, European University Institute, Robert Schuman Centre, <https://globalcit.eu/wp-content/uploads/2010/06/policy%20brief%20International%20Law.pdf>
- Sudre. F. (2010), *La Convention Européenne des droits de l'homme*, (8e édition), p. 7 [European Convention on Human Rights (8th edition)], PUF. In Ciucă, A. (2017), *Persoana fizică în dreptul internațional public. Prolegomene*, p. 75 [The natural person in public international law. Prolegomena]. Lumen Publishing.
- Voiculescu, N., Berna, M. B. (2023), *Tratat de drepturile omului* [Human Rights Treaty]. Universul Juridic Publishing.