

Zu Urkund dessen haben die hierzu gehörig befugten Unterzeichneten dieses Übereinkommen unterschrieben.

Geschehen zu Straßburg am 6. November 1997 in englischer und französischer Sprache, wobei jeder Wortlaut gleichermaßen verbindlich ist, in einer Urschrift, die im Archiv des Europarats hinterlegt wird. Der Generalsekretär des Europarats übermittelt allen Mitgliedstaaten des Europarats, den Nichtmitgliedstaaten, die an der Ausarbeitung dieses Übereinkommens teilgenommen haben, und jedem Staat, der zum Beitritt zu diesem Übereinkommen eingeladen wurde, beglaubigte Abschriften.

Die BRD erklärt zu diesem Übereinkommen folgendes:

Declaration contained in a Note verbale from the Permanent Representation of Germany, dated 16 January 2002, handed to the Secretary General at the time of signature of the instrument, on 4 February 2002 - Or. Engl./Germ.

Germany declares that the procedure for the admission of late expatriates (*Spätaussiedler* - persons of German ethnic origin who have their residence in countries of the former Eastern Bloc) and of their spouses or descendants is not aimed at acquiring the German nationality and that it is not part of any procedures relating to nationality.

Rationale

Article 10 of the European Convention on Nationality stipulates that applications relating to the acquisition of a State's nationality be processed within a reasonable time. As a rule, the aim of persons going through the admission procedure is to obtain admission to Germany. Under the new provisions of Section 7 of the StAG, a German within the meaning of Article 116, paragraph 1, of the Basic Law² who does not possess German nationality shall acquire German nationality *ex lege* upon the issue of the certificate [on his/her status as a late expatriate] as provided under Section 15, paragraph 1 or 2, of the Federal Act on Expellees and Refugees (abbr. BVFG, short title : Federal Expellees Act). This provision also applies to descendants. On account of the fixing of quotas for persons to be admitted under the Federal Expellees Act, the respective admission procedure may involve waiting periods of several years. Against this background, it must be stressed that the admission procedure is legally independent of the acquisition of German nationality.

Obenangegebene Erklärung bezüglich Artikel: 10

Reservations contained in a Note verbale from the Permanent Representation of Germany, dated 16 January 2002, handed to the Secretary General at the time of signature of the instrument, on 4 February 2002 - Or. Engl./Germ.

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 Law [*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 sub-sections 3 and 4 of the new 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 explicitly 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, sub-sections 3 and 4, of the StAG. The reservation required in this respect is compatible with the subject matter and the aim 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 sub-sections 3 and 4 of Section 29 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. The idea that this should apply only to a few exceptional cases should be reflected in an amendment to the law of nationality and citizenship. This would make it possible for Germany not to declare the notified reservation at the time of ratification, or to withdraw a reservation that was actually declared at the time of ratification.

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. In this respect, too, it would be expedient to resolve any such cases by amending the [German] law of nationality and citizenship (*cf. supra*).

() "A foreigner who, on 1 January 2000, legally has his/her habitual residence in Germany and has not yet attained the age of ten years shall be naturalized upon application if at his/her birth the requirements under Section 4, sub-section 3, first sentence, were met and continue to be met. The time set for filing a pertinent application is 31 December 2000."*

Obenangegebene Erklärung bezüglich Artikel: 7

Reservation contained in a Note verbale from the Permanent Representation of Germany, dated 16 January 2002, handed to the Secretary General at the time of signature of the instrument, on 4 February 2002 - Or. Engl./Germ.

Germany declares that the following persons, irrespective of their place of residence, are not subject to loss of nationality as a result of release from nationality (i.e. release will not be granted to the following persons):

1. public officials, judges, military personnel (soldiers) of the *Bundeswehr* [Federal Armed Forces], and other persons employed in a professional or official capacity under public law for as long as their contractual relationship is not terminated, with the exception of persons holding honorary positions;
2. persons liable for military service (conscripts) - as long as the Federal Ministry of Defence or an agency designated by it does not declare that there are no objections to such release (i.e. does not issue a certificate of non-objection, *cf. infra*).

If the persons listed under sub-paragraphs 1 and 2 above are holders of multiple nationality, permission required for renunciation of German nationality effected by means of a declaration to this effect will be granted only if such persons have had their permanent residence abroad for at least ten years. In addition, a person liable for military service (conscript) will also be granted such permission if he did his military service in one of the States of which he is a national, or if a certificate of non-objection was issued to him by the Federal Ministry of Defence or by the agency designated by it.

Rationale

The present reservation regarding Article 8 of the Convention on "loss of nationality at the initiative of the individual" is required because the German law of nationality and citizenship, in Section 22 of the StAG, provides that, on principle, release from nationality shall not be granted to persons who - such as public officials, judges and military personnel (soldiers) of the *Bundeswehr* - are employed in a professional or official capacity under public law as well as persons liable for military service (conscripts). Furthermore, this reservation is required because, under Section 26 of the StAG, those members of the categories listed in Section 22 of the StAG who possess multiple nationality will be permitted to renounce German

nationality if specific conditions are met.

This reservation is intended to obviate any misunderstandings regarding the applicability of Sections 22 and 26 of the StAG.

Obenangegebene Erklärung bezüglich Artikel: 8

Reservation contained in a Note verbale from the Permanent Representation of Germany, dated 16 January 2002, handed to the Secretary General at the time of signature of the instrument, on 4 February 2002 - Or. Engl./Germ.

Germany declares that this provision, with the exception of Lit. (a), is not applied in respect of persons who have fulfilled civil service as an alternative or have been exempted from military obligations on account of having fulfilled a service equivalent to military or civil service.

Rationale

This reservation is essentially aimed at adopting for Germany the legal situation established under the Convention of 6 May 1963 on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality. This legal situation takes account of equity in induction and has proved effective in practice. The only addition to this situation is part of the (new) provisions relating to Lit. (a) [of Art. 22 of the European Convention on Nationality] : inclusion of civil service - which is not yet included in the Convention of 6 May 1963 - is mandatory for reasons of equal treatment; inclusion of equivalent forms of service (i.e. in Germany : service with the civil protection or disaster/emergency management organizations, and development aid service) is appropriate. This reservation must be entered because otherwise holders of dual nationality living in Germany might invoke exceptions relating to military service which are not provided for under German law; as a result, these persons would, in principle, be privileged in relation to holders of only one nationality who are liable for military service. This applies, *mutatis mutandis*, to those provisions of the 1963 Convention relating to military obligations which refer to cases where one of the two Parties does not require obligatory military service.

Obenangegebene Erklärung bezüglich Artikel: 22