

APATRIDES: PECULIARITIES OF LEGISLATIVE PROVISION OF LEGAL STATUS**АПАТРИДИ: ОСОБЛИВОСТІ ЗАКОНОДАВЧОГО ЗАБЕЗПЕЧЕННЯ ПРАВОВОГО СТАТУСУ**

Frantceva O.K., PhD student at the Department of European Union Law
Yaroslav Mudryi National Law University

The article focuses on one of the most pressing theoretical and practical issues in the science of international law – the issues of determining the legal nature of the legal status of stateless persons. Today, determining the specifics of the legal status of stateless persons is one of the most important and acute issues in terms of further development of international legal relations in general, as well as in the context of the development of doctrines on the legal status of individuals in the science of international law. Very few scientific works are devoted to the issues of determining the legal status of stateless persons. In addition, it is quite difficult to determine the applicable law in respect of such persons, as well as to provide for mechanisms to protect the rights and legitimate interests of stateless persons.

An in-depth analysis and definition of the content of the legal and social status of foreigners and stateless persons makes it possible to clarify their place and role in society and the state as members, the specifics of their legal status and citizenship of another state, the content and characteristics that explain their right to work in accordance with applicable national and international laws, and the legal means of observing and ensuring this right.

Stateless persons will be subject only to the law of the state where such a person is located. At the same time, determining the location of a stateless person is a rather complicated process.

Statelessness arises for a number of reasons, including unresolved issues of state succession, contradictions between different national citizenship laws, lack of birth registration, and even discriminatory laws. Statelessness is also observed among recently arrived refugee children born on their parents' way to Europe whose births were not registered, as well as among those who are unable to obtain citizenship due to contradictions or discrimination contained in national citizenship laws. Statelessness can also be found among those who have lived in the same country for decades or were even born there.

Stateless persons can be considered together with the concept of "foreigners". Some scholars believe that the concept of "foreigner" also includes stateless persons. Some scholars believe that the term "foreigner" also includes stateless persons. Other scholars believe that the concept of "foreigner" covers only citizens of foreign countries.

Key words: stateless person, stateless person, legal status, rights, obligations, legal regime, guarantees.

Стаття присвячена висвітленню однієї з актуальних теоретико-практичних проблем науки міжнародного права – питанням визначення правової природи правового статусу осіб без громадянства. Сьогодні визначення специфіки правового становища апатридів є одним із ключових питань для розвитку подальших міжнародно-правових відносин в цілому, а також в контексті розвитку вчень про правовий статус фізичних осіб в науці міжнародного права. Питанням визначення правового статусу осіб без громадянства присвячено мало наукових праць. До того ж досить складно визначити застосовне право щодо таких осіб, а також передбачити механізми захисту прав та законних інтересів апатридів.

Дослідження і розуміння правового й соціального статусу іноземців та осіб без громадянства дають можливість з'ясувати їх місце та роль у суспільстві й державі як членів, особливості правового статусу та належності до громадянства іншої держави, зміст і характеристики, що пояснюють їх право на працю відповідно до чинних національного й міжнародного законодавств, юридичні засоби додержання та забезпечення цього права.

До апатридів буде застосовуватись лише право держави, де така особа перебуває. При цьому визначення місця перебування особи без громадянства є процесом досить складним.

Безгромадянство виникає з низки причин, серед яких: невирішені проблеми правонаступництва держав, суперечності між різними національними законами про громадянство, відсутність реєстрації народження і навіть дискримінаційні закони. Також безгромадянство спостерігається серед нещодавно прибулих дітей-біженців, які з'явилися на світ на шляху їх батьків до Європи, народження яких не було зареєстроване, а також серед тих осіб, які не можуть отримати громадянство через суперечності або дискримінацію, що містяться в національних законах про громадянство. Особи без громадянства трапляються також серед тих, хто впродовж десятиліть живе в одній і тій самій країні чи навіть народився в ній.

Особи без громадянства можуть розглядатись у сукупності із поняттям «іноземці». Окремі вчені вважають, що поняттям «іноземець» охоплюється також і особи без громадянства.

Ключові слова: апатрид, особа без громадянства, правовий статус, права, обов'язки, правовий режим, гарантії.

Every year, the movement of individuals between countries is increasing. Despite the martial law in Ukraine, numerous foreign nationals and stateless persons are in the country.

Ukraine is on the way to joining the European legal space and must continue to transform both at the legislative level and at the level of law enforcement and protection of the rights of individuals – citizens, foreigners and stateless persons.

Not many scientific works have been devoted to the legal status of stateless persons, and it is still quite difficult to determine the applicable law in relation to such persons, especially when it comes to various civil disputes where there is no permanent place of residence. The law of the state that has the closest connection with the legal relationship has to be applied, but this has to be done every time. Thus, this causes certain difficulties in the legal regulation of the legal status of stateless persons.

The issues of protection of human and civil rights and freedoms, as well as the legal status of foreigners and stateless

persons, have received attention from scholars. In contrast to the generalized theory, the issue of the legal status of foreigners and stateless persons in the field of law has not been sufficiently developed. Certain aspects of this issue have been considered by such scholars as V. Averyanov, O. Andrunevych, O. Bachun, V. Bigun, V. Galunko, O. Hulak, J. Kistanova, V. Koval, V. Kolpakov, S. Konstantinov, O. Svitlychnyi, S. Oliynyk, I. Pasailuk, and S. Poznyakov. However, this topic still requires a thorough study.

The purpose of the study is to analyze the peculiarities of the legal status of stateless persons and its legal support.

The Constitution of Ukraine refers to the protection of human rights and freedoms as one of the most important functions of the State. Foreigners, stateless persons and foreign legal entities have the same rights in Ukraine as Ukrainian citizens, with the exceptions specified by Ukrainian legislation. However, it is important to define the concept of "stateless person", the main features, legal nature and legal status of such persons.

The study and understanding of the legal and social status of foreigners and stateless persons make it possible to clarify their place and role in society and the state as members, the peculiarities of their legal status and citizenship of another state, the content and characteristics that explain their right to work in accordance with applicable national and international laws, and the legal means of observing and ensuring this right.

The term "status" in Latin means the position, state of someone or something. In a modern explanatory dictionary, this term is interpreted as a set of rights and obligations that determine the legal position of a person, organization, institution, etc. [1].

O. Skakun emphasizes that "until the 60s of the twentieth century, in the national legal science, legal status was identified with legal capacity. This is due to the fact that legal status and legal capacity arise and terminate in a subject simultaneously, being also inalienable [2, p. 386]. With the further development of jurisprudence in the 70s and 80s of the twentieth century, the category of "legal status" was elaborated in detail in the works of legal scholars, and became a scientific problem and one of the main categories of jurisprudence enshrined in law. In fact, until the middle of the twentieth century, the term "legal status" was completely equal to the term "legal capacity".

It should be emphasized that different approaches can be applied to the definition of "legal status of a person". Scholars do not have a single point of view. The definition of the legal status of a person has a multifaceted structure, including legal personality, legal capacity and legal capacity, as well as subjective rights, freedoms and duties, the concept of citizenship, protection of legitimate interests, and legal responsibility.

Horban O.P. rightly distinguishes two components of legal status: legal and social. Thus, the legal status of a person in society is determined, first of all, by the totality of rights and obligations granted to him/her and enshrined in law and the need to bear responsibility for their violation, as well as by the legal mechanism for their provision and protection [3, p. 27].

When analyzing the concept of legal status of a person, one should realize that this category is not established. It is necessary to take into account both the historical aspect and the economic, social and cultural development of society as a whole. Legislation of different countries provides for various means of ensuring the observance of rights and protection of legitimate interests.

The concept of "status of foreigners and stateless persons" is included in the concept of "human rights status". The legal status of a person is his or her legally enshrined position in society, a set of rights and obligations, responsibilities and guarantees [4].

The legal status of a person and a citizen is a universal category consisting of a number of different elements that characterize the position of a particular person in society, determine the degree of his or her interaction with other people and the state as a whole [5, p. 123]. Thus, the concept of "legal status" is a generic concept [6]. We believe that the concept of legal status is divided into several special concepts: legal status of a person, legal status of a citizen, legal status of a foreigner, legal status of a stateless person, legal status of a person in need of additional or temporary protection, legal status of a refugee, etc. In other words, in addition to the general legal status, there are variants of special legal status as a set of special, additional rights and obligations based on special laws that determine the social and legal status of certain categories of citizens [7, p. 65].

We should agree with the thesis of V. Korelsky, who emphasizes the existence of a broad understanding of legal status, the features of which are as follows:

1) has a general, universal character, contains the status of various subjects of legal relations: the state, society, and individuals;

2) reflects individual characteristics of subjects and their actual position in the system of various social relations;

3) cannot be realized without legal obligations, without legal liability in necessary cases, without legal guarantees;

4) systematically defines the rights and obligations of subjects, which allows for a comparative analysis of the status of different subjects in order to discover new ways to improve them. Obviously, the study of the legal status makes it possible to reveal the peculiarities of the subject of legal relations and, in comparison with the legal status of other participants in legal relations, to identify shortcomings and formulate recommendations for their elimination [8].

According to some European lawyers, the legal status of a person is a legal expression and legal support of the actual position occupied by a person in the state and society [9].

The legal status of foreigners and stateless persons can be defined as a set of legal norms containing fundamental principles and guarantees that determine the behavior of foreigners and stateless persons in connection with the exercise of their rights, obligations, freedoms and legitimate interests on the territory of Ukraine [10, p. 192].

Special attention should be paid to the definition of such concepts as "foreigner" and "stateless person". According to the provisions of the Law of Ukraine "On Citizenship", a "foreigner" is a person who is not a citizen of Ukraine and is a citizen or subject of another state [11]. In turn, the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons" [12] duplicates this definition. As for the concept of "stateless person", in accordance with the provisions of the Law of Ukraine "On Citizenship", it is a person whom no state, in accordance with its legislation, considers its citizen, and in accordance with the provisions of the Law of Ukraine "On the Legal Status of Foreigners and Stateless Persons", it is a person who is not considered a citizen by any state by virtue of its law [12].

It is necessary to identify a number of international treaties that can be attributed to those that define certain concepts or regulate the problematic issues covered in this study.

The Universal Declaration of Human Rights declares the equality of all persons before the law and the right to equal protection of the law. In addition, it establishes that everyone has the right to an effective remedy by national tribunals for violations of the rights granted by the constitution or law [13].

The Convention for the Protection of Human Rights and Fundamental Freedoms establishes and enshrines the right of every individual to a fair and public hearing by an independent and impartial tribunal [14].

It is also worth noting that according to the Convention relating to the Status of Stateless Persons, a "stateless person" is a person who is not considered a national of any State under its law [15]. That is, we can see that the definition of stateless person in the Convention almost coincides with the definition of "stateless person" in the national Law "On the Legal Status of Foreigners and Stateless Persons".

It is important to determine how the protection of the rights of foreigners and stateless persons was envisaged by national legislation.

Another law, which is one of the main ones when it comes to the legal status of foreigners and stateless persons in Ukraine, namely the Law "On the Legal Status of Foreigners and Stateless Persons" [12], clearly indicates that this category of persons (in case of legal stay in Ukraine) will have the same rights and freedoms, as well as bear the same responsibilities as citizens of our state. It should be noted, however, that this is subject to certain exceptions established by the Constitution of Ukraine, laws or international treaties.

At the same time, the status of stateless persons will be different, since only the law of the state where such a person is located will apply to such a person. And it should be emphasized that determining the location of a person who, for example, is constantly migrating, constantly moving from one place to another, is a rather complicated process.

In the scientific literature, the term "foreigner" in a broader sense is complex, as it covers all foreign citizens, stateless persons, refugees, Ukrainians living abroad, and immigrants in Ukraine, who are permanently or temporarily residing in Ukraine. As a rule, they are united by the common feature that they came from other countries – the territories of other states, but they differ in constitutional and legal status and legal conditions of stay in Ukraine due to different interests of staying in Ukraine [7, p. 46].

Scholars also note that stateless persons are not subject to diplomatic and consular protection [16, p. 15].

Despite the fact that in the scientific literature the concept of "foreigner" is generic for the concept of "stateless person", the relevant law distinguishes between these concepts. Thus, a stateless person is a person who is not considered a citizen by any state as a result of its law [17, p. 128].

Statelessness arises for a number of reasons, including: unresolved problems of state succession, contradictions between different national laws on citizenship, lack of birth registration and even discriminatory laws. Hence, statelessness in Europe is very multifaceted. Cases of statelessness can be found among recently arrived refugee children born on their parents' journey to Europe whose births were not registered, as well as among those who are unable to acquire citizenship due to contradictions or discrimination contained in national citizenship laws. Statelessness can also be found among those who have lived in the same country for decades or were even born there.

This includes persons belonging to minority groups that are often discriminated against, such as Roma, who in some countries "inherit" their parents' statelessness and have great difficulty acquiring the citizenship of the country in which they live [18]. International legal norms on statelessness can be divided into two categories: "norms of avoidance" and "norms of protection". The main UN treaty that enshrines the "avoidance norms" is the 1961 Convention on the Reduction of Statelessness, which has 63 states parties, of which 19 are member states of the European Union. This Convention establishes standards for the acquisition and loss of nationality in order to prevent the occurrence of statelessness. Other international and regional treaties also contain avoidance norms, such as the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and the European Convention on Nationality. International norms on the avoidance of statelessness are important and contribute to ensuring that more people have access to the nationality of the state with which they have a relevant link. However, they do not guarantee that everyone has a nationality, even if they are signed and implemented universally. They allow for exceptions through which states may

accept statelessness arising at birth or as a result of deprivation of nationality [18].

With regard to addressing the issue of statelessness in Ukraine, in 2021 the Cabinet of Ministers of Ukraine approved the Procedure for Consideration of Applications for Recognition of Statelessness, according to which a person who cannot obtain a passport document due to the fact that he or she is not considered a citizen by any state as a result of its law, regardless of the legality or illegality of his or her stay in Ukraine, has the right to apply for recognition as a stateless person. Persons who are recognized as stateless by other states and who have a document issued by an authorized body of a foreign state or a UN statutory organization that certifies a stateless person, gives the right to enter or leave the state and is recognized by Ukraine, do not need to undergo an additional procedure for recognition as a stateless person in Ukraine [19].

Based on the analysis of scholarly works, it can be concluded that the elements of the legal status of foreigners and stateless persons are rights, obligations, legal liability, guarantees and legal regime.

The rights and freedoms of foreigners and stateless persons in Ukraine are quite broad and diverse, as they are provided for by various branches of Ukrainian legislation – constitutional, administrative, civil, labor, family, criminal, financial, land, etc. [10, p. 193].

Summarizing the above, I would like to note that the legal status of foreigners and stateless persons is a legally enshrined position of these persons in society, the components of which are determined by both their general elements (rights, obligations, guarantees, legal liability) and specific ones (legal regime applicable to foreigners and stateless persons in Ukraine).

Conclusions. An important result of our study was the clarification of the legal nature of the legal status of a stateless person – this is a type of legal status of a person and a citizen which has its own specific elements (rights, obligations, guarantees, legal liability and specific legal regime of a stateless person).

Stateless persons may be considered together with the concept of "foreigners". Some scholars believe that the concept of "foreigner" also includes stateless persons. In fact, this is true, since such a person is not a citizen in relation to a particular state. On the other hand, the main feature of a stateless person is that such a person does not belong to the citizenship of any state.

The fact that a stateless person has no legal connection with any state determines the specifics of his or her legal status, as well as the specifics of protection of rights and legitimate interests of such categories of persons.

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