1 The Background and the Functions of the European Convention on Nationality

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1.1 Introduction

Under the auspices of the Council of Europe, the contemporary context of citizenship legislation and the states' attitude towards double citizenship are shaped in light of the European Convention on Nationality. This does not mean however, that this treaty law instrument was the mechanism that triggered the current legislative activity of European states. On the contrary, this convention should much rather be understood as the fruit and consequence of the progressive metamorphoses in the approach of the states to dual citizenship.

1.2 The Exclusiveness of the Nation-State Version of Citizenship

As is known, citizenship is by no means an eternal legal institution: even if rights and obligations had already been afforded to free inhabitants belonging to a given territory (i.e. generally to cities, '*polis*' etc. in the antiquity and the medieval times), the instrument assumed greater relevance in wake of the burgeoning nation-state concept during the 19th and 20th centuries. On the one hand, the individual was no longer attached to a town or a city but to a 'state' i.e. a smaller or larger organized territory composed of numerous cities, villages and other territorial units. On the other hand, this attachment was of a long term and exclusive character: the possession of one citizenship generally excluded the simultaneous possession of an other. The reasons for this exclusivity were rooted in historical and political factors such as the animosity and mistrust between states, compulsory military service, state taxation policy, etc.

Loyalty, as an inherent element of citizenship must however also be taken into account: in case of the simultaneous possession of citizenships of hostile or warrior countries, the double national was considered at least suspect by both sides. Double citizenship could also have an influence on the individual's professional carreer in public administration,

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which became either closed as such to him or at least restricted without access to important, high ranking posts. (Whatsmore, compliance with the military obligation in *country A* could be legally considered as high treason in *country B*.)

In order to avoid these situations and recognizing the automatisms inherent in the two main philosophical – technical approaches to the acquisition of nationality (*jus sanguinis* and *jus soli*), coupled with the institution of naturalization, states first attempted to conclude bilateral agreements to avoid cases of double nationality. As regards children born to multinational families, parents were generally obliged the choose either of their respective nationalities, while in the case of immigration, the renunciation of the previous nationality was perceived as a precondition for naturalization. After the redrawing of the borders of the Central European states following World War I, the new frontiers brought with them the automatic acquisition of a new nationality complete with the infamous right of *option*: those affected were free to express their will to preserve their previous nationality, at the same time, they were obliged to leave the country.

The notorious and unsuccessfull 1930 The Hague Codification conference followed this philosophy introducing – albeit not as a main rule – a certain automatism in the acquisition and loss of nationality.[1]

1.3 The Council of Europe and the Follow-Up of the Old Philosophy

Already in 1963, the Council of Europe tackled the general items, including the most important issue of multiple nationality: the question of military service.

The Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality was nevertheless framed according to the old method: the Convention was aimed expressly at the prevention of double nationality,[2]

1 1930 Hague Convention on Certain Questions relating to the Conflict of Nationality Laws, 12 April 1930, (*infra*: LoN Convention of 1930) Art. 7:
'In so far as the law of a State provides for the issue of an expatriation permit, such a permit shall not entail the loss of the nationality of the State which issues it, unless the person to whom it is issued possesses another nationality or unless and *until he acquires another nationality*' (emphasis added).

2 1963 Strasbourg Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, 6 May 1963 (*infra*: CoE Convention of 1963).
Chapter I – Reduction of cases of multiple nationality
Article 1:
'(1) Nationals of the Contracting Parties who are of full age and who acquire of their own free will, by means of naturalisation, option or recovery, the nationality of another Party shall lose their former nationality. *They shall not be authorised to retain their former nationality.*
(2) Nationals of the Contracting Parties who are minors and acquire by the same means the nationality of another Party shall also lose their former nationality if, where their national law provides for the loss of nationality in such cases, they have been duly empowered or represented. *They shall not be authorised to retain their former nationality.*' (emphasis added).

abolishing the different financial obstacles attached to renunciation.[3] Although the states' right of consent to renunciation was recognized, this was far from a genuine right of veto: states were called upon to consider the individual's decision with understanding.[4]

As far as military obligations were concerned, the convention emphasized that the service should be effectuated in principle in one country only and namely in the country of habitual residence.[5] The question of voluntary service, as well as service in the reserve were also duly taken into consideration.

The 1977 additional protocol[6] contemplated introducing a notification system on every new acquisition of nationality by individuals possessing the citizenship of another contracting party.[7] This notification had to contain all the personal data identifying the given person. (name, birth, address, etc.).

An amending protocol[8] of 1977 added some new facilities to the system. In 1993, a second amending protocol was opened for signature.[9] This latter protocol already opened the door towards multiple nationality.[10])

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3 CoE Convention of 1963, Art. 3:
'The Contracting Party whose nationality a person desires to renounce shall not require the payment of any special tax or charge in the event of such renunciation.'

4 CoE Convention of 1963, Art. 2:
'(1) A person who possesses the nationality of two or more Contracting Parties may renounce one or more of these nationalities, *with the consent* of the Contracting Party whose nationality he desires to renounce.
(2) *Such consent may not be withheld* by the Contracting Party whose nationality a person of full age possesses *ipso jure*, provided that the said person has, for the past ten years, had his ordinary residence outside the territory of that Party and also provided that he has his ordinary residence in the territory of the Party whose nationality he intends to retain […] (emphasis added).

5 CoE Convention of 1963: see Arts. 5 and 6.

6 Additional Protocol to the Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, Strasbourg, 24 November 1977.

7 Additional Protocol, Art. 1:
'Each Contracting Party undertakes to communicate to another Contracting Party any acquisition of its nationality by an adult or a minor who is a national of this State, which has taken place according to the conditions contained in Art. 1 of the Convention.'
Art. 2:
'(1) This communication is to be made by means of a form according to the appended model within a delay of not more than six months from the date the acquisition of nationality has become effective. The information printed on the form shall be drafted in all the languages of the member States of the Council of Europe and in the languages of non-member States adhering to the Convention. The Secretary General of the Council shall produce the necessary translations and communicate them to the governments of the member States of the Council and States acceding to the Convention.
(2) The authorities of the State issuing the communication may decline to complete the information relating to item 4 of the form.'

8 The Protocol amending the Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, Strasbourg, 24 November 1977.

9 Second Protocol amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, 2 February 1993.

10 The protocol would add three new, complementary paragraphs in Art. 1 of the CoE Convention of 1963:

The popularity of these instruments remained limited even though all of them are still in force: the Convention of 1963 has thirteen[11] contracting parties, the first amending protocol has only eight[12] while its additional protocol[13] only four contracting parties. Today, the second amending protocol has only two ratifications.[14]

1.4 The Council of Europe and the New, Understanding Philosophy

The Council of Europe was confronted in the nineties with a situation where the facts did not correspond with the coordinates of the sixties.

On the one hand, the number of the member countries increased with the collapse of the Berlin Wall and the end of the East-West conflict. Due to the progressive admission of nearly all the Central and Eastern-European countries, former allies or members of the Soviet Union, today the Council of Europe numbers fourty-seven countries.

On the other hand, it was an undeniable fact that the number of multinational Europeans increased – instead of saying *dramatically*, I should rather say: naturally. This development was of course very much a consequence of the implementation of the principle of free movement of workers in the European Communities and the European Union's concept of European citizenship. The matrimonial consequences of free movement, migration and immigration, coupled with the automatisms of the *jus sanguinis* and *jus soli* principles inevitably increased the number of binational children. Meanwhile, the dismemberment of several multinational states such as the Soviet Union, Czechoslovakia and Yugoslavia brought into this complex picture problems of double nationality and also of statelessness.

Due to the above, the Council of Europe also changed its approach and struggled with a new paradigm: if multiple citizenship is inevitable, instead of aiming for its decrease, it should be regulated, especially the details of the consequences of double nationality.

'[…] where a national of a Contracting Party acquires the nationality of another Contracting Party on whose territory either he was born and is resident, or has been ordinarily resident for a period of time beginning before the age of 18, each of these Parties may provide that he retains the nationality of origin.

[…] in cases of marriage between nationals of different Contracting Parties, each of these Parties may provide that the spouse, who acquires of his or her own free will the nationality of the other spouse, retains the nationality of origin.

[…] when a national of a Contracting Party who is a minor and whose parents are nationals of different Contracting Parties acquires the nationality of one of his parents, each of these Parties may provide that he retains the nationality of origin.'

11 Austria, Belgium, Denmark, France, Germany, Ireland, Italy, Luxemburg, The Netherlands, Norway, Spain, Sweden, United Kingdom (status as of May 2013).

12 Belgium, Denmark, Luxemburg, The Netherlands, Norway, Spain, Sweden, United Kingdom (status as of May 2013).

13 Belgium, Luxemburg, The Netherlands, Norway (status as of May 2013).

14 Italy and The Netherlands (France denounced the protocol) (status as of May 2013).

With its twenty contracting parties[15] the European Convention on Nationality[16] – a 'remarkable convention' as de Groot puts it[17] – is definitely more popular than the Convention of 1963, which nevertheless preserved its legal validity.

Understanding nationality as citizenship irrespective of etnicity,[18] the European Convention on Nationality is built on the following structure: *i*. general principles, *ii*. acquisition, loss and recovery of nationality, *iii*. procedures, *iv*. multiple nationality (in general, in case of state succession and in case of military obligations), *v*. cooperation, *vi*. final clauses.

The general principles cover the question of competence, non-discrimination as well as four guiding principles.

Competences[19] are regulated nearly *verbatim* in the same way as in the Convention of 1930.[20] The sovereign regulatory competence is counterbalanced with the requirement of its conformity to international law.[21] The non-discrimination rule adds to the traditional wording of international human rights treaties the prohibition of discrimination between individuals acquiring nationality by birth or naturalization.[22]

Article 4 stipulates,

15 Albania, Austria, Bosnia and Herzegovina, Bulgaria, Czech Republic, Denmark, Finland, Germany, Hungary, Iceland, Moldova, Montenegro, The Netherlands, Norway, Portugal, Romania, Slovakia, Sweden, FYROM, Ukraine (status as of May 2013). Signatures – for the time being – not followed by ratification: Croatia, France, Italy, Latvia, Luxemburg, Poland, Russia.

16 European Convention on Nationality, Strasbourg, 6 November 1997 (*infra*: Coe Convention of 1997).

17 G.R. de Groot, 'The European Convention on Nationality: A Step towards a Ius Commune in the Field of Nationality Law', 2 *Maastricht Journal of European and Comparative Law* (2000), p. 117.

18 Coe Convention of 1997, Art. 2:
'»nationality« means the legal bond between a person and a State and does not indicate the person's ethnic origin.'

19 CoE Convention of 1997, Art. 3:
'(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.'

20 LoN Convention of 1930, Art. 1:
'It is for each State to determine under its own law who are its nationals. This law shall be recognised by other States in so far as it is consistent with international conventions, international custom, and the principles of law generally recognised with regard to nationality.' The deliberate identity of the wording is confirmed in § 28 of the explanatory report of the Convention of 1977. (www.conventions.coe.int/Treaty/en/Reports/Html/166.htm).

21 As Tanel Kerikmäe puts it, 'Thus, the discretion of a state to determine by law who its nationals are is relative rather than absolute.' T. Kerikmäe, 'European Convention on Nationality and States' Competence: The Issue of Human Rights', II *Juridica international* (1997), p. 26.

22 CoE Convention of 1997, Art. 5:
'(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.'

> 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.

Based on the above principles, the acquisition, loss and recovery of the nationality are regulated in a balanced manner.

States are obliged to grant *ex lege* citizenship for children, foundlings born or found on their territory if at least one of the parents is their citizen or if the children do not possess or acquire any other nationality.[23] (Here, we encounter a mix of the principles *jus sanguinis* and *jus soli*.) In other related cases acquisition of nationality may be linked to an express application of the individual following a five or ten year period of lawful residence.[24] According to common traditions, the acquisition of nationality should be facilitated for spouses, born or adopted children and stable, habitual residents.[25]

The loss of nationality can take place either *ex lege* or based on the individual's request. *Ex lege* loss cases – stipulated in an exhaustive list with no possible reservations thereto[26] – embrace either reasons linked to the individual's attitude considered to be questionable or condemnable from the point of view of 'loyalty'[27] or reasons substantiating the obsoleteness of the institution.[28]

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23 1997 CoE Convention Arts. 6(1) a, b, 6(2) a.

24 1997 CoE Convention Arts. 6(2) b, 6(3).

25 1997 CoE Convention Arts. 6(4) a-g.

26 *See* also: L. Pilgrim, 'International Law and European Nationality Laws', *Eudo Citizenship Observatory*, Robert Schuman Centre for Advanced Studies in collaboration with Edinburgh University Law School, March 2011, p. 14.

27 1997 CoE Convention Art. 7(1):
'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;'

28 CoE Convention of 1997, Art. 7(1):
'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.'

As van Eijken points out 'the decision to revoke nationality is not solely within the sovereignty of Member States, but finds its limits in international law norms in the form of treaties or customary law.'[29]

Why are the *voluntary acquisition of another nationality* and the *voluntary service in a foreign military force* listed among the reasons for the *ex lege* loss of nationality? The voluntary acquisition of another nationality was conceived as a situation leading to the compulsory revocation of citizenship in the Convention of 1963, while according to the Convention of 1997 this is only an option.[30] The explanatory report fails to clarify the motivation, it refers only to the 'voluntary' character of the acquisition i.e. the individual's free will.[31] (Although there is a cross reference to Article 1[32] of the Convention of 1963, we cannot truly identify all the details of the original will of the treaty makers in lack of a proper explanatory report attached to said Convention. It must be noted however, that the Convention of 1930 contains a slightly similar wording, albeit only in the context of expatriation.[33]) The same voluntary character is emphasized in case of military service effectuated in the army of state B while the individual is still the citizen of state A.

The fact that the explanatory report of the Convention of 1997 underlines that – instead of prescribing an objective obligation – a State *may* decide whether or not to revoke citizenship[34] gives to understand that the voluntary individual act may somehow hurt the national pride of the state moving it to react in such a way.

Does such a voluntary act however constitute an effective threat to the state's supreme interests? It cannot be said that this follows from Article 7 (1)a, as a special disposition was enshrined in Article 7(1)d foreseeing a 'conduct seriously prejudicial to the vital interests of the State Party.'[35]

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29 H. van Eijken, 'European Citizenship and the Competence of Member States to Grant and to Withdraw the Nationality of Their Nationals', 27(72) *Merkourios, Criminal Justice and Human Rights* (2010), p. 68.

30 *See* in this sense the § 60 of the Explanatory report.

31 *Idem*.

32 1963 CoE Convention Art. 1:
'(1) Nationals of the Contracting Parties who are of full age and who acquire of their own free will, by means of naturalisation, option or recovery, the nationality of another Party shall lose their former nationality. They shall not be authorised to retain their former nationality.'

33 1930 LoN Convention Art. 7:
'In so far as the law of a State provides for the issue of an expatriation permit, such a permit shall not entail the loss of the nationality of the State which issues it, unless the person to whom it is issued possesses another nationality or unless and until he acquires another nationality. […] The State whose nationality is acquired by a person to whom an expatriation permit has been issued, shall notify such acquisition to the State which has issued the permit.'

34 *See* in this sense the § 58, 59, 66 of the Explanatory report.

35 *See* § 67 of the Explanatory report: 'The wording "conduct seriously prejudicial to the vital interests of the State Party" is drawn from Article 8, Paragraph 3.a.ii of the 1961 Convention on the Reduction of Statelessness. Such conduct notably includes treason and other activities directed against the vital interests of the State concerned (for example work for a foreign secret service) but would not include criminal offences of a general nature, however serious they might be.'

Moreover, bilateral or multilateral international conventions may induce the state to accept several types of foreign military services without 'retaliating'.[36] So what can be the reason for the loss of citizenship in case of a voluntary acquisition of a second nationality and under which conditions is the state entitled to benefit from this prerogative?

As referred to in a footnote *supra*, a textual importation from another convention, namely the 1961 UN Convention on the Reduction of Statelessness took place. The explanatory report attests it *expressis verbis* only *vis-à-vis* the 'conduct seriously prejudicial to the vital interests of the State Party.'[37] It is worth noting that one of the subsequent examples of the 1961 UN Convention can however be invoked as interfering with the voluntary acquisition of a new citizenship, namely 'that the person has taken an oath, or made a formal declaration of allegiance to another State.'[38]

As known from state practice, the wilfull acquisition of a citizenship is generally linked to special, final, solemn steps where taking an 'oath' has both symbolic and legal importance. Inherited from the antiquity and medieval royal traditions, swearing *fidelity* constitutes an element of the oath.

Nevertheless, the material content of the oath should fit current European legal standards and an *a priori* required loyalty should not be exaggerated. As Rainer Bauböck and Bernhard Perchinig emphasize:

> We have no normative objections to a declaration or an oath of loyalty to the legal order of the state granting naturalisation. Although native-born citizens do not have to pledge such allegiance unless they are sworn in for high public office, a democracy may require that newcomers who have had previous commitments to another state should express their loyalty in this particular way. The content of such oaths or declarations should, however, be confined to respect for the constitution and the legal order. It should include neither renouncing allegiances to other states (since this would implicitly rule out

36 *See* § 65 of the Explanatory report: 'However, participation in a multilateral force on behalf of the State of which the person concerned is a national cannot be considered as service in a foreign military force. Furthermore, voluntary military service in another country, in accordance with a bilateral or multilateral Convention, is also not covered by this provision.'

37 *See* the Convention on the Reduction of Statelessness, New York, 30 August 1961 (*infra*: UN Convention of 1961) Art. 8(3):
'Notwithstanding the provisions of Paragraph 1 of this article, a Contracting State may 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 right* on one or more of the following grounds, being grounds existing in its national law at that time:
(*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 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 the State*;' (emphasis added).

38 *See* the 1961 UN Convention Art. 8(3) b.

multiple nationality) nor a list of values that may support the democratic institutions but need not necessarily be shared by all citizens.[39]

In 1961, where the period of the devastating nazi expansionism and the Komintern had not long passed, such a rule was not surprising. (It should be pointed out however, that even the 1961 Convention refers to the maintenance – but not the introduction – of such a sanction in nationality law[40] which had also to offer a fair trial.[41]) In the well established democracies of the second half of the XXth century and today's Europe that had overcome the East-West confrontation, bringing with it the enlargement of the NATO and the European Union, these historically rooted fears no longer persist.

Nevertheless, a few European countries remain rather hostile to double nationality not wanting to share the citizen's fidelity. (While some states abolish[42] this rule, other states maintain[43] or introduce[44] it.) Current international law does not consider this constitutional perception as a violation of international commitments.

The question arises, however, whether there is an option (a *facultas alternativa*) or contradiction hidden in the text.

If the acquisition of the new (second) nationality of *country B* and the underlying national legislation seem to run against 'applicable international conventions, customary international law and the principles of law generally recognised', is the first country (*country A*, the country of current citizenship) free to refuse it?

If *country A* does not accept it and thus the new citizenship is not recognized, this means that the acquisition cannot produce effects *vis-à-vis country A*, i.e. it is *non-existens* and so it does not truly justify the revocation of the citizenship.

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39 R. Bauböck and B. Perchinig, 'Evaluation and Recommendations', in R. Bauböck et al. (Eds.), *Acquistion and Loss of Nationality – Policies and Trends in 15 European States – Summary and Recommendations, Results of the EU-Project*: *The Acquisition of Nationality in EU Member States: Rules, Practices and Quantitative Developments* (NATAC), January 2006, Institute for European Integration Research, Austrian Academy of Sciences, Vienna, pp. 45-46.

40 *See* the introductory sentence of 1961 UN Convention Art. 8(3).

41 *See* 1961 UN Convention Art. 8(4)
'A Contracting State shall not exercise a power of deprivation permitted by Paras. 2 or 3 of this article except in accordance with law, which shall provide for the person concerned the right to a fair hearing by a court or other independent body.' It has to be underlined that the fair trial principle is indirectly also expected according to Art. 4/c of the Convention of 1997 stipulating that: 'no one shall be arbitrarily deprived of his or her nationality;'.

42 'Sweden and Finland abolished the corresponding provision within the past five years and Austria, the Netherlands and Spain have introduced extended possibilities for retention of nationality for certain groups of nationals in cases where naturalisation takes place abroad. The main counter-example is Germany which, in 2000, abolished the rule that nationality is not lost if a foreign nationality is acquired, but residence in Germany is maintained.' R. Bauböck et al., 'Executive Summary', in R. Bauböck et al., *op. cit.* p. 7 (http://diversity.commedia.net.gr/files/studies/meletes/NATAC_recommendations.pdf).

43 Ukraine.

44 Slovakia, since 2010.

If however *country A* does not consider the nationality legislation of *country B* to be a violation of 'applicable international conventions, customary international law and the principles of law generally recognised' why does it react in such a strict and selfish manner? Is this only due to historical, constitutional traditions or is is based on an evident, legitimate fear?

Moreover, one may raise the question whether the attitude of *country A* may be different depending on whether the second citizenship is that of *country B, C* or *D.* In case the answer is yes – should the underlying motivation of *country A* be made public in the given case? It is worth pointing out that in case the attitude of *country A* to the acquisition of a second nationality differs depending on the second country of citizenship, this is probably not based on evident national constitutional traditions but on a pragmatic, purely political decision. (This consideration may be lawful and politically correct in itself, in case it is substantiated by proper argumentation…). The wording and the explanatory report of the Convention do not provide a clear answer to this hypothetical dilemma.

Moreover, the Convention of 1997 prescribes that States 'shall permit the renunciation of its nationality provided the persons concerned do not thereby become stateless'[45] and that the states of habitual residence facilitate the recovery of their own former nationality.[46]

The rules on the applicable procedure put emphasis on fairness and the right of review[47] but according to the Explanatory report, the *ex lege* acquisition and loss do not necessarily require a precise written reasoning.[48]

As far as multiple nationality is concerned, the Convention obliges contracting parties to allow children possessing different nationalities acquired automatically at birth to retain

45 1997 CoE Convention Art. 8(1).

46 1997 CoE Convention Art. 9:
'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.'

47 1997 CoE Convention Art. 11:
'Each State Party shall ensure that decisions relating to the acquisition, retention, loss, recovery or certification of its nationality contain reasons in writing.'
Art. 12: '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.'

48 *See* an important exception concerning the *ex lege* issues in §§ 86-87 of the Explanatory report:
§ 86 'All decisions relating to nationality, and not just those following an application, must contain reasons in writing. As a minimum, legal and factual reasons need to be given. However, the mere registration of cases of *ex lege* acquisition and loss of nationality do not require reasons to be given in writing. […]' § 87: 'In addition, all decisions must be subject to an administrative or judicial review. On the basis of this provision individuals must enjoy a right of appeal against decisions relating to nationality. The procedural aspects of the implementation of this right are left to the internal law of each State Party. […] The general recognition of the right to appeal has indeed been estimated to be of prominent importance.'

these nationalities,[49] as well as nationals to possess another nationality in case the other nationality was acquired automatically by marriage.[50]

Multiple nationals shall have the same rights and duties on the territory of the State as those who possess only the citizenship of the State of residence[51] without prejudice to the traditional rules of diplomatic and consular protection[52] and private international law.[53]

In the context of state succession, the aim is to avoid statelessness, while the applicable rules should be based on *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,[54] encouraging states to regulate related problems in international treaties.[55] According to Kerikmäe:

> One purpose of the Convention was to develop an exhaustive body of normative rules with regard to the consequences of state succession on nationality. […] The drafting process was complicated due to the divergent domestic legislative attempts of the contracting states. Thus, the final result includes only a framework of principles which allow states to formulate specific and exact rules by themselves.[56]

Military service is regulated in length, but more or less in accordance with the philosophy of the 1963 Convention,[57] granting preference to the country of residence.[58]

In the chapter devoted to interstate cooperation, the exchange of information is formulated in an optional manner with – contrary to the rule foreseen in the unsuccessfull additional protocol of 1977 – the possibility of avoiding the identification of persons voluntarily acquiring a new nationality.[59]

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49 1997 CoE Convention Art. 14(1) a.
50 1997 CoE Convention Art. 14(1) b.
51 1997 CoE Convention Art. 17(1).
52 1997 CoE Convention Art. 17(2) a.
53 1997 CoE Convention Art. 17(2)b.
54 1997 CoE Convention Art. 18(2).
55 1997 CoE Convention Art. 19.
56 Kerikmäe: *op. cit.* p. 28.
57 As § 124 of the Explanatory report puts it 'Given the general acceptance of the rules contained in Chapter II of the 1963 Convention, they have been taken over, without any substantive changes, in this Convention (Art. 21), together with the provisions of the 1977 Protocol amending the 1963 Convention, which relate to alternative civil service and exemption from military obligations (Art. 22).'
58 1997 CoE Convention Arts. 21-22.
59 1997 CoE Convention Art. 24:
'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.' According to § 134

1.5 Conclusions

Laura van Waas rightly emphasized that 'without a doubt, in the European regional context, the most significant instrument of international law to place limits on the regulation of nationality by states is the European Convention on Nationality.'[60] She adds that 'the European legal frameworks include several key innovations that really solidify the region's position at the forefront of international developments in this field.'[61] One must not forget however Pilgrims'warning that the well defined 'exhaustive lists' deter important European states from joining the Convention.[62]

She is also correctly points out that there is 'a more general lesson to be learned about obstacles preventing states from ratifying the ECN, namely that international law on nationality is undergoing a progressive gradual transition from an understanding of citizenship, or naturalisation, as privilege to an understanding of citizenship as right. Whereas the European Convention on Nationality was born out of a 'rights culture', not all national Codes have followed suit or, in fact, intend to do so. Many instances of incompatibility between national law and the Convention can thus be traced back to an emerging difference in the understanding of the concept of citizenship that informs individual legal provisions.'[63]

Finally, I must also draw attention to the fact that the European Convention on Nationality constitutes a cornerstone in the new European legal tendencies of modern citizenship legislation. Its rules reflect the commun standards of States, framed generally much more open to recognizing multiple citizenship than before. On the other hand however, States are still eager to preserve important remnants of their sovereignty and the European Convention on Nationality can coexist with the requirements expressed by the States at the time of signature and ratification.

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of the Explanatory report the elastic wording is a result of the unsuccess of the corresponding but precise formulation in the Additional protocol of 1977.

60 L. van Waas, 'Fighting Statelessness and Discriminatory Nationality Laws in Europe', 14 *European Journal of Migration and Law* (2012) (http://arno.uvt.nl/show.cgi?fid=128787) p. 245.

61 Waas: *op. cit.* p. 259.

62 *See* in this sense: Pilgrim: *op. cit.* pp. 16-17.

63 Pilgrim: *op. cit.* p. 16.