

Strasbourg, 14 January 2003

CJ-NA (2002) 1

**COMMITTEE OF EXPERTS ON NATIONALITY  
(CJ-NA)**

**Report on**

**Conditions for the Acquisition and Loss of Nationality**

**adopted by the Committee of Experts on Nationality  
on the basis of a draft prepared by**

**Mr Andrew WALMSLEY**

**BRIEF FOREWORD**

The report sets out to examine whether the current standards concerning the acquisition and loss of nationality are sufficient and whether there are any gaps in the European Convention on Nationality which might need to be filled by the preparation of additional instrument(s).

The following analysis of the nationality laws in members States shows that there is a need for further co-ordination and harmonisation in the following areas:

- rights of the child to a nationality
- acquisition of nationality by naturalisation
- facilitated acquisition of nationality
- recovery of nationality
- other issues which might be of relevance for acquisition of nationality (double *ius soli* and termination of automatic acquisition of nationality)
- loss of nationality at the initiative of the State and at the initiative of the individual.

A list of proposals for further action is contained in the conclusions at the end of this report.

*Note: The terms "nationality" and "citizenship" as used in this report should be considered as synonymous.*

**TABLE OF CONTENTS**

**Pages**

**A. INTRODUCTION ..... 4**

**B. ACQUISITION OF NATIONALITY ..... 5**

**i. By birth (Article 6.1.a) ..... 5**

        (a) children born to one of a State’s nationals ..... 5

        (b) children “born out of wedlock” ..... 6

        (c) children born abroad..... 6

        (d) children born abroad to one of its nationals also born abroad..... 7

        (e) children one of whose parents acquires or has acquired the State’s nationality ..... 7

        (f) adoption..... 7

        (g) children born on the State’s territory and lawfully and habitually resident ..... 7

        (h) foundlings (Article 6.1.b) ..... 8

**ii. Children born on the territory who do not acquire another nationality at birth  
        (Article 6.2) ..... 8**

**iii. By naturalisation (Article 6.3)..... 9**

        (a) age..... 9

        (b) residence ..... 10

        (c) spouses ..... 10

        (d) ability to support oneself ..... 11

        (e) character and health..... 11

        (f) language and integration ..... 12

(g) security .....	13
(h) benefit to country .....	13
(i) renunciation of previous nationality .....	13
<b>iv. Facilitated acquisition of nationality (Article 6.4).....</b>	<b>14</b>
(a) persons lawfully and habitually resident for a period of time beginning before the age of 18.....	14
(b) stateless persons and recognised refugees .....	14
<b>v. By recovery (Article 9) .....</b>	<b>14</b>
<b>vi. Other issues .....</b>	<b>15</b>
(a) double <i>ius soli</i> .....	15
(b) termination of automatic acquisition of nationality.....	15
<b>C. LOSS OF NATIONALITY.....</b>	<b>15</b>
<b>i. At the initiative of the State (Article 7).....</b>	<b>15</b>
<b>ii. At the initiative of the individual (Article 8) .....</b>	<b>16</b>
<b>CONCLUSION AND RECOMMENDATIONS .....</b>	<b>16</b>

## A. INTRODUCTION

1. At its 17<sup>th</sup> meeting, from 4-6 October 2000, the Committee of Experts on Nationality (CJ-NA) noted that all rapporteurs at the 1<sup>st</sup> European Conference on Nationality in October 1999 had touched upon the issue of the conditions for the acquisition and loss of nationality. The CJ-NA considered that this was an area where there might be a need for co-ordination and harmonisation of nationality laws and therefore requested an analysis of the nationality laws of the member States and a report for initial discussion at its plenary meeting in October 2001 and final discussion at its meeting in 2002. It determined that the aim of the study should be to explore international standards and the practice of States in this area and to propose further action by the CJ-NA (paragraph 28, CJ-NA (2000)11).

2. The need for a study such as this is that the key element of nationality legislation is how citizenship is acquired and lost. The 1997 European Convention on Nationality aimed to identify certain minimum standards for the acquisition of nationality together with restrictions on the loss of nationality at the initiative of States. An analysis of the conditions for acquisition and loss would assist the CJ-NA to consider whether current standards were sufficient, the extent to which they might lead to practical problems, and possible solutions to these problems. It might also identify possible gaps in the Convention in which case the CJ-NA would be able to consider whether further instruments, such as Protocols to the Convention, were needed. Furthermore, on 26 January 2001, the Parliamentary Assembly adopted the text of Recommendation 1500 (2001) on the participation of immigrants and foreign residents in political life in the Council of Europe's member States. The Assembly noted, *inter alia*, that "Restrictive criteria may prevent legally resident non-citizens from acquiring the citizenship of the host country, depriving them of full participation in the life of the community and, in the worst case, pushing them to the margins of society". The Assembly therefore recommended that the Committee of Ministers should "..... urge the governments of member states ..... to review their national legislation with a view to making it more flexible and adequate to the needs of immigrants and foreign residents, giving particular attention to ..... the criteria for granting citizenship". It is hoped that this study will assist member States in any review they might conduct as a result of this Recommendation.

3. The main international instruments concerning principles relating to nationality law are: the Hague Convention of 1930 on Certain Questions relating to the Conflict of Nationality Laws; the 1961 Convention on the Reduction of Statelessness; the 1963 Convention on the Reduction of Cases of Multiple Nationality; and the 1997 European Convention on Nationality. There are other Conventions in which reference is made to nationality, in particular the 1951 Convention relating to the Status of Refugees, the 1954 Convention relating to the Status of Stateless Persons, the 1957 Convention on the Nationality of Married Women, and the 1989 Convention on the Rights of the Child. The provisions of these Conventions and others were taken into account by the Council of Europe in the drafting of the 1997 Convention and, therefore, for the purpose of the study and this report, reference to these instruments will not generally be made unless especially relevant to the item under consideration. The 1930 and 1963 Conventions did not set out general conditions for the acquisition or loss of nationality. The 1930 Convention set out the principle that "each State shall determine under its own law who are its nationals", whilst the 1963 Convention was concerned with reducing cases of multiple nationality rather than the basic conditions for the acquisition or loss of nationality. Therefore, only the 1961 Convention on the Reduction of Statelessness and the 1997 European Convention are being used as the principal base lines against which the analysis of the legislation is being made.

4. This report has been prepared on the basis that the starting point of the study should be the provisions of the European Convention on Nationality rather than a detailed comparative analysis of the legislation in member States. Much helpful information has been provided by members of the CJ-NA regarding their national legislation and practices. However, this report does not refer to the specific provisions of the individual laws of member States as being an example/illustration of the particular issues. Reference to a specific clause in a member State's legislation might not give a full picture of the particular condition relating to the acquisition of its nationality by a specific category of individuals without mentioning other clauses in the legislation, and to do that would require a long and involved report.

## B. ACQUISITION OF NATIONALITY

5. Article 6 of the European Convention deals with the rules relating to the acquisition of nationality and this section of the report aims to follow the order of those rules.

### i. By birth (Article 6.1.a)

#### (a) children born to one of a State's nationals

6. The Convention states that "Each State Party shall provide in its internal law for its nationality to be acquired *ex lege* by ..... children one of whose parents possesses, at the time of birth of these children, the nationality of that State Party .....". Most States have provisions in their legislation for a child born on their territory to acquire their citizenship provided that one of the parents possesses the nationality of the State. In some cases acquisition only occurs if the mother is a citizen or, if the father is the citizen, the child is legitimate. Not many States define the terms "parent" or "mother" or "father" in their citizenship legislation. On the surface this may not seem to be required, perhaps because the terms may be defined in other areas of national legislation, but this is an area which requires consideration. Leaving aside the position of adoptive parents, not all legal parents may have genetic links to the child. New reproductive technologies, for example, which appear to be in use more and more, can lead to a child being born without genetic links to the mother or father. Should the child therefore acquire the citizenship of that parent? **Since the frequency of this problem is likely to increase in the future it would be appropriate to consider defining what is meant by "parents" in the Convention and producing an instrument regarding children conceived through reproductive technology.** In this respect the situation regarding adopted children might be a useful pointer. In general, when a child is adopted, the biological parents give up their legal rights concerning the child and the adoptive parents become the legal parents. Where individuals participate in reproductive technology they usually do so in order to allow another individual to be parent of the child. That is a parallel with the parent giving up a child for adoption, and it would be useful to consider whether the child's nationality should come from the biological or the legal parents. In particular, should the nationality of the child's legal parents be the basis on which the child's nationality is determined as they are the parents at the time of the child's birth, and should the rules regarding legal parents be the ones applicable in the case of new reproductive technologies?

7. **Problems may exist concerning children whose parents have different nationalities. For example, in the legislation of the country of the parent who is not in his or her country of origin the child might only acquire the citizenship of that parent if both parents agree. It might also occur in the country of birth where the State might require both parents to agree to the child acquiring its nationality at birth. This could be regarded as being contrary to the principles behind Article 6.1 and consideration needs to be given to whether further advice should be offered to States.** For example, if the parents do not agree on the nationality, should the child automatically acquire the citizenship of the country in which he or she was born and of which one parent is a national in order to avoid statelessness? In such cases the child would have links with the State in which he or she was born both through *ius soli* and *ius sanguinis*. In cases, where the parents do not agree on the child acquiring one nationality, another solution to the problem might be that the child should acquire the citizenships of both parents, with the possibility of needing to opt for one or the other on reaching majority. Other problems might arise where the parents of the child are of different nationalities but the child is born in a third country. These are discussed in paragraphs 20 – 22. One solution, which is relevant to Article 6.1.a, would be to delete "... Subject to any exceptions which may be provided for by its internal law as regards children born abroad". However, such an amendment to a State's law could result in many generations of foreign nationals acquiring the nationality of an ancestor at birth and thereby failing to acquire the nationality of the country in which they are born. Any amendment to this part of Article 6.1.a should therefore take into account the need to assist the integration of foreign nationals in their new country of residence including the ideas at the basis of the double *ius soli* rule.

8. There does not appear to be any major problems in European nationality laws concerning acquisition of nationality at birth if the mother is a national of the country in which the child is born, although there may be a

requirement in some countries for the mother to formally recognise her child if the child is “born out of wedlock”. Nor are there any problems regarding the acquisition of nationality at birth from the father if he is a national of the country in which the child is born provided that the child is legitimate. The real problems concern children “born out of wedlock” and children born abroad.

**(b) children “born out of wedlock”**

9. One of the main problems regarding the application of the Convention in some member States concerns children who are “born out of wedlock”, although many States do allow such children to acquire their citizenship *ex lege*. The final draft of the Convention approved by the CJ-NA allowed States to make exceptions to the Article for children “born out of wedlock” but this was amended before the Convention was referred to and accepted by the Committee of Ministers. The provisions of Article 6.1.a now make no reference to children “born out of wedlock” but allow a State which requires parenthood to be established by “recognition, court order or similar procedures” to grant its nationality to the child only if procedures determined by its internal law are followed. There is no indication of what these “procedures determined by its internal law” should or should not include. However, in some countries which allow the relationship of the child and the father to be established by recognition or court order this does not necessarily permit the acquisition of the nationality of the father as a legal consequence. The State may require further additional requirements to be met before the child can acquire the father’s citizenship.

10. Furthermore, in some countries in which “recognition” is a means by which a male can establish a family relationship with a child and by which the child can obtain citizenship, it is not unknown for some males to use “recognition” as a means of obtaining citizenship for children to whom they are not biologically connected. This can lead to the abuse or misuse of nationality laws (see for example consideration of this problem in CJ-NA (99)1 rev.2) which casts some doubts on whether children should acquire citizenship *ex lege* solely on the grounds of recognition.

11. In other States, parenthood might not be established by such procedures. For example, couples who are not married but who have co-habited for a number of years might not need to seek a court order to establish parenthood and the State’s laws might not contain provisions regarding “recognition”. The Convention refers to “similar procedures” but contains no indication of what procedures would be acceptable. In some States, such decisions are at the discretion of the nationality authorities who might wish to determine that a family relationship exists between the father and the child. In cases where it does not exist it might be unlikely that there would be much pressure from the father for his child to acquire his citizenship but it is possible that in some cases he might wish his child to acquire his nationality because of differences with the mother. In other cases States have provisions for the acquisition of their citizenship by children “born out of wedlock” upon their (biological) parents marrying each other and the child being legitimised under their family law.

12. In many States today the number of marriages is reducing and the number of children “born out of wedlock” is consequently increasing. In other cases some polygamous marriages are not recognised in their law and any children born from that relationship would not be regarded as being legitimate. **The acquisition of nationality by children “born out of wedlock” therefore requires more detailed examination. In drafting the Convention, it proposed to allow States to make exceptions to the acquisition of citizenship for children “born out of wedlock”, but now that the Convention says, in essence, that such children should acquire the citizenship of both their parents further advice should be offered to States on how to apply Article 6.1.a.** One of the determining factors regarding the grant of citizenship should be whether the child would remain stateless if he or she did not acquire the citizenship of his or her father.

**(c) children born abroad**

13. Following the completion of its drafting of the Convention on Nationality, the CJ-NA drafted a Recommendation on the avoidance and reduction of statelessness which was adopted by the Committee of Ministers on 15 September 1999 (R99(18)) which said that “Exceptions made with regard to children born abroad should not lead to situations of statelessness” and this should be a determining factor in the application of a State’s legislation. However problems can arise where one State, basically giving relevance to the principle of *ius soli*, will only allow the first generation born abroad of one of its nationals to acquire its citizenship on the basis of *ius sanguinis*. The second generation born abroad will be assumed to have a claim to the nationality of the country in which he or she is born, especially if that is the State in which his or her parent was born. However, if that country applies the principle of *ius sanguinis* before that of *ius soli* the child might be stateless. **Both States might regard it as being the duty of the other State to grant its**

citizenship to the child, especially if both accept the Recommendation on the avoidance of statelessness. This conflict between laws based on *ius sanguinis* and those which are a combination of *ius sanguinis* and *ius soli* is a matter which would merit further examination. *Ius sanguinis* calls into question whether citizenship should depend on what is essentially the ethnicity of the family and raises what is meant by “a genuine and effective link” with the State and how foreign nationals could establish such a link.

**(d) children born abroad to one of its nationals also born abroad**

14. Where States do not grant their nationality to such children *ex lege* they need to consider providing facilitated access to their citizenship. Most States require any application to be made before the child reaches the age of majority but in some cases descent from a national might not be established until after the child has reached that age. In some States that person is able to make an application for citizenship after a limited period after the descent was established.

**(e) children one of whose parents acquires or has acquired the State's nationality**

15. In most States children acquire nationality if one of their parents acquires it, although residence in the State by the child is often required. Where acquisition by this means does not occur *ex lege* children usually have the right to acquire the parent's nationality through option or registration.

**(f) adoption**

16. Most States provide for the acquisition of their nationality by foreign children adopted by one of their nationals. Many of the requirements are similar to those concerning the acquisition of citizenship by birth, especially in cases where the adoptive parents are of different nationalities, and any provisions concerning acquisition through adoption should be considered in a similar light. Most provisions relate mainly to children adopted in the State by one of its nationals. It is however worth noticing that the 1993 Hague Convention on Adoption provides that in the case of an adoption having the effect of terminating a pre-existing legal parent-child relationship (full adoption), children adopted abroad in a signatory country should have the same rights as a foreign child adopted in the State. At the present time this would not appear to produce many problems requiring further consideration. Full adoption should be regarded basically as birth through legal channels and the right to acquire citizenship should be similar to that of a child born naturally to his or her parents. Entitlement to citizenship in such cases is likely to have already been determined in the enactment of the State's nationality laws.

17. Problems might however arise where a child has come from the country of its origin to a member State to be adopted by a national or nationals of that State and then the adoption process fails. In such cases the child might become stateless. **The issue was considered by the Parliamentary Assembly when it made its Recommendation on international adoption: respecting children's rights, and requested the Committee of Ministers to revise the European Convention on Nationality in order to make it easier for foreign children to acquire the nationality of the receiving country in the event of the adoption falling through or the adoption procedure breaking down. In responding to the Parliamentary Assembly, the Committee of Ministers referred to the opinion delivered by the CDCJ, after consultation with the CJ-NA, which accepted that these problems deserved further attention and that the possible introduction of new rules in this regard, supplementing the European Convention on Nationality, should be deliberated in the context of the current work of the CJ-NA on the conditions for acquisition and loss of nationality.** Details of this are contained in the Committee of Ministers' reply to Parliamentary Assembly Recommendation 1443(2000) (CJ-NA GT (2002) 10).

**(g) children born on the State's territory and lawfully and habitually resident**

18. The principle of *ius soli* is no longer strictly applied in most European States but it can be applied where the parents of a child, both being foreign nationals, are permanent residents in the State. In some States acquisition of citizenship for such children can be facilitated after birth of the child as soon as the parents are granted permanent (or lawful and habitual) residence, and in other States after a defined period of residence.

Given that *ius soli* is no longer applied unrestrictively by most European States it may be helpful to consider whether specific rules are needed concerning the citizenship of children born on the territory of a State and who are resident there.

(h) **foundlings (Article 6.1.b)**

19. The Article provides that States should provide for its nationality to be acquired *ex lege* by foundlings found in its territory who would otherwise be stateless. This follows the provision in the 1961 Convention on the Reduction of Statelessness and generally there is no problem for most States in applying the provision. However in some States there are provisions in their legislation which only apply to new born infants rather than minors, whilst in others nationality can be lost if descent of the child is discovered even after the child has become an adult. Whilst it might be considered whether it would be helpful to provide further advice regarding the nationality of children found on the territory of a State, cases of foundlings are so few that it would not be necessary at this time to devote further attention to this matter.

ii. **Children born on the territory who do not acquire another nationality at birth (Article 6.2)**

20. Problems might arise concerning a child of parents of the same or different nationality born in a country of which neither parent is a national. The child might not automatically acquire citizenship of that State and yet the non-possession of the State's nationality or the non-agreement of the parents to the child acquiring one or other of their nationalities might lead to the child remaining stateless for a period of time. In other cases, where the parent or parents are refugees, they might not have the necessary documentation to establish the child's right to acquire one or both of their nationalities, and the State from which they have moved might not be willing to provide them with the necessary information. In such cases it would be beneficial if the State in which the child is born would grant the child citizenship through birth rather than allowing he or she to remain stateless, as provided for in Article 6.2. The Article provides that where children are born on the territory of the State but do not acquire another nationality at birth, the State concerned should grant its nationality to the child at birth *ex lege* or, for children who remained stateless, upon an application being lodged on behalf of the child. The Article permits States to make the outcome of such applications dependent upon lawful and habitual residence on its territory, but for no longer than 5 years preceding the application being lodged. The legislation in many countries provides for the first option whilst in others the grant of citizenship is dependent upon an application being made. There would not appear to be any major problems concerning this Article of the Convention.

21. There is no provision however concerning children born on the territory of a State who become stateless during their minority. Article 6.4.e provides that persons born on a State's territory and lawfully and habitually resident there should have facilitated access to the nationality of the State and Article 6.4.g extends this to stateless persons and recognised refugees, but the position of a child should be different. **The 1989 Convention on the Rights of the Child sets out that a child has the right to a nationality, and the provisions of Article 6.2.b should therefore be extended to children born on the territory and resident there who become stateless during their minority provided the application is made whilst the child is still a minor.**

22. Regarding children, the Convention deals with their acquisition of nationality through specified situations regarding the nationality of their parents and the place of birth of the child. It does not, however, refer to the voluntary acquisition of nationality by a child or on behalf of a child. The 1989 Convention on the Rights of a Child states that every child has the right to a nationality but the legislation of most States requires applications for nationality for the child to be made by his or her parents or legal guardian. Should children be entitled to apply for nationality on their own behalf, regardless of whether or not their parents are also seeking a change of citizenship? Should young persons have the right to remedy any decisions regarding their nationality which were taken by their parents during their minority or through the child's adoption by parents of a different nationality? **Under the 1989 Convention on the Rights of the Child a minor has the right to a nationality but should the child also have the right to recover a nationality lost through decisions in which he or she had no input? The 1997 Convention contains no reference to the voluntary acquisition of nationality by children nor their legal ability to recover nationality they have lost through actions in which they have no legal input.**

### iii. **By naturalisation (Article 6.3)**

23. The Article sets out that States should provide for the possibility of persons lawfully and habitually resident on their territory to acquire their nationality through naturalisation. It allows States to set conditions for naturalisation but only stipulates that the period of residence required of an applicant by a State should not exceed 10 years. Most States comply with that requirement and, of those that do not, many appear to be in the process of reducing the period of residence before the application may be made. The only question in regard to the period of residence is whether "lawfully and habitually resident" should include time spent when the applicant was subject to restrictions placed upon him or her by the immigration laws of the State. For example, in some countries an immigrant who legally enters the country in order to take approved employment may initially be subject to restrictions on the time he or she may remain in the country. After a number of years the immigrant may then be granted permanent residence or indefinite leave to remain in the country, and he or she would no longer be subject to the time restrictions on his or her stay. So far as naturalisation is concerned, the question would be whether the time spent before the grant of permanent residence should count as part of the period of residence required under the nationality legislation as being lawful and habitual. In most States it would, but some States have a large number of foreign nationals on their territory who are there for a temporary purpose, such as students, which would not qualify them for permanent residence. If the residence requirement for naturalisation was 5 years, should the student be allowed to apply for naturalisation after 5 years in the country subject to conditions under the immigration laws? In some countries this problem is dealt with by a specific requirement in their legislation which requires an applicant to be free of immigration restrictions and in such cases the time spent before the restrictions were removed counts towards the period of lawful and habitual residence. In interpreting the requirement for an applicant to be "lawfully and habitually" resident in a country the period of presence in a country should be the relevant and determining factor, regardless of whether the applicant was subject to immigration restrictions during that period, as it is the length of residence which establishes the connection with the country, not the absence of immigration restrictions.

Problems may however arise if a foreigner is unable to register his or her place of residence in a country due to the absence of a residence registration system. Fulfillment of the condition of lawful and habitual residence so as to meet the criteria for naturalisation may in some cases be dependent on the existence of a system of registering foreigners' place of residence. This situation should be kept in mind for further consideration.

24. As noted above, the Convention only makes reference to the length of time the residence requirement should not exceed, but paragraph 51 of the explanatory report says that "A State Party may, in addition, fix other justifiable conditions for naturalisation, in particular as regards integration". The conditions which one State requires to be met seldom match exactly those in other States but would fall into one or more of some nine basic categories mentioned below. **Many of the conditions which States are allowed to set for naturalisation constitute the very right of a State to decide who its nationals should be. However, these sometimes raise a number of other questions: some could be regarded as being discriminatory and contrary to Article 5 of the Convention, for example, and it would therefore be helpful to both States and applicants if the conditions were to be examined in detail with a view to recommendations being made on their appropriateness and which would also deal with the question of discrimination.**

#### (a) **age**

25. Many States require applicants for naturalisation to be adults, usually aged 18 years or over, which would seem to be reasonable provided that the child of an applicant could acquire the State's nationality if the parent's application was successful and the child also lived on the State's territory. This is provided for in most States but a problem might arise where one of the conditions for acquiring nationality is to renounce one's existing nationality. **In some States minors cannot renounce their nationality and in such cases the State granting nationality to the parent should also grant nationality to the child subject to the child either renouncing his or her former nationality on reaching majority or losing his or her nationality acquired by the parent if no such renunciation is made within a specified period. There is also the question, which is not referred to in the Convention, of whether children should be required to give their consent to their change of nationality.** For very young children this might not appear to be a problem given that they have no influence over the nationalities they acquire at birth or any change of nationality shortly after birth, but for those who are in their teens it might have an effect upon them and they might therefore wish to be consulted. **Where children do not have the right to apply for naturalisation**

**unless they are aged 18 or over, there should be other means by which the child could acquire the State's nationality.** Acquisition of nationality by children/youngsters could encourage and stimulate their integration into the State. Some States already provide for children to acquire their citizenship through less formal procedures than naturalisation but then in practice will refuse such an application if one of the parents has not acquired or is not applying for citizenship at the same time. The child's wishes should be a major factor to be taken into consideration by the State, and in cases where a child cannot acquire citizenship through other procedures, States should consider reducing the minimum age requirement from 18.

**(b) residence**

26. In addition to the basic period of the residence requirement discussed above, the laws in some States make exceptions to the normal requirement for certain categories of applicants. The most common exception is made in respect of spouses and this is discussed below. Other exceptions relate to nationals of neighbouring countries with which there are special bonds, or to individuals of national descent who do not acquire their citizenship *ex lege*. Such provisions might be considered as being contrary to Article 5.1 of the Convention but this is discussed in paragraphs 39-44 of the explanatory report. In particular, paragraph 41 states that such provisions "would constitute preferential treatment on the basis of nationality and not discrimination on the ground of national origin". Where States specifically allow a shorter period of residence for such individuals as referred to in this paragraph, they should also consider offering such facilitation to stateless persons and refugees, as *per* Article 6.4.g, which would reduce the validity of any allegations that such preferential treatment was discriminatory.

**(c) spouses**

27. Most countries in which the spouse of one of its nationals does not acquire citizenship through a declaration of option have less stringent conditions for their acquisition of citizenship through naturalisation. There are a number of variations: some States require the marriage to have existed for a specified number of years without any requirement of residence; others require a (shorter) period of residence; or these two kinds of facilitations may be combined. Which requirement should be applied does not really matter provided that the overall requirements facilitate the acquisition of citizenship by the spouse (in accordance with Article 6.4.a of the Convention).

28. Other questions though, raised by the requirement, are whether residence in the State should be required and whether the facilitation should also be extended to partners in a recognised cohabitational union. In many States marriage of a woman to one of its nationals used to automatically confer its nationality upon her or give her the opportunity to acquire that nationality through option or registration. However in 1957 the Convention on the Nationality of Married Women declared that neither marriage nor the dissolution of marriage between a national of one State and a woman of another State, nor the change of nationality by the husband during marriage, should automatically affect the nationality of the wife. When Article 4.d of the European Convention on Nationality was drafted that provision was reflected in the Article which was extended to cover "spouses" in the way that the nationality legislation of most States now refers to spouses and not just to wives. Most States changed their legislation to conform to the 1957 Convention but as a result many women lost their entitlement to their husband's nationality and needed to be resident in the husband's country in order to acquire his citizenship through naturalisation. This may have been because of concerns over "marriages of convenience" (considered in CJ-NA (99)1 rev.2) but is justifiable. **It would be helpful to consider whether in cases where the spouse is not living on the territory of the State it should nevertheless be possible for the spouse to apply for its citizenship through naturalisation or option provided, as it already is provided for in some States' legislation, that the marriage has been in existence for a specified number of years and the partners are still co-habiting.** In some States marriage to one of its citizens would not entitle the spouse to emigrate to the State and he or she would not therefore be able to meet the residence requirements for the acquisition of their spouse's citizenship. But if the marriage still exists regardless of the emigration restrictions, and the partners are co-habiting abroad, then that should be a matter taken into consideration regarding the acquisition of citizenship by the foreign spouse.

29. **The term "spouse" usually means a person who is legally married to another but, as discussed above in relation to the children of such partnerships, the frequency of cohabitational relationships without marriage appears to be increasing and it might therefore be considered whether the provisions relating to spouses should be extended to partners of a legally recognised cohabitational union.** Recognition of such relationships is quite often included in the domestic law of a State, and if such unions are accepted for some legal issues then there is a strong argument that they should be recognised regarding the acquisition of citizenship. Where States do not grant their citizenship automatically to the

spouses of their nationals upon application most of them make provision for the spouses to acquire citizenship by naturalisation under less stringent conditions than those required of other applicants, as discussed above. Some States allow partners of their citizens to apply for naturalisation after a specified number of years of a recognised cohabitational union. This would include persons of the same gender who, in some States, can marry their partner but who in most States cannot. The Convention contains no provisions on this issue and the acquisition of nationality concerning partnerships of this sort should be examined. The question of extending the facilitated procedure to the partners in acceptable cohabitational unions only arises in States which provide a certain status for such partnerships. Given their liberal approach to the general legal position of these partnerships they might wish to consider extending such an approach to the acquisition of their nationality by one of the partners.

**30. Finally, in some countries the legislation specifies that the national whose citizenship will be acquired should have been a citizen for a specified number of years. This again might be intended to reduce the number of “marriages of convenience” but in most cases this would only apply to former foreign nationals who had acquired the nationality of the State. It might be appropriate to discuss whether such provisions comply with Article 5 on non-discrimination.**

**(d) ability to support oneself**

31. In some States one of the requirements of applicants is to have a home and/or sufficient legal income to support themselves and their families. In other countries this self-sufficiency is expressed in terms of not receiving support from the State or local authority. The need for a legitimate source of income is understood, but an illegitimate source of income is a matter which could be considered under the “character” requirement discussed below. In the legislation in which self-sufficiency is a provision there does not appear to be any discretion to waive the requirement. This could prevent some individuals from applying for naturalisation because of their unemployed status. Some people might not be able to work through a disability, whilst others might have lost their jobs through the collapse of their employers’ company for reasons over which they had no control or have lost their source of income as a result of separation or divorce. In times of economic recession many individuals will find themselves unemployed and lack of the State’s nationality might prevent them from applying for certain jobs. **Whilst such a requirement might be generally justifiable, it might be considered whether States should allow exceptions to be made in appropriate specified circumstances.**

**(e) character and health**

32. Most States require an applicant for naturalisation to demonstrate his or her good conduct. This is expressed in different ways. In some cases the State requires an applicant to be of “good character”, which is not defined, whereas in others specific reference is made to convictions for criminal offences. In general terms the requirements regarding character, besides those mentioned elsewhere in this part of the report, are intended to ensure that a successful applicant has not been engaged in undermining public safety, public order, health or morality, rights and freedoms or another person’s honour or reputation. A major question which arises from these requirements is whether a conviction for a criminal offence should be a permanent barrier to an individual becoming a naturalised citizen. In some legislation the prohibition relates to offences punishable or punished by a specified term of imprisonment whereas others refer to offences committed during the period of lawful and habitual residence which makes up their residence requirement. None of these provisions in themselves are objectionable provided there is some recognition that criminals can be rehabilitated and that therefore some convictions should not be taken into consideration if they occurred some time before the application for naturalisation was being made. In some cases a person may have been convicted of an offence which is no longer a criminal offence and yet, strictly speaking, the conviction might still weigh against the application for naturalisation. The 1961 Convention on the Reduction of Statelessness accepts that conviction of a criminal offence is a discretionary matter when considering the grant of citizenship but it needs to be considered whether the conviction of an applicant should be allowed to constitute a permanent barrier to him or her becoming a naturalised citizen. Payment of taxes and duties and alimony are other matters which are taken into consideration in deciding the “character” requirement in some States. **It would be useful to consider what issues should or should not be taken into consideration when determining the “character” requirement and the way in which they should be applied.** The objective should be to offer advice on what is generally regarded as being reasonable.

33. Loyalty to the country whose nationality the applicant is seeking might also be a requirement which is largely accepted if the applicant swears or affirms an oath of allegiance prior to acquiring citizenship. Whether such an oath should be required, and its wording, are matters which are reasonably acceptable provided there is no discriminatory remarks in the oath and should be left to States to determine based upon their own history and culture.

34. In other cases an applicant's health is also a matter for consideration. **Whilst it is important that an applicant fully understands what the acquisition of a new nationality means it should be considered whether other aspects of an applicant's health are appropriate in determining the application.** If an applicant is required to be "of good health", provision should be made for exceptions to be allowed where any sickness has been short-term.

**(f) language and integration**

35. Most countries require an applicant for naturalisation to have some knowledge of their official language (or one of them in some States in which there is more than one official language), although exceptions may be made for the spouse of one of their nationals. This is an understandable requirement, especially in these days of trans-global communications, where some States rely upon their language as one means of maintaining their identity or, in others, use it as a means of restoring their national identity. The question is what degree of knowledge of the language would it be reasonable to require. In the legislation of some States it is described as being "elementary" whereas in others it is "adequate", "to the extent necessary for communication", "to be able to make themselves understood in the community" or "mastery". In other States an applicant is required to have passed an examination regarding knowledge of the State's language before they can apply for naturalisation. But if an individual does not have sufficient knowledge of the State's language and cannot obtain citizenship through naturalisation, what would be the result of refusing the application? In some cases the applicants may endeavour to learn the language, but knowledge of the language will not affect their rights to be lawfully and habitually resident in the State. Ability to learn a new language can depend upon age, disabilities or the circumstances in which one lives. For example, people who are deaf or illiterate may find it difficult to learn a language, as might people living in an area whose inhabitants are primarily foreign nationals. **The degree of knowledge of the language which should be required is something which could usefully be discussed, together with the circumstances in which exceptions should be allowed.** Where States allow the spouse of one of their nationals to apply for citizenship even though the couple is living abroad, it might not be necessary or possible to have a language requirement for the foreign spouse, and distinctions should be made in such cases. **These considerations could also apply to the requirements in some States for knowledge of their constitution, laws, history and other issues.**

36. Requirements for knowledge regarding the language, culture and history of the country of which the applicant is seeking citizenship should exclusively be used and regarded as an element of integrating non-nationals and should not be used as a discriminatory means for a State to select its nationals.

37. Some States require an applicant for naturalisation specifically to demonstrate evidence of integration into the State. In most States in which this provision is included in their legislation there is no definition of "integration". Knowledge of the language is one thing, but what should be required of an applicant for naturalisation? In a State which has a predominant religion, would it require an applicant to convert to that religion? Or does it mean that an immigrant from a country with a basic non-European method of dressing should abandon those clothes and wear European-style clothing? What exactly is meant by "integration"? Elements of a State's law regarding integration should not be contrary to an individual's human rights or discriminatory, nor should "integration" be interpreted as being the same as "assimilation". "Integration" does not mean taking up living habits or religion or other such matters but means the ability to live together and requires tolerance from individuals towards others despite the fact that they are different. **The relationship between integration and the acquisition of nationality was a matter discussed by participants at the 2<sup>nd</sup> European Conference on Nationality which took place in Strasbourg from 8-10 October 2001. The Conference called upon the Council of Europe, through the CJ-NA, to pay particular attention in its future work to this broad and important issue. This is an area mainly covered by the naturalisation requirements in the legislation of States and which would benefit from further discussion.**

**(g) security**

38. Many, if not all, countries take into account consideration regarding national security in determining applications for naturalisation. In some this is included in their consideration of the “character” requirement, whereas others specify that acceptance as a national should not affect security and defence of the nation or that an applicant should not have been involved in any activities undermining national security. The necessity for such a requirement or consideration is fairly obvious and refusal of naturalisation on such grounds is obviously defensible.

39. A particular current concern regarding the acquisition (and loss) of nationality concerns individuals who are involved in terrorism. Terrorism is seldom a specific issue referred to in nationality legislation. Nevertheless the European Convention on Nationality leaves wide powers to States to refuse naturalisations and many States have provisions in their internal legislation preventing the naturalisation of persons who are considered a threat to the security of the State. States have to ensure under the Convention that decisions relating to the acquisition, loss, recovery or certification of nationality shall contain reasons in writing and be open to administrative or judicial review. The Convention also permits States to withdraw their nationality from persons whose conduct is seriously prejudicial to the vital interests of the State on condition that the person does not thereby become stateless. When States aim at preventing terrorists from possessing their nationality the emphasis should be on the conditions for acquisition of nationality rather than on the possibilities of withdrawing the nationality from persons already possessing it.

**(h) benefit to country**

40. Some States make an exception to their normal requirements for naturalisation for individuals who have made extraordinary contributions to the State’s scientific, economic, cultural or national interests, including their achievements on the sporting front. Such individuals may not be granted naturalisation upon their own application but at the initiative of the State with citizenship being granted by Parliament or the Head of State. Such cases might include individuals in public office. Where a foreign national makes such a major contribution to the interests of a State it is easy to understand why the normal requirements for naturalisation might be set aside. The individual might not have established the normal genuine and effective link with the State but will have managed to create another important link through his or her activities. That would seem to be acceptable. However in some cases individuals can obtain citizenship not through residence or the establishment of a genuine and effective link but through investment of a large sum of money in the State. Such an avenue to citizenship discriminates against the less well off and could be described as “buying a passport”. If citizenship legislation is generally based upon a link between an individual and the State should the ability to essentially “buy” naturalisation be accepted by other States?

**(i) renunciation of previous nationality**

41. States who abide by the principle of single nationality usually require applicants for naturalisation to give up their existing citizenship before their new nationality is granted. In principle this is acceptable but it can lead to practical difficulties. In many cases where the applicant does not lose his or her existing nationality *ex lege* upon acquiring another, he or she needs to renounce his or her existing citizenship. In some countries they will not allow an individual to renounce his or her citizenship unless he or she possesses another nationality. Article 16 of the Convention states that a “State Party shall not make the renunciation or loss of another nationality a condition for the acquisition or retention of its nationality where such renunciation or loss is not possible or cannot reasonably be required”. **Such a provision would be applicable in the case of nationals of a country which does not allow the renunciation of its citizenship, but it would not apply in the case of a country which did permit renunciation but only when the individual had another nationality. The different approaches by States leads to this problem and there is no Article in the Convention which provides a solution to it. Much of the problem could be avoided by increased cooperation between member States but in the meantime it might be considered making a Recommendation on how this might be avoided.** One such solution might be for States granting citizenship to require renunciation of existing citizenship not before they granted it but within a specified period of time otherwise citizenship would be withdrawn. At the same time States should grant the renunciation of their citizenship before another nationality is acquired provided such citizenship is acquired

within another specified period. If it is not acquired then the original citizenship would be recovered and the individual treated as though it had never been renounced. Given the possibility that an applicant for another nationality could on paper be stateless whilst awaiting the decisions of the two States the applicant should be allowed by the first State a reasonable period of time in which to renounce his or her existing citizenship, and a reasonable period of time by the second State in which to acquire a new citizenship.

iv. **Facilitated acquisition of nationality (Article 6.4)**

(a) **persons lawfully and habitually resident for a period of time beginning before the age of 18**

42. In some States, children born on their territory to parents born abroad can acquire citizenship of the country when they reach the age of majority. They might also apply for the nationality before they reach adulthood provided that they have been resident in the territory for a specified period of time. **Birth on the territory and lawful and habitual residence there would establish a genuine and effective link with the State. It might be considered whether any other factors should be allowed to be taken into consideration.** In cases where a parent was born in the territory but did not acquire the State's nationality, the child will be, at least, the second generation of the family living there and would therefore have close links with the State. In some States nationality is acquired by the child *ex lege* provided that the parent born in the State was also resident for a specified period immediately prior to the child's birth. Children who move to the State shortly after their birth, say before they become 5 years of age, will also establish close links with the State, especially when educated there.

(b) **stateless persons and recognised refugees**

43. This provision (Article 6.4) reflects those in the 1951 Convention relating to the Status of Refugees and the 1954 Convention on the Status of Stateless Persons. Not many States specify in their legislation how this facilitation should be carried out. Those that do usually require a shorter period of residence for naturalisation from recognised refugees and stateless persons but attention should also be given to other means as mentioned in the explanatory report to the Convention such as less stringent language requirements, easier procedures and lower procedural fees. **Following on from of the Committee of Ministers' Recommendation on the Reduction of Statelessness it might be considered whether further instruments are required specifically relating to the acquisition of nationality by refugees and stateless persons and their dependants.**

v. **By recovery (Article 9)**

44. Most States allow their former nationals to recover their nationality but sometimes this can only occur if the citizenship was lost through specific circumstances and specified conditions for re-acquisition are met. For example, in some States a national may only recover the nationality if it was lost through marriage, whilst in others a period of residence in the State is required. One of the most common reasons why individuals lose their nationality of origin is when they have to renounce it in order to acquire the citizenship of another country to which they have emigrated. Some States allow them to re-acquire their citizenship immediately after acquiring the new nationality without any specific requirements being met, but others require the individuals to repatriate themselves and be resident for specified periods of time. Other States make special provisions for individuals of their national origin who are repatriated in groups from another country where they have been resident. This usually occurs in cases of state succession although some States allow the individuals to acquire their citizenship through their unqualified application of the principle of *ius sanguinis*. (Some States grant their citizenship to the children of their nationals born abroad but only for one or two generations, whereas others grant their nationality to anyone who can demonstrate their legitimate descendancy from a national of that country, regardless of how long the family have lived abroad.). **It should be considered whether there is a need for further principles and conditions concerning the re-acquisition of citizenship by former nationals.**

vi. **Other issues**

(a) **double *ius soli***

45. In some States, children born on their territory to a parent who is a foreign national who was also born on their territory acquire citizenship of the State *ex lege* through the application of the double *ius soli* rule. This general provision would be of particular relevance to children born to a parent who was also born in the country and was still resident there. The birth of a parent and a child in the State should be sufficient evidence that the family has connections with the State. Whilst the parent might not be able to meet the requirement to be integrated, this should not be a demanding factor involving the second generation of the family to be born in the State. **It might be considered whether guidelines should be drafted on this point which is also related to the acquisition of citizenship being connected to the integration of foreign nationals.** Proof of a parent's birth in the same State as the child should be sufficient to establish the child's entitlement to the nationality of the State

(b) **termination of automatic acquisition of nationality**

46. In some States, acquisition of their nationality by children born abroad does not apply if the parent from whom they would acquire the nationality by descent was also born abroad. In other States, this restriction would apply only if the grandparent and parent were born outside the State. In cases where States apply the principle of *ius sanguinis*, children might still be entitled to the nationality of the State if they can prove their descent from an individual born in the country who acquired its nationality, even though this could have been centuries ago and the descendants had acquired the nationality of other States through their birth there. The different application of the principles of *ius soli* and *ius sanguinis* create enough problems regarding the present birth of children; the lengthy period over which they are applied creates others. **An examination as to what extent or length of time the principles should be applied would assist States in applying their nationality legislation to foreign nationals resident on their territory.**

C. **LOSS OF NATIONALITY**

47. The provisions of Articles 7 and 8 of the Convention take into account those in the 1961 Convention on the Reduction of Statelessness but go further than the 1961 Convention by only permitting statelessness as a result of deprivation at the initiative of the State if the persons acquiring nationality did so through fraudulent conduct, presentation of false information or concealment of any relevant facts. It also limits the cases in which nationality may be withdrawn. In considering whether any further action is required in regard to these Articles account should be taken of the resolution of the United Nations Commission on Human Rights on 17 April 1998 (resolution 1998/48) which called upon States to refrain from taking measures and from enacting legislation that discriminate against persons or groups of persons on grounds of race, colour, gender, religion or national or ethnic origin by nullifying or impairing the exercise, on an equal footing, of their right to a nationality, especially if this renders a persons stateless, and to repeal such legislation if it already exists. The Commission recognised that arbitrary deprivation of nationality was a violation of human rights and fundamental freedoms, and noted that the full social integration of an individual might be impeded as a result of arbitrary deprivation of nationality.

i. **At the initiative of the State (Article 7)**

48. Article 7 of the Convention sets out specific instances in which an individual can lose his or her nationality *ex lege* or at the initiative of the State. Automatic loss of citizenship is usually concerned with the voluntary acquisition of another nationality but it can also occur when an individual has been abroad and there has been no contact with the home State. Such matters are dealt with in the Convention (Articles 7.1.a and e). The other means of losing citizenship is through revocation. The Convention sets out in some detail the circumstances in which revocation should be allowed. These are: acquisition of nationality by means of fraudulent conduct, false information or concealment of any relevant fact (Article 7.1.b); voluntary service in a foreign military force (Article 7.1.c); conduct seriously prejudicial to the vital interests of the State (Article 7.1.d); where it is established during the minority of a child that the preconditions which led to the *ex lege* acquisition of nationality are no longer fulfilled (Article 7.1.f); and where upon adoption a child acquires a foreign nationality of one or both of the adoptive parents (Article 7.1.g). But many States have in their legislation other reasons for the deprivation of citizenship. These may include such matters as conviction for a serious criminal offence; public service without permission in a foreign State, especially if by doing so the

individual acquires the foreign nationality; working for a foreign intelligence or security service or military organisation; performance of acts contrary to the interests of the State; where an individual fails his or her duty of fidelity and loyalty; and attempting to forcefully change the constitutional state system. These matters were rejected by the CJ-NA in drafting the Convention and it is unlikely that extra circumstances would be accepted for adding to the Convention.

49. Article 7.2 of the Convention deals with the loss of a State's nationality by children whose parents lose that nationality. It provides that a child should not lose the nationality if one of the parents retains it. **No mention is made of whether a young person should have the right to remedy any decisions regarding his or her nationality which had been lost through decisions or actions in which he or she had no input and it should be considered whether to make a Recommendation on this matter.**

## ii. At the initiative of the individual (Article 8)

50. Most States allow their citizens to renounce their nationality provided that they do not become stateless by so doing. State Parties may also provide in their internal laws that renunciation may be affected only upon nationals who are habitual residents abroad. **However, in addition to these conditions provided by the Convention, some States require the individual not to have criminal proceedings instituted against him or her or for renunciation not to be contrary to national security interests, or for the individual to have any legal obligations towards the State's authorities or to have tax arrears. These conditions were not accepted by the CJ-NA in drafting the Convention and it might be considered whether to comment upon the appropriateness of such requirements.**

51. **It would also be useful to consider whether exceptions should be allowed in regard to the individual's right to renounce his or her nationality in Article 8.1.** In some cases this right has been misused by individuals applying for a new citizenship in a second State so as to put pressure on the second State since by renouncing their first nationality they risked becoming stateless if they were not granted the nationality of the second country.

## CONCLUSION AND RECOMMENDATIONS

52. The conditions which States apply when defining their body of nationals constitute the very essence of any nationality laws. The European Convention on Nationality is exceptional amongst international conventions in this field in providing, *inter alia*, a maximum period (ten years) after which States should allow in their internal laws for the possibility of the naturalisation of persons lawfully and habitually resident on their territory. The present analysis of the nationality legislation of member States has shown that in most States the law either meets the majority of the provisions of the European Convention on Nationality or is in the process of being altered in order to comply with the Convention (although this may take some time). However the Convention sets out minimum standards and, in the light of Parliamentary Assembly Recommendation 1500 (2001) which urges Governments of member States to review their national legislation with a view to making it more flexible and adequate to the needs of immigrants and foreign residents, it should be considered whether further guidance is required. In particular it would be useful to identify the possibility of further rules for the acquisition and loss of nationality in addition to those already included in the European Convention. The areas for consideration would include (not in order of priority):

- (a) matters relating to integration and nationality of immigrants (paragraphs 2, 7, 18, 25, 35-37 and 42) – in particular (i) the need to assist the integration of foreigners in their new country of residence; (ii) easing the procedures for children to acquire a State's nationality in order to encourage and stimulate their integration into the State; and (iii) the degree of knowledge required of the State's language, constitution, laws, history, etc. in order to be naturalised
- (b) residence requirements, including the concept of double *ius soli* (paragraphs 23, 26-28 and 45) – (i) – in particular residence requirements in the cases of spouses and (ii) the acquisition of nationality by second generation children of immigrants

- (c) the nationality of children (paragraphs 6-22) - in particular children conceived through reproductive technology; children born to parents of different nationalities; children "born out of wedlock"; children born abroad; children born to foreign parents lawfully and habitually resident in a State; adopted children, in particular those children for whom the adoption fails or the adoption procedure breaks down
- (d) human rights (paragraphs 24-41) - whether any of the requirements for naturalisation conflict with an applicant's basic human rights
- (e) the right to a given nationality (paragraph 46) - extent and length of time that a State should apply the principles of *ius sanguinis* and *ius soli*
- (f) the avoidance of statelessness in relation to the renunciation of nationality (paragraphs 50-51).

Of these, the acquisition of nationality by children is especially important and in need of detailed analysis. This is a subject which it would be most useful to discuss in detail at the 3<sup>rd</sup> European Conference on Nationality in autumn 2003 or at the beginning of 2004.