



Doc. 968

20 March 1959

Nationality of children of stateless persons

Report

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Eduard WAHL, Germany



A. Draft Recommendation presented by the Legal Committee¹

The Assembly,

Considering that the number of legitimate children born of a stateless father and a mother of the nationality of one of the Member States has increased during the last few years;

Considering that in the majority of Member States these children automatically acquire the nationality of their mother but that in certain other States they become stateless;

Considering that statelessness is unquestionably prejudicial to these children and that it is in the interests of society that they acquire the nationality of their mothers;

Recalling its Recommendation 87 (1955) on statelessness,

Recommends that the Committee of Ministers :

1. Invite the Member Governments concerned² to take the necessary measures so that legitimate children born in their territory of a marriage between a stateless father and a mother who is a national of their country automatically acquire by right the latter's nationality;
2. Suggest that these Governments draft the legal provisions which will be adopted on this matter in such a manner that the said children, if born in a territory other than that of the mother, do not acquire dual nationality nor become stateless;
3. Keep the Assembly informed of measures which may be taken to this end by the Governments concerned.

1. (a) Adopted unanimously by the Committee. MEMBERS of THE COMMITTEE : MM. Lannung (Chairman); Azara, Kopf (Vice-Chairmen); Alyot, Codacci Pisanelli (Alternate : Collone), Cunningham, Ehngren, Flanagan, Hale, Hedlund, Jonasson, Karasan (Alternate : Erden), Maris, van Meeuwen, Monde (Alternate : Wahl), Metzger, Minjoz, Nacucchi, Van Remoortel, Schaus, Schmal, Strasser, Stray, Struye, Teitgen, Tonic, Yerocostopoulos.
N.B. THE NAMES OF THE MEMBERS WHO VOTED ARE PRINTED IN ITALICS.
(b) See 6th Sitting, 23rd April 1959 (draft Recommendation adopted), and Recommendation 194.

2. Belgium, the Federal Republic of Germany, Luxembourg.

B. Explanatory Memorandum

1. In May 1958, the Consultative Assembly referred to the Legal Committee for an opinion a motion for a Recommendation " to invite Member Governments, where appropriate, to revise their legislation in respect of nationality so that citizenship is ipso facto conferred on children born of a stateless father and a mother who is one of their nationals " (Doc. 832).

2. At its meeting held on 9th and 10th June 1958 at The Hague, the Legal Committee, after examining this motion, noted that it was intended to refer only to children born within the territory of a Member State of which the mother was a national. It instructed the Secretariat to prepare a comparative table of the present legislation on this matter in member countries (AS/Jur (10) PV 2 No. 8) and referred the motion for report to Sub-committee No. 9 on Multiple Nationality,

3. The Sub-committee studied the motion for a Recommendation at its meeting in Paris on 21st November 1958, when Professor Maka-rov, who was present as an independent expert, presented a most able analysis of the problem. The report which the Sub-Committee subsequently prepared was approved by the Legal Committee on March 9th 1959.

4. The comparative table prepared by the Secretariat is appended to this Memorandum. It deals with the case where the father is stateless and the mother a national of a Member State; the case where the father is a national and the mother is stateless, and the case where both parents are stateless.

5. However, in accordance with the instructions mentioned in paragraph 2 above, the table only indicates the nationality of a child born in the territory of a State of which the mother (or the father) is a national³, without specifying what the nationality of the child would be if it had been born in the territory of another State : the table shows the nationality of a child born in France of a stateless father and a French mother, but does not specify what its nationality would be if it had been born in, for example, Germany⁴. Thus it deals only with the nationality of a child in relation to its mother's country. Moreover, the table is concerned only with nationality at birth; it does not mention nationality subsequently acquired, either by residence, naturalisation, or any other act (adoption or legitimation).

6. During the discussions at the Legal Committee three questions arose :

7. (a) The first question was whether to examine the case only of legitimate children or of illegitimate children as well. It was pointed out that to harmonise legislation on the nationality of illegitimate children of stateless persons would be a very difficult undertaking, because it would come up against irreconcilable principles governing affiliation in various countries, principles which have led to two opposing systems, that of " parentage " and that of " recognition ". According to the first system, affiliation arises from the mere fact of parentage (this is the case in Germany, Austria, etc.), consequently the mother's nationality is automatically acquired. Under the second system, affiliation exists only if the child has been recognised (as is the case in France, Belgium, Luxembourg and Italy); this, therefore, constitutes a prior condition to the acquisition of nationality. By reason of these conflicting regulations, which arise from fundamentally different legal conceptions, the Committee did not feel it should deal with the case of illegitimate children but should confine itself to the nationality of legitimate children of stateless persons.

8. (b) The second question was whether consideration should be given only to the case of a child born of a stateless father and of a mother who is a national (second line of the comparative table) or whether the case should also be considered where both parents were stateless (third line of comparative table). The Committee was of the opinion that the latter hypothesis was outside the scope of the motion for a Recommendation and, further, that such a question could only be settled on the basis of a general arrangement (for example an international convention) for reducing or eliminating statelessness. Consequently, the Committee decided to consider only the case of a legitimate child born of a stateless father and of a mother who is a national.

9. (c) The third question was whether consideration should only be given to the nationality of a child born in the territory of a Member State of which the mother is a national or whether consideration should also be given to the nationality of a child born in the territory of a State of which the mother is not a national (see explanation in paragraph 5 above). Some members of the Committee thought this third hypothesis should also be considered. They were afraid that, on the one hand, the child in question would remain stateless if it were born in a country of which the mother was not a national and, on the other hand, that the child might acquire dual nationality if that country, by virtue of *jus soli*, accorded its own nationality. They, therefore, proposed to specify in the Recommendation to be presented to the Committee of Ministers that in the case of

3. The table also shows the nationality of a child born in the territory of a State in which both stateless parents reside.

4. In this case the child would be stateless.

a child born in the territory of a State of which the mother is not a national the mother's nationality should nevertheless be granted, unless the child acquires the nationality of the State in question by virtue of *jus soli*. Other members suggested that the mother's nationality should be granted in all cases, by virtue of *jus sanguinis*, even though the child be born in the territory of a State other than that of which the mother is a national and even if such a solution entailed dual nationality.

10. In principle, your Committee is in favour of the first proposal, since it has the advantage of avoiding statelessness or dual nationality when the child is born in a territory other than that of which the mother is a national. Nevertheless, your Committee do not think this proposal—nor the second one—can be adopted, for the following reasons :

11. From the comparative table (second line), which concerns only the nationality of a child born in the territory of a State of which the mother is a national, it will be seen that the child remains stateless only in Belgium, the Federal Republic of Germany and Luxembourg; in all other countries the child becomes a " national ". The motion for a Recommendation was intended by its sponsors to apply only to these three countries. And, as is mentioned in paragraph 2 above, the Legal Committee has itself stated that the proposal is concerned only with children born in the territory of a State of which the mother is a national.

12. Now, if we adopt the first of the two proposals mentioned in paragraph 9 above, those countries which apply *jus soli* to children born in their territory of a stateless father and of a mother who is a national (Denmark, Iceland, Ireland, Norway, Sweden, United Kingdom) would have to amend their legislation to provide for a partial application of *jus sanguinis*, and the countries where *jus sanguinis* applies (France, etc.) would also have to modify their legislation in order to avoid giving rise to dual nationality. And, if the second of the two proposals mentioned in paragraph 9 above were adopted, those countries where *jus soli* applies—these include the Scandinavian countries— would also have to amend their legislation in order to grant their nationality to a child born outside their territory.

13. Either system would therefore affect countries other than those initially concerned; moreover, we should be obliged to reconcile to some extent the rules of *jus sanguinis* and *jus soli*. Now, as I have already explained, the reconciliation of these rules is " only conceivable in the framework of a general arrangement, for example, an international convention on the problem as a whole"⁵

14. The Legal Committee therefore suggests that we do not go beyond the proposals contained in the motion for a Recommendation (which relates only to three countries and does not advocate the conclusion of a convention). Nevertheless, on the basis of the first of the proposals mentioned in paragraph 9 above— we might suggest to the three Governments in question that any legal provisions which may be introduced on this matter should be so drafted as to prevent a child born in another territory from becoming stateless or of dual nationality.

5. The Conference of Plenipotentiaries to conclude a Convention for the reduction or elimination of statelessness, the convocation of which the Assembly recommended in its Recommendation 87 (1955), has been convened for 24th March at Geneva.

1.

Nationality of child of stateless parent or parents

Austria¹	Belgium¹	Denmark³	France⁴	Federal Republic⁵ of Germany	Greece⁰	Iceland[']	Ireland["]
Austrian Legitimate child born in Father : national - Mother : stateless become Father : stateless - Mother : national become Father : stateless - Mother : Stateless become Legitimate child born in Father : national - Mother : stateless become Father : stateless - Mother : national become Father : stateless - Mother : Stateless become Illegitimate child born in (recognised by father and moter) Father : national - Mother : stateless become Father : stateless - Mother : national become Father : stateless - Mother : Stateless become Illegitimate child born in (recognised by father and moter) Father : national -	Belgian	Danish	French	German	Greek	Icelandic	Irish

Austria ¹	Belgium ¹	Denmark ³	France ⁴	Federal Republic ⁵ of Germany	Greece ⁰	Iceland [']	Ireland ["]
Austrian Legitimate child born in Father : national - Mother : stateless become Father : stateless - Mother : national become Father : stateless - Mother : Stateless become Legitimate child born in Father : national - Mother : stateless become Father : stateless - Mother : national become Father : stateless - Mother : Stateless become Illegitimate child born in (recognised by father and moter) Father : national - Mother : stateless become Father : stateless - Mother : national become Father : stateless - Mother : Stateless become Illegitimate child born in (recognised by father and moter) Father : national - Mother : stateless become	Stateless	Danish	French	Stateless	Greek	Icelandic	Irish

Austria¹	Belgium¹	Denmark³	France⁴	Federal Republic⁵ of Germany	Greece⁰	Iceland[']	Ireland["]
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Stateless	Stateless	Stateless	French if one parent born in France	Stateless	Greek	Stateless	Irish
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Legitimate
child born in

Father :
national -
Mother :
stateless
become

Father :
stateless -
Mother :
national
become

Father :
stateless -
Mother :
Stateless
become

Legitimate
child born in

Father :
national -
Mother :
stateless
become

Father :
stateless -
Mother :
national
become

Father :
stateless -
Mother :
Stateless
become

Illegitimate
child born in
(recognised
by father and
moter)

Father :
national -
Mother :
stateless
become

Father :
stateless -
Mother :
national
become

Father :
stateless -
Mother :
Stateless
become

Illegitimate
child born in
(recognised
by father and
moter)

Father :
national -
Mother :
stateless

Austria1	Belgium1	Denmark3	France4	Federal Republic5 of Germany	Greece0	Iceland'	Ireland''
Italy 9	Luxembourg10	Netherland	Norwa12	Sweden13	Turkey14	United Kingdom 15	
Legitimate child born in							
Father : national -							
Mother : stateless become							
Father : stateless -							
Mother : national become							
Father : stateless -							
Mother : Stateless become							
Legitimate child born in							
Father : national -							
Mother : stateless become							
Father : stateless -							
Mother : national become							
Father : stateless -							
Mother : Stateless become							
Illegitimate child born in (recognised by father and moter)							
Father : national -							
Mother : stateless become							
Father : stateless -							
Mother : national become							
Father : stateless -							
Mother : Stateless become							
Illegitimate child born in (recognised by father and moter)							
Father : national -							
Mother : stateless							
become							

Austria¹	Belgium¹	Denmark³	France⁴	Federal Republic⁵ of Germany	Greece⁰	Iceland[']	Ireland["]
Italian	Luxemburger	Dutch	Norwegian	Swedish	Turkish	British	
Legitimate child born in							
Father :							
national -							
Mother :							
stateless							
become							
Father :							
stateless -							
Mother :							
national							
become							
Father :							
stateless -							
Mother :							
Stateless							
become							
Legitimate child born in							
Father :							
national -							
Mother :							
stateless							
become							
Father :							
stateless -							
Mother :							
national							
become							
Father :							
stateless -							
Mother :							
Stateless							
become							
Illegitimate child born in (recognised by father and moter)							
Father :							
national -							
Mother :							
stateless							
become							
Father :							
stateless -							
Mother :							
national							
become							
Father :							
stateless -							
Mother :							
Stateless							
become							
Illegitimate child born in (recognised by father and moter)							
Father :							
national -							
Mother :							
stateless							
become							

Austria ¹	Belgium ¹	Denmark ³	France ⁴	Federal Republic ⁵ of Germany	Greece ⁰	Iceland [']	Ireland ["]
Italian Legitimate child born in Father : national - Mother : stateless become Father : stateless - Mother : national become Father : stateless - Mother : Stateless become Legitimate child born in Father : national - Mother : stateless become Father : stateless - Mother : national become Father : stateless - Mother : Stateless become Illegitimate child born in (recognised by father and moter) Father : national - Mother : stateless become Father : stateless - Mother : national become Father : stateless - Mother : Stateless become Illegitimate child born in (recognised by father and moter) Father : national - Mother : stateless become	Stateless	Dutch	Norwegian	Swedish	Turkish	British	

Austria¹	Belgium¹	Denmark³	France⁴	Federal Republic⁵ of Germany	Greece⁰	Iceland[']	Ireland["]
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Italian	Stateless	Dutch if the father is domiciled in Netherlands and is been of a mother also domiciled in the Kingdom	Stateless	Stateless	Turkish	British	
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Legitimate
child born in

Father :
national -
Mother :
stateless
become

Father :
stateless -
Mother :
national
become

Father :
stateless -
Mother :
Stateless
become

Legitimate
child born in

Father :
national -
Mother :
stateless
become

Father :
stateless -
Mother :
national
become

Father :
stateless -
Mother :
Stateless
become

Illegitimate
child born in
(recognised
by father and
mother)

Father :
national -
Mother :
stateless
become

Father :
stateless -
Mother :
national
become

Father :
stateless -
Mother :
Stateless
become

Illegitimate
child born in
(recognised
by father and

Austria1	Belgium1	Denmark3	France4	Federal Republic5 of Germany	Greece0	Iceland'	Ireland''
Autria	Belgian	Danemark	France	Federal Republic of Germany	Greece	Iceland	Ireland
Legitimate child born in							
Father :							
national -							
Mother :							
stateless							
become							
Father :							
stateless -							
Mother :							
national							
become							
Father :							
stateless -							
Mother :							
Stateless							
become							
Legitimate child born in							
Father :							
national -							
Mother :							
stateless							
become							
Father :							
stateless -							
Mother :							
national							
become							
Father :							
stateless -							
Mother :							
Stateless							
become							
Illegitimate child born in (recognised by father and moter)							
Father :							
national -							
Mother :							
stateless							
become							
Father :							
stateless -							
Mother :							
national							
become							
Father :							
stateless -							
Mother :							
Stateless							
become							
Illegitimate child born in (recognised by father and moter)							
Father :							
national -							
Mother :							
stateless							

Austria¹	Belgium¹	Denmark³	France⁴	Federal Republic⁵ of Germany	Greece⁰	Iceland[']	Ireland["]
Stateless Legitimate child born in Father : national - Mother : stateless become Father : stateless - Mother : national become Father : stateless - Mother : Stateless become Legitimate child born in Father : national - Mother : stateless become Father : stateless - Mother : national become Father : stateless - Mother : Stateless become Illegitimate child born in (recognised by father and moter) Father : national - Mother : stateless become Father : stateless - Mother : national become Father : stateless - Mother : Stateless become Illegitimate child born in (recognised by father and moter) Father : national - Mother : stateless become	Belgian	Stateless	French	Stateless	Greek	Stateless	Irish

Austria ¹	Belgium ¹	Denmark ³	France ⁴	Federal Republic ⁵ of Germany	Greece ⁰	Iceland [']	Ireland ["]
Austrian Legitimate child born in Father : national - Mother : stateless become Father : stateless - Mother : national become Father : stateless - Mother : Stateless become Legitimate child born in Father : national - Mother : stateless become Father : stateless - Mother : national become Father : stateless - Mother : Stateless become Illegitimate child born in (recognised by father and moter) Father : national - Mother : stateless become Father : stateless - Mother : national become Father : stateless - Mother : Stateless become Illegitimate child born in (recognised by father and moter) Father : national - Mother : stateless become	Stateless	Danish	French	German	Greek	Icelandic	Irish

Austria¹	Belgium¹	Denmark³	France⁴	Federal Republic⁵ of Germany	Greece⁰	Iceland[']	Ireland["]
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Stateless	Stateless	Stateless	French if one parent born in France	Stateless	Greek	Stateless	Irish
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Legitimate
child born in

Father :
national -
Mother :
stateless
become

Father :
stateless -
Mother :
national
become

Father :
stateless -
Mother :
Stateless
become

Legitimate
child born in

Father :
national -
Mother :
stateless
become

Father :
stateless -
Mother :
national
become

Father :
stateless -
Mother :
Stateless
become

Illegitimate
child born in
(recognised
by father and
moter)

Father :
national -
Mother :
stateless
become

Father :
stateless -
Mother :
national
become

Father :
stateless -
Mother :
Stateless
become

Illegitimate
child born in
(recognised
by father and
moter)

Father :
national -
Mother :
stateless

Austria ¹	Belgium ¹	Denmark ³	France ⁴	Federal Republic ⁵ of Germany	Greece ⁰	Iceland [']	Ireland ["]
Italy	Luxembourg	Netherlands	Norway	Sweden	Turkey	United Kingdom	
Legitimate child born in							
Father :							
national -							
Mother :							
stateless							
become							
Father :							
stateless -							
Mother :							
national							
become							
Father :							
stateless -							
Mother :							
Stateless							
become							
Legitimate child born in							
Father :							
national -							
Mother :							
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Father :							
stateless -							
Mother :							
national							
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stateless -							
Mother :							
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Illegitimate child born in							
(recognised							
by father and							
moter)							
Father :							
national -							
Mother :							
stateless							
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Father :							
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Mother :							
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Illegitimate child born in							
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by father and							
moter)							
Father :							
national -							
Mother :							
stateless							
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Austria ¹	Belgium ¹	Denmark ³	France ⁴	Federal Republic ⁵ of Germany	Greece ⁰	Iceland [']	Ireland ["]
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Italy	Luxembourg r	Dutch	Stateless	Stateless	Turkish	British	
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Legitimate
child born in

Father :
national -

Mother :
stateless
become

Father :
stateless -
Mother :
national
become

Father :
stateless -
Mother :
Stateless
become

Legitimate
child born in

Father :
national -

Mother :
stateless
become

Father :
stateless -
Mother :
national
become

Father :
stateless -
Mother :
Stateless
become

Illegitimate
child born in
(recognised
by father and
moter)

Father :
national -

Mother :
stateless
become

Father :
stateless -
Mother :
national
become

Father :
stateless -
Mother :
Stateless
become

Illegitimate
child born in
(recognised
by father and
moter)

Father :
national -

Mother :
stateless
become

Austria ¹	Belgium ¹	Denmark ³	France ⁴	Federal Republic ⁵ of Germany	Greece ⁰	Iceland [']	Ireland ["]
Italy	Stateless	Dutch	Norwegian	Swedish	Turkish	British	
Legitimate child born in							
Father :							
national -							
Mother :							
stateless							
become							
Father :							
stateless -							
Mother :							
national							
become							
Father :							
stateless -							
Mother :							
Stateless							
become							
Legitimate child born in							
Father :							
national -							
Mother :							
stateless							
become							
Father :							
stateless -							
Mother :							
national							
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Father :							
stateless -							
Mother :							
Stateless							
become							
Illegitimate child born in (recognised by father and moter)							
Father :							
national -							
Mother :							
stateless							
become							
Father :							
stateless -							
Mother :							
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Father :							
stateless -							
Mother :							
Stateless							
become							
Illegitimate child born in (recognised by father and moter)							
Father :							
national -							
Mother :							
stateless							
become							

Austria¹	Belgium¹	Denmark³	France⁴	Federal Republic⁵ of Germany	Greece⁰	Iceland[']	Ireland["]
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Italian	Stateless	Dutch if the father is domiciled in Netherlands and is born of a mother also domiciled in the Kingdom	Stateless	Stateless	Turkish	British	
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Legitimate
child born in

Father :
national -
Mother :
stateless
become

Father :
stateless -
Mother :
national
become

Father :
stateless -
Mother :
Stateless
become

Legitimate
child born in

Father :
national -
Mother :
stateless
become

Father :
stateless -
Mother :
national
become

Father :
stateless -
Mother :
Stateless
become

Illegitimate
child born in
(recognised
by father and
moter)

Father :
national -
Mother :
stateless
become

Father :
stateless -
Mother :
national
become

Father :
stateless -
Mother :
Stateless
become

Illegitimate
child born in
(recognised
by father and