COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

European Treaty Series - No. 166

Explanatory Report to the European Convention on Nationality

Strasbourg, 6.XI.1997

I. Introduction

a. Historical background

1. The Council of Europe [(1)] has dealt with issues relating to nationality [(2)] for over thirty years. In 1963 the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality (ETS No. 43, hereinafter called "the 1963 Convention") was opened for signature. Since then, however, there has been a growing recognition that numerous problems concerning nationality, in particular multiple nationality, have not been sufficiently considered by the 1963 Convention. Some of these problems were addressed in protocols opened for signature in 1977 [(3)]. In 1993, the Second Protocol (ETS No. 149) amending the 1963 Convention was opened for signature.

2. In 1977 the Committee of Ministers adopted two resolutions, one on the nationality of spouses of different nationalities and the other on the nationality of children born in wedlock (respectively Resolutions (77) 12 and 13). The former resolution recommended that governments of member States take steps so that foreign spouses of their nationals may acquire their nationality on more favourable conditions than those generally required of other aliens and to eliminate distinctions between foreign husbands and foreign wives as regards the acquisition of nationality. The latter resolution recommended that governments grant or facilitate the acquisition of their nationality to children born in wedlock if one of the parents was a national.

3. The Parliamentary Assembly has also adopted a number of recommendations concerning nationality, inviting member States to facilitate in particular the naturalisation of refugees in their country. In 1988, it adopted Recommendation 1081 (1988) on problems of nationality in mixed marriages. Therein, the Assembly noted that it was desirable for each of the spouses of a mixed marriage to have the right to acquire the nationality of the other without losing the nationality of origin; furthermore, children born from mixed marriages should also be entitled to acquire and keep the nationality of both of their parents.

---

(1) Member States of the Council of Europe as of September 1997: Albania, Andorra, Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Netherlands, Norway, Poland, Portugal, Romania, Russian Federation, San Marino, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, "the former Yugoslav Republic of Macedonia", Turkey, Ukraine and United Kingdom.

(2) Most countries of central and eastern Europe use the term "citizenship" which has the same meaning as the term "nationality" used in the European Convention on Nationality and by most western European States.

(3) See the Protocol amending the 1963 Convention (ETS No. 95) and the Additional Protocol to the 1963 Convention (ETS No. 96).

4. In December 1992, the Committee of Experts on Multiple Nationality (CJ-PL), later renamed the Committee of Experts on Nationality (CJ-NA), proposed the preparation of a feasibility study concerning a new, comprehensive convention which would contain modern solutions to issues relating to nationality suitable for all European States. On the basis of this feasibility study, the CJ-NA started preparing a draft text in November 1993 [(1)]. The working party of the CJ-NA met nine times between March 1994 and November 1996 and the CJ-NA met five times between November 1993 and July 1996 in order to prepare the draft convention. From February 1995 the draft text of the European convention on nationality, as revised by the CJ-NA, was published in order to inform all interested persons and to give them the opportunity to comment.

5. As a result of this work and the consultations of the Parliamentary Assembly, the Steering Committee for Human Rights (CDDH), the European Committee on Migration (CDMG), the *Ad hoc* Committee of Legal Advisers on Public International Law (CAHDI) and the Committee of Experts on Family Law (CJ-FA), the text of the draft convention was finalised by the European Committee on Legal Co-operation (CDCJ) on 29 November 1996 and adopted by the Committee of Ministers on 14 May 1997. The Convention was opened for signature on 6 November 1997.

b. The 1963 Convention and developments in Europe thereafter

6. Chapter I of the 1963 Convention is based on the idea, broadly accepted by many western European States at that time, that multiple nationality was undesirable and should be avoided as far as possible. Article 1 of the 1963 Convention provides in particular that nationals who acquire of their own free will another nationality shall lose their former nationality and shall, subject to a reservation, not be authorised to retain it.

7. Nevertheless, the 1963 Convention recognises that multiple nationality does occur in particular where a second nationality of a State Party has been acquired automatically or where a State, which is not a Party to its Chapter I, allows multiple nationality in other cases. Therefore Chapter II, which may be accepted by a State Party even if it has not accepted Chapter I, contains rules on military obligations in cases of multiple nationality in order to ensure that persons with multiple nationality are not required to carry out their military obligations in more than one State Party.

8. Owing to the number of developments that have taken place in Europe since 1963 and which are referred to hereinafter, the Council of Europe decided to reconsider the strict application of the principle of avoiding multiple nationality: labour migrations between European States leading to substantial immigrant populations, the need for the integration of permanent residents, the growing number of marriages between spouses of different nationalities and freedom of movement between European Union member States. In addition, the principle of equality of the sexes has meant that spouses of different nationalities should be allowed to acquire the nationality of their spouse under the same conditions and that both spouses should have the possibility of transmitting their nationality to their children. The Second Protocol amending the 1963 Convention thus allows multiple nationality in the following three additional cases: second-generation migrants and spouses of mixed marriages and their children.

(1) The CJ-NA was initially chaired by Mr G. Kojanec (Italy) after which Mr U. Hack (Austria) became Chairman. The working party was initially chaired by Mr Hack, after which Mr R. Schaerer (Switzerland) became Chairman. All member States of the Council of Europe are represented on the CJ-NA. Observers of this committee include Armenia, Belarus, Bosnia and Herzegovina, Canada, Holy See, Kyrgyzstan, the International Commission on Civil Status (ICCS), the International Organisation for Migration (IOM), the Hague Conference on Private International Law and the Office of the United Nations High Commissioner for Refugees (UNHCR). A representative of the Commission of the European Communities also participated in this work.

9. The question of allowing persons, who voluntarily acquire another nationality, to retain their previous nationality will depend upon the individual situation in States. In some States, especially when a large proportion of persons wish to acquire or have acquired their nationality, it may be considered that the retention of another nationality could hinder the full integration of such persons. However other States may consider it preferable to facilitate the acquisition of their nationality by allowing persons to retain their nationality of origin and thus further their integration in the receiving State (e.g. to enable such persons to retain the nationality of other members of the family or to facilitate their return to their country of origin if they so wish).

10. Consequently, States should remain free to take into account their own particular circumstances in determining the extent to which multiple nationality is allowed by them (see the Preamble to the European Convention on Nationality).

c. The need for a comprehensive convention on nationality

11. Ever since The Hague Convention on Certain Questions relating to the Conflict of Nationality Laws was concluded in 1930, the number of international instruments containing provisions on nationality has grown considerably [(1)]. There is therefore a need to consolidate in a single text the new ideas which have emerged as a result of developments in internal law and in international law. Article 14 of the present Convention thus allows for multiple nationality in the case of married persons of different nationalities and their children. In addition, some provisions included in this Convention aim to contribute to the progressive development of international law on nationality, for example Chapter VI on State succession and nationality.

12. While the 1963 Convention dealt only with multiple nationality, this Convention, with the exception of questions relating to conflict of laws, deals with all major aspects related to nationality: principles, acquisition, retention, loss, recovery, procedural rights, multiple nationality, nationality in the context of State succession, military obligations and co-operation between the States Parties. The title, the European Convention on Nationality, therefore reflects this fact. This Convention neither modifies nor is incompatible with the 1963 Convention. Consequently, the two conventions can co-exist. In view of the importance of this question, Article 26 of the new Convention explicitly confirms this compatibility (see also the commentary to Article 26 below).

13. The most important area which it has not been possible to include in the present Convention relates to the conflict of laws arising from multiple nationality. However, a growing number of States are making use of the notion of “habitual residence” (see also the Committee of Ministers Resolution (72) 1 on the standardisation of the legal concepts of “Domicile” and of “Residence”) rather than the notion of nationality as a connecting factor in private international law. This eliminates a number of problems which may arise concerning persons with multiple nationality. In this context, it should be emphasised that the notion of “habitual residence”, as used in the Convention, applies generally to persons who regularly and effectively live in a particular place.

(1) The most important other agreements include the 1948 Universal Declaration of Human Rights, 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, the 1961 Convention on the Reduction of Statelessness, the Optional Protocols to the 1961 Vienna Convention on Diplomatic Relations concerning Acquisition of Nationality and the 1963 Vienna Convention on Consular Relations, the 1964 Convention of the International Commission on Civil Status on the exchange of information concerning acquisition of nationality, the 1966 International Convention on the Elimination of All Forms of Racial Discrimination, the 1966 International Covenant on Civil and Political Rights, the 1967 European Convention on the Adoption of Children, the 1969 American Convention on Human Rights, the 1973 Convention of the International Commission on Civil Status to reduce the number of cases of statelessness, the 1979 Convention on the Elimination of All Forms of Discrimination against Women and the 1989 Convention on the Rights of the Child.

14. The problems which emerged as a result of the democratic changes which have taken place in central and eastern Europe since 1989 further underlined the need for a new convention on nationality. Virtually all of these new democracies had to draft new nationality and aliens laws. The existence of a comprehensive Council of Europe convention constitutes an important standard in this field. This is particularly the case in circumstances where a State is dissolved. Important issues such as the avoidance of statelessness and the rights of persons habitually resident on the territories concerned are therefore addressed by this Convention.

15. This Convention, in particular Articles 4 to 6, 10 to 13 and 18 to 20 relating to the acquisition of nationality and to non-nationals, will be of relevance for the implementation of the 1995 Council of Europe Framework Convention for the Protection of National Minorities. The aim of the framework convention is to specify the legal principles which States undertake to respect in order to ensure the protection of national minorities. For example, Article 4, paragraph 1, of the framework convention prohibits discrimination on the ground of belonging to a national minority, a rule which is reinforced by Article 5 and Article 20, paragraph 1, of this Convention. Furthermore, the principles of certain United Nations agreements, such as the 1961 Convention on the Reduction of Statelessness and Article 7 of the 1989 Convention on the Rights of the Child will be reinforced by this Convention, particularly by Articles 4 to 7 and 18.

d. The relevance of the Convention for the Protection of Human Rights and Fundamental Freedoms

16. The Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as "the ECHR") applies to everyone within the jurisdiction of its States Parties. There is a firm recognition in the ECHR that account should be taken both of the *legitimate* interests of States and those of individuals. The reference to legitimate interests is meant to indicate that, in the context of the ECHR and its protocols, only legally protected interests are to be taken into account. Even if the ECHR and its protocols do not, except for Article 3 of Protocol No. 4 (prohibition on the expulsion of nationals), contain provisions directly addressing matters relating to nationality, certain provisions may apply also to matters related to nationality questions [(1)].

Amongst the most important ones are:

– Article 3 (prohibition of torture or inhuman or degrading treatment or punishment);
– Article 6 (right to a fair and public hearing);
– Article 8 (right to family life);
– Article 14 (non-discrimination); and
– Article 4 of Protocol No. 4 (prohibition on the collective expulsion of aliens).

17. Persons who have their family life in a particular country, for example having lived there for many years with their family, even if they have not been able to become a national of this country, may have the right to remain in the country if they can show that they are entitled to respect for family life under Article 8 of the ECHR [(2)]. This right will be particularly important in cases in which, following State succession, a large number of persons have not acquired the nationality of the State where they reside.

(1) The following judgments of the European Court of Human Rights are most relevant: *Abdulazis, Cabales and Balkandali*, 28 May 1985, Vol. 94; *Berrehab*, 21 June 1988, Vol. 138; *Moustaquim*, 18 February 1991, Vol. 193; *Cruz Varas*, 20 March 1991, Vol. 201; *Beldjoudi*, 26 March 1992, Vol. 234-A; *Nasri*, 13 July 1995, Vol. 324; *Gül*, 19 February 1996; *Boughanemi*, 24 April 1996 (Report of judgments and decisions, 1996-II). See also the important opinion of the European Commission of Human Rights in the case of East African Asians, 14 December 1973, published in HRLJ (1994), Vol. 15, p. 215.

(2) An interference with the exercise of this right is only allowed under paragraph 2 of Article 8 by a public authority for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others, and only if such interference is necessary in a democratic society (see the case of Boughanemi referenced in the preceeding footnote).

18. Concerning the prohibition of inhuman or degrading treatment (Article 3 of the ECHR), actions that lower a national or alien in rank, position or reputation and are designed to debase or humiliate can be a violation of Article 3.

19. Article 3 of Protocol No. 4 of the ECHR includes the right of nationals to enter and not to be expelled from the territory of the State of which they are nationals. In addition, Article 4 of the same protocol prohibits the collective expulsion of foreigners.

II. Commentary on the articles of the European Convention on Nationality

Chapter I – General matters

Article 1 – Object of the Convention

20. Article 1 deals with the object of the Convention which contains principles of a general nature (see, in particular, Articles 4 and 18) and specific rules relating to nationality including rules regulating military obligations in cases of multiple nationality (see, in particular, Chapters III and VII) to which the internal law of States Parties shall conform. The latter part of this provision, requiring the internal law of States to conform, is meant to indicate that the principles and rules contained in this Convention are not self-executing and therefore that States, in transposing them into their internal law, may take into account their own particular circumstances.

21. Article 1 indicates that the Convention applies only to individuals.

Article 2 – Definitions

22. The concept of nationality was explored by the International Court of Justice in the *Nottebohm* case. This court defined nationality as “a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties” (*Nottebohm* case, ICJ Reports 1955, p. 23).

23. “Nationality” is defined in Article 2 of the Convention as “the legal bond between a person and a State and does not indicate the person’s ethnic origin”. It thus refers to a specific legal relationship between an individual and a State which is recognised by that State. As already indicated in a footnote to paragraph 1 of this explanatory report, with regard to the effects of the Convention, the terms “nationality” and “citizenship” are synonymous.

24. Throughout the text of the Convention, when translating the term “nationals” into French, the word *ressortissants* was preferred, rather than *nationaux*. For the purposes of the Convention, the term *ressortissants* includes only persons having the nationality of a State Party concerned and not persons under the jurisdiction of the country concerned.

25. “Multiple nationality” includes both dual nationality and the possession of more than two nationalities.

26. The definition of the term “child” is based on Article 1 of the 1989 United Nations Convention on the Rights of the Child. The reference to the law applicable to the child means that the law to be applied may include the rules of private international law.

27. “Internal law” is defined as encompassing all the various types of provisions of the national legal system. The phrase “rules deriving from binding international instruments” refers either to rules deriving from directly applicable instruments or to those rules transposed from binding international instruments.

Chapter II – General principles relating to nationality

Article 3 – Competence of the State

28. Matters of nationality are generally considered to be within the domestic jurisdiction of each State [(1)]; this is the guiding principle of public international law, as codified in Article 1 of The Hague Convention of 1930 on Certain Questions relating to the Conflict of Nationality Laws and recalled in Article 3 of the present Convention, that "each State shall determine under its own law who are its nationals". Both these articles furthermore provide that "this law shall be accepted by other States in so far as it is consistent with international conventions, customary international law, and the principles of law generally recognised with regard to nationality".

29. With the development of human rights law since the second world war, there exists an increasing recognition that State discretion in this field must furthermore take into account the fundamental rights of individuals [(2)] (see also comments related to Articles 4 and 5).

Article 4 – Principles

30. The heading and introductory sentence of Article 4 recognise that there are certain general principles concerning nationality on which the more detailed rules on the acquisition, retention, loss, recovery or certification of nationality should be based. The words "shall be based" were chosen to indicate an obligation to regard the following international principles as the basis for national rules on nationality.

Paragraph a

31. The right of everyone to a nationality was first stated in Article 15 of the Universal Declaration of Human Rights. Article 7 of the 1989 United Nations Convention on the Rights of the Child furthermore gives every child a right to a nationality.

32. The principle of a right to a nationality is included in the Convention because it provides the inspiration for the substantive provisions of the Convention which follow, in particular those concerning the avoidance of statelessness. This right can be seen as a positive formulation of the duty to avoid statelessness and is thus closely related to paragraph b of the same article. While there is a recognition that a right to a nationality exists, the right to any particular nationality is determined by the rules on nationality of each State Party, consistent with Article 3 of the Convention which provides that States shall determine who are their nationals [(3)].

(1) See *Tunis and Morocco Nationality Decrees*, PCIJ Reports (1923), Series B. No. 4.

(2) See in particular the Inter-American Court of Human Rights which, in an advisory opinion of 1984, proclaimed that the right to nationality is an inherent human right recognised in international law and that the powers of States to regulate matters relating to nationality are circumscribed by their obligations to ensure the full protection of human rights (*Re Amendments to the Naturalisation Provisions of the Constitution of Costa Rica*, OC-4/84, HRLJ (1984), Vol. 5, p. 161).

(3) For a discussion of the existence and precise content of the right to nationality, see Chan, "The right to a nationality as a human right", HRLJ (1991), Vol. 12, p. 1).

Paragraph b

33. The obligation to avoid statelessness has become part of customary international law; the 1961 Convention on the Reduction of Statelessness sets out rules for its implementation. As regards the definition of statelessness, reference is made to Article 1 of the 1954 Convention relating to the Status of Stateless Persons which provides that "the term 'stateless person' means a person who is not considered as a national by any State under the operation of its law". Thus, only "*de iure* stateless persons" are covered and not "*de facto* stateless persons". Refugees are covered to the extent that they are also considered *de iure* stateless persons.

34. The aim of this paragraph is to protect the right to a nationality by preventing the stateless status from arising. Once an individual becomes stateless, he or she may lose certain rights and possibly even become a refugee. This Convention contains many provisions which seek to prevent statelessness from arising. It should be noted that paragraph 3 of Article 7 on loss of nationality, subject to one limited exception, and paragraph 1 of Article 8 (not to allow nationals to renounce nationality if they would become stateless), make such loss subject to the avoidance of statelessness. In addition, Article 6, paragraph 4.g and Article 18 of Chapter VI on State succession also aim to avoid statelessness.

Paragraph c

35. This paragraph is taken from Article 15, paragraph 2, of the Universal Declaration of Human Rights. It provides a general safeguard of particular relevance to Article 7 of this Convention relating to the loss of nationality *ex lege* or at the initiative of a State Party.

36. Several indications can be given concerning the prevention of an arbitrary deprivation of nationality. They relate both to the substantive grounds for deprivation and the procedural safeguards. As regards the substantive grounds, the deprivation must in general be foreseeable, proportional and prescribed by law. If it is based on any of the grounds contained in paragraph 1 of Article 5, it is contrary to this paragraph. Thus the withdrawal of nationality on political grounds would be considered arbitrary. More specifically, Article 7 of the Convention exhaustively lists the grounds for deprivation. Where deprivation would lead to statelessness, the prohibition contained in paragraph 3 of Article 7 applies. According to this paragraph the only exception concerns the acquisition of nationality by the improper conduct of the applicant (see paragraph 3 of Article 7).

37. As regards the procedural safeguards, reference should be made to Chapter IV, in particular that decisions relating to nationality shall contain reasons in writing and shall be open to an administrative or judicial review.

Paragraph d

38. This paragraph extends the provisions of Article 1 of the 1957 Convention on the Nationality of Married Women to spouses in general, in order to take into account the principle of equality between women and men (see also paragraph 1 of Article 5).

Article 5 – Non-discrimination

Paragraph 1

39. This provision takes account of Article 14 of the ECHR which uses the term "discrimination" and Article 2 of the Universal Declaration of Human Rights which uses the term "distinction".

40. However, the very nature of the attribution of nationality requires States to fix certain criteria to determine their own nationals. These criteria could result, in given cases, in more preferential treatment in the field of nationality. Common examples of justified grounds for differentiation or preferential treatment are the requirement of knowledge of the national language in order to be naturalised and the facilitated acquisition of nationality due to descent or place of birth. The Convention itself, under Article 6, paragraph 4, provides for the facilitation of the acquisition of nationality in certain cases.

41. States Parties can give more favourable treatment to nationals of certain other States. For example, a member State of the European Union can require a shorter period of habitual residence for naturalisation of nationals of other European Union States than is required as a general rule. This would constitute preferential treatment on the basis of nationality and not discrimination on the ground of national origin.

42. It has therefore been necessary to consider differently distinctions in treatment which do not amount to a discrimination and distinctions which would amount to a prohibited discrimination in the field of nationality.

43. The terms “national or ethnic origin” are based on Article 1 of the 1966 International Convention on the Elimination of All Forms of Racial Discrimination and part of Article 14 of the ECHR. They are also intended to cover religious origin. The ground of “social origin” was not included because the meaning was considered to be too imprecise. As some of the different grounds of discrimination listed in Article 14 of the European Convention on Human Rights were considered as not amounting to discrimination in the field of nationality, they were therefore excluded from the grounds of discrimination in paragraph 1 of Article 5. In addition, it was noted that, as the ECHR was not intended to apply to issues of nationality, the totality of the grounds of discrimination contained in Article 14 were appropriate only for the rights and freedoms under that Convention.

44. The list in paragraph 1 therefore contains the core elements of prohibited discrimination in nationality matters and aims to ensure equality before the law. Furthermore, the Convention contains many provisions designed to prevent an arbitrary exercise of powers (for example Articles 4.c, 11 and 12) which may also result in a discrimination.

Paragraph 2

45. The words “shall be guided by” in this paragraph indicate a declaration of intent and not a mandatory rule to be followed in all cases.

46. This paragraph is aimed at eliminating the discriminatory application of rules in matters of nationality between nationals at birth and other nationals, including naturalised persons. Article 7, paragraph 1.b, of the Convention provides for an exception to this guiding principle in the case of naturalised persons having acquired nationality by means of improper conduct.

Chapter III – Rules relating to nationality

Article 6 – Acquisition of nationality

Paragraph 1

47. On the basis of sub-paragraph a of this paragraph each State Party recognises in its internal law that children born of one of its nationals shall automatically acquire the nationality of that State Party, subject to the possibility of providing for exception in the case of children born outside the territory. Whenever affiliation is dependent on recognition, court order or similar procedures, then nationality may be acquired following the procedure provided for by the internal law of the State Party.

48. The term “foundlings” in sub-paragraph b refers to new-born infants found abandoned in the territory of a State with no known parentage or nationality who would be stateless if this principle were not applied. It is taken from Article 2 of the 1961 Convention on the Reduction of Statelessness. The requirement to grant nationality is also met if the foundling, in the absence of proof to the contrary, is considered *ex lege* the child of a national and thus a national.

Paragraph 2

49. Paragraph 2 applies to children born in the territory of a State Party who do not acquire at birth the nationality of any other State and provides for the implementation in internal law of the principle contained in Article 4, paragraph b, namely that statelessness shall be avoided. The wording of this paragraph is drawn from Article 1 of the 1961 Convention on the Reduction of Statelessness. Reference should also be made to Article 7 of the Convention on the Rights of the Child.

50. Children covered by paragraph 2 shall be granted nationality either at birth by operation of law or subsequently by application. Where the nationality is not acquired at birth, it must be provided that the child concerned may submit an application for the acquisition of nationality according to the procedure laid down in internal law, subject to one or both of the indicated conditions. No time-limit is indicated as a condition because the provision applies only to children and it is therefore implicit, in accordance with the definition of the term “child” in Article 2, that the time-limit is 18 years of age. The nationality must be granted to all children fulfilling the conditions specified in sub-paragraph b. The reference to a period not exceeding five years of lawful and habitual residence means that such residence must be effective and in compliance with the provisions concerning the stay of foreigners in the State.

Paragraph 3

51. This paragraph provides that internal law should contain rules which make it possible for foreigners lawfully and habitually resident in the territory of a State Party to be naturalised. A maximum period of residence which can be required for naturalisation is fixed (ten years before the lodging of an application); it corresponds to a common standard, most countries of Europe requiring between five and ten years of residence. A State Party may, in addition, fix other justifiable conditions for naturalisation, in particular as regards integration.

Paragraph 4

52. Facilitated acquisition of nationality must be provided for all persons belonging to each of the categories listed in sub-paragraphs a to g. This refers not only to naturalisation but also to other forms of acquisition such as *ex lege* acquisition [(1)]. In order to comply with this paragraph, it is sufficient for a State Party to ensure favourable conditions for the acquisition of nationality for the persons belonging to each of the categories of persons listed in the sub-paragraphs. Examples include a reduction of the length of required residence, less stringent language requirements, an easier procedure and lower procedural fees. States Parties still retain their discretion to decide whether to grant their nationality to such applicants. Where the generally required conditions are already very favourable (for example a short period of residence for all applicants for naturalisation), such States are not required to take additional measures.

53. As regards spouses mentioned in sub-paragraph a, it is recalled that already in 1977, Resolution (77) 12 of the Committee of Ministers of the Council of Europe on the nationality of spouses of different nationalities recommended that more favourable treatment be given to a foreign spouse, in order to facilitate the acquisition of the nationality of the other spouse.

(1) See also Chapter VI below on State succession and nationality.

54. The notion of adopted children in sub-paragraph d includes adoptions under the internal law of a State Party and adoptions which have taken place abroad and are recognised in the internal law of that State Party. Reference is made in this context to Article 11 of the 1967 European Convention on the Adoption of Children (ETS No. 58) which requires Parties to this Convention to facilitate the acquisition of their nationality by adopted children of their nationals.

55. Sub-paragraphs e and f cover applications mainly from second- and third-generation migrants. They are more apt to integrate into the society of the host State, as they will have spent part or all of their childhood in the territory of that State, and should therefore be granted facilitated acquisition of nationality (see in this context the Second Protocol amending the 1963 Convention). A State Party may impose a time-limit for applications for this facilitated acquisition of nationality.

56. The term “recognised refugees” in sub-paragraph g includes, but is not limited to, those refugees recognised under the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol. States Parties are free to include other types of refugees in this group. Article 34 of the 1951 Geneva Convention similarly refers to facilitated naturalisation of recognised refugees.

57. Persons who have deliberately become stateless, in disregard of the principles of this Convention (for example persons originating from a State with an internal law which, contrary to Article 8 of this Convention, permits the renunciation of nationality without the prior acquisition of another nationality) shall not be entitled to acquire nationality in a facilitated manner.

Article 7 – Loss of nationality *ex lege* or at the initiative of a State Party

58. Article 7 consists of an exhaustive list of cases where nationality may be lost automatically by operation of law (*ex lege*) or at the initiative of a State Party. In these limited cases, and subject to certain conditions, a State Party may withdraw its nationality. The provision is formulated in a negative way in order to emphasise that the automatic loss of nationality or a loss of nationality at the initiative of a State Party cannot take place unless it concerns one of the cases provided for under this article. However, a State Party may allow persons to retain its nationality even in such cases. Article 7 does not refer to cases in which there have been administrative errors which are not considered in the country in question to constitute cases of loss of nationality.

Paragraph 1

Sub-paragraph a

59. This sub-paragraph allows States Parties to provide for the loss of nationality when there is a voluntary acquisition of another nationality. The word “voluntary” indicates that there was an acquisition as a result of a person’s own free will and not an automatic one (*ex lege*).

60. Whereas under Article 1 of the 1963 Convention, States Parties having accepted Chapter I of the 1963 Convention are under an obligation to provide for the loss of nationality where there is a voluntary acquisition of another nationality, under this sub-paragraph States Parties have a choice.

Sub-paragraph b

61. Fraudulent conduct, false information or concealment of any relevant fact has to be the result of a deliberate act or omission by the applicant which was a significant factor in the acquisition of nationality. For example, if a person acquires the nationality of the State Party on condition that the nationality of origin would subsequently be renounced and the person voluntarily did not do so, the State Party would be entitled to provide for the loss of its nationality. Moreover, for the purpose of this Convention, "concealment of any relevant fact" means concealment of a relevant condition which would prevent the acquisition of nationality by the person concerned (such as bigamy). "Relevant" in this context refers to facts (such as concealment of another nationality, or concealment of a conviction for a serious offence) which, had they been known before the nationality was granted, would have resulted in a decision refusing to grant such nationality.

62. The wording of this sub-paragraph is also intended to cover the acquisition of nationality by false pretences (false or incomplete information or other deceitful action, notably by means of non-authentic or untrue certificates), threats, bribery and other similar dishonest actions.

63. In cases where the acquisition of nationality has been the result of the improper conduct specified in sub-paragraph b, States are free either to revoke the nationality (loss) or to consider that the person never acquired their nationality (void ab initio).

Sub-paragraph c

64. This sub-paragraph covers voluntary service in any foreign military force irrespective of whether it is part of the armed forces of a foreign State. Persons are not considered to have served in a foreign military force if, before acquiring nationality, they served in a military force of a country of which they were nationals.

65. However, participation in a multilateral force on behalf of the State of which the person concerned is a national cannot be considered as service in a foreign military force. Furthermore, voluntary military service in another country, in accordance with a bilateral or multilateral Convention, is also not covered by this provision.

66. It should be noted that this paragraph refers to persons serving voluntary service in a foreign military force as professional soldiers. This situation is different from the one provided for in paragraph 3.a of Article 21, where persons may choose between the obligations of different States of which they are nationals. Moreover, owing to the fact that this paragraph does not contain (as the whole of the Convention) self-executing provisions, States, when legislating on this question, shall determine the conditions under which this provision applies.

Sub-paragraph d

67. The wording "conduct seriously prejudicial to the vital interests of the State Party" is drawn from Article 8, paragraph 3.a.ii of the 1961 Convention on the Reduction of Statelessness. Such conduct notably includes treason and other activities directed against the vital interests of the State concerned (for example work for a foreign secret service) but would not include criminal offences of a general nature, however serious they might be.

68. Furthermore, the 1961 Convention stipulates that conduct seriously prejudicial to the vital interests of the State can constitute a ground for deprivation of nationality only if it is an existing ground for deprivation in the internal law of the State concerned, which, at the time of signature, ratification or accession, the State specifies it will retain.

Sub-paragraph e

69. One of the main aims of this provision is to allow a State, which so wishes, to prevent its nationals habitually living abroad to retain its nationality generation after generation. Such loss, however, is only possible for persons possessing another nationality.

70. For the purposes of this article, the term "lack of a genuine link" applies only to dual nationals habitually residing abroad. Moreover, this provision applies in particular when the genuine and effective link between a person and a State does not exist, owing to the fact that this person or his or her family have resided habitually abroad for generations. It is presumed that the State concerned will have taken all reasonable measures to ensure that this information is communicated to the persons concerned.

71. Possible evidence of the lack of a genuine link may in particular be the omission of one of the following steps taken with the competent authorities of the State Party concerned:

i. registration;
ii. application for identity or travel documents;
iii. declaration expressing the desire to conserve the nationality of the State Party.

72. Sub-paragraph e also has to be interpreted in the light of:

– the definition of nationality as the legal bond between an individual and a State (Article 2, paragraph a);

– the prohibition of the arbitrary deprivation of nationality (Article 4, paragraph c);

– the possibility of excluding children born outside the territory from acquiring the nationality *ex lege* of one parent (Article 6, paragraph 1.a); and

– the right to an administrative or judicial review (Article 12).

Sub-paragraph f

73. This sub-paragraph covers cases of a change of civil status of children which would entail the loss of the prerequisites for the possession of nationality. For example, in certain countries, if a child acquired a nationality on the basis of ties to the mother or father and it is later discovered that they are not the true mother or father, nationality may be withdrawn from the child, provided that statelessness does not occur. It is left to the internal law of each State Party to determine the legal effect of such a loss, that is, effective as from the date of deprivation (*ex nunc*) or as if the acquisition had never taken place (*ex tunc*).

Sub-paragraph g

74. In cases where children acquire or already possess the nationality of the adopting parents, the nationality of origin may be lost or withdrawn. This is in accordance with Article 11, paragraph 2, of the European Convention on the Adoption of Children (ETS No. 58) which provides that "a loss of nationality which could result from an adoption shall be conditional upon possession or acquisition of another nationality".

Paragraph 2

75. For the cases covered by Article 7, paragraph 1, subject to paragraph 3 on statelessness, a State Party may provide that children, including adopted children, follow their parents as regards the loss of nationality. However, the two exceptions are that where the parents lose their nationality under sub-paragraphs c or d of Article 7, this situation does not apply to their children, because the impugned conduct of parents should have no adverse consequences on children. It is furthermore provided explicitly that a child shall not lose his or her nationality if at least one of the parents retains that nationality. When applying this paragraph, States Parties should in any case be guided by the best interests of the child.

Paragraph 3

76. Paragraph 3 contains a general limitation to all preceding paragraphs as it does not permit the loss of nationality in all cases to which Article 7 refers if it would result in statelessness; it constitutes, therefore, a specific application of the general principle contained in Article 4, paragraph b. For some countries there is a requirement to renounce the existing nationality in order to acquire the new one; such a requirement is compatible with paragraph 3 of Article 7. Reference can also be made in this context to paragraph 1 of Article 8.

77. Sub-paragraph b of paragraph 1 is the only exception in which statelessness is tolerated for adult persons or children. The prohibition of statelessness therefore goes further than the one provided for under Article 8 of the 1961 Convention on the Reduction of Statelessness.

Article 8 – Loss of nationality at the initiative of the individual

78. The will of the individual is a relevant factor in the permanence of the legal bond with the State which characterises nationality; therefore, States Parties should include in their internal law provisions to permit the renunciation of their nationality providing their nationals will not become stateless. Renunciation should be interpreted in its widest sense, including in particular an application to renounce followed by approval of the relevant authorities.

79. Problems may arise where persons are allowed or required to renounce their nationality before they have acquired the nationality of another State. Where the acquisition of nationality is subject to certain conditions which have not been fulfilled and the persons concerned failed to acquire the new nationality, the State whose nationality has been renounced must allow them to recover their nationality or must consider that they never lost it, so that statelessness does not occur.

80. The possible fees related to such a renunciation must not be unreasonable (see paragraph 1 of Article 13 of the Convention).

81. Paragraph 2 of Article 8 allows States to limit the right to renounce their nationality in paragraph 1 to nationals who have their habitual residence abroad. It is not acceptable under Article 8 to deny the renunciation of nationality merely because persons habitually resident in another State still have military obligations in the country of origin or because civil or penal proceedings may be pending against a person in that country of origin. Civil or penal proceedings are independent of nationality and can proceed normally even if the person renounces his or her nationality of origin.

Article 9 – Recovery of nationality

82. On the basis of Article 9, States Parties shall facilitate in their internal legal order the recovery of nationality both for persons who have renounced nationality under Article 8 and for those who have lost their nationality under Article 7. However, Article 9 does not provide for a right to recovery. It is sufficient under this article that States Parties facilitate recovery of nationality for some categories of former nationals. Whether a State Party satisfies the

requirement of facilitation is to be considered in the light of all relevant circumstances, in particular the existence of very favourable conditions for the acquisition of nationality.

Chapter IV – Procedures relating to nationality

83. Chapter IV concerns procedures relating to the acquisition, retention, loss, recovery or certification of nationality. The term "certification" covers any kind of proof of nationality in the manner and form decided upon by the internal law of each State Party.

84. The Treaty establishing the European Economic Community contains no provisions regulating the acquisition or the loss of nationality as such matters are, in principle, for the member States to decide. However, as the possession of a nationality of a member State is a requirement for the application of the specific provisions on free movement and in general for the enjoyment of rights stemming from citizenship of the European Union (Articles 8.a to 8.e, Treaty on European Union), secondary community law obliges member States to provide their nationals with proof of nationality by delivering or renewing a valid identity card or passport which specifically indicates the holder's nationality [(1)].

Article 10 – Processing of applications

85. All applications relating to the acquisition, retention, loss, recovery or certification of nationality are to be processed within a reasonable time. Whether an application is processed within a reasonable time is to be determined in the light of all the relevant circumstances. For example, where nationals of the predecessor State, such as in cases of State succession, who have not acquired the nationality of the State in which they reside, are required to apply for nationality, their applications should be processed very rapidly due to the urgency of the question. In any case, while waiting for applications to be processed, most of such persons will normally be entitled to remain in the country, for example owing to their right to family life under Article 8 of the ECHR.

Article 11 – Decisions

86. All decisions relating to nationality, and not just those following an application, must contain reasons in writing. As a minimum, legal and factual reasons need to be given. However, the mere registration of cases of *ex lege* acquisition and loss of nationality do not require reasons to be given in writing. For decisions involving national security, only a minimum amount of information has to be provided. For decisions which were in accordance with the wishes or interests of the individual, for example the granting of the application, a simple notification or the issue of the relevant document will suffice. It was noted that the internal law of some States does not comply with this provision where decisions concerning nationality are taken by parliament.

(1) Article 2(2) of Council Directive 68/360 – Workers: "Member States shall, acting in accordance with their laws, issue and renew an identity card or passport, which shall state in particular the holder's nationality." This rule is also applicable mutatis mutandis to students (Council Directive 93/96); to the employed and self-employed who have ceased their occupational activity (Council Directive 90 and 365); to those providing services or self-employed persons (Council Directive 73/148); to persons enjoying the right of residence (Council Directive 90/364).

Article 12 – Right to a review

87. In addition, all decisions must be subject to an administrative or judicial review. On the basis of this provision individuals must enjoy a right of appeal against decisions relating to nationality. The procedural aspects of the implementation of this right are left to the internal law of each State Party. It has been considered not to be appropriate in this Convention to provide for an exception wherever decisions relating to naturalisation are taken by act of parliament and are not subject to appeal, as is the case in certain States. The general recognition of the right to appeal has indeed been estimated to be of prominent importance.

88. The right to review does not, however, exclude national provisions according to which decisions by the highest State authorities in certain special cases are not subject to appeal to a higher body if the decisions are open to other forms of legal or administrative review, in conformity with internal law.

89. While the ECHR contains no provision on civil legal aid, the right to a fair trial under Article 6, paragraph 1, may sometimes require the State to provide for the assistance of a lawyer when it proves indispensable, for example owing to the complexity of a case (see in this context the *Airey* case, 9 October 1979, ECHR, Series A, No. 32).

Article 13 – Fees

90. This article refers to all fees for the process related to the acquisition, retention, loss, recovery and certification of nationality. These may include, for example, the fees to obtain an application form, to have it processed and to obtain a decision.

91. The general aim of paragraph 1 is that the amount of fees for the acquisition, retention, loss, recovery or certification of nationality should not be unreasonable. Whether the amount of fees is unreasonable is to be determined in the light of all the relevant circumstances. This can, for example, be determined by reference to the costs the administration entails. The payment of fees should not be an instrument to prevent persons from acquiring, retaining, losing or recovering nationality, for example where nationality has been lost as a result of State succession.

92. The words “are not an obstacle” in paragraph 2, as compared to “are reasonable” in paragraph 1, were deliberately chosen to indicate that States Parties are under a more onerous obligation when it comes to the amount of fees for an administrative or judicial review.

93. While legal fees are not included within the meaning of this article, the standards referred to in the judgment of the European Court of Human Rights in the *Airey* case relating to the costs of court proceedings should be noted in this context. Reference should also be made to the principles contained in the Council of Europe’s Recommendation No. R (81) 7 on measures facilitating access to justice, in particular Principle D on the cost of justice which provides that “no sum of money should be required of a party on behalf of the State as a condition of commencing proceedings which would be unreasonable having regard to the matters in issue”.

Chapter V – Multiple nationality

Article 14 – Cases of multiple nationality *ex lege*

94. Article 14 requires States Parties to allow multiple nationality in two cases which are normally accepted even by States which wish to avoid multiple nationality. They indeed occur automatically owing to the concurrent application of the law of two or more States. In particular the provision of Article 14, paragraph 1.a, is based on the requirement that, in the case of marriage of nationals of different States, the principle of equality of spouses in relation to the transmission of the respective nationality to their children must be applied. Also Chapter I of the 1963 Convention, which tends to reduce cases of multiple nationality, does not exclude these two cases of multiple nationality.

95. Paragraph 1.a refers to “children” and therefore, according to the definition of the term in Article 2, paragraph c, only applies up to the age of 18. After children have reached full age, the relevant parts of Article 7, in particular paragraph 1.e on loss of nationality due to the lack of a genuine link with the State Party for persons living abroad, remain applicable.

Article 15 – Other possible cases of multiple nationality

96. Article 15 specifically indicates that the Convention does not limit the right of States Parties to allow multiple nationality. This article makes it clear that States, which so wish, are free to allow other cases of multiple nationality.

97. The new Convention is neutral on the issue of the desirability of multiple nationality. Whereas Chapter I of the 1963 Convention was intended to avoid multiple nationality, Article 15 of this Convention reflects the fact that multiple nationality is accepted by a number of States in Europe, while other European States tend to exclude it.

98. However, the possibility for a State to allow multiple nationality will be subject to any contrary binding international obligations. In particular, States which are bound by Chapter I of the 1963 Convention will not, as regards their respective nationals, be able to allow more than a limited number of cases of multiple nationality (see also part I above for further details).

Article 16 – Conservation of previous nationality

99. This provision seeks to ensure that a person is not prevented from obtaining or holding a nationality because it is not possible or is difficult to lose another nationality. The existence of unreasonable, factual or legal requirements is to be assessed in each particular case by the national authorities of the State Party whose nationality the person is seeking to acquire. For example, refugees cannot generally be expected to return to their country of origin or to request their diplomatic or consular representation to renounce or to obtain their release from their nationality.

100. As this article is particularly important in cases of state succession, Article 18 makes special reference to Article 16.

Article 17 – Rights and duties related to multiple nationality

101. Paragraph 1 contains the basic principle that persons holding multiple nationality, in the territory of the State Party in which they reside, shall enjoy equality of treatment as compared to those holding single nationality, for example as regards voting rights, the acquisition of property or the duty to fulfil military obligations. These rights and duties may, however, be modified by international agreements in certain circumstances (for example see Chapter VII as regards military obligations).

102. Paragraph 2.a deals with diplomatic and consular protection. The general rule of international law as regards diplomatic protection is contained in Article 4 of The Hague Convention of 1930 which provides that "A State may not afford diplomatic protection to one of its nationals against a State whose nationality such a person also possesses." However, owing to the developments that have taken place in this area of public international law since 1930, in exceptional individual circumstances and while respecting the rules of international law, a State Party may offer diplomatic or consular assistance or protection in favour of one of its nationals who simultaneously possesses another nationality, for example in certain cases of child abduction. Account must also be taken of the fact that one member State of the European Union may give diplomatic or consular assistance to a national of another European Union State, where the latter State is not represented in the territory of a third country.

103. Paragraph 2.b concerns the application of the rules of private international law of each State Party in cases of multiple nationality. The Convention does not affect the application of these rules.

Chapter VI – State succession and nationality

104. This chapter deals with issues of nationality arising from State succession as defined by general public international law. The 1978 Vienna Convention on Succession of States in respect of Treaties defines "succession of States" as the replacement of one State by another in the responsibility for international territorial relations. The provisions concerning State succession and nationality are based on existing general international practice and contain general guiding principles. They permit States to decide on the appropriate way in which these provisions may be applied in their internal law.

105. Although these provisions do not apply directly to persons, they are designed to ensure as far as possible that persons living in a region are not put in an unfavourable position merely because of territorial changes.

106. These principles apply to States Parties whether they are successor or predecessor States. However, owing to their nature, this chapter will apply in particular to successor States.

107. The main concern, although not the only one, is the avoidance of statelessness, as is underlined in paragraph 1 of Article 18, and the focus is therefore on the granting or retention of nationality. This chapter aims to reinforce existing treaty provisions on the avoidance of statelessness, such as Article 10 of the 1961 Convention on the Reduction of Statelessness.

Article 18 – Principles

108. Article 18 outlines the specific principles which States Parties undertake to abide by in all matters of nationality arising in the context of State succession. In addition, the other chapters of the Convention also apply in general in cases of State succession. This article needs to be seen in the light of the presumption under international law that the population follows the change of sovereignty over the territory in matters of nationality.

Paragraph 1

109. This paragraph lists the applicable general principles which are part of the democratic vocation of the Council of Europe: ensuring respect for the principles of the rule of law and the rules concerning human rights. In this respect, account should be taken of the Statute of the Council of Europe, in particular Article 3 which provides that "every member of the Council of Europe must accept the principles of the rule of law and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms", the provisions of the European Convention on Human Rights and its protocols and the case-law of the European Court of Human Rights.

110. The relevance of the concept of the "rule of law" in the field of nationality law must be seen in the light of the constitutional and legal traditions of each State. Nevertheless, some basic criteria form part of the concept. These criteria are, for instance:

– decisions must be taken on the firm basis of the law;

– the law should be interpreted with a view to protecting the rights and freedoms of citizens (and not only with a view to protecting the interests of the State);

– there must be some proportionality maintained in the measures taken by the State which affect individuals, in particular if these measures are sanctions or if they affect individual rights;

– the law must be foreseeable and individuals must be able to foresee the legal consequences of their acts; consequently, there should not be a legal vacuum;

– the law should be interpreted in the spirit in which it was drafted.

111. Further guidance concerning the rule of law can be found in the various legal instruments of the Council adopted in the field of efficiency and fairness of civil justice [(1)] and the case-law of the European Court of Human Rights, in particular as regards the right to a fair trial contained in Article 6, paragraph 1, of the ECHR [(2)]. Finally, paragraph 1 recalls the principles contained in Articles 4 and 5 of this present Convention and in paragraph 2 of this article. All the principles mentioned in paragraph 1 are significant in general, although the primary concern is the avoidance of statelessness.

Paragraph 2

112. Paragraph 2 focuses on the factors which are to be taken into account by States Parties affected by State succession when they decide on the granting or retention of their nationality. It does not formulate a detailed rule but establishes principles. Each of the factors has to be weighed up in the light of the particular circumstances of the case.

113. The term "genuine and effective link" contained in sub-paragraph a was first used by the International Court of Justice in the *Nottebohm* case. It refers to a "substantial connexion" of the person concerned with the State. The legal bond of nationality therefore has to accord with the individual's genuine connection with the State.

114. With respect to sub-paragraph b, the habitual residence of the person concerned at the time of State succession refers to the habitual residence in the territory subject to state succession or in the territory of the predecessor State. "Lawful residence" is not required because there is a presumption that a person who was a national immediately prior to State succession was a lawful resident.

115. As regards sub-paragraph c, the will of the person concerned has to be taken into account. This might entail, for example, giving persons a right of option or avoiding the imposition of nationality against the wishes of a person.

(1) These instruments include notably Recommendation No. R(94) 12 on the independence, efficiency and role of judges and Recommendation No. R (95) 5 concerning the introduction and improvement of the functioning of appeal systems and procedures in civil and commercial cases. See the publications of the Council of Europe on efficiency and fairness of justice.

(2) See, in particular, the cases of *Ringeisen*, 16 July 1971, Vol. 13; *Golder*, 21 February 1975, Vol. 18; *Airey*, 9 October 1979, Vol. 32 and *Albert and Lecompte*, 10 February 1982, Vol. 58.

116. Concerning the term “territorial origin” used in sub-paragraph d, it refers neither to the ethnic nor to the social origin of a person but rather to where the person was born, where the parents and grandparents were born or to a possibly existing internal nationality. It is thus similar to the criteria used to determine the acquisition of nationality under the *ius soli* and *ius sanguinis* principles.

Paragraph 3

117. Paragraph 3 provides that where a successor State makes the acquisition of its nationality dependent on the loss of a foreign nationality, Article 16 of this Convention applies, that is, such loss shall not be required where it is not possible or cannot reasonably be required. This paragraph will be particularly important in those States where multiple nationality is not normally allowed in certain cases.

Article 19 – Settlement by international agreement

118. Article 19 favours solutions on nationality matters agreed between the successor States and requires states to ensure that such agreements comply with the principles and rules contained or referred to in Chapter VI of the Convention.

Article 20 – Principles concerning non-nationals

119. This article deals with the rights of permanent residents in the territory of the successor State who were nationals of the predecessor State and who have not acquired the nationality of the successor State as a result of State succession. It thus includes persons who have made an application and are awaiting a decision because the application is still being processed. It also includes those persons whose application has been rejected and persons who have not made an application.

120. In order to fall within the ambit of Article 20, “non-nationals” have to satisfy each of the following conditions:

i. they were nationals of the predecessor State who have not acquired the nationality of the successor State;

ii. they were habitually resident on the territory of the successor State at the time of State succession;

iii. they are still resident on the territory of the successor State.

121. As this article deals with social and economic rights, it is meant to ensure that States Parties enable non-nationals to be in a position to lead the same life, from a practical day-to-day point of view, as before the State succession occurred. Amongst the most important examples of social and economic rights are the right of employment and the right of freedom of movement. Further guidance in this context is provided by the provisions of the European Convention on Establishment (ETS No. 19) and the European Social Charter (ETS No. 35). States Parties may grant additional rights, for example political rights at a local level.

122. A necessary prerequisite in order to be able to enjoy social and economic rights is the right to remain within the territory of the successor State as required in paragraph 1. This right is sometimes also described as a right of residence or the freedom of establishment. It should be recalled that such persons will normally have a right to family life under Article 8 of the ECHR and, where this article applies, may not be expelled even if they are not considered to be nationals [(1)].

123. The principle of equality of treatment with nationals as regards social and economic rights is subject to an exception contained in paragraph 2 of this article. Thereunder, a State Party may exclude non-nationals from employment in the public service only where the employment involves the exercise of sovereign powers. This phrase was taken from and is based on the wording of a judgment of the European Court of Justice (*Commission of the European Communities v. Kingdom of Belgium*, 26 May 1982, Case 149/79) [(2)]. This exception is limited to employment in specific activities of the public service in so far as the employment involves the exercise of powers conferred by public law and with responsibility for safeguarding the general interests of the State. In those exceptional circumstances, possession of nationality is accepted as a necessary prerequisite because the area of employment is so sensitive.

Chapter VII – Military obligations in cases of multiple nationality

124. Given the general acceptance of the rules contained in Chapter II of the 1963 Convention, they have been taken over, without any substantive changes, in this Convention (Article 21), together with the provisions of the 1977 Protocol amending the 1963 Convention, which relate to alternative civil service and exemption from military obligations (Article 22).

125. The one exception relates to the words “ordinary residence” used in the 1963 Convention and the 1977 Protocol, which have been replaced by the more usual words of “habitual residence” used in the other chapters of this Convention. There is no intention to change the concept but rather to be in conformity with the French notion of *résidence habituelle* used both in the 1963 Convention and in this Convention and in other recent instruments.

126. States Parties accepting all or part of Chapter VII are encouraged to consider also ratifying Chapter II of the 1963 Convention so that persons holding multiple nationality from States which have accepted only Chapter II of the 1963 Convention can also benefit from the common principles of these chapters.

Article 21 – Fulfilment of military obligations

127. The most important rule contained in Article 21, paragraph 1, is that persons possessing the nationality of two or more States Parties shall be required to fulfil their military obligations in relation to one of those parties only. Normally, that Party will be the one where the persons are habitually resident. However, these persons are free to choose to submit themselves to military obligations in relation to another Party of which they are also a national.

(1) The following judgments of the European Court of Human Rights are most relevant: *Berrehab*, 21 June 1988, Vol. 138; *Moustaquim*, 18 February 1991, Vol. 193; *Beldjoudi*, 26 March 1992, Vol. 234-A; *Nasri*, 13 July 1995, Vol. 324; *Gül*, 19 February 1996 (Report of judgments and decision, 1996-II).

(2) See also the following judgments of the European Court of Justice: *Commission of the European Communities v. Luxembourg*, C-473/93, 2 July 1996; *Commission of the European Communities v. Belgium*, C-173/94, 2 July 1996; *Commission of the European Communities v. Greece*, C-290/94, 2 July 1996. In these cases the European Court of Justice held that a failure to limit the requirement of nationality to employment in the public service involving the exercise of sovereign powers was contrary to the provisions relating to the free circulation of workers within the Community.

Article 22 – Exemption from military obligations or alternative military service

128. Article 22, paragraph a, provides that persons who have been exempted from their military obligations or have fulfilled civil service as an alternative in relation to one Party, shall be deemed to have fulfilled their military service in relation to another Party of which they are also nationals. Furthermore, under paragraph b, if persons have their habitual residence in a Party of which they are nationals and which does not have compulsory military service, they are deemed to have fulfilled their military obligations also with respect to another Party of which they are nationals and which does have compulsory military service.

Chapter VIII – Co-operation between the States Parties

Article 23 – Co-operation between the States Parties

129. Paragraph 1.a of Article 23 requires the competent authorities to provide information on matters relating to nationality, including instances of statelessness and multiple nationality, and about developments concerning the application of the Convention to the Secretary General of the Council of Europe. The Secretary General will then send all relevant information to all States Parties. In fact, much information has already been received and is to be found in the European Documentation Centre on Nationality (EURODOC) which centralises nationality information and documentation for nearly all European States. The centre is also responsible for publishing the *European Bulletin on Nationality* which summarises the nationality laws of the aforementioned states.

130. In addition, in accordance with sub-paragraph b, States Parties shall provide each other upon request with information relating to nationality and about developments concerning the application of this Convention.

131. Paragraph 2 of this article requires States to co-operate within the framework of the appropriate intergovernmental body of the Council. In fact, the Committee of Experts on Nationality (CJ-NA), which has been responsible for the preparation of this Convention, is the competent specialist body of the Council in this field and on which nearly all European States are represented either as members or as observers. The aim of this co-operation is to deal with all relevant problems and to promote good practices and the progressive development of legal principles concerning nationality and related matters.

Article 24 – Exchange of information

132. Article 24 deals with the exchange of information on the voluntary acquisition of nationality of one State Party by nationals of another State Party. Such information is of particular importance for States pursuing a policy of avoiding multiple nationality. The Parties to the Convention are under no obligation to provide such information but may, at any time, declare that they wish to furnish it.

133. Once such a declaration has been made, several conditions have to be met before the information is provided. First, the information is provided on the basis of reciprocity, that is with respect to States Parties having made the same declaration. Secondly, the conditions stipulated in the declaration by the State Party giving the information have to be met. Thirdly, the applicable laws concerning data protection of the providing State have to be respected. The second and third conditions may, in particular, include the internal laws on the automatic processing of personal data and the protection of individuals as regards their privacy and human rights. The declaration is valid until it is withdrawn. The article does not prevent the State Party receiving the information from asking for further particulars. It is then within the discretion of the State providing the information to decide on such a request.

134. The Additional Protocol to the 1963 Convention (ETS No. 96) and the 1964 Convention on the exchange of information concerning acquisition of nationality (Convention No. 8 of the International Commission on Civil Status) have been taken into account in this context. The Additional Protocol and the 1964 Convention provide for arrangements for communication between the Parties where nationals of one Party acquire the nationality of another Party. The Additional Protocol aims to do so by means of an appended model form which is to be completed and forwarded within a delay not exceeding six months from the date the acquisition of nationality has become effective. The 1964 Convention also contains a model document, in four languages, to be transmitted directly within three months of the date on which the acquisition of nationality takes effect. However, as these instruments have not been widely used or applied, a provision concerning the possibility of exchanging information has been included in this Convention.

Chapter IX – Application of the Convention

Article 25 – Declarations concerning the application of the Convention

135. As Chapter VII may not be relevant for certain States (for example where it is not considered desirable to make use of such provisions), States are given the possibility to make a declaration excluding the application of this chapter. This chapter has been taken over from Chapter II of the 1963 Convention. It is implicit that those States Parties which do not avail themselves of the possibility of a declaration under this paragraph agree to apply this Convention as a whole, subject to admissible reservations.

136. For States which accept Chapter VII, it can, on the basis of reciprocity, only be applicable in the relations with other States Parties which also have accepted Chapter VII.

Article 26 – Effects of this Convention

137. Paragraph 1 safeguards those provisions of internal law and binding international instruments which grant additional rights to individuals in the field of nationality; the Convention shall not be interpreted so as to restrict those rights. The phrase “more favourable rights” refers to the possibility of putting an individual in a more favourable position than provided for under the Convention, for example by the rules of a State Party concerning the acquisition of its nationality.

138. Paragraph 2 indicates that this Convention does not replace the 1963 Convention or its Protocols in the relationship between the States Parties to these instruments. States may choose to be Parties to all these instruments.

139. While the 1963 Convention and this Convention are compatible, their effect may be different according to the internal law of the State concerned, especially as regards multiple nationality. Thus, a State, whose internal law allows multiple nationality in cases other than those provided for under Article 14 of this Convention and the 1963 Convention, might not wish to be bound by Chapter I of the 1963 Convention but could accept this Convention.

Chapter X – Final clauses

Article 27 – Signature and entry into force

140. The Convention will enter into force on the first day of the month following the expiration of a period of three months after the date on which three member States of the Council of Europe have expressed their consent to be bound by it. Considering the importance of this Convention for many States, its entry into force should not be delayed by the requirement of a high number of ratifications. In any case, the number of ratifications required follows the usual number for Council of Europe treaties.

141. The Convention is also open to signature by non-member States of the Council of Europe which have participated in its elaboration. These States are Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Canada, Georgia, the Holy See, Kyrgyzstan and the United States of America.

Article 28 – Accession

142. Due to the importance of allowing a large number of States to become Parties, in particular where there is a need for co-operation between them, the Convention is also open to accession by non-member States not listed in the commentary under Article 27 above, after its entry into force in accordance with the procedure laid down in Article 28.

Article 29 – Reservations

143. Reservations are not permissible with respect to the core chapters of the Convention, which are Chapters I, II and VI. Other reservations are admissible so long as they are compatible with the object and purpose of the Convention, in accordance with Article 19.c of the Vienna Convention on the Law of Treaties.

144. As regards the object of the Convention, reference is made to Article 1 of the Convention. With respect to its purpose, it includes, but is not limited to, the avoidance of statelessness, the guarantee of fair procedures in matters relating to nationality, the possibility for persons having a genuine link with a State Party to acquire its nationality, the limitation of the loss of nationality to justified cases only and the ensuring that persons with several nationalities be required to fulfil their military obligations in relation to one State only. Further guidance is provided by the Preamble to the Convention.

145. Given that reservations are not generally desirable, States Parties wishing to make reservations are under two obligations: to notify the Secretary General of the relevant contents of their internal law or of any other relevant information; and to consider withdrawing them in whole or in part as soon as circumstances permit.

Article 30 – Territorial application

146. This provision applies essentially to overseas territories as it would be contrary to the philosophy of the Convention for a State Party to exclude parts of its metropolitan territory from the application of this instrument.

Article 31 – Denunciation

147. This article enables a State which is a Party to the Convention to denounce either the whole Convention or Chapter VII of the Convention (see Article 25).

Article 32 – Notifications by the Secretary General

148. Information concerning steps taken by States in relation to the Convention will be sent by the Secretary General of the Council of Europe, depositary of the Convention, to other states in compliance with this article.