



Seminar

on

“Nationality: The Right to Have Rights. Ratification by Romania of the International Conventions on Statelessness”

26 June 2002, Senate of Romania

- REPORT -

I. General considerations

In the light of a series of activities in the field of statelessness, including the joint UN/Romanian Government Seminar on the Improvement of the Situation of the Roma in Romania held in Bucharest on 2-3 November 2001, and also taking into account a number of positive developments, culminating with the ratification by Romania of the European Convention on Nationality on 14 June 2002, the Seminar was:

- very timely to reflect the present situation and to take discussions yet a step further with a view to prepare for Romania's ratification of the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;
- “of great social and human importance” because the right to have a nationality is one of the most important human rights, “the right to have rights.”

Protection of stateless persons is giving much importance for the Parliament, the Government and the civil society “which should jointly find the best and most effective solutions to the current problems Romania is confronted with, on the basis of adequate institutional solutions and taking due account of Romania's obligation in the field of

human rights." The ability to exercise an effective nationality and the prevention and reduction of statelessness are a contribution to the promotion of human rights and fundamental freedoms, to the security of peoples, and to stability in international relations. The ratification of the two conventions by Romania would also mean a concrete activity with a view to the country's accession to the European Union.

The discussions during the seminar have shown the "new dimension of the phenomenon in a world of multiple identities" marked by the existence of the State which "represents the main framework in which the individuals act and which is supported financially by individuals". Meanwhile, it should be kept in mind that stateless persons also are entitled to the fundamental human rights without discrimination, with the exception of some political rights. In this context, some participants mentioned that the current relevant legislation does not include specific provisions that would facilitate the granting of nationality for lawfully resident refugees and/or stateless persons. They also mentioned that stateless persons are among the victims of trafficking in human beings.

Participants advocated for close further collaboration among state institutions, international organisations and civil society in adapting the legal framework to current realities including in promoting accession to the Statelessness Conventions. UNHCR welcomes the commitment by the Romanian Senate to establish an *ad hoc* working group to follow-up meetings at the expert level and contributing to the ratification process.

In the process of evaluating the opportunities of accession to the two UN Conventions on Statelessness, the Romanian authorities expressed their interest in cooperating with UNHCR, taking into consideration its special mandate in this field. UNHCR expressed its availability to offer specific technical expertise and advice to the Romanian authorities in preparing for the ratification of the two UN Conventions. In this context, the UNHCR accession package distributed to participants was considered "a very useful tool in preparing accession step by step."

The Romanian authorities are also interested in cooperating with the civil society in matters related to the solution of *de facto* statelessness. In particular the reintegration of stateless persons of Romanian origin expelled from other European countries should be addressed in close coordination among competent institutions and organizations. Priority should be given in this respect to providing all necessary support to these stateless persons to reacquire Romanian nationality or to establish themselves as stateless persons in Romania.

Participants also suggested that the proposals made during the seminar and comprised in the report, could represent the starting point for a coordinated approach to address the statelessness problem, with a view to converting them into legal proposals.

In order to avoid any misunderstandings with respect to terminology used in this report it was emphasized that the terms nationality and citizenship are used as synonyms. At the international level, nationality is generally used to describe the recognition of an individual as legally attached to a particular state. The Romanian legal system uses the word nationality to denote the ethnicity, race or origin and does not determine the legal status of the individual, and citizenship to denote the legal bond between a person and the State. The distinctions in the current Romanian legislation create terminological difficulties at the international level. In the process of revising the Constitution, this aspect should be taken into consideration with a view to harmonizing the legal vocabulary with the one used at the international level.

Participants expressed their appreciation to organizers of this important event and underlined that the large number of institutions and organisations represented in the seminar reflect the great significance Romanian authorities and the civil society at large attaches to the issues related to statelessness.

II. Statelessness - a problem of international concern

International law stipulates a right to nationality and provides guidelines for states in determining nationality.

The international community has specifically addressed the problem of nationality and conflicts in nationality laws in several important documents, including the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws. The 1930 Hague Convention provides that while only States can determine who are their nationals, such determination should be done in accordance with international conventions, international custom and principles of law generally recognized with regard to nationality.

However, despite significant developments in law and practice relating to citizenship, the international community currently faces numerous

situations of statelessness. Those affected include life-long residents of a State, ethnic minorities and a significant numbers of women and children.

The problem of statelessness was specifically addressed by:

- 1954 Convention Relating to the Status of Stateless Persons which sets the legal framework for the standard treatment of stateless persons;
- 1961 Convention on the Reduction of Statelessness which provides for acquisition of nationality for those who would otherwise be stateless and who have an appropriate link with the State through factors of birth on the territory (jus soli) or descent from nationals (jus sanguinis).

III. UNHCR's Mandate

UNHCR's interest in nationality, with a special emphasis on issues pertaining to the reduction of statelessness, derives from its international protection and the responsibilities entrusted to it under the General Assembly resolutions 3274 (XXIV) of 10 December 1974 and 31/36 of 30 November 1976. The two resolutions required UNHCR to fulfil the functions foreseen under Article 11 of the 1961 Convention namely to provide advise to governments that are party to the convention and to individuals for resolving cases of statelessness.

UN General Assembly Resolution no 50/152/1996 requested UNHCR to play a more active role concerning the problem of statelessness. UNHCR has the duty to offer states its expertise in matters relating to nationality legislation and "to actively promote adherence to the 1954 Convention of Stateless Persons and the 1961 Convention on the Reduction of Statelessness". UNHCR was also asked to promote the prevention of statelessness by disseminating information, training staff and government officials and enhancing cooperation with concerned organizations.

UNHCR observations and comments on the Law on the Romanian Citizenship, as well as on issues related to statelessness which were discussed on a number of occasions, including during the Seminar on the Improvement of Situation of the Roma in Romania (2-3 November 2001), were made in a spirit of close cooperation with the Romanian authorities. UNHCR comments aim at avoiding confusion or ambiguity and at ensuring full compliance of the Romanian relevant legal framework with the international norms and standards relating to nationality and statelessness.

IV. The importance of Romania's accession to the two Conventions on statelessness

The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness serve as the reference point for international consensus on principles relating to the problem of statelessness, helping to avoid statelessness both within and between States not only at the national or regional level, but world-wide.

These two legal instruments provide valuable tools for the protection of stateless persons and for avoidance of future cases of statelessness. Moreover, the Final Acts of both conventions recommended to contracting States that persons who are stateless *de facto* should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality. The non-binding recommendation encourages States therefore to take active steps to eliminate all situations of statelessness, even in cases where there is not a clear-cut legal case of statelessness.

Ratification by Romania of these conventions would therefore represent an essential step in strengthening efforts to reduce statelessness and to provide adequate protection to those who, nonetheless, remain or become stateless. With the recent ratification of the 1997 Convention on Nationality which have solved the root problems, the accession to the UN statelessness conventions should not pose any major technical difficulties to the Government of Romania. Thus, Romania can obtain an important political impact with reduced efforts by ratifying these instruments.

The completion of the legal framework on statelessness in/from Romania would also provide a positive response to one of the current problems the international community, including the countries in Europe, is facing at present and it would prove "Romania's responding to international humanitarian problems and its active contribution to their solutions". Article 15 of the Universal Declaration of Human Rights was also cited in this context.

Even if in Romania statelessness is not a wide phenomenon and problems related to it are currently more a matter of practice rather than of legislation, the accession to the UN Conventions will complete the current legal framework, will contribute to avoiding the occurrence of the phenomenon and will lead to a reduction in the number of stateless persons and the "development of the protection of human rights at

national level, the strengthening of the relationship between the individual and the State and the improvement of national solidarity and stability". On the other hand, the ratification would be "a step forward towards the future access of the Romanian nationals to the European citizenship."

Some participants considered that the accession should also be an action prior to the drafting of a special law relating to the status of stateless persons in Romania, which would include the rights stateless persons already benefit from on the basis of Romanian current legislation, including the international instruments that are part of national law.

As the European Convention on Nationality has been ranked as a legislative priority, there should be no difficulty in giving similar priority to the UN Statelessness Conventions.

V. The relevant international framework

- The 1954 Convention on the Status of Stateless Persons;
- The 1961 Convention on the Reduction of Statelessness;
- The 1997 European Convention on Nationality.

VI. The relevant domestic legal framework

- Relevant provisions in the Constitution of Romania
- Law no. 21/1991 on Romanian citizenship, republished;
- Emergency Ordinance no. 68/2002 for modification and completion of Law no. 21/1991 on Romanian citizenship, republished;
- Law no. 396/2002 for the ratification of the European Convention on Nationality;
- Law no. 123/2001 regarding the aliens' regime in Romania;
- Government Decision for approval of Methodological Norms for the implementation of Law no.123/2001 regarding the aliens' regime in Romania;
- relevant provisions in other special laws: Law no. 105/1996 on population records and identity cards, Law no. 119/1996 on birth, marriage and death certificates; Law no. 23/1999 for modification and completion of some provisions in the Family Code and Law no. 119/1996; Law no. 19/2000 regarding the public system for pensions and other social rights, modified and completed; Ordinance no.

102/2000 on status and regime of refugees in Romania, modified by Law no. 323/2001; Law no. 416/2001 regarding the minimum guaranteed income; Law no. 35/1997 on the Ombudsman Office organization and functioning, modified and completed by law no. 181/2002;

- relevant provisions in Government Decision no. 417/1991 establishing the Romanian Committee for Migration Issues, republished; Government Decision for approval of Methodology no. 1/1997 for unitary implementation of Law no. 119/1996; Government Decision no. 1114/2001 for approval of Regulations for implementation of Customs Code of Romania; Government Decision no. 430/2001 on improvement of the situation of Roma population.

VII. Practical steps taken in recent years by the Romanian authorities for avoidance and reduction of statelessness as well as for the reintegration of stateless persons of Romanian origin

a) Juridical field:

- The Ministry of Justice is already studying the possibility of ratifying the two UN Conventions on statelessness;
- Modification of Law no. 21/1991 on the Romanian Citizenship;
- Ratification of the European Convention on Nationality;
- Inclusion of special regulations regarding stateless persons in special laws mentioned under the chapter "*The relevant domestic legal framework*".

b) Practical field:

- The simplified procedure for former Romanian citizens (as well as for their children) who lost the Romanian nationality from various reasons, before December 1989; they are supposed to file requests with the Romanian diplomatic missions from abroad; until the procedure is finalised they can stay in Romania based on an approval from the Ministry of Interior; the stateless persons of Romanian origin do not need to fulfil the requirement of a minimal legal stay in Romania, of at least the last 6 years out of 7 (or 4 years out of 5 if they are married to a Romanian citizen) in order to receive the approval to domicile in Romania;
- Reacquiring of Romanian citizenship is usually approved individually or for small groups, without the need to wait for large groups as before;

- Stateless persons who lived at least two years abroad and who got the approval to domicile in Romania are allowed to import any goods declared at customs, including two vehicles, without paying custom duties;
- Stateless persons with domicile or legal residence in Romania have access to financial assistance as mentioned in Law no. 416/2001;
- Romanian authorities took administrative measures in order to discourage Romanian citizens to file requests of denouncing the Romanian nationality even before the Romanian Citizenship Law was amended in 1999;
- Romanian authorities check the identity in the country of the Romanian citizens travelling abroad and who do not possess identity papers and release them consular passports or travel documents, in order to facilitate their repatriation;
- In case stateless persons are not granted their rights, they have the possibility to file a complaint to the Ombudsman;
- If during the early 1990's, annually almost 3000 persons were granted permission to give up their Romanian nationality, at present such approval is granted only to a couple of tens of persons every year;
- Stateless persons of Romanian origin returned from Germany have been assisted in their reintegration in the Romanian society, through some Romanian/German projects;
- During 2001, over 400 Romanian citizens of Roma ethnic origin with no identity papers received identity documents.

VIII. Practical problems identified – causes of statelessness in Romania

There is a vicious circle generated by the interaction of the following factors: statelessness – migration – lack of identity documents – lack of access to economic, social and cultural rights – poverty. Those factors lead to the endemic problems related to the deprivation of rights and movement of population.

In fact, in Romania, there are two main stateless groups: a) persons of Romanian origin who lost their nationality from various reasons, before and after December 1989 and, b) persons, mostly of Roma origin, who do not bear an identity document.

a) Renunciation the Romanian nationality

- After December 1989 a significant number of Romanians emigrated legally or illegally to countries with a higher economic potential,

especially Germany, Austria, Sweden; because there was that possibility to renounce Romanian nationality before Law no. 21/1991 on Romanian Citizenship was amended in 1999, several emigrants have renounced the Romanian nationality, hoping to regularize their stay in receiving countries, but without the guarantee that they would be able to acquire the nationality of these countries; thus, the result was the creation of statelessness by an important number of persons; most stateless persons of Romanian origin are currently living in Germany (20,000), Austria (9,000) and Sweden (3,000);

b) De facto statelessness

The following examples of complicated or defective administrative practices that generate or maintain *de facto* statelessness have been identified:

- lack of accurate records on all the persons living in localities;
- the late registration of births.

Among the Roma population there are cases of involuntary statelessness (generated by complicated or faulty administrative practices, related to the issuance of birth, marriage and death certificates, as well as a low level of civic education). In a number of cases, parents use fake documents when they are abroad and create difficulties to the authorities when issuing identity documents to their children in Romania, since the parents cannot be identified in the local records by the names they have assumed abroad.

The implications of *de facto* statelessness generated by the non-possession of identity documents on the exercise of political, civil, economic and social rights have been identified and analyzed, as follows:

- the limitation of the right to free movement, both inside and outside the country, as well as of the right to have a permanent residence;
- the prevention from having access to justice, social aid, as well as to social and medical assistance, conclusion of work contracts or documents concerning ownership;
- lack of a personal numerical code prevents children born from stateless or undocumented parents to get access to the state allowance for children or to other forms of social and medical protection.

IX. Practical Solutions and Suggestions de lege ferenda

a) Legislative suggestions

- participants supported the amendment of Law no. 21/1991 on Romanian Citizenship in the sense that all children born in Romania should be recognized as Romanian nationals if otherwise they would become stateless; that provision would contribute to the reduction of statelessness among children born from stateless and undocumented parents;
- it is necessary to correlate the legislation on identity documents with the laws on nationality, statelessness and refugees;
- accession to the two international conventions on statelessness may substantially contribute to the clarification of the problems related to *de facto* statelessness; in Romania, the conditions for accession to these conventions have been met, and the accession procedure will be initiated depending on its ranking among legislative priorities;
- legislative measures have to be adopted concerning the access to education of stateless children and their access to other social rights;
- further amendments of the Romanian Citizenship Law should also include provisions aimed at facilitating the naturalization of stateless persons and refugees, in particular reducing the number of years of legal stay in the country required in order to qualify for naturalization;
- the relevant authorities need to adopt a normative act to be enforced for a limited time, as a legal foundation for the issuance of identity documents in an accelerated procedure to persons who possess no identity documents;
- it is necessary to clarify a number of ambiguous terms such as: good behaviour, continuously and steadily, stay, domicile, residence.

b) Practical suggestions

- *establishment of a joint working group* (NGOs, UNHCR, Ombudsman and other interested organizations) to assess the provisions of the two Conventions and contribute to the analysis in view of the accession to the two statelessness conventions; this working group could also analyze problems related to nationality, refugees, and stateless persons;
- *discussion by the Romanian Committee for Migration Issues (CRPM) and its local committees* of different aspects concerning stateless persons of Romanian origin; participants pleaded for the activation of the CRPM activity which would also contribute to a better understanding of its mandate;

- more effective media coverage and information concerning the possibilities for avoiding or reducing statelessness, as well as for carrying out the necessary procedures;
- creating an accurate public record system, (especially of currently undocumented persons) which should go beyond the data recorded in the birth, marriage, death or property registers;
- intensifying advertising and information campaigns on the problems faced by stateless persons, in order to stimulate a more active involvement of authorities (i.e. local committees for migration issues) and the civil society in the identification of adequate solutions;
- including de facto statelessness among the strategic priorities of the Government;
- activation of the research group on the phenomenon of statelessness among the Roma population proposed by participants in the Statelessness Working Group, Seminar on Roma (2-3 November 2001);
- revision or/and drafting of recommendations concerning the financial responsibility of the countries that return stateless persons;

X. Statistics

Annex 1 - Ministry of Interior

Annex 2 - Ministry of Justice

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12 July 2002