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

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The 1963 Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality is based on the principle that dual nationality is undesirable and should therefore be avoided. However, since 1963, a number of intervening factors have meant that there should be a relaxation of that strict principle : labour migrations between European States leading to substantial immigrant populations, the need for integration of long-term immigrants and the recognition of the principle of equality of the sexes. The Second Protocol amending the 1963 Convention consequently allows for three additional cases of dual nationality, which notably include second generation migrants and spouses of mixed marriages and their children.

Introduction

1. As long ago as 1958 the Consultative Assembly, in its Recommendation 164 (1958), suggested an instrument to reduce cases of multiple nationality. This led to the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality of 6 May 1963 which is based on the idea, broadly accepted at the time, that dual nationality was undesirable and must be avoided as far as possible. The Convention stipulates in particular that a person who of his own free will acquires another nationality automatically loses his former nationality and, furthermore, may not be authorised to retain it. Although this provision relates to nationals of the Contracting Parties, its effects; are in practice far wider, as in most Contracting Parties the principle has a general application.

2. The context in which the 1963 Convention came into being has changed considerably. Massive labour migration, mainly between European States, especially during the 1960's and early 1970's, as well as the subsequent migration of spouses and children, have resulted in substantial immigrant populations in these States. Only in recent years has it come to be generally acknowledged by various member States that these persons will probably remain in the host country indefinitely and must therefore be integrated.

3. Other important new factors to be considered in relation to dual nationality are the growing number of marriages in recent years of persons of different nationalities and the recognition of the principle of the equality of the sexes. These factors have resulted in an increase in cases of dual nationality.

4. Resolutions of the Committee of Ministers of the Council of Europe seek to encourage States to ensure the equality of conditions for both spouses in the acquisition of the nationality of the other spouse (Resolution (77) 12 on the nationality of spouses of different nationalities) and to enable children to acquire the nationality of their mother as well as that of their father (Resolution (77) 13 on the nationality of children born in wedlock). The adoption of legislation along these lines has increased the cases of dual nationality in most member States in recent decades despite the 1963 Convention.

5. These developments since the adoption of the 1963 Convention require that fresh consideration be given to the principle that multiple nationality should be avoided as far as possible. Furthermore, there is no doubt that for many immigrants and their children the prospect of losing their nationality of origin is often a disincentive to seeking the nationality of the country in which they live and whose nationality they would like to have.

6. Acquisition of the nationality of the host country is certainly an important, even crucial factor as far as integration in that country is concerned. Seen from the point of view of States, it is not in a country's national interest that a large section of its population should remain from generation to generation without the nationality of the adoptive country. Seen from the viewpoint of immigrants of long standing, who are recognised in the host country in practically all respects, the absence of full participation in its political life can only be regarded as deplorable.

7. Since a less strict attitude to the automatic loss of the previous nationality would promote the acquisition of the nationality of the host State and thereby complete integration in that country, a relaxation of the strict rules of the 1963 Convention is justified for those groups of immigrants whose integration or need for the new nationality is most urgent. One such group consists of migrants either born in the country in which they live or brought up and educated there. Spouses in mixed marriages and their children form another group as the acquisition of the spouse's nationality should not necessitate the loss of their own. This view has already been strongly advocated by the Parliamentary Assembly in its Recommendation 1081 (1988) on problems of nationality in mixed marriages.

8. Immigrant populations are by their very nature in a process of transition. As this process has gone particularly far in the case of second generation migrants, born or brought up in the country of residence, their possibilities of acquiring the country's nationality - normally by option or declaration - have already been facilitated. There are strong reasons for this. First, it is crucial for the country of residence that at least second generation migrants do not remain foreigners but are fully integrated into the political and social life of the country which has been their home from an early age. Secondly, these migrants have - unlike their parents to some extent - numerous links with their country of residence through the length of time spent there, schooling, knowledge of its language and familiarity with its habits, customs and culture. It should be mentioned that second generation migrants in many member states form a substantial part of the migrant population. Any adverse effects of the acceptance of dual nationality for this group in order to increase the cases of acquisition of the nationality of the host country will be offset by the advantage of full integration of foreign populations.

9. In some member States habitual residence confers almost all of the advantages given to nationals. In other member States, however, this is not the case. In a mixed marriage, a foreign spouse will normally, in the host country, be subjected to various obligations concerning, *inter alia*, residence and work, while the other spouse has full rights as a national. The unity of the family is favoured if each spouse can enjoy the nationality of the other spouse, so ensuring an equality of rights and treatment. In addition, the spouse who acquires the nationality of the host country could become fully integrated, particularly as he or she may partake in its political life. In order to favour the acquisition of the nationality of the other spouse, it is desirable that such acquisition should not entail the loss of the previous nationality.

Commentary on the articles

Article 1

Paragraph 5

10. This paragraph makes it possible for each Contracting Party to derogate from the strict principle of Article 1 of the Convention by means of its internal legislation. The provision has not been made compulsory, since the aim of the Protocol is to form exceptions to, the main principle of Article 1. Each State which ratifies may decide to what extent it will make use of the right to derogate.

11. The provision is applicable where the applicant was born in the host country and is resident there at the time of application. It is also applicable to persons who have been ordinarily resident in the host country before the age of 18. This age limit has been chosen because it is the age of majority in virtually all member States of the Council of Europe. Ordinary residence is required but apart from that no prescribed time requirement is stipulated. The residence may have begun immediately before the age of 18, although such cases will probably be marginal as compared to the cases of second generation migrants who have been born and brought up in the host country. The period and legal conditions relating to residence required for naturalisation and other forms of acquisition of nationality are determined by the law of the host country.

12. The paragraph indicates that there may be a derogation from paragraph 2 of Article 1 of the Convention only when the strict application of this paragraph would result in the loss of the nationality of origin of minors who are nationals of Contracting Parties.

Paragraph 6

13. This paragraph permits another derogation to the provisions of paragraph 1 of Article 1 of the Convention in the case of mixed marriages. By giving effect to the provisions of this paragraph a State may allow a spouse to retain the nationality of origin in the case of the acquisition of the nationality of the other spouse. Any requirement concerning residence included in paragraph 5 of this Protocol does not apply to paragraph 6.

Paragraph 7

14. In the member States, children born in wedlock of parents possessing different European nationalities normally acquire, at birth, the nationalities of both parents. However, this is not always the case. Moreover, in several member States, children born out of wedlock acquire at birth the nationality of the mother only. This paragraph was included in order to prevent a minor who has applied for and acquired the nationality of one of its parents from losing that of the other parent.

Article 2

15. Article 4 of the Convention is not in conformity with the principles set out in this Protocol. Consequently, it should not apply to the situations dealt with in the Protocol.