

OSCE Human Dimension Implementation Meeting

Warsaw, 2 – 13 October 2006

Working Session 10 'Democratic Institutions'

Citizenship and Political Rights

Contribution of the Council of Europe

**COUNCIL OF EUROPE ACTIVITIES IN THE FIELD OF
NATIONALITY/CITIZENSHIP¹**

Introduction

Nationality is an important element in the identity of the individual and the basis for many fundamental individual rights. The Council of Europe's work in the field of nationality forms part of the implementation of its statutory goals, notably to reach greater unity between its member states for the purpose of safeguarding the principles and achieving the ideals which are their common heritage and facilitating their social and economic progress (Article 1 of the Statute of the Council of Europe).

Nationality issues have gained greater significance thanks to the increasing movement of persons across Europe and the growing number of marriages between persons of different nationalities. This has resulted in a growing relevance for individuals of many nationality-related questions such as the acquisition of nationality, possible loss of nationality of origin and consequences of multiple nationality.

The issue of nationality is complex both at the level of national law and because in the application of national law it is necessary to take into account the effects of foreign laws relating to nationality. This is particularly important in the case of applications for nationality made by persons who have another nationality. In such a case the laws of both the State of the nationality of origin and the State of the requested new nationality must be considered in order to ascertain whether the acquisition of the new nationality will result in the loss of the nationality of origin or whether multiple nationality is allowed.

Owing to the importance of these issues, the Council of Europe has been dealing with nationality questions for many years and has encouraged States to comply with certain minimum standards. These standards are at present codified in the **European Convention on Nationality**, adopted in 1997².

¹ Note that the terms "nationality" and "citizenship" are used as synonyms in Council of Europe instruments.

² The texts of the Council of Europe legal instruments referred to in this Note are available on the Internet site of the Council of Europe Treaty Office www.conventions.coe.int (treaties) and the Internet site of the "Nationality" project www.coe.int/nationality (other documents).

I. European treaties on nationality

1.1. European Convention on Nationality

The European Convention on Nationality (CETS No. 166) was adopted and opened for signature in 1997 and entered into force on 1 March 2000. To date, 15 Council of Europe member states have ratified the Convention, an additional 12 States have signed it³ and several other States are expected to follow in the near future.

This Convention consolidates in a single text the minimum standards relating to nationality in Europe. It combines all the important issues relating to acquisition and loss of nationality and can be considered as a European code on nationality. Some of the main principles of the Convention are the prevention of statelessness, non-discrimination in matters related to nationality and respect for legitimate private and public interests.

The Convention is designed to make the acquisition of a new nationality and the recovery of a former one easier, to ensure that nationality is lost only for good reason and that it cannot be arbitrarily withdrawn, to guarantee that the procedures governing applications for nationality are just, fair and open to appeal, and to regulate the situation of persons in danger of being left stateless as a result of state succession. It also covers military obligations and co-operation between States Parties.

As far as multiple nationality is concerned, the Convention lays down the minimum rules on cases when multiple nationality is to be allowed (automatic acquisition of multiple nationalities at birth or by marriage and when the loss of previous nationality is not possible or cannot reasonably be demanded). For all other cases, the Convention authorises the States to determine the extent to which multiple nationality is to be allowed taking into account their own particular circumstances.

1.2. Convention on the Avoidance of Statelessness in relation to State Succession

The most recent Council of Europe instrument in the field of nationality is the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession (CETS No. 200), opened for signature on 19 May 2006.

The rationale for the preparation of this new instrument was the fact that Chapter VI of the European Convention on Nationality, which deals with State succession, contains only principles but no specific rules on nationality in the case of State succession. The new Convention therefore builds upon Chapter VI of the European Convention on Nationality by developing more detailed rules to be applied by States in the context of State succession with a view to preventing, or at least reducing as far as possible, cases of statelessness arising from such situations.

³ For details, please refer to the chart of signatures and ratifications available on the Internet site of the Council of Europe Treaty Office www.conventions.coe.int

The Council of Europe, through its assistance and co-operation activities, encourages and assists the member states to sign and ratify the European Convention on Nationality and the Convention on the Avoidance of Statelessness in relation to State Succession.

1.3. Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality and its protocols

The Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality (CETS No. 043), adopted in 1963, was the first Council of Europe Convention in the field of nationality. It aims at limiting cases of multiple nationality and ensuring that persons possessing the nationality of more than one State Party are required to fulfil their military obligations in relation to one of these States Parties only. This Convention allows multiple nationality only in certain limited cases, in particular when multiple nationality arises by birth or automatically upon marriage, or where a State Party has made a reservation to the Convention. However, since over time many European States began to favour a less restrictive approach towards multiple nationality, the rules of the 1963 Convention were relaxed with the adoption, in 1993, of the Second Protocol amending the 1963 Convention. This Protocol allows States to permit multiple nationality in several additional cases.

Moreover, as described above, the European Convention on Nationality of 1997 merely stipulates the cases where multiple nationality is to be allowed. In other situations where a person acquires another nationality this Convention authorises the States to determine, taking into account their own particular circumstances, whether multiple nationality is admitted.

II. Resolutions and Recommendations on nationality

The Committee of Ministers of the Council of Europe adopted its first resolution in the field of nationality in 1950 (Resolution (50)24 on reciprocal treatment of nationals). Since then, the Council of Europe has adopted a number of resolutions and recommendations in the field of nationality, the most significant of which are briefly described below.

Resolution (77)12 on the nationality of spouses of different nationalities, adopted on 27 May 1977

This Resolution provides, *inter alia*, for the elimination of distinctions concerning the conditions under which nationality may be acquired by foreign husbands of nationals, as opposed to foreign wives.

Resolution (77)13 on the nationality of children born in wedlock, adopted on 27 May 1977

This Resolution provides, *inter alia*, for the granting of nationality at birth to children born in wedlock if their father or their mother possesses such a nationality, based on the principle of the equality of a father's and a mother's rights concerning children born in wedlock. These children should be able to acquire the nationality of their mother as well as that of their father.

Recommendation No. R(84)9 on second generation migrants, adopted on 20 March 1984

This Recommendation notes that second generation migrants in host countries are in a situation, which differs from that of other migrants of foreign origin, due to the numerous links they have with the country, the lengthy period they may have lived there, their possible familiarity with the habits, customs and culture and the extent to which they may have become integrated into society. It therefore aims at ensuring that procedures for the acquisition of

nationality or the reinstatement of the nationality of origin are as simple and speedy as possible, and expenses are as limited as possible, and do not exceed administrative costs.

Recommendation No. R(84)21 on the acquisition by refugees of the nationality of the host country, adopted on 14 November 1984

This Recommendation provides for more favourable conditions (e.g. reduction of the required period of residence) for refugees when acquiring the nationality, in order to enable them and their children to be integrated into the respective State.

Recommendation No. R (99) 18 on the avoidance and reduction of statelessness, adopted on 15 September 1999

Article 4 of the European Convention on Nationality states the principle on the avoidance of statelessness that should be implemented by the adoption by member states of specific rules in their internal law to that effect. The Recommendation aims at providing such rules.

III. Other work in the field of nationality

3.1. Other Council of Europe documents on nationality

The European Commission for Democracy through Law (Venice Commission) adopted, in 1996, a Declaration on the consequence of State succession for the nationality of natural persons. This Declaration provides, *inter alia*, that in all cases of State succession, the successor State shall grant its nationality to all nationals of the predecessor State residing permanently on the transferred territory.

Also in 1996, the Committee of Ministers adopted the Principles on Citizenship Legislation Concerning the Parties to the Peace Agreements in Bosnia and Herzegovina. They aim at avoiding as far as possible situations of statelessness which may arise after the war and at facilitating the acquisition of nationality for persons who have difficulties in having their nationality status ascertained. In particular such persons should be able to acquire a nationality only on the basis of a statement made by or for them.

Moreover, in recent years a number of thematic reports have been drawn up and published exploring certain aspects of the European Convention on Nationality such as:

- Report on Misuse of Nationality Laws (2000);
- Report on Multiple Nationality (2000);
- Report on Conditions for the Acquisition and Loss of Nationality (2002).

3.2. European Conferences on Nationality

With a view to assisting States in finding solutions to problems in the field of nationality and examining important nationality issues for both individuals and States, the Council of Europe has organised several European Conferences on Nationality.

The 1st European Conference on Nationality took place in Strasbourg in 1999 on the theme "Trends and Developments in National and International Law on Nationality". This Conference dealt with such questions as State succession and nationality, multiple nationality, the need for a proper balance between the interests of States and those of individuals, misuse of nationality laws, the need to avoid and reduce statelessness, as well as the relations between European and non-European States in the field of nationality.

The 2nd European Conference on Nationality took place in Strasbourg in 2001 on the theme “Challenges to national and international law on nationality at the beginning of the new millennium”. This Conference considered issues related to integration and nationality, conditions for acquisition of nationality, multiple nationality and State succession and nationality.

The 3rd European Conference on Nationality took place in Strasbourg in 2004 on the theme “Nationality and the Child”. It dealt with the integration and nationality of children, the position of children in decisions regarding their nationality, nationality of children in connection with international adoption, problems relating to the registration of children and implications for the acquisition of nationality.

3.3. Co-operation and assistance activities

For many years, the Council of Europe has been providing technical assistance at the request of member states concerning their domestic legislation relating to nationality and, in particular, on draft legislation in this field. These bilateral and regional activities normally target central and south-eastern European member states that are in the process of reforming their respective citizenship laws.

A large part of these activities are undertaken in close co-operation with the United Nations High Commissioner for Refugees (UNHCR). In 1999, a Memorandum of Understanding was concluded between the Council of Europe and the UNHCR, providing for co-operation between the organisations.