

GUIDELINES FOR STATE PRACTICE IN THE FIELD OF NATIONALITY AND STATE SUCCESSION

Preamble

The members, associate members and observers of the European Commission for Democracy through Law,

Attached to the principles of democracy, the rule of law and the protection of human rights,

Bearing in mind the numerous international texts which relate to nationality and the protection of human rights, particularly the 1930 Hague Convention on certain questions relating to the conflict of nationality laws, the 1948 Universal Declaration of Human Rights, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, the 1951 Convention on the Status of Refugees, the 1954 Convention on the Status of Stateless Persons, the 1957 Convention on the Nationality of Married Women, the 1961 Convention on the Reduction of Statelessness, the 1965 International Convention on the Elimination of Racial Discrimination, the 1966 International Covenant on Civil and Political Rights, the 1967 European Convention on the Adoption of Children, the 1969 American Convention on Human Rights, the 1973 Convention to reduce the number of cases of statelessness, the 1979 Convention on the Elimination of All Forms of Discrimination against Women and the 1989 Convention on the rights of the child;

Bearing in mind the draft European Convention on Nationality, prepared within the Council of Europe;

Taking note of the work of the International Law Commission of the United Nations on the topic "State succession and its impact on the nationality of natural and legal persons";

Recognising that the rights and interests of individuals must be duly taken into account in cases of State succession;

Wishing to promote, as far as the effects of State succession on nationality are concerned, practices between States which are respectful of these rights and interests;

Have adopted the following guidelines which should inspire State practice in the field of nationality and State succession:

1. In cases of State succession, responsibility for questions relating to nationality shall fall to the States involved in the succession.
The States must respect the principles of international law and, in particular, the human rights of all persons concerned, as guaranteed by international instruments.
2. In their domestic law and their international relations, the States in question shall respect the principle that every individual has the right to a nationality. They shall avoid creating cases of statelessness.
3. The successor State shall grant its nationality, provided it is not refused or rejected by the persons concerned who possess another nationality, to all nationals of the predecessor state who live or reside permanently within the transferred territory.
The successor State may choose not to consider as inhabitants or permanent residents within the meaning of this provision, public servants, members of the armed forces and other persons having the nationality of the predecessor State who are resident in the transferred territory for reasons of service on the condition that the persons concerned do not become stateless.
4. The successor State shall also confer its nationality:
 - (a) on those persons who live or permanently reside in the transferred territory who are stateless at the time of succession;
 - (b) on persons who originate from the transferred territory who live or reside outside the territory and who are stateless.
5. The successor State shall also confer its nationality on application:
 - (a) on persons who originate from the transferred territory who have the nationality of the predecessor State and who, at the time of succession, live or reside outside this territory;
 - (b) on inhabitants or permanent residents of the transferred territory who, at the time of succession, hold the nationality of a third State.
6. States shall refrain, in particular, from refusing to confer their nationality on certain individuals, having a real and effective link with the territory ceded, on grounds including their national or ethnic origin, their race, religion, or language, or their political opinions.
7. The predecessor State shall refrain from withdrawing its nationality from inhabitants or permanent residents of the transferred territory who have not chosen to adopt the nationality of the successor State save in case the fundamental interests of the State are at stake and on the condition that the persons concerned do not become stateless.
8. The conditions for the acquisition and loss of nationality shall be provided by law.
Any deprivation, withdrawal or refusal to confer nationality shall be subject to an effective judicial remedy.
9. When the State which has lost territory as a result of the succession has not disappeared, persons residing in the transferred territory shall have the right to choose between the nationality of that State or the successor State.
In case of an dissolution, the following persons should, as far as possible, enjoy a right of option:
 - (a) persons born in the territory of one of the successor States and residing in another successor State;
 - (b) persons having the secondary nationality of an entity that became part of one of the successor States and residing in another successor State;
 - (c) persons residing in one successor State and having ethnic, linguistic or religious links to the majority population of another successor State; and,

- (d) unless they had the nationality of a third State, persons residing in a third State who had acquired the nationality of the predecessor State either through naturalisation or the application of the principle of *jus sanguinis*.

The right of option should be exercised within a reasonable period of time after the date of succession by all adult persons. The choice made by the person exercising parental authority shall prevail over the choice expressed by unmarried minors.

The exercise of the right of option shall not have any prejudicial consequences for those making that choice, in particular with regard to their residence in the successor state and their movable or immovable property located therein.