

## **The Slovak ministerial decree on the verge of the principle of legal certainty**

*Slovakian residence permit, permanent residency abroad and Slovakia's national interest – these are the conditions on the basis of which Minister of Interior Robert Kaliňák's decree would restore Slovak citizenship to those who were deprived of it as a result of the 2010 law. The absurd situation concerning the issue of dual citizenship – the evident unconstitutionality of the amended Act on Citizenship – existing for five years is further increased by the fact that the Slovak government intends to change this situation by a ministerial decree which violates the hierarchy of legal norms and the principle of legal certainty.*

The amendment to Slovakia's Act on Citizenship entered into force on 17 July 2010 and states that if a Slovak citizen acquires the citizenship of another country on the basis of an "explicit expression of will", he/she will be deprived of his/her Slovak citizenship. Over the past four and a half years several attempts have been made in Slovak legislation to overturn the law but none of them has been supported by a necessary majority of deputies. In September 2011 the issue of the Act on Citizenship was brought to the Košice-based Constitutional Court. The initiators of the complaint stated that the citizenship act is not compatible with the constitution of Slovakia, since paragraph 2 of section 5 of the constitution states that "No one can be deprived of their Slovak citizenship against their will." After several adjournments, in September 2014 the Constitutional Court decided not to render a decision on the question: the body dismissed the complaint (which stated that the law is not compatible with the constitution) by referring to procedural reasons. The court explained its decision by stating that according to court rules, a decision can be adopted only with the majority of the votes of all judges, otherwise the claim should be dismissed.

After the establishment of Robert Fico's second government in 2012, Minister of Interior Robert Kaliňák repeatedly declared that an amendment to the act on citizenship was under preparation, and in the summer of 2013 he announced that the proposal had been completed. After this, the Ministry of Interior waited a

further year for the opinion of the Ministry of Foreign Affairs, and then declared that it would also discuss the amendment with international institutions. Henceforward, the Ministry of Interior announced that the Council of Europe and the High Commissioner on National Minorities of the Organization for Security and Co-operation in Europe (OSCE) were engaged with the Ukrainian conflict, therefore, the Slovak Act on citizenship was “put aside”.

At the end of 2014 Robert Kaliňák announced that he would not wait until an amendment to the law is adopted and introduced his own solution: to ease the severity of the citizenship law by ministerial decree. Mr. Kaliňák added that he was inspired by the case of basketball player Anton Gavel who had been deprived of his Slovak citizenship because he became the citizen of Germany. In this case it was in the national interest of Slovakia to restore his Slovak citizenship. Therefore, exceptions have been made in cases where the national interest of the country was involved.

The decree of the Ministry of Interior regulating the restoration of citizenship on the basis of individual treatment entered into force on 1 February. The decree dated on 9 January 2015 determines the procedure for the restoration of Slovak citizenship on the basis of b) point of paragraph 2 of section 7 of the Act on Citizenship No 40/1993. According to this, Slovak citizenship can be restored in special, individual cases to persons who – due to their achievements in the field of economy, science, technology, culture, social affairs or sports – are of crucial importance for the Slovak Republic, or if the restoration of citizenship serves the national interest of the Slovak Republic for some other reason. The decree also states that “national interest” can involve family unification or humanitarian reasons, or it may also concern applicants who are former Slovak citizens.

The aim of the ministerial decree is to restore Slovak citizenship – by means of a simplified procedure – to those who acquired the citizenship of another country in which they had already had permanent residency at the time of the acquired citizenship. Paragraph 2 of article 4 of the decree states that the minister, who is entitled to decide about the application of a former citizen, should take into account the facts which had affected the deprivation of citizenship, as well as the method and conditions of the acquisition of foreign citizenship. Attention should also be paid to whether the person had met the conditions of authorized or registered residence in the foreign country when acquiring the foreign citizenship.

The decree states that the application for the restoration of citizenship by individual consideration can be rejected if the applicant does not represent the interests of Slovakia properly or if the restoration of Slovak citizenship is contrary to the public interest.

The person who applies for individual consideration must also meet the requirement of the citizenship law which states that “the applicant holds a residence permit to reside in the territory of the Slovak Republic”. Thus, the applicant has to have a residence permit in Slovakia. Presumably, this situation is not too realistic, since the majority of people who have been deprived of their Slovak citizenship have moved to another country, while Hungarians living in Slovakia who openly admitted the acquisition of Hungarian citizenship continue to live in Slovakia. However many of them have also declared that they do not intend to apply for a residence permit in their own home state.

The decree contains an additional condition compared to the citizenship act which states that the applicant must have permanent residency in the foreign country at the time of acquiring the foreign citizenship. By this point the decree contradicts the citizenship act, thus, it violates the principle of legal certainty. As this creates a conflict between a subordinate law and a law of a higher degree, the issue can be brought to the Constitutional Court. However – judging by the derogatory attitude of the Constitutional Court when examining the unconstitutionality of the citizenship act – we may assume that the question will be postponed again, or the body would repeat the previous cynical decision. It must be noted, however, that if the case were brought to the Constitutional Court and the body annulled the decree, this would restore the original situation which had existed before the decree came into force. In this case people who had been deprived of their citizenship would not be beneficiaries even if they had permanent residency abroad.

The ministerial decree brings no relief for Hungarians living in Slovakia who have lost their Slovak citizenship – similarly to Hungarians living in other countries – as a result of acquiring Hungarian citizenship while living and working in their home state (Slovakia), without having permanent residency in Hungary. In practice, this means that their citizenship cannot be restored even by the current ministerial decree since permanent residency in Hungary is not a condition of the Hungarian simplified naturalization procedure. Consequently, Robert Kaliňák’s decree –

similarly to the 2010 amendment to the Slovak Act on Citizenship – is directed primarily against the Hungarian community of Slovakia.

The Slovak ministerial decree adds new features to the international legal aspects of the citizenship law which defines citizenship as a legal bond between the individual and the state. In this respect, the international community relies on the verdict of the International Court of Justice made in the *Nottebohm* case which states that citizenship must be accorded with the individual's genuine connection with the state. This includes aspects like the individual's habitual residence, the focus of his/her interests, links to the concerned state and family ties must also be examined. Concerning the dual citizenship of Hungarians living abroad, Hungary has also been criticized in this respect. By the current decree, Slovakia reverses the logic of this verdict since it restores citizenship to those former citizens who have permanent residency not in Slovakia but in an other state. Therefore, the condition for the restoration of Slovak citizenship is not the individual's relation with Slovakia, but the stability of the individual's relations with another country.

During the creation of the Slovak Act on citizenship in 2010, Robert Fico's government contended that the Hungarian citizenship can be acquired without having an effective relationship with Hungary, i.e. one can acquire it without permanent residency or a residence permit in Hungary. The Party of the Hungarian Community (MKP) has repeatedly drawn attention to the inconsistency of the codifiers of the amendment, since by this amendment those Hungarians have been deprived of their citizenship who have a real "living" tie with Slovakia, since they have not left their homeland. The Slovak Minister of Interior is trying to amend the Slovak Act on citizenship – which is evidently contrary to the constitution – by a decree, turning the hierarchy of legal norms upside down. The decree restores Slovak citizenship to those who have a permanent residence not in Slovakia, but with a foreign country. The assessment procedure of the applications will presumably reveal whether it is in the national interest if someone leaves Slovakia in hopes of a better future.