

Council of Europe
Convention on the avoidance
of statelessness in relation
to State succession

Strasbourg, 19.V.2006

Preamble

The member States of the Council of Europe and the other States signatory to this Convention,

Considering that the avoidance of statelessness is one of the main concerns of the international community in the field of nationality;

Noting that State succession remains a major source of cases of statelessness;

Recognising that the European Convention on Nationality (ETS No. 166), opened for signature in Strasbourg on 6 November 1997, contains only general principles and not specific rules on nationality in case of State succession;

Bearing in mind that, with regard to statelessness in relation to State succession, other international instruments either do not have a binding character or do not address some important issues;

Convinced that for the reasons above there is a need for a comprehensive international instrument on State succession and the avoidance of statelessness which should be interpreted and applied, bearing in mind the principles of the European Convention on Nationality;

Taking into account Recommendation No. R (99) 18 of the Committee of Ministers on the Avoidance and Reduction of Statelessness, as well as the practical experience gained in recent years with regard to State succession and statelessness;

Having regard to other binding international instruments, namely the United Nations Conventions relating to the Status of Stateless Persons and on the Reduction of Statelessness, and the Vienna Conventions on Succession of States in respect of Treaties and on Succession of States in respect of State Property, Archives and Debts;

Having also regard to the draft articles on nationality of natural persons in relation to the succession of States, prepared by the United Nations International Law Commission, contained in the Annex to the United Nations General Assembly Resolution 55/153 of 2001 as well as the Declaration of the European Commission for Democracy through Law (Venice Commission) on the Consequences of State Succession for the Nationality of Natural Persons;

Building upon, but without prejudice to, the general principles established in the international instruments and documents mentioned above, by adding specific rules applicable to the particular situation of statelessness in relation to State succession;

In order to give effect to the principles established in the European Convention on Nationality that everyone has the right to a nationality and that the rule of law and human rights, including the prohibition of arbitrary deprivation of nationality and the principle of non-discrimination, must be respected in order to avoid statelessness,

Have agreed as follows:

Article 1 – Definitions

For the purposes of this Convention:

- a “State succession” means the replacement of one State by another in the responsibility for the international relations of territory;
- b “State concerned” means the predecessor State or the successor State, as the case may be;
- c “Statelessness” means the situation where a person is not considered as a national by any State under the operation of its internal law;
- d “Habitual residence” means a stable factual residence;
- e “Person concerned” means every individual who, at the time of the State succession, had the nationality of the predecessor State and who has or would become stateless as a result of the State succession.

Article 2 – Right to a nationality

Everyone who, at the time of the State succession, had the nationality of the predecessor State and who has or would become stateless as a result of the State succession has the right to the nationality of a State concerned, in accordance with the following articles.

Article 3 – Prevention of statelessness

The State concerned shall take all appropriate measures to prevent persons who, at the time of the State succession, had the nationality of the predecessor State, from becoming stateless as a result of the succession.

Article 4 – Non-discrimination

When applying this Convention, 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.

Article 5 – Responsibility of the successor State

- 1 A successor State shall grant its nationality to persons who, at the time of the State succession, had the nationality of the predecessor State, and who have or would become stateless as a result of the State succession if at that time:
 - a they were habitually resident in the territory which has become territory of the successor State, or
 - b they were not habitually resident in any State concerned but had an appropriate connection with the successor State.

- 2 For the purpose of paragraph 1, sub-paragraph b, an appropriate connection includes *inter alia*:
 - a a legal bond to a territorial unit of a predecessor State which has become territory of the successor State;
 - b birth on the territory which has become territory of the successor State;
 - c last habitual residence on the territory of the predecessor State which has become territory of the successor State.

Article 6 – Responsibility of the predecessor State

A predecessor State shall not withdraw its nationality from its nationals who have not acquired the nationality of a successor State and who would otherwise become stateless as a result of the State succession.

Article 7 – Respect for the expressed will of the person concerned

A successor State shall not refuse to grant its nationality under Article 5 paragraph 1, sub-paragraph b, where such nationality reflects the expressed will of the person concerned, on the grounds that such a person can acquire the nationality of another State concerned on the basis of an appropriate connection with that State.

Article 8 – Rules of proof

- 1 A successor State shall not insist on its standard requirements of proof necessary for the granting of its nationality in the case of persons who have or would become stateless as a result of State succession and where it is not reasonable for such persons to meet the standard requirements.
- 2 A successor State shall not require proof of non-acquisition of another nationality before granting its nationality to persons who were habitually resident on its territory at the time of the State succession and who have or would become stateless as a result of the State succession.

Article 9 – Facilitating the acquisition of nationality by stateless persons

A State concerned shall facilitate the acquisition of its nationality by persons lawfully and habitually residing on its territory who, despite Articles 5 and 6, are stateless as a result of the State succession.

Article 10 – Avoiding statelessness at birth

A State concerned shall grant its nationality at birth to a child born following State succession on its territory to a parent who, at the time of State succession, had the nationality of the predecessor State if that child would otherwise be stateless.

Article 11 – Information to persons concerned

States concerned shall take all necessary steps to ensure that persons concerned have sufficient information about rules and procedures with regard to the acquisition of their nationality.

Article 12 – Procedural guarantees

When applying this Convention, the State concerned shall ensure that in the framework of the procedures relating to nationality:

- a the relevant applications be processed within a reasonable time;
- b the relevant decisions contain reasons in writing and be open to an administrative or judicial review in conformity with its internal law;
- c the fees be reasonable and not an obstacle for applicants.

Article 13 – Settlement by international agreement

States concerned shall endeavour to regulate matters relating to nationality, especially with a view to avoiding statelessness, where appropriate by international agreement.

Article 14 – International co-operation

- 1 In order to adopt appropriate measures to avoid statelessness arising from State succession, States concerned shall co-operate among themselves, including by providing information with regard to the operation of their relevant internal law.
- 2 For the same purpose as that mentioned in paragraph 1, States concerned shall also co-operate:
 - a with the Secretary General of the Council of Europe and the United Nations High Commissioner for Refugees (UNHCR) and,
 - b where appropriate, with other States and international organisations.

Article 15 - Application of this Convention

- 1 This Convention applies in respect of a State succession which has occurred after its entry into force.
- 2 A State concerned may, however, declare by notification addressed to the Secretary General of the Council of Europe at the time of expressing its consent to be bound by this Convention, or, at any time thereafter, that it will also apply the provisions of this Convention to a State succession occurring before the entry into force of this Convention.

- 3 If several States concerned make a declaration, as set out in paragraph 2, in respect of the same State succession, this Convention will apply between the States making such declaration.

Article 16 – Effects of this Convention

- 1 The provisions of this Convention shall not prejudice the provisions of internal law and binding international instruments which are already in force or may come into force, under which more favourable rights are or would be accorded to individuals on the avoidance of statelessness.
- 2 This Convention does not prejudice the application of:
 - a the European Convention on Nationality, in particular its Chapter VI relating to State succession and nationality;
 - b other binding international instruments in so far as such instruments are compatible with this Convention,

in the relationship between the States Parties bound by these instruments.

Article 17 – Settlement of disputes

Any dispute concerning the interpretation or application of this Convention shall primarily be settled through negotiation.

Article 18 – Signature and entry into force

- 1 This Convention shall be open for signature by the member States of the Council of Europe and the non-member States which have participated in its elaboration. Such States may express their consent to be bound by:
 - a signature without reservation as to ratification, acceptance or approval; or
 - b signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

- 2 This Convention shall enter into force, for all States having expressed their consent to be bound by the Convention, on the first day of the month following the expiration of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by this Convention in accordance with the provisions of the preceding paragraph.

- 3 In respect of any State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of signature or of the deposit of its instrument of ratification, acceptance or approval.

Article 19 – Accession

- 1 After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State of the Council of Europe which has not participated in its elaboration to accede to this Convention.
- 2 In respect of any acceding State, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 20 - Reservations

- 1 No reservations may be made to this Convention except in respect of the provisions of Article 7, Article 8, paragraph 2, Article 12 and Article 14, paragraph 2, sub-paragraph b.
- 2 Any reservation made a State in pursuance of paragraph 1 shall be formulated at the time of signature or upon the deposit of its instrument of ratification, acceptance, approval or accession.
- 3 Any State may wholly or partly withdraw a reservation it has made in accordance with paragraph 1 by means of a declaration addressed to the Secretary General of the Council of Europe which shall become effective as from the date of its receipt.

Article 21 – Denunciation

- 1 Any State Party may at any time denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.
- 2 Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notification by the Secretary General.

Article 22 – Notifications

The Secretary General of the Council of Europe shall notify the member States of the Council of Europe, any Signatory, any Party and any other State which has acceded to this Convention of:

- a any signature;
- b the deposit of any instrument of ratification, acceptance, approval or accession;
- c any date of entry into force of this Convention in accordance with Articles 18 and 19 of this Convention;

- d any reservation and withdrawal of reservations made in pursuance of the provisions of Article 20 of this Convention;
- e any notification or declaration made under the provisions of Articles 15 and 21 of this Convention;
- f any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

Done at Strasbourg, this 19th day of May 2006, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to each non-member State having participated in the elaboration of this Convention and to any State invited to accede to this Convention.