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**PROMOTING ACQUISITION OF CITIZENSHIP
AS A MEANS TO REDUCE STATELESSNESS
- FEASIBILITY STUDY -**

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Promoting acquisition of citizenship as a means to reduce statelessness - Feasibility Study

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CHAPTER I: OBJECT AND SCOPE OF THE STUDY

1. The elimination of statelessness as permanent concern of the international community

The right to a nationality (article 15 of the Universal Declaration of Human Rights) is the main human right in the field of nationality. Without a nationality, individuals cannot enjoy fundamental rights based on the possession of the nationality of the State of residence, nor enjoy the protection that States grant their citizens who reside abroad. The situation of stateless persons may be characterised in that they have neither a place where they have a right to stay, nor a place to which they have a right to return. If they are authorised to remain in a state, they cannot participate in the political process and often are restricted in their freedom of movement, do not have access to the rights and benefits guaranteed to nationals concerning employment, housing, health, education and social security. Despite constant efforts aimed at avoiding and reducing statelessness, huge numbers of stateless persons still exist in many states, including member states of the Council of Europe. The elimination of statelessness therefore remains the main concern of the international community in the field of nationality.

2. Scope of the study

The purpose of this paper is to study the feasibility of further action of the Council of Europe as regards promoting acquisition of citizenship as a means to reduce statelessness. The study aims at identifying issues where the adoption of Council of Europe legal instruments would be instrumental in order to eliminate gaps in the existing international/ European legal regulation and to harmonise approaches in the Council of Europe member states. The study analyses the existing international and European legal standards and relevant (representative) national regulations and practices, as well as reform proposals.

3. Basic approach of the study

The European Convention on Nationality is the most comprehensive international instrument in the field of nationality. Elaborated by the Council of Europe, adopted in 1997 and in force since 2000, it is a relatively recent instrument. Further progress was made with the adoption of the Council of Europe Recommendation on the Avoidance and the Reduction of Statelessness in 1999 and the Convention on the Avoidance and Reduction of Statelessness in Cases of State Succession in 2006. This study will focus primarily on the European Convention on Nationality as well as the further developments and analyse the relevant provisions on statelessness. It will then compare these results with existing legislation of member states of the Council of Europe, with other international instruments as well as the need for harmonization in relation to statelessness. Should the study conclude that there are gaps in existing instruments of the Council of Europe, or that existing regulations lack binding character, it will make proposals for amendments.

CHAPTER II: REVIEW OF INTERNATIONAL INSTRUMENTS AND NATIONAL LEGISLATION

A. Review of instruments of the Council of Europe dealing with statelessness

4. General remarks concerning instruments of the Council of Europe

The Council of Europe has dealt with issues relating to nationality for over forty years. During this period, the Committee of Ministers and the Parliamentary Assembly have adopted a number of conventions and recommendations with regard to nationality, from the 1963 Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality to the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession. They all contain provisions aiming at the avoidance and reduction of statelessness. However, the provisions of the European Convention on Nationality, the Recommendation on Statelessness and the Convention on the Avoidance of Statelessness in relation to State Succession address all the issues of particular relevance with regard to statelessness. Thus, this study only considers these three instruments of the Council of Europe.

5. Provisions directly dealing with statelessness in the European Convention on Nationality

A number of provisions of the European Convention on Nationality are relevant with regard to statelessness. Some of them explicitly refer to statelessness or have a direct impact on the avoidance or creation of statelessness. Others mainly pursue different aims but may be of relevance in cases of statelessness. The following provisions of the European Convention make an explicit reference to statelessness or have a direct relevance in this area:

Preamble:

Paragraph 3: "Bearing in mind the numerous international instruments relating to ...statelessness"

Paragraph 4: "Desiring to...avoid, as far as possible, cases of statelessness"

Chapter II - General principles relating to nationality

Article 4 - Principles

"The rules on nationality...shall be based on the following principles:

- a) everyone has the right to a nationality;
- b) stateless shall be avoided;
- c) no one shall be arbitrarily deprived of his or her nationality
- d) neither marriage nor the dissolution of a marriage between a national of a State Party or an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse."

Chapter III - Rules related to nationality

Article 6 - Acquisition of nationality

Paragraph 1: "Each State Party shall provide in its internal law for its nationality to be acquired *ex lege* by the following persons:

- a) children one of whose parents possesses, at the time of the birth of these children, the nationality of that State Party, subject to any exceptions which may be provided for by its internal law as regards children born abroad..."
- b) foundlings found in its territory who would otherwise be stateless."

Paragraph 2: "Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality. Such nationality shall be granted:

- a) at birth *ex lege*; or
- b) subsequently, to children who remained stateless, upon an application... Such an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years... "

Paragraph 3: "Each State Party shall facilitate in its internal law the acquisition of its nationality for...: g) stateless persons...lawfully and habitually resident on its territory".

Article 7 - Loss of nationality ex lege or at the initiative of a State Party

Paragraph 1: "A State Party may not provide in its internal law for the loss of its nationality *ex lege* or at the initiative of the State Party except in the following cases:..

- b) acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant;
- c) voluntary service in a foreign military force;
- d) conduct seriously prejudicial to the vital interests of the State Party;
- e) lack of a genuine link between the State Party and a national habitually residing abroad;
- f) where it is established during the minority of a child that the preconditions laid down by internal law which led to the *ex lege* acquisition of the nationality of the State Party are no longer fulfilled;
- g) adoption of a child if the child acquires or possesses the foreign nationality of one or both of the adopting parents".

Paragraph 2: " A State Party may provide for the loss of its nationality by children whose parents lose that nationality except in cases covered by subparagraphs c and d of paragraph 1..."

Paragraph 3: "A State Party may not provide in its internal law for the loss of its nationality under paragraphs 1 and 2 of this article if the person concerned should thereby become stateless, with the exception of the cases mentioned in paragraph 1, sub-paragraph b, of this article".

Article 8 - Loss of nationality at the initiative of the individual

Paragraph 1: "Each State Party shall permit the renunciation of its nationality provided the persons concerned do not thereby become stateless".

Chapter VI - State succession and nationality

Article 18 - Principles

Paragraph 1: In matters of nationality in cases of State succession, each State Party concerned shall respect the principles ... of this Convention, in particular in order to avoid statelessness".

6. Other provisions relevant for statelessness in the European Convention on Nationality

As outlined at the beginning of the previous paragraph, provisions of the Convention mainly pursuing other aims than the prevention of statelessness may nevertheless be relevant with regard to statelessness. All the rules on naturalisation (article 6 paragraph 3), facilitated naturalisation for spouses, children, adopted children, and second-generation migrants (article 6 paragraph 4) or on reintegration (article 9) also apply to stateless persons and thus contribute to the reduction of statelessness. The same applies to the non-discrimination clause (article 5), the procedural provisions (articles 10 - 13), co-operation between States Parties (article 23) and exchange of information (article 24). This study, however, will only focus on the provisions of the Convention directly dealing with statelessness.

7. The Recommendation on Statelessness

The Council of Europe prepared the Recommendation on the Avoidance and the Reduction of Statelessness in 1999, further to the adoption in 1997 of the European Convention on Nationality. Many of the provisions of the Convention are very general and give States great latitude with regard to its implementation. The Recommendation aims at facilitating the application of the Convention by formulating specific guidelines and more detailed rules. Thus, the Recommendation further develops the Convention with regard to statelessness and has a great importance in the context of this study.

8. Principles of the recommendation on statelessness

The Recommendation at first repeats the principles on statelessness of the European Convention on Nationality. With regard to facilitating the acquisition of nationality by stateless persons, it goes somewhat further than the Convention by providing that "the acquisition of nationality by stateless persons should be facilitated and not subject to unreasonable conditions" (paragraph I, d). It then adds the following principle: "In the application and interpretation of national legislation, account should be taken of the consequences of the relevant corresponding provisions of the legislation and the practice of other States concerned, in order to avoid statelessness" (paragraph I, f).

9. Rules of the Recommendation on Statelessness

The Recommendation asks States to respect the following rules:

A. Avoiding and reducing statelessness at birth

a. Each State should provide for its nationality to be acquired *ex lege* by children one of whose parents possesses, at the time of birth of these children, its nationality.

Exceptions made with regard to children born abroad should not lead to situations of statelessness.

b. Each State should ensure that its legislation provides for the acquisition of its nationality by children born on its territory who would otherwise be stateless.

B. Facilitating the acquisition of nationality by stateless persons

Each State should facilitate the acquisition of its nationality by stateless persons lawfully and habitually resident on its territory and, in particular, each State should:

a. reduce the required period of residence in relation to the normal period of residence required;

- b. not require more than an adequate knowledge of one of its official languages, whenever this is provided for by the internal law of the State;
- c. ensure that procedures be easily accessible, not subject to undue delay and available on payment of reduced fees;
- d. ensure that offences, when they are relevant for the decision concerning the acquisition of nationality, do not unreasonably prevent stateless persons seeking the nationality of the State.

Avoiding statelessness as a consequence of loss of nationality

- a. Each State should ensure that the renunciation of its nationality will not take place without the possession, actual acquisition or guarantee of acquisition of another nationality. When another nationality is not acquired or possessed, States should provide that the renunciation is without effect.
- b. When a State requires persons to lose their previous nationality in order to acquire its nationality, this State should grant its nationality, even if the previous one is not immediately lost. The States concerned, if necessary, should agree on the modalities of the application of this provision.
- c. In order to avoid, as far as possible, situations of statelessness, a State should not necessarily deprive of its nationality persons who have acquired its nationality by fraudulent conduct, false information or concealment of any relevant fact. To this effect, the gravity of the facts, as well as other relevant circumstances, such as the genuine and effective link of these persons with the state concerned, should be taken into account.

10. The Convention on Statelessness in relation to State Succession

In 2006 the Council of Europe adopted a comprehensive new Convention on the Avoidance of Statelessness in Relation to State Succession. This Convention contains definitions, principles and rules on the specific responsibility of the predecessor and the successor States, procedural guarantees and rules useful for the implementation of its principles. As the new Convention has taken care of situations of stateless in relation to State succession, there is no need for this study to continue dealing with statelessness and State succession, at least in so far as situations covered by the new Convention are concerned. This Convention, however, contains some rules not mentioned in the other instruments on statelessness of the Council of Europe, and which are significant in that they go beyond the concept of State succession. They are the following:

Article 1 - Definitions

- "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."

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."

B. Review of other international instruments dealing with statelessness

11. Other key international instruments

The other key international instruments dealing with statelessness are the following:

- the 1930 Hague Protocol Relating to Certain Cases of Statelessness;
- the 1948 Universal Declaration of Human Rights
- the 1954 United Nations Convention Relating to the Status of Stateless Persons;
- the 1957 United Nations Convention on the Status of married women;
- the 1961 United Nations Convention on the Reduction of Statelessness;
- the 1966 International Covenant on Civil and Political Rights;
- the 1966 International Convention on the Elimination of All Forms of Racial Discrimination;
- the 1967 European Convention on the Adoption of Children;
- the 1973 Convention to reduce the number of cases of statelessness of the International Commission on Civil Status;
- the 1979 Convention on the Elimination of All Forms of Discrimination against Women;
- the 1989 United Convention on the Rights of the Child.

The instruments of the Council of Europe with regard to statelessness have taken account of these other international instruments, in particular the 1961 United Nations Convention on the Reduction of Statelessness. Therefore, it is not necessary to deal in detail with the above-mentioned international instruments relating to statelessness.

12. Specific provisions of other international instruments

However, the following provisions of other international instruments are not or only partially reflected in the instruments of the Council of Europe:

Convention relating to the Status of Stateless Persons:

Article 1: "For the purpose of this Convention, the term "stateless person" means a person who is not considered as a national by any State under the operation of its law."

Article 32: "States shall as far as possible facilitate the naturalisation...of stateless persons. They shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.

Final act: States shall "...consider sympathetically..." to accord to *de facto* stateless persons "...the same treatment the convention accords to stateless persons".

Convention on the Reduction of Statelessness

Final act: "...Persons who are stateless *de facto* should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality".

International Covenant on Civil and Political Rights

Article 24

2." Every child shall be registered immediately after birth".

3. "Every child has the right to acquire a nationality".

Convention on the Rights of the Child

Article 7

1. "The child shall be registered immediately after birth and shall have...the right to acquire a nationality".

C. Review of national legislation dealing with statelessness

13. Situations of statelessness referred to in international instruments

It follows from the above that the instruments of the Council of Europe and other international instruments refer to the following persons or situations relevant for statelessness:

- statelessness in general;
- stateless children of nationals;
- foundlings;
- stateless children born in the territory of a State;
- stateless children not born in the territory of the State where they reside;
- stateless adopted children;
- stateless married women;
- facilitated naturalisation of stateless persons;
- definition of residence for naturalisation;
- renunciation of nationality resulting in statelessness;
- loss of nationality for persons residing abroad resulting in statelessness;
- deprivation of nationality resulting in statelessness;
- definition of statelessness and proof of statelessness.

The national legislation of member states of the Council of Europe will now be analysed with regard to the above-mentioned situations of statelessness.

14. Statelessness in general

Some member states of the Council of Europe provide that their legislation on citizenship shall be based on the avoidance of statelessness (Moldova; Ukraine). Others provide that a child's citizenship shall not be terminated if such a termination will result in his/her statelessness (Russian Federation) or that the provisions of the nationality law must not be applied if, consequently, a person were to become stateless (Finland).

15. Stateless children of nationals

Children born on the territory of a member state of the Council of Europe whose father or mother possess its nationality always acquire the nationality of their father or mother at birth. Children born abroad normally acquire through descent the nationality of their father or mother. This is at least the case if they would otherwise be stateless. An exception is the legislation of the United Kingdom that permits the establishment of statelessness for children born abroad whose parents and grandparents are British citizens by descent only. Statelessness might, however, be avoided by the general possibility of discretionary registration of minors as British citizens.

16. Foundlings

There is a presumption that foundlings are children who are born on the territory of the State in which they were found of parents possessing the nationality of that State. All member states of the Council of Europe would grant them their nationality.

17. Stateless children born on the territory of a State

Acquisition of nationality at birth

According to the legislation of many member states of the Council of Europe, children born on their territory acquire their nationality at birth if they would otherwise be stateless (Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Finland, France, Greece, Hungary, Ireland, Italy, Luxemburg, Malta, Moldova, Poland, Portugal, Russian Federation, Slovakia, Slovenia, Spain, Sweden, Turkey, Ukraine).

Acquisition of nationality at birth in case of residence of the parents on the territory of the State

Some States provide for the acquisition of their citizenship for stateless children born in their territory only if the parents have a specifically qualified residence in their territory at the time of birth of the child. The residence required must be either lawful residence (Ukraine) or permanent residence (Czech Republic, Sweden and Latvia).

Acquisition of nationality after a certain period of residence on the territory of the State

Some States permit children born stateless on their territory to acquire their nationality if they have resided there for a defined period after birth and have their domicile or permanent residence in that State when they acquire its nationality. This period is either three years (Iceland and the Netherlands) or five years (Estonia and Switzerland).

Acquisition of citizenship after birth with additional conditions

One State grants nationality to children who were born stateless on its territory only when they have reached the age of 18 years. Further conditions are that the child has not been sentenced for specified crimes, nor sentenced to imprisonment for five or more years (Austria).

Loss of nationality if the child acquires another nationality

Some of the above-mentioned States provide for the loss of their nationality if the child acquires, before reaching a certain age, another nationality, in particular the nationality of one of the parents. The acquisition of the nationality of the State of birth is thus provisional up to a certain age. For example this age is five years (Finland), fourteen years (Bosnia and Herzegovina, Croatia) or 18 years (Belgium and France).

18. Stateless children not born on the territory of the State where they reside

In a great number of States, according to the traditional attitude with regard to naturalisation, reaching the age of majority is a condition for the acquisition of nationality through naturalisation. Thus, children cannot apply individually, i.e. without their parents, for naturalisation until they have reached the age of majority. This even applies to children who are stateless because they could not acquire the nationality of their State of residence at birth.

In some States, however, children - including stateless children - can already apply for naturalisation before the age of majority (Belgium, France, Hungary, Latvia, Norway, Poland, Slovakia, Spain, Sweden, Switzerland, United Kingdom).

19. Stateless adopted children

The legislation of all member states of the Council of Europe provides for the acquisition of their nationality if a foreign child is adopted by a national. Loss of nationality through adoption by a foreigner only occurs if the adopted child does not thereby become stateless.

However, if an adoption of a foreign child by nationals is annulled, some States explicitly provide for the loss of their nationality without making exceptions for children who would become stateless (Latvia, Moldova, and Romania). The loss of nationality in such a situation may be limited to children living abroad (Moldova and Romania). On the contrary, other States explicitly exclude the loss of nationality in case of annulment of an adoption if the child would otherwise become stateless (Russian Federation) or do not permit any loss of nationality at all in case of annulment of an adoption (United Kingdom).

20. Stateless married women

As equality between men and women in the field of nationality is achieved, married women do not become stateless in application of the legislation of member states of the Council of Europe.

21. Facilitated naturalisation of stateless persons

Many member states of the Council of Europe provide for a facilitated naturalisation for stateless persons by reducing the normal residency period for naturalisation. In some States, the residency period is reduced from five to three years (Belgium, Bulgaria, the Netherlands), from six to four years (Finland), from eight to five years (Hungary), from ten to five years (Italy), from ten to eight years (Moldova) or from five to four years (Sweden).

Other States simplify the procedure for the acquisition of their nationality (Poland) or their legislation contains a general provision encouraging the acquisition of nationality by stateless persons (Russian Federation, Moldova, Ukraine).

The legislation of a number of States provides for a short period of residence as a requirement for naturalisation, four years (Ireland) or five years (Croatia, Czech Republic, France, Iceland, Latvia, Luxemburg, Poland, Russia, Slovakia, Spain, Turkey, Ukraine, United Kingdom). Some of these States may consider that the normal residency period for naturalisation is already so short that a further reduction for stateless persons is not justified.

22. Definition of residence for naturalisation

The definition of "residence" may have an impact on the possibility of stateless persons to acquire a nationality. Therefore, the following comparison might be useful.

Many member states of the Council of Europe require a certain number of years of residence in the State as a condition for naturalisation without further qualifying the term of residence (Spain, Cyprus, France, Greece, Hungary, Iceland, Ireland, Malta, Norway, Poland, Portugal, Romania, Spain). Others add that residence means principal residence (Austria, Belgium, Netherlands) or that residence must be legal (Croatia, Italy, Moldova, Switzerland, Turkey, Ukraine).

A number of States specify that residence in the sense of the naturalisation provisions means permanent residence (Bosnia and Herzegovina, Bulgaria, Czech Republic, Denmark, Estonia, Germany, Latvia, Lithuania, Russian Federation, Slovakia, Slovenia).

Some States apply a differentiated notion of residence by providing that residence necessary for naturalisation must be legal during an initial period, but permanent when a person applies for naturalisation (Finland, Luxemburg, Sweden, United Kingdom).

23. Renunciation of nationality resulting in stateless

Statelessness can be created when a State applying the principal of single nationality requires that an applicant for naturalisation first renounces his/her previous nationality and then refuses to grant him/her its nationality. More precisely, statelessness results from the release or the renunciation of a previous nationality by the State of origin without a subsequent acquisition of another nationality. Some States explicitly avoid statelessness in such cases by providing that the release or the renunciation of their nationality in order to acquire another nationality is invalid if the person concerned does not acquire another nationality within a certain period, which might be a year (Croatia, Germany, Slovenia) or longer (Sweden).

24. Loss of nationality for persons residing abroad resulting in statelessness

A certain number of member states of the Council of Europe provide for the loss of their nationality if persons reside abroad for a certain period. In some States, loss of nationality occurs for persons born abroad who do not declare, after having reached the age of majority, that they want to retain their nationality (Belgium, Denmark, Iceland, Sweden, Switzerland). They lose their previous nationality only if they possess another nationality.

Other States permit the loss of their nationality for persons residing abroad after a shorter period (seven years) if they do not register at a Consulate, and even if these persons would thereby become stateless (Cyprus, Malta, also Ireland, limited, however, to naturalised persons).

Some States explicitly provide that residence abroad does not affect the nationality of their citizens (Russian Federation, Ukraine).

25. Deprivation of nationality resulting in statelessness

In a great majority of member states of the Council of Europe, deprivation of nationality resulting in statelessness is not authorised or only in case of fraudulent acquisition of their nationality.

In other States, however, loss of citizenship remains possible even if a person becomes stateless. The reasons for withdrawing nationality resulting ultimately in statelessness may be entering public or military service of another State, performing activities on behalf of another State or disloyalty (Austria, Cyprus, Greece, Italy, Latvia, Lithuania, Malta, Romania, Turkey). In some States, deprivation, which might result in statelessness, is limited to naturalised persons (Estonia, Ireland, Luxembourg).

26. Definition of statelessness

The legislation of a great majority of member states of the Council of Europe is based on the definition of statelessness of the 1954 Convention on the Status of Stateless Persons, according to which a person "who is not considered as a national by any State under the operation of its law" (article 1) is stateless.

Some States have a slightly wider definition of statelessness and also grant nationality to children born on their territory whose nationality cannot be determined (Austria), who have no proof of possessing the nationality of a foreign State (Russian Federation, Slovakia) or who are of unknown nationality (Bosnia and Herzegovina, Croatia, Finland, Greece, Poland, Slovenia). The legislation of one State defines persons with unknown nationality as persons for whom there is no information on nationality or statelessness (Finland).

Some States do not apply the provisions on statelessness to children born on their territory if they are entitled to the nationality of any other State (Ireland) or if they possess a secondary right to acquire the nationality of any other State (Finland). Finland does not apply the usual provisions on statelessness to voluntarily stateless persons (children or adults), i.e. persons who have remained stateless by their own or their parents' or guardians' will.

Some States provide for the loss of their nationality if a child who has acquired at birth their nationality later acquires another nationality. This might be any other nationality (Belgium) or be limited to the nationality of one of the parents (France, Bosnia and Herzegovina). The child loses the nationality of birth only if he or she acquires the new nationality before reaching a certain age: five years (Finland), fourteen years (Bosnia and Herzegovina, Croatia) or the age of majority (Belgium, France).

27. Final remarks in the review of national legislation

The legislation of many member states of the Council of Europe does not generate statelessness. Every State, however, is confronted with situations of statelessness created by other States, including non-member states of the Council of Europe, when they concern persons residing in its territory. Even if marriage, for example, does no longer render women stateless according to the legislation of European States, other States still accept statelessness in case of marriage. It is therefore up to the European State of residence to continue addressing this problem if necessary.

CHAPTER III: GAPS IN COUNCIL OF EUROPE INSTRUMENTS AND NEED FOR HARMONIZATION

28. Preliminary remark

This chapter will compare the national legislation of member states of the Council of Europe with the European Convention on Nationality, the Recommendation on statelessness and other relevant international instruments. It will point out the gaps existing in the Convention and the Recommendation.

29. Statelessness in general

Gaps in the European Convention on Nationality

The Convention mentions the general principle that statelessness shall be avoided (article 4, paragraph b). The legislation of some member states of the Council of Europe refers to this principle. However, the legislation of one State (Finland), while referring to the principle, has made it - by limiting it somewhat in scope - into a practically applicable rule. It provides that nationality law must not be applied if, consequently, a person were to become stateless. This is an excellent provision that may prevent cases of statelessness. If necessary, States could explicitly mention justified exceptions (e.g. fraudulent acquisition of a nationality) to this rule. The absence of such a detailed provision on avoiding statelessness can be considered as a gap in the Convention

Gaps in the Recommendation on Statelessness

The same reasoning applies to the Recommendation, which also refers to the principles of the Convention.

30. Stateless children of nationals

Gaps in the European Convention on Nationality

According to the European Convention, States may make exceptions with regard to the acquisition *ex lege* of their nationality by descent for children born abroad (article 6, paragraph 1 a). States can thus provide that children born abroad acquire their nationality not automatically but only by lodging an application. This provision of the Convention thus permits States to create statelessness by allowing them to refuse to grant nationality to children of their nationals born abroad.

As the legislation of the overwhelming majority of member states of the Council of Europe avoids statelessness for children of their nationals born abroad, permitting statelessness in such situations is equivalent to a gap in the Convention.

Gaps in the Recommendation on Statelessness

There is no gap in the recommendation, as it provides for the avoidance of statelessness for all children of nationals born abroad (article II. A. a).

31. Foundlings

As the legislation of all member states of the Council of Europe takes care of the situation of foundlings, there is no need for further harmonization.

32. Stateless children born on the territory of a State

Gaps in the European Convention on Nationality

According to the Convention, States are obliged to grant their nationality to children born on their territory who would otherwise be stateless, either at birth *ex lege* or after a period not exceeding five years if the child fulfils additional conditions (article 6, paragraph 2). The review of national legislation has shown that a clear majority of member states of the Council of Europe grant nationality to stateless children with no other condition than birth on their territory, or with the only additional condition that the parents have legal residence in the State at the time of birth of the child.

Permitting statelessness up to the age of five years for children born on the territory of a State whose parents have lawful and habitual residence in that State seems to be at issue with the very principles advocated by the Convention. At any rate, States have the possibility - as shown under the review of national legislation above - to provide for the loss of their nationality if the child acquires until a certain age another nationality. This study reaches therefore the conclusion that there is a gap in the Convention with regard to stateless children born on the territory of a State Party.

Gaps in the Recommendation on statelessness

There is no gap in the Recommendation, as it asks States to grant nationality to all stateless children born on their territory. It might be considered, however, that the Recommendation goes too far by not taking into account the attitude of States that grant their nationality to children when their parents have a minimal link with those States.

33. Stateless children not born on the territory of the State where they reside

Gaps in the European Convention on Nationality

The Convention contains no provision on the individual naturalisation of children. Thus, States are free to determine that only persons having reached the age of majority can apply for naturalisation. Many member states of the Council of Europe do not permit minors to acquire individually (without their parents) their nationality. This means that children who were stateless already at birth and did not acquire the nationality of the State of birth, or children who became stateless after birth, have often to wait until reaching the majority before they can apply for naturalisation in the State of residence. Such a long time of statelessness is not justified. They should be able to apply for naturalisation before reaching the age of majority. Thus, there is a gap in the Convention with regard to these children.

Gaps in the Recommendation on statelessness

There is the same gap in the Recommendation as in the Convention.

34. Stateless adopted children

Gaps in the European Convention on Nationality

The Convention provides that adoption of a child may not lead to statelessness (article 7 paragraph 1 g) and that States shall facilitate the acquisition of their nationality for children adopted by one of

its nationals (article 6 paragraph 4 d). As some States provide for the loss of their nationality in case of annulment of an adoption even if a child becomes stateless, there is a gap in the Convention with regard to such situations.

Gaps in the Recommendation on statelessness

The same gap exists in the Recommendation.

35. Stateless married women

As the legislation of all member states of the Council of Europe prevents statelessness through marriage, there is no need for further harmonization.

36. Facilitated naturalisation of stateless persons

Gaps in the European Convention on Nationality

According to the Convention, States shall facilitate the acquisition of their nationality for stateless persons (article 6 paragraph 4 f). The provision is very important for the reduction of statelessness. However, it might be much more effective if it included specific criteria for the facilitation of naturalisation. A number of States reduce the period of residence for naturalisation. The Recommendation on Statelessness adds other criteria (requiring simply an adequate knowledge of an official language; easily accessible procedures not subject to undue delay; and payment of reduced fees).

Gaps in the Recommendation on statelessness

The Recommendation has taken into account this gap in the Convention.

37. Definition of residence for naturalisation

Gaps in the European Convention on Nationality

A restrictive definition of residence for naturalisation may make it difficult, in particular for stateless persons, to acquire the nationality of the State of residence. For example requiring five years of permanent residence for naturalisation if permanent residence is granted only after several years of non-permanent residence may result in much more than five years of total residence. For this reason, the new Council of Europe Convention on Statelessness and State Succession refers to the term of "habitual residence" and defines it as a "stable factual residence". This definition should also apply in the European Convention on Nationality, at least with regard to the naturalisation of stateless persons.

Gaps in the Recommendation on statelessness

There is the same gap in the Recommendation as in the Convention.

38. Renunciation of nationality resulting in stateless

Gaps in the European Convention on Nationality

Statelessness can result from the release or the renunciation of a previous nationality without the subsequent acquisition of another nationality. No rule in the Convention obliges States to consider

release or renunciation of their nationality invalid if the applicant is unable to acquire another nationality and seeks therefore to retrieve his/her former nationality. There is a gap in the Convention in this respect.

Gaps in the Recommendation on statelessness

The Recommendation, however, takes into account this gap in the Convention and contains a provision avoiding statelessness in such cases.

39. Loss of nationality for persons residing abroad resulting in statelessness

Gaps in the European Convention on Nationality

Some member states of the Council of Europe still provide for the loss of their nationality for persons residing abroad who therefore might become stateless. As the Convention prohibits the creation of statelessness in such cases (article 7 paragraph 3), there is, in principle, no gap in the Convention. States, however, can make reservations with regard to this article (Article 29 paragraph 1). As only a small number of States accept statelessness for persons residing abroad, no reservation should be possible with regard to this article.

Gaps in the Recommendation on statelessness

The Recommendation does not mention that the extensive possibility of making reservations in the Convention (Article 29, paragraph 1 of the Convention) could cause problems. Thus, there is also a gap in the Recommendation.

40. Deprivation of nationality resulting in statelessness

Gaps in the European Convention on Nationality

The great majority of member states of the Council of Europe do not authorize deprivation of nationality resulting in statelessness or only in cases of fraudulent acquisition of their nationality. This is line with the rules of the Convention (Article 7 paragraph 3). Some member states, however, permit statelessness in cases of deprivation of nationality. In the same way as mentioned in the previous paragraph, member states, however, can make reservations to this important article of the Convention. Nowadays it is not understandable how the deprivation of nationality resulting in statelessness can be justified (with the exception of the fraudulent acquisition of a nationality). No reservation should therefore be possible with regard to this article.

Gaps in the Recommendation on statelessness

As mentioned in the previous paragraph, there is also a gap in the Recommendation.

41. Definition of statelessness

Gaps in the European Convention on Nationality

The European Convention does not define the term of statelessness. The legislation of most member States of the Council of Europe is based on the traditional definition according to which a person is stateless when he/she is not considered as a national by any State under the operation of its law. Other States also treat persons whose nationality is unknown as stateless, i.e. persons who are unable to demonstrate that they have a nationality or that they have no nationality. The Recommendation on Statelessness addresses this problem by providing that not only the legislation

of the States concerned but also their practice should be taken into account (Article I. f.). The new Convention on Statelessness and State Succession specifies in the same context that States should not insist on their standard requirements of proof if statelessness is at stake (Article 8). Therefore, a wider definition of statelessness or rules of proof that are more favourable for the individual concerned are required to better prevent statelessness, In this regard, there is a gap in the Convention.

Gaps in the Recommendation on statelessness

As already mentioned, the Recommendation has taken into account the general idea of this problem.

42. Further need for harmonization

a) Birth registration

Gaps in the European Convention on Nationality

According to the International Covenant on Civil and Political Rights (Article 24) and the Convention on the Rights of the Child (Article 7), every child shall be registered immediately after birth. The registration of a child has a link with the avoidance of statelessness, because the failure to register the birth or all pertinent information on identity, residence, place of birth and nationality of the child's parents may lead to *de jure* or *de facto* statelessness. The law of all member states of the Council of Europe provides for the birth registration of children. Nevertheless, a high number of children live in member states of the Council of Europe without birth registration because their parents have no lawful residence in those States or because their nationality is undetermined. Often, this is still a consequence of recent situations of State succession. A provision in the Convention on the obligation of States to provide for the registration of children at birth in order to prevent statelessness would therefore be a useful contribution to the avoidance of statelessness. Thus, there is a gap in the Convention in this regard.

Gaps in the Recommendation on statelessness

There is the same gap in the Recommendation as in the Convention

b) Deprivation of nationality acquired by fraudulent conduct

Gaps in the European Convention on Nationality

The European Convention accepts statelessness in cases of deprivation of a nationality that has been acquired by fraudulent conduct, false information or concealment of relevant facts (Article 7 paragraph 1 b). If the former State of origin fights against dual nationality, an individual loses the previous nationality by acquisition of the new nationality. In cases of deprivation of the new nationality, the individual concerned becomes stateless. States should therefore ensure that deprivation of nationality rendering persons stateless takes place only if justified by the gravity of the circumstances. There is a gap in the Convention in this respect.

Gaps in the Recommendation on statelessness

A special provision of the Recommendation addresses this problem (Article II. C. c.).

c) *De facto* statelessness*Gaps in the European Convention on Nationality*

According to the final act of the UN Convention on the Reduction of Statelessness, persons who are stateless *de facto* should as far as possible be treated as stateless *de jure* to enable them to acquire an effective nationality. *De facto* statelessness is related to the definition of statelessness and proof of statelessness. A provision that States shall, as far as possible, treat *de facto* stateless persons like *de jure* stateless persons should therefore be inserted in the preamble or the text of a new instrument.

Gaps in the Recommendation on statelessness

There is the same gap in the Recommendation as in the Convention

CHAPTER IV: CONCLUSIONS

43. Feasibility of a new international instrument on statelessness

Since the entry into force of the European Convention on Nationality, member states of the Council of Europe have made constant progress with regard to the prevention of statelessness. Many States that did not accede to the Convention have adapted their internal law to the rules of the Convention and the Recommendation on Statelessness. Nevertheless, the review of existing international instruments and national legislation demonstrates that there are still evident gaps in the European Convention.

The Recommendation on Statelessness has filled a number of these gaps. It is, however, only a non-binding instrument. Enacted in 1999, it has shown its pertinence for many years. It appears that the time has come to transform its provisions into a binding international instrument and to take into account at the same time gaps not yet covered by the Recommendation. The new instrument could be a protocol to the European Convention on Nationality.

44. Contents of a new binding instrument of the Council of Europe with regard to statelessness

The following possible rules deserve attentive consideration with regard to a new binding instrument of the Council of Europe:

- Statelessness in general:
States shall be obliged not to apply their nationality laws if, consequently, persons were to become stateless.
- Birth registration:
States shall be obliged to provide for the registration of children at birth in order to prevent statelessness.
- Stateless children of nationals:
States shall grant their nationality *ex lege* or on application to children, one of whose parents possesses, at the time or the birth of these children, their nationality. No exception with respect to children born abroad may be made.
- Stateless children born on the territory of a State:
States shall grant at birth their nationality to children born on their territory who do not acquire at birth another nationality. States may only set the additional requirement that the parents of these children have legal habitual residence in their territory at the time of birth of the children.
- Stateless children not born on the territory of the State where they reside:
Stateless children shall have the right to apply for naturalisation in the State of residence before reaching the age of majority.
- Stateless adopted children:
States shall not provide for the loss of their nationality in case of annulment of an adoption if a child would thereby become stateless.

- Facilitated naturalisation of stateless persons:
States shall facilitate the naturalisation of stateless persons by reducing the period of residence, requiring no more than adequate knowledge of an official language, procedures which are easily accessible and not subject to undue delay and payment of reduced fees.
- Definition of residence for naturalisation:
"Habitual residence" as a condition for naturalisation should be defined as a "stable factual residence", at least with regard to the naturalisation of stateless persons.
- Renunciation of nationality resulting in statelessness:
States shall be obliged to consider the release or the renunciation of their nationality invalid if individuals have renounced their nationality in order to acquire another nationality, and become stateless because the other State does not grant them its nationality.
- Loss of nationality for persons residing abroad resulting in statelessness:
States shall have no right to make a reservation to the rule of the European Convention on Nationality that no loss of nationality may occur for persons residing abroad if they become stateless.
- Deprivation of nationality resulting in statelessness:
States shall have no right to make a reservation to the rule of the European Convention on Nationality that no deprivation of nationality may occur (with the exception of fraudulent acquisition of a nationality) if this results in statelessness.
- Deprivation of nationality acquired by fraudulent conduct:
States shall ensure that deprivation of nationality rendering persons stateless only occurs if justified by the gravity of the circumstances
- Definition of statelessness:
A larger definition of statelessness or rules of proof, which are more favourable for the individual, should be inserted in the provisions on statelessness.
- *De facto* statelessness:
States shall as far as possible treat *de facto* stateless persons as *de jure* stateless persons

45. Recommendation

Based on this study, the expert recommends that the Council of Europe prepare an additional binding instrument to the European Convention on Nationality with regard to the prevention of statelessness.