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(CJ-NA)

Report on Multiple Nationality[1]

[1] This report has been adopted by consensus by the Committee of Experts on Nationality (CJ-NA) at its meeting on 4-6 October 2000 on the basis of a draft prepared by Mr Giovanni KOJANEC, Italy, former chair of the CJ-NA.

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MULTIPLE NATIONALITY

Summary

This report seeks to provide an overview of the international and internal rules of law regarding multiple nationality. It records that although no rules of customary international law limit the competence of States in the field of nationality, certain treaties give rise to specific obligations for States-Parties.

It goes on to observe that application of these instruments has not resulted in any general rule with regard to multiple nationality. Some States seek to minimise the existence of multiple nationality in internal law, but cannot prevent its occurrence altogether, while others accept it unconditionally.

The report says that in recognition of the fact that multiple nationality does occur, States have to ascertain what nationality should apply in specific cases, particularly when rights can be exercised by an individual on the basis of nationality. The report provides examples of the action which States have taken. It then examines the internal law of different States in the light of the preferences of States to either limit or permit multiple nationality to various degrees.

The report concludes that cases of multiple nationality are unavoidable, even when legislation or treaties seek to reduce them. A number of areas are identified as requiring further exploration and analysis, suggesting the need for States to identify practical solutions for specific situations.

1. Definition[2]

Multiple nationality means the simultaneous possession of two or more nationalities by the same person, as defined in Article 2 of the European Convention on Nationality. It originates from the sovereign determination of each State in establishing the content of its rules concerning acquisition and loss of nationality.

If birth on the territory of a given State is, in application of the ius soli principle, a ground for acquiring automatically the nationality of that State according to its internal law, dual nationality will occur whenever, on the basis of the law of another State applying the ius sanguinis principle, the same person is considered to possess its nationality by descent because one of the parents or both are its nationals.

The situation would not be different if two States, both having adopted the ius sanguinis principle, in the case of marriage of one of their nationals with a national of the other State, each maintaining the nationality of origin, grant their respective nationality to the children issued of such marriage in application of the rules guaranteeing the equality of spouses.

The unilateral determination of a State is also the source of multiple nationality cases whenever the acquisition of its nationality by naturalisation is not made dependent on the loss of nationality possessed by the person concerned (which in certain situations

[2] In this report the word nationality is used synonymously with the word citizenship.

might not be possible) or when the voluntary acquisition of a foreign nationality does not automatically lead to the loss of the nationality previously possessed, as provided, e.g., in the Italian or French legislation. Other situations may also be relevant in this context, particularly if the acquisition of nationality is the automatic consequence of adoption or recognition of a foreign minor: it would be contrary to the principle of family unity to deprive the child of the possibility of acquiring that nationality because of conditions depending on foreign legislation, which might not provide for loss of the nationality of origin in this case.

In some countries nationality is acquired automatically by a woman who marries one of its nationals. According to the nationality legislation in force in European States, she would continue to keep her nationality of origin and thereby become a dual national.

State succession may be a source of multiple nationality whenever a person possessing the nationality of a predecessor State acquires also the nationality of the successor State or States, or in case the predecessor State ceases to exist, acquires the nationality of two or more successor States.

2. International law and nationality

2.1 *Are there rules of general international law limiting the sovereignty of States in the field of nationality?*

The political and philosophical background of the regulation of nationality is different in each State, due to its specific characteristics and its historical development. Nevertheless, the principles that everyone, including the child, should have a nationality and not be arbitrarily deprived of the nationality possessed (see Art. 16 of the Universal Declaration of Human Rights) as well as that statelessness should be avoided and that no discrimination should be admitted, must be considered as accepted at universal level, even if the adoption of the corresponding rules to implement them depends on State legislation. Indeed, the international community consists of States and the legal bond with a State, which characterises nationality (See Art. 2, a) of the European Convention on Nationality of 1997) is essential for the protection of the individual and to ensure the guarantee of his rights. Consequently, it must be recognised by other States, as stated in Article 1 of the Convention on Certain Questions Relating to the Conflict of Nationality Laws of 1930 (hereinafter: the Hague Convention of 1930) (See Chapter 3 below).

2.2 *Harmonisation by treaty of internal law on nationality*

The question arises whether any harmonisation of the internal rules concerning nationality is otherwise possible and desirable. If, for the reasons indicated above, it is hard to conceive the existence of customary rules of general international law imposing on States the acceptance in their internal legal order of common criteria relating to the various aspects of nationality law, including the question of admissibility or denial of multiple nationality, this could be achieved by treaty.

2.2.1 The Hague Convention of 1930 constituted the first attempt in this direction purporting to establish common regulations in specific areas; it contains provisions

whose objective is the avoidance of statelessness and considers also inter-State aspects of nationality, in particular of the consequences of multiple nationality (See also Chapter 3 below). Its acceptance has been very limited.

The Convention on the Nationality of Married Women, signed in New York in 1957 has had somewhat greater success, its scope being to give effect in the internal law of States parties to the basic Human Rights principle of equality of sexes.

The Convention on the Reduction of Statelessness, signed in New York in 1961, is intended to harmonise the internal legislation of States to reach that scope, but it has been ratified by fewer States than the 1957 New York Convention.

It must be remarked that no treaty concluded at universal level ever dealt with the question of multiple nationality in order to harmonise the internal legislation of States in this respect.

2.2.2. It has, however been dealt with at regional level, in Europe, with the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality of 1963 (hereinafter: the Strasbourg Convention of 1963)[3]

As its title indicates, the Strasbourg Convention of 1963, on the one hand, assuming, in its Chapter II, that multiple nationality may occur, contains rules to avoid, in this case, that the person concerned be obliged to fulfil military obligations in more than one State. There are also bilateral treaties concluded to this effect. On the other hand, its Chapter I, based on the consideration, contained in the Preamble, that "cases of multiple nationality are liable to cause difficulties and joint action to reduce as far as possible the number of cases of multiple nationality, as between Member States, corresponds to the aims of the Council of Europe", provides for the obligation of Contracting Parties accepting this Chapter (See Art. 7) to comply in their internal law with the rule stated in Art. 1.1 that "nationals of the Contracting Parties who are of full age and who acquire of their own free will, by means of naturalisation, option or recovery, the nationality of another Party, shall lose their former nationality", to permit renunciation of one of the nationalities possessed (Articles 2 and 3) and to adopt specific provisions to the same effect concerning minors (Art. 1, Para.2 and 3, and Art.2, Para.2).

The Strasbourg Convention of 1963, reflecting the attitude of the internal law of the State Parties contrary to multiple nationality, was intended to establish, on the basis of the acceptance of equal standards, an automatic mechanism leading to the loss of the nationality of one State Party in connection with the acquisition of the nationality of another State Party in certain cases. When the acquisition of another nationality was not dependent on the will of the person, that mechanism did not operate, and multiple nationality was therefore possible. Even in the context of a regional instrument, a general exclusion of the possibility to possess multiple nationality could not be realised.

[3] The following States are parties to the provisions relating to the reduction of multiple nationality contained in the Strasbourg Convention of 1963: Austria, Belgium, Denmark, France, Germany, Italy, Luxembourg, the Netherlands, Norway and Sweden. The list of signatures and ratifications is regularly updated at the Council of Europe's website: http://conventions.coe.int

2.2.3. Indeed, further developments went in the opposite sense, e.g. increasing the number of situations where the automatic loss of nationality provided by the Strasbourg Convention of 1963 would not operate. This was the effect of the Second Protocol amending the Convention, adopted thirty years later, in 1993, and in force for three European States (France, Italy and the Netherlands).

Confronted with the position of a group of States desiring to confirm the principle of single nationality, as stressed by the Strasbourg Convention of 1963, and the opportunity to admit dual nationality at least in certain cases, as maintained by another group of States, the Committee which elaborated the second Protocol to the Convention was finally led to adopt a mechanism based on the admissibility of exceptions to the basic rule of the Convention.

The reason for this change of perspective is to be found in a new appreciation of the phenomenon of permanent immigration in the light of the relevance of nationality for the process of integration of migrants in the receiving State, which is also in the interest of the States concerned. In such a process, the requirement of loss of the nationality previously possessed as a condition for the acquisition of the nationality of the State of permanent residence, appeared to be an obstacle to full integration, due to the reluctance of the persons concerned to cut definitively all their links with the State of origin, even when, as in the case of second generation immigrants, they were reduced merely to a formal legal bond expressed by nationality, which, however, did not make them foreigners in their country of origin. It is worth noting, in this regard, that the Italian law on nationality of 1912, a period characterised by large flows of emigrants from the country, provided expressly that, as an exception to the general acceptance of the principle of single nationality, Italians born and resident in another State which considered them as nationals, retained the Italian nationality, unless they renounced it. This provision was conceived to meet the preoccupations referred to above.

The Second Protocol allows the Contracting Parties not to apply the general rule of the Strasbourg Convention of 1963 concerning the loss of nationality in three cases.

In the first place, where a national of a Contracting Party acquires the nationality of another Contracting Party on whose territory either he was born and is resident, or has been ordinarily resident for a period of time beginning before the age of 18. This provision, permitting to retain the nationality of origin, recognises the admissibility of dual nationality.

Furthermore, a similar effect is obtained in cases of marriage between nationals of different Contracting Parties, when the spouse acquires of his or her own free will the nationality of the other spouse.

Finally, the nationality of origin will not be lost whenever a minor whose parents are nationals of different States possesses the nationality of one of his parents and acquires also the nationality of the other parent.

The last two provisions are clearly meant to foster the unity of nationality within the family whenever the person concerned would not be prepared to lose the nationality

of origin, while the scope of the first one is to promote the full integration in the receiving State of second generation migrants permanently resident in that State, as stated in the Preamble to the Protocol.

2.2.4. These developments indicate that States, at least in Europe, are no longer prepared to have recourse to multilateral international instruments in order to limit the occurrence of multiple nationality even if in their internal law they may have different attitudes, which are reflected in the substantive provisions of their legislation. The absence of international constraints gives room to greater flexibility in relation to their specific approach to the problem.

This was also the conclusion reached at the end of a long negotiation within the Council of Europe, which led to the adoption of the European Convention on Nationality in 1997.

The Convention is the first international body of rules dealing with all the basic aspects of nationality law in the perspective of the guarantee of Human Rights and Fundamental Freedoms, and it may be stated that its impact is not necessarily limited to Europe.

This is certainly the case for the provisions contained in its Chapter II, concerning general principles relating to nationality, which should condition the operation of substantive rules of internal legislation.

While, in this regard, avoidance of statelessness is considered as being the objective in proclaiming a right to nationality, and the prohibition of arbitrary deprivation of nationality, which may also lead to statelessness, constitutes a safeguard in the implementation of that right, the principle of non-discrimination being of fundamental importance, it should be noted that the question of multiple nationality is not dealt with in the light of general principles referred to in Chapter II.

Indeed, specific rules in this respect are contained in Chapter V, but they are based on the assumption (Art.15) that "the provisions of this Convention shall not limit the right of a State Party to determine in its internal law" whether it permits or denies its nationals to possess another nationality. The sole exceptions are provided for in Art. 14 , according to which children having automatically acquired at birth different nationalities, must be allowed to retain them, and nationals must be permitted to possess another nationality when it has been automatically acquired by marriage, and in Article 16 when in the case of naturalisation the original nationality may not be lost.

As stated in Para.97 of the explanatory report, the Convention "is neutral on the issues of the desirability of multiple nationality. Whereas Chapter I of the Strasbourg Convention of 1963 is intended to avoid multiple nationality, Art. 15 of this convention reflects the fact that multiple nationality is accepted by a number of States in Europe, while other European States tend to exclude it".

2.3 *Conclusion: Absence of general rules concerning multiple nationality*

It is clear, in this situation, that no general international rule can be said to exist with regard to multiple nationality. The matter remains subject to the sovereign decision of States, in accordance with the criterion of their exclusive competence in determining who are their nationals and to the obligation of other States to accept such determination if it is not contrary to international law and to principles of law generally recognised with regard to nationality (Art. 3 of the European Convention on Nationality). Each State remains, nevertheless, free not to recognise the possession of another nationality by its nationals.

It should however be noted that, in view of specific circumstances, bilateral treaties have been or may be concluded in order to permit or avoid cases of dual nationality in relation to nationals of the States concerned.

3. Stand of international law with regard to certain problems arising from multiple nationality

The occurrence of multiple nationality, determined by the autonomous operation of different legal systems, gives way to the necessity of establishing which of the nationalities possessed is the relevant one in specific situations.

3.1 *The relevant nationality*

The Hague Convention of 1930 contains, in this regard, rules, which have been widely accepted by States, independently of their ratification of that instrument.

In the first place, Art. 3 makes clear that each of the States whose nationality is possessed by the person concerned may consider that person in its internal legal system as possessing exclusively its nationality: other nationalities would be irrelevant. It may be observed that the most recent legislation in Europe relating to Conflict of Laws (Italian Law nr. 218/1995) reproduces this rule (in Art. 19, Para.2) for the purpose of determining applicable law on the basis of nationality.

If the person possesses more foreign nationalities, a State, in conformity with the Convention, may give exclusive relevance to the nationality of the State where the person is habitually resident or to that of the State with which that person has stronger links (Art.5). Effectiveness is also the criterion adopted in this case by Art. 19, Para.2 of the Italian Law referred to above.

These provisions of an international treaty deal with solutions to be adopted in internal law.

Art.4 of the Convention refers to certain international consequences of multiple nationality concerning the exercise of diplomatic protection, excluding such intervention of the State in favour of one of its nationals against another State whose nationality that person also possesses. This is a consequence of the absolute character of the bond of nationality deriving from the sovereignty of the State. It would indeed constitute interference by one State on matters reserved to the domestic jurisdiction of

another State, to claim a specific treatment in relation to persons who are nationals of the latter (even if they also possess the nationality of the intervening State).

3.2 *Effectiveness and diplomatic protection*

Nationality being a prerequisite for the exercise of diplomatic protection, the ICJ (Nottebohm Case, 1955) was led to consider which conditions must be satisfied in order that nationality conferred upon an individual by a State may be relied upon as against another State and give a title to the exercise of protection against that State.

The Court stressed that it is for every sovereign State "to settle by its own legislation the rules relating to the acquisition of its own nationality", indeed "nationality is within the domestic jurisdiction of the State" (p.20). Nevertheless, "a State cannot claim that the rules it has thus laid down are entitled to recognition by another State unless it has acted with this general aim of making the legal bond of nationality accord with the individual's genuine connection with the State which assumes the defence of its citizens by means of protection as against other States" (p.23). The nationality conferred upon Mr. Nottebohm by Liechtenstein not presenting this character, the Court denied this State a title to exercise protection and to institute international judicial proceedings.

It may be disputed if the effectiveness of the connection between the individual and the State conferring its nationality is such a relevant factor for the international recognition of that nationality, unless we are confronted with cases of multiple nationality where it is necessary to determine which of the nationalities possessed should prevail. Preference must then be given to the "real and effective nationality", based on "stronger factual ties between the person concerned and one of the States whose nationality is involved", as the Court (p.22) considered to emerge from international arbitral decisions with regard to the exercise of protection.

3.3 *Relevance of effectiveness in other cases*

These considerations are also relevant, in general, whenever by treaty between two or more States each of them grants to the nationals of the other State certain rights which must be recognised in their respective internal legal order, and the person concerned is also a national of a third State. An example of this is the Agreement of 1999 between the Russian Federation and Belarus, whereby nationals of each of these States should enjoy in the territory of the other State equal rights as those granted to its nationals.

4. <u>Multiple nationality and European Community Law</u>

According to Para.1 of Art.17 of the consolidated version of the treaty establishing the European Community (as resulting after the entry into force of the treaty of Amsterdam, on 1 May 1999, and corresponding to former Art. 8) "Citizenship of the Union is hereby established. Every person holding the nationality of a member State shall be a citizen of the Union. Citizenship of the Union shall complement and not replace national citizenship". Para.2 explains the nature of Citizenship of the Union stating that "Citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby".

It follows that, while Citizenship of the Union is not an autonomous concept, the personal status attached to it depends on the possession of the nationality of a Member State. There being no Community rules with regard to nationality, Member States are free to determine conditions and procedures on the acquisition and loss of their nationality. As indicated in Declaration 2, annexed to the Final Act of the Treaty of Maastricht, "The question whether an individual possesses the nationality of a Member State shall be settled solely by reference to national law of the Member State concerned".

In the context of freedom of movement, freedom of establishment and freedom to provide services, which are fundamental in the Community system, the aforementioned principles are of basic importance because they prevent a Member State to deny those freedoms, by not recognising the possession by the person concerned of the nationality of another Member State.

This question was raised in the Micheletti Case, brought for preliminary ruling before the Court of Justice of the Community (case c-369/90, Judgement of 7 July 1992), in consideration of the circumstance that Mr Micheletti was a dual national, Argentinean and Italian, who claimed the freedom of establishment in Spain under Community law. According to Spanish law (Art.9(9) of the Civil Code), only his Argentinean nationality would be recognised due to the fact that his last place of residence had been in Argentina. Therefore, he would have been denied entitlement to that freedom in Spain.

The application of the Nottebohm doctrine would have confirmed such consequences, Argentina being the State with which real and effective links existed, even if the possession of Italian nationality was not in question. Nevertheless, the Court held that "it is not permissible to interpret Art. 52 of the Treaty to the effect that where a national of a Member State is also a national of a non-member country, the other Member States may make recognition of the status of Community national subject to a condition such as the habitual residence of the person concerned in the territory of the first Member State". It concluded that "the provisions of Community Law on freedom of establishment preclude a Member State from denying a national of another Member State who possesses at the same time the nationality of a non-member country entitlement to that freedom on the ground that the law of the host State deems him to be a national of a non-member country".

It should be noted that the reasoning of the Court is not based on the application of rules and principles of customary international law to cases of multiple nationality, nor does the Court deny that the internal law of a Member State, may, in general, establish criteria to determine the relevant nationality in such cases. The Court, indeed, deals with the problem arising from multiple nationality only in connection with the application of Community law, and its decision confirms that the operation of internal law of a Member State may not override or condition the enjoyment of the rights granted by Community Law.

It follows that States may by agreement not only permit or prevent multiple nationality, but also adopt the solutions they consider most appropriate to the problems arising from multiple nationality and give or deny relevance to each

nationality concerned, taking into account the specific circumstances of their reciprocal relations.

5. Multiple nationality in internal law

5.1 *Admissibility of multiple nationality*

There are States accepting multiple nationality and States which try to avoid it, while others have a mixed attitude. It should be noted that in Europe even States which attempt to avoid multiple nationality may not exclude it in general (see Article 14 and 16 of the European Convention on Nationality as well as Para. 2.2.4 above). For example, in the case of children born of mixed marriages, their possession by birth of the nationality of each parent is the result of the recognition of the principle of equality of spouses, which makes dual nationality unavoidable. It does not seem to be in conformity with this principle, ranking in the category of fundamental human rights both at constitutional and international level, to oblige said children to lose one of these nationalities on reaching the age of majority or later, unless other circumstances are present, in order to eliminate dual nationality, while their social attachment to both States is effective and the interruption of their legal bond to one of them is not the result of their free will.

5.2 *Prevention of multiple nationality*

In many States the legislation on nationality adopts mechanisms intended to prevent multiple nationality. Indeed, it is deemed contrary to the exclusiveness of sovereignty of a State that its nationals may at the same time possess the nationality of another State. Nationality implies not only rights and obligations of a legal nature. Multiple nationality might lead to interference (in a wider sense) of a State with the position of the individual in the other State.

The decision of the High Court of Australia in June 1999, according to which an Australian national possessing simultaneously another nationality may not, in application of Art. 44 of the Constitution, be elected to the Federal Parliament because of his ties to a "foreign power", illustrates this conception.

The obligation to fulfil military obligations in relation to all States the nationality of which is possessed by the person concerned, is another example, even if bilateral or multilateral conventions (as the Strasbourg Convention of 1963 or the European Convention on Nationality) may introduce rules which remedy this situation on the basis of the principle that these obligations shall be complied with only in relation to one State, determined according to the criteria chosen by the parties (e.g., the place of residence).

These and other aspects of multiple nationality, which are considered significant in order to deny its admissibility may be viewed in the light of the idea of the Nation-State.

If the State is necessarily a form of territorial organisation of a group of individuals united by their common sharing of values based on a given cultural heritage (which has linguistic, religious, ethnic, historical and other characteristics), then it can be

considered a safeguard of the identity and the existence of the State not to permit its nationals to possess the nationality of another State. As a consequence, a person admitted in that community cannot be committed to abide by other values, which find their expression in the existence of a legal bond of nationality with another State.

Nevertheless, there is not a necessary identity between Nation and State, although that conception has, historically as well as in our times, contributed to the formation of newly independent States through the unification or dissolution of existing entities.

A modern State, based on the rule of law and on the respect and guarantee of fundamental rights, may integrate and protect a variety of values (as in the case of minorities); nationality does not, therefore, reflect in an exclusive way one or the other specific connection between the individual and the community organised in the form of State. Nationality "does not indicate the person's ethnic origin", states Art.2, a) of the European Convention on Nationality. As the ICJ said in the Nottebohm Case (p.23), it is a "legal bond having at its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties". Such an attachment does not exclude, a priori, the possibility of maintenance of a similar legal bond with another State. The only problem is to establish under which conditions the nationality of one of the States concerned prevails.

5.3 *Irrelevance of multiple nationality*

There are various States where the possession or the acquisition of foreign nationality by a national or by a person acquiring their nationality has no legal relevance: they permit multiple nationality to subsist, in consideration of different circumstances.

States conferring nationality on the basis of ius soli do not, normally, consider relevant to this effect the possession of any other nationality by the person concerned. A notable exception is provided by the new German legislation adopted in 1999, whereby the conservation of German nationality acquired by a person born in the territory of foreign parents, one of them being habitually resident in the country for a period of at least 8 years, is made dependent on the loss before the age of 23 of the foreign nationality possessed (Art. 4 and 29 of the German Law on Nationality as modified in 1999). It must be noted that, even in this case, the German legislation admits a series of exceptions permitting multiple nationality (as provided in Article 87 of the Law on Foreigners, in the new version of 1999).This constitutes a compromise solution adopted by a State which applies the principle of avoiding multiple nationality but has introduced new rules according to which nationality is acquired, in certain circumstances, by birth on the territory, as well as by descent.

A number of legislations, with the intent to facilitate voluntary acquisition of a foreign nationality by nationals residing abroad who wish to preserve their links with the State of origin, exclude the automatic loss of their nationality in these cases (e.g., Italy and France). This may be the result of an explicit policy aiming at favouring the integration of nationals in another State where they live and work, and who might be deterred from acquiring the nationality of that State if it entails the loss of the nationality previously possessed. Obviously, multiple nationality will depend in these

cases on the circumstances that the State whose nationality is acquired does not require the proof (or the assurance) of loss of the nationality of origin.

5.4 *Naturalisation and multiple nationality*

There are States which, with the intent of promoting full integration in their society of a foreign population settled in their territory (e.g. immigrants), may give priority to this aim and not exclude naturalisation in general if those persons retain their foreign nationality. The acquisition of nationality is considered as a means of realising integration in their society. Multiple nationality will be the result (see, in this regard, the Summary of the Swedish Report on Nationality, by the 1997 Nationality Commission, Stockholm 1999, in particular p.6, ff.).

5.5 *Absence of common criteria*

It may be concluded that the stance of internal law in relation to multiple nationality is the result of historical, philosophical and social factors, which underlie the legislative approach in each State and determine its finalities. This perhaps explains the difficulty of defining common criteria accepted by sovereign States.

6. Consequences of multiple nationality

6.1 *In general*

It emerges from the analysis conducted in the preceding Paragraphs that cases of multiple nationality are unavoidable even when internal legislation or international treaties, as the European Convention of 1963, contain rules intended to reduce them.

As the Final Report of the Swedish 1997 Nationality Commission underlines, although “Swedish nationality legislation is traditionally based on the principle of avoiding dual nationality”, there are “about 300.000 people in Sweden who have dual nationality” (p. 6 and 7 of the Summary report). This is indicative of a phenomenon of a general nature, concerning all States, which is related to the increasingly international character of our societies.

It is therefore understandable that in various States legislation allows nationals to hold another nationality permitting, for the reasons we have already examined, persons who acquire their nationality or a foreign nationality to maintain a link with both States concerned. A remarkable example is contained in the new version of Art. 87, Para.2 of the German Law on Foreigners approved in 1999, which permits, by the way of exception to the general rule, multiple nationality to be held, on condition of reciprocity, by all European Union citizens acquiring German nationality by naturalisation.

The Swedish 1997 Nationality Commission has a more general view when, considering (p.8 of the Summary report) “that the interest of an individual in being able to possess dual nationality is more substantial than the disadvantages linked to such possessions”, it proposes that “Sweden abandons the prevailing principle and instead accepts dual nationality completely as the coming into force of the new Nationality Act."

In these circumstances it is necessary to consider some specific problems arising from multiple nationality and to analyse possible solution, the basic principle being, as we have seen, that the possession of a foreign nationality cannot be invoked before the authorities of another State of which the person concerned is also a national, except in cases where an international agreement between the two States so permits (see Art. 3 of the Hague Convention of 1930).

6.2 *Military service*

Problems related to military service obligations which a multinational must fulfil in relation to each State whose nationality he possesses, may be solved by treaty, whereby a person fulfilling such obligations in relation to one State Party is deemed to have fulfilled his military obligations in relation to any other State Party of which he is also a national (as stated in Art. 6.3 of the Strasbourg Convention of 1963 and in Art. 21.3,c) of the European Convention on Nationality).

The possession of multiple nationality becomes in this way relevant for each State concerned in order to achieve the aim of avoiding multiple military service.

6.3 *Private international law*

In the field of private international law, nationality is frequently used as a connecting factor to determine applicable law. This leads, in the case of multiple nationality, to the necessity of giving preference to one of these nationalities to avoid simultaneous reference to possibly conflicting legislations; each State may establish its own criteria to this effect.

In many cases, the possession of the nationality of a State will prevail in that State, leading to the application of its legislation, and reference to effective nationality will be made by States in case of simultaneous possession of two or more foreign nationalities by the person concerned. The Hague Convention of 1930 (see above, Para.3.1) was intended to promote, among others, the adoption of these criteria by a large number of States so that uniform solutions might be reached in determining applicable foreign law. Efforts to this effect should be pursued, even if recourse to nationality as a connecting factor tends to be substituted by the adoption of the criterion of habitual residence.

Furthermore, multiple nationality can influence civil status registrations because these are normally entered in the State of residence and whenever the person concerned is a national of that State they will not be transmitted for transcription to the other State of which that person is also a national, in application of agreements to that effect. It follows that data contained in the registries of the two States concerning births, marriages, death, etc. may not necessarily correspond.

International co-operation and co-ordination in connection with these registrations seem therefore necessary to avoid conflicting determinations of civil status (including the name of persons) in the relevant States.

6.4 *Political rights*

Persons in possession of a plurality of nationalities may enjoy political rights in more States. This is frequently considered as inadmissible in view of the preservation of the exclusive character of sovereignty.

Nevertheless, for various reasons, such rights are normally exercised in the State of residence, and, consequently, the simultaneous possession of the same rights in another State appears to be actually irrelevant, except in the case where voting may be held abroad.

It should also be noted that multiple nationals are not entitled to consular or diplomatic protection in the States whose nationality they possess. This should not be regarded as a restriction of their rights because in those States they are not treated as foreigners.

6.5 *Integration*

Being a national of a State is an element in the process of integration of a person in a community. Integration is considered implicit when nationality is acquired at birth, iure sanguinis or iure soli, unless the individual, being in possession or acquiring another nationality, renounces it. The fact that the person continues to possess the original nationality is not per se an obstacle to the process of integration, but may favour it when another nationality is conferred upon that person. It is clear that, also in this context, the decision to permit or reduce cases of multiple nationality is essentially of a political nature, conditioned by historical factors.

7. Issues to be considered in relation to the consequences of multiple nationality

On the basis of the consideration of the problems relating to multiple nationality in the previous paragraphs of this report, the following issues can be identified as needing further exploration and analysis by the CJ-NA or by other bodies as appropriate:

7.1 *Military service* is dealt with by multilateral and bilateral conventions, but it might be possible to elaborate a model bilateral convention (including forms to be used, exempt from translation and legalisation) (see Para. 6.2).

7.2 *Private international law*. Unification of criteria to be adopted for the choice of the relevant nationality, if possible on a universal level (see Para 6.3).

7.3 *Civil status registrations*. Mechanisms might be elaborated to facilitate these registrations in all States concerned, in order to avoid divergent registrations (or no registration) in one or more of these States. (See Para. 6.3)

7.4 *Political rights.* The question of enjoyment of political rights in more than one State by persons possessing multiple nationality. (See Para. 6.4)

7.5 *Integration and multiple nationality*. Analysis of the interaction between integration and multiple nationality.

7.6 *Perpetuation of multiple nationality*. The question of whether limits should be introduced into situations where: nationality is acquired by descent, there are no effective links with the first State, and nationality is transmitted indefinitely to descendants possessing another nationality.

7.7 *Compatibility with respect for fundamental rights of the legislative provisions adopted to reduce cases of multiple nationality.* A comparative study of European legislation might be useful to determine the impact of the problem and to evaluate if further action at the international level is necessary. (See Para. 2.1, 2.2 and 5.2)

7.8 *Right to a nationality.* Whether a right to the acquisition of nationality should be affirmed, whenever effective links between a foreign national and a State exist and whether the possession of another nationality should constitute an obstacle to the acquisition of the second nationality?

7.9 *Travel difficulties.* Consequences of multiple nationality on the entry and stay in States of nationality, considering that the State may not permit the use of a foreign passport by its nationals, in which case the movement of persons between the States concerned might be hampered. (See Para. 6)

7.10 *Diplomatic and consular protection.* The problems connected with the exercise of diplomatic and consular protection of multiple nationals in the States of nationality and in third States. (See Para 3.2 and 6.4)

7.11 *Multiple nationality and State succession.* Impact of state succession on the occurence or continuity of multiple nationality.

7.12 *Acquisition or retention of a nationality and conservation of other nationalities.* Exploration of cases when renunciation of nationality is not possible or cannot be reasonably requested, as meant by Article 16 of the European Convention on Nationality.

7.13 *Exchange of information.* A study concerning the possibility, conditions and modalities of exchange of information between States relating to the acquisition of another nationality by their nationals.

This list is not exhaustive and the order of issues does not indicate the level of importance.