

EXPLANATORY REPORT

Adopted at an Extraordinary General Assembly in Strasbourg on 25 March 1999

A. GENERAL REMARKS

Proof of nationality is currently a matter of the utmost importance. This is because the nationals of a State very often find that they need to prove that they hold its nationality, in particular when seeking to avail themselves of certain rights in another State. Such is the case in the European Union as regards the right to reside and to exercise certain professions and also participation in competitive examinations for certain employments.

It is for this reason that the European Convention on Nationality, done at Strasbourg on 6 November 1997, which enshrines the right to a nationality as a fundamental right of the individual, provides *inter alia* for certification of nationality.

In this context the present Convention, which supplements and is closely-linked to the Council of Europe Convention, is aimed at making it possible to issue a uniform document designed to prove the nationality of a State's nationals before the authorities of another State.

Such a document is particularly useful since, by needing neither legalisation nor translation, it facilitates proof of nationality whilst at the same time offering better guarantees to the public or private agencies to which it is presented.

B. COMMENTARY ON THE ARTICLES

Article 1

This Article defines the concept of nationality in the same way as Article 2, paragraph (a), of the Convention on Nationality drawn up within the Council of Europe.

Article 2

Article 2 provides that each Contracting State undertakes to issue to its nationals a certificate of nationality designed to serve as proof in another Contracting State. This certificate will obviously be issued in conformity with the rules applicable in the issuing country to the determination of the nationality of the person concerned.

Since the certificate of nationality is a document designed for use abroad, each Contracting State will be able to continue issuing national certificates in accordance with its own domestic law. However, it goes without saying that nothing would prevent a given State from deciding to use the international certificate for domestic purposes too.

Article 3

Paragraph 1 identifies the persons who are entitled to apply for a certificate of nationality. Since an extremely important document of a personal nature is involved, the view was taken that limits had to be placed on its availability to third parties. In order to make the text more precise, it had been envisaged to draw up a list of the persons who, over and above the individual concerned, would be able to request a certificate of nationality. However, for fear that some would be omitted, it was

decided that third parties would be entitled to obtain certificates only in cases where the existence of a legitimate legal interest was established. What must be established is therefore not any kind of moral or sentimental interest, which may be quite legitimate, but a legal interest. This condition will, for example, be satisfied in cases where a person's nationality has to be proved in order to determine which law is to govern the division of an estate or of matrimonial property.

Paragraph 2 provides that the authorities empowered to issue certificates of nationality shall be designated by the domestic law of the issuing State.

According to paragraph 3, the certificate may, at the applicant's request, be sent directly by the issuing authority to the authority requiring the proof of nationality. This option is very useful for applicants as they will not need to take steps to forward the document. In addition, it means that greater credibility can be attached to the certificate, since it is not given to the person concerned but transmitted directly from the issuing to the requesting authority.

The requirement, under paragraph 4, that the certificate of nationality be issued within a reasonable time was inserted at the request of the Council of Europe for the sake of clarity; it also appears in the Convention on Nationality drawn up within that Organisation.

Article 4

The rule in paragraph 1 is the natural counterpart of Article 2, in that all the Contracting States undertake not only to issue certificates of nationality but also to accept the certificates issued by the other States.

Under paragraph 2, the period of validity of a certificate is determined by the domestic law of the State where it is presented. Whilst the certificate of nationality provides proof of the nationality of the person concerned at the moment when it is issued, the authorities of States where it is presented must accept it during a certain period, to be determined in accordance with the laws or administrative practices of those States. This very flexible formulation is derived from the one contained in the Convention on the issue of a life certificate.

Article 5

This Article begins by stating that certificates of nationality are to be accepted as correct unless and until the contrary is proved.

However, a person's nationality may change. Furthermore, the importance of the effects attaching to nationality gives ground for fearing risks of fraud.

Paragraph 2 of Article 5 therefore provides that in case of serious doubt as to the authenticity of the certificate or the nationality of the person concerned, the authority of the State to which the document is presented may request the issuing authority either to supply a fresh certificate or to verify the nationality.

Seeking the issue of a fresh certificate will concern principally cases where fraud is suspected, because sending the fresh certificate directly to the authority using the document will make it easy to detect possible falsifications or the lack of authenticity of the document presented initially.

A request for verification of the nationality – a substantive verification – will concern principally cases where the authority to which the certificate is presented possesses information of which the issuing authority might not have been aware, the person concerned having possibly lost the nationality attested, for example as a result of acquiring another nationality.

It should be noted that all the communications arising from the application of this Article – whether they involve requests formulated by the authority using the document, the issue of a fresh certificate or explanations supplied by the competent authorities of the issuing State – will be made directly, and not through diplomatic channels.

Finally, it should be added that if recourse is had to Article 5, paragraph 2, in a case where a certificate of nationality has been presented by a Turkish citizen, the authority asking for the issue of a fresh certificate or a verification of the nationality should – in order to facilitate researches by the Turkish authorities – indicate in its request the place and number of the family register of the person concerned, as they appear on his or her identity card or passport.

Article 6

This Article lays down that the Contracting States must designate the national authorities empowered to issue certificates of nationality. It had been envisaged that the Convention would empower consuls to deliver them, in line with the provisions in the Convention on the issue of a life certificate (Article 4, paragraph 3). However, this idea was abandoned, since some countries do not authorise their consuls to issue certificates of nationality and do not wish to do so. In any event, under Article 3 of the Convention it is for the domestic law of each State to determine which authorities are empowered to issue the certificate. Accordingly, nothing would prevent countries that confer this power on consuls from designating them for this purpose.

Articles 7 to 11

These Articles deal with questions concerning the form of the certificate, a model whereof appears in Appendix 1 to the Convention. Their drafting is based on the multilingual models adopted in other Conventions of the International Commission on Civil Status. However, since the adoption of Convention No.25, on the coding of entries appearing in civil status documents, it has been decided to abandon the use of multilingual forms. Certificates of nationality will, like life certificates, be drawn up in the language of the issuing authority and in the French language, with the standard entries also bearing a code based on that found in the above-mentioned Convention No. 25.

Article 12

Article 12 repeats verbatim the text adopted when the Convention on the issue of a life certificate was being drafted; it calls for similar comments.

The certificate of nationality is designed to be utilised in a State other than the one that issued it and will generally be presented to an authority or agency that does not possess the glossary enabling the coded entries to be understood. It therefore seemed appropriate to provide that the authority issuing the certificate will, if so requested by the person applying for it, append a document listing the code numbers appearing in the certificate and their translation – or, if this term is preferred, their meaning

– in the official language or one of the official languages of the State where the certificate is to be used. If the authority issuing the certificate found it difficult to follow this procedure, it could append thereto a list of the code numbers with their translations into all the various languages used in the countries that are members of the International Commission on Civil Status.

The issuing authority will also have the option, if the equipment available to it so permits, of “decoding” the certificate, a process that consists of appending to the document drawn up in the language of the issuing country a complete translation into the language of the country of utilisation.

It is furthermore provided, in paragraph 2 of Article 12, that any interested party – which expression covers both the applicant and the agency for which the certificate is intended – may request the competent authority of the State of utilisation to indicate the meaning of the code numbers appearing in the certificate or to “decode” it. Needless to say, recourse should be had to this option only if the authority that drew up the certificate has not previously translated the code numbers or decoded the document. It would also be reasonable for agencies utilising the certificate that has been issued to refrain from asking for the meaning of the code numbers or a decoding when they understand the foreign-language entries appearing therein.

Article 13

This Article too is closely modelled on the corresponding provisions (Article 11) of the Convention on the issue of a life certificate.

Paragraph 1 sets out the formal guarantees of authenticity of the certificate of nationality. If it was signed under a delegation of authority in accordance with domestic law, such delegation does not have to be indicated.

The exemption from legalisation, enunciated by paragraph 2, is in line with the rules of more general application found in Convention No. 17 of the International Commission on Civil Status, signed at Athens on 15 September 1977.

The express reference to exemption from legalisation is warranted not only because the certificate of nationality – like the life certificate – does not appear, *stricto sensu*, in the list of records and documents covered by Convention No. 17, but also because there might be some States which ratify this Convention but have not signed the general Convention on exemption from legalisation.

Article 14

This Article allows documents other than the international certificate of nationality to be used to prove nationality. This is because the aim of the Convention is not to make production of the model it creates obligatory but to enable individuals to furnish by simple means proof of their nationality for use abroad, for example if their national law lays down more complex procedures or does not provide specifically for the issue of nationality certificates or attestations. Moreover, Community regulations oblige the member States to supply their nationals with proof of their nationality by including an express indication of the holder’s nationality in identity cards or passports which they issue or renew (see Article 2§2 of Council Directive No. 68/360).

Article 16

The question of the geographical scope of the Convention was discussed at length, with some States being in favour of an open Convention to which all States would be entitled to accede.

However, other States expressed reservations on this point and it was therefore decided to adopt a wording derived from that utilised at The Hague Conference on Private International Law, which would allow Contracting States to raise an objection to accession by a State which was a member neither of the International Commission on Civil Status nor of the European Union nor of the Council of Europe.

This possibility of raising an objection is open to any Contracting State within the period of six months following notification of the accession. Furthermore, any State, including a new acceding State, may, at the time when it ratifies, accepts or approves the Convention, raise an objection in respect of States which are already party to the Convention but are not members of the International Commission on Civil Status, the European Union or the Council of Europe.

Articles 15 and 17 to 21

These Articles contain the final clauses usually found in Conventions of the International Commission on Civil Status.

Under Article 17, the entry into force of the Convention is conditional on ratification, acceptance, approval or accession by two countries that are members of the International Commission on Civil Status.

* The **model certificate** appearing in Appendix 1 calls for few comments. The only point to be specifically mentioned is that the word “stamp” has been added after the word “seal” in the last space on the certificate, as the two words have a different meaning in some languages whereas in others they are, at least in everyday speech, considered to be synonyms and used interchangeably.