# 1995/11/08 - PL. ÚS 5/95: CITIZENSHIP LOSS

**HEADNOTES:**

**1. The Article 12 para. 2 of the Constitution,1) however, is a response to the institution of forfeiture of citizenship which existed before November, 1989, and attempts, by means of constitutional regulation, to prevent such intrusion upon the rights of citizens. The purpose of the constitutional directive enshrined in Art. 12 para. 2 of the Constitution,1) thus, was and is to prevent the possibility of the legislature adopting legal rules which would call for the deprivation of citizenship as a sanction for any illegal conduct by a citizen. In the present case, however, the criticized § 17 of the Citizenship Act2) has a different aim, if it assumes that the citizen acted to acquire foreign citizenship on his own initiative. From this viewpoint, it is not a matter of depriving an individual of her citizenship, but of the loss of citizenship through the acquisition of citizenship of another state. It is evident from this that the meaning of Art. 12 para. 2 of the Constitution1) is quite different from what the appellant infers. If the appellant‘s interpretation of Art. 12 para. 2 of the Constitution1) - in comparison with § 17 of the cited Act2) - were correct, that would mean, as a consequence, that the Constitution prohibits the legislature (even pro futuro) from barring the existence of dual or multiple citizenship. Such a ban would, of course, be completely absurd, as it would restrict the right of a sovereign state to prevent dual citizenship, and would be in conflict - as stated elsewhere in this decision - with draft international agreements currently in force in contemporary democratic Europe, as well as draft agreements.**

**The Constitutional Court considers it significant that the acquisition of citizenship of a foreign state under § 17 of the cited act2) occurs through the individual‘s (applicant‘s) own manifestation of intent, and that the legal consequence of that manifestation of intent is the loss of citizenship of the Czech Republic. If, then, a citizen manifested (manifests) the intent to acquire, at his own request, citizenship of a foreign state, he must have been (must be) aware - in view of the clear and categorical wording of the contested legal provision - i.e., a generally binding enactment - of the fact that de lege lata, as soon as he acquires the citizenship of the foreign state, he will lose citizenship of the Czech Republic.**

**2. Art. 12 para. 2 of the Constitution, 1) on the one hand, and Art. 12 para. 1 of the Constitution1) and § 17 of the Citizenship Act,2) on the other hand, used different terms („deprivation“ of citizenship, „loss“ of citizenship). This difference in terminology indicates the legislature‘s intent to differentiate two qualitatively different situations. This intent can be concluded, particularly by comparing both paragraphs of Art. 12 of the Constitution. (Art. 12 para. 1 states that the acquisition and loss of citizenship of the Czech Republic shall be governed by law. Art. 12 para. 2 states that no one can have his state citizenship removed against his will.) It is difficult to imagine that the legislature would have used two different terms in one provision, if it did not intend to bring about different legal results and thus address situations which are not the same, but rather different. This is also the issue in the matter at hand.**

**3. To adjudge the issue at hand we also cannot omit consideration of the legal situation in the field of international law. In this area dual citizenship is generally considered an undesirable condition.**

**The general practice of states can be characterized thus:**

**a) a person with more than one citizenship cannot rely on his citizenship of one state in relation to another state of which he is also a citizen;**

**b) a third state is supposed to consider a person with more than one citizenship a citizen of only one state, as it elects.**

**The attempt to eliminate dual citizenship is also apparent from bilateral treaties which the Czechoslovak Republic (or the former Czechoslovak Socialist Republic) concluded with some neighboring states, specifically with the USSR, Hungary, and Poland.**

**4. The legal framework for the termination of the state citizenship of the Czech Republic is fully in accordance with the trend in contemporary modern democratic Europe. In this regard, the 6 May 1963 Agreement on limiting instances of multiple citizenship and on services in the armed forces in case of multiple citizenship, of 6 May 1963, is significant. Art. 1 para. 1 of that Agreement states that adult citizens of a signatory state who, by means either of a manifestation of their own free will, naturalization, election or re-acquisition, acquire the citizenship of another signatory state, shall lose their previous citizenship. They are not entitled to retain their previous state citizenship. An analogous framework also applies to minors.**

**The Czech Republic is not yet a signatory of this agreement, but its very existence clearly indicates the trend among the Council of Europe member states.**

**Nor does the forthcoming European Treaty on Citizenship and Military Duty in the Case of Multiple Citizenship represent a break with the principles of the Agreement of 6 May 1963, which is still in effect, albeit not for the Czech Republic.**

**CZECH REPUBLIC**

**CONSTITUTIONAL COURT**

**JUDGMENT**

**IN THE NAME OF THE REPUBLIC**

**The petition is rejected on the merits.**

**REASONING**

The complainant submitted a constitutional complaint against the judgment of the Municipal Court in Prague . . . in which it was determined that, in accordance with § 13 lit. c)4) and § 172) of Czech National Council Act No. 40/1993 Coll., on the Acquisition and Loss of Citizenship of the Czech Republic [hereinafter Citizenship Act], a certificate evidencing citizenship of the Czech Republic may not be issued to the complainant.

The complainant also submitted a petition proposing the annulment of § 17 of the Citizenship Act2) (the application of which brought about the Municipal Court's judgment), in accordance with which citizens of the Czech Republic shall lose Czech citizenship in the moment that they, at their own request, acquire the citizenship of a foreign state, with the exception of those who gained citizenship of a foreign state in connection with entering into marriage or birth.

[Until 31 December 1992, the complainant was a citizen of the Czech and Slovak Federal Republic and of the Czech Republic. Following the dissolution of the federation, he remained a citizen of the Czech Republic. On 30 June 1993, he elected to take citizenship of the Slovak Republic, for which he was eligible by the terms of the Slovak Citizenship Act. He then requested a certificate of Czech citizenship from a local municipal office in Prague. In view of § 17 of the Czech Citizenship Act,2) his request was rejected, as was his appeal to the Municipal Court in Prague, both institutions concluding that as a consequence of his electing to take Slovak citizenship, his Czech citizenship was automatically lost. He then filed a constitutional complaint with the Constitutional Court of the Czech Republic, requesting that § 172) be declared unconstitutional and that, as a consequence thereof, the Municipal Court decision be quashed.]

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The complainant contested, among other things, the conclusion of the Prague City Court, that the provisions of § 17 of the Citizenship Act2) do not conflict with Art. 12 para. 2 of the Constitution.1) … According to the contested decision it is not decisive whether the intent to lose citizenship of the Czech Republic was explicitly expressed, “for if losing Czech citizenship is a legal consequence of the manifestation of intent to acquire

citizenship of a foreign state, that manifestation of intent aimed at acquiring foreign citizenship always also contains a manifestation of intent aimed at losing Czech citizenship."

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II.

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The cited Assembly publications emphasize that a basic principle applied in the draft law is the principle under which each citizen should have, if possible, the citizenship of only one state. This is based on an attempt to prevent problems connected with dual citizenship, both for the individual and for the state. This is based on the principle that individuals should have an opportunity, while observing requirements set by law, to acquire or lose the citizenship of the Czech Republic. Maximum emphasis is placed on maintaining only one citizenship.

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III.

The appellant first relies on Art. 12 para. 2 of the Constitution,1) which states that no one may be deprived of his citizenship against his will. This Article, however, is a response to the institution of forfeiture of citizenship which existed before November, 1989, and attempts, by means of constitutional regulation, to prevent such intrusion upon the rights of citizens. The purpose of the constitutional directive enshrined in Art. 12 para. 2 of the Constitution, 1) thus, was and is to prevent the possibility of the legislature adopting legal rules which would call for the deprivation of citizenship as a sanction for any illegal conduct by a citizen. In the present case, however, the criticized § 17 of the Citizenship Act2) has a different aim, if it assumes that the citizen acted to acquire foreign citizenship on his own initiative. From this viewpoint, it is not a matter of depriving an individual of her citizenship, but of the loss of citizenship through the acquisition of citizenship of another state. It is evident from this that the meaning of Art. 12 para. 2 of the Constitution1) is quite different from what the appellant infers. If the appellant's interpretation of Art. 12 para. 2 of the Constitution1) - in comparison with § 17 of the cited Act2) - were correct, that would mean, as a consequence, that the Constitution prohibits the legislature (even pro futuro) from barring the existence of dual or multiple citizenship. Such a ban would, of course, be completely absurd, as it would restrict the right of a sovereign state to prevent dual citizenship, and would be in conflict - as stated elsewhere in this decision - with draft international agreements currently in force in contemporary democratic Europe, as well as draft agreements. The Constitutional Court therefore does not share the appellant's view that Art. 12 para. 21) is relevant in examining the constitutionality of § 17 of the Citizenship Act.2)

The Constitutional Court considers it significant that the acquisition of citizenship of a foreign state under § 17 of the cited act2) occurs through the individual‘s (applicant‘s) own manifestation of intent, and that the legal consequence of that manifestation of intent is the loss of citizenship of the Czech Republic. The provisions of the Citizenship Act were duly published in the Collection of Laws and were generally known. Every citizen has a duty to know the laws of the republic, and it can justifiably be expected of them that they do, particularly those who intended or intend to perform one or another legal act connected with citizenship. If, then, a citizen manifested (manifests) the intent to acquire, at his own request, citizenship of a foreign state, he must have been (must be) aware - in view of the clear and categorical wording of the contested legal provision - i.e., a generally binding enactment - of the fact that de lege lata, as soon as he acquires the citizenship of the foreign state, he will lose citizenship of the Czech Republic. If, despite that, he performed (performs) that act, he is required to bear the legal consequences which valid law connects to that act.

The opinion that Art. 12 para. 2 of the Constitution1) is irrelevant to the determination of the constitutionality of § 17 of the Citizenship Act.,2) can also be supported by arguments based on the grammatical analysis of both enactments.

Art. 12 para. 2 of the Constitution, 1) on the one hand, and Art. 12 para. 1 of the Constitution1) and § 17 of the Citizenship Act,2) on the other hand, used different terms („deprivation“ of citizenship, „loss“ of citizenship). This difference in terminology indicates the legislature‘s intent to differentiate two qualitatively different situations. This intent can be concluded, particularly by comparing both paragraphs of Art. 12 of the Constitution. 1) (Art. 12 para. 1 states that the acquisition and loss of citizenship of the Czech Republic shall be governed by law. Art. 12 para. 2 states that no one can have his state citizenship removed against his will.) It is difficult to imagine that the legislature would have used two different terms in one provision, if it did not intend to bring about different legal results and thus address situations which are not the same, but rather different. This is also the issue in the matter at hand.

Concerning the fact that the general term „deprivation“ has a different meaning in contemporary Czech than does the term „loss“, we can point, in particular, to expert literature in linguistics (cf. The Dictionary of Standard Czech, 1989 Czech Academy of Sciences - Institute for Czech Language, volume IV., p. 367, volume VII., p. 238). According to the dictionary, the term „to deprive“, means: by some intervention to eliminate the effect or influence of someone or something, to take something away from someone, deprive someone of something (deprive someone of a managerial position). Legal terminology contains the terms, „depriving of capacity to engage in legal transactions“, „depriving of parental rights.“ The grammatical significance of this word and its comparison with familiar legal institutions clearly indicate that the concept „deprivation“ presupposes an outside intervention extranea (generally from a position of authority). In contrast, the expression „loss,“ according to the dictionary, has the meaning of „to lose“ (something, someone), „lose possession“ (of something), in other words, the opposite of the concept „to acquire“: e.g. to lose possession of money or property. „To lose something,“ in contrast to the concept „be deprived of something,“ thus apparently does not assume an outside intervention by a third party. It is, thus, evident that even from the grammatical interpretation of compared texts, the protection enshrined in Art. 12 para. 2

of the Constitution1) has in mind cases when the deprivation (forfeiture) of citizenship comes about as the result of an authoritative intervention by a third party (the state). Thus, the loss of citizenship, which is regulated in the provisions of §§ 13 to 17 of the Citizenship Act, is not such a case.

The Constitutional Court has, thus, reached the conclusion that § 17 of the Citizenship Act.,2) is not in conflict with Art. 12 para. 2 of the Constitution. 1)

The Constitutional Court also took into consideration provisions of the Charter of Fundamental Rights and Basic Freedoms and of international treaties, to which the complainant's constitutional complaint makes reference. [The Court did not find § 172) to be in conflict with any of them]

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IV.

Our current legal framework is based on the principle that citizenship should be single and exclusive. This is emphasized by the explanatory report to the government‘s draft law on acquisition and loss of citizenship of the Czech Republic. In this connection we must point to judgment of the Constitutional Court of 13 September 1994, file no. Pl. ÚS 9/94, which concerns several issues of citizenship of the Czech Republic. This judgment states, among other things, that the Czech Republic addressed the issue of acquisition of citizenship of the Czech Republic by a domestic enactment, the Citizenship Act., which contains the principle of preventing dual citizenship and limiting the creation of statelessness. (In this way, the legal regime in effect in the Czech Republic was linked to that which had been in effect on the territory of the Czech and Slovak Federative Republic, and was based on the fact that analogous principles are also applied in the legal systems of other European countries.) Therefore, we can hardly accept the complainant's categorical and generally formulated claim that neither any legal regulation of the Czech Republic nor its constitutional order contain the principle of forbidding dual citizenship, which, on the contrary, he claims they expressly allow.

To adjudge the issue at hand we also cannot omit consideration of the legal situation in the field of international law.

1. In this area dual citizenship is generally considered an undesirable condition. On the one hand it can lead to international disputes, particularly in issues of diplomatic protection, because a dual citizen can be considered a citizen by more than one country. On the other hand dual citizenship causes serious problems for the dual citizens themselves, in particular concerning obligations of national loyalty and the performance of military service, which two or more countries can require of dual citizens. Third states may consider a dual citizen, as they elect, as the citizen of either of the competing states, regardless of the intent and interest of the dual citizen himself.

2. The general practice of states can be characterized thus:

a) a person with more than one citizenship cannot rely on his citizenship of one state in relation to another state of which he is also a citizen;

b) a third state is supposed to consider a person with more than one citizenship a citizen of only one state, as it elects, not according to the election of the dual citizen himself or any of the states of which he is a citizen. In this election, states are generally guided by the principle of effectiveness, that is, they consider a foreigner a citizen of the state to which he has the closest factual ties. In Czechoslovakia the state citizenship which was acquired last was the deciding one (§33 par. 2 of Act No. 97/1963 Coll., on International Private and Procedural Law). The same legal situation applies in the contemporary Czech Republic (Art. 1 of Czech National Council Constitutional Act No. 4/1993 Coll., on Provisions Related to the Dissolution of the Czech and Slovak Federal Republic).

3. The attempt to eliminate dual citizenship is also apparent from bilateral treaties which the Czechoslovak Republic (or the former Czechoslovak Socialist Republic) concluded with some neighboring states, specifically with the USSR, Hungary, and Poland. These treaties are based on the principle that

a) persons who simultaneously have the citizenship of both signatory states can elect the citizenship which they wish to keep ...,

b) persons to whom the treaty applies will be considered exclusively the citizens of the signatory state whose citizenship they elected (Art. 7 of the CSR-USSR Treaty, Art. 6 para. 1 of the CSSR-HPR [Hungarian People‘s Republic] Treaty),

c) persons who do not make a declaration electing state citizenship by a deadline (set forth by the treaty), will be considered exclusively the citizens of the signatory country on whose territory they live (Art. 7 of the CSR-USSR Treaty, Art. 6 para. 3 of the CSSR-HPR Treaty, Art. 6 of the CSSR-PPR [Polish People‘s Republic] Treaty).

4. It can be said that the legal framework for the termination of the state citizenship of the Czech Republic is fully in accordance with the trend in contemporary modern democratic Europe. In this regard, the 6 May 1963 Agreement on limiting instances of multiple citizenship and on services in the armed forces in case of multiple citizenship, of 6 May 1963, is significant. Art. 1 para. 1 of that Agreement states that adult citizens of a signatory state who, by means either of a manifestation of their own free will, naturalization, election or re-acquisition, acquire the citizenship of another signatory state, shall lose their previous citizenship. They are not entitled to retain their previous state citizenship. An analogous framework also applies to minors. The idea of strengthening the institution of exclusive (sole) citizenship is then pursued by Art. 3 of the agreement, which states that no provision of the Agreement bars the application of any provisions which could restrict even further the creation of multiple citizenship, whether it was included or subsequently implemented in the legal framework of any signatory state or in any agreement, convention, or treaty concluded between two or more signatory states.

The Czech Republic is not yet a signatory of this agreement, but its very existence clearly indicates the trend among the Council of Europe member states. As of 2 January 1995, the Agreement had been ratified by 13 states (Austria, Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Spain, Sweden, the United Kingdom of Great Britain and Northern Ireland) and one country had signed it (Portugal). As a group, all the states which ratified the Agreement are significant and traditionally democratic countries.

5. Nor does the forthcoming European Treaty on Citizenship and Military Duty in the Case of Multiple Citizenship represent a break with the principles of the Agreement of 6 May 1963, which is still in effect, albeit not for the Czech Republic. The preamble to the draft European treaty recognizes the right of each state to decide whether it permits its citizens to have only one or more than one citizenship. Art. 4 does state that the internal laws ... of each signatory state shall be based on the following general principles: 3. - no one shall be arbitrarily deprived of his citizenship; however, Art. 6 par. 1 states this general rule in more detail, saying that a signatory state may not lay down in its domestic law ... the loss of citizenship either ex lege or at the initiative of the signatory state, with the exception of the following instances: a) voluntary acquisition of the citizenship of another state. Art. 9 par. 2 further states that, depending on any ... international agreement governing the issues of citizenship - a) each signatory state shall grant its citizenship to person who:

i) were citizens of and had permanent residence de jure and de facto on the territory of a state which has ceased to exist ... and

ii) still have permanent residence de jure and de facto on that territory, which has become part of the territory of the signatory state.

It is clear that the cited Article does not literally apply to the case at hand, as no international treaty on citizenship was concluded in connection with the termination of the existence of the Czech and Slovak Federative Republic. However, even if such a situation were to occur, we can point to the conclusion of Art. 9 par. 2 a), under which, when citizenship is being issued, the persons in question can be required to renounce the citizenship of any other state.

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**Overview of the most important legal regulations**

1. Art. 12 par. 1 of Act no. 1/1993 Coll., the Constitution of the CR, reads: The conditions under which citizenship of the Czech Republic is acquired and lost shall be provided for by statute. Par. 2 reads: No person may be deprived of his citizenship against his will.

2. § 17 of Act no. 40/1993 Coll., on Acquiring and Losing Citizenship of the CR, introduces the method of losing citizenship by acquiring a foreign state citizenship and provides that a citizen of the CR loses citizenship of the CR at the moment when, at his own request, he acquired a foreign citizenship, except if he acquired the foreign citizenship in connection with marriage or birth.

3. Art. 10 of Act no. 1/1993 Coll., the Constitution of the CR, provides that international treaties concerning human rights and fundamental freedoms which have been duly ratified and promulgated and by which the Czech Republic is bound are directly applicable and take precedence over statutes.

4. § 13 letter c) of Act no. 40/1993 Coll., on Acquiring and Losing Citizenship of the CR, provides that citizenship is lost by acquiring foreign citizenship (§ 17) except in cases where acquisition of foreign citizenship happens in connection with entering into marriage or the birth of a child.

5. Art. 3 par. 1 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that everyone is guaranteed the enjoyment of his fundamental rights and basic freedoms without regard to gender, race, color of skin, language, faith and religion, political or other conviction, national or social origin, membership in a national or ethnic minority, property, birth, or other status.

6. Art. 14 par. 1 of Act no. 2/1993 Coll., the Charter of Fundamental Rights and Freedoms, provides that the liberty of movement and the freedom of the choice of residence is guaranteed.