

COMPARATIVE ANALYSES ON THE DEPRIVATION OF NATIONALITY UNDER UZBEKISTAN CITIZENSHIP LAW AND THE MINIMUM REQUIREMENTS OF DEPRIVING CITIZENSHIP UNDER INTERNATIONAL LAW*

Farruhbek MUMINOV**

ABSTRACT

Article 15 of the UN Universal Declaration of Human Rights undoubtedly states that “everyone has the right to a nationality” and that “no-one shall be arbitrarily deprived of his nationality”. It is widely recognized that states are free to perceive individuals as citizens. In discretion of states, the acquisition of citizenship defines a condition for citizenship withdrawal. Such conditions are often seen in state citizenship laws. While states have broad discretion in introducing such regulation including modifying and relaxing them, it should be consistent with international law as an essential prerequisite to the enjoyment and protection of the human right. This paper focuses on general grounds for citizenship withdrawal in Uzbekistan Citizenship Law. It examines a comprehensive review of all grounds for deprivation of citizenship in the context of Uzbekistan Citizenship Law. Although the deprivation of citizenship is the state's sovereign discretion, there are some limitations in the context of international law. In this regard, general grounds for deprivation of citizenship in Uzbekistan Citizenship Law should be consistent with international standards.

Keywords: Citizenship Withdrawal, Uzbekistan Citizenship Law, International Convention, International Standards.

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** Ph.D. Candidate, Faculty of International Private Law, Anadolu University, Turkey, f.mominov@hotmail.com, ORCID ID: 0000-0002-1559-3879 (Geliş Tarihi: 26.12.2018 – Kabul Tarihi: 08.05.2019)

ULUSLARARASI HUKUKTA VATANDAŞLIĞIN KAYBEDİLMESİ İÇİN ARANAN ASGARİ KOŞULLAR İLE ÖZBEK VATANDAŞLIK KANUNUNUNDA ÖZBEK VATANDAŞLIĞININ KAYBEDİLMESİ KOŞULLARININ MUKAYESELİ ANALİZİ

ÖZET

Birleşmiş Milletler İnsan Hakları Evrensel Beyannamesinin 15 maddesi uyarınca “herkesin bir vatandaşlığa hakkı vardır” ve “hiç kimse keyfi olarak vatandaşlıktan yoksun bırakılamaz”. Kural olarak, devlet kimleri vatandaşlığa kabul edeceği konusunda tam bir serbestliğe sahiptir. Devletlerin sahip olduğu söz konusu geniş yetki vatandaşlıktan çıkarma bakımından da geçerlidir. Genellikle vatandaşlıktan çıkarmaya ilişkin hususlar devletlerin vatandaşlık kanunlarıyla düzenlenmektedir. Devletlerin vatandaşlığa ilişkin düzenlemelerde değişiklik yapma ve esnek kurallar getirme konusunda da geniş bir yetkiye sahip olduğu kabul edilmektedir. Vatandaşlığa ilişkin düzenlemelerin uluslararası hukukla uyumlu olması bireylerin temel insan haklarının korunması ve insan haklarına erişimi bakımından önem taşımaktadır. Çalışmada Özbek Vatandaşlık Kanunu çerçevesinde vatandaşlıktan çıkarmanın genel gerekçeleri izah edilecektir. Bu çerçevede Özbek Vatandaşlık Kanunu’nda vatandaşlıktan çıkarmaya ilişkin genel hususlar ayrıntılı bir şekilde incelenecektir. Vatandaşlıktan çıkarma devletin egemenlik yetkisi çerçevesinde değerlendirilmesine rağmen söz konusu yetkiyi sınırlayıcı nitelikte olan bazı milletlerarası anlaşmalar vardır. Bu anlamda Özbek Vatandaşlık Kanununun uluslararası standartlarla uyumlu olması gerekmektedir.

Anahtar Kelimeler: Vatandaşlıktan Çıkarma, Özbek Vatandaşlık Kanunu, Milletlerarası Anlaşmalar, Uluslararası Standartlar.

INTRODUCTION

The right to nationality is a fundamental right to access most other rights and freedoms. Traditionally, states have the right to enjoy wide discretion in acquisition and deprivation of their nationalities. However, it is widely recognized that this discretion of state can be limited in the scope of international law. The Human Right Council stated that loss or deprivation of citizenship must meet certain conditions in order to comply with international law, in particular, the prohibition of arbitrary deprivation of nationality. International law, therefore, strictly limits the circumstances in which loss or deprivation of nationality leading to statelessness can be recognized as serving a legitimate purpose.¹ In this sense, there are a few international documents, including the European Convention on Nationality² and the 1961 Convention on the Reduction of Statelessness in Related to Prevention of Statelessness³. The latest international instrument is the International Law Commission's Draft Articles on the Expulsion of Aliens (2014)⁴. More specifically, Article 8 defines that “A State shall not make its national an alien, by deprivation of nationality, for the sole purpose of expelling him or her.”

Deprivation of citizenship has been a standard feature of Uzbekistan Citizenship Law since the Former Soviet Union. According to Article 18 of the

¹ UN Human Rights Council, Human rights and arbitrary deprivation of nationality: Report of the Secretary General, 19 December 2013, A/HRC/25/28 <<https://www.refworld.org/docid/52f8d19a4.html>> I.a.d. 21.04.2019; UN Human Right Council, Arbitrary deprivation of nationality, Reports of the Secretary-General, 26 January 2009, A/HRC/10/34 <<https://www.refworld.org/docid/49958be22.html>> I.a.d. 20.04.2019. See in more detail. **Spiro, Peter** (2011) A New International Law of Citizenship, The American Journal of International Law, Volume 105 (4), p. 694-746; **Kadelbach, Stefan and Roth-Insigkeit, David** (2017) The Right to Invoke Rights as a Limit to Sovereignty – Security Interests, State of Emergency and Review of UN Sanction by Domestic Courts under European Convention of Human Rights, Nordic Journal of International Law 86(3), p. 275-301.

² European Convention on Nationality, Uzbekistan is not part of ECN <<https://rm.coe.int/168007f2c8>> I.a.d. 25.03.2018.

³ The 1961 Convention on the Reduction of Statelessness, Uzbekistan is not signatory country. See signatory countries <https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=V-4&chapter=5&clang=_en> I.a.d. 25.03.2018.

⁴ International Law Commission at its sixty-sixth session, Draft Articles on the Expulsion of Aliens, with Commentaries (2014) <<http://www.refworld.org/docid/5539ef8e4.html>> 25 March 2018; the International Law Commission in its commentaries to the Draft Articles on the Nationality of Natural Persons in relation to Succession of States highlighted that the evolution of international human rights law has significantly altered the classical doctrine on the preponderance of States' interests over the interests of individuals. Draft Articles on Nationality of Natural Persons in relation to the Succession of States with commentaries (Yearbook of the International Law Commission, 1999, Vol. 11, Part 2, p. 24).

Law on USSR (Union of Soviet Socialist Republics) Citizenship,⁵ deprivation of citizenship may take place if the person concerned has committed actions discrediting the high status of a citizen of the USSR and damaging to the prestige or state security of the USSR. The exceptional nature of a deprivation decision could only be taken by the Presidium of the Supreme Soviet of the USSR. After gaining independence, Uzbekistan has adopted Law on Citizenship in 1992.⁶ Article 21 of the Law makes it possible to deprive individuals of their nationality. The scope of such provision serves for security bodies of foreign countries, permanent residence abroad if the person obtained his citizenship through false representation, conducive to the public good and acquisition of foreign country citizenship. Deprivation is distinguishable from voluntary a loss of citizenship because it is initiated by the state and based on the violation of basic norms of good citizenship such as disloyalty or threat to state national security. Deprivation of nationality exists in nearly all countries' citizenship laws albeit the scope of such provision is debatable⁷. Deprivation of citizenship is often seen by Western democratic states in response to homegrown terrorism. Assessment of deprivation policies indicates that it contradicts international human rights, domestic rule of law standards, such as prevention of stateless, non-arbitrariness or non-discrimination between the different categories of citizens. In this respect, countries should carefully review provisions of citizenship law to avoid all these issues.

Over nearly 30 years, Uzbekistan Citizenship Law has changed and reviewed some of the provisions including loss of citizenship. Some provisions are albeit not in line with international standards (European Convention on Nationality, the 1961 Convention on the Reduction of Statelessness). This paper will provide a comprehensive review of the general grounds for deprivation of citizenship and discuss the latest amendments in Uzbekistan Citizenship Law. Part I examines the overview of the grounds for deprivation

⁵ The Law of the Union of Soviet Socialist Republics on Citizenship of the USSR, International Legal Materials, Cambridge University Press, Volume 20(5), 1981, p. 1207-1210 <<http://www.jstor.org/stable/pdf/20692350.pdf?refreqid=excelsior%3Abf7106ce3713af6fc54ce381b721db44>> I.a.d. 23.05.2018.

⁶ Law of the Republic of Uzbekistan on Citizenship of the Republic of Uzbekistan, 2.07.1992, No.632-XII, Journal of Oliy Majlis of Republic of Uzbekistan, 1992, No.9, Art.338 (as amended by laws No.51 as of 2004, No.32 as of 2015, No.39 as of 2016).

⁷ **Baluarte, David** (2017) The Risk of Statelessness: Reasserting a Rule for the Protection of the Right to Nationality, Yale Human Rights and Development Law Journal, Vol.19, p.62-64.

of citizenship from an International and Uzbekistan Citizenship Law perspective. Part II offers a critical review of the grounds for deprivation of citizenship in the scope of Uzbekistan Citizenship Law. Part III provides general procedure and appeal rights related to citizenship withdrawal in Uzbekistan legislature. Part IV examines arbitrary revocation of citizenship in light of Regional Human Rights Courts Decisions. Part V provides some recommendations to reform Uzbekistan Citizenship Law and few international conventions related to deprivation of citizenship which Uzbekistan should consider to acceding these international conventions.

I.GROUNDS FOR DEPRIVATION OF CITIZENSHIP

International law allows states to deprive their citizenship under certain conditions. These conditions are often seen in state citizenship laws, and Uzbekistan is not an exception. In this respect, we will review the grounds for deprivation of citizenship in Uzbekistan Citizenship Law.

A. SERVICE FOR FOREIGN COUNTRIES SECURITIES BODY

According to Article 21.1 of Uzbekistan Citizenship Law (UCL), *deprivation of citizenship may take place as a result of the entry into a foreign state of military service, security service, police, justice or other public administration bodies.* It is clear that such provision points out the breach of allegiance as a condition for citizenship withdrawal. The provision requires a specific conduct as the entry into a foreign state of all administrative bodies. However, it is not an automatic loss of citizenship. The Commission on Citizenship under the President of the Republic of Uzbekistan reviews and concludes on the issues of deprivation of citizenship (Art 30).

Service for a foreign military army as grounds for deprivation of citizenship is to be in compliance with the European Convention on Nationality (ECN). Article 7.1.c of the ECN allows the loss of nationality because of voluntary service in a foreign military force. The Explanatory Report explains that it does not matter whether the person involved served in the official army of a foreign state or not. The provision covers every voluntary military service in any foreign military force, irrespective of whether it is part of the armed forces of a foreign state. Persons are not considered to have served in a foreign

military force if, before acquiring a nationality, they served in a military force of a country of which they were nationals.⁸

Conversely, the 1961 Convention on the Reduction of Statelessness (CRS) does not contain the provision which is deprivation of citizenship on the basis of serving foreign military army. The Convention includes some exceptions for deprivation.⁹ The main reason for this provision is to raise public security concerns. Service for either a foreign country's security bodies or a foreign public authority is not a reason for deprivation as long as it threatens to national security policy. Furthermore, there is no restriction for citizens to move to different foreign countries to find a job, to build family on condition that they obey and carry their obligations in respect of home state law.¹⁰

Work for the public service of a foreign country is even less justifiable than military and security bodies of a foreign country as it can be considered as a lack of loyalty; however, it is not sufficient grounds for citizenship withdrawal.¹¹ As a ground of citizenship withdrawal, service for the foreign army or public service is pervasive in a country's citizenship law practice. For example, In France, citizens may lose their citizenship if they do not resign from service in a foreign army or foreign public service. Similarly, in Greece, citizens can be deprived of citizenship if they accept a public office in a foreign country and remain there even after the order by the Minister of Interior. It is required to take permission in some countries such as Germany, Latvia, and Estonia.¹²

⁸ The Council of Europe Explanatory, Report to the European Convention on Nationality (1997), European Treaty Series No.166.

⁹ According to Article 8 of CRS contains some exceptions in the scope of deprivation of citizenship. It is following:

- *Where the nationality has been obtained by misrepresentation or fraud (Article 8.2.b)*
- *Contracting State may retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such right on one or more of the following grounds, being grounds existing in its national law at that time:*

- a) *That inconsistently with his duty of loyalty to the Contracting State,*
- i) *the person in disregard of an express prohibition by the Contracting State rendered or continued to render services to, or received or continued to receive emoluments from, another State, or*
- ii) *has conducted himself in a manner seriously prejudicial to the vital interests of the State*

¹⁰ **Baubock and Paskalev** (2015), p.17; **Mantu, Sandra** (2015) *Contingent Citizenship: The Law and Practice of Citizenship Deprivation in International, European and National Perspectives*, BRILL Nijhoff Publishing, p. 47.

¹¹ **Baubock and Paskalev** (2015), p.18.

¹² See in more detail: **Groot, Gerard-Rene and Vink, Maarten** (2014) *A Comparative Analysis of Regulations on Involuntary Loss of Nationality in the European Union*, CEPS Paper in Liberty and Security in Europe No.75, p. 22-25.

As previously noted, the UCL scope of citizenship withdrawal as a consequence of service in a foreign military force is wider than the ECN. The scope of such provision in the UCL contains the work for the foreign military force of the foreign country as well as justice and other administrative bodies.

B. PERMANENT RESIDENCE ABROAD

Article 21.2 of the UCL defines a ground of deprivation of citizenship where a person permanently residing abroad fails to be registered at a consulate within three years without any reasonable justifications. The ECN allows for the loss of citizenship as a result of “*lack of a genuine link between the State Party and a national habitually residing abroad.*” The Explanation Report explains in more detail that one of the aims of this provision is to allow a State, which so wishes, to prevent its nationals habitually living abroad, to retain its nationality generation after generation. The scope of such provision is limited because lack of genuine link applies only to dual nationals habitually residing abroad. Moreover, this provision applies in particular when the genuine and effective link between a person and State does not exist, owing to the fact that this person or his family have resided habitually abroad for generations.¹³

The Explanatory Report noted that three circumstances can be considered as possible evidence of lack of a genuine link in the following:

- Registration
- Application for identity or travel documents
- Declaration expressing the desire to conserve the nationality of the State Party

As previously noted, the 1961 CRS contains a provision for deprivation of citizenship on account of continuous residence abroad. Such a provision specifies a minimum period of residence abroad for citizenship withdrawal. According to Article 7.4 of the Convention, duration of time for citizenship withdrawal is “*not less than seven consecutive years,*” However, the ECN does not restrict the scope of such ground to naturalized individuals.

¹³ Explanatory Report to the European Convention on Nationality (1997), European Treaty Series No.166, p.12.

In comparative law, citizens may lose their citizenship as a consequence of continuous residence abroad. In liberal States, in particular, EU countries, the scope of such provision is limited. Loss of citizenship as a result of continuous residing abroad is often applied to naturalized persons or a person who is born abroad such as Denmark, Finland, France, Ireland, Malta, Spain, and Switzerland. A minimum period of residence abroad is at least 7 years in Denmark, Ireland, Finland, Malta, 20 years in Luxemburg and 50 years in France.¹⁴ On the contrary, in Post-Soviet states such as Russia,¹⁵ Turkmenistan,¹⁶ Kazakhstan,¹⁷ Tajikistan¹⁸ Kyrgyzstan¹⁹ and Ukraine,²⁰ continuous residence abroad is not ground for loss of citizenship in the scope of their citizenship laws.

There is limited applicability of such provision from the perspective of the UCL. First and foremost, permanent residence abroad as grounds of citizenship can only be applicable to dual nationals. In fact, it is not recognized

¹⁴ In case of France “Person has never had habitual residence in France and his/her ancestors also have not resided in France for 50 years”. See in more detail. **Groot and Vink**, supra, p.31.

¹⁵ Article 19 of Russian Citizenship Law; Russian Federation Federal Law on Citizenship of the Russian Federation, 31.05.2002, No.62 FZ, Legislation Bulletin of the Russian Federation, 2002, No.22, Art.2031 (as amended by Federal Laws N 151-FZ as of 11.11.2003, N 127-FZ as of 02.11.2004, N 5-FZ as of 03.01.2006, N 121-FZ as of 18.07.2006, N 296-FZ as of 01.12.2007, N 328-FZ as of 04.12.2007, N 163-FZ as of 01.10.2008, N 301-FZ as of 30.12.2008, N 127-FZ as of 28.06.2009, N 182-FZ as of 12.11.2012, N 169-FZ as of 02.07.2013, N 185-FZ as of 02.07.2013, N 299-FZ as of 02.11.2013, N 71-FZ as of 20.04.2014, N 72-FZ as of 20.04.2014, N 142-FZ as of 04.06.2014, N 157-FZ as of 23.06.2014, N 307-FZ as of 14.10.2014, N 507-FZ as of 31.12.2014, N 124-FZ as of 01.05.2016, N 243-FZ as of 29.07.2017).

¹⁶ Article 17 of Turkmenistan Citizenship Law; Law of Turkmenistan on Citizenship of Turkmenistan, 30.09.1992, No.740-XII, Journal of Majlis of Republic of Turkmenistan, 1992, No.9, Art.71 (as amended by laws No.2 as of 14.06.2003, No.2 as of 12.07.2007, No.411-IV as of 22.06.2013).

¹⁷ Article 21 of Kazakhstan Citizenship Law; Law on Citizenship of Kazakhstan, 20.12.1991, No.1071-XII, Journal of Parliament of the Republic of Kazakhstan, 1991, No. 52, Art.636 (as amended by laws No.2477 as of 03.10.1995, No.322 as of 17.05.2002, No.600 as of 04.10.2004, No.478-IV as of 22.07.2011, No.421-V as of 24.11.2015, No.501-5 as of 09.04.2016, No.28-VI as of 22.12.2016, No.147-VI as 16.04.2018).

¹⁸ Article 23 of Tajikistan Citizenship Law; Law of Republic of Tajikistan “About Citizenship”, 4.11.1995, No.104, Mazhlisi Oli of the Republic of Tajikistan Collection of Legislation, 1995, No.21, Art.243 (as amended by law No.10 as of 2008, No.1208 as of 8.08.2015).

¹⁹ Article 26 of Kyrgyzstan Citizenship Law; Law on Citizenship of the Kyrgyz Republic, 18.12.1993, No.1333-XII, Journal of Jogorku Kenesha of the Republic of Kyrgyzstan, 1994, No.1, Art.1 (as amended by laws No.70 as of 21.05.2007, No. 94 of 13.07.2011, No. 6 as of 10.02.2012, No.2 as of 17.03.2012, No.162 as of 2.08.2016).

²⁰ Article 19 of Ukraine Citizenship Law; Law of Ukraine on Citizenship, 18.01.2001, No.2235-III, Legislation Bulletin of Ukraine (as amended by laws No.2508-IV as of 05.04.2005, No.2663-IV as of 16.06.2005, No.1014-V as of 11.05.2007, No.4652-VI as of 13.04.2012, No.5459-VI as of 16.10.2012, No.5492-VI as of 20.11.2012, No.657-VIII as of 28.01.2016).

dual citizenship in accordance with the UCL.²¹ In this sense, the application of such provision for a person leads to statelessness. It contradicts the 1961 Convention on the Reduction of Statelessness (Article 7). Secondly, the 3-year limit in the scope of this provision is also problematic because it is not compatible with Article 7.4 of the Convention on the Reduction of Statelessness. This provision allows the loss of citizenship as a condition of less than seven-year continuous residences abroad. It is clear that it stipulates the minimum requirement of the time limit that is not less than seven consecutive years. Thirdly, citizenship withdrawal based on permanent residence abroad is contradicted by Article 7 of the UCL according to this clause, “*Residence of a citizen of the Republic of Uzbekistan abroad does not result in termination of the citizenship of the Republic of Uzbekistan.*” Finally, the assessment of reasonable justification depends on administrative discretion. In this case, the consul general gives an independent assessment of the reasons based on objective information for failure to register on time according to the Regulation on the Procedure for Consideration of Citizenship.²² Broad assessment discretion for authorities could be problematic in some circumstances because deprivation of nationality must be established by law, and conditions related to deprivation of nationality is predictable. In practice, citizenship withdrawal based on permanent residence abroad is more debatable. Based on massive migration from Uzbekistan to abroad thousands of citizens would face the risk of deprivation of their citizenship. Even though deprivation of citizenship on the ground of permanent residence abroad is rarely applied by the authorized officers, it carries a certain degree of risk in case of arbitrary deprivation of citizenship. In this sense, the application of this provision is based on the discretion of the authorities rather than law. This can be considered a violation of the minimum requirements of international law in Article 15 of the UN Universal Declaration of Human Rights.

²¹ According to Article 10 of UCL “*Foreign citizenship of a person who is a citizen of the Republic of Uzbekistan shall not be recognized*”.

²² Regulations on the procedure for consideration of questions of citizenship of the Republic of Uzbekistan, approved by the Presidential decree of the Republic of Uzbekistan, 26.02.1999, PF-2240, Journal of Oliy Majlis of Republic of Uzbekistan, 1999, No.3, Art.65.

C. THE CAUSAL LINK BETWEEN FRAUD AND THE ACQUISITION OF CITIZENSHIP

UCL contains the acquisition of citizenship by fraudulent means as a ground for loss of citizenship (Article 21.3). Such provision is a common feature in many countries' citizenship laws. The 1961 Convention on the Reduction of Statelessness allows the loss of citizenship if the nationality has been obtained by misrepresentation or fraud (Article 8.2.b). In the scope of this provision, States may provide for deprivation of citizenship due to failure to renounce a foreign nationality if the failure renounces clearly that it can be classified as fraud. The deprivation only becomes effective if it is proven that the person involved did not renounce the former nationality. In this context, a State may not refuse documents proving the renunciation of the former nationality on the basis that they do not fulfill certain formal criteria, for example, they have not been legalized or bear an apostille stamp.

The similar provision may be found in Article 7.1/b of ECN. The Explanation Report defines "*fraudulent conduct*" as false information, or concealment of any relevant fact based on a deliberate act or omission by the applicant, which was a significant factor in the acquisition of citizenship. For example, if a person acquires the nationality of the State Party on the condition that the nationality of origin would subsequently be renounced and the person did not do so. The Explanation Report also explains "*concealment of any relevant fact*". It means the concealment of a relevant condition which would prevent the acquisition of citizenship. "*Relevant*" in the context of fraudulent conduct is fact (concealment of another nationality or concealment of a conviction for a serious offense) which they had known before nationality was granted and would have resulted in a decision refusing to grant such nationality.

It is important to note that a causal link between fraud (misrepresentation) and the acquisition of citizenship is a prerequisite for loss of citizenship. In the simplest term, fraud must be material to the acquisition of citizenship. In this sense, deprivation is not permissible if the nationality would have been acquired even if the misrepresentation or concealment had not occurred.²³ For example,

²³ Tunis Conclusions par.58.

undisclosed convictions, marriage or civil partnership found to be invalid or void, false details given in relation to early immigration or an asylum application.²⁴ The act of fraud by the acquisition of citizenship due to citizenship withdrawal is common practice in countries' citizenship laws. Albeit, transparency in the procedure of assessment is crucial in order to balance the State and individual interest.

D. SERIOUSLY PREJUDICIAL BEHAVIOR

One main function of citizenship laws provides states to remove or keep out dangerous people. These measures help them secure their own safety and their society. In particular, the specific nature of terrorist crimes in the practice of some countries' laws can be seen as deprivation of citizenship as a punishment.²⁵ The United States Supreme Court considers deprivation of citizenship as "*a form of punishment more primitive than torture.*"²⁶

According to Article 21.4 of the UCL, deprivation of citizenship may take place under the condition that the person is acting in favor of a foreign state or is a serious threat to the interests of society and the state by committing crimes against peace and security. The European Convention refers to such acting or conduct in a manner seriously prejudicial to the vital interest of the State Party (ECN Article 7.d). The Explanatory Report noted that such conduct notable includes treason and other activities directed against the vital interest of the State concerned (for example, working for a foreign secret service) but would not include criminal offenses of a general nature, however serious they may be although acts of treason, espionage and depending on their interpretation in domestic law- "*terrorist act*" may be considered to fall within the scope of this provision. The act or conduct concerned must be the inconsistency with the "*duty of loyalty*" to the State of nationality and the provision, therefore, applies

²⁴ See in more detail, **Fripp, Eric** (2015) *The Law and Practice of Expulsion and Exclusion from the United Kingdom: Deportation, Removal, Exclusion and Deprivation of Citizenship*, Hart Publishing, p.399, **Bauböck, Rainer and Paskalev, Vesco** (2015) *Cutting Genuine Links: A Normative Analyses of Citizenship Deprivation*, Georgetown Immigration Law Journal Vol 30(47), p. 79-82.

²⁵ **Cloots, Elke** (2017) *The Legal Limit of Citizenship Deprivation as a Counter-terror Strategy*, European Public Law, Volume 1, p.59, **Esbroom, Leslie** (2016) *Citizenship Unmoored: Expatriation as a Counter – Terrorism Tool*, University of Pennsylvania Journal of International Law, 37(4), p.1289-1290.

²⁶ United States Supreme Court 1958, No. 70, 1958 (*Trop v. Dulles*). See in more detail comparative analyses of citizenship withdrawal, **Zwanenburg, Marten** (2016) *Foreign Terrorist Fighters in Syria : Challenges of the "Sending" State*, International Law Studies Vol.92, p.226-230.

only to conduct which is seriously prejudicial to the vital interest of that State.²⁷ The 1961 Convention stipulates that conduct seriously prejudicial to the vital interest of the State can constitute a ground of nationality only if it is existing ground for deprivation in the internal law of the State concerned, which at the time of signature, ratification, accession, the State specifies it will retain.

Recent developments indicate that deprivation of a foreign fighter is being debated among countries due to national security concerns. In the light of such national security issues, citizenship withdrawal is used by States as a counter-terrorism measurement. For example, in France and Belgium, deprivation is only applied if the person has double citizenship. This measurement is rarely applied in both countries. Unlike other countries, in France and Belgium, deprivation is no substitute for a criminal trial.²⁸ Similarly, Russian Citizenship Law (Amendment) 2017 allows deprivation of citizenship if a person is found guilty of terrorism-related crimes including an international terrorist act, calls for terrorism or the justification of it, and training, organization, or participation in a terrorist group. Although the effectiveness of deprivation on account of security concerns is questionable. There are a few measures that can be used as counter-terror tools such as watch list, well-practiced surveillance, passport revocation and travel bans.²⁹

E. ACQUISITION OF FOREIGN COUNTRY CITIZENSHIP

According to 21.5 of the UCL, deprivation of citizenship may take place as a result of the acquisition of foreign state citizenship. This ground for loss of citizenship reflects the attitude of state to dual nationality. In this regard, dual citizenship is not recognized in the scope of the UCL.

Deprivation of citizenship through the acquisition of foreign country citizenship can be subject in two circumstances. One is that the person may not have disclosed previous citizenship during the naturalization process. This is considered general provision on fraud and results in citizenship withdrawal.

²⁷ Tunis Conclusions par.68, See in more detail, **Zwanenburg**, *supra*, p.226-230.

²⁸ **Wautelet, Patrick** (2016) Deprivation of Citizenship for Jihadists: Analyses of Belgian and French Practice and Policy in Light of the Principle of Equal Treatment, Social Sciences Research Network, p.6

²⁹ **Spiro, Peter** (2015) Terrorist Expatriation: All Show, No Byte, No Future, EUI Working Papers RSCAS 2015/14, p.8.

Another case is that the person may acquire foreign state citizenship after Uzbek citizenship. For example, it is possible that authority requires a person to lose his citizenship voluntarily. In this case, it is questionable that the possibility of deprivation of citizenship on account of acquisition of foreign state citizenship is not precise because neither the UCL or citizenship regulation provides an explanation to this provision. According to Part IV of Citizenship Regulation, relevant ministries and agencies shall send the documents to the Ministry of Foreign Affairs to the citizens residing permanently abroad. The Ministry of Foreign Affairs receives the documents, and the Ministry of Internal Affairs and the National Security Service presents them with its documents and conclusions to the Commission on Citizenship under the President of the Republic of Uzbekistan. First and foremost, all grounds for deprivation of citizenship, including the acquisition of foreign country citizenship in the scope of the UCL, is not automatic. In this sense, such provision provides wide discretionary power for authority because of a lack of explanation and transparency. Secondly, as a rule, citizenship laws must be predictable. As previously indicated, this provision is not clearly defined. The UN Human Rights Council noted that “where States have formulated this ground for loss or deprivation as a response to any acquisition of another nationality by one of their nationals, this may raise issues of legal certainty and continuity of rights. In some cases, the person concerned may have been conferred a new nationality without his or her consent or even knowledge and may become an alien in his or her country of original nationality, with significant impact on the continued enjoyment of his or her civil and political, as well as economic, social and cultural rights.”³⁰

II. PROCEDURE FOR DEPRIVATION OF CITIZENSHIP

A. GENERAL PROCEDURE

The Human Rights Council emphasizes that States should ensure that adequate procedural standards are in place in order to prevent the arbitrary application of national regulations and provide relevant safeguards against the stateless. At the international level, it can be seen in some procedural guidelines related to citizenship in ECN. Article 10 refers to an application relating to the

³⁰ UN Human Right Council (2013), p.6.

acquisition, retention, loss, recovery or certification of its nationality be processed within a reasonable time. The Explanatory Report noted that whether an application is processed within a reasonable time is to be determined in the light of all relevant circumstances. Administrative procedure and juridical review are within the authority of each state, except human rights are applicable under public international law. Recent developments in state practice indicate the disposition to submit nationality disputes to the ordinary administrative and juridical review.

In accordance with Article 44 of UCL “*groundless refusal to accept application on citizenship matters, violation of terms for consideration of applications and other unlawful acts of the authorized officers violating procedures for consideration of citizenship cases and the procedures for execution of decisions on citizenship matters may be applied in the manner established by law to the high-level of authorized officer or the court*”. It is obvious that this provision provides procedural rights to individuals against the authorized officers on the ground of breach of provisions in the context of UCL. The scope of procedural rights is also broad enough to cover arbitrary deprivation of citizenship. In order to avoid arbitrary, deprivation of citizenship must be consistent with domestic law and specific procedural and substantive standards in particular, the principle of proportionality. Measures related to deprivation of citizenship is required to serve a legitimate purpose that is coherent with international law and the purposes of international human right law. As a rule, arbitrariness relates to revocation of citizenship and must apply to all state actions, legislative, administrative and judicial. The ordinary meaning of “arbitrariness” is not only congruity with “against the law” but it must also be interpreted broadly to cover elements of inappropriateness, injustice and lack of predictability³¹.

The procedural provision relating to nationality is governed by Regulation on the procedure for consideration of issues related to citizenship of the Republic of Uzbekistan. The decision-making power is vested through the President of Uzbekistan (UCL, Article 30). In comparative law, the decision relating to nationality is taken in different bodies. For example, in Belgium, deprivation may only be ordered by the court. In France, the state takes the

³¹ UN Human Right Council (2009), p.14.

decision on deprivation. In the UK, the Home Secretary has the power to deprive citizenship.³² In Post-State UK countries, the President is the only authority to take the decision relating to nationality, including deprivation of citizenship such as Russia,³³ Kazakhstan,³⁴ Turkmenistan,³⁵ Tajikistan,³⁶ Kyrgyzstan³⁷ and Ukraine.³⁸

Under Uzbek law, the general procedure for deprivation of citizenship is complicated and there is a lack of transparency. For example, deprivation of citizenship due to more than three years living as a permanent resident abroad is not registered at the consulate. According to the Regulation on the procedure for consideration of issues related to citizenship, the consul general independently determines the reasons for not registering at the consular on the basis of objective data. To determine such reasons for deprivation, there is no guideline for the consul general to evaluate excuses for not registering at the consulate. As the Human Right Council noted, the wide discretion of authority may lead to results in stateless. It stressed that the margin of discretion enjoyed by the State authority in the interpretation of law and readiness to deprive individuals. In some circumstances, national authority enjoys broad discretion in determining when to deprive a person of nationality. In this case, there is a risk that international standards prohibiting arbitrary deprivation of nationality may not be respected.

B. APPEAL RIGHTS

A comparative study of citizenship law shows that the practice of states varies on appeal rights. Some states explicitly safeguard the right to appeal any decision on nationalities such as Lebanon, Morocco, USA, UK, and Belgium³⁹. Some other states provide for an appeal right only with regard to certain

³² **McGuinness, Terry and Gower, Melanie** (2017) Deprivation of British Citizenship and Withdrawal of Passport Facilities, Briefing Paper No.06820, p.3 <researchbriefings.files.parliament.uk/.../SN06820.pdf > l.a.d. 14 April 2019.

³³ Article 29 of Russian Citizenship Law.

³⁴ Article 29 of Kazakhstan Citizenship Law.

³⁵ Article 24 of Turkmenistan Citizenship Law

³⁶ Article 31 of Tajikistan Citizenship Law

³⁷ Article 28 of Kyrgyzstan Citizenship Law

³⁸ Article 22 of Ukraine Citizenship Law

³⁹ See in more detail, **Lambert, Helene** (2015) Comparative Perspectives on Arbitrary Deprivation of Nationality and Refugees Status, *International and Comparative Law Quarterly*. 64 (1), p.2-37.

nationality decisions. Others do not allow an appeal, and all nationality decisions are considered only by the exclusive competence of the executive and are not subject to review. Such an approach may lead to process concerns as this leaves individuals more vulnerable to an abusive application of the law. Furthermore, the Explanatory Report to the European Convention on Nationality noted that all decisions must be subject to an administrative or juridical review. On the basis of this provision, individuals must enjoy a right of appeal against the decision relating to nationality. The procedural aspects of the implementation of this right are left to the internal law of each State.

III. DEPRIVATION OF CITIZENSHIP AND ARBITRARINESS IN REGIONAL HUMAN RIGHT COURTS

Arbitrariness related to deprivation of citizenship is more than lawfulness that includes standards of justice or due process consideration and non-discrimination⁴⁰. It should be noted that all deprivation of citizenship is not considered as arbitrary. However, sometimes states ignore such domestic law and deprive the individual of citizenship. Beyond that it is more problematic in states where lack of rule and independent justice system are. Several judgements and decisions on the revocation of citizenship which are taken by the European Court of Human Rights (ECHR), the Inter-American Court of Human Rights (IACHR), the African Commission on Human and Peoples' Rights, the African Committee of Experts on the Rights and Welfare of the Child. However, right to citizenship is not guaranteed by the European Convention of Human Right, arbitrary denial of citizenship may be an issue under some circumstances due to the impact of such denial on the private life of an individual⁴¹.

Deprivation of citizenship must be consistent with domestic law, in particular, it is consistent with the principles of proportionality, non-

⁴⁰ UN HRC, 'Human Rights and Arbitrary Deprivation of Nationality: Report of the Secretary- General', 19 December 2013, A/HRC/25/28.

⁴¹ *Karashev and Family v. Finland*, 31414/96, Council of Europe: European Court of Human Rights, 12 January 1999 <<https://www.refworld.org/cases,ECHR,45d076a92.html>> I.a.d. 08.04.2019; *Genovese v Malta*, Application no. 53124/09, Council of Europe: European Court of Human Rights, 11 October 2011, <<https://www.refworld.org/cases,ECHR,509ea0852.html>> I.a.d. 08.04.2019.

discrimination and due process⁴² in order to avoid being arbitrary. For example, the case of *K2 v. the United Kingdom* ECHR had addressed to the revocation of citizenship in the scope of national security concerns. The applicant was a naturalized British citizen and left the United Kingdom in breach of his bail conditions. Secretary of State for the Home Department made a decision that the applicant be deprived of his citizenship due to a risk of threat to public good. The applicant was also excluded from the United Kingdom on the ground that he was involved in terrorism-related activities, in particular, links related to several Islamic extremists. By contrast, the applicant alleged that the United Kingdom failed to provide adequate procedural safeguards in the scope of Article 8 rights of the Convention and he was unable to participate effectively in legal proceedings because of limited disclosure of the national security case. The Court noted that in order to determine arbitrariness related to revocation of citizenship, it will have regard whether the revocation was in accordance with law, if it was accompanied by the necessary procedural safeguards including whether the person deprived of citizenship was allowed the opportunity to challenge decision before courts affording the relevant guarantees; and whether authorities acted diligently and swiftly. The Court also pointed out that in determining the decision to deprive an individual of citizenship, it is necessary to apply a standard of “arbitrariness” which is a stricter standard than that of proportionality. Finally the Court found in the context of all these principles that revocation of citizenship, in this case, is not arbitrary⁴³. The European Court of Justice recent case demonstrates that deprivation of citizenship on the basis of deception may be implemented even though this leads to stateless. The Court in *Janko Rottmann v. Freistaat Bayern* case said that deprivation of citizenship on the ground of misrepresentation or fraud can be applied in the scope of the ECN and 1961 Convention in spite of that lead to statelessness. The Court also pointed out that these decisions need to take into account the principle of proportionality⁴⁴.

Unlike the European Convention on Nationality, the American Convention on Human Rights includes clearly expressed prohibition on

⁴² UNHCR ‘Tunis Conclusions’ (n 43) paras 15–27.

⁴³ *K2 v. the United Kingdom*, (Application no. 42387/13), Council of Europe: European Court of Human Rights, 9 March 2017 <<https://hudoc.echr.coe.int/eng-press#%20>> I.a.d. 21.04.2019.

⁴⁴ Case C-135/08 *Janko Rottmann v. Freistaat Bayern* [2 March 2010] CJEU.

arbitrary deprivation of nationality⁴⁵. There are two important decisions related to deprivation of nationality in practice of the Inter American Court of Human Rights. *Baruch Ivcher Bronstein v. Peru* case is based on arbitrary deprivation of citizenship because of national security concerns. The applicant, the owner of a Peruvian TV station, was alleged by the Fujimori regime on the ground that publishing material by Peruvian TV station threatened national security of the country. The Court observed that the applicant acquired Peruvian nationality through a “supreme resolution” of the President, and his nationality title was signed by the Ministry of Foreign Affairs. However, the applicant lost his citizenship as a result of a “directorial resolution” of the Migration and Naturalization Directorate, which is a lower rank than the authority that granted the corresponding rights. The Court found that this demonstrates the arbitrary character of the revocation of the applicant, in violation of Article 20/3 of the American Convention⁴⁶.

The case of the *Yean and Bosico Children v. The Dominican Republic* provides guidance from Inter-American Court of Human Rights in explaining to what extent it can be evaluated as arbitrary deprivation of citizenship. The Commission alleged that the Dominican Republic, in particular Registry Office authorities had rejected to register birth certificates for the Yen and Bosico children even though they were born within the State’s territory and Constitution of the Dominican Republic contained the principle of *ius soli* to determine those who have a right to Dominican citizenship. The Court determined that States have the obligation not to adopt practices or laws concerning the granting of nationality, the application of which fosters an increase in the number of stateless persons. This condition arises from the lack of nationality, when an individual does not qualify to receive this under the State’s laws, owing to arbitrary deprivation or the granting of a nationality that, in actual fact, is not effective. Statelessness deprives an individual of the possibility of enjoying civil and political rights and places him in a condition of extreme vulnerability. The Court found that for discriminatory reasons, and

⁴⁵ Article 20 of the American Convention on Human Rights; Organization of American States (OAS) American Convention on Human Rights, “Pact of San Jose”, Costa Rica, 22 November 1969 <<https://www.refworld.org/docid/3ae6b36510.html>> I.a.d. 21.04.2019.

⁴⁶ *Ivcher-Bronstein Case (Baruch Ivcher Bronstein vs. Peru)*, Inter-American Court of Human Rights (IACrHR), para 96, 6 February 2001 <<https://www.refworld.org/cases,IACRTHR,44e496434.html>> I.a.d. 14.04.2019.

contrary to the pertinent domestic norms, the State failed to grant nationality to the children, which constituted an arbitrary deprivation of their nationality, and left them stateless for more than four years and four months, in violation of Articles 20 and 24 of the American Convention⁴⁷.

The above cases clearly indicate that arbitrarily deprivation of citizenship including discriminatory grounds is considered a violation of the human right and it is prohibited in international law in case of that results in statelessness. It is well established that individual arbitrarily deprived of citizenship should be provided an opportunity to appeal and be guaranteed adequate procedural standards. The individual is also given opportunity and access to effective remedy. In light of all of these facts, it is questionable whether a lack of suspensive right of appeal in case of Uzbekistan, particularly without confirmation of decisions before loss of nationality can be considered a breach of international procedural rights.

IV. RECOMMENDATIONS

The Central Asian States except Kyrgyzstan provide no adequate safeguard against statelessness on the ground of voluntary deprivation of citizenship as reported by the UNHCR. Kazakhstan, Tajikistan, Turkmenistan and Uzbekistan in the context of their citizenship laws allow individuals to renounce their nationality without possessing or having an assurance of acquiring another nationality⁴⁸. In particular, loss of nationality for residence abroad without consular registration could be a serious problem on the ground that individuals would face a major risk of statelessness on account of massive labor migration from Uzbekistan to abroad. As previously noted, the 1961 Convention includes two key safeguards against statelessness in the scope of change of nationality. The first safeguards against statelessness is that “renunciation of nationality shall not result in loss of nationality unless the person concerned possesses or acquires another nationality”. The second safeguard against statelessness is that an individual who seeks naturalization in

⁴⁷ Case of the Yean and Bosico Children v. The Dominican Republic, Inter-American Court of Human Rights (IACrTHR), 8 September 2005, para.174 <<https://www.refworld.org/cases,IACRTHR,44e497d94.html>> I.a.d. 12.04.2019.

⁴⁸ UNHCR (2011) Statelessness in Central Asia (Prepared for UNHCR by Marjorie Farquharson), p.14.

a foreign state “shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country”.

Currently, there is no explicit definition of the role of international law in light of the current legal framework of Uzbekistan. For this reason, legal basis of an international convention is opaque in the Uzbek Constitution⁴⁹. The Preamble of the Uzbek Constitution references to international law that “... *recognizing priority of the generally accepted norms of the international law...*”. However, the Preamble of Constitution is no more than a declaration in accordance with Article 24 of the Law of Normative Legal Acts⁵⁰. Resulting from lack of role of international law in the context of Uzbekistan legislation, it would be seen as the main challenge of application of international norms. In the case of UCL, it is possible to apply international law based on Article 45. In accordance with Article 45 of UCL “*Where an international instrument of the Republic of Uzbekistan provides for rules other than those contained in the present law, the rules of the international instrument shall be applied*”.

Uzbekistan has entered a new era with a massive liberalization of the country including law and judicial system reforms in recent years. New reforms related to human rights, in particular, deprivation of citizenship would improve the image of the country in the international community. From this prospect, it is hopeful that Uzbekistan would review its citizenship law and adopt international instruments related to stateless persons. First of all, it is suggested that the role of international law in the context of Uzbekistan legislation should be clearly defined. Without the legal basis of international law in domestic legislation it is extremely difficult for an effective application of international standards including providing a safeguard against statelessness. Secondly, Uzbekistan should consider acceding the 1954 United Nations Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness and the 1997 European Convention on Nationality. These conventions provide an effective statelessness determination procedure. It also establishes a legal basis to protect stateless individuals and increase of awareness about statelessness among government institutions. Thirdly, on the

⁴⁹ Constitution of the Republic of Uzbekistan (Official Gazette 15.12.1992 - 243).

⁵⁰ Law of the Republic of Uzbekistan on Normative Legal Acts, 24.12.2012, No.342, Journal of Olii Majlis of Republic of Uzbekistan, 2012, No.52, Art.583.

level of domestic framework, Uzbekistan should review its Citizenship Law and other related regulations. As noted earlier, Uzbekistan Citizenship Law and other related regulation are not consistent with the minimum requirement of international standards. In particular, deprivation of citizenship in the context of Uzbekistan Citizenship Law is absent of predictability. The main features of national citizenship law are predictability and established by law. In the process of review, it is recommended to consider international minimum standards and provide clear, transparent, and predictable provisions. Last but not the least, one of the problems with deprivation of citizenship in arbitrariness in the context of Uzbekistan Citizenship Law is the absence of clear and predictable procedure. It is often illustrated in practice due to the deprivation of citizenship that citizenship law includes no adequate procedural standards and appeal rights. In light of all these considerations, it should be considered to provide appeal rights and guaranteed sufficient procedural rights in case of that deprivation of citizenship. It also considers that individual deprivation of citizenship would have access to effective remedy; specifically, decision should require judicial confirmation before the loss of citizenship.

CONCLUSION

The enjoyment of the right to a nationality is a fundamental right under international law of human rights. The deprivation of citizenship leads to legal consequences where an individual's citizenship can no longer be recognized by the State. Grounds for citizenship withdrawal is defined in national citizenship laws. At the same time, some international instruments contain the prohibition of deprivation under certain circumstances. This rule is not advisory, and the States must follow it. Furthermore, clearly defined, consistent with international norms, transparent right to appeal to nationality and predictability is the indispensable part of each State's citizenship laws.

It is difficult to say that provisions of citizenship withdrawal in the scope of UCL are consistent with minimum international standards. In the case of deprivation of citizenship as a result of residence abroad in the prolonged time, the UCL stipulates maximum three years when the 1961 Convention on the Reduction of Statelessness determines not less than seven consecutive years. Furthermore, the application of such provision provides broad discretion in

determining when to deprive a person of nationality. The most criticized aspect of authority discretion that is not limited, and there is no guidance to exercise discretion in administrative decision making regarding citizenship withdrawal. A lack of definition in that law not only creates a problem for individuals but also for practitioners. In this case, the conduct of authority carries certain risks to violate international standards related to the deprivation of citizenship.

In light of all defined legal gaps in the context of UCL, Uzbekistan should take steps to be coherent with minimum standards of international law. These recommended measures would concentrate on creating clear, transparency and predictability legal framework related to the deprivation of citizenship. By doing these recommendations, Uzbekistan would provide assurance to individual substantive and procedural rights in case of deprivation of citizenship.

BIBLIOGRAPHY

Baluarte, David (2017) The Risk of Statelessness: Reasserting a Rule for the Protection of the Right to Nationality, *Yale Human Rights and Development Law Journal*, Vol.19.

Bauböck, Rainer and Paskalev, Vesco (2015) Cutting Genuine Links: A Normative Analyses of Citizenship Deprivation, *Georgetown Immigration Law Journal* Vol: 30:47.

Cloots, Elke (2017) The Legal Limit of Citizenship Deprivation as a Counter-terror Strategy, *European Public Law*, Volume 1.

Esbroom, Leslie (2016) Citizenship Unmoored: Expatriation as a Counter – Terrorism Tool, *University of Pennsylvania Journal of International Law*, 37(4).

Fripp, Eric (2015) The Law and Practice of Expulsion and Exclusion from the United Kingdom: Deportation, Removal, Exclusion and Deprivation of Citizenship, Hart Publishing

Groot, Gerard-Rene and Vink, Maarten Peter (2014) A Comparative Analysis of Regulations on Involuntary Loss of Nationality in the European Union, CEPS Paper in Liberty and Security in Europe No.75

Kadelbach, Stefan and Roth-Insigkeit, David (2017) The Right to Invoke Rights as a Limit to Sovereignty – Security Interests, State of Emergency and Review of UN Sanction by Domestic Courts under European Convention of Human Rights, *Nordic Journal of International Law* 86(3).

Mantu, Sandra (2015) Contingent Citizenship: The Law and Practice of Citizenship Deprivation in International, European and National Perspectives, BRILL Nijhoff Publishing.

McGuinness, Terry and Gower, Melanie (2017) Deprivation of British Citizenship and Withdrawal of Passport Facilities, Parliamentary Briefing Paper No 06820, London: House of Common Library.

Spiro, Peter (2011) A New International Law of Citizenship, *The American Journal of International Law*, Volume 105 (4).

Spiro, Peter (2015) Terrorist Expatriation: All Show, No Byte, No Future, *EUI Working Papers RSCAS 2015/14*.

Wautelet, Patrick (2016) Deprivation of Citizenship for Jihadists: Analyses of Belgian and French Practice and Policy in Light of the Principle of Equal Treatment, Social Sciences Research Network.

Weis, Paul (1979) Nationality and Statelessness in International Law, Sijthoff & Nordhoff International Publishers, Second Edition.

Zwanenburg, Marten (2016) Foreign Terrorist Fighters in Syria: Challenges of the “Sending” State, International Law Studies Vol.92.