CONVENȚIA EUROPEANĂ CU PRIVIRE LA CETĂȚENIE*

ADOPTATĂ LA STRASBOURG, LA 6 NOIEMBRIE 1997

EUROPEAN CONVENTION ON NATIONALITY

DONE AT STRASBOURG, ON 6 NOVEMBER 1997

**În vigoare pentru Republica Moldova din 1 martie 2000.*

Preamble

THE MEMBER STATES of the Council of Europe and the other States signatory to this Convention,

CONSIDERING that the aim of the Council of Europe is to achieve greater unity between its members;

BEARING in mind the numerous international instruments relating to nationality, multiple nationality and statelessness;

RECOGNISING that, in matters concerning nationality, account should be taken both of the legitimate interests of States and those of individuals;

DESIRING to promote the progressive development of legal principles concerning nationality, as well as their adoption in internal law and desiring to avoid, as far as possible, cases of statelessness;

DESIRING to avoid discrimination in matters relating to nationality;

AWARE of the right to respect for family life as contained in Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

NOTING the varied approach of States to the question of multiple nationality and recognising that each State is free to decide which consequences it attaches in its internal law to the fact that a national acquires or possesses another nationality;

AGREEING on the desirability of finding appropriate solutions to consequences of multiple nationality and in particular as regards the rights and duties of multiple nationals;

CONSIDERING it desirable that persons possessing the nationality of two or more States Parties should be required to fulfil their military obligations in relation to only one of those Parties;

CONSIDERING the need to promote international co-operation between the national authorities responsible for nationality matters,

HAVE AGREED AS FOLLOWS:

CHAPTER I

GENERAL MATTERS

Article 1

Object of the Convention

This Convention establishes principles and rules relating to the nationality of natural persons and rules regulating military obligations in cases of multiple nationality, to which the internal law of States Parties shall conform.

Article 2

Definitions

For the purpose of this Convention:

(a) "nationality" means the legal bond between a person and a State and does not indicate the person's ethnic origin;

(b) "multiple nationality" means the simultaneous possession of two or more nationalities by the same person;

(c) "child" means every person below the age of 18 years unless, under the law applicable to the child, majority is attained earlier;

(d) "internal law" means all types of provisions of the national legal system, including the constitution, legislation, regulations, decrees, case-law, customary rules and practice as well as rules deriving from binding international instruments.

CHAPTER II

GENERAL PRINCIPLES RELATING TO NATIONALITY

Article 3

Competence of the State

1. Each State shall determine under its own law who are its nationals.

2. This law shall be accepted by other States in so far as it is consistent with applicable international conventions, customary international law and the principles of law generally recognised with regard to nationality.

Article 4

Principles

The rules on nationality of each State Party shall be based on the following principles:

(a) everyone has the right to a nationality;

(b) statelessness shall be avoided;

(c) no one shall be arbitrarily deprived of his or her nationality;

(d) neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse.

Article 5

Non-discrimination

1. The rules of a State Party on nationality shall not contain distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin.

2. Each State Party shall be guided by the principle of non-discrimination between its nationals, whether they are nationals by birth or have acquired its nationality subsequently.

CHAPTER III

RULES RELATING TO NATIONALITY

Article 6

Acquisition of nationality

1. Each State Party shall provide in its internal law for its nationality to be acquired *ex lege* by the following persons:

(a) children one of whose parents possesses, at the time of the birth of these children, the nationality of that State Party, subject to any exceptions which may be provided for by its internal law as regards children born abroad. With respect to children whose parenthood is established by recognition, court order or similar procedures, each State Party may provide that the child acquires its nationality following the procedure determined by its internal law;

(b) foundlings found in its territory who would otherwise be stateless.

2. Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality. Such nationality shall be granted:

(a) at birth *ex lege*; or

(b) subsequently, to children who remained stateless, upon an application being lodged with the appropriate authority, by or on behalf of the child concerned, in the manner prescribed by the internal law of the State Party. Such an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application.

3. Each State Party shall provide in its internal law for the possibility of naturalisation of persons lawfully and habitually resident on its territory. In establishing the conditions for naturalisation, it shall not provide for a period of residence exceeding ten years before the lodging of an application.

4. Each State Party shall facilitate in its internal law the acquisition of its nationality for the following persons:

(a) spouses of its nationals;

(b) children of one of its nationals, falling under the exception of Article 6, paragraph 1, sub-paragraph a;

(c) children one of whose parents acquires or has acquired its nationality;

(d) children adopted by one of its nationals;

(e) persons who were born on its territory and reside there lawfully and habitually;

(f) persons who are lawfully and habitually resident on its territory for a period of time beginning before the age of 18, that period to be determined by the internal law of the State Party concerned;

(g) stateless persons and recognised refugees lawfully and habitually resident on its territory.

Article 7

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

1. A State Party may not provide in its internal law for the loss of its nationality *ex lege* or at the initiative of the State Party except in the following cases:

(a) voluntary acquisition of another nationality;

(b) acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant;

(c) voluntary service in a foreign military force;

(d) conduct seriously prejudicial to the vital interests of the State Party;

(e) lack of a genuine link between the State Party and a national habitually residing abroad;

(f) where it is established during the minority of a child that the preconditions laid down by internal law which led to the *ex lege* acquisition of the nationality of the State Party are no longer fulfilled;

(g) adoption of a child if the child acquires or possesses the foreign nationality of one or both of the adopting parents.

2. A State Party may provide for the loss of its nationality by children whose parents lose that nationality except in cases covered by sub-paragraphs c and d of paragraph 1. However, children shall not lose that nationality if one of their parents retains it.

3. A State Party may not provide in its internal law for the loss of its nationality under paragraphs 1 and 2 of this article if the person concerned would thereby become stateless, with the exception of the cases mentioned in paragraph 1, sub-paragraph b, of this article.

Article 8

Loss of nationality at the initiative of the individual

1. Each State Party shall permit the renunciation of its nationality provided the persons concerned do not thereby become stateless.

2. However, a State Party may provide in its internal law that renunciation may be effected only by nationals who are habitually resident abroad.

Article 9

Recovery of nationality

Each State Party shall facilitate, in the cases and under the conditions provided for by its internal law, the recovery of its nationality by former nationals who are lawfully and habitually resident on its territory.

CHAPTER IV

PROCEDURES RELATING TO NATIONALITY

Article 10

Processing of applications

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.

Article 11

Decisions

Each State Party shall ensure that decisions relating to the acquisition, retention, loss, recovery or certification of its nationality contain reasons in writing.

Article 12

Right to a review

Each State Party shall ensure that decisions relating to the acquisition, retention, loss, recovery or certification of its nationality be open to an administrative or judicial review in conformity with its internal law.

Article 13

Fees

1. Each State Party shall ensure that the fees for the acquisition, retention, loss, recovery or certification of its nationality be reasonable.

2. Each State Party shall ensure that the fees for an administrative or judicial review be not an obstacle for applicants.

CHAPTER V

MULTIPLE NATIONALITY

Article 14

Cases of multiple nationality *ex lege*

1. A State Party shall allow:

(a) children having different nationalities acquired automatically at birth to retain these nationalities;

(b) its nationals to possess another nationality where this other nationality is automatically acquired by marriage.

2. The retention of the nationalities mentioned in paragraph 1 is subject to the relevant provisions of Article 7 of this Convention.

Article 15

Other possible cases of multiple nationality

The provisions of this Convention shall not limit the right of a State Party to determine in its internal law whether:

(a) its nationals who acquire or possess the nationality of another State retain its nationality or lose it;

(b) the acquisition or retention of its nationality is subject to the renunciation or loss of another nationality.

Article 16

Conservation of previous nationality

A State Party shall not make the renunciation or loss of another nationality a condition for the acquisition or retention of its nationality where such renunciation or loss is not possible or cannot reasonably be required.

Article 17

Rights and duties related to multiple nationality

1. Nationals of a State Party in possession of another nationality shall have, in the territory of that State Party in which they reside, the same rights and duties as other nationals of that State Party.

2. The provisions of this chapter do not affect:

(a) the rules of international law concerning diplomatic or consular protection by a State Party in favour of one of its nationals who simultaneously possesses another nationality;

(b) the application of the rules of private international law of each State Party in cases of multiple nationality.

CHAPTER VI

STATE SUCCESSION AND NATIONALITY

Article 18

Principles

1. In matters of nationality in cases of State succession, each State Party concerned shall respect the principles of the rule of law, the rules concerning human rights and the principles contained in Articles 4 and 5 of this Convention and in paragraph 2 of this article, in particular in order to avoid statelessness.

2. In deciding on the granting or the retention of nationality in cases of State succession, each State Party concerned shall take account in particular of:

(a) the genuine and effective link of the person concerned with the State;

(b) the habitual residence of the person concerned at the time of State succession;

(c) the will of the person concerned;

(d) the territorial origin of the person concerned.

3. Where the acquisition of nationality is subject to the loss of a foreign nationality, the provisions of Article 16 of this Convention shall apply.

Article 19

Settlement by international agreement

In cases of State succession, States Parties concerned shall endeavour to regulate matters relating to nationality by agreement amongst themselves and, where applicable, in their relationship with other States concerned. Such agreements shall respect the principles and rules contained or referred to in this chapter.

Article 20

Principles concerning non-nationals

1. Each State Party shall respect the following principles:

(a) nationals of a predecessor State habitually resident in the territory over which sovereignty is transferred to a successor State and who have not acquired its nationality shall have the right to remain in that State;

(b) persons referred to in sub-paragraph a shall enjoy equality of treatment with nationals of the successor State in relation to social and economic rights.

2. Each State Party may exclude persons considered under paragraph 1 from employment in the public service involving the exercise of sovereign powers.

CHAPTER VII

MILITARY OBLIGATIONS IN CASES OF MULTIPLE NATIONALITY

Article 21

Fulfilment of military obligations

1. Persons possessing the nationality of two or more States Parties shall be required to fulfil their military obligations in relation to one of those States Parties only.

2. The modes of application of paragraph 1 may be determined by special agreements between any of the States Parties.

3. Except where a special agreement which has been, or may be, concluded provides otherwise, the following provisions are applicable to persons possessing the nationality of two or more States Parties:

(a) Any such person shall be subject to military obligations in relation to the State Party in whose territory they are habitually resident. Nevertheless, they shall be free to choose, up to the age of 19 years, to submit themselves to military obligations as volunteers in relation to any other State Party of which they are also nationals for a total and effective period at least equal to that of the active military service required by the former State Party;

(b) Persons who are habitually resident in the territory of a State Party of which they are not nationals or in that of a State which is not a State Party may choose to perform their military service in the territory of any State Party of which they are nationals;

(c) Persons who, in accordance with the rules laid down in paragraphs a and b, shall fulfil their military obligations in relation to one State Party, as prescribed by the law of that State Party, shall be deemed to have fulfilled their military obligations in relation to any other State Party or States Parties of which they are also nationals;

(d) Persons who, before the entry into force of this Convention between the States Parties of which they are nationals, have, in relation to one of those States Parties, fulfilled their military obligations in accordance with the law

of that State Party, shall be deemed to have fulfilled the same obligations in relation to any other State Party or States Parties of which they are also nationals;

(e) Persons who, in conformity with paragraph a, have performed their active military service in relation to one of the States Parties of which they are nationals, and subsequently transfer their habitual residence to the territory of the other State Party of which they are nationals, shall be liable to military service in the reserve only in relation to the latter State Party;

(f) The application of this article shall not prejudice, in any respect, the nationality of the persons concerned;

(g) In the event of mobilisation by any State Party, the obligations arising under this article shall not be binding upon that State Party.

Article 22

Exemption from military obligations or alternative civil service

Except where a special agreement which has been, or may be, concluded provides otherwise, the following provisions are also applicable to persons possessing the nationality of two or more States Parties:

(a) Article 21, paragraph 3, sub-paragraph c, of this Convention shall apply to persons who have been exempted from their military obligations or have fulfilled civil service as an alternative;

(b) persons who are nationals of a State Party which does not require obligatory military service shall be considered as having satisfied their military obligations when they have their habitual residence in the territory of that State Party. Nevertheless, they should be deemed not to have satisfied their military obligations in relation to a State Party or States Parties of which they are equally nationals and where military service is required unless the said habitual residence has been maintained up to a certain age, which each State Party concerned shall notify at the time of signature or when depositing its instruments of ratification, acceptance or accession;

(c) also persons who are nationals of a State Party which does not require obligatory military service shall be considered as having satisfied their military obligations when they have enlisted voluntarily in the military forces of that Party for a total and effective period which is at least equal to that of the active military service of the State Party or States Parties of which they are also nationals without regard to where they have their habitual residence.

CHAPTER VIII

CO-OPERATION BETWEEN THE STATES PARTIES

Article 23

Co-operation between the States Parties

1. With a view to facilitating co-operation between the States Parties, their competent authorities shall:

(a) provide the Secretary General of the Council of Europe with information about their internal law relating to nationality, including instances of statelessness and multiple nationality, and about developments concerning the application of the Convention;

(b) provide each other upon request with information about their internal law relating to nationality and about developments concerning the application of the Convention.

2. States Parties shall co-operate amongst themselves and with other member States of the Council of Europe within the framework of the appropriate intergovernmental body of the Council of Europe in order to deal with all relevant problems and to promote the progressive development of legal principles and practice concerning nationality and related matters.

Article 24

Exchange of information

Each State Party may at any time declare that it shall inform any other State Party, having made the same declaration, of the voluntary acquisition of its nationality by nationals of the other State Party, subject to applicable laws concerning data protection. Such a declaration may indicate the conditions under which the State Party will give such information. The declaration may be withdrawn at any time.

CHAPTER IX

APPLICATION OF THE CONVENTION

Article 25

Declarations concerning the application of the Convention

1. Each State may declare, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, that it will exclude Chapter VII from the application of the Convention.

2. The provisions of Chapter VII shall be applicable only in the relations between States Parties for which it is in force.

3. Each State Party may, at any subsequent time, notify the Secretary General of the Council of Europe that it will apply the provisions of Chapter VII excluded at the time of signature or in its instrument of ratification, acceptance, approval or accession. This notification shall become effective as from the date of its receipt.

Article 26

Effects of this Convention

1. The provisions of this Convention shall not prejudice the provisions of internal law and binding international instruments which are already in force or may come into force, under which more favourable rights are or would be accorded to individuals in the field of nationality.

2. This Convention does not prejudice the application of:

(a) the 1963 Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality and its Protocols;

(b) other binding international instruments in so far as such instruments are compatible with this Convention,

in the relationship between the States Parties bound by these instruments.

CHAPTER X

FINAL CLAUSES

Article 27

Signature and entry into force

1. This Convention shall be open for signature by the member States of the Council of Europe and the non-member States which have participated in its elaboration. Such States may express their consent to be bound by:

(a) signature without reservation as to ratification, acceptance or approval; or

(b) signature subject to ratification, acceptance or approval, followed by ratification, acceptance or approval.

Instruments of ratification, acceptance or approval shall be deposited with the Secretary General of the Council of Europe.

2. This Convention shall enter into force, for all States having expressed their consent to be bound by the Convention, 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 this Convention in accordance with the provisions of the preceding paragraph.

3. In respect of any State which subsequently expresses its consent to be bound by it, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of signature or of the deposit of its instrument of ratification, acceptance or approval.

Article 28

Accession

1. After the entry into force of this Convention, the Committee of Ministers of the Council of Europe may invite any non-member State of the Council of Europe which has not participated in its elaboration to accede to this Convention.

2. In respect of any acceding State, this Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of deposit of the instrument of accession with the Secretary General of the Council of Europe.

Article 29

Reservations

1. No reservations may be made to any of the provisions contained in Chapters I, II and VI of this Convention. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, make one or more reservations to other provisions of the Convention so long as they are compatible with the object and purpose of this Convention.

2. Any State which makes one or more reservations shall notify the Secretary General of the Council of Europe of the relevant contents of its internal law or of any other relevant information.

3. A State which has made one or more reservations in accordance with paragraph 1 shall consider withdrawing them in whole or in part as soon as circumstances permit. Such withdrawal shall be made by means of a notification addressed to the Secretary General of the Council of Europe and shall become effective as from the date of its receipt.

4 Any State which extends the application of this Convention to a territory mentioned in the declaration referred to in Article 30, paragraph 2, may, in

respect of the territory concerned, make one or more reservations in accordance with the provisions of the preceding paragraphs.

5. A State Party which has made reservations in respect of any of the provisions in Chapter VII of the Convention may not claim application of the said provisions by another State Party save in so far as it has itself accepted these provisions.

Article 30

Territorial application

1. Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, specify the territory or territories to which this Convention shall apply.

2. Any State may, at any later date, by a declaration addressed to the Secretary General of the Council of Europe, extend the application of this Convention to any other territory specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings. In respect of such territory, the Convention shall enter into force on the first day of the month following the expiration of a period of three months after the date of receipt of such declaration by the Secretary General.

3. Any declaration made under the two preceding paragraphs may, in respect of any territory specified in such declaration, be withdrawn by a notification addressed to the Secretary General. The withdrawal shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of such notification by the Secretary General.

Article 31

Denunciation

1. Any State Party may at any time denounce the Convention as a whole or Chapter VII only by means of a notification addressed to the Secretary General of the Council of Europe.

2. Such denunciation shall become effective on the first day of the month following the expiration of a period of three months after the date of receipt of notification by the Secretary General.

Article 32

Notifications by the Secretary General

The Secretary General of the Council of Europe shall notify the member

States of the Council of Europe, any Signatory, any Party and any other State which has acceded to this Convention of:

(a) any signature;

(b) the deposit of any instrument of ratification, acceptance, approval or accession;

(c) any date of entry into force of this Convention in accordance with Articles 27 or 28 of this Convention;

(d) any reservation and withdrawal of reservations made in pursuance of the provisions of Article 29 of this Convention;

(e) any notification or declaration made under the provisions of Articles 23, 24, 25, 27, 28, 29, 30 and 31 of this Convention;

(f) any other act, notification or communication relating to this Convention.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

DONE at Strasbourg, this sixth day of November 1997, in English and in French, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Council of Europe. The Secretary General of the Council of Europe shall transmit certified copies to each member State of the Council of Europe, to the non-member States which have participated in the elaboration of this Convention and to any State invited to accede to this Convention.