



HELLENIC REPUBLIC

GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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Comments on the bill by the Ministry of Interior titled: “Political participation of non-citizens of Greek origin and third country nationals who reside legally and long-term in Greece”

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I. Introduction

This legislative initiative constitutes a very important step for substantive inclusion of **documented migrants** living and working in Greece for several years, and in particular of their children who were born or raised in Greece. This initiative is based on two pillars which must characterize every measure and policy on migration: on the one hand, respect and promotion of human rights of everyone who resides in Greece, and on the other hand the guarantee of social cohesion of the whole population in combination with the guarantee of safety of the borders. This legislative initiative attempts to ensure the full enjoyment of rights of those people who constitute a part of Greek society, while it clarifies the position of the Administration towards irregular immigration. The said bill gives the right to acquire the Greek citizenship only to those who reside in Greece legally.

The NCHR would like to point out that it is fully aware of the fact that there must be a criterion, in this case the criterion of legal status, set as the main condition for the acquisition of the Greek citizenship. However, the NCHR expresses its concern for the fact that the acquisition of legal status has been problematic in practice, due to the inadequacy of measures and practices of migration policy that have been applied so far.

Citizenship signifies the bond between an individual and a particular country, based on the will of the former to be part of a specific State by accepting its laws and principles and by joining its political community. Therefore, the status of citizen is not related with his/her cultural or ethno-religious identity.

Furthermore, the NCHR notes that the title of the bill does not fully reflect its content, i.e. the acquisition of Greek citizenship by aliens residing legally and for a long period of time in Greece. Instead, it recommends the following bill title: “Acquisition of the Greek citizenship by aliens who reside legally and long term in Greece - Political participation of non-citizens of Greek origin and third country nationals residing legally and long term in Greece”.

On the specific provisions of the bill, the NCHR notes the following:

II. Chapter A: Acquisition of Greek citizenship by third country nationals’ children who were born or have attended school in Greece

Article 1 of the bill

Par. 1: According to this provision, aliens' children born in Greece, the so called "second generation of immigrants", may acquire the Greek citizenship under specific conditions. This evolution constitutes a very important step, since Greek citizenship law was based exclusively on the principle of *jus sanguinis*.

Par. 2: This provision concerns the so called "one and a half generation", i.e. the children of aliens who have not been born in Greece, but have come to the country at a very early age and have, therefore, been integrated into the Greek educational system, The NCHR considers that the distinction between the three first years of compulsory education and the other six is reasonable, due to the importance of the first years of education for the learning of the Greek language and the social integration of the child. Furthermore, it has to be noted that the provision is of relevance for children of aliens who, after reaching adulthood, have legal residence status in the country. If this is not the case, they do not have the right to file a statement in the Municipality of their domicile. This condition has to be **clarified**, at least in the **explanatory memorandum** of the bill, so that misinterpretations are avoided.

Common statement of parents: According to article 1 of the bill, an aliens' child may acquire the Greek citizenship under the specified conditions, if his/her parents file a common statement and an application for registration to the records of their Municipality. The wording of the provision does not clarify, though, whether the legal residence of both parents is a precondition, unless one of the parents resides abroad. It needs to be reminded that according to article 84, par 1 of Law 3386/2005, aliens who do not reside legally in the country do not have access to public services. Consequently, it is not possible to file a common statement in case one of the two parents is in irregular situation in terms of his residence status in the country.. Therefore, it is needs to be clarified that par. 1 of article 1 of the bill concerns: a) alien parents who both reside legally in the country, while the condition of five years residence may be fulfilled by either one, and b) the case of one parent residing legally for five years in the country, while the other one resides abroad. In the second case the parent residing abroad may file the relevant statement to the competent Greek consulate.

Furthermore, the condition of common statement cannot be fulfilled in the case of single-parent families. Therefore, it needs to be provided that in case only one parent exercises the full custody of a child, the required statement may be filed by him/her.

Voluntary renunciation of citizenship: According to article 1 of the bill, aliens' children may acquire the Greek citizenship after submittal of a common statement by his/her parents. The bill should provide for the possibility of renunciation of the Greek citizenship by the child upon reaching adulthood, if he/she so wish.. Therefore, it is recommended that article 19 of Law 3284/2004 “renunciation of Greek citizenship by children naturalized Greek”, also applies to the cases of article 1 of the Bill.

The NCHR would like to point out that aliens' children who will acquire the Greek citizenship will have in many cases the citizenship of their parents as well. Dual citizenship may raise several issues that the Administration will have to address, such as the one of multiple military obligations. On this particular issue, the NCHR refers to article 21 of the European Convention on Nationality of 1997, which offers a fair and balanced solution, and calls upon the Greek Government to ratify it.

II. Chapter B: Harmonization of naturalization with the rule of law

A) Article 2 of the bill

Element (b): The NCHR considers that the wording of element (b) enumerating a large number of offences does not render clear the *ratio* of the provision, especially if one takes into account the fact that offences of different gravity – such as the one of treason and the one of theft – entail exactly the same consequences i.e. exclusion from the naturalisation process. The existence of a large number of offences, which, if perpetrated -regardless of the penalty imposed and the time of conviction-, block the access to the naturalization process, constitutes a non-proportionate “sanction”.

The NCHR considers more suitable a general provision according to which the applicant must not have been convicted for a felony in the 20 years before the filing of the naturalization application. Furthermore, and in combination with its aforementioned recommendation, the NCHR calls upon the Government to review the list of offences under element (b), retaining only the most serious categories of offences, as those against the Greek State and international crimes, whose perpetration justifies the rejection *prima facie* of a naturalization application.

The NCHR takes the view that in this way the *ratio* of the provision will be more clear. Furthermore, it is noted that the competent public services request the criminal record of judicial use of the applicant, while examining an application for naturalization . Moreover, the obligation for stating the reason for the eventual rejection of the application of naturalization, allows the

Administration to state the conviction for an offense as reason for refusing Greek citizenship to an applicant. The NCHR recommends the rewording of the provision.

In any case, the NCHR recommends the maintenance of the amendment to Law 3284/2004: the amendment was the result of article 41 of Law 3731/2008 that removed the violations of the legislation regarding entry of aliens in Greece from the list of offences blocking the naturalization process to applicants.. In particular with regard to refugees – where no penalties for illegal entrance or residence in the country are permitted–, the abolishment of the aforementioned impediment was very important since they would not have to go through the costly and time-consuming procedure of preclusion of convictions’ consequences for illegal entry.

Element (d): The element (d) sets as a condition for naturalization the legal residence in Greece for a period of five years within the last decade prior to the submission of the naturalization application.. It is advisable that a shorter period of time is required for refugees along the lines of Law 3284/2004. Regardless of the fact that Law 3284/2004 took into consideration the need for different treatment of refugees, according to article 34 of the Convention of Geneva relating to the status of refugee: “The Contracting States shall as far as possible facilitate the integration and naturalization of refugees. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings”. It is also noted that the same obligation of facilitation applies to stateless persons according to article 32 of the UN Convention Relating to the Status of Stateless Persons of 1954. Therefore regarding these two categories of aliens a more favorable time condition is required.

Furthermore, element (d) does not require the five years time condition for non-citizens of Greek origin and individuals having the citizenship of an EU member state. The different treatment between aliens and non-citizens of Greek origin constitutes a historic pillar of Greek citizenship law and the formation of the contemporary Greek society. However, this cannot lead to different regulations concerning the acquisition of citizenship. Besides, the differentiation between aliens and non-citizens of Greek origin has been criticized by the European Commission against Racism and Intolerance. Furthermore, and in spite of the fact that Greece has not so far ratified it, it should be noted that this provision is incompatible with article 5 of the European Convention on Nationality of 1997.

Moreover, the facilitation regarding individuals with an EU member state citizenship does not constitute an obligation of the State imposed by EU. Therefore, the NCHR calls upon the

Government to reconsider the extent of differentiation and set the same time condition for non-citizens of Greek origin, EU member-states citizens, refugees and stateless persons.

B) Article 3 of the bill

Element (d): The exemption from the obligation to submit along with the application a birth certificate should also apply to stateless persons.

Furthermore, the NCHR recommends the inclusion of the social security number (SSN) to the necessary documents for the naturalization procedure. The SSN is the means of identification in terms of employment and social security of any person residing in Greece, and it is an indication of integration into the society.

C) Article 5 of the bill

Par. 2 provides for the “reasoned rejection of a naturalization application according to the Code of Administrative Procedure”. The current Law on citizenship does not provide for the reasoning of affirmative decisions, -although in practice this does happen-, while it states that negative decisions are not reasoned. The Conseil d’ Etat has ruled that “an alien’s naturalization constitutes sovereign right of the State, which exercises it according to its volition. Besides, for this reason it is provided that the rejection of a naturalization application does not require reasoning [...]”. However, it has also ruled that “when the negative decision or other document, which has been referred to by the decision, include specific reasons on the basis of which the Administration rejected the naturalization application, these reasons must be legal and are reviewed by judge”.

The obligation for reasoning is a very important development for citizenship law; it constitutes a development that entails the modification of the nature of the act, since it will be subject to judicial review. The NCHR considers that this modification complies with the principles of legality and the rule of law, but also with article 11 of the 1997 European Convention on Nationality that provides for the obligation naturalization decisions to be reasoned. Furthermore, the NCHR takes the view that any second thoughts regarding the way judicial review will work in practice, especially when a negative decision is based on reasons of national security and the relevant information may not be rendered public, can be overcome. According to the jurisprudence of the Conseil d’ Etat “the fact that a document is classified may justify the restriction of the parties’ access to the file, but not the access of the court to the relevant document [...]. Therefore, if the reasoning of the administrative act against which an annulment application has been filed is based on classified information, the Administration is not obliged to mention the facts that derive from that information in the administrative act, but it is obliged to bring it to the attention of the Court.

Then the Court will review the reasoning of the administrative act without informing the parties of the classified information and without including it in its decision”.

E) Article 19 of the bill

The Bill should also require the applicability of deadlines for the pending naturalization applications. Therefore, a deadline must be set, during which the examination of the pending applications will be concluded, e.g. within two or three years after the entry into force of the law.

III. Chapter C: Participation in the first degree of local administration election

The NCHR would like to express its satisfaction for this initiative, which constitutes an important step towards the social inclusion of third country nationals living in our country, although such an obligation does not derive from international law, but merely from EU law regarding the citizens of EU member-states. The NCHR, already in 2005, had recommended granting to third-country nationals - who live in Greece for a long period of time- the right to vote and be elected in the first degree of local administration elections.

However, the NCHR takes the view that the right to vote should be granted to all categories of aliens entitled to apply for naturalisation and not solely to holders of particular types of residence permits, provided they wish to enroll in the relevant election catalogues. The enrolment to the electoral catalogues might be perceived as an indication of their social inclusion and willingness to take part in the political life of Greece for naturalisation purposes.