Citizenship and National Security: Case Law of the Supreme Court of Estonia

Ivo Pilving

Introduction

First of all, I wish to express my gratitude for the invitation and opprtunity to speak at this event.

Citizenship establishes a special relation of solidarity and loyalty between a person and the state as citizenship is the cornerstone of an individual's democratic participation. As the supreme power of the state is vested in the citizens of Estonia, citizenship enables the people to exercise the supreme power of the state by elections and referenda, also citizens have the right to apply for officies in public authorities and obligation to serve in military. Threats to national security can arise when the determination of nationality can be influenced by the decisions of other countries, especially if that other country is aggressive.

I will start by introducing a few fundamental principles in the Estonian Constitution concerning the citizenship, followed by a brief summary of recent Supreme Court practice touching the influence of foreign authorities in citizenship issues.

Ius sanguinis

In Estonia, citizenship is primarily acquired through the principle of *ius sanguinis* – every child with a parent who is an citizen has the right to citizenship at birth. Moreover, no one can be deprived of Estonian citizenship acquired at birth.

Dual citizenship

Dual citizenship is not prohibited by the Constitution. However, this prohibition is a fundamental principle of the Citizenship Act. However, dual citizenship most commonly occurs and is *de facto* tolerated in Estonia for two reasons – 1) both states recognize the principle of *ius sanguinis* or; 2) the person is born in a state which recognizes the *ius soli* principle (anyone born in the territory of a state has the right to citizenship) but has an Estonian parent.

Citizenship within the context of international law and EU law

It is the sovereign right of all states to determine its own citizens.[1] As such, other states cannot interfere in another states sovereign right to determine its own citizens.

With regards to EU law, citizenship of a Member State automatically grants EU citizenship, making EU citizenship derivative of a Member State's citizenship. This complicates a state's sovereign right to determine its own citizens, as decisions on national citizenship integrally relates to a persons EU citizenship.

The CJEU has concluded that while each Member State maintains the sole right of determining its own citizens, the principle of proportionality must be observed if a Member State revokes a person's citizenship, when it also entails the loss of citizenship of the EU.[2] Regarding proportionality, the

[1] Nottebohm (Liechtenstein vs. Guatemala). Judgment of April 6, 1955. I.C.J. Reports 1955
[2] CJEU C-135/08, Janko Rottmann vs. Freistaat Bayern, 02.03.2010.

consequences of that loss to the person concerned must be assessesed and, if relevant, for that of the members of his or her family, from the point of view of EU law.[3]

Recent Supreme Court Practice

Case 3-16-1810/35: Tartu Peace Treaty

In the first (2018) case, a question arose whether a person can be recognized as an Estonian citizen by birth, if their ancestors had the right to opt for Estonian citizenship according the Tartu Peace Treaty of 1920 between Soviet Russia, but who nevertheless did not move to Estonia before the Soviet occupation in 1940.

The Treaty provided just the right to opt for citizenship, also stipulating the obligation for those persons to leave Russia within one year. According to the interpretation of SC there was no automatic acquisition of the citizenship although the might have got certificates for their status.

The Supreme Court judgment drew heavy criticism from both society in general and from legal scholars. The discourse arose as the text of the Treaty was indeed ambiguous and open to many interpretations. The Estonian authorities had previously considered the descendants of optants who remained in Russia to automatically be Estonian citizens. However, the Supreme Court did not consider this interpretation to be in accordance with the meaning and purpose of the Treaty, as hundreds of citizens would have remained in communist Russia, acquiring dual citizenship. Estonia would to this day have no record or overview of their descendants.

In 2018, the Minister of the Interior hinted that people could present themselves as descendants of optants in Russia without any legal basis.[4] Another solution had to found for people who were mistakenly considered as citizens, e.g. the possibility of simplified naturalization. Their situation however cannot be considered as a deprivation of Estonian or EU citizenship, as they had never acquired either status in the first place.

Case 3-22-1072/28: Recognition of Paternity

Less than 2 months ago the Court issued a new judgement regarding citizenship. The applicant submitted an application to obtain an Estonian passport claiming to be descended from an Estonian citizen. Paternity was initially established by a Russian court judgment, which was later recognized by the Harju District Court in a civil procedure.

However, in the Russian judgment, paternity was established merely on the basis of statements by the applicants' mother, the person who was registered as the father on the birth certificate, and the alleged biological father. Moreover, the applicant has consistently refused to take a DNA test.

The Supreme Court concluded in that, since the District Court recognized the Russian court's judgement, then the applicant is considered to be an Estonian citizen. The District Court recognizing the foreign court decision, did not assess the Russian court's application of the law.

However, the Supreme Court stated *obiter dictum* that in filiation cases courts must not recognize foreign court decisions, if recognizing the decision would lead to a risk of violating important public

[3] CJEU C-221/17, Tjebbes jt vs. Minister van Buitenlandse Zaken, 12.03.2019, paras 40, 55-56).
[4] https://www.postimees.ee/6919468/dmitrite-hirmus-jaavad-elmid-passita.

rights of Estonia, e.g the principles of the citizenship. In instances where the foreign judgment is based solely on testimonies, the general reliability of the foreign country and their courts must be taken into account.

Dissenting opinion

In dissenting opinion, I found that the Court wrongly concluded that the binding nature of a court decision regarding filiation must be considered as absolute and universal proof in citizenship cases. At least, the judgements of a state's own court and that of a foreign court, cannot automatically be considered to carry the same legal weight.

Although the majority of the Supreme Court in this judgment stated that civil courts must carefully consider whether to recognize foreign judgments, the court may not have all the necessary information at their disposal in assessing the risks of the manipulation of citizenship.

Conclusion

To conclude, the Supreme Court has had to admit to problems relating to Russia in at least two instances in recent years, where the strict principles of Estonian citizenship have come under threat. Taken separately, these cases would not pose any serious threat to national security, however they could pose such a threat if the use of unreliable proof of filiation by an aggressive foreign state were to become widespread. In my dissenting opinion I proposed that the legislator should revise the principles of using proof of filiation from a foreign state in procedures related to citizenship.