COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

European Treaty Series - No. 95

Explanatory Report to the Protocol amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality

Strasbourg, 24.XI.1977

I. The Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in cases of Multiple Nationality was opened to signature by member States of the Council of Europe on May 1963, and entered into force on 28 March 1968.

II. The Protocol amending the Convention of 6 May 1963, drawn up within the Council of Europe by a Committee of Governmental Experts under the authority of the European Committee on Legal Co-operation (CDCJ), was opened to signature by member States of the Council of Europe on 24 November 1977.

3. The text of the explanatory report concerning the Protocol, as prepared by the committee of experts and revised by the CDCJ, do not constitute instrument providing an authoritative interpretation of the text of the Protocol, although it might be of such a nature as to facilitate the application of the provisions contained therein.

General considerations

1. In its Recommendation 164 (1958) the Consultative Assembly advocated the drawing up of an instrument to reduce cases of multiple nationality. This suggestion led to the Convention of 6 May 1963 stipulating that a person who of his own free will acquires another nationality automatically loses his former nationality, and granting persons who involuntarily, simply through the operation of law, possess several nationalities, the right in certain circumstances to renounce all nationalities other than that they wish to keep. Article 2, paragraph 2 of the Convention requires the Parties to recognise this right and accept renunciation if the applicant shows that he has for the past ten years had his ordinary residence outside the territory of the State whose nationality he wants to renounce and that he resides in the territory of the State whose nationality he wishes to retain to the exclusion of others. At a time when renunciation of nationality was regarded by many States as difficult to reconcile with the requirements of public law, the recognition of a genuine right to such renunciation not requiring the consent of the State concerned, could not have been anything more than a concession to which extremely stringent conditions were attached, intended to show that the applicant had lost all ties with the State whose nationality he wished to renounce.

Meanwhile, however, ideas have changed. Moreover, national legislation has instituted many more cases of automatic multiple nationality. Public law is gradually losing its overriding importance and more attention is being paid to the individual's desire to choose freely which of the nationalities he possesses automatically he will finally retain. This being so, long-term residence outside the state of the nationality of which he wants to renounce no longer seems a crucial requirement. At a time when inter-State travel for professional reasons is becoming more and more common, ordinary residence in the territory of a particular state has ceased to be a compelling reason for allegiance to that state. Thus to require that a person of double nationality should show evidence of ordinary residence in the State of one of his nationalities

in order to have the right to renounce the others takes away that right from all who are obliged to reside on the territory of another State.

These considerations have led the committee to suggest abolishing the requirement of a period of at least ten years' residence outside the State whose nationality a person wishes to renounce and ordinary residence in the State whose nationality he wants to retain. The only condition that seems necessary to prevent abuses and renunciation inspired solely by a desire to avoi A an otherwise inescapable duty, is to require the applicant to show that he has his ordinary residence outside the State whose nationality he intends to renounce. One reason for selecting the concept of ordinary residence is that it is recognised in a large number of recent conventions, and has the advantage of having been defined within the Council of Europe (see Resolution (72) 1 on the standardisation of the legal concepts of domicile and residence).

2. Most European legislations contain a provision for compulsory military service, but some do not, or will cease to do so in the future.

If a person possessing dual nationality is a national of a State in which military obligations exist, and also of a State in which they do not, a problem arises in the interpretation of Article 6, paragraph 3. It is difficult to see how such a person can be regarded as having fulfilled his effective military obligations especially if he is ordinarily resident in the State in which they exist.

In this case it is reasonable for such a person to be subject to the military obligations of the State in which he is ordinarily resident. He could only be considered as having satisfied his military obligations by voluntary enlistment in the military forces of the other State for a period at least as long as that of the active military service in the State in which it is compulsory.

Needless to say, the same possibility of gaining release by voluntary enlistment also exists when the person is ordinarily resident in some other State.

It would also seem equitable to admit that a person with multiple nationality, who is ordinarily resident in the territory of a State in which military service is not compulsory, should be regarded as having fulfilled his military obligations in respect of the other State in which it is compulsory.

Once a person in such a case settles in the territory of the State in which military service is compulsory, he may be obliged to discharge his obligations. Only when a period of residence in the territory of a state in which military service is not compulsory has continued long enough to warrant interpreting it as permanent, should he be regarded as definitely released from his obligations. To this end States may stipulate that residence in the territory of the state in which military service is not compulsory must continue until some specified age. Such declarations will be made at the time of deposit of the instrument of ratification, in order that the persons concerned may know the extent of their rights and obligations.

It seemed appropriate also to envisage the case where a person of multiple nationality residing in the territory of one of the States whose nationality tie holds has been relieved of, or exempted from, the obligation of military service by that state or has been authorised, for example as a conscientious objector, to perform civilian service as an alternative. As, in such circumstances, he must be regarded as having fulfilled his military obligations in that state, he must no longer be liable for military service or an alternative service in the State of his other nationality.

3. Article 7, paragraph 1, of the 1963 Convention prohibits Contracting States from accepting only its first chapter on the reduction of cases of multiple nationality, whereas the second Chapter concerning military service, may be adopted in isolation.

It is understandable that the member States of the Council of Europe were chiefly concerned to relieve people with several nationalities of liability to perform military service in every State whose nationality they possessed, and wished for that reason to tie acceptance of the provisions that made for a reduction of cases of multiple nationality to acceptance of the provisions relating to military obligations. But this will have the unfortunate effect that States which cannot agree to grant exemption from military service to those of their nationals who possess another nationality are prevented from acceding to the arrangements in the Convention for reduction of cases of multiple nationality.

However, now that the trend in national legislation is towards an increase in possibilities of acquiring a nationality and consequently of cases of multiple nationality, and this trend is encouraged by the Council of Europe's recommendation that a child should have equal opportunity to adopt either the nationality of his father or that of his mother, it is becoming increasingly important to introduce a general system facilitating the renunciation by a person to one of his nationalities. The consequence should be the elimination of all obstacles which could prevent States from accepting the system instituted by the 1963 Convention.

As some States are still not in a position to accept Chapter II of the Convention, it is proposed that Article 7 of the Convention should be amended to enable them to accept Chapter I only.

4. The possible reservations set out in paragraphs 2 and 4 of the Appendix of the Convention were intended to take account of the views of certain States which could not agree to a wife's having a nationality other than that of her husband.

Meanwhile, the principle of family unity in respect of nationality has been superseded by recognition of the right of each partner to choose his or her own nationality. The New York Convention of 20 February 1957, concluded under the auspices of the United Nations, confirms married women in this right. Now that marriage is no longer to have any automatic effect on the wife's nationality, the Appendix to the Convention must cease to permit reservations which obstruct the free choice of nationality by each partner, as such reservations would be contrary to the principle of equal rights in marriage advocated by the Council of Europe.

5. Ratification of the present Protocol by a State which has made this reservation will automatically make the reservation ineffective for the future. This process, being automatic, seems preferable to one whereby the State concerned would be obliged formally to withdraw the reservation on depositing its instrument of ratification.

6. Article 5 envisages the hypothetical case that certain Parties to the 1963 Convention might not be able to accept the amendments made by the Protocol. These States remain bound by the Convention only ; those States which have so far only signed it retain the option of ratifying it in its original form, even after the Protocol has come into force.

States Parties to the 1963 Convention and not Parties to the Protocol will not be able to require States Parties to the Protocol to apply the amendments made therein. Their mutual relations will be governed by the Convention alone.

7. As the Protocol amends the 1963 Convention it will obviously be open for signature only by those States that have at least signed the Convention.