

33 REVIEW OF THE MONOGRAPH ON NATIONALITY IN RELATION TO THE SUCCESSION OF STATES

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Mónika Ganczer, Állampolgárság és államutódlás, Dialóg Campus Kiadó, Budapest-Pécs, 2013, p 342; ISBN 978 615 5376 22 1

The Montevideo Convention on the Rights and Duties of States 1933, sets out the definition, rights and duties of statehood. It defines four elements as requirements to claim statehood: (a) permanent population; (b) defined territory; (c) government; and (d) capacity to enter into relations with other states. In respect to the permanent population, there must be some people to establish the existence of a State but there is not a specification of a minimum number of people and again there is not a requirement that all of the people be national of the state. Nationality is thus dependent upon statehood. Notwithstanding this, there is a genuine and effective link between the state and its nationals, which contains a great number of rights and obligations for each party, therefore nationals can be affected by the succession of States.

Nationality is a highly sensitive issue as it is a manifestation of a country's sovereignty and identity, therefore – as Monika Ganczer emphasizes in Chapter III of her book¹ – the questions of nationality fall within the domestic jurisdiction of each state. In connection with this question, the author explains substantially the essence of *domaine réservé* in scope of nationality. However, the applicability of a State's internal decisions can be limited by similar actions of other States and by international law. Consequently, with regard to the practice of the States, how a State exercises its right to determine the requirements of citizenship should conform to the relevant provisions in international law. The author names and analyses the national and international documents in relation to state succession and nationality with scope on the relevant cases investigated by international courts. i.e. in its Advisory Opinion on the Tunis and Morocco Nationality Decrees of 1923, the Permanent Court of International Justice stated that:

The question whether a certain matter is or is not solely within the domestic jurisdiction of a State is an essentially relative question; it depends on the development of international law. ... In a matter which, like that of nationality,

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1 Mónika Ganczer, *Állampolgárság és államutódlás*, Dialóg Campus Kiadó, 2013, p. 55-56.

is not, in principle, regulated by international law, the right of a State to use its discretion is nevertheless restricted by obligations which it may have undertaken towards other States.²

As Monika Ganczer claims in her book, the Advisory Opinions of the Permanent Court of International Justice had a powerful effect on the preparation and the drafts and the final version of the Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws in 1930. Article 1 of the Convention states that: 'It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality.'³

The aforementioned provisions can be found in recent international instruments relating to nationality, such as the 1997 European Convention on Nationality.

The author underlines another significant property of nationality, which was defined by the International Court of Justice in 1955, the *Nottebohm Case*. The Court stated that the nationality 'is a legal bond having as its basis social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties.'⁴

Chapter IV deals with the general principles of nationality in relation to the succession of States and the principles governing specific cases of State succession. Before taking account of all these factors the author defines the conception of State succession and highlights the problematic questions of the matter.⁵ In recent times a consensus has emerged as to what the term 'State succession' circumscribes: the replacement of one State by another in the responsibility for the international relations of territory.⁶ Instances of succession essentially entail the transfer of certain rights and obligations of the predecessor state to the successor state. In terms of transferred rights and obligations, State succession may have an effect on international treaties, state property, archives and debts, nationality and other rights of the population as well as internal legal order of the state.⁷ Although issues of State succession with regard to state property, archives, debts, and international treaties

2 *Nationality Decrees Issued in Tunis and Morocco*, Permanent Court of International Justice, Advisory Opinion of 7 February 1923. P.C.I.J. Series B, No. 4, p. 24.

3 Convention on Certain Questions relating to the Conflict of Nationality Laws, The Hague, 13 April 1930. Art. 1.

4 Judgement of 6 April 1955 in *Case Nottebohm (Liechtenstein v. Guatemala)*, [1955] International Court of Justice, Second Phase, ICJ Rep. 1955, p. 23.

5 Ganczer 2013, p. 85.

6 Vienna Convention on Succession of States in respect of Treaties, Vienna, 23 August 1978. Art. 2(1)b).

7 Monika Ganczer: Nationality in Relation to State Succession, in Svéhlik Csaba (Ed.), *A tudomány felelőssége gazdasági válságban*, IV. KHEOPS Tudományos Konferencia, KHEOPS Automobil-Kutató Intézet, 2009, pp. 577-583.

are governed by international instruments,⁸ the nationality of natural persons has not yet been codified in the form of a treaty even though the changing of sovereignty over a territory also has an effect on nationality, as statehood is a precondition of nationality.

When analysing the impact of a succession on the nationality of natural persons Monika Ganczer examines the fundamental issues of succession, i.e. (a) transfer of part of the territory; (b) unification of States; (c) dissolution of a State; and (d) separation of a part of the territory individually. The aforesaid issues provoke the loss of nationality of the predecessor state and the complication of acquiring a new nationality and raise numerous questions need to be regulated by the international community *inter alia* the right to nationality, the elimination of statelessness, the avoidance or settlement of dual nationality and the protection of children, women or spouses. The problem on which the monograph related phase focuses is the proper definition of nationality based upon the historical overview of the concept. The author introduces the historical background in a clearly structured way to help the understanding of elements of the definition of nationality, focuses on the development and various rights and obligations linked to the nationality in certain communities. She sheds light among others on the differences between the content of the *citizenship* and the *nationality* and delimitates the relevant terms on the basis of their meanings.⁹ After analysing the above-mentioned problem, the monograph focuses on the individuals affected by State succession, i.e. every individual who could potentially lose the nationality of the predecessor State and acquires the nationality of the successor state.¹⁰ Additionally, inhabitants of the given territory all need to be taken into account, *inter alia* foreigners or stateless persons, therefore the author examines the criteria used to determine the persons concerned¹¹ and the theories explaining the methods and exact date of the change of nationality: the theory of domestic law of the state, the theory of the will of the individual, and the theory of automatic change.¹² In addition, the monograph exposes the intermediate approach of the theories, i.e. the theory of the will of the state and analyses the right of option in connection with the theory of an individual with regard to the declarative or constitutive effect of the declaration of option.

Following the discussion of the aforementioned theories, the author puts emphasis on the universal and regional requirements, documents and general principles of international law concerning human rights in relation to the succession of states, underlines the prevention of statelessness, the right to nationality, the obligation of the state to avoid the situation of multiple nationalities and the requirement of non-discrimination. The Chapter contains

8 1978 Vienna Convention on Succession of States in Respect of Treaties and 1983 Vienna Convention on Succession of States in Respect of State Property, Archives and Debts.

9 Ganczer 2013, 51. oldal.

10 *Ibid.*, pp. 92-120.

11 *Ibid.*, pp. 92-120.

12 *Ibid.*, pp. 120-143.

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not only the operative international treaties but also the perspective of future regulation on the basis of the Draft Articles of the International Law Commission on the nationality of natural persons in relation to state succession, and the Council of Europe Convention on the avoidance of statelessness in relation to state succession, entered into force in 2009.¹³

The author enhances the value of her monograph with case studies in order to accentuate the practical manifestation of theoretical problems determined and emphasises the necessity of a standard international legislation on the matter. The thesis analyses the Hungarian territorial mutations after World War I and World War II, the secession of Baltic states, the separation of Czechoslovakia, the German unification and the dissolution of the Socialist Federal Republic of Yugoslavia with regard to the unilaterally declared independence of Kosovo in February 2008.¹⁴

As Monika Ganczer demonstrated in her monograph, the law of state succession is still characterised by a certain lack of undisputed rules of customary law and she highlights the problems need to be solved by international rules. The author provides a comparative analysis of the international documents and the practices of states on nationality, on human rights, and on the nationality of natural persons in relation to state succession and also emphasizes the unavoidable legal obligation of the international community. The excellent monograph of Monika Ganczer gives a comprehensive revision and *de lege ferenda* suggestions on the nationality in relation to state succession. It could be a guideline for the legislator and for the competent national authorities of law enforcement and her work can be highly recommended for professional purposes.

13 *Ibid.*, pp. 191-195.

14 *Ibid.*, pp. 201-250.