

## INTERNATIONAL REGULATIONS CONCERNING DIFFERENT CATEGORIES OF STATES' POPULATION

Gavril PARASCHIV\*

---

### ABSTRACT:

POPULATION IS, TOGETHER WITH TERRITORY AND GOVERNMENT, ONE OF THE ESSENTIAL ELEMENTS OF THE STATE'S EXISTENCE, THAT IS, ABOVE ALL, A HUMAN COMMUNITY. THE STATE CAN NOT EXIST WITHOUT POPULATION, AS IT CAN NOT EXIST WITHOUT TERRITORY OR GOVERNMENT. THE LEGAL REGIME SPECIFIC TO CERTAIN CATEGORIES OF THE POPULATION IS GOVERNED NOT ONLY BY INTERNAL LEGAL RULES, BUT ALSO BY INTERNATIONAL CONVENTIONS.

---

**KEY WORDS:** INTERNATIONAL LAW, POPULATION, NATIONALITY, DIPLOMATIC PROTECTION, DIPLOMATIC STATUS

### INTRODUCTION

State's population represents the total number of people living on its territory, regardless of nationality; along with nationals, in a State we may find permanently or temporarily, foreign and stateless citizens, they having a different legal regime from the citizens<sup>1</sup>.

Another definition covers only the mass of individuals linked to the State by nationality, even if some of them are on the territories of other states<sup>2</sup>.

In principle, the legal status of various categories of individuals is determined by the internal laws of the State to which they belong, with the exception of categories on which state jurisdiction is limited, such as for example, persons with diplomatic status<sup>3</sup>.

Certain aspects, such as statelessness, legal status of foreigners, human rights, diplomatic protection, etc. on the population as a whole or certain categories thereof are also subject to international concerns<sup>4</sup>.

---

\* Ph.D. Associate Professor Spiru Haret University, Romania, gavril.paraschiv@yahoo.com.

<sup>1</sup> Dumitru Mazilu, *Public International Law*, volume I, Edition V-a (Bucharest: Publishing House Lumina Lex, 2010) 272; Pierre Vellas, *Public International Law*, 2<sup>nd</sup> Edition (Paris: Librairie Générale de Droit et de Jurisprudence, 1970).

<sup>2</sup> Adrian Năstase, Bogdan Aurescu, *Public International Law. Synthesis*, 7<sup>th</sup> Edition (Bucharest: Publishing House CH Beck, 2012) 147.

<sup>3</sup> Dumitra Popescu, Felicia Maxim, *Public International Law* (Bucharest: Publishing House Renaissance, 2010) 93.

<sup>4</sup> Daniel-Ștefan Paraschiv, *Current trends of the evolution of public international law in the context of increasing independence of States and the need to exercise sovereignty*, "Dreptul" Magazine, no. 6/2012 (2012) 164-170

## NATIONALITY

Citizenship is the legal bond based on a social fact, effective solidarity of existence, interests and feelings, combined with a reciprocity of rights and obligations<sup>5</sup>.

Citizenship is permanent legal and political link between an individual and a state, which generates and expresses all the mutual rights and obligations between the individual and the state of nationality<sup>6</sup>.

European Convention on Nationality, 1997, defines it as “the legal bond between a person and a state”, adding that it “does not indicate the person’s ethnic origin”.

Citizenship is a right of the person who expresses his belonging to a state, one can not be deprived arbitrarily of his nationality<sup>7</sup>, wherever he may be: in the State of origin, in another state, at sea, in the air or in space<sup>8</sup>.

Acquiring right of citizenship is *by birth*, the state to which belongs the baby being determined by two major legal systems established: *ius sanguinis*, the child acquires the citizenship of the parents regardless of place of birth and *jus soli*, the child acquires the citizenship of the State in which he is born, regardless of the nationality of their parents<sup>9</sup>.

At the request of a person on the basis of an act of state authorities, citizenship is acquired by *naturalization*, as a result of: *marriage* to a citizen of the state, *prolonged stay* in the State, *international adoption*, *regaining or reintegration*, *option*, *transfer or resettlement*, *granting*<sup>10</sup>.

*Loss of citizenship* can take place either by *law* (for example, through the adoption of minors by foreign citizens) or by *waiver* or *withdrawal*. Romanian citizenship can not be withdrawn if acquired by birth<sup>11</sup>.

## DIPLOMATIC PROTECTION OF ITS OWN CITIZENS

The foreigner who is in the territory of a state is subject to its jurisdiction.

At the same time he maintains a permanent legal link with the State whose nationality he has and which can impose certain obligations arising from the Constitution and other laws.

State of origin should grant its citizens abroad *diplomatic protection*, which consists in taking certain measures to protect their interests in relations with state authorities where he is located<sup>12</sup>.

Constitution of Romania provides in art. 17, the right to diplomatic protection of Romanian citizens.

## LEGAL REGIME OF FOREIGNERS

By foreigner we mean a person who is in the territory of a state, without having its nationality, but of another State. Persons without citizenship (*stateless*) and *refugees* are assimilated to foreigners.

<sup>5</sup> Daniel-Ștefan Paraschiv, Ramona-Gabriela Paraschiv, Gavril Paraschiv, „Public International Law” (Bucharest: Publishing House Pro Universitaria, 2014) 58 and following.

<sup>6</sup> Raluca Miga-Beșteliu, *Public International Law. Introduction to Public International Law*, III Edition (Bucharest: Publishing House All Beck, 2003) 166.

<sup>7</sup> Adrian Năstase, Bogdan Aurescu, [2], 146.

<sup>8</sup> Ioan Muraru, *Constitutional Law and Political Institutions* (Bucharest: Publishing House Actami, 1998) 154 and following.

<sup>9</sup> Ion Diaconu, *Public international law treaty*, vol. II (Bucharest: Publishing House Lumina Lex, 2003) 105 and following.

<sup>10</sup> Adrian Năstase, Bogdan Aurescu, [2], 148.

<sup>11</sup> Dumitra Popescu, Felicia Maxim, [3], 92.

<sup>12</sup> Raluca Miga-Beșteliu, [6], 140.

Treatment applicable to foreigners knows more forms resulting from the practice of states<sup>13</sup>:

- *National regime* under which foreign citizens have the same rights as nationals of the State, except political rights or other rights established by law<sup>14</sup>;
- *Special regime*, which grants certain rights only;
- *Most Favoured Nation regime*, under which the state grants foreigners the more favorable regime which was allowed by international treaties, to citizens of another member State;
- *Mixed regime*, which is a combination of the national regime and the special regime.

The doctrine of international law stressed the need to establish *minimum international standard* regarding foreigners regime<sup>15</sup>.

The current practice of states shows that are in some cases making joint implementation of the regime mentioned in respect of foreigners on their territory.

Special problems in terms of the rules of international law on foreigners have occurred in relation to *extradition* and *expulsion*.

*Extradition* is the act by which a state surrenders, under certain conditions, at the request of another state, a person on its territory alleged to be the perpetrator of a crime to be tried or to serve a penalty for which was previously convicted.

*Expulsion* is the act by which a state compels one or more foreigners in its territory to leave when they become undesirable due to the perpetration of acts which violate laws or interests of the state of residence<sup>16</sup>.

## LEGAL REGIME OF REFUGEES AND DISPLACED PERSONS

A *refugee* is a person who as a result of well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion has left the country of origin, and because of such fear, is unable or unwilling to return to this country.

In general terms, the refugee means a person who seeks to evade conditions or circumstances in his country of origin, which he considers unbearable and find shelter and protection in another country, where not to be discriminated against<sup>17</sup>.

Refugees are those who – due to armed conflict – were forced to leave the country, staying in another country without losing or renouncing to the nationality of the State of origin<sup>18</sup>.

Displaced persons are those who have been deported ‘on the territory of foreign states’<sup>19</sup>.

*The status of refugees* includes a series of rights and obligations covered by both the 1951 Convention and internal law of the states. The Convention establishes in art. 2 general

---

<sup>13</sup> Dumitra Popescu, Felicia Maxim, [3], 97; Adrian Năstase, Bogdan Aurescu, [2], 149.

<sup>14</sup> Ian Brownlie, *Principles of Public International Law*, Fifth Edition (New York: Oxford University Press, 1999) 524.

<sup>15</sup> Andreas Hans Roth, *The Minimum Standard of International Law Applied to Foreigners* (Leiden: A.W. Sijthoff Publisher, 1948) 27 and following.

<sup>16</sup> Dumitra Popescu, Felicia Maxim, [3], 100.

<sup>17</sup> Ramona-Gabriela Paraschiv, *The prohibition of discrimination of refugees, in Exercise of the right to non-discrimination and equal opportunities in contemporary society* - NEDES 2014 (Bucharest: Publishing House Pro Universitaria, 2014) 257-261

<sup>18</sup> Guy Goodwin-Gill, *The Refugee in International Law* (Oxford: Oxford University Press, 1996) 123.

<sup>19</sup> Kofi Annan, Preface, *Situation of Refugees in the world 1997-1998* (Oxford: Oxford University Press, 1999) IX; Dumitra Popescu, Adrian Năstase, *Public International Law*, Revised and enlarged edition (Bucharest: Casa de Editură și Presă „Șansa” SRL, 1997) 148.

obligation of refugees to comply with laws, regulations, and measures taken to maintain public order existing in the country where they are located.

*In Romania*, the legal status of refugees is regulated by Law no. 122/2006 (published in the Official Gazette no. 428 of 18.5. 2006), GD no. 1596/2008 regarding the resettlement of refugees in Romania, GD no. 898/2011 establishing the form and content of residence permits, travel documents and other documents issued to foreigners, etc.

Still, our country is concerned with the promotion and implementation of fair procedures for determining refugee status and granting refugee status, given the European and global developments in this area<sup>20</sup>.

### **RIGHT TO ASYLUM**

Granting *territorial asylum* is a sovereign right of the State on the entry and establishment on its territory of other nationalities who are subject to persecution in their home country for political, religious, scientific activities, etc., considered (at home) against its law<sup>21</sup>.

After granting asylum, the state should behave – to foreigner whom it granted this status – in accordance with the general principles of international law and international conventions on the rights of foreigners, to which is possibly part of<sup>22</sup>.

*Diplomatic asylum* is practiced for humanitarian reasons, as a right of temporary asylum granted to persons pursued for political reasons whose life is in danger.

It is defined as a right to grant protection in the premises of embassies or consular offices in a state to citizens of that state, pursued by authorities or whose life is in danger because of domestic events<sup>23</sup>.

### **CONCLUSIONS**

From the point of view of international law, the exercise of state powers on individuals has relevance on:

- Conditions in which the legal status of citizens or foreigners of a State can be recognized and enforceable against other States or international fora;
- Compatibility to exercise those powers with the rules of international law<sup>24</sup>.

Thus, citizenship, as statelessness is a legal situation specific to the individual, resulting from the connection of that person to a particular state, giving fullness exercise of the rights and obligations stipulated in the Constitution and laws of the State concerned, which must comply with international conventions<sup>25</sup>.

Diplomatic protection of its own citizens is one of the obligations of diplomatic missions of the State of origin and citizenship derives from nationality connection between the individual and the state.

The legal regime of foreigners is established under international conventions by each state and is to determine by legislative, administrative and justice acts, rights and obligations of foreigners, the conditions under which they may enter, remain and leave the territory etc.<sup>26</sup>

---

<sup>20</sup> Mihai Delcea, Legal protection of refugees under international law (Timișoara: Publishing House Presa Universitară Română, 2002) 201 and following

<sup>21</sup> Dumitra Popescu, Felicia Maxim, [3], 98.

<sup>22</sup> Raluca Miga-Besteliu, [6], 136.

<sup>23</sup> Phillipe Cahier, *The contemporary diplomatic law* (Paris, 1962) 208 and following.

<sup>24</sup> Raluca Miga-Besteliu, [6], 128.

<sup>25</sup> Ramona-Gabriela Paraschiv, Elena Paraschiv, *Human rights-fundamental problem of humanity*, in „Reports of Legal Studies In Honorem Ph.D. Prof. Nicolae Popa” (Craiova: Publishing House SITECH, 2010) 278-290.

<sup>26</sup> Alexandru Bolintineanu, Adrian Năstase, Bogdan Aurescu, *Contemporary International Law* (Bucharest: Publishing House All Beck, 2001) 74 and following.

One of the most important principles of refugee law is that of non-refoulement (*principle of non-refoulement*), under which states are obliged not to expel or not to return, in any way, a refugee to the frontiers of territories where his life or freedom would be threatened on account of race, religion, nationality, membership of a particular social group or political opinion (art. 33 of the Convention on Refugees, 1951)

## REFERENCES

1. **Bolintineanu, Alexandru; Năstase, Adrian; Aurescu, Bogdan;** *Contemporary international law* (Bucharest: Publishing House All Beck, 2001)
2. **Brownlie, Ian;** *Principles of Public International Law*, Fifth Edition (New York: Oxford University Press, 1999)
3. **Delcea, Mihai;** *Legal protection of refugees under international law*, Timișoara: Publishing House Presa Univesitară Română, 2002
4. **Diaconu, Ion;** *Public international law treaty*, vol. II, Bucharest: Publishing House Lumina Lex, 2003
5. **Goodwin-Gill, Guy;** *The Refugee in International Law*, Oxford: Oxford University Press, 1996
6. **Mazilu, Dumitru;** *Public international law*, volume I, V Edition, Bucharest: Publishing House Lumina Lex, 2010
7. **Miga-Beșteliu, Raluca;** *Public international law. Introduction to Public international law*, III Edition, Bucharest: Publishing House All Beck, 2003
8. **Muraru, Ioan;** *Constitutional Law and Political Institutions*, Bucharest: Publishing House Actami, 1998
9. **Năstase, Adrian; Aurescu, Bogdan;** *Public international law. Synthesis*, 7 Edition, Bucharest: Publishing House CH Beck, 2012
10. **Paraschiv, Daniel-Ștefan; Paraschiv, Ramona-Gabriela; Paraschiv, Gavril;** „*Public international law*”, Bucharest: Publishing House Pro Universitaria, 2014
11. **Paraschiv, Daniel-Ștefan;** *Current trends of the evolution of public international law in the context of increasing independence of States and the need to exercise sovereignty*, “Dreptul” Magazine, no. 6/2012
12. **Paraschiv, Ramona-Gabriela;** *The prohibition of discrimination of refugees, in Exercise of the right to non-discrimination and equal opportunities in contemporary society* - NEDES 2014 (Bucharest: Publishing House Pro Universitaria, 2014) 257-261
13. **Paraschiv, Ramona-Gabriela; Paraschiv, Elena;** *Human rights-fundamental problem of humanity*, in „Reports of Legal Studies In Honorem Ph.D. Prof. Nicolae Popa” (Craiova: Publishing House SITECH, 2010)
14. **Popescu, Dumitra; Maxim, Felicia;** *Public international law*, Bucharest: Publishing House Renaissance, 2010
15. **Popescu, Dumitra; Năstase, Adrian;** *Public international law*, Revised and enlarged edition, Bucharest: Casa de Editură și Presă „Șansa” SRL, 1997
16. **Roth, Andreas Hans;** *The Minimum Standard of International Law Applied to Foreigners* (Leiden: A.W. Sijthoff Publisher, 1948)
17. **Vellas, Pierre;** *Public international law*, 2<sup>nd</sup> Edition, Paris: Librairie Générale de Droit et de Jurisprudence, 1970