

DRAFT DECLARATION ON THE CONSEQUENCES OF STATE SUCCESSION FOR NATIONALITY

by
Mr Constantin ECONOMIDES
(Greece)

The Venice Commission for Democracy through Law:

considering that questions relating to nationality fall to States within the limits laid down by international law,

bearing in mind that the expression "State succession" refers to the replacement of one State by another in the responsibility for the international relations of a territory, provided that such succession is lawful from the point of view of international law within the meaning of Article 6 of the Vienna Convention on the Succession of States in respect of Treaties and Article 3 of the Vienna Convention on State Succession in respect of State Property, Archives and Debts,

recognising that in cases of State succession, the interests not only of States but also of individuals must be taken into account,

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

having regard to State practice in the matter,

has adopted the following principles, rules and recommendations:

1. The States concerned must respect the principle that everyone has the right to a nationality.
2. The States concerned must do their utmost to avoid creating cases of statelessness
3. The States concerned must refrain, as far as possible, from conferring their nationality against the will of the persons concerned **(1)**.
4. In all cases of State succession (annexation, unification of States, separation to form a new State, etc) the successor State shall grant its nationality to all nationals of the predecessor State residing permanently on the transferred territory. Such nationality shall be granted regardless of ethnic origin, religion or language. Similarly, once this nationality has been granted, no discrimination shall be made between nationals of the successor State on the basis of the above-mentioned criteria **(2)**.
5. It is desirable that successor States grant their nationality, on an individual basis, to applicants belonging to the two following categories:
 - a. persons originating from the transferred territory, who are nationals of the predecessor State but resident outside the territory at the time of succession;
 - b. permanent residents of the transferred territory who, at the time of succession, hold the nationality of a third State **(3)**.
- 6.1 Successor States shall grant their nationality:
 - a. to permanent residents of the transferred territory who become stateless at the time of the transfer;
 - b. to persons originating from the transferred territory, resident outside that territory, who become stateless at the time of the transfer.
- 6.2 It is desirable that successor States grant their nationality:
 - a. to permanent residents of the transferred territory who are stateless at the time of the transfer;
 - b. to persons originating from the transferred territory but resident outside that territory who are stateless at the time of the transfer.
- 6.3 The predecessor State shall not withdraw its nationality from its own nationals who have been unable to acquire the nationality of the successor State on the basis of the rule laid down in provision no 4 **(4)**.
7. In all cases of succession, except the unification of States, the successor State shall grant the right of option in favour of the nationality of the predecessor State to the persons mentioned in rule no 4 who have ethnic, linguistic or religious links with the latter.

The right of option should be exercised by all adults within a reasonable time from the date of succession.

The exercise of the right to choose the nationality of the predecessor State shall have no prejudicial consequences for those making that choice, in particular with regard to their residence in the successor State and their moveable or immoveable property located therein **(5)**.

8. It goes without saying that in the event of succession, States which are involved in the succession may, by agreement, settle the question of the nationality of individuals in different ways **(6)**. They do not, however, enjoy unfettered discretions in such matters. They must, above all, respect the human rights of the persons concerned, as guaranteed by international instruments and, in particular, the rule that everyone has the right to a nationality **(7)**.

NOTES

- (1)** The first three provisions set out principles of an introductory nature. Provision No 1 is related to provision No 4 (granting of the nationality of the successor State). Provision No 2 is related to provision No 6 (avoidance of cases of statelessness). Finally, provision No 3 is related to provision No 7 (the right of option) which in fact constitutes an exception to the rule laid down in provision No 4.
- (2)** This obligation is compatible with State practice in such matters. It is also compatible with the rules of general international law. It should not be forgotten that in all cases of state succession, there is a transfer of territory which inevitably affects the nationality of persons who, along with the territory, pass from one sovereignty and from one territory and nationality to another.

Accordingly, all the nationals of the predecessor State effectively and genuinely resident in the transferred territory - the condition of attachment to this territory is primordial - lose the nationality of the predecessor State and acquire the nationality of the successor State. It therefore follows that the successor State cannot grant its nationality to nationals of the predecessor State who do not have safe and certain links with the transferred territory, nor to those who are resident on the territory for public service reasons, e.g. public servants of the predecessor State, members of the armed forces. etc.

Finally the principle of non-discrimination, namely on grounds of ethnic, religious or linguistic origin, apply fully both to the granting of the nationality of the successor State and to the enjoyment by the persons who acquire such nationality of all the rights and interests attached thereto.

- (3) This provision is a mere recommendation, made in the interests of the above-mentioned categories of persons and on condition, of course, that they wish to acquire the nationality of the successor State on an individual and voluntary basis.
- (4) This provision is designed to avoid cases of statelessness as far as possible.
- (5) This provision sets out a rule and two recommendations. The right of option is not obligatory for all persons who pass from one sovereignty to another but only for those who have ethnic, linguistic or religious links with the predecessor State. Only such persons are entitled to the right of option. This solution is based mainly on State practice in such matters and on the principle that a person may not be deprived of his nationality against his will. However, there is no reason for granting the right of option to other inhabitants, particularly those who have ethnic, linguistic or religious links with the successor State.

The first recommendation concerns the exercise of the right of option and the second recommendation its consequences, which, contrary to past practice, should no longer adversely affect those who have the right of option.

- (6) It should be noted that, with regard to the nationality of legal persons, the following provision was put forward: "Legal persons whose headquarters are located in the transferred territory shall acquire upon succession the nationality of the successor State". However, the Venice Commission, bearing in mind that there are very few examples of State practice in such matters, preferred not to include this provision in the present Declaration which concerns only the nationality of natural persons.
- (7) This provision is self-evident. In practice the States concerned nearly always settle the question of nationality in cases of State succession themselves. Such States may therefore depart from the recommendations set out in this declaration but must comply with the rules contained therein.