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**COMPARATIVE LEGAL ANALYSIS OF THE LEGISLATION  
OF THE REPUBLIC OF BELARUS AND THE PROVISIONS OF THE  
CONVENTION ON THE REDUCTION OF STATELESSNESS OF 30  
AUGUST, 1961**

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## SUMMARY

The comparative legal analysis of the legislation of the Republic of Belarus and the provisions of the Convention on the Reduction of Statelessness of 30 August, 1961 was made in accordance with Sub-Clause of the Section 'Identification of Statelessness', Sub-Clause *i* of the Section 'Prevention of Statelessness' of the Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons of the UNHCR ExCom of 6 October, 2006 (hereinafter referred to as the UNHCR ExCom Conclusion 106 (LVII) – 2006) by the National Center for Legislation and Legal Research of the Republic of Belarus under agreement No. 09-31/8 of 19 August, 2008 with the UNHCR Representation in the Republic of Belarus.

The Convention on the Reduction of Statelessness of 30 August, 1961 (hereinafter referred to as the Convention) was developed within the framework of the United Nations at the UN Conference on the Elimination or Reduction of Statelessness in Future. The goal of the Convention is to reduce statelessness by establishing streamline approaches to the issues of nationality, determination of single rules of acquisition and termination of nationality on the level of an international treaty and unification of the national legislation of the States Parties on these issues.

The Convention fixes the following major approaches to the resolution of the issues of nationality under certain terms and with certain exceptions:

- a person born in the territory of a State shall be granted the nationality of that state, if that person would otherwise become stateless;
- a person, whose parent is a national of a State, is granted the right to acquire the nationality of that State;
- a foundling found in the territory of a State is considered born in the territory of that State from parents holding the nationality of that State;
- birth aboard a ship or aircraft is considered as taking place in the territory of that State, under which flag the ship flies, or in the territory of the State where the aircraft is registered;
- the States should make loss of nationality, renunciation of nationality, deprivation of nationality subject to acquisition of the nationality of another State, or provision of guarantees of its acquisition;
- a child who has lost the nationality of a State due to changes in his individual status, has a right to restoration of the nationality of that State;
- deprivation of a nationality on discriminating grounds is not allowed;
- the State that in any manner acquires a territory should grant its nationality to persons, whose nationality is related to that territory.

The Republic of Belarus is not party to the Convention.

In the Republic of Belarus the issues of nationality of the Republic of Belarus are regulated by the Constitution of the Republic of Belarus of 15 March, 1994, the Law of the Republic of Belarus of 1 August, 2002 'On the Nationality of the Republic of Belarus' (hereinafter referred to as the Law 'On Nationality'), the Regulation on the Procedure of Review of Issues Related with the Nationality of the Republic of Belarus, approved by the Edict of the President of the Republic of Belarus No. 209 of 17 November, 1994 as amended by the Edict of the Republic of Belarus No. 755 of 29 December, 2006 (hereinafter referred to as the Regulation on the Procedure of Review of Issues Related with the Nationality of the Republic of Belarus), and international treaties of the Republic of Belarus on issues of nationality.

According to Part Two of Article 10 of the Constitution of the Republic of Belarus, no one may be deprived of the nationality of the Republic of Belarus or the right to change his nationality. The acquisition and loss of the nationality are performed in accordance with law (Part Four of Article 10 of the Constitution of the Republic of Belarus).

A detailed comparative analysis of the provisions of the legislation of the Republic of Belarus and of the Convention shows that in general the legislation of the Republic of Belarus meets the prescriptions of the Convention and is aimed at the reduction of statelessness and the prevention of statelessness. In certain cases the legislation of the Republic of Belarus is aimed at the reduction of statelessness and the prevention of statelessness even to a greater extent, than the Convention. However, it does not impede the Republic of Belarus to participate in that Convention since, according to Article 13 of the Convention, it does not affect any the rights of the States to apply the provisions of their national legislation, as well as international treaties that are more conducive to the reduction of statelessness than the provisions of the Convention.

The legislation of the Republic of Belarus meets the recommendations provided in Sub-Clause *j* of the Section 'Prevention of Statelessness' of the UNHCR ExCom Conclusion 106 (LVII) – 2006, since it does not contain any restrictions applied to parents in passing on nationality to their children; denial of a woman's ability to pass on nationality; renunciation without having secured another nationality; automatic loss of citizenship from prolonged residence abroad; deprivation of nationality owing to failure to perform military or alternative civil service; loss of nationality due to a person's marriage to an alien or due to a change in nationality of a spouse during marriage; and deprivation of nationality resulting from discriminatory practices.

However, the legislation of the Republic of Belarus regulates certain issues at variance with the provisions of the Convention:

- the Law 'On Nationality' allows for situations when a child born in the territory of the Republic of Belarus does not acquire the nationality of the Republic of Belarus, even if he will otherwise become stateless. It is possible if neither one of the parents of the child holds the nationality of the Republic of Belarus, and meanwhile parents (single parent) do not (does not) reside permanently in the territory of the Republic of Belarus (Article 1 of the Convention);
- the Law 'On Nationality' establishes more numerous and rigorous conditions for acquisition of the nationality of the Republic of Belarus by a stateless person born in its territory upon his request (for instance, then person can not acquire the nationality of the Republic of Belarus, if the person does not undertake to follow and respect the Constitution of the Republic of Belarus and other legislative acts of the Republic of Belarus, does not know either national language of the Republic of Belarus within the limits necessary for communication and if the person is suspect or accused, and criminally prosecuted in the Republic of Belarus or in a foreign country for crimes recognized as such by the legislation of the Republic of Belarus – until the sentence or a final decision on the case is pronounced – if the person was deported or expelled from the Republic of Belarus – until the end of the term of the ban on entry into the Republic of Belarus, etc.) (Clause 2 of Article 1 of the Convention);
- even on if all the conditions set forth in the Law are met, an application for nationality may be rejected, in relation to persons born in the territory of the Republic of Belarus as well, in consideration of the interests of the Republic of Belarus (sentence two of Sub-Clause *b*) of Clause 1 of Article 1 of the Convention);
- the legislation of the Republic of Belarus does not establish a rule, according to which, for the purposes of resolving the issues of nationality, territories of ships flying the flag of the Republic of Belarus or aircraft registered in the Republic of Belarus are made equal with the territory of the Republic of Belarus (Article 3 of the Convention);
- the legislation of the Republic of Belarus does not provide for the conferment of the nationality of the Republic of Belarus in case of acquisition/transfer of a territory to the Republic of Belarus under an international treaty that does not contain any provisions aimed at exclusion of the situation of statelessness in the result of such a transfer.

The legislation of the Republic of Belarus does not fully resolve the task of preclusion of the situation of statelessness in relation to foreign nationals wishing to acquire the nationality of the Republic of Belarus. However, the Convention does not establish direct obligations of the Contracting States on that issue. It is assumed that the issues of prevention of

situation of statelessness for foreign nationals wishing to acquire the nationality of the Republic of Belarus should be regulated on a mutual basis by conclusion of treaties with foreign countries. For instance, these issues were thus resolved in conclusion of the Treaty between the Republic of Belarus and the Republic of Kazakhstan on the Simplified Procedure of Nationality Acquisition by the Nationals of the Republic of Belarus Coming for Permanent Residence to the Republic of Kazakhstan, and the Nationals of the Republic of Kazakhstan Coming for Permanent Residence to the Republic of Belarus, of 17 January, 1996; Treaty between the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation on the Simplified Procedure of Nationality Acquisition of 26 February, 1999; Treaty between the Republic of Belarus and Ukraine on a Simplified Procedure of Nationality Change by the Nationals of the Republic of Belarus Who Permanently Reside in Ukraine, and Nationals of Ukraine, Who Permanently Reside in Belarus, of 12 March, 1999.

In view of the aforesaid, the following amendments and addenda should be included into the Law 'On Nationality' at documentation of participation of the Republic of Belarus in the Convention for the purpose of implementation of its provision:

- in relation to persons born in the territory of the Republic of Belarus who do not have any other nationality, remove conditions for acquisition of the nationality of the Republic of Belarus, as provided by Articles 13-16 of the Law 'On Nationality', or in their stead establish conditions of acquisition of the nationality of the Republic of Belarus meeting the requirements of Clause 2 of Article 1 of the Convention;
- provide that the birth of a person aboard a ship of the Republic of Belarus in open water or air space outside of the Republic of Belarus shall be considered as birth in the territory of the Republic of Belarus.

Appropriate amendments and addenda should be also introduced into the Regulation on the Procedure of Review of Issues related to the Nationality of the Republic of Belarus.

In order to make a decision on documentation of participation of the Republic of Belarus in the Convention, the issue of cancellation of the conditions of acquisition of the nationality of the Republic of Belarus stipulated in Articles 13-16 of the Law 'On Nationality' in relation to persons who were born in the territory of the Republic of Belarus and who do not have any other nationality, or determination of condition of acquisition of the nationality of the Republic of Belarus in line with the requirements of Clause 2 of Article 1 of the Convention, will require detailed elaboration and discussion among involved government agencies of the Republic of Belarus.

It should be noted that the gaps of the national legislation revealed in the result of the analysis, should be eliminated regardless of documentation of participation of the Republic of Belarus in the Convention.

# COMPARATIVE LEGAL ANALYSIS OF THE LEGISLATION OF THE REPUBLIC OF BELARUS AND THE PROVISIONS OF THE CONVENTION ON THE REDUCTION OF STATELESSNESS OF 30 AUGUST, 1961

## Article 1

1. A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless. Such nationality shall be granted:

(a) At birth, by operation of law, or

(b) Upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this article, no such application may be rejected. A Contracting State which provides for the grant of its nationality in accordance with subparagraph (b) of this paragraph may also provide for the grant of its nationality by operation of law at such age and subject to such conditions as may be prescribed by the national law.

2. A Contracting State may make the grant of its nationality in accordance with subparagraph (b) -of paragraph 1 of this article subject to one or more of the following conditions:

(a) That the application is lodged during a period, fixed by the Contracting State, beginning not later than at the age of eighteen years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so;

(b) That the person concerned has habitually resided in the territory of the Contracting State for such period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years in all;

(c) That the person concerned has neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge;

(d) That the person concerned has always been stateless.

3. Notwithstanding the provisions of paragraphs 1 (b) and 2 of this article, a child born in wedlock in the territory of a Contracting State, whose mother has the nationality of that State, shall acquire at birth that nationality if it otherwise would be stateless.



4. *A Contracting State shall grant its nationality to a person who would otherwise be stateless and who is unable to acquire the nationality of the Contracting State in whose territory he was born because he has passed the age for lodging his application or has not fulfilled the required residence conditions, if the nationality of one of his parents at the time of the person's birth was that of the Contracting State first above-mentioned. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. If application for such nationality is required, the application shall be made to the appropriate authority by or on behalf of the applicant in the manner prescribed by the national law. Subject to the provisions of paragraph 5 of this article, such application shall not be refused.*

5. *the Contracting State may make the grant of its nationality in accordance with the provisions of paragraph 4 of this article subject to one or more of the following conditions:*

(a) *That the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State;*

(b) *That the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State;*

(c) *That the person concerned has always been stateless.*

## **Comments to the Provisions of the Convention**

1. Article 1 of the Convention on the Reduction of Statelessness of 30 August, 1961 (hereinafter referred to as the Convention) provides for several ways for a State to grant its nationality to a person **who would otherwise become or remain stateless**. It should be emphasized that in the Russian text of the Convention the term 'person without nationality' is used along with the term 'stateless person'. The Convention does not provide any definitions of these terms. However, the English text of the Convention has only one term – 'stateless person'. The same term is provided in the English text *of the Convention Relating to the Status of Stateless Persons of 28 September, 1954* in relation to stateless persons. Therefore, it is suggested that the terms 'stateless person' and 'person without nationality' are synonymous for the purposes of the Convention. In this analysis the term 'stateless persons' ('persons without nationality') will refer to stateless persons in the meaning *of the Convention Relating to the Status of Stateless Persons of 28 September, 1954*, i.e., persons who are not considered as nationals by any

State by operation of its law are stateless persons (persons without nationality) de jure. Meanwhile, Resolution I, which is an Attachment to the Final Act of the United Nations Conference on the Elimination or Reduction of Statelessness in Future, recommended the States to treat as far as possible persons who are stateless de facto as stateless de jure to enable them to acquire an effective nationality.

Clauses 1 and 3 of Article 1 of the Convention relate to the conferment of its nationality by a State to a person born **in its territory**. Neither the above Article, nor the other Articles of the Convention provide an explanation of the meaning of a 'territory of a State'. It is assumed that the Contracting States will be guided by their domestic legislations for the resolution of this issue.

In accordance with Clause 1 of Article 1 of the Convention, a State may grant its nationality to a person born in its territory:

a) by operation of law, **with no requirement of lodging an appropriate application** by or on behalf of the person concerned and observance of other formalities.

In this case a State may grant its nationality:

at birth (tacitly, by the fact of the birth of the child in the territory of that State);

when a child is of an age established by the national legislation and with a consideration of any conditions that may be stipulated in this legislation; **or**

b) **upon an application** with the appropriate authority by or on behalf of the person concerned. A State may make the grant of its nationality subject to one or more of the following conditions:

- that the application for nationality is lodged during a fixed period. A State may fix any period for lodging an application; however its time limit may not be lower than eighteen years and higher than twenty-one years of age. Besides, regardless of the duration of the period fixed by the State, the applicant should be allowed at least one year during which he may himself make the application;
- that the applicant has habitually resided in the territory of that State for a certain period of time. The State may provide in its legislation for any period of habitual residence of the applicant in its territory, however, it should not exceed five years immediately preceding the lodging of the application. The overall time (i.e., the total period) of the person's habitual residence in the territory of this State should not exceed ten years. However, neither Article 1 nor the other articles of the Convention provide an explanation of the meaning of 'habitual residence'. This issue is left for the judgment of the States.

- that the person concerned has neither been convicted of an offence against national security (a State may deny its nationality to such a person regardless of the type of penalty), nor has been sentenced to imprisonment for a term of five years or more on a criminal charge. According to Resolution IV, which is an Attachment to the Final Act of the United Nations Conference on the Elimination or Reduction of Statelessness in Future, the Conference resolved that for the purposes of the Convention the term 'convicted' shall mean 'convicted by a final judgment of a court of competent jurisdiction';
- that the applicant has been stateless since his birth till the time of submission of the application.

A State may not impose any more rigorous or additional conditions in relation to the applicant. A State also should not reject an application for nationality if the applicant meets the conditions fixed by the State with a consideration of the above provisions.

Sub-Clause b) of Clause 1 of Article 1 of the Convention stipulates that the procedural issues related to submission of applications for nationality are regulated by the legislation of the State where such an application is lodged at.

Clause 3 of Article 1 of the Convention does not provide a State with a choice of the method of conferment of its nationality to **a child born in wedlock in its territory, and whose mother holds the nationality of that State** – the nationality should be granted to him tacitly at birth. These provisions are aimed at the prevention of a situation when a child may become stateless, if the legislation of the relevant State provides that a child's nationality follows the father's nationality while the father is stateless. It should be emphasized that, according to Clause 3 of Article 1 of the Convention, a child has a right to the nationality of the relevant State also when his parents divorced after his birth.

Clause 4 of Article 1 of the Convention refers to the grant of nationality by a State to a person born **outside of its territory**. The State **is obliged to** grant its nationality to that person only in case of aggregate occurrence of the following conditions:

- one of the person's parents was a national of that State at the time of his birth. In accordance with Clause 4 of Article 1 of the Convention, a State may set forth in its legislation the nationality of which parent would be followed by the nationality of the child. Therefore, a State is not obliged to grant its nationality to a child whose mother holds its nationality when the child's nationality follows, according to its legislation, the father's nationality who is a foreign national or a person without nationality. A situation when only the father of the child is the national of that State,

when, according to the legislation of the State, the child's nationality follows the mother's nationality, is resolved in the same manner;

- a person may not acquire the nationality of the State, in the territory of which the person has stayed, if the person has exceeded the age required for submission of the application or failed to meet the required conditions of residence. In this case, when a person can not become a national of his country of birth for any other reasons, the State outside of which the person has stayed, may deny him their nationality;
- in case of non-conferment of nationality, the person will be stateless.

A State may grant its nationality both upon an application by or on behalf of the person concerned or without such an application (the procedure of lodging an application is determined by the legislation of the subject State), and without any requirements for the grant of nationality, or making it subject to fulfillment of one or more of the following conditions:

that the application is lodged before the applicant reaches the age of twenty-three;

that the person concerned has been stateless from his birth till the time of submission of the application.

A State may not impose any more rigorous or additional conditions in relation to the applicant. A State also should not reject an application for nationality if the applicant meets the conditions fixed by the State with a consideration of the above provisions.

2. International treaties of the Republic of Belarus do not regulate the issues stipulated in Article 1 of the Convention.

## **Comparative Analysis of the Legislation of the Republic of Belarus and Provisions of the Convention**

3. The Law of the Republic of Belarus of 1 August, 2002 'On the Nationality of the Republic of Belarus' (hereinafter referred to as the Law 'On Nationality', the Law) provides two options for acquisition of the nationality of the Republic of Belarus by a person **if he was born in the territory of the Republic of Belarus:**

by birth (tacitly, in accordance with Article 13 of the Law 'On Nationality');

by lodging an application. It only applies to persons meeting the requirements set forth in Article 14 of the Law 'On Nationality' and persons meeting the requirements of Paragraphs One and Two of Part One of Article 15 of the Law 'On Nationality').

4. **By birth** – a child acquires the nationality of the Republic of Belarus, if, as of the date of birth of the child:

- at least one of the child's parents (either parent) holds the nationality of the Republic of Belarus. It should be mentioned that such a child acquires the nationality of the Republic of Belarus also when he was born outside of the country (i.e., the place of birth of the child is irrelevant);
- the parents (a single parent) of the child, **who permanently reside** in the territory of the Republic of Belarus, are persons without nationality. The nationality of the Republic of Belarus shall be granted to such a child only if he was **born in the territory of the Republic of Belarus**;
- the parents (a single parent) of the child, **who permanently reside** in the territory of the Republic of Belarus, are foreign nationals. The nationality of the Republic of Belarus shall be granted to such a child only if he was **born in the territory of the Republic of Belarus**, while the States, the nationality of which is held by his parents, will not grant him their nationality.

A child staying in the territory of the Republic of Belarus, whose parents are unknown, shall also become national of the Republic of Belarus **by birth** regardless of the place of his birth (see the Commentary to Article 2 of the Convention).

Based on the provisions of Article 13 of the Law 'On Nationality', we may assume that there could be some situations when a child born in the territory of the Republic of Belarus, will not acquire the nationality of the Republic of Belarus, **even if he will otherwise be stateless**. It may occur, if neither one of the child's parents holds the nationality of the Republic of Belarus while the parents (single parent) do not reside permanently in the territory of the Republic of Belarus.

In view of the above, we may make a **conclusion about a higher level of strictness** of the norms of the Law 'On Nationality', as compared with the provisions of Sub-Clause ) of Clause 1 of Article 1 of the Convention, since when a State provides in its legislation that a child born in its territory acquires nationality by birth, by operation of law, then such a nationality should be granted **tacitly**.

5. The nationality of the Republic of Belarus may be acquired **by application** by persons meeting the requirements set forth in Article 14 of the Law 'On Nationality', or in Paragraphs One and Two of Part One of Article 15 of the Law 'On Nationality'.

**Option 1** (Article 14 of the Law 'On Nationality'), the person should meet the following requirements:

- age of 18 and above;
- responsibility to follow and respect the Constitution of the Republic of Belarus and other acts of legislation of the Republic of Belarus;
- knowledge of either national language of the Republic of Belarus within limits necessary for communication;

- residence in the territory of the Republic of Belarus upon receipt of a permission for permanent residence in the Republic of Belarus for seven years successively (except for persons recognized as refugees in accordance with the procedure prescribed by the legislation of the Republic of Belarus). The above term may be reduced or non-applicable for certain categories;
- a legitimate source of income;
- no nationality or loss of the nationality of a foreign country in case of acquisition of the nationality of the Republic of Belarus, or personal application at a competent agency of the foreign state for termination of the existing nationality of the foreign state, except when termination of the nationality of the state is impossible for reasons beyond the person's control;
- there are no other circumstances in relation to the person, as listed in Article 16 of the Law 'On Nationality'.

It should be mentioned that in the above option **the fact of birth in the territory of the Republic of Belarus** may take place or not, and it **is not a prerequisite** for making a decision on conferment of the nationality of the Republic of Belarus.

However, according to Part Four of Article 14 of the Law 'On Nationality' in the above option, the conferment of the nationality of the Republic of Belarus (*inter alia*, of persons born in the territory of the Republic of Belarus) is conducted with a consideration of the interests of the Republic of Belarus. It means that even if all the conditions determined by the Law are met, an application for nationality may be turned down. This rule **does not correspond** to the provisions of the second sentence of Sub-Clause *b*) of Clause 1 of Article 1 of the Convention.

**Option 2:** (Paragraph Two of Part One of Article 15 of the Law 'On Nationality'), the person should meet the following requirements:

- **birth** in the territory of the Republic of Belarus before 12 November, 1991 (i.e., prior to enforcement of the Law of the Republic of Belarus of 18 October, 1991 'On the Nationality of the Republic of Belarus');
- age of 18 and above;
- permanent residence in the territory of the Republic of Belarus;
- previous nationality of the former USSR;
- the persons should not have been national of the Republic of Belarus in the past;
- responsibility to follow and respect the Constitution of the Republic of Belarus and other acts of legislation of the Republic of Belarus;
- knowledge of either national language of the Republic of Belarus within limits necessary for communication;
- no nationality or loss of the nationality of a foreign country in case of acquisition of the nationality of the Republic of Belarus, or personal

application at a competent agency of the foreign state for termination of the existing nationality of the foreign state, except when termination of the nationality of the state is impossible for reasons beyond the person's control;

- there are no other circumstances in relation to the person, as listed in Article 16 of the Law 'On Nationality'.

It should be mentioned that compliance with and respect of the Constitution and other legislative acts, knowledge of either national language within the limits necessary for communication, is a natural and mandatory requirement for a person wishing to become national of any country.

The requirement of past nationality of the former USSR is primarily determined by the 'privileged' procedure of nationality acquisition by certain persons – the 'procedure of registration' (Article 15 of the Law 'On Nationality'). The registration procedure of acquisition of the nationality of the Republic of Belarus does not require permanent residence in the territory of the Republic of Belarus for seven years successively, and a legitimate source of income.

6. It should be noted that the legislation of the Republic of Belarus does not provide for tacit (without application) conferment of nationality to persons born in its territory after they reach a certain age and conditional on meeting certain requirements. Taking into account the advisory nature of the subject provision of the Convention we may state that the legislation of the Republic of Belarus **corresponds** to Part Two of Clause 1 of Article 1 of the Convention.

In accordance with **Paragraph One of Clause 2 of Article 1** of the Convention, any Contracting State may, in accordance with Sub-Clause *b)* of Clause 1 of this Article, make the conferment of its nationality conditional on one or more requirements of Sub-Clauses *c)–d)* of Clause 2 of Article 1 of the Convention. It means that the state may not stipulate other conditions in relation to the applicant, than those listed in Clause 2 of Article 1 of the Convention.

It should be noted, though, that the provisions of the legislation of the Republic of Belarus on nationality do not **correspond** to the provisions of Paragraph One of Clause 2 of Article 1 of the Convention, since they provide for other terms of nationality acquisition in addition to those listed in Sub-Clauses *c)–d)* of Clause 2 of Article 1 of the Convention (Paragraphs Two, Three, Five of Part One of Article 14, Part One of Article 15, Paragraphs Two, Four-Eight of Article 16 of the Law 'On Nationality'<sup>1</sup>).

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<sup>1</sup> The obligation to follow and respect the Constitution of the Republic of Belarus and other legislative acts of the Republic of Belarus;

knowledge of either national language of the Republic of Belarus within the limits required for communication; a legitimate source of income;

the nationality of the former USSR and absence of the nationality of the Republic of Belarus;

**7. As a result of comparison of the above conditions** of acquisition of the nationality of the Republic of Belarus with the conditions that could be referred to by a State in granting its nationality in accordance with **Sub-Clause b) of Clause 1 and Clause 2** of Article 1 of the Convention, allows us to make the following conclusions:

) Sub-Clause *a*) of Clause 2 of Article 1 of the Convention, according to which an application should be lodged during a period, fixed by the Contracting State, beginning not later than at the age of 18 years and ending not earlier than at the age of twenty-one years, so, however, that the person concerned shall be allowed at least one year during which he may himself make the application without having to obtain legal authorization to do so, correlates with the requirement of Articles 14 and 15 of the Law 'On Nationality' that a person applying for the nationality of the Republic of Belarus should reach the age of 18 years. It should be noted that the Law 'On Nationality' does not limit the maximum age for applying for the nationality of the Republic of Belarus;

b) **Sub-Clause b) of Clause 2** of Article 1 of the Convention establishing that a person concerned should have habitually resided in the territory of the Contracting State for such a period as may be fixed by that State, not exceeding five years immediately preceding the lodging of the application nor ten years, may be compared with the following:

- the condition of permanent residence in the Republic of Belarus for seven years in succession, as provided by Paragraph Four of Part One of Article 14 of the Law 'On Nationality'. In this case the requirement of the Law appears to be **more rigorous** than the requirement of Sub-Clause *b*) of Clause 2 of Article 1 of the Convention;
- the condition of permanent residence in territory of the Republic of Belarus, as provided by Part One of Article 15 of the Law 'On Nationality' (without identification of a period of time during which the person should permanently reside in the territory of the Republic of Belarus. In this case

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state of marriage with a person who was born or who permanently resided in the territory of the Republic of Belarus before 12 November, 1991 and who acquires the nationality of the Republic of Belarus in accordance with the procedure of registration;

the person is a descendant of a person who was born or who permanently resided in the territory of the Republic of Belarus before 12 November, 1991 and who acquires the nationality of the Republic of Belarus in accordance with the procedure of registration;

absence of circumstances listed in Article 16 of the Law 'On Nationality':

the person was sentenced for a crime against peace and safety of mankind, or for a war crime;

the person is suspected or accused of or criminally prosecuted in the Republic of Belarus or in a foreign country for crimes that could be considered as such by the legislation of the Republic of Belarus – up until the imposition of sentence or another final decision on the case;

the person has been sentenced and is serving the sentence – up until the end of the sentence term;

the person has been deported or expelled from the Republic of Belarus – up until the end of the ban on entry into the Republic of Belarus;

the person has misrepresented information or presented fake documents;

the person has served in army, police, security agencies, agencies of justice, or other government agencies of a foreign country.



the requirement of the Law **does not contradict** the requirement of Sub-Clause *b)* of Clause 2 of Article 1 of the Convention.

As a result, it appears possible to make a conclusion about higher rigorousness of the provisions of the Law 'On Nationality', as compared with Sub-Clause *b)* of Clause 2 of Article 1 of the Convention.

) **Sub-Clause ) of Clause 2** of Article 1 of the Convention according to which a person concerned should have neither been convicted of an offence against national security nor has been sentenced to imprisonment for a term of five years or more on a criminal charge, is comparable with the following:

- the requirement of Paragraph Two of Article 16 of the Law 'On Nationality' that an application for the nationality of the Republic of Belarus shall be rejected if the applicant has been convicted for a crime against peace and safety of mankind, war crime, or a **crime against the State**. In this case, since the terms 'offence against the national security' and 'crime against the state' are not completely identical, we may make a conclusion about **higher rigorousness** of the provisions of the Law in relation to Sub-Clause *c)* of Clause 2 of Article 1 of the Convention.
- the requirement of Paragraph Three of Article 16 of the Law regarding absence of a sentence for committal of a grave or especially grave crime in or outside of the territory of the Republic of Belarus, that is recognized as such by the legislation of the Republic of Belarus. Since the term 'sentenced' is more broadly interpreted than the term 'with a sentence', as it is not time-limited and since it is based on the provisions of Parts Three – Five of Article 12 of the Criminal Code of the Republic of Belarus<sup>1</sup>, we may make a conclusion that the subject requirement of the Law 'On Nationality' **does not contradict** the requirement of Sub-Clause *c)* of Article 1 of the Convention is even **more lenient**;
- the requirement of Paragraph Five of Article 16 of the Law stating that an application for nationality shall be rejected if the applicant is sentenced and serves an imprisonment sentence – up until the term of the punishment. In this case the requirement of the Law 'On Nationality' is **more rigorous**, as it also implies rejection of an application in cases when the applicant is sentenced to a term of less than five years.

In view of the aforesaid and beside the above conditions, Article 16 of the Law 'On Nationality' also provides for **other conditions for denial in the**

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<sup>1</sup> According to Parts 3-5 of Article 12 of the Criminal Code of the Republic of Belarus:  
the term 'less grave crimes' means deliberately committed crimes that are punishable by law for a maximum term of imprisonment of up to six years, as well as crimes committed through negligence that are punishable by law for a term of imprisonment of over two years;  
the term 'grave crimes' means deliberately committed crimes that are punishable by law for a maximum term of imprisonment of up to twelve years;  
the term 'especially grave crimes' means deliberately committed crimes that are punishable by law for a maximum term of imprisonment of above twelve years, for life imprisonment or death penalty.

**nationality of the Republic of Belarus** (for instance, if the person is suspected or accused, and criminally prosecuted in the Republic of Belarus or in a foreign country for crimes recognized as such by the legislation of the Republic of Belarus – until the sentence or a final decision on the case is pronounced – if the person was deported or expelled from the Republic of Belarus – until the end of the term of the ban on entry into the Republic of Belarus, etc.), we may make a conclusion that **the Law 'On Nationality' imposes more rigorous conditions of acquisition of the nationality**, than those prescribed in Sub-Clause *c*) of Clause 2 of Article 1 of the Convention;

d) **Sub-Clause d) of Clause 2** of Article 1 of the Convention, whereas the person concerned should always have been stateless, may, with some allowance, be correlated with the requirement of Paragraph Six of Part One of Article 14 of the Law 'On Nationality' stating that the persons should have no nationality<sup>1</sup>. Since the Law allows for another former nationality in the past, we may affirm **absence of contradiction** of the above provision of the Law to Sub-Clause *d*) of Clause 2 of Article 1 of the Convention its even lesser rigorousness.

8. However, upon review of **Clauses 1 and 2 of Article 1** of the Convention, we may make a **general conclusion about higher rigorousness** of the provisions of the Law 'On Nationality', as compared to the relevant provisions of the Convention.

9. The Provisions of **Clause 3 of Article 1** of the Convention correspond to the rule expressed in Paragraphs One and Two of Part One of Article 13 of the Law 'On Nationality' according to which a child shall acquire the nationality of the Republic of Belarus regardless of his place of birth **if at least one of his parents holds the nationality of the Republic of Belarus** at the time of birth of the child.

In this case the Law 'On Nationality' **fully corresponds to the Convention and contains even more lenient conditions** of acquisition of the nationality of the Republic of Belarus by a child, in particular:

- it does not contain any requirements for the parents to be **in wedlock** by the time of his birth;
- it does not contain any requirements about the birth of the child **in the territory of the Republic of Belarus**;
- it does not contain any restrictions according to which the nationality is acquired only by the child whose **mother** holds the nationality of the Republic of Belarus.

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<sup>1</sup> The alternative requirement for a person to renounce the nationality of a foreign country in the event of acquisition of the nationality of the Republic of Belarus or submission of an application for termination of the nationality of the foreign country to a competent agency of that country, except when the termination of nationality of a foreign country is impossible for reasons beyond the person's control, is not reviewed here since it refers to persons who would otherwise be stateless.

10. We could mention the following in relation to Clauses 4 and 5 of Article 1 of the Convention:

According to the rule stipulated in Paragraphs One and Two of Part One of Article 13 of the Law 'On the Nationality of the Republic of Belarus', a child acquires the nationality of the Republic of Belarus **regardless of his birth place, if at least one of his parents** holds the nationality of the Republic of Belarus on the date of his birth. However, as was mentioned before, it is irrelevant where the child was born and whether child's father or mother hold the nationality of the Republic of Belarus, and whether they are married or not.

Therefore, in relation to the Republic of Belarus, a person referred to in Clauses 4 and 5 of Article 1 of the Convention, will become a national of the Republic of Belarus on only condition that **either one of his parents is a national of the Republic of Belarus.**

In view of the above we may make a conclusion in this case that the legislation of the Republic of Belarus provides an approach that **does not contradict the provisions** of Clauses 4 and 5 of Article 1 of the Convention.

## Conclusions

11. Therefore, a comparative analysis of Article 1 of the Convention and the Belarusian legislation on nationality allows us to make the following conclusions.

The legislation of the Republic of Belarus on nationality corresponds the provisions of Part Two of Clause 1, Sub-Clauses ) and *d*) of Clause 2, Clauses 3–5 of Article 1 of the Convention.

However, the legislation of the Republic of Belarus on nationality **does not fully correspond** the provisions of Sub-Clause ) of Clause 1, sentence two of Sub-Clause *b*) of Clause 1, Paragraph One of Clause 2, Sub-Clauses *b*) and ) of Clause 2 of Article 1 of the Convention:

- the nationality of the Republic of Belarus is provided tacitly at birth not to all persons born in the territory of the Republic of Belarus, who would otherwise be stateless;
- even if all requirements set forth by the Law are met, an application for nationality may be rejected, inter alia, in relation to persons born in the territory of the Republic of Belarus;
- the legislation of the Republic of Belarus sets forth other conditions of acquisition of its nationality in addition to those listed in Sub-Clauses *a*)-*d*) of Clause 2 of Article 1 of the Convention;

- conditions of acquisition of the nationality of the Republic of Belarus are more rigorous, as compared to the conditions stipulated in Sub-Clauses *b)* and *c)* of Clause 2 of Article 1 of the Convention.

We may, therefore, make a conclusion about **partial correspondence** of the legislation of the Republic of Belarus to the provisions of Article 1 of the Convention.

## **Article 2**

*A foundling found in the territory of a Contracting State shall, in the absence of proof to the contrary, be considered to have been born within that territory of parents possessing the nationality of that State.*

1. Article 2 of the Convention provides for a simultaneous application of the principles of the 'right of blood' and the 'right of place' in relation to a foundling in order to maximize the possibility of conferment of a nationality to such a child who would otherwise be stateless. However, Article 2 of the Convention does not establish a direct obligation of a State, in the territory of which the foundling was found, to grant him its nationality.

The presumption of Article 2 of the Convention that the foundling was born in the territory of that states by parents who are its nationals, is not absolute, that is, it is valid only in absence of proof to the contrary. Meanwhile, this Article of the Convention does not resolve the issue of the outcomes of identification of the child's birth place, as well as the identification of his parents. The norms of the Convention provided in the other articles and/or relevant provisions of the national legislations of the Contracting States are used for the determination of the nationality of a foundling.

2. International treaties of the Republic of Belarus do not contain any norms similar with the provisions set forth in Article 2 of the Convention

3. In accordance with Part Two of Article 13 of the Law 'On Nationality', a child staying in the territory of the Republic of Belarus, whose parents are unknown, becomes a national of the Republic of Belarus.

4. Since thesauri explain the term 'foundling' as a 'child whose parents are unknown'<sup>1</sup>, it appears possible to make a conclusion that these provisions of the Law 'On Nationality' **fully correspond** to the provision of Article 2 of the Convention.

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<sup>1</sup> S.I. Ozhegov and N.Yu. Shvedova 'Explanatory Dictionary of the Russian Language' – Moscow, 2004.  
2. Comprehensive Explanatory Dictionary of the Russian Language, St. Petersburg, 1998.

### **Article 3**

*For the purpose of determining the obligations of Contracting States under this Convention, birth on a ship or in an aircraft shall be deemed to have taken place in the territory of the State whose flag the ship flies or in the territory of the State in which the aircraft is registered, as the case may be.*

1. Article 3 of the Convention reflects the approach of the international law, according to which the jurisdiction of a State may apply outside of its national territory to certain objects, in particular, means of transportation that do not belong to the State. These objects do not possess the main characteristics of a national territory; therefore they are conditionally referred to as 'quasi-territories'. Article 3 of the Convention does not establish that a ship flying under a flag of a certain State, or an aircraft registered in that State, are its territories – it only makes them equal to such, though **only for the purposes of resolving the issue of conferment of a nationality**. Meanwhile, this Article of the Convention does not refer either to the location of the ship or aircraft, or their status. It should be emphasized that, though Article 3 of the Convention does not contain any obligations for the Contracting States to grant their nationality to persons born on relevant ships or aircraft, its provisions may be decisive in practice when, in accordance with the national legislation, nationality is granted according to the principle of the 'right of place' or in accordance with the mixed principle

The norms of the Convention stipulated in the other articles and/or appropriate provisions of the national legislation of the Contracting States should be used to determine of the nationality of the person born aboard of a relevant means of transportation that belongs to a State.

2. The international treaties of the Republic of Belarus do not contain any norms similar with the provisions set forth in Article 3 of the Convention.

3. The legislation of the Republic of Belarus does not provide a rule, according to which the territory of ships flying the flag of the Republic of Belarus, or aircraft registered in the Republic of Belarus is made equal to the territory of the Republic of Belarus.

It means that a child born aboard a ship flying the flag of the Republic of Belarus, or in an aircraft registered in the Republic of Belarus, may not acquire the nationality of the Republic of Belarus according to Paragraphs Three or Four of Part One of Article 13 of the Law 'On Nationality'<sup>1</sup>, since

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<sup>1</sup> A child shall acquire the nationality of the Republic of Belarus by birth if, as of the date of birth of the child:

- the child's parents (the only parent), who are permanent residents of the Republic of Belarus, are persons without nationality, provided that the child was born in the territory of the Republic of Belarus;

**the condition of birth in the territory of the Republic of Belarus** is not met.

It appears that the provisions of the Law 'On Nationality' are **more rigorous and do not correspond** to the provisions of Article 3 of the Convention, since, according to the Law a child **remains stateless** in case of simultaneous occurrence of the following circumstances:

- he was born aboard a ship flying the flag of the Republic of Belarus, or in an aircraft registered in the Republic of Belarus;
- his parents (single parent) permanently reside in the territory of the Republic of Belarus and are persons without nationality or foreign nationals (and the state of their nationality does not grant its nationality to the child).

#### **Article 4**

*1. A Contracting State shall grant its nationality to a person, not born in the territory of a Contracting State, who would otherwise be stateless, if the nationality of one of his parents at the time of the person's birth was that of that State. If his parents did not possess the same nationality at the time of his birth, the question whether the nationality of the person concerned should follow that of the father or that of the mother shall be determined by the national law of such Contracting State. Nationality granted in accordance with the provisions of this paragraph shall be granted:*

*(a) At birth, by operation of law, or*

*(b) Upon an application being lodged with the appropriate authority, by or on behalf of the person concerned, in the manner prescribed by the national law. Subject to the provisions of paragraph 2 of this article, no such application may be rejected.*

*2. A Contracting State may make the grant of its nationality in accordance with the provisions of paragraph 1 of this article subject to one or more of the following conditions:*

*(a) That the application is lodged before the applicant reaches an age, being not less than twenty-three years, fixed by the Contracting State;*

*(b) That the person concerned has habitually resided in the territory of the Contracting State for such period immediately preceding the lodging of the application, not exceeding three years, as may be fixed by that State;*

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- the child's parents (the only parent), who are permanent residents of the Republic of Belarus, are foreign nationals, provided that the child was born in the territory of the Republic of Belarus while the states of the child parents' nationality will not grant their nationality to the child.

*(c) That the person concerned has not been convicted of an offence against national security;*

*(d) That the person concerned has always been stateless.*

1. In accordance with Article 4 of the Convention a Contracting State shall grant its nationality to a person born **outside of its territory**, if the nationality of one of his parents at the time of the person's birth was that of this State, and that person would otherwise be stateless. These provisions are not categorical, since in accordance with Clause 4 of Article 1 of the Convention, a State may deny its nationality to a person concerned if, according to its legislation, the child's nationality follows the father's (mother's) nationality, while the father (mother) is not a national of that State. Moreover, for the purposes of Article 4 of the Convention, it is irrelevant, whether the child's parents were married or not.

A State may decide how to grant its nationality: **at birth by operation of law (tacitly, without application) or upon an application by or on behalf of the person concerned.**

In the second case a State may grant its nationality unconditionally, or establish a requirement of fulfillment of one or more conditions by the applicant:

- that the application is lodged before the applicant reaches the age of not less than twenty-three years;
- that the person concerned has habitually resided in the territory of the Contracting State for a certain period. A State may provide in its legislation for any period of habitual residence of the applicant in its territory, however, it should not exceed three years immediately preceding the lodging of the application;
- that the person concerned has not been convicted of an offence against national security (a State may deny its nationality to such a person regardless of the type of penalty);
- that the person concerned has been stateless since his birth until the time of submission of the application.

A State may not impose any more rigorous or additional conditions in relation to the applicant. A State also should not reject an application for nationality if the applicant meets the conditions fixed by the State with a consideration of the above provisions.

2. International treaties of the Republic of Belarus do not regulate the issues stipulated in Article 4 of the Convention.

3. According to the rule stipulated in Paragraphs One and Two of Part One of Article 13 of the Law 'On Nationality', a child acquires the nationality of the Republic of Belarus **regardless of the place of his birth**, if, as of the

date of birth of the child, **at least either one of his parents** holds the nationality of the Republic of Belarus. Meanwhile, as was mentioned before, it is irrelevant, where the child was born, whether the child's father or mother holds the nationality of the Republic of Belarus, and whether the child's parents are married and whether the child will remain stateless, or not.

Therefore, in relation to the Republic of Belarus, a person referred to in Article 4 of the Convention, will become a national of the Republic of Belarus for the only reason that either parent is national of the Republic of Belarus.

4. Based on the above we may make a conclusion that the legislation of the Republic of Belarus establishes **an approach that corresponds** to the provisions of Article 4 of the Convention.

## **Article 5**

*1. If the law of a Contracting State entails loss of nationality as a consequence of any change in the personal status of a person such as marriage, termination of marriage, legitimation, recognition or adoption, such loss shall be conditional upon possession or acquisition of another nationality.*

*2. If, under the law of a Contracting State, a child born out of wedlock loses the nationality of that State in consequence of a recognition of affiliation, he shall be given an opportunity to recover that nationality by written application to the appropriate authority, and the conditions governing such application shall not be more rigorous than those laid down in paragraph 2 of article 1 of this Convention.*

1. Article 5 of the Convention applies only to the States whose legislation provides grounds of loss of nationality by a person.

Clause 1 of Article 5 of the Convention contains an exhaustive list of possible changes of the individual status: **marriage, termination of marriage, legitimation, recognition or adoption**. A State is not obliged to cancel the provisions of its legislation prescribing the loss of the nationality by a person due to such changes. However, the State should make its loss conditional to acquisition of the nationality of another State by that person. Both a Contracting State and a State which is not a Party to the Convention may be considered as such a State.

Clause 2 of Article 5 of the Convention also does not oblige a Contracting State to cancel its regulations allowing a child born out of wedlock, to lose the nationality of that State in consequence of recognition of affiliation. It should, however, give such a child an opportunity to lodge a



written application to the appropriate authority for the recovery of the nationality of that State. The application may be lodged by or on behalf of the child.

If a Contracting State makes the submission of the child's application subject to one or more conditions, these could only be the conditions stipulated in Clause 2 of Article 1 of the Convention (see comments to Clause 2 of Article 1 of the Convention).

2. In accordance with Article 1 *of the Convention on the Nationality of Married Women of 20 February, 1957*<sup>1</sup>, 'each Contracting State agrees that neither the celebration nor the dissolution of a marriage between one of its nationals and an alien, nor the change of nationality by the husband during marriage, shall automatically affect the nationality of the wife.

According to this Article of the above Convention, the fact of conclusion or dissolution of marriage between persons either of whom is a national of a Contracting State, should not lead by itself to changes in the nationality of the spouse. Such changes should be understood not only as the change of the wife's nationality for the husband's, but also as the loss of her nationality, should the husband be stateless. For the purposes of Article 1 *of the Convention on the Nationality of Married Women of 20 February, 1957*, the nationality of a woman prior to the conclusion or dissolution of marriage is irrelevant (she could have been stateless). It is assumed that any changes in the nationality of a woman changing her marital status should be based on her will. An analysis of Article 1 *of the Convention on the Nationality of Married Women of 20 February, 1957* allows us to make a conclusion that in the result of implementation of her right for choice of nationality she may become (remain) stateless.

In accordance with Clause 1 of Article 8 *of the Convention on the Rights of the Child of 20 November, 1989*<sup>2</sup>, the nationality of a child is an element of his personality and in this regard the States are bound to respect the right of the child to preserve his or her identity (including nationality, name and family relations), as recognized by law without unlawful interference. According to Clause 2 of Article 8 of the above Convention, the States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her nationality, where a child is illegally deprived of it.

Article 8 *of the Convention on the Rights of the Child of 20 November, 1989* is generic in nature. In accordance with this Article of the above Convention, the States shall themselves determine how they shall respect the right of the child to preserve his or her nationality in case of its legitimate loss. Article 5 of the Convention on the Reduction of

<sup>1</sup>Effective for the Republic of Belarus since 23 March, 1959.

<sup>2</sup>Effective for the Republic of Belarus since 31 October, 1990.

Statelessness of 30 August, 1961, provides **concrete measures for the states to implement the right of the child for preservation of his or her nationality** on the grounds of its loss.

3. Article 7 of the Law 'On Nationality' clearly states that marriage or termination of marriage by a national of the Republic of Belarus with a national of another country or a person without nationality by itself does not imply changes in the nationality of the spouses. In its turn, a person who has married a national of the Republic of Belarus may acquire the nationality of the Republic of Belarus, upon his will and on the condition of fulfillment of the requirements stipulated by the Law 'On Nationality'.

Regarding consequences of the other options of changes in individual status listed in Article 5 of the Convention (legitimation, recognition, recognition of affiliation in relation to a child born out of wedlock, or adoption) in relation to a holder of the nationality of the Republic of Belarus, it should be mentioned that according to legislation of the Republic of Belarus that changes by no means in themselves do not impact on nationality of the Republic of Belarus, including that they cannot be a basis for loss of nationality (with reference to Article 5 of the Convention).

In accordance with paragraph fourth of Article 20 of the Law on Citizenship, termination of nationality of the Republic of Belarus is not allowed, if the citizen of the Republic of Belarus does not have other nationality or guarantees of its acquisition.

4. In view of the above we may come to **the following conclusions:**

the legislation of the Republic of Belarus does not provide for loss of the nationality due to any changes in the individual status (marriage, termination of marriage, adoption, etc.)

loss of the nationality of the Republic of Belarus is not allowed **notwithstanding the reason**, if the national of the Republic of Belarus does not have another nationality or guarantees of its acquisition.

Therefore, the legislation of the Republic of Belarus **corresponds** to the provisions of Article 5 of the Convention.

## **Article 6**

*If the law of a Contracting State provides for loss of its nationality by a person's spouse or children as a consequence of that person losing or being deprived of that nationality, such loss shall be conditional upon their possession or acquisition of another nationality.*

1. Article 6 of the Convention applies selectively – only in relation to those States whose legislation stipulates the possibility of loss of their nationality by a person's spouse or children due to loss or renunciation of that nationality by that person. The elaboration of Article 6, as well as Article 5 of the Convention, was caused by the principle of family unity in the legislation of a number of countries; in accordance with that principle the nationality of a wife follows the nationality of the husband, and a child's nationality follows the father's nationality (if the child is legitimate) or mother (if the child is not legitimate)<sup>1</sup>. Different application of this principle in practice could have led to a situation when the loss or deprivation of the nationality of the above persons could have tacitly made their children or spouse stateless.

2. According to Article 2 *of the Convention on the Nationality of Married Women of 20 February, 1957*, the renunciation of the nationality by a national of the Contracting States shall not prevent the retention of her nationality by the wife of such a person.

Article 2 *of the Convention on the Nationality of Married Women of 20 February, 1957*, is, undoubtedly, aimed at the prevention of the situation of statelessness of the spouse of a person who **voluntarily** renounces the nationality of a certain state. However, since this Article of the above Convention does not regulate the consequences of **loss or deprivation** of the husband's nationality for his wife, the latter may in this case become stateless. It may happen when she loses her nationality of a certain state at her request.

In relation to the provisions of Article 8 *of the Convention on the Rights of the Child of 20 November, 1989*, see comments to Article 5 of the Convention.

3. According to Part One of Article 23 of the Law 'On Nationality', if the nationality is changed by the parents (single parent), the child's nationality is changed accordingly if he has not reached the age of 14 years.

Meanwhile, in accordance with Paragraph Four of Article 20 of the Law 'On Nationality', termination of the nationality of the Republic of Belarus is not allowed, if the national of the Republic of Belarus does not have another nationality or guarantees of its acquisition.

Therefore, we may make a conclusion that the provision of Paragraph Four of Article 20 of the Law 'On Nationality' **corresponds** to the provision of Article 6 of the Convention, and in some cases may be viewed as a more lenient requirement, since:

it is not limited by a categorical requirement to acquire another nationality and provides another alternative option – guarantees of acquisition of another nationality. Such an approach is determined by the

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<sup>1</sup> [http://untreaty.un.org/ilc/documentation/english/a\\_cn4\\_50.pdf](http://untreaty.un.org/ilc/documentation/english/a_cn4_50.pdf)

fact that certain states, in accordance with their legislation, may not grant their nationality to a person until he renounces (or loses) the nationality of the Republic of Belarus. Such cases might lead to an unfavorable situation when one state does not allow a person to renounce its nationality (or lose it), while the person has not acquired the nationality of the other state, and that other state, in its turn, denies to grant him its nationality since the person has not left the nationality of the first state (and has not lost it). The provisions of the Law are aimed at the prevention of such situations.

According to the Regulation on the Procedure of Review of Issues Related to the Nationality of the Republic of Belarus, in such cases a guarantee of acquisition of another nationality is a document (certificate) of a competent agency of the foreign country confirming the grant of the nationality of that country in case of renunciation of the nationality of the Republic of Belarus by that person (Clause 23).

4. A comparative analysis allows us to make a conclusion on **correspondence** of the legislation of the Republic of Belarus to the provisions of Article 6 of the Convention.

## **Article 7**

*1. (a) If the law of a Contracting State entails loss or renunciation of nationality, such renunciation shall not result in loss of nationality unless the person concerned possesses or acquires another nationality;*

*(b) The provisions of subparagraph (a) of this paragraph shall not apply where their application would be inconsistent with the principles stated in articles 13 and 14 of the Universal Declaration of Human Rights approved on 10 December 1948 by the General Assembly of the United Nations.*

*2. A national of a Contracting State who seeks naturalization in a foreign country shall not lose his nationality unless he acquires or has been accorded assurance of acquiring the nationality of that foreign country.*

*3. Subject to the provisions of paragraphs 4 and 5 of this article, a national of a Contracting State shall not lose his nationality, so as to become stateless, on the ground of departure, residence abroad, failure to register or on any similar ground.*

*4. A naturalized person may lose his nationality on account of residence abroad for a period, not less than seven consecutive years, specified by the law of the Contracting State concerned if he fails to declare to the appropriate authority his intention to retain his nationality.*

*5. In the case of a national of a Contracting State, born outside its territory, the law of that State may make the retention of its nationality after the expiry of one year from his attaining his majority conditional upon*

*residence at that time in the territory of the State or registration with the appropriate authority.*

*6. Except in the circumstances mentioned in this article, a person shall not lose the nationality of a Contracting State, if such loss would render him stateless, notwithstanding that such loss is not expressly prohibited by any other provision of this Convention.*

Clause 1 of Article 7 of the Convention contains provisions aimed at the prevention of statelessness of a person who, in accordance with the national legislation may renounce his nationality.

According to the general rule, such a person should retain his nationality until he becomes national of another country (the nationality of another country should mean a nationality of both a Contracting State and a State which is not a Party to this Convention).

Meanwhile, the renunciation of a nationality shall be allowed if a person has double or multiple nationality as of the time of review of the application, or if retention of his nationality can somehow violate his right to freedom of movement and residence within the borders of each state, or to leave any country, including his own, and to return to his country, or to seek and to enjoy in other countries asylum from persecution (except for prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations).

Clause 2 of Article 7 of the Convention refers to situations when a person **wishes to naturalize** in a foreign country.

It should be emphasized that the Convention does not contain the concepts of 'naturalization' and 'naturalized person'.

In studying the Convention, we considered 'naturalization' as the conferment of a nationality to a foreigner upon his application, which usually takes place after a more or less lengthy residence of the foreigner in the territory of the relevant State<sup>1</sup>.

A person applying for the renunciation of his nationality should retain it until the acquisition of the desired nationality or guarantees of its acquisition. Clause 2 of Article 7 of the Convention does not exclude temporary statelessness of a person between leaving the previous and acquiring a new nationality.

In accordance with Clauses 3–5 of Article 7 of the Convention, a State may not apply such grounds for renunciation of a person's nationality as on

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<sup>1</sup> V.N. Dodonov, V.P. Panov, O.G. Rumiantsev. International Law. Reference Glossary / Ed. MAI Academician, V.N. Trofimov, J.D. – Moscow – INFRA-M, 1997. V.N. Dodonov. International Law. Reference Glossary / V.N. Dodonov, V.P. Panov, O.G. Rumiantsev; ed. V.N. Trofimov. – Moscow: INRA-M, 1997. – p.175.

the ground of departure, residence abroad, failure to register or on any similar ground if it can lead to statelessness, with the exception of cases when:

- a naturalized person has resided abroad for no less than seven consecutive years and fails to declare to the appropriate authority of that country about his intention to retain his nationality. It should be mentioned that if a person is a national by birth, he may not lose his nationality for that reason;
- a person born outside of a country (regardless how the nationality was acquired) after the expiry of one year after attaining majority and conditional upon residence at that time in the territory of the State or registration with the appropriate authority (the State may use either one of these grounds).

We would like to draw attention to the fact, that according to Resolution II, which is an Attachment to the Final Act of the United Nations Conference on the Elimination or Reduction of Statelessness in Future, the Conference Resolves that for the purposes of Paragraph 4 of Article 7 of the Convention the term 'naturalized person' shall be interpreted as referring only to a person who has acquired nationality upon an application which the Contracting State concerned may in its discretion refuse. In accordance with Resolution III, which is an Attachment to the Final Act of the United Nations Conference on the Elimination or Reduction of Statelessness in Future, the Conference recommended the Contracting States making the retention of nationality by their nationals abroad subject to a declaration or registration to take all possible steps to ensure that such persons are informed in time of the formalities and time-limits to be observed if they are to retain their nationality

It should be mentioned that with reference to the concerned Article the States may freely formulate and apply any grounds for the loss of their nationality related to the departure of the person, his residence abroad, failure to register or other identical grounds, **unless it leads to statelessness** (for instance, when the person has the nationality of another/other country (-ies) at the time of loss of the nationality).

Based on of Clause 6 of Article 7 of the Convention, we may say that, if a State assumes that a person will become stateless as a result of loss of his nationality **in circumstances other than those listed in this Article of the Convention**, the State should allow that person to retain his nationality.

2. International treaties of the Republic of Belarus do not regulate issues covered by Article 7 of the Convention.

3. According to Article 17 of the Law 'On Nationality', the nationality of the Republic of Belarus may be terminated only due to:

- renunciation of the nationality of the Republic of Belarus;
- loss of the nationality of the Republic of Belarus.

**Renunciation** of the nationality of the Republic of Belarus is carried out at initiative of the national of the Republic of Belarus in accordance with the procedure established by Regulation on the Procedure of Review of Issues Related to the Nationality of the Republic of Belarus, approved by the Edict of the President of the Republic of Belarus No. 209 of 17 November, 1994 as amended by the Edict of the President of the Republic of Belarus No. 755 of 29 December, 2006 (hereinafter referred to as the Regulation on the Procedure of Review of Issues Related to the Nationality of the Republic of Belarus), and in absence of the grounds stipulated in Article 20 of the Law 'On Nationality'<sup>1</sup>.

**Loss** of the nationality of the Republic of Belarus is possible in absence of grounds provided in Article 20 of the Law 'On Nationality'<sup>2</sup>, in the following cases:

- due to entry of the person to military, police service, security, justice and other state agencies of a foreign country;
- upon an application of the parents (single parent) in relation to a child who has acquired the nationality of the Republic of Belarus by birth along with the nationality of a foreign country. Loss of the nationality of the Republic of Belarus by a child from 14 to 18 years of age is allowed only upon a written notarized consent of the child;
- for reasons prescribed by the international treaties of the Republic of Belarus.

In accordance with Paragraph Four of Article 20 of the Law 'On Nationality', termination of the nationality of the Republic of Belarus is not allowed if the national of the Republic of Belarus **does not have another nationality or guarantees of its acquisition.**

It is clear that the above provisions of the Law 'On Nationality' and the provisions of Sub-Clause *a*) of Clause 1 of Article 7 of the Convention are aimed at ensuring that no one becomes stateless upon leaving a nationality. However, Clause 1 of Article 7 of the Convention establishes that loss of the nationality by a person applying for renunciation of his nationality is allowed, if that person **already has or will acquire another nationality**; and the Law 'On Nationality' – if that person already has another nationality or **guarantees of its acquisition.**

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<sup>1</sup> The nationality of the Republic of Belarus may not be renounced if the national of the Republic of Belarus:

- is accused of or charged for a crime and subject to a valid and mandatory sentence;
- has tax and other debts and liabilities to the Republic of Belarus, its legal entities and natural persons;
- does not have any other nationality or guarantees of its acquisition,

<sup>2</sup> The nationality of the Republic of Belarus may not be lost if the national of the Republic of Belarus:

- is accused of or charged for a crime and subject to a valid and mandatory sentence;
- has tax and other debts and liabilities to the Republic of Belarus, its legal entities and natural persons;
- does not have any other nationality or guarantees of its acquisition,

It appears that in this case the provisions of the Law 'On Nationality' **correspond** to the provisions of Sub-Clause *a*) of Clause 1 of Article 7 of the Convention, and in some cases may be viewed as more lenient, since they are not limited to the categorical requirements of acquisition of another nationality and provide another alternative option - **guarantees of acquisition** of another nationality.

As was mentioned above, such an approach is determined by the fact that certain states may, in accordance with their legislations, deny their nationality to a person until the person renounces (or loses) the nationality of the Republic of Belarus. Such cases might lead to an unfavorable situation when one State does not allow a person to renounce its nationality (or lose it), while the person has not acquired the nationality of the other State, and that other State, in its turn, denies to grant him its nationality since the person has not left the nationality of the first State (and has not lost it). The provisions of the Law are aimed at precluding such situations.

The principles set forth in Articles 13 and 14 of the Universal Declaration of Human Rights, are reflected in Articles 30 and 12 of the Constitution of the Republic of Belarus stipulating the right of citizens of the Republic of Belarus to free movement within the Republic of Belarus and the right to free departure from it and unobstructed return, as well as the right for asylum in the Republic of Belarus for other persons. It outlines the importance, priority and obligation of these provisions for the Republic of Belarus.

Therefore, we may make a conclusion about **correspondence** of the provisions of the legislation of the Republic of Belarus to Sub-Clause *b*) of Clause 1 of Article 7 of the Convention.

In accordance with Paragraph Four of Article 20 of the Law 'On Nationality', termination of the nationality of the Republic of Belarus is not allowed, if the national of the Republic of Belarus **does not have another nationality or guarantees of its acquisition**.

It appears that the provisions of Paragraph Four of Article 20 of the Law 'On Nationality' **correspond** to Clause 2 of Article 7 of the Convention.

In relation to Clauses 3–5 of Article 7 of the Convention, it should be mentioned that the legislation of the Republic of Belarus on nationality does not provide for grounds for the loss of nationality. In this relation it appears possible to make a conclusion that the provisions of the Belarusian legislation **correspond** to Clauses 3–5 of Article 7 of the Convention.

In relation to Clause 6 of Article 7 of the Convention it should be mentioned that, as was mentioned before, in accordance with Paragraph Four of Article 20 of the Law 'On Nationality', termination of the nationality of the Republic of Belarus is not allowed, if the national of the Republic of Belarus **does not have another nationality or guarantees of its acquisition**.



4. In view of the aforesaid, we may make a conclusion that the legislation of the Republic of Belarus **corresponds** to the provisions of Article 7 of the Convention.

## **Article 8**

*1. A Contracting State shall not deprive a person of his nationality if such deprivation would render him stateless.*

*2. Notwithstanding the provisions of paragraph 1 of this article, a person may be deprived of the nationality of a Contracting State:*

*(a) In the circumstances in which, under paragraphs 4 and 5 of article 7, it is permissible that a person should lose his nationality;*

*(b) Where the nationality has been obtained by misrepresentation or fraud.*

*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;*

*(b) That the person has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.*

*4. A Contracting State shall not exercise a power of deprivation permitted by paragraphs 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.*

1. Clause 1 of Article 8 of the Convention, as a general rule, prohibits the States to deprive a person of his nationality if such deprivation **would render him stateless**.

However, in accordance with Clause 2 of Article 8 of the Convention, a State may deprive any person of its nationality, even if it would render that person stateless:

- in the circumstances stipulated in Paragraphs 4 and 5 of Article 7 of the Convention (see comments to Paragraphs 4 and 5 of Article 7 of the Convention);
- where the nationality has been obtained by misrepresentation or fraud.

Based on Clause 2 of Article 8 of the Convention, the States may deprive a person of their nationality for the above reasons regardless of the time expired since the acquisition of the nationality.

It should be mentioned that, by a general rule, a State may not apply other reasons for depriving any person of its nationality, other than those listed in Clause 2 of Article 8 of the Convention.

Meanwhile, a State is also allowed to deprive of its nationality a person, who exhibits disloyalty to it, i.e.:

- 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
- has conducted himself in a manner seriously prejudicial to the vital interests of the State;
- has taken an oath, or made a formal declaration, of allegiance to another State, or given definite evidence of his determination to repudiate his allegiance to the Contracting State.

The following conditions should be met at the same time so that a State had a right to deprive any person of its nationality for one or more grounds listed above:

these grounds **should be fixed in its national legislation** at the time when the State expresses its consent to be bound by the Convention;

at expressing its consent to be bound by the Convention, the State should make a statement to the effect that it reserves the right to deprive a person of its nationality for one or more such grounds. Meanwhile, the grounds should be described in the text of the statement.

It should be mentioned that if the legislation of a Contracting State before or at the time of its expression of consent to be bound by the Convention, did not contain such grounds, the State may not make such a statement and it may deprive a person of its nationality when it becomes stateless, only on the conditions envisaged by Clause 2 of Article 8 of the Convention.

According to Clause 4 of Article 8 of the Convention, any grounds of deprivation of the nationality that may lead to statelessness must be fixed by the States in their legislations. Moreover, at making a decision on deprivation of their nationality, the States may not exceed the limits prescribed by the legislation. The States shall also envisage in their legislation provisions that would guarantee a decision on deprivation a person

of its nationality will be in a fair manner made by a court or another independent institution, or provisions that would allow such a person to appeal against a relevant decision in court or another independent institution that should fairly treat review of the case.

An analysis of Article 8 of the Convention allows us to come to the conclusion that it by no means limits the Contracting States in their right to deprive of the nationality those persons who would not become stateless for any reasons (for instance, persons with a double or multiple nationality).

2. International treaties of the Republic of Belarus do not regulate issues contained in Article 8 of the Convention.

3. It should be noted that the Law 'On Nationality' **does not provide such a ground of termination of the nationality, as deprivation of nationality**

According to Article 17 of the Law 'On Nationality', the nationality of the Republic of Belarus may be terminated only due to:

- renunciation of the nationality of the Republic of Belarus;
- loss of the nationality of the Republic of Belarus.

Meanwhile, in accordance with Paragraph Four of Article 20 of the Law 'On Nationality', termination of the nationality of the Republic of Belarus is not allowed if the national of the Republic of Belarus **does not have another nationality or guarantees of its acquisition.**

The Law 'On Nationality' provides also for institution of cancellation of decision on acquisition of nationality of the Republic of Belarus.

In particular, according to Articles 21 and 22 of the Law 'On Nationality', a decision on acquisition or termination of nationality shall be **cancelled** if it was taken on the basis of presentation of deliberately false information or fake documents<sup>1</sup>. And such a decision is considered to be invalid from the day of its adoption.

Sub-Clause *b*) of Clause 2 of Article 8 of the Convention provides that a person may be deprived of its nationality when the nationality **has been obtained by misrepresentation or fraud.**

An analysis of the above norms allows us to come to the **following conclusions:**

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<sup>1</sup> Such approach is considered more appropriate from the legal viewpoint than deprivation of nationality because of stated reasons since acquisition or termination of nationality on the basis of presentation of deliberately false information or fake documents is illegal, hence it should be cancelled as void. Deprivation of nationality (in case it would be provided in the legislation of the Republic of Belarus) as well as renunciation of nationality or its loss are only possible if it was obtained by legal means.

Documentary misrepresentation may include concealment of criminal charges, nationality of another country, and expulsion from the Republic of Belarus during a previous stay, etc. Documentary fraud may refer to the use of another person's passport with a replaced photograph, fake marriage termination certificates, fake certificates on absence of tax and other arrears to the Republic of Belarus, its legal entities and natural persons, etc.

although the legislation of the Republic of Belarus does not provide an instrument of deprivation of the nationality, it contains norms aimed at the prevention of abuse and fraud at acquisition of the nationality;

meanwhile, the Law envisages a responsibility in the form of cancellation of the decision on acquisition or termination of the nationality of the Republic of Belarus, which is considered **invalid as of the day when it was made**. Therefore, it is considered that the person has never held the nationality of the Republic of Belarus, even though it will become stateless after cancellation of the decision on acquisition of the nationality of the Republic of Belarus.

Therefore, it appears that the above norms of the Law 'On Nationality' **correspond** to Sub-Clause *b*) of Article 8 of the Convention.

In relation to Clause 3 of Article 8 of the Convention we would like to draw attention to the fact, that the Law 'On Nationality' does not directly provide such grounds for loss of nationality, **as violation of the duty of loyalty to the state, rendering services to another state or emoluments from it, conduct seriously prejudicial to the vital interests of the State**, etc. A person may be liable for committal of the above offenses depending on their magnitude, in accordance with the acts of legislation of the Republic of Belarus (for instance, Article 356 'Treason against the State' and Article 358 'Espionage' of the Criminal Code of the Republic of Belarus), however, **they alone may not present adequate grounds for loss of the nationality of the Republic of Belarus**

Such grounds of loss of nationality, as an oath or formal declaration of allegiance to another State, or definite evidence of his determination to repudiate his allegiance to the country of his nationality, are also not stipulated directly in the legislation of the Republic of Belarus.

However, the above circumstances are often related to the entry of the person to military, police service, security, justice and other state agencies of a foreign country, and the Law 'On Nationality' contains such a clause (Paragraph Two of Article 19). The loss of the nationality of the Republic of Belarus by such a person is only allowed when the person has another nationality or **guarantees of its acquisition**, i.e., in the latter case a situation of temporary statelessness of that person is possible.

Therefore, based on the above and taking into account of Clause 3 of Article 8 of the Convention, if the Republic of Belarus decides to accede the Convention, it will most likely need to resolve the issue of formulating a statement on preserving the grounds of loss of nationality, as provided Paragraph Two of Article 19 of the Law 'On Nationality', in its legislation.

The following provisions correspond to the provisions of Clause 4 of Article 8 of the Convention:

a) the provisions of Article 60 of the Constitution of the Republic of Belarus, according to which everyone is guaranteed the protection of his rights and freedoms by a competent, independent and fair court in legally established terms;

b) the provisions of Article 38 of the Law 'On Nationality', according to which:

- decisions on the issues of nationality made by the President of the Republic of Belarus may be appealed in the Supreme Court of the Republic of Belarus that shall review such case as a first instance court;
- decisions on the issues of nationality made by government agencies authorized by the President of the Republic of Belarus may be appealed in Oblast and Minsk City Courts;
- unjustified rejection of applications on the issues of nationality, violation of the terms of review of applications, as well as other illegitimate actions of officials on the issues of nationality may be appealed in court.

Therefore, **any decision on the issues of the nationality of the Republic** of Belarus may be appealed in court.

In view of the above it appears possible to come to a conclusion that the above provisions of the legislation of the Republic of Belarus **correspond** to the provisions of Clause 4 of Article 8 of the Convention.

4. As a result it appears possible to make a conclusion about **correspondence** of the legislation of the Republic of Belarus on nationality to the provisions of Article 8 of the Convention.

## **Article 9**

*A Contracting State may not deprive any person or group of persons of their nationality on racial, ethnic, religious or political grounds.*

1. Article 9 of the Convention establishes a ban on deprivation of anyone of his nationality on **discriminatory grounds**. The obligations under this Article are unconditional. However, it is irrelevant, whether a person will become stateless as a result of deprivation of the nationality, or not. The list of grounds according to which a person or a group of persons may be deprived of their nationality, appears exhaustive.

2. The principle of non-discrimination is a regular norm of the international law and it was reflected in a number of international treaties acceded by the Republic of Belarus.

In accordance with Clause 1 of Article 15 of the *Universal Declaration of Human Rights, approved by the General Assembly of the United Nations*

*on 10 December, 1948*, everyone has a right to a nationality. Article 2 of the above Declaration implies a prohibition to deny nationality to a person on discriminating grounds. The list of such grounds is rather exhaustive: race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, political, jurisdictional or international status of the country or territory to which a person belongs, whether it is independent, trust, non-self-governing or under any other limitation of sovereignty.

According to Article II of the *International Convention on the Suppression and Punishment of the Crime of Apartheid of 30 November, 1973*<sup>1</sup>, any legislative measures and other measures calculated to prevent a racial group or groups from participation in the political, social, economic and cultural life of the country and the deliberate creation of conditions preventing the full development of such a group or groups, in particular, by **denying to members of a racial group or groups basic human rights and freedoms, including the right to a nationality**, committed for the purpose of establishing and retaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them, constitute the crime of apartheid.

In this relation the Contracting States have a number of obligations, including legislative and other measures required to suppress the crime of apartheid (Clause ) of Article IV of the *International Convention on the Suppression and Punishment of the Crime of Apartheid of 30 November, 1973*).

In accordance with Article 5 of the *International Convention on the Elimination of All Forms of Racial Discrimination of 21 December, 1965*<sup>2</sup>, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, color, or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to a nationality.

In this relation each State Party:

- undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;
- undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;

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<sup>1</sup> Effective for the Republic of Belarus since 18 July, 1976.

<sup>2</sup> Effective for the Republic of Belarus since 8 May, 1969.

- take effective measures to review governmental, national and local policies, etc. (Clause 1 of Article 2 *of the Convention on the Elimination of All Forms of Racial Discrimination of 21 December, 1965*).

Based on the provisions of Clause 3 of Article 1 and Sub-Clause ) of Clause 1 of Article 2 of the International *Convention on the Elimination of All Forms of Racial Discrimination of 21 December, 1965*, if the provisions of the legislation of the States Parties concerning nationality, citizenship or naturalization, are discriminating in relation to a certain nationality, the States should take effective measures to amend, call off or nullify the relevant provisions.

Therefore, the norms of the international treaties of the Republic of Belarus contain adequate guarantees that a person or a group of persons will not be deprived of their nationality for any discriminatory reasons.

The approach described in Article 9 of the Convention is impossible in the Republic of Belarus, since:

- the Law 'On Nationality' **does not provide for such an instrument as deprivation** of nationality;
- the Law 'On Nationality' **does not provide for such grounds** of termination of nationality, as racial, ethnic, religious or political;
- Racial, ethnic, religious or political grounds in general **may not be taken into consideration** as solution of issues of nationality of the Republic of Belarus in accordance with Article 22 of the Constitution of the Republic of Belarus, which states that everyone is equal before the law and everyone has a right to equal protection of his rights and legal interests without and discrimination.

4. In this regard we may make a conclusion about **full correspondence** of the Law 'On Nationality' to the provisions of Article 9 of the Convention.

## **Article 10**

*1. Every treaty between Contracting States providing for the transfer of territory shall include provisions designed to secure that no person shall become stateless as a result of the transfer. A Contracting State shall use its best endeavors to secure that any such treaty made by it with a State which is not a Party to this Convention includes such provisions.*

*2. In the absence of such provisions a Contracting State to which territory is transferred or which otherwise acquires territory shall confer its nationality on such persons as would otherwise become stateless as a result of the transfer or acquisition.*

1. Article 10 of the Convention is aimed at the prevention of statelessness at transfer from one state to another (i.e., both States remain as subjects of the international law). This Article of the Convention does not regulate the issues of succession in relation to the nationality in case of other territorial changes (unification of states, separation of a territory from a state, etc.).

In accordance with this Article of the Convention, the methods of preclusion of statelessness differ depending on the contents of the international treaties on the transfer of a territory.

If the parties of such international treaties are **the Contracting States**, they should establish in such international treaties certain provisions guaranteeing that no one (i.e., no person, temporarily staying or permanently residing in their territories) will become stateless as a result of that transfer. Such provision may, in particular, refer to the option to retain one's citizenship.

If the international treaty on transfer of a territory was concluded between a Contracting Party and a state, which is not a party to the Convention, the situation is slightly different.

Regardless whether the Contracting State is a predecessor or successor, it is obliged to undertake all efforts to include the above provisions into the treaty on transfer of a territory. However, it is not always possible in practice since any international treaty is a result of coordination of the wills of two parties that do not always match.

In order to resolve this issue, Clause 2 of Article 10 of the Convention provides that if the **succeeding state** has failed to ensure that a treaty with a State, which is not party to the Convention, would contain provisions precluding statelessness in case of territorial succession, it should grant its nationality to such persons that would otherwise become stateless **as a result of transfer or acquisition of a territory**.

It should be noted that, based on of Article 10 of the Convention, the States are not obliged to include into international treaties any norms on conferment of the nationality to persons that were stateless by the time of succession, as well as to persons who had the nationality of these or other states, and retained it after the transfer of the territory. The succeeding state is not obliged to grant its nationality to such persons, either.

2. The Republic of Belarus is not party to multilateral treaties governing the issues of succession in relation to nationality. The Belarusian



state also has not concluded any bilateral treaties with provisions in this field, or agreements of transfer of territories<sup>1</sup>.

3. According to Paragraph Five of Article 12 and Paragraph Four of Article 19 of the Law 'On Nationality, the nationality of the Republic of Belarus may be **acquired** or **lost** for reasons envisaged in international treaties of the Republic of Belarus.

In accordance with Part Two of Article 2 of the Law, if an international treaty of the Republic of Belarus provides rules other than those that are stipulated in the Law, the rules of the international treaty shall apply.

Hence, the Law 'On Nationality' **does not exclude the possibility** of acquisition and loss of the nationality of the Republic of Belarus for reasons prescribed in international treaties of the Republic of Belarus that may differ from the reasons established by the Law.

The legislation of the Republic of Belarus does not contain any special provisions regulating the procedure of conferment of the nationality of the Republic of Belarus or loss of the nationality of the Republic of Belarus in the event of acquisition/transfer of a territory by/to the Republic of Belarus

4. If the Republic of Belarus does not document its participation in the Convention and concludes international treaties on transfer of territories to it without any provisions aimed at the prevention of the situation of statelessness due to such a transfer, then, in order to acquire the nationality of the Republic of Belarus the residents of the Republic of Belarus transferred territory will need to fulfill all the conditions prescribed by the Law 'On Nationality', even though they would otherwise **become stateless** in the result of such an accession, i.e.:

- the obligation to follow and respect the Constitution of the Republic of Belarus, other legislative acts of the Republic of Belarus;
- knowledge of either national language of the Republic of Belarus within the limits necessary for communication;

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<sup>1</sup> It does not, however, mean that there have not been such issues in the history of the Republic of Belarus. Thus, after the disintegration of the Republic of Belarus USSR and establishment of new sovereign states the problem of national identification of their residents was rather topical.

We should draw attention to the positive and rather progressive practices of the Republic of Belarus that, in its Law 'On the Nationality of the Republic of Belarus' of 18 October, 1991, acknowledged all persons residing in its territory as of the date of enactment of the above Law, as its nationals (Clause 1 of Article 2 of the Law of the Republic of Belarus 'On the Nationality of the Republic of Belarus').

Moreover, in accordance with Article 17 of the Law of the Republic of Belarus 'On the Nationality of the Republic of Belarus', persons who have permanently lived in the territory of the Republic of Belarus and were resettled by forced, or left it prior to the enactment of the above Law, their descendants, as well as persons identifying themselves as Belarusians and their children born outside of the contemporary territory of the Republic of Belarus, nationality was granted upon their wish in accordance with the simplified procedure, i.e., without the requirement of permanent residence in the territory of the Republic of Belarus for 7 years prior to lodgment of the application.

- residence in the territory of the Republic of Belarus upon receipt of a permit for permanent residence in the Republic of Belarus for seven years in succession;
- a legitimate source of income;
- absence of the circumstances listed in Article 16 of the Law.

In the event of accession of the Convention by the Republic of Belarus and conclusion of such treaties with states that are not parties to the Convention, the Republic of Belarus will need to undertake all measures necessary to safeguard provisions precluding statelessness in the result of transfer of a territory to the Republic of Belarus.

In absence of the above provisions in a relevant international treaty of the Republic of Belarus, the provision of Clause 2 of Article 10 of the Convention will have a direct action, i.e., no amendments and/or addenda into the national legislation of the Republic of Belarus will be required in case of accession of the Convention by the Republic of Belarus.

## **Article 11**

*The Contracting States shall promote the establishment within the framework of the United Nations, as soon as may be after the deposit of the sixth instrument of ratification or accession, of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority.*

At request of the UN General Assembly, the functions of the body mentioned in Article 11 of the Convention are currently performed by the UN High Commissioner for Refugees<sup>1</sup>.

According to Article 17 of the Convention, at the time of signature, ratification or accession any State may make a reservation in respect of Article 11 of the Convention.

## **Article 12**

*1. In relation to a Contracting State which does not, in accordance with the provisions of paragraph I of article I or of article 4 of this Convention, grant its nationality at birth by operation of law, the provisions of paragraph I of article I or of article 4, as the case may be, shall apply to persons born before as well as to persons born after the entry into force of this Convention.*

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<sup>1</sup> <http://www.unhcr.org/protect/PROTECTION/3bd7d3914.html>

2. *The provisions of paragraph 4 of article I of this Convention shall apply to persons born before as well as to persons born after its entry into force.*

3. *The provisions of article 2 of this Convention shall apply only to foundlings found in the territory of a Contracting State after the entry into force of the Convention for that State.*

Clauses 1 and 2 of Article 12 of the Convention imply that its certain provisions are retroactive.

Thus, according to Clause 1 of Article 12 of the Convention, if a State establishes in its legislation that in cases stipulated by Clause 1 of Article 1 and/or Article 4 of the Convention, the nationality is granted to the persons listed there at birth, by operation of law, then it has to grant it in the same order not only children born after, but also before the entry of the Convention into force in relation to that State.

In accordance with Clause 2 of Article 12 of the Convention, a State should grant its nationality to all persons mentioned in Clause 4 of Article 1 of the Convention, who were born outside of its territory both after and before the entry of the Convention into force in relation to that State.

Clause 3 of Article 12 of the Convention establishes that the provisions of Article 2 of the Convention apply only to the foundlings found in the territory of a certain State after the entry of the Convention into force in relation to that State.

### **Article 13**

*This Convention shall not be construed as affecting any provisions more conducive to the reduction of statelessness which may be contained in the law of any Contracting State now or hereafter in force, or may be contained in any other convention, treaty or agreement now or hereafter in force between two or more Contracting States.*

Based on of Article 13 of the Convention, we may say that the Convention has no impact on the rights of the States to apply the provisions of the national legislation as well as international treaties that to a greater extent, than the provisions of the Convention, are aimed at the reduction of statelessness.

### **Article 14**

*Any dispute between Contracting States concerning the interpretation or application of this Convention which cannot be settled by other means shall be submitted to the International Court of Justice at the request of any one of the parties to the dispute.*

Article 14 of the Convention establishes optional jurisdiction of the International Court of Justice on disputes concerning the interpretation or application of the Convention, i.e., only when the States failed to come to an agreement through other methods (the States are free to choose them, taking into account that they are bound by the provisions of Article 33 of the *Charter of the United Nations of 26 June, 1945*)<sup>1</sup>. It should be noted that the Republic of Belarus did not recognize the mandatory jurisdiction of the International Court of Justice in accordance with Clause 2 of Article 36 of the *Statute of the International Court of Justice of 26 June, 1945*<sup>2</sup>. In this relation, taking into account Clause 1 of Article 17 of the Convention, if the Republic of Belarus makes, at expression of its consent to be bound by the Convention, a reservation to Article 14 of the Convention on non-recognition of the jurisdiction of the International Court of Justice in relation to disputes on interpretation or application of the Convention, it will not have to send such a dispute to this Court. In case of review of a relevant dispute by the International Court of Justice on the initiative of other States, its decision will not be bounding for the Republic of Belarus.

## **Article 15**

*1. This Convention shall apply to all non-self-governing, trust, colonial and other non-metropolitan territories for the international relations of which any Contracting State is responsible; the Contracting State concerned shall, subject to the provisions of paragraph 2 of this article, at the time of signature, ratification or accession, declare the non-metropolitan territory or territories to which the Convention shall apply ipso facto as a result of such signature, ratification or accession.*

*2. In any case in which, for the purpose of nationality, a non-metropolitan territory is not treated as one with the metropolitan territory, or in any case in which the previous consent of a non-metropolitan territory is required by the constitutional laws or practices of the Contracting State or of the non-metropolitan territory for the application of the Convention to that territory, that Contracting State shall Endeavour to secure the needed consent of the non-metropolitan territory within the period of twelve months*

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<sup>1</sup> Effective for the Republic of Belarus since 24 October, 1945.

<sup>2</sup> Effective for the Republic of Belarus since 24 October, 1945.

*from the date of signature of the Convention by that Contracting State, and when such consent has been obtained the Contracting State shall notify the Secretary General of the United Nations. This Convention shall apply to the territory or territories named in such notification from the date of its receipt by the Secretary-General.*

*3. After the expiry of the twelve-month period mentioned in paragraph 2 of this article, the Contracting States concerned shall inform the Secretary-General of the results of the consultations with those non-metropolitan territories for whose international relations they are responsible and whose consent to the application of this Convention may have been withheld.*

Article 15 of the Convention regulates the issues of application of the Convention in relation to non-self-governing, trust, colonial and other non-metropolitan territories, the international relations of which are the responsibility of a Contracting State, and it applies only to those States that have such territories. The Republic of Belarus has never had non-metropolitan territories. This Article of the Convention is not applicable to the Republic of Belarus.

## **Article 16**

*1. This Convention shall be open for signature at the Headquarters of the United Nations from 30 August 1961 to 31 May 1962.*

*2. This Convention shall be open for signature on behalf of:*

*(a) Any State Member of the United Nations;*

*(b) Any other State invited to attend the United Nations Conference on the Elimination or Reduction of Future Statelessness;*

*(c) Any State to which an invitation to sign or to accede may be addressed by the General Assembly of the United Nations.*

*3. This Convention shall be ratified and the instruments of ratification shall be deposited with the Secretary-General of the United Nations.*

*4. This Convention shall be open for accession by the States referred to in paragraph 2 of this article. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.*

Article 16 of the Convention regulates the issues of documentation of participation of the States in the Convention. The Convention was open for signature from 30 August, 1961 till 31 May, 1962, and it was subject to ratification. The Secretary-General of the United Nations is the depositary of the Convention.

After 31 May, 1962 the Convention was open for accession of:

State Members of the United Nations;  
States attending the United Nations Conference on the Elimination or Reduction of Statelessness in Future;

Any other States invited to attend the Convention by the General Assembly of the United Nations.

The Republic of Belarus has been a member of the United Nations since the time of its foundation (BSSR was one of the states-founders of the UN). . In this regard the Republic of Belarus has an unquestionable right to participate in the Convention. Since the Republic of Belarus (BSSR back then) did not sign the Convention in the period from 30 August, 1961 till 31 May, 1962 (when the Convention was open for signature), it may, according to Clause 4 of Article 16 of the Convention, express its consent to be bound by the Convention by accession.

An analysis of the Convention shows that it contains a number of provisions that do not fully correlate with the provisions of the legislative acts of the Republic of Belarus, and governs issues that are referred to the sphere of legislative regulation, but are not regulated by legislative acts. Besides, the Convention was originally subject to ratification in accordance with Clause 3 of Article 16 of the Convention. In this relation it is subject to (Paragraphs Two – Four of Article 19 of the Law of the Republic of Belarus of 23 July, 2008 'On International Treaties of the Republic of Belarus').

If it is decided that the documentation of participation of the Republic of Belarus in the Convention is advisable, the consent of the Republic of Belarus to be bound by the Convention should be expressed in the form of accession. In view of the above, and also based on Paragraph Two of Part Five of Article 23 of the Law of the Republic of Belarus 'On International Treaties of the Republic of Belarus', a decision on accession of the Republic of Belarus will be made by the National Assembly of the Republic of Belarus in the form of a law.

## **Article 17**

- 1. At the time of signature, ratification or accession any State may make a reservation in respect of articles 11, 14 or 15.*
- 2. No other reservations to this Convention shall be admissible.*

Article 17 of the Convention provides a list of reservations to the Convention that may be declared by the States at expression of their consent to be bound by the Convention.

States wishing to document their participation in the Convention may make reservations:

- in respect to the agency to which a person with a right to acquire nationality may, in accordance with the Convention, lodge an application and for assistance with it (Article 11 of the Convention);
- in respect to the methods of resolution of disputes arising between the States regarding the interpretation or application of the Convention (Article 14 of the Convention);
- in respect to non-metropolitan territories in relation to which the Convention will be applied (Article 15 of the Convention).

No other reservations to the Convention are allowed.

However, it should be mentioned that beside the reservations mentioned in Article 17 of the Convention, Clause 3 of Article 8 of the Convention provides for a possibility for a Contracting State to formulate a statement at expressing its consent to be bound by the Convention – regarding the grounds of deprivation of nationality, that are fixed in its national legislation as of the time of documentation of its participation in the Convention and are acceptable documents in compliance with the Convention.

In the event of accession of the Republic of Belarus to the Convention at expression of its consent to be bound by the Convention it will have a right to make reservations to Articles 11, 14 and 15 and a statement in reference to Clause 3 of Article 8 of the Convention.

A statement in reference to Clause 3 of Article 8 appears advisable as the legislation of the Republic of Belarus currently provides such a ground for loss of the nationality of the Republic of Belarus by a person at the person's entry to military, police service, security, justice and other state agencies of a foreign country (Paragraph Two of Article 19 of the Law 'On Nationality') on the condition that the person has another nationality or guarantees of its acquisition.

A statement of reservation to Article 11 seems to be inexpedient since this Article provides only for the duty of the Contracting States **to promote** in the prospective **the establishment** within the framework of the United Nations, as soon as may be after the deposit of the sixth instrument of ratification or accession, of a body to which a person claiming the benefit of this Convention may apply for the examination of his claim and for assistance in presenting it to the appropriate authority. From Article 11 it is not possible to infer the unambiguous conclusion about mechanisms of its functioning, as well as about legal force of this establishment. Such questions are taken outside the scope of the Convention and will be decided by other international legal instruments, and the Republic of Belarus will separately

take a decision on participation in their elaboration, adoption and expressing the consent for their obligatory character.

A statement of reservation to Article 14 seems to be inexpedient since according to established practice the Republic of Belarus formalize its participation in the international treaties that foreseen the jurisdiction of the International Court of Justice for settlement of disputes in respect of these treaties without any reservations and statements on this question.

A statement of reservations to Article 15 of the Convention is superfluous since the Republic of Belarus does not have any non-metropolitan territories.

### **Article 18**

*1. This Convention shall enter into force two years after the date of the deposit of the sixth instrument of ratification or accession.*

*2. For each State ratifying or acceding to this Convention after the deposit of the sixth instrument of ratification or accession, it shall enter into force on the ninetieth day after the deposit by such State of its instrument of ratification or accession or on the date on which this Convention enters into force in accordance with the provisions of paragraph 1 of this article, whichever is the later.*

Article 18 of the Convention establishes a procedure of enactment of the Convention for various categories of states depending on the date of documentation of their participation in this Convention.

The Convention came into force on 13 December, 1975. As of July, 2008, 34 states are parties to the Convention.

In the event of accession of the Republic of Belarus to the Convention it will come into effect for the Republic of Belarus on the ninetieth day after the deposit of the instrument of accession.

### **Article 19**

*1. Any Contracting State may denounce this Convention at any time by a written notification addressed to the Secretary-General of the United Nations. Such denunciation shall take effect for the Contracting State concerned one year after the date of its receipt by the Secretary-General.*

*2. In cases where, in accordance with the provisions of article 15, this Convention has become applicable to a non-metropolitan territory of a*



*Contracting State, that State may at any time thereafter, with the consent of the territory concerned, give notice to the Secretary-General of the United-Nations denouncing this Convention separately in respect to that territory. The denunciation shall take effect one year after the date of the receipt of such notice by the Secretary-General, who shall notify all other Contracting States of such notice and the date of receipt thereof.*

Article 19 of the Convention regulates the issues of the procedure of denunciation of the Convention.

## **Article 20**

*1. The Secretary-General of the United Nations shall notify all Members of the United Nations and the non-member States referred to in article 16 of the following particulars:*

- (a) Signatures, ratifications and accessions under article 16;*
- (b) Reservations under article 17;*
- (c) The date upon which this Convention enters into force in pursuance of article 18;*
- (d) Denunciations under article 19.*

*2. The Secretary-General of the United Nations shall, after the deposit of the sixth instrument of ratification or accession at the latest, bring to the attention of the General Assembly the question of the establishment, in accordance with article 11, of such a body as therein mentioned.*

## **Article 21**

*This Convention shall be registered by the Secretary-General of the United Nations on the date of its entry into force.*

Articles 20–21 of the Convention establish the authority of the Secretary-General of the United Nations as a depositary of the Convention.

*In witness whereof the undersigned Plenipotentiaries have signed this Convention.*

*Done at New York, this thirtieth day of August, one thousand nine hundred and sixty-one, in a single copy, of which the Chinese, English, French, Russian and Spanish texts are equally authentic and which shall be deposited in the archives of the United Nations, and certified copies of which shall be delivered by the Secretary-General of the United Nations to all*

*members of the United Nations and to the non-member States referred to in article 16 of this Convention.*

The final part of the Convention indicates its date (30 August, 1961) and the languages, the texts in which are equally authentic: English, Chinese, Russian, Spanish and French.

These provisions are of a special importance for the Republic of Belarus since one of the authentic texts of the Convention is in Russian, which, in accordance with Article 17 of the Constitution of the Republic of Belarus, is a national language of the Republic of Belarus.

## **International Treaties of the Republic of Belarus on the Issues of Nationality**

The Republic of Belarus has concluded a number of international treaties providing for a simplified order of acquisition of the nationality of certain States Members of the CIS by the nationals of the Republic of Belarus, and the nationality of the Republic of Belarus – by the nationals of these States:

Treaty between the Republic of Belarus and the Republic of Kazakhstan on the Simplified Procedure of Nationality Acquisition by the Nationals of the Republic of Belarus Coming for Permanent Residence to the Republic of Kazakhstan, and the Nationals of the Republic of Kazakhstan Coming for Permanent Residence to the Republic of Belarus, of 17 January, 1996<sup>1</sup>;

Treaty between the Republic of Belarus, Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation on a Simplified Procedure of Nationality Acquisition, of 26 February, 1999<sup>2</sup>;

Treaty between the Republic of Belarus and Ukraine on a Simplified Procedure of Nationality Change by the Nationals of the Republic of Belarus Who Permanently Reside in Ukraine, and Nationals of Ukraine, Who Permanently Reside in the Republic of Belarus, of 12 March, 1999<sup>3</sup>.

A simplified procedure of nationality acquisition applies to persons that meet the criteria set forth in the above international treaties of the Republic of Belarus.

**All the above-listed treaties contain norms excluding the possibility of statelessness in the process of transfer of a person from the nationality of one State to the nationality of another State.**

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<sup>1</sup> Came into effect on 31 July, 1998.

<sup>2</sup> Effective for the Republic of Belarus since 4 November, 2000.

<sup>3</sup> Came into effect on 8 April, 2000.

In accordance with Part Three of Article 2 of the Treaty between the Republic of Belarus and the Republic of Kazakhstan on a Simplified Procedure of Nationality Acquisition by the Nationals of the Republic of Belarus, Coming for Permanent Residence to the Republic of Kazakhstan, and Nationals of the Republic of Kazakhstan, Coming for Permanent Residence to the Republic of Belarus, of 17 January, 1996; the date of registration of the acquisition of nationality of either party will be the date of loss of the nationality of the other party. Part Four of Article 1 of the Treaty between the Republic of Belarus and Ukraine on a Simplified Procedure of Nationality Change by the Nationals of the Republic of Belarus Who Permanently Reside in Ukraine, and Nationals of Ukraine, Who Permanently Reside in Belarus, of 12 March, 1999, contains an identical provision.

According to Clause 3 of Article 2 of the Treaty between the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation on a Simplified Procedure of Nationality Acquisition by the Nationals of 26 February, 1999, in case the nationality of one party is acquired and the nationality of the other is lost, the applicant concerned shall retain the nationality of the other party until a positive decision on his application is made according to the national legislation of that party.

The above provisions also apply to children who change their nationality in relation to the change of the nationality of their parent(s).

## **Prevention of the Situation of Statelessness for Foreign Nationals Who Wish to Acquire the Nationality of the Republic of Belarus**

The Convention does not contain any norms establishing common rules for the Contracting States in relation to provision of nationality to foreign nationals who wish to acquire the nationality of a Contracting State. It is assumed that every State may establish its requirements to foreign nationals wishing to acquire its nationality. However, such cases may provoke situations of statelessness limited by a certain period of time (when, in accordance with the national legislation of the State, the person renounces his former nationality in relation with submission of such an application), or unlimited by time (when the former nationality of the person was terminated prior to submission of an application for the new nationality, or in relation to submission of such an application, whereas a new nationality was not granted to the person).

The following norms of the legislation of the Republic of Belarus **do not promote** the prevention of statelessness in relation to foreign nationals

and persons without nationality wishing to acquire the nationality of the Republic of Belarus.

One of the conditions of conferment of the nationality of the Republic of Belarus is **absence of a nationality** or **loss of the nationality** of a foreign country in the event of acquisition of the nationality of the Republic of Belarus, or the **fact of application** of the person to a competent agency of a foreign country **for termination of his nationality of the foreign country**, with the exception of situations when the termination of the nationality of the foreign country is impossible for reasons out of the person's control.

In accordance with Paragraph Eleven of Clause 17 of the Regulation On the Procedure of Review of Issues Related to the Nationality of the Republic of Belarus, a document of a competent agency of a foreign country confirming the absence or termination of the person's nationality of the foreign country is:

- a certificate of absence of the nationality (renunciation of nationality) of the foreign country;
- a certificate confirming that the nationality of the foreign country will be lost in case of acquisition of the nationality of the Republic of Belarus;
- a certificate confirming the fact of acceptance of an application for renunciation of the nationality of the foreign country.

However, even if a foreign national or person without nationality meets all the requirements for acquisition of the nationality of the Republic of Belarus, their acquisition of the nationality of the Republic of Belarus is not guaranteed.

Thus, according to Parts One and Two of Article 14 of the Law 'On Nationality', a person meeting all requirements for acquisition of the nationality of the Republic of Belarus, only has a right to **apply for acquisition of the nationality of the Republic of Belarus**. According to Part Four of Article 14 of the Law 'On Nationality', conferment of the nationality of the Republic of Belarus is made **with a consideration of the interests of the Republic of Belarus**.

Therefore, those foreign nationals who, for instance, have renounced the nationality of a foreign country (or applied for its renunciation) in order to acquire the nationality of the Republic of Belarus, **risk not acquiring it and remaining stateless** if the President of the Republic of Belarus or government agencies authorized to resolve the issues of the nationality of the Republic of Belarus, decide that the acquisition of the nationality of the Republic of Belarus by such persons does not meet the interests of the Republic of Belarus.

Based on the provisions of Paragraphs Three and Four of Part One of Article 13 of the Law 'On Nationality', we may say that there could be situations when a child born in the territory of the Republic of Belarus **will**

**not acquire the nationality of the Republic of Belarus, even if he would otherwise become stateless.** It is possible that if neither one of the parents of the child holds the nationality of the Republic of Belarus, and meanwhile parents (single parent) do not (does not) reside permanently in the territory of the Republic of Belarus.

Since the legislation of the Republic of Belarus on nationality sets forth other conditions of nationality acquisition in addition to those listed in Sub-Clauses a) – d) of Clause 2 of Article 1 of the Convention (e.g., fulfillment of and respect for the Constitution of the Republic of Belarus and other legislative acts of the Republic of Belarus, knowledge of either national language of the Republic of Belarus within the limits necessary for communication, a legitimate source of income, no previous history of charges for crimes against peace and safety of mankind, war crimes, etc.), we may make a conclusion that in this case the requirements of the Law 'On Nationality' are more rigorous than the conditions of the Convention.

According to the Law 'On Nationality', a child **born on the territory of Belarus** acquires nationality of the Republic of Belarus by birth if on the day of his birth his parents (single parent) permanently reside on the territory of the Republic of Belarus and are stateless persons or foreign citizens (and the states of their nationality do not grant to the child their nationality).

At the same time, even if such parents comply with all such requirements with the exception of birth on the territory of the Republic of Belarus (for example if the child was born aboard a ship flying the flag of the Republic of Belarus or an aircraft registered in the Republic of Belarus), a child will **become an apatriote**.

In this case the **provisions of the Law 'On Nationality' are more rigorous and do not correspond to the provisions of Article 3 of the Convention.**

In case of possible accession of a new territory by the Republic of Belarus, the issue of the possibility and procedure of acquisition of the nationality of the Republic of Belarus by the residents of this territory should be resolved separately. And, if such a possibility of acquisition of the nationality of the Republic of Belarus will not be stipulated in an international treaty, according to which the territory is transferred, in order to become nationals of the Republic of Belarus they will need to meet **all the requirements** imposed on all persons wishing to acquire the nationality of the Republic of Belarus, even if they will become stateless as a result of such an accession of a territory:

- the responsibility of observance of and respect for the Constitution of the Republic of Belarus and other acts of the legislation of the Republic of Belarus;

- knowledge of either national language of the Republic of Belarus within the limits required for communication;
- residence in the territory of the Republic of Belarus upon acquisition of a permit for permanent residence in the Republic of Belarus for seven years consequently;
- availability of legitimate means of subsistence;
- absence of reasons listed in Article 16 of the Law 'On Nationality'.

However, it is assumed that the issues of prevention of situations of statelessness for foreign nationals wishing to acquire the nationality of the Republic of Belarus should be regulated on a mutual basis by conclusion of treaties with foreign countries. For instance, these issues were thus resolved in conclusion of the Treaty between the Republic of Belarus and the Republic of Kazakhstan on the Simplified Procedure of Nationality Acquisition by the Nationals of the Republic of Belarus Coming for Permanent Residence to the Republic of Kazakhstan, and the Nationals of the Republic of Kazakhstan Coming for Permanent Residence to the Republic of Belarus, of 17 January, 1996; Treaty between the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation on the Simplified Procedure of Nationality Acquisition of 26 February, 1999; Treaty between the Republic of Belarus and Ukraine on a Simplified Procedure of Nationality Change by the Nationals of the Republic of Belarus Who Permanently Reside in Ukraine, and Nationals of Ukraine, Who Permanently Reside in the Republic of Belarus, of 12 March, 1999.

## CONCLUSIONS AND SUGGESTIONS

A detailed comparative analysis of the provisions of the legislation of the Republic of Belarus and of the Convention shows that the legislation of the Republic of Belarus to a great extent meets the prescriptions of the Convention and is aimed at the reduction of statelessness and the prevention of statelessness. In certain cases the legislation of the Republic of Belarus is aimed at the reduction of statelessness and the prevention of statelessness even to a greater extent, than the Convention.

1. Thus, the legislation of the Republic of Belarus has the following provisions that are to a greater extent aimed at the reduction and prevention of statelessness:

- according to the legislation of the Republic of Belarus, a child acquires the nationality of the Republic of Belarus regardless of the place of his birth, if, as of the date of birth of the child, **at least either one of his parents** holds the nationality of the Republic of Belarus. Meanwhile it is irrelevant, where the child was born, whether the child's father or mother

holds the nationality of the Republic of Belarus, whether the child's parents are married, whether the child will remain stateless, or not;

- in accordance with the Law 'On Nationality', a child whose parents are unknown and who stays in the territory of the Republic of Belarus unconditionally acquires the nationality of the Republic of Belarus;
- the legislation of the Republic of Belarus does not provide for an option for a loss of the nationality due to some changes in the individual status (marriage, termination of marriage, adoption, etc.);
- loss of the nationality of the Republic of Belarus is allowed only in case of the following: 1) due to entry of the person to military, police service, security, justice and other state agencies of a foreign country, 2) upon application of the parents (single parent) in relation of a child, who has acquired the nationality of the Republic of Belarus by birth along with the nationality of a foreign country (loss of the nationality of the Republic of Belarus by a child from 14 to 18 years of age is allowed only upon a written notarized consent of the child), 3) for reasons stipulated in international treaties of the Republic of Belarus;
- loss of the nationality of the Republic of Belarus is not allowed for any reasons, if the national of the Republic of Belarus does not have another nationality or guarantees of its acquisition;
- the legislation of the Republic of Belarus does not provide for loss of the nationality of the Republic of Belarus due to departure of a national outside of the Republic of Belarus, stay or continuous residence abroad, lack of registration, etc.;
- any decision on the issues of nationality of the Republic of Belarus may be appealed in court.

The presence of the above norms of the legislation of the Republic of Belarus does not impede participation of the Republic of Belarus in the Convention, since, according to Article 13 of the Convention, it does not relate to the right of the States to apply the provisions of their national legislations as well as international treaties that are aimed at the reduction of statelessness to a greater degree, than the provisions of the Convention.

The legislation of the Republic of Belarus meets the recommendations described in Sub-Clause *j* of the Section 'Prevention of Statelessness' of the Conclusion of the UNHCR ExCom of 6 October, 2006 on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons (Document 106 (LVII) – 2006)<sup>1</sup>, since it does not contain the provisions, establishing restrictions applied to parents in passing on nationality to their children; denial of a woman's ability to pass on nationality; renunciation of one's nationality without having secured another

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<sup>1</sup> <http://www.unhcr.org/excom/EXCOM/453497302.html>

nationality; automatic loss of citizenship from prolonged residence abroad; deprivation of nationality owing to failure to perform military or alternative civil service; loss of nationality due to a person's marriage to an alien or due to a change in nationality of a spouse during marriage; and deprivation of nationality resulting from discriminatory practices.

However, certain provisions of the legislation of the Republic of Belarus **do not correspond** to certain provisions of the Convention:

- the Law 'On Nationality' allows for situations when a child born in the territory of the Republic of Belarus does not acquire the nationality of the Republic of Belarus, even if he will otherwise become stateless. It is possible that if neither one of the parents of the child holds the nationality of the Republic of Belarus, and meanwhile parents (single parent) do not (does not) reside permanently in the territory of the Republic of Belarus (Article 1 of the Convention);
- the Law 'On Nationality' establishes more multiple and strict conditions for acquisition of the nationality of the Republic of Belarus by a stateless person born in its territory upon his request (for instance, the person can not acquire the nationality of the Republic of Belarus, if the person does not undertake to follow and respect the Constitution of the Republic of Belarus and other legislative acts of the Republic of Belarus, and if the person does not know either national language of the Republic of Belarus within the limits necessary for communication, is suspect or accused, and criminally prosecuted in the Republic of Belarus or in a foreign country for crimes recognized as such by the legislation of the Republic of Belarus – until the sentence or a final decision on the case is pronounced – if the person was deported or expelled from the Republic of Belarus – until the end of the term of the ban on entry into the Republic of Belarus, etc.) (Clause 2 of Article 1 of the Convention);
- even when all requirements set forth by the Law are met, an application for nationality may be rejected, *inter alia*, in relation to persons without nationality who were born in the territory of the Republic of Belarus, in consideration of the interests of the Republic of Belarus (sentence two of Sub-Clause *b*) of Clause 1 of Article 1 of the Convention);
- the legislation of the Republic of Belarus does not establish a rule, according to which, for the purposes of resolving the issues of nationality, territories of ships flying the flag of the Republic of Belarus or aircraft registered in the Republic of Belarus are made equal with the territory of the Republic of Belarus (Article 3 of the Convention);
- the legislation of the Republic of Belarus does not provide for the conferment of the nationality of the Republic of Belarus in case of transfer of a territory to the Republic of Belarus under an international treaty which



does not contain provisions aimed at exclusion of situations of statelessness in case of such a transfer.

The legislation of the Republic of Belarus does not fully resolve the task of prevention of the situation of statelessness in relation to foreign nationals wishing to acquire the nationality of the Republic of Belarus. However, the Convention does not establish any direct responsibilities of the Contracting States on this issue. It is assumed that the issues of prevention of situations of statelessness for foreign nationals wishing to acquire the nationality of the Republic of Belarus should be regulated on a mutual basis by conclusion of treaties with foreign countries. For instance, these issues were thus resolved at conclusion of the Treaty between the Republic of Belarus and the Republic of Kazakhstan on the Simplified Procedure of Nationality Acquisition by the Nationals of the Republic of Belarus Coming for Permanent Residence to the Republic of Kazakhstan, and the Nationals of the Republic of Kazakhstan Coming for Permanent Residence to the Republic of Belarus, of 17 January, 1996; Treaty between the Republic of Belarus, the Republic of Kazakhstan, the Kyrgyz Republic and the Russian Federation on the Simplified Procedure of Nationality Acquisition of 26 February, 1999; Treaty between the Republic of Belarus and Ukraine on a Simplified Procedure of Nationality Change by the Nationals of the Republic of Belarus Who Permanently Reside in Ukraine, and Nationals of Ukraine, Who Permanently Reside in Belarus, of 12 March, 1999.

3. In view of the aforesaid, the following amendments and addenda should be introduced into the Law 'On Nationality' in case of documentation of participation of the Republic of Belarus in the Convention:

- in relation to persons born in the territory of the Republic of Belarus, who do not have any other nationality, revoke the conditions of acquisition of the nationality of the Republic of Belarus as stipulated in Articles 13-16 of the Law 'On Nationality', or in their stead define conditions of acquisition of the nationality of the Republic of Belarus in line with Clause 2 of Article 1 of the Convention;
- make a provision to the effect that the birth of a person aboard a ship of the Republic of Belarus in open water or air space outside of the Republic of Belarus shall be considered as birth in the territory of the Republic of Belarus.

In the event of accession of the Republic of Belarus to the Convention and conclusion of international treaties on transfer of a territory to the Republic of Belarus with states that are not parties to the Convention without provisions aimed at the prevention of statelessness resulting from such international treaties, the provision of Clause 2 of Article 10 of the Convention will have a direct action, i.e., no amendments and/or addenda into the legislation of the Republic of Belarus will be required.

In the event of documentation of accession to the Convention by the Republic of Belarus at expressing its consent to be bound by the Convention in accordance with Clause 3 of Article 8 and Clause 1 of Article 17, it will have a right to make reservations to Articles 11, 14 and 15 of the Convention and a statement in reference to Clause 3 of Article 8 of the Convention.

A statement of reservations to Articles 11 and 14 of the Convention appears inadvisable. A statement of reservations to Article 15 of the Convention is superfluous since the Republic of Belarus does not have any non-metropolitan territories.

A statement in reference to Clause 3 of Article 8 appears advisable as the legislation of the Republic of Belarus currently provides such a ground for loss of the nationality of the Republic of Belarus by a person at entry of the person to military, police service, security, justice and other state agencies of a foreign country (Paragraph Two of Article 19 of the Law 'On Nationality') on the condition that person has another nationality or guarantees of its acquisition.

With the view of making a decision on accession of the Republic of Belarus to the Convention, the issue of revocation of the conditions of acquisition of the nationality of the Republic of Belarus, as stipulated in Articles 13-16 of the Law 'On Nationality' in relation to persons who were born in the territory of the Republic of Belarus and who do not have any other nationality, or establishment of conditions of acquisition of the nationality of the Republic of Belarus in line with Clause 2 of Article 1 of the Convention will require detailed elaboration and discussion with involved government agencies of the Republic of Belarus.

It should be emphasized that the gaps in the national legislation, which were identified in the course of the analysis, should be eliminated regardless of accession of the Republic of Belarus to the Convention.

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