



Opinion 258 (2006)¹

Draft Protocol on the avoidance of statelessness in relation to state succession

Parliamentary Assembly

1. The human right to nationality is a fundamental right recognised by the 1948 Universal Declaration of Human Rights and the 1997 European Convention on Nationality (CETS No. 166). The Parliamentary Assembly therefore welcomes the draft protocol on the avoidance of statelessness in relation to state succession which it regards as an essential instrument complementing the existing conventions. It fully supports the objective of avoiding cases of statelessness by facilitating the acquisition of nationality and generally subscribes to the provisions laid down therein.

2. In this context, it draws attention to its [Opinion No. 200 \(1997\)](#) on the draft European convention on nationality and welcomes the response to its call that “the provisions relating to state succession (...) be further developed”.

3. The Assembly notes that the draft protocol applies in respect of any succession of states occurring subsequent to its entry into force. The Assembly regrets that the present draft protocol, limited to cases relating to state succession, does not make it possible to resolve cases of statelessness existing prior to the state succession. It consequently calls on future states parties to play an active part in the process desired for years by the Committee of Ministers and the Parliamentary Assembly of tangibly and effectively reducing cases of statelessness in member states. It urges them to take a more proactive approach, basing their legislation on the principles and provisions in Recommendation No. R (99) 18 of the Committee of Ministers on the avoidance and reduction of statelessness.

4. The Assembly regrets that, according to Article 14 of the draft protocol, the protocol will only apply to situations of state succession which will take place after its entry into force. The Assembly recalls a widely accepted principle of law according to which rules that offer a more favourable regime for individuals should have a retroactive effect. This is particularly important in view of the high number of persons deprived of nationality as a result of the cases of state succession that occurred in Europe the late 1980s and early 1990s.

5. The Assembly recalls its [Recommendation 1223 \(1993\)](#) on reservations made by member states to Council of Europe conventions, in which it expressed the view that it was “advisable and even necessary that the number of reservations made in respect of Council of Europe conventions be considerably reduced”. It notes with regret that the draft protocol allows states to make reservations on at least two fundamental provisions of the protocol, to the detriment of both the coherence and effectiveness of the protocol and the necessary harmonisation of national legislation.

6. Certain provisions of the draft protocol, as currently worded, could be improved so as to take account of the opinions previously expressed by, inter alia, the Assembly and the European Commission for Democracy through Law (Venice Commission). Consequently, the Assembly recommends that the Committee of Ministers introduce the following amendments, which it regards as essential, to the draft protocol:

6.1. change the title of the draft protocol to “Convention on the avoidance of statelessness in relation to state succession” and replace the word “protocol” by “convention” throughout the text;

1. Assembly debate on 27 January 2006 (8th Sitting) (see [Doc. 10770](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Bartumeu Cassany). Text adopted by the Assembly on 27 January 2006 (8th Sitting).



6.2. amend sub-paragraph e of Article 1 ("Definitions") to read "Person concerned" means every individual who, at the time of the state succession:

has the nationality of the predecessor state and is or would become stateless as a result of the state succession,

is lawfully and habitually resident on the territory subject to succession and is stateless at the time of the succession";

6.3. replace Article 4 ("Non-discrimination") with the following text: "States concerned shall not discriminate against any person concerned on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.";

6.4. amend Article 5.1 by replacing "A successor state shall grant its nationality to" by "The nationality of the successor state shall be acquired by";

6.5. after Article 5.2.c add a new sub-paragraph worded as follows: "descent from or marriage to a person covered by this article";

6.6. add a new paragraph 3 to Article 5 worded as follows: "The nationality of the successor state shall also be acquired by those persons who, at the time of state succession, are lawfully and habitually resident on the territory subject to succession and are stateless at the time of the succession";

6.7. at the beginning of Article 7 add a new sentence worded as follows: "The states concerned shall take account of the will of the persons concerned whenever these persons fulfil the conditions for obtaining the nationality of two or more states";

6.8. at the end of Article 7 add a new sub-paragraph worded as follows: "The acquisition of the nationality of a successor state or the choice of the nationality of the predecessor state or of one of the successor states according to the will expressed by the person concerned shall not have detrimental consequences for those opting to do so, particularly in respect of their right to reside on the territory of the successor state or of their movable or immovable property situated there.";

6.9. after Article 7 add a new article worded as follows: "Effective date – The acquisition of nationality in relation to state succession, as well as the acquisition of nationality following the exercise of an option, shall take effect on the date of such succession, if the person concerned would otherwise be stateless during the period between the date of the succession of states and such acquisition of nationality.";

6.10. amend Article 8.2 by replacing "before granting its nationality to" by "before attributing the nationality to";

6.11. replace Article 10 with the following sentence: "The nationality of a state concerned shall be acquired ex lege by a child of a person concerned born on the territory of a state concerned, and at birth if that child would otherwise be stateless.";

6.12. after Article 10 add a new article worded as follows: "Legislation and regulations on nationality – States concerned should, without undue delay, enact legislation and regulations on nationality relating to state succession.";

6.13. replace Article 11 by the following text: "States concerned should without delay take all appropriate measures to ensure that persons concerned will be apprised fully and within a reasonable time period, of the effect of the regulations and procedures with regard to their nationality, of any choices they may have thereunder, as well as of the consequences that the exercise of such choices will have on their status.";

6.14. after Article 11 add a new article worded as follows: "Right to an effective remedy – The decisions taken by the state concerned in respect of requests relating to the acquisition, retention, deprivation or withdrawal of nationality or refusal to grant it or in respect of the exercise of an option on the occasion of state succession shall be notified in writing; persons concerned have the right to an effective administrative or judicial remedy.";

6.15. replace the whole of Article 19 with the following: "No reservations may be made to the present convention."

7. The Assembly therefore calls on Council of Europe member states to sign and to ratify this instrument as soon as possible and, taking a proactive approach, to recognise through a declaration that the protocol will have retroactive effect for existing cases of statelessness. It notes that only 14 states have ratified the European Convention on Nationality and that another 12 have signed it, which are disappointing figures. It encourages states which have not yet done so to sign and ratify the convention.