11. The Right to a Nationality and the European Convention on Human Rights

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Nationality and Human Rights

The Universal Declaration of Human Rights (1948) provides that everyone has the right to a nationality. However, this right was not included in the European Convention on Human Rights (1950) nor in any of the protocols to the Convention. This omission cannot be explained by the right to a nationality being an unimportant right – quite the contrary.

Legally, nationality is an expression of a particularly close bond between a person and a state. With the status of a national of a state, in principle the individual obtains full rights in that state, while in international relations the individual may count on its protection. The right to a nationality is thus of great importance to the individual. However, it is also of great importance to a state to be able to decide alone who shall be its nationals. Therefore states have been reluctant to assume international obligations in this particular field.

Even so, the contracting parties to the European Convention on Human Rights (ECHR) have agreed to restrict their powers under general international law to the extent and within the limits of the obligations they have assumed under the Convention. Although the right to a nationality is not itself protected by the Convention, one might ask whether a refusal of the right could – in certain special circumstances and quite independently – violate another right already covered by the Convention.

In this chapter I examine whether and, if so, to what extent the ECHR may be applied in matters of nationality. First, some comments will be made on the importance of the right to a nationality. Secondly, the international and regional, that is European, rules on nationality will be briefly reviewed. Finally, the question of the applicability of the ECHR in matters of nationality will be considered.
The Importance of Nationality

Reading the work of Hannah Arendt (1906–1975), we obtain an insight into the importance of nationality. In Arendt’s work *The Origins of Totalitarianism* from 1950, she analyses the problem of statelessness in Europe after World War I, her description leaving no doubt as to the necessity of ensuring the right to a nationality.¹

The background to Arendt’s analysis is the dissolution of the two multinational states of pre-war Europe, Russia and Austria-Hungary, and the stateless people and minorities who suddenly lost rights that had been thought of and even defined as inalienable, namely the Rights of Man or human rights. Stateless persons had no government to represent and protect them, and denationalisation became a powerful weapon of the totalitarian politics.² At that time mass denationalisation was something new and unforeseen, presupposing a totalitarian state structure. Arendt talks of a “totalitarian infection”, pointing out that there was “hardly a country left on the Continent that did not pass between the two wars some new legislation which, even if it did not use this right extensively, was always phrased to allow for getting rid of a great number of its inhabitants at any opportune moment”.³

In Nazi Germany there was no reluctance to use denaturalisation and denationalisation towards the Jews, and adjacent countries were not immediately prepared to help the Jewish refugees. The “inalienable human rights” proved to be unenforceable, even in countries whose constitutions were based upon them, whenever people who were no longer the nationals of any sovereign state appeared. According to Arendt, stateless persons were convinced that their loss of national rights was identical with a loss of human rights. First, they suffered the loss of their homes, and then government protection, which did not imply just the loss of their legal status in their own country, but in all countries. Arendt writes about the importance of possessing a nationality:

We became aware of the existence of a right to have rights (and that means to live in a framework where one is judged by one’s actions and opinions) and a right to belong to some kind of organised community, only when millions of people emerged who had lost and could not regain these rights because of the new global political situation.⁴

She concludes that only with a completely organised humanity could the loss of home and political status become identical with expulsion from humanity altogether.

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² Ibid., p. 267.
³ Ibid., p. 208.
⁴ Ibid., p. 294.