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TITLE

**Statelessness in the Region: The Status of Belonging to a Disputed
Territory**

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Introduction

The military escalation of the Nagorno-Karabakh conflict in April 2016 caused displacement of the people living in Nagorno-Karabakh to Armenia. A number of individuals arriving in Armenia from Nagorno-Karabakh held Armenian citizenship, while others held Nagorno-Karabakh citizenship and passports or there was lack of documents for identification. Thus, there was a barrier while providing humanitarian assistance to those people by the Office of the United Nations High Commissioner for Refugees (hereinafter: UNHCR), as their identification documents did not have a legal force at international level. Although, the people of Nagorno-Karabakh are under protection by the unrecognized state of Nagorno-Karabakh, while being in Armenia in April 2016 they were not able to receive the social security in Armenia, i.e. the elder people could not receive their pensions on Armenian bank accounts.¹ People receive passports, birth and marriage certificates by the authorities of Nagorno-Karabakh. The latter is an unrecognized state; therefore, the documents received by the authorities are not internationally recognized as well. However, this does not mean that the people were not born, or do not have a nationality or are not married. The significance of citizenship becomes apparent at this point.

The concept of citizenship originated in Greek city-states. Initially, citizens of the community were considered people who owned property (excluding women and the poor) and they had several rights and obligations, i.e. taxes were imposed on them, they were liable to military service, and, most importantly, they had the right to vote. Starting from the Middle Ages, with the development of the “national citizenship” concept and the feudal rights and obligations, the concept of citizenship, referring to the subordinate position of an individual, led to a change in the concept. Referring to citizenship as a relationship between a state and an individual, the state not only imposes obligations on its citizens but also provides them with protection. Among the rights and duties of a citizen, two of the rights are most commonly emphasized in a democratic state: the *right to vote* and the *right to hold a public office*.

A modern concept of citizenship denotes the fundamental element of identity, belonging to a state and having the protection of the latter. Due to the lack of citizenship people are deprived from the protection of the state and from exercising their basic rights. People are granted nationality based on several factors. Those factors include the place of birth, residence or any other relation between an individual and a state. Such a link is

¹ Report on Displacement in Armenia due to the escalation of the Nagorno-Karabakh (NK) conflict in April 2016, UNHCR, provided in hard copy

considered a “genuine link” or “genuine effective link” between a state and an individual. Around the world, majority of people readily establish such a tie, which is accepted by the concerned state. However, the issue of statelessness, in both of its forms of *de jure* and *de facto* statelessness, may also arise in the result of a relation between a state and an individual. The causes of the emergence of statelessness in large numbers may vary, starting from the refugee movements (most common form of nowadays as a consequence of military conflicts), the policy of governments of different states of denationalization of a large group of population, the formation of new states, etc.

The issue in Armenia has its roots dating back to the collapse of the Union of Soviet Socialist Republics (USSR). Being a citizen of USSR, there was not a deeply rooted issue of nationality; rather an incorporation of a citizen of the Union existed. As a permanent residence was considered to be the main criterion to acquire the Union citizenship (granted by the specific country within the Union), acquiring or loosing nationality was not a topic for debate. In September 1991 Armenia became independent. In December 1991 a referendum of independence was approved by 99,89% of voters in Nagorno-Karabakh.² The adoption of Constitutions followed the independence of Republic of Armenia and de-facto independence of Nagorno-Karabakh. This paper will focus on the possibility to determine the legal status of the people living in Nagorno-Karabakh, and the way in which international law deals with statelessness can be delineated in the determination of the status of people residing in a non-recognized state.

By discussing the legal basis for the referendum for independence conducted in Nagorno-Karabakh and the determination of an independent state in accordance to International law principles, the study will consider the legal status of the people living Nagorno-Karabakh from three perspectives:

1. the people of Nagorno-Karabakh as citizens of the Republic of Azerbaijan
2. the people of Nagorno-Karabakh as stateless persons
3. the people of Nagorno-Karabakh as citizens of the Republic of Armenia.

The Nagorno-Karabakh conflict and the settlement of the latter is one of the main issues Armenia is facing in international law and foreign policy. Moreover, the people who are left with no legal status is another challenge not only for Armenia, Azerbaijan or Nagorno-Karabakh, but for the international community as well. Besides for settling the conflict and

²The Referendum on Independence of the Nagorno-Karabakh Republic, *available at*

<http://www.nkr.am/en/independence-referendum-in-karabakh>

sustaining peace in the region, one of the major responsibilities of the international community is the protection of human rights, which should be ensured through the international conventions aiming to protect human rights and end statelessness as well.

The Paper is comprised of an introduction, two chapters and a conclusion, which includes a possible recommendation for tackling the issue. The Introduction gives an initial background to the issue, emphasizing the events where the issue became more visible, stressing the significance of a nationality and pointing the relevance of the issue for Armenia. The first chapter comprises of two parts. The first part gives a background to the legal status of Nagorno-Karabakh in legal documents applicable in the USSR and the reason Nagorno-Karabakh remained an unrecognized state. The second part discusses the current legal status and de facto status of Nagorno-Karabakh in accordance with domestic and International law. The second chapter comprises of three parts. The parts discuss the legal status of people living in Nagorno-Karabakh as (i) citizens of the Republic of Azerbaijan, (ii) stateless persons and (iii) as citizens of the Republic of Armenia respectively. The conclusion draws implications from the findings of the study and suggests possible recommendation.

Chapter 1: Background to the Issue

Nagorno-Karabakh after the collapse of the USSR

Article 3 of the Soviet Law “On the Procedure for Resolving Problems on the Secession of a Union Republic from the USSR”, adopted on April 3, 1990, allows the autonomous republics and regions to decide the issue of their independence and initiate the process thereof, stating that: “In a Union republic which includes within its structure autonomous republics, autonomous oblasts, or autonomous okrugs, the referendum is held separately for each autonomous formation. The people of autonomous republics and autonomous formations retain the right to decide independently the question of remaining within the USSR or within the seceding Union republic, and also to raise the question of legal status of their state”.³

The Soviet law “On the Procedure for Resolving Problems on the Secession of a Union Republic from the USSR” was adopted by the Supreme Soviet and was absolutely binding for all the republics and autonomous regions of the USSR. On August 23, 1990 the Supreme Council of the Armenian Soviet Socialist Republic, “... proceeding from the principles of the Universal Declaration on Human rights and the generally recognized norms of international law; exercising the right of nations to self-determination, ...”⁴ began the process of independence through the adoption of “Declaration of Independence of Republic of Armenia”. On September 21, 1991, based on the results of a conducted referendum, Armenia became an independent state.⁵

On September 2, 1991, in accordance with Article 3 of the Law “On the Procedure for Resolving Problems on the Secession of a Union Republic from the USSR”⁶ Nagorno-Karabakh triggered the process of independence through the adoption of the “Declaration of Independence of the Republic of Nagorno-Karabakh”, which was in compliance with the existing Soviet law.⁷

The Republic of Nagorno-Karabakh held the referendum of independence on December 10, 1991. Out of the total number 132.328 registered voters 82.2 percent took part in the Referendum, and 99 percent was in favor of independence.⁸ According to the

³ Law on Succession from the USSR N 1409-I, Supreme Council USSR, 90-15, 1990 April, *available at* <http://soviethistory.msu.edu/1991-2/shevardnadze-resigns/shevardnadze-resigns-texts/law-on-secession-from-the-ussr/>

⁴ Armenian Declaration of Independence, Supreme Council of the Armenian Soviet Socialist Republic, *available at* <http://www.gov.am/en/independence/>

⁵ Ibid.

⁶ See footnote 3.

⁷ See footnote 2.

⁸ Ibid.

conclusion made by independent observers, the whole process of the Referendum (the voting, vote count, the distribution of bulletins among the Azerbaijani-populated settlements of Nagorno-Karabakh and considering their refusal to participate in the Referendum) was in accordance with the existing law. With the adoption of the “Declaration on State Independence of the Republic of Nagorno-Karabakh” on January 6, 1992, Nagorno-Karabakh’s perspective was to ensure the right of people to self-determination and to establish relations with both Armenia and Azerbaijan as an independent state. Based on the existing domestic legislation and the above-mentioned facts Nagorno-Karabakh, being an autonomous region, should have gained independence. The Azerbaijani population, who was living in Nagorno-Karabakh and refused to participate in the Referendum, was in favor of the aggression initiated by Azerbaijan against Nagorno-Karabakh. On the day of the Referendum, the Armenian settlements, including Stepanakert were fired at.

On the other side, Azerbaijan SSR’s Supreme Soviet adopted declaration on “Re-establishment of the State Independence of the Republic of Azerbaijan” on August 30, 1991.⁹ By the adoption of “Constitutional Act on State Independence” the Republic of Azerbaijan confirmed its independence on October 18, 1991.¹⁰ The act indicated Azerbaijan’s secession from the USSR. By declaring the establishment of the Soviet power in Baku illegal, the Republic of Azerbaijan rejected the whole Soviet political and legal heritage.¹¹ It was clear, that by rejecting the Soviet legal heritage of 1920-1991, Azerbaijan would have to accept the legal status of Nagorno-Karabakh. Thus, the latter was unfavorable for Azerbaijan, as the Law “On the Procedure for Resolving Problems on the Secession of a Union Republic from the USSR” would apply, and Nagorno-Karabakh would have gained independence.

During all the above-mentioned time period the aggression gradually evolved into a large-scale war. After six years of armed conflict, through the 1994 ceasefire Armenian forces became in de facto control of Nagorno-Karabakh. At this point, it seems there is a clash between the principles of self-determination and territorial integrity. Nagorno-Karabakh tries to ensure the right to self-determination, while Azerbaijan claims territorial integrity.

⁹ Declaration of the Supreme Soviet of the Azerbaijan Republic on “Re-establishment of the State Independence of the Azerbaijan Republic”, Bakinski Rabochi, August 31, 1991.

¹⁰ Constitutional Act of the Republic of Azerbaijan on the Independence of The Republic of Azerbaijan, available at <http://azerbaijan.az/portal/History/HistDocs/Documents/en/09.pdf>

¹¹ Avakian, Shahan, *Nagorno Karabakh Legal Aspects*. 18 (2013). available at [https://www.mfa.am/filemanager/Statics/nk-eng-2014%20\(1\).pdf](https://www.mfa.am/filemanager/Statics/nk-eng-2014%20(1).pdf)

Nagorno-Karabakh as an Independent State

Through the full-scale war and the rejection of the recognition of the legal status of Nagorno-Karabakh by Azerbaijan, Nagorno-Karabakh started the formation of an independent state. Relying on the fact, that the Referendum conducted and the Declaration of Independence were in accordance with the internal and international legal norms, Nagorno-Karabakh succeeded in establishing the attributes and complying with the international requirements of being an independent state for the past two decades. Operating as an autonomous region in the USSR Nagorno-Karabakh could develop the political structures, executive, legislative and judicial branches, armed forces and to maintain national security as an independent state.

International law provides the applicable criteria for determination of statehood in accordance with the Montevideo Convention on Rights and Duties of States.¹² The four elements that are stipulated in Article of the Montevideo Convention are the necessary requirements to define statehood. The Montevideo Convention, being a treaty concluded between the American States, should have been applied to the signatories and generally parties to the Convention. However, the Montevideo Convention is a codification of the Customary International Law, can be applied as general norms of international law to all the subjects of international law, rather to only the signatories of the Convention. Article 38(1)(b) of the Statute of the International Court of Justice finds the international custom “as evidence of general practice accepted as law”.¹³ It is clearly stated in the North Sea Continental Shelf cases and restated in the case of Nicaragua v. United States that the international custom consist of state practice and opinio juris.^{14,15} Both of the elements can be found in the Opinions of the Arbitration Commission of the Conference on Yugoslavia.¹⁶ Applying the criteria of defining statehood stipulated in the Montevideo Convention the Arbitration Commission decided on the Socialist Federative Republic of Yugoslavia. In Opinion N 1 of the Arbitration Commission the definition given in regard to the defining statehood in

¹² The Montevideo Convention on the Rights and Duties of States, opened for signature December 26 1933, 165 LNTS 19 (entered into force December 26 1934), *available at* <https://www.cambridge.org/core/books/international-law-documents/montevideo-convention-on-rights-and-duties-of-states/>

¹³ Statute of the International Court of Justice, Chapter II, *available at* https://www.icj-cij.org/en/statute#CHAPTER_II

¹⁴ Continental Shelf (Libyan Arab Jamahiriya v. Malta), 1985, I.C.J. Rep 13 [27].

¹⁵ Military and Paramilitary Activities in and Against Nicaragua (*Nicaragua v. United States of America*) (Judgment), 1986, ICJ Rep 14 [183].

¹⁶ B. G Ramcharan, *The International Conference on the Former Yugoslavia: Official Papers*, Volume 2. 1260, (BRILL, 1997).

accordance to the criteria set up Montevideo Convention constitutes an opinion juris, stating that, “The state is commonly defined as a community which consists of a territory and a population subject to an organized political authority; that such a state is characterized by sovereignty.”¹⁷ Therefore, the Montevideo Convention, setting the widely accepted criteria of defining statehood in International law, is considered as a codification of Customary International law.¹⁸ Constituting a part of Customary International law, the criteria of statehood is applied to discuss the state of Nagorno-Karabakh.

According to the principles of international law and as stated in Article 1 of the “Montevideo Convention on Rights and Duties of States”, “the state as a person of international law should possess the following qualifications: (a) a permanent population; (b) a defined territory; (c) government; and (d) capacity to enter into relations with other states.”¹⁹ A contradiction exists in Declarative and Constitutive theories of statehood in regard to the recognition by third states. Declarative theory states that the entity’s statehood is independent of its recognition by other states and shows the state’s readiness to recognize and establish relations with a self-declared state. While Constitutive theory of statehood regards state recognition as another condition for the establishment of an independent state.²⁰

In accordance with the principles of international law, Nagorno-Karabakh possesses the following elements:

1. Permanent Population: The population of Nagorno-Karabakh is about 143,574 with 95% Armenians and 5% minorities.²¹ Thus, the majority of people living in Nagorno-Karabakh form a homogenous group, with the existence of the Law on “Nationality of the Republic of Nagorno-Karabakh”.

2. A Defined Territory: Republic of Nagorno-Karabakh exercises its jurisdiction on a defined territory.

3. A Government: Being a presidential republic Nagorno-Karabakh has an effective control of its defined territory and exclusive jurisdiction on the territory and people living in Nagorno-Karabakh. The Constitution of the Republic of Nagorno-Karabakh states that Nagorno-Karabakh is a “sovereign, democratic, social State governed by the rule of law”. It exercises its power in accordance with the separation of powers and checks and balances system, holds regular elections.

¹⁷ Ibid.

¹⁸ Joshua Castellino, *International Law and Self-Determination: The Interplay of the Politics of Territorial Possession With Formulations of Post-Colonial National Identity*. 77 (2000).

¹⁹ See footnote 12.

²⁰ See footnote 11.

²¹ Ibid.

4. Capacity to enter into relations with other states: The Republic of Nagorno-Karabakh establishes both official and non-official relations with several countries. The National assembly of Nagorno-Karabakh established relations with the Parliaments of Russian federation, France, Great Britain, etc and European Parliament; Government of Nagorno-Karabakh engages in cooperation with states; Nagorno-Karabakh has representative offices in the Republic of Armenia, the United States of America, France, Germany, Russia, Australia and Lebanon. While Nagorno-Karabakh participates in the negotiation process for the peaceful settlement of the conflict; Nagorno-Karabakh officials sign the documents prepared by international forums of individual states and OSCE Minsk Group Co-Chairs travel to Nagorno-Karabakh and meet the authorities of Karabakh, Azerbaijan still rejects both the recognition and any relation with Nagorno-Karabakh.²²

Nagorno-Karabakh meets the above-mentioned requirements, however, the point of “being recognized by other states”, though it is not an obligatory requirement for states, is the main issue in this case. The independent state of Nagorno-Karabakh is not recognized by any state, including Republic of Armenia. Though Armenia does not recognize the de facto independent state, it is in close relations with Nagorno-Karabakh. The cooperation frame enhances over all of the operating fields, including armed forces, infrastructure, economic and social development. Thus, Armenia informally sees Nagorno-Karabakh as an independent state and emphasizes in its foreign policy the right of people of Nagorno-Karabakh to self-determination, as well as, the uninterrupted land communication with Armenia, under jurisdiction of the Armenian side.⁷ On contradiction to several sources considering Nagorno-Karabakh as a part of Armenia, the latter does not hold an official position over this issue: it neither recognizes Nagorno-Karabakh as an independent state, nor claims over the unification of it with the Republic of Armenia.

²² Ministry of Foreign Affairs of the Republic of Nagorno-Karabakh, International Cooperation, available at <http://www.nkr.am/en/international-cooperation>

Chapter 2: The Legal Status of the people living in Nagorno-Karabakh

People residing in Nagorno-Karabakh referred to as citizens of the Republic of Azerbaijan

On 25 April 2008 the United Nations General Assembly, recalling the Security Council resolutions, as well as General Assembly resolution 60/285 of 7 September 2006, entitled “The situation in the occupied territories of Azerbaijan”, adopted resolution 62/243 of the same title as the resolution 60/285. The resolution 62/243 reads as follows:

1. Reaffirms continued respect and support for the sovereignty and territorial integrity of the Republic of Azerbaijan within its internationally recognized borders;
2. Recognizes the necessity of providing normal, secure and equal conditions of life for Armenian and Azerbaijani communities in the Nagorno-Karabakh region of the Republic of Azerbaijan, which will allow an effective democratic system of self-governance to be built up in this region within the Republic of Azerbaijan.²³

Nagorno-Karabakh, being a disputed territory, is internationally recognized as a part of Azerbaijan. Thus, Azerbaijan claims that the people living in Nagorno-Karabakh are nationals of Azerbaijan. On the other, in the current situation, Nagorno-Karabakh is a disputed territory. Inside or outside the territory of Azerbaijan, the possession of Azerbaijani nationality would mean a de facto statelessness for the people of Nagorno-Karabakh. David Weissbrodt, a human rights advocate and scholar of international human rights law, enhances the definition of de facto statelessness, incorporating human rights values, stating that, “De facto statelessness can occur when governments withhold the usual benefits of citizenship, such as protection, and assistance, or when persons relinquish the services, benefits, and protection of their country. Put another way, persons who are de facto stateless might have legal claim to the benefits of nationality but are not, for a variety of reasons, able to enjoy these benefits. They are, effectively, without a nationality.”²⁴ The reason of why the Azerbaijani nationality will be considered an ineffective one for people of Nagorno-Karabakh, and why they will not be protected by the state lies in the essence of the Armenophobic policy of Azerbaijan, and the anti-Armenian sentiments both inside and outside the territory of Azerbaijan. The policy is continuous in nature, starting from historic events up until now.

²³ United Nations General Assembly, Resolution 62/243 on *The situation in the occupied territories of Azerbaijan*. (2008).

²⁴ David S. Weissbrodt, *The Human Rights of Non-citizens*, Oxford University Press. 84 (2008).

The majority of the population of Azerbaijan is Muslim Azerbaijanis, while in Nagorno-Karabakh the population is Christian Armenians. Throughout the history of Azerbaijan, including the period of being a member of the USSR, up until now the Azerbaijani policy is characterized by hatred and discrimination against Armenians, considering them as their number 1 enemy. Starting from historic events, when the demographics of Armenians living in Azerbaijan and Nagorno-Karabakh has drastically changed as a result of ethnic cleansings carried out by Azerbaijan, the image of discrimination of Armenians becomes more visible. One of the actions organized by Azerbaijan was the massacre of Armenians in the city of Sumgait – the third largest city in Azerbaijan – in 1988.²⁵ This massacre in Sumgait was the beginning of the pogroms and other massacres of Armenian population in the territory of Azerbaijan. With the course of the full scale war, that broke out over Nagorno-Karabakh, Azerbaijan tried to carry out ethnic cleansings in Nagorno-Karabakh by several operations. However, by pushing back the Azerbaijani armed forces from Nagorno-Karabakh (as a last target for ethnic cleansings), ethnic Armenians remained to live in there up until now.

The most obvious evidence of the anti-Armenian policy and hatred was the Ramil Safarov case. Azerbaijani army officer Ramil Safarov and Armenian army officer Gurgen Margaryan were participants of a training course organized by NATO in Hungary in 2004. The Azerbaijani military hacked the Armenian military in the latter's room with an axe while he was asleep. Ramil Safarov was arrested by Hungarian police, was convicted of murder and sentenced to life imprisonment, with a possible release after 30 years, by courts of Hungary. In 2012, after the Ministry of Justice of Azerbaijan informed that the enforcement of sentence would continue to be served in Azerbaijan, the Hungarian authorities transferred Ramil Safarov to Azerbaijan. Ramil Safarov was granted a presidential pardon and released after arriving in Azerbaijan, was promoted and received benefits inside the state. Though Hungarian government disapproved the pardon, Hungarian Ombudsman in his report stated, that the Hungarian authorities agreed to extradition of Ramil Safarov without any assurance received from the Republic of Azerbaijan. In the application to the European Court of Human Rights the applicants (Makuchyan and Minasyan in the case of “Makuchyan and Minasyan v. Azerbaijan and Hungary”) complain of a violation of Article 2 of the ECHR by Azerbaijan in relation to the murder by Azerbaijani military officer and the presidential pardon letting Ramil Safarov prevent his sentence; Article 14 in conjunction with Article 2 in relation to the crime, that was ethnically motivated and was welcomed by the Azerbaijani president; and

²⁵ Shavarsh Kocharyan, *Why is the Nagorno-Karabakh Conflict Still Not Resolved?*, 7 (2016). available at https://www.mfa.am/filemanager/Statics/A_nkr_en.pdf

Article 2 in relation to granting the request of extraditing Ramil Safarov by Hungary, without having any assurance that he would serve his sentence in Azerbaijan.²⁶

Moreover, grave violations of International Human Rights Law continued in April, 2016. At the beginning of the military escalation of the Nagorno-Karabakh conflict, as a result of shelling of a school by Azerbaijani armed forces, a student was killed, and 4 students were heavily wounded. Alongside with keeping the population under bombardment and shelling the residential buildings and houses, Azerbaijani armed forces committed several violent acts. One of those acts was committed in the village of Talish, which is a bordering village and was attacked heavily during several days of military escalations. By entering the village early in the morning, Azerbaijani soldiers committed acts of brutality against Armenian population. In particular, within few hours, destroyed the houses, tortured and killed several old people by cutting their ears.²⁷ Article 32 of the Geneva Convention of 1949 states that High Contracting Parties agree that they are prohibited to take any measure of a character to cause physical suffering or extermination of protected persons in their hands.¹⁴ Both Armenia and Azerbaijan are parties to the Convention.¹⁵ Besides during the escalation of the military conflict, several soldiers of Nagorno-Karabakh were beheaded and killed. According to different media reports, the severed heads of the soldiers were shown to the public living in the nearest villages. While returning the bodies of the soldiers of the Nagorno-Karabakh Defense Army, the Nagorno-Karabakh State Commission on Prisoners of War, Hostages and Missing Persons, at the presence of the representatives of the International Committee of the Red Cross, registered that there were signs of torture and mutilation on the bodies of all of the soldiers.²⁸ The discussed acts are violations of International Human Rights Law and Humanitarian Law. Moreover, Article 34(1) of the 1977 Protocol Additional to the Geneva Conventions of 12 August 1949 stipulates, “The remains of persons who have died for reasons related to occupation or in detention resulting from occupation or hostilities and those of persons not nationals of the country in which they have died as a result of hostilities shall be respected, and the gravesites of all such persons shall be respected...”²⁹

The above discussed examples clearly show that Azerbaijan acts with motivation of hatred against ethnic Armenians inside or outside its territory. The Armenophobic policy, the

²⁶ *Makuchyan and Minasyan v. Azerbaijan and Hungary*, 17247/13 [Section IV], Information Note N 193, (2016).

²⁷ Human Rights Defender, Interim Public Report on *ATROCITIES COMMITTED BY AZERBAIJANI MILITARY FORCES AGAINST THE CIVILIAN POPULATION OF THE NAGORNO KARABAKH REPUBLIC AND SERVICEMEN OF THE NAGORNO KARABAKH DEFENCE ARMY ON 2-5 APRIL 2016*, 17, available at http://www.ombudsnkr.am/Interim_Public_Report_NKR_Omb_FINAL.pdf

²⁸ *Ibid.*

²⁹ 1977 Protocol Additional to the Geneva Conventions of 12 August 1949, art. 34(1), available at https://www.icrc.org/en/doc/assets/files/other/icrc_002_0321.pdf

ethnic cleansings, the propaganda against Armenians is spread among all layers of the population, the media and among the high-ranking officials. Azerbaijan claims over Nagorno-Karabakh ensuring the existence of a separate democratic entity within its territory, as well as the equal rights and protection of the Armenian population. Considering the acts of severe brutality and constant ethnic cleansing of Armenians throughout history, the nationality of Azerbaijan will not be considered an effective nationality for Armenian population and will leave them de facto stateless, in a reasonable fear of being persecuted, if no massacre occurs.

The term “effective nationality”, as known as Nottebohm principle, is upheld by the International Court of Justice in the case of *Liechtenstein v. Guatemala*. In the case, Liechtenstein claimed compensation and restitution from Guatemala reasoning that Guatemala acted towards Friedrich Nottebohm, who was a citizen of Liechtenstein, in manner that is in contradiction to international law. In the judgment of April 6, 1955, the International Court of Justice held that the Liechtenstein’s claim was inadmissible on a ground, which was related to the nationality of Mr. Nottebohm. The bond of nationality between an individual and a state ensures the state with the right to put an international claim on the behalf of the individual. Being a national of Germany, Mr. Nottebohm resided in Guatemala. While being on a visit to Europe he acquired nationality of Liechtenstein and went back to Guatemala staying there until was removed as a result of Second World War measures. On an international level, the nationality granted by one state is recognized by other states only if it represents a genuine link between the state and the individual. Mr. Nottebohm did not hold a genuine link to Liechtenstein. Thus Liechtenstein was not entitled to put forward an international claim on behalf of Mr. Nottebohm against Guatemala. The Court held that, “ That naturalization was not based on any real prior connection with Liechtenstein, nor did it in any way alter the manner of life of the person upon whom it was conferred in exceptional circumstances of speed and accommodation. In both respects, it was lacking in the genuineness requisite to an act of such importance, if it is to be entitled to be respected by a State in the position of Guatemala.”³⁰

Though the application of the Nottebohm principle had been applied in relation to cases covering dual citizenship, in the *Liechtenstein v. Guatemala* case it was applied for determination of nationality. Applying the principle of effective nationality and genuine link to the people living in Nagorno-Karabakh, two discussions should be implied. Firstly, based

³⁰ Nottebohm Case (*Liechtenstein v. Guatemala*), second phase, Judgment of April 6th, 19 55, I.C. J. Reports (1955).

on the above mentioned facts and cases relating to the policy of Azerbaijan against Armenians, Azerbaijani nationality cannot be considered as an effective nationality for those people. Secondly, people living in Nagorno-Karabakh are not Azerbaijani nationals either by birth or by naturalization. Considering also the demographical, religious, traditional, social and cultural factors on one side, and the fear of persecution on the other side, Nagorno-Karabakh people do not hold a genuine link to Azerbaijan. Neither the Azerbaijan's sole purpose and claim over the territory and the territorial integrity of Azerbaijan does create a genuine link of the Nagorno-Karabakh people with Azerbaijan.

Throughout the history Azerbaijan failed to ensure the democratic, social and economic development of Nagorno-Karabakh. Furthermore, the failure to do in all aspects was accompanied by an implementation of a policy of ethnic cleansing. At all levels of the society, as well as at state level, Azerbaijan supports the anti-Armenian sentiments and considers a murder of an Armenian not a criminal act, the perpetrator of which should be punished, but a heroic act with promotions and social advantages at the state level. The discussed points are the strongest arguments for claiming the inefficiency of the Azerbaijani nationality for people living in Nagorno-Karabakh and the absence of a genuine link to the Republic of Azerbaijan, as well as for the right of the people living in Nagorno-Karabakh to self-determination.

People residing in the Republic of Nagorno-Karabakh referred to as stateless persons: Analysis within legal framework of the legislations of Republic of Armenia, Republic of Nagorno-Karabakh and International Conventions

Article 1(1) of the 1954 Convention relating to the Status of Stateless Persons defines the term “stateless person” as “a person who is not considered as a national by any State under the operation of its law”. Part 2 of Article 1 states that this Convention shall not apply:

- (i) To persons who are at present receiving from organs or agencies of the United Nations other than the United Nations High Commissioner for Refugees protection or assistance so long as they are receiving such protection or assistance;
- (ii) (ii) To persons who are recognized by the competent authorities of the country in which they have taken residence as having the rights and obligations which are attached to the possession of the nationality of that country.³¹

Nagorno-Karabakh, having the characteristics of a democratic state issues citizenship of Republic of Nagorno-Karabakh to its citizens. However, the citizenship, as the state itself, is

³¹ 1954 Convention relating to the Status of Stateless Persons, *available at* https://www.unhcr.org/ibelong/wp-content/uploads/1954-Convention-relating-to-the-Status-of-Stateless-Persons_ENG.pdf

not internationally recognized and does not have a legal status. Though Republic of Nagorno-Karabakh ensures that its citizens can exercise their rights and provides them with protection, not being internationally recognized state makes its citizens belong to a non-state, a disputed territory. On the bases of the definition of stateless persons mentioned above, the people living in Nagorno-Karabakh are nationals by the state of Nagorno-Karabakh. Thus, taking into consideration the absence of a legal status of the state, these citizens do not belong to a recognized state.

Article 1(1) of the 1961 Convention on the Reduction of Statelessness provides that a “Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted: (a) at birth, by operation of law, or (b) upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this Article, no such application may be rejected.” Furthermore, Part 2(d) of Article 1 follows that a “Contracting State may make the grant of its nationality in accordance with sub-paragraph (b) of paragraph 1 of this Article if the person concerned has always been stateless.”³² Thus, the definitions set in articles of both of the Conventions do not include the characteristics of the case of people who live in Nagorno-Karabakh.

Office of the United Nations High Commissioner for Refugees (UNHCR) suggests the *de facto* statelessness of persons along with *de jure* statelessness of persons who are not refugees.³³ The 1954 Convention and the 1961 Convention on the Reduction of Statelessness provide definition, protection by Contracting States for *de jure* statelessness. According to UNHCR, the *de facto* statelessness is the lack of effective nationality. The common definition of *de facto* statelessness states that *de facto* stateless persons should be outside of their State of nationality and do not have the protection of the State. However, after the collapse of the Soviet Union, the former Socialist Federal Republic of Yugoslavia and Czechoslovakia initiated the expansion of the term “*de facto* stateless persons”, arguing that the traditional definition cannot fully reconcile with the new condition of people. Carol Batchelor, Director of the Division of International Protection of UNHCR, argues: “Given the developments in practice relating to asylum seekers over the years, and the number of persons who do not receive citizenship in their country of habitual residence but continue to live there, it has become clear that not all *de facto* stateless persons are refugees. This is complicated by the various positions adopted by States on nationality status, the State of residence, for example, insisting that the persons concerned have nationality in the State where a previous generation

³² 1961 Convention on the Reduction of Statelessness, *available at* https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&clang=_en

³³ Hugh Massey, *Legal and Protection Policy Research Series: UNHCR and De Facto statelessness*. 27 (2010)

held citizenship, while the latter State refuses to grant nationality insisting that the persons concerned should have nationality where they were born or reside.”³⁴ This tends to suggest that a person can be de facto stateless outside, as well as inside the country of his nationality, proved by several scenarios described by Batchelor. The term of statelessness incorporates two discussions:

1. Whenever a state applies rules for avoiding statelessness, the latter highly relies on the definition of stateless persons. As discussed above, the de jure stateless person is the person, “who is not considered as a national by any state under the operation of its law”.³⁵ On the other hand, there are cases, when persons acquire a nationality, but they do not have the rights related to the nationality and do not have a protection within the state. This means that they lack an effective nationality. The ineffective nationality causes a de facto statelessness.
2. De facto statelessness, from another perspective, suggests that a person can acquire a certain nationality of a state, however, no effective link can exist between the state and the person. Thus, making the nationality ineffective and leaving the person without a state protection. Relating to the definition of statelessness, the state, where the person has a habitual residence, incorporates the rules to avoid the status of statelessness.

Whatever extent the definition of the de facto statelessness be flexible, it has a defined description: whether the persons, in case of possessing a nationality of a certain state, lacking the rights and protection (when the states refuse to give) or those persons cannot effectively exercise their nationality. However, it should be emphasized that it is up to the states to decide on the certain definition of de facto statelessness.

With respect to preventing and reducing statelessness the Law of the Republic of Armenia on Citizenship states, that “A person not holding Armenian citizenship can be granted Armenian citizenship without fulfilling the requirements of points 1) and 2) of part 1 of this article (discussed below) if the person has been recognized as a refugee in the Republic of Armenia or is a stateless person who resides in the Republic of Armenia.”³⁶ The issue is, as Nagorno-Karabakh is not considered as parts of Armenia, people living in Nagorno-Karabakh are not considered residents in Armenia. At this point, granting

³⁴ Ibid.

³⁵ See footnote 31.

³⁶ Հայաստանի իրավական տեղեկատվական համակարգ, Հայաստանի Հանրապետության Օրենքը Հայաստանի Հանրապետության Քաղաքացիության մասին, *available at* <https://www.arlis.am/DocumentView.aspx?docID=57692>

citizenship is the political policy of Armenia in respect to the determination of legal status of Nagorno-Karabakh.

Preventing and reducing statelessness in its territory is the obligation of the Republic of Armenia undertaken by international conventions and treaties to end statelessness. Thus, by granting Armenian citizenship to people living in Nagorno-Karabakh based on ethnicity and through a simplified procedure (see discussion in detail below), Armenia takes steps to reduce statelessness in the region.

Armenia has undertaken international obligations in the field of statelessness and nationality by two international institutions it is a member of - the United Nations and the Council of Europe. It has been a member of the United Nations since 1992³⁷ and ratified two significant conventions on statelessness – the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.^{38 39} Moreover, Armenia is a Party to several UN treaties, several provisions of which address the issues of statelessness and nationality. Such treaties are the 1966 International Covenant on Economic, Social and Cultural Rights;⁴⁰ the 1966 Convention on the Elimination of All Forms of Racial Discrimination;⁴¹ the 1989 Convention on the Rights of the Child;⁴² etc. International treaties ratified by Armenia constitute a part of the Armenian legal system. Article 5 of the Constitution of the Republic of Armenia states, that in case there is a conflict between the norms defined by international treaties and domestic laws, the internal treaty norms shall apply.⁴³ However, for an effective implementation of international norms, they should be incorporated into the domestic legislation.

The second international institution is the Council of Europe, to which Armenia is a member since 2001.⁴⁴ However, Armenia has neither signed nor ratified the two conventions having a significant relevance in the field of statelessness. Those conventions are the 1997 European

³⁷ Ministry of Foreign Affairs of the Republic of Armenia, *available at* <https://www.mfa.am/hy/international-organisations/12>

³⁸ See footnote 31.

³⁹ See footnote 32.

⁴⁰ 1966 International Covenant on Economic, Social and Cultural Rights, *available at* https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=I-1&chapter=1&clang=_en

⁴¹ 1966 Convention on the Elimination of All Forms of Racial Discrimination, *available at* https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=I-1&chapter=1&clang=_en

⁴² 1989 Convention on the Rights of the Child, *available at* https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=I-1&chapter=1&clang=_en

⁴³ RA Const. art. 5

⁴⁴ Ministry of Foreign Affairs of the Republic of Armenia, *available at* <https://www.mfa.am/en/international-organisations/5>

Convention on Nationality⁴⁵ and the Convention on the Avoidance of Statelessness in relation to State Succession.⁴⁶

The definition of stateless persons, being it de jure or de facto, throughout the enhancement of the latter includes all the possible situations and causes people are left without citizenship. However, the definitions cover the cases when one of the parties is a recognized state and does not enhance its framework towards involving the persons who belong to a non-recognized as well.

People residing in Republic of Nagorno-Karabakh referred to as Armenian citizens: Analysis within legal framework of Republic of Armenia and Republic of Nagorno-Karabakh

The Republic of Armenian being a part of the Union of Soviet Socialist Republics (USSR) incorporated the concepts of citizenships established by the laws of USSR. Thus, the citizen of a specific Republic of the Union held USSR citizenship. The issue of acquiring nationality was a key point in the integrated concept of Union citizenship. Armenian practice suggested that the Armenian citizens were considered the people who were issued the passports by Armenian Soviet Socialist Republic. Therefore, residence of people had a decisive role on determination of nationality. There was even absence of laws regulating the acquisition or loss of nationality in several Union Republics.

In September 1991 the Republic of Armenia became independent. In December 1991 a referendum of independence was approved by 99,89% of voters in Nagorno-Karabakh (now Nagorno-Karabakh).⁴⁷ The adoption of Constitutions followed the independence of Republic of Armenia and de-facto independence of Nagorno-Karabakh. The Constitutions of Republic of Armenia and Republic of Nagorno-Karabakh provide the core principles in the citizenship policy developed by both countries. The citizenship of Armenia and Nagorno-Karabakh are granted both by birth and by naturalization. Article 47 of the Constitution of Republic of Armenia⁴⁸ stipulates the right to citizenship by stating:

1. A child born to citizens of the Republic of Armenia shall be a citizen of the Republic of Armenia.
2. Every child with one of the parents holding citizenship of the Republic of Armenia shall have the right to acquire citizenship of the Republic of Armenia.

⁴⁵ 1997 European Convention on Nationality, *available at* https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/166/signatures?p_auth=K6JVqC0D

⁴⁶ Convention on the Avoidance of Statelessness in relation to State Succession, *available at* https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/200/signatures?p_auth=K6JVqC0D

⁴⁷ See footnote 2.

⁴⁸ RA Const. art. 47.

3. Armenians by national origin shall have the right to acquire citizenship of the Republic of Armenia upon settling in the territory of the Republic Armenia.
4. Armenians by national origin shall acquire citizenship of the Republic of Armenia through a simplified procedure prescribed by law.

Similarly, Article 47 of the Constitution of Republic of Nagorno-Karabakh⁴⁹ states:

1. A child born to citizens of the Republic of Nagorno-Karabakh shall be a citizen of the Republic of Nagorno-Karabakh.
2. Every child with one of the parents holding citizenship of the Republic of Nagorno-Karabakh shall have the right to acquire citizenship of the Republic of Nagorno-Karabakh.
3. Ethnic Armenians shall have the right to acquire citizenship of the Republic of Nagorno-Karabakh upon residing in the territory of the Republic of Nagorno-Karabakh.
4. Ethnic Armenians shall acquire citizenship of the Republic of Nagorno-Karabakh through a simplified procedure prescribed by law.

Moreover, Article 13 of the Law of the Republic of Armenia on Citizenship of the Republic of Armenia defines the criteria for acceptance into Armenian citizenship. The 3 main criteria one has to meet to be granted Armenian citizenship are the 1) residence on the territory of the Republic of Armenia in a manner prescribed by Law for the last 3 years; 2) proficiency in the Armenian language; 3) familiarity with the Constitution of the Republic of Armenia. By stating these 3 criteria, point 5 of Article 13 of the Act on Citizenship provides that, “A person of Armenian ethnicity not holding citizenship of the Republic of Armenia can receive citizenship of the Republic of Armenia without fulfilling the requirements of points 1, 2 and 3 of the part 1 of this article.”⁵⁰ Thus, the requirements for naturalization of the people being ethnic Armenians are waived.

The above-mentioned article provides that the conditions of acquisition of Armenian citizenship by ethnic Armenians are simplified. Therefore, taking into account the underlined nationality and citizenship bond enshrined in the domestic legislation of Armenia highlights the significance of the doctrine *jus sanguinis* per acquiring Armenian citizenship. Given the fact that people living in Nagorno-Karabakh are ethnic Armenians, they are granted Armenian citizenship and hold passports of Republic of Armenia through a simplified procedure.

⁴⁹ NKR Const. art. 47.

⁵⁰ See footnote 36.

The procedure of being granted Armenian citizenship, in accordance with Article 13 of Law on Citizenship of Republic of Armenia,⁵¹ is as follows: any person, who is 18 years old can apply to a respective body (in this case the Passport and Visa Department of the Police of the Republic of Armenia) to be accepted into Armenian citizenship. Citizens of other states, who are ethnic Armenians or, otherwise, meet the conditions stipulated by Article 13 of the Citizenship Act of Armenia, shall apply the diplomatic missions and consular services of the republic of Armenia for the issuance of Armenian passport. In regard with issuing passports the consular services act in accordance with the Armenian legislation and Article 5 of the Vienna Convention on Consular Relations.⁵² The citizenship is accepted by the decree of the President of the Republic of Armenia on granting a citizenship.

In fact, Nagorno-Karabakh (or Artsakh) Republic grants its citizenship to the people living in the country. However, if those people want to cross any border or travel abroad, they should acquire the citizenship of the Republic of Armenia. This is currently the existing practice in Nagorno-Karabakh. The official position of the Republic of Armenia is somewhat ambiguous. In every sphere – infrastructure, economy, social and political life – Armenia and Nagorno-Karabakh are in close cooperation. In some regards, Nagorno-Karabakh receives support and aid from Armenia. Thus, this not necessarily means that Armenia recognized Nagorno-Karabakh as an independent state. Neither the position of Armenia is relied on the unification of the Nagorno-Karabakh with Armenia, as it sees Nagorno-Karabakh as a separate entity. Nevertheless, by granting Armenian citizenship to the people of Nagorno-Karabakh Armenia from one hand acts in accordance to its national law (by granting the citizenship of the Republic of Armenia to ethnic Armenians through a simplified procedure) and on the other hand, it holds an unofficial position and supports to the de facto independent state. However, not all of the population of Nagorno-Karabakh holds Armenian citizenship, having left only with the citizenship granted by Nagorno-Karabakh.

In a democratic society citizens exercise their power through voting. The latter is a right of citizens of the Republic of Armenia, which they exercise, based on their registration addresses in Armenia. Article 2 of the Electoral Code of the Republic of Armenia⁵³ defines the list of citizens having the right to vote. People having their registration addresses in Nagorno-Karabakh and residing there are not eligible to vote at the elections in Armenia, though they hold Armenian citizenship. However, Article 10(5) of the Electoral Code of the

⁵¹ Ibid.

⁵² Vienna Convention on Consular Relations, art. 5 (1963). *available at* https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-6&chapter=3

⁵³ Հայաստանի իրավական տեղեկատվական համակարգ, ՀԱՅԱՍՏԱՆԻ ՀԱՆՐԱՊԵՏՈՒԹՅԱՆ ԸՆՏՐԱԿԱՆ ՕՐԵՆՍՊԻՐՔ, (2016) *available at* <https://www.arlis.am/DocumentView.aspx?docid=105967>

Republic of Armenia, states that, “For the purpose of participating in the voting, during elections of the National Assembly, electors having no registration in the Republic of Armenia shall, no later than 10 days before the voting day, submit an application to the authorized body on being temporarily included in the list of electors, indicating the address of their place of residence in the Republic of Armenia on the voting day.”⁵⁴ By this article, the Armenian law ensures the people, who do not have a registration address in Armenia, to exercise their right to vote. The people of Nagorno-Karabakh, having Armenian citizenship with an address of registration in Nagorno-Karabakh, in fact can exercise their right and participate the elections of the National Assembly. However, this is not the existing practice, as they participate in election of Nagorno-Karabakh, but not in the elections of Armenia. This is one manifestation that the separation of two independent states can be described.

⁵⁴ Ibid.

Conclusion

The Statehood of Nagorno-Karabakh shall be achieved within the due process of self-determination at the national level. The issue is of utmost significance for Armenia. Among other factors, Armenia highlights the importance of sustaining peace in the region and supporting the self-determination of the people of Nagorno-Karabakh. The first chapter of this study aimed to show the conflict of Nagorno-Karabakh and its current status of an unrecognized state is somewhat artificial, as the process of gaining independence was in accordance with the existing law. Thus, as a primary scrutiny Nagorno-Karabakh has a right to claim to independence based on the results of the Referendum, which was conducted on a legitimate basis. Throughout the conflict of Nagorno-Karabakh, among other violations, it is the basic rights of the people that were constantly violated, starting from the artificial barrier of the right of people to self-determination to the recent events during the military escalation in April 2016.

Nagorno-Karabakh, having the characteristics of a democratic state in accordance to International law, issues citizenship of Republic of Nagorno-Karabakh to its citizens. However, the citizenship, as the state itself, is not internationally recognized and does not hold a legal status. Though Republic of Nagorno-Karabakh ensures that its citizens are protected and can exercise their rights within the state of Nagorno-Karabakh, not being internationally recognized state makes its citizens belong to a non-state. On the basis of the definition of stateless persons mentioned above, the people living in Nagorno-Karabakh are nationals by the state of Nagorno-Karabakh. Thus, taking into consideration the absence of a legal status of the state, these citizens do not belong to a recognized state and in fact, do not hold a citizenship.

The claim by Azerbaijan that the Nagorno-Karabakh is a part of its territory and the people living there are the people of Azerbaijan, for who the state aims to allow the democratic self-governance and equal rights for the Armenian population, is rejected by the above discussed cases and the policy of Azerbaijan. At all levels of the society, as well as at state level, Azerbaijan supports the anti-Armenian sentiments and considers a murder of an Armenian not a criminal act, the perpetrator of which should be punished, but a heroic act with promotions and social advantages at the state level. Nagorno-Karabakh's religion and culture has never been associated with the religion and culture of Azerbaijan. And currently the population is ethnic Armenians. The discussed provide the strongest arguments for claiming the inefficiency of the Azerbaijani nationality for people living in Nagorno-Karabakh and the absence of a genuine link to or effective nationality of the Republic of

Azerbaijan, as well as for the right of the people living in Nagorno-Karabakh to self-determination.

The existing practice of granting Armenian citizenship to the people of Nagorno-Karabakh is targeted to the issue of the people being able to cross borders and travel abroad. Armenia has greatly supported Nagorno-Karabakh in the process of shaping a democratic state and institutions. Though Nagorno-Karabakh succeeded in building a conception of a democratic state, it is not still recognized by any state, including Armenia. Armenia carries out an ambiguous policy of neither recognizing Nagorno-Karabakh nor claiming the unification of the two independent states. The absence of any legal documents regulating the relations between the two states and granting Armenian citizenship to the people of Nagorno-Karabakh can create an obstacle with the claim of Nagorno-Karabakh over the self-determination of the people and creating an external conception of an independent state, which may influence the outcome of the determination of the legal status Nagorno-Karabakh in a way.

The 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, the enhancement of the definition of de facto stateless persons by the UNHCR as well, tackling the issue of statelessness and giving definitions of stateless persons impose obligations on the states to end statelessness and ensure that the people who were born or reside on their territory acquire a nationality either by birth or by naturalization. The definition of stateless persons, being it de jure or de facto, throughout the enhancement of the latter includes all the possible situations and causes people are left without citizenship. However, the definitions cover the cases when one of the parties is a recognized state and does not enhance its framework towards involving the persons who belong to a non-recognized as well.

Although the determination of the legal status of people rely on the determination of the legal status of the state, discussion of granting the people with an international legal status, not necessarily a citizen of Nagorno-Karabakh, can be a way contributing the settlement of the Nagorno-Karabakh conflict. While de jure statelessness can result from several issues, including the gaps in the law regulating the affairs between a state and an individual, de facto statelessness can result from discrimination expressed by the state. The Conventions tackling the issue of statelessness constitute a sufficient ground with regards to the requirements of the definitions of statelessness, only if the parties to the convention are recognized states. Throughout the enhancement of the definition of de facto stateless persons, the determination of making a distinction between the nationals of a recognized state (whether the nationality be effective or ineffective) and the nationals of a non-state should be included, as well.

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