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Legge sulla cittadinanza, la residenza e l'accesso N. CXXXI – the legislative reorganisation of the citizenship of the Vatican City State

**Legge sulla cittadinanza, la residenza e l'accesso N. CXXXI –
reorganizacja legislacyjna obywatelstwa miasta-państwa Watykan**

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Abstract: The citizenship of the Vatican City State is characterised by individual features relating above all to the manner in which it is conferred and its forfeiture. The introduction of the legal category of Vatican nationality has its origins in the Lateran Treaty, but it was in 1929 when Pope Pius XI promulgated the law *Legge sulla cittadinanza ed il soggiorno N. III* concretising this institution which has lived to see its own reorganisation over time. Based on an analysis of Vatican legislation, it is possible to conclude that the present Vatican legislation is largely updated to current needs without losing its unique characteristics. The main intention was to present whether and how *Legge sulla cittadinanza, la residenza e l'accesso N. CXXXI* changes Vatican citizenship and what differences can be found in the newly created law. This process was based on a comparative method of legal acts, an analysis of the literature, as well as observation of interrelationships and dependencies. On the basis of this exercise, it was determined that the 2011 law remains within the original legal framework, but that its amendment is of a practical nature, intended to give individuals freedom of action and not to lead them to the appearance of possible negative consequences associated with the loss of citizenship.

Keywords: Vatican citizenship, Vatican City State, The Holy See

Abstrakt: Obywatelstwo miasta-państwa Watykan charakteryzuje się indywidualnymi cechami odnoszącymi się przede wszystkim do sposobu nadawania i jego utraty. Wprowadzenie kategorii prawnej obywatelstwa watykańskiego swój początek bierze w traktacie laterań-

skim, jednakże papież Pius XI w 1929 r. promulgował ustawę *Legge sulla cittadinanza ed il soggiorno N. III*, konkretyzującą tę instytucję, która z biegiem czasu doczekała się swojego przeorganizowania. Na podstawie analizy aktów prawnych Watykanu można wysnuć tezę, że teraźniejsze prawodawstwo watykańskie w dużym stopniu aktualizuje się do obecnych potrzeb, nie tracąc przy tym swoich unikatowych cech. Głównym zamiarem było przedstawienie tego, czy i w jaki sposób *Legge sulla cittadinanza, la residenza e l'accesso N.CXXXI* zmienia obywatelstwo watykańskie oraz jakie różnice odnajdziemy w nowopowstałej ustawie. Proces ten oparto na metodzie komparatystycznej aktów prawnych, analizie piśmiennictwa, a także obserwacji wzajemnych związków i zależności. Na podstawie tego działania ustalono, że ustawa z 2011 r. pozostaje w pierwotnych ramach prawnych, lecz jej zmiana ma charakter praktyczny, mający dawać jednostkom swobodę w działaniu oraz nie ma ich doprowadzać do pojawienia się ewentualnych negatywnych skutków związanych z utratą obywatelstwa.

Słowa kluczowe: obywatelstwo watykańskie, miasto-państwo Watykan, Stolica Apostolska

1. Introduction

Despite the different views presented in the doctrine of the subject, it is undeniable that the City State of the Vatican as a State is one of the recognised subjects of international law fulfilling all the attributes of Statehood as defined in the Montevideo Convention on the Rights and Duties of State of 1933. These include a permanent population, a defined territory, the possession of authority (government), and the ability to enter into relations with other states (Bracik, Srogosz 2014: 144–145). The Vatican is governed by a sovereign in the person of the Pope. He also has legally assured residual judicial and executive powers, which he exercises through the state apparatus. The Holy Father exercises his sovereignty over a specific territory (44 hectares) located in the form of an enclave surrounded by Italy. In turn, this territory is inhabited by people with the unique status of Vatican citizens. It should also be noted that there is a relationship with the Vatican and the Pope to another entity of international law, the Holy See. It is pointed out that under international law regulations, the City State of the Vatican and the Holy See are different subjects of international law (Grochalski 2011: 62). They are functionally linked with each other, and this is due to the link in the person of the Pope, who acts as the supreme authority of the Holy See and the supreme head of the Vatican, and by extension - of the citizens there.

2. Citizenship of the of Vatican City from 1929

As indicated above, the Vatican City State has an indispensable and constitutive attribute in the form of a legal category of the population of the State who are its citizens. The very term citizenship and an attempt to qualify

it confront each other with numerous and usually contradictory rationales that are the aftermath of the multiplied nature of this concept underlying the various fields of study (Grochalski 2015: 40-41). The legislative construction of citizenship has undergone numerous transformations over the years, but the consequence is a continued lack of definitional uniformity due to the multiplicity of international regulations and the differences found in the national legal orders of individual states (Zdanowicz 2001: 15). However, generalising the theses of representatives of doctrine, we can define citizenship as belonging of a person to a particular state (Grochalski 2015: 41), calling it in another way a particular “legal bond” (Góralczyk, Sawicki 2020: 280). Its salient features are the subjection of the individual to a specific state authority, from which the rights and duties of citizenship follow (Grochalski 2015: 41). In addition, fidelity and loyalty to the state, and jurisdiction over one’s own citizens occurs regardless of where the individual is located (Góralczyk, Sawicki 2020: 280).

The first legislative consideration on this subject with regard to the Vatican appeared in the international agreement that was the Lateran Treaty (LT). Article 9 of this Act states that “In accordance with the norms of international law, the sovereign power of the Holy See is exercised over all persons who have their permanent residence in the Vatican City State” (Article 9 of LT). In further neighbouring regulations, we also find reference by the parties to the Vatican citizen, e.g. Article 10 of the LT. These provisions can be seen as an act not only of the establishment and recognition of the Vatican City State itself, but its further consequence is the approval of the institution of the Vatican City citizenship in the legal space of the State. This is an expression of a third State, such as Italy, which puts an emphasis on the ability of the newly-established entity to form and exercise full sovereignty and self-determination over its affairs. Moreover, these regulations did not impose any obligations on the Vatican regarding the issue of Vatican citizenship. It was merely a form of emphasising the statehood of *Lo Stato della Città del Vaticano* and allowing for the self-realisation of one of the qualities set out in the Montevideo Convention already referred to. It was up to the sovereign power of the State to codify and specify the legal framework as other person of international law does in practice (Kierznowski 2016: 142). Hence, the Vatican has self-determined the basis of its system (Longchamps de Bérier, Zubik 2008: 12). Therefore, in addition to the Lateran Pacts, in 1929 the Vatican sovereign issued additional laws, referred to as fundamental and constitutional laws, which included the first treating of Vatican citizenship, *Legge sulla cittadinanza ed il soggiorno N. III* of 7 June 1929 (the Law on Citizenship and Residence promulgated (*Legge N. III*)) by

Pope Pius XI, and a further deepening of the matter was carried out by papal decree of 6 July 1940 (Grochalski 2011: 63).

It should be emphasised that we are talking about the citizenship of the Vatican and not of the Holy See (Ibidem: 62). In legal acts we do not find any different nomenclature, only the term 'Vatican City'. This is due to the international legal status of the Holy See (has an overarching character in relation to the Vatican), as it is not considered a state, but a *sui generis* subject of international law (Pałyga 1978: 102-118; Bogacki 2009: 55; Staszaków 2006: 208-209). Therefore, citizenship can only be linked to the Vatican City State. In addition, it is pointed out that there is no category of Vatican nation in the light of the type of political, legal, sociological, ethnic concept (Gaca, Oder and Witkowski 2020: 193). This is linked to the characteristic accessory nature of Vatican citizenship and the very special status of the State of the Pope.

The first law, *Legge N. III* regulating Vatican citizenship, its Article 1, lists a closed catalogue of persons to whom Vatican citizenship may be granted. These are Cardinals residing in the City of Vatican City or in Rome, persons residing permanently in the City of Vatican City by virtue of their dignity, duties, office or employment, or persons holding an appropriate authorisation issued, depending on the factual basis, by the Holy Father, by the Governor by the Cardinal Secretary of State (Article 1 *Legge N. III*). This last can grant citizenship to a person connected with the papal retinue or the representation of the State in relations with other States and other subjects of international law, in diplomatic relations and in the conclusion of treaties (Article 2 *Legge fondamentale dello Stato della Città del Vaticano 26 novembre 2000 (Legge fondamentale)*). In addition, persons who do not meet the above-mentioned conditions, but who have obtained the appropriate authorisation to live on the territory of the State granted by the Pope with the conferral or retention of citizenship, may apply for the conferral (Ibidem). The list of *numerus clausus* is completed by the spouses, children, descendants and brothers and sisters of citizens. They must live together with the Vatican citizen and when they receive a prior authorisation allowing this residence, which is based on the further norms contained in Chapter I of the Act, they only attain the status of a citizen (Article 2 *Legge N. III*). In the following regulations, it can be observed that the authorisation for children and spouses of Vatican citizens precedes the process of establishing family ties, while in the case of its granting for ascendants, brothers and sisters, it is also necessary that there are circumstances of dependency of the Vatican citizen with the obligation of maintenance for these relatives (Article 4 and 5 *Legge N. III*). Therefore, it can be deduced that the acquisition of the Pope's nationality will be the result of holding a certain position in the State administration, of having an ecclesiastical dignity (but

this is not conclusive), or of having the status of Vatican resident granted by a statutory authority (Solarczyk 2004: 249).

Of sufficient importance in the process of granting citizenship is the authorisation in question, so it is worth highlighting its legal basis. The authority issuing it, which considers the occurrence of the factual prerequisites already commented on, is set out in Article 3 of the cited Law. Its task is to carry out the verification process and to rule on the right. But in addition to the act of conferral, the Vatican legislator also specifies the state of expiry of the authorisation while distinguishing cases of *ex lege* forfeiture. The first of these is contained in Article 4 of the *Legge N. III*, which states that the authorisation expires by operation of law for spouses when the marriage has been declared null and void, or when the marriage has been dispensed from, or when a separation has been pronounced, and for children when they reach the age of 25, except for those who are incapacitated and dependent on a Vatican citizen, and additionally for daughters when they marry (Article 4 *Legge N. III*). In addition, the authorisation in respect of brothers expires on their reaching the age of 25, except if they are incapacitated, and in the case of sisters, as was the case with daughters, with their marriage. At the same time, it is emphasised in these articles that these provisions do not infringe on the prerogative of the High Priest who has the personal power to grant authorisation by virtue of his sovereign status granted to him in Articles 1 and 16 of *Legge N. III* (similarly, the unfettered decision to grant authorisation based on an internal assessment of the case not subject to statutory requirements), and the competence of the Governor under Article 17 of the law of *Legge N. III* having the same effect as a papal decision on the subject (Article 1, 16 and 17 *Legge N. III*). The loss of the residence authorisation may involve another ground, namely its revocation.

The consequence of revoking the authorisation or losing the right to apply for authorisation to reside on Vatican territory will be the termination of the citizenship of the Vatican City State by the citizen whose residence depends on it (Article 6 letter d *Legge N. III*). This regulation, while also bearing in mind the aforementioned grounds relating to a specific degree of kinship, applies precisely to the families of Vatican citizens who, by virtue of a family relationship, have resided with him/her in the territory of *Lo Stato della Città del Vaticano* and have so obtained. On the other hand, other grounds for the loss of Vatican citizenship apply to persons permanently residing in the Vatican by virtue of their dignity, duties, office or employment, when such residence is required by law, decree or by virtue of the authority of a High Priest or Cardinal Secretary of State, or in the case of another person authorised by the Governor, as well as in the case of a person connected with the papal retinue or the representation of the State in relations with other States and other subjects of international

law, in diplomatic relations and in the conclusion of treaties, are the loss of the dignity, duties and employment which was the basis for the authorisation of the residence (Article 6 letter c *Legge N. III*). In addition, the deprivation of citizenship status will occur when any citizen decides to voluntarily leave the residence of the Vatican and, in the case of Cardinals, also of the city of Rome (Article 6 letter a-b *Legge N. III*).

The citizenship of the Vatican City, regulated by the Citizenship and Residence Act of 7 June 1929, is unique and unrepeatable in relation to other states. This claim is supported by its accessory nature and the prerequisites for acquisition. It is not based on the classical grounds of acquisition by birth known to international law, such as the *ius sanguinis* (whereby a person becomes a citizen of the State of which his parents are citizens – the right of blood; *jus sanguinis*), or the *ius soli* (*jus soli*; the right of the soil – expressed by the fact that an individual's acquisition of nationality is determined by birth in the territory of the State), or other secondary means of acquisition, e.g. naturalisation, marriage, full adoption, repatriation (Góralczyk and Sawicki 2020: 281–282). In the case of the Papal State, the determining factor for the granting of citizenship is the grounds referred to as *ius functionis* – the performance of a specific function, and the other *ius domicilii* – the right of permanent residence (Grochalski 2011: 64). Also referred to as *ius officii* (Łukaszewski 2010: 184–185). The leading prerequisite for acquisition is the occurrence of strictly defined circumstances giving the opportunity to apply for citizenship, and their mere occurrence does not *ipso jure* result in direct acquisition (Grochalski 2011: 62). In the process of acquiring citizenship, apart from the factual prerequisites, it is necessary to issue the act of its granting in the form of an administrative decision of the state authority, as it is necessary to distinguish between the legal and factual fulfilment of the grounds, which only gives the legal possibility to apply for it, and only its positive granting has a constitutive character, where in other third countries such an act can be described as declaratory, i.e. confirming the status already obtained by law. Moreover, Vatican citizenship has the unprecedented feature of temporality, since the obsolescence of the basis of acquisition has the concomitant effect of relinquishing it. The transitory status of citizenship consists solely in its continuance in the course of service to the Holy See and the Vatican City State or the continued existence of the legal basis enshrined in law, the only exception to the principle of temporality being the citizenship of the Pope, who has it for life (Ibidem: 62–63). The difference of Vatican citizenship from that of third countries is also the circumstance that the Vatican City does not include in its legislation the catalogue of rights and duties of a citizen known in other entities. Nor do we observe a civic entitlement in the form of passive and active electoral rights, which in principle derive from being

a citizen (Saris 2012: 173–209). However, despite its comparative difference, the citizenship of the Vatican City fulfils all the provisions proving its recognition as a full and complete state citizenship without the possibility of undermining its existence and functioning, and, moreover, does not give grounds to conceive of it as an incomplete, hybrid or “quasi-citizenship”.

3. Legal changes introduced by the Legge N. CXXXI of 11 February 2011

In the wake of the growing changes, Pope Benedict XVI decided in 2011 (22 February 2011) to update the provisions on citizenship by promulgating *Legge sulla cittadinanza, la residenza e l'accesso N. CXXXI* (the Law on Citizenship, Residence and Access to the Vatican (*Legge N. CXXXI*)) justifying it in the preamble by “the systematic continuation of the regulatory adaptation of the legal system [...] and the specific nature of the State [...]”. After all, its characteristics remain unchanged, yet in relation to the amended *Legge N. III.*, significant changes were made, as the new law repealed all previous acts concerning the matter of citizenship while introducing reorganised catalogues and factual grounds for granting and loss of it. Under Article 1, paragraph 1 of *Legge N. CXXXI*, the citizens of Vatican City State are Cardinals whose place of residence is Vatican City or Rome, diplomats of the Holy See and persons residing permanently in Vatican City by virtue of their office, service (*Legge N. CXXXI*). Under the new Citizenship Act, we will not find the possibility for all persons indicated in the repealed act to apply for citizenship. In its Article 1, paragraph 2, letters a-c, it is stipulated that citizenship will be granted to persons residing in the Vatican by virtue of their office, as well as to persons other than those in service but authorised by the Holy Father to reside in the territory of his State, and to the spouses and children of a citizen, who, having been authorised to do so, reside in the Vatican, upon the request of these interested persons considered by the High Priest or the President of the Governorate – conferred in the name of the Pope. Thus, it is a legal action of request. With regard to the spouse and children of a citizen, the requirement to establish family ties still remains, but this determination alone only allows these persons to seek a permit to reside in the Vatican and thus to obtain the status of resident and not that of citizen, where this was the case under the old Citizenship Law (Kowalczyk 2015: 143). The range of people who can apply for Vatican citizenship has been significantly reduced and diminished. An additional change is the different rules for granting Vatican citizenship status to employees of papal offices and institutions, who under the previous *Legge N. III* could apply for citizenship by operation of law. Currently, this is the

case only for those who are required by the act, by virtue of their work and their function, to reside permanently on the territory of the Vatican City State (Ibidem). This professional group of lay and clerical workers is guaranteed by law the status of citizen of the Vatican City State. Alongside them, there are also employees for whom the obligation to reside in the Vatican is not required. But staff members settling on the territory of the State of the Pope may apply for citizenship on similar terms as family members, by means of an appropriate application procedure. Without such initiation and in the case of their passive attitude, they will only be entitled to a residence permit (Ibidem).

The new citizenship law of Pope Benedict XVI also provides for the provisionality of Vatican citizenship. This status is lost with regard to Cardinals – when they do not have their residence on the territory of Vatican City or Rome, to the persons listed in Article 1, paragraph 1 letter c and in paragraph 2 letter a of the *Legge N. CXXXI* – functionaries, with the termination of the duties by which they acquired that citizenship. Article 3, paragraph 1 letter d of the same law indicates, in general terms, that the loss of citizenship entails the cessation of residence in the Vatican and, in any case, the expiry of the residence permit. The legal regime of this law also regulates the renunciation of nationality by the citizen's relatives. Thus, his/her spouse and children lose their citizenship status in the event that the citizen himself/herself loses his/her citizenship. In addition, the citizen's children lose their Vatican citizenship when they reach the age of 18, but in this case, if they decide to continue to live on Vatican territory, they must obtain the relevant consent (Article 3 *Legge N. CXXXI*). It is important to underline, as further stated in its paragraph 3, that Vatican citizenship is not lost through temporary residence elsewhere, which is not accompanied by the loss of actual residence in the Vatican City State or, in the case of cardinals, in Rome. Similarly, it was established in the Lateran Treaty in Article 9, paragraph 1 sentence 2, “This permanent residence shall not be lost by the fact of temporary residence in another place, which is not accompanied by the loss of a dwelling in that State, or where it does not appear from other circumstances that this residence has been abandoned” (Article 9 of LT). There was also a similar provision in the Article 8 *Legge N. III*. This norm is intended to safeguard citizens and to be ahead of an overly strict literal interpretation of the provisions, since any displacement from the territory of the State could immediately result in the withdrawal of citizenship status. In doing so, it should be borne in mind that a different process for abandoning Vatican citizenship is the mere renunciation of it.

The current construction of Vatican citizenship and its acquisition has implications for administrative structures and the position of individuals under international law as well. The *Legge N. CXXXI* grants the possibility for persons

who are part of the diplomatic personnel of the Holy See to acquire Vatican citizenship, as the Holy See and the Vatican actively participate in interstate relations (Kowalczyk 2004–2005: 20). However, it must be distinguished that not all persons belonging to the members of a mission will be granted such status. Only members of the diplomatic personnel will be able to hold Vatican citizenship, while other persons – members of the administrative and technical staff, even though they will be working for the Apostolic Nunciature and thus performing a service to the Holy See, will not obtain Vatican citizenship. Such a conduct is crucial from the point of view of multiple citizenship and the consequences associated with it. Those who are part of the administrative and technical staff will not have to worry about the possible consequences relating to the possibility of renouncing their nationality of the original State, as well as the possible need to return to obtaining the nationality of their country of origin. In addition, the emphasis on the right of residence will have an impact on those who choose to centre their lives in the Vatican, e.g. the family of a civil servant who has to reside on Vatican territory because of his/her service and wishes to form a joint family household with him/her. There may be cases where a family following a Vatican citizen would be forced to renounce the nationality of their country of origin, as they would be acquiring a new nationality, which is that of the Vatican (Czaja 1983: 150). But the Vatican legislator, in the new *Legge N. CXXXI*, foresaw the possibility of such negative consequences for specific individuals and, in reforming the law, made a safe break by only acquiring the right of residence, which does not result in the need to renounce the citizenship of the country of origin.

In *Legge N. CXXXI*, the Vatican legislature shifted the centre of gravity and emphasised greater favour for the right of residence on Vatican territory itself. The reduction in the circle of persons who can apply for Vatican citizenship is, among other things, a result of the legal consequences that may arise from the coincidence of citizenships. As already pointed out, Vatican citizenship has an accessory, subsidiary character (Zubik 2004: 82–94). In principle, no one is born with it and it cannot be a primary citizenship. It is granted in addition to, or in exchange for, an already existing citizenship, abstracting from the basis of the grant, for a limited period of time. Thus, a person who is to be granted Vatican citizenship has only two options, as the legislation of his/her country of origin will force him/her to renounce his/her original citizenship, as it does not honour more than one citizenship. The second option is not to be forced to renounce one's original nationality because it does not recognise more than one citizenship, but once one acquires Vatican citizenship, one becomes dominant, so to speak, and the others will be in limbo. Such a person, upon losing his or her Vatican citizenship status, will automatically revert to his or her previous

nationality without having to go through the process of secondary acquisitions existing in the legislation of third country (Ibidem; Zdanowicz 2001: 165–170). If Vatican citizenship is granted to a person holding an office in the Holy See or in the Vatican, which would mean that the person would have to renounce the citizenship of his/her country of origin, and if his/her service to the Pope comes to an end, resulting in the withdrawal of Vatican citizenship, the person would not become stateless, as he/she is protected against such an effect by the regulation contained in Article 9, paragraph 2 of the LT. Pursuant to it, persons whose Vatican citizenship status has expired and who have no other nationality will be treated as Italian citizens (Article 9 paragraph 2 of LT). Although it is not possible to become stateless as a last resort, the Vatican legislator, in reorganising the law on citizenship, has introduced a safer mechanism that places the status of resident rather than citizen on those residing on its territory. In an era of progress, globalisation and significant changes in civilisation, while bearing in mind the freedom of choice of the individual, who may or may not always, for the reasons shown, seek to acquire Vatican citizenship, it is important to stress the effective value and practicality of such a change.

4. Conclusions

Undoubtedly, the citizenship of Vatican City is a particularly regulated institution compared to its counterparts found in the legislations of third countries. This is a direct result of the nature of the entity that is the Vatican and the Holy See and the tasks and role they play in the international space. The Vatican's fiduciary and subordinate nature to the primary mission of the Papal State has necessitated the same attribute for its own citizenship. This is because it is closely correlated with the fulfilment of duties in favour of these legal international entities. It is a full and complete citizenship with all the solemnity and dignity of its existence. All this is confirmed by the *Legge sulla cittadinanza, la residenza e l'accesso N.CXXXI*, and additional motivation for such a thesis is its complex and demanding manner of obtaining it and the honour it entails. The reorganisation of the institution of Vatican citizenship and the right of residence by the above-mentioned law is a response to possibly emerging disadvantages in the legal sphere affecting individuals.¹ Reducing access to the process of acquiring citizenship and forcing the right of residence

¹ It should be emphasised that in the Motu Proprio of May 13, 2023, Pope Francis promulgated the new Fundamental Law of the Vatican City State and its Article 5 states that citizens and residents of Vatican City are part of the community of Vatican City (Legge Fondamentale dello Stato della Città del Vaticano (13 maggio 2023), https://www.vatican.va/content/francesco/it/motu_proprio/documents/20230513-legge-fond-scv.html).

is a turn towards the modernisation and adaptation of the Vatican to current realities, while respecting the traditions and norms represented for centuries by the Pope and his administration in order to fulfil its global religious mission.

Abbreviations

- LT – Lateran Treaty, drawn between the Holy See and Italy on 11 February 1929
- Legge N. III – *Legge sulla cittadinanza ed il soggiorno N. III* of 7 June 1929
- Legge N. CXXXI – *Legge sulla cittadinanza, la residenza e l'accesso N. CXXXI* of 22 February 2011
- Legge fondamentale – *Legge fondamentale dello Stato della Città del Vaticano* of 26 November 2000

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