



Explanatory Report to the European Convention on Establishment

Paris, 13.XII.1955

I. The European Convention on Establishment, drawn up within the Council of Europe by a committee of experts set up for this purpose, was opened for signature by the member States of the Council of Europe on 13 December 1955.

II. The text of the commentary, adopted by the Standing Committee of the European Convention on Establishment at its 12th Session in 1979, does not constitute an instrument providing an authoritative interpretation of the text of the Convention, although it might be of such a nature as to facilitate the understanding of the provisions contained therein.

Commentary

Background

1. The aim of the Council of Europe being to achieve a greater unity between its members, the establishment of common rules ensuring fair and uniform treatment for the nationals of each member in the territory of the other members was likely to further the achievement of this aim.

2. On the other hand, the political significance of the creation of the Council of Europe and the close association of its members through its Statute justified of themselves certain effects on the legal treatment of nationals of member States and were to make the differences of legal status between nationals and foreigners from countries within the Council less marked.

3. Consequently, it seemed desirable and it fitted into the framework of the organisation of the Council of Europe to have a multilateral convention on the reciprocal treatment of nationals, basing itself on the principle of equality of treatment with nationals, drawn up within the Council of Europe.

Such a convention would further make it possible to standardise a matter in which some member States were already bound to each other by bilateral treaties of settlement or trade and consolidate the liberal tendency increasingly apparent in this field.

4. On the basis of the above considerations, the Italian Government submitted at the 5th Session (3-9 August 1950) of the Committee of Ministers of the Council of Europe a proposal ⁽¹⁾ for the inclusion in the Consultative Assembly's agenda of the study of a convention relating to the treatment of nationals of one Council of Europe member State on the territories of the other member States.

(1) Doc. 11, Appendix B.

5. This proposal was transmitted to the Consultative Assembly for an opinion⁽¹⁾ and in its Recommendation 47 of 25 August 1950 the Assembly proposed that the Committee of Ministers should request the International Institute for the Unification of Private Law in Rome to carry out a preliminary study of a draft convention on the reciprocal treatment of nationals (original title).

6. That preliminary study was to be based on the guiding principles appended to Recommendation 47 and to be carried out in collaboration with the Chairman of the Committee on Legal and Administrative Questions and the Secretariat, and in consultation, wherever desirable, with those national and international scientific or administrative bodies competent to give useful information on the many aspects of the question.

After some amendments by the Committee on Legal and Administrative Questions the text drawn up in accordance with these arrangements was approved by the Consultative Assembly and transmitted to the Committee of Ministers by Recommendation 1 of 12 May 1951.

7. In its Resolution (51) 58 of 2 August 1951 the Committee of Ministers invited the member governments to send the Secretariat their comments on the draft convention adopted by the Assembly, and at its 5th meeting at Deputy level (7-11 July 1952) adopted Resolution (52) 40 and decided "to convene, in principle on 15 October 1952, a committee of governmental experts, whose terms of reference will cover the study of the draft convention elaborated by the Consultative Assembly, together with the replies received from the governments of the member States, in order to draw up a programme of the work involved in drafting a convention which would be acceptable to the members".

The Committee of Ministers made it clear that "the committee of experts mentioned in the resolution would be a preparatory committee, whose task would be limited to the study of the general principles involved in drawing up a convention acceptable to all members. The report of this first committee of experts would be submitted to the Ministers' Deputies, who would then decide whether it was advisable to take further action, such as convening a conference for the purpose of drafting a convention."⁽²⁾

8. In accordance with its terms of reference, the committee of experts, which met in Strasbourg from 16 to 18 October 1952, confined itself to considering whether, in the light of the comments submitted by governments, the conclusion of a convention based on the text adopted by the Consultative Assembly was a useful way of achieving the aims of the Council of Europe and, if so, what matters should be dealt with in the convention.

In its report to the Committee of Ministers⁽³⁾, the committee of experts agreed that in spite of the difficulties raised by the diversity of national legislation and legal systems the conclusion of such a convention, limited to specific subjects, was most desirable.

9. Subsequent to that first report, the Committee of Ministers at its 8th meeting at Deputy level (18-22 December 1952) decided that the experts should continue their work with a view to drafting a convention on the reciprocal treatment of nationals.

Following that decision, the experts, several of whom were accompanied by specialists either in the law of establishment or in labour law, held six meetings in Strasbourg between 1953 and 1955.

(1) Resolution (50)24.

(2) Interpretation of Resolution (52) 40 agreed upon at the 6th meeting of the Ministers' Deputies (5-12 September 1952).

(3) Doc. CM/12 (52) 120.

10. The draft Convention adopted by the Assembly was taken as a starting point for the work of the committee. The committee of experts encountered the same difficulties as did the Assembly, both over the diversity of national legislations and the different economic and social situations of the various member States.

The law of the States represented on the committee presented wide differences in one or more of the following fields: civil law and civil procedure, constitutional law, law on establishment, labour law, tax law, and the law governing civil obligations.

11. The committee decided therefore that, like the Assembly, it should limit the range of matters dealt with in the draft convention. The conventions and agreements already concluded within the framework of the Council of Europe on the protection of human rights, medical and social assistance, social security and the equivalence of diplomas also made it possible for the committee of experts to confine its draft instrument to the important matters constituting the basis of any treaty on establishment.

However, owing to the instructions received from their governments, the experts succeeded in the course of successive meetings in adopting certain provisions which may be regarded as more liberal than those in the Assembly's draft.

12. The committee recognised that the Convention's governing principle should be that of equality of treatment as between nationals of one Party and those of other Parties. The restrictions which each State was compelled to impose, in respect either of residence on its territory or of the exercise of certain rights and activities, must be regarded as exceptions. Wherever circumstances permitted, the committee was anxious to affirm the principle of equal treatment as compared with nationals.

13. There were two possible approaches to the Convention: *a.* it could be framed as liberally as possible with reservations on the part of the Contracting Parties admitted, or *b.* it could be drafted so that all the provisions could be accepted without any reservation by the Contracting Parties.

The committee eventually decided in favour of a text in which the undertakings binding on the Parties were as uniform as possible, reservations of a general kind not being acceptable.

14. Since the concepts of establishment and domicile were not amenable to a common interpretation by the Council's member States, and did not even exist in some of them, it was thought preferable to depart from the Assembly's text, which proposed "establishment by way of permanent or prolonged domicile or residence". The committee's text refers only to "temporary visits" and to "prolonged or permanent residence", using the latter to cover all the possible implications which the use of the terms "establishment" and "domicile" would have had.

15. The question arose whether separate provisions should be drafted to cover wage-earning occupations and independent occupations. In the course of its work, the committee decided not to make this distinction.

16. The committee also considered whether the draft Convention should include clauses relating to companies and legal persons. However, since this was sufficiently broad and complex a question to call for a separate convention, the committee was unanimous in recommending that the Committee of Ministers should arrange for this Convention, dealing solely with physical persons, to be followed by a second convention concerned with the treatment of legal persons.

17. The committee decided that the inclusion of a provision concerning the most-favoured-nation clause was not necessary.

On the whole the experts agreed that international law contained no positive rule enabling them to decide with absolute certainty whether a third State could invoke such a clause in respect of this Convention and were of the opinion that this could vary according to the actual text and scope of the clause as it appeared in each separate agreement.

The majority of the committee's experts considered that the Convention should be regarded as a closed convention, in the sense that its extension to third States could not derive solely from a most-favoured-nation clause in another international instrument. For this reason the committee endeavoured to stress the Convention's regional character, especially by emphasising in the preamble that the facilities and prerogatives it grants are conceded by reason of the links between the member States of the Council of Europe, and by including in the final clauses the formal stipulation that any Contracting Party ceasing to be a member of the Council of Europe shall cease to be a Party to the Convention.

18. The committee's work resulted in a draft convention which lays down the major principles governing the treatment by one Contracting Party of nationals of another Contracting Party in a variety of spheres, especially in the matter of aliens' regulations and the right of establishment.

19. A comparison with the international conventions which have been concluded since the signature of the European Convention on Establishment - notably the Rome Treaty, the aims of which are far more ambitious, since it sets out to establish a genuine union - suggests that those who drafted the Council of Europe's Convention were pioneers in the establishment field at the international level.

20. In proposing to their governments that a standing committee should be established, the experts wished, however, to make it clear that the draft prepared by them was but a first step towards more uniform arrangements covering the broad field of the treatment of nationals of Council of Europe member States. Amendments and improvements could subsequently be made to the text adopted, and further work could be envisaged in the future.

21. Furthermore, the committee considered that it might improve the wording of the text if the Convention were followed by a Protocol containing various explanatory or interpretative provisions.

22. The Convention was signed in Paris on 13 December 1955.

It entered into force on the date of deposit of the fifth instrument of ratification, on 23 February 1965.

Introduction

23. The European Convention on Establishment, which was opened for signature by the member States of the Council of Europe in 1955, is currently (1979) in force between Belgium, Denmark, the Federal Republic of Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Norway, Sweden and the United Kingdom. Further, it has been signed, but not ratified, by the Governments of Austria, France, Iceland and Turkey.

24. The Convention is concerned only with the right of establishment of natural persons. The right of establishment of legal persons is the subject of another international instrument drawn up within the Council of Europe, viz. the European Convention on Establishment of Companies, which has not yet come into force.

25. The European Convention on Establishment (individuals), in pursuance of the general principles set forth in the Council's Statute, seeks to ensure that a favourable basis is established for the treatment by one Contracting Party of nationals of another Contracting Party in the matter of entry, residence and expulsion; and that nationals of a Contracting Party who are in the territory of another Contracting Party are accorded treatment generally equal to that which the latter Party accords to its own nationals in the following matters:

- i. the exercise of private rights;
- ii. judicial and administrative guarantees for individuals;
- iii. the exercise of gainful occupations;
- iv. taxation, compulsory services, expropriation and nationalisation;
- v. certain other individual rights, such as participation in elections held by bodies or organisations of an economic or professional nature, acting as arbitrator, and admission to institutions for primary and secondary education and technical and vocational training.

26. For this purpose, the Convention provides for the following mechanism: first of all, "freezing", at the time of the signature, of any restrictions existing *vis-à-vis* nationals of other Contracting Parties; secondly, gradual easing of such restrictions with a view to ultimate equality of treatment as compared with nationals.

This principle is nevertheless subject to limitations as a result of the diversity of economic and social circumstances and national regulations on the matters concerned.

27. The Convention does not, it is true, settle all the issues in this field and it was accordingly deemed desirable to make provision in it for a body known as the "Standing Committee", with a variety of functions.

This committee is instructed to formulate proposals designed to improve implementation of the Convention and to amend or supplement its provisions. It is also responsible for endeavouring to settle any differences of opinion between the Contracting Parties over the interpretation or application of Article 6, paragraph 11.b (introduction of further restrictions as to the acquisition, possession or use of certain categories of property by aliens, including nationals of the other Parties) and Article 14, paragraph 1.b (introduction of further restrictions as to the exercise of gainful occupations by aliens, including nationals of other Parties).

Consequently, the committee, apart from having an advisory and conciliatory function, is in a position to exert an influence on the actual workings of the Convention.

28. The committee has to meet at least once every two years as convened by the Secretary General of the Council of Europe; it may also be convened when the Committee of Ministers considers it necessary.

29. It is required to publish periodical reports on the current legislation of each Contracting Party regarding the matters covered by the Convention. At this stage, three periodical reports have been published, in 1971, 1974 and 1977 respectively.

30. Appended to the Convention is a Protocol the provisions of which are an integral part of the Convention. The Protocol clarifies certain general rules, defines the terminology used and, generally speaking, contains provisions of explanatory or interpretative character.

Observations on the Articles of the Convention

Article 1

31. The undertaking in Article 1 is limited in several important ways; for example, nationals of the other Parties may be refused free entry for reasons relating to *ordre public*, national security, public health or morality.

According to Section La of the Protocol, each Contracting Party applies national criteria in assessing the reasons set forth in Article 1. The authors of the Convention realised that it was impossible to define the above-mentioned concepts in such a way as to satisfy all the Contracting Parties. In particular, the concept of *ordre public* does not always have the same meaning for all Contracting Parties.

32. Nevertheless, the authors of the Convention deemed it necessary to provide some clarification on this point.

For this purpose, it is stated in Section III.a of the Protocol that "the concept of *ordre public* is to be understood in the wide sense generally accepted in continental countries. A Contracting Party may, for instance, exclude a national of another Party for political reasons, or if there are grounds for believing that he is unable to pay the expenses of his stay or that he intends to engage in a gainful occupation without the necessary permits."

However, the Protocol says nothing concerning the case where the national of another Contracting Party is convicted of a criminal offence. It is therefore interesting to note the interpretation given by the Court of Justice of the European Communities regarding the concept of *ordre public* in the Rome Treaty: the Court of Justice decided *inter alia*, when interpreting Article 3 of a Community directive on co-ordination of special measures applicable to aliens with regard to movement and residence, that in as much as it may justify certain restrictions on the free movement of persons under Community law, recourse by a national authority to the concept of *ordre public* in any case presupposes the existence - apart from the social disturbance which any infringement of the law constitutes - of a real and sufficiently serious threat affecting a fundamental interest of society.

Lastly, the Protocol (Section II) stipulates that national regulations on the subject are not affected by the Convention in so far as they are not inconsistent with it.

33. Where the movement of persons is concerned, reference should also be made to the [European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe](#) ⁽¹⁾. In particular, this Agreement abolishes the obligation on nationals of the member States of the Council of Europe to have an entry visa for a stay of up to three months when the person concerned is not engaged in a gainful activity.

The provisions of Articles 1 to 7 of that Agreement, cited below, afford a comparison with the initial provisions of the European Convention on Establishment:

"Article 1

1. Nationals of the Contracting Parties, whatever their country of residence, may enter or leave the territory of another Party by all frontiers on presentation of one of the documents listed in the Appendix to this Agreement, which is an integral part thereof.

(1) Signed in Paris on 13 December 1957; entered into force on 1 January 1958.

2. The facilities mentioned in paragraph 1 above shall be available only for visits of not more than three months' duration.

3. Valid passports and visas may be required for all visits of more than three months' duration or whenever the territory of another Party is entered for the purpose of pursuing a gainful activity.

4. For the purposes of this Agreement, the term "territory" of a Contracting Party shall have the meaning assigned to it by such a Party in a declaration addressed to the Secretary General of the Council of Europe for communication to all other Contracting Parties.

Article 2

To the extent that one or more Contracting Parties deem necessary, the frontier shall be crossed only at authorised points.

Article 3

The foregoing provisions shall in no way prejudice the laws and regulations governing visits by aliens to the territory of any Contracting Party.

Article 4

This Agreement shall not prejudice the provisions of any domestic law and bilateral or multilateral treaties, conventions or agreements now in force or which may hereafter enter into force, whereby more favourable terms are applied to the nationals of other Contracting Parties in respect of the crossing of frontiers.

Article 5

Each Contracting Party shall allow the holder of any of the documents mentioned in the list drawn up by it and embodied in the Appendix to this Agreement to re-enter its territory without formality, even if his nationality is under dispute.

Article 6

Each Contracting Party reserves the right to forbid nationals of another Party whom it considers undesirable to enter or stay in its territory.

Article 7

Each Contracting Party reserves the option, on grounds relating to ordre public, security or public health, to delay the entry into force of this Agreement or order the temporary suspension thereof in respect of all or some of the other Parties, except in so far as the provisions of Article 5 are concerned. This measure shall immediately be notified to the Secretary General of the Council of Europe, who shall inform the other Parties. The same procedure shall apply as soon as this measure ceases to be operative.

A Contracting Party which avails itself of either of the options mentioned in the preceding paragraph may not claim the application of this Agreement by another Party save in so far as it also applies it in respect of that Party."

Article 2

34. This article first refers to the conditions laid down in Article 1. The purpose of the provisions of Article 2 is to facilitate the prolonged or permanent residence of nationals of one Contracting Party in the territory of the other Parties. This article also contains a special limitation: provisions are applied only to the extent permitted by the "economic and social conditions" of each Contracting Party, which is entitled to assess those reasons in accordance with national criteria.

Article 3

35. Article 3 sets out the circumstances in which a Contracting Party may expel from its territory nationals of another Contracting Party lawfully residing in its territory. In several cases expulsion is subject to certain conditions.

Each Contracting Party is left free to determine by national criteria the scope of the reasons for expulsion under Article 3 as well as whether such reasons are of "a particularly serious nature". Section I.b of the Protocol reads: "Each Contracting Party shall determine whether the reasons for expulsion are of a 'particularly serious nature'. In this connection account shall be taken of the behaviour of the individual concerned during his whole period of residence."

36. The Convention places a few restrictions based on humanitarian considerations on the exercise of the option to expel. Thus Section III of the Protocol, which stipulates that the right of expulsion shall be exercised only in individual cases, obliges the competent authorities to take account of family ties.

Lastly, in the circumstances set forth in Article 3, paragraph 2, of the Convention, a national of another Contracting Party ordered to be expelled has a right of appeal with stay of execution. However, the Convention precludes that right in cases where imperative considerations of national security demand otherwise.

The latter text is based on the Geneva Convention of 1951 on the Status of Refugees.

37. The authors of the Convention agreed that the rights secured in this text do not apply in cases where expulsion is ordered by a court trying a criminal case, or where expulsion follows automatically by law as the result of a criminal conviction, the persons concerned having had the opportunity of defending themselves in court.

Article 4

38. Article 4 secures to the nationals of one Contracting Party residing in the territory of another Party treatment equal to that enjoyed by nationals in the sphere of civil rights. The purpose of this is to abolish treatment which discriminates against the nationals of the other Contracting Parties. However, Articles 5 and 6 of the Convention place limits on this principle.

Article 5

39. This article provides for a first departure from the principle of equality of treatment with nationals, for reasons of national security or defence. The reasons set out as permitting exceptions may be appraised according to national criteria. However, the Contracting Parties may maintain such exceptions only if they are based on the reasons mentioned.

These provisions make allowance for the current state of legislation in member States (e.g. national regulations governing the carrying and possession of arms by aliens).

Article 6

40. Article 6 provides for the possibility of restrictions on the acquisition, possession or use by nationals of other Contracting Parties of certain categories of property other than those referred to in Article 5. Each Party is required to transmit a list of such restrictions to the Secretary General of the Council of Europe.

41. Unlike Article 5, Article 6 entails an obligation on governments not to impose further restrictions except in the conditions laid down in paragraph 1.b of Article 6. According to paragraph 2, sub-paragraph 1, of this article, each Party must endeavour to reduce its list of restrictions. This provision constitutes in effect a recommendation to the Contracting Parties.

42. Article 6 also stipulates that if reciprocity is a condition, the relevant information must be transmitted to the Secretary General of the Council of Europe. Reciprocity of treatment appears as a condition in a number of bilateral conventions and in some national legislation on establishment.

43. In the second sub-paragraph of paragraph 2, the Contracting Parties are recommended to grant nationals of other Contracting Parties exemptions from the general regulations concerning aliens as provided for in their own legislation. Various national laws do in fact permit exemptions of this kind, in particular as regards the acquisition and use of ships, the acquisition of farmland, houses, etc.

Article 7

44. The full legal and judicial protection of persons and property, rights and interests which this article secures to the nationals of the Contracting Parties already obtains in many States by virtue of constitutional principles.

This article constitutes an application of the principle of treatment on an equal footing with nationals.

It also takes account of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 8

45. This article secures to nationals of the Contracting Parties entitlement to free legal assistance in the territory of any other Party under the same conditions as the nationals of the latter Party. This entitlement already exists in respect of many States as the result of bilateral agreements and of the Hague Convention relating to Civil Procedure. The same applies to the free issue of copies of documents relating to civil status.

Article 9

46. Nationals of the Contracting Parties are exempt from the payment of a deposit or security when bringing legal proceedings on the territory of any of the Parties. This provision is in conformity with the above-mentioned Hague Convention.

The security being abolished in the case of foreign plaintiffs, paragraph 3 of Article 9 is a clause designed to guarantee the recovery of legal costs.

The Protocol (Section IV) states that Articles 8 and 9 of the European Convention on Establishment in no way affect obligations contracted under the Hague Convention on Civil Procedure.

47. The Standing Committee expressed its agreement with the opinion formulated by the Secretariat of the Council of Europe regarding the interpretation of Article 9 of the Convention, according to which the provisions of this article cannot be relied upon by nationals of the State of the court.

Article 10

48. The scope of Article 10 is considerably curtailed by the restrictions there provided for. Cogent economic or social reasons can be invoked for a country's refusal to treat a national of another Party on an equal footing with its own nationals.

49. The text does not distinguish between wage-earning occupations and independent occupations. The gainful occupations to which Article 10 of the Convention applies are listed therein.

50. As regards the employment market in particular, governments may take account of the situation in the employment sector for which an authorisation is requested by the national of another Party.

51. The Protocol (Section V) stipulates that the provisions of Article 10 shall be subject to the conditions governing entry and residence laid down in the opening articles of the Convention. It also states (Section II) that regulations governing the admission of aliens to gainful occupations are unaffected by this Convention in so far as they are not inconsistent with it (see the commentary on Article 15).

52. Further, it is agreed in the Protocol (Section V) that the spouse and dependent children of nationals of any Contracting Party lawfully residing in the territory of another Party who have been authorised to accompany or join them shall as far as possible be allowed to take up employment in that territory in accordance with the conditions laid down in this Convention.

53. Among other multilateral conventions which accord equality of treatment with nationals as regards the movement of persons are the Treaty of Rome, the Benelux Treaty and the co-operation agreements between the Nordic countries.

Lastly, problems relating to the exercise of gainful occupations are also governed by certain conventions between Contracting Parties to the present Convention. An example is Article 18 of the European Social Charter ⁽¹⁾.

(1) The right to engage in a gainful occupation in the territory of other Contracting Parties (Article 18 of the European Social Charter):

"With a view to ensuring the effective exercise of the right to engage in a gainful occupation in the territory of any other Contracting Party, the Contracting Parties undertake:

- 1. to apply existing regulations in a spirit of liberality;*
- 2. to simplify existing formalities and to reduce or abolish chancery dues and other charges payable by foreign workers or their employers;*
- 3. to liberalise, individually or collectively, regulations governing the employment of foreign workers, and recognise*
- 4. the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Contracting Parties."*

Article 11

54. The purpose of this article is to preclude the Contracting Parties from imposing on the nationals of other Contracting Parties, during the validity of a work permit or of a permit relating to the exercise of independent activities, restrictions which were not provided for when the authorisation was granted, unless they are also applicable to nationals. It is understood, however, that this safeguard will not apply in cases where the authorisation has been obtained on false pretences. Furthermore, it applies only to the exercise of the occupation for which the authorisation was granted.

Article 12

55. Like Article 11, Article 12 contains provisions restricting the power to refuse equality of treatment with nationals. Such treatment must be granted, and the restrictions provided for in Article 10 may not be placed on nationals of Contracting Parties, when one of the conditions provided for in Article 12 is fulfilled.

Each Contracting Party may opt for one or two of the conditions mentioned.

Paragraph 2 of this article provides for two further options. A Contracting Party may opt for a longer period than that laid down in sub-paragraph *a*, and may declare that it reserves the right to control the change from a wage-earning to an independent occupation.

56. The Protocol (Section V) stipulates that persons resident in pursuance of special rules cannot rely on the provisions of Article 12. The Protocol lists a number of persons to whom these provisions apply.

Article 13

57. By reserving for nationals the functions set out therein, Article 13 sanctions a principle which is accepted in some national legislations and bilateral and multilateral conventions.

For example, civil service posts and military posts may be reserved for nationals. These are public functions, including judges, notaries, bailiffs and solicitors. Public service posts may be under the authority of the State, municipalities or semi-public institutions.

Article 14

58. This article enables the exercise of certain activities, apart from those referred to in the preceding Article, to be subjected to reservations or regulations. The mechanism of Article 14 has been aligned with that of Article 6.

59. Paragraph 1 of Article 14 is divided into two sub-paragraphs.

Sub-paragraph *a* is concerned with restrictions in force at the time when the Convention is signed. It takes account of the provisions of current legislation barring aliens from the exercise of certain occupations or subjecting the exercise of those occupations to specific conditions, particularly reciprocity. While taking this state of affairs into account, the Convention makes it incumbent upon the Contracting Parties to supply national lists of reserved occupations. Prominent on the lists of restrictions supplied by the Parties are the following occupations: inshore fishing, piloting, harbour service, transport, cinema management, etc.

The committee of experts has acknowledged that matters relating to the nationality of means of transport, and especially ships, are not affected by this Convention.

Sub-paragraph *b* refers to the period subsequent to the entry into force of the Convention. The Contracting Parties may introduce further restrictions, additional to the lists provided for in sub-paragraph *a*, for imperative reasons of an economic or social character, and only for those reasons, which will be judged by national criteria (Section 1 of the Protocol).

60. Paragraph 2 of Article 14 provides that each Contracting Party shall endeavour to reduce the number of restrictions and to allow individual exemptions to the nationals of other Contracting Parties. In specific cases, certain national legislations provide for waiving provisions whereby certain activities are reserved for nationals.

61. In this context it should be stressed that the authors of the Convention agreed that the opening, on a basis of reciprocity, of occupations reserved for nationals of the host country was compatible with the provisions of paragraph 2, first sub-paragraph, of Article 14 of the Convention.

Article 15

62. These provisions are a consequence of the fundamental principle of the Convention, namely that of treatment on an equal footing with a Party's own nationals.

Nationals of other Contracting Parties must, however, produce the same guarantees or qualifications, which means that they must, where appropriate, receive the same vocational training (e.g. skilled crafts and vocational training in the Federal Republic of Germany and in the Grand Duchy of Luxembourg).

Access to the professions being often conditional on the production of university qualifications, the nationals of other Contracting Parties must submit the same diplomas or qualifications as nationals of the host country in the absence of bilateral or multilateral agreements governing the questions of equivalence of diplomas between the States concerned. Equivalence of diplomas may also be provided for by national legislation.

63. The expression "lending assistance" in the second paragraph comprises the idea of consultation (e.g. a doctor practising in one of the Contracting Parties and calling in a foreign colleague for consultation, or a foreign barrister practising in one Contracting Party called by a foreign colleague in another Contracting Party to assist him pleading before a court in that Party).

64. It does not appear practicable for the provisions of the second paragraph of Article 15 to apply to professions other than the medical, paramedical and legal professions.

65. It is pointed out that, by virtue of bilateral conventions between the Contracting Parties to the European Convention on Establishment, doctors, veterinary surgeons, dentists and midwives may practise in bordering municipalities of the States concerned.

66. In the system of the Rome Treaty, which is binding on nine States, among them some of the Contracting Parties to this Convention, provision is made for the mutual recognition of diplomas and co-ordination of legislation on establishment, apart from the principle of equality of treatment with nationals. The provisions in question supplement the principle of equal treatment with nationals and are indispensable in facilitating the establishment and occupation of nationals of the other member States.

Article 16

67. These provisions are not based on the principle of equal treatment with nationals, but simply provide for the free movement of commercial travellers (and by the same token commercial representatives) without need of an authorisation, the only limitation being that residence must be temporary.

This provision does not preclude the right of the host country to require any person engaged in an occupation as described above to furnish proof of his status of commercial traveller. Several multilateral conventions in this field have, to this end, instituted an "international commercial travellers' identity card".

68. The Protocol (Section V) stipulates that the Contracting Parties shall not, in their municipal legislation or regulations, treat the occupation of commercial traveller as an itinerant trade or form of hawking. This provision is designed to protect the commercial traveller, by precluding certain Contracting Parties from invoking against him internal regulations whereby they might reserve the exercise of itinerant trades or hawking for their own nationals.

Article 17

69. According to this article, the principle of equal treatment with nationals is applied specifically to wages and working conditions in general, where these are governed by the regulations of a public authority.

The term "statutory regulation" covers all kinds of legal provisions and regulations, such as acts of parliament, decrees, orders, etc. The expression "working conditions in general" refers in particular to wages, minimum employment age, working hours, overtime, paid leave, health and safety of workers.

The Protocol (Section V) makes it clear that this provision does not apply to the particular case of student employees.

Lastly, the second paragraph of this article provides for a limitation to the effect that the Contracting Parties are not obliged to accord to the nationals of other Parties, within the framework of Chapter V, more favourable treatment than that accorded to their own nationals.

Article 18

70. In order to allow for the autonomy *vis-à-vis* the State which bodies of a professional or economic nature enjoy in many countries, the text of Article 18 merely stipulates that no Contracting Party may "forbid" nationals of another Contracting Party from taking part as electors in elections held by those bodies. The final clause of this article, which makes a reservation in respect of the decisions of professional bodies, applies to private or independent organisations.

In cases where the legislation of a Contracting Party provides for nationals only to be electors in elections held by professional or economic bodies, that Party should amend its legislation in order to enable nationals of other Contracting Parties to be electors. There is no corresponding obligation to grant the right to stand for election in the bodies or organisations in question.

71. Where professional organisations have public law status and are official bodies consulted by the legislature – as may be the case in one or other Contracting Party – the situation is, of course, different and may justify a reservation, in conformity with the provisions of Article 26 of the Convention.

Article 19

72. The provisions of Article 19 may conflict with national provisions of civil law whereby only nationals may act as arbitrators, but where the Convention has been ratified such discrimination must be abolished unless the Contracting Party in question has made a reservation in accordance with Article 26 of the Convention.

The concept of arbitration, as accepted in the civil law of a number of Contracting Parties, is that of a legal institution which enables the parties to a dispute to have their case tried by one or more private persons instead of taking it to the courts.

In civil proceedings the arbitrator is a professional or a private individual appointed by a court or chosen by the parties to settle a dispute.

Article 20

73. The text of Article 20 relates only to primary and secondary education and technical and vocational training; it does not concern higher or university education.

Furthermore, this provision applies only to public instruction; it does not apply to private education. It is, however, understood that subsidised private schools which are subject to the direct and effective supervision of governmental authorities as regards access to the education they dispense come within the purview of this provision.

Article 21

74. Paragraph 1 of this article secures equal treatment with nationals in fiscal matters to the nationals of other Parties "in similar circumstances". This qualification implies that the provision in question applies to the nationals of the other Parties whether or not they are resident. The expression "more burdensome" refers not to the amount of the charges or taxes but to the relevant procedure.

It is understood that customs duties lie outside the scope of the Convention.

75. The provisions of paragraph 2 entail the abolition of residence charges in respect of aliens who are nationals of the Contracting Parties. Charges connected with the related administrative formalities remain in force; they must not, however, exceed the expenditure entailed by such formalities.

Article 22

76. This article is concerned particularly with requisitions, civilian services and taxes, such as municipal taxes. It constitutes one of the applications of the principle of equal treatment with nationals.

Article 23

77. Article 1 of the First Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms stipulates that: "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

Article 23 of the present Convention, which refers to the preceding provisions, constitutes another application of the principle of equality of treatment with nationals.

Article 24

78. Paragraph 1 of this article confers several functions on the Standing Committee, the most important of which is that of serving as a dynamic element in the Convention. The committee does not have the right itself to make amendments to the Convention, but it may formulate proposals.

79. Paragraph 2, which enables the committee to settle any differences of opinion which may arise between the Parties in respect of certain of the Convention's provisions, does not affect the provisions of Article 31.

80. Paragraph 3 is concerned with the committee's information function. The periodical report to which it refers must be drawn up and published under the committee's supervision and direction.

The ensuing paragraphs determine the committee's composition and basic rules of procedure.

Article 25

81. The provisions of the Convention do not prejudice the provisions of municipal law or international instruments which secure more favourable treatment to the nationals of one or more other Contracting Parties. Consequently, the nationals of a Contracting Party to whom provisions of municipal or international law secure more favourable treatment than that provided for in the present Convention may invoke those provisions in their favour.

Furthermore, this Convention does not preclude the Contracting Parties thereto from concluding among themselves other agreements whereby more favourable treatment is secured to the nationals of one or more of them.

For example, the Benelux Treaty, the Treaty of Rome and the co-operation agreements between the Nordic countries provide for more favourable treatment for the nationals of the other Contracting Parties in respect of paid employment and independent activities.

82. It is stipulated in the Protocol (Section VI) that the European Convention on Establishment shall not be applicable to industrial, literary and artistic property and new vegetable products. These matters are in fact governed by special conventions, e.g. the Paris Convention on Industrial Property.

Article 26

83. The authors of the Convention were anxious to ensure that its scope and effectiveness were diminished as little as possible as a result of reservations. For that reason they did not admit general reservations, preferring to obviate them by offering options. They feared that reservations of a general nature, whose effects are hard to predict, would unduly weaken the stipulations of the Convention.

Reservations are permitted only under the conditions provided for in Article 26, that is to say to the extent to which a law in force in the territory of the Party concerned at the time of its signature or ratification of the Convention is not in conformity with a given provision of the Convention.

In accordance with the provisions of Section VII of the Protocol, the Contracting Parties may exercise the right conferred on them under Article 26 only in so far as they find this is required by substantial provisions of their legislation.

A reservation shall be withdrawn as soon as circumstances permit.

Article 27

84. Reservations permitted in accordance with the provisions of Article 26 are subject to the condition of reciprocity pursuant to Article 27, so that a Contracting Party which has made a reservation in respect of a given provision of the Convention may not claim application of the said provision by another Party, save in so far as it has itself accepted that provision.

Article 28

85. This article allows for measures of derogation from the Convention, especially in time of war. It recalls a similar provision in Article 15 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

Article 29

86. This article defines the territorial field of application of the Convention.

The committee of experts who drafted the Convention had decided initially that only the metropolitan territories of the Contracting Parties would come within the Convention's field of application. However, the decision to extend the field of territorial application was taken at the final meeting. This extension may be effected unilaterally by a Contracting Party.

Article 34 of the European Social Charter is worded similarly to Article 29 of the European Convention on Establishment.

Article 30

87. This article excludes legal persons from the scope of the Convention by limiting the meaning of "nationals" to physical persons possessing the nationality of one of the Contracting Parties.

Section VIII of the Protocol indicates that the term "ordinarily resident" is to be defined according to the regulations applicable in the Contracting Party of which the person concerned is a national.

Article 31

88. This article gives the International Court of Justice jurisdiction in disputes concerning the interpretation or application of the Convention.

It will be remembered that paragraph 2 of Article 24 vests in the Standing Committee powers of conciliation (see commentary on Article 24 above).

Article 32

89. This clause is customary in international conventions to which a Protocol is attached.

In order to improve the text of the Convention itself, the committee of experts deemed it expedient to attach a Protocol containing provisions on the scope of the discretionary powers of the Parties, the concept of *ordre public* and various points of an explanatory or interpretative character.

Article 33

90. These provisions concerning denunciation of the Convention are customary in international conventions, especially those concluded between member States of the Council of Europe.

Article 34

91. These provisions, relating to signature, ratification and notification of the ratification of the Convention, are customary in international conventions, especially those concluded between member States of the Council of Europe.