BRIEFING PAPER

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Policy Department C
Citizens' Rights and Constitutional Affairs

A CLARIFICATION OF THE FUNDAMENTAL RIGHTS IMPLICATIONS OF STATELESS AND PERSONS ERASED FROM THE REGISTER OF RESIDENTS

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Résumé:
In several international instruments nationality is guaranteed as a human right. Consequently, statelessness is already as such in breach of the guarantee that everybody must be able to enjoy all human rights.
This paper describes international treaties which try to assure stateless persons the widest possible exercise of fundamental rights and freedoms, respectively try to reduce cases of statelessness. The European Union should encourage Member States to ratify these conventions, preferably without reservations.
The paper discusses the definition of a *de iure* stateless person, i.e. a person who is not considered as a national by any State under the operation of its law. Under this definition, the so-called erased persons in Slovenia - i.e. erased from the register of residents - must be classified as stateless. The same applies for Latvian permanent residents non citizens, be it that the latter category could also be classified as Latvian nationals without citizenship.
Finally, the paper recommends initiating comparative studies of the nationality laws of the Member States regarding the rules on avoidance and reduction of cases of statelessness and the facilitation of the access of stateless persons to the nationality of their country of residence.

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A CLARIFICATION OF THE FUNDAMENTAL RIGHTS IMPLICATIONS OF STATELESS AND ERASED PERSONS FROM THE REGISTER OF RESIDENTS

1. INTRODUCTION

Nationality is mentioned in several international documents as a human right.

Art. 15 Universal Declaration of Human Rights[1] declares:
"1. Everyone has the right to a nationality.
2. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality."

This paradigm is repeated in other international instruments dealing with human rights. One could for example make a reference to Art. 7 (1) Convention on the Rights of the Child[2] and Art. 20 American Convention on Human Rights.[3] Remarkably the European Convention on Human Rights does not mention the possession of a nationality as a human right. An important additional legal instrument was however realized by the Council of Europe: the European Convention on Nationality.[4] The right to a nationality is mentioned in Art. 4 lit. a, whereas Lit. b of the same Article provides that statelessness shall be avoided.

Nationality constitutes such an essential right because many other rights are linked to the possession of a nationality of a certain State. Therefore, it is frequently stressed that nationality is a right to have rights.

In perspective of these observations, one can conclude that the mere fact that a person is stateless already is in breach of the guarantee that every person must be able to enjoy all human rights.

Nevertheless, due to the national autonomy in nationality matters, it may occur that some persons do not have any nationality and are thus statelessness. It must be considered a concern of the international community to ensure the access of those stateless persons to a nationality. Only the acquisition of a nationality by a stateless person will completely remedy the observed violation of human rights. Furthermore, the international community has to establish rules which oblige States to avoid the causation of new cases of statelessness. Finally, but only as an interim solution, the international community has to set rules which give a solid legal position to persons who happen to be stateless, like i.a. the right to remain in the country.

This paper will pay attention to the legal position of stateless persons in general, more in particular to the UN Convention on the status of stateless persons of 1954.[5]

Of paramount importance are the questions, how to define statelessness and how to determine whether a person is stateless. In this study, several possible definitions of statelessness will be

[1] Resolution 217 A (III) of 10 December 1948.
[2] 1577 UNTS 3: 'The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.'
[3] O.A.S.Treaty Series No. 36; 1144 UNTS 123: ' 1. Every person has the right to a nationality. 2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality. 3. No one shall be arbitrarily deprived of his nationality or of the right to change it.'
[4] CETS 166
[5] 360 UNTS 117.

discussed. Special attention will be given to the distinction *de iure* statelessness and *de facto* statelessness. As a category at the borderline between these two categories attention will be paid to the so-called erased persons[6] and the so-called permanent residents non-citizens.[7] Mainly based on the UN Convention on the Reduction of Statelessness (New York 1961)[8] and the relevant provisions of the European Convention on Nationality (Strasbourg 1997), it will be described how states should reduce cases of statelessness occurring already at the birth of a person, in which manner the naturalization of stateless persons should be facilitated and how the grounds of loss of nationality should be drafted and applied in order to avoid new cases of statelessness. Special attention will be given to the question which Member States of the European Union ratified the aforementioned treaties and whether they made reservations relevant concerning the issue of statelessness.

2. INTERNATIONAL TREATIES ON (THE POSITION OF) STATELESS PERSONS

The UN Convention relating to the status of stateless persons (New York, 28 September 1954) was concluded in order to assure stateless persons the widest possible exercise of fundamental rights and freedoms. The Convention lays down a set of minimum rights and obligations of stateless persons. It includes provisions on non-discrimination, exemption from exceptional measures, juridical status, gainful employment, welfare, fiscal charges, transfer of assets, freedom of movement, identity papers, travel documents and – last but not least- facilitation of naturalization. The convention has been ratified by most Member States of the European Union (see annex I).[9] However, some Member States made far reaching reservations (see annex II). Furthermore, not all States which ratified the Convention implemented all obligations of the convention perfectly. [10] The European Union should encourage Member States to ratify the Convention and should stimulate Member States which ratified the Convention to lift the reservations made. Furthermore, Member States should fulfill their obligation under Art. 33 of the Convention to communicate to the Secretary-General of the United Nations the laws and regulations which they have adopted to ensure the application of this Convention. A comparative study of the legal position of stateless persons in the EU is desirable. This study should include precise numbers of stateless persons and persons with undetermined nationality.

The preamble of the 1930 Hague Convention on certain questions relating to the conflicts of nationality laws[11] stresses already that "the ideal towards which the efforts of humanity should be directed in this domain is the abolition of all cases [..] of statelessness" and therefore includes provisions which reduce cases of statelessness resulting from marriage.

A comprehensive UN Convention on the Reduction of Statelessness was concluded in New York on 30 August 1961.[12] This prescribes that Contracting State shall grant their nationality

[6] See i.a. Petition 0320/2005 by Matev Krivic (Slovenian), on behalf of the Association of Erased Residents of Slovenia (and Commission reply of 3 July 2006, European Parliament, Committee on Petitions, CM\623382EN.doc PE 376.491.

[7] Law on the Status of the former USSR Citizens Who Are not Citizens of Latvia or Any Other State, adopted on 12 April 1995. See i.a. Inga Reine, Protection of stateless persons in Latvia, paper presented during the Seminar on Prevention of Statelessness and Protection of Stateless Persons within the European Union, European Parliament Committee on Civil Liberties, Justice and Home Affairs on 26 June 2007. Available on http://www.europarl.europa.eu/hearings/20070626/libe/reine_en.pdf (visited on 22 November 2007).

[8] 989 UNTS 175.

[9] Exceptions are Austria, Bulgaria, Cyprus, Estonia, Malta, Poland and Portugal.

[10] See the very critical remarks of Gábor Gyulai on Hungary, Slovakia and Slovenia. He concludes that the situation in Poland (which did not ratify the Convention) is closer to meet the standards set by the 1954 Convention.

[11] 179 UNTS 89.

[12] 989 UNTS 175.

to a person born on its territory who otherwise would be stateless, either by *ius soli* or by facilitated access to their nationality. It also obliges a Contracting State to grant its nationality to a person, not born on its territory, who would otherwise be stateless, if the nationality of one of his parents at the time of the person's birth was that of the State involved. Several provisions assure, that loss of nationality (e.g. by marriage) shall be conditional upon possession or acquisition of another nationality. In principle, deprivation of a person of his nationality is not allowed if such deprivation would render him stateless. However, some exceptions on this rule exist. Eleven Member States of the European Union ratified the 1961 Convention. However, some States made reservations (see Annex III). The European Union should encourage Member States to ratify the 1961 Convention and should stimulate Contracting States to lift their reservations.

In order to eliminate a specific cause of statelessness, the Convention of the International Commission of Civil Status to reduce the number of cases of statelessness was concluded (Bern, 13 September 1973).[13] It obliges States to grant the nationality *iure sanguinis a matre* to children of a mother who is a national of the State involved, if they do not acquire any nationality from their father. Since all Member States of the European Union introduced the principle of equal treatment of men and women in their nationality law, the 1973 Convention is not relevant anymore.

Rules on the reduction and avoidance of statelessness are also included in the European Convention on Nationality (Strasbourg 1997). Art. 4 (b) of this Convention does not give a strong right, because it only declares that statelessness "shall be avoided". However, several other articles of the new Convention provide concrete measures to fight against statelessness. For example, Art. 6 of the European Convention obliges Contracting States to facilitate the access of stateless persons to their nationality. Art. 7 forbids – in principle - loss of nationality, if statelessness would be the consequence. Only one exception is allowed. Although one may question to what extent this is true, the explanatory report to the Convention declares that the avoidance of statelessness has become a part of customary international law. However, after the collapse of the USSR, Yugoslavia and Czechoslovakia, many successor States did not observe the principle of avoidance of statelessness. Nevertheless, the principle of avoidance of statelessness could at least be classified as regionally restricted customary international law, because in Western Europe the principle is generally accepted both in theory and in state practice.[14] But even then one has to admit, that the obligation to avoid statelessness is currently not an absolute one. The fact that the European Convention on Nationality still allows statelessness in the particular category provided for under Art. 7 (3) in combination with Art. 7 (1) (b) illustrates this. Eleven Member States of the European Union ratified the 1997 Convention and seven other Member States signed this Convention. However, some States made reservations (see Annex IV). The European Union should encourage Member States to ratify the Convention and should stimulate Contracting States to lift their reservations.

Furthermore, Recommendation No.R (99) 18 of the Committee of Ministers of the Council of Europe on the avoidance and the reduction of statelessness adopted on 15 September 1999 has to be mentioned. This recommendation recalls partly the principles already formulated in the European Convention on Nationality insofar as they have relevance for the avoidance and reduction of cases of statelessness, but some of these principles are further elaborated through specific and concrete guidelines.

Several international instruments deal with problems of nationality caused by State succession. In the framework of the Council of Europe a special Convention on the avoidance

[13] Tractatenblad 1974, 32.
[14] On regional customary international law in nationality matters Gerard-René de Groot, Staatsangehörigkeitsrecht im Wandel, Köln: Heymanns 1989, 22, 23.

of statelessness in relation to State succession was opened for signature on 19 May 2006.[15] This Convention is not yet in force since it has only been ratified by Norway.[16] The European Union should encourage Member State to ratify this Convention. Within the UN a special Convention on nationality of natural persons in relation to the succession of States is under preparation. [17] Finally, the Declaration of the European Commission for Democracy through Law (Venice Commission) on the Consequences of State Succession for the Nationality of Natural Persons[18] has to be mentioned.

3. DEFINITION AND DETERMINATION OF STATELESSNESS

Art. 1 of the Convention on the Status of Stateless Persons (1954) defines a stateless person as a person "who is not considered as a national by any State under the operation of its law". This definition is repeated in Art. 1 (c) of Convention on the avoidance of statelessness in relation to State succession. This definition of a "*de iure*" stateless person is also frequently followed in domestic nationality laws (so e.g. Art. 1 (1) (f) Netherlands Nationality Act 1985 (in the version valid since 2003)). It is remarkable that the 1961 Convention and the 1997 European Convention on Nationality do not include a definition of statelessness. For the interpretation of those conventions the definition of the 1954 Convention is followed in practice.

However, the definition of the 1954 Convention causes difficulties. One has to realize, that statelessness avoiding or reducing provisions in international instruments or in domestic nationality laws will only be activated, if the preliminary question that a certain person otherwise would be (or stay) stateless is answered in the affirmative.

Therefore, it occurs frequently that authorities do not classify a person as "stateless", but as a person whose nationality is "undetermined" or "under investigation". It also may occur, that a person is classified as a national of another State, although this is not confirmed or even denied by the foreign State involved. These classifications may be caused

a) by lack of reliable information on the nationality legislation of the States with which the person involved has some ties or
b) by a perhaps surprising interpretation of nationality provisions by the foreign State(s) involved.

However, the consequence could be that the person involved is deprived of the activation of statelessness avoiding or reducing provisions.

First of all, we have to establish that in case of different interpretation of foreign nationality provisions by the authorities of a the foreign State involved and by the authorities of another State - due to the principle of autonomy of States in nationality matters - always the interpretation of the foreign State involved prevails. If the foreign State refuses to recognize the person involved as a national, other States are absolutely not entitled to conclude that the person in question is nevertheless a national of this foreign State. If the person involved does not possess any other nationality, this person is *de iure* stateless and must enjoy the advantages of statelessness avoiding or reducing provisions.

Slightly different are those cases, where there is a lack of up to date information on the content of foreign nationality provisions. However, I would like to submit that if no

[15] CETS 200.
[16] Furthermore, the Convention was signed by Moldova, Montenegro and Turkey.
[17] See Annex to the United nations General Assembly Resolution 55/153 of 2001.
[18] Adopted at its 28th Plenary Meeting on 13-14 September 1996. See: http://www.legislationline.org/legislation.php?tid=11&lid=4820 (visited on 23 November 2007).

information can be acquired within a reasonable time[19] the person involved should be deemed to be stateless. It would be desirable to develop an international legal instrument in which this principle is codified, preferably with a concrete indication of which time is "reasonable".

In order to avoid the activation of statelessness avoiding or reducing provisions States sometimes deliberately do not classify a person as "stateless", but label the person involved differently, e.g. as a "permanent resident non-citizen".[20] This occurred i.a. in Latvia. In respect of the nationality position of the "permanent resident non-citizen", two different views can be defended:
a) If a "permanent resident non-citizen" does not possess the nationality of another State, this person is *de iure* stateless. Therefore statelessness avoiding or reducing provisions apply. If e.g. a Latvian "permanent resident non-citizen" moves to another Member State of the European Union (e.g. as a long term resident[21]) he enjoys the facilitations in force in that other Member State regarding stateless persons. If the State of residence provides for the acquisition of nationality *iure soli* by a child born on its territory if it otherwise would be stateless, the child of such a Latvian "permanent resident non-citizen" will acquire the nationality of the country of birth, provided that he does not acquire any other nationality.
b) The status as a "permanent resident non-citizen" has to be qualified as a second class nationality status of Latvia, comparable with an American national without citizenship[22], a British subject without citizenship[23] or (until 1962) a Netherlands national without citizenship.[24] In the event of such a classification, however, the question has to be raised and answered, whether such a second class Latvian national possesses European citizenship. In principle, 'every person holding the nationality of a Member State' is citizen of the Union (Art. 17 ECT). Persons holding the nationality of a Member State are – in principle – entitled to European citizenship, even if the Member State involved does not classify them as 'citizen'.[25]
Nevertheless, a Member State may exclude some nationals from European citizenship. This is allowed by Declaration (no. 2) on nationality of a Member State, which is attached to the Maastricht Treaty. Remarkable is that Latvia did not lodge such a declaration with the Presidency of the European Union. It is dubious, whether the mere fact that Latvia deliberately labeled the persons involved as 'permanent residents' and not as 'nationals' is already enough to exclude them from European citizenship.

A next issue to be dealt with is the borderline between *de iure* statelessness and *de facto* statelessness. The Final Act of the 1961 Convention, like the 1954 Convention, includes a recommendation that the provisions be extended to *de facto* stateless persons wherever possible. The Conference recommended that 'persons who are stateless *de facto* should as far as possible be treated as stateless *de iure* to enable them to acquire an effective nationality.'

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[19] Compare Art. 10 European Convention on Nationality 1997: "Each State Party shall ensure that applications relating to the acquisition, retention, loss, recovery or certification of its nationality be processed within a reasonable time."
[20] E.g. the Latvian legislation distinguishes between "Latvian citizens" (*Latvijas Republikas pilsoņi*), "permanently resident non-citizens" (*nepilsoņi*), "asylum-seekers and refugees", "stateless persons" (*bezvalstnieki*) and "aliens" in the broad sense of the term (*ārzemnieki*), including foreign nationals (*ārvalstnieki*) and stateless persons (*bezvalstnieki*).
[21] Council Directive 2003/109/EC of 25 November 2003, OJ L 16, 23.1.2004.
[22] Immigration and nationality Act 1952, Section 308 (8 U.S.C. 1408).
[23] Sections 30-32 British Nationality Act.
[24] 'Nederlands onderdaan – niet- Nederlander'; see Act of 10 February 1910, Staatsblad 1910, 55, repealed by Act of 14 September 1962, Staatsblad 1962, 358..
[25] The Dutch, English, French, German, Portuguese and Spanish texts of Art. 17 are obvious on this point. Confusing is e.g. the Italian text where the word 'cittadinanza' is used. See on this issue G.R. de Groot, Towards a European Nationality Law' in H. Schneider (ed.) Migration, Integration and Citizenship: A challenge for Europe's future' Maastricht: Forum (2005), 13-53, in particular 14-17.

De facto statelessness is sometimes defined as: [26] 'a person "unable to demonstrate that he/she is *de iure* stateless, yet he/she has no effective nationality and does not enjoy national protection.' This definition is too broad. It may be difficult to bring evidence in order to establish that a person is not considered as a national by any State and is therefore *de iure* stateless. A difficulty with the evidence is, however, not a reason to exclude a person from the definition of *de iure* stateless. It is therefore preferable to define a *de facto* stateless person as 'a person without effective nationality and therefore not enjoying any protection of his/her national State.'

The question has to be raised, how to classify the so-called erased persons in Slovenia. These are persons born in other areas of ex-Yugoslavia who lived in Slovenia at the time of Slovenian independence, but did not – for different reasons, many of them for not knowing that they should at all – apply for Slovenian citizenship until the end of 1991. In 1992 they were erased from the register of permanent residents of Slovenia (without notifying them) and are since then treated as foreign citizens. Most of them faced severe problems after being erased from the register of permanent residents of Slovenia: their civil documents were taken away, they lost their jobs, had problems with housing, lost social benefits, suffered problems in getting work permits and so on. The Slovenian Constitutional court established already in 1999 that erasing these people from the register of permanent residents of Slovenia was illegal and unconstitutional. Nevertheless, the legal position of many of these persons is still uncertain. From the point of view of nationality law, these persons -as far as they did not acquire *ex lege* the nationality of another successor state of ex-Yugoslavia - have to be classified as *de iure* stateless and therefore qualify for the protection of the 1954 Convention which was ratified by Slovenia in 1992. The difficulties which the erased persons have with identity documents, jobs, housing etc. constitute – without any doubt - severe violations of the 1954 Convention. Furthermore, it has to be stressed that their access to the nationality of their State of residence (in most cases: Slovenia) has to be facilitated.

A completely different problem related to the definition of statelessness is caused by the fact, that according to the definition of the 1954 Convention a person can also be stateless although he could acquire the nationality of a foreign State by simple registration. Several States provide that the child of a national born abroad does not acquire the nationality of the parent *iure sanguinis* by operation of the law, but only after the registration of the child in e.g. the registers of the competent consulate of the State involved. If the parent does not register the child, the nationality involved is not acquired. The consequence is that the child will be stateless if he does not acquire the nationality of the other parent or of the country of birth. If the country of birth provides for the acquisition of nationality *iure soli* for children who otherwise would be stateless, the child will acquire the nationality of this country.[27] If the country of birth provides for an option right for the stateless child involved after a certain period of residence, the parent can use that right for the child.[28]

It is very questionable whether the statelessness avoiding or reducing provision are created for those type of cases of – more or less self caused – cases of statelessness.[29] It is therefore not surprising that recent modifications of domestic nationality legislation in some States try to avoid the activation of statelessness avoiding provisions in those cases.

[26] Gyulai, o.c., 10.

[27] E.g. Spain: see Aurelia Álvarez Rodríguez y Observatorio Permanente de la Inmigración, Nacionalidad de los hijos de extranjeros nacidos en España, Madrid 2006.

[28] See for the Netherlands: G.R. de Groot, Het optierecht van in Nederland geboren staatloze kinderen op het Nederlanderschap, Migrantenrecht 2006, 312-318.

[29] The same applies for cases where a foreign nationality legislation allows to renounce the nationality involved, even if statelessness is the consequence.

An example is Art. 19-1 of the French Civil Code as modified in 2003[30])

"Est français :
1º [….] ;
2º L'enfant né en France de parents étrangers pour lequel les lois étrangères de nationalité ne permettent en aucune façon qu'il se voie transmettre la nationalité de l'un ou l'autre de ses parents."[31]

A similar development can be observed in the recent Finnish and Belgian nationality legislation.[32] However, it is remarkable that neither the 1961 Convention on the reduction of statelessness nor the 1954 Convention on the status of stateless persons allows for such an "amendment" of the definition of statelessness. It should be stressed, that the three States just mentioned (France, Finland and Belgium) did not ratify the 1961 Convention.[33] They were therefore free to modify their concept of statelessness. It would be desirable to discuss this difficulty in an international setting in view of amending the international definition of statelessness.

4. REDUCTION OF STATELESSNESS AT BIRTH

According to Art. 6 (2) of the 1997 Convention on Nationality each State Party shall provide in its internal law for its nationality to be acquired by persons born on its territory who would otherwise be stateless. This rule is repeated in Recommendation R 99 (18) of the Council of Europe in Part II A sub b. The nationality of the country of birth has to be attributed either *ex lege* at birth or subsequently to children who remained stateless upon application. In the latter case the grant of nationality may be made subject to one or both of the following conditions:

a) lawful and habitual residence on the territory of the State involved for a period not exceeding five years immediately preceding the lodging of the application, and
b) absence of a conviction for a serious offence.

The wording of this paragraph is inspired by Art. 1 of the 1961 Convention on the Reduction of Statelessness. The 1961 Convention also provides for an acquisition *ex lege* of the nationality of the country of birth if the child otherwise would be stateless, or an acquisition upon application which may be subject to one or more of the following conditions:
'a) that the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;
b) that the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all;
c) that the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge;
d) that the person concerned has always been stateless.'

[30] Loi nº 2003-1119 du 26 novembre 2003 (art. 64), Journal Officiel du 27 novembre 2003.
[31] Is French:
1° A child born in France of stateless parents;
2° A child born in France of alien parents and to whom the transmission of the nationality of either parent is not by any means allowed by foreign Nationality Acts.(Act no 2003-1119 of 26 Nov. 2003).
[32] Art. 9 (4) Finish Nationality Act 2003; Art. 10 Belgian Nationality Act.
[33] Nevertheless, these countries should be encouraged to ratify the 1961 convention. At the occasion of ratification they could make a declaration in which they exclude from the definition of stateless person, a person who could be registered as a national of the State of a parent.

However, there is a remarkable difference between the both international instruments. The European Convention on Nationality allows Contracting States to require a 'lawful' residence for a certain period, whereas the 1961 Convention only allows Contracting States to require 'habitual residence'.

The facilitation offered to stateless persons born on the territory of the State is not in all States which ratified the relevant conventions in conformity with the just described rules. E.g. according to the nationality law of the Netherlands, nationality is not attributed *ex lege* to persons born stateless on Netherlands territory, but stateless persons can opt for Dutch nationality, provided they fulfill the conditions laid down in Art. 6 (1) (b) Netherlands Nationality Act: the person involved has to be born on Dutch territory, and he must have since his birth lawfully his main place of residence in the Netherlands, the Netherlands Antilles or Aruba for at least three years and he has to be stateless since his birth. On two points this facilitation is not in accordance with the rules of the Conventions. It is not in conformity with both Conventions that Art. 6 of the Nationality Act requires that the stateless person must have resided "since his birth" on the territory of the Netherlands. Moreover, the requirement of a lawful residence is allowed by the 1997 European Convention on Nationality, but is contrary to the 1961 Convention. The drafters of the 1961 Convention realized that allowing requiring a *lawful* residence would open the possibility that States avoid the obligation to grant the nationality by refusal of a residence permit to a person born on the territory.

It also has to be mentioned, that Austria made a reservation in respect to Art. 6, (2) (b) European Convention on Nationality (see Annex IV), which is essentially a 'translation' of Par. 14 of the Austrian Nationality Act. Obviously Austria did not want to change the nationality position of stateless persons born in Austria by any way. All of the conditions formulated in Par. 14 are incorporated in the reservation.

In the previous paragraph it was already mentioned, that some States do not provide for the transmission of their nationality by operation of the law in case of birth abroad of a child of a national. This is allowed by i.a. Art. 6 (1) (a) European Convention on Nationality, which allows that States make an exception for children born abroad. Recommendation R 99 (18) underscores this in rule II A, sub a:
"Each State should provide for its nationality to be acquired *ex lege* by children one of whose parents possesses, at the time of birth of these children, its nationality. Exceptions made with regard to children born abroad should not lead to situations of statelessness." The second sentence of this rule is a useful addition to the Convention. Attention has to be paid as well to the explanatory report on this rule (Nr. 65 and 66, first sentence"):
"However, it should be noted that this provision does not require a State to grant its nationality to children born abroad generation after generation without limitation, when such children have no links with that State. Normally, such children will acquire the nationality of the State of birth (with which - presumably - they have a genuine and effective link). However, any provisions limiting the transmission of the nationality of a parent to a child born abroad should not apply if such a child would become stateless.
It must be added that the acquisition of the nationality of one of the parents at birth on the basis of the *ius sanguinis* principle, by children born abroad should be automatic and not made conditional upon a registration or option, the absence of which would make them stateless."

Moreover, with respect to children whose parenthood is established by recognition, court order or similar procedures Art. 6 (1) (a) European Convention on Nationality allows States to provide, that the child only acquires its nationality following the procedure determined by its internal law. Consequently, many States have special rules on the possibility to transmit the nationality of men to their children born out of wedlock. Such limitations should also be

subject to the proviso, that the nationality of the father is nevertheless acquired *ex lege* if the child otherwise would be stateless.[34]

A comparative study on whether and how the Member States of the European Union try to avoid cases of statelessness occurring at birth is desirable.

5. FACILITATION OF THE ACCESS TO NATIONALITY FOR STATELESS PERSONS

As already mentioned above, the 1954 Convention prescribes the facilitation of the naturalization of stateless persons by their State of residence. Art. 32 reads:
'The Contracting States shall as far as possible facilitate the assimilation and naturalization of stateless persons. They shall in particular make every effort to expedite naturalization proceedings and to reduce as far as possible the charges and costs of such proceedings.'

A facilitation of the access of a stateless person to the nationality of the State of residence is also required by Art. 6 (4) (g) European Convention on Nationality:
'Each State Party shall facilitate in its internal law the acquisition of its nationality for the following persons: […] g) stateless persons and recognized refugees lawfully and habitually resident on its territory.'

Of the Member States of the European Union several States provide that a stateless person can apply for naturalization after a shorter period of residence than other aliens.

A comparative study on whether and how the Member States of the European Union facilitate the access of stateless persons residing on their territory is desirable.

6. STATELESSNESS AS A CONSEQUENCE OF LOSS OF NATIONALITY

The 1961 Convention prohibits – in principle – loss of nationality if statelessness would be the consequence (Art. 7 (6)), but allows some exceptions in Art. 7 (4) and (5):

'4. A naturalized person may lose his nationality on account of residence abroad for a period, not less than seven consecutive years, specified by the law of the Contracting State concerned if he fails to declare to the appropriate authority his intention to retain his nationality.
5. In the case of a national of a Contracting State, born outside its territory, the law of that State may make the retention of its nationality after the expiry of one year from his attaining his majority conditional upon residence at that time in the territory of the State or registration with the appropriate authority.'

Art. 8 (2) (b) allows deprivation of nationality 'where the nationality has been obtained by misrepresentation or fraud.'

Moreover Art. 8 (3) allows a Contracting State to 'retain the right to deprive a person of his nationality, if at the time of signature, ratification or accession it specifies its retention of such

[34] The same applies for States which still discriminate women regarding the possibility to transmit their nationality to children born within wedlock. States should – at least – provide that a child acquires the nationality of the mother, if he otherwise would be stateless. However, as already mentioned above Member States of the European Union do not discriminate women regarding to the transmission of their nationality to their children born within wedlock.

right on one or more of the following grounds, being grounds existing in its national law at that time'. The grounds for loss which can be maintained by such a declaration are:

'(a) that, inconsistently with his duty of loyalty to the Contracting State, the person;
(i) has, in disregard of an express prohibition by the Contracting State rendered or continued to render service to, or received or continued to receive emoluments from another State, or
(ii) has conducted himself in a manner seriously prejudicial to the vital interests of the State;
(b) that the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.'

As indicated in Annex III some Member States of the European Union made a declaration as mentioned in Art. 8 (3).

The European Convention on Nationality is much stricter than the 1961 Convention. The third and final paragraph of Art. 7 provides that, in principle, loss of a nationality may not cause statelessness. The only exception allowed to this principle is deprivation of nationality because of fraudulent conduct, false information or concealment of any material fact during the naturalization or option procedure. The Explanatory report on Art. 7 of the European Convention on Nationality mentions in Nr. 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*)."

This "explanation" is obviously inspired by the practice of the nationality authorities in some States, which were involved in the drafting of the Convention involved.[35] However, Recommendation 99 (18) of the Council of Europe underscores in Part C sub c: "In order to avoid, as far as possible, situations of statelessness, a State should not necessarily deprive of its nationality persons who have acquired its nationality by fraudulent conduct, false information or concealment of any relevant fact. To this effect, the gravity of the facts, as well as other relevant circumstances, such as the genuine and effective link of these persons with the State concerned, should be taken into account".

Increasingly, States provide for the loss of nationality if the acquisition of the nationality occurred by means of fraudulent conduct, false information or concealment of a relevant fact attributable to the applicant.[36] The rules and procedures which can lead to the loss of nationality on this ground, differ considerably from country to country. In perspective of Recommendation 99 (18), it is desirable, that separates decisions should be made regarding all individual persons involved: children should not follow their parents automatically in the loss of nationality based on fraud; attention has to be paid to the special circumstances of their case.[37] Furthermore, the loss of nationality based on fraud should – in principle – be subject to limitation: after a certain period of time this ground for loss should not be possible anymore, due to the fact during the years the genuine link with the State of the new acquired nationality becomes more and more intensive.[38] The construction "void *ab initio*" should be

[35] See G.R. de Groot, The loss of nationality; a critical inventory, in: David. A. Martin/ Kay Hailbronner (ed.), Rights and Duties of Dual Nationals: Evolution and Prospects, Kluwer Law International, The Hague/ London/ Boston 2003, 201-299.
[36] See art. 7 (1) (b) European Convention on Nationality.
[37] Compare Art. 14 (1) Netherlands Nationality Act (version valid since 2003).
[38] The German Constitutional Court (Bundesverfassungsgericht) 24 May 2006 obviously restricts the deprivation of nationality because of fraud with the condition, that it has to be "zeitnah" (close in time).

rejected for at least three different reasons. In the first place, this construction does not allow for separate decisions regarding the different persons involved (for example children). Secondly, this construction is not subject to limitations in time.[39] Finally, special circumstances can not be taken into account. For these reasons the "void *ab initio"* construction may be in conflict with the principle of proportionality, which together with the principle of subsidiarity has developed to a leading principle of EU law. If the authorities of a Member State would come to the conclusion that e.g. fraud concerning the identity (name, date and place of birth) of an applicant for naturalization may have as general consequence that the naturalization is deemed to be void without any regard as to the seriousness, the reasons for and circumstances of the fraud and the time which has passed since the naturalization this could be seen as disproportional. In perspective of EU law such a disproportionality could be problematic, if the loss of nationality of the Member State involved also leads to the loss of European citizenship.

Deprivation of nationality because of fraud with as consequence statelessness is also possible, if a national of a Member State of the European Union acquired by fraudulent behavior the nationality of another Member State and lost as a consequence of the acquisition of a new nationality his old nationality. If the new nationality is lost by deprivation because of the fraud and the old nationality is not automatically reacquired, the person involved is stateless and therefore does no longer possess European citizenship. Again on could argue, that such a deprivation would violate the principle of proportionality. The difficulty involved, is also discussed by Hailbronner. He concludes that the Member States of the European Union are obliged to coordinate their nationality law to some extent in order to avoid that a Union citizen is deprived of his status by a negative interplay between the nationality legislation of the countries involved.[40]

[39] See on the difficulties caused by this construction: G.R. de Groot, Identiteitsfraude en het Nederlanderschap van vóór 1 april 2003 genaturaliseerde personen, Nederlands Juristenblad 2007, 74-80 and G.R. de Groot/ H. Schneider, Erschlichene Einbürgerungen, Identitätsbetrug und Entzug der Staatsangehörigkeit in Deutschland und den Niederlanden, in: Rechtsstaatliche Ordnung Europas – Gedächtnisschrift für Albert Bleckmann, Köln: Carl Heymanns 2007, 79-102.

[40] Kay Hailbronner, in : Rainer Bauböck/ Eva Ersboll/ Kees Groenendijk/ Harald Waldrauch (eds.), Acquisition and Loss of Nationality, Volume I : Comparative Analyses, Policies and Trends in 15 European Countries, Amsterdam : Amsterdam University Press 2006, 93, 94.

7. RECOMMENDATIONS

- The EU should promote the accession of all Member States to 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, the 1997 European Convention on Nationality and the 2006 Convention on the avoidance of statelessness in relation to State succession;
- The EU should encourage Member States which ratified these Conventions but made certain reservations to reconsider their reservations;
- A *de iure* stateless person is every person "who is not considered as a national by any State under the operation of its law" (1954 Convention). Consequently, if a foreign State refuses to recognize a certain person as a national, other States are absolutely not entitled to conclude that the person in question is nevertheless a national of this foreign State. If no information can be acquired within a reasonable time on the nationality of a person, he/she should be deemed to be stateless. The EU should promote the development of an international legal instrument in which this principle is codified, preferably with a concrete indication of which time is "reasonable'.
- Latvian 'permanent residents non-citizens' should either be classified as *de iure* stateless persons or as Latvian nationals without citizenship.
- Persons erased from the Slovenian register of permanent residents have to be classified as *de iure* stateless persons.
- The EU should encourage an international discussion on the desirability to exclude from the definition of stateless persons, children who could be registered as a national of the State of a parent.
- The EU should initiate a comparative study of the legal position of stateless persons in the different Member States of the EU. This study should include precise numbers of stateless persons and persons with undetermined nationality.
- The EU should initiate a comparative study on the nationality laws of the Member States in which an analysis is made how Member States try a) to reduce statelessness at birth, b) facilitate the access of stateless persons to their nationality, c) avoid statelessness caused by the grounds for loss of nationality.

8. LITERATURE

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ANNEX I: SURVEY OF RATIFICATIONS

MS EU	Convention relating to the Status of Stateless Persons (1954)	Convention on the Reduction of Statelessness (1961)	European Convention on Nationality (1997)
Austria		1972	1998
Belgium	1960		
Bulgaria			2006
Cyprus			
Czech Republic	2004	2001	2004
Denmark	1956	1977	2002
Estonia			
Finland	1968		S: 1997
France	1960	S: 1962	S: 2000
Germany	1976	1977	2005
Greece	1975		S: 1997
Hungary	2001		2001
Ireland	1962	1973	
Italy	1962		S: 1997
Latvia	1999	1992	S: 2001
Lithuania	2000		
Luxembourg	1960		
Malta			S: 2003
Netherlands	1962	1985	2001
Poland			S: 1999
Portugal			2001
Romania	2006	2006	2005
Slovakia	2000	2000	1998
Slovenia	1992		
Spain	1997		
Sweden	1965	1969	2001
United Kingdom	1959	1966	

Year = year of ratification

S = year of signature, but no ratification yet

ANNEX II: DECLARATIONS AND RESERVATIONS TO THE 1954 CONVENTION RELATING TO THE STATUS OF STATELESS PERSONS, MADE BY MEMBER STATES OF THE EUROPEAN UNION.

As of 20 September 2006
Declarations and Reservations
(Unless otherwise indicated, the declarations and reservations were made upon ratification, accession or succession.)

Czech Republic

Declarations:
" ...Acceding to the Convention we declare the following:
1. Pursuant to Article 27 of the Convention, identity papers shall be issued only to stateless persons having permanent residence permits in the territory of the Czech Republic in accordance with the country's national legislation.
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2. Article 23 of the Convention shall be applied to the extent provided by the national legislation of the Czech Republic.
3. Article 24, paragraph 1(b) shall be applied to the extent provided by the national legislation of the Czech Republic.
4. Pursuant to Article 28 of the Convention, travel documents shall be issued to stateless persons having permanent residence permits in the territory of the Czech Republic in accordance with the country's national legislation. Such persons shall be issued "aliens' passports" stating that their holders are stateless persons under the Convention of 28th September 1954."

Denmark

Denmark is not bound by article 24, paragraph 3.
The provisions of article 24, paragraph 1, under which stateless persons are in certain cases placed on the same footing as nationals, shall not oblige Denmark to grant stateless persons in every case exactly the same remuneration as that provided by law for nationals, but only to grant them what is required for their support.
Article 31 shall not oblige Denmark to grant to stateless persons a status more favourable than that accorded to aliens in general.

Finland

"(1) A general reservation to the effect that the application of those provisions of the Convention which grant to stateless persons the most favourable treatment accorded to nationals of a foreign country shall not be affected by the fact that special rights and privileges are now or may in future be accorded by Finland to the nationals of Denmark, Iceland, Norway and Sweden or to the nationals of any one of those Countries;
"(2) A reservation to article 7, paragraph 2, to the effect that Finland is not prepared, as a general measure, to grant stateless persons who fulfil the conditions of three years residence in Finland an exemption from any legislative reciprocity which Finnish law may have stipulated as a condition governing an alien's eligibility for same right or privilege;
"(3) A reservation to article 8 to the effect that that article shall not be binding on Finland;
"(4) . . .
"(5) A reservation to article 24, paragraph 1 (b) and paragraph 3 to the effect that they shall not be binding on Finland;
"(6) A reservation to article 25, to the effect that Finland does not consider itself bound to cause a certificate to be delivered by a Finnish authority, in the place of the authorities of a foreign country, if the documentary records necessary for the delivery of such certificate do not exist in Finland;
"(7) A reservation with respect to the provisions contained in article 28. Finland does not

accept the obligations stipulated in the said article, but is prepared to recognize travel documents issued by other Contracting States pursuant to this article."

France

The provisions of article 10, paragraph 2, are regarded by the French Government as applying only to stateless persons who were forcibly displaced from French territory, and who have, prior to the date of entry into force of this Convention, returned there direct from the country to which they were forced to proceed, without in the meantime having received authorization to reside in the territory of any other State.

Germany

1. Article 23 will be applied without restriction only to stateless persons who are also refugees within the meaning of the Convention of 28 July 1951 relating to the Status of
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Refugees and the Protocol of 31 January 1967 relating to the Status of Refugees, but otherwise only to the extent provided for under national legislation;
2. Article 27 will not be applied.

Hungary

Reservations:
Reservation to Articles 23 and 24 of the Convention:
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"The Republic of Hungary shall apply the provisions contained in Articles 23 and 24 in such a way that it ensures to stateless persons having permanent domestic residence equal treatment with its own citizens."
Reservation to Article 28 of the Convention:
" The Republic of Hungary shall apply the provisions contained in Article 28 by issuing a travel document in both Hungarian and English languages, entitled 'Utazási Igazolvány hontalan személy részére / Travel Document for Stateless Person' and supplied with the indication set out in Paragraph 1, Subparagraph 1 of the Schedule to the Convention."

Ireland

Declaration:
"The Government of Ireland understand the words `public order' and `in accordance with due process of law', as they appear in article 31 of the Convention, to mean respectively, `public policy' and `in accordance with the procedure provided by law'."
Reservation:
"With regard to article 29 (1), the Government of Ireland do not undertake to accord to stateless persons treatment more favourable than that accorded to aliens generally with respect to
(a) The stamp duty chargeable in Ireland in connection with conveyances, transfers and leases of lands, tenements and hereditaments, and
(b) Income tax (including sur-tax)."

Italy

The provisions of articles 17 and 18 are recognized as recommendations only.

Latvia

Reservations:
"In accordance with article 38 of the [Convention] the Republic of Latvia reserves the right to apply the provisions of paragraph 1 (b) of Article 24 subject to limitations provided for by the national legislation."
"In accordance with article 38 of the [Convention] the Republic of Latvia reserves the right to apply the provisions of Article 27 subject to limitations provided for by the national

legislation."

Netherlands

The Government of the Kingdom reserves the right not to apply the provisions of article 8 of the Convention to stateless persons who previously possessed enemy nationality or the equivalent thereof with respect to the Kingdom of Netherlands;
With reference to article 26 of the Convention, the Government of the Kingdom reserves the right to designate a place of principal residence for certain stateless persons or groups of stateless persons in the public interest.

Slovakia

Declaration:
"The Slovak Republic shall not be bound by article 27 to that effect it shall issue identity papers to any stateless person that is not in possession of a valid travel document. The Slovak Republic shall issue identity papers only to the stateless person present on the territory of the Slovak Republic who have been granted long-term or permanent residence permit."

Spain

Reservation:
"[The Government of the Kingdom of Spain] makes a reservation to article 29, paragraph 1, and considers itself bound by the provisions of that paragraph only in the case of stateless persons residing in the territory of any of the Contracting States."

Sweden

Reservations:
(1) . . .
(2) To article 8. This article will not be binding on Sweden.
(3) To article 12, paragraph 1. This paragraph will not be binding on Sweden.
(4) To article 24, paragraph 1 (b). Notwithstanding the rule concerning the treatment of stateless persons as nationals, Sweden will not be bound to accord to stateless persons the same treatment as is accorded to nationals in respect of the possibility of entitlement to a national pension under the provisions of the National Insurance Act; and likewise to the effect that, in so far as the right to a supplementary pension under the said Act and the computation of such pension in certain respects are concerned, the rules applicable to Swedish nationals shall be more favour able than those applied to other insured persons.
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(5) To article 24, paragraph 3. The provisions of this paragraph will not be binding on Sweden.
(6) To article 25, paragraph 2. Sweden does not consider itself obliged to cause a Swedish authority, in lieu of a foreign authority, to deliver certificates for the issuance of which there is insufficient documentation in Sweden.

United Kingdom of Great Britain and Northern Ireland

Declaration:
"I have the honour further to state that the Government of the United Kingdom deposit the present instrument of ratification on the understanding that the combined effects of articles 36 and 38 permit them to include in any declaration or notification made under paragraph 1 of article 36 or paragraph 2 of article 36 respectively any reservation consistent with article 38 which the Government of the territory concerned might desire to make."
Reservations:
"When ratifying the Convention relating to the Status of Stateless Persons which was opened for signature at New York on September 28, 1954, the Government of the United Kingdom have deemed it necessary to make certain reservations in accordance with paragraph 1 of Article 38 thereof the text of which is reproduced below:

(1) The Government of the United Kingdom of Great Britain and Northern Ireland understand Articles 8 and 9 as not preventing them from taking in time of war or other grave and exceptional circumstances measures in the interests of national security in the case of a stateless person on the ground of his former nationality. The provisions of Article 8 shall not prevent the Government of the United Kingdom of Great Britain and Northern Ireland from exercising any rights over property or interests which they may acquire or have acquired as an Allied or Associated Power under a Treaty of Peace or other agreement or arrangement for the restoration of peace which has been or may be completed as a result of the Second World War. Furthermore, the provisions of Article 8 shall not affect the treatment to be accorded to any property or interests which at the date of entry into force of this Convention for the United Kingdom of Great Britain and Northern Ireland are under the control of the Government of the United Kingdom of Great Britain and Northern Ireland by reason of a state of war which exists or existed between them and any other State.
(2) The Government of the United Kingdom of Great Britain and Northern Ireland, in respect of such of the matters referred to in sub-paragraph (b) of paragraph 1 of Article 24 as fall within the scope of the National Health Service, can only undertake to apply the provisions of that paragraph so far as the law allows.
(3) The Government of the United Kingdom of Great Britain and Northern Ireland cannot undertake to give effect to the obligations contained in paragraphs 1 and 2 of Article 25 and can only undertake to apply the provisions of paragraph 3 so far as the law allows."
Commentary: "In connexion with sub-paragraph (b) of paragraph 1 of Article 24 which relates to certain matters within the scope of the National Health Service, the National Health Service (Amendment) Act 1949 contains powers for charges to be made to persons not ordinarily resident in Great Britain (which category would include some stateless persons) who receive treatment under the Service. These powers have not yet been exercised but it may be necessary to exercise them at some future date. In Northern Ireland the Health
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Services are restricted to persons ordinarily resident in the country except where regulations are made to extend the Services to others. For these reasons, the Government of the United Kingdom, while prepared in the future, as in the past, to give the most sympathetic consideration to the situation of stateless persons, find it necessary to make reservation to sub-paragraph (b) of Article 24.
"No arrangements exist in the United Kingdom for the administrative assistance for which provision is made in Article 25 nor have any such arrangements been found necessary in the case of stateless persons. Any need for the documents or certifications mentioned in paragraph 2 of that Article would be met by affidavit."

ANNEX III: DECLARATIONS AND RESERVATIONS TO THE 1961 CONVENTION ON THE REDUCTION OF STATELESSNESS , MADE BY MEMBER STATES OF THE EUROPEAN UNION

Declarations and Reservations
(Unless otherwise indicated, the declarations and reservations were made upon ratification, accession or succession.)

Austria
Declarations concerning article 8, paragraph 3 (a), (i) and (ii):

"Austria declares to retain the right to deprive a person of his nationality, if such person enters, on his own free will, the military service of a foreign State.

"Austria declares to retain the right to deprive a person of his nationality, if such person being in the service of a foreign State, conducts himself in a manner seriously prejudicial to the interests or to the prestige of the Republic of Austria."

France
At the time of signature of this Convention, the Government of the French Republic declares that it reserves the right to exercise the power available to it under article 8 (3) on the terms laid down in that paragraph, when it deposits the instrument of ratification of the Convention.

The Government of the French Republic also declares, in accordance with article 17 of the Convention, that it makes a reservation in respect of article 11, and that article 11 will not apply so far as the French Republic is concerned.

The Government of the French Republic further declares, with respect to article 14 of the Convention, that in accordance with article 17 it accepts the jurisdiction of the Court only in relation to States Parties to this Convention which shall also have accepted its jurisdiction subject to the same reservations; it also declares that article 14 will not apply when there exists between the French Republic and another party to this Convention an earlier treaty providing another method for the settlement of disputes between the two States.

Territorial application:
France, 31 May 1962. The Convention will apply to the Overseas Departments and the Overseas Territories of the French Republic

Germany
The Federal Republic of Germany will apply the said Convention:

(a) in respect of elimination of statelessness, to persons who are stateless under the terms of article 1, paragraph 1, of the Convention relating to the Status of Stateless Persons of 28 September 1954;

(b) in respect of prevention of statelessness and retention of nationality, to German nationals within the meaning of the Basic Law (Constitution) for the Federal Republic of Germany.

Ireland
"In accordance with paragraph 3 of article 8 of the Convention Ireland retains the right to deprive a naturalised Irish citizen of his citizenship pursuant to section 19 (1) (b) of the Irish Nationality and Citizenship Act, 1956, on grounds specified in the aforesaid paragraph."

United Kingdom of Great Britain and Northern Ireland

“The Government of the United Kingdom declares that], in accordance with paragraph 3 (a) of Article 8 of the Convention, notwithstanding the provisions of paragraph 1 of Article 8, the United Kingdom retains the right to deprive a naturalised person of his nationality on the following grounds, being grounds existing in United Kingdom law at the present time: that, inconsistently with his duty of loyalty to Her Britannic Majesty, the person

"(i) Has, in disregard of an express prohibition of Her Britannic Majesty, rendered or continued to render services to, or received or continued to receive emoluments from, another State, or

"(ii) Has conducted himself in a manner seriously prejudicial to the vital interests of Her Britannic Majesty."

Territorial application:
29 Mar 1966 (a) The Convention shall apply to the following non-metro politan territories for the international relations of which the United Kingdom is responsible:Antigua, Bahamas, Barbados, Basutoland, Bechuanaland, Bermuda, British Guiana, British Honduras, British Solomon Islands Protectorate, Cayman Islands, Channel Islands, Dominica, Falkland Islands, Fiji, Gibraltar, Gilbert and Ellice Islands, Grenada, Hong Kong, Isle of Man, Mauritius, Montserrat, St. Helena, St. Kitts, St. Lucia, St . Vincent, Seychelles, Swaziland, Turks and Caicos Islands, Virgin Islands (b) The Convention shall not apply to Aden and the Protector ate of South Arabia; Brunei; Southern Rhodesia; and Tonga, whose consent to the application of the Convention has been withheld

ANNEX IV: DECLARATIONS AND RESERVATIONS TO THE EUROPEAN CONVENTION ON NATIONALITY (1997), MADE BY THE MEMBER STATES OF THE EUROPEAN UNION

Declarations and Reservations

(Unless otherwise indicated, the declarations and reservations were made upon ratification, accession or succession.)

Austria

Austria declares that the term "parents/parents" used in Articles 6 and 7 of this Convention does not, according to the Austrian legislation on nationality, include the father of children born out of wedlock.

Austria declares that the term "lawful and habitual residence/résidence légale et habituelle" used in Articles 6 and 9 of this Convention will be interpreted according to the Austrian legislation on nationality as *"Hauptwohnsitz"* (main domicile) in the sense of the Austrian legislation concerning the main domicile.

Concerning Article 6, paragraph 1, lit (b), Austria declares to retain the right that foundlings found in the territory of the Republic are regarded, until proven to the contrary, as nationals by descent only if they are found under the age of six months.

Concerning Article 6, paragraph 2, lit (b), Austria declares to retain the right to grant an alien nationality only if he:

1. was born in the territory of the Republic and has been stateless since birth;

2. has had his ordinary residence in the territory of the Republic for a period of not less than ten years, of which a continuous period of not less than five years must precede the granting of nationality;

3. has not been convicted with final effect by a domestic court for certain offences, specified in section 14, paragraph 1, sub-paragraph 3, of the Law on Nationality 1985 as amended;

4. has neither been sentenced with final effect by a domestic nor a foreign court to imprisonment of five or more years; if the offences underlying the sentence pronounced by the foreign court are also punishable under domestic law and the sentence was passed in proceedings complying with the principles of Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4th November 1950;

5. applies for naturalisation after completing the age of eighteen and not later than two years after attaining majority.

Concerning Article 6, paragraph 4, lit (g), Austria declares to retain the right not to facilitate the acquisition of its nationality for stateless persons and recognised refugees lawfully and habitually resident on its territory (i.e. main domicile) for this reason alone.

Austria declares to retain the right to deprive a national of its nationality if:

1. he acquired the nationality more than two years ago either through naturalisation or the extension of naturalisation under the Law on Nationality of 1985 as amended;

2. neither Section 10, paragraph 4, nor Section 16, paragraph 2, nor Section 17, paragraph 4, of the Law on Nationality 1985 as amended were applied;

3. on the day of naturalisation (extension of naturalisation) he was not a refugee as defined in the Convention of 28th July 1951 or the Protocol relating to the legal Status of Refugees of 31st January 1967, and

4. despite the acquisition of its nationality he has retained a foreign nationality for reasons he is accountable for.

Austria declares to retain the right to deprive a national of its nationality, if such person, being in the service of a foreign State, conducts himself in a manner seriously prejudicial to the interests or the reputation of the Republic of Austria.

Concerning Article 7 in conjunction with Article 7, paragraph 1, lit (c), Austria declares to retain the right to deprive a national of its nationality, if such person voluntarily enters the military service of a foreign State.

Concerning Article 7 in conjunction with Article 7, paragraph 1, lit (f), Austria declares to retain the right to deprive a national of its nationality whenever it has been ascertained that the conditions leading to the acquisition of nationality *ex lege*, as defined by its internal law, are not fulfilled any more.

Germany
Article 7

Germany declares that loss of German nationality ex lege may, on the basis of the "option provision" under Section 29 of the Nationality Act [Staatsangehörigkeitsgesetz-StAG] (opting for either German or a foreign nationality upon coming of age), be effected in the case of a person having acquired German nationality by virtue of having been born within Germany (*jus soli*) in addition to a foreign nationality.

Rationale

A reservation is required on account of the provisions of the new sub-sections 2 and 3 of Section 29 of the Nationality Act (StAG), under which persons who had acquired German nationality under Section 4 (3) of the StAG and are required to state their respective option may lose their German nationality. This reservation is based on the fact that Article 7 of the European Convention on Nationality of 6 November 1997 provides that a State Party to the Convention may, in its internal law, provide for the loss of its nationality ex lege or at the initiative of the State Party only in the cases provided for in that Article. However, none of the cases definitively listed in Article 7 with regard to loss of nationality are in conformity with the provisions governing loss of nationality as laid down in Section 29 (2) and (3) of the StAG. The reservation required in this respect is compatible with the object and purpose of the Convention of 6 November 1997. The same applies to persons who under Section 40b of the StAG are eligible for privileged naturalization. Upon attaining their majority, they are also under the obligation to declare their intent (option), possibly entailing loss of German nationality under the provisions of Section 29 (2) and (3) of the StAG.

Article 7 (1) (f)

Germany declares that loss of nationality may also occur if, upon a person's coming of age, it is established that the requirements governing acquisition of German nationality were not met.

Rationale

This reservation is required since German law provides for the possibility of minors and adults losing their German nationality if the preconditions which led to the acquisition of German nationality are no longer fulfilled.

Article 7 (1) (g)

Germany declares that loss of German nationality can also occur in the case of an adult being adopted.

Rationale

This reservation is required since the German law of nationality and citizenship provides for loss of German nationality also in the case of adoption of an adult. This applies when - by way of exception - the adoption of an adult has the effects of the adoption of a minor. This is only likely to occur in quite exceptional cases.

Netherlands

Declaration contained in a Note Verbale from the Permanent Representation, handed over to the Secretary General at the time of deposit of the instrument of acceptance, on 21 March 2001 - Or. Engl.

With regard to Article 7, paragraph 2, of the Convention, the Kingdom of the Netherlands declares this provision to include the loss of the Dutch nationality by a child whose parents renounce the Dutch nationality as referred to in Article 8 of the Convention.
Period covered: 1/7/2001 -

Romania

Romania made a reservation concerning art. 6. The text is however not yet available and will soon be published on www.coe.int.