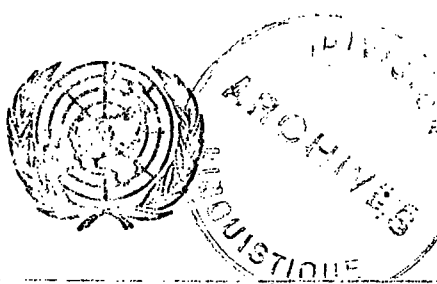


UNITED NATIONS
ECONOMIC
AND
SOCIAL COUNCIL



GENERAL

E/2164/Add.11

8 January 1952

ENGLISH

ORIGINAL: SPANISH

THE PROBLEM OF STATELESSNESS

Information transmitted by States in pursuance of
Economic and Social Council resolution 352 (XII)
relating to the problem of statelessness

The Secretary-General has the honour to circulate the following communication dated 19 October 1951 which he has received from the Ministry of Foreign Affairs of the Oriental Republic of Uruguay:

"The Ministry for Foreign Affairs of the Oriental Republic of Uruguay presents its compliments to the Secretary-General of the United Nations and, referring to Circular letter SOA 325/04 of 5 April 1951, has the honour to transmit herewith a copy of the information requested on the status and treatment of stateless persons in our country."

1. CAUSES OF STATELESSNESS

I. No persons born in the territory of the Republic are stateless

Article 65 of the National Constitution adopts the jus soli as the basis for nationality in Uruguay.^{1/}

Any person born^{2/} in Uruguay is therefore a national of the Oriental Republic whether he be the child of Uruguayans, aliens, stateless, or unknown persons.^{3/}

II. No person can become stateless through loss of Uruguayan nationality

(1) According to Article 71 of the Constitution, Uruguayan nationality is not lost even by naturalization in another country.

^{1/} Oriental and not Uruguayan; in current usage, however, the two expressions are interchangeable.

^{2/} The place of birth, not the place of registration of birth, determines nationality.

^{3/} In the case of an abandoned child, the place of birth is considered to be the place where the child was found. See Art. 28 of the Civil Register Act of 11 February 1879.

- (2) Loss of nationality may not be imposed as a punishment.
- (3) An Uruguayan woman does not lose her nationality by marrying a foreigner or a stateless person.
- (4) Uruguayan nationality may not be renounced.

2. NATURALIZATION OF STATELESS PERSONS

I. Stateless persons may not acquire Uruguayan nationality by law

No one may be naturalized a Uruguayan. Articles 65 and 66 of the Constitution confer citizenship^{4/} on persons who are not Uruguayan but do not grant them Uruguayan nationality.^{5/}

Articles 66 and 67 refer to aliens but include stateless persons; aliens should be interpreted to mean any persons who are not Uruguayan whether or not they have another nationality. In that connexion Article 22, paragraph 1 of the Civil Code provides as follows: "Citizens are persons declared to be such by the Constitution. All other persons are aliens." "Citizens" in this text means Uruguayans.^{6/}

II. Uruguayan nationality cannot be acquired by marriage

Hence an alien woman who, in accordance with the law of her own country acquires her husband's nationality and loses her own nationality at marriage, will be stateless if she marries an Uruguayan.

III. Uruguayan nationality cannot be acquired as a concession from the State

3. ACQUISITION OF CITIZENSHIP BY STATELESS PERSONS

Attention should be called to the inflexibility of Uruguayan legislation on nationality particularly because it does not recognize that an Uruguayan ceases to be an Uruguayan when he acquires the nationality of another State^{7/} or that a stateless person or alien^{8/} may acquire Uruguayan nationality.

^{4/} Nationality is different from citizenship, citizenship is the status of a person who has political rights and duties; a citizen, as such, participates in the sovereignty of the nation (Article 68 of the Constitution).

^{5/} Although the text of Article 65 does not clearly indicate that a child of a Uruguayan father or mother does not acquire Uruguayan nationality, the practice of the Electoral Court has been to grant citizenship only.

^{6/} This may be inferred from Article 22, para. 2.

^{7/} Source of the dual nationality of Uruguayans who are naturalized in another country.

^{8/} Cause of the statelessness of foreign persons whose national law deprives them of their nationality because they acquire citizenship in Uruguay. /Nevertheless

Nevertheless this policy is effectively counterbalanced by the rules relating to citizenship.^{9/}

I. Stateless persons, like aliens, may acquire Uruguayan citizenship

(a) If a stateless person is the child^{10/} of an Uruguayan^{11/} father or mother,^{12/} he acquires natural citizenship (Article 65 of the Constitution).

In such cases it is only necessary to take up residence in the country and to enter his name in the civil register.

Natural citizenship acquired in this way confers the same rights as the natural citizenship of Uruguayans.

(b) If a stateless person is not the child of an Uruguayan father or mother, he may acquire legal citizenship (Article 66 of the Constitution).

For that purpose he must fulfil the requirements of habitual residence for a varying number of years,^{13/} possession of property and good conduct.

Legal citizenship is not a favour granted by the State but a right to which anyone meeting the above conditions is entitled.

The conditions do not include a requirement that the applicant should possess a foreign nationality; all that is required is that he should not be Uruguayan. Thus a stateless person is not asked for proof of his nationality but of the place of his birth.

II. On acquiring citizenship, a stateless person does not cease to be stateless (just as an alien does not cease to be an alien)

In Uruguay there are citizens (natural or legal) who are stateless persons or aliens.

^{9/} Thus, while an Uruguayan who is naturalized in another country does not lose his nationality, he loses the right to exercise his citizenship (Article 71 of the Constitution); and while an alien may never acquire Uruguayan nationality, he can easily acquire national citizenship while retaining his own nationality. This explains why Uruguay does not issue naturalization papers but citizenship papers which are issued by the Electoral Court; and why, from the Uruguayan point of view, an alien retains his nationality when he acquires Uruguayan citizenship (See Article 1 of Act of 2 February 1928; and Art. 66, in fine of Constitution of 1934).

^{10/} Whether legitimate or illegitimate.

^{11/} It is sufficient for one of the parents to be Uruguayan.

^{12/} The nationality of the father or mother is determined by the place of birth of each.

^{13/} Article 66 of the Constitution sets forth in detail the conditions and the time requirements.

4. STATUS OF STATELESS PERSONS

I. Political rights

Stateless persons, like aliens, do not possess political rights. They may obtain those rights by acquiring national citizenship.

When natural citizenship is acquired, the individual enjoys all political rights, namely:

- the right to vote (Article 68, paragraph 1 of the Constitution)
- the right to hold public office (Ibid)
- the right to occupy posts in the public service (Article 69 of the Constitution).

When legal citizenship is acquired, the citizen enjoys the same rights, with four exceptions:

- he may not be President of the Republic (Article 148 of the Constitution)
- he may not be Vice-President (Article 148 of the Constitution)
- he may not be a member of the Supreme Court of Justice (Article 208 of the Constitution)
- he may not be a member of the Administrative Litigation Tribunal (Article 269 of the Constitution).

To exercise political rights, the holder of legal citizenship must allow a period varying between three and seven years to elapse from the time of the acquisition of citizenship.

Stateless persons and aliens who have not acquired citizenship, have the right to vote after fifteen years of habitual residence (Article 67 of the Constitution).

II. Individual rights

All persons, whether they be Uruguayans, aliens or stateless, enjoy identical individual rights by the very fact that they are inhabitants of the Republic (Article 7 of the Constitution).

Article 8 of the Constitution provides that all persons are equal before the law.^{14/}

The individual rights to which stateless persons, aliens and Uruguayans are equally entitled include the following:

^{14/} See also Article 22 of the Civil Code.

/(a) the right to

- (a) the right to life (Article 7 of the Constitution).
 - there is no death penalty in Uruguay (Article 25 of the Constitution).
- (b) protection of their honour (Article 7 of the Constitution).
- (c) the right to privacy.
 - the sanctity of the home is inviolable; no one may enter it by night without the consent of its master and by day only at the express order of the competent judge (Article 11 of the Constitution).
 - correspondence and papers are inviolable (Article 27 of the Constitution).
- (d) physical freedom.
 - no one may be imprisoned except in case of flagrante delicto or on the basis of presumptive evidence (Article 51 of the Constitution).
 - no one may be punished or imprisoned without due process of law (Article 12 of the Constitution).
 - the right of habeas corpus may be invoked (Article 17 of the Constitution).
 - secret enquiries are prohibited (Article 22 of the Constitution).
 - no one may be imprisoned for debts (Article 15 of the Constitution).
 - prisons are used only as a means of keeping persons who have been tried and sentenced in safe custody and never of humiliating them (Article 25 of the Constitution).
- (e) freedom of conscience.
 - religious freedom (Article 5 of the Constitution).
 - the taking of oaths by the accused is abolished (Article 20 of the Constitution).
 - independence of moral and civic conscience (Article 53 of the Constitution).
- (f) freedom of thought.
 - there is no censorship of any kind (Article 28 of the Constitution).
 - freedom of education (Article 59 of the Constitution).
- (g) freedom to assemble, to form associations and to organize trade unions (Articles 37, 38 and 56 of the Constitution).
- (h) freedom to work.
 - any person may devote himself to labour, farming, industry or

/commerce, and to

commerce, and to professional or any other legitimate activity (Article 35 of the Constitution).

- thus no authorization is required to obtain employment or to transfer from one post to another.

- all inhabitants have the benefit of the same labour legislation.

- everyone has the right to strike (Article 56 of the Constitution).

- there is no discrimination between Uruguayans and non-Uruguayans in obtaining employment.

EXCEPTIONS: (l) private contractors for public works are required to set aside a percentage of positions for Uruguayans.

- there is no discrimination in the amount of salaries.

- there is no discrimination in the extension of benefits under the Colonization Act (Act of 12 January 1948, Article 60 G).

(i) the right to practise liberal professions (Article 35 of the Constitution).

- including medicine and law, both as advocate and notary.

(j) the right to enter into contracts.

- to rent urban or rural property freely.

- to grant power of attorney (also to an alien or a stateless person) for purposes of representation.

- there are no special interest rates on loans to aliens or stateless persons.

(k) the right to property (Article 7 of the Constitution).

- stateless persons, like Uruguayans and foreigners, may own movable or immovable property.

EXCEPTION: Stateless persons and aliens may not acquire property in national security areas (airports, etc.)

(Decree of 16 December 1942).

- expropriation may be ordered only for reasons of public necessity or utility subject to the payment of compensation determined by the courts if necessary (Article 31 of the Constitution, Article 492 of the Civil Code, Act of 28 March 1912).

- property cannot be confiscated for political reasons (Article 14 of the Constitution).

/- the right of

- the right of inheritance (Article 47 of the Constitution): stateless persons and aliens may inherit, receive inheritances and make wills in the same way as Uruguayans.
- (l) the right of intellectual, artistic, industrial, commercial and other property, (patents, trade marks, copyright, etc.) (Article 32 of the Constitution).
- (m) the right to primary, secondary, industrial, artistic, physical and advanced education.
 - education of all kinds given by the State is free to all (Article 62 of the Constitution).
- (n) the right to social assistance.
 - free medical care for indigent persons (Article 45 of the Constitution).
 - assistance to mothers (Article 41 of the Constitution).
 - assistance to large families (Article 40 of the Constitution).
 - asylum for indigent persons (Article 45 of the Constitution).
- (o) the right to social security.
 - insurance without discrimination as to nationality.
 - retired pay, pensions and old-age pensions,^{15/} without discrimination as to nationality (Article 58 of the Constitution).
- (p) the right to petition any authority of the Republic (Article 29 of the Constitution).
- (q) the right of complaint.
 - all judges are responsible for any infringement of the rights of individuals or for any violation of the law (Article 23 of the Constitution).
 - public officials are personally liable for any prejudice caused to third parties.
 - the State has subsidiary responsibility (Article 24 of the Constitution).
- (r) access to courts of justice.
 - stateless persons, like Uruguayans and aliens, have free access to courts of justice.

^{15/} In the case of aliens, prolonged residence in the country is required.

- in Uruguay there are no special courts for aliens or stateless persons.
- security for costs is not required merely because the plaintiff is an alien or a stateless person. Such security is given at the petition of a party when the plaintiff resides abroad (whether he be an Uruguayan, an alien or a stateless person) (Article 120 of the Code of Civil Procedure).
- legal aid on grounds of indigence is available to aliens and stateless persons (Article 227 of the Constitution).

III. Entry, residence and departure

Stateless persons may enter, reside in and leave the country (Article 36 of the Constitution).

(a) Entry

It is not necessary to possess a nationality in order to enter the country. Presentation of a passport is requested as proof of identity, not of nationality. A Nansen passport is accepted.

Stateless persons, like foreigners, are admitted only on the basis of the regulations of 28 February 1947.

Among the conditions for entry, the above regulations call for a certificate issued by the competent authorities in the country of origin or residence of the persons concerned stating that if he is not admitted to our country, he can return to his country of origin or residence. As there are States which do not issue such certificates to stateless persons, those persons cannot enter Uruguay.

Re-entry is permitted when the period of absence does not exceed three years.

(b) Residence

Residence in the country is free to stateless persons; they may leave the territory of the Republic whenever they wish.

The penalty of expulsion may be applied to them (Article 74 of the Penal Code).

They may be extradited (Article 14 of the Penal Code).

(c) Departure

Stateless persons, like aliens, are not entitled to a national passport if they are not citizens.

/EXCEPTIONS:

EXCEPTIONS: A stateless or alien woman married to an Uruguayan may obtain a national passport but the Ministry for Foreign Affairs must inform the competent authorities of the statement contained therein that it may not be invoked to prove recognition of Uruguayan nationality.^{16/}

The same privilege applies to widows and unmarried daughters.

Stateless persons or aliens may in certain cases obtain diplomatic passports (for example in the case of a dependent relative of an Uruguayan ambassador).

In certain cases stateless persons are entitled to a Nansen passport, but generally without the right to return to Uruguay.^{17/}

Stateless persons, like aliens, are not entitled to the assistance of Uruguayan consuls when they are abroad.

IV. Private rights

In principle civil and commercial laws apply without distinction to all inhabitants of the territory of the Republic, as indicated in Article 3 of the Civil Code.

This principle is limited by Uruguayan rules of private international law which determine in what cases foreign law should be applied. The above-mentioned rules are contained in detail in Articles 2393 to 2400 of the Civil Code. They are based on the system of domicile (not nationality).

Hence whether a person is stateless, an alien or an Uruguayan is irrelevant in determining the system of private rights. Article 22, paragraph 2 of the Civil Code reads as follows: "Uruguayan law recognizes no distinctions between Uruguayans and aliens as regards the acquisition and exercise of the civil rights regulated by this Code."

The capacity of persons is governed by the law of domicile (Article 2393 of the Civil Code).

The right to contract marriage is governed by the law of the place in which the marriage occurs (Article 2395 of the Civil Code).

Hence the parties to a marriage are not required to present foreign certificates of any kind either from consular or other foreign authorities.

^{16/} Article 1 of Decree of 20 November 1921; Article 3 of Decree of 30 November 1928.

^{17/} Decrees of 22 August 1924, 30 April 1925 ... 10 April 1931.

/They do not

They do not need to be domiciled in Uruguay or to have residence permits.

Personal relations between spouses are governed by the law of matrimonial domicile (including divorce) (Article 2396 of the Civil Code).

Property relations between spouses are governed by the law of the first matrimonial domicile in so far as no prohibitions are prescribed by the law prevailing in the place in which the property is situated (Article 2397 of the Civil Code).

Relations between parents and children are governed by the law of matrimonial domicile (Article 2396 of the Civil Code).

Relations between parents and natural children, as well as guardianship and custody, are governed by the law of the domicile of the legal representative of the minors (doctrinal solution authorized by Article 16 of the Civil Code).

Inheritance, including the right to inherit, is governed by the law of the place in which the property is situated (Article 2400 of the Civil Code).

No distinction is made between inheritance of movable and immovable property.

The right to make a will, the form of the will and the validity of the provisions of testaments are governed by the law of the place in which the property is situated. (Article 2400 of the Civil Code).

Civil status, the attainment of majority and affiliation must be proved by authentic civil register papers or certificates (Article 40 of the Civil Code).

Nevertheless, additional proofs are accepted especially when the documents must be issued by foreign authorities and it is demonstrably impossible to obtain them.

V. Duties

Stateless persons, like aliens, have the same duties as Uruguayans.

Stateless persons, like Uruguayans, cannot be obliged to do what is not required by law and cannot be prevented from doing what is not prohibited by law (Article 10 of the Constitution).

Stateless persons have the same tax obligations as Uruguayans.

Stateless persons have the same health obligations as Uruguayans (Article 43 of the Constitution).

/Primary

Primary education is obligatory for stateless persons.
They may also be subject to military service.^{18/}

5. CONCLUSION

Uruguayan legislation provides no means whereby stateless persons may become Uruguayans.

On the other hand, Uruguayan legislation does not give rise to statelessness.

Moreover, the status of stateless persons in Uruguay is so similar to that of aliens that, generally speaking, their position does not improve through the acquisition of foreign nationality.

Finally, without ceasing to be stateless, stateless persons may achieve a status similar to that of Uruguayans merely by obtaining citizenship.

TREATMENT OF STATELESS PERSONS IN URUGUAY

I. Introduction

The constitutional system of Uruguay in the matter of nationality is different in significant aspects, which are important in determining the status of stateless persons, from the system prevailing in the American republics generally.

As the institution of naturalization is unknown among us and the principle of jus soli is adopted as the only principle governing the acquisition of nationality, it may be said that an alien can never cease to be an alien in relation to our country, and that Uruguay is unable to offer stateless persons a means of acquiring nationality so long as the present Constitution remains unchanged.

II. The Constitutional System

In connexion with nationality and citizenship, our Constitution makes the following distinctions among individuals:

(a) In the matter of nationality:

1. Only individuals born within the territory of the Republic,

^{18/} See, for example, the Act of 2 February 1928.

/whatever their

whatever their sex, are nationals.

2. All others are foreigners and can not attain the status of Uruguayans, i.e. nationals of our Republic.

3. Nationality is never lost or suspended.

(b) In the matter of citizenship:

1. There are two types of citizens: natural and legal citizens.

2. All nationals are natural citizens.

3. Also, aliens who are children of an Uruguayan father or mother, i.e. of an Uruguayan national, can obtain natural citizenship if they take up residence in the country and are entered in the Civil Register.

4. All other aliens, i.e. those who are not children of an Uruguayan father or mother, can obtain only legal citizenship.

5. There are very slight differences between natural and legal citizenship, the first type of citizenship conferring a number of rights which are not conferred by the second. Thus, to be President of the Republic, a member of the Supreme Court or of the Administrative Litigation Tribunal, natural citizenship is required and legal citizenship is not sufficient, as it is for the offices of legislator, Minister of State, judge, etc.

6. Natural citizenship is never lost, although it may be suspended in certain cases.

7. Legal citizenship is lost if the holder is naturalized in another country after obtaining Uruguayan citizenship.

As a result of the above provisions, which are contained in Articles 64 to 71 of the Constitution, stateless persons cannot become nationals of Uruguay nor can anyone who has not achieved that status by birth. Conversely, it may be said that no Uruguayan could ever become stateless according to the law of this country.

III. Stateless Persons and Immigration

It should be noted that there are no constitutional or legal provisions preventing stateless persons from entering the country.

The laws in force do not require the immigrant to produce a passport as proof of nationality, although they recognize the value of a passport as an identification document.

/In addition, by

In addition, by Decree of 22 August 1924, Uruguay recognized Nansen passports which may be issued to stateless persons.

The rules in force (Decree of 30 November 1928) do not allow the issuance of Uruguayan passports except to Uruguayans, i.e. to our nationals, or to the wives of Uruguayans. Only in the latter case can a stateless woman obtain a Uruguayan passport.

IV. Stateless Persons and Citizenship

Nothing prevents a stateless person from obtaining legal citizenship in Uruguay provided that he fulfils the conditions required of all aliens for that purpose by the constitutional provisions.

It should be noted that legal citizenship is not a privilege which the State can grant to or withhold from anyone requesting it, but rather a right which can be legally claimed from the State by anyone fulfilling the constitutional conditions.

V. Stateless Persons and Identification

Stateless persons residing in our country can obtain police identification papers under the same conditions as any other non-national, the provisions in force not constituting any obstacle.

VI. Conclusions

So long as the constitutional provisions in force are unchanged, Uruguay can offer little to improve the status of stateless persons.

On the other hand, our country does nothing to aggravate the problem of statelessness as in no case does it permit any of its nationals to lose their nationality."
