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The concept and structure of status of stateless persons – international law approach

Introduction

Stateless, generally means that a person does not have the nationality of any state, that is, any state does not recognize its person according to its laws. In international law, stateless people mainly belong to the knowledge category of public international law (of course, private international law also has relevant contents in conflict law), which is the embodiment of negative conflicts in the relevant provisions of nationality conflict. It should be said that stateless people have an independent legal status. In international practice, however, stateless persons do not enjoy the protection of any country internationally, nor enjoy the civil rights stipulated by any country, including the right to be allowed to enter or settle in any country.

This stateless state not only causes various adverse effects on the person concerned himself but also causes inconvenience and conflict to the administration of nationality and the implementation of laws in the host country. For a long time, the international community has also made many efforts to reduce the stateless status and concluded many international treaties and instruments to change it. However, relying solely on these international treaties is not enough to solve the problem of the lack of rights of stateless people. First, many countries have not acceded to the relevant treaties at all, and second, these treaties emphasize how to reduce and eliminate stateless status without much mention of how to protect or strengthen management. It is really against the principles and original intention of the international human rights convention for stateless people with a tragic existence and incomplete protection of relevant laws and treaties.

Specific concepts of the status of stateless persons

(1) The personal status of a stateless person shall be governed by the law of the country where he has his domicile and shall be governed by the law of the country where he lives. The previous rights of stateless persons, especially concerning marriage, shall be respected in the respect of a Contracting State and, if necessary, observe the ceremonies required by the law of that State, provided that if he is not, the relevant rights are also recognized by the law of that State. States shall treat stateless persons in the acquisition and other rights relating to personal and real property, and in leases and other deeds of personal and real property, as preferential as they shall, in any event, not be less than that given to ordinary foreigners under the same circumstances.

(2) With regard to the protection of industrial property, such as the right to invention, design or model, trademark, trade names, and rights to literature, art, and scientific works, stateless persons shall enjoy the same protection in the country in which they regularly live. He shall give in the territory of any other State party the same protection granted to the nationals of the country where he regularly lives.

(3) With regard to non-political and non-profit associations and trade association organizations, the contracting States treat stateless persons legally living in their territory

(4) A stateless person has the right to appeal freely to the courts in the territory of all States. Stateless persons living in the regularly resident State party shall enjoy the same treatment as their nationals on matters appealed to the courts, including litigation relief and exemption from litigation guarantees. A stateless person shall, in a country other than the country in which he regularly lives, for the matter mentioned in paragraph 2, the treatment of the country in which he lives regularly lives.

(5) States shall give as preferential treatment as possible to stateless persons legally living in their territory to do work in exchange for wages, which, in any case, shall not be less than that enjoyed by ordinary foreigners under the same circumstances. States parties should give sympathetic considerations in making all stateless persons entitled to pay wages equal to that of their nationals, especially for stateless persons entering their territory under labour recruitment or immigration schemes¹.

States shall give as much preferential treatment as possible to stateless persons legally in their territory for their operation of agriculture, industry, handicrafts, commerce and the establishment of industrial and commercial companies. States are stateless persons lawfully resident in their territory

¹ L.J. Xizi, *Negative nationality conflicts and solutions of natural persons under the perspective of private international law* [J], „Legal expo.” 2015, Vol. 4, pp. 83–84.

who hold a diploma recognized by the competent authorities and are willing to practice themselves. States shall give stateless persons the same treatment available to their nationals in primary education. Countries should be treated as preferential as possible by stateless people in terms of education other than primary education, especially access to academic research, recognition of foreign school certificates, diplomas and degrees, tuition reductions, and scholarships².

Guarantee differences in the status of stateless persons

All States parties to the Convention on the status of stateless persons must give stateless persons the treatment granted to foreigners generally. The nationality law of each country has different provisions on the rights and obligations of stateless persons, but generally not lower than the provisions of the host country for foreigners. The following is the treatment that must be given by States parties to the Convention on the status of stateless persons: Public relief: equal treatment to its nationals in public relief and aid. Identification documents: In the country where a stateless person is located, identity documents shall be issued to any stateless person who does not have travel documents in his territory. Financial levy: No taxes or fees shall be levied additional or higher on stateless persons. Naturalization: It shall facilitate the naturalization or assimilation of stateless persons³.

Although State parties make some treatment commitments to different countries, the status guarantee of stateless persons varies mainly for the following reasons:

(1) Root cause: The principles of sovereignty determined by nationality law are different.

The Hague Convention on Several Issues concerning Conflicts over Nationality Laws, adopted in 1930, stipulates that the mode of nationality acquisition, loss and conditions of recovery are matters within the sovereignty of a State and prohibit other states from interference. In the absence of unified nationality legislative rules, all countries take safeguarding their interests as the starting point and adopt different principles of sovereignty, which leads to differences in national nationality laws⁴.

² Y. Long, *On the methods of solving the negative conflicts of natural persons* [J], „Legal expo.” 2015, Vol. 5, pp. 256–256.

³ C. Imeng, *Study on the stateless population of ethnic minorities on the China-Myanmar border* [J], „Bagui Overseas Chinese Magazine” 2013, Vol. 3, pp. 27–33.

⁴ Convention on certain questions relating to the conflict of nationality law, 13 April 1930, „League of Nations, Treaty Series”, Vol. 179, No. 4137, p. 89, <https://www.refworld.org/docid/3ae6b3b00.html> (accessed: 27.12.2022).

(2) Direct reasons: different regulations on the acquisition and loss of nationality.

From the perspective of nationality acquisition, the principle of nationality law determining natural-born nationality can be roughly divided into birthplace alism and ancedoctrine. In birthplace countries, there are great differences in identification criteria, there are single and double differences in origin countries, and there are differences in emphasis. In addition, from the perspective of the loss of a natural person's nationality, the provisions of nationality laws vary from country to country.

(3) Factors influencing it: the continuous change of nationality legislation

At the end of the 20th century, with international migration, the flow and distance bigger and bigger, more and more, after world war ii, countries began the nationality law revision, temporarily forming a wave, and today the attitude towards natural person nationality conflict is still in charge, this is also an important factor of nationality conflict.

(4) Specific forms of expression

The negative forms of natural conflict mainly include between the countries of origin, between the countries, between the birthplace and origin, between the countries and elective and birthplace ism, and between the birth conflict of stateless descendants under this conflict. The negative conflicts of nationality from natural persons mainly include marriage, naturalization, deprivation of nationality, adoption and so on⁵.

Although there are differences in the treatment of stateless persons, States shall give stateless persons lawfully within their territory the right to choose their place of residence and act freely within their territory, subject to the rules applicable to foreigners in the same case. States shall issue identity documents to any stateless person not holding valid travel documents in their territory. States shall issue travel documents to stateless persons legally living in their territory, except for important reasons of national security or public order. The provisions of the annexe to the Convention shall apply to the above documents. States parties may issue any other travel documents to stateless persons in their territory, and the Contracting States should give sympathetic consideration in particular to stateless persons in their territory who cannot obtain them from the country of their lawful place of residence. To protect the most basic rights of stateless persons⁶.

There are many problems in the legal regulation of stateless people. The protection of the rights of stateless people is stipulated at the legal level and is not implemented in practice, which is really against the spirit of interna-

⁵ Z. Lei, *On the diplomatic protection of stateless people and refugees – takes the United Nations Draft Foreign Protection Provisions as a clue* [J], „Journal of Shandong University of Science and Technology” 2014, Vol. 16(4), pp. 38–44.

⁶ S. Grosby, *Biblical ideas of nationality ancient and modem*, Indiana Eisenbrauns 2002.

tional law and the principle of human rights. Reasonable regulation of stateless people requires a unified consensus and cooperation, and more importantly, the establishment and improvement of policies, systems and laws between the international community and countries.

Conclusions

In the international community, to fully protect the legitimate rights and interests of stateless persons and reduce the existence of stateless persons, the United Nations formulated the Convention on the Status of Stateless Persons and the Convention on 20 September 1954 and 30 August 1961. The two conventions for the protection of stateless people play a pivotal role, however, with the expansion of war and natural disasters in recent years, the number of refugees, and evolved into the number of stateless people is amazing, so to further promote the protection of stateless personnel, prevent and reduce the occurrence of the stateless phenomenon, reasonable legal regulation, intensify legislation, urgent.

International treaties provide for it. The above two existing international treaties have a limited number of accession countries, which should further promote the accession of other unjoined countries. More importantly, in response to the development of The Times and the great changes in the world landscape, the United Nations Human Rights Council should develop more specific international treaties based on the consequences of the development of stateless people, which should reduce the number of stateless persons and guarantee the number of stateless persons. The signing of new multilateral international treaties is also an effective way to further reduce the existence of stateless people, which will maximize the opportunity for otherwise stateless people to obtain the corresponding nationality.

For example, a person born on a ship may be considered as having the nationality of the flag country, and a person born on a plane may be considered the nationality of the aircraft registration country. If international treaties establish such a similar regulation, it can effectively reduce the occurrence of statelessness in the international community, especially in contracting States.

Countries attach great importance to their domestic legislation. At the domestic level, the domestic legislation of each country must pay attention to it, and in the formulation or modification of their laws, to avoid the occurrence of making their nationals stateless personnel. For stateless people living in their own countries, relevant laws and regulations should also be introduced to relax the conditions under which they want to naturalize and give them broader opportunities for naturalization.

The most important thing of domestic legislation is to guarantee its judicial relief right. Justice is the last protective barrier to maintaining normal order in society, and it is the regulator and safety valve of social stability.

Therefore, the national governments should guarantee the judicial relief rights of stateless people to better ensure the realization of their basic human rights. In countries that have given stateless people the right to judicial relief, they should simplify the judicial procedures as far as possible on the basis, to help stateless people free from the disorder as soon as possible. Stateless people's biggest vulnerability is no legal documents, so for them, both in daily life or public (dealing with the government) to handle various matters is much more difficult than ordinary people, so to give them as far as possible procedural simplification and time extension, to have a minimum standard for their life. Specific cases should be handled flexibly.

If the existence of a stateless person is involved in the actual case, each country shall, according to the specific circumstances of the case, have acquired the nationality of a country, have not lost the nationality of a country, or give it the corresponding nationality according to the special circumstances of the case. Through this flexible treatment method, the protection of the legitimate rights and interests of stateless people will be maximized to the maximum extent, and the existence of a stateless state can be reduced in some special cases.

References

- Grosby S., *Biblical ideas of nationality ancient and modern*, Indiana Eisenbrauns 2002.
- Imeng C., *Study on the stateless population of ethnic minorities on the China-Myanmar border*, „Bagui Overseas Chinese Magazine” 2013, Vol. 3.
- Lei Z., *On the diplomatic protection of stateless people and refugees – takes the United Nations Draft Foreign Protection Provisions as a clue*, „Journal of Shandong University of Science and Technology” 2014, Vol. 16(4).
- Long Y., *On the methods of solving the negative conflicts of natural persons*, „Legal expo.” 2015, Vol. 5.
- Xizi L.J., *Negative nationality conflicts and solutions of natural persons under the perspective of private international law*, „Legal expo.” 2015, Vol. 4.

Summary

The concept and structure of status of stateless persons – international law approach

Keywords: international law, stateless persons, protection, international treaties, preferential treatment.

Stateless nationality (statelessness) means a state in which a natural person is not considered its people by the laws of any state, or it means that the natural person does not belong to any state. Stateless people face many obstacles and serious threats to the protection of international law because they do not have the nationality of any country.

The purpose is to investigate the legal status of a stateless person and the regulation of this issue by international law and its prevalence in the world. An in-depth analysis of the current situation of stateless people in the world and the theoretical basis of their protection will help to strengthen the protection of stateless people and reduce their status of stateless people.

Therefore, it is necessary to study the protection of stateless states so that respect for individuals and their fundamental human rights can be fully demonstrated. The signing of new multilateral international treaties is also an effective way to further reduce the existence of stateless people, which will maximize the opportunity for otherwise stateless people to obtain the corresponding nationality.

Streszczenie

Koncepcja i struktura statusu bezpaństwowców – podejście prawa międzynarodowego

Słowa kluczowe: prawo międzynarodowe, bezpaństwowcy, ochrona, umowy międzynarodowe, preferencyjne traktowanie.

Obywatelstwo bezpaństwowe (bezpaństwowość) oznacza stan, w którym osoba fizyczna nie jest uznawana przez prawo żadnego państwa, jak również to, że osoba fizyczna nie należy do żadnego państwa. Bezpaństwowcy napotykają wiele przeszkód i poważnych zagrożeń w świetle ochrony prawa międzynarodowego, ponieważ nie posiadają obywatelstwa żadnego kraju.

Celem artykułu jest zbadanie statusu prawnego bezpaństwowca oraz uregulowania tej kwestii przez prawo międzynarodowe i jej rozpowszechnienia na świecie. Pogłębiona analiza aktualnej sytuacji bezpaństwowców na świecie

oraz teoretycznych podstaw ich ochrony pomoże wzmocnić ochronę bezpaństwowców i obniżyć ich status..

Dlatego konieczne jest zbadanie ochrony państw bezpieczeństwa, by móc w pełni wykazać szacunek dla jednostek i podstawowych praw człowieka. Podpisanie nowych wielostronnych umów międzynarodowych jest również skutecznym sposobem dalszego ograniczania liczby bezpaństwowców, co maksymalizuje szanse uzyskania przez osoby bezpieczeństwa odpowiedniego obywatelstwa.