

STATELESSNESS IN THE UNITED STATES & EUROPEAN UNION (COMPARATIVE STUDY)

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ABSTRACT

In some nations a stateless person would have the difficulty in accessing the basic right such as education and healthcare facility. The denial of these rights impact not only the individual but the society as a whole, excluding an entire section of the population would possibly lead to social tension.

Keywords: Statelessness, US, EU.

INTRODUCTION

Statelessness exists in the US despite of the strict immigration controls, the predominant reasons for statelessness include the presence of individuals who are unable to prove their nationality and failure of their countries of origin to recognize them as citizens whereas European Union follows a sui generis law which has added a significant value and primacy to national legal systems, and is binding on 28 Member States. The principle is this that the provisions of EU law are directly applicable, or has a direct effect, the primacy of EU law means that the national authorities are required to apply the provision of EU Law instead of any conflicting provisions of domestic law.[1]

UNITED STATES

The existing problem of national identity increases exponentially if birthright citizenship in the US is amended to exclude the children of undocumented people. Another issue with changing the US citizenship law is that the statelessness would continue in the next generation. For the Mexican migrants in the US lack the legal status in the US as most of them do not have birth registration in Mexico, on which consulates often rely on to establish citizenship and to issue travel documents to deportees. Nationality in the United States is called citizenship, is completely a matter of state sovereignty. A dual nationality is discouraged but so is statelessness it needed to be clear which state had jurisdiction over a person—not so much so that person could exercise his rights (a woman was assumed to follow the citizenship of her father or husband), but so that the state could call on

him for military service or other obligations, or so that the state could protect the commercial interests of national businesses operating abroad. [2]

In United States the legislation which will be regularizing the status of stateless person is the Border Security, Economic Opportunity and Immigration Modernization Act (S.744), this legislation provides a legal and socioeconomic status of stateless person living within the United States. The stateless have no formally recognized nationality or citizenship and they cannot avail themselves of the legal and diplomatic protections of any country. A stateless person in removal proceeding is typically detained for ninety days, and in the meantime they are assigned a country to stay upon, after 90 days the a judge may order the detainee to check in with immigration official and obtain the travel documents.[3]

EUROPE UNION

If the provisions of the law are not applicable nor does it have an effect, ensuring the primacy of the EU law is left to the legal system of the Member State, provisions regarding the status of stateless person are found both in primary and secondary EU law and there is no explicit obligation for statelessness determination under the laws of European Union. Article 67(2) of the Treaty on the Functioning of the European Union (TFEU) stipulates that stateless persons have the same legal status as third-country nationals. This provision reflects the minimum requirement of the 1954 Convention that necessitates States to provide stateless people the same treatment as is accorded to aliens generally. Statelessness is not defined in EU law; respectively, the legislator refers to Article 1(1) of the 1954 UN Convention.[4]

The EU Charter of Fundamental Rights (CFR) brings together the fundamental rights protected in the EU in a single document, but it does not contain any explicit mentions of statelessness. It is relevant because stateless persons are also entitled to some of the rights that apply to everyone under the jurisdiction of the Member States. The CFR has the same legal effects as other EU treaties, therefore, secondary legislation has to be in conformity with it. The CFR is also under the jurisdiction of the Court of Justice of the European Union, and it has a vertical direct effect between Member States and individuals.[5]

In secondary EU legislation, mentions of statelessness are rather sporadic. Under the Common European Asylum System, statelessness is not a ground for obtaining protection. The existing rules

of EU law protect the stateless in an indirect manner. The basis of this indirect protection is the aforementioned Article 67(2) of the TFEU, which is a gateway to rights in the sense that community legislation often operates with the term ‘third-country nationals’ when stipulating the rights and obligations of foreigners in the EU. The existing protection of stateless persons is therefore a by- product of the legislation in place, which nonetheless might mark the first step towards the construction of a community framework on protecting the stateless.[6]

Due to this very own sophisticated legal order, the European Union may serve as a bridge between the international obligations of the Member States and the action needed to implement them. As estimated by UNHCR, there are 400,000 stateless persons living in the European Union today. There is no doubt that the European Area of Freedom, Security and Justice could be improved by adopting statelessness- specific legislation at the EU level.

CONCLUSION

A stateless person in the United States may be eligible for an immigration benefit or relief from removal of or in conjunction with the lack of nationality. On the other hand European Union there is a clear lack of data on stateless person in Europe, there is a wide diversity in registration practices between authorities and between countries, as well as gaps. Further, there is lack of dedicated stateless determination procedures.

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