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Draft European Convention for the Reciprocal Treatment of Nationals

Report[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Paul BASTID, France

The Committee on Legal and Administrative Questions submits to the Assembly the following draft Recommendation :

1. 1951 - 3rd Session - First part

Draft Recommendation[2]

" The Assembly,

" Considerin g that the Recommendation of 25th August, 1950 (Doc. 105,1950) submitted to the Committee of Ministers in compliance with the latter's request for an opinion, had indicated the general principles of a European Convention for the reciprocal treatment of nationals ;

Considerin g the directions given by the Committee of Ministers in its Annual Report (Doc. 5) (paragraph 58), to the effect that a Committee of Governmental Experts was to be formed to study the preliminary draft European Convention prepared in Rome by a Working Party of the Committee on Legal and Administrative Questions in collaboration with the International Institute for the Unification of Private Law, as soon as the Assembly should have given its approval to the draft in question;

" Considerin g that, after making various alterations, the Committee on Legal and Administrative Questions has approved the text drawn up in the circumstances indicated above;

" Decides :

a. to approve the Draft European Convention for the Reciprocal Treatment of Nationals attached hereto;

b. to instruct the Secretary-General to transmit the said draft to the Committee of Ministers, together with all documents concerning the work which preceded and followed the meeting in Rome, in order that the Governmental experts may be acquainted with the general intentions of the Assembly, as well as with the purpose of the Convention."

Draft European Convention for the reciprocal treatment of Nationals

Preamble

The Governments,

Have agreed as follows :

ARTICLE 1

Entry and Temporary Residence

The High Contracting Parties undertake to permit and facilitate access to their territory by such nationals of and High Contracting Party as, in their view, do not represent a threat to public order, public health, security or morals. They will admit to domicile or permanent or prolonged residence to the extent allowed by their economic and social status.

The nationals of the High Contracting Parties who have legally entered the territory of one of those Parties and who have conformed with such conditions as may have been imposed on their admission or establishment, may only be expelled if they commit an offence agains public order or morals or if they threaten the security of the State.

Such of them as have been established for more than five years on the territory of a High Contracting Party may only be expelled after being given an opportunity to submit their defence to an Authority appointed for this purpose.

For the purpose of the present Convention the term "establishment" shall mean establishment by a national of one of the High Contracting Parties, of permanent residence or domicile in the territory of another High Contracting Party.

ARTICL E 2

Exercise of Private Rights in General

The nationals of each of the High Contracting Parties shall enjoy treatment equal to that enjoyed by native-born citizens in respect of the possession and exercise of private rights, whether personal rights or rights relating to property, subject to the provisions set out below and subject to the rules determining which law is applicable.

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2. Adopted. See 13th Sitting and Rec. 1.

The provisions of this Article shall not prejudice the right of the High Contracting Parties to forbid or make subject to prior authorisation the acquisition, possession and use by aliens of certain categories of property, for reasons based upon the requirements of national defence and security, of public order, or the need to prevent private control of the vital resources of the country.

A High Contracting Party availing itself of the right set out in the second paragraph of Article 2, must notify the Secretariat-General of the Council of Europe to that effect.

ARTICLE 3

Judicial and Administrative Guarantees

The nationals of each High Contracting Party shall enjoy in the territory of the other High Contracting Parties full legal and judicial protection of their persons and property and of their rights and interest under the same conditions as native-born citizens. For this purpose they shall have the same right as native-born citizens to appear before the competent judicial and administrative authorities.

The nationals of the High Contracting Parties shall have the right to secure the assistance, in the defence of their interests, of any person of their choice who .is qualified by the laws of the country.

The nationals of a High Contracting Party shall be accorded free legal assistance in the circumstances and to the same extent as such assistance is granted to native-born citizens.

For the nationals of one of the High Contracting. Parties established on the territory of another High Contracting Party equality with native-born citizens in respect of the right to go to law. shall imply the abolition of the requirement of a deposit or security, by whatever name it may be called, which is not required of native-born citizens.

Alternative Text for the two last paragraphs

The subjects of one High Contracting Party shall enjoy in the territory of the other High Contracting Party à perfect equality of treatment with subjects of that High Contracting Party as regards free judicial assistance for poor persons and imprisonment for debt; and, provided that they are resident in any such territory, shall not be compelled to give security for costs in any case where a subject of such other High Contracting Party would not be so compelled.

ARTICLE 4

Exercise of Economic Activities

In the territory of each High Contracting Party and subject to conformity with its laws and regulations, the nationals of the other High Contracting Parties established therein shall not be forbidden the exercise of any commercial, agricultural, industrial or financial activity, and, in general, of any activity of an economic character, except for reasons based on economic and social necessity. If they are authorised to exercise such activities, they shall be placed on a completely equal footing with native-born citizens.

By way of exception to the previous paragraph, the High Contracting Parties may reserve for their nationals :

a. activities concerned with national defence and security;

b. concessions of public services and awards of contracts for supplies and public works ;

c. the exploitation of mineral resources and hydraulic power;

d. the piloting and registration of shipping.

Commercial travellers who are nationals of one of the High Contracting Parties shall not need any authorisation in order to pursue their activities on the territory of another High Contracting Party. They shall not he subject to any taxes or special dues which are not applicable to national commercial travellers, save in so far as it may be necessary to ensure their equality with such persons, and provided that they possess an identity card issued in accordance with Article 10 of the . Geneva Convention of 3rd November, 1923.

ARTICL E 5

Exercise of the Arts, Craft Activities or Trades

In the territory of each High Contracting Party, and subject to conformity with its laws and regulations, nationals of the other High Contracting Parties established therein shall not be forbidden the exercise of any profession, art or craft activity or of any paid employment in a private enterprise except for reasons based on economic, social of Trade Union requirements.

Nevertheless, the practice of professions for which special qualifications or guarantees are required shall, in any case, be subject to the possession of those qualifications or guarantees or of others recognised to be equivalent. The High Contracting Parties shall not, however, prevent entry into their territory of persons in professional practice such as doctors or lawyers called in by one of their colleagues duly authorised to practise the profession, for the purpose of consultation or of assistance or of giving evidence in a particular case.

ARTICLE 6.

Participation in Public Activities and Offices

No High Contracting Party may forbid nationals of another High Contracting Party established on its territory for at least five years from taking part as electors or candidates in elections in bodies or organisations of an economic or professional nature such as Chambers of Commerce or of Agriculture or trade associations, subject to the decisions which such bodies or organisations may take on this matter within the limits of their competence.

The nationals of each High Contracting Party shall be permitted without any restriction, on the territory of another High Contracting Party, to act as arbitrators in arbitral proceedings between private parties.

ARTICLE 7

Utilisation of Public Services

The nationals of any High Contracting Party established on the territory of another High Contracting Party shall be entitled to medical and hospital assistance and to other public services on an equal footing with native-born citizens, subject to the provisions relating to social insurance systems. With regard to education they shall have the same rights and obligations as native-born citizens.

ARTICLE 8

Public Duties and Offices

The nationals of each High Contracting Party established on the territory of another High Contracting Party shall be exempt from any judicial or administrative functions whatsoever.

They shall likewise be exempt on the territory of any other High Contracting Party from all compulsory military service, both in peace and war, if they can show that they have fulfilled this obligation towards the States of which they are nationals.

Nevertheless, the nationals of each High Contracting Party established on the territory of another High Contracting Party shall be obliged, in the event of war or public catastrophe, to perform the same civilian services as native-born citizens.

The nationals of each High Contracting Party shall be subject to the services and payments in lieu of services pertaining to the ownership of their property to which all the ?nationals of the country are subject under the law.

I n the event of nationalisation by one of the High Contracting Parties of a branch of production or a public utility service, enterprises having the nationality of other High Contracting Parties and operating in .the branch of activity or service in question shall be entitled to treatment at least as favourable as indigenous enterprises.

ARTICLE 9

Taxation

Subject to the provisions contained in any agreements on double taxation concluded or to be concluded, the nationals of each High Contracting Party shall not be liable on the territory of another Party to dues, taxes, fees or contributions, however called, other or higher than those levied on native-born citizens; in particular they shall benefit, under the same conditions as native-born citizens, from deductions or exemptions from dues or taxes and from all allowances, including allowances for dependents.

The foregoing provisions shall not prevent the levying, in appropriate cases, of so-called Residence Taxes or of taxes connected with police formalities, if such taxes are equally levied on other aliens. Such taxes may not be levied at a higher rate than is applicable to the nationals of any other State.

ARTICLE 10

Position of Foreign Communities

The nationals of one High Contracting Party may in no case demand on the territory of another special treatment as being members of a particular racial, linguistic or religious community.

Subject to the normal diplomatic protection of nationals in foreign countries, the High Contracting Parties recognise that they may not intervene, on behalf of their nationals abroad, in such fashion as to prejudice the political unity or independence of the country where they are living.

ARTICLE 11

Territories to which the Convention is applicable

Any High Contracting Party may, at the time of ratification or at any later time, declare, by notification addressed to the Secretary-General of the Council of Europe, that the present Convention shall apply to all or -to any one. of the territories for whose international relations, it is responsible.

The Convention shall .apply to the territory or territories indicated in the notification as from the thirtieth day after the receipt of this notification by the Secretary-General of the Council of Europe.

The provisions of this Convention shall be applied in such territories with due regard, however, to local requirements.

ARTICLE 12

Effect of the Convention on other Treaties

Nothing in the present Convention shall prejudice the provisions of any other Convention, Treaty or agreement, concluded or to be concluded between certain of the High Contracting Parties by the terms of which the nationals of the other High Contracting Parties are or may be accorded greater equality with native-born citizens than under the terms of the present Convention.

ARTICLE 13

Settlement of Disputes

Any High Contracting Party may, after the exhaustion of local remedies and through the intermediary of the Secretary-General of the Council of Europe, bring before the Commission established by the Convention signed at Rome .on 4th November, 1950 any failure to observe the provisions of the present Convention. In such case the Commission shall act in accordance with the provisions of the Rome Convention.

Failing friendly settlement, the dispute may be referred by one of the Parties thereto to the International Court of Justice, provided /that both Parties have adhered to the Statute of the Court and have accepted the clause on compulsory jurisdiction in Article 36 of the Statute. If such is not the case, the High Contracting Parties agree that the dispute shall be submitted by the Parties concerned to the Court established by the Convention for the Protection of Human Rights, provided that they have accepted the jurisdiction of that Court for the settlement of disputes arising out of the interpretation and application of that Convention. Otherwise the differences shall be submitted to an Arbitral Tribunal established in accordance with the Convention of 18th October, 1907, for the peaceful settlement of international disputes, or to any other Arbitral Tribunal of their choice.

ARTICLE 14

Signature and Ratification

This Convention shall be open to the signature of the Members of the Council of Europe. It shall be ratified. Ratifications shall be deposited with the Secretary-General of the Council of Europe.

This Convention shall come into force after the deposit of eight instruments of ratification.

As regards any signatory ratifying subsequently, the Convention shall come into force on the date of the deposit of its instrument of ratification.

The Secretary-General of the Council of Europe shall notify all the Members of the Council of Europe of the entry into force of the Convention, the names of the High Contracting Parties which have ratified it and of the deposit of all instruments of ratification which may be effected subsequently.

ARTICLE 15

Denunciation

A High Contracting Party may denounce the present Convention only after a period of two years from the date on which it became a Party to it and after six months' notice contained in a communication addressed to the Secretary-General of the Council of Europe, who shall inform the other High Contracting Parties.

Such a denunciation shall not have the effect of releasing the High Contracting Party concerned from its obligations under this Convention in respect of any act which, being capable of constituting a violation of such obligations, may have been performed by it before the date at which the denunciation became effective.

Subject to the same limitations any High Contracting Party which shall cease to be a Member of thé Council of Europe shall cease to be a Party to this Convention.