

Liste des déclarations formulées au titre du traité n° 166

Convention européenne sur la nationalité

Situation au 18/6/2012

<http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?CL=FRE&CM=8&NT=166&VL=1>



Allemagne :

Declaration contained in the instrument of ratification, completed by a letter from the Permanent Representative of Germany, deposited on 11 May 2005 - 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 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 (1) of the Basic Law 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 (1) or (2) of the Federal Act on Expellees' and Refugees' Affairs (Federal Expellees Act – BVFG). This provision also applies to descendants. On account of the fixing of quotas for persons to be admitted under the BVFG, 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.

Période d'effet : 1/9/2005 -

Déclaration ci-dessus relative aux articles : 10

Reservations contained in the instrument of ratification, completed by a letter from the Permanent Representative of Germany, deposited on 11 May 2005 - 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 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.

Période d'effet : 1/9/2005 -

Déclaration ci-dessus relative aux articles : 7

Reservation contained in the instrument of ratification, completed by a letter from the Permanent Representative of Germany, deposited on 11 May 2005 - 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):

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. 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 habitual residence abroad for at least ten years. In addition, persons liable for military service (conscripts) will also be granted such permission if they did their military service in one of the States of which they are a national, or if they produce a certificate of non-objection by the Federal Ministry of Defence or by the agency designated by it.

Rationale

The 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.

Période d'effet : 1/9/2005 -

Déclaration ci-dessus relative aux articles : 8

Reservation contained in the instrument of ratification, completed by a letter from the Permanent Representative of Germany, deposited on 11 May 2005 - Or. Engl./Germ.

Germany declares that this provision, with the exception of sub-paragraph (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 sub-paragraph (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 made 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.

Période d'effet : 1/9/2005 -

Déclaration ci-dessus relative aux articles : 22