== AKT 109746 == Dokument 1 == [Tyskland: svar på høring] ==

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Berlin: Svar på ambassadehøring – Andre landes holdning til ændring af FN's konvention af 1961 om begrænsning af statsløshed
Ambassaden har været i kontakt med det tyske indenrigsministeriums statsborgerskabskontor (forbundsregeringens ansvarlige enhed) og fremsender på denne baggrund følgende besvarelser af de fremsendte spørgsmål.

1. Bliver Konventionen om Begrænsning af Statsløshed (1961) diskuteret i Tyskland – eller har den været diskuteret de seneste år?

Indenrigsministeriet har ikke kendskab til en sådan debat. Ambassadens gennemsøgning af tyske medier har ikke vist tegn på en offentlig debat om Konventionen eller dens bestemmelser.

2. Betragter Tyskland det som værende tilladt ift. Konventionen at suspendere tildelingen af statsborgerskab til en person, der er dækket af Konventionen?

I Tyskland reguleres tildelingen af statsborgerskab efter Konventionen af en lov (Gesetz zur Verminderung der Staatenlosigkeit), der implementerer Konventionen om Begrænsning af Statsløshed (1961), Konventionen om Statsløse Personers Retsstilling (1954) samt Konventionen om Reduktion af Tilfælde af Statsløshed (1973) i tysk lovgivning. Loven bestemmer, at en statsløs person har ret til tysk statsborgerskab, hvis følgende betingelser er opfyldt (art. 1):

- Personen er født i Tyskland
- Personen har haft retmæssigt permanent ophold i Tyskland i mindst fem år
- Personen indgiver anmodning om statsborgerskab inden afslutningen af det 21. leveår
- Personen ikke har været idømt en friheds- eller ungdomsstraf på fem år eller mere.

Loven bestemmer desuden (art. 2), at de almindelige regler om tildeling af statsborgerskab finder anvendelse i sager om statsløses adgang til tysk statsborgerskab. En tysk kopi af loven (Gesetz zur Verminderung der Staatenlosigkeit) er vedhæftet denne besvarelse.

Den tyske statsborgerskabslov opstiller en række kriterier for tildelingen af statsborgerskab, herunder (i ambassadens uofficielle oversættelse):

"§ 10 (1) En udlænding, som i otte år har haft retmæssigt sædvanligt ophold i landet og som er habil efter § 37 stk. 1, pkt. 1 eller har en legal repræsentant, skal efter ansøgning tildeles statsborgerskab, hvis han

1. bekender sig til den frie demokratiske grundordning i Forbundsrepublikken Tysklands grundlov og erklærer, at han ikke forfølger eller støtter eller har forfulgt eller har støttet bestræbelser, som

a) er imod den frie demokratiske grundordning, imod forbundets eller en delstats eksistens eller sikkerhed eller

b) på ulovlig vis har til formål at hæmme embedsførelsen ved forfatningsorganer på forbundsniveau eller ved en delstat eller hos medlemmer af disse eller

c) bringer tyske udenrigspolitiske interesser i fare ved anvendelse af vold eller forberedelser hertil"

En officiel engelsk oversættelse af den tyske statsborgerskabslov (Nationality Act) er vedhæftet denne besvarelse.

Det er muligt for tyske myndigheder at standse tildelingen af statsborgerskab til statsløse, hvis disse vurderes at udgøre en trussel imod den offentlige og demokratiske orden. Statsborgerskabslovens § 11 indeholder en bestemmelse om, at tildeling af statsborgerskab er udelukket, hvis den pågældende ansøger ikke bekender sig til den demokratiske grundorden. Proceduren for at søge oplysninger herom er beskrevet i statsborgerskabslovens § 37 (2) og indebærer, at immigrationsmyndighederne kontakter den tyske indenrigsefterretningstjeneste ("Verfassungsschutz") og anmoder om en vurdering af alle ansøgere, der opfylder forudsætningerne for at opnå tysk statsborgerskab. Såfremt efterretningstjenesten finder anledning til at påpege konkrete, alvorlige sikkerhedsmæssige problemer med en ansøger, vil denne blive

nægtet tysk statsborgerskab.

Det tyske indenrigsministerium vurderer, at denne praksis er i fuld overensstemmelse med Konventionen af 1961. Indenrigsministeriet vurderer på denne baggrund, at der ikke er behov for at tilpasse Konventionen af 1961, da denne allerede giver statsparterne tilstrækkelige muligheder for at nægte statsborgerskab til personer, der har begået kriminalitet eller vurderes at udgøre en risiko for den offentlige eller demokratiske orden. Indenrigsministeriet vurderer ikke, at der er behov for at sænke grænsen for, hvornår en statsløs kan nægtes statsborgerskab ved lovovertrædelser fra de nuværende fem år.

3. Ville Tyskland være interesseret i at deltage i en dialog om mulighederne for at ændre Artikel 1 (2) (c) i Konventionen af 1961? Hvilke udfordringer kunne man forudse i en sådan proces?

Det tyske indenrigsministerium vurderer, at Konventionen allerede giver tilstrækkelig mulighed for at tilbageholde statsborgerskab for personer, der har begået alvorlig kriminalitet eller udgør en trussel for den offentlige og demokratiske orden (jf. spørgsmål 2). Indenrigsministeriet vurderer på denne baggrund, at det ikke vil være relevant for Tyskland at deltage i en sådan debat.

Ambassaden har talt med Hr. Benz fra Indenrigsministeriets statsborgerskabskontor.

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Titel: Ambassadehøring: FN's konventionen af 1961 om begrænsning af statsløshed
Sendt: 30-06-2016 16:15:49

Instruktion: Andre landes holdning til ændring af FN's konvention af 1961 om begrænsning af statsløshed

Regeringens koordinationsudvalg har den 27. april 2016 resolveret, at Udlændinge-, Integrations- og Boligministeriet (UIBM) og Udenrigsministeriet i samarbejde skal undersøge andre landes holdning til et ønske i regeringen om at ændre FN's konvention af 1961 om begrænsning af statsløshed, så den i højere grad tager højde for nutidens udfordringer ved tildeling af statsborgerskab - f.eks. i forhold til terrorisme.

Det fremgår af forelæggelsesmaterialet for koordinationsudvalget, at det er regeringens opfattelse, at det bør genovervejes, hvorvidt konventionen fortsat skal forpligte en medlemsstat til at tildele statsborgerskab til personer omfattet af konventionen, der er under mistanke for at have begået en forbrydelse mod statens sikkerhed, eller til personer omfattet af konventionen, der er idømt en fængselsstraf 2,5 år eller derover (mindre end 5 år), at det bør genovervejes, hvorvidt en medlemsstat fortsat skal være forpligtet til at tildele statsborgerskab til personer omfattet af konventionen, som vurderes at kunne være til fare for landets sikkerhed (eksempelvis af den nationale efterretningstjeneste), samt at det bør undersøges, hvorvidt en ansøgning om dansk indfødsret fra en person omfattet af Statsløsekonventionen, hvor f.eks. den nationale efterretningstjeneste vurderer, at den pågældende kan være til fare for landets sikkerhed, kan stilles i bero.

Det kan herudover til generel baggrund anføres, at det fremgår af Venstres udlændingeudspil fra august 2014 (vedhæftet), at Venstre ønsker at undgå, at statsløse, der af Politiets Efterretningstjeneste (PET) vurderes at være til fare for rigets sikkerhed, har et retskrav på at få dansk statsborgerskab, og at Venstre vil tage initiativ til en ændret fortolkning eller om nødvendigt en indholdsmæssig ændring af Statsløsekonventionen. Herudover udtalte udlændinge-, integrations og boligministeren på et samråd den 1. oktober 2015 i Folketingets Indfødsretsudvalg, at ministeren agter at tage kontakt til FN's

Ausführungsgesetz zu dem Übereinkommen vom 30. August 1961 zur Verminderung der Staatenlosigkeit und zu dem Übereinkommen vom 13. September 1973 zur Verringerung der Fälle von Staatenlosigkeit (Gesetz zur Verminderung der Staatenlosigkeit)

StaatenlMindÜbkAG

Ausfertigungsdatum: 29.06.1977

Vollzitat:

"Gesetz zur Verminderung der Staatenlosigkeit vom 29. Juni 1977 (BGBl. I S. 1101), das durch Artikel 3 § 4 des Gesetzes vom 15. Juli 1999 (BGBl. I S. 1618) geändert worden ist"

Stand: Geändert durch Art. 3 § 4 G v. 15.7.1999 I 1618

Fußnote

(+++ Textnachweis ab: 7.6.1977 +++)

Art 1

Das Übereinkommen vom 30. August 1961 zur Verminderung der Staatenlosigkeit (BGBl. 1977 II S. 597) wird angewandt

1. zur Beseitigung von Staatenlosigkeit auf Personen, die staatenlos nach Artikel 1 Abs. 1 des Übereinkommens vom 28. September 1954 über die Rechtsstellung der Staatenlosen (BGBl. 1976 II S. 473) sind;
2. zur Verhinderung von Staatenlosigkeit oder Erhaltung der Staatsangehörigkeit auf Deutsche nach Artikel 116 Abs. 1 des Grundgesetzes.

Die Verleihung der Staatsangehörigkeit zur Beseitigung von Staatenlosigkeit erfolgt durch Einbürgerung.

Art 2

Ein seit der Geburt Staatenloser ist auf seinen Antrag einzubürgern, wenn er

1. im Geltungsbereich dieses Gesetzes oder an Bord eines Schiffes, das berechtigt ist, die Bundesflagge der Bundesrepublik Deutschland zu führen, oder in einem Luftfahrzeug, das das Staatszugehörigkeitszeichen der Bundesrepublik Deutschland führt, geboren ist,
2. seit fünf Jahren rechtmäßig seinen dauernden Aufenthalt im Geltungsbereich dieses Gesetzes hat und
3. den Antrag vor der Vollendung des einundzwanzigsten Lebensjahres stellt,

es sei denn, daß er rechtskräftig zu einer Freiheits- oder Jugendstrafe von fünf Jahren oder mehr verurteilt worden ist. Für das Verfahren bei der Einbürgerung einschließlich der Bestimmung der örtlichen Zuständigkeit gelten die Vorschriften des Staatsangehörigkeitsrechts.

Art 3 u. 4 ----

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Art 5

Dieses Gesetz gilt nach Maßgabe des § 13 Abs. 1 des Dritten Überleitungsgesetzes auch im Land Berlin.

Art 6

Dieses Gesetz tritt am Tage nach der Verkündung in Kraft.

Nationality Act

of 22 July 1913 (Reich Law Gazette I p. 583 - Federal Law Gazette III 102-1), as last amended by Article 1 of the *Second Act Amending the Nationality Act* of 13 November 2014 (Federal Law Gazette I p. 1714)

Section 1
[Definition of a German][1]

A German within the meaning of this Act is a person who possesses German citizenship.

Section 2

(Repealed)

Section 3
[Acquisition of citizenship]

(1) Citizenship is acquired

1. by birth (Section 4),

2. by a declaration pursuant to Section 5,

3. by adoption as a child (Section 6),

4. by issuance of the certificate pursuant to Section 15, sub-section 1 or 2 of the Federal Expellees Act (Section 7),

4a. for Germans without German citizenship within the meaning of Article 116, paragraph 1 of the Basic Law, under the procedure laid down in Section 40a below (Section 40a),

[1] Titles in square brackets are not official titles.

5. for a foreigner by naturalization (Sections 8 to 16, 40b and 40c).

(2) German citizenship shall also be acquired by any person who has been treated by German public authorities as a German national for 12 years and this has been due to circumstances beyond his or her control. In particular, any person who has been issued a certificate of nationality, a passport or a national identity card shall be treated as a German national. Acquisition of citizenship shall apply as of the date when the person was deemed to have acquired German citizenship by treating him or her as a German national. The acquisition of German citizenship shall extend to those descendants who derive their status as Germans from the beneficiary pursuant to sentence 1.

Section 4
[Acquisition by birth]

(1) A child shall acquire German citizenship by birth if one parent possesses German citizenship. Where at the time of the birth only the father is a German national, and where for proof of descent under German law recognition or determination of paternity is necessary, acquisition shall be dependent on recognition or determination of paternity with legal effect under German law; the declaration of recognition must be submitted or the procedure for determination must have commenced before the child reaches the age of 23.

(2) A child which is found on German territory (foundling) shall be deemed to be the child of a German until otherwise proven. The first sentence shall apply mutatis mutandis to a child born to a mother under condition of anonymity in accordance with Section 25 (1) of the Act to Prevent and Resolve Conflicts in Pregnancy (SchKG).

(3) A child of foreign parents shall acquire German citizenship by birth in Germany if one parent

1. has been legally ordinarily resident in Germany for eight years and

2. has been granted a permanent right of residence or as a national of Switzerland or as a family member of a national of Switzerland possesses a residence permit on the basis of the Agreement of 21 June 1999 between the European Community and its Member States on the one hand and the Swiss Confederation on the other hand on the free movement of persons (Federal Law Gazette 2001 II p. 810).

The acquisition of German citizenship shall be recorded by the registrar responsible for certifying the child's birth. The Federal Ministry of the Interior shall, with the consent of the *Bundesrat*, be authorized to issue regulations concerning the procedure for recording the acquisition of citizenship pursuant to sentence 1 by way of ordinance.

(4) German citizenship shall not be acquired pursuant to sub-section 1 in case of birth abroad if the German parent was born abroad after 31 December 1999 and is ordinarily resident abroad, unless the child would otherwise become stateless. The legal consequence pursuant to sentence 1 shall not ensue if within a year after the child's birth an application for certification of the birth pursuant to Section 36 of the Civil Status Act is filed; to observe this deadline it shall be sufficient if the application is received within the above deadline by the competent diplomatic mission. Where both parents are German nationals, the legal consequences pursuant to sentence 1 shall ensue only if they both fulfill the conditions stipulated therein.

Section 5
[Right of declaration for children born before 1 July 1993]

By declaring a wish to become a German national, a child born before 1 July 1993 of a German father and a foreign mother shall acquire German citizenship if

1. paternity has been recognised or determined with legal effect under German law,

2. the child has been legally ordinarily resident in the federal territory for three years and

3. the declaration is submitted prior to the child's 23rd birthday.

Section 6
[Acquisition by adoption as a child]

A child who is below eighteen years of age at the time of application for adoption shall acquire citizenship as a result of valid adoption by a German under German law. The acquisition of citizenship shall extend to the child's descendants.

Section 7
[Acquisition by issuance of the certificate pursuant to Section 15, sub-section 1 or 2 of the Federal Expellees Act]

Repatriates of German ancestry and their family members included in the admission notice shall acquire the German citizenship when they are issued a repatriates certificate in accordance with Section 15, sub-section 1 or 2 of the Federal Expellees Act.

Section 8
[Discretionary naturalization]

(1) A foreigner who is legally ordinarily resident in Germany may be naturalized upon application provided that he or she

1. possesses legal capacity pursuant to Section 80, sub-section 1 of the Residence Act or has a legal representative,

2. has not been sentenced for an unlawful act and is not subject to any court order imposing a measure of reform and prevention due to a lack of criminal capacity,

3. has found a dwelling of his or her own or accommodation and

4. is able to support himself or herself and his or her dependents.

(2) The requirements stipulated in sub-section 1, sentence 1, nos. 2 and 4 may be waived on grounds of public interest or in order to avoid special hardship.

Section 9
[Naturalization of spouses or life partners of Germans]

(1) Spouses or life partners of Germans should be naturalized in keeping with the requirements set out in Section 8, if

1. they lose or give up their previous citizenship or a ground exists for accepting multiple nationality pursuant to Section 12 and

2. it is ensured that they will conform to the German way of life,

unless they do not have sufficient command of the German language (Section 10 sub-section 1, sentence 1, no. 6 and sub-section 4) and do not fulfill any condition that would justify an exception under Section 10, sub-section 6.

(2) The provision pursuant to sub-section 1 shall also apply if naturalization is applied for within one year of the German spouse's death or of a ruling dissolving the marriage becoming final and the applicant is entitled to custody of a child issuing from the marriage who already possesses German citizenship.

(3) (repealed)

Section 10
[Entitlement to naturalization;
derivative naturalization of spouses and minor children]

(1) A foreigner who has been legally ordinarily resident in Germany for eight years and possesses legal capacity pursuant to Section 80 of the Residence Act or has a legal representative shall be naturalized upon application if he or she

1. confirms his or her commitment to the free democratic constitutional system enshrined in the Basic Law of the Federal Republic of Germany and declares that he or she does not pursue or support and has never pursued or supported any activities

   a) aimed at subverting the free democratic constitutional system, the existence or security of the Federation or a *Land* or

   b) aimed at illegally impeding the constitutional bodies of the Federation or a *Land* or the members of said bodies in discharging their duties or

   c) any activities which jeopardize foreign interests of the Federal Republic of Germany through the use of violence or preparatory actions for the use of violence,

   or credibly asserts that he or she has distanced himself or herself from the former pursuit or support of such activities,

2. has been granted a permanent right of residence or as a national of Switzerland or as a family member of a national of Switzerland possesses a residence permit on the basis of the Agreement of 21 June 1999 between the European

Community and its Member States on the one hand and the Swiss Confederation on the other hand on the free movement of persons or possesses an EU Blue Card or a residence permit for purposes other than those specified in Sections 16, 17, 20, 22, 23, sub-section 1, Section 23a, 24 and Section 25, sub-sections 3 to 5 of the Residence Act.

3. is able to ensure his or her own subsistence and the subsistence of his or her dependents without recourse to benefits in accordance with Book Two or Book Twelve of the Social Code or recourse to such benefits is due to conditions beyond his or her control,

4. gives up or loses his or her previous citizenship,

5. has not been sentenced for an unlawful act and is not subject to any court order imposing a measure of reform and prevention due to a lack of criminal capacity,

6. possesses an adequate knowledge of German and

7. possesses knowledge of the legal system, society and living conditions in Germany.

The conditions under sentence 1, numbers 1 and 7 do not apply to foreigners who do not have legal capacity pursuant to Section 80, sub-section 1 of the Residence Act.

(2) The foreigner's spouse and minor children may be naturalized together with the foreigner in accordance with sub-section (1), irrespective of whether they have been lawfully resident in Germany for eight years.

(3) Upon a foreigner confirming successful attendance of an integration course by presenting a certificate issued by the Federal Office for Migration and Refugees (BMAF), the qualifying period stipulated in sub-section 1 shall be reduced to seven years. This qualifying period may be reduced to six years if the foreigner has made outstanding efforts at integration exceeding the requirements under sub-section 1, sentence 1, no. 6, especially if he or she can demonstrate his or her command of the German language.

(4) The conditions specified in sub-section 1, sentence 1, no. 6 are fulfilled if the foreigner passes the oral and written language examinations leading to the *Zertifikat Deutsch* (equivalent of level B 1 in the Common European Framework of Reference for Languages). Where a minor child is under 16 years of age at the time of

naturalization the conditions of sub-section 1, sentence 1, no. 6 shall be fulfilled if the child demonstrates age-appropriate language skills.

(5) As a rule, the conditions specified in sub-section 1, sentence 1, no. 7 shall be fulfilled if the foreigner has passed the naturalization test. To prepare for the test, foreigners may participate in voluntary integration courses.

(6) The requirements of sub-section 1, sentence 1, nos. 6 and 7 shall be waived if the foreigner is unable to fulfill them on account of a physical, mental or psychological illness or disability or on account of his or her age.

(7) The Federal Ministry of the Interior shall be authorized, without the need for approval by the *Bundesrat*, to issue ordinances defining the test and certification requirements as well as the basic structure and contents of the naturalization courses under sub-section 5, based on the contents of the orientation course under Section 43, sub-section 3, sentence 1 of the Residence Act.

Section 11
[Grounds for exclusion]

Naturalization shall not be allowed

1. if there are concrete, justifiable grounds to assume that the foreigner is pursuing or supporting or has pursued or supported activities aimed at subverting the free democratic constitutional system, the existence or security of the Federation or a *Land* or at illegally impeding the constitutional bodies of the Federation or a *Land* or the members of said bodies in discharging their duties or any activities which jeopardize foreign interests of the Federal Republic of Germany through the use of violence or preparatory actions for the use of violence, unless he or she credibly asserts that he or she has distanced himself or herself from the former pursuit or support of such activities, or

2. if a ground for expulsion applies pursuant to Section 54, nos. 5 and 5a of the Residence Act.

Sentence 1, no. 2 shall apply *mutatis mutandis* for foreigners within the meaning of Section 1, sub-section 2 of the Residence Act and also for nationals of Switzerland and their family members possessing a residence permit on the basis of the Agreement of 21 June 1999 between the European Community and its Member

States on the one hand and the Swiss Confederation on the other hand on the free movement of persons.

Section 12
[Naturalization accepting multiple nationality]

(1) The condition stipulated in Section 10, sub-section 1, sentence 1, no. 4 shall be waived if the foreigner is unable to give up his or her previous citizenship, or if doing so would entail particularly difficult conditions. This is to be assumed if

1. the law of the foreign state makes no provision for giving up its citizenship,

2. the foreign state regularly refuses to grant release from citizenship,

3. the foreign state has refused to grant release from citizenship for reasons for which the foreigner is not responsible, or attaches unreasonable conditions to release from citizenship or has failed to reach a decision within a reasonable time on the application for release from citizenship which has been submitted in due and complete form,

4. the subsequent multiple nationality represents the sole obstacle to the naturalization of older persons, the process for release from citizenship entails unreasonable difficulties and failure to grant naturalization would constitute special hardship,

5. in giving up his or her foreign citizenship the foreigner would incur substantial disadvantages beyond the loss of his or her civic rights, in particular such disadvantages of an economic or property-related nature, or

6. the foreigner holds a travel document in accordance with Article 28 of the Convention relating to the Status of Refugees of 28 July 1951 (Federal Law Gazette 1953 II, p. 559).

(2) The condition stipulated in Section 10, sub-section 1, sentence 1, no. 4 shall further be waived if the foreigner holds the citizenship of another member state of the European Union or Switzerland.

(3) Further exemptions from the condition stipulated in Section 10, sub-section 1, sentence 1, no. 4 may be granted pursuant to the provisions of agreements under international law.

Section 12a
[Decision in case of conviction for an offence]

(1) The following shall not be taken into consideration in the process of naturalization:

1. the imposition of educational or disciplinary measures under the Juvenile Court Act,

2. sentencing to fines of up to 90 daily rates and

3. the imposition of suspended sentences of up to three months' imprisonment which are waived after expiry of the probationary period.

Where more than one term of imprisonment or more than one fine have been imposed pursuant to sentence 1, nos. 2 and 3, they shall be cumulated, unless the court imposes a lower aggregate punishment; where a fine and imprisonment are imposed simultaneously, one daily rate equals one day's imprisonment. If the punishment or the total of all punishments slightly exceeds the framework under sentences 1 and 2, it shall be decided on the merits of the individual case whether it can be disregarded. Where a measure of reform and prevention under Section 61, no. 5 or no. 6 of the Criminal Code has been imposed, it shall be decided on the merits of the individual case whether this measure of reform and prevention can be disregarded.

(2) Foreign convictions shall be considered if the offence concerned is to be regarded as liable to prosecution in Germany, the sentence has been passed in proceedings conducted in accordance with the rule of law and the sentence is commensurate. Such a conviction cannot be considered if its removal from the records would be required in accordance with the Federal Central Criminal Register Act. Sub-section 1 shall apply *mutatis mutandis*.

(3) If a foreigner who has applied for naturalization is under investigation on suspicion of having committed an offence, the decision on naturalization shall be deferred until conclusion of the proceedings, and in the case of conviction until the judgment becomes unappealable. The same shall apply if the imposition of youth custody is suspended pursuant to Section 27 of the Juvenile Court Act.

(4) Convictions abroad and criminal investigations and proceedings which are pending abroad shall be stated in the application for naturalization.

Section 12b
[Interruptions of residence]

(1) Ordinary residence in Germany shall not be considered interrupted by stays abroad of up to six months in duration. In case of longer stays abroad, ordinary residence in Germany shall be considered to continue if the foreigner re-enters the federal territory within the deadline stipulated by the foreigners authority. The same shall apply if the deadline is exceeded solely on account of the foreigner carrying out statutory military service in his or her country of origin and the foreigner re-enters the federal territory within three months of discharge from military or community service.

(2) If the foreigner has resided abroad for over six months for a reason of a non-temporary nature, the previous period of residence in Germany may be counted towards the duration of residence which is necessary for the purposes of naturalization, up to a period of five years.

(3) Interruptions in the lawfulness of residence shall be disregarded if they arise as a result of the foreigner having failed to apply in good time for initial issuance or subsequent extension of the residence title.

Section 13
[Discretionary naturalization of former Germans abroad]

A former German and his or her minor children who are ordinarily resident abroad may be naturalized on application if they meet the requirements of Section 8, sub-section 1, nos. 1 and 2.

Section 14
[General discretionary naturalization abroad]

A foreigner who is ordinarily resident abroad may be naturalized subject to the other conditions of Sections 8 and 9 if ties with Germany exist which justify naturalization.

Section 15

(Repealed)

Section 16
[Certificate of naturalization]

Naturalization shall become effective upon delivery of the certificate of naturalization issued by the competent administrative authority. Before the certificate is handed over to the foreigner he or she shall make the following solemn statement: "I solemnly declare that I will respect and observe the Basic Law and the laws of the Federal Republic of Germany, and that I will refrain from any activity which might cause it harm." Section 10, sub-section 1, sentence 2 shall apply *mutatis mutandis*.

Section 17
[Loss of citizenship]

(1) Citizenship shall be lost

1. by release from citizenship (Sections 18 to 24),

2. by acquisition of a foreign citizenship (Section 25),

3. by renunciation (Section 26),

4. by adoption by a foreigner (Section 27),

5. by joining the armed forces or a comparable armed organization of a foreign state (Section 28) or

6. by a declaration (Section 29) or

7. by revocation of an unlawful administrative act (Section 35),

(2) Loss of citizenship pursuant to sub-section 1 no. 7 does not affect German citizenship of third persons obtained by law, if they have reached the age of five.

(3) Sub-section 2 shall apply, mutatis mutandis, to decisions pursuant to other acts which would result in the retroactive loss of German citizenship of third persons, in

particular in the case of withdrawal of a settlement permit under Section 51, sub-section 1, no. 3 of the Residence Act, in the case of withdrawal of a certificate under Section 15 of the Federal Expellees Act and where non-existence of paternity is determined under Section 1599 of the Civil Code. The first sentence shall not apply if paternity is contested pursuant to Section 1600, sub-section 1, no. 5 and sub-section 3 of the Civil Code.

Section 18
[Release from citizenship]

A German shall, on application, be released from citizenship if he or she has applied for a foreign citizenship and the competent body has furnished an assurance that such citizenship will be granted.

Section 19
[Release from citizenship of a person in parental custody or in the care of a guardian]

(1) Application for the release from citizenship of a person in parental custody or in the care of a guardian may be filed by the legal representative only and shall require approval from the German family court.

(2) The approval of the family court shall not be required where the father or mother applies for release from citizenship for himself or herself and for a child at the same time by virtue of the right of custody and the applicant is entitled to custody for the child concerned.

Section 20

(Repealed)

Section 21

(Repealed)

Section 22
[Refusal of release from citizenship]

Release from citizenship must not be granted to:

1. Civil servants, judges, Federal Armed Forces soldiers and other persons employed in a service or official capacity under public law, for as long as they remain employed in said service or official capacity, with the exception of persons employed in an honorary capacity.

2. Persons liable for military service, until it is confirmed by the Federal Ministry of Defence or a body designated by the said Ministry that no reservations exist regarding release from citizenship.

Section 23
[Certificate of release]

Release from citizenship shall become effective upon delivery of the certificate of release from citizenship issued by the competent administrative authority.

Section 24
[Invalidity of release from citizenship]

The release from citizenship shall be deemed to be null and void if the released person fails to acquire the foreign citizenship of which he or she was assured within one year of issuance of the certificate of release.

Section 25
[Loss of citizenship on acquisition of a foreign citizenship following due application for the same; approval of retention of citizenship]

(1) A German shall lose his or her citizenship upon acquiring a foreign citizenship where such acquisition results from an application filed by the German concerned or his or her legal representative, whereas the represented person shall suffer such loss only if the qualifying conditions for application for release from citizenship apply as stipulated in Section 19. The loss under sentence 1 shall not take effect if a German acquires the citizenship of another member state of the European Union, Switzerland

or of a state with which the Federal Republic of Germany has signed a treaty under Section 12, sub-section 3.

(2) Citizenship shall not be lost by any person who, prior to acquiring foreign citizenship following their application for the same, received written approval from their competent authority for retention of their citizenship. Where an applicant is ordinarily resident abroad, the German diplomatic mission abroad shall be consulted in this connection. The public and private interests shall be weighed up in reaching the decision on an application pursuant to sentence 1. With regard to an applicant who is ordinarily resident abroad, special consideration shall be accorded to the question of whether he or she is able to furnish credible evidence of continuing ties with Germany.

(3) (repealed)

Section 26
[Renunciation]

(1) A German may renounce his or her citizenship if he or she possesses several nationalities. Such a renunciation shall be declared in writing.

(2) The written renunciation shall require the approval of the authority which is competent pursuant to Section 23 for issuing the certificate of release. Such approval shall be withheld if release may not be granted pursuant to Section 22; this shall not apply, however, if the person renouncing citizenship

1. has been permanently resident abroad for at least ten years or

2. has performed military service in one of the states whose citizenship he holds as a person liable for military service within the meaning of Section 22, no. 2.

(3) The loss of citizenship shall take effect upon delivery of the certificate of renunciation issued by the approving authority.

(4) Section 19 shall apply *mutatis mutandis* for minors.

Section 27
[Loss of citizenship on adoption by a foreigner]

A German under the age of majority shall lose his or her citizenship as a result of adoption by a foreigner in accordance with German law, if he or she acquires the adopting person's citizenship by virtue of such adoption. The loss of citizenship shall extend to his or her descendants where the acquisition of citizenship by the adoptee pursuant to sentence 1 also extends to the descendants. The loss under sentence 1 or sentence 2 shall not take effect if the adoptee or his or her descendants maintain a legal relation to their German parent.

Section 28
[Loss of citizenship as a result of joining the armed forces or a comparable armed organization of a foreign state]

A German who, without the consent of the Federal Ministry of Defense or a body designated by the said Ministry, voluntarily enlists with the armed forces or a comparable armed organization of a foreign state whose citizenship he or she possesses, shall lose German citizenship. This shall not apply if he or she is entitled to enlist in the aforesaid manner by virtue of an inter-governmental agreement.

Section 29
[Declaration]

(1) The following persons are required to declare whether they wish to retain their German or foreign citizenship:

1. persons who have acquired German citizenship pursuant to Section 4 (3) or Section 40b,

2. persons who did not grow up in Germany in accordance with subsection 1 a,

3. persons having a foreign citizenship other than citizenship of a European Union Member State or Switzerland, and

4. persons who within a year of their 21st birthday have been notified of the requirement to declare pursuant to subsection 5, fifth sentence.

Persons required to declare must declare after their 21st birthday whether they wish to retain their German or their foreign citizenship. The declaration shall be submitted in writing.

(1 a) A German as defined in subsection 1 shall be regarded as having grown up in Germany if, by his or her 21st birthday, he or she

1. has normally resided in Germany for eight years,

2. has attended school in Germany for six years, or

3. has completed school or occupational training in Germany.

Persons having a similarly close relation to Germany in the individual case and for whom having to declare would represent a special hardship under the circumstances of the case shall also be regarded as having grown up in Germany as defined in the first sentence.

(2) If the German required to declare pursuant to subsection 1 declares a wish to retain the foreign citizenship, German citizenship shall be lost when the competent authority receives the declaration.

(3) If the German pursuant to subsection 1 declares a wish to retain German citizenship, he or she shall be obliged to furnish proof that he or she has given up or lost the foreign citizenship. If the loss of the foreign citizenship does not go into effect within two years of notification of the requirement to declare pursuant to subsection 5, German citizenship shall be lost, unless pursuant to subsection 1 the German received prior written approval from the competent authority to retain German citizenship (retention approval). The application for retention approval, including as a precautionary measure, may only be filed within one year of notification of the requirement to declare pursuant to subsection 5. The loss of German citizenship shall not take effect until the rejection of the application becomes legally valid. The possibility of provisional legal redress pursuant to Section 123 of the Code of Administrative Procedure shall remain unaffected.

(4) The retention approval pursuant to subsection 3 shall be granted where renunciation or loss of the foreign citizenship is not possible or cannot reasonably be expected or where acceptance of multiple citizenship would be required in case of naturalization in accordance with Section 12.

(5) At the request of a German who acquired German citizenship pursuant to Section 4 (3) or Section 40b, the competent authority shall establish the continuation of German citizenship in accordance with subsection 6 if the necessary conditions are met. If the continuation of German citizenship has not been established by the German's 21st birthday, the competent authority shall use the registration data to determine whether the conditions of subsection 1 a, first sentence, no. 1 are met. If this is not possible to determine, the authority shall inform the person in question of the possibility to provide evidence that the conditions of subsection 1 a have been met. If such evidence is provided, the competent authority shall establish the continuation of German citizenship in accordance with subsection 6. If no evidence is provided, the competent authority shall notify the person in question of his or her obligations and the possible legal consequences as set out in subsections 2 to 4. This notification shall be formally served. The provisions of the Act on Service in Administrative Procedure shall apply.

(6) The continuation or loss of German citizenship in accordance with this provision shall be determined ex officio. The Federal Ministry of the Interior may, by ordinance with the consent of the Bundesrat, issue provisions regulating the procedure to determine the continuation or loss of German citizenship.

Section 30
[Establishment of German citizenship]

(1) Possession or lack of German citizenship shall be established by the nationality authority upon application. The outcome of this assessment shall be binding in all matters for which possession or lack of German citizenship is of legal relevance. In the case of a public interest, possession of German citizenship or lack thereof may be established upon the competent authority's own motion.

(2) To establish possession of German citizenship it shall be required and sufficient to give reliable evidence that German citizenship was acquired and has not since been lost by furnishing documents, extracts from the citizens' registers (*Melderegister*) or other written evidence. Section 3, sub-section 2 remains unaffected.

(3) Where possession of German citizenship has been established upon application, the nationality authority shall issue a certificate of nationality. Upon request, the nationality authority shall issue a certificate confirming non-possession of German citizenship.

§Section 31
[Personal data]

Nationality authorities and diplomatic missions abroad may collect, store, modify and use personal data insofar as this is necessary to discharge their duties under this Act and in accordance with provisions relating to nationality contained in other acts. For the purpose of deciding on the citizenship of persons specified in Article 116, paragraph 2 of the Basic Law, such information may also be collected, stored or modified and used which relates to the political, racial or religious reasons due to which these persons were deprived of their German citizenship between 30 January 1933 and 8 May 1945.

Section 32
[Transmission of data to nationality authorities]

(1) Public bodies shall transmit personal data to the bodies specified in Section 31 upon request, insofar as knowledge of these data is necessary to discharge the duties referred to in Section 31. Public bodies shall transmit these data to the competent nationality authority even without a request if the public body considers such transmission to be necessary for the nationality authority to decide on a pending application for naturalization or loss or non-acquisition of German citizenship. With regard to naturalization procedures, this refers particularly to data relating to the initiation and execution of criminal proceedings, proceedings for the collection of fines, and extradition procedures of which the foreigners authorities have obtained knowledge pursuant to section 87, sub-section 4 of the Residence Act. The data referred to in sentence 3 shall be transmitted without delay to the competent nationality authority.

(2) Personal data shall not be transferred pursuant to sub-section 1 if such transfer is precluded by special statutory regulations on the use of the said data.

Section 33
[Register of decisions relating to nationality law]

(1) The Federal Office of Administration (registration authority) maintains a register of decisions relating to citizenship matters. The following shall be entered into the register:

1. decisions on certificates on nationality;

2. decisions on the statutory loss of German citizenship;

3. decisions on the acquisition, possession and loss of German citizenship made between 31 December 1960 and 28 August 2007.

(2) More specifically, the following items of information may be stored in the register:

1. the basic personal data of the person concerned (sumame, surname at birth, former surnames, given names, date and place of birth, sex, the fact that under Section 29 German citizenship may be lost, as well as the postal address at the date of the decision);

2. the way in which, and the date when the decision or certificate or the loss of citizenship shall take effect;

3. name, postal address and file reference of the authority which made the decision.

(3) The nationality authorities shall be obliged to immediately transmit all personal data specified in sub-section 2 relating to decisions made under sub-section 1, sentence 2, nos. 1 and 2 after 28 August 2007 to the registration authority.

(4) The registration authority shall transmit the data referred to in sub-section 2 to the nationality authorities and diplomatic missions abroad upon their request insofar as knowledge of the data is necessary to discharge their duties relating to nationality law. The provisions of the Federal Data Protection Act shall apply to the transmission to other public bodies or for research purposes.

(5) The nationality authority shall transmit the data specified in sub-section 2 to the competent authority to which a person must report his/her current address or to the competent diplomatic mission abroad immediately after it has established that a person has been naturalized, retains German citizenship or has lost, renounced or never acquired German citizenship.

Section 34
[Opting procedure]

(1) To implement the opting procedure, in the cases of Section 29 (5), second sentence, the competent authority to which the person must report his/her current address (residents' registration authority) shall transmit, by the tenth day of each calendar month, to the competent nationality authority the following personal data relating to persons who will turn 21 in the following month:

1. surname,

2. previous names,

3. given names,

4. current and previous addresses and, in case of immigration from abroad, the last previous address in Germany,

5. date moved in, date moved out, date last moved out of a home in Germany and date last moved to Germany from abroad,

6. date and place of birth,

7. sex,

8. current citizenships, including the fact that under Section 29 the person may lose German citizenship.

(2) If a person referred to in subsection 1 has moved to a foreign country, the residents' registration authority shall transfer the data specified in subsection 1, the date when the person moved abroad and the new address abroad, if known, to the Federal Office of Administration within the period specified in subsection 1. In case of immigration from abroad, the first sentence shall apply mutatis mutandis.

Section 35
[Withdrawal of an unlawful naturalization or permission to retain German citizenship]

(1) Any unlawful naturalization or permission to retain German citizenship may be withdrawn if the administrative act was obtained under false pretences, by threat or

bribery or by providing incorrect or incomplete information which determined the issuance of this administrative act.

(2) As a rule, subsequent statelessness of the person concerned shall not preclude such withdrawal.

(3) Withdrawal is permissible only within five years after notification of the naturalization or permission to retain German citizenship.

(4) The administrative act shall be withdrawn with retroactive effect.

(5) If the withdrawal affects the lawfulness of administrative acts issued pursuant to this present Act with regard to third persons, a discretionary decision on the merits of the individual case shall be taken for every person affected. In particular, involvement of the third person concerned in committing fraud, threat or bribery or in deliberately providing incorrect or incomplete information on the one hand, and his or her legitimate interests on the other, shall be weighed in reaching the decision, also taking particular account of the welfare of the child.

Section 36
[Naturalization statistics]

(1) Annual naturalization surveys shall be conducted for the purposes of federal statistics, beginning in 2000 and relating in each case to the previous calendar year.

(2) The surveys shall cover the following attributes for each naturalized person:

1. year of birth,

2. sex;

3. marital status,

4. place of residence at time of naturalization,

5. duration of residence in the federal territory in years,

6. legal basis for naturalization,

7. previous citizenships and

8. continuation of previous citizenships.

(3) Supplementary attributes covered in the survey shall be:

1. designations and addresses of those obliged to furnish information pursuant to sub-section 4,

2. names and telecommunication numbers of the persons available to answer queries and

3. registration number of the naturalized person at the naturalization authority.

(4) In respect of the surveys there shall be a duty to furnish information. This duty shall be incumbent on the naturalization authorities. The naturalization authorities shall furnish the information to the competent statistical offices of the *Länder* by 1 March each year. Provision of the information pertaining to sub-section 3, no. 2 shall be voluntary.

(5) Transmission of tables containing statistical results, including where a field in a table only shows a single case, may be effected by the Federal Statistical Office and by statistical offices of the *Länder* to the competent highest federal and *Land* authorities for use in dealings with the legislative bodies and for planning purposes, but not for measures pertaining to individual cases.

Section 37
[Procedural provisions]

(1) Section 80, sub-sections 1 and 3 and Section 82 of the Residence Act shall apply *mutatis mutandis*.

(2) The naturalization authorities shall transmit the personal data which they have stored on applicants aged 16 or over to the authorities for the protection of the constitution for the purpose of investigating grounds for exclusion under Section 11. The authorities for the protection of the constitution shall notify the inquiring body forthwith in accordance with the applicable special statutory provisions on use of the said data.

Section 38
[Fees]

(1) In the absence of any statutory provision to the contrary, official acts in citizenship matters shall be subject to costs (fees and expenses).

(2) The fee for naturalization under this Act shall be 255 Euros. This fee shall be reduced to 51 Euros for a minor child which is naturalized at the same time and which has no independent income within the meaning of the Income Tax Act. No fee shall be payable for the acquisition of German citizenship pursuant to Section 5 and the naturalization of former Germans who have lost their German citizenship as a result of marrying a foreigner. Establishment of the possession or non-possession of the German citizenship under Section 29, sub-section 6 and Section 30, sub-section 1, sentence 3, as well as issuance of a retention approval under Section 29, sub-section 4 are free of charge. The fee stipulated in sentence 1 may be reduced or renounced on grounds of equity or public interest.

(3) The Federal Minister of the Interior shall be empowered to determine the additional circumstances in which fees shall be payable and to make provision in respect of the levels of fees and the reimbursement of expenses via statutory order with the approval of the *Bundesrat*. The fee shall not exceed 51 Euros for release from citizenship, 255 Euros for retention approval and 51 Euros for the certificate of citizenship and other forms of certification.

Section 38a
[Ban on issuance of
citizenship certificates in electronic form]

It shall not be permissible to issue certification pertaining to citizenship matters in electronic form.

Section 39

(Repealed)

Section 40

(Repealed)

Section 40a
[Acquisition of German citizenship by Germans without German citizenship within the meaning of Article 116, paragraph 1 of the Basic Law]

Any person who, on 1 August 1999, is a German within the meaning of Article 116, paragraph 1 of the Basic Law without possessing German citizenship shall acquire German citizenship on the said date. For a repatriate, his or her non-German spouse and his or her descendants within the meaning of Section 4 of the Federal Expellees Act, this shall apply only if they have been issued a certificate pursuant to Section 15, sub-section 1 or 2 of the Federal Expellees Act prior to the aforesaid date.

Section 40b
[Transitional provision for children up to the age of ten]

A foreigner who is legally ordinarily resident in Germany on 1 January 2000 and is under ten years of age shall be naturalized upon application if the conditions pursuant to Section 4, sub-section 3, sentence 1 were met at the time of his or her birth and continue to be met. The application can be filed up to 31 December 2000.

Section 40c
[Transitional provision for persons applying for naturalization]

Sections 8 to 14 and Section 40c as last amended before 28 August 2007 (Federal Law Gazette I, p. 1970) shall continue to apply to applications for naturalization filed before 30 March 2007, as far as these sections contain more lenient provisions.

Section 41
[No possibility of deviation on the part of the *Länder*]

Land law may not deviate from the regulations of the administrative procedure set out in Sections 32 to 33 and Section 37 (2).

Section 42
Penal provision

Anyone who furnishes or uses incorrect or incomplete information concerning essential requirements for naturalization with a fraudulent intent to procure naturalization for themselves or any third person shall be punished with imprisonment of up to five years or a fine.

◆◆◆◆◆

[redacted]

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Titel: Berlin: Svar på supplerende spørgsmål til Berlin, vedr. ambassadehøring: FN's konventionen af 1961 om begrænsning af statsløshed
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Berlin: Svar på supplerende spørgsmål, vedr. ambassadehøring: FN's konventionen af 1961 om begrænsning af statsløshed

Ambassaden har været i fornyet kontakt med indenrigsministeriets kontor for statsborgerskab. På baggrund af indenrigsministeriets skriftlige besvarelse af de fremsendte supplerende spørgsmål, fremsendes følgende besvarelse i ambassadens uofficielle oversættelse. Desuden har ambassaden telefonisk afklaret visse tvivlsspørgsmål. Det tyske svar vedlægges.

Til spørgsmål 1: *På hvilket juridisk grundlag vurderer det tyske indenrigsministerium, at det er i overensstemmelse med artikel 1(2)(c) i FN's konvention af 1961 om begrænsning af statsløshed at nægte statsborgerskab til statsløse personer, der er født i Tyskland, som alene vurderes at udgøre en risiko for den offentlige eller demokratiske orden, og som ikke er fundet skyldige i en forbrydelse mod statens sikkerhed?*
I Tyskland er der indtil nu ingen konkrete tilfælde, hvor tysklandsfødte statsløse, som for det meste stadig er børn og som efter fem års retmæssigt permanent ophold kan meddeles indfødsret, er blevet nægtet statsborgerskab pga. sikkerhedsbetænkeligheder.

Hvis en ansøger dog først fremsætter sin ansøgning senere (fx kort tid inden afslutningen på det 21. leveår) og hvis den indenlandske efterretningstjeneste er i besiddelse af oplysninger, der efter tysk ret ville forbyde tildeling af indfødsret jf. statsborgerskabslovens § 11), må man gå ud fra, at Artikel 1, stk. 1, sidste sætning ("...to such conditions as may be prescribed by the national law") retfærdiggør, at der ikke tildeles indfødsret. Det tyske indenrigsministerium oplyser, at en domstol endnu ikke har taget stilling til hjemlen, hvorfor spørgsmålet ikke kan afklares endeligt på nuværende tidspunkt. Men den konsoliderede forventning i indenrigsministeriet er, at hjemlen vil være Artikel 1, stk. 1, sidste sætning.

Til spørgsmål 2: *Hvad ligger der efter tysk lovgivning i begrebet "retmæssigt permanent ophold i Tyskland i mindst 5 år", jf. art. 2 i den nationale lov, Loven til Begrænsning af Statsløshed?*
Ifølge tysk ret (se fx Erstes Sozialgesetzbuch § 30, stk. 3) har en person sit 'faste ophold' [gewöhnlicher Aufenthalt] dér, hvor han opholder sig på en sådan måde, som tydeliggør, at vedkommende ikke kun opholder sig midlertidigt i dette område eller på dette sted". Begrebet udlægges på samme måde i statsborgerskabsretlig sammenhæng. Hvis en person opholder sig retmæssigt i Tyskland, viser det, at personen ikke kun opholder sig midlertidigt, men har 'fast ophold'. For så vidt er dette ikke i modstrid med Konventionen.

Ifølge tysk retspraksis er betydningen af "permanent ophold" [dauernder Aufenthalt], som nævnt i Loven om Begrænsning af Statsløshed, art. 2 indholdsmæssigt i al væsentlighed det samme som 'fast ophold' [gewöhnlicher Aufenthalt]. En person har 'permanent ophold' i Tyskland, hvis vedkommende ikke kun

opholder sig her midlertidigt, men tidsubestemt, sådan at opholdets afslutning er ukendt. Børn og unge har som regel samme ophold som deres forældre. Også når udlændingemyndighederne udsteder gentagne udsættelser på ubestemt tid ifm. udrejsehindring, er der tale om et 'permanent ophold'.

"Retmæssigt" er et permanent ophold ifølge art. 2 i Loven om Begrænsning af Statsløshed, hvis udlændingemyndighederne meddeler opholdstilladelse efter § 5 i Opholdsloven [tidl.: Udlændingeloven], eller hvis den statsløse er fritaget fra kravet om opholdstilladelse. Det tyske indenrigsministerium oplyser fsva. sidstnævnte undtagelelsesmulighed, at den primært skal ses i et historisk lys: Personer, der efter anden verdenskrig befandt sig i Tyskland, kunne ikke i alle tilfælde sendes tilbage til deres oprindelige hjemlande (bl.a. fordi disse ikke længere eksisterende).

Forbundsregeringens memorandum (bemærkninger) til Konventionen fra 1976
I forbundsregeringens memorandum s. 27 ['Denkschrift', svarende til bemærkningerne til et lovforslag] om Tysklands ratificering til Konventionen hedder det (i ambassadens uofficielle oversættelse):
"Ved forhandlingen af konventionsudkastene på statskonferencerne blev også det retskravsgivende ophold diskuteret. I den forbindelse antages det, at et varigt ophold kendetegnes ved et gensidigt tillidsforhold, der beror på retmæssig adfærd. Med det lovlige ophold skabes tætte personlige forbindelser, der skaber særlige bindinger. Indlemmelse i landets befolkning bevirker, at opholdsstaten i praksis bliver den pågældendes hjemland. Dette forhold kræver følgelig mere end blot tilstedeværelse; det er ikke udelukkende begrænset til målelige kriterier. Uretmæssig adfærd kan derfor ikke forpligte til tildeling af indfødsret i henhold til Konventionen. Rettigheder, der følger af Konventionen, skal således ikke gives til personer, der opholder sig illegalt på statens område. Forhandlingerne på statskonferencerne har vist, at ingen af de involverede stater ville være rede til at affinde sig med en indskrænkelse af deres suveræne ret til tildeling af indfødsret, hvis de kan blive tvunget til dette trods en ansøgers lovstridige adfærd. Ved anvendelse af Konventionen kan der fsva. fortolkningen af begrebet "permanent ophold" ikke gribes tilbage til bosættelsesbegrebet [Niederlassungsbegriff*] i den nationale statsborgerskabsret, eksempelvis i paragraf 8 og 9 i Rigs- og Statsborgerskabsloven. Dette ville gå imod den udlægning af bosættelsesbegrebet, som retspraksis har vist, ifølge hvilken bosættelsesbegrebet kun baserer sig på målelige kriterier og ikke forudsætter et lovligt ophold (afgørelse ved Forbundsforvaltningsdomstolen d. 9.12.1975**). Hvis Konventionens opholdsretlige forudsætninger skulle bedømmes på lige fod med de nationale bosættelsesregler ifm. naturalisation, ville det ved en skønsmæssig afgørelse ikke være givet, at man kunne tage højde for en ansøgers evt. ulovlige adfærd, som kunne falde negativt ud for ansøgeren.

* Niederlassung, definition pr. 2016: Retten til at bosætte sig er tidsmæssig ubegrænset. Med denne tilladelse må man arbejde i Tyskland. Der er ingen geografiske kriterier tilknyttet. For at kunne få denne status, skal man principielt have haft opholdstilladelse i fem år og skal desuden opfylde flere betingelser. Man skal kunne sikre sin og sine familiemedlemmers underhold, have tilstrækkelige tyskkundskaber og må ikke være straffet.
** Dom fra 1975 ved Forbundsforvaltningsdomstolen om fortolkningen af bosættelsesretten ved naturalisation. Ifølge statsborgerskabsloven anno 1975 baserede bosættelsesretten [Niederlassungsrecht] sig kun på målelige kriterier. Bosættelsesretten forudsatte et permanent ophold koblet med en tydelig intention om at ville fortsætte dette ophold. Det spillede ifølge domstolen ingen rolle, om opholdet havde været lovligt eller ulovligt.

Ambassaden har talt med Heinz Peter Benz fra indenrigsministeriets kontor for statsborgerskab.

Ambassaden Berlin / Christina Hjorth Korup & Steffen Horsmann

[redacted]

Supplementary questions – 1961 UN Convention on the Reduction on Statelessness

1. Under the wording of article 1(2)(c) of the 1961 UN Convention on the Reduction on Statelessness a Contracting State may make the grant of its nationality – to stateless persons falling within the scope of the Convention – subject of a condition:

> "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".

It appears that under the German rules German nationality will be denied to stateless persons – born in Germany and covered by the 1961 Convention – if the German security service considers the person in question to be a threat to public or democratic order. It appears that such person will not acquire German nationality despite not being convicted of an offence against national security.

Please state on which judicial grounds the German authorities asses that a State is allowed to deny the grant of nationality to a stateless person covered by the 1961 Convention when the national security service considers that the person in question might be a threat to public or democratic order despite that the person has *not been convicted* of an offence against national security.

Any interpretation aid or explanatory notes supporting the German view on article 1(2)(c) of the 1961 UN Convention on the Reduction on Statelessness would be very welcome.

2. Under the wording of article 1(2)(b) of the 1961 UN Convention on the Reduction on Statelessness a Contracting State may make the grant of its nationality – to stateless persons falling within the scope of the Convention – subject of a condition:

> "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".

It appears that under the German rules – Gesetz zur Verminderung der Staatenlosigkeit, Article 2(2) – an applicant covered by the 1961 Convention has to comply with a condition that he or she:

> "2. seit fünf Jahren rechtmäßig seinen dauernden Aufenthalt im Geltungsbereich dieses Gesetzes hat."

Please state under which conditions a stateless person will be considered fulfilling the criteria in art. 2(2) of the Gesetz zur Verminderung der Staatenlosigkeit ("seit fünf Jahren rechtmäßig seinen dauernden Aufenthalt im Geltungsbereich dieses Gesetzes hat").

Please further state how the German authorities asses the term "habitually resided" in article 1(2)(b) of the 1961 Convention. Please also state whether the German authorities asses the term "habitually resided" in article 1(2)(b) to imply a legal or formal residence in the country.

Any interpretation aid or explanatory notes supporting the German view on article 1(2)(b) of the 1961 UN Convention on the Reduction on Statelessness would be very welcome.

Sehr geehrter Herr Horsmann, sehr geehrter Herr Gaardmann,

ich bitte um Nachsicht, dass ich Ihre Anfrage erst so spät beantworten kann.

Ihre in englischer Sprache verfassten Fragen verstehe ich so, dass Sie um Auskunft bitten,

1. aus welchen rechtlichen Gründen deutsche Behörden die Einbürgerung (gemäß Artikel 2 des Gesetzes zur Verminderung der Staatenlosigkeit) in Deutschland geborener Staatenloser verweigern könnten, wenn die Verfassungsschutzbehörden sie für eine Bedrohung für die Öffentlichkeit oder die freiheitlich demokratische Grundordnung halten, und

2. wieso Artikel 2 des Gesetzes zur Verminderung der Staatenlosigkeit bestimmt, dass die hier geborene staatenlose Person ihren mindestens fünfjährigen dauernden Aufenthalt in Deutschland rechtmäßig gehabt haben muss, obwohl die Konvention einen gewöhnlichen Aufenthalt fordert, und wie deutsche Behörden den Rechtsbegriff „gewöhnlicher Aufenthalt" auslegen.

Zu 1.

Hier sind bisher keine praktischen Fälle bekannt geworden, in denen in Deutschland geborene Staatenlose, die ja nach 5 Jahren rechtmäßigen dauernden Aufenthalts eingebürgert werden können und damit meist noch Kinder sind, wegen Sicherheitsbedenken nicht eingebürgert worden wären.

Sollte ein Betroffener seinen Antrag jedoch erst später (z.B. kurz vor Vollendung des einundzwanzigsten Lebensjahres) stellen und sollten den Verfassungsschutzbehörden entsprechende Erkenntnisse vorliegen, die eine Einbürgerung nach deutschem Recht verbieten (vgl. § 11 StAG), gehe ich davon aus, dass Artikel 1, Absatz 1, letzter Satz „... to such conditions as may be prescribed by the national law ..." die Nichteinbürgerung rechtfertigt.

Zu 2.

Nach deutschem Recht (vgl. z.B. § 30 Absatz 3, letzter Satz, Erstes Buch Sozialgesetzbuch) hat jemand den „gewöhnlichen Aufenthalt dort, wo er sich unter Umständen aufhält, die erkennen lassen, dass er an diesem Ort oder in diesem Gebiet nicht nur vorübergehend verweilt." Entsprechend wird dieser Begriff auch staatsangehörigkeitsrechtlich verstanden. Nur wenn sich eine Person rechtmäßig in Deutschland aufhält, lassen die Umstände erkennen, dass sie nicht nur vorübergehend hier verweilt (= gewöhnlicher Aufenthalt). Insoweit liegt h.E. kein Widerspruch zur Konvention vor.

Nach hiesiger Rechtsprechung (z.B. BVerwG, 1 C 45/90, vom 23.02.1993) besagt "Dauernder Aufenthalt" im Sinne dieser Vorschrift inhaltlich im Wesentlichen dasselbe wie "gewöhnlicher Aufenthalt". Eine Person hat ihren "dauernden Aufenthalt" in Deutschland, wenn sie hier nicht nur vorübergehend, sondern auf unabsehbare Zeit lebt, so dass eine Beendigung ihres Aufenthalts ungewiss ist. Kinder und Jugendliche teilen in der Regel den Aufenthalt ihrer Eltern. Auch wenn die Ausländerbehörde den Aufenthalt auf nicht absehbare Zeit durch wiederholt erteilte Duldungen hinnimmt, kommt ein dauernder Aufenthalt in Betracht.

"Rechtmäßig" ist ein dauernder Aufenthalt im Sinne dieser Vorschrift, wenn die Ausländerbehörde eine Aufenthaltsgenehmigung nach § 5 AuslG 1990 [Anmerkung Benz: heute AufenthG] erteilt oder der Staatenlose vom Erfordernis einer Aufenthaltsgenehmigung befreit ist.

Ergänzend verweise ich auf die Denkschrift der Bundesregierung zu dem Übereinkommen (BT-Drucks. 8/12, S. 27). Dort heißt es:

"Bei der Beratung der Konventionsentwürfe durch die Staatenkonferenzen ist auch der den Verleihungsanspruch begründende Aufenthalt erörtert worden. Danach ist davon auszugehen, dass der dauernde Aufenthalt ein gegenseitiges Vertrauensverhältnis kennzeichnet, das auf rechtmäßigem Handeln beruht. Mit dem erlaubten Aufenthalt werden persönlich enge Beziehungen geschaffen, die besondere Bindungen erzeugen. Die Einbeziehung in den Kreis der eigenen Wohnbevölkerung bewirkt, dass der Aufenthaltsstaat für den Betroffenen praktisch schon zur Heimat geworden ist. Dieses Verhältnis verlangt mithin mehr als bloße Anwesenheit; es ist nicht allein auf rein tatsächliche Merkmale beschränkt. Unrechtmäßiges Handeln vermag deshalb die Verpflichtung zur Verleihung der Staatsangehörigkeit auf Grund des Übereinkommens nicht auszulösen; die Vergünstigungen aus dem Übereinkommen werden somit Personen nicht gewährt, die sich illegal im Vertragsgebiet aufhalten. Die Verhandlungen der Staatenkonferenzen haben gezeigt, dass keiner der beteiligten Staaten bereit gewesen wäre, die mit einem Verleihungsanspruch verbundene Einschränkung seiner Einbürgerungshoheit hinzunehmen, wenn sie ihm auch durch widerrechtliches Handeln eines Begünstigten aufgezwungen werden könnte. Bei der Anwendung des Übereinkommens kann hinsichtlich der Auslegung des Begriffs des dauernden Aufenthalts deshalb nicht auf den Niederlassungsbegriff des innerstaatlichen Einbürgerungsrechts, zum Beispiel in §§ 8, 9 des Reichs- und Staatsangehörigkeitsgesetzes, zurückgegriffen werden. Dem stünde die Auslegung entgegen, die der Niederlassungsbegriff durch die Rechtsprechung erfahren hat, der zufolge er nur auf tatsächliche Merkmale abstellt und einen erlaubten Aufenthalt nicht voraussetzt (Urteil des Bundesverwaltungsgerichts vom 09. Dezember 1975 -- BVerwG I C 40.71). Die bei der Entscheidung über eine Einbürgerung im Ermessenswege noch mögliche Berücksichtigung des rechtswidrigen Verhaltens zuungunsten des Einbürgerungsbewerbers wäre bei Anspruchseinbürgerungen jedenfalls nicht gegeben, wenn die das Recht auf Verleihung der Staatsangehörigkeit begründende Aufenthaltsvoraussetzung des Übereinkommens der Niederlassungsvoraussetzung des innerstaatlichen Einbürgerungsrechts gleichbeurteilt werden müsste."

Ich würde mich freuen, wenn ich Ihnen mit diesem Informationen weiter helfen konnte.

Mit freundlichen Grüßen

I.A.

Heinz Peter B e n z,