

THE ADMINISTRATIVE
LIMITATIONS TO THE HUMAN
RIGHT TO IDENTITY. THE CASE OF
THE MEXICAN OUTER SERVICE

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— Abstract—

This paper is aimed to recognize the administrative limitations on the Human Right to Identity that currently occur within Mexican Consulates, since the issuance of consular registration of undocumented Mexican migrants is hindered by requesting a Certificate of Identity. It is based on a review of the concepts of Right to Identity and its processing through official documents, mainly consular registration, evidencing that the conditions under which migration operates show the ineffectiveness of the Identity Certificate requested, so it is suggested that through the area of Notarial Functions of the Mexican consulates the faith of knowledge be granted, which would allow that the Mexican official empowered for these effects is made the testimonial act that allows to recognize and identify undocumented migrants residents within their territorial circumscription, thus guaranteeing by the State the Human Right to Identity.

Keywords

Identity; Human Rights, Faith of knowledge, migratory policies, mexican migrants.

HUMAN RIGHT TO PERSONAL IDENTITY

With the Constitutional reform that was verified in 2011 in Mexico, a paradigm of Human Rights emerged that has meant, to our legislation, a series of interpretations that require multidisciplinary knowledge and more extensive to those used in the national territory, such as the one that occurs in Article 4 of the Political Constitution of the United Mexican States, in which the Right to Identity is stated in the Mexican Positive Law, circumscribing this Right to the immediate registration of children's birth. However, the Right to Identity consists of actions that go beyond just recognizing someone's moment of birth, in turn implies a sense of belonging to a family, to society, to the State of origin and contains accordingly elements as fundamental as respect for freedom, human dignity and the right to legal security.

In Mexico there is no legal definition of the Right to Identity, so, to understand its content, it is required to go to other disciplines that do, considering for example psychology, which refers to identity as the subjective and individual element of each person; which constitutes the human being *per se*, and that is becoming more complex and modified throughout human existence (Research Center for Peace, CIP-FUHEM, 2017).

For sociology, identity has a double character, what the individual perceives of himself and what the social group to which he belongs recognizes about him. One of the main goals in cultural politics of the Mexican State is to recognize the cultural content of the native peoples; since it rectifies the national identity and at the same time straightens the speech of a mestizo nation based on cultural syncretism and the dominant anthropological ideology, as well as dealing with the decision-making of the destiny that is posed and conducted for their community (Stevenhagen, 2001).

In the field of Law there is a recognition of attributes that are specific to individuals, which, once integrated, make them have "legal personality" and, therefore, be subjects of Rights and Obligations; within these attributes are both the name and nationality of people, which takes part of what is explained by psychology about the individual's identity and their belonging in a group or society, without establishing the definition of the personal identity, being able to only enumerate the "components" of an individual.

The application of the "International Convention on the Rights of the Child" (SRE, 2017) was ratified and recognized within our country since 1990, in which the Rights to Identity, to the name and nationality are highlighted as

essential for each child, interpreting that through the timely registration of birth minors are granted the legal security they require. As a commentary on the case, our country still has a 6.6% lag of children who are not registered before the first year of life, which intensifies in poor rural or indigenous areas (UNICEF, 2017).

Within this same order, article 8 refers to the Right of Identity through the commitment of the States, which are bound to respect and preserve nationality, identity and even family relations.

In the Mexican Positive Law, it corresponds to the Supreme Court of Justice to make the interpretation of those rules that require a process of clarification, as in the case that occupies us the concept of Identity within our legal framework, thus, the ruling issued by this body establishes that the elements that make up the legal identity are the name, nationality and a filiation:

CHILDREN'S RIGHT TO IDENTITY. It is a right of constitutional rank that derives from article 4 of the Federal Constitution, since the objective of the reform to this precept consisted in recognizing as constitutional rights all the rights of children established in the various international treaties that Mexico has signed. Thus, since the right to identity is recognized in articles 7th and 8th of the Convention on the Rights of the Child, its constitutional rank is undeniable. Likewise, according to these precepts and article 22nd of the Law for the Protection of the Rights of Children and Adolescents, the right to identity is composed of the right to have a name, a nationality and a filiation. Indeed, although identity is constructed through multiple psychological and social factors, in terms of rights, the person's own image is determined to a large extent, by the knowledge of their origins and their filiation, as well as by the identification that they have in society through a name and a nationality. From the determination of said filiation, different rights of the child, such as food and inheritance rights, are also derived.

Interesting in this jurisprudential text, is the connection that is made of the national legislation, from the Political Constitution of the United Mexican States to the Law for the Protection of the Rights of Children and Adolescents, as well as the enumeration of the components to the identity and its connection to fundamental civil and family rights for the full development of the human personality.

The content of the Right to Identity within our legal system can be found in article 19 of the General Law on the Rights of Children and Adolescents (Deputies, 2017), which although it is not a defined concept, is enumerated,

that is to say, they refer the requirements or attributes that are recognized to said concept, being these:

- I. To have the name and the surnames that correspond them, as well as to be registered in the respective Civil Registry immediately free of charge, and to have the first certified copy of the corresponding birth certificate expeditiously and inexpensively issued, under the terms of the applicable provisions;
- II. To have a nationality, in accordance with the provisions of the Political Constitution of the United Mexican States and international treaties;
- III. To know their affiliation and origin, provided that this is keeping with the best interests of children, and
- IV. To preserve their identity, including name, nationality and cultural affiliation, as well as family relationships.

The fact that this recognition is made from the perspective of childhood stands out. It is easy to understand that the administrative perspective of this Right is perfected the moment a child is registered, hence through this official administrative document that is, through the Birth Certificate, granted by the Civil Registry the Right to Identity is presented and hold.

In this regard the Federal Civil Code in force in our country, general and mandatory order in the matter of recognition of the attributes of a person; that is to say of the name, nationality and affiliation of the person, as well as of the existence of the Civil Registry and the registration of births and processing of birth certificates, establishes within its numerals the processes, requirements and conditions necessary to obtain recognition to the Right to Identity, highlighting then that for our legal system there is no other document that guarantees the identity of a person other than the Birth Certificate. This is especially important when referring to migrants, nationals abroad who must prove their identity to foreign authorities and have the status of undocumented.

Identity, considering the attribute of nationality, implies from a sociological perspective respect and recognition of culture, language, traditions, history and common life; and from a legal perspective it also means belonging to a State, the condition of National and the protection that the State grants to its nationals inside and outside its territorial space, having as main effects the recognition of Political Rights, the granting of documents of national identity such as the passport or consular registration, as well as assistance and protection in diplomatic or foreign matters.

In the international field of Human Rights, the American Convention of Human Rights establishes in its 3rd article the Right to the Legal Personality, in its article 18th the Right to the Name and in the article 20th the Right to a Nationality, considering that all the signed countries of this convention are obliged to respect the principles established therein without any discrimination; therefore, it is understood that this obligation to respect rights is extended to the state agencies responsible for enforcing them in accordance with the powers expressly conferred for that purpose.

A person who has an established identity and recognized by their government abroad, can count with not only the Human Right to identity, but also with their own Social Inclusion rights, including economic and political inclusion in the place where they live.

It is worth referring the meaning given by the Supreme Court of Justice of the Nation within the text commented and published on the Right to Identity (Steiner, C; Uribe, P, 2013); in this text, the interpretation given by the Inter-American Court of Human Rights, in which the Right to Identity is consubstantial to the human being, is taken up, granting it, together with the recognition of this Right, the possibility of materializing the Right to the Legal Personality, and noting that the refusal to recognize it hinders the full exercise of political, economic, social, political and cultural rights of individuals. This Right to Identity protects each person against the violation of the "personal life" of each individual.

In the same way, and in the jurisprudential scope, the Inter-American Court of Human Rights (2005) has pronounced itself with respect to the consequences that imply the denial of nationality to people and their extreme vulnerability, as well as the vulnerability that individuals have even in their Right to Dignity, the lack of recognition of their legal personality, estimating the need for the States to implement the mechanisms and processes required to achieve the Right to Recognition of the Legal Personality.¹

We cannot ignore the International Covenant on Civil and Political Rights (SEGOB, 2002) which establishes in article 24.2 the Right of all children to

1 Judgment of September 8, 2005 of the Case of the Yean and Bosico Girls vs. the Dominican Republic in which it refers to the international responsibility incurred by the State for denying the issuance of the birth certificates of the girls Dilcia Oliven Yean and Violeta Bosico Cofi and the harmful legal consequences generated by said omission.

have a name and their registration in the Civil Registry "immediately after" their birth, or the article 24.3 that grants the right to acquire a nationality, considering both the recognition of legal personality.

To understand the scope of the Right to Identity, it must be clear that this is not just about the life, the feelings and the being of an individual conceived by himself as someone unique and different, but it also refers to the rest of the society, all those who he knows, those who interact and relate to him; legally speaking, these attributions are given when we recognize him by his name, his nationality, his age, his marital status, and, therefore, we and the State grant them the right to be protected as an individual and as part of a superior entity that recognizes them as part of it.

The Right to Identity also refers to Human Dignity; it is a basic and fundamental Human Right that, due to its implications, both local and international, should not be suspended, repealed or extinguished and it is especially important when it refers to the protection of migrants. In this sense, the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families (SEGOB, 1999) in Article 24 establishes the full recognition and protection of their legal personality and in 29 they endorse the right to name and nationality.

Therefore, it is clear the content, scope and importance of the existence of official national documentation that effectively grants protection to the Right of Identity as belonging to a family and a State is much more important when it comes to citizens that are in an undocumented status in other countries.

The value of having a document that gives the quality of a person, that is, that includes the rights of identity and personality to a citizen, as well as showing their status as a citizen despite not having legal documentation to be considered legal resident in the country of destination, makes that within our legislation the Nationality Law in its third article, numeral VI originates a document that identifies Mexicans as nationals, the "Consular Registration", same as it is issued by the Ministry of Foreign Affairs and grants undocumented nationals abroad the exercise of certain economic, social and even cultural rights through this identification.

CONSULAR REGISTRATION

The consular registration is, according to what is established in the second article of the Regulation of the Consular Registration, *the identity document issued by a consular office in favor of a national to show that in the registry*

of Mexicans it is registered for residing within its circumscription, granted through the de facto recognition of the identity, address and nationality or belonging to the Mexican state of the person who owns it.

This document serves citizens living abroad not only as a certificate of nationality, but in practical life, it is the only legal document in which they demonstrate having an address and, by having a photograph and a term of five years, sometimes it is also the only proof they have to identify themselves as who they are, that is, their identity according to what has been indicated in the course of this article; in addition, as it's valid for five years, it is also the ideal document to open bank accounts and, in some cases, obtain driver's licenses despite being undocumented, as it is done in the United States of America.

In the Regulation of the Consular Registration, Article 5th lists the requirements for requesting said document, highlighting for this article the numeral IV. "Present identification with photograph", requirement that is detailed more in depth in the fraction IV of the article 9th of said ordering, the one that indicates:

- "IV. Verify your identity with any of the following official IDs with photograph:
- a) ID issued by the Federal Electoral Institute;²
 - b) Mexican driver's license or from a locality in the consular office circumscription;
 - c) Passport, and
 - d) Any other document that in the opinion of the consular officer establishes the identity of the applicant

The Passport and Travel Identity Documents Regulations establish in its Article 14 a more detailed relationship of the proof of identity, the possibility of proving the Identity by means of an official document that contains the specifications established for this purpose by the Ministry of Foreign Affairs that allow its interpretation through relevant administrative provisions; with this, the document called "identity constancy" arises.

When the interested party comes to the Mexican consular offices in the United States of America and does not have the documents listed in article 14

2 This identification document is currently issued by the National Electoral Institute, following the Constitutional Reform on electoral political issues published on February 10, 2014, in which the name of the issuing Institute was modified.

of the Passport Regulation, he is directed to obtain a Certificate of Identity through his municipality of origin.

In this document, whose format can be obtained in the pages of certain consulates of Mexico, it is also indicated to the applicant that it is necessary to attend personally (which in the great majority of the cases is an undocumented Mexican citizen, therefore requires enrollment) or one of his relatives living in Mexico with a recent photograph to the Municipal Presidency of his locality of origin and accompanied by two witnesses who know him and who reside in that locality, to request his certificate to be issued in his name.

This procedure considered of possible identification, as the legislation says in the opinion of the consular officers, means in everyday practice a series of obstacles and impediments of daily life that makes undocumented citizens choose not to continue with the procedure. In most of the cases undocumented people of indigenous communities are the ones who try to carry out this process, most of those have more than 10 years of having left their origin town or are women.

FAITH OF KNOWLEDGE

During the past summer and as a result of a research stay held at the Orlando consulate in Florida, the socioeconomic survey implemented indicated that the indigenous migrant population of Hidalgo and Chiapas has significant representation. The migrants interviewed mostly went through the procedures of consular registration and passport; however, at the time of requesting the necessary documentation to carry out the needed procedure and make it clear that they did not have any of the official documents to identify themselves according to the law; the migrants claimed that they could not get the "Proof of Identity", because either their community of origin is distant from the municipal presidency, their family members in Mexico are very old, or if they find any witnesses willing to make the trip to give their testimony to the municipal authority, it's unlikely they recognize the migrant, since they have not seen them for many years, so the photograph shown "may not look like" the person who they remember when they left.

In several cases, the migrants indicated that they had a birth certificate that stated that they are Mexican and that they even had relatives or friends who could state that could recognize them as who they say they are.

In addition to the foregoing, and in accordance with the provisions of Article 87 of the Foreign Service Law, the Mexican Consulates have an

area of exercise of notarial functions in which they have public faith to: "authenticate, notarize and revoke contracts of mandate and powers, open public testaments, acts of repudiation of inheritances and authorizations granted by those exercising parental authority or guardianship over minors or people unable to take care of themselves, provided that such legal acts are celebrated within their Consular Circumscription and are intended to have effects in Mexico."

From the previous analysis, it is clear that the public faith that may be granted by the Consulates to their nationals abroad is limiting, especially in regard to its effects. However, in light of this scenario and derived from the evident need to make the Human Right to Identity prevail, especially of migrants who find themselves in a situation of extreme vulnerability when they cannot present any document that identifies them, it is proposed that the Consulates grant the "Faith of knowledge". Such case already exists in the Argentine Law, in which public officials can grant the "Faith of knowledge", stating that the person before them presents themselves with witnesses, and known for such effects as "witnesses of knowledge".

In this Law it is indicated that when granting the public instruments to carry out the process, they state that they know those who are presented before them, that is, they come with suitable elements such as witnesses to obtain the knowledge of faith.

In our country, Vargas Aceves (1999) proposes that within the Notarial functions performed be indicated instead of "THE SUBSCRIBED NOTARY CERTIFIES AND GIVES FAITH TO KNOW THE COMPETENT" the phrase "identifies the grantors", which for purposes of this work is achieved with the two witnesses accompanying the conational to the corresponding procedure to later obtain the consular registration.

CONCLUSIONS

The Human Right to Identity is not yet recognized within our national legislation, which makes it necessary to resort to international systems, instances and jurisprudence in order to conceptualize it and appeal it within our Law.

This normative omission leads to conceptual errors that worsen in undocumented migrants who need to identify themselves in the countries to which they emigrate. It is necessary to reassess the importance of having a consular registration or a passport for those who live without documents in a foreign country; the fact that it is an administrative provision that hinders the

right to recognize the nationality and the name of an individual abroad implies a serious omission and regression in Human Rights.

Migrant attention policies must be sensitized in relation to the population they serve in consulates and embassies, considering the realities that prevail when it comes to migrants who are indigenous, who did not finish their studies, who have left their communities years ago, and that if they have relatives who still remain in them, they are far from the municipal capitals, which makes it impossible in several cases to obtain documents in the municipal presidencies.

There is an area empowered to provide public faith within the consulates, therefore, it would be possible to reform the legislation of the Mexican Foreign Service to grant faith of knowledge before the appearance of two witnesses for the purpose of obtaining the consular registration and the passport and, this way, guarantee the Right to Identity of undocumented migrants.

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