

THE IMPLEMENTATION OF THE UN CONVENTION ON STATELESSNESS WITH REGARDS TO ROMA COMMUNITY IN ALBANIA

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Abstract

The scope of the approval of the Convention Relating to the Status of Stateless Persons is an extension to countries' foreign politics, which have on the focus the protection of the rights and freedoms of the individual. This convention has been endorsed by the Conference of Ambassadors in the year 1954, and entered into force in the year 1960. It was ratified by the Republic of Albania on the 23rd of July 2003. The provisions of this convention aim at helping all those persons that after World War II were identified as stateless persons. In the provisions, stateless persons are defined, when and where the convention will be implemented, which are the rights of these individual in terms of juridical status, their rights regarding employment, well being, administrative measures, naturalization, etcetera. It scrutinizes all the individuals' civil and political rights, as it is its object. The study aims to evaluate the implementation of this convention with regards to the Roma community in Albania. At first the concept of statelessness will be defined; then there will be given some reasons for losing one's nationality. How statelessness is treated in Albanian law, how a person can be penalized by its country with loss of nationality, the effects of changing borders regarding deep changes in international relationships, denationalization, collision, etcetera. Attention will be given to the present situation of this community in Albania, their way of living, the role of the Albanian state regarding them. After studying the present approach, we will further see the divergences and its controversies in terms of state discrimination and the negligence of the community itself in improving the situation.

Key words: UN Convention on Statelessness, nationality, apatride, denationalization, collision, jus soli, jus sanguinis, etc.

Introduction

The aim of the adoption of the UN Convention on Statelessness is an extension of countries' international policies safeguarding their citizen basic rights and freedoms. After the General

Assembly ratified the Universal Declaration of Human Rights in 1948 and the approval of the 1951 Refugee Convention, there came the turn of the Convention on the Status of Stateless Persons. The convention was first approved in the year 1954 and entered into force 6 years later, in the year 1960. It has also been ratified by the Republic of Albania in 23 July 2003. The provisions of this convention are meant to help all the persons that after the 2nd World War and until now are identified as stateless persons. The provisions define stateless persons, when and where the convention will not be applied, what are the rights of these individuals regarding their juridical status, rights on employment, well-being, administrative measures, naturalization, etcetera.

Cases of statelessness and citizenship deprivation

Before explaining the current issues with statelessness, a brief introduction on the concept will be given. Today, in the world there are approximately eleven million stateless persons. This figure varies from time to time. The problems that these persons carry are various; for example, in some countries the lack of their identification affects the accuracy of censuses. Another aspect are related to police formalities: if they would come to stop a stateless person as a suspect, its identification would be difficult, because of the lack of a formal identity. Guilty or not, the time needed to make the person's identification and to perform procedural formalities would be extended rendering it thus an unfair deprivation of freedom. Often, stateless persons are denied the right to medical care or social insurance. In some cases because of the lack of identification papers, they may be denied the right of free movement from state to state. In some cases they might not be allowed to cross certain countries borders, preventing them from joining their families. Cases are innumerable, but now let's have an insight on the concept of statelessness. Quoting chief judge Earl Warren, "Citizenship is man's basic right for it is nothing less than the right to have rights"¹. A stateless person² is a citizen of no country. In other words these people cannot prove the citizenship neither in the country they reside, nor from their country of origin. Naturally, a question arises: how can a person be stateless or lose his or her citizenship?

1. The person can voluntarily abandon his citizenship by his own will. The law in different countries provides the opportunity to withdraw from ones citizenship upon request.³
2. The country may omit one's citizenship as a result of his or her conduct⁴. This may happen when the citizen is a regular law offender. As it is an imposition from the

¹*Doracak për parlamentarët*, UNHCR, 11-2005

²*Convention Relating to the Status of Stateless Persons* (adopted on September 28, 1954, entered into force on June 6, 1960), art. 1.

³*The European Convention on Nationality* adopted by the Council of Europe in 1997, art. 7; *Albanian Constitution*, art. 19/3;

Law number 8389 date 05.08.1998 "Albanian Nationality", art. 15

⁴Puto A., *Public International Law*, Tiranë, 2010, pg . 281,

state, this case differs from the first because it is independent by the person's will. It is usually associated with other punishments against various violations.

3. According to some countries' legislations a person can lose his or her citizenship as a result of certain terms expirations⁵. This means that the persons who stay out of their country longer period then defined, automatically lose their citizenship turning themselves in apatrides.

4. Another case of loss of citizenship is denationalization. In this case different population groups may be violently displaced from their land. This implies deep trans-boundary and international changes. After the people are violently expelled their land is annexed, discontinuing the displaced' juridical relationship with their country of origin.

5. Another form of loss of citizenship similar to denationalization is loss from the redefinition of national borders, where people living near the borders now belong to the other country⁶.

6. Another interesting aspect of statelessness is **collision**, when one loses his or her citizenship because of legal discrepancies⁷. There are cases when the law of a certain country uses the "wife takes husband's nationality" principle, while the husband's country does not apply this principle. In this case the woman will lose her nationality.

7. Another possible cause of statelessness is the discrimination of certain ethnic groups and communities.

Roma Community in Albanian Reality

In the year 2003 Albania has adopted the UN Convention Relating to the Status of Stateless People. Let us see how it is being implemented relating to the Roma community. The scope is to evidence the scale and quality of the implementation of the convention from the Albanian government. The Roma national minority, alternatively known as the Roma community presents sharp and specific problems. This community finds itself as a neglected group, forgotten and often discriminated⁸. In the everyday language they are frequently referred as "gabel" or "arixhi", words that bear prejudice. Since the beginning, we may notice that the discrimination faced by this group barges against Article 3 of the Convention on the Status of Stateless Persons, stating that the countries should not discriminate stateless persons because of their race, religion or descent. Another problem of the rom community is their way of living. They are not installed in residential centers and wandering, free living, out of any obligation to the state and as a consequence their rights are limited. They often do not have formal resides, they are not registered in civil state offices, they do not have birth certificates, it is not known where they are buried and they do not take the minimum of effort to naturalise according to the Albanian law and so to earn the Albanian citizenship. It is clear that the lack of formal registration denies this community of many civil and

⁵*Ibidem*, pg. 281.

⁶*Ibidem*, pg. 278.

⁷*Ibidem*, pg. 284.

⁸Puto A., *Konventa Evropiane për të drejtat e njeriut në përfaqje me Kushtetutën e Shqipërisë*, pg. 156.

political rights, an undeniable part of human rights. The convention gives great importance to the articles on employment and gainful employment⁹. Regarding the implementation of the article on gainful employment¹⁰, it clearly states that stateless persons have the right to paid employment according to worker recruitment programs or immigration schemes. Reality is different. With respect to paid employment, Roms are almost unemployed, except any case of grey work, which see them employed as loaders. The articles on self-employment¹¹ gives them the right to engage in agriculture, industry, craftsmanship, trade or the establishment of companies of different types. The only comfort for this community has been self-employment, but in different standards than those predicted by the dispositions. You can see members of the Roma minority collecting plastic and metal, selling second-hand-clothing, weaving or knitting, often begging and working in casual short-term employments. The provisions on free¹² professions attributes to stateless people living in Albania who possess a degree approved by the authorities, favorable conditions and the same treatment as foreign people who wish to deal with free professions. Free professions are an utopia for the Roma community. The lack of education and professional training makes them excluded from the formal job market. Despite the articles on gainful employment, those on the juridical status¹³ bear the same importance. The provisions and the personal status¹⁴ attributes to stateless persons the right of marriage and the right of parentage. Problems arise in this direction too, because this community does not respect the civil state legal acts, especially those concerning marriage. Their marriages are not often registered, nor child births. This makes them biological parents, but not juridical ones. This implies other problems concerning family planning. Many of them have numerous families inducing themselves to poverty, poor education and malnutrition. The neglected registration of their children, automatically denies them from the right to gain Albanian nationality on the basis of the jus soli principle. With regards to the provision on access to courts¹⁵ of the stateless and the exception from *cautio judicatum solvi*, the Albanian state has a positive approach to the convention. This is evidenced in the legal support given to the community by the ombudsman, as a public organ, and also, whereas not economically possible, the payment to the legal representative. With regard to the provision on artistic right and industrial property¹⁶ we may say that they are totally inexistent. It is impossible to this group to evidence their intellectual property, as inventions, author rights, designs or models, trade names and signs, artistic and scientific works, etcetera. The provisions on the right of association¹⁷ awards stateless persons the right to be part of non political and or non profit associations and syndications.

⁹*Convention Relating to the Status of Stateless Persons* (adopted on September 28, 1954, entered into force on June 6, 1960), chapter III.

¹⁰*Ibidem*, art. 17.

¹¹*Ibidem*, art. 18.

¹²*Ibidem*, art. 19.

¹³*Ibidem*, chapter II.

¹⁴*Ibidem*, art. 12.

¹⁵*Ibidem*, art. 16;

Albanian Constitution, art. 31, letter (ç)

¹⁶ *Convention Relating to the Status of Stateless Persons* (adopted 28 September 1954, entered into force 6 June 1960), art. 14.

¹⁷*Ibidem*, art. 15.

Part of the Roma community accedes to some of these organs, mainly based in the capital and with a few widespread in other cities. Their activity is poor, and they are always pending for funds from organizations such as UNHCR, UNDP, EU, etcetera, for starting any professional or social action plan. The study gives also importance to the provisions of the Convention on the well-being¹⁸ of stateless persons. The provision on social insurance gives us a broad and clear panorama of the problem relating to this group. Roma people are not included in the schemes of social insurance, medical insurance and medical care, neither as employed, nor as self-employed or voluntary contributors.¹⁹ As such, they cannot profit from the Diseases Branch, the Births Branch, the Pensions Branch, the Professional Ailments Branch, or the Unemployed Branch. As a consequence they find themselves unprotected from contingencies and the inability to work due to aging. As such, premises for working in black are encouraged²⁰. A specific provision has been the object of many controversies, the provision on sheltering²¹. The convention states that the stateless, such great part of the Roma community, from the sheltering point of view, should be treated equally as foreign persons. In some areas of the capital, groups have arranged shelters themselves, building barracks and huts, because of the lack of the provision of proper residences. The land where these habitations lie, is often property of different landlords, even though not always legitimate owners. They have often contracted building companies to build on the sites and to clear them of the present inhabitants, the state police has been called. We may evidence two facts in here, both legal, but controversial to each other, creating series of problems. First, the landlord has the right to property and may ask for its freeing. Second, the community has the right to shelter, awarded from international conventions. The violent eviction of the Roma people from the police is an unacceptable behavior. At this point, the intervention of the Ministry of Well-being and Tirana Municipality is needed for solving the situation. The only active organ in appealing to the responsible institutions is the abundsman. He has often reminded to the authorities the International Pact on Economic, Social, and Cultural Rights, ratified in Albania in the year 1991, as part of the Plan of Measures for the Roma issue. He also reminds them of article 14 of the Convention of Human Rights, also ratified in Albania and article 18 of the Albanian Constitution where discrimination is sanctioned. With regards to the European Integration of the country, we should not forget article 11 for receiving the Status of the Candidate, that is connected with the safeguard of the rights of humans, children, women, and minorities such as Roma people. Problems arise with the implementation of the provisions on public education²². Roma, as also Albanian people, should be included and follow public elementary education. Their nomad way of living and the their own negligence, creates great problems concerning with their children's education. The state can do little here, because the main issue awareness. Consequences can vary from illiteracy to crimes as theft and other violations. This creates an undesirable tradition, with

¹⁸*Ibidem*, chapter V.

¹⁹Peto Zh., *Sistemet e mbrojtjes shoqërore*, Tiranë, 2006, pg. 65.

²⁰*Ibidem*, pg. 55.

²¹ *Convention Relating to the Status of Stateless Persons* (adopted on September 28, 1954, entered into force on June 6, 1960) art. 21.

²²*Ibidem*, art. 22.

negative effects, making thus education something unnecessary for their living. Another case demanding attention are provisions on administrative measures. Freedom of movement²³, sanctioned under an appropriate article, gives stateless people the right to choose their residence, and to freely move within the borders of the Albanian Republic, the same way as specified for the foreign people. This disposition has never been applied. Roma find themselves living in self-fabricated shelters, lacking basic conditions, without being registered according to the administrative divisions. This makes them feel free to change their residence without notice. Adding “free movement”, better definable as chaotic movement, they behave as a foreign body to the country, avoiding any obligation. Is important to say that another aspect of the convention, such as that on eviction²⁴, according to which it can be made as in the cases of national security and public order. Regarding to this point, even though this community has led a difficult life, it has always been in peace with the community, never impinging public order or national security, never being a threat. As a last aspect of this treatment, we may mention the provisions on naturalization²⁵. A part of the Roma community has been assimilated and now lives as Albanian citizen, for example those living in Levan (Fier). In order to gain naturalisation, they should seek it first, according to national laws and regulations. If these people have not gained Albanian citizenship according to jus soli or jus sanguinis, then they may gain it when they are at least 18 years, have been living for more than 5 years within the borders of the country and have good knowledge of the Albanian language²⁶. This provision is one of the key points of the Convention for the Reduction of Stateless People, part of the standards on human rights.

Conclusions

Statelessness in universal phenomena of our days. It concerns many countries and is engaging them in national and international initiatives related to the treatment of stateless people and the reduction of their number. With regards to what this document deals with and the doctrinal treatment, the Albanian state should intensify its work for the integration of the Roma community and for stopping its discrimination. First, their awareness regarding their conditions should be augmented. Secondly, the legal procedures for gaining citizenship should be simplified, including naturalization, marriage, adoption. Thirdly, they should be given the opportunity to enjoy personal, political, economic, social and cultural rights. From the other side, the community itself has to commit to state liabilities, and to work towards a more sustainable way of living. This way, it will also allow the state to give it a better support.

²³*Ibidem*, art. 26.

²⁴*Ibidem*, art. 31.

²⁵*Ibidem*, art. 32;

Law number 8389 date 05.08.1998 “Albanian Nationality”, art. 9.

²⁶*Albanian Constitution*, art. 19/2.

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