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Report

drawn up on behalf of the Legal Affairs Committee

on the ~~British~~ **British Nationality Bill**

Rapporteur: Mr K. MALANGRE

1.2.1

The motion for a resolution annexed to this report (Doc. 1-728/80) was referred to the Legal Affairs Committee at the plenary sitting of the European Parliament on 17 December 1980.

At its meeting on 29 January 1981 the Legal Affairs Committee appointed Mr Malangré rapporteur.

At its meeting on 20 May 1981 the Legal Affairs Committee considered this report and adopted it unanimously.

Present: Mr Ferri, chairman; Mr Luster and Mr Turner, vice-chairmen; Mr Malangré, rapporteur; Mrs Cinciari Rodano, Mr Dalziel, Mr Fischbach, Mr Geurtsen, Mr Goppel, Mr de Gucht, Mr Magahy, Mr Plaskovitis, Mr Sieglerschmidt, Mrs Vayssade, Mr Vié and Mr Zecchino (deputizing for Mr Modiano).

CONTENTS

	<u>Page</u>
A. MOTION FOR A RESOLUTION	5
B. EXPLANATORY STATEMENT	7
ANNEX	

A

The Legal Affairs Committee hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

on the British Nationality Bill

The European Parliament,

- having regard to the motion for a resolution (Doc. 1-728/80);
 - having regard to the British Nationality Bill;
 - having regard to article 227 of the EEC Treaty as amended by the 1972 Act of Accession;
 - having regard to the declaration by the Government of the United Kingdom of Great Britain and Northern Ireland annexed to the 1972 Act of Accession¹;
 - having regard to the report of the Legal Affairs Committee (Doc. 1-254/81);
1. Recalls that the definition of nationality for the purposes of European Community law is the responsibility of each Member State;
 2. Recalls that at the time of signature of the Treaty of Accession, the Government of the United Kingdom made a Declaration on the definition of the term "nationals";
 3. Notes that the British Nationality Bill would abolish the term "citizen of the United Kingdom and Colonies" and alter the meaning of the term "right of abode", terms which are both used in the Declaration, and would consequently change the definition of British nationality for the purposes of European Community law, but that the Bill does not indicate how the Declaration would be replaced.

¹ See page 1297 of 1978 Treaty edition.

4. Considers it essential for the Nationality Bill to contain a clear definition of British nationality for the purposes of Community law;
5. Points out that under Clause 1(1) of the Bill, one change in British Nationality law would be that a person born in the United Kingdom to parents from another Member State would no longer be entitled to British nationality unless they were "settled" there;
6. Notes that, under Clause 2 of the Bill, another change would be that a person born to British parents in a Member State other than the United Kingdom would no longer be able automatically to pass British nationality on to his or her children, should they also be born outside the United Kingdom;
7. Regrets that, since there are differences between Member States' nationality laws, there would be the risk, however slight, that some children might be born stateless as a result of these changes, and that nationals of Member States may consequently be reluctant to exercise their rights of freedom of movement and freedom of establishment;
8. Therefore considers it highly desirable that British nationality should be made available to the two categories of people referred to above; at least when they would otherwise possibly be stateless;
9. Welcomes the proposed change whereby a British woman would be able to pass on British citizenship to a child born outside the United Kingdom in the same way as a British man can already do;
10. Takes the view that the Member States of the Community should press for further harmonization of the nationality law of Member States of the Council of Europe so as to avoid people being born stateless;
11. Instructs its President to forward this resolution and the report relating thereto to the Council, the Commission and the Member States.

EXPLANATORY STATEMENTI. INTRODUCTION

1. Nationality has traditionally been defined by states by means of two criteria: the ius soli and/or the ius sanguinis. In other words, people derive their nationality either from their birth within the national territory or from their parents' own nationality. The definition and choice of criteria has been the prerogative of the state in question.

2. This tradition was followed when the European Communities were set up. While Article 227 lays down in detail the territorial scope of the EEC Treaty the definition of nationality is left, implicitly, to the laws of Member States. Two Member States, the Federal Republic of Germany and the United Kingdom, found it necessary to set out their position in Declarations¹ annexed to the Treaties; the others use the definitions contained in their national, constitutional and legislative provisions.²

3. In general, nationality law expresses the connection between the individual and the State and lays down rights and duties, for example, in respect of the right to vote in and be a candidate in elections to public office; military service; and extradition. In Community law the concept of nationality is mainly important in the field of the free movement of persons provided for in Title III of the EEC Treaty, Article 48(2) on free movement of workers, Article 52 on freedom of establishment, and Article 59 on freedom to provide services, all prohibiting discrimination on grounds of nationality against Member State nationals. This report, which is concerned with the potential impact of the British Nationality Bill on Community law, will concentrate on this aspect of the proposal, but first it may be useful to set out briefly its historical background.

II. BACKGROUND TO THE BRITISH NATIONALITY BILL

4. Current British Nationality law is, as a result of the many different Commonwealth countries and other former colonies with historical connections with the United Kingdom, highly complex. Before 1949, the criterion for a "British subject" was allegiance to the British Monarch. The 1948 British Nationality Act took account of the

¹ See p 573 and p 1297 of 1978 Treaty edition respectively

² See Notice to Members No 1/81, PE 72.267 Annex III

independence of a growing number of former colonies and created a new 'Citizenship of the United Kingdom and Colonies'. Since then the Act has been modified a number of times but has proved unsatisfactory especially in that it, unlike most countries' nationality laws, merely defines the various forms of citizenship but does not grant to citizens an automatic right of entry and right of residence in the United Kingdom. That right (the term used is 'right of abode') has been defined by a series of Immigration Acts, the most recent dating back to 1971.

5. It was the complexity of the legal situation, with separate but linked legislation on nationality on the one hand and immigration on the other, which led to the Declaration of Nationality made by the United Kingdom Government at the time of British accession and annexed to the 1972 Act of Accession. Nationality for the purposes of the Treaties is there defined in terms of 'Citizenship of the United Kingdom and Colonies', a concept of nationality law, and of 'right of abode', a concept of immigration law¹.

III AIM OF THE BRITISH NATIONALITY BILL

6. The British Nationality Bill aims to amend and to simplify the rules concerning nationality. It would replace the present arrangements by a three-tier structure; British Citizenship, Citizenship of British Dependent Territories and British Overseas Citizenship. Only British Citizenship would confer the right to enter and remain in the United Kingdom without restriction².

IV IMPACT ON COMMUNITY LAW

7. a) Definition of United Kingdom nationality
Citizenship of the United Kingdom and Colonies, in terms of which nationality is defined for Community purposes, would disappear as a result of the adoption of the Bill. There is in the Bill no new definition of British nationality for the

¹ For a more detailed introduction, see Notice to Members No 1/81, PE 72.267 Annex I

² There are special arrangements for Gibraltar, which is part of the European Community.

purposes of Community law. While Clause 36(2)¹ provides a new definition of the term 'right of abode', the second criterion used in the 1972 Declaration, it is not in itself sufficiently clear. Indeed it is surprising that there is no definition in the otherwise detailed interpretation clauses in the Bill. In reply to a question on this point in the second reading debate in the House of Commons, the Home Secretary stated² 'that these matters are still under discussion with the European Community'. Since the Bill's provisions are particularly complex, it is essential that the discussions result in a new, clear definition. Otherwise uncertainty will arise as to who can benefit from the Treaty provisions on freedom of movement.

b) Risk of Statelessness as a result of the Bill

8. The authors of the motion for a resolution point to one way in which the Bill would limit entitlement to British nationality:

'..... the proposals would deprive British nationals born outside the United Kingdom of the right to transmit their nationality to their children and lead to some children becoming stateless,'

and state that they are:

'fearful that the proposals would discourage British citizens from exercising their rights to free movement and establishment'.

The Legal Affairs Committee has examined the nationality laws of the other Member States of the European Community³. It considers that although it is unlikely that many children would be born stateless as a result of the change, the possibility cannot be ruled out. And it should be remembered that, since Member States remain responsible for laying down their nationality law, others may change their legislation in the future in a similarly restrictive way to that now proposed in the United Kingdom.

9. There is another change, not mentioned by the authors, which might lead to statelessness. This is the abolition of the automatic right of a child born in the United Kingdom to British nationality. Under the Bill, entitlement would depend on one of the parents being settled in the United Kingdom. The test of the term 'settled' laid down in Clause 46(2)⁴, would appear to exclude a considerable number of Community nationals who have gone to the United Kingdom in accordance with the Treaty provisions on freedom of movement.

¹ See Notice to Members No 1/81, PE 72.267, Annex II

² See Hansard for 28 January 1981, ct col. 940-1

³ See Notice to Members No 1/81, PE 72.267, Annex III

⁴ See Notice to Members No 1/81, PE 72.267, Annex II

10. The Legal Affairs Committee consider that while the risk of statelessness in both cases is small, it may be sufficient to dissuade people from moving abroad, whether from the United Kingdom or towards it, and to exercise their treaty rights of freedom of movement. The Bill should therefore be amended so that British nationality is made available to children born in the two circumstances outlined above.

c) Alleged sexual discrimination in the Bill

11. The authors allege that the proposals would be a setback to equal rights for women. "Equal rights for women" should here be read as meaning equal opportunities to exercise their rights to freedom of movement and freedom of establishment. In this context the Bill marks an improvement rather than a setback in that British women as well as men would be able to pass on their nationality to children born outside the United Kingdom, for example, in another Member State.

12. It has been argued that the proposals could be seen as a setback to equal rights for women because, in the circumstances described in paragraph 8 above, the right of a child to British citizenship would depend on a parent being settled in the United Kingdom and the 1980 Immigration rules treat men and women differently as regards the right to settle¹. The differences in treatment arise in the provisions dealing with the rights of wives and husbands to join spouses who are already settled in the United Kingdom. For, the discriminatory aspect of the Immigration Rules lies in the fact that it is more difficult for a woman settled in the United Kingdom to obtain permission for her husband to join her than the other way round. In other words, it is easier for a pregnant woman to join her husband than for a man to join his pregnant wife. From the point of view of the child's nationality rights, the impact of the Immigration Rules is thus to discriminate in favour of women rather than against them. The Immigration Rules were discussed in more detail in the report drawn up by Mr Malangré on behalf of the Legal Affairs Committee.¹

v CONCLUSIONS

13. The Legal Affairs Committee considers that the Bill raises a number of issues in relation to Community law, particularly:

- the definition of United Kingdom nationality for the purposes of Community law (see paragraph 7);
- an increased risk of children being born stateless, which may make Member State nationals reluctant to exercise their right of freedom of movement (see paragraphs 8 - 9);

It considers that the allegation that the Bill marks a setback to equal rights for women is not justified (see paragraphs 11-12).

¹ Malangré report (Doc. 1-573/80)

MOTION FOR A RESOLUTION

tabled by Mr LOMAS, Mr SEAL, Mr ENRIGHT, Mrs BUCHAN, Mrs CLWYD
Mrs CASTLE, Mr ADAM, Mr CABORN, Mr ALBERS, Mr SCHMID,
Miss QUIN, Mrs VIEHOFF, Mr ROGERS, Mr MEGAHY,
Mr COLLINS, Mr GRIFFITHS, Mr MUNTINGH, Mrs LIZIN,
Mr WOLTJER, Mr COHEN, Mr von der VRING, Mrs SALISCH,
Mr RIEGER and Mr GALLAGHER

with request for urgent debate
pursuant to Rule 14
on British Nationality Law

The European Parliament,

- aware that one of the fundamental aims and purposes of the EEC Treaty is to encourage free movement and establishment between Member States as stated in Article 3 (c) and amplified in Title III,
 - considering that the proposals of the British Government in the White Paper on British Nationality Law would deprive British nationals born outside the United Kingdom of the right to transmit their nationality to their children and lead to some children becoming stateless,
 - fearful that the proposals would discourage British citizens from exercising their rights to free movement and establishment,
 - noting that these proposals would establish five different kinds of nationality in one of the EEC Member States only,
 - noting they would be a setback to equal rights for women,
1. Calls on the Commission and the Council to draw the attention of the British Government as a signatory to the Convention on Human Rights to the necessity to reconsider its proposed legislation;
 2. Instructs its President to forward this resolution to the Commission and the Council.

JUSTIFICATION

These proposals are included in the British Government's programme of legislation for the current parliamentary session.

