Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Opinion 200 (1997)[1]

Draft European convention on nationality

Parliamentary Assembly

1. The Parliamentary Assembly emphasises the major political importance of nationality and citizenship issues and the fundamental role played in this field by the Council of Europe, as regards both its standard-setting activities and co-operation and assistance with member or non-member states.

2. The Assembly notes that the 1963 Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality and its protocols were ill-designed to take into account the new situation facing western societies and the democratic changes that have come about in central and eastern Europe; it points out that there are various gaps in the positive law of member states and highlights the need to harmonise current legislations in member countries.

3. The Assembly welcomes the draft convention on nationality, submitted to it for opinion, which it considers to be an intelligible, lucid and far-reaching text and subscribes on the whole to the principles and rules contained therein.

4. The Assembly is convinced that the draft convention will help prevent statelessness, in particular by limiting the possibilities of withdrawal of nationality. It subscribes to the rules designed to facilitate the acquisition of nationality, to facilitate recovery of one's nationality of origin, to limit the possibility of loss of nationality to certain duly justified cases, to guarantee fair and due process and to make sure that persons with more than one nationality are required to fulfil their military obligations in only one state.

5. It notes that the draft convention, while remaining neutral on the issue, allows for multiple nationality, leaving states free to decide on their own policy on this matter.

6. It points out that none of the provisions of the draft, in particular Articles 6 and 7, should be interpreted by states in such a way as to be detrimental to the situation and treatment of children, who must be granted the same rights and status.

7. The Assembly is concerned that many states where conscription still exists have never signed the 1963 convention. In view of the consequences inherent in the discharge of military obligations in many states, particularly in matters of inheritance, it encourages states to sign and ratify Chapter VII of the present convention which covers military obligations in cases of multiple nationality.

8. The Assembly recalls its Recommendation 1223 (1993) on reservations made by member states to Council of Europe conventions in which it considered it "advisable and even necessary that the number of reservations made in respect of Council of Europe conventions be considerably reduced". Once again, the Assembly notes that there is too much leeway for states in the choice of applicable provisions, to the detriment of the ambition, coherence and effectiveness of the convention and the necessary harmonisation of national legislations.

9. Consequently, it would like to see the future states parties commit themselves with greater determination and recommends that member states sign and ratify the convention as soon as possible and make the strict minimum of reservations.

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1. Assembly debate on 31 January 1997 (8th Sitting) (see Doc. 7718, report by the Committee on Legal Affairs and Human Rights, rapporteur: Mr Fogas¯; and Doc. 7719, opinion by the Committee on Migration, Refugees and Demography, rapporteur: Mrs Aguiar). Text adopted by the Assembly on 31 January 1997 (8th Sitting).

10. The Assembly invites the Committee of Ministers to adopt the draft convention without delay, and, with a view to improving its provisions, recommends the adoption of the following amendments:

10.1. change the title of the draft convention to "Convention on Citizenship" and replace the term "nationality" by "citizenship" throughout;

10.2. change Article 5, paragraph 1, as follows: "the rules of a state Party on nationality shall not contain distinctions, or allow any practice, which amount to discrimination on the grounds of sex, religion, race, colour, national or ethnic origin, or membership of a national minority, or lead to discrimination between the official languages of the state";

10.3. add at the end of Article 5, paragraph 2: "or are candidates for naturalisation";

10.4. delete in Article 6, paragraph 1.a, the words "subject to any exceptions which may be provided by its internal law as regards children born abroad";

10.5. expand, in the explanatory report, the concept of "concealment of any relevant fact" appearing in Article 7, paragraph 1.b, to ensure that it is explained with rigorous precision;

10.6. delete sub-paragraph c of Article 7, paragraph 1, or at least amend it as follows: "voluntary service in the military or police forces of another state with which it is at war";

10.7. replace Article 7, paragraph 1.e, by the following new paragraph: "lack of a genuine link between the State Party and a national who has never resided there";

10.8. delete in Article 10 the words "within a reasonable time" and replace them by the words: "within a period not exceeding one year";

10.9. add to Article 22.a, at the end: "or who have been granted the status of conscientious objector";

10.10. amend Article 25, paragraph 1, as follows: "Any state whose domestic legislation does not require its nationals to fulfil military obligations may ...";

10.11. add to Article 29, paragraph 1, at the end: "The maximum validity of reservations is set at ten years".

11. Furthermore, the Assembly feels compelled to express its reservations in respect of certain provisions which it considers too simplistic, particularly with regard to state succession and co-operation between states.

12. It considers that the provisions relating to state succession (chapter VI) should be further developed drawing on the work of the European Commission for Democracy through Law, and that it is particularly essential to broaden the scope of the guarantees and rights of nationals of predecessor states who should enjoy political and social rights and an "effective remedy" against deprival, or withdrawal of, or refusal to grant nationality.

13. The Assembly applauds the effort of co-operation which took place in the background while the draft convention was being prepared, in the context of the Démo-Droit programme on nationality issues for central and east European states, and the efforts of the Committee of Experts on Nationality to collect information and produce documentation. It recommends that the Committee of Ministers pursue assistance to the countries of central and eastern Europe, in particular the programmes relating to citizenship and legislative reform.

14. It therefore invites the Committee of Ministers to pursue the efforts undertaken and calls for the setting up of a permanent structure in the Council of Europe on questions of nationality, responsible for gathering the necessary information on developments in the legislation of member states and advising them on any planned amendments.

15. The Assembly invites the Committee of Ministers to adopt a more proactive approach and to broaden the future scope of its deliberations, in particular by extending the terms of reference of the Committee of Experts on Nationality. In addition to the very topical issue of state succession, the Assembly questions the potential effects on the European Union of common citizenship, and the scope of community law on nationality issues.