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Strangers and Estrangement – a Human Rights View

Aurora Ciuca^{a,*}^aProf. PhD, “Stefan cel Mare” University, Suceava, Romania

Abstract

When defining a *stranger* (a *foreigner*) a negation was always included in the wording, meaning “*the one who is not a citizen*”, “*the one who does not belong to a group*” and this triggered the inexistence of a status (most of the times throughout history) or the attachment of a different status.

At present, the protection of foreigners slipped from the general international law to the field of human rights and the exercise of conciliation of the sovereign competences of the states under the obligation of protection shifts the focus on the individual as a human being and gives new dimensions to traditional international rules.

Hospitality, as a first reaction to the stranger supposes (in Kantian words) “*not to be treated with hostility*” and must be ensured by the political sovereign. Different *degrees* of protection available for different strangers (the migrant worker “*free to leave any state*”, the refugee that has to *gain* their condition by meeting the requirements of international regulations, the newly arrived or the longtime resident) are analyzed in the present paper.

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The definition of a stranger (a foreigner) has always included a negation, as referring to “the one who is not a citizen”, “who does not belong to a group”, the absence (most of the times throughout history) of a status or the attachment of a different status. The common meanings are considering a “person part of another country’s population”, but also the sense of person “who is or feels strange” (DEX, p.1052), or “alien”, “from elsewhere”,

* Corresponding author. Tel.: (+40)724.07.33.97
E-mail address: aurora_ciuca_2000@yahoo.com

"unknown"(DER).

The appellation "*barbarus*" descending from the ancient Greece and Rome perpetuated throughout the centuries. Between the friend-strangers *Xenoi* (Xenos) (Belfiore, 1993,113-129) that, in Athens, could be integrated into the community and the Metics (*metoikos*) whom were permitted residence in exchange of some taxes or thanks to a protector (the most famous Metic in history, Aristotle, had Plato as his protector) there was a difference of status (AFGE, 2000). In Rome the legal condition also created different hierarchies: strangers were enemies (*hostis*), noncitizens were both *cives minuto jure* (plebeians, previously to acquiring the specific rights of Roman citizens, freedmen) and Latini (latini *veteres*, colonial Latini or *Latini Iuniani*)(Ciucă, 1998, p.175) the *peregrines* foreigners protected by the rules of *jus gentium* had the recognition of their rights arising from commercial contracts (but not political and civil rights) etc.

The Manors in the Middle Ages were true centers of power, in which the Lord of the Manor had all rights over the subjects, but also the obligation to protect them. The belonging of a person to another manor that is being born on another lord's territory (*alibi natus*) is a manifestation of the *jus soli* principle. The treatment of foreigners was different depending on their social position (the privileged ones being the nobles, teachers, students, clergy) or sometimes on the area of origin.

Following the establishment of national states, the internal rules also refer to a foreigner by denying the status of national or citizen. The population of a state consists of all the persons living in a certain territory and having the citizenship of that state. The state border is a dividing line between "us" and "the others".

International law leaves it to each state to establish rules concerning the assignment (ICJ, 1955) and withdrawal of nationality as well as on the entry, stay and exit of foreigners on a particular national territory. Nationality is the primary criterion upon which it is built the condition of foreigner and, therefore, the right to nationality can be described as a "right of exclusion" (Lagarde, 2003, p.1052).

Meeting the stranger has always raised issues of identity both for the community he/she enters in contact with and at individual level, for the one who experiences this condition. Identity, as survival reflex and as a permanent construction is strengthened also by *the ones outside*, by reference to the foreigners. The fear of unknown (and the unknown ones) was likely to coagulate the interests, to mark the differences and keep the essence of identity.

At individual level, for the stranger entering another (linguistic, cultural, religious etc.) community the identity construction is altered. The individual is at the intersection of "self" and "in self" alienation. In other words, he/she oscillates between the need to adapt to the new existential paradigm (which involves trying to integrate fast and well with the new requirements) and the preservation of his/her identity (manifested by displaying and assuming the difference, the condition of foreigner - through clothing, religious insignia, customs etc.) (Ciuntiu, 2011, Editorial, 2010).

The protection of foreigners

The first comprehensive international conventions on the protection of certain categories of foreigners have been adopted under the auspices of the International Labour Organization: Convention No. 97(1949) concerning migrant workers' protection during the migration (recruitment, travel, entry to territory) and during the stay (social protection and the actual labor conditions), Convention no. 143 concerning migration in abusive conditions and the promotion of equality of opportunity and treatment of migrant workers(1975), followed by the UN Convention on the protection of the rights of all migrant workers and members of their families(1990).

In the regional framework of the Council of Europe it was adopted the European Convention on Establishment (1995). The European Community (Article39 of the EC Treaty) established rules which derogate from the common law: free movement of workers within the Community and the abolition of any discrimination based on nationality.

The 1951 Convention on Refugees (and its 1967 Protocol) which requires states to grant refugees, without discrimination, equal treatment with that of nationals in matters of religious freedom, access to justice, basic education, employment and social security and comparable treatment to the most favourable treatment accorded to nationals of a foreign country in matters of the rights of association and the exercise of professions.

The minimal status of stateless persons was established by the Convention of September 28th, 1954, in New York. In 1961, the Convention on the Reduction of Statelessness called for the states to establish requirements for the assignment of nationality to people who could be in the situation of statelessness.

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