

DECLARATION ON THE PRINCIPLES, RULES AND RECOMMENDATIONS CONCERNING THE QUESTION OF THE NATIONALITY OF INDIVIDUALS AND LEGAL PERSONS IN STATE SUCCESSION

by
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The Venice Commission for Democracy through Law:

Considering that responsibility for questions relating to nationality shall fall to States within the limits laid down by international law,

Bearing in mind that the expression "State succession" means the replacement of one State by another in the responsibility for the international relations of territory, it being understood that this succession must be in conformity with international law within the meaning of Article 6 of the Vienna Convention on Succession of States in respect of Treaties and Article 3 of the Vienna Convention on Succession of States in respect of State Property, Archives and Debts,

Recognising that in cases of State succession, not only the interests of the States should be taken into consideration, but also those of the individual,

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

Bearing in mind the practice of States in this field,

Has adopted the following principles, rules and recommendations:

I. Principles

1. The States in question shall ensure respect for the principle that everyone has the right to a nationality.
2. The States in question shall ensure that, as far as possible, cases of statelessness are avoided.
3. The States in question shall ensure that, as far as possible, they do not confer their nationality contrary to the will of individuals.

II. Rules and recommendations

4. In all cases of State succession (annexation, union of States, separation to form a new State, etc) the successor State shall grant its nationality to all nationals of the predecessor State who live or reside permanently within the transferred territory. This nationality shall be granted without distinction on any ground such as ethnic origin, religion or language.

Commentary

This requirement is in keeping with the practice of States in this area. It is also in harmony with the rules of general international law. It must not be forgotten that in all State successions there is a transfer of territory which of necessity affects the nationality of those persons who, with the territory, pass from one sovereignty to another. We can see here the very close link which exists between sovereignty on the one hand and territory and nationality on the other.

In this way, all the nationals of the predecessor State, who are genuinely resident in the transferred territory - the condition of attachment to this territory is of paramount importance - lose the nationality of the predecessor State and acquire that of the successor State.

It follows that the successor State may choose not to confer its nationality on nationals of the predecessor State who do not have definite links with the transferred territory, or on those who are resident in this territory for reasons of public service: such as civil servants of the predecessor State, members of the armed forces etc.

5. It would be desirable for the successor State to envisage conferring its nationality on an individual basis to persons who request it and who belong to the following two categories:
 - a. 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. inhabitants or permanent residents of the transferred territory who, at the time of succession, hold the nationality of a third State.

Commentary

This provision is simply a recommendation made in the interest of the persons mentioned above and on the condition, of course, that they wish to acquire the nationality of the successor State on an individual and voluntary basis.

6. The successor State should confer its nationality:
 - a. on those persons who live or permanently reside in the transferred territory who are or become stateless at the time of succession.
 - b. on persons who originate from the transferred territory who live or reside outside this territory and who are or become stateless at the time of succession.

Commentary

This is also a recommendation. However, it is worded more strongly than the preceding recommendation with the aim of ensuring that, as far as possible, cases of statelessness are avoided.

7. In all cases of succession, apart from a union of States, the successor State shall grant the right to opt in favour of the nationality of the predecessor State to persons designated in Rule No. 4 who have ethnic, linguistic or religious links with this State.

The right of option should be exercised within a reasonable period of time after the date of succession by all adult persons.

The exercise of the right to opt in favour of the nationality of the predecessor State 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.

Commentary

This provision contains a rule and two recommendations. The right of option is obligatory not 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 these persons are entitled to choose. This solution is based to a great extent on the practice of States in this area, as well as on the principle that persons may not be deprived of their nationality against their will. However, as concerns other inhabitants, and in particular those who have ethnic, linguistic or religious links with the successor State, a right of option would have no justification.

The first recommendation concerns the exercise of the right of option and the second the consequences of this, which, contrary to past practice, should no longer be prejudicial to those making the choice.

8. Legal persons whose headquarters are located in the transferred territory shall acquire upon succession the nationality of the successor State.

Commentary

This is a new rule. The practice of States is very limited as concerns the nationality of legal persons. However, the simplest solution is to envisage for legal persons a rule based on that governing the nationality of individuals.

9. It goes without saying that, in cases of State succession, the States involved in the succession may, notably by agreement, settle the question of the nationality of individuals and legal persons in a different way. They do not, however, enjoy full discretionary

powers. In particular, they must respect the human rights of all persons concerned, as guaranteed by international instruments, and particularly the rule that every one of them has the right to a nationality.

Commentary

This provision states an obvious truth. In practice, it is almost always the States concerned which settle the question of nationality - at least that of individuals - in State succession. These States may therefore depart from the recommendations contained in this declaration, but they must comply with the rules laid down herein.

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