



wants it to be left without consideration and the proceedings to be terminated. Alternatively, an opinion is expressed on its unfoundedness, presenting arguments for legality of the challenged act. In an accompanying letter he developed detailed considerations for the fact that the proposal of the Minister of Justice under Art. 34 LBG does not represent an individual administrative act, as the hypothesis of art. 21, para 5 of the APC and the same has a preparatory character - it is part of the proceedings, ending with the issuance of a decree by the President of the Republic of Bulgaria. He also referred to the fact that the European Convention on Nationality had been ratified by the Republic of Bulgaria with the reservation under Art. 12 of the same, obliging the parties to it to provide conditions for contesting the decisions on acquisition, preservation, loss and restoration of citizenship. According to the Minister of Justice, the only act with the character of an individual administrative act in the multi-stage procedure for acquiring Bulgarian citizenship, subject to challenge under the APC, is his explicit refusal to initiate proceedings at the request of an interested person for acquiring Bulgarian citizenship.

The admissibility of the action.

According to the provisions of Art. 29 of the LBG procedure for acquisition of Bulgarian citizenship by naturalization, release from Bulgarian citizenship and restoration of Bulgarian citizenship is carried out at the request of the interested person, submitted personally to the Ministry of Justice or to the diplomatic or consular mission of the Republic of Bulgaria. The application and proposals under Art. 29, 30 and Art. 31, para. 1 of the law shall be addressed to the Minister of Justice.

A Citizenship Council is established at the Ministry of Justice, which gives an opinion on applications and proposals related to Bulgarian citizenship, after written statements of the Ministry of Interior and the State Agency for National Security. The Minister of Justice, by virtue of the legal competence assigned to him, determines the nominal composition of the Citizenship Council and issues regulations for its activity.

Within the framework of the prescribed legal procedure, based on Art. 34 of the LBG, the Minister of Justice, based on the opinion of the Citizenship Council, makes a proposal to the President of the Republic of Bulgaria to issue a decree or to refuse to issue a decree for acquisition, restoration, release or deprivation of Bulgarian citizenship, as well as revocation of naturalization. According to Art. 36 of the LBG, the acquisition of Bulgarian citizenship by naturalization, the restoration of Bulgarian citizenship, the release and deprivation of citizenship and the revocation of naturalization shall

be carried out by a decree of the President of the Republic of Bulgaria. The decree shall enter into force on the day of its issuance.

In view of the above legal procedure, the defendant's objection in the case - Minister of Justice for inadmissibility of the appeal is unfounded for the following reasons:

First - unfounded is the opinion expressed by the defendant that the proposal of the Minister of Justice under Art. 34 LBG has the character of an act under Art. 21, para 5 of the APC that it is preparatory with regard to the decree of the President concluding the procedure under the LBG and therefore cannot be qualified as an individual administrative act.

The systematic place of the provision of art. 21 of the APC is in Chapter Five of the Code - "Issuance of administrative acts" and the norm of Art. 21, para 5 of the APC will be applicable only in case of initiated administrative proceedings, ending with the issuance of a challenging individual administrative act. The legislation of para 5 of art. 21 of the APC is related to the circumstance that the declarations of administrative will and actions of the administrative body will not be subject to independent control for legality, insofar as the final administrative act will be subject to such control - the one under Art. 21, para 1 of the APC and they in turn will be covered by this control.

As can be seen from the legal regulation of the proceedings under Chapter Five of the LBG, the legislator regulates the same in two phases - administrative, developing through administrative proceedings under the rules of the APC before an administrative body, ending resp. with the issuance of an individual administrative act and a phase that takes place before another body of state power - the President of the Republic. The latter is not and cannot be administrative in nature. According to the rules of the Constitution, the President of the Republic, who does not belong to any of the three authorities, is not part of the executive, he is not an administrative body and his acts are not administrative acts according to the APC. In addition - according to the explicit rule of Art. 2, para 1 item 1 of the APC, the provisions of the APC shall not apply to acts of the President of the Republic. For this reason, the decree of the President under Art. 36 of the LBG, as a final act of the procedure for granting Bulgarian citizenship, does not constitute an individual administrative act and the same cannot be subject to control for legality. This circumstance automatically excludes the possibility for application of art. 21, para 5 of the APC with regard to the proposal of the Minister of Justice under Art. 34 LBG - an act by which the administrative phase of the procedure ends . Within the administrative phase of the proceedings, initiated at the request

of the interested person under Art. 29 of the LBG, the final act is the one under Art. 34 LBG - the proposal of the Minister of Justice, and the opinion of the Citizenship Council has the character of a preparatory one. According to the rules of the APC, it has the character of an act under Art. 21, para 5 of the APC.

It should be concluded from the legal framework of the procedure for acquiring Bulgarian citizenship that the proposal of the Minister, prepared in accordance with the procedure specified in the Law on Citizenship, after implementation of all procedural actions prescribed in the law actually prepares the issuance of the Presidential decree. necessary stage of the overall procedure, but it is not an act under Art. 21, para 5 of the APC, and is an act terminating the administrative proceedings under the APC, ie is an act under Art. 21, para 1 of the APC.

Secondly - the reference directly to the reserve under Art. 12, which ratified the European Convention on Nationality - SG, no. 102 of 20.12.2005, promulgated. SG no. 34 of 25.04.2006 and in force for the Republic of Bulgaria from 1.06.2006, in order to substantiate the inadmissibility of the appeal, is unfounded, due to the existing in the national legal system general clause for appealability of the administrative acts.

The right to appeal against administrative acts is enshrined in the Basic Law and according to Art. Art. 120, para 2 of the CBD, the citizens and the legal entities may appeal all administrative acts, which affect them except the ones explicitly indicated by law. In the decision №14 / 2014 The Constitutional Court has interpreted this norm of the Constitution and has specified in detail only under what conditions the legislator can explicitly exclude the control over the legality of administrative acts. According to the decision: "The provision of Article 120, paragraph 2 of the Constitution of the Republic of Bulgaria gives the legislator the right exceptionally in compliance with the requirements of proportionality, including mandatory international standards for access to justice, by law to provide for non-appeal before a court. of specified category of administrative acts only when necessary to protect the foundations of constitutional order or other essential interests obshtestveni as providing defense and security, and the implementation of the principles and objectives of its foreign policy.

2. With the introduction of non-appealability, the legislator may not exclude the possibility for the persons concerned to claim before the court the nullity of the administrative act. "

According to Article 12 of the European Convention on Nationality, each State Party must ensure that decisions on the acquisition, retention, loss and

restoration of nationality or the issue of citizenship certificates are subject to administrative or judicial appeal in accordance with its provisions. domestic legislation.

According to Art. 1, item 2 of the Law on Ratification of the European Convention on Citizenship, Promulgated, SG, iss. 102 of 20.12.2005 "The Republic of Bulgaria, in accordance with Article 29, paragraph 1, of the Convention, reserves the right not to apply the provision of Article 12 of the Convention." The purpose of the accepted reserve under Art. 12 f - without violating the Convention, the state, in accordance with the regulation of its domestic law, not to provide means for appealing against the administrative acts on granting or deprivation of citizenship.

The reservation thus adopted in the ratification law - a norm with less legal force than the constitutional one, in itself without fulfilling the conditions under Art. 120, para 2 KRB cannot generate the intended legal result and does not deprive the persons of the right to appeal the administrative acts under LBG.

In order to achieve such a result / non-appealability of the acts under the LBG /, based on the accepted reservation, the legislator, in compliance with the conditions of TD №12 / 14 of the CC / proportionality, compliance with international acts on access to court, protection of the constitutional order and especially important public interests such as defense, security and foreign policy /, must introduce an explicit prohibition on appealing against administrative acts, as per Art. 120, para 2 of the CRB, the same must be explicit and established by law. In this case, this can be achieved only through an explicit legal text in the LBG that a specific administrative act adopted in the LBG procedures will not be subject to appeal. In the absence of an explicit legal norm, as required by the Constitution, the right to appeal against administrative acts cannot be revoked. It derives directly from the Constitution and represents, according to its constitutional regime, part of the irrevocable fundamental right to protection / Art. 56 KRB /.

The European Convention on Nationality has a framework character, ie. it does not contain specific rights for the nationals of the States Parties to which they may directly invoke in court, but contains indications of the outcome by specifying the obligations which it imposes on States for implementation. According to the internal legal order of the Republic of Bulgaria, enshrined in the Constitution, more precisely - according to Art. Art. 120, para 2 - in order to successfully realize in practice the reserve under art. 12 of the Convention, the legislator in accordance with the CRB should have provided for an explicit legal non-appealability of the acts on

granting citizenship, in accordance with the rules of domestic law.

As can be seen from the content of the LBG, it does not provide for explicit non-appealability of the administrative acts under the LBG. Since there is no such provision in the LBG, the reserve under Art. 12, as a provision of a law / Law for ratification of the European Convention on Citizenship, is irresistible to the right under Art. 120, para 2 of the Constitution. It follows from the above that under the current constitutional regulation of the right to appeal, the legislator has in practice left the reservation accepted by him without legal significance.

The act of the Minister under Art. 34 ZBG, representing a proposal to the Vice-President of the Republic not to grant the applicant K. Bulgarian citizenship, although not for the addressee the applicant, was issued not ex officio by the Minister, but at the request of the applicant K. and reflected directly in his legal sphere due to its negative content. It fully meets the criteria contained in Art. 21, para 1 of the APC, defining it as an individual administrative act, according to which an individual administrative act is the explicit statement of will or the statement of will expressed by action or inaction of an administrative body or of another body or organization authorized by law, which creates rights or obligations or directly affect the rights, freedoms or legitimate interests of individual citizens or organizations, as well as the refusal to issue such an act. In this sense is Order № 14132 of 21.12.2016. according to adm.d. № 12452/2016 of YOU.

The Minister of Justice is a central individual administrative body with special competence in the field of justice, it is part of the system of executive power. He is charged with explicit legal competence to make a proposal to the President of the Republic under Art. 34 of the LBG, after the implementation of the administrative procedure prescribed in the law and verification for the existence of the legal preconditions for acquisition, release or restoration of Bulgarian citizenship. It is clear from the content of the specific statement of intent that the same, insofar as it does not satisfy the request of the person, adversely affects his legal sphere, from which the legal interest of appeal arises. That is why the act under Art. 34 of the LBG, in the presence of a legal interest for the disputant, as an administrative act under Art. 21, para 1 of the APC is subject to control for legality by the order of art. 145 APC.

The statement that the refusal to initiate proceedings on the application under Art. 29 of the LBG is the only individual administrative act subject to control for legality in the proceedings under the LBG. A fundamental issue is that according to the definition of this power given by the code / art. 197 of the APC /, such an explicit refusal to consider on the merits a request for issuance

of an individual administrative act is not and cannot have the character of an individual administrative act, as with it the body does not rule on the merits of a material dispute. This is an act by which the administrative body decides only on a procedural issue related to the admissibility of the request for issuance of an administrative act. If the explicit refusal to consider on the merits a request for issuance of an administrative act would have the character of an individual administrative act, then it should be accepted and, resp. appeal in the procedure, in the order and on the grounds provided for the latter. However, the examination of the admissibility of the request according to Art. The APC always precedes the examination of the dispute on the merits, due to which the statement that an act of such character is an individual administrative one is incorrect and does not find support in the law. The appeal of D. E. K. should be considered filed within the statutory term under Art. 149, para. 1 of the APC / insofar as the act has not been communicated to the person by the order of art. 61 of the APC, and the obligation to report and prove the omission of the term lies on the body /, by a person with a legal interest in the dispute, due to which it is procedurally admissible.

The merits of the dispute.

According to Art. 12a. ZBG a person who has received a permanent residence permit on the grounds of Art. 25, para. 1, items 6, 7 or 8 or as a member of the family of such a person, or art. 25, para. 1, item 13 - in connection with Art. 25c, para. 2, item 2 or 3, or art. 25, para. 1, item 16 of the Law on Foreigners in the Republic of Bulgaria, may acquire Bulgarian citizenship if it meets the conditions under Art. 12, para. 1, items 1, 2, 3 and 4. The conditions under Art. 12, para. 1, items 1, 2, 3 and 4 are the following: A person, who is not a Bulgarian citizen, may acquire Bulgarian citizenship, if as of the date of submission of the application for naturalization: 1. is an adult 2. not less than 5 years ago has received a permit for permanent or long-term residence in the Republic of Bulgaria; 3. has not been convicted of an intentional crime of a general nature by a Bulgarian court and no criminal proceedings have been instituted against him for such a crime, unless he has been rehabilitated; has an income or occupation that enables him to support himself in the Republic of Bulgaria;

The applicant applied for acquisition of Bulgarian citizenship from the position of a person under Art. 12a, i.e. a person who has received a permit for permanent residence has made an investment of over BGN 1 million, for which as of the date of submission of the application under Art. 29 the requirements of art. 12, para 1 items 1-4 of the law.

According to the provisions of Art. 29 of the LBG procedure for acquisition of Bulgarian citizenship by naturalization is carried out at the request of the interested person, submitted personally to the Ministry of Justice or to the diplomatic or consular mission of the Republic of Bulgaria, which is addressed to the Minister of Justice.

On the basis. Art. 34 of the LBG, the Minister of Justice, based on the opinion of the Citizenship Council, makes a proposal to the President of the Republic of Bulgaria to issue a decree or to refuse to issue a decree for acquisition, restoration, release or deprivation of Bulgarian citizenship, as well as to revoke naturalization. According to Art. 36 of the LBG, the acquisition of

Bulgarian citizenship by naturalization, the restoration of Bulgarian citizenship, the release and deprivation of citizenship and the revocation of naturalization shall be carried out by a decree of the President of the Republic of Bulgaria. The decree shall enter into force on the day of its issuance.

From the presented evidence in the case it is established that in the Directorate "Bulgarian Citizenship" at the Ministry of Justice a file for acquisition of Bulgarian citizenship was formed by DK, a citizen of L., on the grounds of Art. 12a of the LBG, as a person who has received a permanent residence permit on the grounds of Art. 25, para. 1, items 6, 7 or 8, which has made investments in the Republic of Bulgaria.

The administrative file submitted by the respondent contains the Establishment Document № IBA - ZNRB-19 / 22.01.2016, issued by the Bulgarian Investment Agency, the content of which is not disputed by the parties, which shows that the Agency certifies the fact that the applicant DK has made an investment through a trust management contract for the amount of over 1,000,000 for a period of at least 5 years, according to Art. 25, para 1 item 7 of the FRBA and Art. 39, para 6, item 6 PPZCHRB, as the same has declared the origin of the funds according to art. ZMIP. It is evident from the same that the investment was made through a trust management contract with "I." for a period not shorter than 5 years on the date 15 December 2008. On November 24, 2014. with a new annex to the trust management contract the term of the contract was extended on December 26, 2015, ie it was in force on the date of the application for naturalization. It is not disputed in the case that on the basis of the investment the applicant K. acquired the right of permanent residence in the Republic of Bulgaria.

The application for acquisition of Bulgarian citizenship by naturalization was submitted on 27.05.2015. under № 3779/2015 and was considered at a meeting of the Citizenship Council with minutes № 15 of 02.06.2016, which gave an opinion that it should not be respected, on the grounds that as of the date of the meeting of the Council - 2.06.2015. investment is not supported.

Based on the opinion of the Council, the Minister of Justice, based on Art. 34 of the LBG, has made a proposal № 92-09-51 from 13.06.2016 under protocol № 15 from 13.06.2016 to the Vice President of the Republic of Bulgaria not to issue a decree for acquisition of Bulgarian citizenship by naturalization of DK .. The reasons for this coincide entirely with the motives of the Citizenship Council of 2.06.2016.

For the proposal under Art. 34 of the LBG, the complainant learned from a letter of the Ministry of Justice, which was received on 07.09.2016, / from which date the deadline for appeal should be counted, although the announcement was published on the website of the Ministry on 09.06.2016. Letter with ref. № 94-D-117 dated 23.08.2016 was sent to the person in response to his application dated 15.07.2016, which is not an official way of notifying the candidates for acquisition of Bulgarian citizenship. It is evident from the motives to it the reason why the applicant was not notified by the order of art. 61 of the APC for the proposal under Art. 34 of the LBG is the circumstance that the respondent party does not consider the same as an individual administrative act, therefore it does not serve it according to the procedure provided in the APC.

After an explicit request from the present court instance a transcript of the appealed act - the Proposal under Art. 34 ZBG, together with a certified transcript of the decision of the Citizenship Council is presented in the case - /p.168 et seq./.

In view of the evidence thus presented, the court finds the appeal of D. E. K., a citizen of L., against a proposal under Art. 34 of the Bulgarian Citizenship Act, prepared by the Minister of Justice in case № 4100 of 2015 of the Ministry of Justice as well-founded, and the disputed proposal not to issue a decree for acquisition of citizenship for an illegal administrative act issued in violation of the requirements of Art. 146 items 3 and 4 of the APC.

Proposal under Art. 34 of the LBG of the Minister of Justice to the applicant K. not to grant Bulgarian citizenship, was issued by an administrative body, acting within the granted legal competence and in compliance with the requirement for form of the act.

The administrative proceedings were duly instituted and conducted, giving the person the opportunity to collect and present evidence in connection with the validity of the request. The special requirement for an opinion from the Citizenship Council has been met. Formally, the act of the Minister of Justice contains a justification for the refusal to give a positive proposal for the country, ie. it can be assumed that on the formal side it contains reasons.



