STATELESSNESS AS A CONSEQUENCE OF THE CONFLICT OF NATIONALITY LAWS (PART II)

3. Statelessness as a Result of Marriage

A. At the Time of Marriage

From the very first, the official doctrine of the equality of man and woman has been a cardinal principle of Soviet law, and in Soviet citizenship legislation this ingredient has throughout found expression in the rule that matrimony by a citizen of the USSR with one not such a citizen entails no change of citizenship. Or, as the 1978 Citizenship Law (Art.4) puts it:

"Entry into marriage by a male or female citizen of the USSR with a person who is a foreign citizen or a stateless person ... entails no change in the citizenship of the spouses."

The position of the Soviet regime on this item, it might be added, has always been a source of considerable pride to Soviet spokesmen — not altogether without reason. Accordingly, much is usually made of it in Soviet legal literature, and the following statement may be taken as typical of what is commonly said in that context:

"Soviet law stands guard over the citizenship interests of the Soviet woman. The Great October socialist revolution has established, and the law on citizenship again confirms, that entry into marriage by a citizeness of the USSR with a person not a citizen of the USSR does not entail for her a change of citizenship, that exit of the husband from the citizenship of the USSR does not entail for her exit from the citizenship of the USSR."

While such a policy incontestably has certain merits in terms of rendering it impossible for Soviet citizens inadvertently to blunder into statelessness as the aftermath of marriage to a foreigner, its very rigidity also produces markedly adverse effects which tend to offset much of the positive quality of the approach. Indeed, while fully protecting Soviet citizens from contracting statelessness through marriage to an alien, so to speak, it fails to make any allowance for the reverse situation in which, through blind collision of disparate legal systems, a foreigner may be precipitated into statelessness merely by virtue of marriage to a Soviet citizen, through no personal choice or desire on the part of the victim to suffer that fate. Examples of such results are legion, what with the large number of countries subscribing even today to the rule that their female nationals automatically forfeit their nationality by marriage to an alien, while other states, the Soviet Union among them, just as adamantly refuse to extend their citizenship to persons..."
thus egregiously penalized for marrying one of their citizens.

True, for a while there the Soviet government did offer a remedy for these ills, except that most people would rate the cure it chose far worse than the original ailment. What the authorities did was to prohibit by the decree of February 15, 1947, marriages between foreigners and Soviet citizens. This state of affairs lasted until the promulgation of the edict of November 26, 1953, which restored the status quo ante.

To return to the central point, however, in this field Soviet law today is back on the main track and statelessness as a result of the marriage of a foreign woman to a Soviet citizen is therefore again a normal occurrence.

The other observation to be made in this connection is that from the outset the Citizenship Law of 1938 seemed to consummate a major break with precedent by eschewing all mention of special ways and means to counteract the ensuing difference in the citizenship status of the spouses and overcome the negative consequences of such an awkward situation to the unity of the family, and its 1978 successor follows in its footsteps. Prior to that, relevant federal legislation had always provided that in conditions of "mixed" marriage, a petition by one of the partners for a change of nationality in order to acquire that of the other was permitted to proceed in a simplified manner, thereby also allowing, at least in principle, a ready avenue for handling any threat of incipient statelessness due to matrimony. And, the sole reason ever given for the regime's failure to perpetuate this progressive rule was that

"Soviet law is based on the full realization by the spouses of their responsibilities in regard to the family and as citizens of a socialist society. The law stimulates this consciousness as concerns citizenship. It considers that the citizenship of the USSR may be obtained not by contracting marriage, but by whether said person is deserving of being a citizen of the USSR." In any event, on closer inspection this departure from past practice turns out to be more a matter of form than of substance. In the first place, as the 1931 Regulation had made clear, the competent agencies could always refuse to apply this "simplified manner" and advise the petitioner to file for naturalization through the usual channels. Not only was such a decision not subject to appeal, but the law further omitted to specify on what grounds the request could be denied, apparently leaving it entirely to administrative discretion. In the second place, the idea had from the start met with considerable opposition within Soviet legal circles on the grounds that it served no good purpose and actually was only used by Soviet citizens married to foreigners and desirous of emigrating with their spouse so as to pass for foreigners and thus avoid paying the heavy duties levied on Soviet citizens applying for documents to travel abroad. Aside from providing people in this position with a convenient escape clause permitting them to leave the country legally upon payment of just a nominal fee instead of the standard and much higher tax imposed on the average Soviet citizen seeking to go outside the USSR, critics of the measure argued that it never filled any real need and, they charged, managed from inception merely to provoke doctrinal controversy and sow bureaucratic confusion.

Moreover, it should be noted, from the standpoint of factors contributing to the incidence of statelessness, the rule was not an unmixed blessing either. Granted, it