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# European Convention on Nationality (ECN) 1997 and European nationality laws

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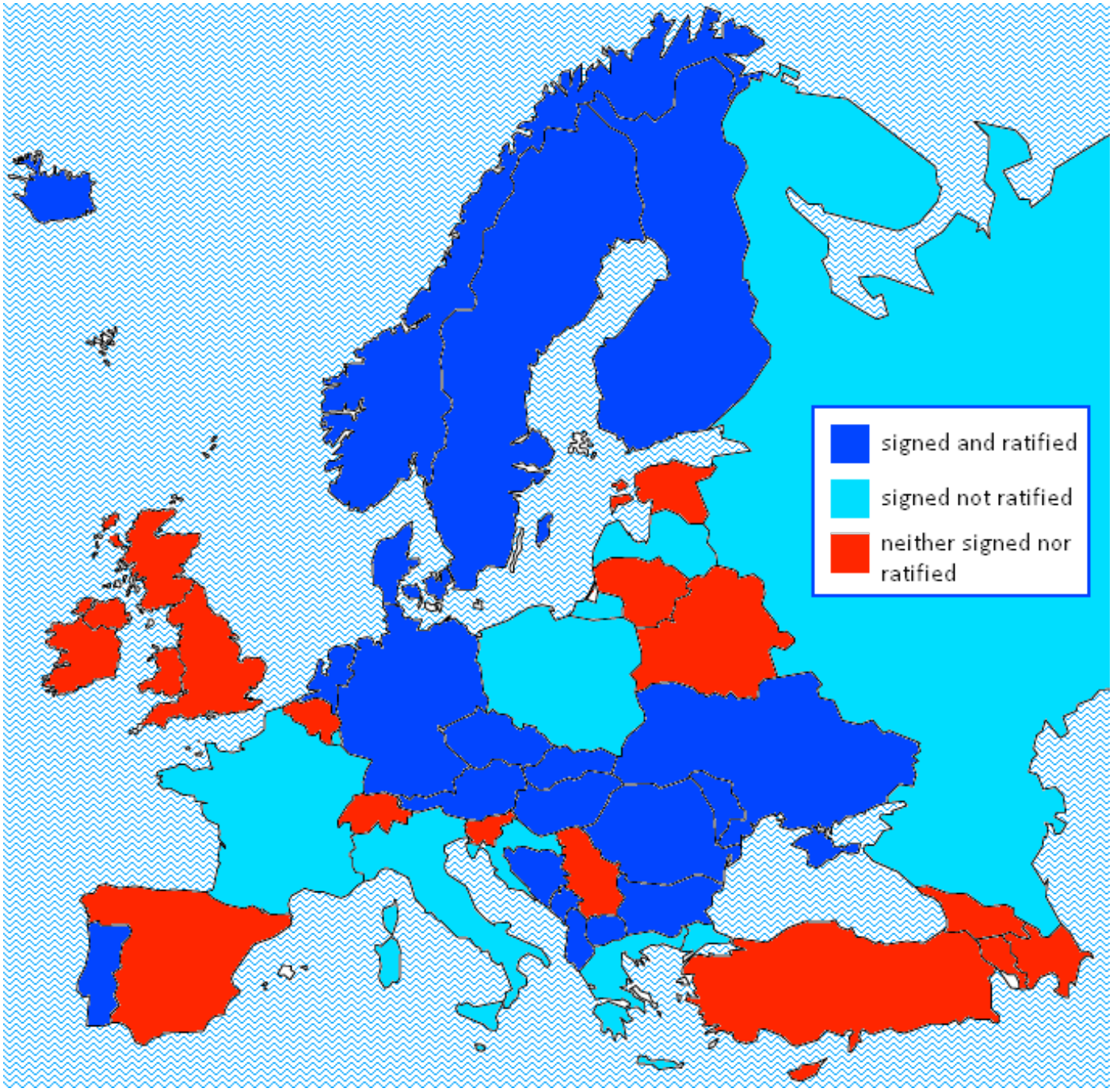
The European Convention on Nationality (ECN) adopted by the Council of Europe in 1997 is the most important regional legal instrument on nationality today. It consolidates, for the first time in a single document, generally recognised international legal norms on nationality. The success of the ECN is however undermined by a number of issues.

- The ECN attracted more reservations than any of the other specialised or general human rights treaties.
- The absence of any form of independent reviewing and enforcement mechanism makes it difficult to monitor compliance and promote progress concerning the standards set by the Convention.
- Although common obstacles to ratification are state objections to only a few of the ECN's provisions, these obstacles are very significant.
  - The single most prominent obstacle to ratification appears to be an unwillingness to be bound by the ECN's prohibition of discrimination on the basis of race, national or ethnic origin (ECN article 5(1)) and also between nationals by birth and those who acquired nationality subsequently (ECN article 5(2)). Note that the latter principle constitutes a recommendation rather than a clear prohibition.
  - State objections to offering administrative or judicial review (ECN article 12) and to charging 'reasonable' fees (ECN article 13(1)) represent further obstacles to ratification.
  - The ECN demonstrates and consolidates a gradual transition from an understanding of citizenship as *privilege* to an understanding of citizenship as *right* in international law on nationality. Not all national codes sit easily with this increased emphasis on rights of the individual, including foreign residents.

The ECN to date is the most important regional legal instrument regarding nationality law. Of all 47 Council of Europe Member States, twenty have ratified and nine have signed the Convention. Of the 37 states covered in this study, eighteen have ratified and eight have signed the Convention.[1] This means that almost half of the states in this study have ratified the ECN and about three quarters have either signed or ratified the Convention. However, the domestic impact of the ECN remains questionable due to high rates of reservations and a lack of an independent reviewing body.

## Map: Ratifications of ECN

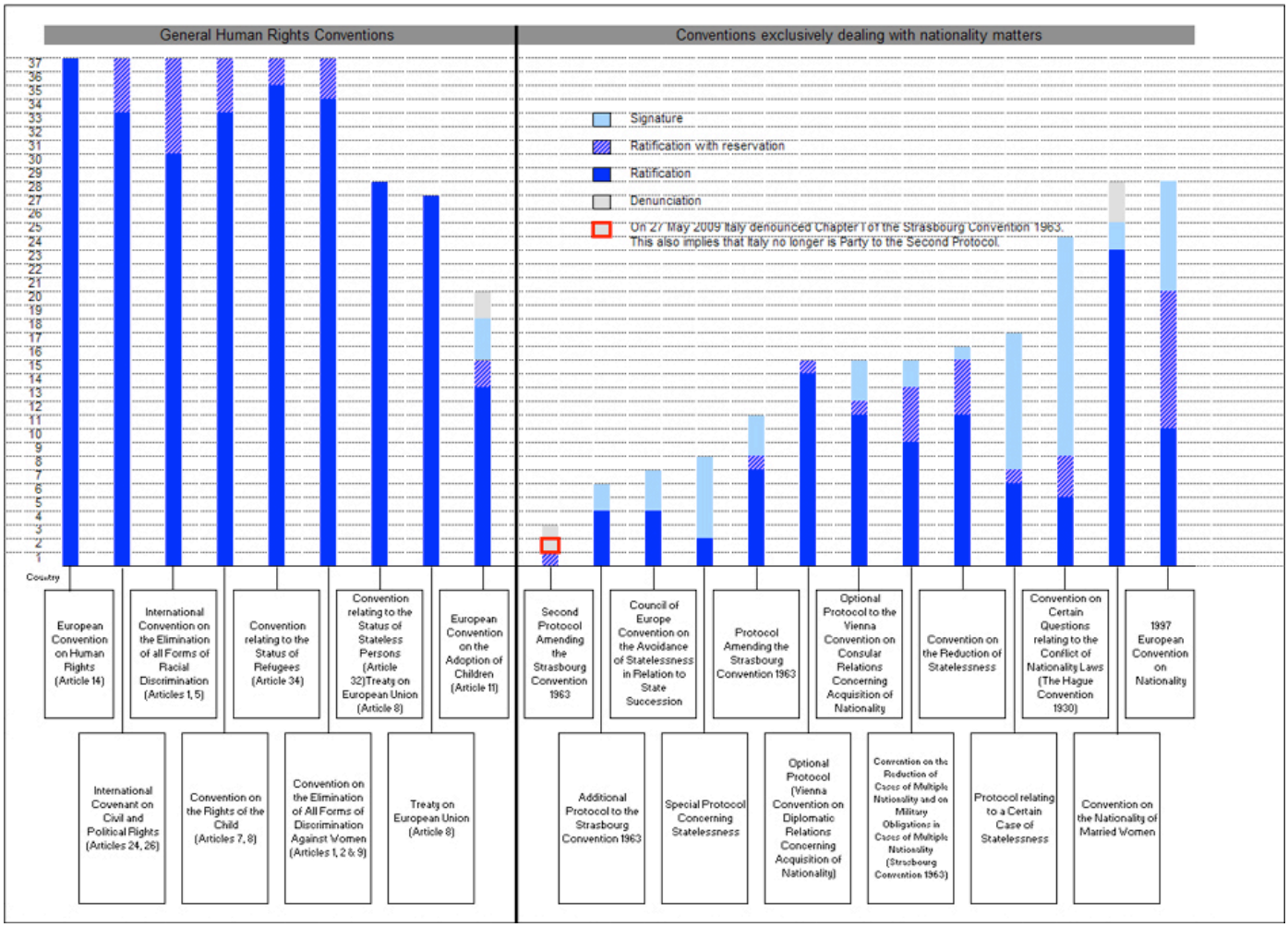



## *Success of the ECN*

Placed alongside more traditional international human rights instruments, those conventions dealing specifically with nationality or statelessness were for many years the ones with the lowest numbers of ratifications. The only exception was the Convention on the Nationality of Married Women of 1957. The widespread refusal to sign and ratify international instruments on nationality (as shown in Table 1) meant that fewer states were obliged to follow clear and comprehensive standards in designing their national citizenship regimes.

This lack of domestic impact of the majority of treaties has been mitigated to some extent by higher rates of ratification of the 1997 European Convention on Nationality. Rates of ratification, however, are a limited indicator of actual impact especially considering that there is no independent reviewing body monitoring implementation. Apart from formally adopting the Convention, states clearly are also influenced by international law in an indirect manner which is inevitably more difficult to assess. More detailed domestic case studies would be necessary for a full assessment of this.

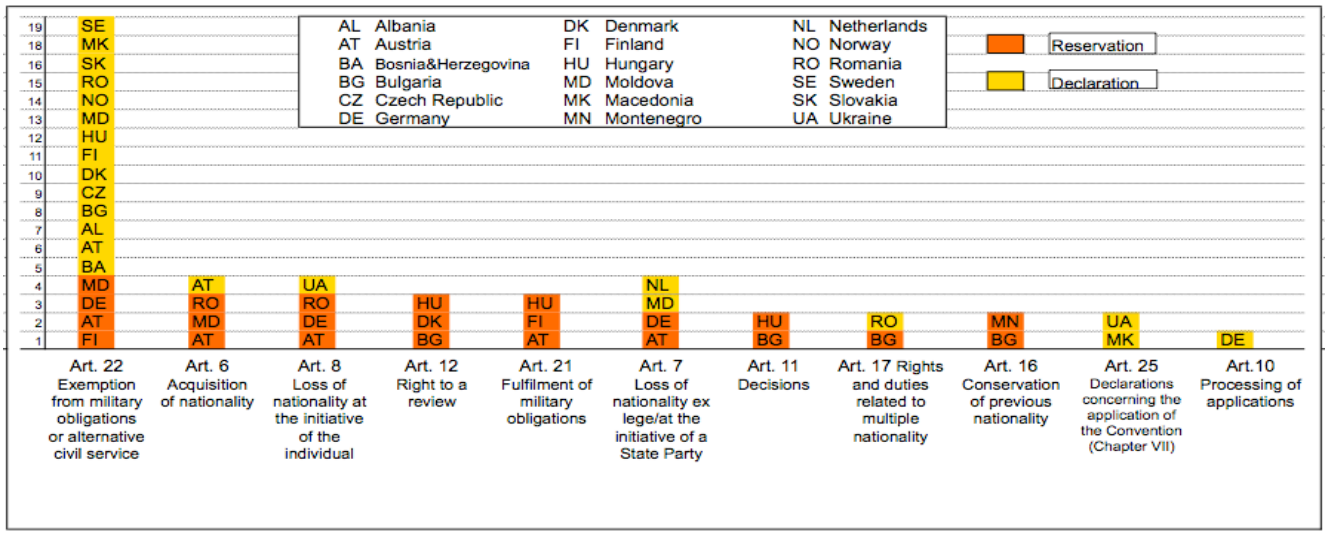
## Table 1: Ratifications of international conventions on nationality




## Problem of high numbers of reservations

The ECN's success due to its high rates of ratification is undermined by the fact that it has also attracted more reservations than any of the other specialised or general human rights treaties listed above (see Table 1). This may indeed raise questions as to the effectiveness of certain standards contained in the Convention. Numerous states have entered reservations to certain articles – mostly with regards to substantive conditions for acquisition or loss of nationality (ECN articles 6-8), to procedural provisions (ECN article 12) and to rules regarding military service (ECN articles 21 and 22). The state that entered most reservations is Austria with multiple reservations to five articles of the Convention, followed by Bulgaria with reservations to four articles. Montenegro, which ratified the Convention in 2010, entered a reservation with regards to article 16 (see Table 2).

## Table 2: Reservations and declarations made with regards to the ECN



## Lack of independent reviewing and enforcement mechanism

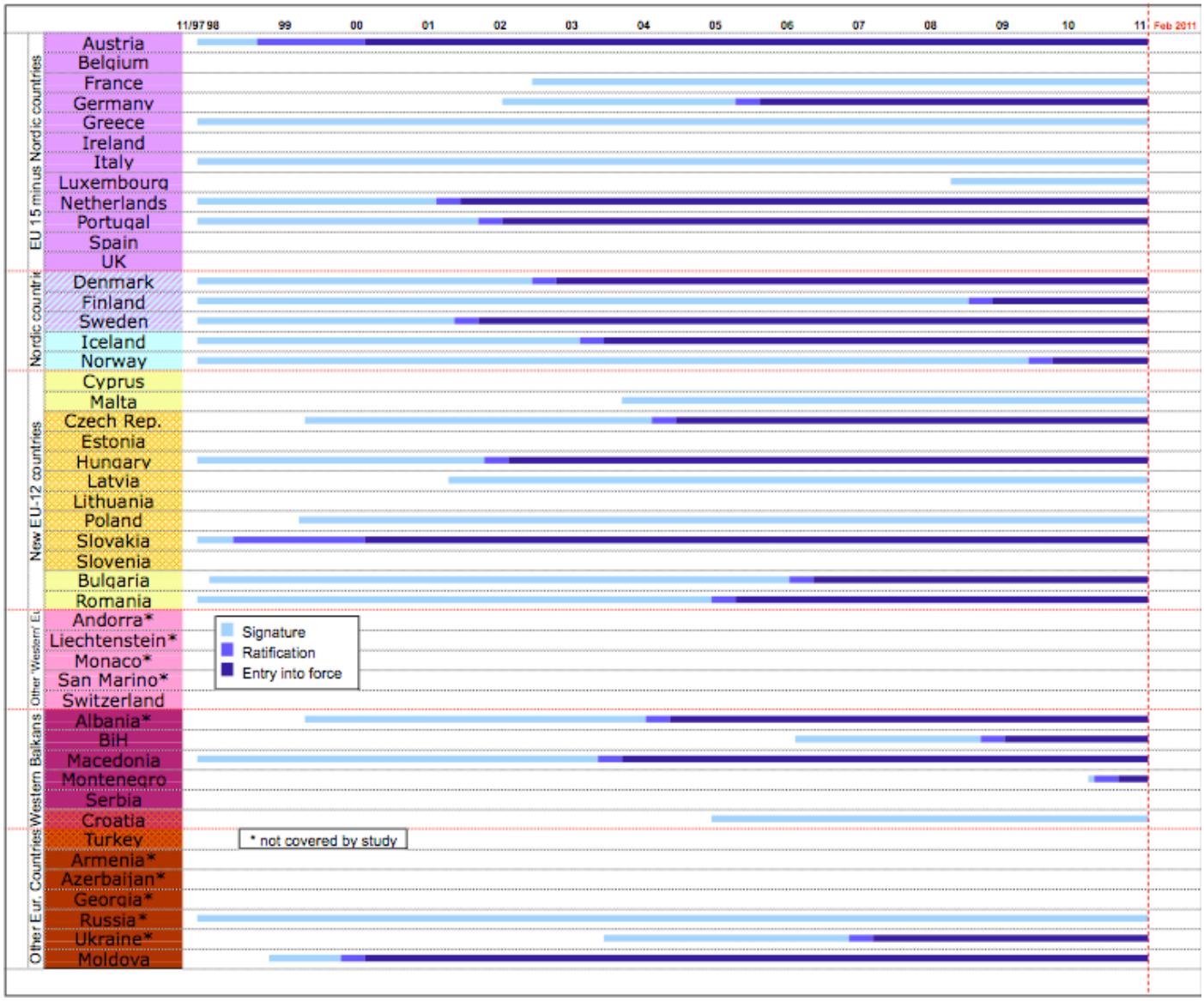
Another issue to be considered when assessing the ECN's impact on European nationality regimes is the complete absence of any independent reviewing and enforcement mechanism. Review of the implementation of the ECN is thus left to the internal system of the State Party.

The exchange of information among State Parties is surely of practical importance and a good basis for developing best practices to be employed by states across Europe. Each state is obliged to provide the Secretary General of the Council of Europe, as well as other State Parties should they request so, with information on their national legislation and developments concerning the application of the Convention (ECN article 23(1)).

However, not providing for an independent monitoring body at the drafting stage was a missed opportunity to safeguard 'the progressive development of legal principles and practice concerning nationality and related matters' (ECN article 23(2)).

It remains unclear what the sanctions under international law would be should a state violate its international obligations. Had the ECN been designed as a Protocol to the European Convention on Human Rights, for instance, cases involving nationality matters could have been brought before the European Court of Human Rights – but this is not the case. There is neither an international body specifically resolving nationality disputes between states nor any individual complaint mechanism at the international level designed to deal with nationality matters. The absence of such a mechanism is even more problematic as violations of nationality standards on a large scale are much more likely to attract international attention than individual cases.

### Table 3: Ratifications and signatures of the ECN



## Regional patterns and trends

While there are some regional patterns in how the ECN is received, the overall picture is rather mixed (see Table 3). Nonetheless, there is clear influence of the Convention in certain areas of nationality law which can be restrictive as well as liberalising in character.

For instance, the list of grounds for loss of nationality as provided by the European Convention on Nationality is exhaustive. No reservations are possible. This therefore restricts states that are Party to the Convention to a set of permitted modes of loss of nationality. On the one hand, states had to abolish various grounds of loss which are not covered by the Convention but, on the other hand, a number of states extended their laws to include fraudulent conduct with regards to acquisition of nationality as reason for withdrawal of citizenship, which is possible under ECN article 7(1b).

To better illustrate the specific regional impact of the Convention, the Council of Europe Member States have been subdivided into 6 groups: the EU 15 minus the Nordic states, the Nordic states (including two non-EU Member States), the 2004 and 2007 acceding states, other Western European states, the Western Balkans and other European states.

## Similar obstacles to ratification

Of all 47 Council of Europe Member States, eighteen have neither signed nor ratified the ECN and nine remain Signatories only. Out of the 37 states covered by the present study, eleven have neither signed nor ratified the ECN and are therefore not bound by the Convention's rules nor did they officially indicate an intention to comply with them. A further eight of the 37 states remain signatories only. A signature is to be interpreted as intention to ratify the Convention in the future.

It is interesting to observe that there is a clear convergence towards a certain set of obstacles to ratification.

The single most prominent obstacle to ratification of the ECN appears to be an unwillingness to be bound by the **prohibition on discrimination on the grounds of sex, religion, race, colour or national or ethnic origin**. In their nationality codes or laws, many states still continue to discriminate on the grounds of ethnic origin, nationality (prohibited by ECN article 5(1)) as well as on the basis of whether a person became a national by birth or naturalisation (discouraged by ECN article 5(2)). The fact that this guiding principle has been included as general principle relating to nationality in the most influential Convention on nationality to date, is a clear indication of the importance of this issue.

Article 5(2) arguably does not represent a binding provision as the wording of the article can be interpreted as allowing for deviation from this rule. However, since no reservations are permitted to Chapter II on general principles relating to nationality, of which article 5(2) is part, ratifying the Convention while continuing to discriminate between naturalised persons and nationals by birth might be seen by many states as not 'compatible with the object and purpose of this Convention' as required by article 29 on reservations.

For example, it is not uncommon that, as in Lithuania, only citizens by birth may run for the office of President or that, as in Cyprus, citizenship deprivation is possible only for citizens who acquired their nationality through registration or naturalisation. Also ethnic considerations continue to play an important part in certain states' citizenship regimes. In Greece, for instance, even after the reforms of 2010 the law on nationality as well as the naturalisation procedures remain based on a conceptual distinction between *homogenis* (of Greek ethnic origin) and *allogeneis* (of non-Greek origin).

Another set of obstacles occurs in connection with procedures as established by the European Convention on Nationality. The **right to an administrative or judicial review** of nationality decisions (ECN article 12) is not granted in all states. Neither is it common standard to 'ensure that decisions relating to the acquisition, retention, loss, recovery or certification of its nationality contain **reasons in writing**' (ECN article 11).

In Ireland, for example, the incompatibility of Irish citizenship law with ECN articles 11 and 12 on procedures relating to nationality is the reason why Ireland has refrained from becoming Party to the Convention. Under the current system, nationality is conferred by *absolute Ministerial discretion*.

A further procedural obstacle to states deciding to ratify the Convention, but which does not yet feature prominently in current discussions, might be the **scale of the fees charged for nationality related procedures** in some states. According to ECN article 13 such fees must be reasonable and must not constitute an obstacle for applicants.

These significant procedural obstacles to ratification are also related to a more general concern. International law on nationality is undergoing a progressive gradual transition from an understanding of citizenship as *privilege* to a conception of citizenship as *right*. Not all national codes have followed suit or intend to do so. They do not sit easily with the ECN's increased emphasis on rights of the individual, including foreign residents.

## *Policy recommendations*

1. Introduce an independent reviewing and enforcement mechanism to safeguard 'the progressive development of legal principles and practice concerning nationality and related matters' (ECN article 23(2)).

2. Eliminate provisions in nationality laws which discriminate on the grounds of sex, religion, race, colour or national or ethnic origin.

3. Follow the recommendation of ECN article 5(2) to eliminate any provision that discriminates between nationals by birth and those who acquired nationality subsequently.

4. Review procedural arrangements regarding nationality acquisition which contradict procedural standards as set by the ECN in articles 10-13 to resonate with an increased emphasis on rights of the individual, including foreign residents, in international law on nationality.

5. Issue further international documents and recommendations to assist states in implementing principles and best practices in areas such as

    a. rights to naturalisation of third country nationals,
    b. elimination of discrimination between nationals of birth and those who acquired nationality subsequently,
    c. national security and nationality,
    d. nationality in relation to state succession.

For a more extensive report on international legal norms in nationality law see:
http://eudo-citizenship.eu/comparative-analyses

For the full text of the European Convention on Nationality (ECN) visit:
http://conventions.coe.int/Treaty/en/Treaties/Html/166.htm

*For more information visit the EUDO CITIZENSHIP Observatory website at:* **http://eudo-citizenship.eu**