

LEGAL PROTECTION OF STATELESS PERSONS IN MODERN INTERNATIONAL LAW: THEORETICAL AND PRACTICAL ISSUES

Asmar Panahova*

Abstract

In the article, the theoretical and practical issues of legal protection of stateless persons in modern international law are extensively analyzed based on the existing diversity of opinions in the legal literature, international and domestic normative-legal acts. It is noted that stateless persons are a special category of people whose legal status is regulated by slightly different rules and requires special treatment. The need to adopt special international agreements in this field has confirmed this once again. In general, stateless persons have practically the same rights, freedoms and obligations as foreigners, except for some differences. It is concluded that in order to achieve a more effective regulation, the legal status of stateless persons and the provisions of the international agreement on the elimination of statelessness should be created in the national legislation of the states. At the same time, all the circumstances that can lead to the state of statelessness should be completely eliminated in the national legislation of the states.

Keywords: *modern international law, stateless persons, human rights, legal status, cases of statelessness, personal status, international documents, domestic legislation.*

Stateless persons are persons who live in the territory of a certain state, but are not its citizens, and at the same time do not have proof of citizenship of a foreign state.

David Weissbrodt, a renowned expert on international human rights, notes that one of the ways to ensure that stateless persons can realize their right to citizenship (as stipulated in Article 15 of the Universal Declaration of Human Rights) is through the doctrine of genuine and effective link. According to this doctrine, a person should be entitled to citizenship from states with which he has a real and effective relationship. At the very least, a person should be entitled to the citizenship of the country with which he is most closely related. A significant connection with the state may arise, for example, from living in the territory of the state for a long time, being born in the territory of the state, etc. The doctrine of genuine and effective link is a very important method of addressing the problem of statelessness. Indeed, it is difficult to find a person without real and effective link with the state. However, as a practical matter, a sovereign state has the right to determine who acquires its citizenship. However, this right must be in accordance with relevant international standards and laws. At a minimum, these standards impose an international obligation on states to reduce statelessness, to respect the human rights of the stateless, and to grant citizenship to all children born within state borders [1].

In scientific literature, most authors note the following cases of statelessness: if a person has lost the citizenship of his country and has not yet accepted the citizenship of another country; If a woman who is a citizen of a country based on the principle of "the wife must be accepted into the citizenship of the husband" has entered into marriage with a citizen of a foreign country (if the legislation of the country of which that foreigner is a citizen does not automatically grant this woman her own citizenship).

* Ph.D in law, Baku State University

Due to the different regulation of the conditions for obtaining the citizenship of one state and the loss of the citizenship of another state, as well as due to the existence of different criteria and principles for obtaining and losing citizenship, such a situation arises that a certain natural person does not fulfill the conditions for obtaining the citizenship of any of the states and no state considers that person as its citizen, as a result of which this person acquires the status of stateless person [2].

The problem of regulating the status of stateless persons in the institution of citizenship is one of the most complex problems. Statelessness is undesirable for states and may even create conditions for international disputes and conflicts regarding the regulation of entry and exit of stateless persons (especially regarding their deportation to other states).

Within the framework of statelessness, two types of stateless persons are defined: "absolute" and "relative" statelessness. Absolute statelessness arises by birth (for example, a person's parents are stateless, and because the person was born on the territory of a "right of blood" state, he does not acquire any citizenship). Relative statelessness occurs as a result of loss of citizenship. A distinction is also made between "de jure" and "de facto" statelessness [3]. Refugees are de facto stateless if not recognized as de jure stateless.

There may be different reasons for the emergence of statelessness. This situation may also arise when a person loses the citizenship of one country and cannot acquire another citizenship. Statelessness can also arise as a result of marriage. For example, if a woman who marries a foreigner loses her citizenship, and her husband's state does not grant her citizenship automatically, then that woman becomes a stateless person. Also, in the preamble of the 2006 Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession, it is emphasized that one of the main sources of statelessness is related to the legal succession of states [4].

Stateless persons have fewer rights and freedoms in their country of residence. As a rule, their use of civil and political rights is restricted, and they are deprived of the opportunity to apply for diplomatic protection.

Differences in the legal status of citizens and stateless persons are quite important. This issue has been repeatedly paid attention to in the legal literature and in the activities of international organizations. For example, in 1980, Baroness Ellis, the special rapporteur of the UN Sub-Commission on Prevention of Discrimination and Protection of Minorities, prepared the study "International Provisions Protecting the Human Rights of Non-Citizens". A number of current directions for solving the problems mentioned in that study were determined.

In general, for national minorities in Europe, as well as within the international community as a whole, the problem of citizenship or dual citizenship is part of a more global problem, that is, the problem of identity. The identity problem is related to the right to self-determination and decision-making. When it comes to citizenship, there are and should be several areas that national minorities should explore. The most optimal way to protect people belonging to minorities is to leave the solution of that issue to the relevant minorities, to give them the opportunity to choose [5].

The socio-economic situation of stateless persons in terms of education, employment and housing is very weak. Even immigrants who have the right to work and live at the same level as citizens (those with stateless status) are deprived of finding a job in the public sphere of activity. For example, in some states of the United States,

jobs in administrative and judicial bodies are valid only for citizens of the United States, because they have the right to participate in the administration of the state. Such restrictions exist in most countries.

However, it should be noted that for the attraction of foreign capital, cheap labor and other purposes, in a number of countries, taking into account the state interests, exceptions to the rules on technical and working personnel are provided [6]. In the field of entrepreneurial activity, basically all countries are based on the principle of legal equality of citizens and persons with other legal status. But in some countries, a special permit is required for this type of activity for stateless persons, who have an insufficient period of residence. For example, in Germany, it is necessary to have the right of permanent residence for 8 years. All this shows that stateless persons need special social protection from the state.

Stateless persons have the right to work according to their abilities, choose the type of activity and profession, have the right to rest, social security, health protection, get an education, own an apartment, and become an entrepreneur. They enjoy the freedoms granted to citizens (speech, opinion, conscience, etc.) and their rights to personal integrity and housing are guaranteed.

However, the political and legal status of this category of persons has its own characteristics in different states. They do not have the right to vote and be elected, they are not called to serve in the armed forces, their right to choose the type of occupation is somewhat limited, stateless persons cannot hold a number of positions, if according to the law it is related to the presence of the criterion of citizenship.

We can agree with such an idea that statelessness manifests itself from a negative point of view in human rights. For this reason, states at the level of national legislation, and the international community, through the conclusion of international conventions, carry out important activities to increase the number of stateless persons and reduce statelessness in general.

Many states, including AR, are interested in reducing statelessness. The legislation of most states provides mechanisms for obtaining citizenship by foreign nationals and stateless persons. In addition, states also establish a number of rules and procedures that prevent the emergence of statelessness. As a rule, those rules touch on the issues of acquisition and loss of citizenship as a result of birth, entering into marriage. Those rules and procedures often do not regulate issues related to the deprivation of citizenship of persons who voluntarily cut off actual link with the relevant state or engaged in activities directed against the sovereignty of that state.

The possibility of becoming stateless at the time of marriage is denied in the legislation of a number of states: either it is determined that the marriage does not affect the citizenship of the spouses, or a new citizenship is granted to a woman who loses her citizenship at the time of marriage.

States usually eliminate existing cases of statelessness by applying the following rules: granting the right to citizenship to stateless persons; refusal to remove citizenship; to enact laws of a general or special nature aimed at eliminating statelessness.

Until the collapse of the USSR, there was a steady trend of reducing the number of stateless persons within the Union, and both domestic and international legislation had an unambiguous position in this direction. Currently, this process has weakened enough and even in the CIS countries there is an increase in the number of stateless persons. The main reason for this phenomenon is, first of all, the denial of dual

citizenship in the legislation of the former allied republics, and the existence of various barriers at the time of citizenship.

Thus, certain differences between the rights and duties of citizens and stateless persons automatically arise. For example, the Latvian Human Rights Office prepared a list of 68 differences between the rights and duties of citizens and stateless persons [7].

International legal norms on the reduction of statelessness are reflected in a number of international conventions. In the preamble of the Hague Convention Relating to the Conflict of Nationality Laws of June 12, 1930, it is stated that all mankind should try as an ideal to completely abolish statelessness within the framework of the matter of citizenship [8]. According to Article 7 of the Convention, a person who has lost the citizenship of one country shall not lose his original citizenship until he acquires the citizenship of another country. Marriage of a woman with a foreigner or change of her citizenship by her husband should not be grounds for her to become stateless.

A very important point is clarified in the Hague Convention. Children of unknown persons must acquire citizenship at the place of birth or at the place where they were found (art. 14, 15). If the adoption of a child leads to the loss of the child's previous citizenship, then such loss can occur only if the child acquires the citizenship of the adopters at the same time (art. 16, 17) [9].

The Universal Declaration of Human Rights of 1948 declares the right to citizenship (Article 15.1). Part 2 of that Article states that no one can be deprived of his citizenship and the right to change his citizenship. International law has contributed significantly to the improvement of the legal status of stateless persons, which brings them closer to the status of foreigners, particularly as reflected in the 1954 Convention relating to the Status of Stateless Persons. The Convention emphasizes that every stateless person has obligations towards the country of his/her residence, which includes compliance with the laws and regulations in force for the establishment of public order (Art. 2). The Convention also states that the Contracting States shall apply the provisions of the present Convention to stateless persons without regard to race, religion or their origin. At the same time, the Convention does not prohibit granting other rights to stateless persons, other than the rights and freedoms provided by the Convention (Article 5). The Convention imposes an obligation on states to equate the status of foreigners with the status of stateless persons, where we are talking about the status under domestic law (art. 7) [10]. It does not include rights to diplomatic protection by the home state, which foreigners have, nor does it extend to rights provided by treaties with their country. Every stateless person has the right of free access to the courts in the territories of the Contracting States (art. 16). Contracting States shall grant to stateless persons lawfully resident in their territory more favorable treatment than that enjoyed by aliens in obtaining employment.

Stateless persons, under certain conditions, enjoy rights and benefits as an exception to the principle of reciprocity. The exceptional measures applied to nationals or former nationals of a foreign state cannot be applied to stateless persons on the ground that they previously held the citizenship of that state. But in emergency situations, the state can apply such temporary measures to them, which it considers necessary from the point of view of national security.

Only *de jure* stateless persons are covered by the 1954 Convention, *de facto* stateless persons are not covered. Refugees fall within the scope of this Convention only if they are considered *de jure* stateless persons. The 1954 Convention establishes a certain legal

regime for stateless persons in the territory of the participating states. The Convention protects their personal status, property rights, provides some concessions in the field of education, entrepreneurship, employment, etc. This Convention mandates the States Parties to provide stateless persons with a legal regime no less than that enjoyed by foreign nationals residing in their territory. Stateless persons enjoy the full range of rights in the territory of the state where they have their permanent residence.

The 1961 Convention on the Reduction of Statelessness mandates States Parties to grant citizenship to any person born on its territory who would otherwise be stateless. In such cases, citizenship is granted either at birth in accordance with the law or at the request of the person or his representative. Children of unknown parents found on the territory of the state also acquire citizenship by "right of the soil". In connection with this issue, it should be noted that today very few states give preference to one of the parents when determining the child's citizenship. Presumably, this issue is resolved with the consent of the parents.

The Convention considers renunciation of citizenship possible and rejects the principle of depriving a person of citizenship (if as a result he becomes a stateless person). However, the cancellation of illegally obtained citizenship or the deprivation of such citizenship is considered legal. It should be noted that some countries require the relinquishment of their previous citizenship and the submission of relevant documents proving this fact for the granting of citizenship. The Convention also specifies the obligations of the contracting states to reduce the number of stateless persons and when the sovereignty of a certain territory changes.

The goal of this Convention is to create a favorable regime for stateless persons to acquire the citizenship of the country of their permanent residence and to prevent cases of a person becoming stateless during expatriation. Also, the Convention unifies the procedures for acquiring and losing citizenship in order to reduce the number of stateless persons.

In addition, another important feature of the Convention is that it includes the provisions that provide for the establishment of an international body with the authority to consider appeals by stateless persons regarding non-fulfillment of its provisions. By the Resolution of the UN General Assembly dated November 30, 1976, the functions of such a body were assigned to the UN High Commissioner for Refugees.

The Convention on the Nationality of Married Women dated 1957 established the provisions to eliminate cases of statelessness arising as a result of a woman's marriage.

The 1997 European Convention on Nationality contains a number of principles and provisions aimed at reducing statelessness. The principles of citizenship established in Article 4 of the Convention are mainly derived from generally accepted principles of international law and the basic norms of international law in the field of human rights protection. For example, the following norms are established in this Convention: everyone's right to citizenship; the obligation to avoid statelessness; inadmissibility of arbitrary deprivation of citizenship; entry into marriage or its dissolution, as well as the change of citizenship by one of the spouses, does not affect the citizenship status of the spouses [11].

The list of grounds for deprivation of citizenship is specified in Article 7 of the Convention. The European Convention on Nationality prohibits states from depriving a person of their nationality if this action would result in the status of a stateless person. However, cases of obtaining citizenship by false or other illegal means are an exception.

The Convention provides that a state party may allow a person to renounce their nationality, but such renunciation shall not render the person stateless.

The 1997 Convention also states that each State Party must provide for rules in its domestic law that facilitate the acquisition of its nationality by stateless persons. However, the Convention does not provide for any specific obligations towards stateless persons. This is due to the fact that the participating states are not yet fully prepared to define specific obligations in their legislation towards stateless persons.

Within the framework of the CIS, at the regional level, there is also a process of creating norms aimed at regulating issues related to the status of stateless persons. On December 29, 1992, the Interparliamentary Assembly of Member Nations of the CIS developed a recommendatory Act on the harmonized principles of citizenship regulation. This document focuses on the protection of human rights and the reduction of statelessness in the CIS countries. This document emphasizes the importance of the following principles: every person's right to citizenship and its replacement, equality of citizenship, inadmissibility of deprivation of citizenship due to social origin, property status, race and nationality, gender, education, language, religion, political and other views, nature of occupation. The aforementioned document encourages the acquisition of citizenship by stateless persons [12].

Most states view statelessness as a negative phenomenon and try to eliminate it in their domestic and international legal practice. However, the issue of statelessness remains one of the most acute problems in the internationalization of citizenship. This is explained by the fact that few states participate in those international agreements, or even if they do, they do not take appropriate measures to implement those international norms. Today, the leading role in the prevention of statelessness still belongs to domestic legislation. For this reason, it is necessary to include international legal principles on citizenship in the laws on citizenship in order to solve the issues of statelessness. At the same time, uniform norms and principles should be formed in matters of acquisition and loss of citizenship. The European Convention on Nationality dated 1997 can be mentioned as one of the important steps in this sphere.

Thus, stateless persons are a special category of people whose legal status is regulated by slightly different rules and requires special treatment. The need to adopt special international agreements in this field has confirmed this once again. In general, stateless persons have practically the same rights, freedoms and obligations as foreigners, except for some differences. In order to achieve more effective regulation, the legal status of stateless persons and the provisions of the international agreement on the elimination of statelessness should be created in the national legislation of the states. At the same time, all the circumstances that can lead to the state of statelessness should be completely eliminated in the national legislation of the states.

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