



**Recommendation CM/Rec(2009)13
of the Committee of Ministers to member states
on the nationality of children**

*(Adopted by the Committee of Ministers on 9 December 2009
at the 1073rd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members;

Reaffirming its keen interest in issues of nationality and their adequate solution in member states;

Stressing the key activities of the Council of Europe in the field of nationality law, including activities for avoiding and reducing statelessness, and its competence in these matters;

Recalling the 1948 Universal Declaration of Human Rights according to which every individual has the right to a nationality, and emphasising the importance of an effective nationality for the individual's protection and for the exercise of his or her personal rights and freedoms;

Recalling also the 1989 United Nations Convention on the Rights of the Child according to which children have the right to acquire a nationality, which is a firm element of their identity;

Welcoming the amendments which member states have made to their laws on nationality in recent years, in particular those aimed at reducing statelessness and those granting children better access to the nationality of their parents and of their state of birth and residence;

Noting that children of parents of foreign origin born or growing up in their state of residence are in the particular situation of becoming increasingly familiar with the language(s), habits, customs and culture(s) of their state of residence, which contributes to their integration into that society;

Noting that foreign children adopted by nationals are in a particular situation leading to their integration into the culture of the country of their adoptive parents;

Recalling its Recommendation No. R (99) 18 on the avoidance and reduction of statelessness;

Taking account of the work carried out in the area of nationality by the United Nations and other international institutions;

Having regard to the other relevant international instruments, in particular the 1930 Hague Convention on Certain Questions relating to Conflict of Nationality Laws and its Protocol on Statelessness; the 1954 United Nations Convention Relating to the Status of Stateless Persons; the 1961 United Nations Convention on the Reduction of Statelessness; the 1966 International Covenant on Civil and Political Rights; the 1965 International Convention on the Elimination of All Forms of Racial Discrimination; the 1973 Convention to reduce the Number of Cases of Statelessness of the International Commission on Civil Status; the 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women and the 1990 United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;

Taking into account in particular the importance of the principles and rules of the 1997 European Convention on Nationality (ETS No. 166), the 2006 Council of Europe Convention on the Avoidance of Statelessness in

Relation to State Succession (CETS No. 200) and the 2008 European Convention on the Adoption of Children (revised) (CETS No. 202);

Expressing the hope that all member states will sign, ratify and fully implement these conventions as soon as possible;

Realising the need for further measures, at national and international levels, in order to avoid and reduce cases of statelessness, in particular of children, and to improve the access of children to the nationality of their parents and of their state of birth and residence;

Recalling the usefulness of co-operation and, where appropriate, the obligation to exchange information on the nationality of children among member states in order to ensure that a child has access to a nationality;

Emphasising the definition of child as a person below the age of 18 years unless, under the law applicable to the child, majority is attained earlier;

Taking into account the importance of birth registration to ensure the right to a nationality and avoid statelessness,

Recommends that governments of the member states be guided in their legislation, policies and practice by the principles contained in the appendix to this recommendation.

Appendix to Recommendation CM/Rec(2009)13

Principles concerning the nationality of children

With a view to reducing statelessness of children, facilitating their access to a nationality and ensuring their right to a nationality, member states should:

I. Reducing statelessness of children

1. provide for the acquisition of nationality by right of blood (*jure sanguinis*) by children without any restriction which would result in statelessness;
2. provide that children born on their territory who otherwise would be stateless acquire their nationality subject to no other condition than the lawful and habitual residence of a parent;
3. provide that children on their territory who are stateless despite the provisions contained in principles 1 and 2 above, and who have the right to acquire the nationality of another state, be provided with any necessary assistance to exercise that right;
4. provide that children who, at birth, have the right to acquire the nationality of another state, but who could not reasonably be expected to acquire that nationality, are not excluded from the scope of principles 1 and 2 above;
5. provide that stateless children have the right to apply for their nationality after lawful and habitual residence on their territory for a period not exceeding five years immediately preceding the lodging of the application;
6. co-operate closely on issues of statelessness of children, including exchanging information on nationality legislation and public policies, as well as on nationality details in individual cases, subject to applicable laws on personal data protection;
7. treat children who are factually (de facto) stateless, as far as possible, as legally stateless (de jure) with respect to the acquisition of nationality;
8. register children as being of unknown or undetermined nationality, or classify children's nationality as being "under investigation" only for as short a period as possible;

9. treat children found abandoned on their territory with no known parentage, as far as possible, as foundlings with respect to the acquisition of nationality;

10. provide that the revocation or annulment of an adoption will not cause the loss of the nationality acquired by this adoption, if statelessness would be the consequence;

II. Nationality as a consequence of a child-parent family relationship

11. provide that children whose parentage is established by recognition, by court order or similar procedures acquire the nationality of the parent concerned, subject only to a procedure determined by their internal law;

12. apply to children their provisions on acquisition of nationality by right of blood if, as a result of a birth conceived through medically assisted reproductive techniques, a child-parent family relationship is established or recognised by law;

13. subject the granting of their nationality to children adopted by a national to no other exceptions than those generally applicable to the acquisition of their nationality by right of blood, if as a consequence of the adoption the family relationship between the child and the parent(s) of origin is completely replaced by the family relationship between the child and the adopter(s);

14. facilitate the acquisition of their nationality by children adopted by a national in the case of an adoption in which the family relationship between the child and the parent(s) of origin is not completely replaced by the family relationship between the child and the adopter(s);

15. provide that revocation or annulment of an adoption will not cause the permanent loss of the nationality acquired by the adoption, if the child is lawfully and habitually resident on their territory for a period of more than five years;

16. provide that foreign children lawfully residing on their territory with a view to adoption have the right to file applications for the acquisition of their nationality if the adoption is not finalised. States should not in this case require a period of more than five years of habitual residence on their territory;

III. Children born on the territory of a state to a foreign parent

17. facilitate the acquisition of nationality, before the age of majority, by children born on their territory to a foreign parent lawfully and habitually residing there. Enhanced facilitation should be offered in cases where that parent is also born on their territory;

IV. Position of children treated as nationals

18. provide that children who were treated in good faith as their nationals for a specific period of time should not be declared as not having acquired their nationality;

V. Rights of children in proceedings affecting their nationality

19. ensure that, as far as possible, in proceedings affecting their nationality, children are consulted and their views and wishes are taken into account, having regard to their degree of maturity. Applications for nationality made on behalf of children should include the opinion of children considered by law as having sufficient understanding. A child should be considered as having sufficient understanding upon attaining an age, prescribed by law, which should not be more than 14 years;

20. give children the right to file applications for the acquisition or loss of nationality if they are considered by law as having sufficient understanding and are, where necessary, legally represented as required by domestic law;

21. grant children, where necessary, legally represented as required by domestic law, the right to challenge decisions regarding their nationality;

22. provide that children who have lost their nationality have the right to apply for recovery of it before the age of majority, or within at least three years after reaching the age of majority, and that they shall be, where necessary, legally represented as required by domestic law;

VI. *Registration of birth*

23. register the birth of all children born on their territory, even if they are born to a foreign parent with an irregular immigration status or if the parents are unknown, in order to safeguard their right to a nationality. The registration of birth should be free of charge and be performed without delay, even if the period within which the birth should have been declared has already expired.