

## Council of Europe and nationality law

Prof. Dr Gerard-René  
de Groot

### Council of Europe

- Very active in field of nationality law: already in 1949
- **1963 Convention** on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality
- **1993 Second Protocol** to 1963 Convention
- **1997 European Convention on Nationality (ECN)**
- **2006 Convention on the avoidance of statelessness in relation to State succession**

## Art. 1 (1) 1963 Convention

- Nationals of the Contracting Parties who are of full age and **who acquire of their own free will**, by means of naturalisation, option or recovery, the nationality of another Party shall lose their former nationality. They shall not be authorised to retain their former nationality.

## 1963 Convention

- Austria 1969
- Belgium 1991
- Denmark 1972
- France 1965
- Germany 1969
- Italy 1968
- Luxemburg 1971
- Netherlands 1985
- Norway 1969
- Sweden 1969
- [Ireland; Spain; UK only chapter II on military service ]
- Therefore ratification by 13 States, **10 States** are bound by chapter I

## Equal treatment men and women

Realization of **equal treatment** in nationality law took place in most countries in the 70's and 80's

Consequence: Considerable more cases of multiple nationality *iure sanguinis* due to introduction *ius sanguinis a matre et a patre*

Question: why avoid multiple nationality in case of voluntary acquisition of foreign nationality, but accept (or even stimulate) multiple nationality in case of birth as child of parents with different nationalities

## Second protocol 1993

- Allows exceptions on main rule of 1963 Convention:
- a) if a person acquires the nationality of another Contracting Party on whose territory either he was born and is resident, or has been ordinarily resident for a period of time beginning before the age of 18
- b) if a person acquires the nationality of his spouse
- c) if a minor whose parents are nationals of different Contracting Parties acquires the nationality of one of his parents

## Second protocol 1993

- Ratified by France, Italy, Netherlands
- Between these countries Art. 1 1963 Convention still applies, but the States involved may that nationality is not lost in the cases covered by the Second Protocol

## 1963 Convention

- **Austria** (reservation: authorisation to retain nationality possible, if the other State gives consent)
- Belgium denounced convention in 2007
- **Denmark**
- France denounced convention in 2008
- Germany denunciation in 2001
- *Italy* 2nd prot./ no loss of nationality in Lc
- Luxemburg denounced convention in 2008
- *Netherlands* 2nd prot./ exceptions loss of nationality
- **Norway**
- Sweden denunciation in 2001

## 1997 European Convention on nationality

- Codification of customary international law regarding nationality: art. 3-5
- Some rules on acquisition of nationality art. 6
- Exhaustive list of grounds for loss of nationality art. 7/ 8
- Neutral regarding multiple nationality

## Popularity of ECN 1997

- Ratification by 18 States (12 MS EEA: 11 MS EU + Iceland) Norway will ratify soon
- Most States ratified without reservations (9 States) or on 2-4 points (5 States)
- Exception: Austria (11 reservations on all points where Austrian law is not in accordance with ECN)
- Other States modified their nationality law in order to fulfill standards of ECN: harmonization

## Popularity ECN

- Albania (2004)
- Austria (2000)
- Bosnia Herzegovina (2009)
- Bulgaria (2006)
- Czech Republic (2004)
- Denmark (2002)
- Finland (2008)
- Germany (2005)
- Hungary (2002)
- Iceland (2003)
- Moldova (2000)
- Netherlands (2001)
- Portugal (2002)
- Romania (2005)
- Slovakia (2000)
- Sweden (2001)
- FYR Macedonia (2003)
- Ukraine (2007)

## Convention avoidance of statelessness in relation to State succession

- In force on 1 May 2009
- Hungary
- Moldova
- Norway

## **Committee of experts on nationality**

- 2008 appointed by Secretary General CoE
- Worked on Recommendation of the Council of Ministers
- Now submitted to CJ CoE 12/13 March 2009
- → Council of Ministers October 2009

## **Committee of experts on nationality**

- Preparation of 4th European conference on nationality law
- Update Nationality Bulletin of the CoE

## Recommendation on the nationality of the child

- Reducing statelessness of children
- Nationality as a consequence of a child-parent relationship
- Children born on the territory of a State to a foreign parent
- Position of children treated as nationals
- Rights of children in matters of nationality
- Registration of birth

## Recommendation

- Soft law: a non binding instrument
- Prepares discussion on a new treaty
- Interprets some rules of the ECN

Can only be adopted with unanimity

Therefore compromise character