

# Evolution of the Citizenship Law and Policy in Kyrgyzstan

## From the Initial Post-Soviet to Present Day Concept

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### Abstract

This paper presents a narrative and a coherent discussion on the historical, sub-regional and political preconditions for the formation and evolution of the laws and policies regarding citizenship in the Kyrgyz Republic (Hereinafter; Kirgizia, Kyrgyzstan)<sup>2</sup> The introductory part of this country study assesses objectively the historical stages the state had to undergo and serves as a guide to the next section, which is devoted to the citizenship laws in texts. This layout will enable the reader to understand the initial character or attitude towards the previous socialist order and the policy of multi-ethnicity, which was widely practiced in the former USSR. One of the main targets of the research is to demonstrate how Kyrgyz authorities constituted the initial body of citizens after gaining independence, whether they did it by implying a zero-option or using other principles. The section also aims to define the principles enabled for citizenship determination, such as *jus soli* and *jus sanguinis*. Through a case study of Tajik refugees in Kyrgyz Republic, this paper will demonstrate the practices of the conferral of citizenship upon a particular group by means of international treaty supported by the UNHCR. While discussing each actual situation, this paper examines whether the Kyrgyz parliamentarians consulted existing particular international norms while crafting laws relevant to citizenship or whether they implied other standards.<sup>3</sup>

While analyzing rules and policies, which govern the naturalization, the research also focuses on such sensitive elements as language laws, ethnicity, and

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<sup>2</sup> and the role that international norms have played to shape these laws and policies.

It should be noted that international citizenship law presently suffers from terminological chaos resulting from the different usages of "nationality" and "citizenship." Western nations tend to consider these terms as synonyms, and thus most of the laws in the West are addressed as nationality acts/laws. In the post-Soviet context, however, these terms possess very different meanings. The term "nationality" is considered to be synonymous with the term "ethnicity" (ethnic background) of an individual. "Citizenship," on the other hand, specifies a legal and political bond between the state and the individual. At present, these terms have not been carefully examined by researchers and tend to be addressed differently according to the region within this field of academic study. For the sake of clarity, this paper will use both words "national" and "citizen" (citizenship, foreign citizens) as synonyms; in the context of the legal and political bond between individual and state of affiliation. Some explanation is available in; Rogers Brubaker "Citizenship Struggles in Soviet Successor States" *IMR* Vol XXVI, No. 2, 1992;

<sup>3</sup> For a description of existing international-legal standards, please refer to: A. Ismatov, "Citizenship Regulation in the Post-Soviet Space; an International Legal Study in Nationality and Statelessness," Nagoya, Japan (Nagoya University, 2014), 15–31. Abstract available on; [http://ir.nul.nagoya-u.ac.jp/jspui/bitstream/2237/20640/4/ISMATOV%20Aziz\\_%E5%86%85%E5%AE%B9%E8%A6%81%E7%B4%84.pdf](http://ir.nul.nagoya-u.ac.jp/jspui/bitstream/2237/20640/4/ISMATOV%20Aziz_%E5%86%85%E5%AE%B9%E8%A6%81%E7%B4%84.pdf). [Accessed on December 20, 2016]

residency in order to find out how applicants can satisfy them. As language laws exist in almost all post-USSR states and usually raise questions about their legitimacy, their practical application, particularly in Central Asia, are still not well researched by academia. By addressing the relevant cases, this paper provides a general picture of remaining problems and the attitude of the state towards such issues. Additional focus is given to instruments used to identify dual or multiple citizenship. By applying descriptive and legal dogmatic approaches, this paper provides a detailed citizenship law analysis and to contributes to the present state of study on citizenship at the sub-regional level.

**Keywords;** USSR, Kyrgyz SSR, Kyrgyz Republic, citizenship law, nationality, stateless person, foreign citizen, refugee;

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#### **i. Certain aspects of contextual literature on Central Asia**

There is a significant gap in the state of contextual bibliography on post-USSR citizenship studies. As an example, the nationality/citizenship related issues in the Baltic States sparked considerable international concern and resulted in numerous studies. Both scholars of Baltic and non-Baltic origin and monitoring bodies have paid big attention to the problem in the context of Baltic nationalism. Presently, there are lots of publications in legal or sociological journals and periodicals from Latvian and Estonian scholars and practitioners, which reflect quite aggressive attitudes towards ex-USSR law and policy in the Baltics. Similar problems in other regions of the former Soviet Union, namely, in the Caucasus and Central Asia remain less researched. As the activities of international human rights actors are informally restricted and NGOs are not welcomed, the problems deriving from citizenship laws and numerous potential cases are not well researched in Central Asia. The UNHCR

report by Marjorie Farquharson (*Statelessness in Central Asia*) is the only study which contains a detailed description and analysis of the citizenship laws of the five Central Asian republics, including Kyrgyzstan. While analyzing the naturalization policies of the states, the author focuses mainly on the regional magnitude of statelessness. It is, however, a purely legal piece of research based on the analysis of citizenship laws with no mention of the actual situation in Kyrgyzstan. A handful of other existing English reports only provide information about the current legal situation with no analysis of the previous legal developments or background. The following work is based predominantly on the findings from national legislation and practices, cases and country reports specifically related to nationality matters. There is a limited number of books and journal articles in light of the fact that the Kyrgyz Republic is not a well-researched state among the post-Soviet states. Several English based publications provide rather fragmentary data on the landmark statelessness, refugee and language related issues, namely; Commercio, Michele E. *Russian Minority Politics in Post-Soviet Latvia and Kyrgyzstan: The Transformative Power of Informal Networks*. In this book author examines the power of informal networks and their influence on minority politics in; Kyrgyzstan where there is more out-migration and less political mobilization among Russians, and in Latvia where, on the other hand, less out-migration and more political mobilization, notwithstanding the fact that it is a state that adopts policies that favors Latvians at the expense of Russian speaking minority.<sup>4</sup> Fiddian-Qasmiyeh, Elena, Gil Loescher, Katy Long, and Nando Sigona. *The Oxford Handbook of Refugee and Forced Migration Studies*. A compilation of regional studies and thematic overviews related, among many other humanitarian issues, to statelessness in the Central Asian region. Although based only on English based studies, it sheds more light on the past, present and emerging debates about statelessness.<sup>5</sup> Ginsburgs, George, Roger Stenson Clark, F. J. Ferdinand Joseph Maria Feldbrugge, and Stanisław Pomorski. *International and National Law in Russia and Eastern Europe: Essays in Honor of Georges Ginsburgs* is a collection of essays among which, some are dedicated to the statelessness and Citizenship of Russian minorities.<sup>6</sup> Landau, Jacob M., and Barbara Kellner-Heinkele. *Politics of Language in the Ex-Soviet Muslim States: Azerbaijan, Uzbekistan,*

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<sup>4</sup> Michele E. Commercio, *Russian Minority Politics in Post-Soviet Latvia and Kyrgyzstan: The Transformative Power of Informal Networks* (University of Pennsylvania Press, 2011).

<sup>5</sup> Elena Fiddian-Qasmiyeh et al., *The Oxford Handbook of Refugee and Forced Migration Studies* (OUP Oxford, 2014).

<sup>6</sup> George Ginsburgs et al., *International and National Law in Russia and Eastern Europe: Essays in Honor of Georges Ginsburgs* (Martinus Nijhoff Publishers, 2001).

*Kazakhstan, Kyrgyzstan, Turkmenistan, Tajikistan*. This research provides an analysis of language policies in the Central Asian states. One particular point is that author relates the language policies to the broad range of issues such as nation building, language planning and multilingualism. However, while analyzing previously unpublished empirical data, author does not pause much on language laws that came up to be a precondition in each republic for paving the way for second or multi language policy in each state.<sup>7</sup> Isin, Engin F., and Peter Nyers. *Routledge Handbook of Global Citizenship Studies*. The Office of the United Nations High Commissioner for Refugees, *The State of the World's Refugees: Human Displacement in the New Millennium*. These two studies are rather fragmentary information on displacement in different parts of the former Soviet Union including Central Asian states.<sup>8</sup>

## **I. Introduction**

In October 1925, amid the national-territorial delimitation policies managed by the Soviet policymakers, the Kara-Kyrgyz Autonomous Soviet Socialist Republic (ASSR) appeared as the state, which unified mainly an ethnic Kyrgyz population within its borders. In February 1926, it was reorganized into the Kyrgyz ASSR.<sup>9</sup> The 1936 USSR Constitution changed its status from an autonomous republic into the Kyrgyz Soviet Socialist Republic (hereinafter, the Kyrgyz SSR).<sup>10</sup> In other words, it gained a status equal to socialist union republics. Similar to other states, the Kyrgyz SSR was created, based on the principles of territorial delimitation and ethnic majority. At the same time, it included certain territories, which were densely populated by other minorities.<sup>11</sup>

The Soviet period re-designed the structure of Kyrgyz traditional nomadic life and brought comprehensive reforms to the region. For example, after banning the family code based on religious norms, the newly backed authorities declared gender

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<sup>7</sup> Jacob M. Landau and Barbara Kellner-Heinkele, *Politics of Language in the Ex-Soviet Muslim States: Azerbaijan, Uzbekistan, Kazakhstan, Kyrgyzstan, Turkmenistan, Tajikistan* (C. Hurst & Co. Publishers, 2001).

<sup>8</sup> Engin F. Isin and Peter Nyers, *Routledge Handbook of Global Citizenship Studies* (Routledge, 2014); The Office of the United Nations High Commissioner for Refugees, *The State of the World's Refugees: Human Displacement in the New Millennium* (Oxford University Press, USA, 2006).

<sup>9</sup> Gene Huskey, *Kyrgyzstan: The Politics of Demographic and Economic Frustration; Nations and Politics in Soviet Successor States* (Cambridge, England: Cambridge University Press, 1993) 399;

<sup>10</sup> Chapter II, Article 13; Constitution (Fundamental Law) of the Union of Soviet Socialist Republics; With Amendments and Additions Adopted by the First, Second, Third, Sixth, Seventh and Eighth Sessions of the Supreme Soviet of the U.S.S.R. Kremlin, Moscow, December 5, 1936, <https://www.marxists.org/reference/archive/stalin/works/1936/12/05.htm>. [Accessed on August 25, 2016]

<sup>11</sup> *Ibid*, for example, part of Fergana Valley historically populated by Uzbeks and representatives of other ethnicities;

equality, thus promoting a new, previously unknown form of social and legal cultures. Soviet policies also eradicated religious educational system in favor of public education based on the principle of gender equality.<sup>12</sup>

Considered previously as a purely nomadic state with an extremely weak agricultural sector, Kyrgyzstan faced fewer hardships with the Soviet collectivization process. On the other hand, the Stalinist purges of 1936-1938 destroyed the class of *intelligentsia* and religious clerics by imposing imprisonment or exile.<sup>13</sup> Soviet authorities made strong efforts to erase existing religious and cultural consciousness in order to replace it with the concept of identity-based on socialist values.

Under the new socialist regime, the Kyrgyz SSR made relatively quick progress in its industrialization.<sup>14</sup> Heavy and light industrial capabilities were developed mainly as a result of the influx of Russian-speaking technicians and specialists from other parts of the Soviet Union. In a short span of time, authorities founded new cities and developed their infrastructure based on a Soviet toponymic.<sup>15</sup>

In an almost identical way to other post-Soviet states, the Kyrgyz SSR underwent a period of development between 1950-1980. In the following years, the state became ethnically more heterogeneous as many people from other parts of the USSR settled permanently or were deported to the Kyrgyz SSR.<sup>16</sup> The demographic profile gradually changed towards a multiethnic state together with a widespread *Russification* of the region.<sup>17</sup>

The policies of *glasnost*' and *perestroika* in 1990, labeled by the ruling authorities as the beginning of democratic reforms did not reach their final aims but resulted further in the collapse of the communist ideology and the whole union state. In September 1991, the Kyrgyz Democratic Movement issued a draft Declaration of

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<sup>12</sup> David Nissman, *Kyrgyzstan*; Collier's Encyclopedia (New York: Vol. 14, Macmillan, 1993) 212 -216;

<sup>13</sup> *Ibid*, 212 -216;

<sup>14</sup> Refer for detailed data Tom Everett-Heath, *Central Asia: Aspects of Transition* (Psychology Press, 2003), 1;

<sup>15</sup> Gene Huskey, *Kyrgyzstan: The Politics of Demographic and Economic Frustration; Nations and Politics in Soviet Successor States* (Cambridge, England: Cambridge University Press, 1993) 399; UNCHR, Alinur Elebaeva, "Minority Rights; Cultural Diversity and Development in Central Asia", *Sub-Regional Seminar* (Bishkek, October 2004) 4-12;

<sup>16</sup> Also; Russians, Ukrainians, Dungans, (Chinese Muslims), Uighurs, Tatars, Germans. Results of All-Union Census on the population, 1989 (*Naselenie SSSR: po dannym vsevoiaznoi perepisi naseleniia, 1989*) Moscow, 1990;

In 2002, about 700,000 Uzbeks lived in the Kyrgyz part of the Valley. In ten years the number grew rapidly. Refer further to; Armstrong, Andrea, C. "Being Recognized as Citizens: A Human Security Dilemma in Central Asia and Caucasus," *Commission of Human Security*, Nov, 2002, 23;

<sup>17</sup> *Ibid*. 13. The tragic events of 1930 in Kazakhstan also resulted in the migration of non-natives into the region. Inhabitants of some regions moved to Kyrgyzstan as a result of mass hunger. Stalin's mass deportations of Germans from the Volga region, Koreans from the Far East, Caucasians (*Chechens, Ingush, Balkars, Meshketian Turks* and others) and Crimean Tatars also resulted in an increase of the non-native population;

Sovereignty.<sup>18</sup> Simultaneously, the government elaborated official symbols of the newly independent state: the state seal and anthem. In August 1990, the Communist Party was officially abolished in Kyrgyzstan.<sup>19</sup> It became the first state among the Central Asian republics to develop its democratic opposition and a multi-party system. Various political blocs, institutions, and minority coalitions opposed nationalism and extremism to stimulate democracy and the rule of law. In 1990, Kyrgyzstan demonstrated an unprecedented case in the whole post-Soviet space by electing a non-communist president.<sup>20</sup>

“Since the disintegration of the USSR, in 1991 Kyrgyzstan was proclaimed as a sovereign independent Kyrgyz Republic and the lawful successor to the territory of the Soviet Kyrgyzstan and acquired international recognition. In 1993 was adopted the Constitution of the new sovereign Kyrgyz state. The new government included a President and a Prime Minister and ... Parliament. The government has abandoned socialism and established a democratic state.”<sup>21</sup>

In October 1989, analogically to other post-Soviet states, Kyrgyzstan initiated the promotion of a new language law in favor of Kyrgyz language and change from the Cyrillic alphabet into Latin.<sup>22</sup> Additionally, in order to promote the Kyrgyz language and usage of the new alphabet, authorities expanded the relevant network of educational organizations. The Law on Language was passed in 1991. After long debates, it was however decided not to prioritize one language over another but rather to grant equal official status to both of the languages: Russian and Kyrgyz. Later, in 1993, when Kyrgyzstan adopted its first constitution, it fully reiterated the provision on the equal status of both languages.<sup>23</sup>

The core population in the present Kyrgyz state is composed of ethnic Kyrgyz

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<sup>18</sup> The Law on introducing the post of the President of the Kyrgyz SSSR, On Introducing Changes and Amendments into the Constitution (Fundamental Law) of the Kyrgyz SSSR, adopted on 24 October, 1990 and the Declaration on State Sovereignty of the Republic of Kyrgyzstan, adopted on 15 December, 1990;

<sup>19</sup> Although, later in 1991 it revived as the Kyrgyz Communist Party, however with an extremely weak position in National Parliament. As the state headed for democratic reforms, in the next 20 years its presence went almost unnoticed. Refer further to; Gene Huskey, *Kyrgyzstan: The Politics of Demographic and Economic Frustration; Nations and Politics in Soviet Successor States* (Cambridge, England: Cambridge University Press, 1993) 399;

<sup>20</sup> Askar Akaev was elected on 27 October, 1990 at a sitting of the Supreme Soviet of the Kyrgyz SSR. Refer to the UNCHR, Alinur Elebaeva, "Minority Rights; Cultural Diversity and Development in Central Asia," *Sub-Regional Seminar* (Bishkek, October 2004) 3;

<sup>21</sup> *Ibid*, 2;

<sup>22</sup> Eugene Huskey, *The Politics of Language in Kyrgyzstan, National Council for Soviet and East European Research*, MA, 1995. Conversion to Cyrillic script took place in 1940;

<sup>23</sup> Some researchers suppose that the 1989 Law gave priority to those who spoke Kyrgyz language (titular nation), while, the same time, ignoring the interests and future perspectives of non-titular national minorities who basically spoke Russian. Such politicization of language, similarly to other post-USSR regions, eventually sparked inter-ethnic problems. Refer to UNCHR, Alinur Elebaeva, "Minority Rights; Cultural Diversity and Development in Central Asia", *Sub-Regional Seminar* (Bishkek, October 2004) 3; Also, refer further to *para* on language legislation; it should be noted beforehand that no legal case is available on the restriction of nationality reasoned by language issues.

nationals. The state also hosts a large number of ethnic minorities. The second largest group is Uzbek. They reside mainly in the southern part, which technically comprises a part of the Fergana valley. In 1991, when the USSR ceased to exist, previously unimportant boundaries between states became an issue for international disputes. In the Central Asian region, one of many complicated issues was the Fergana valley, a land which simultaneously included portions of three states, Kyrgyzstan, Uzbekistan and Tajikistan, however, in most parts, traditionally populated by ethnic Uzbeks. From 1990 up to nowadays, the Kyrgyz portion of the valley has been known for its unstable inter-ethnic situation, centered around clashes between Kyrgyz, who comprise a titular majority of the state, and the Uzbek national minority.<sup>24</sup>

In the two decades after gaining independence, the biggest part of the Slavic population left Kyrgyzstan, mainly for Russia. Its reasons are quite similar to those of other Central Asian states and include, basically, unclear future perspectives and financial instability. In addition, a substantial number of formerly deported Volga Germans and Ukrainians were repatriated back to their ethnic homelands.

In the initial years of independence, the state also faced serious economic difficulties. The sudden switch from a centralized planned economy to a free market economy was accompanied by the unpreparedness of many sectors of industry to compete with other states. Other social problems, including a high level of corruption and maladministration caused by a series of revolutions, finally resulted in the replacement of ruling authority and constitution.<sup>25</sup>

## II. Nationality law in texts

The key provision for implementing the zero-option principle in the

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<sup>24</sup> *Ibid* 11-15, also; Gene Huskey, *Kyrgyzstan: The Politics of Demographic and Economic Frustration; Nations and Politics in Soviet Successor States* (Cambridge, England: Cambridge University Press, 1993) 399; also, Barrington, Lowell. "The Domestic and International Consequences of Citizenship in the Soviet Successor States" *Europe-Asia Studies*, Vol.47 No. 5, (1995) 739; Bremmer, Ian and Ray Taras. *Nations and Politics in the Soviet Successor States* (Cambridge University Press: New York) 1993; Armstrong, Andrea, C. "Being Recognized as Citizens: A Human Security Dilemma in Central Asia and Caucasus", *Commission of Human Security 24 i*, Nov, 2002; Alisher Khamidov, "Frustration Builds among Uzbeks in South Kyrgyzstan", *Eurasia Insight*. [www.eurasianet.org](http://www.eurasianet.org), March 26, 2001. Refer also to; Alisher Khamidov, Erica Marat, "The Danger Of Ethnic Nationalism in Kyrgyzstan", *Central Asia-Caucasus Analyst*, 2011; Antonina Zaharova, Nick Megoran, "Osh, Ten Years on; Positive developments on ethnic relations", *Eurasia Insight*, Sept 18, 2000; IRIN "Kyrgyzstan: Focus on Conflict Prevention in Ferghana Valley", as quoted from; Andrea, C. Armstrong, "Being Recognized as Citizens: A Human Security Dilemma in Central Asia and Caucasus", *Commission of Human Security 24*, Nov, 2002; Abilabek Asankanov, "Ethnic conflict in the Osh region in summer 1990: Reasons and lessons", refer further to; <http://archive.unu.edu/unupress/unupbooks/uu12ee/uu12ee0d.htm> [accessed on September 6, 2016];

<sup>25</sup> UNCHR, Alinur Elebaeva, "Minority Rights; Cultural Diversity and Development in Central Asia", *Sub-Regional Seminar* (Bishkek, October 2004) 24; Commission for Security and Cooperation in Europe, *Implementation of the Helsinki Accords, Human Rights and Democratization in Europe*, Washington D.C.: U.S. Government Printing Office, (January 1993) 171;

citizenship policy of Kyrgyzstan was first adopted into 1993 Constitution.<sup>26</sup> The same year the Kyrgyz Republic adopted the 1993 Law on Citizenship of the Kyrgyz Republic (hereinafter, the 1993 law).<sup>27</sup> The 1993 law automatically recognized as citizens all those who were citizens of the former Kyrgyz SSR and resided permanently (with registered residency) in Kyrgyzstan by December 15, 1990, and had not applied for another citizenship. The highlighted date was associated with the adoption of the Declaration on the State Sovereignty of the Kyrgyz Republic, symbolizing the beginning of a new-independent state and its citizenry.<sup>28</sup> As USSR passports contained the necessary stamps specifying the date and place of residence of the bearer (*propiska*) - it was relatively easy to ascertain the fact of permanent residence in Kyrgyzstan.<sup>29</sup>

For the next 15 years, this initial regulatory framework proved itself as inadequate for solving the growing problem of the statelessness of former Soviet citizens who did not have their residency in Kyrgyzstan registered prior to the adoption of the 1993 law.<sup>30</sup> Therefore, in order to address frequently reported problems related to statelessness, national authorities, supported by international donors, annulled the 1993 law, and instead adopted the 2007 Law on Citizenship of the Kyrgyz Republic. (The 2007 law)<sup>31</sup> The 2007 law was crafted with the objective of addressing the problems of stateless persons and people who lack valid passports.<sup>32</sup> It particularly focused on the former Soviet nationals who became stateless because of complicated issues related to their residency registration.<sup>33</sup>

In addition, while the 1993 law focused strongly on the passport regime and

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<sup>26</sup> The 1993 Constitution of Republic of Kyrgyzstan, N 1 185-XII, May 5, 1993. Sec II art 13-14 (replaced by the 2010 Constitution of Republic of Kyrgyzstan);

<sup>27</sup> The 1993 Law on Citizenship of the Kyrgyz Republic (as amended by the Law of the Kyrgyz Republic of 25 July 2002 No. 130), 1333-XII, 18 December 1993, available at: <http://www.refworld.org/docid/40fe4f3e4.html> [accessed 20 January 2014];

<sup>28</sup> The Declaration on the State Sovereignty of the Kyrgyz Republic; August 31, 1990; *SOUYZ 91*, N 38;

<sup>29</sup> Refer further to; Report on Kyrgyzstan; Passports and ID documents, *UNHCR*, February 20, 2013; 12; (Note) presently, all Kyrgyz nationals are required to have *propiska* (residence registered at the address at which they permanently reside). In practice, it gives a wide range of social rights and welfare benefits. While previously it was stamped into national passports, presently it is shown in ID cards. In theory, Kyrgyzstan still has *propiska* system however its application is not as strong as in some other former Soviet states.

<sup>30</sup> UNHCR, *A Place to Call Home: The situation of stateless persons in the Kyrgyz Republic; Findings of the Survey Commission by the UNHCR*, Bishkek 2009, 12; also, Marjorie Farquharson, *Statelessness in Central Asia*, Report for the UNHCR, May 2011, 12;

<sup>31</sup> The 2007 Law on Citizenship of the Kyrgyz Republic, May 21, 2007, came into force on June 1, 2007, N-70, The Presidential Decree 473; also; Regulation on the Procedure for Consideration of Citizenship Issues of October 25, 2007;

<sup>32</sup> Whether the person's residency was registered on December 15, 1990, and February 18, 1994 was a crucial for the purpose of obtaining citizenship, while the 2007 law did not pause on deadlines.

Report on Kyrgyzstan; Passports and ID documents, *UNHCR*, February 20, 2013, 6;

<sup>33</sup> In particular, Art 5, (2) the 2007 law;

2) Former Citizens of the USSR who have been residing permanently in the Kyrgyz Republic for five years before apply for a Kyrgyz passport and who have not applied for the citizenship of another state;

its exchanging procedures, the 2007 law avoided many barriers and deadlines within which the old passports had to be exchanged for new ones. On the other hand, the 2007 law maintains the dominant character of passports in internal and social affairs. In article 9 of the law, there is a regulation, which considers national passports as an essential document certifying the legal bond between individual and state, thus placing it on the top of citizenship related identification documents.<sup>34</sup>

Citizenship law in Kyrgyzstan states that citizenship is equal for all regardless of how people acquired it.<sup>35</sup> It provides for legal definitions of; citizens, stateless persons, foreign citizens as well as grounds and procedures for acquisition, renunciation, loss and deprivation of citizenship. In addition, Kyrgyzstan has migration laws and respective laws and regulations on foreign nationals.<sup>36</sup>

Like the other four Central Asian states, Kyrgyzstan's acquisition of citizenship by birth is based on the *jus sanguinis* blood descent principle which was apparently inherited from the old Soviet law.<sup>37</sup> Children born in wedlock between nationals and stateless or nationals and unknown people are also automatically considered as citizens.<sup>38</sup> A child born in Kyrgyzstan to a national and foreigner can be only considered as a national after the foreign parent submits written consent to the registration authorities.<sup>39</sup> A child born to stateless parents can only acquire citizenship through the fact that parents have permission to reside permanently.<sup>40</sup> Similarly to Uzbekistan and Kazakhstan, the absence of such a permit may result in a high risk of statelessness for a child. Abandoned foundlings automatically gain citizenship.<sup>41</sup> The 2007 citizenship law also speculates automatic citizenship provisions for children born abroad to nationals if they stay there temporarily.<sup>42</sup> The same regulation applies to children born in the territory of another state to Kyrgyz nationals and stateless persons.<sup>43</sup> A written agreement is required to be considered a Kyrgyz citizen when a child is born abroad to a Kyrgyz national and a foreigner.<sup>44</sup>

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<sup>34</sup> Art 9, the 2007 law;

<sup>35</sup> *Ibid* ; Art 4 (4)

<sup>36</sup> Kyrgyzstan: Law No. 61 of 2000 on External Migration, July 17, 2000, available at: <http://www.refworld.org/docid/3ae6b4ed34.html> [accessed 20 January 2014]; Replaces the Law Pertaining to Alien's Stay in the Kyrgyz Republic of 1/1/1992; Regulation on Procedure of Registration and Issuance of Temporary and Permanent Residence Permits to Foreign Citizens and Stateless Persons in the Territory of the Kyrgyz Republic, *GKR 626*, November 13, 2008;

<sup>37</sup> Art 12 (1) the 2007 law;

<sup>38</sup> *Ibid* ; Art 12 (3) ;

<sup>39</sup> *Ibid*;

<sup>40</sup> *Ibid* ; Art 12 (4);

<sup>41</sup> Art 12 (5) the 2007 law; In compliance with the 1961 Statelessness Convention, although Kyrgyzstan is not a state-party to both of the statelessness conventions as for December 2016.

<sup>42</sup> Art 12 (1) the 2007 law;

<sup>43</sup> *Ibid* ; Art 12 (3);

<sup>44</sup> *Ibid* ; Art 12 (2);

There is no related legal provision on possible disagreements between parents on a child's future nationality. Certain scholars regard such absence as posing a risk of statelessness for children.<sup>45</sup>

The 2007 law on nationality provides equal rights for both of the parents to pass on their nationality to children born inside or outside of the territory.<sup>46</sup> The law also establishes grounds for safeguards on the future nationality of spouses in cases of divorce.<sup>47</sup> Similarly, the change in nationality status of one spouse may not affect the nationality of another.<sup>48</sup>

The 2007 citizenship law of Kyrgyzstan permits dual nationality.<sup>49</sup> The possession of dual nationality is also speculated under bilateral or multilateral treaties.<sup>50</sup> It should be noted that at the moment Kyrgyzstan has no agreement with any of its neighbor-states because none of the Central Asian states or China recognize dual nationality.<sup>51</sup> It seems to be the only problem for dual nationality, as in this case, individuals or children are given only one option to choose the citizenship of a particular Central Asian state.<sup>52</sup> At the moment, a large number of Kyrgyz migrants who hold both Kyrgyz and Russian passports, reside in the Russian Federation. By 2011 Kyrgyz authorities have estimated that about half of the 700,000 Kyrgyz nationals living in the Russian Federation have obtained their Russian citizenship under the simplified procedure.<sup>53</sup>

Kyrgyzstan implies certain safeguards mechanisms against statelessness in the context of the renunciation of another nationality. In particular, Kyrgyz authorities require newly naturalizing applicants, from states, which do not permit dual citizenship, to submit a written notice of renunciation of their previous nationality just for their own record. Kyrgyz authorities do not require the renouncing of a previous nationality before the decision on the Kyrgyz citizenship has been made. The written renunciation of the previous nationality and the old

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<sup>45</sup> UNHCR, *A Place to Call Home: The situation of stateless persons in the Kyrgyz Republic*; Findings of the Survey Commission by the UNHCR, Bishkek 2009, 32; also Marjorie Farquharson, *Statelessness in Central Asia*, Report for the UNHCR, May 2011, 12;

<sup>46</sup> Art 4 (4) the 2007 law, the issue was brought in line with legal obligations under Art 9.2, CEDAW, as the predecessor law gave the preference to the patriarchal principle of nationality;

<sup>47</sup> Art 8 (1), (2) the 2007 law; State-party to the 1957 Convention on the Citizenship of Married Women;

<sup>48</sup> *Ibid*; Art 8 (2);

<sup>49</sup> Art 22 (1)(2) the 2007 law (also changed provision in the 2010 Constitution);

More discussed in the *para* on Bilateral treaties;

<sup>50</sup> *Ibid*;

<sup>51</sup> Ex. Tajikistan. Also because there is a provision banning dual nationality with bordering states.

Art 22 (2) the 2007 law;

<sup>52</sup> Simultaneously, other Central Asian states in their naturalization procedures require a documentary evidence that person had renounced his previous nationality. (refer to the previous and next country studies)

<sup>53</sup> Since October 24, 2011, as the number of applicants grew up intensively, simplified procedures are no longer applied to Kyrgyz nationals; Report on Kyrgyzstan; Passports and ID documents, UNHCR, February 20, 2013, 6;

passport are only submitted to the issuing state when Kyrgyz nationality is finally secured.<sup>54</sup> On the other hand, someone who wants to renounce Kyrgyz citizenship is obliged to submit an official notice of possession of another citizenship or affidavit confirming that applicant will acquire citizenship of another state once the Kyrgyz one is renounced.<sup>55</sup> Simultaneously, such renunciation has to be approved by the president.<sup>56</sup>

Kyrgyz Republic reserves the right for deprivation of nationality. The typical legal provisions for this include a loss of nationality acquired by fraudulent behavior or misrepresentation of facts while undergoing naturalization.<sup>57</sup> In August 2016, the president of Kyrgyz Republic signed amendments into law on citizenship, allowing relevant authorities to deprive citizenship to those individuals convicted of terrorism.<sup>58</sup> Such measures are common in recent citizenship practices of Central Asian states and Russia as a result of actions against international and domestic terrorism related crimes. In general, international law does not prohibit states to deprive citizenship from its own citizens. However, it requires that it not be arbitrary. With the adoption of the 2007 law, the provisions of Kyrgyzstan on this matter became compliant with the 1961 Statelessness Convention, as the law no longer stipulates article for the deprivation of citizenship for residence of citizens abroad, which is the main problematic and restrictive issue in the citizenship laws of some states.<sup>59</sup> The president together with the Interior and Foreign Ministries are responsible parties for decisions regarding the loss of nationality.<sup>60</sup>

The nationality law gives a clear provision for due process guarantees and legal remedies on loss of the citizenship. In Kyrgyzstan, the presidential decision on

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<sup>54</sup> Art 14 (2) the 2007 law; Art 54, Annex 2 to Presidential Decree No 473, October 25, 2001;

<sup>55</sup> Para 33, 2007 Regulation No 473 On the Procedure for Considering Issues related to the Citizenship of the Kyrgyz Republic;

<sup>56</sup> Art 28 the 2007 law;

<sup>57</sup> Art 26 (1)(2), the 2007 law; Add (1); loss of citizenship for serving in the military services of a foreign power;

Refer also to; Marjorie Farquharson, Statelessness in Central Asia, Report for the UNHCR, May 2011,16;

<sup>58</sup> Article 6, [On amending the article 26 of the Law of Kyrgyz Republic on Citizenship]

*[Статья 6 Внести в Закон Кыргызской Республики «О гражданстве Кыргызской Республики» (Ведомости Жогорку Кенеша Кыргызской Республики, 2007 г., № 5, ст. 461) следующее изменение: пункт 1 статьи 26 изложить в следующей редакции: «1) вследствие поступления лица на военную или разведывательную службу иностранного государства; прохождения за пределами Кыргызской Республики подготовки, направленной на приобретение умений и навыков совершения террористического или экстремистского преступления; участия в вооруженных конфликтах или военных действиях на территории иностранного государства, за исключением случаев исполнения официальных обязанностей по поддержанию международного мира и безопасности. (Rus)]*

<sup>59</sup> Provision was lifted in the 2007 law;

<sup>60</sup> Art 27 (1) the 2007 law, in cases of military service in the foreign state Ministers of Defense and Security Service are consulted, refer to; Art 37-42, 2007 Regulation No 473 On the Procedure for Considering Issues related to the Citizenship of the Kyrgyz Republic;

citizenship can be appealed within the time limits.<sup>61</sup> However, once the decision on loss is confirmed, authorities annul the national passport and instead issue a person special certificate confirming the fact of loss.<sup>62</sup>

The naturalization procedure in the law of 2007 lifted many barriers and enabled many stateless persons to legalize their stay. It considered all former Soviet nationals with five years of residence in Kyrgyz territory as eligible for citizenship. Thus the country could decrease its stateless population, which by 2007 had reached almost 13,000 persons.<sup>63</sup>

The 2007 law makes a distinction between general and simplified ways of obtaining nationality.<sup>64</sup> Simplified procedures cover those applicants who were born in Kyrgyz SSR (had a USSR passport); one of whose parents is a national residing in the Kyrgyz Republic; and people who decided to restore their nationality.<sup>65</sup> The ethnic Kyrgyz people with citizenship of another state and stateless women married to Kyrgyz nationals are entitled to the most simplified naturalization procedures. The law foresees no residence or other requirements for them.<sup>66</sup> Similarly, simplified procedures are stipulated for children who have one parent or legal trustee who is a national of the Kyrgyz Republic.<sup>67</sup>

The general naturalization for foreigners and stateless persons in Kyrgyzstan requires permanent residence period of 5 years.<sup>68</sup> The requirement might be shortened from five to three years for certain persons who meet special criteria outlined in the law.<sup>69</sup> The law also stipulates knowledge of state or official languages, which are: Kyrgyz or Russian. It makes a rather vague provision stating that the applicant should have abilities enough for conversation.<sup>70</sup> The existing practice on naturalization, however, does not demonstrate any cases in which the reason for

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<sup>61</sup> Art 28 the 2007 law; refer to the 2007 Regulation No 473 On the Procedure for Considering Issues related to the Citizenship of the Kyrgyz Republic; Art 41 (2) the 2007 law; Within the six months from the date of the final decision or more in case of reasonable circumstances;

<sup>62</sup> The reason of loss is not stated in the certificate; Art 41 (1), 2007 Regulation No 473 On the Procedure for Considering Issues related to the Citizenship of the Kyrgyz Republic;

<sup>63</sup> Art 5 (2) the 2007 law; Also: UNHCR, *A Place to Call Home: The situation of stateless persons in the Kyrgyz Republic*; Findings of the Survey Commission by the UNHCR, Bishkek 2009, 32, also Marjorie Farquharson, *Statelessness in Central Asia, Report for the UNHCR*, May 2011, 23;

<sup>64</sup> Art 13; 14 the 2007 law;

<sup>65</sup> *Ibid*; Art 13; I (1(1), (2), (3)). For this category, the residence period might be shortened from five to one year.

<sup>66</sup> *Ibid*; (2);

<sup>67</sup> *Ibid*; (3);

<sup>68</sup> Art 13 I (1) the 2007 law; Art 10, 2007 Regulation No 473 On the Procedure for Considering Issues related to the Citizenship of the Kyrgyz Republic;

<sup>69</sup> Art 13 II (2,3,4), the 2007 law;

Those who did great achievements in science, technology or culture, those who meet special qualifications required by state; awarded for distinguished service, persons who did their investments in sectors of economy of a high state priority; recognized refugee (only in Kyrgyzstan and Kazakhstan)

<sup>70</sup> *Ibid*; Art 13 I (2);

applicants' rejection was language insufficiency. This is explained by the fact that immigration authorities give the same preference to the Russian language, which is spoken by the majority of the population.<sup>71</sup>

All requirements such as language proficiency (permitted both in Kyrgyz or Russian), financial solvency, residence, and marriage are supported by proofs, which basically consist in documentary evidence.<sup>72</sup> Proof of payment of application, identity, family connection, residence and financial solvency documents are included in the application and submitted to the immigration office. So far, Kyrgyzstan is the only country, which notifies the applicant about the ongoing steps in the assessment.<sup>73</sup>

## II. A. Bilateral treaties

The citizenship law in the Kyrgyz Republic stipulates the options of dual citizenship and the acquiring of a nationality in a simplified way the international or bilateral treaties or agreements.<sup>74</sup> The practice of granting citizenship on simplified conditions on the basis of international agreements already exists in legal practices in certain post-Soviet states. The Kyrgyz Republic along with the Republic of Tajikistan are the only states in Central Asia which also stipulate in their nationality laws the possibility of dual citizenship with other states on the basis of international agreements.

An agreement between Kazakhstan, Kyrgyzstan, The Russian Federation, and Belarus was concluded in February 1999 and offered mutually simplified procedures for acquiring nationality.<sup>75</sup> In 2003, the Kyrgyz Republic and the Republic of Tajikistan concluded a bilateral agreement, which aimed to give simple access for nationality to Tajik nationals residing in certain parts of the Kyrgyz state.<sup>76</sup> The necessity for such an agreement was caused by the complicated situation of Tajik refugees who fled the 1992 civil war in Tajikistan and later found themselves in

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<sup>71</sup> Refer to the next *para* on language issues in Kirgizia;

<sup>72</sup> *Ibid*; Art 33, (1),(4), (7); In case if applicant is a graduate of an educational institution where the main language of instruction was Kyrgyz or Russian, such conditions may be waived;

<sup>73</sup> Art 8, 2007 Regulation No 473 On the Procedure for Considering Issues related to the Citizenship of the Kyrgyz Republic;

<sup>74</sup> Art 22 (1)(2) the 2007 law (also changed provision in the 2010 Constitution);

<sup>75</sup> An Agreement Between Kazakhstan, Kyrgyzstan, The Russian Federation and Belarus on a simplified procedure for citizenship acquisition, February 26, 1999; <http://cis-legislation.com/document.fwx?rgn=3973> [accessed on December 20, 2016]

<sup>76</sup> Agreement Between the Kyrgyz Republic and the Republic of Tajikistan on Granting Citizens of the Republic of Tajikistan the Right of Renunciation of the Citizenship of the Republic of Tajikistan Through a Simplified Procedure and Acquisition of the Citizenship of the Kyrgyz Republic Through a Simplified Procedure [Kyrgyzstan], 27 August 2003, available at: <http://www.refworld.org/docid/40fe33804.html> [accessed 20 December 2016]

limbo because of the shortages in Kyrgyz refugee law and policy.<sup>77</sup> A bilateral agreement and new refugee law resulted further in regulation on simplified procedures for the acquisition of citizenship.<sup>78</sup>

As states specified their borders in Central Asia, some of them enforced visa requirements for nationals of bordering states.<sup>79</sup> In order to ease existing travel restrictions for own nationals those of neighboring states, Kyrgyz authorities concluded visa-waiver agreements with more than 45 states. As an example, the agreement between Uzbekistan and Kyrgyzstan on mutual trips allows visa-free entry and stay.<sup>80</sup>

## **II. B. Language legislation**

The program of wide national revival launched almost in all union republics prior to the collapse of the USSR, started basically with adopting the laws establishing the state titular language. In 1989, Kyrgyz SSR passed a law designating the Kyrgyz language as a state language.<sup>81</sup> This law required persons employed in state organs, public administration, law enforcement agencies and a wide range of organizations and educational institutions to have a fluent command of the Kyrgyz language. This pioneering language law also stipulated for the Russian language a role as an instrument for inter-ethnic communication.

Obviously, as in all other states, the decision on language laws was dictated by political will while the social reality and preparedness was far beyond from allowing an immediate switching into Kyrgyz language. In fact, in 1990 half of the population and about 80 percent of people residing in big cities used Russian regularly as a tool for communication and work. Such legal developments were therefore considered entail an increasingly harsh language policy towards Russian speakers, of whom the majority composed ethnic Kyrgyz people. Moreover, as the Kyrgyz language was evaluated as a nomad language, which experienced difficulties in the fields of science, law and politics, enormous work needed to be done on enriching its vocabulary. Such issues gradually diminished the nationalistic policies towards prioritizing the Kyrgyz language over Russian.<sup>82</sup>

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<sup>77</sup> Detailed discussion in *para* on case study (case of Tajik refugees in Kirgizia);

<sup>78</sup> Provision on Simplified Procedure of Acquisition of Citizenship of the Kyrgyz Republic by the Citizens of the Republic of Tajikistan (By-laws to the Tajik-Kyrgyz Agreement) [Kyrgyzstan], 380, 25 May 2004, available at: <http://www.refworld.org/docid/40fe4c434.html> [accessed 20 December 2016]

<sup>79</sup> Some border disputes remain and are often the cause of the improper application of citizenship norms (for ex, registration rules);

<sup>80</sup> Agreement between the Government of the Kyrgyz Republic and government of the Republic of Uzbekistan on mutual trips of the citizens, October 3, 2006;

<sup>81</sup> The 1989 Law of the Kyrgyz SSR on state language, 1989; The Supreme Soviet of Kyrgyz SSR, *N 17*;

<sup>82</sup> Michele E. Commercio, *Russian Minority Politics in Post-Soviet Latvia and Kyrgyzstan* (University of

Both versions of the Kyrgyz constitutions confirmed the status of a Kyrgyz as a state language.<sup>83</sup> However, the last constitution secured a special role for the Russian language, stating it as an official language. The authorities took certain efforts in order to stabilize the situation with migration and to create the concept of a common home for the country's different ethnicities unified by a liberal language policy.

In legal terms, Russian became the official language in Republic of Kyrgyzstan in May of 2000 with the adoption of a law on official language.<sup>84</sup> The law came up with a three main and unique points that eradicated the language hierarchy and accommodated the needs of Russian speakers. First, the law confirmed the protection and essential conditions for the functioning and development of Russian on the same base as the Kyrgyz language.<sup>85</sup> Second, the citizens were given the right to appeal to the local or state administration organs in Russian. This was probably the most important factor, as the law required all state organs, law enforcement agencies and judiciary to use Russian as a working language.<sup>86</sup> Additionally, in daily life, the status of Russian was granted the same status with the Kyrgyz language. Third, the law created conditions for receiving education in the Russian language in all educational organizations.<sup>87</sup>

In order to keep the Kyrgyz language developing, the authorities initiated a wide range of programs including the adoption of the 2004 law on state language.<sup>88</sup> The law reiterates the official status of Russian language and simultaneously creates conditions for supporting the Kyrgyz language through educational and development programs.<sup>89</sup> The law asserts the necessity for an excellent command of Kyrgyz for occupying high state positions, such a President, Prime Minister, Chair of Parliament, or Head of the Constitutional Court. There is a provision stipulating a well enough command of Kyrgyz language for public servants and the provision of

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Pennsylvania Press, 2010) 58-63;

<sup>83</sup> The 1993 Constitution of Republic of Kyrgyzstan, *N 1 185-XII*, May 5, 1993. Sec II art 13-14 (replaced by the 2010 Constitution of Republic of Kyrgyzstan);

<sup>84</sup> Law of the Republic of Kyrgyzstan on Official Language. May 29, 2000 (*N52*) Amended on July 28, 2008;

<sup>85</sup> *Ibid*, Art 2;

<sup>86</sup> *Ibid*, Art 1, 2, 14;

<sup>87</sup> *Ibid*, Art 13;

<sup>88</sup> The Law of Kyrgyz Republic on State Language, April 2, 2004 (*N54*);  
With amendments of December 8, 2008 (*N307*) and January 21, 2010 (*N8*);

<sup>89</sup> *Ibid*, Art 1, 2;

necessary paperwork in the state language.<sup>90</sup> The present law eliminated many controversial points of the 1989 law and therefore is considered a liberal towards language policy. It stipulates provisions, on the protection of languages of minorities and the creation of conditions for the development of languages of different ethnic groups. In addition, it lifted the articles of the previous 1989 law, which required a wide range of employees in different organizations and institutions to be fluent in the Kyrgyz language.

Both of the laws benefited the state profile in terms of its relatively liberal naturalization law and language policy. The naturalization process became more productive with granting official status to the Russian language. Therefore, since 2000, there is not even a single case in which the denial of nationality was reasoned by language requirements. This is explained by the fact that Russian is practically considered as an official language, at least for naturalization procedures.<sup>91</sup>

### **III. Nationality law in practice**

The national administrative framework on citizenship issues is nominally vested in the President. Factually, all responsibilities are carried out by the Commission on Citizenship under the President and departments of Internal Affairs in regions and towns.<sup>92</sup> The Ministry of Internal Affairs receives applications for naturalization from domestic applicants while the Ministry of Foreign Affairs receives applications and provides relevant aid to its nationals within its embassies and consulates in foreign countries.<sup>93</sup> The framework looks much like all other states of the former USSR.

Formally, an exercise of nationality rights starts with the receiving of a national ID from the issuing authorities.<sup>94</sup> In the case of naturalized citizens, after the naturalization process followed by special presidential decree. The nationality law states that citizenship is one and equal, irrespective of the grounds for which it was acquired.

As the citizenship law and other regulations on citizenship issues are relatively fresh, being dated in 2007-2010, there is no comprehensive information on citizenship law in practice. As yet, the situation concerning the practice of citizenship

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<sup>90</sup> *Ibid*, Art 7, 8, 9, 10;

<sup>91</sup> None of the materials used in present research provide any relevant case.

<sup>92</sup> UNHCR, *A Place to Call Home: The situation of stateless persons in the Kyrgyz Republic*; Findings of the Survey Commission by the UNHCR, Bishkek 2009, 12;

<sup>93</sup> Refer to the procedures on renunciation and loss of citizenship in Nationality Law in texts;

<sup>94</sup> During the period 2004-2006 passport was replaced by separate travel passport and ID card for domestic use. Report on Kyrgyzstan; Passports and ID documents, UNHCR, February 20, 2013, 12;

rights has not been assessed widely by national judgments or international research. The question of the practical implementation of citizenship rights shall be addressed through several case studies in the present chapter.

### **III.A. Case of the Tajik refugees in the Kyrgyz Republic**

Since the breakup of the USSR, Kyrgyzstan has been facing various cases of statelessness or, at least, a high risk of it.<sup>95</sup> The most positive steps in the form of a new 2007 law on citizenship enabled stateless persons to acquire citizenship without certain bureaucratic and financial obstacles. This case study takes a closer look at the joint efforts by authorities and international donors to address the problem of former Tajik refugees who fled to the Kyrgyz Republic in 1990.<sup>96</sup>

Right after the collapse of the socialist regime in 1990, while the attention of many human rights watchdogs was focused on the conflict in the Balkans, a civil war erupted in Tajikistan making many flee the country. In terms of internal and external security issues, Tajikistan has always remained the most problematic in the region, as it was the only state hit by a protracted civil war. The conflict was sparked not only because of political confrontation but also many unresolved problems and disputes between various regions, clans, and personalities. In addition, a strong confrontation between those who advocated for the establishment of secular state and those willing to proclaim a state based on strong Islamic rules protracted the war, leaving the national economy in ruins and 1.2 million becoming refugees or internally displaced persons.<sup>97</sup>

With no relevant legislation on refugees, the Kyrgyz authorities decided to accept those fleeing the war. The situation got more complicated because the

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<sup>95</sup> The recent research on statelessness in Kyrgyzstan identified several groups of stateless persons or those who risk falling under the category;

1) Persons who used to be citizens of another state, but have become stateless because of shortcoming in citizenship legislation and the practices of the authorities in countries of origin and the Kyrgyz Republic; (most had received citizenship due to the 2007 law)

2) Former USSR citizens who arrived in the Kyrgyz Republic after the Law on Citizenship of the Kyrgyz Republic of 12 September 1993 came into force and did not apply for any other citizenship. Rem (most had received citizenship due to the 2007 law) the case is described in II.B;

3) Former USSR citizens who resided permanently in the Kyrgyz Republic on 18 of February 1994 who do not have any other citizenship and who did not yet apply for Kyrgyz Republic passports. Rem (most had received citizenship due to the 2007 law) the case is described in II.B

4) Children born to parents of whom one or both are stateless (subject to permanent residence registration)

5) Children of labor migrants; Rem (most had received citizenship due to the 2007 law)

*Report on Kyrgyzstan*; Passports and ID documents, UNHCR, February 20, 2013; 7-8;

UNHCR, *A Place to Call Home: The situation of stateless persons in the Kyrgyz Republic*; Findings of the Survey Commission by the UNHCR, Bishkek 2009, 15-16;

<sup>96</sup> John Anderson, *Kyrgyzstan: Central Asia's Island of Democracy* (Taylor & Francis, 1999); Imogen Gladman, *Eastern Europe, Russia and Central Asia 2007* (Taylor & Francis, 2006).

<sup>97</sup> The Carnegie Endowment for Peace, Tajikistan Civil War's long echo, <http://www.carnegieendowment.org/2012/04/30/tajikistan-civil-war-s-long-echo/c520> [accessed on September 6, 2016]; also refer to: <http://www.un.org/events/tenstories/06/story.asp?storyID=600> ; [accessed on September 6, 2016];

presence of the Soviet passport holders from Tajikistan was not regulated in national legislation until 1993. Only in 1998, the UNHCR with other interested parties started to cooperate closely with non-governmental agencies and Kyrgyz parliamentarians on promulgating refugee laws in the state. The necessity of such law was urgently required in order to enhance the possibility for refugees to get Kyrgyz nationality or at least the legal status of refugee.<sup>98</sup>

The unique feature of this case involved the cessation of refugee status for individuals after the change of circumstances in their home country. After years of stay in the Kyrgyz state, Tajik refugees no longer required international protection as the civil war in Tajikistan ended and, in a short span of time, a new governance of Tajikistan was underway. Therefore, refugee status was no longer recognized by the Kyrgyz authorities despite a reasonable number of refugees who remained on Kyrgyz land.<sup>99</sup>

Kyrgyzstan's initial position stated that the state hosted a big number of persons who escaped the conflict, and who in legal terms could no longer be recognized as refugees because the conditions that had forced the refugees to flee their home country no more existed. As the civil war in Tajikistan ended and the state was undergoing the recovery process, Kyrgyz authorities and experts refused to apply the title of refugees in regards to Tajiks. Simultaneously, Kyrgyz authorities expressed no will to deport refugees to Tajikistan or any third safe country. With a new law on refugees, there appeared a threat of statelessness. As for Tajikistan, which promulgated slightly later a new nationality law, those individuals were holders of former Soviet passports, or simply put, citizens of the state which did not exist. Obviously, a new draft of the Kyrgyz law on refugees and a Tajik law on citizenship created additional gray area of persons with no status.<sup>100</sup>

Kyrgyz Republic in close cooperation with UNHCR produced a model refugee law and adopted its final version only by 2002.<sup>101</sup> A bit later, authorities

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<sup>98</sup> John Anderson, *Kyrgyzstan: Central Asia's Island of Democracy* (Taylor & Francis, 1999), 95; UNHCR, Strategy Note, 2001; <http://www.unhcr.org/3b205b2b10.html> [accessed on November 27, 2012];

<sup>99</sup> Refer further to; Imogen Gladman, *Eastern Europe, Russia and Central Asia 2007* (Taylor & Francis, 2006).

<sup>100</sup> The Carnegie Endowment for Peace, Tajikistan Civil War's long echo, <http://www.carnegieendowment.org/2012/04/30/tajikistan-civil-war-s-long-echo/c520> [accessed on November 27, 2012]; also refer to: <http://www.un.org/events/tenstories/06/story.asp?storyID=600> ; [accessed on September 6, 2016];

<sup>101</sup> Law of the Kyrgyz Republic on Refugees, In edition of the Laws of the KR from May 13, 2006, of No. 87, 3/17/2012 of No. 15; 25 March 2002, available at: <http://www.refworld.org/docid/40fe5dbe4.html> [accessed on September 6, 2016];

Article 1. Concept of the refugee

The refugee the person not being the citizen of the Kyrgyz Republic and petitioning before the Kyrgyz Republic for recognition of by the refugee who is out of the country of the civil accessory or the place of the permanent residence owing to reasonable concerns to become the victim of prosecutions on the basis of race,

adopted Regulations governing the work with refugees.<sup>102</sup> UNHCR experts believed that the law expanded the definition embodied in the 1951 Refugee Convention describing the refugee as someone who is fleeing civil strife.<sup>103</sup> On the other hand, it technically could not be applied to former Tajik refugees who refused to return to their own country. When Kyrgyzstan adopted the 2002 Refugee law, most of the former Tajik refugees became *de facto* stateless as they lacked a state protection principle. To help them in securing legal status, international agencies tried to negotiate with the Tajik government on simplified ways for acquiring citizenship. However, by 2002, those efforts to negotiate with Tajik national authorities brought no visible results.<sup>104</sup> A durable solution for former Tajik refugees came up a year later with an important boost in the naturalization policy of the Kyrgyz Republic and later with two highly important agreements between Kyrgyzstan and Tajikistan.<sup>105</sup> The first agreement afforded Tajik refugees residing in Kyrgyzstan to renounce Tajik citizenship through the simplified procedure, while the second agreement offered to the same group simplified access to Kyrgyz citizenship. A special presidential decree on simplified naturalization helped many *de facto* stateless individuals to obtain secure nationality. It all came as a result of mutual efforts and long negotiations by the UNHCR and national Kyrgyz and Tajik authorities.

The above-mentioned presidential decree granted nationality and passports to more than 1200 *de facto* stateless persons. Those former refugees have fulfilled the obligation to spend at least seven years in the country and made certain efforts for integrating the local communities. Notably, many of those who have been granted citizenship were ethnic Kyrgyz who shared many cultural ties with locals. As UNHCR regional mission pointed "...naturalized refugees have been living in Kyrgyzstan for more than eight years. All were predominantly ethnic Kyrgyz who

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religion, the nationality, political convictions, belonging to specific social group, and also real danger to undergo to prosecution in the armed and international conflicts and which cannot, owing to such concerns, or does not wish to use protection of the country;

<sup>102</sup> National Legislative Bodies / National Authorities, Kyrgyzstan: Regulations of 2003 Governing the Work with Refugees in the Kyrgyz Republic (By-Laws to the Refugee Law), 4 April 2003, available at: <http://www.refworld.org/docid/40fe4dad4.html> [accessed 20 December 2016]

<sup>103</sup> UNHCR, Strategy Note, 2001; <http://www.unhcr.org/3b205b2b10.html> [accessed on November 27, 2012];

<sup>104</sup> *Ibid*;

<sup>105</sup> National Legislative Bodies / National Authorities, Agreement Between the Kyrgyz Republic and the Republic of Tajikistan on Granting Citizens of the Republic of Tajikistan the Right of Renunciation of the Citizenship of the Republic of Tajikistan Through a Simplified Procedure and Acquisition of the Citizenship of the Kyrgyz Republic Through a Simplified Procedure, 27 August 2003, available at: <http://www.refworld.org/docid/42d678514.html> [accessed 20 December 2016];

Provision on Simplified Procedure of Acquisition of Citizenship of the Kyrgyz Republic by the Citizens of the Republic of Tajikistan (By-laws to the Tajik-Kyrgyz Agreement) [Kyrgyzstan], 380, 25 May 2004, available at: <http://www.refworld.org/docid/40fe4c434.html> [accessed 20 December 2016]

fled Tajikistan during the five-year civil war that erupted following the country's independence from the Soviet Union in 1991".<sup>106</sup>

Initially, ethnic issues played an important role in the simplified access to naturalization. Later, a set of bilateral agreements between Kyrgyzstan and Tajikistan offered access to citizenship to all other *de facto* stateless. Though some ethnic elements existed in the simplified access to naturalization initially, the present case provides an example of good international legal cooperation promoted by the UNHCR to address statelessness. Many displaced refugees throughout the Central Asian region, including those who remained in Kyrgyzstan, could, after some time, successfully repatriate back, while the majority of them naturalized in the Kyrgyz state.

By 2011, of the total of 20,000 refugees who fled to the Kyrgyz Republic, escaping the atrocities of 1990 civil war in Tajikistan, about 10,000 persons were considered as Kyrgyz citizens, while the rest had repatriated back.<sup>107</sup> After many years of legal limbo, thousands of people were able to receive Kyrgyz passports instead of the old Soviet ones. The process of granting citizenship to the refugees from Tajikistan has shaped the state's future national refugee legislation and practice, which prior to 1990 did not even exist in any of the Central Asian states.

#### **IV. Evaluation**

The *perestroika* period in Kyrgyzstan was mostly a similar scenario to other states of Central Asia. The initial promotion of independence was not as active as, for example, in the Baltic States. The nationalistic views on the future model of statehood appeared slightly later in forms of language laws and other regulations on prioritizing co-ethnics.

The Kyrgyz example on initial steps towards nation building in the mid-1990 demonstrated at least strong commitment to the observation of human rights. While crafting its domestic law, the state has taken considerably more international legal responsibilities in the field of human rights than other Central Asian counterparts. Simultaneously, national authorities put strong efforts in order to eradicate notorious legal provisions inherited from the Soviet law. While those provisions in the form of restrictive exit visas or *propiska* and passport control have been widely practiced in other states, Kyrgyzstan demonstrated a progressive example by replacing them with

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<sup>106</sup> Ethnicity was pointed into special graph of the USSR passport. UNHCR, Strategy Note, 2001; <http://www.unhcr.org/3b205b2b10.html> [accessed on December 20, 2016];

<sup>107</sup> <http://www.unhcr.org/4e5755809.html> [accessed on December 20, 2016];

less restrictive instruments.

Although Kyrgyzstan implemented a zero-option principle in its state citizenship concept, international human rights actors and non-governmental organizations frequently reported on the problems of statelessness. The initial 1993 citizenship law created a gap for certain groups of people and caused statelessness for technical reasons. With financial support from donor organizations, the state elaborated a new 2007 law on citizenship, which addressed a wide range of problematic issues related to addressing statelessness, acquisition, loss and deprivation of citizenship and naturalization. The 2007 law came to be more compliant with international legal standards as it enabled many people to secure legal status.

Both constitutions secured equal roles for the Kyrgyz and Russian languages. The subsequent laws and regulations on languages have also reiterated constitutional provision for the two official languages. In practice, the government has proven itself responsive to human rights issues, at least in its citizenship and language policies as dual language policy allowed further avoidance of problems related to language barriers during naturalization.

On the other hand, human rights watchdogs express concerns over ethnic policy, particularly, ethnic divisions in Kyrgyzstan. The repetitive character of inter-ethnic clashes in the southern part of the state between the Uzbek national minority and Kyrgyz majority results in human insecurity and destabilization in the region. It tends to draw attention and criticism from human rights actors.