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Citizenship Policies in the New Europe

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Citizenship Policies in the New Europe

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Preface

In recent years there has been a growing interest in comparative research on citizenship policies in major countries of immigration, both overseas and in Europe. However most comparative studies are limited in geographic scope to a small number of already well-researched countries. The present volume looks at countries that are rarely included in these studies. It presents the results of the *Citizenship in the new Member States and Turkey* conference, held in Vienna from 30 June to 2 July 2005. This conference was organised within the framework of the EU-funded network of excellence IMISCOE (the acronym for international migration, integration and social cohesion in Europe), or to be more precise, within the thematic cluster of this network that focuses on citizenship and is coordinated by Rainer Bauböck.

Why concentrate on the ten new Member States and Turkey? There are various reasons for this choice. The initial idea for analysing the nationality regulations in this particular group of countries originated in another EU-funded project called NATAC (The acquisition of nationality in EU Member States: rules, practices and quantitative developments). NATAC provides the first strictly comparative analysis of the rules and practices regulating the acquisition and loss of nationality in the fifteen 'old' EU Member States. Unlike earlier, similar studies, it was not limited to country reports but used a new methodology that facilitates the comparison of the regulations across countries. The results of this project are published in two volumes (Bauböck, Ersbøll, Groenendijk & Waldrauch 2006). Volume 1 contains comparative reports with chapters on the modes of acquiring and losing nationality, the statistics on nationality, the trends in nationality laws and the statuses of denizenship and quasi-citizenship in the fifteen states. Volume 2 supplies specific background information on the historical and political evolution of the nationality legislation in each individual country, structured according to a common grid in order to facilitate comparative analyses.

The present volume complements the analyses carried out in the NATAC project. It provides a first comparative overview of the nationality regulations in the ten new Member States that acceded the European Union on 1 May 2004. We have added Turkey to our sample of

countries for several reasons. First, it shares a number of similarities or historical connections with the two new Mediterranean Member States (Cyprus and Malta). Second, Turkey is by far the largest source country of immigration into the old fifteen EU countries and its recent citizenship reforms provide insight into the interaction between sending and receiving country policies. Finally, including Turkey as an accession candidate to the EU in our sample allows us to study the ongoing impact of enlargement on concepts and policies of citizenship.

This book represents a first attempt at adapting the methodology developed in the NATAC project to these countries. The country reports included in this volume are structured according to a common grid that is similar to the one used for Volume 2 of the above mentioned publication. Each chapter contains a historical outline of nationality policy since 1945 that provides a broad overview of developments with special emphasis on important reforms, breaks from basic principles of nationality acquisition and loss and regulations for special groups of people (e.g., an ethnic diaspora). Subsequently, the authors summarise the basic principles of the most important current modes of acquisition and loss of nationality in their respective countries. A third section looks at current political debates and any changes planned for the future. Finally, the reports present the statistical developments since 1985, describe which modes of acquisition and loss of nationality are dealt with by the available statistics and explain important breaks in the numbers of acquisitions and loss of nationality in their country. Like the country reports gathered for the NATAC project, the reports included in this volume do not primarily aim at a legal comparison but concentrate on the historical and political background of current regulations for the acquisition and loss of nationality. A further question guiding our research was the impact of the EU and other international bodies on the evolution of these regulations.

Nevertheless, this book on citizenship in the new Europe is a publication in its own right with a very specific focus. The concepts of nationality and citizenship in the eleven countries under discussion in this volume generally differ quite strongly from those prevalent in Western Europe. By and large, citizenship in these countries is still closely linked to an ethnic interpretation of nationality, transmission to subsequent generations is exclusively based on descent, there is greater hostility towards multiple nationality, and greater emphasis is laid on citizenship links with ethnic kin-minorities in neighbouring countries and expatriates. Indeed, emigration has played a more important role for recent citizenship reforms in these countries than immigration. Yet, a few among them are already experiencing another transition, from a sending country to a transit country and finally to a receiving country of new immigration. Moreover, eight of these countries have also un-

dergone a transition from communist to democratic rule. A final fundamental contrast with the old fifteen EU Member States is that none of these countries has enjoyed continuous independence within the present state borders for more than 60 years. In addition to dealing with individual acquisition and loss of citizenship, these countries therefore had to resolve the puzzling problems of initial collective citizenship determination for large populations in the context of state restoration, of new establishment after partitioning or secession or of geographic relocations of borders. Again, this has sometimes implied a return to ethnic roots and the exclusion of long term residents and their children for political reasons, such as the restrictive access to Estonian and Latvian citizenship for Russian immigrants who settled there after 1940.

The introductory chapter by Andre Liebich provides a comparative analysis of nationality regulations in the post-communist states. Since this does not apply to three of the countries included in our study we will briefly summarise their commonalities and differences here.

Citizenship in Cyprus, Malta and Turkey has been shaped by distinct historical trajectories. Cyprus and Malta are both former British colonies, but the impact of British rule on the development of nationality law in each of them differs strongly. Before becoming a British colony in 1878, Cyprus had been a part of the Ottoman Empire, which based its rule on the 'millet' system, defining belonging and identity through membership in one of three self-governing religious communities (Muslim, Christian and Jewish).[1] The subjects' relation to the state was mediated by these communities rather than a direct personal relation as entailed in the concept of citizenship. This model fitted very well into the British tradition of colonial indirect rule. It was therefore not abolished but only modernised by the British colonial authorities. Until recently an 'ethno-communal' concept of belonging has influenced the concept of nationality, and only with the accession of Cyprus to the European Union has a trans-communal type of citizenship started to develop (see Trimikliniotis in this volume).

In Malta, religious uniformity had already been coercively established by the Knights of St. John in the Middle Ages. The Ottomans failed to conquer Malta in the sixteenth century and after a short French interregnum, Malta had been under British control since 1814. In the nineteenth and twentieth century the major internal dividing lines had been neither religion nor ethnicity, but class, reflected in a polarised British-style two-party system. Within this framework of an ethnically and religiously homogeneous post-colonial state, a descent-oriented understanding of nationality has promoted the inclusion of emigrants and their offspring, whereas foreign citizens face high barriers for naturalisation (see Buttigieg in this volume).

In Turkey, after 1869, the millet system was gradually replaced by the concept of a personal relationship to the state, although in practice ethnicity and religion continued to be dominant criteria for access to nationality in the late Ottoman Empire. Since the 1920s, however, a secular understanding of nationality has replaced the millet system. Since becoming a major sending country of economic migrants to Western Europe, Turkey's nationality legislation has been strongly influenced by the desire to allow emigrants to maintain their ties to Turkey. External citizenship has thus gained in importance. Responding to the flow of remittances from Western Europe and to racist violence in Germany in the early 1990s, Turkey has offered a quasi-citizenship status to its former nationals while at the same time promoting dual nationality (see Kadirbeyoglu in this volume). This policy shift parallels developments in other major sending states, such as India, Mexico and Morocco and confronts receiving states with the need to coordinate their citizenship policies with those of migration source countries.

Turkey's external citizenship policies highlight a major lesson to be drawn from the analyses presented in this book. All states still regard the regulation of acquisition and loss of their nationality as a core matter of national sovereignty and self-determination. However, the effects of nationality policies cannot be fully internalised within the respective polity. International migration and shifting international borders both create contexts in which each country's laws and policies inevitably impact on other states. These external effects of nationality and citizenship are enhanced through the common citizenship of the European Union and its attached rights of free movement between Member States. In such an environment, efforts of coordination between national policies and agreement on common norms should be in every country's interest.

Vienna, June 2006
Rainer Bauböck, Bernhard Perchinig, Wiebke Sievers

Note

1 The millet system is also still echoed in nationality legislation in Greece, where belonging to the Orthodox Church is a decisive factor in the process of 'definition' of Greek nationality (cf. Christopoulos 2006).

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Introduction: Altneuländer or the vicissitudes of citizenship in the new EU states[1]

Andre Liebich

Altneuland is the title of a novel written over a century ago by the Zionist leader Theodor Herzl. The old-new land Herzl had in mind was Palestine but the term seems to me to be apposite for the lands with which this paper is concerned, the former communist states that have recently joined the European Union. As I shall try to argue, from the point of view of our concern here, namely, the issue of citizenship, these countries display a peculiar blend of antiquity and novelty which may justify a certain claim to distinctiveness.

In this paper, I therefore propose to look at the preconditions and conditions of citizenship in the new EU Member States through the prism of 'old' and 'new.' Applying these terms, I shall first consider the specificities of East Central European statehood; I shall then look at the evolution of principles of political membership, and finally, I shall consider the efforts to incorporate the past into the present citizenship provisions.

1 New states and old concerns, or why there is not much plural citizenship in the Altneuländer

When the First World War broke out, less than a century ago, not a single one of the eight new post-communist members of the EU enjoyed statehood. Three of these countries (Slovenia, the Czech Republic and Slovakia) have only become states in the last fifteen years (though Slovakia had a brief and not very happy experience as a state during the Second World War). Of the five other states (Poland, Hungary, Lithuania, Latvia, Estonia) only one (Hungary) has enjoyed uninterrupted statehood since 1918 and, in the case of the Baltic states, their statelessness in this period has lasted longer than their statehood (annex 1).

To be sure, at least two countries, Poland and Hungary, have long been acknowledged, even when absent from the map and even by such sceptics as Marx and Engels, as one-time historic states (Rosdolsky 1986; Connor 1984). Other countries, notably Lithuania and the Czech Republic, might make weaker claims to a distant statehood in a more or less misty past. The contrast with the situation of the 'old' fifteen

EU Member States could not be more striking. Although the 'old' EU does also number three countries which only arose after the First World War (Finland, Austria, Ireland) and one whose existence was interrupted (Austria), twelve of the fifteen old EU countries have known uninterrupted statehood for periods running from well over a century (Germany, Luxemburg, Italy, Belgium, Greece) to many hundreds of years (United Kingdom, Netherlands, Spain, Portugal, Sweden, Denmark, France).

I would suggest that the recent and discontinuous statehood that characterises the new EU states has broad implications for political attitudes and identity. The Hungarian public intellectual, Istvan Bibó, has spoken of the 'distress of the small states of Eastern Europe' by which he means 'anguish at the perspective of the disappearance of one's own people and country' (Bibó 1991[1946]: 13-69). This anxiety is based on the historical realities noted above but it is re-enforced by demography. Though there are smaller states in the old EU, some of the new Member States are very small indeed (Slovenia, Estonia, Latvia and Lithuania together are smaller than Belgium or Portugal) and all of them combined, excepting Poland, have a smaller population than a middle sized EU Member State like Spain. Even Poland, whose population is larger than all the other new EU adherents put together, is itself only about the size of Spain. And, as if to underline that in East Central Europe even thirty eight million nationals does not spare one from brooding on the survival of the state, Poland's hymn still begins, somewhat ominously, 'Poland has not yet perished while we are alive.'

The fragility of statehood in East Central Europe drives all these countries in the direction of a state-reinforcing overcompensation. The preambles to their constitutions or other foundational documents (annex 2) evoke ancient genealogies and historical continuities. Moreover, the Baltic states' insistence on the legal fiction of uninterrupted statehood, despite a half century of statelessness, leads them to adopt constitutional and legislative dispositions that transform a fixed date into a marker of timelessness. Legitimacy, apparently, reposes, at least in part, upon antiquity and continuity and the search for these is a serious task (Liebich 1995: 313-318).

One would imagine that such tenacious attachment to a recent and therefore tenuous statehood would find reflection in the philosophy and provisions regarding plural citizenship (Liebich 2000: 97-107). One could advance the hypothesis that fragile states with unstable borders might accept or even favour plural citizenship to reflect the variability of the historical conditions they had experienced. One could also put forward the proposition that such precarious states would be reluctant to dilute or share attributes of statehood by tolerating plural citizenship for its citizens.

In fact, it is the latter proposition that holds more strongly. All the post-communist states considered here, with the exception of only Hungary and Slovakia, are reticent about authorising their citizens, especially their naturalised citizens, to carry another passport. This reticence is subjected to pressure in the opposite direction, especially from émigrés who are keen on maintaining or re-establishing formal ties with their country of origin without giving up membership in their country of adoption. The result is a considerable amount of incoherence. For example, an Estonian citizen may not be a citizen of another country; any Estonian citizen who acquires another citizenship by birth must renounce either that citizenship or Estonian citizenship. The same law, however, states that no person may be deprived of Estonian citizenship acquired by birth.[2] In the well documented case of Poland, the only state considered here that has not adopted a new citizenship law since the fall of communism, the relevant formulation is ambiguous. It states that a person who is a Polish citizen under Polish law cannot at the same time be recognised as a citizen of another state. This provision was interpreted restrictively in the communist period but is now applied more liberally (see though Lodzinski 1998: 161).[3] Arbitrary application of the prohibition on plural citizenship was also the rule in Czechoslovakia after 1949. Today, in the Czech Republic 'there is a long list of discretionary exemptions from the requirement to renounce one's [previous] nationality' upon naturalisation (Baršová in this volume). The upshot of the matter throughout the area appears to be a continued tendency towards formal rejection of the principle of plural citizenship, though with varying degrees of severity and consistency (annex 3).

The two exceptions to such prohibition, Hungary and Slovakia, confirm the first hypothesis presented above according to which states may accept plural citizenship as a reflection of their historical experience. These two countries authorise plural citizenship with (virtually, in the case of Slovakia) no reservations. The Slovak provision that renouncement of former citizenship is 'in favour' of naturalisation is so weak a formulation as to be self-negating. If one were to search for the causes of their exceptionalism in this regard, one would have to take account of the fact that these two countries show particular concern for their diasporas and that they have also known a sudden change of borders (Hungary) or status (Slovakia) leaving a number of their nationals outside the state.[4] In historical terms, it might be noted that Hungary was not always open to plural citizenship – indeed, at the time of the Austro-Hungarian monarchy it specifically excluded dual citizenship with Austria – and that Slovakia, long integrated into Hungary, might be expected to have based some of its own conceptions of statehood on the Hungarian example.[5]

There is, clearly, a tendency towards relaxation of the injunctions against plural citizenship. One might imagine that such relaxation would be by way of compensation for the strict refusal of these countries to countenance anything in the order of federal arrangements or even regional autonomies (annex 4).[6] In fact, this is not the underlying reason for greater tolerance of plural citizenship. Rather, pressure stems from the desire to prove their eurocompatability by following European trends, as evidenced by the most recent European Convention on Nationality (1997), which encourages plural citizenship as much as earlier conventions discouraged it. Above all, the element referred to above, émigré pressure in favour of plural citizenship is becoming ever stronger. First, as a consequence of the fall of communism these countries have reconciled themselves with their historical émigré communities, just as these communities abroad have reconciled themselves with their countries of origin. Second, these countries are producing a significant new wave of emigration. Part brain drain, part cheap labour, stimulated by globalisation as well as by EU enlargement, this new emigration is even more interested in maintaining ties with its home country than were its predecessors.

To date, the move in the direction of plural citizenship has not occasioned sweeping changes in citizenship laws. States have abrogated the communist era bilateral conventions on elimination of cases of dual nationality (for Hungary and Poland see Gál 2002: 748 and Górny et al. 2003: 15, 18-21; the country reports published in this volume confirm that this is the case elsewhere). This should be seen as a rejection of a communist heritage rather than endorsement of plural citizenship. Only Lithuania has specifically removed the clause in art. 1 of its 1991 and 1997 citizenship laws that stated, 'A citizen of the Republic of Lithuania may not at the same time be citizen [sic] of another state, except in cases provided for in this law.'[7] In some cases (Latvia, Slovenia) restrictions on plural citizenship now apply only to those who choose to naturalise into the citizenship of the country concerned and therefore concern immigrants rather than emigrants. Inasmuch as immigration (initially, at least, from the East) may be expected to become an evermore frequent phenomenon in the new EU states, pressure will mount to remove these restrictions as well.[8]

2 Old categories and new principles, or how ethnicity has trumped other grounds of citizenship

The classic distinction between civic and ethnic conceptions of citizenship, as well as that between citizenship founded upon ius soli and ius sanguinis, apply to the countries under discussion here too.[9] Interest-

ingly, what might be considered the more enlightened variant of citizenship, civic citizenship (or, at least, a prototype of civic citizenship), as well as the more progressive principle of membership, ius soli, belong to these countries' past rather than to their present. We may note in passing that the latter point also applied to Germany before the 1999 citizenship reform that introduced ius soli (see Fahrmeir 1997; Massfeller 1953).

In the two countries of the area under discussion that have the strongest state tradition, Poland and Hungary, a medieval conception of political citizenship prevailed well after it had disappeared elsewhere. In both countries, as in some other parts of Europe, the noble or equestrian estate was seen as constituting the nation, that is, the politically enabled and active part of the population. If 'citizenship in Western liberal democracies is the modern equivalent of feudal privilege,' (Carens 1987: 252) then feudal privilege may well be the medieval equivalent of citizenship. The originality of the Polish and Hungarian cases was that this estate, largely made up of the landowning gentry or even the landless petty nobility, though still only a small minority, comprised a far broader section of the overall population than it did, for example, in Western Europe.[10] Here, as in pre-modern Western Europe, estate identity overrode linguistic or ethnic criteria. In the vast multiethnic entities that were the Polish and Hungarian kingdoms, referred to as the Polish-Lithuanian Commonwealth and the Lands of the Crown of Saint Stephen, social status thus trumped the multitude of potentially competing blood connections. The Polish *szlachcic* (noble or gentleman) was proud to declare himself 'natione polonus, gente ruthenus (or lituanus)' thus affirming that Polish political identity was compatible with Ruthenian (that is, Ukrainian, in modern terms) or Lithuanian primordial ties. As these terms may recall, a neutral dead language, Latin, was the political lingua franca of this class well into the eighteenth century in the case of Poland and into the middle of the nineteenth century in Hungary (Walicki 1994; Bárány 1990: 201).

Estate membership in Poland and Hungary implied important political prerogatives. In Hungary the crown was theoretically elective; in Poland it was effectively elective until the disappearance of the Polish state, the Commonwealth or First Republic, in 1795. The electorate consisted of the noble estate, making its members citizens in the modern understanding of the term and imparting dignity to the notion of political membership.[11] In spite of huge disparities of wealth and power, members of the noble estate cultivated a formal equality to such an extent that in Poland all titles of nobility were outlawed (Davies 1982: 239ff). In both countries as well as in Bohemia, Diets made up

of members of the nation met regularly, deliberated vociferously, and exercised power to various degrees (Schramm 1996).

In Bohemia, the estate system proved weaker and decayed earlier than in Hungary and Poland. As in these two countries, the estate system here did not originally differentiate among ethnic or linguistic identities, in this case, between Germans and Slavs. It cultivated a Bohemian 'land patriotism [...] the patriotism of our aristocracy' (Sayer 1998: 57ff). Only in the wake of the seismic events of 1848, did Bohemian and local identities change into ethnic ones. Bohemians and Budweisers became Czechs or Germans, to quote the title of a recent study which emphasises that 'ethnicity was only one form of nationhood among several in Habsburg Central Europe, yet one that came to dominate the others' (King 2002: 10). However, in Bohemia, territorial-based identity remained strong. During the First World War, Thomas Masaryk originally founded his case for Bohemian independence on the state rights of the historic Kingdom of Bohemia. He put aside this argument only when he saw that it did not impress British decision-makers, indifferent to antiquarian constitutional niceties in countries other than their own. He also downplayed it as he realised that it did not further the project of uniting Slovakia to the Czech lands in a future Czechoslovak state (Agnew 2000; Galandauer 1993).

The territorial demarcation of political membership, intimately connected to citizenship based on ius soli, was firmly anchored elsewhere in East Central Europe as well. From the early Middle Ages, the Hungarian comitat gave local territorial content to the principle of gentry self-government (Bak 1990: 66; Holub 1958). After 1848 the comitat remained a fundamental and prestigious administrative unit. The Polish Dietines, assemblies of local gentry, were the effective units of government in pre-partition Poland from the fifteenth century to the late eighteenth century (Davies 1982: 323). Polish exiles after 1830, having abandoned the now obsolete idea of a Polish gentry nation, defined the Polish nation in territorial terms, as consisting of all those who lived in the territory of Poland before the first partition of 1772 (Kukiel 1955; Liebich 2004). Restoration of the Polish state within these borders was still the demand of Polish activists at the time of the First World War.[12] Finally, until 1918, throughout the whole territory of the Austro-Hungarian empire (with the partial exception of Bosnia-Herzegovina), *Heimatrecht* (*indigénat, pertinenza*), an original form of communal citizenship, was the basic building block of state citizenship (Redlich 1907). This institution, which deserves the attention of historians of citizenship, appears to have survived unto the present day only in Switzerland.[13]

The Allied and Associated Powers, victors in the First World War, had fought, purportedly, for the rights of small nations and for the

principle of national self-determination. Their objective was the creation of national states, that is, states which were, if not ethnically homogeneous, at least responsive to the aspirations of ethnic nations in East Central Europe. In setting down the rules for acquisition of citizenship in the successor states, however the victorious powers resorted to territorial criteria. Anyone habitually resident (in the case of former German or Russian territory) or possessing communal *Heimatrecht* (in the case of former Austria-Hungary) within the new frontiers of a state was entitled to that citizenship. The solution did not preclude citizenship conundra for individuals who were not of the majority 'race and language' and who did not possess or could not prove present or past *Heimatrecht* in their state of residence – for example, some Hungarians in Slovakia (Napier 1932). This was perhaps the last time that a territorial principle predominated over ethnic criteria in determining citizenship in the countries with which we are concerned. Henceforth, territoriality, like social status in an earlier period, became a criterion of the past and ethnicity took the lead in regards to citizenship.

Already in the post-First World War peace treaties the victors were obliged to make concessions to the principle of ethnicity, at least as an alternative criterion for the determination of citizenship. The treaties allowed for a right of citizenship option. In the case of the Treaty of Versailles with Germany, individuals could determine their citizenship not only on the basis of habitual residence but also by virtue of their place of birth, on condition that their parents were domiciled in that place at the time of their birth. As one commentator stated, 'it [was] impossible that there be any question of *race* or *language* [italics in original]' in setting criteria for optants 'since Poland counts masses of Jews among its nationals [ressortissants] speaking a special jargon, and more than one third of the citizens of Czechoslovakia are of the German language' (Brustlein 1922: 35). In fact, race and language were precisely the criteria applied for the successor states of the Habsburg empire: Individuals having *Heimatrecht* anywhere in the former Austro-Hungary could choose, instead of the citizenship of the state in which their commune now lay, the citizenship of the state where the majority of the population was made up of people speaking their language and was of their 'race.' In a sort of counterpart to the Treaty of Versailles' provision that citizenship could also be based on one's place of birth in addition to one's current place of residence, the Treaties of Saint Germain and Trianon allowed citizenship to be claimed on the basis of an earlier *Heimatrecht* just previous to one's current *Heimatrecht* (Subbotitch 1926; Brustlein 1922).

One is tempted to see in the differential dispositions with regard to Germany and Austria-Hungary an expression of the different perceptions of these two countries, Germany being seen as governed by more

civic and Austria-Hungary by more ethnic considerations. Confirmation of such an approach might be sought in the fact that the Treaty of Versailles does speak of Czechoslovaks (art. 85) and Poles (art. 91) who are German nationals but it does not define a Czechoslovak or a Pole, unlike Trianon and Saint Germain which specifically evoke 'race and language.' It may be simply the logic of *Heimatrecht* that leads in this direction. As *Heimatrecht* replaces birth place and encourages the cult of a 'petite patrie' or a spirit of subjective belonging it may be expected that *Heimatrecht*-based citizenship on a state scale would edge away from a strictly impersonal basis of citizenship, such as birthplace, and seek out other criteria for belonging.

Since 1918 the prevailing conceptions of identity in all the countries in question have led them to look toward ethnic criteria in defining those entitled to citizenship.[14] These ethnic criteria do not, as a rule, appear explicitly in citizenship laws themselves, though they often linger just beneath the surface. They do appear, however, in Slovenian and Hungarian citizenship laws where the schedule of residence requirements for naturalisation goes from ten and eight years respectively to one year for ethnics (Kovács and Tóth in this volume; Medved in this volume). Formally, the governing principle of most citizenship laws is descent without reference to ethnicity, though in the case of the Baltic states with a strict time reference. Rules for naturalisation in these citizenship laws generally follow well-established criteria familiar to students of citizenship everywhere. The underlying concept of citizenship can be found, notably in ancillary documents, that attempt to establish a quasi-citizenship or a special connection with co-nationals abroad. For example, Lithuania's citizenship law (2002) provides for a certificate of indefinite 'retention of the right to citizenship' for pre June 1940 Lithuanian citizens as well as 'persons of Lithuanian descent' – the term is unspecified – residing abroad.

The most famous recent case of such an attempt at quasi-citizenship – 'fuzzy' citizenship as one scholar has called it – is that of the Hungarian Status Law of 2001 (Fowler 2002). This measure provoked an enormous storm in the states concerned, the countries of the Hungarian diaspora. The question was examined by international bodies, notably the Venice Commission and the Council of Europe. The Hungarian Status Law was finally adopted in significantly modified form, having served as a reminder of the passions that issues of citizenship can arouse (see Kántor, Majtenyi, Ieda, Vizi & Halász 2004).

The Hungarian Status Law provides a certain number of advantages to its beneficiaries. When in Hungary status holders enjoy the same cultural and educational benefits as Hungarian citizens, as well as subsidised travel, and some social security and health service benefits. They can work for up to three months a year in Hungary without re-

striction. The Law provides additional advantages to Hungarian teachers living abroad (not just teachers of Hungarian but those teaching in Hungarian) and subsidies to families abroad that send their children to local Hungarian schools. State subsidies are guaranteed for Hungarian-language institutions and for Hungarian community organisations abroad.

The Hungarian Status Law is not unique. Poland attempted to promulgate similar legislation but the initiative failed or stalled for bureaucratic and internal political reasons.[15] Slovenia has adopted a Resolution on the Position of Autochthonous Slovene Minorities in Neighbouring Countries and the Related Tasks of State and Other Institutions in the Republic of Slovenia (1996). This mostly concerns support for Slovene minority organisations abroad; it does not attempt to define an expatriate Slovene. Slovakia, however, has adopted a full-fledged Law on Expatriate Slovaks (1997). The beneficiaries can reside in Slovakia 'for a long period' and can be employed – apparently, for an unlimited period – without working permit and without permanent residence status. They receive assistance 'to maintain their Slovak identity,' wherever they may be. There is some alleviation of provisions governing social security contributions and elderly expatriates receive travel subsidies within Slovakia

Why did the Hungarian status law provoke a storm abroad whereas there does not appear to have been any such adverse reaction to the corresponding Slovak law? The answer seems to lie in the respective definitions of prospective beneficiaries. Significantly, and perhaps paradoxically, the Slovak law has not caused international concern because it defines its beneficiaries in ethnic terms whereas the Hungarian law is vague on ethnic requirements and precise on territorial conditions.

Slovak expatriate status may be granted to an individual without Slovak citizenship who has 'Slovak nationality or Slovak ethnic origin and Slovak cultural and language awareness.' Slovak ethnic origin is obtained if at least one ancestor 'up to the third generation had Slovak nationality.' 'Cultural and language awareness' depends on 'at least passive knowledge of the Slovak language and basic knowledge of Slovak culture or declaring himself/herself actively for the Slovak ethnic [sic].' I do not propose to ponder the ambiguities of the expression 'declaring [oneself] actively for the Slovak ethnic.' Rather, let me cite, for purposes of comparison, the definition contained in the Hungarian Status law: 'This Act shall apply to persons declaring themselves to be of Hungarian nationality, who are not Hungarian citizens and who have their residence in the Republic of Croatia, the Federal Republic of Yugoslavia, Romania, the Republic of Slovenia, the Slovak Republic or the Ukraine and who have lost their Hungarian citizenship for reasons other than voluntary renunciation' (art. 1.1). Simply declaring oneself to

be 'of Hungarian nationality,' as certified by a recognised Hungarian community organisation abroad, is sufficient to obtain the 'Certificate of Hungarian Nationality' provided for in the Status Law. Note also that by referring only to persons of Hungarian nationality rather than Hungarian ancestry or descent the Status Law might be seen as thinking in terms of a state of affairs that disappeared in 1920.

Underlying the difference in reactions provoked by the Hungarian Status Law and the (non) reaction to the Slovak Expatriate Law, is historical experience. For almost a millennium, Hungary, even when its own sovereignty was impaired, dominated the Danubian basin and outlying areas. All or parts of the countries mentioned in the Status Law belonged to the Crown of Saint Stephen. For centuries, the Hungarian nobility – the Hungarian nation in the feudal sense, as we have seen above – owned and governed these territories. After having long magyarised local elites, in the nineteenth century the Hungarian state also launched a sweeping campaign of general Magyarisation. The Slovaks have been, in contrast, a dominated nation par excellence (dominated, in fact, by Hungarians). The subjects of the Slovak Expatriate Law are, above all, Slovak emigrants in America and elsewhere. The law also concerns Slovaks in the Czech Republic – the largest minority in that state since the dissolution of Czechoslovakia – as well as the small, and much assimilated, Slovak minority in Hungary, sometimes invoked by Bratislava to counter Budapest's complaints about treatment of the Hungarian minority in Slovakia.

The overwhelming importance of history in determining reactions to the respective status and expatriate laws is confirmed by the Polish example. Although the project for a Polish Charter for Poles abroad was not adopted, Poland did promulgate a law on Repatriation of Poles (2000). I shall deal with other aspects of this law in the following section but here let me point out that although the Polish law does dwell on ethnicity, like the Slovak law, it also has a determining territorial component, like the Hungarian statute. Interestingly, however, the territorial scope of the Polish law is defined in a way to *exclude* any former Polish territories. It concerns Poles 'in the Asian part of the former Union of Soviet Socialist Republics' – that is the three Caucasian Republics, the Asian part of the Russian Federation and the Central Asian Republics (art. 9:1). The Polish Sejm (Lower House of Parliament) specifically rejected the Senate's proposed amendment that repatriation provisions be extended to Poles in all states of the former socialist bloc.[16] The Repatriation Law thus excludes Ukraine, Byelorussia and Lithuania, all of which were integrated in the pre-1795 Polish Monarchical Republic or Commonwealth (*Rzeczpospolita*) and parts of which were still included in the Polish 'Second Republic,' i.e. the interwar Polish state. Although there is a considerable number of Poles in these

countries and, at least in the case of Byelorussia, they may have not only economic but serious political reasons for seeking repatriation, Poland seems to be bending over backwards to avoid suspicion that it is thinking in terms of its imperial past or historical boundaries. In the case of Hungary, there is strong suspicion that this is precisely the thinking behind the Status Law.[17]

3 Old wrongs and new rights, or how to use citizenship to correct history

A peculiarity of the new EU states is that citizenship laws and related provisions are formulated with the intention of redressing past wrongs. The compensatory or restitutional function – *Wiedergutmachung*, in the literal sense of the term – is particularly strong with respect to the recent communist past, though it extends to earlier periods as well.

The Polish Repatriation Act mentioned above is a prime example of an attempt at such historical redress. The preamble to the Act begins by 'recognising that the duty of the Polish state is to allow the repatriation of Poles who had remained in the East [...] due to deportations, exile and other ethnically motivated forms of persecution.' Repatriates enjoy significant benefits. They acquire Polish citizenship on the day they cross the Polish border (art. 4). Their costs of resettlement are underwritten by the Polish state.

Repatriates are of 'Polish extraction [and] declaring Polish nationality.' Polish extraction is defined as having at least one parent or grandparent or two great grandparents who held Polish citizenship or who cultivated 'Polish traditions and customs' (art. 5). Polish nationality is ascertained by demonstrating 'links with Polish provenance, in particular by cultivating Polish language, traditions, and customs.' Knowledge of Polish is, obviously, an advantage but it is not a requirement to the same degree as 'traditions and customs' since the latter suffice to confirm the Polish nationality of one's forbearers. These traditions and customs remain undefined, allowing wide latitude for consular officials who, according to the law, decide whether an individual meets criteria for repatriation. One supposes that some of the most evocative traditions for the vast majority of today's Polish population would be religious; for example, celebration of Christmas in the Polish style. This might encompass non-Catholic Christian Poles and even non believers but it would exclude members of other faiths, such as observant Jews.

In spite of what one might expect from the preamble and spirit of the law, proof of deportation, forced exile or persecution are not conditions for obtaining repatriate status. The law also covers, perhaps inadvertently, those individuals (and their descendants) who emigrated will-

ingly to some of the peripheries of the Russian Empire or of the USSR; for example, as employees in Siberian development projects or in the military or civil service of the Russian or Soviet state.[18] The primary target of the law, however, are those families who were deported in 1939-1940 from Soviet-occupied Eastern Poland (even though these areas are no longer part of Poland) as well as earlier exiles and deportees; members of the Polish minority in the USSR transferred in the Stalinist era to areas far from the Polish border; Polish nationalists and revolutionaries exiled under the tsar, especially after the 1905 Revolution in the Russian Empire and the 1863 Insurrection in the Polish and Lithuanian lands, but perhaps even earlier and under other circumstances. The number of persons concerned by the Repatriation Act is insignificant: in the three years preceding the adoption of the Act fewer than 2000 people were repatriated from the East – this includes some 200 non-Polish spouses who do not benefit from a repatriation visa but who are treated like foreign spouses of Polish citizens and thus granted temporary residence permits. The symbolic significance of the Act as an affirmation that conferral of citizenship may be used to right the wrongs of history is enormous.

Although attempts to replace the communist-era Polish citizenship law (1962) bogged down in legislative paralysis, the bill proposed by the Sejm to the Senate in 2000 gives further insight into the hypothesis formulated above regarding the objective of righting historical wrongs through citizenship law.[19]

According to the proposed bill, the President may confer Polish citizenship, upon his or her own decision, on foreigners who did military service during the 1939-1945 war in the Polish Army or in Polish military formations attached to Allied forces on all fronts or who served in Polish underground formations and organisations, including those in partisan units attached to such organisations. These individuals do not need to have possessed Polish citizenship in the past (arts. 17.1.1; 17.1.2; 17.2). The bill also provides for restitution of citizenship, without presidential intervention and simply on the basis of a declaration before a consular official within a specified time period, for some individuals who left Poland between 1 September 1939 and 4 June 1989 – the latter date being identified as the beginning of the end of Communist rule. Those reinstated include individuals who, in order to leave Poland, were forced to renounce their citizenship under threat of 'repressions and chicaneries,' including arrest, loss of work or dwelling, expulsion from schools including universities (art. 28.1.1.b). The specific victims of Communist persecution covered in this provision would seem to be, above all, those students, intellectuals and others purged as 'Zionists' in 1968. Reinstatement is not granted to those who left Poland voluntarily on the basis of a declaration that they belonged to a

non-Polish ethnic group and who 'obtained the citizenship of the native country of their nationality' (art. 28.2.4.). This provision is aimed at preventing ethnic Germans or others from benefiting from the reinstatement granted to the victims of the 1968 purges. Finally, the bill offers restitution of citizenship to those who had lost it by enlisting in the Armed Forces of Great Britain, the USA or France after (!) 9 May 1945. In a sense, the bill appears to be saying that Poland – the real Poland which is now able to express itself – had not taken a stand against its wartime allies during the Cold War.

The Czech Republic, also keen to underline and correct the injustices of the communist era, adopted restitution laws. The Law on the Citizenship of Some Former Czechoslovak Citizens (1999) opens with the following, somewhat grandiose declaration:

'Parliament, in order to assuage the legacy of certain wrongs that occurred in the period 1948 to 1989, and realising that Czechs and compatriots living abroad contribute to maintaining and cultivating the national cultural heritage as well as to deepening ties of common belonging with the Czech Republic and realising that Czech emigrants developed, in exile, notable spiritual, political and cultural activity in favour of renewal of freedom and democracy in its homeland and that this activity deserves extraordinary recognition'.

In fact, however, the law benefits all individuals and their descendants who lost their Czechoslovak citizenship during this period for whatever reason, including by virtue of the prohibition on plural citizenship in Czechoslovakia or by virtue of naturalisation in a state that prohibited dual citizenship but, presumably, no longer prohibits it. Restitution of citizenship here may thus be seen as a favour or as a sort of citizenship-amnesty offered to all Czechs, whatever the circumstances of their loss of citizenship. The law did have a cut off period which expired in 2004 but there is now some question of prolonging it (Seitlová 2005: 11). With regard to the numerically significant and politically vocal Czech-American lobby, the bilateral convention dating back to 1928 between the United States and Czechoslovakia prohibiting dual citizenship had already been invalidated by a Government Decree in 1997, without reference to the 1993 Czech Citizenship Law article (art. 17) prohibiting dual citizenship in general. In practical terms the 1999 law on former Czechslovak citizens would therefore be superfluous for this important group. This law, as well as other legal dispositions, takes care to include some categories of Slovaks among its beneficiaries and dual Czech and Slovak citizenship is authorised, again as an exception to a general prohibition. One could argue, however, that such provisions are no longer prompted by considerations of historical justice but, rather, amount to housecleaning operations dealing with some of the messy aspects of the Czech-Slovak divorce.

In the case of the Baltic States, the very re-emergence of these countries is itself seen as a redress for historical injustice. Naturally, citizenship laws also serve the purpose here of correcting past iniquities and they do so largely by legally abolishing the time period during which injustice was perpetrated. The Estonian Nationality Law (1995) does not mention dates but this does not mean that it is neutral with regard to them. At the time of registration for Estonian citizenship in 1989, only those individuals had an *a priori* legal claim to citizenship who were themselves, or one of whose forbears was, an Estonian citizen on 16 June 1940, the date of the Soviet ultimatum leading to occupation. In accordance with the thesis on state continuity, in 1992 the Estonian Parliament voted to re-apply the Citizenship Act of 1938, as amended up to 16 June 1940 (Thiele 2002). The latter qualification deprived a number of resident non-Estonian nationals of eligibility for facilitated naturalisation. Like certain other countries, Estonia specifically states that it will not grant or restore citizenship to those who have acted against the interests of the state (art. 21.3). Independently of this provision, the Estonian law also denies citizenship to individuals and spouses of individuals who entered Estonia 'in conjunction with the assignment of military personnel into active service, the reserve forces or retirement' (art. 21.6). An exception is made in the law for individuals who have retired from the armed forces of a foreign state and have been married for at least five years (and are still married) to a natural born Estonian citizen. (One wonders how many such cases there may be). Apparently, historical injustices may be righted not only by conferring citizenship but also by denying it.

Latvia's Citizenship Law (1994) also identifies citizens, in the first instance, as those who were citizens on 17 June 1940 and their descendants, unless they had become citizens of another state after 4 May 1990 (art. 2.1). Naturalisation by Latvians abroad during the period of occupation is thus distinguished from naturalisation since the re-acquisition of independence. This is in accordance with the idea that since the occupation was illegal no change of a citizen's legal status could occur in that period and thus those who were citizens in 1940 continued to be citizens in 1990, whatever they had done in the meantime. The law also considers as citizens women and their descendants who lost Latvian citizenship by virtue of a law of 1919 concerning women who married foreigners. This provision too, variants of which may be found in other citizenship laws, represents the correction of a historical injustice, though one not related to communist rule. Restrictions on who can obtain Latvian citizenship are more severe in some respects than those in Estonia. Citizenship will not be granted to those whom courts have identified as propagating, after 4 May 1990, racist or totalitarian ideas, the latter comprising communist ideas, as well as those who,

after 13 January 1991, acted against the Republic of Latvia through participation in the Communist Party (CPSU [LCP]) or front organisations, including the Organisation of War and Labour Veterans. In Latvia neither retired Soviet military and police personnel, though only those who came to Latvia directly after demobilisation, nor former employees or even informants of the Soviet security services are eligible for citizenship. Unlike Estonia, military personnel who came to Latvia on active service, as well as their spouses, do not seem to be ineligible for naturalisation. Brief mention is made of persons who entered Latvia in accordance with the Mutual Assistance Pact between Latvia and the USSR of 5 October 1939, the follow-up to the Molotov-Ribbentrop Pact, but this only seems to exclude the possibility of exceptional rather than regular naturalisation (art. 13.1.3).

Lithuania adopted the most liberal policies of naturalisation among the Baltic States. All persons who had been resident for at least ten years in the Soviet Republic of Lithuania before November 1989 could opt for citizenship within two years. Nevertheless, even the most recent Lithuanian Citizenship Law (2002) begins by defining a first category of citizens resident in Lithuania who held citizenship before 15 June 1940 and their descendants.[20] The aim of historical redress comes through in an article (14.2) granting easier conditions for naturalisation to deportees or political prisoners who married Lithuanian citizens as well as to their children born in exile. Individuals married to a Lithuanian citizen and residing in Lithuania already enjoy facilitated naturalisation (art. 14.1). In this case, naturalisation is facilitated even further by shortening the period of residence from five to three years. Here too legislators cannot resist introducing historical memory into citizenship law.

4 Conclusions

In concluding an article a few years ago on plural citizenship in post-communist states, I wrote that citizenship law was in flux (Liebich 2000). In fact, over the last decade it has remained more stable than one might have thought. In the near future, however, one can perhaps cautiously predict a peculiar new pattern of interaction between the old and the new. Citizenship laws, founded on historical concerns about statehood, ethnicity and past injustices, as well as the societies that have made these laws their own, will have to confront new realities defined by mobility, immigration and social heterogeneity. One can therefore expect the 'old' and the 'new,' as categories of analysis, to continue providing a suitable template for understanding citizenship issues in East Central Europe.

Annex 1: Continuous statehood among old and new EU Member States

'OLD' EU MEMBERS	'NEW' EU MEMBERS
France (5th century)	Poland (*966*/1918)
Denmark (9th century)	Hungary (*896*/1918)
Sweden (10th century)	
Portugal (12th century)	Cyprus (1960)
	Malta (1964)
Spain (1492)	
Netherlands (1581)	Lithuania (*1920*/1991)
United Kingdom (1707)	Latvia (*1920*/1991)
	Estonia (*1920*/1991)
Greece (1830)	Slovenia (1991)
Belgium (1831)	
Italy (1861)	
Luxemburg (1867)	Czech Republic (1992)
Germany (1871)	Slovakia (*1939*/1992)
Finland (1918)	
Austria (*1919*/1945)	
Ireland (1922)	

Explanatory note: in cases of interrupted or restored statehood, years in italics indicate the first acquisition of statehood.

Annex 2: Constitutional preambles (extracts)

Czech Republic (1993) We, the citizens of the Czech Republic in Bohemia, Moravia, and Silesia, at the time of the renewal of an independent Czech state, being loyal to all good traditions of the ancient statehood of Czech Crown's Lands and the Czechoslovak State.

Estonia (1992) Unwavering in their faith and with an unswerving will to safeguard and develop a state which is established on the inextinguishable right of the Estonian people to national self-determination and which was proclaimed on February 24, 1918 [...] which shall guarantee the preservation of the Estonian nation and its culture throughout the ages, the Estonian people adopted, on the basis of art. 1 of the Constitution which entered into force in 1938, by Referendum held on June 28, 1992 the following Constitution.

Hungary (2003) In order to facilitate a peaceful political transition to a constitutional state, establish a multi-party system, parliamentary democracy and a social market economy, the Parliament of the Republic of Hungary hereby establishes the following text as the Constitution of the Republic of Hungary, until the country's new Constitution is adopted.

Latvia (1990)* The independent state of Latvia, founded on 18 November 1918, was granted international recognition in 1920 and became a member of the League of Nations in 1921. The Latvian Nation's right to self-determination was implemented in April 1920, when the people of Latvia gave their mandate to the Constituent Assembly chosen by universal, equal, direct and proportional elections. In February 1922, the Assembly adopted the Constitution of the Republic of Latvia, which is still in effect de iure.
*Declaration on the Renewal of Independence.

Lithuania (1992) The Lithuanian Nation having established the State of Lithuania many centuries ago [...] having for centuries defended its freedom and independence [...] having preserved its spirit, native language, writing, and customs.

Poland (1997) Recalling the best traditions of the First and the Second Republic [...] Obliged to bequeath to future generations all that is valuable from our over one thousand years' heritage, bound in community with our compatriots dispersed throughout the world.

Slovakia (1992) mindful of the political and cultural heritage of our forebears, and of the centuries of experience from the struggle for national existence and our own statehood, in the sense of the spiritual heritage of Cyril and Methodius and the historical legacy of the Great Moravian Empire.

Slovenia (1991) [Proceeding ...] from the historical fact that in a centuries-long struggle for national liberation we Slovenes have established our national identity and asserted our statehood.

Annex 3: Provisions on plural citizenship

Czech Republic (1992)

art. 7.1.b [citizenship by conferment (= naturalisation) for persons who] can prove that they were released from citizenship of another state, or

will by gaining citizenship of the Czech Republic lose their previous foreign citizenship, unless the persons concerned are stateless.
art. 17 Citizens of the Czech Republic shall lose citizenship of the Czech Republic instantly upon gaining at own request foreign citizenship, with the exception of cases of gaining foreign citizenship in connection with entering into marriage, or birth.

Estonia (1995)

art. 1.2 An Estonian citizen may not simultaneously be the citizen of another country.
art. 3 Any person who by birth in addition to Estonian citizenship acquires citizenship of another state must within three years after attaining the age of eighteen years renounce either Estonian citizenship or citizenship of another state.
art. 5.2 No person may be deprived of Estonian citizenship acquired by birth.

Hungary (1993)

art. 2.2 The Hungarian citizen who is simultaneously a citizen of another state – if law shall not regulate contrarily – is considered to be a Hungarian citizen in the application of Hungarian law.

Latvia (1994)

art. 9.1 The granting of Latvian citizenship to a person shall not lead to dual citizenship.
art. 9.2 If a citizen of Latvia simultaneously can be considered a citizen (subject) of a foreign country in accordance with the laws of that country, then the citizen shall be considered solely a citizen of Latvia in his or her legal relations with the Republic of Latvia.

Lithuania (2002)

art. 12.1.5. [person may be granted citizenship if ...] is a stateless person or is a citizen of a state under the laws of which he loses citizenship of the said state upon acquiring citizenship of the Republic of Lithuania and notifies in writing of his decision to renounce citizenship of another state.
art. 18.1.2 Citizenship of the Republic of Lithuania shall be lost upon acquisition of citizenship of another state.

Poland (1962)

art. 2 A person who is a Polish citizen under Polish law cannot be recognised at the same time as a citizen of another state.
art. 8.3 Granting Polish citizenship may be dependant on submitting evidence of loss of or release from foreign citizenship.

Slovakia (1993)

art. 7.2.b The following is in favour of a person requesting the grant of citizenship of the Slovak Republic [...] [if the person] can prove, that under the law of the state of which this person is a citizen, this person has lawfully renounced his or her citizenship.
art. 9.1 The citizenship of the Slovak Republic can be lost only at own request.

Slovenia (1991)

art. 2 The citizen of the Republic of Slovenia, being as well the citizen of a foreign country, is treated as a citizen of the Republic of Slovenia, while being in the territory of the Republic of Slovenia, unless otherwise stated by an international agreement.
art. 10.2 [a person can obtain citizenship] when he or she is dismissed from previous citizenship or is certain to obtain such a dismissal when obtaining the citizenship of the Republic of Slovenia.

Annex 4: Federalism and regional autonomies in old and new EU Member States

'OLD' EU MEMBERS	'NEW' EU MEMBERS
federal states	**federal states**
Austria Belgium Germany	- - -
unitary states with regional autonomies	**unitary states with regional autonomies**
Italy Spain Finland Portugal United Kingdom Denmark (France)	- - -
unitary states	**unitary states**
Luxembourg Ireland Sweden Greece Netherlands	Poland Czech Republic Slovakia Hungary Lithuania Latvia Estonia Slovenia Cyprus Malta

Notes

1 My thanks to Andrea Baršová and Piotr Koryś for their help and comments.

2 As Priit Järve put it at the 2005 Vienna workshop *Citizenship in the new Member States and Turkey*, Estonian citizenship is practically a genetic determinant, an innate trait that cannot be removed (see also Järve in this volume). Apparently, Estonia has not followed the reasoning of the Czech Constitutional Court which distinguished between 'deprivation of nationality' and 'loss of nationality' (Baršová in this volume).

3 Efforts to adopt a new law have failed in part because of the litigious issues of plural citizenship. The official Polish position is explained in the following tortured terms: 'Polish law does not recognize dual citizenship of its citizens. While Polish law does not forbid Polish citizens from becoming the citizen [sic] of a foreign state, that citizen will lose their [sic] Polish citizenship once approval has been granted by the proper Polish authorities' (Consulate General of the Republic of Poland, Los Angeles. pan.net/konsulat/law/dualct.htm; also see Górny, Grzymała-Kazłowska, Koryś & Weinar 2003). With respect to loss of Polish nationality, the 1962 law was amended in 1998 to remove the provision that 'the acquisition of a foreign citizenship automatically results in the loss of Polish citizenship' (Dziennik Ustaw [Register of Laws and Statutes] 106, 17 August 1998).

4 The proposition that ethnic Hungarians abroad should also enjoy Hungarian citizenship, without any reservations about their other citizenship status and without any residence requirement in Hungary, was only narrowly defeated in a December 2004 referendum. The issue is discussed in Kovács & Tóth (in this volume).

5 Austrian and Hungarian citizenship laws (the legal regimes were entirely separate, there was no Austro-Hungarian citizenship) did not require candidates for naturalisation to prove that they had lost their previous nationality but, as of 1870, they did require such proof for Hungarians seeking to become Austrians and vice versa (Soubbotitch 1926: 15).

6 Bauböck (2005) has suggested that claims to transnational or plural citizenship are weaker where a minority enjoys significant political autonomy, such as that obtained in a federal state.

7 The authorisation of plural citizenship applies only to those (and their descendants) still resident in Lithuania who held Lithuanian citizenship before 15 June1940 as well as persons who are of Lithuanian descent and who consider themselves Lithuanian (Lithuanian Nationality Act, art. 18.1.2). More on this in section 3 below.

8 Extension of authorised cases of plural citizenship is under discussion in the Czech Republic (Baršová 2003). I imagine that similar discussions are going on in other countries. I have not researched popular attitudes towards plural citizenship but these appear to be differentiated. In the, already complex, case of Poland, 'the negative attitude towards dual citizenship in Poland does not extend to persons whose second citizenship is other than German' (Kamusella 2003: 709).

9 I take the point that the civic-West/ethnic-East stereotype 'when true is only weakly true, and according to several measures is false' (Shulman 2002: 554). With respect to conceptions of citizenship, however, the civic/ethnic distinction seems to me a useful heuristic device in tracing a historical evolution.

10 In Poland, 11-13 per cent of the population belonged to the equestrian estate in the sixteenth century, 9-10 per cent in the eighteenth century. In France under the July Monarchy (1830-1848), 1.5 per cent of the population was enfranchised. In Britain the corresponding figure at that time (1828) was 3.2 per cent. Figures cited by Walicki (1982: 16). In Hungary, the gentry numbered 3-5 per cent of the population by the fifteenth century (Engel 1990: 43).

11 The Polish Constitution of 1791, celebrated as the first modern European constitution (it beat the French Constitution by a few months), even while abolishing its exclusive political privileges still paid homage to the 'Nobility, or the Equestrian Order' stating (art. II): 'It is in this order that we repose the defence of our liberties and the present constitution: it is to their virtue, valour, honour, and patriotism, we recommend its dignity to venerate, and its stability to defend, as the only bulwark of our liberty and existence.'

12 According to Soubbotitch (1926: 55), many (unnamed) Polish jurists argued that Poland had never ceased to exist because the partitions were in fact occupations. The

analogy with present-day Baltic positions is striking (see section 3 below). I have not found examples of such Polish arguments but their existence is confirmed, *a contrario*, through a vehement attack on such arguments by Schätzel (1921).

13 A recent reference source refers to *indigénat* as 'a second-degree nationality preserved by nationals of a federal entity' – which neither Hungary nor Austria ever was – and describes it as 'vieilli' or archaic (Salmon 2001). Even today, however, to 'be a Swiss citizen implies a cantonal *indigénat* and a communal citizenship. The three levels are inseparable. No one can be a national (*ressortissant*) of a canton without communal citizenship or Swiss without a cantonal *indigénat*' (etat.geneve.ch). The same document refers to 'nationalité (indigénat) genevoise.' In addition to a *droit de cité communal* there is also a concept in some localities of *bourgeoisie communale* that implies a co-proprietorship of communal assets.

14 The main remnants of ius soli are to be found in standard international provisions regarding children born in the territory of the state who would otherwise remain stateless. Even so, Latvia only adopted such provisions in 1998, restricting them to children born on Latvian territory after 21 August 1991, the date of the Moscow coup that might be seen as the last gasp of the USSR. It might be noted that Latvia has maintained an element of ius soli in qualifying the principle of citizenship by descent with the provision that if only one parent is a Lativan citizen the child must be born in Latvia or the responsible parent must be permanently resident in Latvia for the child to qualify as Latvian.

15 Text available at www.senat.gov.pl.

16 Radio Free Europe/Radio Liberty, 'Polish Repatriation to Focus ''Mainly'' on Compatriots from Kazakhstan', Daily Report, 9 November 2000.

17 Countering the claim that Hungary defines the scope of its Status Law in terms of its historic boundaries, one might note that the Status Law does not extend to Austria, though part of historic Hungary today lies within Austria. This exception is not sufficient to alleviate suspicions. In fact, it nourishes other grounds for resentment: the Status Law does not cover Austria because one of the tacit intentions of the Law is to minimise the effects for expatriate Hungarians of Hungary's entry into the EU. The resulting inequality of status for citizens of Romania, Ukraine etc. was one of the principal grounds for international reservations vis-à-vis the law.

18 Some such individuals would be covered by the provision that repatriation cannot be offered to anyone who 'during their stay outside the Republic of Poland acted against the vital interests of the Republic of Poland or participated or participate in human rights violations' (arts. 8.3 a and b). The law also excludes those who repatriated from Poland between 1944 and 1957 to some Soviet Republics. Presumably, however, descendants of all these individuals are still eligible for repatriation if they meet other requirements.

19 Ustawa z dnia 29 czerwca 2000 r. o obywatelstwie polskim, Tekst ustawy przekazany do Senatu zgodnie z art. 48 regulaminu Sejmu (nie zakończony proces legislacyjny) [Statute of 29 June 2000 regarding Polish citizenship, text of statute transmitteed to Senate according to article 48 of the Senate Regulation (uncompleted legislative process)]. ks.sejm.gov.pl.

20 The 2002 law qualifies this category by adding, 'providing [they] did not repatriate.' The 1991 law is clearer stating 'unless [they] repatriated from Lithuania.' I would take this to mean that only individuals in this category who continue to reside in Lithuania are covered. This would be confirmed by the following clause in both laws that declares as Lithuanians those who 'permanently resided in the present day territory of the Republic of Lithuania from 9 January 1919 to 15 June 1940' as well as their descendants and those who otherwise would be stateless.

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Part I: Restored states

Chapter 1: Estonian citizenship: Between ethnic preferences and democratic obligations

Priit Järve

The most important reform in the nationality policy of Estonia after 1945 was the restoration of the pre-1940 nationality in 1992 by reintroducing the 1938 Citizenship Act with slight changes. In 1995, Estonia adopted a new Citizenship Act which did not change the basic principles of the acquisition and loss of Estonian nationality but established more demanding requirements for the acquisition of nationality by naturalisation.

1.1 History of Estonian nationality

1.1.1 Nationality policy since 1945

The Republic of Estonia was established in 1918. In 1940, it was annexed to the Soviet Union as the Estonian Soviet Socialist Republic under threat of military force. As a result, the citizens of the Republic of Estonia were incorporated into the Soviet citizenry. Estonian nationality was replaced by Soviet nationality. Between 1941 and 1944, Estonia was occupied by Nazi Germany. In 1944, Estonia was re-conquered by the Red Army, and Soviet nationality was once again imposed upon the people on its territory. Estonian nationality ceased to exist *de facto*.[1] Instead, the Soviet passports, which were issued in Estonia after the Second World War, included a mandatory line with ethnic identification of the carrier. 'Estonian' became one of such identifications to be used in Soviet internal passports (Soviet passports for travel abroad did not mention ethnicity). In Estonia, differently from many internal regions of the USSR, all persons were issued Soviet internal passports upon reaching the age of sixteen. These passports, not valid for travel abroad, gave the holders relative freedom of travel within the Soviet Union. The authorities stamped the carrier's domicile registration (*propiska*) and marital status into the passport.

The Soviet Union sought to merge the different ethnic nations and groups living in the country into a new civic identity – the Soviet people. While the Soviet authorities claimed that such an identity was emerging, and a certain number of citizens reported that they already regarded themselves as 'Soviets', the official registration of different

ethnic identities was not discarded. Thus, Estonians had the inscription 'Estonian' in their passports until the dissolution of the Soviet Union[2], though, this inscription could not be automatically converted into Estonian nationality after independence. Since 1992, only pre-1940 nationals and their descendants, regardless of their ethnic identification, were entitled to acquire Estonian nationality by registration. Those Estonians who settled in Estonia after 1940 and their descendants (with 'Estonian' in their Soviet passports) could not acquire Estonian nationality by simple registration but had to take the path of naturalisation. At the same time, pre-1940 nationals and their descendants of non-Estonian ethnic origin (with 'Jew', 'Russian', 'Latvian', 'Pole', etc. in their Soviet passports) could acquire Estonian nationality by registration. In new Estonian passports the registration of ethnic identity was dropped.

The debate on nationality between liberal and conservative camps started in Estonia at the end of the 1980s when the national independence movement was gathering momentum. In 1989, the campaign of registering the citizens of the pre-war Republic of Estonia and their descendants was carried out by the Estonian Citizens' Committees, voluntary associations established during the *perestroika* era to sustain the idea of the legal continuity of the pre-war Estonian state. On the positive side, this campaign helped restore the awareness of the link between the individual and the state. At the same time, being led by national conservatives, it firmly introduced the exclusive approach towards Estonian nationality. The conservatives pointed at drastic changes in the ethnic composition of the population of Estonia due to a considerable influx of Russian-speaking immigrants under the Soviet regime. These settlers had pushed the share of non-Estonians in the population up from around 10 per cent in 1940 to unprecedented 38.5 per cent in 1989.

In 1992 the conservatives emerged as winners in the debate on nationality. As a result, the Citizenship Act of 1992 was based on the principle of the restitution of the pre-1940 nationality. Only those who were citizens in 1940 and their descendants (regardless of ethnicity) were granted Estonian nationality by registration, those who settled in Estonia after 1940 were offered the possibility of becoming Estonian nationals through naturalisation. As an immediate consequence of this Act the majority of non-Estonians as well as a small number of Estonians were not granted the right to participate in the national referendum on the country's new Constitution in 1992 and in the first parliamentary elections after independence later the same year. Estonia's new political leadership considered the great number of non-Estonian settlers as a threat to the nation. Under these conditions nationality became an instrument for the attainment of national homogeneity and for the political containment of Soviet era settlers. The interests of the

Estonian ethnic nation, as then understood, were given priority over full democratic participation.

In Estonia these exclusionary policies enjoyed relatively wide support as a reaction to the changes in the ethnic composition of population. A survey of public opinion, carried out in the Baltic States in 1993, showed that the principle of limiting nationality to descendants of the pre-1940 citizens was supported by 44 per cent of Estonian, 52 per cent of Latvian and twelve per cent of Lithuanian respondents (Rose & Maley 1994: 31-34). These differences among the Baltic respondents correlated very clearly with the demographics of the respective countries: the bigger the share of non-titular groups in a given state, the stronger the reluctance to let them participate in political life.

The restoration of pre-1940 nationality had profound political consequences. The exclusion of the majority of non-Estonians from the formation of state institutions and from the process of adoption of crucial legal documents, including the Constitution, enabled Estonians to entrench themselves firmly in all commanding posts of the state avoiding power-sharing with minorities. At the referendum on independence in Estonia in March 1991 there were 1,144,309 persons with the right to vote. At the referendum on the Estonian Constitution in summer 1992, after the adoption of the first Citizenship Act, the reported number of eligible voters was 689,319, or only about 60 per cent of the 1991 figure. Consequently, 454,990 adults had been disenfranchised (Semjonov 2000: 15). It was therefore not surprising that the Parliament elected in 1992 was 100 per cent Estonian.

The restoration of pre-1940 nationality caused mass statelessness of non-Estonians, which harmed the relations between different ethnic communities inside Estonia, caused tension in the relations with Russia (the absolute majority of non-citizens were Russians), and evoked criticism, usually disguised as 'recommendations', from prominent international and regional organisations such as the United Nations, the OSCE, the Council of Europe and the European Union.

Between 1992 and 2005 the share of stateless residents in the population of Estonia declined from 32 to 10.4 per cent (see Figure 1.1). However, the inability and/or the lack of motivation of older cohorts of non-citizens to master the Estonian language at the necessary level raises doubts that the problem of statelessness will be easily overcome in the near future if the conditions of naturalisation remain the same.

1.1.2 Restoration of Estonian nationality[3]

On 26 February 1992, the Supreme Council of the Republic of Estonia put the version of 16 June 1940 of the Citizenship Act of 1938 into force. The main features of this nationality regulation were the ius san-

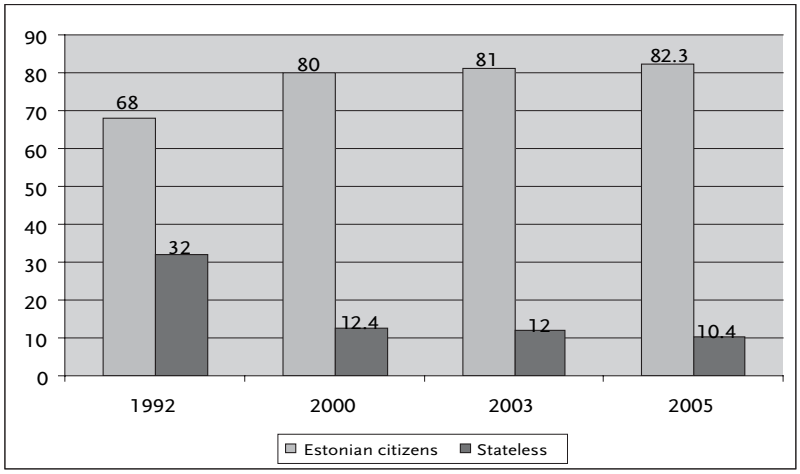

Figure 1.1: Estonian citizens and stateless persons in Estonia, 1992-1.5.2005, per cent of the whole population

Source: Estonian Ministry of the Interior and Statistical Office of Estonia

guinis principle and the avoidance of dual nationality. Pursuant to art. 3 of this Law, every person who possessed or whose parents possessed Estonian nationality before 16 June 1940 – the day of the Soviet ultimatum followed by the annexation of Estonia – had a legal claim to Estonian nationality. About 80,000 non-Estonians thereby acquired Estonian nationality.

Russians and others who came to Estonia after 16 June 1940, all in all almost one third of the entire population in 1992, were automatically excluded from Estonian nationality. In essence they were mostly immigrant workers but perceived by many as colonial settlers with no right to automatic acquisition of Estonian nationality. Their only way to acquire Estonian nationality was through naturalisation. As a precondition for naturalisation the applicant had to have his or her permanent place of residence in the Estonian territory (as proved by *propiska*) for at least two years before and one year after the day of application (residence census 'two plus one') and had to prove their knowledge of the Estonian language. The earliest date for establishing the permanent place of residence was set at 30 March 1990. The required time period was counted only from that day onwards, so that 30 March 1993 was the earliest date when one could acquire Estonian nationality by naturalisation. Thus a large part of the population, especially Russians, did not have the right to vote or the right to be elected in the parliamentary election of 20 September 1992 and were therefore excluded from political participation, giving rise to further tensions in a situation that was

already strained. These tensions were somewhat eased by the right of non-citizens to vote at the local elections after 1996.

After some changes in the 1992 Citizenship Act a new Citizenship Act was passed on 19 January 1995 and entered into force on 1 April 1995.[4] The new Act integrated all regulations on nationality and introduced some new conditions for naturalisation (residence in Estonia on the basis of a permanent residence permit issued at least five years prior to the date of written application for Estonian nationality and at least one year after the registration of the written application; and a test on the knowledge of the Estonian Constitution and the Citizenship Act).

According to the initial version of the 1995 Citizenship Act, children of stateless parents born in Estonia could not acquire Estonian nationality after birth. This was in violation of the International Covenant of Civil and Political Rights (art. 24(3)) and the Convention on the Rights of the Child (art. 7(1)), both of which Estonia had ratified. These provisions proclaim the right of the child to acquire a nationality. This controversy triggered a heated discussion. Some politicians and lawmakers saw a danger of compromising the governing principle of nationality acquisition (ius sanguinis) by adding the ius soli principle to it.

After political and academic debates, in which the role of recommendations issued by international actors should not be underestimated, an amendment to the Citizenship Act was finally adopted in December 1998, which entered into force on 12 July 1999. Pursuant to this amendment, children under the age of fifteen born on Estonian territory after 26 February 1992 can acquire the Estonian nationality on the basis of a declaration if their parents are stateless and have been legal residents of Estonia during the previous five years. This new regulation did not include children between the ages of fifteen and eighteen who are under the protection of art. 1 of the Convention on the Rights of the Child and children born before 26 February 1992. Thiele (1999) argues that this domestic regulation was not fully in line with Estonia's international obligations.

Some changes in the legislation on nationality have made the naturalisation process easier for certain groups of applicants. For example, in June 2002, the Estonian Parliament adopted amendments to the Citizenship Act, which created special conditions for acquisition of Estonian nationality through naturalisation by persons with severe or moderate disabilities (such as a visual, hearing or speech impairment). Disabled persons who have appropriate medical certificates are not obliged to pass exams on knowledge of the language or of the Estonian Constitution and the Citizenship Act. There are also other measures being taken to facilitate naturalisation such as a more generous reimbursement of the costs of language studies, or recognition of Estonian language

and Civics exams taken by students of Russian-language schools, as valid for naturalisation.

1.2 Basic principles of the most important current modes of acquisition and loss of nationality

The basic principles of Estonian nationality are stipulated in art. 8 of the Constitution as follows: every child with at least one parent who is an Estonian national shall have the right, by birth, to Estonian nationality; any person who as a minor lost his or her Estonian nationality shall have the right to have his or her nationality restored; no person may be deprived of Estonian nationality acquired by birth; no person may be deprived of Estonian nationality because of his or her beliefs. As further specified by art. 8, the conditions and procedures for the acquisition, loss and restoration of Estonian nationality shall be established by the Citizenship Act. The basic constitutional principles of nationality are reiterated in arts. 5(1), 16(1), 28(3) and 28(2) of the 1995 Citizenship Act respectively.

1.2.1 Acquisition of nationality

Acquisition of Estonian nationality is stipulated by Chapters 2 and 3 (arts. 5 through 15) of the 1995 Citizenship Act. This includes acquisition of nationality by birth, by naturalisation and for achievements of special merit. Nationality by naturalisation and for achievements of special merit shall be granted by a decision of the Estonian Government.

According to art. 5, nationality is acquired by birth if at least one of the child's parents holds Estonian nationality at the time of the child's birth. Nationality is also acquired by birth if the child is born after the death of his or her father and if the father held Estonian nationality at the time of his death. If a child of unknown parents is found in Estonia, a court can declare that the child has acquired Estonian nationality by birth upon application by the guardian of the child or a guardianship authority, unless the child is proved to be a citizen of another state. According to art. 5, nobody shall be deprived of Estonian nationality acquired by birth.

Arts. 6 through 15 establish conditions for acquisition of Estonian nationality by naturalisation and for achievements of special merit. The conditions for acquisition of nationality by naturalisation differ depending on whether a person is at least fifteen years of age, or under that age.

An alien[5] who is at least fifteen years of age and wishes to acquire Estonian nationality by naturalisation shall have stayed in Estonia on the basis of a permanent residence permit for at least five years prior to the date on which he or she submits an application for Estonian nationality and for one year from the day following the date of registration of the application. Additionally, he or she must have knowledge of the Estonian language and of the Constitution of the Republic of Estonia and the Citizenship Act. In accordance with the requirements provided for in this Act he or she must also have a permanent legal income which ensures his or her own subsistence and that of his or her dependants, be loyal to the Estonian state, and take the following oath: 'In applying for Estonian citizenship, I swear to be loyal to the constitutional order of Estonia'.

For a minor to acquire Estonian nationality by naturalisation, an application by his or her parents, or by a single or adoptive parent of Estonian nationality, accompanied by specific documents, is required. After the amendments to the Citizenship Act, which entered into force on 12 July 1999, a minor's stateless parents and stateless single or adoptive parent(s) also have the right to apply for nationality by naturalisation for a minor.

Estonian nationality can be acquired for achievements of special merit to the Estonian state, which are defined as 'achievements which contribute to the international reputation of Estonia in the areas of culture or sports or in other areas' (art. 10). Proposals for the granting of nationality for achievements of special merit may be submitted by members of the Estonian Government. The Government is required to approve the granting of citizenship for achievements of special merit. According to the amendment which entered into force in November 1995 (seven months after the Citizenship Act entered into force), Estonian nationality for achievements of special merit may be granted to not more than ten persons per year.

However, in some cases, naturalisation is ruled out. According to art. 21 of the 1995 Citizenship Act, Estonian nationality shall not be granted to or resumed by a person who:

1. submits false information upon application for Estonian nationality;
2. does not observe the constitutional order and laws of Estonia;
3. has acted against the Estonian state and its security;
4. has committed a criminal offence for which a punishment of imprisonment of more than one year was imposed and whose criminal record has not expired or who has been repeatedly punished under criminal procedure for intentionally committed criminal offences;
5. has been employed or is currently employed by foreign intelligence or security services;

6. has served as a professional member of the armed forces of a foreign state or who has been assigned to the reserve forces thereof or has retired there from, nor shall Estonian nationality be granted to or resumed by the spouse of such a person.

Thus, art. 21(6) clearly targets those non-Estonians (together with their spouses) who are not Estonian nationals by birth and who remained in Estonia after they retired from the Soviet Army.[6] However, the same art. 21 also offers them one possibility to acquire Estonian nationality. It stipulates that Estonian nationality may be resumed by, or granted to, a person who has retired from the armed forces of a foreign state if the person has been married for at least five years to a person who acquired Estonian nationality by birth and if the marriage has not been terminated by divorce.

1.2.2 Loss of nationality

Loss of Estonian nationality is foreseen for persons who have acquired the citizenship of another state, or who have provided false information in the naturalisation process. Conditions and procedures for loss of Estonian nationality are stipulated in Chapter 6 of the 1995 Citizenship Act (arts. 22 through 30). According to these stipulations, a person shall cease to be an Estonian national 1) through release from Estonian nationality; 2) through deprivation of Estonian nationality, and 3) upon acceptance of the citizenship of another state.

A person who wishes to be released from Estonian nationality shall submit an application, identification documents, a certificate which proves that he or she has acquired the citizenship of another state or will acquire the citizenship of another state in connection with his or her release from Estonian nationality, and pay the state fee.[7] According to art. 26, release from Estonian nationality may be refused to a person if: 1) the person would become stateless as a result; 2) he or she has unfulfilled obligations towards the Estonian state; 3) he or she is in active service in the Estonian Defence Forces. Decisions on release from Estonian nationality shall be taken by the Government.

According to art. 28, a person shall be deprived of Estonian nationality by an order of the Estonian Government if he or she 1) as an Estonian national, enters state public service or military service of a foreign state without permission from the Estonian Government; 2) joins the intelligence or security service of a foreign state or foreign organisation which is armed or militarily organised or which engages in military exercises; 3) forcibly attempts to change the constitutional order of Estonia; 4) upon acquisition of Estonian nationality by naturalisation or upon resumption of Estonian nationality submits false information

and thereby conceals facts which would have precluded the granting of Estonian nationality to him or her or which would have precluded him or her from resuming Estonian nationality; 5) is a citizen of another state but has not been released from Estonian nationality. This latter provision makes it possible to deprive naturalised dual citizens of their Estonian nationality if they have acquired another nationality. Since Estonian law is in principle opposed to dual nationality, such persons are obliged to apply for release from their Estonian nationality.

Art. 28(3) establishes an important difference between nationals by birth and by naturalisation. It stipulates that the reasons for deprivation of nationality listed in art. 28 do not apply to persons who acquire Estonian nationality by birth. It means that those who have acquired nationality by naturalisation are vulnerable – they can be deprived of their newly obtained nationality.

Art. 29 addresses the loss of Estonian nationality upon acceptance of citizenship of another state or renunciation of Estonian nationality. It stipulates that a person is deemed by the government agency authorised by the Estonian Government to have ceased being an Estonian citizen upon acceptance of the citizenship of another state or upon renunciation of Estonian nationality in favour of the citizenship of another state. Nevertheless, in the light of these stipulations it remains unclear what happens if an Estonian national by birth does not declare his or her wish to be released from Estonian nationality after he or she has acquired, or is going to acquire another nationality. While the 1995 Citizenship Act rules out multiple nationality (arts.2 and 3) the state has been quite tolerant in cases of the resumption of Estonian nationality by emigrants under art. 16(1) which grants everyone who loses Estonian nationality as a minor the right to resume Estonian nationality. Several such Estonians holding multiple nationalities have been members of the Estonian Government and elected to the Parliament.

1.3 Current debates on nationality

1.3.1 The focus of the debate

From the very outset of Estonian nationality policy in 1992, the approaches of Estonians and Russian-speakers to the issue of nationality have been almost diametrically opposed to each other. The approach characteristic of the Estonians draws heavily on history and underlines that the changes in the ethnic composition during the Soviet years, when the share of Estonians fell from 90 per cent to almost 60 per cent between 1940 and 1989, were dangerous for the survival of the Estonian nation. Therefore, refusal to grant nationality to Soviet era

settlers by registration was regarded by many Estonians as an adequate reaction to these changes in the population. The Estonian side also argues that in comparison with citizenship laws of other countries the Estonian requirements for nationality are quite liberal by current international standards.

The opposite approach, taken by the Russian-speaking minorities and by several international actors, maintains that history and nation do not matter as much as the Estonians think they do. Rather, one should start with the present multi-ethnic situation and think about individuals. As a characteristic example of this view, Helsinki Watch pointed out that it 'rejects the argument that all those who came to Estonia after 1940 did so illegally and therefore were never citizens. Their residency was legally established under the applicable law at the time they entered the territory of Estonia. Those who settled in Estonia after 1940 must be treated as individuals, not as instruments of state policy, however reprehensive that policy may have been' (Helsinki Watch 1993: 14).

According to the proponents of this view, stateless people are a security risk, since the interests of these individuals are not properly represented at the state level, and their behaviour can be unpredictable. The underlying implication of this argument is usually that Estonia should grant nationality more generously by further simplifying its conditions for naturalisation, especially the language requirements. Most of the ensuing debate has been about the political acceptability of such simplifications, and in most cases the Estonian legislators have rejected the proposals to that end. After more than a decade of debates, the opposition between the two approaches has somewhat softened but is still far from having disappeared. As long as there remain many tens of thousands of stateless persons, the debate will probably continue.

1.3.2 International debate

Estonia was regularly encouraged by international actors to speed up naturalisation to reduce the proportion of non-citizens in the population, especially during the country's accession to the European Union. Estonia had to discuss its nationality issues with international partners and to even make changes in its Citizenship Act to bring it into alignment with the country's international obligations and to promote naturalisation. Several international and regional organisations, foreign embassies in Estonia, and international NGOs not only participated in the debate but also provided necessary know-how and financial assistance to their Estonian interlocutors. However, under the conditions set by the 1995 Citizenship Act naturalisation slowed down for several years. In 1997 international partners persuaded the Estonian authori-

ties to launch a policy of integration for non-Estonians. A special government agency (Bureau of the Minister of Population Affairs[8]) and a specialised foundation for the integration of non-Estonians[9] were established, which started to work out and to implement integration programmes and action plans to resolve the problem of statelessness.[10]

After several years of modest yields, the numbers of naturalised citizens started to grow after Estonia joined the EU in 2004. Estonia interpreted the admission to the EU as the ultimate international approval of its nationality policies. The EU and other international actors have stopped issuing recommendations on how Estonia should develop its nationality policy. Only Russia has not dropped the problem of statelessness in Estonia from its political agenda. It remains to be seen to what degree Russia can internationalise this issue in its contacts with the EU, in the framework of the OSCE and in the Council of Europe.

In the wake of Estonia's admission to the EU, inputs from international actors have ceased to inform the domestic debate on nationality issues. Since then, this debate has been shaped more than ever before by internal incentives.

1.3.3 Domestic debate

Estonian policy on nationality has remained conservative ever since independence, without major 'home-made' debates after the Citizenship Act of 1992 was adopted. Instead, the mainstream political parties have regularly declared prior to national elections that, regardless of the election results, the Citizenship Act and the corresponding policies will not be changed.

The Estonian political elite deemed that the initial non-inclusion of Soviet era settlers into the citizenry served the interests of the survival of the Estonian ethnic nation and its culture. According to a statement by a former Estonian minister, the ultimate hope for the future of the non-Estonians was 'that a third or so will become Estonian citizens, a third may remain here with Russian citizenship, and at least a third will leave' (Lieven 1993: 377). By 2000, these hopes had only partially materialised, mainly because the formation of a persistent contingent of stateless residents had not been anticipated. The results of the population censuses of 1989 and 2000 showed that 29 per cent of non-Estonians from 1989 had become Estonian citizens by 2000 and 14 per cent had obtained Russian citizenship, while the total number of non-Estonians had decreased from 602,381 to 439,833, or by 27 per cent between the two censuses.[11] In 2000, 173,539 non-Estonians, or 39 per cent of their number in 2000, were Estonian citizens, 86,067 non-Estonians, or 20 per cent, were Russian citizens and 170,349 non-Estonians, or 39 per cent, were stateless residents (Statistical Office of Esto-

nia 2001: 13-14). By the end of 2005, the number of stateless residents had fallen to 136,533, which was 23 per cent of the number of non-Estonians in 1989 and 31 per cent of their number in 2000.[12]

In 1995 minority members won six seats of the 101 in the Estonian Parliament, for the first time since independence, as representatives of the so-called Russian parties (minority parties). They organised a separate faction which tried to initiate changes in the Citizenship Act in order to make the acquisition of nationality easier for stateless Russian-speakers. However, all those attempts were systematically aborted by firm resistance from the Estonian majority in the Parliament. As a result the minority parties were compromised in the eyes of Russian-speaking voters and during the 2002 national elections these parties were unable to surpass the 5 per cent threshold to get into the Parliament. In 2002 nine candidates of minority origin were elected to the Estonian Parliament on the lists of the so-called Estonian parties, which have started to compete among themselves for the votes of naturalised non-Estonians. As members of mainstream parties, minority MPs hope to be more successful than before in defending the interests of non-Estonians, by promoting naturalisation, minority education and the public use of minority languages.

1.3.4 Changes in public opinion

Influenced by history many Estonians came to perceive Russia and Russians as threats. Surveys of public opinion and sociological research of the early 1990s showed that Estonians tended to support the official nationality policies which sought to control the participation of Russians in Estonian politics with the help of the Citizenship Act. Approximately one fifth of Estonians thought that the official policies, including the language requirements for obtaining nationality were not harsh enough. In 2000, 46 per cent of Estonians had the opinion that Estonia would benefit if non-Estonians leave the country (Kruusvall 2001).

The majority of Russian-speakers in Estonia have considered the official policies on nationality, let alone the more radical views reflected in various media outlets, internet chat-rooms and elsewhere, as unfair and discriminatory. Nevertheless, the data from integration monitoring in 2000 showed that non-Estonians were predominantly oriented towards acquiring Estonian nationality: it was desired by 80 per cent of the family members of Estonian citizens who were without nationality, by 62 per cent of the family members of non-citizens, and by 61 per cent of the family members of Russian citizens. Estonian nationality was desired in the first place for children, but also for spouses and parents. At the same time, 12 per cent of the family members of non-citizens did not want citizenship, and 16 per cent had not made up their

minds. It might well be that a certain number of non-citizens had resigned themselves to their status and did not see any particular reason (or possibility) to change it (Hallik 2001).

While the official Estonian view on nationality has remained basically the same since 1992, the public opinion of Estonians has changed due to an increase in overall tolerance and the proliferation of related values. Most remarkably, the integration monitoring of 2005 showed that already as much as 54 per cent of Estonians agree to grant nationality to Russians born in Estonia on simplified terms. Only about one third of Estonians held this view in 2000 (37 per cent in 2002).[13] This means that the majority of Estonians no longer perceive Russians as a grave threat. It also means that tolerance of ordinary Estonians in nationality issues has overtaken official policies. These changes in public opinion may facilitate new policy initiatives to overcome the problem of statelessness.

1.4 Statistics on acquisition of nationality since 1992

Estonian statistics on acquisition of nationality date from after the 1992 Citizenship Act was adopted. The introduction of this Act granted Estonian nationality by registration to 68 per cent of the population who, or whose predecessors, were Estonian nationals before 17 June 1940. The rest of the population (32 per cent) who, or whose predecessors, were *not* Estonian nationals before that date, were bestowed the status of aliens. Over 95 per cent of those aliens were not of Estonian descent.

In 1993, after several reorganisations at governmental level, the Estonian Citizenship and Migration Board (CMB) was established.[14] The CMB is a government agency acting within the administrative area of the Ministry of Internal Affairs and its main tasks include: determining the status of persons living in Estonia either as Estonian citizens or as aliens and issuing identity documents to the residents of Estonia, as well as receiving and processing applications for acquiring and restoring Estonian nationality, as well as for exemptions from Estonian nationality, and preparing the respective material for the Government of the Republic to decide on these applications (CMB 2003: 4).

Currently, the CMB provides the most reliable statistics on nationality and naturalisation in Estonia. According to these data, between 1992 and 30 April 2005 as many as 133,555 persons have acquired Estonian nationality by naturalisation. Two special categories of applicants account for more than one third of that number. Between 1992 and 1995, a simplified fast track procedure for naturalisation without a language exam was available for those aliens (Soviet era settlers) who had

participated in the elections of the Estonian Citizens' Congress in 1990 and registered themselves as applicants for nationality already prior to March 1990 (of those persons 24,102 were naturalised), as well as for Estonians living outside Estonia, of whom 25,966 used this simplified procedure (CMB 2003: 13).

Besides those two special categories, the CMB has provided statistics on the following categories of naturalised persons:

1. those who acquired Estonian nationality on general conditions, i.e. who passed all exams, (49,104 persons between 1992 and November 2003);
2. minors under fifteen years of age (23,902 persons between 1992 and November 2003);
3. persons without active legal capacity and disabled persons (319 individuals between 2001 and November 2003);
4. persons granted nationality for achievements of special merit (702 persons between 1992 and November 2003);
5. minors under fifteen years of age whose parents are resident non-citizens (art. 13(1) of the Citizenship Act) (5,949 persons between 1999 and May 2005).

Between 1992 and December 2005, 2,728 persons have been released from Estonian nationality. Between 1992 and November 2003, the Government has refused to grant nationality to 583 applicants.[15]

The process of naturalisation has not been a homogeneous flow of applications and their approval. After the Citizenship Act of 1992, the tempo of naturalisation was much higher than in the wake of the 1995 Citizenship Act which changed the conditions of naturalisation by making the language exam more rigorous and by adding an exam on the Constitution and the Citizenship Act which also had to be taken in the Estonian language. Thus, between 1992 and 1996 as many as 87,712 persons naturalised under the conditions set by the first Citizenship Act, or 63 per cent of all persons who have naturalised between 1992 and 2005 (see Figure 1.2). In 1996, 16,740 persons passed the citizenship language exam, which followed the old rules and requirements. In 1997, only 2,099 persons passed an upgraded language exam (UNDP 1999: 42).

However, in spite of the complications related to naturalisation, such as language exams which are considered difficult by the applicants, and the growing share of non-Estonians among citizens, who are eyed with suspicion by ethnic conservatives, no political force in Estonia has proposed to stop the process. As a result, in November 2005 the overall number of naturalised persons (137,199) finally surpassed the number of stateless persons (136,533).[16]

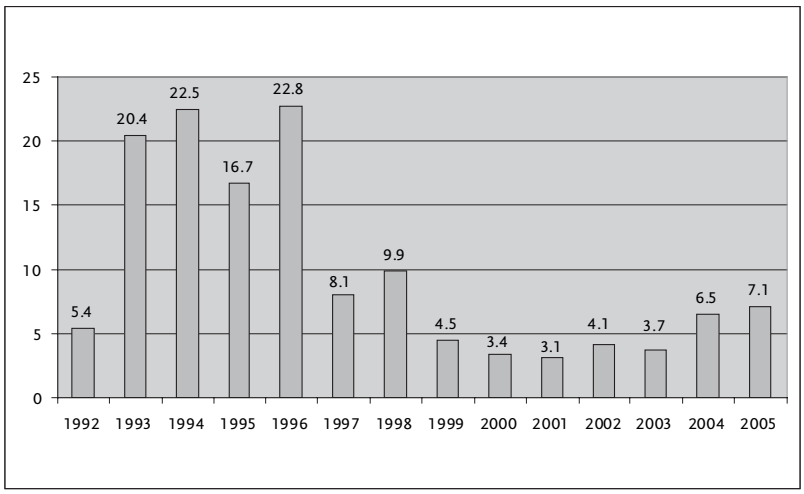

Figure 1.2: Naturalisation in Estonia, 1992-2005, persons naturalised per year in thousands
Source: Estonian Citizenship and Migration Board

1.5 Conclusions

The current naturalisation process in Estonia is a politically sensitive and cautious inclusion of non-citizens in which international 'supportive pressure' has played an important role. Naturalisation has brought new members to Estonian citizenry, made it ethnically more diverse and moved the country closer to full democratic participation. It is estimated that about 20 per cent of all Estonian nationals are non-Estonians. More than half of them have acquired nationality after 1992 through naturalisation. However, 136 thousand permanent residents of Estonia were still without a nationality at the end of 2005. This means that sustained practical efforts to promote integration and naturalisation are needed in Estonian society for years to come. Both non-Estonians and Estonians should be targeted in order to promote better mutual understanding and cultural accommodation.

Steps should also be taken in developing legal instruments and standards concerning nationality and statelessness. While Estonia has signed and ratified the majority of international instruments aimed at combating racial and ethnic discrimination,[17] it has so far failed to sign and ratify a number of international treaties dealing with issues of nationality and statelessness such as the UN Convention of the Status of Stateless Persons (1954); the UN Convention on the Nationality of Married Women (1957); the UN Convention on the Reduction of Statelessness (1961); the Convention of the International Commission of Civil

Status to Reduce the Number of Cases of Statelessness (1973); and the European Convention on Nationality (1997).

One is inclined to hope that membership in the EU and the proliferation of democratic values will motivate Estonia to sign and ratify more international treaties in the near future to help overcome statelessness and promote the political participation of minorities through citizenship.

Chronological list of citizenship-related legislation in Estonia

Date	Document	Content	Source
1992	Constitution of Estonia		www.legislationline.org
1993	Aliens Act (consolidated in 2003)	Regulates the entry of aliens into Estonia, their stay, residence and employment in Estonia and the bases for legal liability of aliens.	www.legislationline.org
1995	Citizenship Act (adopted 19 January 1995, entered info force 1 April 1995)	Replaced the Citizenship Act of 1992, did not change the basic principles of acquisition and loss of nationality but established more demanding requirements for the acquisition of nationality by naturalisation.	www.legislationline.org
1995	Citizenship Act Amendment Act of 18 October 1995 (entered into force 20 November 1995)	Established that citizenship for achievements of special merit may be granted to no more than ten persons per year.	www.legislationline.org
1995	Language Act	Established the Estonian language as the only official language of Estonia, regulates the requirements for proficiency in the Estonian language and the use of Estonian and foreign languages in Estonia.	www.coe.int
1997	Aliens Act Amendment Act	Limited the annual immigration quota and established new conditions for issuing permanent residence permit.	www.legislationline.org
1998	Citizenship Act Amendment Act of 8 December 1998 (entered into force 12 July 1999)	Provided for acquisition of citizenship for children of stateless single or adoptive parents; introduced deprivation of citizenship in case of submission of	www.legislationline.org

Date	Document	Content	Source
		false information in the process of application and loss of citizenship upon acceptance of the citizenship of another state.	
1999	Identity Documents Act	Established an identity document requirement and regulates the issue of identity documents to Estonian citizens and aliens by the Republic of Estonia.	www.legislationline.org
2000	Citizenship Act Amendment Act of 14 June 2000 (entered into force 10 July 2000)	Amended the requirements for naturalisation for a person with a severe, profound or moderate disability.	www.legislationline.org
2001	Penal Code Article 174	Established penalties for the alteration of a child's descent by substituting a child with a child of another person for personal gain, or if causing alteration of the child's citizenship.	www.legislationline.org
2001	Citizenship Act Amendment Act of 14 November 2001 (entered into force 1 February 2002)	Revised the wording of some articles as a result of changes in other civil laws.	www.legislationline.org
2002	Citizenship Act Amendment Act of 5 June 2002 (entered into force 1 July 2002)	Specified rules for the naturalisation of children whose parents are dead, missing or have restricted active legal capacity or whose parents are deprived of their parental rights.	www.legislationline.org
2002	Citizenship Act Amendment Act of 19 June 2002 (entered into force 1 August 2002)	Ruled that the Government of the Republic shall substantiate the granting of citizenship for achievements of special merit (but not the refusal to grant citizenship on these grounds); regulated the fees for the acquisition of citizenship by naturalisation, for resumption of and for release from citizenship.	www.legislationline.org
2002	Citizenship Act Amendment Act of 15	Regulated the naturalisation of persons	www.legislationline.org

Date	Document	Content	Source
	October 2002 (entered into force 10 November 2002)	with a severe, profound or moderate disability.	
2003	Citizenship Act Amendment Act of 29 January 2003 (entered into force 1 March 2003)	Regulated the procedures for acquisition of citizenship for adopted children.	www.legislationline.org
2003	Citizenship Act Amendment Act of 10 December 2003 (entered into force 1 January 2004)	Established the procedures for reimbursement of language training expenses to persons who passed the citizenship exams.	www.legislationline.org
2004	Citizenship Act Amendment Act of 11 February 2004 (entered into force 20 March 2004)	Specified residence periods required for naturalisation (five years on the basis of a permanent residence permit prior to application and six months from the day following the date of registration of the application);established time limits and obligations for the applicants and authorities in processing applications.	www.legislationline.org

Legal texts can also be found under: www.legaltext.ee
For selected pieces of secondary documentation see: www.legislationline.org

Notes

1 Although the 1977 Constitution of the Estonian SSR used the term 'citizens of the Estonian SSR', it was merely a synonym of the mandatory Soviet registration of domicile (in Russian: *propiska*).

2 In this chapter the terms 'Estonian', 'Russian', etc. designate ethnicity. The term 'non-Estonians' refers to all individuals whose ethnic origin is different from that of Estonians. The term 'Russian-speakers' stands for those non-Estonians whose mother tongue, or predominantly used language, is Russian.

3 This subsection draws on Thiele (1999: 14-16).

4 An English translation is available at: www.legislationline.org.

5 Estonian law uses the term 'alien' rather than 'foreign national' to categorise a person who is not an Estonian citizen (Aliens Act of 1993, art. 8). The category of 'aliens' also applies to stateless persons who form a large group among Estonia's non-citizens. The Estonian identification document issued to a stateless person is called an 'Alien's passport' which many stateless persons who were born in the country consider as inappropriate, if not insulting. In Estonian political discourse the stateless persons are characterised differently from the legal jargon as individuals

'who have undetermined citizenship' which gives to the whole issue a slightly more optimistic twist.

6 According to estimates, this group, which the authorities consider as a threat to the state security, includes approximately 30,000 persons (together with their family members). Their pensions and health insurance are paid by the Russian Federation. Many of them are also citizens of the Russian Federation. So far, Estonia has provided the Soviet Army retirees only with temporary residence permits to make their expulsion for security reasons possible and their application for nationality impossible. However, under the new EU regulations, which entered into force in January 2006, these persons shall enjoy the right to permanent residence permits as nationals of third states who have legally resided in an EU Member State for five years or more. Thus, they will have the right to apply for nationality as permanent residence permit holders under one article of the Citizenship Act while having no right to do so under another article of the same Act. This controversy seems to call for new regulations, or amendments to this Act.

7 At the end of 2005, the state fee for naturalisation as well as for release from Estonian nationality was 250 Estonian kroons (16 euros) while the minimum monthly salary was 3,000 Estonian kroons. The applicants do not usually consider this fee as a significant obstacle.

8 See www.rahvastikuminister.ee.

9 See www.meis.ee (Non-Estonians's Integration Foundation).

10 The state programme 'Integration in Estonian Society 2000-2007' can be accessed at www.riik.ee/saks/ikomisjon/programme.htm.

11 After 1991, depopulation became a firm trend in Estonia. The censuses of 1989 and 2000 show that while all minority groups diminished in size, only Ukrainians, Byelorussians, Tatars, Jews and Germans lost more than one third of their members. At the same time, the most numerous group – the Russians in Estonia – had decreased from 475 to 351 thousand, or only by one fourth. All in all, the absolute number of non-Estonians went down 27 per cent between the two censuses while the absolute number of Estonians diminished by only 12 per cent. As a result the share of Estonians in the whole population went up 6.4 percentage points from 61.5 to 67.9. According to the census of 2000 the total population of Estonia was 1,370,052 (in 1989: 1,565,622) (Statistical Office of Estonia 2001: 14).

12 Broadcast on Estonian TV on 28 December 2005 available at: www.itv.ee.

13 See the results of Integration Monitoring 2000, 2002, and 2005 at www.meis.ee.

14 Estonians, worried by growing immigration, already started inventing measures during the pre-Gorbachev era to bring this process under their control. Thus, in the early 1980s, the municipality of Tallinn, the capital city of Estonia, started to limit the number of workers that industrial and other enterprises were allowed to bring to Estonia, charging them considerable fees for every worker who eventually settled in Tallinn. It is interesting that the legality of these improvised methods was not challenged by Moscow, possibly because the growing interethnic tensions had already sparked public unrest among the youth in Tallinn in the autumn of 1980. However, a more systemic foundation for the immigration policy was laid in 1990, when the Supreme Council of the Estonian Soviet Socialist Republic (Estonian SSR) established the National Migration Board of the Estonian SSR, the predecessor of the CMB. This agency's task was to carry out state control of migration and issue residence and work permits. For that purpose the Supreme Council adopted the 'Immigration Law of the Estonian SSR', which entered into force on 1 July 1990. This law established the requirement that any alien who wanted to settle in Estonia must apply for a residence permit. The first permits were issued in January 1991.

15 These numbers are based on data published by the CMB in 2003 and more recent data provided by the Bureau of the Minister of Population Affairs in an e-mail on 25 May 2005 and available at: www.rahvastikuminister.ee.
16 Source: www.rahvastikuminister.ee.
17 These documents include the Convention on the Prevention and Punishment of the Crime of Genocide (entry into force in Estonia 19 January 1992), the International Convention on the Elimination of All Forms of Racial Discrimination (20 November 1991), the International Covenant on Economic, Social and Cultural Rights (21 January 1992), the International Covenant on Civil and Political Rights (21 January 1992), the Optional Protocol to the Covenant on Civil and Political Rights (21 January 1992), the Convention on the Elimination of All Forms of Discrimination against Women (20 November 1991), the Convention on the Rights of the Child (20 November 1991), the Framework Convention for the Protection of National Minorities (1 February 1998).

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Chapter 2: Checks and balances in Latvian nationality policies: National agendas and international frameworks[1]

Kristīne Krūma

Upon restoration of independence Latvia strictly followed the principle of state continuity. This has also been reflected in nationality policies which followed the *ex iniuria ius non oritur* principle. However, Latvia had to take the framework of international law that existed when independence was restored into account and to deal with a large number of Soviet-era settlers. This led to the creation of a specific category of persons in international law, namely so-called non-citizens, which has become the main issue of international debates on Latvian nationality policies.

2.1 History of nationality policy

2.1.1 Nationality policy prior to regaining independence

An important step in the process of consolidating the new statehood proclaimed on 18 November 1918 was the adoption of the Law on Citizenship in 1919. This Law was not repealed after the occupation of Latvia by the Soviet Union in 1940. At the same time, Latvian nationals became nationals of the USSR by way of automatic imposition of the latter's nationality.

There were different views regarding the status of Baltic nationals after the Second World War. In some of the lawsuits initiated by Baltic nationals concerning their nationality they were still considered Baltic nationals by courts of other states. The varying treatment of Baltic nationals by other states prevailed until 1991 when the Baltic States regained independence.

Upon the restoration of independence in 1990 the decision-makers were faced with the dilemma of the two main options available regarding nationality. Under the first option it was argued that the original state had disintegrated or disappeared and that a new state had been founded. The newly-founded state could therefore determine its nationals on the basis of its territory – a 'zero option'. As far as this option is concerned, one may add, however, that the codification efforts of the International Law Commission at the United Nations concern-

ing the nationality of persons in situations of state succession showed that awarding nationality to all residents by successor states that emerged from the dissolution of a predecessor state is by no means an automatic or established rule of international law.[2] It is a preferred solution, especially in view of the existing obligation not to create statelessness, but state practices continue to vary.

The second option emanated from the concept of state continuity, which implies the continuity of the nationality of the state in question (Thiele 1999: 12).[3] When adopting nationality legislation Latvia was guided by the principle of continuity of the state and the humanitarian principles prohibiting the imposition of the nationality of the occupying country upon nationals of the occupied country. It was argued that automatic conferral of USSR nationality on the population of the Baltic States as a consequence of their occupation in 1940 was unlawful under international law as long as the Baltic States were presumed to exist (Kalvaitis 1998: 231; Ziemele 2001: 233).[4] Therefore, Latvian nationals recovered *de facto* rights and obligations deriving from their Latvian nationality but those USSR nationals who arrived in Latvia as a result of its foreign occupation were made subject to the naturalisation procedure according to relevant legal provisions.

2.1.2 Restoration of nationality

During this period, the political institutions of the Soviet era were still in place. However, their freedom to act was significantly restricted. Since Latvia was guided by the principle of state continuity it had to restore not only nationality but also its pre-1940 institutions, including its parliament. The post-Soviet institutions acting in this period had limited capacity. Their authority was only to preserve continuity until the fifth legitimately elected Parliament would start functioning.

According to the state continuity thesis the aggregate body of Latvian nationals was re-established in accordance with the 1919 Law on Citizenship, as amended in 1927. It was considered again applicable with the adoption of the 15 October 1991 Resolution on the Renewal of the Republic of Latvia's Citizens' Rights and Fundamental Principles of Naturalisation by the Supreme Council. The presumption was that Latvian nationality had continued to exist, irrespective of the loss of independence in 1940. The Decree on the Order in which the Citizens of the Soviet Socialist Republics Lithuania, Latvia and Estonia are Granted USSR Citizenship (1940) on the basis of which Soviet nationality was imposed on Latvian nationals was declared null and void *ab initio*.

According to the Resolution the following groups of individuals were recognised as nationals: (1) those who were Latvian nationals on 17 June 1940 and their descendants, if they had lived in the country and had re-

gistered by 1 July 1992; (2) persons who were Latvian nationals on 17 June 1940 and their descendants if they did not reside in Latvia or were nationals of another state and had submitted an expatriation permit; (3) persons born and residing in Latvia if their parents were unknown.

The process of naturalisation was also made easy for persons who were living in Latvia on 17 June 1940 without the Latvian nationality. This approach was based on the premise that if Latvia had not been occupied, these persons could have acquired nationality (Ziemele 1998: 208).

It was considered that only the nationals proper, as defined by the 1919 Law, could legitimately restore the political system of Latvia and thus take part in the elections for the Fifth Parliament in 1993. Others who did not qualify for nationality could apply for naturalisation under the 1919 Law and the Resolution. Since the requirements for naturalisation were high, including *inter alia* sixteen years of residence, naturalisation based on the Resolution never occurred (Ziemele 1998: 208; Kalvaitis 1998: 255).

2.1.3 Basis for current nationality policy

During the parliamentary election campaign in 1993 nationality was the most important issue. Proposals ranged from repatriation of all Soviet time settlers to a zero option. The elected Parliament in a way represented the opinion of Latvian nationals as to how the state should proceed in this matter. Initial proposals were very strict. According to the first model adopted by the Parliament, the first applications for naturalisation would have been accepted in 2000 and then only at a rate of 0.1 per cent of the previous year's total number of nationals. This would have resulted in approximately a thousand new nationals annually. This draft was heavily criticised by the Western democracies and by international organisations. As a result the President of Latvia refused to sign the adopted law. Complex nationality issues were even the reason for postponing Latvian membership of the Council of Europe.

The new Law on Citizenship was adopted only on 22 July 1994. According to art. 2, as amended in 1995[5], nationals of Latvia are: (1) persons who were nationals on the date of occupation and their descendants, unless they had acquired the nationality of another state after Latvia proclaimed its independence on 4 May 1990; (2) Latvians and Livs[6] who permanently reside in Latvia, do not hold the nationality of another state or have received an expatriation permit; (3) women who permanently reside in Latvia and had lost their nationality according to the Law on Citizenship of 1919 as well as their descendants unless they had acquired the nationality of another state after 4 May 1990; (4) nat-

uralised persons; (5) children who are found in the territory of Latvia whose parents are unknown; (6) orphans living in an orphanage or a boarding school in Latvia; (7) children born of parents both of whom were nationals of Latvia at the time of such birth, irrespective of the place of birth of such children; (8) persons who permanently reside in Latvia and are duly registered and who have completed a full educational course in general education schools in which Latvian was the language of instruction, or in mixed language schools, if they are not nationals of another state or have received an expatriation permit. As argued by Ineta Ziemele, the latter category broadens the scope of Latvian nationals in that it includes those former USSR nationals who may have integrated into Latvian society, irrespective of their place of birth (Ziemele 2001: 235). The right of a child to acquire Latvian nationality was ensured by providing that if at least one parent is a Latvian citizen the child will acquire Latvian nationality, subject to mutual agreement by the parents.

Those who did not belong to the above mentioned groups had to naturalise according to the procedures set out by law and the regulations of the Cabinet of Ministers.[7] Although naturalisation requirements were made easier, they were still exclusionary. The law provided for gradual naturalisation, the so-called 'window-system', thus limiting the rights of individuals to freely choose the timing for naturalisation. It was provided that persons will be naturalised in stages starting in 1996 and ending in 2003 (Kalvaitis 1998: 231). After 2003 all persons would have the right to apply.[8] This approach was adopted because it was expected that considerable numbers of non-citizens would apply for Latvian nationality and civil servants would therefore be unable to ensure proper application of the law. However the number of applications turned out to be much lower than expected. The reasons for the low interest were only analysed after the law was adopted. The main reasons identified were (1) lack of knowledge of the Latvian language; (2) unwillingness to enter into obligatory military service; (3) the easier requirements for obtaining a Russian visa for non-citizens; (4) the number of rights already granted; (5) political mistrust and disappointment at not having been granted nationality automatically and (6) an identity crisis after the collapse of the USSR.

2.1.4 Recent developments of nationality policy

There were many assessments on the compliance of Latvia's laws with applicable international standards in the area of nationality. These were accompanied by numerous recommendations, in particular concerning facilitation of access to nationality for Soviet-era settlers. In view of the constant pressure of the UN Commission on Human Rights, the

Council of Europe, the OSCE High Commissioner on National Minorities and most notably the European Union,[9] Latvia amended its Citizenship Law in 1998 (Tomaševski 2000: 340). The amendments were confirmed in a referendum and became effective in November 1998.[10] These amendments abolished the 'window-system' and provided nationality for children born in Latvia after 21 August 1991 to stateless persons or non-citizens. In accordance with art. 3 of the Citizenship Law the parents of the child were required to submit an application for the acquisition of nationality before the child reached the age of fifteen.[11] In addition to these amendments, the naturalisation procedure was simplified, i.e., several groups of individuals were identified for exemption from the naturalisation process or who did not have to pass the naturalisation exams. Thus, for instance, applicants over the age of 65 were exempted from the history test.[12]

Western countries and international organisations provided considerable assistance to Latvia with the objective of overcoming the main barriers which kept the numbers of applications for nationality low. Special attention was paid to language training. About 50 different sets of learning and informational material were published and 45 projects to facilitate naturalisation were initiated, an information centre was established and a number of campaigns were organised.

Notwithstanding the latest amendments and campaigning, the numbers of non-citizens are still quite high. By June 2005 there were about 432,000 non-citizens in Latvia (in 1995 the number was 735,000). However, by the end of 2005, nationality through naturalisation had only been granted to 105,088 persons (the rest has either been repatriated or acquired Russian nationality while remaining residents of Latvia). Various attempts to speed up the naturalisation of non-citizens have had limited success. Within the last ten years the number of non-citizens has not decreased very much (Berg & van Meurs 2001: 145).[13] The reasons for the lack of interest are changing however. For instance knowledge of the language and military service are no longer mentioned in public opinion polls as important barriers to naturalisation. Moreover, there are reasons why interest is growing these days, the main reason being the enlargement of the European Union. The Naturalisation Board now foresees that naturalisation could be completed in seven years but there will remain about 130,000 persons who will choose to remain non-citizens for the rest of their lives.

2.1.5 The status of non-citizens

When Latvia regained independence in 1991 it inherited large Russian-speaking communities that had arrived there from the ex-USSR. The Soviet central authorities had encouraged large-scale immigration of

the labour force, to meet the local demands of Soviet industrialisation and ethnic politics. Consequently, the collapse of the Soviet Union affected mostly the Russian people and other Eastern Slav groups such as Byelorussians and Ukrainians (Berg & van Meurs 2001: 139). The historical minorities of Slav origin living in the Baltic States before the Soviet invasion were treated differently.

The collapse of the Soviet Union and the ensuing independence of Latvia created problems for persons who were living in Latvia but who suddenly realised that they were nationals of a state which no longer existed. Various international organisations were criticising Latvia for having too many inhabitants without nationality. This was due to the fact that former USSR nationals were not automatically granted Latvian nationality, nor did they apply for Russian nationality or the nationality of another state. Western European countries and international organisations considered that a large number of persons without any factual nationality could constitute a risk for internal stability and could provoke ethnic conflicts. They could not be extradited as settlers from an occupying state because this would be contrary to human rights law which prohibits the expulsion of aliens *en masse*. Nor could these persons be classified as stateless because that would be against the principle on the reduction of statelessness.

Under the circumstances a special status of non-citizen was introduced. Non-citizens are persons who were USSR nationals but who, after 1991, did not qualify for Latvian nationality and did not acquire Russian or any other nationality. The Former USSR Citizens Act in art. 1 states:

> 'The persons governed by this Act – ''non-citizens'' – shall be those nationals of the former USSR, and their children, who are resident in Latvia [...] and who satisfy all the following criteria:
> 1. on 1 July 1992 they were registered as being resident within the territory of Latvia, regardless of the status of their residence; or their last registered place of residence by 1 July 1992 was in the Republic of Latvia; or a court has established that before the above mentioned date they had been resident within the territory of Latvia for not less than ten years;
> 2. they do not hold Latvian nationality;
> 3. they are not and have not been nationals of any other state'

This provision recognises non-citizens as a special category whose legal status in some areas provides them with more rights and guarantees than, for example, proper permanent residents, however non-citizens are not yet nationals of Latvia.

Special rights given to non-citizens of Latvia can be summarised as follows. Non-citizens are given a special passport. The passport not

only grants a special status of belonging to the state and thus allowing the constitutional right of return but has even been recognised by some countries as sufficient for a visa-free entry into their country (for instance Denmark). In accordance with art. 2 of the Former USSR Citizens Act, non-citizens of Latvia cannot be deported, which is not the case with third-country nationals. When ratifying international conventions Latvia as a rule submits a declaration requesting the equal treatment of citizens and non-citizens. For instance, upon ratification of the European Convention on Extradition and its Protocols in 1997 Latvia stated that it shall apply to both citizens and non-citizens. Non-citizens enjoy human rights granted to nationals and this has been submitted by Latvia and accepted by a number of international treaty monitoring bodies. Moreover, in accordance with art. 2 of the Law on Diplomatic and Consular Service, they enjoy diplomatic protection of Latvia.

Latvia does not allow non-citizens the right to be elected at national and municipal levels or to hold public office. Moreover, non-citizens in Latvia are restricted from practising certain professions like those of: judge, court bailiff, notary, prosecutor, policeman, state security officer, land surveyor, fireman, national guard, captain of a crew, private detective, attorney, or employee in diplomatic and consular service. There are also restrictions on possessing land, social rights and repatriation. Although, unlike immigrants in the EU, non-citizens are not nationals of any other state, they are treated as long-term resident third-country nationals in the EU framework in accordance with the provisions of Directive 2003/109/EC and are granted visa-free travel in accordance with Regulation 539/2001.[14] This approach has been criticised by experts[15] and raises questions about the extent that Latvia can live up to its international human rights obligations, i.e., especially those that fall under the International Covenant on Civil and Political Rights.

Up to now there have been several attempts to classify non-citizens under a heading recognised by international law.[16] Moreover, Latvia is still under international pressure to end discrimination in its nationality policies.[17] Latvian courts have recently given an authoritative interpretation of the status of non-citizens, the most important of which is the recent ruling of the Constitutional Court.[18]

The Constitutional Court had to review the amendments made to the Former USSR Citizens Act which provided for the revocation of the status of non-citizen for persons who acquired the status of permanent residence in another country after 1 June 2004. Until these amendments the status could only be renounced on condition that a nationality had been acquired. The Court regarded the amendments as unconstitutional. It started analysing the adoption of the Former USSR Citizens Act in historical and political context and concluded that the opinion that Latvia had a duty to grant nationality automatically to

those individuals and their descendants who have never been Latvian nationals and arrived during occupation is unfounded (para. 13). The Court acknowledged that the introduction of the status of non-citizen was a complicated political compromise as a result of which a category unknown in international law has been created. The Court has noted that Latvia has consistently defended its position that non-citizens cannot be qualified as stateless persons and this view has been accepted by the international monitoring bodies (Ziemele & Kruma 2003).[19] In its judgment (para. 17) the Court defined the status of non-citizen in the following way:

'The status of non-citizens is not and cannot be considered as a mode of Latvian nationality. However, the rights given to non-citizens and the international obligations which Latvia has undertaken in relation to these persons, signify that the legal link of non-citizens to Latvia is recognised to a certain extent and based on it mutual obligations and rights have emerged. This is derived from art. 98 of the Constitution which *inter alia* states that anyone who possesses a Latvian passport has a right to protection by the state and the right to freely return to Latvia.'

The court therefore confirmed that non-citizens have a special link with Latvia which entails mutual rights and obligations. Those are, however, different from the ones of nationals. It can be argued that non-citizens possess 'functional Latvian nationality', i.e., they have many of the rights of nationals except for political rights and the right to hold certain positions but they cannot be defined as nationals.

Latvia has adopted a so called 'carrot-stick' policy towards non-citizens, i.e., if they want to enjoy the rights of EU nationals, then they have to become nationals of a Member State. The current problem lies in the fact that the number of non-citizens is considerable and it is not decreasing fast enough.

2.2 Basic principles for the acquisition and loss of nationality

2.2.1 Acquisition of nationality

General principles

According to the Citizenship Law of 1994 Latvian nationality is acquired on the basis of the ius sanguinis principle. Moreover, Latvian nationality legislation maintains the continuity of Latvian nationality, as identified in 1919. This is evident in the 1991 Resolution which refers to the restoration of the rights of Latvian nationals and not to a restoration of the institution of 'nationality', which is presumed to exist.

In addition to the ius sanguinis principle, there are groups of individuals which are granted nationality almost automatically.[20] Firstly, cer-

tain ethnic groups: Latvians and Livs are nationals if they live permanently in Latvia and hold no other nationality. However, if they immigrate from other countries they will be subject to a simplified naturalisation procedure. Secondly, persons who completed education in schools with Latvian as a language of instruction. Thirdly, women who lost their nationality in accordance with the archaic rule on revocation of nationality upon marriage with a person of another nationality. Fourthly, children, whose parents are unknown, and orphans.

Lastly, children born after 21 August 1991 to persons who are stateless or non-citizens. In order to apply for nationality in the case of statelessness a child should be (1) a permanent resident; (2) stateless or a non-citizen 'for the entire time' of its life prior to application; (3) fluent in Latvian which is verified by a document from an educational establishment or by the Commission of the Naturalisation Board; (4) over the age of fifteen. The applicant also should not have a criminal record of more than five years of imprisonment. Until the child reaches the age of fifteen the application can be submitted by both parents jointly or separately, or by the adoptive parents of a child, if they are stateless persons or non-citizens and have resided in Latvia for at least five years. It shall be noted that a certificate of language proficiency shall be submitted only by those minors who have not been registered by their parents until the age of fifteen. Moreover, after they have reached the age of eighteen general naturalisation requirements apply.

Art. 13 provides for the admission to nationality for special meritorious service beneficial to Latvia. A decision must be passed by Parliament on each individual case. A person cannot acquire dual nationality by the application of art. 13, and the restrictions of art. 11 are applicable (see below).

Dual nationality

Dual nationality is, in principle, not permitted in Latvia. The 1994 Citizenship Law does not, however, exclude this possibility if the person has registered his or her Latvian nationality. This means that Latvia will not create dual nationality, while acknowledging that other states may do so.

The Citizenship Law is indeed ambiguous in relation to dual nationality. Art. 9 provides that a person who acquires Latvian nationality cannot be a dual national. Para. 2 of the same article states that in case a person is considered to be a national of another state, in his or her relations with Latvia the person is considered only to be a citizen of Latvia. Art. 24 provides the possibility to revoke nationality by court decision if a person has acquired the nationality of another state without renunciation of his or her Latvian nationality. The possibility to hold dual Latvian nationality and that of another state is set out in the Tran-

sition Regulations of the Citizenship Law. They provided that those Latvian nationals who, during the period from 17 June 1940 until 4 May 1990, left Latvia as refugees or were deported and their descendants could register as Latvian nationals until 1 July 1995. This provision is gender neutral meaning that descendants of either parent could register. However, it does not mention that they have to renounce their current nationality.

Currently there are 30,793 dual nationals most of whom (12,473) are also nationals of the USA.

Naturalisation

Individuals who have registered with the Residents' Register are considered to reside lawfully in Latvia and are entitled to acquire nationality through naturalisation if they have received a permanent residence permit. The naturalisation requirements are the following: (1) permanent residence in Latvia for five years counting from 4 May 1990[21]; (2) knowledge of the Latvian language, the Constitution[22], the anthem and the history of Latvia; (3) a loyalty oath to the Republic of Latvia; and (4) legal source of income (art. 12).

The Law provides for a special procedure of naturalisation in cases where applicants have been nationals of Lithuania, Estonia or Poland before the USSR intervention and have lived in Latvia for at least five years. These rules also include their descendants (art. 14).[23] The special procedure also applies to persons married to Latvian citizens for not less than ten years, who have been residing in Latvia for at least five years, even if the spouse has passed away (art. 14). A special procedure provides that these applications are considered expediently.

Upon application, a person shall declare that he or she does not hold any other nationality and that none of the restrictions apply as specified in art. 11 of the Citizenship Law.

Article 11 establishes restrictions for naturalisation, if a person:

- has acted against the independence of Latvia and its powers which has been established by the courts;
- propagated totalitarian ideals or ethnic or racial hatred which has been established by the courts;
- served in the institutions of another state, including the armed forces;
- served in the USSR army and was called-up from outside Latvia;
- has been employed by the KGB, the security or intelligence or a similar service of another state;
- has been sentenced in Latvia or another state for a crime, which is a crime in Latvia;
- has, after 13 January 1991, worked against Latvia in several organisations.[24]

This Article seems to follow a rather exclusionary approach. For instance, if a person has been convicted for any crime (even if imprisonment was only for a year) he or she can never apply for Latvian nationality. Also the restrictions in relation to the affiliation with the KGB could be challenged as to their legitimacy and proportionality since there are nationals who had the affiliation but who were nationals or acquired nationality by registration.[25]

Children up to the age of sixteen acquire nationality together with the naturalised parent without undergoing the naturalisation process as set out in art. 12. This is also the case if the parents have not reached an agreement but the child permanently resides in Latvia or in cases of adoption. Nationality is granted to a minor from fourteen to eighteen years of age only with his or her written consent (art. 16). If a minor's nationality has changed and his or her consent has not been obtained, he or she can, within a year of coming of age, renew Latvian nationality irrespective of the period of residence in Latvia (art. 16, para. 2). If the nationality of a child has changed as a result of the marriage of (one of) its parents, the naturalisation procedure will not be applicable if the child wishes to renew his or her Latvian nationality.

In accordance with art. 4 of the Citizenship Law all Latvian nationals are equal irrespective of the way nationality has been acquired. This is a constitutional principle confirmed by the Constitution in art. 91 stating that all are equal before the law and human rights shall be respected without any discrimination.

The Naturalisation Board working under the auspices of the Ministry of Justice is responsible for the examination of applications for naturalisation. During the naturalisation procedure the Board co-operates with other institutions with the aim to verify the information submitted by the applicants. Its decisions are subject to appeal in court.[26] During court proceedings the naturalisation process is suspended until the decision of a final instance or until the case is dropped. The procedure of naturalisation is set out in detail in a number of regulations of the Cabinet of Ministers. The Regulations on the Procedure of Acceptance and Review of Naturalisation Applications include application forms and specify the procedure for submission of applications and the documents to be submitted.[27] Naturalisation takes place in regional units of the Naturalisation Board. In 2004, the procedure for submitting documents was liberalised and the requirement that documents must be submitted in the regional unit of the registered place of residence of the applicant was lifted. The naturalisation procedure is relatively easy and takes no more than up to six months from the date of application. Also the fee for naturalisation has been lowered several times. Since 2003 it has been set at 20 Lats (approx. 30 euros) and at 3

Lats (4 euros) for certain groups of applicants.[28] Persons may withdraw their applications at any stage of the naturalisation procedure.

The requirements for the examinations are set out in the Regulations on the Examination of Proficiency in the Latvian Language and the Examination of Knowledge of the Basic Principles of the Constitution, the Text of the National Anthem and the History of Latvia for Persons Who Wish to Acquire the Citizenship of Latvia through Naturalisation. The regulations provide that knowledge of the language, of the Constitution, the anthem and history shall be tested by an examination commission established by the Naturalisation Board.[29] Persons exempt from the tests are those who: (1) have acquired primary, secondary or higher education in educational institutions with Latvian as the language of instruction, (2) have disabilities. Persons over the age of 65 shall be subject to the Latvian language test only.[30]

According to sect. 4, the employees of the Naturalisation Board, the members of the Standing Committee on the Implementation of the Citizenship Law, of the Parliament as well as representatives from other organisations and institutions, shall be allowed to be present in the examinations as observers if they have received permission from the head of the Naturalisation Board. The examination of language proficiency takes place within two months from the day when all the necessary documents have been submitted, and the examination of the other topics two months after passing of the language exam (sect. 6). If the applicant does not attend or fails the exam he or she can retake the exam after three months in the case of the language exam and after one month in the case of the so-called knowledge exam (sect. 9).

The language proficiency exam has a written and an oral part (sect. 11). According to sect. 22, the examination commission shall assess the applicant's ability to read, write, listen and understand talks on topics of everyday life. Applicants above the age of 65 only take the oral language test (sect. 21).

Language proficiency has often been mentioned as the main obstacle for naturalisation. Therefore, in 1996, the State Programme for Latvian Language Learning was initiated. In the framework of the programme a number of language courses and information campaigns on naturalisation were conducted by the Naturalisation Board with financial assistance from various international organisations and Western countries. The success rate was high: in 1998 only 2 per cent of the applicants did not pass the exam the first time, while in 2002, when the number of applicants increased significantly, 15 per cent had to repeat their exam (Brands-Kehre & Puce 2005: 23).

The knowledge exam may be taken orally or in writing, based on the applicant's choice (sect. 23). The success-rate is high, too. In 1998 only 0.4 per cent failed the test at the first attempt. In 2003 and 2004 the

figure rose to 3 and 4 per cent respectively. The relative increase of failed first attempts can be explained by the overall rise of applications from 5,608 in 1998 to 21,297 in 2004.

2.2.2 Loss of nationality

Latvian nationality is lost in cases of renunciation or revocation. According to art. 23, renunciation can take place if a person has been guaranteed the nationality of another state except if he or she has unfulfilled obligations towards the state or has not fulfilled mandatory military service. The clause on the fulfilment of obligations towards the state is unclear, i.e., whether it involves fiscal or other obligations. Such a broad formulation may make it possible to arbitrarily deny the right to change nationality (Ziemele 1998: 248). Moreover, since 2004 Latvia has a professional army and mandatory military service has been abolished.

Art. 24 provides for three cases when nationality can be revoked by a decision of a regional court, namely, if a person (1) has acquired the nationality of another state without renouncing Latvian nationality; (2) continues to serve in foreign armed forces or similar institutions without permission from the Cabinet of Ministers; or (3) has acquired nationality by fraud. The provision applies equally to all nationals, except for those who hold dual nationality and are thus exempted from the application of art. 24 (Ziemele 1998: 247). Family members are also not affected by such proceedings. These grounds comply with those identified in the Convention on the Reduction of Statelessness. If a person continues to reside permanently in Latvia for five years then this revocation does not affect future naturalisation (art. 25, para. 2).

2.3 Current political debates

The nationality issue still appears in public debate and is mainly referred to by left wing parties who traditionally represent the Russian-speaking electorate. Most noticeably it is raised in context with other ethnically sensitive laws, for instance, the Education Law or the ratification of the Council of Europe's Framework Convention for the Protection of National Minorities.

Right wing parties have recently reopened the nationality debate. It was planned that during the autumn session of 2005 the Parliament would consider amendments in the Citizenship Law. The aim of the amendments was to re-formulate with greater precision the cases where nationality cannot be granted to persons who acted against the

state as well as to ease the process of granting nationality to several groups of children.

According to the head of the Naturalisation Board, Eizenija Aldermane, the Citizenship Law, last amended in 1998, currently needs certain amendments of a technical nature. She mentioned as an example the case where it is unclear what nationality shall be given to a child if one of the parents is a non-citizen and the other is a foreigner. The same applies in relation to the so called 'forgotten' children, i.e. children whose parents naturalise but forget to apply for the naturalisation of their children.

The most important amendments are expected in relation to art. 11 which provides for restrictions in granting nationality. According to Aldermane 'the situation has changed; the world faces international terrorism and other security concerns which shall be reflected in the Law. Moreover, current reading of the Law provides that nationality is not granted to a person who was an employee of the KGB or other foreign security service. This formulation does not cover persons who are still employed by these institutions'.[31]

In 2005 the Minister for Integration, Ainars Latkovskis, considered that a more general formulation should be included allowing nationality to be withheld from persons acting against the state and state security. He mentioned as examples the nationality laws of Estonia, Russia and other states. In this context the case of Mr. Petropavlovskis shall be mentioned. Mr. Petropavlovskis is a non-citizen and a member of a radical group called 'Headquarters for the Protection of Russian Schools' which amongst other things organises various kinds of protests against an education reform that provides that in secondary schools, which are financed by the state, 60 per cent of the subjects shall be taught in Latvian. He joined one of the radical left parties and was willing to be a candidate for local government elections after naturalisation. In the meantime, he publicly campaigned for violence, bloodshed, terrorism and threatened to act after naturalisation. However, the Cabinet of Ministers refused his application for nationality on 16 November 2004 based on the argument that he is not loyal to the state, a decision which was challenged by Mr. Petropavlovskis.[32] This is the first case of the Cabinet of Ministers refusing to grant nationality to a person who has complied with all other requirements of the Citizenship Law. According to art. 17, the Cabinet of Ministers decides on whether nationality is granted or not. Para. 3 of the same article states that a negative decision by the Naturalisation Board is subject to appeal in court.[33] The Administrative Court of the first instance has agreed with the position of the Government because the law does not explicitly state that decisions of the Government can be appealed.[34] Moreover, in the view of the court, compliance with the requirements of the Citizenship Law

does not establish a subjective right to Latvian nationality. The court agreed with the Government that this reading of the Law does not contradict the obligations of Latvia as a signatory state of the European Convention of Nationality. The main reason for this is that the current procedure of naturalisation was established in 1997 while Latvia signed the Convention only in 2001. The case was appealed unsuccessfully. Public statements by Mr. Petropavlovskis imply that he intends to appeal to international instances.

The discussions on amendments to the Citizenship Law have been stopped. The Cabinet of Ministers agreed that the pre-election campaign for the next parliamentary elections, which will take place in autumn 2006, is not the right time for discussing amendments of politically sensitive laws.

2.4 Statistics

2.4.1 Status and ethnic composition of Latvian inhabitants

The following tables on status and ethnic composition of Latvian inhabitants illustrates both Latvian national sentiments from the 1930s when they were a considerable majority and the current situation where Latvia is still hosting large numbers of non-citizens.

As evident from Table 2.1, the ethnic composition of Latvia's residents changed considerably during the occupation.

Table 2.2 shows that notwithstanding various efforts to liberalise naturalisation requirements, the numbers of non-citizens have not decreased significantly since the beginning of the 1990s.

Table 2.1: Changes in ethnic composition of Latvia's population

	1935	*1995*	*2005*
Latvians	75.5%	55.1%	58.9%
Non-Latvians	24.5%	44.8%	41.1%

Source: Ziemele 2001: 236, and Naturalisation Board, www.np.gov.lv

Table 2.2: Citizens and non-citizens of Latvia

	1993	*2005*
Nationals	1,715,930 (71.8%)	1,826,804 (79.6%)
Non-citizens and foreign nationals	673,398 (28.2%)	469,458 (20.4%)
Total	2,389,328	2,296,062

Source: Ziemele 2005: 156, 365, Naturalisation Board, www.np.gov.lv, and Register of Residents of the Department of Citizenship and Migration, www.pmlp.gov.lv

Table 2.3: Residents of Latvia on 1 July 2005 (by ethnic origin)[1]

	Nationals	*Non-citizens*	*Aliens, stateless*	*Total*	*%*
Latvians	1,349,539	2,120	1,033	1,352,692	58.9%
Lithuanians	17,655	12,263	1,571	31,489	1.4%
Estonians	1,522	658	349	2,529	0.1%
Byelorussians	28,551	56,829	2,024	87,404	3.8%
Russians	346,746	288,207	21,084	656,037	28.6%
Ukrainians	13,812	40,952	3,813	58,577	2.6%
Poles	40,642	14,885	556	56,083	2.4%
Others	28,337	16,955	5,959	51,251	2.2%
Total	1,826,804	432,869	36,389	2,296,062	100%

Source: Naturalisation Board, www.np.gov.lv, and Register of Residents of the the Department of Citizenship and Migration, www.pmlp.gov.lv

Table 2.3 illustrates that it was mainly residents of Russian or Eastern Slav origin who became stateless or non-citizens after the restoration of independence in 1990. The situation has not changed since then and the naturalisation process is generally slow.

2.4.2 Acquisition of nationality by children

The discussions before the 1998 referendum on the possibility of granting nationality to children of non-citizens and stateless persons were heated and there were arguments that large numbers of children would acquire nationality without being sufficiently integrated. Currently available statistics tell the opposite.

Table 2.4: Children of non-citizens and stateless persons born after 21 August 1991 who were granted Latvian nationality

Ethnic origin	*Number*
Lithuanian	78
Estonian	5
Russian	2,917
Polish	164
Byelorussians	265
Ukrainian	260
Not indicated	48
Other	210

Source: Naturalisation Board, www.np.gov.lv

Altogether 3,706 children have benefited from the amendments to the Citizenship Law in 1998 of which 2,917 are of Russian origin. This figure is unsatisfactory considering that there are altogether about 20,000 children who have the right to acquire nationality according to

the provisions of the Citizenship Law. In 2004, the Minister for Integration, together with the Minister for Children and Family Affairs, conducted an information campaign sending information to the parents of these children. As a result there was an increase in the number of applications (Brands-Kehre & Puce 2005: 24).[35] Experts have suggested replacing the current system with the automatic registration of children born to parents who are stateless or non-citizens as nationals.

2.4.3 Naturalisation

Naturalised persons per year

As argued above, naturalisation rates remain low but with positive tendencies. The respective statistics allow some general conclusions to be drawn on the motivation of the potential applicants for nationality to start on the naturalisation process.

Table 2.5: Numbers of naturalisations in Latvia per year

Year	*Persons applying for naturalisation*	*Naturalised persons*
1995	4,543	984
1996	2,627	3,016
1997	3,075	2,992
1998	5,608	4,439
1999	15,183	12,427
2000	10,692	14,900
2001	8,672	10,637
2002	8,370	9,844
2003	11,268	10,049
2004	21,297	16,064
2005	19,807	19,736
Total	111 142	105 088

Source: Naturalisation Board, www.np.gov.lv

The biggest wave of naturalisation started after the window-system was abolished. In 1998, only 4,439 persons were naturalised; the number rose to 12,427 persons in 1999. This increase might also be due to a number of campaigns for naturalisation taking place at the time.

The second wave of naturalisations started after it became clear that Latvia would become a member of the European Union. From 2003 to 2004 the number of naturalisations rose from 10,049 to 16,064. In 2005, 19,736 persons were naturalised and the high rate of naturalisation remains steady.

Notwithstanding the growing figures, the data are still not satisfying when the overall number of non-citizens is taken into account. The main reason for the high number of non-citizens mentioned by the

authors of the report 'Democracy Audit' is the lack of motivation of non-citizens to naturalise. Firstly, non-citizens consider that they automatically deserve nationality. Secondly, there are certain benefits in retaining the status of non-citizen, mainly easier travel requirements to the CIS countries. Thirdly, there is fear of the naturalisation exams. The last reason to be mentioned is the fee to be paid which, although lowered, is still relatively high for many people living in Latvia.

Ethnic origin of applicants for naturalisation

The ethnic origin of applicants for naturalisation is indicative of the fact that Latvia is still dealing with its post-occupation legacies. The migration rates are insignificant and applicants for naturalisation are Soviet-era settlers.

Table 2.6: Ethnic origin of applicants for naturalisation in Latvia

Latvians, Livs	69
Lithuanians, Estonians	3,844
Russian	64,831
Polish	4,069
Byelorussian	9,876
Ukrainian	8,448
Not indicated	57
Other	4,061

Source: Naturalisation Board, www.np.gov.lv

During the Soviet-era large numbers of 'blue-collar socio-economic' profile immigrants were sent to Latvia. At that time the Soviet central government put emphasis on the promotion of economic industrialisation. Latvia has suffered under this policy because (1) Latvia hosted the headquarters of the Soviet army for the Baltic region and (2) the Latvian political elite was most sympathetic compared to other Baltic states.

Age of applicants for naturalisation

Most applicants are to be found in the age groups of eighteen to 30 and 31-40. These statistics exemplify that if the 'window system' had been maintained the numbers would be different because the age groups starting at 41 represent a considerable proportion of those who applied for naturalisation.

Table 2.7: Age of applicants for naturalisation in Latvia (1 February 1995 – 31 December 2005)

Age of applicants	*Number*	*Percentage %*
15-17	8,822	8.3
18-30	32,256	30.3
31-40	21,856	20.5
41-50	22,529	21.1
51-60	13,555	12.7
61 and older	7,564	7.1

Source: Naturalisation Board, www.np.gov.lv

Nationality granted for special meritorious service for the benefit of Latvia
With regard to granting of nationality for special meritorious service two periods can be distinguished. From 1995 to 1998 there were 199 cases of naturalisation due to special services, whereas the number dropped to only twelve since 1999.

This decline is explained by changes in the Citizenship Law in 1998 when the so-called 'window-system' was dropped. Therefore those who want to become nationals can apply for naturalisation and they do not have to rely on the special procedure for the extension of nationality by Parliament. This procedure most often is used for sportsmen.

2.5 Conclusions

Latvian nationality policy is based on the concept of state continuity. The rights attached to nationality were therefore restored to those who were nationals at the time of the occupation of Latvia in 1940 and their descendants. This policy led to the situation that a large group of people who settled in Latvia during occupation remained stateless. Being under international pressure to comply with the international legal framework, especially regarding the reduction of statelessness, Latvia introduced the status of non-citizen. A so called carrot-and-stick policy has been adopted with regards to this group. Non-citizens are denied political rights and the right to hold certain posts or to be employed in certain professions. In order to enjoy these rights they have to naturalise.

Taking into account that nationality is a politically sensitive topic in Latvia it is doubtful that radical changes will occur in the near future. The difficult compromise made in 1998 is satisfactory for the ruling centre-right wing parties. However, the question of the fate of non-citizens in the framework of EU law remains unsettled.

Chronological list of citizenship-related legislation in Latvia

Date	Document	Content	Source
1919	Law on Citizenship (amended in 1927)	Defined the basic principles of acquisition and loss of nationality during the interwar period.	
1922	Constitution of the Republic of Latvia (adopted 15 February 1922 with latest amendments on 15 December 2005)	The Constitution was restored after restoration of independence.	www.ttc.lv
1940	Decree on the Order in which the Citizens of the Soviet Socialist Republics Lithuania, Latvia and Estonia are Granted USSR Citizenship	Imposed Soviet nationality on the nationals of three Baltic States automatically.	
1990	Declaration on the Renewal of Independence of the Republic of Latvia (4 May 1990)	Restored the authority of the 1922 Constitution and suspended it immediately except for a few provisions which could only be suspended by a referendum.	www.oefre.unibe.ch
1991	Resolution on the Renewal of the Republic of Latvia's Citizens' Rights and Fundamental Principles of Naturalisation	Aimed at reconstituting the body of nationals who could elect a legitimate Parliament and was based on the 1919 Law.	
1994	Law on Citizenship	The first version provided a 'window system' limiting the right to naturalise on the basis of age.	www.coe.int or www.ttc.lv
1995	Amendments of Citizenship Law	Provided for right to citizenship for Latvians and Livs who have registered domicile in Latvia, persons who have acquired education in Latvian as well as women who lost their citizenship by marriage in accordance with the 1919 Law.	
1995	Law on the Status of Former USSR Citizens Who Are Not Citizens of Latvia or Any Other State (amended in 1997, 1998, and 2000)	Introduced the status of non-citizen.	www.humanrights.lv
1997	Amendments of Citizenship Law	Only technical amendments.	

Date	Document	Content	Source
1998	Amendments of Citizenship Law	The 'window-system' was repealed and access to Latvian nationality for children of non-citizens and the stateless was liberalised.	
1999	Regulations No. 32 on the Procedure for the Acceptance and Review of the Application on the Recognition of a Child as a Citizen of Latvia	Specified the procedure and documents to be submitted to the Naturalisation Board with an application for the recognition of a child as a citizen.	www.legislationline.org
1999	Regulations No. 33 on the Examination of Proficiency in the Latvian Language and the Examination of Knowledge of the Basic Principles of the Constitution, the Text of the National Anthem and the History of Latvia for Persons Who Wish to Acquire the Citizenship of Latvia through Naturalisation (with amendments 2000, 2001, 2003, 2004, 2006)	Provided for the procedure to be followed during examinations, identified the persons to be exempted from tests, and specified the competencies and obligations of the examination commissions.	www.np.gov.lv
1999	Regulations No. 34 on the Procedure for the Acceptance and Review of Naturalisation Applications (with amendments 2000, 2001, 2003, 2004, 2005, 2006)	Established the procedure and documents to be submitted for naturalisation. The many amendments which followed were necessary in order to bring the Regulations in line with other laws adopted in the meantime, such as the Immigration Law, the Law on the Declaration of Residence, the Law on Personal Identity Documents, the Administrative Procedure Law etc.	www.legislationline.org
1999	Law on the Status of Stateless Persons in the Republic of Latvia	Non-citizens are not subject to this law.	www.ttc.lv
2000	Regulations No. 410 on the State Duty Payable for Documenting Renunciation	Introduced a fee of 15 Lats for renunciation or restoration of nationality.	www.legislationline.org

Date	Document	Content	Source
	of the Citizenship of Latvia and Restoration of the Citizenship of Latvia		
2001	Regulations No. 234 on the State Duty Payable for Submission of a Naturalisation Application (with amendments 2002, 2003)	Provided for three different categories of applicants and the amount of state duty to be paid by each of those groups (20 Lats, 3 Lats, exempt from paying).	www.legislationline.org
2001	Regulations No. 13 on the Procedure for Documenting Loss and Restoration of the Citizenship of Latvia (with amendments 2004)	Set guidelines for the procedure on loss and restoration of citizenship. Specified the documents to be submitted by the applicant and the respective decisions to be taken by the Naturalisation Board. The amendments brought the Regulations in line with the new Law on Administrative Procedure.	www.legislationline.org
2004	Regulations No. 378 Regarding Passports for Latvian Citizens and Aliens as well as Travel Documents for Stateless Persons	Set out the application procedures for passports and the contents of each document.	www.ttc.lv
2004	Regulations No. 1011 on the Procedure to Determine the Status of Latvian Non-citizens	Provided for procedure to be followed by applicants and the Office of Citizenship and Migration Affairs regarding decisions as to whether a person satisfies all the conditions to qualify for the status.	www.pmlp.gov.lv

Notes

1 I would like to thank Prof. Ineta Ziemele for her comments on the draft of this article. The usual disclaimer applies.

2 UN Doc A/RES/55/153 (Nationality of Natural Persons in relation to the Succession of States), 30 January 2001.

3 For a detailed treatment of this principle, see Ziemele 2005.

4 Latvia like the other Baltic States was guided by the principle *ex iniuria ius non oritur* which has been seen as a rather inflexible approach.

5 In 1995 grounds (2), (3) and (8) were included.

6 Livs are a historic indigenous group of Finno-Ugric descent living near the Baltic sea.

7 See the part on naturalisation in section 2 below.

8 For instance a person who was 45 years of age and born in Latvia could apply for naturalisation in 2000, while a person who was twenty could apply in 1996.

9 The European Union 'expressed grave concern at certain aspects of the [...] law on citizenship adopted in Latvia' (European Commission, *General Report on the Activities of the European Union 1994* Brussels/Luxembourg 1995, para. 759). See also the Opinion No. 183 (1995) on Latvia's application for membership in the Council of Europe; stars.coe.fr.

10 The amendments were adopted on 22 June 1998. The referendum was held on 3 October 1998 and about 53 per cent of the electorate voted for the adoption of the amendments.

11 Only in exceptional cases can such an application be submitted by a single parent, i.e., by a mother if there is no entry regarding the father in the birth record or by the remaining parent if one parent is deceased.

12 Apart from that the requirements of exams and the fee to be paid for naturalisation have been lowered a number of times.

13 See the section on statistics at the end of this chapter.

14 The EU accession negotiations avoided the issues related to the status and rights of non-citizens. The Commission of the European Union, when interpreting the scope of the application of the so called Third-country Nationals' Directive (Council Directive 2003/109/EC of 25 November 2003 Concerning the Status of Third-country Nationals who are Long-term Residents, Official Journal, L 016, 23 January 2004, pp. 0044-0053) stated that 'the expression ''third-country national''' covers 'all persons who are not citizens of the Union in the sense of Article 17 paragraph 1 of the EC Treaty, that is to say those who do not have the nationality of an EU Member State'. This indicates that persons with undetermined citizenship fall within the scope of the directive. Letter from the Directorate-General Justice and Home Affairs, European Commission to the Permanent Delegation of Latvia in the EU institutions, 23 June 2003.This places non-citizens in a disadvantageous situation compared to the status they have enjoyed so far.

15 See the conclusions by an EU Network of Independent Experts on Fundamental Rights, Synthesis report for 2003, p. 88. The experts regret that the situation of non-citizens has not been resolved during the entry negotiations between Latvia and the EU.

16 For instance, Kees Groenendijk suggested to call them 'denizens', a term describing residents enjoying a status between alien and citizen (Groenendijk 1993: 15).

17 See the concluding observations of the Committee for the Elimination of Racial Discrimination on Latvia, 12 April 2001. CERD/C/304/Add.79, available under www.unhchr.ch, and the report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Latvia, 5–8 October 2003, available under www.coe.int.

18 See Constitutional Court Case 2004-15-0106, *Official Gazette* No. 40, 9 March 2005. Most other rulings have been passed by administrative courts. Thus, for instance, the department of administrative cases of the Supreme Court Senate gave the following definition: 'The link of a non-citizen to the Republic of Latvia is closer than it is in the case of a stateless person or an alien. Therefore, the revocation of the status of non-citizen means a significant limitation of the rights of the respective person' (case of Oganess Saakjan, Decision of 2004, No. SKA-89, C27261801). The regional court, on the other hand, was faced with a case of a non-citizen and a Russian parent who wanted to register their child as a non-citizen. The court concluded that 'the Republic of Latvia has acknowledged its jurisdiction also over non-citizens and a Latvian non-citizen in his rights is closer to the status of citizenship. It shall also be acknowledged that the link of a non-citizen to the Republic of Latvia is stronger than that of a stateless person or an alien. Taking into account that the parents of the child have

chosen Latvia as place of residence, it can be concluded, that the human rights of the child are not limited in Latvia if she is granted the status of a non-citizen' (case of Sergej Zaharov, Decision of 2004, No. AA 1218-04/4, A42173104).

19 See, for instance, Concluding Observations of the Human Rights Committee: Latvia, 3 October 1995. CCPR/C/79/Add.53; A/50/40, paras. 334–361. www.unhchr.ch. Concluding observations of the Committee of the Elimination of Racial Discrimination: Latvia, 12 April 2001. CERD/C/304/Add.79. www.unhchr.ch.

20 Almost automatic acquisition means that a person shall approach the regional office of the Naturalisation Board and submit documents testifying that the person permanently resides in Latvia as well as supporting documents confirming that the person belongs to one of the groups of persons qualifying for almost automatic citizenship (for instance, diploma of secondary education in Latvian).

21 According to para. 4 of art. 24 of the Immigration Law permanent residence can be acquired after five years of residence in Latvia with a temporary residence permit. This means that a person shall reside five years in Latvia in order to obtain permanent residence and a further five years with permanent residence to acquire the right to apply for citizenship. Exceptional cases provide for a shorter residence requirement as permanent residence permits can be issued in certain cases immediately after arrival (for instance, family reunification, former citizens and non-citizens and alike).

22 The Law states that a person shall know the basic principles of the Constitution of the Republic of Latvia and the Constitutional Law Rights and Obligations of a Citizen and a Person. However, this law lost its force on 6 November 1998 when the Constitution was supplemented with a chapter on human rights.

23 In the case of Estonia and Lithuania they had to be citizens of the respective countries on 17 June 1940, but in the Polish case on 1 September 1939.

24 These include the Communist Party of the Soviet Union, the Latvian Communist Party, the Working People's International Front of the Latvian SSR, the United Council of Labour Collectives, the Organisation of War and Labour Veterans, the All-Latvia Salvation of Society Committee or their regional Committees or the Union of Communists of Latvia.

25 According to the Naturalisation Board there were approximately twenty court cases related to the application of art. 11. Most of them concerned persons with alleged affiliation to the KGB. Since 2002 the Naturalisation Board has lost in only one court case on the application of art. 11. The case involved a person who challenged the decision to refuse the application for citizenship on the basis that he served in the USSR army.

26 The Naturalisation Board is considered as one of the best performing institutions in Latvia. In relation to court cases the statistics show that out of 338 court cases the Naturalisation Board has lost only five.

27 A special procedure is provided by the Regulations on the Procedure for the Acceptance and the Review of the Application on the Recognition of a Child to be a Citizen of Latvia. The documents submitted are subject to verification by the Office of Citizenship and Migration Affairs and the Ministry of the Interior if a child has reached the age of fourteen (minimum age for criminal liability). Any other state and self government institution can be approached by the Board (sect. 19).

28 Regulations on the State Duty Payable for Submission of a Naturalisation Application, Regulations No. 234 (Record No. 26, para. 43), Riga, 5 June 2001. The rate is lowered to 3 Lats for: (1) members of poor families or poor persons; (2) unemployed; (3) members of families with more than three under age children; (4) persons receiving old-age pension; (4) disabled persons with a certain degree of disability; (5) pupils and students; (6) full time students of tertiary education

establishments. Persons exempted are: (1) politically repressed; (2) severely disabled persons; (3) orphans and children who are not under their parents' charge; (4) persons sheltered by social care institutions of the state or self-government. The fees were changed in 1997, 2001 and 2002.

29 It was common practice that language proficiency had to be verified even after a person had passed the exam in case he or she wanted to hold a public position. This practice was changed after the decision of the Human Rights Committee in the Ignatane case (Communication No. 884/1999, 31 July 2001). Antonina Ignatane was deleted from the list of candidates for local government elections after language inspectors conducted an unexpected language examination at her place of work concluding that her level of language proficiency did not correspond to the highest degree necessary to be elected for local government.

30 These exceptions were introduced in 1998.

31 LETA [National News Agency], 1 February 2005. 'Gatavos grozījumus pilsonības likumā' [Amendments to Citizenship Law in preparation], *Diena* [daily newspaper], 12 April 2005.

32 LETA, 8 December 2005.

33 This procedure was introduced with amendments of 1997. Prior to the 1997 reform, decisions on naturalisation were taken by the Ministry of the Interior and they were subject to judicial review.

34 Case No. A42248104, A1486-05/3, decision by the Administrative Court on 16 December 2005.

35 The Table is based on data on ethnic origin as indicated by residents. At the beginning of the 1990s all residents were required to declare their ethnic origin which was mentioned both in their passports and in the Register of Residents. Current practice is that those applying for naturalisation are required to declare their ethnic origin on an application form that they submit to the Naturalisation Board. This requirement is optional as is the reference to ethnic origin in the passport.

36 The number of applications received during 2004 was equal to the numbers received from 1998-2004.

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Chapter 3: Lithuanian nationality: Trump card to independence and its current challenges[1]

Kristīne Krūma

There are slight differences between the Latvian and Lithuanian approaches as far as the transition from the Soviet to democratic institutions is concerned. Lithuania could be said to have used the Soviet legal and institutional basis for the adoption of the decisions necessary at the time more than Latvia did. However, it will be argued that these differences do not challenge the underlying principle of *ex iniuria ius non oritur* followed also by Latvia and Estonia.

In comparison to other Baltic States Lithuania escaped close international scrutiny of its nationality policies. Therefore nationality has, until recently, not created any controversies. Only after Lithuania encountered hurdles related to the presidential discretion for granting nationality has the issue attracted attention, especially on the national political agenda.

3.1 History of nationality policy

3.1.1 General overview of nationality policy

The same scenario of imposing the Soviet nationality upon their nationals was applied in all three Baltic States, including Lithuania. However, Soviet Citizenship Law did allow the Soviet republics some authority regarding nationality matters (Kalvaitis 1998: 240). This was seized by Lithuania in 1989 when it enacted its first Citizenship Law. Those who opted for Lithuanian nationality did not, however, lose their status as nationals of the Soviet Union.

Guided by the principle of *ex iniuria ius non oritur*, Lithuania, having declared independence on 11 March 1990, first reinstated the 1938 Constitution and simultaneously suspended some of its articles as they were incompatible with democratic principles. Following the full suspension of the 1938 Constitution, the Provisional Basic Law was enacted, accounting for present-day realities (Kalvaitis 1998: 243). The 1992 Constitution was carefully drafted with reference to laws in force before 1940 and with an emphasis on constitutional continuity (Ziemele 2005: 40). However, the enactment of the 1989 Citizenship Law before adoption of the Constitution is the main difference to the ap-

proaches adopted in the two other Baltic States because Lithuania was guided by the conflicting principle *ex factis ius oritur,* at least to a certain extent. This means that the new Constitution was adopted by an extended body of nationals in comparison to the citizenship laws prior to 1940.

The development of Lithuanian nationality legislation can be divided into three main phases. The first phase started with the Law adopted in 1989 providing for liberal conditions upon which Lithuanian nationality could be acquired. This phase ended with the Law of 1991 when Lithuania had already restored its independence and stricter criteria for the acquisition of nationality were introduced. This second phase is problematic and confusing because there were various attempts to find a balance between compliance with the principle of continuity of nationality and the avoidance of double nationality. The third phase was initiated by the new 2003 Law on Citizenship. It attempts to streamline provisions of the 1991 Law and its numerous amendments and to bring certain provisions in line with the requirements for human rights.

3.1.2 The 1989 Citizenship Law

The first Lithuanian nationality law was adopted on 3 November 1989. The Law identified four categories of persons who were or could become nationals of Lithuania:

- Persons, who were nationals or permanent residents prior to 15 July 1940, their children and grandchildren who are or have been permanent residents of Lithuania.
- Persons who had a permanent place of residence in Lithuania if they were born in Lithuania or they were Lithuanian descendants and provided they were not nationals of another state.
- Other persons who at the time of the adoption of the Law were permanent residents for at least two years and had employment or other legal source of support in Lithuania. Thus, the law allowed persons who arrived in Lithuania during the Soviet period to acquire Lithuanian nationality. They had to declare their intention to become nationals within two years following the entry into force of the law[2], i.e., until November 1991. Upon registration they had to swear an oath of allegiance to the Lithuanian Constitution and laws (Kalvaitis 1998: 244, 261). This principle applied irrespective of their nationality or language abilities.
- Persons who had acquired the Lithuanian nationality in accordance with the law.

According to the Constitutional Court of Lithuania in Case 7/94, the Law differentiated between existing and potential holders of Lithuanian nationality.[3] Persons who were nationals prior to occupation, their descendants and permanent residents on 15 June 1940 who continued to reside in the country when the Law entered into force, were considered nationals *ipso facto*. The same applied to persons born in the territory of Lithuania and still residing there, and persons whose parents were born or resided in that territory. These persons were considered as having a permanent legal relationship with Lithuania; a principle which was considered particularly important in Lithuania for its nationality policies (Ziemele 1998: 223).

Soviet time immigrants were considered only as potential nationals as they were guaranteed the right to freely decide on their nationality. After they accepted nationality they all had to take a pledge of loyalty to Lithuania (Kalvaitis 1998: 261). In case 7/94, the Constitutional Court emphasised that there were differences between this category of persons and the other nationals. The latter never had firm permanent legal relations with Lithuania and they were immigrants holding Soviet nationality. After the restoration of an independent Lithuania they became foreigners if they did not use the option provided for by the 1989 Law. It has to be recalled that this choice was not obvious or easy at the time. In 1989 or even 1990, it was still difficult to foresee the collapse of the Soviet Union. Taking an oath of allegiance to Lithuania required certain convictions. 90 per cent (87 per cent according to other sources) of non-Lithuanian permanent residents registered as nationals under these provisions. Only 1 per cent of the pre-independence electorate chose not to become nationals of the Republic of Lithuania (Kalvaitis 1998: 261).

The law did not provide for the possibility of dual nationality. This was confirmed in the Provisional Basic Law in art. 13 which stated that as a rule, a citizen of Lithuania may not at the same time be a citizen of another state. The subsequent amendments on 16 April 1991 confirmed that Lithuanian nationality is lost upon the acquisition of the nationality of another state. However a number of exceptions existed at that time as well. These concerned persons who were nationals of Lithuania prior to 15 June 1940 and their descendants.

3.1.3 The 1991 Citizenship Law

The second Citizenship Law in Lithuania was adopted on 10 December 1991.[4] It established who are to be considered Lithuanian nationals. The new law ended the liberal period when any resident could apply for nationality after two years of residence and introduced stricter requirements. It was subsequently amended several times: 19 November

1992, 16 July 1993, 3 October 1995 and 6 February 1996. The following comments on the 1991 Law take these amendments into account.

The law identified groups of individuals eligible for Lithuanian nationality. Initially those included:

– nationals of Lithuania prior to 15 June 1940 including their children and grandchildren if they had not acquired nationality of another state;
– permanent residents of Lithuania between 9 January 1919 and 15 June 1940 within the territory of the present Lithuania, their children or grandchildren, if they continue to reside in Lithuania and are not nationals of another country;
– persons of Lithuanian origin who left Lithuania prior to 16 February 1918, if they have not acquired nationality of another state;[5]
– persons who acquired nationality in accordance with the Law on Citizenship effective prior to 1991;
– other persons who acquired nationality under the Law (naturalised).

The Supreme Council in the Resolution on the Procedure for Implementing the Republic of Lithuania Law on Citizenship of 10 December 1991, clarified in sect. 5 that persons serving in the armed forces, internal troops and state security structures, as well as other law enforcement and repressive structures of the Soviet Union must not be considered as permanently residing or employed in Lithuania. This was in line with the Supreme Council Resolution on 1939 Treaties between Germany and the USSR and Elimination of their Consequences for Lithuania (7 February 1990) and the Supreme Council Declaration on the Status of Soviet Armed Forces in Lithuania (19 March 1990). They stated that servicemen of the occupation army were not entitled to the right to participate in elections organised in Lithuania, with the exception of those persons who under the 1989 Law on Citizenship could be recognised as nationals of Lithuania. A descendant of a Lithuanian citizen, as identified prior to 15 June 1940, who had served in the Soviet army, was not excluded from Lithuanian nationality. The USSR nationality was declared null and void with respect to such individuals as for all other Lithuanian nationals. The Constitutional Court said that:

'Such a decision meant that the consequences of occupation and annexation with regard to citizens of Lithuania on whom citizenship of the Soviet Union had been forced against their will, were being undone. It goes without saying, that such decision on the part of the state could only be adopted regarding its citizens, and the state could by no means resolve issues concerning the citizenship of another state'.

According to art. 12 of the 1991 Lithuanian Constitution, with the exception of cases established by law, no person may be a citizen of the Republic of Lithuania and another state at the same time. The Citizen-

ship Law deals with the issue of double nationality in a confusing way which is closely connected with a certain conflict between the principles of continuity of nationality and the principle of effective link that the Law tries to accommodate. Relevant provisions of the Law have been amended several times to clarify who can and who cannot acquire double nationality. Concerns were expressed by the Lithuanian nationals who could not obtain Lithuanian passports because they had in the meantime acquired another nationality. They were therefore denied the possibility to restore their nationality because dual nationality was prohibited. The Council of Europe characterised this situation as unsatisfactory (Ziemele 1998: 220).

Explanations were given by the Constitutional Court in Case 7/94 when it dealt with questions pertaining to the right of members of the Soviet armed forces to acquire Lithuanian nationality. The Constitutional Court was approached by a group of MPs who challenged the validity of the Resolution of the Parliament which provided that members of the USSR army, who had terminated their service before 1 March 1992 and 4 November 1994, and had been issued a Citizen Certification Card, could acquire citizenship. The Court declared the provisions of the Resolution unconstitutional. It clarified that the 1989 Citizenship Law 'did not provide for a possibility for a citizen of Lithuania to be at the same time a citizen of another state'. This was supported by another general principle of the 1989 Law, providing that Lithuanian nationality is lost with the acquisition of another nationality (Ziemele 1998: 220). The Court noted that there is only one exception to this general rule, i.e., persons who were nationals of the Republic of Lithuania prior to 15 June 1940 and their descendants. The latter explanation relates to the application of the principle of continuity of nationality while the prohibition of dual nationality is linked in principle to the understanding of effective link by Lithuania as concerns its decisions on nationality issues.

According to this ruling of the Constitutional Court, the Law was amended in 1995. Art. 1 provided that nationals of Lithuania prior to 15 June 1940, and their children, are nationals of Lithuania if they have not renounced Lithuanian nationality. The requirement that they should not be nationals of another state was lifted. However, this condition was still applicable to their grandchildren.

This amendment also affected arts. 17 and 18 of the 1991 Law. Art. 17 stated that the right to nationality of Lithuania shall be retained for an indefinite period for (1) persons who were nationals prior to 15 June 1940 and their children provided that they have not renounced Lithuanian nationality and (2) persons of Lithuanian origin residing in other states.[6] According to the 1995 amendments a person of whom one parent or grandparent is Lithuanian and who is Lithuanian him or herself

shall be considered a person of Lithuanian origin. The same amendments provided for differentiation between the above mentioned categories (1) and (2). While the first group could retain another nationality, the second had to renounce the nationality of another state and return to Lithuania for permanent residence in order to be granted Lithuanian nationality.

Art. 18 stated that all persons mentioned in art. 17 should renounce the nationality of another state. Moreover, persons of Lithuanian origin residing in other states shall become permanent residents as well as take the oath to Lithuania in order to acquire nationality.[7] Such a complicated scheme reflects the problems caused by the prohibition of dual nationality when the independence of a state, which was suppressed for a considerable time, is restored. It was only when amendments were made in 1993 that persons who were deported or left Lithuania during occupation and their children who had not acquired nationality of another state by birth and lived in other states could recover Lithuanian nationality by presenting a written notice to the authorities. Before these amendments neither provisions of art. 17 or art. 18 provided possibilities to acquire dual nationality.

Therefore, on the one hand, the Law identifies nationals with respect to whom the prohibition of dual nationality does not apply, i.e., groups of individuals whose right to nationality is retained for an indefinite period without renouncing their present nationality. On the other hand, there are groups of persons who have the right to nationality but the right can only be exercised when they renounce their present nationality (Ziemele 2001: 235-236).

Distinctions apply also to different categories of children, i.e., those who are considered nationals by birth and those who have to acquire nationality although they are born in Lithuania. A child born to parents one of whom is a Lithuanian citizen *shall be* a citizen irrespective of his or her place of birth if at least one parent has permanent residence in Lithuania (art. 9). If, however, both parents reside outside Lithuania they shall reach an agreement on the child's nationality until he or she is eighteen years of age. Foundlings *shall be* considered nationals while children born to stateless persons who are permanent residents in Lithuania *shall acquire* Lithuanian nationality (arts. 10 and 11). The articles do not specify whether these children have to be born in Lithuania, which may imply that the Law means children who have arrived in the country with their parents. Both articles draw a distinction between children who *shall be* nationals by birth and those who have to *acquire* nationality (Ziemele 1998: 237).

In relation to spouses of Lithuanian nationals art. 14 provided a simplified procedure for the acquisition of nationality, i.e., three years of residence in Lithuania while married, the passing of exams on lan-

guage and the Constitution as well as the renunciation of their previous nationality. The amendments of 1992 added another category of persons subject to a simplified procedure. It stated that those who are married to Lithuanian nationals who were deportees or political prisoners and their children born in exile shall be granted Lithuanian nationality if they are married for at least three years and have moved for permanent residence to Lithuania together with their spouse. These persons would only have to renounce their previous nationality and to pass an examination on the Constitution of Lithuania.

Lithuania's general approach to the regulation of nationality, especially in the early 1990s, can be considered as more liberal in comparison to the other Baltic States. First, most of the Soviet-era settlers acquired nationality on the basis of the 1989 Law while Latvia and Estonia re-established the body of nationals on the basis of the legislation of the pre-occupation period. Second, Lithuania did not introduce any quota system while Latvia abolished its quota system only in 1998.[8] Third, Lithuania included residence during Soviet period as valid for nationality purposes. Latvia and Estonia took into account only the residence after restoration of independence. Therefore, Lithuania managed to avoid criticism which is still addressed to Latvia and Estonia. This has often been explained by the different proportion of non-indigenous population residing in Lithuania when independence was restored.

The Lithuanian approach cannot be qualified as a 'pure zero-option' because there were distinctions made between different groups of persons. The principle of continuity of nationality remained the main point of departure for deciding how to identify nationals. That is the reason why some of the groups were not considered as nationals *ipso facto* and were subject to naturalisation according to the 1989 Law. However the procedure was very simple and a majority of the groups affected by this clause, mainly former USSR nationals, naturalised. As a consequence the 1991 Law did not really have to address the issues concerning the former USSR nationals, except when they had not used the 1989 Law option (Ziemele 1998: 225). As concerns nationals however, a distinction was made between the execution of the right to nationality and the restoration of nationality. Restoration concerns situations where the original nationality was not retained throughout the occupation or when some actions are needed to re-instate it (Ziemele 1998: 224).

3.1.4 The 2003 Citizenship Law

The third Law on Citizenship was adopted on 17 September 2002 and entered into force on 1 January 2003. It repealed the 1991 Law and incorporated certain related laws (such as the Law on the Validity of Citi-

zenship Documents). The Law was subsequently amended in 2003 and 2004.[9] One of the main issues which was publicly debated was the question of Lithuanian émigrés holding dual nationality.[10] Emigrants voiced their discontent with the fact that they are stripped off Lithuanian nationality when acquiring the nationality of another state. The new Law accommodated their requests and in addition provided for possibilities to have their nationality status re-instated. However, some national minorities protested against the Law. They argued that permitting dual nationality only to ethnic Lithuanians contravenes the Constitution and international norms.

The new Law on the Implementation of the Republic of Lithuania Law on Citizenship was adopted in 2003 (amended in 2004). One of the main provisions stated that those who applied for nationality under the 1989 Law but did not receive a document confirming their status and were residing abroad, lost their nationality on 31 December 2003. This decision was taken by the Minister of the Interior.

The new Citizenship Law slightly amended art. 1 defining the categories of nationals. It now includes references not only to children and grandchildren of persons who were nationals prior to 15 June 1940 or permanent residents from 9 January 1919 to 15 June 1940 but also to their great-grandchildren. Moreover, those who were nationals prior to 15 June 1940 and their descendants (including great-grandchildren) do not have an obligation to renounce a nationality held from another state. Reference to 16 February 1918 has been lifted and, thus, any person of Lithuanian descent is a Lithuanian citizen if he or she does not have any other nationality. Hence, the Law expands the category of persons who have an inherent right to nationality of Lithuania up to the fourth generation, and introduces conditions for simplified restoration of nationality for those who lost their Lithuanian nationality but have an inherent right to it. The former art. 17 has been simplified and art. 18 has been deleted altogether.

The conditions upon which a child is considered a citizen if only one parent is a Lithuanian citizen have also been slightly changed. According to the new art. 9, a child shall be a citizen if born in the territory of Lithuania and one of the parents is a national. In case the child is born outside Lithuania, his or her nationality is to be determined by an agreement between the parents (of whom one must be a Lithuanian national) until he or she reaches eighteen years of age. This shall be done irrespectively of their place of permanent residence. Art. 10 provides ius soli acquisition of nationality for children whose parents are stateless persons permanently residing in Lithuania.

The conditions for acquiring Lithuanian nationality were made stricter for spouses (art. 14). Firstly, the 2003 Law provided that only those spouses who had been married for at least five years and had been resi-

dent in Lithuania for that period were to be granted nationality. They had to pass exams on language and the Constitution and were not allowed to hold another nationality. Thus, stricter requirements were introduced as previously only three years of residence were required. With the amendments effective from January 2005, the residence requirement for spouses of Lithuanian nationals has been raised even further to seven years.[11] Secondly, persons married to Lithuanian nationals who were deportees or political prisoners and their children born in exile are no longer exempt from the Lithuanian language exam. They also have to reside in Lithuania for five, not three years as before. Thirdly, the Law has introduced conditions upon which a person can acquire nationality in the case of his or her spouse being deceased, if they were married for more than a year with residence in Lithuania. In these cases a person could acquire Lithuanian nationality after three years of residence provided that he or she passes the exams on language and the Constitution and renounces his or her previous nationality. However, after the amendments effective from January 2005 the residence requirement was raised to five years.

It shall be noted that at least some amendments were introduced because of a ruling of the Constitutional Court of Lithuania in case No. 40/03 of 30 December 2003 regarding the granting of nationality by way of exception.[12] The petitioners – several MPs – asked the Court's ruling on the possible violation of the constitutional principle of equality by the President when he granted nationality by exception to one of his advisors, Jurij Borisov. These events were heatedly debated and subsequently led to an impeachment procedure against the President. In summary, the Constitutional Court ruled that in cases when the President grants nationality by way of exception he or she shall verify the service which was given to Lithuania as a state, establish whether the person has permanent factual links with Lithuania, whether the applicant is not subject to any exceptions mentioned in the Law as well as his or her possibilities to recover nationality on his or her own initiative in accordance with the Law.

Generally the Law streamlines the conditions for the acquisition and retention of nationality of the previous Law which due to its numerous amendments became too cumbersome. A number of provisions are excluded because they do not relate to the acquisition or retention of nationality but rather dealt with the conditions for entry and residence in the territory of Lithuania. The Law is clearer regarding the continuity and restoration of nationality as well as dual nationality. Moreover, it brings the conditions in line with the requirements of human rights law (groups excluded from acquiring nationality, loss of nationality due to invalid passport etc.) and provides for stricter requirements in certain cases (spouses). Finally, the Law grants more authority to the Min-

ister of the Interior and clarifies a number of provisions in relation to the naturalisation procedure. These latest provisions came into force on 1 April 2006.[13]

3.2 Basic principles of the most important current modes of acquisition and loss of nationality

3.2.1 General principles of the acquisition of nationality

Art. 12 of the Constitution proclaims that 'citizenship of the Republic of Lithuania shall be acquired by birth or on other grounds established by law'. However, the Citizenship Law does not mention the principle of reducing statelessness as a possible guideline for the nationality policy of the state (Ziemele 1998: 248). There is no support for the argument that Lithuania has adopted the ius soli principle in addition to the ius sanguinis principle as basis for the acquisition of nationality in the Law.

Art. 7 enumerates the grounds on which the nationality of Lithuania can be acquired by: (1) birth; (2) exercising the right to nationality; (3) naturalisation; (4) international treaties; (5) reference to other grounds provided in legislation. Reference to international treaties is unclear. It can be argued that in cases where the Citizenship Law contravenes Lithuania's international obligations the norms of the treaties would then be directly applicable.

3.2.2 Right to nationality

The Lithuanian Citizenship Law identifies a number of groups who are considered Lithuanian nationals by birth and by exercising the right to nationality. Nationals are, firstly, those individuals who were nationals by right, i.e., they were nationals before 15 June 1940 or are of Lithuanian descent. However, a distinction is made within this category of people between nationals *ipso facto* who do not have to renounce the nationality of another state and those who have to do so in order to become nationals of Lithuania. In both cases their right is preserved indefinitely. Secondly, nationals are people who were born in the territory and have subsequently resided there (Ziemele 2001: 237). They are given the right to acquire nationality on the basis of application because their links with Lithuania are not considered as obvious (Ziemele 2001: 237). Otherwise they are regarded as foreigners, albeit with the right to permanent residence. In comparison with the first group their right to opt for nationality is not preserved indefinitely (Ziemele 1998: 222). Thirdly, children born to Lithuanian parents and foundlings shall be Lithuanian nationals while children born to state-

less persons have the right to acquire nationality. The provision is neutral regarding the gender of the parents.

Nationals residing outside Lithuania can submit their applications to diplomatic and consular missions. The Minister of the Interior has the authority to submit a recommendation to recognise a person as having lost nationality, and to receive applications for retention of nationality by persons who were nationals prior to 15 May 1940 and those of Lithuanian descent. According to art. 29 if a person fails to obtain the necessary documents attesting Lithuanian nationality held prior to 15 June 1940 or his or her Lithuanian descent, the Minister of the Interior or Minister of Foreign Affairs and institutions authorised by them may apply to the Presidential Citizenship Commission for a verification of facts. The Commission presents its recommendatory findings to the Minister of the Interior or the institution authorised by him. According to art. 31, repeated applications shall be accepted no earlier than one year after the adoption of the previous decision.

3.2.3 Naturalisation

Art. 12 lays down several requirements to be met in order to acquire Lithuanian nationality.

The requirements are the following:

- passing the Lithuanian language exam (speaking and reading);[14]
- ten years of permanent residence in Lithuania;
- permanent employment contract or a constant legal source of support;
- knowledge of the Constitution;
- lack of any other nationality; and
- agreement to take the oath to Lithuania.

Amendments in 1995 lifted the requirements of the language exam and the knowledge of the Constitution exam for persons over 65 years of age, disabled persons of group I and II[15] and the sick with grave chronic mental diseases. These exceptions were upheld in the Law of 2003. In addition, this Law has lifted the requirement that refugees have to be stateless or renounce their nationality prior to applying for Lithuanian nationality.

Art. 12 provides that interests of the state have to be taken into consideration when nationality is granted. The application of this provision is unclear and open to discretion.

The terms 'permanent residence in the territory of Lithuania' and 'constant legal source of support' were clarified in sect. 3 of the Supreme Council Resolution on the Procedure for Implementing the Republic of Lithuania Law on Citizenship (adopted on 10 December

1991). A person shall be considered as permanently residing in Lithuania if he or she has been registered in the register of permanent residents, has accommodation, and is employed in Lithuania under an employment contract or has another paid occupation in Lithuania and pays taxes there. A person will also be considered as permanently residing if he or she is somebody's dependent or is paid a pension legally due to him or her in Lithuania. Residency is counted including the period 1940-1991 (Kalvaitis 1998:264).

Lithuanian practice as confirmed by the Constitutional Court in Case 7/94 has established that neither an occupying army nor repressive structures of a foreign state which resided in Lithuania without consent of Lithuania's authorities could be considered as lawfully residing for the purpose of the permanent residence requirement of the Citizenship Law (Ziemele 2001: 236). Likewise, service in such foreign forces cannot be considered as legal employment. Moreover, this interpretation is valid also in the context of the 1989 Law.

According to art. 16, the President has the right to grant nationality by exception. The requirements for this option are, first, significant contribution to strengthening of Lithuanian statehood by the person in question. Second, the person has to contribute to an increase in Lithuania's power and its authority in the international community. Third, the person should be integrated in the Lithuanian society, i.e., he or she must have permanent factual links with Lithuania. Fourth, according to the ruling of the Constitutional Court in Case 40/03, art. 13 is applicable in these cases.

Art. 13 identifies the groups of persons precluded from acquiring nationality. Those include persons who (1) have committed crimes against humanity or acts of genocide; (2) have taken part in criminal activities against Lithuania; (3) before coming to Lithuania have been tried for a deliberate crime for which the criminal liability is imposed in Lithuania or have been sentenced in Lithuania; (4) are chronic alcoholics or drug addicts and (5) have especially dangerous infectious diseases.

Exclusion of alcoholics, drug addicts and criminals applied until the adoption of the Law of 2003. Criminals who have been convicted before the adoption of the Law were subject to an *ex post facto* penalty to their punishment. Exclusion from naturalisation of alcoholics and drug addicts was particularly pernicious because it was likely to discourage them from seeking needed treatment.[16]

Since 1 January 2005 groups (1) and (2) have been widened and include not only those persons who committed aforementioned crimes but also those who were preparing or attempting to commit those crimes and acts. Moreover, the amendments added that persons who do not have the right to reside in Lithuania cannot be granted nationality.

Since then, art. 13 on conditions for withholding nationality has been changed to bring it in line with human rights requirements. Firstly, it no longer states that chronic alcoholics, drug addicts or those ill with especially dangerous infectious diseases cannot become nationals. Secondly, the scope of persons who have had criminal charges against them has been minimised. The Law no longer refers to persons who before coming to Lithuania have been tried for a deliberate crime but only to persons who before coming to Lithuania have had a custodial sentence imposed on them for a premeditated crime. Also in relation to those convicted in Lithuania a reference is made to premeditated crime, not to a deliberate one.

The procedures for resolving issues related to nationality are set out in chapter V of the Law. The chapter includes detailed information as to what documents shall be submitted in each case when a person applies for nationality. According to para. 10 of art. 28 all applications for the acquisition, renunciation and restoration of nationality shall be submitted to the President through the executive institution of the municipality. Applications for nationality are reviewed by the Citizenship Commission which is established by the President. It submits proposals for decision to the President. Decrees by the President should be co-signed by the Minister of the Interior. According to the Constitutional Court the responsibility for these decrees lies with the Ministers. The reason for this is that the President can be removed from office only for grave violations of the Constitution. In case of denial an applicant is provided with a reasoned decision in writing. According to art. 30 decrees by the President concerning the granting, retention, restoration or loss of nationality as well as declaring an act on the granting of nationality invalid are published in the *Official Gazette*.

3.2.4 Loss of nationality

The grounds for loss of Lithuanian nationality are outlined in art. 18. It provides that nationality is lost (1) upon renunciation; (2) upon acquisition of nationality of another state; (3) on grounds provided for by international agreements to which Lithuania is a party.[17] According to the latest amendments in 2004 (effective of 1 April 2006) a person would lose nationality if, while working in another state, he or she were to injure the interests of Lithuania. The formulation is wide and it is unclear what is meant by damaging Lithuanian interests. Acquisition of nationality of another state does not result in loss of nationality for two groups of persons, i.e., persons who were nationals prior to 15 June 1940 and their descendants as well as persons of Lithuanian descent.[18] A person may be recognised as having lost nationality if he or she is in

the military service of another state or is employed in the public service of another state without permission of the Lithuanian authorities.

Moreover, there are a number of grounds on which naturalisation can be invalidated. Art. 21 provides that, firstly, naturalisation will be deemed invalid if nationality has been acquired by fraud or if a person has committed international crimes provided for by the international treaties or customary law (aggression, genocide, crimes against humanity, war crimes or crimes against Lithuania). Secondly, the act of naturalisation will be declared invalid if the court establishes that after 15 June 1940 a person has 'organised or carried out deportation or extermination of the residents, suppressed the resistance movement in Lithuania' (official translation). The same result would be reached if a court establishes that a person took part in the actions against independence and territorial integrity of Lithuania after 11 March 1990.

The act of invalidation applies to naturalised nationals and Lithuanian descendants, if they have opted for Lithuanian nationality (Ziemele 1998: 221). A declaration of invalidity may be used as an additional penalty in relation to other criminal charges, e.g. if a person has committed crimes against humanity, acts of genocide or crimes against the Republic of Lithuania, prior to or after acquisition of nationality, as determined by the court decree. Original nationals cannot be subjected to such an additional penalty in similar circumstances (Ziemele 1998: 250). The article does not set any precise time limit within which charges brought against a person for crimes against Lithuania could affect naturalisation. This again opens the possibility of arbitrary decisions which could result in statelessness and would run against the rule prohibiting arbitrary deprivation of nationality (Ziemele 1998: 250).

Art. 30 provides that invalidation of nationality is enacted by the President of Lithuania who issues a decree to that effect. The decree is not subject to judicial scrutiny. As the Lithuanian Citizenship Law is both complex and cumbersome on a number of issues the right to appeal decisions would be more than desirable (Ziemele 1998: 222).

According to art. 18 everyone has a right to renounce their nationality. However, the same article provides for exceptions. Thus application for renunciation may not be considered if the person has been charged with a criminal act or if a court judgement passed on the person has become effective and enforceable. Setting the absence of criminal charges as a condition for the renunciation of nationality may also raise human rights considerations. The person may still be entitled to renounce nationality, which would not affect procedures employed by the state as long as the person remains within its jurisdiction (Ziemele 1998: 249).

The Law on Citizenship places additional safeguards in order not to allow the cases of statelessness to arise. Art. 20 provides that a person who has lost nationality as a result of renunciation or on grounds provided in an international treaty may be reinstated with Lithuanian nationality if he or she submits an application while having permanently resided in Lithuania for at least ten years, has a legal source of support and is stateless. Special conditions are provided for persons who were nationals or permanent residents before 15 June 1940 and their descendants as well as persons of Lithuanian descent. If they have lost nationality as a result of renunciation or on the basis of an international treaty, Lithuanian nationality is restored automatically on the basis of application.

3.3 Current political debates

The most recent proposals in the field of nationality policies aim at establishing a procedure for restoration of Lithuanian nationality for those who lost it upon acquisition of another nationality prior to 1 January 2003. This is a continuation of the policy established in the last Citizenship Law. In order to draft a legislative proposal a working group of experts from different state institutions has been established.[19]

Another debate regards the nationality of Jewish emigrants (*Litvaks*) from Lithuania. During his visit to Israel on 15-16 March 2005, President Valdas Adamkus said that he sides with the motion to give them Lithuanian nationality.[20] The speaker of the Lithuanian Parliament Arturas Paulauskas predicted that Adamkus had provoked spearhead debates over the issue and possible amendments to the Citizenship Law. These debates, however, as noted by Paulauskas will have to take into account the history of all minorities in Lithuania, such as the Polish and German, as well. The speaker of the *Seimas* said that the Parliament debated the issue of nationality for *Litvaks* a couple of years ago but stopped short of endorsing it in a new nationality law. *Rzeczpospolita*, a Polish daily, wrote that Lithuania should not limit the right to nationality to one group but should also grant nationality to the Polish people coming from what is now Lithuania. Dual nationality may currently only be granted automatically to foreigners of Lithuanian origin.

It may therefore be concluded that no major changes are envisaged in Lithuanian nationality policy. Recent political debates confirm that general tendencies are towards the liberalisation of the acquisition of nationality in relation to certain groups, including dual nationality for those who are of Lithuanian origin.

3.4 Statistics

Taking into account that nationality and statelessness issues were not high on the political agenda due to the liberal approach adopted in the 1989 Law, no exact statistics were maintained. Lithuanian statistical information is therefore rather poor.

Table 3.1 shows the significant changes to the ethnic composition of Lithuania between 1923 and 1992.

Table 3.1: Ethnic composition in Lithuania in 1923 and 1992

	1923	*1992*
Lithuanians	68%	79.6%
Non-Lithuanians	32%	20.4%

Source: Department of Migration, Ministry of the Interior of the Republic of Lithuania, www.migracija.lt

Data for the period from 1992 onwards are not available because no exact statistics were maintained during that period. Data on naturalisation only have been available since 2002. As Table 3.2 shows, between 2,400 and 3,400 persons have been naturalised each year.

Table 3.2: Acquisitions of Lithuanian nationality, 2002-2004

YEAR	*2002*	*2003*	*2004*
NUMBER	3299	2451	3403

Source: Department of Migration, Ministry of the Interior of the Republic of Lithuania, www.migracija.lt

The number of deprivations of nationality are rather high, but have declined since 2002 from 1,026 to 701 per year (see Table 3.3).

Table 3.3: Deprivation of Lithuanian nationality, 2002-2004

YEAR	*2002*	*2003*	*2004*
NUMBER	1026	611	701

Source: Department of Migration, Ministry of the Interior of the Republic of Lithuania, www.migracija.lt

Restoration of nationality did not play a significant role in the last years, the number of cases has been below a hundred each year.

Table 3.4: Restoration of Lithuanian nationality, 2003-2004

YEAR	*2003*	*2004*
NUMBER	82	68

Source: Department of Migration, Ministry of the Interior of the Republic of Lithuania, www.migracija.lt

3.5 Conclusions

The Lithuanian approach to nationality issues has been considered as more liberal than the regulations in other Baltic States because it did not apply pre-1940 citizenship laws in order to reconstitute its body of nationals. The Citizenship Law of 1989 provided easy criteria for acquisition of nationality. As the result of liberal laws most of its residents acquired Lithuanian nationality. However, the Citizenship Law of 1991, enacted immediately after restoration of independence, introduced much stricter requirements for the acquisition of Lithuanian nationality. These are still in existence and in certain cases are more stringent than the regulations in other Baltic States, such as the conditions on residence before applying for citizenship.

One of the major areas of confusion relates to the regulation of dual nationality in Lithuania. Dual nationality has become more restricted since the adoption of the 1991 Citizenship Law. It has provoked public debates due to its exclusionary nature and unclear application. The situation has been addressed in subsequent amendments and most notably in the Law of 2003. From the overall developments it seems that Lithuania is becoming more liberal concerning dual nationality.

The main remaining problem of Lithuanian nationality policy is the wide discretion given to the President concerning the granting of nationality. Notwithstanding the amendments introduced after the decision of the Constitutional Court in the Paksas case, the judicial review of all decisions related to nationality would be a welcome development. This would also facilitate Lithuania's ratification of the European Convention on Nationality which has not yet been signed.

Chronological list of citizenship-related legislation in Lithuania

Date	Document	Content	Source
1989	Supreme Soviet of the Lithuanian Soviet Socialist Republic Law on Citizenship (3 November 1989 No. XI-3329)	Reconstituted the body of nationals by restoring nationality to those who were nationals before the 1940 occupation and their descendants; provided for liberal naturalisation of residents.	www.uta.edu
1991	Republic of Lithuania Law on Citizenship (5 December 1991 No. I-2072 as amended by 2 July 1997, No. VIII-391)	Introduced stricter naturalisation requirements and a complicated system in relation to dual nationality.	www.uta.edu
1991	Supreme Council of the Republic of Lithuania	Clarified the application of the Citizenship Law in	

Date	Document	Content	Source
	Resolution on the Procedure for Implementing the Republic of Lithuania Law on Citizenship (11 December 1991, No. I-2080)	relation to inter alia persons who served in armed troops and other state security structures of the Soviet Union.	www.litlex.lt
1991	Law on the Validity of Citizenship Documents issued by the Republic of Lithuania and on the Supplement to the Law on Citizenship (void since 1 January 2003)	Confirmed that Citizen's Certification Card and Certification Testifying Decision to Acquire Citizenship shall be valid until the person is issued with new citizens' passport but no longer than 1 July 1993. Supplemented Citizenship Law of 1991 and provided that new Citizenship Law shall replace 1989 Law on 11 December 1991.	www.legislationline.org (excerpts)
1992	Constitution of the Republic of Lithuania	Confirmed the basic principles of acquisition of Lithuanian nationality (ius sanguinis) and a negative position in relation to dual nationality.	www.litlex.lt
2002	Law on Citizenship (as last amended by the Law of 3 April 2003 N° IX-1456)	Repealed the 1991 Law, extended the category of persons who have inherent right to nationality and simplified the restoration of nationality; clarified Lithuania's position on dual nationality; introduced ius soli for children whose parents are stateless and reside in Lithuania; introduced higher requirements for spouses of Lithuanian nationals.	www.coe.int and www.legislationonline.org
2002	Law on Implementation of the Law on Citizenship (as last amended by the Law of 21 January 2003 N° IX-1298)	Clarified the procedural requirements in cases of dual nationality.	www.coe.int and www3.lrs.lt
2003	Decision of the Constitutional Court of Lithuania on the Compliance of the President	States that citizenship of the Republic of Lithuania is granted to Jurij Borisov by way of exception in	www.lrkt.lt

Date	Document	Content	Source
	of the Republic of Lithuania with Decree No. 40 on Granting Citizenship of the Republic of Lithuania by way of Exception of 11 April 2003	compliance with the Constitution of the Republic of Lithuania and para. 1 of art. 15 of the Republic of Lithuania's Law on Citizenship (30 December 2003).	
2004	Amendments to the Law on Citizenship (12 September 2004, N° IX-1078)	Brought the law in line with human rights (regarding refugees, alcoholics, drug addicts); took into account the ruling of the Constitutional Court in the Borisov case in relation to procedural aspects of nationality policies.	www3.lrs.lt
2004	Amendments to the Law on the Implementation of the Law on Citizenship (11 November 2004, N° IX-1079)	Streamlined the procedures for the acquisition of nationality attempting to address problems as envisaged in the Borisov case.	www3.lrs.lt

Notes

1 I would like to thank Prof. Ineta Ziemele for her comments on the draft of this article. The usual disclaimer applies.

2 Permanent residence was determined by so called *propiska* which is something similar to a residence permit nowadays. It had to be obtained before individuals could move to another place. This was applicable not only in between republics but also within republics. Report on Lithuania, European Commission against Racism and Intolerance. Strasbourg, September 1997, ECRI (97) 56 para. 6.

3 Case No. 7/94 of 13 April 1994 (1994) 1 E.E.C.R.C.L.255. Available at www.lrkt.lt.

4 The texts used here are available under www.litlex.lt and www.minelres.lv.

5 This option was inserted with amendments of 3 October 1995.

6 This article was slightly changed by amendments on 6 February 1996. Before these amendments the law provided that citizenship shall be retained by children who had Lithuanian citizenship until 15 June 1940 and who were born in Lithuania or in refugee camps but are at present time residing in other states.

7 Before amendments of 7 December 1993 this condition was also applicable to children of persons who held Lithuanian citizenship until 15 June 1940.

8 See chapter 2 on Latvia in this volume.

9 Certain provisions of amendments are effective since 1 April 2006, but some since 1 January 2005.

10 For details on these debates see the articles 'Lithuanian émigrés unhappy with citizenship loss', ELTA [National News Agency], 6 June 2001, 'New Law will entitle Lithuanian emigrants to keep citizenship', ELTA, 17 September 2002, and 'Adamkus signed controversial citizenship law', ELTA 30 September 2002.

11 The proposed amendments were even stricter and debate was reopened after the President of Lithuania intervened with proposals to liberalise the procedure for naturalisation in Lithuania for spouses. The compromise reached was that the required term of residency would be increased from five to seven years, but not to ten years as foreseen in the draft law (86 in favour, five against, seven abstentions). The President also opposed the additional requirement that the couple should have minor children who are Lithuanian citizens. In his view this would contradict the principle of equality contained in the Constitution. The proposals made by the President were harshly criticised by Conservative Members of Parliament. They saw the proposals as threat to the survival of the Lithuanian nation and national identity. Moreover, they were afraid that liberal citizenship procedures might stimulate marriages of convenience, often referring to Denmark to illustrate this point. See '*Seimas* approves more liberal procedures for admission to citizenship via marriage', ELTA, 9 December 2004.
12 On this case, see also 'Lithuanian Practice in International Law 2004', as reported in the *Baltic Yearbook of International Law* 5, 2005: 329-332.
13 In addition, on 1 April 2006 the authority on questions of citizenship, formerly attributed to municipal institutions, was transferred to the Department of Migration of the Ministry of the Interior.
14 On 11 February 2004 the Ministers of Education and Science and Justice confirmed the programme of exams on the basics of the Lithuanian Constitution and language. The procedure for the organisation and implementation of the exams was confirmed by both Ministers on 1 March 2004.
15 There are three groups of disability of which group I is the heaviest. The group is assigned by a special commission on the basis of a diagnosis. Assignments can be for a defined period or for life. Group I is as a rule assigned for life.
16 Provisions at issue were closely monitored, at least, by the Human Rights Watch, which on a number of occasions condemned their application and advocated to abolish them. See the reports on human rights developments in Latvia, Lithuania and Estonia available at www.hrw.org.
17 Before the Law of 2003 was adopted it was possible to lose citizenship on the basis of severance of actual links with Lithuania. A person who has lived abroad with an invalid passport for more than three years or who has entered foreign military or public service without the permission of the competent authorities was considered to have severed links with Lithuania.
18 However, it is not entirely clear because according to art. 1, para. 3, persons of Lithuanian descent can acquire Lithuanian citizenship if they are not citizens of any other state. The only plausible explanation can be that according to art. 18 they do not lose their right to acquire Lithuanian citizenship because they possess the citizenship of another state.
19 Information provided by the Head of the Division on Citizenship Matters of the Ministry of the Interior, Mrs. Daiva Vezikauskaite.
20 For more information on the debate see ELTA, 15 March 2005, and ELTA, 16 March 2005.

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Part II: States with histories of shifting borders

Chapter 4: Same letter, new spirit: Nationality regulations and their implementation in Poland

Agata Górny

During the last century, the rewriting and reconstructing of the pertinent laws relating to Polish nationality were shaped, first of all, by transformations in the Polish state's political construction. Namely, the Second Republic of Poland (1918-1939), the Polish People's Republic (1945-1989) and the Third Republic of Poland (from 1989 onward) have represented different political systems and approaches towards the concept of Polish citizenship.

Arguably, the development of the legal notion of Polish citizenship has always been strongly embedded in the historical context of the country, as belonging to the Polish nation has not always been synonymous with membership within the Polish state. This situation has been caused by radical reconfigurations of Poland's borders in the last century and substantial political (also economic) emigration from Poland. Moreover, the communist Polish People's Republic promoted the idea of a single socialist nation comprised of members/inhabitants of Soviet Bloc countries. Thus, geo-politics defined a concept of the nation that was far removed from the way in which many Polish people construed their own identity.

I differentiate, therefore, between the distinct concepts of ethnicity and nationality/citizenship. The latter dual concepts refer to affiliation to the state and are certified by a legal bond between a citizen and the state. Ethnicity constitutes more of a subjective feeling of belonging to an ethnic group or to a given nation, along with concurrent, objective criteria relating to a person's ancestry. Such a differentiation is necessary in a presentation of the regulations and practice regarding Polish nationality since, in my opinion, ethnicity was very important in the law on nationality in the Polish People's Republic and still plays a role in current Polish legislation.

The goal of this chapter is to demonstrate evolutions in the field of Polish nationality, focussing on its acquisition and loss. I present changes not only in written law but also in practice regarding Polish nationality. This is necessary due to a high level of discretion in the Polish legislation in this field. Analyses of regulations are further enriched with selected statistics on the acquisition of the Polish nationality to better capture the nature of the phenomenon in Poland.

Aside from analysing legal acts and statistics, the chapter will indicate the direction in which the approach towards Polish nationality has been going since the 1990s. I argue that contemporary Polish nationality policy (if we can talk about one) still puts the emphasis on emigrants and the diaspora rather than on immigrants. My argument is supported by the debate and work on new legislation relating to matters of Polish nationality in the Polish Parliament in 1999-2001. The focus on the diaspora can be found in bills on Polish nationality and related bills, of which only the Repatriation Bill was enacted (in 2000).[1] Thus, I devote some space to the most recent bill on Polish nationality, debated in the Parliament in 2001, which combined elements from earlier bills.

The chapter opens up with a historical overview of developments in nationality legislation from the post-war era to the present. Then, it discusses basic rules governing acquisition and loss of Polish nationality in contemporary Poland. Subsequently, discussions regarding new regulations and their underlying orientations and trends in policy on Polish nationality are presented. Finally, selected statistics on the acquisition of Polish nationality are provided and discussed.

4.1 Polish nationality in historical perspective

4.1.1 Introductory remarks

There have been three acts on Polish nationality enacted – in 1920[2], 1951[3] and 1962[4] – that share important elements. First of all, the acquisition of Polish nationality by birth has always been driven by the blood principle (ius sanguinis), with the territory principle (ius soli) merely playing a secondary role. Secondly, due to radical changes in Poland's international borders and long-standing emigration from Poland, issues concerning the recognition of Polish nationality have always been crucial to Polish legislation on nationality. Finally, rules concerning foreigners' naturalisation in Poland have been of secondary importance in the debate and legislation on Polish nationality, despite considerable growth in immigration to Poland since the early 1990s.

4.1.2 Post-Second World War (1945-1962)

The end of the Second World War and agreements signed between Stalin and other allied leaders radically altered Polish territory. This involved two major changes – loss of (formerly) eastern Polish lands inhabited by Polish citizens and the acquisition of eastern German lands populated largely by German citizens (the 'Regained Territories'). The loss of the eastern Polish territories brought the problem of repatriat-

ing Polish citizens from the newly-Soviet territory. This act was based on several Polish-Soviet mutual repatriation agreements signed in the 1940s and in 1957. On the basis of these agreements, all people of Polish and Jewish ethnicity, who had been Polish citizens as of 17 September 1939, were entitled to move and resettle within Poland's new borders (Łodziński 1998). All repatriates were treated as Polish citizens, and automatically lost their foreign nationality upon repatriation to Poland. The repatriation agreements signed with the Soviet Union concerned also the resettlement of Polish citizens of non-Polish (Ukrainian, Belarusian, Russian etc.) ethnicity to the USSR. Here, the principle of expatriation from Poland was not based on nationality but ethnicity.

Nevertheless, the biggest national group expatriated from Poland in the post-war period, on the basis of the Potsdam agreements, was Germans. They were officially excluded from Polish society by the Act on the Exclusion of Persons of German Ethnicity from Polish Society (1946).[5] This applied to people not verified as Polish nationals or those manifesting their German origins.[6] Ethnic Poles, even the ones having been German citizens before the Second World War, were entitled to stay in Poland. Special official bodies were established and appropriate legal rules introduced to verify the Polish ethnicity of those who wished to stay in Poland.[7] Two pivotal legal acts announced at that time were the Act on Polish Nationality of Persons of Polish Ethnicity Inhabiting the Regained Territories (1946)[8] and a like decree for inhabitants of the former Free City of Gdańsk (Danzig) (1947).[9] These acts directly linked a person's nationality to his or her ethnicity.

Ethnicity verification and objective ethnicity criteria were also included in the 1951 Act on Polish Nationality. Namely, the Act obliged the inhabitants of the Regained Territories and the former Free City of Gdańsk to obtain adequate documents certifying their Polish ethnicity. It also gave the right to Polish nationality to all Polish repatriates. Again, Polish nationality was linked to ethnicity on a legal basis. This link was also reflected in two subsequent legal acts concerning the permission for the renunciation of the Polish nationality for people of German (1956)[10] and Jewish (1958)[11] ethnicity who left for their ethnic homelands (Albiniak & Czajkowska 1996: 324-325). Such acts were designed to simplify the renunciation of Polish nationality. Behind these acts lay, however, the idea of expelling those expressing non-Polish ethnicity from the country. The fact that this pressure was directed towards selected ethnic groups is symptomatic.

4.1.3 Stabilisation (1962-1989)

Another Act on Polish Nationality was introduced in 1962. This Act, without major amendments, remained effective until the end of the communist regime in Poland. It did not challenge the rules for the recognition of Polish nationality included in the 1951 Act by assuming a continuity of the law on Polish nationality. Nor did it directly address the issue of Polish ethnicity, although it still accorded special rights to repatriates returning to Poland.[12] The link between ethnicity of a person and his or her right to Polish nationality was made an issue in the late 1960s. Polish authorities officially challenged the loyalty of Polish citizens of Jewish origin to the Polish state. People with 'dual loyalties', usually active in some way in political life were made to leave Poland after signing a document expressing their intention to renounce their Polish nationality upon acquisition of the Israeli nationality (Stola 2000). This 'action of mass renunciation of Polish nationality' was based on the above-mentioned Decree of 1958. It is not within the scope of this analysis to present the comprehensive political background behind asking Jews to repudiate their Polish nationality.[13] It demonstrates, however, how the concept of Polish ethnicity and accordant right to Polish nationality was exploited in Poland during the communist era.

Furthermore, many Polish people who emigrated from Poland during the communist era were 'asked' to relinquish their Polish nationality while visiting Poland. If they didn't relinquish it, they risked being imprisoned in Poland for illegally overstaying abroad. Here, 'a need to renounce' Polish nationality was justified not by the ethnicity criterion, but by a lack of loyalty towards the Polish People's Republic and its ideology. Those procedures did not violate the Polish legislation on nationality. However, they have been recently challenged as violating the Polish Constitution by making renunciation of the Polish nationality effectively compulsory for some people (Jagielski 2001).

In general, an analysis of legal acts on Polish nationality alone does not allow for an understanding of the issues of nationality and nation in communist Poland. This is due to the officials' high level of discretionary powers regarding Polish nationality at that time, which was particularly evident in how the relationship between ethnicity and nationality was treated. Although absent from the 1962 Act on Polish Nationality, ethnicity was a factor in decisions regarding Polish nationality and played a particular role in relation to German and Jewish minorities. Special decrees designed for these two groups in 1956 and 1958 were not voided until 1984 (Albiniak & Czajkowska 1996: 326).

4.1.4 Political and economic transition (the post-1989 era)

The end of the Polish People's Republic and the establishment of the Third Republic of Poland necessitated deep economic and political reforms in the country. Likewise, changes in the nationality law were considered to be necessary even as early as the negotiations that led to fully democratic elections. However, a new Act on Polish Nationality has not been enacted yet and the 1962 Act on Polish Nationality, with some amendments from the late 1990s, is still in force.[14] Even so, some policy changes regarding Polish nationality have been introduced. These changes in policy take advantage of imprecise formulations in the 1962 Act on Polish Nationality. In this way, a strongly subjective approach in conferring Polish nationality has been continued in the Third Republic of Poland.

The most significant amendments to the 1962 Act were introduced in 1999. The issue of repatriation was removed from the Act on Polish Nationality and a separate legal act – the Repatriation Act – dealing with this phenomenon was implemented in 2000. Rules regarding loss of Polish nationality were changed since one of the clauses of the Act, namely that 'acquisition of a foreign nationality results in the loss of Polish nationality,' violated the 1997 Polish Constitution[15] (Jagielski 2000). An amendment was passed to make it impossible to deprive anybody of Polish nationality unless he or she expressed the desire to give it up.

Amendments from 1999 also encompassed a few more precise, hence less discretionary, criteria for granting Polish nationality. A definition of the type of stay (on the basis of a permanent residence permit) was added to the requirement regarding the duration of stay in Poland – five years. In practice, it amounts to around ten years of legal residence in Poland although it varies for different groups of foreigners.[16] Major changes were introduced to the procedure designed for foreign spouses of Polish citizens (art. 10). The simplified procedure of acquiring Polish nationality started to apply not only to foreign women married to Poles, as it used to be, but also to foreign men. Under the amendments, they were entitled to Polish nationality either three years and six months after their marriages to Poles or after six months of living on the basis of a permanent residence permit in Poland. In the past, the corresponding requirement was totally different – application for Polish nationality had to be made within three months of marriage.

A presidential Ordinance put into force in 2000[17] was another step towards reduced discretion in decisions regarding the acquisition and loss of Polish nationality, although it did not change the procedures themselves that much. As a consequence of this ordinance, a list of documents and forms required by the Presidential Chancellery to pro-

cess appropriate applications became written law instead of less formal rules, as had been the case before. The President initiated another greatly significant change to Polish nationality policy. In 1999, the President expressed his will (in a form of a legal act) to terminate all remaining conventions concerning avoidance of dual nationality with post-communist countries – a legacy of the communist era.[18] These conventions had been affecting foreigners' naturalisation process by creating inequality among applicants for Polish nationality. Most citizens of the Soviet Bloc were not allowed to retain their previous nationality upon naturalisation in Poland, whereas for other foreigners it was subject to a discretionary decision of the Polish President. By 2002, as a consequence of the President's initiative, Poland ceased to be a party of those conventions.[19]

4.2 Basic principles of current regulations on Polish nationality

4.2.1 Acquisition of Polish nationality

The 1962 Act on Polish Nationality deals with the acquisition of Polish nationality by birth and with most modes of after-birth acquisitions. The latter are regulated by three articles (arts. 8, 9 and 10). They correspond with three procedures: *conferment*, *acknowledgement* and a simplified *marriage* procedure. One mode of acquisition – *repatriation* – is covered by a separate legal act – the 2000 Repatriation Act.

Acquisition by birth is driven chiefly by the ius sanguinis principle: a child becomes a Polish citizen when he or she has at least one Polish parent (arts. 4 and 6). The ius soli principle applies only when both parents are unknown (art. 5).

Conferment (art. 8) is the most discretionary procedure and can be considered as a 'fast track' for granting Polish nationality. Within this procedure, the President has virtually unrestricted power to grant or refuse Polish nationality without any justification. Officially, using this procedure, a foreigner *can be granted* Polish nationality when he or she has lived in Poland, on the basis of a permanent residence permit, for at least five years. However, the President can also use this procedure for achievement-based conferment of Polish nationality, such as for athletes, artists, scientists and others who rendered or are expected to render some valuable service to the Polish State. The President can also make acquisition of the Polish nationality conditional on renunciation of an applicant's former nationality.

Acknowledgement (art. 9) can be considered as an *entitlement*-based procedure of acquisition, as it gives relatively little space for discretion. Within this procedure, *a stateless person* or a person whose nationality is unknown *can be* granted Polish nationality, after he or she has lived

in Poland, on the basis of a permanent residence permit, for at least five years. Applications within this procedure are collected at the local level (in *starostwo*) and decisions are made by voivods (the elected governor of a voivodeship – province), who have to justify their positive and negative decisions.

Marriage procedure (art. 10) defines acquisition by *declaration.* Within this procedure, a person married to a Polish citizen *acquires, upon application,* Polish nationality when he or she has lived in Poland, on the basis of a permanent residence permit, for at least six months or has been married for at least three and a half years. The practice shows that this procedure is the least discretionary among the three described paths.

The conferment of Polish nationality can be extended to children of the applicant. It can be extended also to adopted children but only after the written agreement of the legal guardian (art. 8). In general, the nationality of children over sixteen cannot be changed without their expressed agreement (arts. 7 and 8). Polish nationality is automatically extended to all children of the applicant living in Poland at the time only in the acknowledgement procedure (art. 9).

As demonstrated above, the main requirement for being successfully naturalised in Poland concerns the duration of residence in Poland. The Act on Polish Nationality does not demand any proof of attachment to the Polish nation and culture or fluency in Polish. It has been, however, observed that Polish nationality has sometimes been refused, especially within the conferment procedure, due to the unsatisfactory level of an applicant's integration in Polish society in cultural, social or economic terms (Jagielski 2001). A study of positive and negative decisions on applications for Polish nationality in the Warsaw voivodeship in 1989-1998 revealed also that an applicant's Polish origins could be to his or her advantage (Górny 2001).

Repatriation to Poland is inseparable from the acquisition of Polish nationality. Repatriates become Polish citizens upon crossing the Polish border with a repatriation visa in their hands; Polish ethnicity is the exclusive criterion for being entitled to the repatriation visa.[20] Designates of Polish ethnicity, that have to be observed jointly, encompass: declaration of Polish ethnicity, attachment to Polish culture (cultivation of Polish language and tradition) and having at least one parent or grandparent or two great grandparents of either Polish ethnicity or Polish nationality in the past. Thus, for repatriates, the right to Polish nationality is exclusively based on an ethnicity criterion, which forms an exception to the Polish nationality law.

4.2.2 Loss and reacquisition of Polish nationality

Polish nationality *cannot* be taken away from anybody without his or her will. 'A Polish citizen loses his or her Polish nationality, upon his or her application, after the President consents to it.' *Resignation* from Polish nationality extends to children only if the second parent agrees to it or is deprived of his or her parental rights. Children over sixteen have to agree to renunciation. Apart from self-renunciation, Polish nationality can be taken away by *option* when parents, among whom one is a foreigner, declare the choice of a foreign nationality for a child within three months of the child's birth.

As far as *reacquisition* of Polish nationality is concerned, the 1962 Act limits such possibility only to persons who lost their Polish nationality due to marriage with a foreigner (art. 11). In such cases Polish nationality can be returned, upon application, after termination of the marriage. However, the President can also restore Polish nationality in other cases using the conferment procedure. In 1998, President Kwaśniewski even declared that he would be returning Polish nationality to German and Israeli citizens who had lost it in the past and that he would not require renunciation of their foreign nationality. Consequently, restoration of Polish nationality is another element of the Polish law on nationality where the level of discretion is relatively high.

4.2.3 Dual nationality

Dual nationality is tolerated in Poland although there is very little space devoted to this issue in the 1962 Act on Polish Nationality. A short art. 2 says that 'a Polish citizen, according to the Polish law, cannot be recognised as a citizen of another country at the same time'. The interpretation of this article varied and created some controversies in various periods. Its present interpretation is that a Polish citizen cannot use his or her rights as a foreign citizen in contacts with Polish authorities (Zdanowicz 2001). Such a relatively liberal approach is an effect of the liberalisation of policy on dual nationality, which started in the mid-1980s (Zdanowicz 2001). The liberalisation was further facilitated by the termination of conventions on the avoidance of dual nationality in the late 1990s and early 2000s.

It should be noted, however, that an official policy on dual nationality has never been articulated in Poland. Furthermore, the President, who can ask for the relinquishment of foreign nationality upon naturalisation in Poland (art. 8), has not defined his position on this issue. Consequently, as in other fields of nationality policy, the role of the President is pivotal and the approach towards dual nationality in Poland is highly discretionary. Such 'unofficial' practices regarding dual

nationality create many misunderstandings in this area, such as the common opinion of the Polish diaspora that dual nationality is not accepted by Poland.

4.3 The unresolved debate (1999-2001)

Changes in the Polish nationality law have been planned since 1989, but only selected goals have been achieved to date. The most important act – the Act on Polish Nationality – remains unchanged although there have been already several bills on Polish nationality proposed and discussed in the Polish Parliament. Work on nationality legislation was particularly intensive during the third parliamentary term (1997-2001), when post-Solidarity parties held a majority in the Polish Parliament. In the fourth parliamentary term, when post-communist parties held the majority, work on nationality legislation was put off.[21]

The necessity to enact a new Act on Polish Nationality, frequently declared by politicians (mostly post-Solidarity ones), stems from the fact that the ideology regarding entitlement to Polish nationality changed radically after 1989 in Poland. Also, new social currents, with the democratisation in CEE countries, required new solutions in the law on Polish nationality. Reinstatement of Polish nationality to people who were deprived of it needs to be clearly defined. Moreover, issues relating to the repatriation of people of Polish descent from the territory of the ex-USSR again became prominent in the 1990s. Last but not least, increasing immigration to Poland requires that the rules on naturalisation need to be re-evaluated and made less discretional.

Whereas the repatriation problem has been solved legislatively with the introduction of the Repatriation Act in 2000, no special legislation dealing with the two remaining issues has been enacted. Preparation of an Act on Polish Nationality started in the late 1990s and three bills on Polish nationality have been proposed. The most recent was the deputies' proposal submitted in 2000, which combined the two earlier proposals. Certain issues included in the latest Bill to demonstrate the political background and aims behind the formulation of a new Act on Polish Nationality are worth noting.

In the Bill, as in all acts on Polish Nationality, the basic rule for being recognised as a Polish citizen was the ius sanguinis principle. This newest Bill foresaw special procedures for people intending to reacquire their Polish nationality lost in the past. In fact, as stated in the introduction to the Bill, the problem of 'reinstating Polish nationality to all those who have the right to it' was considered very important by the Bill's authors. The proposed reinstatement procedure would have applied to those who had lost Polish nationality on the basis of pre-

vious Acts on Polish Nationality (1920, 1951, 1962) and whose relinquishing of Polish nationality had not been 'fully voluntary'.[22] Applicants' entitlement to this procedure would not have been contingent on living permanently in Poland. The Bill also proposed a procedure for granting nationality to a particular group of people of Polish origin – Polish veterans of the Second World War. As far as a naturalisation procedure is concerned, the Bill on Polish Nationality added to a list of requirements proposed in the 1962 Act by introducing criteria designating applicants' level of social, economic and cultural integration into the Polish society. They included: adequate knowledge of the Polish language, evidence of applicants' ability to maintain themselves in Poland, absence of criminal record and behaviour not violating loyalty towards the Polish state. These criteria were intended to set more precise and thereby less discretional criteria for naturalisation in Poland.

The parliamentary debates on the above proposals were fairly uncontroversial (Górny, Grzymała-Kazłowska, Koryś & Weinar 2003) and so can be considered as indicative of the approach to nationality matters observed in the contemporary Polish political scene. The reasons there was eventually no consensus on the Bill, leading to its withdrawal from the parliamentary agenda are not clear. It seems, however, that the issue dividing the Polish Parliament was the problem of acceptance of dual nationality (Górny, Grzymała-Kazłowska, Koryś & Weinar 2007). Right-wing, post-Solidarity policy-makers supporting the Polish diaspora insisted on the need for more open acceptance of dual nationality whereas less radical left-wingers in the Parliament promoted the present status quo – quiet/unofficial tolerance of it.

In general, the Bill on Polish Nationality focused on securing the right of people of Polish origin to Polish nationality. Similar aims were to be achieved by enactment of the Repatriation Act in 2000. As far as safeguarding the interests of the Polish diaspora is concerned another Bill was discussed in the Polish Parliament in 1999-2001 – the Bill on the Polish Charter. The draft anticipated ways to determine national affiliation of persons of Polish origin or of Polish nationality. It was to be issued not only to former Polish citizens, but also to their descendants. The Charter was to offer to its beneficiaries the freedom of entry and extended social entitlements in Poland. At the same time, the Charter did not impose any obligations on its beneficiaries and the application procedure was to be free of charge. Similar projects of a Special Status Law have been introduced in three other Central European countries – Hungary, Slovakia and Slovenia (see Kovács and Tóth, Kusá and Medved in this volume). In Poland, the project was not accepted due to the financial burden that it would have put on the Polish State in its proposed form and due to conflict with the *acquis communautaire*.[23]

The focus of both discussions and political and legislative action regarding Polish nationality and related matters is undoubtedly on the Polish diaspora and Polish emigrants, with immigration and naturalisation being of secondary importance. However, only the issue of repatriation has been resolved legislatively. Work on an Act on Polish Nationality and on the Polish Charter – the Procedure for the Recognition of Membership to the Polish Nation or of Polish Origin – have been postponed. In fact the projects have been abandoned in parliaments with a post-communist majority. Polish NGOs (primarily *Wspólnota Polska)* helping Poles in the East had unsuccessfully lobbied for the enactment of that Procedure before 2003, when visa requirements were imposed on citizens of countries neighbouring Poland to the East. Since the elections in 2005, when the post-Solidarity parties won the majority in parliament, repatriation, citizenship legislation and the Polish Charter have been put on the political agenda again.

4.4 Acquisitions of Polish nationality in numbers

4.4.1 Comment on data

Data on acquisitions of Polish nationality have just recently been integrated into the main statistical system and database of foreigners. I will therefore only focus on acquisitions through one procedure, namely the conferment of Polish nationality, for which nation-wide data are available over a reasonable period of time. At the same time, the characteristics of applicants using this procedure accurately reflect the nature of the phenomenon and the most important groups being naturalised in Poland. To make my description more exact and informative, I enrich it with fragmented data on other procedures and repatriation. These data include information on foreigners who were naturalised by acknowledgement and marriage procedures in 1997 and in recent years (2002-2004).[24] I will also show results of research carried out in the Warsaw voivodeship in 1999, when I collected data on applicants for Polish nationality in 1989-1998 based on the three most important procedures: conferment, acknowledgement and marriage.[25]

4.4.2 Naturalisations – conferment and two other procedures

In 1992-2004, two consecutive Polish Presidents, using the conferment procedure, granted Polish nationality to 13,227 people. The biggest national group of newly admitted Polish citizens were Germans (12 per cent). Other important groups constituted: Israelis (8 per cent), Canadians (6 per cent), Bulgarians (4 per cent) and Americans (3 per cent), (see Table 4.1). However, as much as 30 per cent of applicants

Table 4.1: Foreigners granted Polish nationality by means of the 'conferment procedure' in 1992-2004 by (former) nationality

Nationality	*Number of persons*	*Per cent of the total*
German	1,587	12%
Israeli	1,080	8%
Canadian	778	6%
Bulgarian	591	4%
American	456	3%
The former Soviet Union, including the Baltic States[a]	3939	30%
Other	4,796	36%
Total	13,227	100%

[a] I include the general category ex-USSR, since for as many as 804 persons the statistics do not indicate from which former Soviet Union republic they originate.
Source: Author's own compilation based on data provided by the Polish President's Chancellery

originated from the former Soviet Union, with Ukrainians being the leading group (10 per cent).

Most applicants for Polish nationality originated from countries constituting traditional areas of destination for Polish emigrants: Germany, US, Canada and various countries in Western Europe (e.g. France). The intensive Polish-Bulgarian student exchanges during the communist era resulted in many Polish-Bulgarian marriages and complicated nationality matters for their families. It is evident that the conferment procedure has been used by the Presidents to return Polish nationality to Polish emigrants who had lost it. This also explains the high number of Israelis 'naturalising' in Poland.

The group of ex-USSR citizens naturalising via the conferment procedure in Poland in the 1990s and 2000s is quite high. It does not fully reflect, however, the predominance of ex-Soviet citizens in contemporary migration to Poland, since they were particularly likely to use the acknowledgement procedure in the 1990s. This was due to the requirement to relinquish their original nationality in accordance with bilateral conventions on avoiding dual nationality, still effective between Poland and countries of the former Soviet Bloc in the 1990s. The acknowledgement procedure is less discretional than the conferment and therefore already stateless people tend to choose the acknowledgement instead of the conferment procedure. In 1989-1998, in the Warsaw voivodeship, 76 per cent of ex-USSR citizens (stateless persons at the moment of applying) used the acknowledgement procedure and citizens of this region constituted a full 94 per cent of all those applying for naturalisation under this procedure.

The chart showing the number of naturalisations granted by the Presidential Chancellery in the period analysed is reminiscent of a U-

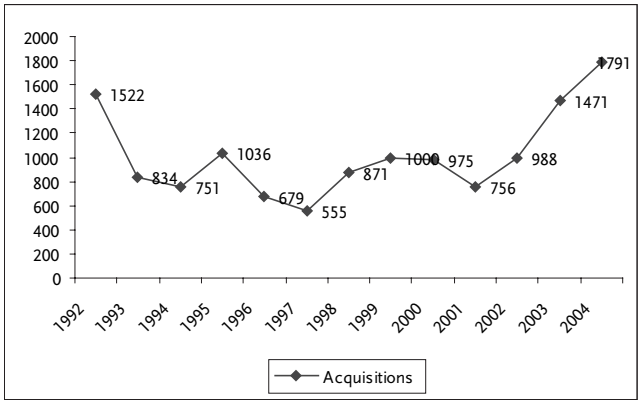

Figure 4.1: Acquisitions of Polish nationality via the conferment procedure, by year of acquisition

Source: Author's own compilation based on data provided by the Polish President's Chancellery

shape (see Figure 4.1). The highest annual numbers registered were 1,522 (in 1992) and 1,791 (2004), whereas the fewest 679 and 555 occurred in the mid-1990s-1996 and 1997, respectively. The 'boom' of naturalisations registered at the beginning of the 1990s was caused mainly by 'early re-conferments' of Polish nationality. For example, in 1992-1995, over one quarter of the people granted Polish nationality were German citizens, probably many or most of whom had lost their Polish nationality in the past.

The quite evident, i.e. 56 per cent, growth in the number of acquisitions in 1998 can be partly explained by factors described above. Among them, the increase in the number of applications by Israelis (and other Polish emigrants) seems to be important. The number of 'naturalising' Israelis rose in 1998 after President Kwaśniewski's aforementioned promise of a 'broad and uncomplicated restoration'. In 1997, the President granted (restored) Polish nationality to only nineteen Israelis, whereas in 1998 the respective number was six times higher – 114 persons.

A gradual increase in volume of ex-USSR citizens using the conferment procedure also contributed to the increase in acquisitions. Immigrants from the former Soviet Union have constituted the main segment of 'new wave' immigration to Poland, which began in the late 1980s, and these migrants started to qualify for naturalisation in the latter half of the 1990s. The subsequent termination of bilateral conventions on the avoidance of dual nationality with some Soviet Bloc countries allowed more and more ex-USSR citizens to use the conferment procedure. Between 2001 and 2004, their volume grew fourfold

and it is likely to continue growing in the future. In 2004, newly-naturalised Polish citizens from the Ukraine constituted 29 per cent of the total. For all ex-USSR countries as a whole, the respective ratio amounted to 52 per cent.

Certainly, data on the conferment procedure describe only part of the phenomenon of naturalisations in Poland, but in my opinion, they quite accurately provide a snapshot of national groups interested in Polish nationality, especially for the 2000s. In the 1990s, the number of applicants for the acknowledgement procedure was slightly higher than for the conferment procedure; by the 2000s, the acknowledgement procedure almost totally lost its importance due to the dissolution of conventions on avoiding dual nationality. In fact, between 2002 and 2004, fewer than 200 people were naturalised through any procedure other than conferment.[26]

The remaining procedure, marriage, played a secondary role in the 1990s and is still of rather marginal importance. In 1997, for example, only 52 foreign women used this path. In the Warsaw voivodeship in the period 1992-1998, it was 73 women. At the same time, the annual numbers of mixed weddings in Poland were much higher – between 3,000 and 3,500 in the 1990s and 2000s respectively. This procedure gained more importance after 1999, when it started to apply not only to women but also to men and when conditions regarding applications became more 'reasonable'. It is likely to further grow in importance, since ex-USSR citizens no longer have to relinquish their foreign nationality upon naturalisation in Poland. In 2002, for example, from among 3,552 mixed marriages celebrated in Poland, over 40 per cent involved citizens of post-Soviet countries.

4.4.3 Repatriation

Repatriation procedures were introduced amid much discussion. On the one hand, speculation about thousands of people of Polish descent (not always genuine) who would take advantage of the repatriation procedure, was aired in the media and Parliament. On the other hand, virtually nobody dared to question Poland's obligation to take care of its exiles in faraway Asiatic republics of the former Soviet Union. The controversies around repatriation influenced the final shape of the 2000 Repatriation Act by limiting repatriation to a very small group of people. As a rule the repatriation procedure only applies to persons who have lived permanently in some Asiatic republics prior to 2000. Thus, it is designed for those who did not manage to repatriate themselves in the 1940s and 1950s. The requirement that a would-be repatriate has to be invited by an official institution or a private person further limits the accessibility of the repatriation procedure.

Table 4.2: Repatriation visas to Poland in 1997-2003, by repatriates' previous country of residence

Previous country of residence	*1997*	*1998*	*1999*	*2000*	*2001*	*2002*	*2003*
Total	316	281	278	662	804	613	301
Belarus	–	10	15	45	140	127	43
Czech Republic	–	–	–	–	2	4	1
Georgia	–	–	–	–	–	1	3
Kazakhstan	316	245	172	361	216	194	156
Lithuania	–	–	11	16	20	3	–
Latvia	–	1	1	10	–	–	–
Moldova	–	1	2	10	9	5	2
Russian Federation	–	7	8	10	36	31	11
Ukraine	–	15	69	210	381	245	77
Uzbekistan	–	2	–	–	–	2	8

Source: Central Statistics Office, from Kępińska (2004)

All in all, in 1997-2003, only 3,255 repatriation visas were issued and 4,259 persons arrived via the repatriation programme. The actual number of persons who were naturalised in Poland is somewhere between these two numbers, since new arrivals include non-Polish members of repatriate families. In 2001-2003, 2,053 people acquired Polish nationality as repatriates. As demonstrated in Table 4.2, nationals of Kazakhstan represent the majority among repatriates (visas issued). Citizens of other former republics of the Soviet Union are in the minority and this relationship will persist due to the structure of the Repatriation Act.

According to the fragmented data on acquisitions of Polish nationality, naturalisation is a limited phenomenon in Poland. In the 1990s and 2000s, the annual number of persons granted Polish nationality, did not exceed 3,000, although the beginning of the 1990s brought about a visible increase in the volume of naturalisations. For example, in the Warsaw voivodeship, 26 and 80 applicants had been granted Polish nationality in 1990[27] and 1991 respectively, whereas in 1992, the number amounted to 203, with no decrease evident in subsequent years.

4.5 Conclusions

There have been surprisingly few and small changes in Polish legislation on nationality since 1951, when the second Act on Polish Nationality was introduced. Neither did the 1989 formation of the post-communist Third Republic of Poland pass a new law on nationality in spite of expectations of the kind. All this does not mean, however, that nothing

changed *in practice* regarding Polish nationality and the political attitudes to it. The most prominent example of the policy changes was the President's decision to restore Polish nationality by way of the conferment procedure, to those who had lost it during the communist era.

In general, the characteristic feature of law on Polish nationality is its great latitude for discretion by ministry officials, provincial voivods, and especially by the President of the Republic. Consequently, changing policy in nationality matters does not necessarily require changes in written law. At the same time, uncovering the mechanisms of this policy in practice requires looking beyond the written law. Even though the 1962 Act on Polish Nationality makes acquisition of Polish nationality conditional only on the duration of an applicant's stay in Poland, civil servants take into account also other factors encompassing a foreigner's social and cultural integration as well as his or her family and financial situation.

Poles living abroad and/or returning to Poland, and their right to Polish nationality, were the focus of the debate on reforms to Polish nationality law in the 2000s. It is important to remember that only some of the applican ts for Polish nationality are immigrants. A large proportion – about half in the 1990s – of new citizens are people who had lost Polish nationality under communism, and repatriates. This is undoubtedly a temporary phenomenon. The proportion will diminish as the pool of individuals interested in reacquiring their Polish nationality wanes and as the number of 'typical immigrants' who qualify for acquisition of Polish nationality, already relatively high, gradually grows.

Polish accession to the European Union boosted discussions on immigration to Poland in the context of the eastward shift of the EU border, i.e. to Poland's eastern frontier. However, it did not affect discourse on Polish nationality, which was absent from political and public platforms in pre- and post-accession periods. The absence was probably due to the post-communist majority in the Polish Parliament between 2001 and late 2005, which was not eager to tackle nationality (and other) issues pertaining to how to 'deal with the communist past'. The present Parliament has put nationality legislation on the political agenda again but has not yet discussed it.

Another consequence of Polish accession to the EU is the visible increase in the number of applications for Polish nationality submitted to Polish consulates abroad, especially outside Europe in the 2000s. In 2000, only 765 such applications were registered whereas, in 2004, their number reached 3,807. In 2000-2002 the highest number of applications was from Germany. Then, Argentina took first place with 505 in 2003 (Centre of Migration Research 2005).[28] Certainly, we do not talk here of acquisitions of Polish nationality, but about situations whereby people, usually descendants of Polish emigrants, entitled to ci-

tizenship but who are not registered citizens (not having a national registry number and passport, possibly due to a lack of interest on their part) take advantage of this right.[29]

All in all, it seems that interest in Polish nationality matters, rather moderate in the 1990s and at the beginning of 2000s, has been growing recently. This growth of interest is likely to continue in the light of the on-going immigration to Poland and the fact that Polish nationality became a European Union nationality in 2004.

Chronological list of citizenship-related legislation in Poland

Date	Document	Content	Source
1920	Act on Nationality of the Polish State	Regulated modes of acquisition and loss of Polish nationality.	www.dziennik-ustaw.pl (in Polish)
1938	Act on Deprivation of Polish Nationality	Regulated modes of loss of Polish nationality	www.dziennik-ustaw.pl (in Polish)
1946	Decree Concerning the Exclusion of Persons of German Ethnicity from the Polish Society	Defined the framework for the exclusion and finally deportation of persons of German ethnicity living on the Polish territory after the Second World War.	www.dziennik-ustaw.pl (in Polish)
1946	Act on Polish Nationality of Persons of Polish Ethnicity Inhabiting the Regained Territories	Defined the conditions for entitlement to Polish nationality for persons living in South-Western Poland (territories belonging to Germany before the Second World War).	www.dziennik-ustaw.pl (in Polish)
1947	Act on Polish Nationality of Persons of Polish Ethnicity Inhabiting the Former City of Gda sk	Defined the conditions for entitlement to Polish nationality for persons living in the former city of Gda sk.	www.dziennik-ustaw.pl (in Polish)
1951	Act on Polish Nationality	Regulated modes of acquisition and loss of Polish nationality.	www.dziennik-ustaw.pl (in Polish)
1956	Decree of the Council of Ministers No. 37/56 Concerning the Permission for German Repatriates to Renounce Polish Nationality (unpublished)	Provided a fast track for renunciation of Polish nationality for people leaving for Germany.	
1958	Decree of the Council of Ministers No. 5/58 Concerning the Permission for People Leaving to Israel to Renounce Polish Nationality (unpublished)	Provided a fast track for renunciation of Polish nationality for people leaving for Israel.	

Date	Document	Content	Source
1962	Act on Polish Nationality	Regulated modes of acquisition and loss of Polish nationality.	www.coe.int; www.uric.gov.pl (in Polish); www.dziennik-ustaw.pl (in Polish); www.abc.com.pl (in Polish)
1997	Amendment of the Act on Polish nationality	Extended required time of residence in Poland (5 years) by introducing the clause that only the stay on the basis of the permanent residence permit is counted; removed rules applying to repatriation procedure.	
1997	Constitution of the Republic of Poland		www.legislationline.org (excerpts)
1999	Amendment of the Act on Polish nationality	Introduced equality in treatment of husbands and wives of Polish citizens with regard to acquisition of Polish nationality; removed all possibilities of losing Polish nationality; made resignation from Polish citizenship fully dependent on the will of its holder.	
1999	Act on Terminating the Convention, Being Effective in Polish-Belarusian Relations, between the Polish People's Republic Government and the USSR Government Concerning the Avoidance of Cases of Dual Nationality, signed in Warsaw on 31 March 1965	Expressed the will of the Polish party to terminate the Convention on Avoidance of Dual Citizenship being in force between Poland and Belarus.	www.dziennik-ustaw.pl (in Polish); www.abc.com.pl (in Polish)
1999	Act on Terminating the Convention, Being Effective in Polish-Czech Relations between the Polish People's Republic and the Czechoslovak Socialistic Republic Concerning Regulations on Dual Nationality, signed in Warsaw on 17 May 1965	Expressed the will of the Polish party to terminate the Convention on Avoidance of Dual Citizenship being in force between Poland and the Czech Republic.	www.dziennik-ustaw.pl (in Polish); www.abc.com.pl (in Polish)
1999	Act on Terminating the Convention between the Polish People's Republic and the Mongolian	Expressed the will of the Polish party to terminate the Convention on Avoidance of Dual	www.dziennik-ustaw.pl (in Polish); www.abc.com.pl (in Polish)

Date	Document	Content	Source
	People's Republic Concerning Regulations on Dual Nationality, signed in Ulan Bator on 23 May 1975	Citizenship being in force between Poland and Mongolia.	
1999	Act on Terminating the Convention, Being Effective in Polish-Slovak Relations between the Polish People's Republic and the Czechoslovak Socialistic Republic Concerning Regulations on Dual Nationality, signed in Warsaw on 17 May 1965	Expressed the will of the Polish party to terminate the Convention on Avoidance of Dual Citizenship being in force between Poland and Slovakia.	www.dziennik-ustaw.pl (in Polish); www.abc.com.pl (in Polish)
1999	Act on Terminating the Convention, Being Effective in Polish-Ukrainian Relations, between the Polish People's Republic Government and the USSR Government Concerning Avoidance of Cases of Dual Nationality, signed in Warsaw on 31 March 1965	Expressed the will of the Polish party to terminate the Convention on Avoidance of Dual Citizenship being in force between Poland and Ukraine.	www.dziennik-ustaw.pl (in Polish); www.abc.com.pl (in Polish)
2000	Amendment of the Act on Polish nationality	Presented the full version of the changed act with minor changes.	
2000	Repatriation Act	Defined a framework for the repatriation of people of Polish descent from the Asiatic republics of the ex-USSR.	www.legislation.org; www.uric.gov.pl (in Polish); www.dziennik-ustaw.pl (in Polish); www.abc.com.pl (in Polish)
2000	Ordinance by the President of the Republic of Poland on Detailed Procedures Regarding Acquisition or Agreement for Relinquishing Polish Nationality and on Samples of Certificates and Applications	Defined the documents to be submitted and the exact procedures for the acquisition of nationality by conferment.	www.dziennik-ustaw.pl (in Polish); www.abc.com.pl (in Polish)
2001	Amendment of the Act on Polish nationality	Introduced rules relating to registration of acquisitions and losses of Polish nationality.	
2003	Amendment of the Act on Polish nationality	Procedural changes.	

Notes

1 Repatriation Act, *Journal of Law* 160, 2000, 1118.
2 Act on Polish Nationality, *Journal of Law* 44, 1920, 44.
3 Act on Polish Nationality, *Journal of Law* 5, 1951 25.
4 Act on Polish Nationality, *Journal of Law* 10, 1962, 49.
5 *Journal of Law* 66, 1946, 404.
6 The exclusion involved forced resettlement from the Polish territory and the loss of property in Poland.
7 So as to be positively verified as Polish, a person had to prove his or her coming from a Polish family and express his or her feeling of belonging to the Polish nation.
8 *Journal of Law* 15, 1946, 106.
9 Act on Polish Nationality of Persons of Polish Ethnicity Inhabiting the Former Free City of Gdańsk, *Journal of Law* 65, 1947, 378.
10 Decree Concerning the Permission for German Repatriates to Renounce Polish Nationality; the Decree of the Council of Ministers 37/56, 1956, (unpublished).
11 Decree Concerning the Permission for People Leaving for Israel to Renounce Polish Nationality; the Decree of the Council of Ministers 5/58, 1958, (unpublished).
12 In fact, very few people took advantage of this procedure, as it lacked appropriate directives as to its implementation.
13 It would be also a great oversimplification to look for origins of that action only in the anti-Semitic attitudes of the Polish elites and society. For example, not all Jews were made to leave Poland. Moreover, some of them remained not only in Poland but also in the Polish political structures.
14 Act on Polish Nationality, *Journal of Law* 128, 2003, 1175.
15 Constitution of the Republic of Poland, *Journal of Law* 78, 1997, 483.
16 Children of Polish citizens are immediately entitled to a permanent residence permit; foreigners married to Poles can be entitled after two years, whereas foreigners having 'tolerated status' have to wait ten years for a permanent residence permit.
17 Ordinance of the President of the Polish Republic on Detailed Procedures Regarding Acquisition or Agreement for Relinquishing Polish Nationality and on Samples of Certificates and Applications, *Journal of Law* 18, 2000, 231.
18 They include conventions signed with: the Soviet Union (1965), Czechoslovakia (1965), Bulgaria (1972), Mongolia (1975), and the German Democratic Republic (1975) (Albiniak & Czajkowska, 1996).
19 At the time of writing, only the Ukrainian Government has not ratified the termination of the convention.
20 In fact, being entitled to a repatriation visa does not necessarily imply immediate repatriation. Financial and organisational constraints have been slowing down the repatriation process. Some people entitled to repatriation have to wait several years to be invited by Polish authorities to Poland.
21 This problem is discussed in more detail in Górny, Grzymała-Kazłowska, Koryś & Weinar (2003).
22 They had not expressed their will to decline Polish nationality (deprivation on the basis of the Act of 1920) or they were 'forced' to relinquish Polish nationality (deprivation on the basis of the Acts of 1951 and 1962).
23 For more see Górny, Grzymała-Kazłowska, Koryś & Weinar (2003).
24 For 1997, data from regional departments were collected in one *ad hoc* action. For 2002-2004, I do not have exact data on the acknowledgement and marriage procedures but on the total for all three procedures. Aside from this, I have separate data only on the conferment procedure.

25 I worked on personal data files and created a database of 1,483 applicants, among whom 1,314 were granted Polish nationality.
26 According to a short interview with a civil servant dealing with acquisitions of Polish nationality, the number of people naturalising by way of the acknowledgement procedure is fewer than twenty people per annum.
27 The number for 1990 may be slightly underestimated, as files were checked according to the year of application. I started from 1989 and it is likely that somebody applying before 1989 and having received Polish nationality in 1990 was not registered in my database.
28 In 2004, by 18 November – 259 applications were submitted in Argentina.
29 Data collected by Agnieszka Weinar in the research project: 'New Poles, new Europeans – dual nationality among descendants of Polish emigrants in Argentina'.

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Chapter 5: Kin-state responsibility and ethnic citizenship: The Hungarian case

Mária M. Kovács and Judit Tóth

The preference for the naturalisation of ethnic Hungarians has been considered a counterbalance to the troubled history of a nation artificially split among various states and as a tool for preserving cultural identity in the twentieth century. The principle of ethnicity has been observed directly in nationality legislation and migration law through regulations for visa, residence and employment permits, and asylum status (Tóth 1995). Due to the ideology of a 'threatened Hungarian ethnic identity' the relationship between the social and economic integration of migrants, migration law, naturalisation and citizenship has never been publicly discussed (Fullerton, Sik & Tóth 1997). Hungarian authorities need not give reasons for refusing an application for naturalisation and there is no legal remedy against a negative decision. This is justified by referring to the sovereign power of state and, in cases of rejection, by a presumption of the applicants' missing ethnic, cultural ties to Hungary. An extension of preference in naturalisation to European Union citizens was smoothly passed in 2003, partly because of the supposed ethnic proximity of applicants in adjacent states.[1] Provisions supportive of family unity in nationality law are widely accepted and so are the discretionary powers in naturalisation proceedings that determine who is to be allowed to join this rather homogeneous society (Tóth 2005).

On the other hand, there are some contentious components of the nationality regulations in contemporary Hungary.

- Naturalisation and its precondition, the authorisation of permanent residence, are criticised as being too time-consuming and expensive, and the requirements for documentation as too bureaucratic. In other words, ethnic Hungarians, being the largest group of applicants, do not see themselves as preferential beneficiaries when it comes to the attitude of the authorities or to procedural provisions.
- Moreover, certain privileges of Hungarian citizenship were extended to EU nationals and migrants under the scope of Community law in the accession process (Tóth 2004a).
- The role of naturalisation in the process of migrant integration has been unclear. While the applicant is required to be highly integrated in a cultural, economic and social sense, integration programmes

do not exist at all, which means that integration can only be achieved by individual effort. The applicant must also not endanger public order and is investigated in this regard in various ways.

– Nationality as a basket of various rights and obligations is basically considered by the general public as a historical, cultural, ethnic and emotional issue without awareness of its existing legal and normative status and its neutral significance in a democratic rule-of-law system. For this reason, public opinion is strongly divided into 'normativists' and 'nation-builders', representing different standpoints concerning voting rights, principles for the acquisition of nationality, dual citizenship and never-ending citizenship for emigrants in the diaspora.
– As for ethnic Hungarians, the right to have the family and given name and the name of the applicants' prior place of residence and birthplace in their original ethnic language was finally introduced in amendments related to the naturalisation and registry process.[2] This causes certain confusion in the registration of foreigners and nationals since registration is, in theory, based on the authenticity and unaltered nature of existing identity documents. Moreover, this right is exclusively reserved for ethnic Hungarians; it does not apply to the non-Hungarian version of names of, for instance, naturalised refugees or stateless migrants belonging to a linguistic minority, which would be registered in the dominant language in their countries of origin.

5.1 History of Hungarian policies on nationality since 1945

Although the first Act on Hungarian Nationality (1879) became increasingly restrictive through amendments adopted during the wars, its ius sanguinis principle has remained dominant up to the present day. This Act was in force until 1948. The history of Hungarian policies on nationality since 1945 can be divided into the following periods:

1945-1948: The Armistice Agreement concluded in Moscow (1945)[3] annulled all the modifications of nationality that had come about as a result of the territorial changes of the Hungarian state between 1939 and 1945. Millions of former Hungarian citizens who ended up under the jurisdiction of neighbouring states lost their Hungarian nationality. The Peace Agreement fixed the borders of the Hungarian state along the frontiers as they had existed on the last day before the war began.[4] Between 1945 and 1948 temporary regulations on nationality considered all persons residing in Hungary in 1945 as nationals except for those holding the nationality of another state. Bilateral agreements on population exchange initiated by Czechoslovakia and the expulsion of

Germans resulted in the deprivation of nationality for those falling under these measures.[5] Individuals who had not returned to Hungary following the conclusion of the war were deprived of their citizenship and, between 1946 and 1948, their property was confiscated.[6] Finally, the citizenship status of communists who had fled Hungary during the interwar years was settled.[7]

1948-1956: In 1946 a reform of the legal status and civil rights of children born out of wedlock established their full equality,[8] but only the new Act on Hungarian Nationality of 1948[9] provided a coherent legal framework for the acquisition of nationality through changes in family and personal status. The Act provided for the equal treatment of children born out of wedlock and stipulated that all nationals residing abroad should be registered, without, however, creating techniques for registration in the absence of consular relations. The Act recognised the pending Hungarian nationality of undocumented persons who had been residing in Hungary for a given number of years.

1956-1989: This period witnessed the emancipation of spouses on the basis of the New York Convention of 1957 on married women[10] the principles of which were inserted into the third Act on Nationality adopted in 1957.[11] The executive rules of the Act were not published and were implemented by confidential order, such as the one requiring emigrants to renounce their nationality and social insurance rights. Following the 1956 revolution and the mass emigration it triggered, a broad amnesty was proclaimed for returnees and a registry of nationals permanently abroad was established.[12]

1989-1993: After 1989, Hungary started reforms to establish the rule of law and constitutionalism. In 1989 the prohibition of deprivation of nationality was regulated in the modified Constitution.[13] At the same time the nationality of expatriate nationals who had been deprived of their nationality arbitrarily was restored upon request.[14] The Geneva Convention of 1951[15] inspired the preferential naturalisation of refugees that was inserted into the nationality law. The fourth Act on Nationality passed in 1993 made preconditions for naturalisation more restrictive but preferences based on ethnic and family ties were intended to compensate for this.[16] Between 1989 and 1993 Hungary terminated bilateral agreements with former socialist states that excluded dual citizenship.

1994-2005: This period is marked by Hungary's accession efforts to the EU and by political debates on the status of ethnic Hungarians living outside Hungary's borders. During this time the Act on Nationality was amended three times,[17] due to the ratification of the European Convention on Nationality (1997) and the UN Convention on Stateless Persons (1954).[18] Eligibility for preferential naturalisation was extended to EU citizens and a super-preference was adopted in favour of ethnic

Hungarians in the shadow of the upcoming Schengen restrictions (Tóth 2003).

In the period under discussion there were three major breaks in basic principles. Although from 1879 onwards Hungary tolerated multiple nationality, between 1946 and 1989 the main rule was the exclusion of dual citizenship through bilateral agreements with socialist states. Mixed couples had to choose one of their nationalities for their child. Following 1989 the modified Constitution abolished the arbitrary deprivation of nationality. International principles of human rights relevant to nationality were inserted into the law, while a growing circle of preferences was defined as a core element of domestic legislation.

5.2 Current nationality legislation

5.2.1 Current principles in nationality legislation

The Constitution contains a guarantee relating to citizenship, i.e. the *prohibition of its arbitrary deprivation* (art. 69). Other rules are to be settled in legislation to be adopted by a two-thirds voting majority. The two-thirds rule, however, does not apply to the ratification of international agreements on citizenship.

The Nationality Act ensures the *equality of rights of citizens*. It guarantees that all citizens have identical legal standing irrespective of the legal title of acquisition of citizenship. The 1997 European Convention on Nationality obliges participating states to refrain from discrimination between their citizens, whether they are nationals by birth or have acquired nationality subsequently.

Discrimination is forbidden among Hungarian nationals, irrespective of the legal title under which their citizenship was granted. The Act contains only one exception with regard to withdrawal of citizenship which only applies to citizens by naturalisation.

The *right to change citizenship* is also included in the Nationality Act. Withdrawal of citizenship is an exception. The more common procedure is renunciation by a person who lives abroad and thus would presumably not become stateless. Measures aimed at the *prevention of statelessness* restrict the right of the individual to self-determination and the sovereignty of the state in accordance with the conventions of the UN and the European Convention. The only legitimate reason for the withdrawal of citizenship is if it was acquired in a manifestly fraudulent manner. Moreover, in the case of renunciation the person must prove that he or she has obtained another citizenship.

Domestic law ensures the granting of citizenship at birth by descent (ius sanguinis) while ius soli is applied as an auxiliary principle for abandoned or stateless children. The Act on Nationality supports *family*

unity (with respect to legal status) by various preferences for the naturalisation of spouses and (adopted) minors. Refugees and stateless persons are also given priority for admission to citizenship. Hungarian regulations are special in granting preferential treatment to persons who are former Hungarian nationals and to ethnic Hungarians in the process of acquiring citizenship.

Hungary tolerates *multiple citizenship*, and the state strives to create rules and enter into agreements to avoid conflicts between different legal systems. A person acquiring Hungarian nationality by naturalisation need not renounce his or her prior citizenship. The circle of bilateral agreements and the European Convention regulate several legal relationships with respect to persons of multiple citizenship (e.g. with regard to military service or taxation). Furthermore, persons having another citizenship are entitled to the same rights and obligations in the territory of Hungary as other nationals, with the exception of employment in the police or security services (Tóth 2004b). On the other hand, the *principle of genuine link*[19] requires a factual, effective and close relationship between Hungary and the applicant for naturalisation or other modes of acquiring citizenship, regardless of his or her existing other citizenship. However, for those in possession of Hungarian nationality and living abroad the genuine and effective link to Hungary is irrelevant. Since 1929 millions of (lawful) emigrants and their descendants have preserved their Hungarian nationality despite acquiring a second or third nationality, and despite the absence of close relations, or cultural and ethnic affiliation to Hungary.

Hungarian citizenship shall be certified with a *valid document* (identity card, passport, citizen's certificate). In case of doubt it will need to be either attested by the authorities or a certificate issued. Upon request, the responsible minister issues a certificate on the existence of citizenship or its cessation, or verifies that the person concerned has never been a Hungarian national. The certificate is valid for one year from the date of issuance. The certificate's contents may be contested before the Municipal Court by the person concerned, his or her lawful representative, the public prosecutor as well as the person's guardian.[20]

The regulatory principles and essence of the citizenship system in Hungary are *in harmony with international legal norms*. Hungary is a signatory to all conventions of import which define the framework of the development of the law. However, some shortfalls in *procedural guarantees* are still apparent.

5.2.2 Current modes of acquisition and loss of nationality

There are seven legal titles of acquisition of Hungarian nationality with different requirements:

1. The child of a Hungarian national obtains Hungarian citizenship *by birth* (ius sanguinis) regardless of the place of birth.
2. The child of a stateless immigrant in possession of a permanent residence permit or an abandoned child of unknown parents shall be considered as a Hungarian national unless or until this presumption is rebutted (e.g. when he or she obtains a foreign citizenship due to the clarification of his or her parent's identity and nationality). There is no time limit for rebuttal; *presumption* of Hungarian nationality on the basis of ius soli is therefore conditional.
3. Hungarian nationality of exiled nationals who were deprived of their nationality between 1945 and 1989 shall be restored upon request. A *declaration* addressed to the President of the State reinstates the nationality of the exiled national immediately when it is made. Acquisition of nationality is also possible by declaration in case the applicant was born in Hungary and has not acquired another nationality through his or her parent by birth, provided that at the time of the person's birth he or she resided in Hungary, he or she has lived without interruption in Hungary for a period of at least five years by the time of submission of the declaration and he or she is not older than nineteen years. Another ground for acquisition applies if the applicant was born from a Hungarian national mother and a foreign father before 1 October 1957 and did not become a Hungarian national by birth.
4. Presumptive paternity ensures nationality by law for a child born out of wedlock if a parent who declares paternity or a judgement recognises paternity/maternity, or if the parents marry subsequently (*family law facts*).
5. Upon request the *restitution* of citizenship is ensured if the applicant could not obtain a new citizenship within one year of his or her renunciation of Hungarian citizenship.
6. *Naturalisation* implies a long procedure and is conditional on various preconditions. Basic, non-preferential cases of *naturalisation* shall meet all of the following requirements:
   - permanent residence in Hungary for eight years in possession of a permanent residence permit or EEA citizens' residence permit,
   - clean criminal record and no current criminal proceedings,
   - proven means of stable livelihood and residence in Hungary,
   - naturalisation must not violate national interest of the state, and
   - successful examination taken on basic constitutional issues in the Hungarian language. If the applicant attended a Hungarian language secondary school or university, or obtained a diploma in Hungary, he or she is exempt from the exam.

   The requirements for preferential naturalisation differ from basic ones as follows:

- The permanent residence requirement is reduced to five years if the applicant was born on Hungarian territory or has established residence in Hungary before reaching legal age or is stateless.
- The permanent residence requirement is reduced to three years, if the applicant has been married to a citizen for three years, or he or she has a minor child who is a Hungarian citizen, or if the applicant has been adopted by a Hungarian citizen or is an officially recognised refugee.
- There is a residence requirement, but no permanent residence requirement at all, if any of the applicant's ascendants was a Hungarian national and he or she declares himself or herself to be an ethnic Hungarian.

The permanent residence requirement can also be waived

- in case of the extension of naturalisation to a minor child, i.e. if the applicant is a minor and his or her application was submitted along with that of a parent who qualifies for naturalisation,
- if the applicant is a minor and has been adopted by a Hungarian citizen,
- if the President of the State or the Minister of Foreign Affairs determines that the applicant's naturalisation is of 'overriding interest' to the Republic of Hungary (for instance, if he or she is a top level artist, athlete, or scientist).

7. Requirements for *re-naturalisation* include a permanent residence permit of the applicant whose nationality has ceased, a clean criminal record and no current criminal proceedings, proven means of stable livelihood and residence in Hungary, and the assurance that his or her naturalisation does not violate Hungarian national interests.

Loss of nationality shall be based on

1. *Renunciation*: A national residing abroad may renounce his or her nationality if he or she possesses another nationality or relies on the probability of its acquisition.
2. *Withdrawal*: Hungarian nationality may be withdrawn only if a person who has acquired nationality by naturalisation has violated the law on nationality, in particular by misleading the authorities by submitting false data or omitting data or facts. In practice, however, there have not been actual cases in which this provision would have been applied to persons that would have become stateless as a result. Ten years after naturalisation, Hungarian nationality may no longer be withdrawn.

5.3 Current political debates on (dual) citizenship

5.3.1 The Hungarian Status Law and the referendum on dual citizenship

Minority protection for ethnic Hungarians and nation building has inspired dabate in contemporary Hungary. There are numerous ramifications of the political discussions on legal development but we will describe only two aspects briefly here and give a concrete example in order to highlight the interrelations between nationality law, migration law, external relations, European integration and nation building.

Although the list of states and criteria for *visa obligations* became part of Community control, bilateral agreements on visa-free travelling were maintained up to Hungary's accession to the EU. Issuing visas, including a national visa (in the terminology of the Schengen regime), has just been reformed in favour of Hungarian minorities living in adjacent third countries. In 2006 a visa allowing its holder to stay in Hungary and a multi-entry visa for ethnic Hungarian visitors has been introduced. This visa may be issued for five years to a foreign applicant who is capable of sustaining himself or herself, and wishes to use his or her stay in Hungary for practising the Hungarian language and cultural activities. Under this visa, employment or study in Hungary is not allowed. The text of the visa agreements is neutral but there are plans to reform them to reflect certain ethno-national priorities towards Romania, Ukraine and Serbia-Montenegro.[21] In brief, the visa policy intends to secure the possibility for individuals belonging to the Hungarian external kin-minorities to freely visit and enter Hungary in order to compensate for Community law and security requirements (Tóth 2004b).

The Act on Benefits for Ethnic Hungarians living in Neighbouring States of Hungary (usually called the Status Law) was adopted in 2001 after stormy political debates. It introduced a specific certificate for ethnic Hungarians living in Slovakia, Romania, Ukraine, Slovenia, Serbia-Montenegro and Croatia. Because of constitutional inconsistency and international protests (Kántor 2004), the law was modified in 2003 ending some of the individual benefits (employment, social insurance and public health) that were available in Hungary to holders of the Ethnic Hungarian Certificate (identity card).[22] In December 2004 a further support system (Homeland Fund) for community building was adopted.[23] Naturally, this set of direct ethnically-based assistance by diaspora law (Tóth 2000) can legalise and inspire migratory movements toward Hungary.

On 5 December 2004 Hungary held a referendum on whether it should offer Hungarian citizenship to Hungarians living outside the borders of the Hungarian state.[24] The novel aspect of the proposal was not the introduction of dual citizenship itself, since the option of ob-

taining a Hungarian second citizenship had long been available for permanent residents within the country. The innovation would have been to remove all residency requirements from the pre-conditions for obtaining a Hungarian second citizenship. Ethnic Hungarians in neighbouring states, and possibly living elsewhere outside Hungary, were to be granted the opportunity of obtaining Hungarian citizenship merely by declaring themselves to be of Hungarian linguistic affiliation, at a Hungarian consular office, or if they hold a Hungarian Certificate, confirming their Hungarian nationality. The proposal was thus directed at external co-ethnic minorities living in neighbouring states and at members of the Hungarian diaspora elsewhere in the world.

The text of the referendum question was as follows: 'Do you think that Parliament should pass a law allowing Hungarian citizenship with preferential naturalization to be granted to those, at their request, who claim to have Hungarian nationality, do not live in Hungary and are not Hungarian citizens, and who prove their Hungarian nationality by means of a ''Hungarian Identity Card'' issued pursuant to Article 19 of Act LXII of 2001 or in another way to be determined by the law which is to be passed?'[25]

Although the referendum question left the criteria of eligibility open for future lawmaking, an approximation of potentially eligible claimants can be made on the basis of the size of the Hungarian population in the neighbouring states numbering around three million.[26] Assuming that the majority of those made eligible by the reform would actually claim citizenship, the proportions of the resulting change would exceed the growth of Germany's citizenry after unification, but of course, without the corresponding territorial enlargement. This then points to the second specificity of the Hungarian situation, namely that the dimensions of Hungary's kin-minority problem are unusually large even for Europe. Nearly a quarter of all ethnic Hungarians live outside Hungary's borders in neighbouring states.

Political debates on the referendum within Hungary were tremendously polarised. Indeed, in 2003 the initiative to call a referendum had not come from within the Hungarian political establishment, but from a radical and somewhat marginal organisation not well integrated into Hungarian politics, the World Federation of Hungarians (Debreczeni 2004).[27] The Federation had contested the policies of the Hungarian Government on citizenship matters for years and had also set itself on a collision course with the more moderate Hungarian minority parties across the borders, especially when it mounted opposition against the Orbán Government's (1998-2002) efforts, supported by external Hungarian minorities, to provide an alternative solution to dual citizenship through the creation of the Status Law of 2001.[28] The law established the certificate for ethnic Hungarians living in neighbouring

states,[29] entitling its beneficiaries to a set of cultural and economic rights, including seasonal working permits in Hungary. However, the Federation insisted that the benefits provided by the law were no substitute for what the Hungarians really needed, which was full Hungarian citizenship.[30]

The Status Law provoked angry response in neighbouring states. Hungary was accused of irredentist nationalism, of creating a 'veiled form of dual citizenship' the ultimate effect of which was to call the sovereignty of the neighbouring states into question. Hungary was also criticised by the European Union for the unilateral adoption of the law, for not having consulted with the states in question, and for the extra-territorial aspects of the law. But despite this negative response, the World Federation of Hungarians insisted that Hungary must proceed with the unilateral creation of non-resident trans-border citizenship for ethnic Hungarians.[31] Responding to arguments that such a step would not be compatible with the terms of Hungary's accession to the Union, in the spring of 2003, the federation called on Hungarian voters to say no to Hungary's accession. Hungary should only join the EU if it could take trans-border Hungarians into the Union even if the state in which they live remains outside of it (Csergő & Goldzeiger 2004). So, in October 2003, the Federation began collecting signatures for a referendum on establishing non-resident citizenship for trans-border Hungarians.

This points then to the third specificity of the Hungarian story, namely that the initiative for citizenship reform came from outside the Hungarian political establishment. Only this feature can explain the puzzle of why any political actor would take the risk of launching an initiative that has only limited support within Hungary itself and therefore carries the prospect of its own defeat.

Initially, mainstream Hungarian parties on all sides reacted very cautiously to the initiative, along with the more moderate groups of trans-border minorities. Only after a few months did mainstream right wing parties (FIDESZ and MDF) along with the President of the Republic declare their support for the referendum, while the socialists and liberals turned against it.[32] What followed was an agitated, occasionally hysterical, campaign leading up to the referendum that fulfilled the prophecy of its own failure ending up invalid on account of the low number of participants. Eventually 63.33 per cent of eligible voters stayed away from the referendum. Among those who cast their ballots, 51.57 per cent voted in favour of the reform, 48.43 per cent against.[33]

No research is available on the question of what precisely motivated Hungarian voters in their choices. Welfare protectionism could well have played a role, given the fact that, apart from Slovakia, the living standards of trans-border Hungarians are way below those of Hungar-

ians, and that the arguments of the Socialist Party against dual citizenship relied primarily on the costs of the reform. An equally important motive may have been the fear of instability at the borders resulting from conflicts with Hungary's neighbours. Voters may also have been influenced by the perception that dual citizenship would eventually lead to voting rights. What is sufficiently clear, however, is that, at least for now, trans-border dual citizenship could only be created in Hungary without the popular mandate of the Hungarian electorate, the mandate that the supporters of the initiative had hoped to obtain in the referendum. To quote one liberal opponent of the initiative (Kis 2004a: 4): 'The offer was made to a nation of ten million to enlarge its homeland beyond the state-borders to the entire Carpathian basin. The nation refused to take the risk and accept the costs.'

But given the enormous disappointment of trans-border Hungarians with the result, the issues raised during the campaign will remain on the agenda of Hungarian politics for quite some time to come.

5.3.2 Implications of trans-border dual citizenship

The arguments for the Hungarian trans-border dual citizenship initiative are fundamentally different from those advanced in favour of dual citizenship in the major immigration states of Western Europe. In the immigration states dual citizenship is an instrument used to integrate labour migrants into their country of immigration. Dual citizenship in this case works towards the decoupling of citizenship from ethnicity. In contrast, the Hungarian initiative is part of an opposite trend present in a number of European countries of re-linking *citizenship with ethnicity*.

The Hungarian suggestion associates eligibility for extraterritorial dual citizenship with membership in an ethnically defined community. Dual citizenship would thus purposefully reaffirm the connection between ethno-cultural nationality and citizenship, which is precisely the connection that most immigration states have been trying to weaken when tolerating dual citizenship (Fowler 2002).

Advocates of the reform wish to overcome this difficulty by presenting their plan as based on a traditional ius sanguinis concept rather than on ethnicity. In this view, trans-border citizenship is not something that would be newly granted to ethnic Hungarians. Trans-border Hungarians would only 'regain' the citizenship of their ancestors who had been citizens of the Hungarian part of the Dual Monarchy before the First World War.[34] However, there are several difficulties with this approach.[35]

The first difficulty is political. After the First World War those Hungarians who ended up as minorities in neighbouring states were ob-

liged by the Peace Treaties to opt for the citizenship of their new home state, or, if they declined to do so, to move to Hungary. Therefore, in the eyes of Hungary's neighbours, any unilateral change in the citizenship status of minority Hungarians would amount to a unilateral breach of treaty obligations, to a revision of the terms of the peace treaty that still serves as the basis of international legitimacy for the current borders of these states. It was for a similar reason that the Italian law of 2000 that offered Italian citizenship to the Italian diaspora did not extend this offer to the descendants of Italians in Dalmatia, Istria and Fiume, i.e. those regions that were ceded by Italy to Yugoslavia in the post-war treaties.

Second, trans-border populations whose ancestors bore the citizenship of a larger Hungarian state in the Dual Austro-Hungarian Monarchy before the First World War include millions of non-Hungarians. So even if the ius sanguinis view was applied, the only way to narrow down eligibility for Hungarian dual citizenship to those with a Hungarian ethno-cultural affiliation would be to apply an ethnic definition.

A third feature of dual citizenship that emerged from the referendum initiative was the potentially weak distinction between active and inactive citizenship for dual citizens. In most immigration states, transnational dual citizenship implies that only the citizenship of the current country of residence is active, so that the rights associated with the external citizenship are dormant (Faist 2005). However, in the case of Hungarian trans-border citizenship such clear-cut distinctions between periods of active and inactive citizenship would be hard to make (Vizi 2003).[36] Therefore, with regard to the potential content of non-resident trans-border citizenship, the general perception that has emerged in Hungary is that even if dual citizenship would initially be created without voting rights, it would only be a matter of time before large numbers of trans-border voters would cast their ballots. In view of these implications, it is hardly surprising that the proposal created passionate debates both within Hungary and among the Hungarian minorities in the neighbouring states. For many participants the question at stake was whether Hungary should experiment with ideas that are pulling it away from, rather than bringing it closer to 'mainstream' Europe. As János Kis summarised it, the victory of 'yes' votes would mean nothing less than putting Hungarian parliamentarianism in danger and transforming the nature of Hungarian democracy. Since elections in Hungary are usually won by a narrow margin, the appearance of trans-border voters would most likely mean that 'the outcome of Hungarian elections would regularly be decided by voters who do not pay taxes in Hungary and who are, in general, not subject to its laws'. A further element of 'organised irresponsibility' inherent in such a solution would be that those casting the swing votes may be people who

had never even lived in Hungary so that their political choices would be made on a highly selective image of issues and candidates. For all these reasons, he concluded, 'the victory of ''yes votes'' would pull us back to the murky nationalism of past ages, it would lock up Hungarian politics in the prison of revisionist nostalgia, it would poison public life within Hungary as well as our relationship with neighbouring states and with trans-border Hungarians, and it would damage the level of our acceptance within the European Union'.[37]

In stark contrast to the liberals, advocates of the initiative argued that their proposal is modelled on concepts and processes that are part and parcel of an integrated Europe of the future, a de-territorialised world in which individuals with multiple identities are entitled to a legal expression of the free choice of their nationality. Advocates argued that all European states accept ethnicity as part of the basis of citizenship, most even making provisions for the acquisition of benefits, including citizenship, for co-ethnics who are citizens of another state. The problem with European norms and practices, they argued, is not that there is no connection between ethnicity and citizenship but that Europe is in a process of denial about this connection, treating ethnicity as though it was a disreputable relative on whom we rely secretly, but whom we hide from others (Schöpflin 2004). They pointed to plans or existing legislation on non-resident citizenship for co-ethnic kin within the European Union in Italy, Greece, Slovakia and the Czech Republic. A particularly relevant example is Silesian Germans who, from the early 1990s, were able to obtain German passports in addition to their Polish ones and, by implication, European citizenship, without having to take up residence in Germany. These precedents, they argued, point to the legitimacy, even within the core nations of the European Union, of using dual citizenship for the inclusion of trans-border co-ethnics in the citizenry of the homeland.

Liberal opponents challenged this interpretation of larger European processes and insisted that the EU would regard the ethnicist turn in Hungarian legislation as a breach of common principles laid down in European agreements (Tóth 2004c).[38] Secondly, they criticised the confrontational attitude towards Hungary's neighbours promoted by this policy. The problem with unilateral action is not so much that it violates international law, but that it is self-defeating. To quote the above mentioned newspaper article by János Kis again: The unilateral creation of Hungarian citizens in the territory of other states is nothing but a 'mirage' that provokes 'phony wars over phony questions and phony answers'.

Thirdly, opponents argued, that the creation of dual citizenship cannot be justified by reference to the approval by trans-border minorities either, because these groups are themselves divided over the issue and

do not speak with a single voice.[39] In the end, any unilateral move by Hungary to create dual citizenship would remain 'a game of illusions played between Hungarian nationalists and a minority within the Hungarian minority' in a useless, but 'ritual display of imagined political togetherness' (Kis 2004b).

Fourthly, critics objected that dual citizenship is incompatible with claims of autonomy raised by trans-border minorities.[40] Concurring with Rainer Bauböck they maintained that parallel 'claims of multiple citizenship and territorial autonomy should be seen as mutually incompatible. They would create fears in the host society about irredentist threats to its territorial integrity that cannot be easily dismissed as unreasonable' (Bauböck 2006: 159-160).

Therefore, according to the socialists and the liberals, Hungary must take a new look at its homeland policies regarding kin-minorities. The discourse advocated by the two mainstream right-wing parties aims at recreating a 'unitary Hungarian nation' over and above existing state-borders by means of creating legal bonds between parts of the Hungarian nation living in several countries (Stewart 2004). Hungary should step back from this confrontational approach because it relies on outright ignorance about the sensitivities of other states. Instead, it should clearly articulate its policies in the conceptual framework of minority protection. Hungary must accept that trans-border Hungarians are the citizens of other states and should promote the protection of Hungarian minorities in their efforts to secure equal individual and collective rights in their home states.

Finally, there are obvious ambiguities in the arguments of both sides in the debate. The idea of dual citizenship emerged in Hungary with reference to a larger international trend of increasing toleration of dual citizenship, partly within the European Union and partly within the East-Central European region. However, while in the immigration states of Europe the idea of dual citizenship is not associated with nationalist policies, in Hungary, as in many other states of the region, the demand for dual citizenship has mostly migrated to the nationalist right. In the Hungarian referendum debate, the battle over dual citizenship has been cast as a debate between the nationalist right as supporters, on the one hand, and the Europe-oriented liberals, as opponents, on the other. However, this representation of the debate is, to some extent, self-made and arbitrary. In fact, in their support of dual citizenship the nationalists have mainly been drawing on the arguments of European liberals. At the same time, liberals relied on counter-arguments they claimed to have extrapolated from relevant European norms and practices, but these practices are much too diverse to form the basis of a coherent interpretation. Unsurprisingly, at the end both sides failed to present a fully convincing, coherent interpretation of

those international norms and practices that would support their respective positions. In the final analysis it is quite possible that the conflicting stances of the two sides in the debate may stem from concerns that are only remotely connected to the problems of trans-border Hungarians, namely from conflicting opinions, and concerns about the long-term stability of Hungary's transitional democracy. After all, parliamentary practices have not been firmly established in Hungary for much more than a decade. Yet in the Hungarian context the creation of trans-border non-resident dual citizenship would most likely amount to a mass enfranchisement of a new electorate that, similar to all episodes of mass enfranchisement in the past, would introduce new uncertainties into the system and could lead to an internal destabilisation of Hungarian democracy itself. In this respect, both sides share the same intuition, namely that if instituted, trans-border citizenship would most likely have the effect of freezing the regular rotation of parliamentary forces for some time to come in favour of the nationalist right: a prospect that is as welcome on one side as it is feared on the other.

5.4 Trends in statistics

Data on trends of acquisition and termination of citizenship is information of public interest.[41] Nevertheless relevant data is only partially available and only since 2001 in more detail. Available data contain numbers on naturalisation, re-naturalisation and on the termination of nationality. Between 1958 and 1984 there were more cases of emigration than immigration (Tóth 1997), and the total number of (re-)naturalised persons is 16,156 while at least 24,082 persons left the country. The yearly average of naturalisations and re-naturalisations is 622 while the average of terminations of nationality is 926. During this time there has been no change in citizenship law, so it is only by examining legal and political practices that we can find an explanation for the growth in the rate of nationality loss after 1967. A substantial proportion of removal-upon-request came from female Hungarian spouses marrying husbands from any European state that prohibited dual citizenship.

Between 1985 and 1989 the number of terminations was still higher than the number of (re-)naturalisations, but the difference between them decreased. The major groups of applicants for naturalisation are from the adjacent and socialist states (Romania, Czechoslovakia, Soviet Union, and East-Germany) while the direction of emigration/marriage migration is towards Austria and Yugoslavia.

Table 5.1: Number of (re-)naturalisations and terminations of nationality in Hungary, 1985-1994

year	*naturalisation/re-naturalisation*		*removal/renunciation*	
1990	**3,170**		**1,184**	
	Czech/Slovak	63	Czech/Slovak	2
	Yugoslav	21	Yugoslav	18
	Austrian	11	Austrian	169
	Romanian	2,661	Romanian	1
	Soviet	156	Soviet	1
	East-Germ.	35	East-Germ.	70
	non-European	96	non-European	1
1991	**5,893**		**441**	
	Czech/Slovak	25	Czech/Slovak	2
	Yugoslav	22	Yugoslav	3
	Austrian	18	Austrian	80
	Romanian	5,114	Romanian	–
	Soviet	306	Soviet	–
	stateless	13		
	non-European	186	non-European	1
1992	**21,880**		**1,149**	
	Czech/Slovak	249	Czech/Slovak	7
	Yugoslav	1	Yugoslav	3
	Austrian	7	Austrian	211
	Romanian	20,624	Romanian	–
	Ex-Soviet	569	Ex-Soviet	–
	stateless	7		
	non-European	60	non-European	3
1993	**11,521**		**2,084**	
	Czech/Slovak	55	Czech/Slovak	5
	Yugoslav	309	Yugoslav	–
	Austrian	20	Austrian	314
	Romanian	9,956	Romanian	–
	Ex-Soviet	843	Ex-Soviet	–
	stateless	7		
	non-European	75	non-European	3
1994	**9,238**		**1,688**	
	Czech/Slovak	40	Czech/Slovak	7
	Yugoslav	888	Yugoslav	–
	Austrian	1	Austrian	346
	Romanian	6,254	Romanian	–
	Ex-Soviet	1,730	Ex-Soviet	–
	stateless	1		
	non-European	120	non-European	2
Total 1985-1994	**55,409**		**11,492**	
Yearly average 1985-1994	**5,541**		**1,149**	

Source: www.bmbah.hu

Since 1990 the number of naturalisations has increased. This is not only due to the larger number of ethnic Hungarian applicants but also

to the changing interpretation of the legal rules in force. The constitutional reform aimed at establishing rule of law influenced the practice of the Ministry of the Interior. If an applicant met the legal requirements the discretionary power of naturalisation had to be interpreted such that a positive decision on naturalisation was to be granted by the President. However this practice of 'self-limitation' could not compensate for the more restrictive preconditions of naturalisation adopted by the Act on Hungarian Nationality in 1993. The number of non-European applicants is growing, but has still remained marginal since the 1990s.

Table 5.2: Distribution of nationality law cases in Hungary, 1998-2004

	1998	*1999*	*2000*	*2001*	*2002*	*2003*	*2004*
applications for (re-)naturalisation	3,593	3,160	3,963	4,282	4,453	4,916	5,761
applicants with citizenship of (%):							
Romania					61	60	63
Yugoslavia/Serbia					17	15	13
Ukraine					11	15	13
Other European					6	14	14
non-European					5	5	3
Stateless					1	1	1
naturalised and re-naturalised persons	6,203	6,066	7,538	5,934	3,890	5,579	5,667
applications for re-obtaining nationality upon declaration of expatriation, prior nationals (persons)	232	200	208	194	212	151	144
application for certificate of existing nationality (persons)	3,934	4,264	3,935	3,924	4,401	4,803	5,984
reinstatement of nationality (persons)	–	–	–	1	1	1	1
applications for renunciation of nationality (cases)	893	728	748	684	609	463	236
accepted renunciations of nationality (persons)	1,070	995	955	791	857	n.d.	n.d.

Source: www.bmbah.hu

Over the past years Hungary has become an immigration country for large numbers of ethnic Hungarians and, increasingly for others coming from more distant regions. There are three major channels for immigrants to become nationals: (1) naturalisation, (2) prior nationals, mainly expatriates re-obtaining Hungarian nationality by declaration or

re-naturalisation, (3) expatriates or their descendants living abroad who can prove Hungarian citizenship through a verification procedure of existing citizenship (Certificate of Nationality). This restoration of legal ties with Hungary was made possible by political changes and new rules on rehabilitation and compensation for damages or harm committed against nationals by the socialist regime. In 2005 the number of (re-)naturalised persons was 9,981 while the number of issued citizenship cards certifying the holder's Hungarian nationality has risen to between 5,000 and 6,000 per year.

The ratio of naturalisations according to legal titles is available only for the year 2002. The total number of persons naturalised was 3,890 (100 per cent). Its sub-groups were as follows.

Table 5.3: Ratio of naturalisation decisions in Hungary in 2002

Type of legal titles	*Act on Nationality*	*Persons*	*%*
no preference ('basic decision')	4 § (1)	244	6.27
weak preference ('applicant was born in Hungary')	4 § (4) a.	3	0.0
weak preference ('applicant immigrated as minor to Hungary')	4 § (4) b.	2	0.0
medium preference ('applicant's spouse is Hungarian national')	4 § (2) a.	325	8.35
medium preference ('applicant's minor child is Hungarian national')	4 § (2) b.	49	1.25
medium preference ('applicant is a recognised refugee')	4 § (2) d.	17	0.4
strong preference ('applicant is a minor')	4 § (5)	9	0.2
strong preference ('applicant is a minor adopted by a national')	4 § (6)	30	0.7
strong preference ('ethnic Hungarian')	4 § (3)	2,447	62.9
re-naturalisation	5 §	764	19.6

Source: www.bmbah.hu

Table 5.3 indicates that, beyond the ethnic immigration from the Carpathian basin, family reunification and repatriation of prior nationals have added the largest numbers of new nationals.

5.5 Conclusions

In Hungary the term 'nation' is interpreted and used in law as a concept referring to membership in the cultural, ethnic and linguistic community. But the substance of the term remains indefinable by law. This reveals contradictions between existing laws and the Constitution. On the one hand, art. 6 of the Constitution refers to the kin-state's responsibility for kin-minorities living across the borders. However, the

definition of membership in the minority or ethnic community is vague, and various preferential provisions legally discriminate against certain categories of people despite the fact that the state is party to dozens of international treaties aimed at avoiding such discrimination. Furthermore, minorities living in Hungary are distinct participants in the state, in possession of subjective and collective constitutional rights, although, in their case as well, membership of a specific ethnic or national entity cannot be defined. Due to this problem neither statistics on membership of minorities living in Hungary, nor hard data on immigrants entering Hungary and enjoying legal preferences in the country are available. According to Rainer Bauböck, '[h]istoric traditions and the distinction between ethnic and civic nationhood are increasingly irrelevant for explaining legislative changes'.[42] Despite a standard level of immigration, in the case of Hungary Bauböck's suggestion is less evident than among the old EU Member States (Tóth & Sik 2003). The recently failed referendum of 5 December 2005 on *ex lege* citizenship being granted to ethnic Hungarian minorities living in adjacent states is a case in point as it would have used ethnic preferences for granting non-resident citizenship to trans-border Hungarians. The role of nationality law in the integration process of migrants has not been discussed publicly and the need to harmonise Hungarian citizenship with that of other Member States of the European Union has not been put on the agenda.

Chronological list of citizenship-related legislation in Hungary

Date	Document	Content	Source
1946	Act XV on Czech-Slovak-Hungarian Agreement	Deprived those who fell under the bilateral agreements on population exchange of Hungarian nationality.	
1947	Government Decree 12.200	Deprived expelled Germans of Hungarian nationality.	
1947	Act X	Deprived those who had not returned to Hungary following the conclusion of the war of Hungarian nationality.	
1948	Act LX on Hungarian Nationality	Based on ius sanguinis like the previous Act of 1879. Provided for the equal treatment of children born out of wedlock; stipulated that all nationals residing abroad should be registered; recognised the pending Hungarian	

Date	Document	Content	Source
		nationality of undocumented persons.	
1949	Constitution (excerpts)		www.legislationline.org
1957	Act V on Hungarian Nationality	Introduced the emancipation of spouses; included executive rules, such as the one requiring emigrants to renounce their nationality and social insurance rights.	
1989	Act XXXI amending the Constitution of 1949 (excerpts)	Prohibited arbitrary deprivation of nationality.	
1993	Citizenship Act (Act LV of 1993 on Hungarian Nationality)	Provided that the nationality of expatriate nationals who had been deprived of their nationality arbitrarily is restored upon request; included preferential naturalisation of refugees; introduced stricter conditions for naturalisation but also preferences based on ethnic and family ties.	www.coe.int or www.huembwas.org or www.bmbah.hu/jogszabalyok.php
1993	Government Decree 125/1993 on the Execution of Act No. LV of 1993 on Hungarian Citizenship	Defined formats and procedural rules.	www.coe.int or www.bmbah.hu/jogszabalyok.php
2001	Legislation on Kin-minorities (Act LXII of 2001 on Ethnic Hungarians Living in Neighbouring Countries)	Introduced an identity card (Certificate) for ethnic Hungarians that provides certain allowances and benefits (mainly in Hungary).	venice.coe.int
2001	Act XXXII amending Act LV of 1993 on Hungarian Nationality	Provided for ethnic Hungarians to have the family and given name in their original ethnic language; introduced facilitated acquisition of nationality for exiled nationals by declaration to the President of State.	
2001	Government Decree 103/2001 amending Government Decree 125/1993 on the Execution of Act LV of 1993 on Hungarian Citizenship	Provided fast track naturalisation process for ethnic Hungarians and minors.	

Date	Document	Content	Source
2003	Act LVI amending Act LV of 1993 on Hungarian Nationality	Extended preference in naturalisation to European Union citizens.	
2003	Act LVII amending Act LXII of 2001 on Ethnic Hungarians Living in Neighbouring Countries	Cut and restructured benefits and allowances for ethnic Hungarians.	
2003	Government Decree 128/ 2003 amending Government Decree 125/ 1993 on the Execution of Act LV of 1993 on Hungarian Citizenship	Introduced new formats in nationality procedures.	
2005	Act XLVI amending Act LV of 1993 on Hungarian Nationality	Provided for shorter waiting period in naturalisation for ethnic Hungarians; specified exceptions from taking the examination on basic constitutional issues and the implementation of geographical name of birth in ethnic versions.	
2005	Act LXXXIII amending Act LXII of 2001 on Ethnic Hungarians Living in Neighbouring Countries	Harmonised proceedings of Certificate for ethnic Hungarians with the new Code on Public Administration Process.	
2005	Government Decree 119/ 2005 amending Government Decree 125/ 1993 on the Execution of Act LV of 1993 on Hungarian Citizenship	Determined the fee for the examination on basic constitutional issues in the naturalisation process (20 €); clarified family unification rules in related immigration rules.	
2006	Act XXI amending Act LV of 1993 on Hungarian Nationality	Introduced official notice on ceased Hungarian citizenship of individuals to the population and defence registry of the Central Statistical Office.	

Notes

1 Act LVI of 2003 amending Act LV of 1993 on Hungarian Nationality. It entered into force with the accession of Hungary to the European Union on 1 May 2004.
2 Act XXXII of 2001 amending Act LV of 1993 on Hungarian Nationality, Government Decree No. 125 of 22 September1993, Decree of the Minister of the Interior No. 6 of 7 March 2003.
3 Concluded in Moscow on 20 January 1945 and published in Act V of 1945.
4 The Peace Agreement was concluded in Paris and published in Act XVIII of 1947. It entered into force by Government Decree 11.800 of 1947.
5 See details in Czech-Slovak-Hungarian Agreement published in Act XV of 1946 and Government Decree 12.200 of 1947.
6 In particular Act X of 1947 and Act XXVI of 1948.
7 For instance, Prime Minister Decree 9.590 of 1945.
8 Act XXIX of 1946.
9 Act LX of 1948.
10 Published in Law-Decree No. 2 of 1960.
11 Act V of 1957.
12 Law-Decree No. 11 of 1955, No. 7 of 1956, No. 11 of 1956; Ministerial Decree of the Interior 2 of 11 January 1956.
13 Act XXXI of 1989 introduced a substantially new Constitution but formally it was only an amendment.
14 Provisions of Act XXVII of 1990 and Act XXXII of 1990 were inserted into the third Act on Nationality in 1993.
15 Published in Law-Decree No. 15 of 1989.
16 Act VL of 1993.
17 Acts XXXII of 2001, LVI of 2003 and XLVI of 2005.
18 Published in Acts II and III of 2003.
19 This principle is a legal expression of the fact that the individual who obtains this citizenship – directly through the law or as a result of the action of the authorities – is in actual fact more closely related to the state whose citizen he or she is than to any other state (Lichtenstein v. Guatemala, 1995 WL 1 (International Court of Justice) generally known as the Nottebohm case).
20 Act on Hungarian Nationality, arts. 10-12.
21 Before accession Hungary had agreements on visa-free travel with six neighbours, and a voucher system was defined with the Ukraine. For the sake of legal harmonisation these agreements were modified. Visa requirements were introduced for Ukrainian and Serbian citizens, while the agreement with Romania introduced a maximum length of stay.
22 Act LXII of 2001 on Ethnic Hungarians Living in Neighbouring Countries. It was amended by Act LVII of 2003. Its administrative rules on financial, technical and procedural issues are laid down in ten Government and Ministerial Decrees.
23 Act II of 2005 on the Homeland Fund covers various community-building projects for kin-minorities living in adjacent states.
24 In Hungary a referendum is valid if at least 25 per cent of the electorate returns identical votes, or if participation is higher than 50 per cent of the total number of eligible voters. In this case neither criterion was fulfilled.
25 Official translation provided by the Government's Election Office (*Országos Választási Bizottság*), www.election.hu, last accessed 5 May 2005.
26 According to the statistics published in 2004 by the Hungarian Government office for trans-border Hungarians (*Határon Túli Magyarok Hivatala*), the number of Hungarians living in Romania, Ukraine, Serbia and Montenegro, Slovakia, Croatia and

Slovenia as provided by the official censuses in these countries between 2000 and 2002 amounted to 2,429,000, among these in Romania 1,435,000; Ukraine 156,000; Serbia and Montenegro 293,000; Slovakia 516,000; Croatia 16,000 and Slovenia 8,500 (see www.htmh.hu, last accessed 5 May 2005). The estimate for the number of trans-border Hungarians potentially eligible for Hungarian citizenship based on ethnic identification is higher than these numbers, which is explained by the assumption that more people would be able to fulfil the criteria of Hungarian affiliation than those who actually declare themselves Hungarian in government censuses. The number of potential claimants on such grounds globally was estimated at around five million by the Under Secretary for Foreign Affairs, András Bársony ('Határok nélkül', Kossuth Rádió, 16 January 2003. www.hhrf.org, last accessed 5 May 2005). Also see note 34.

27 J. Debreczeni, 'Hazárdjáték' [Gambling], *Népszabadság* [daily newspaper], 27 November 2004.

28 The Hungarian name of the federation is *Magyarok Világszövetsége*.

29 Since its adoption, approximately a quarter of all trans-border Hungarians applied for the Hungarian ID. There are about 850,000 card-holders today.

30 As a result of the conflict around the Status Law, the Orbán Government withdrew public funding from the Federation.

31 Soon after the announcement of the plan for the referendum it became clear that any legislation on dual citizenship would have to happen unilaterally, as the Romanian president promptly announced his country's opposition.

32 On 12 November 2004 President Ferenc Mádl, in a speech addressed to the Hungarian Permanent Assembly (*MÁÉRT*), spoke of the perception of the referendum initiative by external minorities as an act of 'historical justice' and added: 'I call upon Hungarians to use their votes to assume a sense of community with Hungarians outside of our borders' (www.martonaron.hu, last accessed 17 February 2005).

33 'A kettős állampolgárságról, Adatok, állásfoglalások, elemzések' [On dual citizesnhip, data, opinions and analyses]. www.martonaron.hu, last accessed 17 February 2005.

34 Hungarian citizens who had emigrated from Hungary retained their Hungarian citizenship. This however did not apply to former citizens of Hungary in the neighbouring states who had lost their Hungarian citizenship as a result of the peace treaties that redrew the borders of the Hungarian state. The possibility of inheriting Hungarian citizenship applies only to people whose right to Hungarian citizenship is derived from their connection to the territory of the state of Hungary as delineated in the Paris Peace Treaty of 1947.

35 B. Nagy (2004), 'Kettős Állampolgárság: Nemzet, állam, polgár: kisérlet a fogalmi rendteremtésre' [Dual Citizenship: Nation, State and Citizen: An Attempt at Conceptual Clarification]. www.martonaron.hu. The dimension of the population potentially affected by the ius sanguinis transmission of citizenship is difficult to assess. Given the fact that in 1920, Hungary's population had been reduced to half of what it had been before the war (with a corresponding reduction of two-thirds of its territory), the idea that ius sanguinis transmission could automatically create dual citizens after any number of generations would amount to the obligation to reactivate the 'dormant' citizenship of people whose numbers may surpass half of Hungary's current population. The peace treaty of 1920 reduced Hungary's population from 18.2 million to 7.9 million and its territory from 282,000 km^2 to 93,000 km^2. Trans-border Hungarians are estimated to number about 3.5 million, while people (with their offspring) who retain a ius sanguinis right to Hungarian citizenship (e.g. those who emigrated after 1939) are estimated to be about 1.5 million.

36 Hungarian trans-border citizenship, if ever instituted, is more likely to be in line with that of Croatia where trans-border dual citizens retain some of their rights

associated with Croatian citizenship, including voting rights in Croatian elections, even at times when their alternate citizenship is active. But while trans-border Croats vote for a quota of expatriate seats, trans-border Hungarians would find it easy to vote for regular seats without putting their alternate citizenship to rest. This is because Hungarian regulations on the declaration of residence are extremely lax, requiring only three months of residence for a citizen to activate his or her right to vote. Moreover, in order to avoid the disenfranchisement of the homeless, voters can be admitted to the voters' registry without actually possessing an address or residence permit by simply making a declaration of residence at a given locality at the municipal office. According to recent changes in Italian law, Italian non-resident citizens may also vote in referenda and national elections for a fixed number of seats. However, the numerical dimensions of the Italian case are radically different from that of Hungary. There are altogether 2.7 million non-resident Italian citizens, which is equivalent to about 3 per cent of the resident citizenry of Italy, as opposed to the size of the trans-border Hungarian population that represents 30-35 per cent of Hungary's current citizenry.

37 J. Kis, 'Miért megyek el szavazni?' [Why am I taking part in the voting?], *Népszabadság*, 20 November 2004.

38 Especially in the European Convention on Nationality (1997) ratified by Hungary in 2002 which stipulates in art. 2/a that '"nationality" means the legal bond between a person and a State and does not indicate the person's ethnic origin', and restricts the 'recovery of former nationality' of a given state to those residing on its territory.

39 For example, the biggest Hungarian party of the large Hungarian minority of Romania, which has substantial representation in the Romanian Parliament and Government, has traditionally been, at best, lukewarm about dual citizenship. However, the most vocal advocates of trans-border Hungarian citizenship also come from Romania and they also rely on a substantial constituency. Minorities themselves do not speak with a single voice because the attitudes of the different groups of which they are composed are derivative of the long-term view each of these groups takes on the possibilities of negotiating a better status for themselves in their host states. Even if the idea of dual citizenship enjoyed the support of the majority of trans-border Hungarians, this support would be based on a demagogic-populist misrepresentation of what is actually possible.

40 T. Bauer, 'Kettős Kapituláció' [Dual Capitulation], *Népszabadság*, 8 January 2004.

41 Art. 61 of the Constitution provides a fundamental right to free expression and obtaining as well as freely disseminating information of interest to the general public. A separate law regulates its implementation (Act LXIII of 1992).

42 See 'Western European Countries Tend to Follow a Liberalizing Trend towards Citizenship Policies. Interview with Rainer Bauböck'. www.migrationonline.cz.

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Part III: Post-partition states

Chapter 6: Czech citizenship legislation between past and future

Andrea Baršová

The main contours of the Czech (formerly Czechoslovak) citizenship laws were shaped by momentous historic events. Administrators, judges and lawyers smoothed over rough outlines made by political forces, adding to them exceptions, interpretations and remedies. Consequently, Czech citizenship legislation has always been complex.[1] This paper follows the main trends of its development and gives a brief account of Czech citizenship legislation and the politics and policies linked with it since 1918. It focuses on responses to unprecedented social changes and challenges in the last sixteen years, which may be stimulating for the current debates on citizenship policies in the European and transnational context.

6.1 History of Czechoslovak citizenship policies

6.1.1 History of Czechoslovak citizenship policies from 1918 to 1993

Czechoslovak citizenship came into existence with the creation of Czechoslovakia on 28 October 1918. It was linked to the municipal right of domicile that had been an important instrument regulating migration within the Habsburg monarchy.[2] Former Austro-Hungarian nationals, who had a right of domicile in municipalities that became part of the Czechoslovak territory after the break-up of the Austro-Hungarian Empire, acquired Czechoslovak citizenship. The basic rule was modified by peace treaties[3] and constitutional laws[4] which regulated the issue of citizenship in order to protect ethno-national minorities and provided options to choose the citizenship of an ethnic kin state. The creation of Czechoslovakia led to massive remigration of ethnic Czechs and Slovaks, in particular from Austria (Vaculík 2002: 38-39; Kristen 1989: 83). Apart from specific provisions linked to the creation of the new state, provisions of old Austrian laws on citizenship remained in force in the Czech lands of Bohemia and Moravia.[5] This was the case, for instance, with the ius sanguinis principle laid down in the 1811 Austrian Civil Code.

The end of the Second World War[6] and the restoration of Czechoslovakia led to the adoption of *ad hoc laws* that introduced the criterion of

ethnicity into citizenship legislation. The new legislation was linked to post-war (both forced and voluntary) migration. Under the President's Constitutional Decree No. 33/1945 Coll. Concerning Czechoslovak Citizenship of Persons of German and Hungarian Ethnicity, Czechoslovak nationals of German and Hungarian ethnic origin were deprived of Czechoslovak citizenship.[7] On the other hand, Constitutional Act No. 74/1946 Coll. Concerning the Naturalisation of Compatriots Returning to the Homeland and its implementing regulations provided for facilitated naturalisation of ethnic Czechs, Slovaks and members of other Slavonic nations who (re)settled in Czechoslovakia. Naturalisation was often linked to changes of names to Czech or Slovak ones (Vaculík 2002: 40-49). In the post-war years more than 200,000 Czechs, Slovaks and members of other Slavonic nations immigrated to Czechoslovakia while more than 2,820,000 inhabitants of German ethnicity were expelled.

After the communists seized power in Czechoslovakia in February 1948, deprivation of citizenship was introduced as a supplementary penalty for certain political offences. A complex new citizenship legislation was adopted in 1949. Act No. 194/1949 Coll. on Czechoslovak Citizenship modified by Act No. 72/1958 Coll., replaced the old legislation, but preserved many of its features, such as the ius sanguinis principle and the principle of a single citizenship. Both in the communist ideology and in legal theory, citizenship meant not only legal but also factual bonds between a citizen and the society. A legal textbook published in 1963 defines 'socialist citizenship' in the following way: 'Socialist citizenship is not only a legal bond between a citizen and the state, but it means also belonging to a community of working people, who participate in the building of socialist (communist) society and in the building and defence of the socialist state; it means belonging to the community connected by shared dreams and ideals' (Černý & Červenka 1963: 19).

The law also provided for depriving people of Czechoslovak citizenship. It was applied as penalty to those citizens who lived abroad and had engaged in activities 'which might endanger state interests', those who had left the territory of Czechoslovakia 'illegally', those who had not returned to Czechoslovakia when requested to do so by the Ministry of the Interior and those who lived abroad for more than five years without a 'valid passport permitting its holder to live abroad'. These legal provisions existed until 1990.

The Prague Spring of 1968, a movement towards the liberalisation of communist rule, was accompanied by the Slovak national movement.[8] This movement demanded the introduction of a federal system within a multiethnic, but centralised, Czechoslovakia. As of 1 January 1969 the unitary Czechoslovak state was transformed into a federal

state, composed of the Czech and the Slovak Republics.[9] At the level of citizenship legislation, this change was reflected by the adoption of Federal Act No. 165/1968 Coll. on the Principles of Acquisition and Loss of Citizenship, which was followed by the Act of the Czech National Council No. 39/1969 Coll. on the Acquisition and Loss of Citizenship of the Czech Socialist Republic, adopted in April 1969.[10] The new legislation introduced, in addition to the (federal) Czechoslovak citizenship, citizenship of the two (Czech and Slovak) Republics as the constituent entities of the Federation.[11] Under this legislation, Czechoslovak nationals automatically acquired the citizenship of either the Czech or Slovak Republic, based on their place of birth and some supplementary criteria.

The new legislation gave people a right to change the republic-level citizenship at their discretion but this right was rarely exercised. The reason was trivial: the republic-level citizenship had no practical consequences whatever. In fact, most citizens were not even aware of their republic-level citizenship.[12] In addition, the freezing period of 'normalisation' in the 1970s and 1980s, which followed the suppression of the Prague Spring, pushed most people into private and family life as the only remaining space for meaningful activities, where the question of citizenship had no significance.

The fall of the communist regime in November 1989 prompted new developments in all spheres, including citizenship legislation. The first task for the new democratic Government was to remedy injustices caused by deprivations of citizenship under the communist rule. In response to communist abuses of power, a constitutional provision was introduced, to stipulate that, 'no one shall be deprived of his or her citizenship against his or her will'.[13] In 1990, Act No. 88/1990 Coll. was adopted, which provided for the reacquisition of the Czechoslovak citizenship by emigrants who had lost it in the period of communist rule. The law, which was not free of certain restrictions and shortcomings,[14] identified one strand of future development in the field of citizenship legislation that I will call *restitution* legislation.

6.1.2 Break-up of Czechoslovakia and creation of the Czech citizenship

The demise of the communist regime opened a space for the resurgence of nationalist feelings and politics.[15] In Czechoslovakia, the rebirth of the Slovak nationalist movement led to a consensual break-up of the federal state. As in the fall of 1992 the break-up of Czechoslovakia was increasingly becoming a realistic option (negotiated and carried through by the ruling political elite),[16] many Czechoslovaks started to think about their future in terms of citizenship.[17] The dormant provisions of the existing citizenship legislation, which allowed for a simple

switch between the Czech and the Slovak republic-level citizenships, started to be widely invoked. Until the end of 1992, some 65,000 Slovak republic-level citizens applied for the Czech republic-level citizenship.

On 1 January 1993, the Czech and the Slovak Republics were established as successor states to the former Czechoslovakia. In the Czech Republic, citizenship issues were regulated by the hastily drafted and adopted Act No. 40/1993 Coll. on the Acquisition and Loss of Citizenship of the Czech Republic.[18] The primary aim of the law was to identify nationals of the new state and to prevent dual (Czech and Slovak) citizenship.[19]

The provisions of the new legislation fell into two main categories. The first was a set of transitory provisions regulating *initial determination* of nationals of the new state,[20] complemented by provisions governing the option for Czech citizenship. The other category involved rules of permanent nature, regulating e.g. acquisition of the Czech citizenship by birth, naturalisation or loss of Czech citizenship.

Table 6.1: Conceptual scheme of Act No. 40/1993 Coll. on the Acquisition and Loss of Citizenship of the Czech Republic

	Norms regulating initial determination of citizenship		*Norms regulating standard procedures for acquisition and loss of citizenship (e.g. by birth, naturalisation)*
	overall initial determination of citizenship	**supplementary and corrective initial determination**	
time aspect	automatic operation of laws taking effect on 1 January 1993	temporary application of norms	permanent application
personal scope	core of nationals of the new state, the category was established by operation of law - all former Czech Republic-level citizens	solves individual cases, takes into account the will of individuals concerned	plurality of cases, not to be defined in advance

As regards the initial overall determination of citizenship, Act No. 40/1993 Coll. stipulated that, 'natural persons, who were citizens of the Czech Republic as of 31 December 1992, are citizens of the Czech Republic as of 1 January 1993.' Leading Czech jurists explain the establishment of Czech citizenship in the following way. 'As a consequence of the disappearance of Czechoslovakia and the establishment of the Czech Republic as an independent entity under public international

law, the Czech republic-level citizenship acquired as of 1 January 1993 an international dimension and turned into full-fledged state citizenship.' (Černý & Valášek 1996: 99). The same approach as regards overall (collective) initial determination was adopted by Slovak legislators. This prevented *de iure* statelessness in the wake of the break-up of Czechoslovakia.[21]

The primary rule was supplemented with a set of transitory provisions regulating the right of option and facilitating naturalisation for certain Slovak citizens. In the period from 1 January 1993 to 30 June 1994, 240,000 former Czechoslovak citizens acquired Czech citizenship under the option clauses.

The criteria for exercising this right of option, however, included not only two years of permanent residence in the territory of the Czech Republic, but also a clean criminal record.[22] The application of the latter condition had a disproportionate impact on members of the Roma (Gypsy) minority.[23] It was criticised by Czech human rights activists as well as by the international community. The criticism led to piecemeal adjustments and softening of Act No. 40/1993 Coll. in relation to former Czechoslovak (now Slovak) nationals.[24]

In the decade following the establishment of the independent Czech Republic, public and political discourse on citizenship matters was dominated by one issue: intentional and accidental consequences of the break-up of Czechoslovakia. In the shadow of this central theme, some problems related to the restitution of Czechoslovak (now Czech) citizenship for emigrants were also discussed. In the autumn of 1998, with the change of Government (from liberal-conservative to social-democratic), a more profound reform of citizenship legislation was put on the Government agenda. This led to (a) significant alterations of the transitory provisions of the 1993 Citizenship Act, and (b) the adoption of Act No. 193/1999 Coll. on the Citizenship of Some of the Former Czechoslovak Citizens, which was another piece of restitution legislation.

(a) The former legislation mitigated the harsh consequences of the break-up of Czechoslovakia for some groups of former Czechoslovak nationals. A ruling of the Constitutional Court of the Czech Republic of 5 May 1997[25] also fostered this development. The Court held that one does not lose citizenship of the Czech Republic by one's declaration of option for the citizenship of the Slovak Republic. (These individuals became dual nationals.)[26] Major amendments to the 1993 Citizenship Act were implemented by Act No. 194/1999 Coll. which not only transformed this ruling into a statutory provision, but also allowed all Czech citizens who were former nationals of Czechoslovakia to acquire Slovak citizenship without losing their Czech citizenship. (This is an exception to one of the declared principles of the Czech citizenship legislation, i.e. the prevention of dual citizenship.)

The law also introduced a simplified procedure for acquisition of Czech citizenship by declaration for former Czechoslovak nationals who had been living continuously in the territory of the Czech Republic since the break-up of Czechoslovakia. This was a corrective provision. It provided for acquiring Czech citizenship by those who for various reasons (legal or personal) could not opt or apply for Czech citizenship before. The necessity of the remedy is demonstrated by this figure: 6,278 former Czechoslovak citizens acquired Czech citizenship in 1999 alone, by invoking the new provision.[27]

A subsequent amendment to Act No. 40/1993 Coll. adopted in 2003 (Act No. 357/2003 Coll.) introduced further remedial provisions. It gave former Czechoslovak nationals who were granted Slovak citizenship (i. e. were naturalised in Slovakia) in the period from 1 January 1994 to 1 September 1999 the right to (re)acquire the lost Czech citizenship by declaration. The amendment also gave the right to acquire the Czech citizenship by declaration to certain groups of Slovak nationals who were minors at the time of the break-up of Czechoslovakia.[28]

(b) Act No. 193/1999 Coll. on the Citizenship of Some of the Former Czechoslovak Citizens, reintroduced and broadened the right of reacquisition of Czech citizenship by declaration. It applied to emigrants who had lost Czechoslovak citizenship under communist rule, but for legal or practical reasons had not been able to make use of the first restitution act of 1990. Originally, the applicability of the law was limited to five years after its entry into force.

6.2 Basic principles of acquisition and loss of Czech citizenship

As stated above, the citizenship legislation has gone through a series of adjustments since 1993. While the greater part of the fine-tuning was related to the situation of former Czechoslovak nationals, there have been other changes, such as acquisition of citizenship by children or naturalisation. Some changes reflected reforms of the administrative structures. This section describes the main principles of Czech citizenship legislation in force as of 1 January 2007. It does so only selectively in so far as they reflect topical political discussions or indicate new trends.

6.2.1 Acquisition of citizenship

There are four ways of acquiring Czech citizenship: a) acquisition of citizenship by former Czechoslovak citizens by option, declaration or facilitated naturalisation (as described above), b) acquisition of citizenship by descent, adoption, and establishment of paternity, c) acquisition

of citizenship by being found in the territory of the Czech Republic and d) acquisition of Czech citizenship by naturalisation.

Under the ius sanguinis principle, one acquires Czech citizenship if at least one parent is a Czech citizen. The place of birth is not relevant. Ius soli applies if the parents are stateless and at least one of them is a permanent resident (i.e. a green-card holder).[29] A natural person found in the territory of the Czech Republic is a Czech citizen unless it is proved that he or she acquired the citizenship of another state by descent.

The conditions for *naturalisation* are strict:[30] permanent residence for at least five years, clean criminal record,[31] passing a Czech language test, renunciation of the previous citizenship,[32] no infringement of immigration law, and fulfilment of certain statutory duties, such as paying taxes, health, social and retirement insurance. The permanent residence status is an eligibility criterion that may not be waived. Under the immigration legislation in force until recently an immigrant could apply for permanent resident status (i.e. a green-card) only after ten years of continuous legal residence in the Czech Republic and after eight years in cases of family reunion. Exemptions were made only for those related to Czech citizens or permanent residents and on humanitarian grounds. Thus, the waiting period for naturalisation for many immigrants was in fact fifteen years and more. [33]

There are statutory exemptions for certain categories (such as recognised refugees and stateless persons). For instance, refugees are eligible for naturalisation without having to renounce their original citizenship. (They acquire permanent resident status by virtue of being granted asylum.) Most of the requirements can be waived at the discretion of the Ministry of the Interior if certain conditions are met. For instance, the Ministry may waive the five-year duration of permanent residency (but not the permanent resident status as such) for applicants born in the Czech Republic, former Czech (or Czechoslovak) nationals, spouses of Czech nationals, children of Czech nationals, stateless persons or refugees.

There is a long list of discretionary exemptions from the requirement to renounce one's original citizenship. This list was extended recently by Act No. 357/2003 Coll. partly because of an initiative by the Human Rights Council (see below). Applicants may keep their previous citizenship (and become dual or multiple nationals) if they are permanent residents, have stayed legally in the territory for at least five years, have a genuine link to the Czech Republic and, in addition, satisfy one of the prescribed conditions. These are for example situations when the applicant's renunciation of the previous citizenship involves unreasonable fees or other demands not acceptable in a democratic state, when naturalisation is in the interest of the Czech Republic be-

cause of the expected significant contribution to the Czech society in science, societal life, culture or sports or when the applicant is a former Czech (or Czechoslovak) national.[34] There is also an exemption for applicants who have resided legally in the Czech Republic for at least twenty years and have held permanent resident status for five years or more.

The relatively simple language test is waived for all Slovak nationals and for any one else at the discretion of the authorities.

6.2.2 Loss of citizenship

Since the Czech Constitution prohibits deprivation of citizenship against one's own will, it may not be imposed as a penalty. In conformity with the principle of ius sanguinis even later generations of Czech descent born and living abroad cannot lose Czech citizenship by mere operation of law.

A Czech national can lose citizenship in two ways: by a *declaration of renunciation* and by *acquisition of foreign* citizenship at his or her request. A Czech citizen may lose his or her citizenship by a declaration of renunciation if he or she stays abroad and at the same time possesses the citizenship of a foreign state (cases of dual and multiple citizenship).[35] A Czech citizen automatically loses Czech citizenship as a consequence of acquiring a foreign citizenship if the latter citizenship is acquired at his or her own request. (This does not apply if the acquisition of a foreign citizenship is automatic, for example by descent.) This mode of automatic loss of citizenship was introduced by the 1993 Citizenship Act and did not exist before 1 January 1993.[36] This provision became controversial in practice.[37] Its constitutionality was also challenged with reference to the ban on deprivation of citizenship against one's will but was eventually confirmed by the Constitutional Court.[38]

The recent amendment to the 1993 Citizenship Act (Act No. 357/2003 Coll.) introduced an exemption from the loss of citizenship in relation to marriage. If a Czech national acquires the citizenship of his or her spouse during the marriage, he or she will not lose Czech citizenship.[39]

6.2.3 Dual and multiple citizenship

The Czech legislation is becoming generally more tolerant about dual (and multiple) citizenship. This trend is clearly visible in spite of the fact that the official citizenship policy still follows the principle of prevention of dual citizenship. In reality, there are numerous dual and multiple nationals who acquired the status legally. These are e.g. for-

mer Czech and Czechoslovak citizens who reacquired Czech citizenship by declaration under the restitution laws, people who became dual Czech and Slovak nationals due to the break-up of Czechoslovakia, applicants for naturalisation for whom the Ministry of the Interior waived the requirement for them to renounce their former citizenship (including cases of achievement-based naturalisation), naturalised refugees, and Czech spouses of foreign citizens. There are those who acquired dual citizenship by descent and emigrants who acquired foreign citizenship but never lost their Czech (or Czechoslovak) citizenship.

Moreover, there are many cases in the grey zone. For instance, if the Czech authorities are not informed of the acquisition of a foreign citizenship by a Czech citizen or by the foreign state concerned, which is often the case, they still treat the person as a Czech citizen (e.g. they will grant him or her a passport).

6.2.4 International treaties

The Czech Republic is party to certain bilateral and multilateral treaties concerning citizenship. The current trend is toward accession to multilateral treaties[40] as most bilateral treaties were terminated in the late 1990s, primarily because they were not compatible with the provisions of the 1997 European Convention on Nationality as regards the preservation of dual citizenship for children whose parents have different citizenship. These terminated bilateral agreements were with the former Soviet Union and some of its successor states as well as Hungary, Poland, Bulgaria, and Mongolia.

Politically, the most controversial of the bilateral agreements was the 1928 Naturalisation Treaty between the United States and Czechoslovakia, which precluded dual citizenship of emigrants.[41] The Treaty was valid until 20 August 1997. The application of the Treaty excluded many former Czechoslovak citizens from restitution of their property lost during the communist regime.

6.2.5 Procedure

The Ministry of the Interior is responsible for citizenship issues. The Ministry decides on naturalisations. It maintains a central register of persons who have acquired or lost Czech citizenship. A decision by the Ministry may be appealed. In this case, the Minister of the Interior decides. The Minister receives the opinion of a special consultative commission, but is not bound by it.[42] Decisions on citizenship are open to judicial review.[43] Fees are relatively high – 10,000 Czech crowns (330 euros) for granted naturalisation. The acquisition of citizenship by declaration is free of charge.

6.3 Current political debates

The gradual solution of the problem of the break-up of Czechoslovakia, which dominated the citizenship agenda until recently, opened space for fresh approaches to the fundamental issues of citizenship legislation. The shift of perspective was also due to a new phenomenon: increasing migration to the Czech Republic and evolving integration policies (Baršová 2005; Baršová & Barša 2005: 231-238).

An impetus for an overall revision of the citizenship legislation came from the Government Council for Human Rights.[44] Following an Analysis of Dual Citizenship Issues submitted to the Government and the adoption of the latest amendments to the 1993 Citizenship Act in 2003, the Government decided that the Ministry of the Interior should prepare a comprehensive analysis of the citizenship legislation based on broad public consultation and submit it to the Government by 30 June 2005. The Ministry circulated a consultation paper in the autumn of 2004 and subsequently, in May 2005, a draft Analysis of the Legislation on the Acquisition and Loss of Citizenship.[45] .

The Analysis discusses the fundamental principles of the new citizenship law. It suggests the following crucial moves towards liberalisation: a) full toleration of dual (multiple) citizenship on both the entry and exit sides and b) facilitated acquisition of citizenship by second and third generation migrants.

a. As regards the grounds for this profound reform, the Ministry refers to both the prevailing trends toward liberalisation abroad and practical aspects. There are countries which do not allow, in legislation or in practice, renunciation of one's citizenship. This is a source of undue administrative burden, according to the Ministry.[46]
b. The Ministry suggests that foreign nationals born in the territory of the Czech Republic should have the right to acquire Czech citizenship by declaration within two years after the age of majority if they are permanent residents and have a clean criminal record. The same should apply to those who have lived continuously in the Czech Republic since early childhood. Even if this proposal is not a very favourable solution in comparison with other options (such as the application of ius soli at birth), it is still a positive change in the national context. At present the Czech citizenship legislation does not have any provisions specifically addressing the issue of second and third generation immigrants. The proposed rule would at least eliminate the need to apply for membership in the community where the applicant was born and grew up.

On the other hand, the Ministry states that the strict conditions for naturalisation should be maintained or even be tightened.[47] It proposes to

exclude from naturalisation applicants who are likely to become a public burden. The Analysis also contemplates some changes in language testing: the testing should be more professional.[48]

In July 2005, the Government approved the Analysis.[49] A year later, in June 2006, the Ministry of the Interior circulated the first framework draft of the new legislation. In addition to the changes mentioned above, the Ministry proposes to amend the Constitution so as to allow the withdrawal of citizenship in cases of false acquisition of citizenship (e.g. fraudulent use of documents). Another controversial proposal of the draft concerns an amendment to the Constitution introducing the clause that there is 'no legal right to be granted citizenship'. This proposal can be regarded as the Ministry's response to the criticism that it was making extensive use of discretion in naturalisation cases (see below).

The draft framework was scheduled to be submitted to the Government in December 2006. However, because of the change in Government after the 2006 parliamentary elections, the date was postponed. At the time of writing, the future of the draft was hardly predictable.

There was also a public debate concerning the situation of those who emigrated under the communist regime. An amendment to Act No. 193/1999 Coll. on the Citizenship of Some of the Former Czechoslovak Citizens, introduced as a private bill in the Senate, abolished the deadline for making a declaration on the reacquisition of Czech citizenship.[50]

More controversies arise in the context of the property restitution laws. As one of the conditions for the restitution of property was Czechoslovak (Czech) citizenship, the application of the post-war decrees by which persons of German ethnic origin were deprived of Czechoslovak citizenship is a topical issue.[51]

Among the practical problems repeatedly brought to the attention of the Government by non-governmental organisations and other actors, such as the Ombudsman, is the extensive discretion of the Ministry of the Interior in decisions on naturalisation and the way it is exercised. In practice, the Ministry's negative decisions do not often constitute grounds for rejection of an application, but refer vaguely to administrative discretion as such and to the fact that there is 'no legal right to be granted citizenship'. Until recently the courts conducting the judicial reviews have sustained the practice.[52] Only some legal scholars expressed doubts whether 'granting citizenship is, indeed, an act of mercy, exercised by the state at its own good will' or is rather in the interest of society (Chlad 2004: 350; Molek & Šimíček 2005: 142-144). A cautious shift in the jurisprudence regarding the use of discretion in naturalisation procedures was brought about by the Supreme Administrative Court (established in 2003).[53] The idea that dis-

cretionary naturalisation should be completed or replaced by granting a right to naturalisation once the specified conditions are met is not on the agenda at all.

6.4 Statistics[54]

If we exclude Slovak nationals, the numbers of persons naturalised annually in the Czech Republic have been surprisingly stable in the last decade, with a maximum of 2,000 persons and a minimum of 837 per annum, as shown in Table 6.2.

Table 6.2: Naturalisations (excluding Slovak nationals) in the Czech Republic, 1993-2005

Year	*1993*	*1994*	*1995*	*1996*	*1997*	*1998*	*1999*	*2000*	*2001*	*2002*	*2003*	*2004*	*2005*
Total number	1,469	1,412	2,000	1,380	837	1,128	1,031	1,059	1,121	1,150	1,267	1,495	1,177

Source: Ministry of the Interior

The number of Slovak nationals granted Czech citizenship based on supplementary and corrective initial rules (see Table 6.1) is still significant (Act No. 40/1993 Coll., Sections 18a, 18b and 18c).

Table 6.3: Number of Slovak and other nationals acquiring Czech citizenship from 2001-2005

year	*2001*	*2002*	*2003*	*2004*	*2005*
Total	6,321	4,532	3,410	5,020	2,626
Declaration based on Act No. 139/1999 Coll.	1,607	1,273	1,154	1,784	190
Act No. 40/1993 Coll. – total	4,714	3,259	2,256	3,236	2,436
Slovakia – Act No. 40/1993 Coll. – total	3,593	2,109	989	1741	1,259
Slovakia – declaration section 18a*	3,378	1,862	850	627	565
Slovakia – declaration section 18b**	–	–	55	364	123
Slovakia – declaration section 18c***	–	–	5	573	325
Slovakia – naturalisation section 7	215	247	79	177	246
Other naturalisations (section 7) – Act No. 40/1993 Coll.	1,121	1,150	1,267	1,495	1,177

Source: Czech Statistical Office
* former Czechoslovak nationals who had lived continuously in the territory of the Czech Republic since the break-up of Czechoslovakia
** former Czechoslovak nationals who were naturalised in Slovakia in the period from 1 January 1994 to 1 September 1999
*** former Czechoslovak nationals born in Slovakia who were minors during the break-up of Czechoslovakia, but with at least one parent a Czech republic-level citizen

In 2005, the total number of persons naturalised was 1,423. This number included 246 Slovak nationals, 239 Ukrainian nationals, 167 Polish

nationals, 143 Romanian nationals, 134 Russian nationals, 63 nationals of Bosnia and Herzegovina, 62 Vietnamese nationals, 48 Bulgarian nationals and 43 nationals of Kazakhstan.[55]

Table 6.4: Slovak nationals who acquired Czech citizenship by declaration (Section 18a of Act No. 40/1993 Coll.)

Year	*1999*	*2000*	*2001*	*2002*	*2003*	*2004*	*2005*
	6,278	5,377	3,378	1,862	850	627	565

Source: Ministry of the Interior

Table 6.4 shows that at the end of 1990s there were still a number of former Czechoslovak citizens living in the Czech Republic whose status was not adequately regularised. The decreasing numbers indicate that the problem is diminishing.

Table 6.5: Former Czechoslovak nationals who (re)acquired Czech citizenship by declaration under Act No. 193/1999 Coll.

Year	*1999*	*2000*	*2001*	*2002*	*2003*	*2004**	*2005*
	798	1,899	1,607	1,273	1,154	1,784	190

Source: Ministry of the Interior
* The deadline for making the declaration expired on 2 September 2004. The Act No. 46/2006 Coll. deleted the deadline and thus made the law operational again. It was published and entered into force on 27 February 2006.

Act No. 193/1999 Coll. concerns those who emigrated during the communist regime. As they live all over the world, the process requires time both for spreading the information on the right to reacquire the Czech citizenship and for the actual exercising of that right. The steady numbers show that the deletion of the deadline for making the declaration is fully warranted.

6.5 Conclusions

The consensual division of Czechoslovakia caused many problems regarding citizenship. The new legislation did not generate *de iure* stateless persons, as was sometimes mistakenly contended by its critics. Rather, the consequence of the restrictive and inadequate citizenship legislation was that some former Czechoslovak citizens ended up with the citizenship of a successor state in which they did not live and to which they were only formally attached.[56] This revealed the need to clarify international rules concerning cases of state succession.[57] It also

raised a more puzzling question: Does the right to a citizenship imply a right to choose one's own citizenship?

By the application of remedial provisions introduced in the period 1993-2003, most of the problems related to the break-up of Czechoslovakia have been solved. Nonetheless, the original intention of the legislators to avoid dual Czech and Slovak citizenship has not been fully achieved. On the contrary, the precarious position of some groups of citizens shows that there are situations in which it is not justified to deny a person the right to dual citizenship. Cases of dual Czech and Slovak citizenship are numerous.

Conditions are unfavourable as regards naturalisation except for foreign nationals with strong family links to Czech citizens (spouses, children). They involve long waiting periods to fulfil the eligibility criteria as regards the residence requirement. Longer periods of absence are not tolerated and only formal continuous legal status counts. There is also a Czech language test (although kept at a reasonably easy level). As a rule, applicants have to relinquish their original citizenship and a number of additional criteria are tested. There are no specific provisions for automatic acquisition of the Czech citizenship by second and third generation immigrants (not even at the age of majority) or facilitated naturalisation for this category. Decisions denying naturalisation are open to judicial review but both in theory and practice administrative discretion is applied very broadly in naturalisation cases. On the other hand, the legal status of naturalised citizens is secure as a ban on the deprivation of citizenship is guaranteed under the Constitution.

At present, the Czech citizenship legislation is at a crossroads. Issues related to the break-up of Czechoslovakia, which have dominated the political debates, are losing their topicality. New challenges are linked to increasing immigration. In particular, the restrictive nature of current naturalisation provisions, which reflects the surviving parochial character of Czech society, is in conflict with the declared need for effective integration policies. The proposed comprehensive citizenship reform will have to address the issue. At a more general level, the proposed reform can be seen as a key element in the transformation of the Czech self-image from an ethnic to a civic nation.

Chronological list of citizenship-related legislation in Czechoslovakia/ the Czech Republic

Date	Document	Content	Source
1920	Act of 29 February 1920, No. 121 Coll. of Acts of the Czechoslovak Republic, introducing the Constitutional Charter of the Czechoslovak Republic	The Czechoslovak Constitution provided for a single Czechoslovak citizenship and prohibited dual citizenship.	

Date	Document	Content	Source
1920	Constitutional Act of 4 April 1920, No. 236, Supplementing and Amending Existing Provisions on the Acquisition and Loss of Citizenship and on Domicile in the Czechoslovak Republic	Implemented provisions of the peace treaties concerning the state succession in relation to citizenship and determined who are Czechoslovak citizens; provided for the continuation of Austro-Hungarian citizenship legislation.	
1945	President's Constitutional Decree No. 33/1945 Coll. Concerning Czechoslovak Citizenship of Persons of German and Hungarian Ethnicity	Deprived most ethnic Germans and Hungarians of Czechoslovak citizenship.	Website of the Sudeten Germans: sudetengermans. freeyellow.com
1946	Constitutional Act No. 74/ 1946 Coll. Concerning the Naturalisation of Compatriots Returning to the Homeland	Facilitated naturalisation of returnees who were ethnic Czechs, Slovaks or members of other Slavonic nations.	
1949	Act No. 194/1949 Coll. on the Acquisition and Loss of Czechoslovak Citizenship, amended by the Act No. 72/1958 Coll. Modifying the Regulations on the Acquisition and Loss of Czechoslovak Citizenship	New citizenship code adopted after the communist coup d'etat in February 1948.	
1968	Constitutional Act No. 143/ 1968 Coll. on the Czechoslovak Federation	Transformed centralised Czechoslovakia into a federation of two entities, the Czech Republic and the Slovak Republic.	
1968	Federal Act No. 165/1968 Coll. on the Principles of Acquisition and Loss of Citizenship	Provided a framework for the introduction of republic-level (Czech and Slovak) citizenship.	
1969	Act No. 39/1969 Coll. of Czech National Council on Acquisition and Loss of Citizenship of the Czech Socialist Republic	Introduced republic-level Czech citizenship.	
1990	Act No. 88/1990 Coll. Amending and Supplementing Legislation on Acquisition and Loss of Czechoslovak Citizenship	Provided for the reacquisition of Czechoslovak Citizenship by emigrants who had lost it in the period of the communist rule and deleted the provisions on withdrawal of citizenship.	

Date	Document	Content	Source
1993	Constitution of the Czech Republic	Contains the provision that, 'no one shall be deprived of his or her citizenship against his or her will'.	www.psp.cz
1993	Act No. 40/1993 Coll. on Acquisition and Loss of Citizenship of the Czech Republic	New citizenship code which entered into force in the Czech Republic after the dissolution of Czechoslovakia.	www.legislationline.org
1993	Act No. 272/1993 Coll., Amendment of the Act No. 40/1993 Coll.	Introduced changes to the right to opt for Czech citizenship with regard to certain Czechs born on the territory of Slovakia before 31 December 1939	www.legislationline.org
1995	Act No. 140/1995 Coll., Amendment of the Act No. 40/1993 Coll.	Facilitated the naturalisation of those who immigrated to the Czech Republic upon invitation by the Government; the provision concerned in particular the members of the Czech minority from the Chernobyl area.	www.legislationline.org
1996	Act No. 139/1996 Coll., Amendment of the Act No. 40/1993 Coll.	Introduced discretionary waiver of the clean criminal record requirement in naturalisation procedures with regard to Slovak citizens who were former Czechoslovak citizens and had been living in the Czech Republic since the break-up of Czechoslovakia.	www.legislationline.org
1999	Act No. 194/1999 Coll., Amendment of the Act No. 40/1993 Coll.	Introduced significant remedial changes in relation to the situation of former Czechoslovak citizens living in the Czech Republic since the break-up of Czechoslovakia.	www.legislationline.org
1999	Act No. 193/1999 Coll. on the Citizenship of Some of the Former Czechoslovak Citizens.	Provided for the reacquisition of Czech citizenship by emigrants who had lost it in the period of the communist rule and were not able to make use of Act No. 88/1990 Coll.	www.legislationline.org
2003	Act No. 357/2003 Coll.,	Introduced further remedial	

Date	Document	Content	Source
	Amendment to the Act No. 40/1993 Coll.	provisions with regard to former Czechoslovak nationals and certain liberal changes, in particular with regard to dual nationality.	
2006	Act No. 46/2006 Coll., Amendment to Act No. 193/1999 Coll. on the Citizenship of Some of the Former Czechoslovak Citizens.	Deleted the deadline for making declarations on reacquisition of Czech citizenship by some of the former Czechoslovak citizens (emigrants).	

Notes

1 See the leading handbook on Czech citizenship law Černý & Valášek 1996.

2 Domicile (*domovské právo, Heimatrecht*) refers to membership in a municipal community. In the Czech lands (Bohemia and Moravia) as parts of the Austro-Hungarian Empire, domicile was regulated by Act No. 105/1863 Coll. [Collection] of Acts of the Empire, as amended by Act No. 222/1896 Coll.

3 E.g. Treaty of Versailles (1919), Treaty of Saint-Germain-en-Laye (1919) and Treaty of Trianon (1920).

4 Constitutional Act of 4 April 1920, No. 236, Supplementing and Amending Existing Provisions on the Acquisition and Loss of Citizenship and on Domicile in the Czechoslovak Republic and Act of 29 February 1920, No. 121 Coll. of Acts of the Czechoslovak Republic, introducing the Constitutional Charter of the Czechoslovak Republic. The basic principles of the Czechoslovak citizenship were thus regulated by constitutional laws and treaty provisions. The system, however, failed to achieve the declared aim of protecting minorities and preventing statelessness.

5 In Slovakia provisions of former Hungarian laws remained in force. See also Kusá in the present volume.

6 In October 1938, Czechoslovakia lost parts of its territory inhabited mainly by a German population. In March 1939, after the secession of Slovakia, the rest of the Czech lands were turned into the Protectorate Bohemia and Moravia. The complex legal consequences in terms of citizenship are described by Verner (1947, Appendix II: 227-270).

7 The Presidential Decree exempted from withdrawal of citizenship those citizens of German and Hungarian ethnicity who had joined the fight for liberation or were persecuted by the Nazis. The legislation also established a possibility to apply for the (re)granting of Czechoslovak citizenship within six months after the entry of the Decree into force. Most Czechoslovak citizens concerned actually had acquired German or Hungarian citizenship in the period 1938-1945.

8 See also Kusá in this volume.

9 Constitutional Act No. 143/1968 Coll. on the Czechoslovak Federation.

10 The corresponding law regulating the same issue in the Slovak Republic was the Act of the Slovak National Council No. 206/1968 Coll.

11 In this paper, the term *republic-level citizenship* is used to denote membership in the constitutive entities of the federal state. The term *(state) citizenship* is used exclusively

to indicate membership of a sovereign state. In Czech language and legal terminology, the term *state citizenship* (*státní občanství*) is used for both legal statuses.

12 The republic-level citizenship was not recorded in any official documents, such as birth certificates, ID cards or passports. On the other hand, the ID and other documents recorded the *ethnic origin (národnost)*, (e.g. Czech, Slovak, Hungarian), which was based, in principle, on one's own declaration.

13 Constitutional Act No. 23/1991 Coll. introducing the Charter of Fundamental Rights and Freedoms. The Act amended art. 5 of Constitutional Act No. 143/1968 Coll. on the Czechoslovak Federation. The Act came into force on 8 February 1991. Later, it was transformed into art. 12(2) of the Czech Constitution. The provision offers stronger protection against deprivation of citizenship than art. 15(2) of the Universal Declaration of Human Rights, which bans *arbitrary* deprivation of citizenship only.

14 Act No. 88/1990 Coll. provided for the reacquisition of Czechoslovak citizenship by former Czechoslovak citizens who had lost Czechoslovak citizenship in the period between 1 October 1949 and 31 December 1989. The reacquisition took effect in certain cases through a simple declaration. However, two issues are important. First, the law did not go back to before 1948 to cover former Czechoslovak citizens who were deprived of Czechoslovak citizenship by the post-war Presidential Decrees (Germans and Hungarians). Second, the law provided a relatively short period to exercise the right to request the reacquisition of citizenship. It expired on 31 December 1993.

15 See Kusá in the present volume.

16 The Constitutional Act No. 542/1992 Coll. on the Dissolution of Czechoslovakia on 31 December 1992, was adopted by the Federal Assembly on 25 November 1992.

17 Since the establishment of Czechoslovakia in 1918, there has been much intrastate migration. For instance, in the period 1918-1938 many Czechs went to Slovakia as part of a new Czechoslovak administration. After 1945, there was continuous economic emigration from Slovakia to Bohemia and Moravia. One important element of the post-war internal movements of inhabitants was (both spontaneous and state-organised) resettlement of Slovak Roma in industrial towns and cities of Moravia and Bohemia.

18 The drafting and the adoption of the law took place in exceptional circumstances. The whole process was finished within two months.

19 The possibility of dual (Czech and Slovak) citizenship was the most divisive issue between the ruling political elites – Slovak nationalists and Czech pragmatists. It was favoured by the former and denied by the latter. Since an agreement on state succession regarding citizenship had not been reached, two separate citizenship laws regulated the citizenship of the successor states.

20 For the concept of the *initial determination* (*Erstabgrenzung*), see the work by Krombach (1967).

21 The same criterion, i.e. republic-level citizenship, was used in some countries of former Yugoslavia (Slovenia, Croatia), while the countries of the post-Soviet Eurasia applied a permanent residency criterion instead.

22 The right to opt for Czech citizenship was restricted by the requirement that the person had not been convicted in the last five years for an intentional criminal offence.

23 Most Roma migrated to Czech lands from Slovakia after 1945. Consequently, many Czech Roma became Slovak citizens by the application of the general rules of initial determination.

24 The first significant change was introduced by Act No. 139/1996 Coll., which allowed for exceptions from the clean criminal record requirement for former

Czechoslovak citizens who had resided in the territory of the Czech Republic since the break-up of Czechoslovakia.

25 File No. IV US 34/97.

26 The ruling was confirmed by a subsequent ruling on 14 November 2000 (File No. I. US 337/99). The Court argued that exercising the right of option does not mean that a person acquired foreign, i.e. Slovak citizenship *at his or her own request*, which would lead to automatic loss of Czech citizenship. In practical terms, this ruling concerned mostly ethnic Czechs living in Slovakia.

27 See also below Table 6.4.

28 See below Table 6.3, sections 18b, 18c.

29 The situation of children born to a stateless parent without permanent residence is not regulated adequately.

30 I do not distinguish between *eligibility* and *conditions* for naturalisation. In Czech citizenship legislation, the conditions for naturalisation fall into two categories: a) conditions *sine qua non*, which cannot be waived, and b) conditions, which can be waived at the discretion of the authorities.

31 The applicant has not been convicted for an intentional crime in the last five years.

32 The applicant has to submit a certificate of the loss of his or her previous citizenship or a certificate that by the acquisition of Czech citizenship he or she will lose his or her previous citizenship.

33 Act No. 326/1999 Coll., as amended (Aliens Act). The amendment of the Aliens Act, Act No. 161/2006, which entered into force on 27 April 2006, cut the waiting period for permanent resident status to five years (in order to implement EU Directive 2003/109/EC Concerning the Status of Third-country Nationals who are Long-term Residents).

34 This does not apply to Slovak citizens.

35 In order to avoid statelessness, there is no provision allowing for the renunciation of Czech citizenship if the person concerned is not a citizen of another state.

36 We assume that the intention of the drafters of the law was to reduce the cases of Czech citizens living abroad transferring Czech citizenship over several generations.

37 It had particularly precarious consequences for Czech women who married citizens of some Islamic countries. The status of non-citizens put them at a disadvantage with regard to e.g. inheritance rights, whereas the potential loss of Czech citizenship in the case of naturalisation would deprive them of diplomatic protection. Another category adversely affected are citizens who applied for a foreign citizenship before the law entered into force but were granted a foreign citizenship after 1 January 1993.

38 In the Court's opinion, there is a distinction between *deprivation of citizenship*, prohibited by the Constitution, and *loss of citizenship*. Those who apply for a foreign citizenship should be aware of the legal consequences attached to the act, which are provided for by law. Thus, the loss of citizenship based on the acquisition of foreign citizenship does not constitute deprivation of citizenship against one's will. See Ruling published under No. 6/1996 Coll. Concerning the Proposal to delete Section 17 of Act No. 40/1993 Coll. on the Acquisition and Loss of Citizenship of the Czech Republic.

39 This provision existed previously, but the wording was not clear and, in practice, it was applied only to rare cases of automatic acquisition of citizenship through marriage.

40 The Czech Republic is party to the following multilateral treaties: 1997 European Convention on Nationality (No. 76/2004 Collection of International Treaties, henceforth Coll. of I. T.), date of accession: 1 July 2004; 1961 UN Convention on the Reduction of Statelessness (No. 43/2002 Coll. of I. T.), date of accession: 19 March

2002; 1954 UN Convention Relating to the Status of Stateless Persons (No. 108/2004 Coll. of I. T), date of accession: 17 October 2004.

41 Published as Act No. 169/1929 Coll. The treaty established a rule that in the case of naturalisation, the citizenship of the state of origin is automatically lost.

42 In 2004, the Ministry issued 677 negative decisions regarding naturalisation. 369 unsuccessful applicants appealed. In 134 cases the Minister of the Interior overturned the negative decision (Ministry of the Interior 2005: 145).

43 Act No. 150/2002 Coll. on Judicial Reviews of Administrative Acts. For judicial review in naturalisation cases see part 3 of this chapter.

44 The Council for Human Rights is an advisory body to the Government. See Resolution of the Government of the Czech Republic No. 493/2002 Related to the Communication by the Council for Human Rights on the Citizenship of the Czech Republic. The communication concerned certain urgent issues, such as the incompatibility of the remaining bilateral agreements with the requirements of the European Convention on Nationality. It also brought to the attention of the Government certain problems of interpretation and practice in the field of citizenship law.

45 Ministry of the Interior, Document No. VS – 473/50/2-2004.

46 The fundamental incentives for the switch towards toleration of multiple citizenship thus seem to be those described by Hagedorn (2003). Obviously, citizens and immigrants campaign for dual citizenship for different reasons. Dual citizenship corresponds to the needs of both expatriates and immigrants and offers them a greater scope for individual choice.

47 However, implementing EU Directive 2003/109/EC Concerning the Status of Third-country Nationals who are Long-term Residents would *de facto* reduce the overall residence requirement.

48 At present, the state authorities processing applications for naturalisation carry out the testing. This does not guarantee uniform standards of testing.

49 Ministry of the Interior, *Analýza úpravy nabývání a pozbývání státního občanství*. [Analysis of the regulation on acquisition and loss of state citizenship] Adopted on 13 July 2005 by Government Resolution No. 881.

50 The Chamber of Deputies passed the bill on 23 November 2005. 102 deputies voted for the bill and 49 against. The Senate confirmed the bill on 26 January 2006. The Act No. 46/2006 Coll. was published and entered into force on 27 February 2006.

51 Some of the judicial cases concern citizenship of deceased persons, as the right to restitution by heirs depends on the issue. In certain cases, the Ministry of the Interior had to complete legal proceedings started in the late 1940s, using the then valid citizenship legislation (see e.g. Decision of the Supreme Administrative Court of 27 November 2003, ref. no. 6 A 90/2002-82 (www.nssoud.cz).

52 See Molek & Šimíček 2005.

53 Resolution by the Supreme Administrative Court of 23 March 2005, ref. no. 6A 25/2002-42 and Decision by the Supreme Administrative Court of 4 May 2006, ref. no. 2As 31/2005-78. (www.nssoud.cz). In the former case the Court decided that negative decisions on naturalisation can be reviewed by administrative courts. (The Ministry of the Interior as well as some courts were of the opinion that naturalisation cases, unlike other citizenship cases, can not be reviewed by courts because of the non existence of the legal entitlement to citizenship.) In the latter case the Court confirmed its opinion on the possibility of administrative review of naturalisation cases and rejected the whole theory of unlimited administrative discretion in these procedures.

54 As part of a new, more active approach to the issues of immigration and integration, the Czech Statistical Office started to gather and analyse data on naturalisation in a

systematic manner. These statistics however only cover the period since 2001. They can be found at www.czso.cz.

55 There is a Czech minority living in Kazakhstan.

56 In many cases, Slovak citizens living in the Czech Republic had even difficulties to acquire permanent resident status (Boučková & Valášek 1999).

57 The variety of solutions adopted in the numerous cases of state succession made it difficult to prove the presence of a concrete and detailed customary law on state succession and citizenship. It was only the 1997 European Convention on Nationality that introduced certain generally applicable rules on citizenship in cases of state succession.

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Chapter 7: The Slovak question and the Slovak answer: Citizenship during the quest for national self-determination and after[1]

Dagmar Kusá

Citizenship is both a status and a praxis. As a status, it is defined by a collection of laws and regulations. In Slovakia, these have been shaped by both principles of ius soli and ius sanguinis, the latter gaining importance especially after the First and the Second World War. The praxis involves the civic and political participation by citizens as well as the policies of governments concerning the implementation of the law in relation to its citizens as well as to non-citizens. The latter depend strongly on the political situation of the times. The first two turbulent decades of the Czechoslovak Republic were marked by attempts to ethnically homogenise the 'Czechoslovak' nation, targeting primarily the German and Hungarian minorities (but also Roma and others) as unwanted elements, culminating in three years of 'homelessness' after the end of the Second World War. Only the communist Government restored their civil and political rights. Yet it was unable to do away with the national sentiments of the Slovaks, striving to achieve national self-determination within or without Czechoslovakia. The Federation of 1968 (and the Warsaw Pact tanks that preceded it) quieted the nationalist voices until 1989, when they echoed through the public squares with all the more vigour. The dissolution of Czechoslovakia, which followed in 1993, made for a messy transition period in citizenship policy with the need to address both issues related to the end of the communist regime and its victims, as well as to the status of Czech nationals in Slovakia.

The last decade has also brought new challenges connected to the integration of Slovakia into the European Union and marked by general globalisation processes. Slovakia is figuring out its relationship towards an influx of newcomers from parts of the world with which it had no cultural contact in the past. International institutions shape these policies to a large degree, although the careful observation of Hungary's – the closest neighbour and historic adversary – citizenship policies seems to have just as much impact on shaping the public debate and legal provisions taken in Slovakia. While we will be focusing in this chapter primarily on citizenship as a *status*, the political *praxis* of gov-

ernments does need some attention to complete our understanding of what shaped citizenship policies at different times.

7.1 History of Slovak citizenship

7.1.1 History of citizenship policies since the first Czechoslovak Republic

Czechoslovak citizenship was created with the first Czechoslovak Republic on 28 October 1918. The collective identity to which it referred was cumbersome, to say the least, and was a result of the historical path of the Czech and Slovak nation-building processes as well as of the peculiar nature of the new state that had resulted from the dissolution of the Austro-Hungarian Empire and from the peace treaties following the First World War. The Wilsonian principle of self-determination influenced the understanding of the concept of citizenship and contributed to the growing role of ethnicity in its legal definition. Concepts of citizenship and ethnic nationality are often difficult to set apart neatly. They influence each other, and both depend heavily on political interpretations. The Czechoslovak Republic consisted of a multitude of ethnic groups and the leadership struggled with asserting the dominant position of the Czech and Slovak nations in their newly established Republic. National minorities, especially the three million Germans and close to a million Hungarians, formed 44 per cent of the total population. The Czechoslovak Government thus enforced an official Czechoslovak nationality[2] (instead of separate Czech and Slovak nationalities).

The sovereign nation needed to be propped up by some 'objective' quantifiable measures of dominance. Population censuses helped to provide these measures and also allowed citizens to be distinguished from foreigners.[3] The power of numbers as represented in the census was becoming apparent to national leaders prior to the foundation of Czechoslovakia. With the growing turbulence over what was then called the 'nationality question' within the Habsburg Empire the census was becoming more and more powerful as an expression of 'real' power, as a ticket to future control over territory and as one of the determinants of state formation and boundaries. In 1900, for example, the German newspaper in Bohemia appealed to its readers: 'Dear fellow citizens! Please pay close attention to column 13 (*Umgangssprache)* in the census form. The future of our nation depends on this minor entry. 1. What is the language used on a daily basis? It is the language most commonly used by an individual. Daily use means the communication in the family, among people that live together, in their employment, with an employer. Wherever this communication happens in the German language, no other language should be entered into column

13. Is the language used on a daily basis identical with the mother tongue? Absolutely not. Czech employees [...] use in their German employment the German language instead of their mother tongue. German is their language of everyday use.' (Zeman 1994: 37). In a similar manner Czech, Slovak and Ruthenian leaders appealed to their respective constituencies to enter their mother tongue. Data were collected by census officials, often with the aid of the army and police and accompanied by threats, blackmail or violence.

The census remained important, especially in border disputes after 1918. The northern part of the Czech Teschen-Silesia region as well as the southern part of the Slovak borderlands with Hungary were heavily disputed after the war and nationality was used as a tool for demarcation policies. Polish representatives based their arguments on census data from before 1918, which showed a clear majority of ethnic Poles in those territories. As the populations here were ethnically mixed and their mother tongue was often Polish or Hungarian, the question in the 1921 census carried out by the Czechoslovak Government was promptly changed to ask directly about nationality. A Silesian nationality was created (besides Polish and Czechoslovak). Respondents in this category were then automatically counted among Czechoslovak nationals. This resulted in a complete change of population proportions. While the percentage of Poles fell to 25 per cent (from 139,000 to 69,000), the percentage of Czechoslovaks grew from 40 per cent to 65 per cent (from 123,000 to 177,000) (Paul 1998: 163).

The fate of Teschen-Silesia was decided at the Paris Peace Conference. Polish representatives succeeded in their demand for a plebiscite. If this had been carried out, Czechoslovakia might have lost some of these economically strong territories. However the international commission overseeing the plebiscite could not agree on the conditions, the Red Army was quickly invading Poland, and legal norms in Czechoslovakia were confusing due to the existing state of legal dualism where Czech lands inherited the legal system from Austria, and Slovakia that of Hungary. A plebiscite was to be carried out not only in Silesia, but also in the northern Slovak areas of Spiš and Orava, which would result in implementing two plebiscites regulated by differing sets of laws. The northern boundary was therefore finally decided upon the recommendation of the Allied Powers. Poland was compensated for much of Silesia with 25 settlements in Orava and Spiš (Klimko 1980; Peroutka 1991).

Legal dualism was caused by differing practices in granting citizenship and domicile before 1918 following the Austro-Hungarian Compromise of 1867. While in Austria domicile, i.e. a legal title of residence in a municipality (*Heimatrecht*), was closely registered, it was not in the Hungarian part of the empire that included Slovakia.[4] Even

though domicile was granted to all those born and residing in a municipality, the gentry had a right to deny some people domicile even if they were born or had resided in the locality for a long time. Jurová (2002) maintains this was the fate of many Roma who moved from village to village. This was due to arts. 8-15 of the municipal law (XXVII/1886) that tied the acquiring of domicile of those who move and/or marry to fulfilling certain duties towards the municipality, thus giving the authorities opportunities for convenient interpretation. Furthermore, Act No. 222/1896 amended some provisions of the 1863 municipal law that specified conditions under which a Roma could be granted domicile.

The Roma and Hungarians were groups that succeeding Czechoslovak governments sought to minimise statistically after 1918. The census of 1921 shows a remarkable number of 'foreigners' without Czechoslovak citizenship that still have domicile on Slovak territory. The extent to which these groups were affected by citizenship policies has unfortunately not been extensively researched and quantitative data in this area are missing (Jurová 2002).

Czechoslovakia's citizenship regulations were further disturbed by the events of the Second World War. Slovakia experienced its first (debatably) independent statehood as a Nazi puppet state, while the Czech lands were occupied under the Third Reich's Protectorate. The end of the Second World War and the restoration of Czechoslovakia led to the adoption of ad hoc laws that introduced the criterion of ethnicity into citizenship legislation. The new legislation was linked to the post-war massive emigration and population exchange. Under the President's Constitutional Decree No. 33/1945 Coll. (Collection), Czechoslovak citizens of German and Hungarian ethnic origins were deprived of Czechoslovak citizenship.[5] This also meant their exclusion from official institutions (Order 99/1945 of the Slovak National Council), as well as from reimbursement for war damages, and implied other practical consequences.[6] Further decrees also disbanded German and Hungarian associations and organisations.

The transfers of ethnic Germans were agreed to by the Allied Powers at the Potsdam Conference in 1945. They did, however, not approve of applying the same policy based on a principle of collective guilt to Hungarians. The alternative solution found by the Beneš Government was a 'voluntary exchange of populations' between Czechoslovakia and Hungary. This plan resulted in the removal of 89,660 ethnic Hungarians, who were moved into Hungary, in return for receiving 73,273 ethnic Slovaks (Vadkerty 2002: 32). Oral history projects document that the nature of the exchange was in many cases coercive. Another wave of transfers, labelled by the Czech historian Karel Kaplan as an 'internal colonisation' (Kaplan, 1993: 9), was based on the Presidential De-

cree No. 88/1945 on universal labour service. Ethnic Hungarians were recruited for 'voluntary agricultural work'[7] into the then vacant Sudetenland. Age limits imposed by the Decree were also frequently ignored and property left behind was confiscated (in direct violation of the Decree) (Kusá 2005). These policies were accompanied by a programme of re-Slovakisation, passed by the Slovak National Council in June 1946. This policy gave ethnic Hungarians an opportunity to 'reclaim' Slovak citizenship (based on the premise of previous coercive Magyarisation of Slovaks) within the time span of one year. Some 320,000 Hungarians were granted Slovak citizenship on this basis. However, as the census of 1960 shows, many returned to claiming Hungarian ethnicity in the census as soon as the political situation allowed for it.[8]

This era has been dubbed by the Hungarian authors as the 'homeless years'. Citizenship was eventually restored to the Germans and Hungarians remaining in Czechoslovakia in 1948 by the newly established communist government; most Hungarians who had been transferred to Sudetenland have returned. Many, however, never recovered lost properties. The Beneš Decrees and their legal and practical consequences remain a painful open wound in Czech and Slovak political memory to this day and have been repeatedly debated, especially in connection with possible compensation for those affected and their descendants. Representatives of German and Hungarian communities sometimes call for an annulment of the Beneš Decrees, yet due to the complexity of the political situation of interwar and post-Second World War years and a lack of political will in the Czech and Slovak Republics, it is unlikely that such a measure would be adopted. Some conciliatory steps were taken by the Czech and Slovak Governments in the past decade on the level of bilateral declarations (the Czech-German Declaration of 1997) or public speeches (e.g. Hrušovský 2003).

7.1.2 Regulation of Czechoslovak citizenship in 1949-1968 and the 'Slovak Question'

The rise of communist monopoly rule meant, ironically enough, the end of 'homelessness' for the Hungarians and Germans in Czechoslovakia. Citizenship laws were, however, misused for other political purposes, as one of the tools to keep the lid on the population, as a sort of preventive blackmail of those who might think of publicly voicing their disapproval of the communist regime.

The legal process of acquisition and loss of Czechoslovak citizenship in the period following the February putsch of 1948 was governed by the Act on the Acquisition and Loss of Czechoslovak Citizenship No. 194/1949, as amended by the Act No. 72/1958 Modifying the Regula-

tions on the Acquisition and Loss of Czechoslovak Citizenship.[9] The Czechoslovak citizenship could be acquired in four ways: 1) by birth: Czechoslovak citizenship was transferred to the child by his or her parent citizens regardless of whether the child was born in the territory of the Czechoslovak Republic or abroad. If the child was born in the territory of the Czechoslovak Republic, it was sufficient if one of the parents was a Czechoslovak citizen;[10] 2) by marriage: A foreigner could acquire Czechoslovak citizenship on demand upon marrying a Czechoslovak citizen. This acquisition needed to be investigated and approved by a district National Committee within six months; 3) by grant: A foreigner could be granted Czechoslovak citizenship upon request after meeting two principal conditions: residing in the Czechoslovak territory for five consecutive years and abandoning his or her previous citizenship. There was no legal entitlement to be granted citizenship; 4) by reacquisition: This applied to the acquisition of citizenship by the 'homeless' persons of German and Hungarian nationality *ex lege* after taking a citizenship oath without the need to apply or to fulfil other conditions.[11]

The loss of Czechoslovak citizenship was possible by 1) renunciation upon request,[12] 2) revocation by the state due to hostile acts against the Republic, illegal emigration, or not returning to the homeland for the period of five years or upon request of the Ministry of the Interior, 3) marrying and acquiring citizenship in another country (with a possibility to request retention of Czechoslovak citizenship), 4) a court decision as a penalty for 'high treason, espionage, desertion of the Republic, military subversive activities, war treason, assassination of a state official',[13] 5) naturalisation in the United States of America, and 6) as a consequence of agreements on dual citizenship.[14]

During this period of time, and especially during the détente period of the 1960s, when literature and arts were flourishing after the denunciation of the Stalinist doctrine, Slovak leaders and intellectuals voiced their desire for self-determination of the Slovak nation in a federative arrangement. They did not wish to be Czechoslovak citizens, but Slovak citizens of Czechoslovakia. While the Czech elite focused on market liberalisation and democratisation of the regime, Slovaks called for 'first federalisation, then democratisation' – a slogan that reappeared repeatedly in public squares after 1989 in a much more malevolent form. This issue divided Czech and Slovak intellectuals during the entire duration of the communist regime, as the Czech cultural leaders failed to see the urgency of this issue for the Slovaks. The Soviet leadership, however, duly noted Slovak aspirations for federation. Thus when the tanks rolled into Prague and Bratislava on the 21 August 1968 it brought with it different realities for the two nations. While the oppression following the Warsaw Pact invasion was equally suffocating in

both parts of the country, it also brought the desired federation for the Slovaks. Dissent in Slovakia was therefore more muted compared to the Czech region. The Soviets poured investment into the Slovak industry in the post-1968 era further contributing thereby to different perceptions of the 'normalisation' period between the two nations. What was an era of darkness for most Czechs, was seen by many Slovaks as a repressed society, but with real industrialisation and federation at least on paper. While this reality itself may not have had an immediate impact on citizenship laws and practice, it certainly reverberated on the political scene after 1989, when the cultural divide between Czechs and Slovaks escalated into the 'Velvet Divorce'.

7.1.3 Regulation of Czechoslovak citizenship in 1969-1992: Czechoslovak Socialist Federative Republic

Until 1968, when the Czechoslovak Federation was established, Czechoslovakia was a unitary state with a single Czechoslovak citizenship. The establishment of a federation also resulted in the creation of Czech and Slovak citizenships. Constitutional Law No. 143/1968 Coll. on the Czechoslovak Federation, which came into force on 1 January 1969, is based on the principle of individual preference when determining the citizenship of the two constituent republics.[15]

The original text contains a provision according to which every citizen of one of the republics is also a citizen of Czechoslovakia (art. 5). Citizenship was regulated by the Constitutional Act of the National Council of the Czechoslovak Socialist Republic No. 165/1968 Coll. on the Principles of Acquisition and Loss of Czech and Slovak Citizenship, followed by the Act No. 206/1968 Coll. of the Slovak National Council on Acquisition and Loss of Citizenship of the Slovak Socialist Republic.

Normally citizenship at the level of the two republics was determined by the place of birth or by the citizenship of the parents, if that could be identified. Czech or Slovak citizens could however choose a different citizenship until 31 December 1969. The Act precluded dual citizenship, one had to choose one or the other. The Slovak National Council passed Act No. 206/1968 Coll. to apply these rules in domestic legislation.

Between 1969 and 1992 it was possible to acquire Slovak and Czech citizenship by birth,[16] by choice (within one year after the establishment of the federation), by marriage, or by grant (after five consecutive years of residence for foreigners and two years for Czech citizens with permanent residence in Slovakia).

Loss of citizenship in the 'normalisation' era was similar to previous regulations. It could be renounced, lost due to acquiring Czech citizenship, or one could still be deprived of it on the basis of art. 7 of Act No.

194/1949 Coll., naturalisation in the US, or according to agreements on dual citizenship.

After the fall of communism, both Czech and Slovak national elites struggled to assert the position of their nations within Europe. National identity had to be reconstructed and to a large extent even re-invented. Both elites turned to their past to seek linkages and justification for steps towards self-determination. Czechs and Slovaks, however, sought friendship with very different animals from their past. Czechs built on Masaryk's democratic ideals from the first interwar republic, while Slovaks viewed this era suspiciously with a memory of the Czech 'Pragocentrism'[17] and of the refusal of the Czechoslovak Government to grant Slovakia a right to self-determination or autonomy in a federation. Instead, Slovaks referred to the legacy of the Slovak puppet state created by the Nazis.[18] The discrepancy in perceptions of the post-1968 era added to the rift between the two nations. This 'failure to find a decent past' together, as Igor Lukes (1995) coined it, contributed to the choice of separate paths for the future by the political elites, whose sentiments were, however, not reciprocated by the majorities of populations on either side of the new border.

In the confused atmosphere of rampant nationalism that had anti-Czech, anti-Hungarian, anti-Semitic, and even anti-Western traits in the years prior to the Velvet Divorce, Slovak representatives raised many issues that seemed to be frivolously escalating the conflict into what popularly became known as the 'hyphen war', i.e. the war about the spelling of 'Czechoslovakia'. Slovak delegates claimed that the term Czechoslovakia was discriminatory to the Slovaks, who are commonly mistaken for Czechs abroad. Claims were backed by invoking the myths of one thousand years of suffering by the Slovaks under the Hungarian yoke, only to be replaced by the Czech yoke in 1918. The Federative Assembly finally settled on 'Czech and Slovak Federative Republic' as the name for the post-communist state.

The Slovak Prime Minister Vladimír Mečiar conducted a policy of blackmail, threatening the Czech leadership with the possibility of secession over each major political issue. The Czech Prime Minister Klaus eventually called his bluff and startled Mečiar by accepting the proposal for separation. The divorce was decided at the top political level without being ratified by popular participation, but also without strong protests from the Czech and Slovak public. Over half of the respondents in public opinion surveys voiced their desire to remain in the common state and/or to have an opportunity to decide its fate in a referendum (Nemcová 1992). It was instead decided by political elites. On 1 January 1993 the two nations started a new period in their history and had to determine their identities and related policies anew. Even before the dissolution, the citizenship laws had been growing in signif-

icance, and many Czechs and Slovaks were using their right to choose their republic-level citizenship.

In Slovakia, the nationalist craze played out directly in many legal provisions that concerned anybody 'other' than ethnic Slovaks.[19] Such was the case with the 'Sign Law' (a law regulating public inscriptions such as topographical names of towns, villages, streets and store signs), the Act on the Official State Language, which was passed without any provisions for the use of languages of the national minorities (which were adopted only in 1997), the 'Territorial Arrangement' that redrew district boundaries to lessen the percentage of ethnic Hungarians in areas where they were concentrated, and other legislation. This policy has also affected the practice of allowing access to those seeking asylum, with possible hopes for eventually acquiring citizenship in the Slovak Republic. While the legislation regulating the asylum procedures was not markedly different from other countries, the political environment was palpably hostile. During the war in Bosnia and Herzegovina Slovakia, just as many other countries, received an influx of refugees. The Migration Office of the Ministry of the Interior was at that time particularly untoward in granting anyone the status of a refugee. Many, if not most, displaced persons had to contend with a protective status of the United Nations High Commissioner for Refugees office in Slovakia, and most were turned back after a few months, not always into safe conditions.

7.2 Current regulations of acquisition and loss of Slovak citizenship

In the first years of the Slovak Republic, Slovak citizenship was either determined by law or could be individually chosen. Those who were citizens of the Slovak Republic before 31 December 1992 automatically became citizens of independent Slovakia, as stipulated in Act No. 40/1993 Coll. on Citizenship of the Slovak Republic. Czech citizens could apply for Slovak citizenship until 31 December 1993 by way of a written request to the District Office in the territory of the Slovak Republic or to the Diplomatic Mission or Consular Office of the Slovak Republic abroad. This option was open freely to all citizens of the former Czech and Slovak Federative Republic. Those applying for Slovak citizenship had to provide proof that they were Czechoslovak citizens as of 31 December 1992 and state their place of birth and permanent residence (art. 7).

7.2.1 Acquisition of citizenship

Slovak citizenship can be currently acquired by birth, by adoption, or by grant. The laws regulating citizenship are comparatively generous towards individuals with Czech or Slovak roots, allowing for a plural citizenship and extending considerable citizenship rights to the Slovak expatriates living abroad.

Acquisition of citizenship by birth is firmly based on ius sanguinis except in those cases where a child would otherwise become stateless. In current legislation a child acquires Slovak citizenship only if at least one of the parents is a citizen of the Slovak Republic or if the child was born in the territory of the Slovak Republic to parents who are stateless or whose citizenship is not transmitted to the child iure sanguinis.[20] If citizenship cannot be established, a child is considered to be a citizen of the Slovak Republic if he or she was born or was found in the territory of the Slovak Republic and his or her parents are not known. If one of a child's parents is a citizen of another country and the other is a citizen of the Slovak Republic, then the child is a citizen of the Slovak Republic even if it is later established that the child's parent who is a citizen of the Slovak Republic is not the child's natural parent. A child can also acquire citizenship when he or she is adopted by a Slovak citizen. In case of disagreement between the parents, Slovak citizenship can be determined by a court judgement on the basis of one parent's or a legal guardian's request.

Citizenship of the Slovak Republic can also be granted upon request to a foreigner. This requires consecutive permanent residence and physical stay in the Slovak territory for at least five years immediately prior to submitting an application for citizenship. Slovak law also requires sufficient basic proficiency in the Slovak language. Applicants must also have a clean criminal record, which means that they must not have been prosecuted for an intentional crime during those five years before the application, must not be under an administrative expulsion order from the country of residence or subject to extradition proceedings.[21]

Facilitating factors in the application procedure are if an applicant is stateless or voluntarily renounces his or her previous citizenship. Furthermore, citizenship can be granted upon request to those who have entered into marriage with a Slovak citizen (after living in the Slovak Republic for a period of three consecutive years), or those who have made special contributions to the Slovak Republic through their achievements in the field of economy, science, culture or technology.

There are also special provisions for the restoration of citizenship to those who lost it according to previous legislation. A person whose former Czechoslovak citizenship expired or who lost the Czechoslovak ci-

tizenship due to a long absence or on the basis of citizenship law during the communist regime, may be granted citizenship of the Slovak Republic even if the above-mentioned condition of five years consecutive permanent residence has not been met. Former Slovak citizens returning to live in Slovakia have to have permanent residence in the Slovak Republic for two years prior to filing an application for citizenship.[22]

7.2.2 Loss of citizenship

Slovak citizenship can be lost, only upon the holder's own request, by releasing the person from the state bond. Only those can be released who already possess another citizenship, or who will acquire another citizenship as soon as they are released from Slovak citizenship.

A Slovak citizen cannot be released if he or she is being prosecuted, is currently serving a sentence or is due to serve a sentence or has outstanding taxes or other debts to pay to the state. The District Office, Diplomatic Mission or a Consular Office of the Slovak Republic makes the final decision on the loss of citizenship. Citizenship is lost on the day of receipt of the document stating his or her release from the state bond of the Slovak Republic.

7.2.3 Procedure

Slovak citizenship acquired by naturalisation is awarded by the Ministry of the Interior of the Slovak Republic based on a written application. This application has to be filed in person at a District Office, Diplomatic Mission or Consular Office of the Slovak Republic. It must include personal data about the applicant and must be accompanied by a dossier of documents including a brief curriculum vitae, an identification card, a birth certificate, a personal status certificate, and a certificate of residence in the Slovak Republic. Former Czechoslovak citizens that qualify for restoration of citizenship have to provide a document stating the release from the state bond of the Czechoslovak Republic, the Czechoslovak Socialist Republic or the Slovak Socialist Republic (whichever applies). Former Slovak citizens applying for citizenship after two years of residence in Slovakia can submit a Slovak Status ID as a form of identification. The Ministry of the Interior can ask for other documents if required to render a decision.

The application is accompanied by a questionnaire on the basis of which the authorities evaluate the applicant's Slovak language skills. Verification has to be done in a way that takes the applicant's circumstances into account. The District Office has the right to request a statement from the police and will then forward the complete applica-

tion with all documents and statements to the Ministry of the Interior for a final decision. When making its decision, the Ministry of the Interior has to take into account the public interest as well as statements of state institutions and of the police. It has nine months from receipt of an application to issue a decision. If statements of state institutions and of the police are required, the processing period is prolonged to one year.

Slovak citizenship is acquired by obtaining a Certificate of Acquisition of Slovak Citizenship at the District Office, Diplomatic Mission or Consular Office of the Slovak Republic and after taking the obligatory oath. The citizenship oath reads: 'I promise on my honour and conscience that I will be loyal to the Slovak Republic, I will respect the Slovak Constitution, laws and other legal rules and will duly fulfil all duties of a Slovak citizen.'[23]

If the applicant doesn't pick up the Certificate of Acquisition within six months of receiving a written notification the Ministry will stop the procedure. If the Ministry rejects the application then the applicant can apply again after a minimum waiting period of one year.

7.2.4 International treaties

Slovakia is party to many international multilateral and bilateral treaties that impact on domestic citizenship regulations. International treaties take precedence over domestic law – if they differ from the provisions in the Act No. 40/1993 Coll. on Citizenship of the Slovak Republic, the legal regulations of international law outweigh domestic law (art. 17).

As in the case of the Czech Republic, the treaty with the United States that precluded naturalised American citizens of Czech and Slovak origin from holding dual citizenship (the 1928 Naturalisation Treaty) expired in 1997. This allowed many former citizens and their descendants to restore their Slovak citizenship and to file claims for restitution of property with the Slovak state.

Among the other important bilateral treaties was the Agreement on Slovak-Hungarian Neighbourly Relations from 1995, which had implications for the practical implementation of certain cultural and educational rights of ethnic Hungarians in Slovakia. Many international provisions – including this one – were passed only due to extensive pressure from European institutions dangling the carrot of EU accession in front of the Slovak leadership. The Slovak-Hungarian Treaty was passed at the peak of the Mečiar Government era, to the bewilderment of his followers and perhaps of himself, after Slovakia had received demarches from the OSCE High Commissioner on National Minorities and other international institutions regarding its practices concerning

national minorities and foreigners. The international community thus played a key role in shaping domestic policies in this transition period keeping the ugly dragon of nationalism and xenophobia on a somewhat shorter leash.

7.2.5 Dual and multiple citizenship

Slovak legislation tolerates dual citizenship. Regulations of dual and multiple citizenship on a European level are, however, developing slowly and with obstacles. The regime changes and successive creation of new states after 1989 created a need to come up with common regulations regarding citizenship policies that resulted in the European Convention on Nationality (ETS No. 166), which entered into force on 1 March 2000. It was the first international document to establish core principles and rules applying to all aspects of citizenship to which the domestic law of the parties to the treaty should conform. The Convention was opened for signature to Member States of the Council of Europe as well as non-members on 6 November 1997. Slovakia signed and ratified the Convention, as did the Czech Republic.

Among other issues the Convention covers questions of multiple citizenship. Art. 14 directly stipulates the right to dual citizenship in the case of acquiring citizenship of another country by marriage. The force of the Convention is however softened by arts. 15 and 16, which give the parties the right to determine whether their nationals who acquire or possess the nationality of another state retain or lose their citizenship; and the right of state parties to make the acquisition or retention of their citizenship conditional upon renunciation or loss of another citizenship (unless it is not possible or cannot reasonably be required). These articles are often used in practice to preclude multiple citizenship. There have been speculations as to whether Slovakia could use them in this way if the Hungarian Parliament passes the law on dual citizenship for ethnic Hungarians living abroad (see Kovács and Tóth in this volume). This would not be possible without amendments to the current law, which stipulates that the loss of Slovak citizenship results only from a person's own request to be released from the state bond. The state cannot on its own initiative deprive any person of their Slovak citizenship. It is, however, possible that some ethnic Hungarians residing in Slovakia could be released from the state bond upon their own request after gaining Hungarian citizenship, thus becoming Hungarian foreign nationals living in Slovakia. This status would, however, bring more inconveniences than benefits to the applicants. It is far more probable that, if Hungary passed the dual citizenship law, most ethnic Hungarians in Slovakia would hold on to their Slovak citizenship.

As was already mentioned, Czech and Slovak nationals could choose their citizenship for a period of one year after the dissolution of the Czechoslovak Federative Republic. This situation was not without complications. It rendered tens of thousands of Roma living in the Czech Republic stateless due to improper documentation, permanent residence in Slovakia (many migrated from Slovakia to Czech lands before 1989), lack of information about the procedure (and the need to apply), a criminal record or other reasons.[24] Furthermore, from 1994 it became harder for Czech or Slovak citizens to live and work in the other part of the former common republic. In 1999, after years of continuous pressure from European institutions and non-governmental organisations, and following a Czech Supreme Court decision of 1997, which ruled that the Czech citizens who chose Slovak citizenship in 1993 did not lose their Czech citizenship, the Czech citizenship laws were amended to allow for reacquisition of the Czech citizenship for certain groups of people within a stipulated period. Further revisions of the Czech law were passed in September 2005 to allow for dual citizenship for Czechs living in Slovakia, who had lost their Czech citizenship by acquiring the Slovak nationality between 1 January 1994 and September 1999.[25] Applications for dual citizenship can be submitted to the Consular Office of the Czech Embassy in Bratislava. The application process takes up to two months. Approximately five thousand people requested dual citizenship in 2005.[26]

7.3 Current political debates and reform plans

7.3.1 The Hungarian Status Law and referendum on dual citizenship

Slovak-Hungarian relations have been an inflammable issue on the Slovak political scene since the fall of communism. Much nationalist rage was directed against the former dominant nation, the Hungarian part of the dual monarchy. Policies of forceful Magyarisation in the late nineteenth and early twentieth century and the turbulent dissolution of the empire that left one third of the ethnic Hungarians outside the borders of the Hungarian state, provide historical memories that shaped mutual relations in a controversial fashion. The myth of a thousand years of suffering under the Hungarian yoke has long been nurtured by Slovak nationalists and after 1989 it often served as a useful rallying point.

The question of Hungary's relationship with ethnic Hungarians living abroad, especially in the areas immediately bordering on Hungarian state territory, was therefore watched closely and suspiciously. The issue exploded in the Slovak media in 2001 when Hungary passed the Status Law (the law on Hungarians living abroad) and again in 2004

when a referendum was held on allowing ethnic Hungarians to acquire dual citizenship. The content and impact of these Hungarian initiatives are described in detail in Mária M. Kovács's and Judit Tóth's chapter on Hungarian citizenship in this book, so I will focus here only on the repercussions in Slovakia.

The Hungarian Status Law

The question of ethnic Hungarians living abroad was not used for a nationalist agenda in Slovakia alone. It also polarised the political scene in Hungary and deepened the left-right divide. Viktor Orbán's FIDESZ played on national sentiments of Hungarians about co-ethnic minorities in neighbouring countries and produced a bill on benefits for ethnic Hungarians living abroad, passed by the Hungarian Parliament in 2001.

The first version of the law, which entered into force on 1 January 2002, provided for financial stipends for students of Hungarian ethnic origin abroad. Members of Hungarian minorities could also apply for Hungarian identity cards (Status ID), with which they can access further benefits such as discounts in Hungary for public transportation and entrance fees for museums and cultural and educational events. The Status ID was handed out on the basis of a recommendation from local cultural organisations representing Hungarian minorities abroad by the newly established Office for Hungarians living abroad with its seat in Budapest. After the refusal of the Slovak and Romanian Governments to allow implementation of the Status Law in their states' territories and after criticism by the Venice Commission that was asked by the Council of Europe to examine the matter,[27] the law was amended in summer 2003. Since then the education stipend is no longer addressed to individuals, but to institutions that offer education in the Hungarian language or on Hungarian culture. The financial aid is thus accessible not only to ethnic Hungarians but to anybody who wishes to study Hungarian culture and history.

The amended version was approved by a majority of the Hungarian Parliament, with the exception of the FIDESZ party, the originator of the law, and the FKGP, the Smallholders' Party, which had lost seats due to a large corruption scandal involving its president. It was also accepted by the Venice Commission and Romanian Government. Slovak representatives, however, remained opposed to it, and the political parties of the ruling coalition (apart from the Party of Hungarian Coalition SMK) contemplated passing an 'anti-law', which would prevent the implementation of the Status Law in the territory of the Slovak Republic. The lengthy, emotionally charged squabble between Slovak and Hungarian leaders was finally resolved in December 2003 by the

Slovak-Hungarian Agreement on Support for the National Minorities in the Areas of Culture and Education. An article on the Slovak-Hungarian Agreement in the daily paper SME summarises its key points.[28] The treaty identifies two specific cultural foundations that are permitted to distribute financial aid to cultural and educational institutions only (some university students qualify as an exception). It establishes a principle of reciprocity, and the distribution of funds will be subject to annual control by a Slovak-Hungarian commission of experts.

The crux of the tensions, however, was apparently not in the law itself. Old historical grievances were voiced in the circles of the law's critics, accusing the political representation of Hungary of 'soft irredentism', i.e. attempts to recreate the Hungary of the times of the Hungarian kingdom on a psychological level, and of lurking historic revisionism among the Hungarian minorities themselves.

František Mikloško, one of the most prominent Christian Democrats and the former Speaker of the National Council of the Slovak Republic, expressed views that can be attributed to Slovak representatives in general: 'I voiced my opinion even on TV, and my Hungarian Colleagues hold it against me. I would say that the Status Law psychologically creates the concept of a Great Hungary. The Slovak side made mistakes too, when the Law was debated we were sleeping and suddenly we were confronted with a done deed. There is one serious problem however: Hungary is passing a law that is implemented in the territory of the Slovak Republic. We don't mind if Hungarians have some advantages, but it seemed to be a precedent that would not be good, and the Venice Commission has also denounced it.'[29]

The representatives of the Party of the Hungarian Coalition in Slovakia, which had seats in the Slovak coalition Government, found themselves between the grindstones as it were of the two national leaderships. Both sides looked to them for resolution and they drew fire from Slovak nationalists for being 'irredentist Hungarians', as well as from Hungarian leaders in Hungary for being too passive. László Nagy, member of the SMK Presidium and chair of the Committee for Human Rights, Nationalities, and Status of Women of the NCSR, laments: 'One problem of the Law is that it became a part of the internal political game. We are not affected by it, but Dzurinda and others assume that the voter expects rejection of the Status Law by the Slovak political leaders, which may be an erroneous assumption. It has played a negative role in Slovak-Hungarian relations that got decidedly chilly in 2002.''[30]

The subject of the Hungarian Status Law is divisive among the Slovak-Hungarian population of the Slovak south as well. Although tensions between Slovaks and Hungarians in this ethnically mixed region

are usually less than in the rest of the country, they have been palpable in the topics related to the quasi-citizenship of the Status Law and the question of dual citizenship, which emerged shortly afterwards.

The question of dual citizenship for ethnic Hungarians

The question of dual citizenship for ethnic Hungarians living abroad emerged as a hot political issue in 2003. The first requests to the Hungarian leadership came from the Hungarian minority in Vojvodina, later accompanied by similar demands from Hungarians in Romania. The World Federation of Hungarians prepared a petition for a referendum about dual citizenship. Its goal was to achieve Hungarian citizenship for all applicants who already were holders of a Status ID under the Hungarian Status Law.

This initiative was supported by the opposition political parties in Hungary – the Young Democrats (FIDESZ) and the Hungarian Democratic Forum (MDF), which managed to rally enough support to get the required number of signatures on the petition for a referendum that would decide whether to grant Hungarian citizenship to ethnic Hungarians from abroad. The referendum took place on 5 December 2004, but, since over 60 per cent of eligible voters decided to stay at home, the referendum results (in favour of dual citizenship by a small margin) were invalid.[31]

Dual citizenship for ethnic Hungarians was justified mainly on the basis of empathy with ethnic kin. The press again debated attempts to repair the 'Trianon Injustice' that truncated the Hungarian nation after the First World War. On the other hand, the initiative was also designed to give practical advantages resulting from Hungarian nationality. This would be relevant especially for Hungarians living outside of the EU borders. The ruling parties MSZP and SZDSZ stood firmly against the referendum, appealing mostly against the costly consequences that implementation of the law would have. The situation was further complicated by the fact that Romanian and Ukrainian legislations preclude dual citizenship, thus ethnic Hungarians acquiring Hungarian citizenship would have to renounce their original citizenship, which could lead to an untenable situation for the Hungarian Government.

The Slovak leadership watched the development leading to the referendum with a heightened sense of insecurity and antagonism. According to diplomatic sources (report of Ministry of Foreign Affairs), Slovakia was prepared to protest in the EU if the referendum was successful, based on its inconsistency with the Agreement on Slovak-Hungarian Neighbourly Relations from 1995, as well as with the principles of the EU of non-discrimination and democratic governance.

The SMK was once again caught in the middle. While the executive Vice-President of the SMK, Miklós Duray, supported the idea of the referendum, the official SMK position, as represented by its chairman Béla Bugár, was to support policies that will help ethnic Hungarians to stay in the country where they were born. He warned that the initiative might antagonise Hungarians living in Hungary and members of Hungarian minorities. 'We find ourselves unwillingly amidst the Hungarian internal political struggle and are receiving one slap after another. We have not received such slaps even in our native country. We want to remain in our native country, pay taxes there, etc.'[32]

The heated debate ended up in Court in Slovakia. The Slovak National Party (SNS) sued the Vice-Chairman of the SMK, Miklós Duray (one of the more radical leaders of the Hungarian minority in Slovakia), for treason because of his speech in favour of the dual citizenship initiative in the Hungarian Parliament.[33] The ethnically charged debates about the Status Law and the referendum on dual citizenship have probably also contributed to support for Slovak nationalist and populist platforms, which has grown over the past two years.

7.3.2 Comparison of the Slovak Act on Expatriate Slovaks with the Hungarian Status Law

The Hungarian Status Law is not a unique invention without parallel (as it sometimes appeared to be from the indignant reactions in the Slovak press). In 1997 the Slovak Republic passed Act No. 70/1997 on Expatriate Slovaks. Prior protection of Slovak nationals living abroad was guaranteed by a declaration of support in the Slovak Republic's constitution. The House of Expatriate Slovaks, founded by the Ministry of Culture of the Slovak Republic, has also been in existence since 1995 focusing on cultural cooperation and support of expatriate Slovak institutions. According to the Act No. 70/1997, it is sufficient to apply for the status of an expatriate Slovak *or* to be a direct descendant of a Slovak national. If the applicant cannot provide any documentation certifying his or her ethnic origin, a letter from an institution representing Slovaks abroad or two witnesses that have the status of expatriate Slovaks will do. Application is submitted to the Ministry of Foreign Affairs (MFA) of the Slovak Republic and the application process takes two months. If it is successful the MFA issues an Expatriate Slovak Certificate. Among the benefits that this status brings is the permission to reside 'for a long time' in the territory of the Slovak Republic and the opportunity of applying for permanent residence in Slovakia. It is likewise possible to apply for studies at any of the Slovak universities or to apply for a job without the permanent residence in

Slovakia or employment authorisation required by other foreign nationals.[34]

The Hungarian Status Law has inspired changes in the Slovak Status Law. In 2005 the National Council of the Slovak Republic passed an Amendment to the Act on Expatriate Slovaks[35] (now properly labelled 'Slovaks living abroad') that established the Office for Slovaks Living Abroad, which is funded from the state budget and is responsible for carrying out the official state policy towards Slovakia's external citizens. The Office also issues Certificates of Ethnic Slovaks Living Abroad (Slovak Status IDs) that make the process of claiming benefits related to the status easier. Financial support is tied to the areas of culture, education and research, information, and media. Individuals and institutions can apply for funding in 'activities that further the development of Slovak identity, culture, language, or cultural heritage in these countries.'[36]

Hopefully the amended law will help to provide assistance to Slovaks living abroad at the place of their residence. Some representatives of the Slovak institutions abroad complain that the direct result of the Slovak Status Law is a brain drain of young people who leave to study and work in Slovakia rather than financial support for Slovak publications and cultural events in the areas where Slovaks living abroad are concentrated.[37] The most remarkable difference between the Slovak and Hungarian Status Law in their current form is the territorial limitation of the latter, which restricts the implementation of the law to neighbouring countries with a large proportion of Hungarian minorities. The Slovak counterpart has no such stipulation. This is easily explained by the fact that most of the Slovaks living abroad reside in the United States (over 1,200,000 Slovaks).

7.4 Statistical trends (acquisition of Slovak citizenship since 1993)

After the fall of communism, Slovakia experienced tumultuous shifts in population, largely in connection with the dissolution of the Czech and Slovak Federative Republic, but undoubtedly also as a result of its strategic position as a bridge between Western and Eastern Europe. There have been shifting migration trends, too. In the early 1990s, the Slovak Republic was losing its citizens to the Czech Republic. This trend ceased after 1994 when Slovakia started gaining population from abroad and increasingly so, from the East. Most migration is temporary and circular with migrants returning after short stays in Slovakia. The number of those who actually ask for Slovak citizenship changes with domestic and international events, circumstances and legislation. The

following tables and graphs show the numbers of successful applicants who acquired Slovak citizenship.

Table 7.1: Number of persons who acquired citizenship of the Slovak Republic (1993 – 2005)

Year	*1993*	*1994*	*1995*	*1996*	*1997*	*1998*	*1999*	*2000*	*2001*	*2002*	*2003*	*2004*	*2005*
Czech citizens	64,834	20,612	1,379	575	416	399	849	3,903	175	805	942	2,262	2,439
Other citizens	1,550	1,393	910	768	1,519	535	417	623	1,362	3,539	3,100	1,508	539
Total	66,384	22,005	2,289	1,343	1,935	934	1,266	4,526	1,537	4,344	4,042	3,770	2,978

Source: Ministry of the Interior, Slovak Republic

As can be seen from Table 7.1, in 1993 and 1994, the vast majority of those who acquired Slovak nationality were Czech nationals. Due to the possibility to choose citizenship in 1993, the proportion of Czech nationals among the successful applicants for citizenship was overwhelming. This proportion has gradually declined thereafter and was lowest in 1996 to 1998, which is probably due to the political situation in Slovakia. The numbers of Czech applicants rose again especially after the amendments to the citizenship law in 1999, and have also been growing in recent years.

For other than Czech nationals the trends in the acquisition of citizenship are quite different. Notable is again the decline in numbers in the years 1995 and 1996, followed by an increase due to the influx of refugees fleeing from the countries of former Yugoslavia. There is a marked increase in the naturalisation of foreigners from outside former Czechoslovakia especially since the year 2000, when more applicants from Asia and the Near East sought to settle in the Slovak Republic.

Figure 7.1 illustrates the diverse trends in the two populations who have acquired Slovak citizenship over the past decade. (The years 1993 and 1994 have been excluded here due to the high number of Czech applications for citizenship resulting from the dissolution of Czechoslovakia.) We can clearly see the impact of the Czech amendments to the citizenship law in 1999 in the resulting increase of Czech nationals applying for and receiving Slovak citizenship. The rapid increase in citizenship granted to other foreign nationals cannot be readily explained on the basis of legislative changes, but rather on the basis of new migration patterns. Compared to previous times, many more foreigners looking both for asylum and for citizenship have settled in Slovakia.

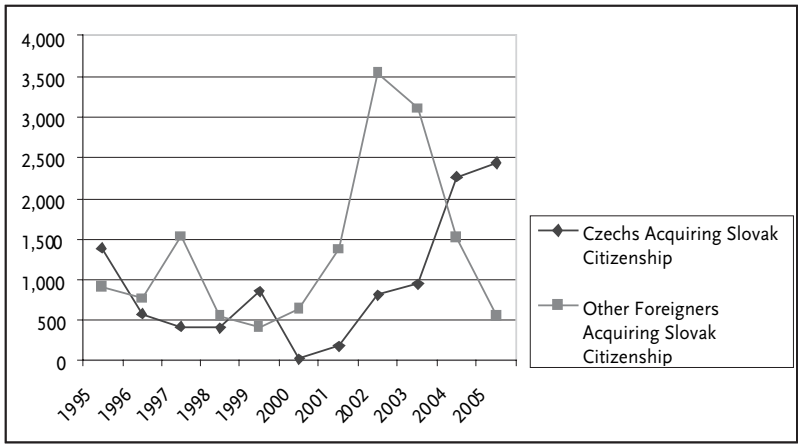

Figure 7.1: Czechs and other foreign nationals who acquired citizenship of the Slovak Republic in 1995-2005

Source: Ministry of the Interior, Slovak Republic

Among those that seek Slovak citizenship are people fleeing from persecution, violence, civil war, or other conditions threatening their lives and security in their home countries. Close to 46,000 foreigners have applied for asylum in Slovakia since 1992. However, asylum status had been granted only to 575 of them by the end of August 2005. This tendency makes Slovakia a country with one of the lowest rates of refugee recognition in Europe (Vaňo 2005: 60). The highest number of applicants was recorded in 2004. Increasingly, they come from countries such as India, Russia (especially Chechnya), Pakistan or China.

Table 7.2: Refugees and asylum seekers in the Slovak Republic

	1995	*1996*	*1997*	*1998*	*1999*	*2000*	*2001*	*2002*	*2003*	*2004*
Asylum applications	359	415	645	506	1,320	1,556	8,151	9,734	10,358	11,395
Persons granted refugee status	68	129	65	49	27	11	18	20	11	15
Refugees granted Slovak citizenship	0	4	14	22	2	0	11	56	40	15

Source: Vaňo 2005: 59

7.5 Conclusions

The evolution of policies relating to the definition, granting and withdrawal of citizenship in Central Europe was closely tied to turbulent events on the international and regional political scene. More than in

the West, the ideals and practices of citizenship were marked by struggles for national self-determination, as well as power struggles between the small neighbouring states squeezed in between the warring superpowers during the Cold War period.

Slovak national development had not run its course in the period before 1948. The Slovaks had not achieved a truly independent statehood and were not content to be submerged in a centralised Czechoslovak state after the Second World War. The Slovak Question emerged as a dominant issue at several turning points in history. It impacted on citizenship policies within the common state of Czechs and Slovaks in 1968, when the Slovaks received the gift of federation from the invading Soviet troops, and then again after 1989, when it led to the Velvet Divorce between the two nations.

Citizenship practices as well as the understanding of what citizenship entails and should entail were murky due to frequent changes in policies prior to 1989, due to their ad hoc nature and inconsistencies in the first years of the post-communist regime, as well as because of the tumultuous political scene in Slovakia and new challenges resulting from Slovak independence in 1993.

Slovak citizenship policies were strongly shaped by international influences, especially by pressures from the European Union and binding treaties with the Council of Europe. On the other hand, they also reacted to the heated, historically and emotionally charged political debates on the status of Hungarians living abroad and the possibility of their acquiring dual citizenship in Hungary. Central European reality shows us how closely citizenship and identity are intertwined and how easily they are misused for political machinations that further the egoistic agendas of parties and leaders.

Citizenship policies are being gradually simplified and fitted to the new migratory trends that result from membership in the EU. Central European neighbours have not quite yet abandoned nationalist appeals and contentious policies that seek easy enemies to rally supporters. At the same time, they have to quickly figure out how to absorb inflows from parts of the world very different from theirs. All these developments occur in the context of an enlarging European Union with the common citizenship of the Union linking the nationality policies of its Member States to each other.

Chronological list of citizenship-related legislation in Czechoslovakia/the Slovak Republic

Date	Document	Content	Source
1945	President's Constitutional Decree No. 33/1945 Coll. Concerning Czechoslovak Citizenship of Persons of German and Hungarian Ethnicity	One of the ``Beneš Decrees'' that deprived most ethnic Germans and Hungarians of Czechoslovak citizenship.	From the ``Website of the Sudeten Germans'': sudetengermans. freeyellow.com
1948	Act No. 245/1948 on the Citizenship of Persons of Hungarian Ethnicity	Return of Czechoslovak citizenship to ethnic Hungarians who were Czechoslovak citizens on 1 November 1938 and were not subject to the ``voluntary exchange of population'' between Slovakia and Hungary in 1946.	In the Slovak language: www.centrum.usd.cas.cz
1949	Act No. 194/1949 on the Acquisition and Loss of Czechoslovak Citizenship, amended by the Act No. 72/1958 Modifying the Regulations on the Acquisition and Loss of Czechoslovak Citizenship	New citizenship code adopted after the communist coup d'etat in February 1948.	In the Czech language: www.portal.gov.cz
1952	Act No. 59/1952 on Contracting Marriage with a Foreigner	Stipulated a requirement to obtain permission from the Ministry of the Interior to marry a person of non Czechoslovak citizenship.	In the Czech language: www.lexdata.cz
1953	Act No. 34/1953 Coll. on the Acquisition of Czechoslovak Citizenship by Particular Persons	Return of Czechoslovak Citizenship to ethnic Germans who were deprived of it by the Presidential Constitutional Decree No. 33/1945 and are permanent residents of the Czechoslovak Republic.	In the Czech language: www.centrum.usd.cas.cz
1968	Constitutional Law No. 143/1968 Coll. on Czechoslovak Federation	New citizenship code adopted after the communist coup d'etat in February 1948.	See a brief description on Wikipedia: en.wikipedia.org
1968	Act No. 165/1968 Coll. on Acquisition and Loss of Czech and Slovak Citizenship	Provided a framework for the introduction of republic-level (Czech and Slovak) citizenship.	
1968	Act No. 206/1968 Coll. of Slovak National Council on Acquisition and Loss of Citizenship of the Slovak	Introduced republic-level Slovak citizenship.	

Date	Document	Content	Source
	Socialist Republic		
1990	Act No. 88/1990 Coll. Amending Regulations on Acquisition and Loss of Czechoslovak Citizenship	Setting regulations for re-acquisition of Czech or Slovak citizenship by emigrants or others who were deprived of Czech or Slovak citizenship prior to 1989.	In the Slovak language: www.zbierka.sk
1991	Constitution of the Slovak Republic	Contains the provision that, 'no one shall be deprived of his or her citizenship against his or her will', and the Bill of Fundamental Rights and Freedoms, including the 'right to choose one's nationality'	In the Slovak language: www.government.gov.sk Excerpts in English: www.legislationline.org
1993	Act No. 40/1993 Coll. on Citizenship of the Slovak Republic	New citizenship code which entered into force in the Slovak Republic after the dissolution of Czechoslovakia.	In English: www.coe.int In the Slovak language: www.minv.sk
1997	Act No. 70/1997 Coll. On Expatriate Slovaks and Changing and Complementing Some Laws	Slovak status law defining rights and benefits of the Slovaks living abroad.	In the Slovak language: www.gszs.sk
2002	Act No. 480/2002 Coll. on Asylum, amended by Act No. 1/2005 Coll.	Law defining key terms and regulating asylum acquisition procedure.	In the Slovak language; www.unhcr.sk
2005	Act. No. 265/2005 Coll. Amending the Act on Citizenship of the Slovak Republic	Introduced remedial provisions with regard to pre-1989 Czechoslovak nationals, regulates acquisition of Slovak citizenship by Slovaks living abroad.	In the Slovak language: www.zbierka.sk
2005	Act. No. 474/2005 Coll. on Slovaks Living Abroad and on Amendments and Additions to Certain Laws	Established the Office for Slovaks Living Abroad and regulates the competencies of the state administration regarding state support for Slovaks living abroad.	In the Slovak language: www.gszs.sk

Notes

1 The author and the editors thank Lucia Mokrá for her research contributions on legal and statistical developments.
2 Nationality in this context is not a synonym for citizenship, but refers to membership of an ethnic nation. The idea of a Czechoslovak nation did not take root – it was popular neither with Czech and Slovak political representatives nor with the general population and was eventually abandoned in favour of separate Czech and Slovak nationalities.
3 For a detailed history of census taking and practices see Kertzer & Arel 2002.
4 For a more detailed description of the development in the Czech part of Czechoslovakia see Baršová in this volume.
5 The Presidential Decree exempted from loss of citizenship those citizens of German and Hungarian ethnicity who had joined in the fight for liberation or were victims of Nazi persecution. The legislation also established a possibility to apply for the (re-) granting of Czechoslovak citizenship (a policy called 'Re-Slovakisation in Slovakia') within six months after the Decree entered into force.
6 For decades, the topic of the transfers of ethnic Hungarians was taboo in Slovak literature. The few texts that were written were from the pen of Hungarian authors in Slovakia – Zoltán Fábry's *The Accused Speaks Out* (written in 1946) was published in the 1960s, and in 1982 Kálmán Janics's *Czechoslovak Policy and the Hungarian Minority, 1945-1948* was published in the US in a small edition of a few hundred copies. After 1989 the topic was grudgingly picked up. The most comprehensive analysis and documentation was published by Vadkerty (2002).
7 The voluntary part was secured by leaflets promising return of Czechoslovak citizenship in return for being recruited as agricultural labourers. Leaflets also reiterated that this was the very last chance for Hungarians to reacquire Czechoslovak citizenship.
8 The Czechoslovak census of 1947 records 390,000 Hungarians in Slovakia, the 1961 census records 518,782 (data from Kocsis & Kocsis-Hodosi 1998).
9 See also Baršová in this volume for the same pieces of legislation from a Czech perspective.
10 Children born from mixed marriages, where one parent was a Czechoslovak citizen and the other was the citizen of the Soviet Union, Poland or Hungary, represented an exception. In that case citizenship was determined by an agreement of the parents at the time of inscription in the book of births. In case agreement wasn't reached, the child acquired the citizenship of the parent in the state of birth. If the child was born in the territory of a third state, it acquired citizenship of the state on whose territory the child's parents had resided before they went abroad.
11 Act No. 34/1953 Coll. Concerning the Acquisition of Czechoslovak Citizenship by Particular Persons and Act No. 245/1948 on the Nationality of Hungarian Nationals.
12 Stipulated by art. 6 of the Act on Czechoslovak Citizenship.
13 This provision was defined by Act No. 86/1950 of the Penal Code. Such penalty included the loss of citizenship rights, expulsion from the army, and forfeiture of property. Act No. 63/1965 abrogated this penalty and the next codification of the Czechoslovak Penal Law did not include this kind of penalty.
14 Most socialist states had concluded bilateral agreements that excluded dual citizenship among them.
15 See also Baršová in this volume.
16 A child whose parents were Slovak citizens acquired Slovak citizenship. If one of them was Slovak and the other Czech, and the child was born in the Slovak territory, then the child acquired Slovak citizenship. If the child was born abroad, it acquired

the mother's citizenship. Parents could also agree on the child's citizenship by statement until six months after birth.

17 Pragocentrism was a term used by the Slovak leaders to denote the tendency of the Czech representation to rule the country from a strong unitary centre, Prague. Slovak elites had qualms with Pragocentrism ever since the creation of the first republic in 1918.

18 This claimed heritage is a controversial and complex one. Though perhaps only the Slovak National Party would fully claim the legacy of the Slovak Republic of the war period, together with the persona of its President, Jozef Tiso, responsible for sweeping anti-Semitic measures, all parties and most leaders do recognise at least its partial validity as the first form of official Slovak statehood.

19 For a description of the developments in the Czech Republic see Baršová in this volume.

20 Art. 5 of Act No. 40/1993 Coll. on Citizenship of the Slovak Republic.

21 Art. 7 of Act No. 40/1993 Coll. on Citizenship of the Slovak Republic.

22 Art. 7 of Act No. 40/1993 Coll. on Citizenship of the Slovak Republic.

23 Art. 8a, sect. 9 of Act No. 40/1993.

24 See European Roma Rights Center report 'Personal Documents and the Threat to the Exercise of Fundamental Rights Among Roma in Former Yugoslavia', www.errc.org, retrieved in May 2006.

25 See also Baršová on Czech citizenship in the present volume.

26 Embassy of the Czech Republic in Slovakia, www.mzv.cz.

27 Among the main objections was the charge of ethnic discrimination concerning access to the benefits of the law. The Status Law is also territorially limited in implementation to certain neighbouring countries where the Hungarian minority is numerous and where the standard of living is not higher than within Hungary itself. Austria was therefore not included among the countries where the Status Law was to be implemented.

28 I. Stupňan, 'Schválili dohodu s Maďarskom' [Agreement with Hungary Approved], *SME*, 12 December 2003.

29 The interview with František Mikloško was conducted by the author in Bratislava on 13 June 2003.

30 The interview with László Nagy was conducted by the author in Bratislava on 18 June 2003.

31 Only 37.5 per cent of registered voters participated in the referendum. 51.5 per cent of the voters were in favour of dual citizenship, 48.5 per cent against. 50 per cent of eligible voters have to participate for a referendum to be valid in Hungary (or an equivalent of over 25 per cent of all eligible voters must select the same answer on the referendum). Source: 'Neplatné maďarské referendum o dvojitom občianstve [Invalid Hungarian Referendum on Double Citizenship], BBC Slovak.com, 6 December 2004. www.bbc.co.uk.

32 Peter Stahl, 'Maďari hlasujú o dvojitom občianstve'[Hungarians Vote on Double Citizenship], *Hospodárske noviny* [daily newspaper], 3 December 2004. hnonline.sk.

33 The SNS sued Miklós Duray many more times afterwards for treason, libel, damaging the name of the Republic, and more. Each charge was dismissed by the court. SNS leader Jan Slota called the representatives of the Hungarian minority 'radioactive extremists' (Slota: 'Politici z SMK sú rádioaktívni extrémisti' [Politicians from the Party of Hungarian Coalition are Radioactive Extremists], 6 June 2005, www.sns.sk). Shortly before the parliamentary elections of June 2006 SNS popularity climbed to almost 10 per cent in public opinion polls. In the June 2006 elections, the populist left-leaning party SMER-SD came out on top with 29 per cent of the votes. SNS came in third with almost 12 per cent of the votes. The former leader of

the Government coalition SDKÚ received 18 per cent of the votes (Source: SITA [Slovak Press Agency], 18 June 2006).

34 Arts. 5 and 6 of the Act No. 70/1997 Coll. on Expatriate Slovaks and Changing and Complementing Some Laws.

35 Act No. 474/2005 Coll. on Slovaks Living Abroad and on Amendments and Additions to Certain Laws.

36 Art. 5 of the Act No. 474/2005 Coll. on Slovaks Living Abroad and on Amendments and Additions to Certain Laws.

37 Ondrej Štefanko, 'Slovenská republika a zahraniční (dolnozemskí) Slováci' [Slovak Republic and Foreign (Hungarian) Slovaks],*Český a slovenský svet* [Czech and Slovak World], www.svet.czsk.net, accessed in May 2006.

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Chapter 8: From civic to ethnic community? The evolution of Slovenian citizenship

Felicita Medved

This chapter focuses on *državljanstvo* of the Republic of Slovenia, i.e. on citizenship or nationality as a legal bond between a person and a sovereign state. After tracing the history of citizenship in the territory of present day Slovenia, it gives a brief description of the evolution of the Slovenian citizenship legislation, both in terms of the initial determination of its citizenry at the inception of the state in June 1991 and the rules governing the acquisition and loss of citizenship. In fifteen years of statehood the legal regime on citizenship has undergone several changes. The Constitutional Law on citizenship was supplemented and changed five times, with the first supplement already adopted in December 1991 and the latest amendments made in November 2006. These developments have, on the one hand, implied an opening towards certain groups, either in response to international standards or for national interests. On the other hand, they have slowly supplanted the civic conception of citizenship that governed the initial determination of Slovenian citizenry in 1991 with a concept of nation as a community of descent.

8.1 History of citizenship policies

8.1.1 History of citizenship up to 1991

Citizenship legislation in the territory of Slovenia first evolved within the framework of the Habsburg Empire. The 1811 Austrian Civil Code, which established a link between unified citizenship status and civil rights and other regulations concerning citizenship, operated in the Slovenian lands until the collapse of the monarchy, except for in Prekmurje, where Hungarian citizenship law was in force after 1879. In close relation to citizenship, the right of domicile in municipalities (*domovinska pravica, Heimatrecht*), as a form of local citizenship, which gives rights to unconditional residence and poverty relief, was regulated on similar principles in both parts of the Austro-Hungarian monarchy in the second half of the nineteenth century (Radmelič 1994: 207; Kač & Krisch 1999: 607-613).

On 1 December 1918 most of the Slovene lands, the Croat lands and Bosnia and Herzegovina joined Serbia and Montenegro to form the Kingdom of Serbs, Croats and Slovenes (SHS), later to be named the Kingdom of Yugoslavia. The Saint-Germain-en-Laye Peace Treaty, which came into force in July 1920, and the Trianon Treaty, which came into force one year later, established that a person who had right of domicile outside of Austria and Hungary from then on acquired the citizenship of one of the successor states. The Saint-Germain treaty postulated, *inter alia*, that such persons could opt for the citizenship of that successor state in which they once had domicile or the successor state where the majority was of their 'race' or spoke their language. However, not all persons who had domicile (*pertinenza*) in the Slovene Littoral and part of Carniola that thereafter belonged to Italy automatically acquired Italian citizenship. Those who were not born there or acquired domicile after 24 May 1915 or once had domicile in this territory could opt for Italian nationality. On 25 November 1920 the provincial Government of Slovenia issued the executive regulations to the Treaty on the acquisition and loss of Yugoslav citizenship by option and request.[1] The option was based on previous domicile or nationality, i.e. ethnicity. According to the Rapallo treaty between the Kingdom of SHS and Italy of 12 November 1920, Yugoslavia provided a one-year right of option for Italian citizenship for ethnic Italians in the from then on Yugoslav territory (Kos 1994).

At the level of Yugoslav internal legislation, the 1928 Citizenship Act[2] introduced a unified citizenship, primarily based on ius sanguinis *a patre* and the principle of a single citizenship. In the early 1930s provisions of Austrian and Hungarian regulations concerning the right to domicile were replaced by membership of a municipality.

In the Slovenian Littoral the Italian citizenship legislation was in force from 7 June 1923 until mid-September 1947. Italy did not apply any special regulations concerning citizenship in the occupied territory during the Second World War, whereas the German and Hungarian occupying forces granted citizenship to certain groups of people by regulation and law respectively, which were subsequently nullified (Radmelič 1994: 222-223).

The post-war regulation of Yugoslav citizenship started on 28 August 1945 before the final organisation of the second Yugoslavia was clear.[3] The following persons became Yugoslav citizens: 1) all persons who, on the date of the enforcement of the Act, were citizens under the then valid 1928 Act; 2) persons who had domicile in one of the municipalities in the territory, which according to international treaties became part of Yugoslavia; and 3) persons who belonged to one of the Yugoslav nations and resided in its territory without right to domicile, unless they decided to emigrate or to opt for their previous citizenship. An excep-

tion to this regulation was added in 1948, excluding from citizenry with retroactive effect those persons of German ethnicity who were abroad and were Yugoslav citizens as of 6 April 1941, having domicile in one of the municipal communities and were, according to art. 35a disloyal 'to the national and state interests of the nations of Yugoslavia during and before the war.'[4] Another Act adopted in 1945 (and nullified in 1962) concerned officers of the former Yugoslav army who did not wish to return to Yugoslavia and members of various military formations who served occupying forces and escaped abroad. They lost citizenship *ex lege*, followed by the sequestration of their property.[5]

According to the Paris Treaty with Italy which came into force in September 1947 persons who had permanent residence on 10 June 1940 in the territory that became Yugoslavia lost Italian citizenship. As obliged by the Treaty, Yugoslavia adopted a special Act on the citizenship of these persons in December 1947.[6] The Italian speaking population had a one-year option for Italian citizenship and Yugoslavia could demand emigration of these persons within one year of the date of the option. In 1947, an option for Yugoslav citizenship was also given to persons whose citizenship issue was not solved by the Treaty, i.e. to some 100,000 emigrants from the Littoral to Yugoslavia or other countries before June 1940, who ethnically belonged to one of the Yugoslav nations. The Paris treaty also established the Free Territory of Trieste, a project that lasted for seven years until it was divided between Italy and Yugoslavia by the 1954 London Memorandum of Understanding. The latter did not regulate citizenship directly, but gave guarantees for the unhindered return of persons who had formerly held domicile rights in the territories under Yugoslav or Italian administration, which the Yugoslav law interprets as a qualified option.[7] Remaining unsolved questions were settled by the 1975 Osimo agreements, which confirmed that both states regulate citizenship and provided the possibility of migration for members of minorities (Kos 1994).[8]

Yugoslav citizenship was unified and excluded other citizenship. Acquisition of citizenship remained based on ius sanguinis. A victorious revolutionary communist and national spirit of the immediate post-war period was expressed in legal provisions concerning naturalisation for members of Yugoslav nations and those foreign citizens who actively cooperated in the national liberation struggle on the one hand and exclusion and deprivation of citizenship for certain ethnic groups or military formations who really or supposedly worked against Yugoslav interests on the other. The 1964 reform, following the new constitution, abolished loss of citizenship on grounds of absence (as in previous Austrian and Yugoslav legal arrangements), relaxed naturalisation of expatriates (emigrants) and abolished the oath of loyalty upon admission. An odd characteristic of Yugoslav legislation was that in the areas

which did not pose a threat to the regime, such as the equality of spouses, introduced in 1945, gender equality and the position of minors the legislator was already progressive during the period when international standards were only in the making. Yugoslavia was also party to certain multilateral treaties concerning citizenship such as the Convention Relating to the Status of Stateless Persons of 1954, the International Convention on the Nationality of Married Women of 1957, the Covenant on Civil and Political Rights of 1966, the International Convention on the Elimination of all Forms of Racial Discrimination of 1966, the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and the Convention on the Rights of the Child of 1989.[9]

To better understand the problems related to succession in the field of citizenship it is important to emphasise that Yugoslavia was a federal state with a so-called mixed system of citizenship. Jurisdiction to adopt citizenship legislation existed at two levels simultaneously, at the level of the federal state and at the level of the constituent federal units, i.e. republics. From the point of view of international public and private law, the primary citizenship was Yugoslav (Kos 1996a). Internally, however, all Yugoslav citizens also had republic-level citizenship.[10] Changing the place of residence to another republic or abroad did not affect the republic-level citizenship. Access to another republic-level citizenship was relatively easy though. At first it was conditional on three years of residence, but already in 1946 one year of residence sufficed. In the 1960s a simple declaration was enough for a change of republic-level citizenship, reflecting a high level of centralised decision making.[11] The 1974 Constitution however brought decentralisation of power. According to the 1976 Citizenship Act of the Socialist Republic of Slovenia[12] citizens of other republics received citizenship of Slovenia upon application if they had permanent residence in Slovenia. Residents from other republics however had the same rights as Slovenian citizens, except for those reserved only for citizens of the republic, such as voting rights.

8.1.2 Succession and initial determination of citizens of the new state

Since the developments of the late 1980s and early 1990s showed that it would not be possible to reach a consensual agreement on some other organisational form for Yugoslavia or on succession, the Republic of Slovenia unilaterally declared its independence on 25 June 1991. Slovenia had no historical heritage of independent statehood or concept of political membership beyond republic-level citizenship within the former federation to fall back on. In that respect, Slovenia differs from some states which came into being following the break-up of former

federations, such as the USSR. Notably Estonia and Latvia restored their citizenship laws of half a century earlier, emphasising state continuity broken by 'lost' or 'occupied' sovereignty (see Jaerve and Krūma in this volume). Some other new states adopted a 'zero-option' policy, granting their citizenship to all people actually residing in the republic either at the time of independence or at the moment the new citizenship law was passed. This policy was more acceptable in those states where the proportion of the 'titular' ethnic population was very high (Medved 1996; Ziemele 2001; Mole 2001).

At the international level, citizenship in the context of state succession is addressed by binding and non-binding international instruments, such as the 1961 UN Convention on the Reduction of Statelessness and the 1978 Vienna Convention on Succession of States in Respect of Treaties, containing large principles but lacking comprehensive regulations.[13] The primary concern of the international coverage of law on citizenship in cases of succession remains focused on reduction of dual citizenship and the avoidance of statelessness and deals less with the initial determination of citizens, which is not a concern of the established (old) states. Although there has been substantial development in human rights law, laws concerning the acquisition or loss of citizenship continue to be primarily considered a sovereign prerogative of the state.[14]

In this context, Slovenia regulated citizenship issues through the Citizenship Act adopted within the scope of the legislation relating to Slovenia's gaining of independence. The constitution was adopted six months later, on 23 December 1991, and does not regulate citizenship, but leaves it to the law. Since then the citizenship law has gone through several changes. The first supplement was already adopted in December 1991, followed by further changes in 1992, 1994, 2002[15] and most recently in 2006.[16] Conceptually, the 1991 Act contains two main categories. The first category includes provisions of a transitional nature, which refer to the initial collective and automatic determination of the citizens of the new state, complemented by provisions governing the option for Slovenian citizenship.[17] The second category regulates the acquisition and loss of citizenship of a standard (permanent) nature.

As regards the *initial overall determination* of citizenship the basic principle is the continuity of previous citizenship upon state succession. Art. 39 stipulates that any person, who held citizenship of Slovenia and of Yugoslavia according to existing valid regulations, was considered *ex lege* to be a citizen of Slovenia on the day when the Act came into force. This provision established the continuity with the previous legal order, meaning that all laws and regulations which due to various legal orders were in force in the territory of Slovenia in the past, in-

cluding international agreements, are applied within the framework of this provision. The period in which a person was born determines which regulations apply for ascertaining citizenship.

The primary rule of the initial determination of citizens was complemented with the *optional* acquisition of Slovenian citizenship for *citizens of other former Yugoslavian republics* who had permanent residence in Slovenia on the day of the Plebiscite for the Independence and Autonomy of Slovenia on 23 December 1990, and who actually lived in Slovenia. These two cumulative conditions determined what was considered the genuine link with Slovenia: the permanent residence connected with social, economic and certain political rights and the actual living there expressing the criterion of integration, which in practice meant that the person had to reside in Slovenia, not only have a formal residence there (Mesojedec-Pervinšek 1999: 656-659; Medved 2005: 467). In dimensions of time 'actual living' was established by the Supreme Court to be at least the period between 23 December 1990 and the date of issuance of a final decision on citizenship. As for the content of this notion, which is not legally defined, administrative court practice did not interpret it to mean continuous physical presence but also considered living activities in a certain territory, such as where a person earns a living, resides and fulfils obligations to the state to qualify as such (Polič 1993).

The December 1991 supplement on art. 40 specified a further restriction, stating that the person's application is to be turned down if that person has committed a criminal offence directed against the Republic of Slovenia since Slovenian independence or if the petitioner is considered to form a threat to public order, the security and defence of the state.[18]

The legal period for the submission of the application was six months and expired on 25 December 1991. More than 174,000 persons, or 8.7 per cent of the total population, of which around 30 per cent were born in Slovenia, applied for citizenship on the basis of art. 40 and 171,125 became Slovenian citizens.

The registration of the former republican citizenship was not carried out very thoroughly and some persons who firmly believed themselves to be Slovenian citizens were not considered as such and could not prove their former republican citizenship in order to acquire Slovenian citizenship. To address this problem two corrections were made in 1994, concerning the *recognition* and *declaration* of Slovenian citizenship. Art. 39a stipulates that a person is considered a Slovenian citizen if he or she was registered as a permanent resident on 23 December 1990 and has permanently and actually lived in Slovenia since that date. However, this only applies if the person in question would have acquired the citizenship of Slovenia according to the previous legal or-

der. On the other hand, according to the new art. 41 persons younger than 23 and older than eighteen years who were born in Slovenia can declare themselves Slovenian citizens if one of their parents was a citizen of Slovenia at the time of their birth, but the parents later agreed on adopting the citizenship of another republic.

The registered permanent residency posed a problem for those immigrants who were not registered, but had a long-time factual residence in Slovenia. They could not apply for Slovenian citizenship since they were not legally considered as residents.[19] The problem of permanent residency also arose for those who were registered, but did not apply for or did not acquire Slovenian citizenship. Becoming aliens, they had to apply for residency status irrespective of how long they had been resident. The Aliens Act[20] did not contain any special provisions concerning this group of people.[21] It only provided that with respect to the said persons provisions of the Law should start to apply two months after the expiry of the time period within which they could apply for Slovenian citizenship or on the date of issuance of a final decision on citizenship. On 26 February, when the Aliens Act started to apply to these persons, administrative authorities transferred those who did not apply for residency status from the register of the permanent population to the record of foreigners without any decision or notification addressed to the persons concerned instructing them of their new legal position.[22] This secret 'erasure' became known to the public only much later and the number of persons affected is not exactly known. The state admits that 18,305 persons had been deprived of their legal residence. In spite of several appeals by the Ombudsman for human rights,[23] non-governmental organisations and some individuals, it was only in 1999 that the Constitutional Court found that the Aliens Act had failed to regulate the transition of the legal status of this group of people to the status of foreigners.[24] The Constitutional Court decided that the error should be corrected by the legislator within six months which resulted in the Settling of the Status of Citizens of Other SFRY Successor States in the Republic of Slovenia Act.[25] However, in 2003 the Constitutional Court also found this regulation unconstitutional and ordered the Ministry of the Interior to immediately issue decisions to retroactively return the status of permanent residence to those who already had had their status changed. Moreover, it asked the legislator to pass a new law within six months, clarifying the criteria for those persons who, in the period between 1992 and 2003, left Slovenia for shorter or longer periods.[26] The polarisation of the political scene as well as public opinion led to various interpretations of the Constitutional Court decision. This resulted in a number of initiatives for referenda, supported by right-wing parties, as well as in the preparation of two separate acts. After the adoption of the so-called 'technical law' in

October 2003, opposition parties succeeded in calling a referendum on 4 April 2004. The voter turnout was less than a third of the 1.6 million electorate, and the Act was rejected by almost 95 per cent. This development succeeded in thwarting the adoption of any law to comply with the decisions of the Constitutional Court.[27] The current right-centre Government is now trying to prepare a special Constitutional Law.

In the meantime, in order to settle the position of some of the people who could not or did not wish to apply for Slovenian citizenship in 1991, or whose applications were rejected and who subsequently became aliens or were even 'erased', the Citizenship Act was amended in 2002. The new 'transitional and final provisions' facilitated acquisition of Slovenian citizenship for citizens of other republics of the former Yugoslavia who were registered as permanent residents on 23 December 1990 and who have been living in Slovenia continuously from that day. Duration of residence, personal, family, economic, social and other ties with Slovenia, as well as the consequences a denial of citizenship might have caused, were also taken into consideration. The deadline for a cost-free application expired on 29 November 2003. 1,676 persons were naturalised under this provision.

Apart from the two main categories – initial determination of citizenship and optional naturalisation – the Citizenship Act contained a third category of transitional provisions that were of compensatory or restitutional nature. These provided for *reacquisition of citizenship*, which was, according to art. 41, made possible for those who were deprived of Yugoslav citizenship and Slovenian citizenship on the basis of prior 1945/46 federal law on the deprivation of citizenship or on the grounds of absence.[28] They and their children could acquire Slovenian citizenship if they filed an application within one year of the enforcement of the Act. Since most of these people were living abroad the application period was prolonged to two years in 1992. At the same time a new art. 13a in the section concerning exceptional naturalisation stipulated that, notwithstanding the conditions for regular naturalisation, an adult may obtain Slovenian citizenship if of Slovenian descent through at least one parent and if his or her citizenship of the Republic of Slovenia ceased due to release, renunciation or deprivation or because the person had not acquired Slovenian citizenship due to historical circumstances. The article also granted the Government the right to give a preliminary opinion on the applications. Due to this extensive discretion and, *inter alia*, the violation of the principle of equality before the law, arts. 41 and 13a were nullified in 1993.[29]

8.2 Basic principles of acquisition and loss of Slovenian citizenship

The characteristics of current legislation are the principle of ius sanguinis and only limited application of ius soli, the prevention of statelessness, gender equality in acquisition of citizenship, equality of parents in deciding the citizenship of their minor children, equality of children born in wedlock with children born out of wedlock, will of the person concerned in the process of acquisition and loss of citizenship and protection of personal data. Further principles are the relative tolerance of multiple citizenship and the validity of the Slovenian citizenship in these cases, meaning that a dual or multiple citizen is treated as a citizen of the Republic of Slovenia, while in the territory of Slovenia, unless otherwise stated by an international agreement. Foreign citizens may acquire Slovenian citizenship by naturalisation on basis of residence or of family ties or because of special interests of the state.[30] Facilitated naturalisation is provided for immigrant children born and raised in Slovenia and for Slovene emigrants and their descendants. Discretionary power is provided for in all cases of naturalisation, however may only be exercised if the reasons, including the proof thereof, are recorded in the written decision.[31]

8.2.1 Acquisition of citizenship

Slovenian citizenship is acquired by descent, by birth in the territory of Slovenia, by naturalisation (through application) and in compliance with international agreement (which is applicable only in cases where borders changed).

Under the ius sanguinis principle there are two modes of acquiring Slovenian citizenship: *ex lege* and by *registration*. The registration has a constitutive character and retroactive effect (*ex tunc*).

At birth a natural person obtains Slovenian citizenship *ex lege*: i) when both parents are Slovenian citizens, ii) when the child is born in Slovenia and at least one parent is a Slovenian citizen (in the latter case the acquisition of the citizenship *ex lege* is combined with the territorial principle)[32] and iii) when the child is born abroad and one of the parents is a Slovenian citizen while the other parent is unknown, of non-determined citizenship or stateless.

Children born abroad with one parent of Slovenian citizenship at the time of the child's birth can acquire Slovenian citizenship *by registration*. Registration can be initiated within eighteen years after birth by the Slovenian parent without consent of the other parent or if a minor is a ward by his or her guardian, who must be a Slovenian citizen.[33] As of 1994 children older than fourteen years have to give their consent.

Persons above the age of eighteen years can acquire Slovenian citizenship based on a personal declaration for registration. The age limit for this procedure was extended from 23 to 36 years of age in 2002. The November 2006 Act amending the Citizenship of the Republic of Slovenia Act, further clarifies the procedure and adds the condition that persons who register their Slovenian citizenship should not previously have lost it due to release, renunciation or deprivation after they reached majority.

Acquisition of citizenship by *adoption* follows the principle of citizenship by descent when at least one of the adoptive parents is a Slovenian citizen. An adoptee foreigner older than fourteen years has to give his or her consent.

Ius soli applies for a foundling or a new-born infant in the territory of Slovenia with no known parentage or if the parents are of unknown citizenship or stateless. If it is discovered prior to the child reaching the age of eighteen that the parents are foreign citizens, then Slovenian citizenship shall cease at the parents' request.

Persons who acquire Slovenian citizenship under above described principles are regarded as citizens of the Republic of Slovenia by birth.

Foreign citizens may acquire Slovenian citizenship by regular, facilitated and exceptional *naturalisation*.

The conditions that must be fulfilled for *regular naturalisation* are very strict. The applicant has to submit a release from current citizenship or a proof that such a release will be granted if he or she acquires Slovenian citizenship unless the applicant is stateless or can submit evidence that his or her citizenship is cancelled by naturalisation by the law of his or her state of origin or that such a release was not decided upon by this state in a reasonable period of two years.[34] In cases where applicants cannot present proof of expatriation, e.g. because the voluntary acquisition of a foreign citizenship is considered an act of disloyalty, the declaration by an applicant that he or she will renounce his or her current citizenship if granted Slovenian citizenship suffices. However, the applicant usually has to present proof of expatriation before he or she can be naturalised. This may lead to temporary statelessness which can become permanent if after release from the previous citizenship an applicant is no longer eligible for naturalisation, e.g. due to loss of means of subsistence or a prison penalty. Since the authorities have to check if other conditions are still fulfilled after the prescribed period within which an applicant must present proof of release, the 2006 amendments specify that only those conditions that can be verified administratively will suffice. The condition of a release from current citizenship is waived for citizens of those EU Member States where reciprocity exists.

A second condition is that the applicant must have lived in Slovenia for ten years, of which the five years prior to the application must be without interruption, and, as added in 2002, the person should have the status of foreigner. This imprecisely defined status is clarified in the 2006 amendments as describing those people who have either a temporary or permanent residence permit, which in practice prolongs the waiting period for naturalisation. In addition, the applicant should not have had his or her residence in Slovenia curtailed.

Further requirements are that the person does not constitute a threat to public order or the security and defence of Slovenia, has fulfilled his or her tax obligations and has a guaranteed permanent source of income.[35] In fact, the latest amendments state that the applicant is required to have such means of subsistence as will guarantee material and social security to the applicant and persons he or she has an obligation to support i.e. a basic minimum income for each person. Moreover, the law demands a clean criminal record, meaning, *inter alia,* that the applicant should not have served a prison sentence of more than three months or have been sentenced to a conditional prison term of more than one year.[36] The applicant will also be obliged to take an oath of respect for the free democratic constitutional order of Slovenia, which replaces the requirement to sign a declaration of consent to the legal order of the Republic of Slovenia introduced in 2002. Finally, there is a requirement for the knowledge of the Slovene language, which has changed substantially. In the early 1990s it sufficed that the person could communicate. From 1994 an obligatory examination was demanded. Many people could not pass the examination even if they had been educated in Slovenia. Currently an obligatory examination at elementary level is required unless the applicant went to school or acquired education at higher or university level in Slovenia or is older than 60 years and has actually lived in the country for fifteen years or, as added in 2006, has acquired elementary or secondary education in the Slovenian language in neighbouring countries where there are autochthonous Slovene minorities. Exceptions are provided for illiterates or due to health reasons.

Facilitated naturalisation reflects specific interests of the state and more recently, the will of the state to better comply with the standards of the 1997 European Convention on Nationality. This mode of naturalisation affects particular groups of persons: Slovenian emigrants and their descendants, foreigners married to Slovenian citizens, minors and since 2002 persons with refugee status, stateless persons and persons born in Slovenia and living there since their birth. To these groups of persons, the 2006 amendments added foreigners who have concluded their university education in Slovenia. Exemptions from certain requirements are provided for these groups of applicants, in particular regard-

ing the release from current citizenship and the required duration of residency with a foreign status in Slovenia. For example, an individual of Slovenian descent or a foreign spouse of a Slovenian citizen can become a Slovenian citizen after one year of uninterrupted residence. However, the 2006 amendments show that these two groups of persons are not treated equally. While the generational criterion (up to the third generation for direct descent) for descendants of Slovenian emigrants was extended up to the fourth generation, the period of marriage before a foreign spouse of a Slovenian citizen is eligible to apply for naturalisation was prolonged from two to three years in order to dissuade marriages of convenience. For persons who lost Slovenian citizenship in accordance with the present Act or prior Acts valid in the territory of Slovenia, the residence requirement is limited to six months. Acknowledged refugees and stateless persons may be naturalised after five years of actual and uninterrupted residence in the country. For persons born in Slovenia and living there since birth (mainly citizens of successor states of the SFRY), personal, family, economic, social and other connections with Slovenia as well as the consequences a denial of naturalisation may cause are taken into consideration. Foreigners who have concluded their university education in Slovenia will be eligible to apply for naturalisation after seven years of residence. For all these cases release from current citizenship is not necessarily required.

A minor acquires Slovenian citizenship upon the request of one or both naturalised parents if the child has lived with that parent in Slovenia for at least one year prior to the application. If the child is born in Slovenia, Slovenian citizenship can be acquired before the age of one year. Citizenship may also be granted to a child having no parents or whose parents have lost their parental rights or functional capacity and who has lived in Slovenia since birth on the grounds of a petition by the guardian who is a Slovenian citizen and who lives with the child. The Ministry for Family and Social Affairs has to confirm that the acquisition of citizenship is for the benefit of the child. In all above cases the consent of the child above the age of fourteen is also necessary.[37] In the case of adoption, where there is no such relation between the adoptive parent and adoptee as between parents and children, a child not older than eight years, living permanently in Slovenia, can acquire citizenship upon the request of the adoptive parents.

In cases of *exceptional naturalisation,* the interests of the state for example in the field of culture, economy, science, sport, and human rights are decisive and must be confirmed by the Government. A person qualifying for exceptional naturalisation may remain a double or multiple citizen, but has to actually live in Slovenia without interruption for at least one year with a foreigner's status before applying for citizenship. The latter condition does not have to be fulfilled when his or

her naturalisation benefits the state for national reasons, i.e. when the person is of Slovene ethnicity. The 2006 amendments clarify the conditions for exceptional naturalisation of persons of Slovene descent, including persons belonging to Slovene minorities in neighbouring countries. Neither residence in Slovenia nor other conditions such as material and social security or fulfilled tax obligations in a foreign country are required in these cases.

8.2.2 Loss of citizenship

A Slovenian citizen cannot lose citizenship by mere operation of law. There are five modes of loss of Slovenian citizenship: release, renunciation, deprivation and loss of citizenship through international agreements, the latter only being applied in cases of changes to state borders. Citizenship can also be lost by the nullification of naturalisation.

Release is the regular way of losing citizenship by application. It is the right of any Slovenian citizen who fulfils the stipulated conditions, such as actual residence abroad and proof that he or she will be granted a foreign citizenship. Release has to be approved by a public authority, but discretionary power is limited to specific reasons such as national security and national interests, reciprocity or other reasons derived from relations with a foreign country.

Renunciation is a qualified option for dual citizens, meaning that such a person has the right to renounce Slovenian citizenship. It is accorded to individuals up to 25 years of age, born in a foreign country, residing there and holding a foreign citizenship. Other conditions have not been foreseen. The Ministry of the Interior has no discretionary power and may issue a decree stating that Slovenian citizenship of such a person ceased on the day that such a statement of renunciation was filed. Minors, up to the age of eighteen years, enjoy a substantially higher degree of protection regarding the release from and renunciation of citizenship, in comparison to the acquisition of citizenship. The consent of both parents is required, regardless of their citizenship. In a case of dispute, the Ministry for Family and Social Affairs decides in the best interests of the child. Furthermore, children older than fourteen years must give their personal consent.

Deprivation of citizenship is the only type of citizenship loss that the state may initiate. A Slovenian citizen, actually residing in a foreign country and in possession of a foreign citizenship may be deprived of citizenship if it is ascertained that this person's activities are contrary to the international and other interests of the Republic of Slovenia. Proof of the existing conditions must be given in the decree on the deprivation of citizenship, which may be issued by exception in the absence of the party concerned.

Cancellation of a decree on naturalisation may occur if it is discovered that naturalisation was granted based on false declarations or deliberate concealment of essential facts or circumstances on the side of the individual in question. It may also be nullified if the person acquired citizenship on the grounds of a foreign state's guarantee that the person's foreign citizenship will cease to exist if the person acquires the Slovenian citizenship and evidence of the loss of the previous citizenship has not been submitted within the prescribed period. Nullification is not possible if such a person would become stateless.

8.2.3 Dual and multiple citizenship

In general, Slovenian legislation is relatively tolerant of plural citizenship on both entry and exit sides. The ius sanguinis and gender equality principles contribute to dual citizenship for citizens by birth, both in Slovenia and abroad, since ius sanguinis transmission of Slovenian citizenship is not limited to the first or second generation or by any other requirements. Multiple citizenship is even possible for adopted persons. Acquisition of the citizenship of another country does not mean that the Slovenian citizenship is automatically forfeit, neither is release from current citizenship required for certain groups that qualify for facilitated and exceptional naturalisation, nor in cases of regular naturalisation where expatriation would have harsh consequences.

The number of dual and multiple citizens is unknown. In June 1991 there were 15,000 registered dual citizens residing abroad (Končina 1992). After independence the number of dual and multiple citizens substantially increased, both in the country and abroad. In 2005 it was estimated that around 60,000 Slovenes permanently residing abroad had Slovenian citizenship. Slovenia grants substantial political rights to citizens abroad, including franchise in local, parliamentary and presidential elections. The number of dual citizens in Slovenia is much larger and is mainly the consequence of specific historical circumstances in which the new state was created and was partially dependent on the citizenship legislation of other countries, notably Italy.

The transitional provisions regulating the option for Slovenian citizenship did not touch upon dual citizenship and it is estimated that almost all people from other republics of the former Yugoslavia are dual citizens. In 1991, it was also objectively impossible to make this type of naturalisation conditional on a release from current citizenship. The outcome of the Yugoslav crisis was unknown and the possibility of a bilateral or multilateral regulation of citizenship did not bear fruit. The break-up of Yugoslavia did not lead to *de iure* statelessness, since all successor states applied the principle of continuity of former republic-level citizenship (Kos 1996b; Mesojedec-Pervinšek 1999: 655). Never-

theless, the interest in Slovenian citizenship was much higher than expected in 1991 when the authorities estimated that approximately 80,000 persons would apply for Slovenian citizenship (Mesojedec-Pervinšek 1997: 32-34). Reasons for such a response are various and have so far not been well researched. Public discussions emphasise utilitarian motives, in particular the possibility to purchase socially owned housing which was only open to Slovenian citizens. Suspicions that holders of dual citizenship may be disloyal and that they pose a potential threat to state security led to a change in political and public mood and to legislative attacks on this status, mainly supported by the Slovene National Party and the Peoples' Party in the period from 1993 to 1996. While the Liberal Democratic Government also proposed the abolishment of dual citizenship in 1993, some other proposals openly called for the retroactive nullification of all decrees under art. 40. In 1995, there even was an official initiative for a referendum on the issue, which was only stopped by the Constitutional Court[38] (Cerar 1995; Dujić 1996; Medved 2005: 470-474).

8.2.4 Jurisdiction and procedures

Up to the end of 2006, the Ministry of the Interior had jurisdiction over naturalisation and loss of citizenship. Following the concept of territorial de-concentration of state administration, the 2006 amendments to the Citizenship Act transfer this competence from the Ministry of the Interior to local administrative units. Only cases of exceptional naturalisation remain under the Ministry of the Interior. Moreover, the Ministry still has a 'controlling' role in the obligatory revision procedure for decisions on naturalisation and loss of citizenship as well as documents related to the release from prior citizenship. In this procedure the Ministry can either confirm decisions made at the local level or take a new decision. A period of nine months is envisaged for the transfer of decision-making.

Legislative competence lies with the Government, which specifies the requirements for regular naturalisation regarding, *inter alia*, residence, income and threat to public order, security and defence of the state, and defines the criteria for the naturalisation on the grounds of national interest and for the refusal of release from citizenship. A decision of the Ministry may be appealed and is open to judicial review (see Polič 1997a, 1997b). Fees are relatively low (30,000-35,000 SIT, i. e. 125-150 euros).

Local administrative units have the authority to establish and register citizenship.[39] Record keeping of citizenship is done in compliance with the Births, Deaths and Marriages Registry Act at the register of births.[40] The Ministry of the Interior keeps the central citizenship reg-

ister. Since this register does not constitute a separate database but is part of the permanent population register, the 2006 amendments provide that the Ministry of the Interior and local administrative units shall keep a register of persons who acquired citizenship by naturalisation and those who lost Slovenian citizenship. This register shall be computerised and connected to the registers of foreigners and of births, deaths and marriages. Personal data from this register may be used by the employees of internal affairs when performing their duties defined by law and can be forwarded to other users only if these are authorised by law or upon the consent or request of the individual to whom they relate. The Ministry of the Interior can forward personal data of an individual to other states under the condition of reciprocity only if such data are used for clearly defined purposes (such as settling citizenship issues or realisation of penal proceedings) and that in that state personal data protection applies also to foreigners. Slovenian citizenship can be proven by attestation or any other public document of citizenship issued by an agency with the authority for administering the official register in which the citizenship of the person is entered, or by the administrative unit where the person permanently resides. According to the latest change any administrative unit can issue attestations of citizenship.

8.3 Current political debates

Until recently the citizenship agenda has been dominated by the heritage from the dissolution of Yugoslavia. Subsequently, the citizenship legislation went through a series of adjustments related to the admission of citizens of other successor states of the former Yugoslavia. As already pointed out above, the issue of plural citizenship prevailed in the mid-1990s. After unsuccessful legislative attempts to abolish dual citizenship there is an acceptance of plural citizenship for this group of people as a reflection of the historical experience. In the late 1990s and thereafter, the political scene was dominated by the issue of the 'erased'. Up to now, there have only been partial solutions to settle the problems of this group of people, either by regulating their status as foreigners or enabling them to naturalise. Moreover, despite the more recent criticism by the Commissioner for Human Rights at the Council of Europe and by the Commission against Racism and Intolerance (ECRI) of the Council of Europe, it is not expected that further attempts, including the current Government's attempt to introduce a special Constitutional Law, which requires a two-thirds parliamentary majority, will bear any fruit before the next parliamentary elections. Current political debates thus shifted the focus to societal integration

of naturalised 'foreigners' and political participation and representation for these 'new minorities'. This debate is further enhanced by the realities of more recent immigration and reforms necessary as a result of joining the European Union in May 2004.

In the pre-accession period the eurocompatibility was influenced more by international trends, such as the 1997 European Convention on Nationality of which Slovenia is not a party, than by indirect pressure from the EU. This applies in particular to the amendments in 2002, refining and relaxing access to citizenship for recognised refugees, stateless persons and second- and third-generation immigrants. On the other hand, conditions for naturalisation have been maintained and tightened. Since 2002 applicants must have the status of foreigner, as explained above. This status is an eligibility criterion that may be waived only in some exceptional cases of naturalisation. Further changes concern the question of loyalty. In 2002 the declaration of agreement with the legal order of Slovenia was introduced, which in 2006 was supplanted by an oath of loyalty. In July 2005 the Government also further specified national interest as a reason for exceptional cases of naturalisation, in other words criteria for cultural i.e. ethnic-affinity based naturalisation of Slovenes living abroad. The Governmental Office for Slovenes around the world may give an opinion on the applicant, which has led to criticism and protest from members of the Slovene diaspora.

In line with this protest, the political discussion focused on legislation regulating relations between Slovenia and Slovenians abroad, in particular concerning the legal position of autochthonous minorities living in neighbouring countries and emigrants and their descendants with or without Slovenian citizenship. In April 2006 the National Assembly passed the Republic of Slovenia and Slovenians Abroad Act.[41] The Act is based on art. 5 of the Constitution, the 1996 Resolution on the Position of Autochthonous Slovene Minorities in Neighbouring Countries and the Related Tasks of State and Other Institutions in the Republic of Slovenia[42] and the 2002 Resolution on Relations with Slovenes Abroad.[43] The objectives of this legislation are to arrange relations of the 'homeland' with Slovene diasporas in order to strengthen national identity and consciousness and promote mutual ties in the fields of culture, care for the Slovene language, education and science, sports, economy and regional cooperation. It introduces a new *status of a Slovene without Slovenian citizenship*, regulates its acquisition and loss and provides certain advantages to its beneficiaries. Acquisition of this status would primarily depend on descent, activity in Slovenian organisations abroad and active ties with the 'homeland'. The Governmental Office for Slovenes around the world will be responsible for issuing this status. When in Slovenia, the holders of this status will enjoy pre-

ferential enrolment at institutions of higher education, equal access to research projects and public cultural goods, such as libraries or archives, as well as equal property rights. They will also enjoy priority in employment over other third-country nationals. Until present no one has applied for, let alone acquired, this 'quasi-citizenship' status. The Act also supports the return of Slovenian expatriates and their children and also provides for *repatriation*, meaning immigration of Slovenes, organised and financed by Slovenia in cases when there is, according to the assessment of the Ministry for Foreign Affairs, a severe political or other crisis in the states where they reside, and if their repatriation contributes to the development of the 'homeland'. The Council for Slovenians Abroad and the Council for Slovenians in Neighbouring Countries will function as *permanent advisory bodies*. The councils are headed by the Prime Minister, who appoints their members, composed of representatives of state bodies, institutions, political organisations and civil society organisations from Slovenia and abroad.[44]

There are certain parallels between the Slovenians Abroad Act and the famous and controversial 2001 Hungarian Status Law, the 1997 Law on Expatriate Slovaks and the 1999-2001 failed Polish move to install a similar law (see Liebich, Kovács & Tóth, Kusá and Górny in this volume). However, the Slovenian Government claims that the Slovenian law cannot be equated with the Hungarian Status Law since it does not interfere with competences of other EU Member States or the free movement of workers, nor does it establish Identity Cards valid in the territory of any other EU Member State.

The most recent political discussion concerned the future development of citizenship legislation. A working group was set up to analyse current citizenship legislation and its implementation and prepare changes to the Citizenship Act. Due to the complexity of current citizenship legislation there was a tentative suggestion for an overall revision, but this was hardly to be expected. In fact, when in July 2006 the Act amending the Citizenship of the Republic of Slovenia Act was proposed, the Government claimed that it would not change the aims and principles of the existing legislation, but focused on requirements for naturalisation and some practical aspects, such as clarifications of imprecisely defined provisions, and on harmonisation with other legislation, specifically concerning immigration and record keeping.

Nevertheless, the Act was not adopted in a short parliamentary procedure as initially proposed by the centre-right Government but caused extensive discussion, particularly regarding the 89-word long *oath of loyalty*, suggested by the Ministry of Justice. While the Liberal Democrats proposed that the text of the oath should be simplified, the Social Democrats, another opposition party, argued that the text confuses the concepts of 'state' and 'homeland' as the latter is not a legal concept

and that taking an oath of loyalty 'to my new homeland' shames a civilised and modern society and is reminiscent of nineteenth century patriotism. Moreover, the Liberal Democrats opposed the transfer of the jurisdiction over naturalisation and loss of citizenship from the Ministry of the Interior to local administrative units, which in the Government's view is the main novelty of the amended Act. They argued that such an arrangement could lead to arbitrary decisions in spite of the revision procedure by the Ministry. While none of the political parties opposed relaxed naturalisation for ethnic Slovenes, the Liberal Democrats criticised that conditions, such as residence in Slovenia or material and social security, are waived in these cases.

The Act amending the Citizenship of the Republic of Slovenia Act was passed by the National Assembly on 24 November 2006. Since the National Council did not veto the adopted Act in the prescribed seven-day period, the Act was enacted at the end of the year 2006.

8.4 Statistics

At the end of 2005 there were 201,919 naturalised citizens or approximately one tenth of the total population of Slovenia. Roughly 85 per cent of the total of persons naturalised acquired citizenship according to the optional provisions in the immediate post-independence period, with the corrective provision of 2002 contributing to less than 1 per cent. The great majority (98.5 per cent) of naturalised citizens originated in other successor states of the Social Federal Republic of Yugoslavia, of these 46 per cent from Bosnia and Herzegovina and only 1.46 per cent from other countries. In respect to naturalisation by standard provisions the share of the latter rises to 10 per cent. These were mainly citizens of Western European countries and of overseas OECD-states. For example, 1,677 were citizens of the EU States and Switzerland, among them 736 of Italy and 445 of Germany. These are followed by previous citizens of the Russian Federation (249) and of Ukraine (162).

A quarter of all persons naturalised according to standard provisions acquired Slovenian citizenship by fulfilling all conditions. Almost 58 per cent of the persons were naturalised according to facilitated procedure. Exceptional naturalisations present a rather large share of 17 per cent.

Almost 90 per cent of facilitated naturalisations refer to extension of citizenship to family members, i.e. to spouses and minor children. Ethnic-affinity based naturalisations are also significant.

Table 8.1: Admission to Slovenian citizenship based on supplementary and corrective initial determination rules (art. 40, 1991, art. 19, 2002) and on standard provisions for naturalisation by country of origin, 25 June 1991–31 December 2005

Country of origin	*Art. 40, 1991*		*Art. 19 , 2002*		*Standard provisions*	
	No.	*%*	*No.*	*%*	*No.*	*%*
Bosnia & Herzegovina	78,918	46.12	780	46.54	14,049	48.25
Croatia	58,528	34.20	307	18.32	6,397	21.97
Serbia & Montenegro	28,531	16.68	519	30.96	4,472	15.36
Macedonia	5,150	3.00	48	2.86	1,259	4.32
Other countries			22	1.32	2,939	10.10
Total	171,127	100	1,676	100	29,116	100

Source: Ministry of the Interior[45]

Table 8.2: Regular and facilitated naturalisations by groups of persons in Slovenia, 1991-2005

Regular naturalisation	*Facilitated naturalisation*							
	Minors	*Spouses*	*Slovenes by descent*	*Born in Slovenia**	*Recognised refugees**	*Reacquisition**	*Stateless person**	*Total*
7,385	8,256	6,774	1,700	68	5	5	1	16,809

*from 2002
Source: Ministry of the Interior

Table 8.3: Regular and facilitated naturalisations in Slovenia per year, 1991-2005

Year	*1991*	*1992*	*1993*	*1994*	*1995*	*1996*	*1997*	*1998*	*1999*	*2000*	*2001*	*2002*	*2003*	*2004*	*2005*
Granted*															
25,870	303	320	2,539	1,233	1,781	926	544	2,747	1,893	2,102	1,101	2,092	2,860	2,989	2,440

*including art. 19, 2002
Source: Ministry of the Interior

The numbers of persons naturalised annually reflect changes in legislation with a minimum of 303 persons in 1991 and a maximum of 2,989 in 2004. The increasing trend after 2001 can mainly be explained with the corrective measure added in 2002 to incorporate those whose status was not adequately regulated in 1991. The decreasing number in 2005 indicates that this problem is diminishing.

Table 8.4: Reasons for granting exceptional naturalisations in Slovenia

National interest	*Born in Slovenia*	*Culture*	*Health sector*	*Sport*	*Education/ science*	*Economy*	*IT sector*	*Interest of the state*	*Religion*	*Defence*	*Tourism/ traffic*
3,647	605	165	153	97	94	82	63	6	6	2	2

Source: Ministry of the Interior

Ethnic affinity is the dominant ground of national interest for exceptional naturalisations, with birth in Slovenia representing the second largest interest. All other state interests play only a secondary role, comprising a modest 14 per cent share.

Table 8.5: Exceptional naturalisations in Slovenia per year, 1991-2005

Year	*1991*	*1992*	*1993*	*1994*	*1995*	*1996*	*1997*	*1998*	*1999*	*2000*	*2001*	*2002*	*2003*	*2004*	*2005*
Granted															
4,922	47	45	159	218	391	150	628	571	444	274	245	716	446	344	244
Not granted															
1,185	3	19	68	36	88	66	14	88	35	27	32	130	57	16	506

Source: Ministry of the Interior

Since the peak in 2002, there is a decreasing trend of exceptional naturalisations per year. On the one hand this is the effect of the 2002 supplements to the Citizenship Act whereby second- and third-generation immigrants can be granted citizenship according to a facilitated procedure. On the other hand a strikingly high number of refusals for naturalisation in 2005, mainly ethnic Slovenes living abroad, can be attributed to the Government's redefinition of national interest in citizenship acquisition. This is expected to drop again in the coming years due to the changes in 2006 concerning the naturalisation of ethnic Slovenes.

Table 8.6: Release from Slovenian citizenship per year, 1991-2005

Year	*1991*	*1992*	*1993*	*1994*	*1995*	*1996*	*1997*	*1998*	*1999*	*2000*	*2001*	*2002*	*2003*	*2004*	*2005*
Granted															
4803	12	263	432	365	307	888	423	311	249	352	227	350	304	217	103

Source: Ministry of the Interior

The development of release from citizenship is relatively modest, showing an increase until 1996 and since then a steady decrease to a low figure of 103 in 2005. In the period analysed 103 persons altogether were not released from Slovenian citizenship.

8.5 Conclusions

As a new state, Slovenia went through a process of initial determination of citizenry. The question of the initial 'body' of citizens and simultaneously of legal integration of the majority of 'non-ethnic' Slovenes was resolved early in the process of independence and interna-

tional recognition, and without great controversy. Several factors contributed to such a development. Firstly, although the establishment of Slovenia as a nation-state can be considered as a product of the so-called eastern type of ethno-cultural nationalism, asserting the right to self-determination and self-governance of the Slovenian 'nation', the initial policy of citizenship was rather in support of democratic statehood than of 'nationhood'. Citizenship was defined in territorial terms, close to 'zero-option' policies, in order to ensure an even jurisdiction over the territory and people within the boundaries of the new state. By adopting such an approach Slovenia could exercise 'effective governance', which supported its claim for international recognition, in combination with other elements of external conditionality attached to international recognition, notably democracy and respect for minorities. This meant that though some political groups had favoured, at this juncture, a more restrictive definition of citizenry and consequently of polity based primarily on 'ethnic' criteria, the timing would have worked against it. What mattered was the very fact of instituting an autonomous citizenship, a highly visible claim to external sovereignty. Secondly, such an approach afforded all persons affected by state succession the possibility to participate in the building up of Slovenia, reflecting confidence in a harmonious relationship between 'titular' nation and 'other' citizens. The promise given to permanent residents from other former Yugoslav republics that they would receive the Slovenian citizenship, if they so wished, was seen as fulfilled.[46] In order to satisfy émigré communities, which largely supported the independence process and to remedy injustices caused by deprivation of citizenship under the previous regime, they were granted preferential treatment regarding naturalisation.

What might initially have appeared as a progressive principle of membership based on a civic conception, which could serve as a reference point for the evolving statehood and an opportunity for defining national identity by embracing the multiethnic reality, took an ambiguous turn after independence was achieved. There were attempts to abolish dual citizenship for people from other Yugoslavian successor states and only reluctantly was it eventually tolerated. Furthermore, some of those who did not apply or were not admitted to Slovenian citizenry were deprived of their legal residence. At the same time, however, citizenship policy and supplementary or changed provisions on naturalisation throughout the fifteen-year statehood functioned as instruments for regulating the status of immigrants and citizens of other Yugoslavian successor states whose status had not adequately been regulated in 1991. In this process, the judiciary, in particular the Constitutional Court, played an important role.

At the same time, Slovenia responded to international standards in the field by introducing facilitated naturalisation for certain categories of persons such as second and third generation immigrants or recognised refugees. Nevertheless, state interests in naturalisation prevail over those of the individual. The concept of a nation as a community of descent means that the principle of ius sanguinis prevails in defining those entitled to citizenship at birth, that ethnic criteria play a major role in naturalisation procedures and that Slovenia is attempting to establish a special connection with Slovenes residing abroad. It also supports a notion of imagined community by, for example, explicit requirement of proficiency in the Slovenian language for naturalisation. Furthermore, even naturalised citizens are often seen as foreigners in most areas of public life. Current debates point to a need for a stronger public sense of citizenship in the democratic polity, but do not suggest any substantial change of the basic philosophy guiding citizenship policy nor – after the recent amendments – a comprehensive legislative reform.

Chronological list of citizenship-related legislation in Slovenia

Date	Document	Content	Source
1991	Citizenship of the Republic of Slovenia Act (Official Gazette of the Republic of Slovenia, No. 1/1991-I)	Constituted the initial body of citizens and basic principles of acquisition and loss of citizenship. It also provided for optional naturalisation of residents from other republics of SFRY (art. 40) and reacquisition of citizenship for those who were deprived of it on the basis of prior federal law (art. 41) in the transitional period.	in Slovenian e-gov.gov.si In English www.legislationline.org or www.coe.int
1991	Act Amending the Citizenship of the Republic of Slovenia Act (Official Gazette of the Republic of Slovenia, No. 30/1991-I)	Supplemented art. 40 and stipulated that the person's application for citizenship is to be turned down if that person is considered to form a threat to public order, security and defence of the state or has committed a criminal offence directed against the Republic of Slovenia.	In Slovenian www2.gov.si In English as above www.legislationline.org or www.coe.int
1991	Constitution of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, Nos.	Postulated in art. 12 that citizenship shall be regulated by law and in art. 5 (2) that Slovenes not	In Slovenian www.dz-rs.si

Date	Document	Content	Source
	33/91-I, 33I/1991-I, 42/1997, 66/2000, 24/2003, 69/2004, 69/2004, 69/2004, 68/2006)	holding Slovene citizenship may enjoy special rights and privileges in Slovenia, the nature and extent of which shall be regulated by law.	In English www.dz-rs.si
1992	Act Amending the Citizenship of the Republic of Slovenia Act (Official Gazette of the Republic of Slovenia, No. 38/1992)	Regulated naturalisation for persons of Slovenian descent through at least one parent, if their Slovenian citizenship ceased due to release, renunciation or deprivation or because they had not acquired Slovenian citizenship due to historical circumstances (art. 13.a).	In Slovenian www2.gov.si in English www.coe.int
1992	Constitutional Court Decision repealing Articles 41 and 13.a of the Citizenship of Slovenia Act (Official Gazette of the Republic of Slovenia, No. 61/1992, Constitutional Court Decision: U-I-69/92-30)		In Slovenian odlocitve.us-rs.si In English odlocitve.us-rs.si
1992	Constitutional Court Decision repealing Article 28 of the Citizenship of Slovenia Act (Official Gazette of the Republic of Slovenia, No. 61/1992, Constitutional Court Decision: U-I-U-I-98/91-21)	Provided that the reasons for a discretionary decision must be stated in such a way that it is evident whether the administrative authority in exercising its discretionary power of decision has acted ``within the limits of authorisation and in accordance with the intention of granting such an authorisation''.	In Slovenian odlocitve.us-rs.si In English odlocitve.us-rs.si
1994	Act amending the Citizenship of the Republic of Slovenia Act (Official Gazette of the Republic of Slovenia, No. 13/1994)	Provided for the recognition and declaration of citizenship for residents from other former Yugoslav republics; extended the age limit for citizenship by registration; tightened the naturalisation criteria, specifically as to language proficiency; introduced consent of minors older than fourteen years.	In Slovenian www2.gov.si In English www.unhcr.org
1994	Decree on Criteria for		

Date	Document	Content	Source
	Establishing the Compliance with Specified Conditions for Acquiring the Citizenship of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, No. 47/1994)		
1996	Resolution on the Position of Autochthonous Slovene Minorities in Neighbouring Countries and the Related Tasks of State and Other Institutions in the Republic of Slovenia (Official Gazette of the Republic of Slovenia, No. 35/1996)	Envisages various forms of aid for these minorities, taking into account their specific needs and interests and providing them with concrete aid in the cultural, language, informative, economic, and financial areas.	In Slovenian www.uszs.gov.si In English venice.coe.int
1999	The Settling of the Status of Citizens of Other SFRY Successor States in the Republic of Slovenia Act (Official Gazette of the Republic of Slovenia, Nos. 61/1999, 54/2000 Constitutional Court Decision U-I-295/99-13, 64/2001)	Regulated the acquisition of permanent residence for citizens of other SFRY successor states who had permanent residence registered in the territory of Slovenia on 23 December 1990 or who were residing in Slovenia on 25 June 1991 and have continued to do so without interruption since that date.	In Slovenian www.uradni-list.si In English www.legislationline.org
2002	Act amending the Citizenship of the Republic of Slovenia Act (Official Gazette of the Republic of Slovenia, No. 96/2002)	Extended the age limit for the citizenship by registration; added stricter criteria for regular naturalisation, such as the status of foreigner; relaxed naturalisation for refugees, stateless persons and second- and third-generation immigrants.	In Slovenian http://www.uradni-list.si
2002	Resolution on the Relations with Slovenes Abroad (Official Gazette of the Republic of Slovenia, No. 7/2002)	Envisages cooperation with Slovenes abroad in fields of culture, language, information, economy, science and foreign policy; declares interest in repatriation, a status of Slovenes without citizenship and citizenship and voting rights of citizens abroad.	In Slovenian www.uradni-list.si
2002	Constitutional Court	Found The Settling of the	In Slovenian

Date	Document	Content	Source
	Decision: U-I-246/02-28 (Official Gazette of the Republic of Slovenia, No. 36/2003)	Status of Citizens of Other SFRY Successor States in the Republic of Slovenia Act unconstitutional.	odlocitve.us-rs.si
2006	Relations between the Republic of Slovenia and Slovenians abroad Act (Official Gazette of the Republic of Slovenia, No. 43/2006)	Introduced the status of Slovenes without Slovenian citizenship.	In Slovenian www.uradni-list.si
2006	Act amending the Citizenship of the Republic of Slovenia Act (Official Gazette of the Republic of Slovenia, No. 127/2006)	Introduced stricter requirements for regular naturalisation (material and social security, clean criminal record, oath of loyalty) and for spouses of Slovenian nationals. Redefined groups of persons eligible for facilitated and exceptional naturalisation.	In Slovenian www.dz-rs.si

Notes

1 *Official Gazette of the Provincial Government for Slovenia*, 147/1920 and 122/1921.
2 *Official Gazette of the Kingdom of Serbs, Croats and Slovenes*, 254/1928.
3 *Official Gazette of the Democratic Republic of Yugoslavia (DRY)*, 64/1945; *Official Gazette of the Federal People's Republic of Yugoslavia (FPRY)*, 54/1946, 90/1946, 88/1948 and 105/1948.
4 *Official Gazette of the FPRY*, 105/1948. In 1997 the Constitutional Court of the Republic of Slovenia found that the use of this provision is not unconstitutional in procedures concerning the ascertainment of citizenship. Constitutional Court Decision, U-I-23/93 of 20 March 1997.
5 *Official Gazette of the DRY*, 64/1945; *Official Gazette of the FPRY*, 86/1946 and 22/1962.
6 *Official Gazette of the FPRY*, 104/1947.
7 The Memorandum includes a special statute that guarantees for both sides the rights of minorities. It is the first international document that regulates the protection of the Slovene ethnic minority ('Yugoslav ethnic group') in Italy – for the Trieste region.
8 Also see Slovenia, Italy, White Book on Diplomatic Relations published in 1996 by the Ministry of Foreign Affairs of the Republic of Slovenia.
9 *Official Gazette of the FPRY*, 9-96/1959, 7-115/58; *Official Gazette of the Socialist Federal Republic of Yugoslavia (SFRY)*, 7-35/1971, 31-448/1967, 11-48/1981 and 15-65/1990. Slovenia is a party to these instruments by succession.
10 In this paper, the term *republic-level citizenship* is used to denote the membership in constituting entities of the federal state. The term *citizenship* is used to indicate mem-

bership of a sovereign state. In the Slovenian language and legal terminology, *državljanstvo* is used for both legal concepts.

11 *Official Gazette of the SFRY*, 38/64.

12 *Official Gazette of the Socialist Republic of Slovenia*, 23/1976.

13 Moreover, most of these instruments such as the European Convention on Nationality, which was opened for signature on 6 November 1997 and entered into force on 1 March 2000, and the relevant provisions of the 1999 draft articles on the Nationality of Natural Persons in Relation to the Succession of States, were drafted after the changes that had reshaped the European political landscape at the end of the twentieth century. The former contains a chapter on state succession which focuses on principles and general rules but does not provide for specific rules which states should respect in cases of state succession.

14 In this regard, it must also be noted that the European Union does not consider nationality matters to be in its sphere of competence.

15 *Official Gazette of the Republic of Slovenia*, 1/1991-I. Amendments and Supplements to this Act were published in the *Official Gazette of the Republic of Slovenia*, 30/1991-I, 38/1992, 13/1994 and 96/2002. The officially revised text was published in the *Official Gazette of the Republic of Slovenia*, 7/2003. www.mnz.gov.si.

16 The Act amending the Citizenship of the Republic of Slovenia Act was adopted by the National Assembly on 24 November 2006. *Official Gazette of the Republic of Slovenia*, 127/2006.

17 For these concepts also see Baršová in this volume.

18 In 1999 the Constitutional Court repealed the paragraph related to the public order risk. Constitutional Court Decision, U-I-89/99 of 10 June 1999.

19 That immigrants from other republics did not register their permanent residence was partly due to the fact that they did not know of this possibility or simply did not care; partly it can be attributed to the concept of migration registration and registration of permanent residency in the former state. Slovenia was the sole republic of the SFRY which registered in- and out-migration.

20 *Official Gazette of the Republic of Slovenia*, 1/1991-I, 44/1997 and 50/1998 – Constitutional Court Decisions.

21 Under the then valid Aliens Act they could obtain a one-year temporary residence permit and after three years of uninterrupted residence a permit for permanent residence. Later this condition was prolonged from three to eight years. Cf. the controversial 1993 Estonian law on aliens, which declared that anybody living in Estonia without Estonian citizenship, which had no legal status in Estonian law in 1992/1993, would have to apply for residency status. The Council of Europe experts criticised that the status of persons already resident in Estonia was equated with that of non-citizens not currently resident there (see Day & Shaw 2003; also see Jaerve in this volume).

22 Only upon the request of applicants themselves did administrative authorities issue a certificate of removal from the register.

23 The Ombudsman in his first yearly report of 1995 refers to the so-called 'aliens sur place' (*zatečeni tujci*) using a label which resembles the term 'refugees sur place'.

24 Constitutional Court Decision, U-I-284/94 of 4 February 1999.

25 *Official Gazette of the Republic of Slovenia*, 61/1999 and 64/2001.

26 Constitutional Court Decision, U-I-246/02-28 of 3 April 2003.

27 The Ministry of the Interior, however, issued decisions on residency from 26 February 1992 to those 'erased', who already had permanent residence permits. 4,107 such decisions were issued until mid-January 2005, while 8,470 were still in the procedure.

28 1,278 Slovenes were deprived of citizenship based on collective decisions by federal authorities, of which the individuals were never notified, and 67 due to absence.
29 Constitutional Court Decision, U-I-69/92-30 of 10 December 1992.
30 Decree on Criteria for Establishing the Compliance with Specified Conditions for Acquiring the Citizenship of the Republic of Slovenia through Naturalisation, *Official Gazette of the Republic of Slovenia*, 47/1994.
31 Constitutional Court Decision, U-I-98/91 of 10 December 1992.
32 Under the principle of equality of children born in wedlock and children born out of wedlock a child of a foreign mother is a Slovenian citizen if the fatherhood of a Slovenian citizen is acknowledged, declared or otherwise established. The legal effect of fatherhood is retroactive and as such affects the citizenship of the child.
33 The registration is not necessary if the child would otherwise become stateless or if the child moves to Slovenia, together with the Slovenian parent, before he or she is eighteen years old.
34 Before 1994 an applicant did not have to submit this evidence.
35 The condition of a guaranteed residence was dropped in 2002.
36 Before the 2006 amendments the requirements did not include conditional prison sentences. Moreover, the accepted period of imprisonment was decreased from a maximum of one year to three months.
37 See also Constitutional Court Decision, U-I-124/94-8 of 9 February 1995. odlocitve.us-rs.si.
38 Constitutional Court Decision on the request for holding a referendum on Article 40 of the Citizenship Act of the Republic of Slovenia, U-I-266/95-8 of 20 November 1995, *Official Gazette of the Republic of Slovenia*, No. 69/1995.
39 Until 1995 this function was performed by municipalities and then transferred to local administrative units by the Act on the Takeover of State Functions Performed until 31 December 1994 by Municipal Bodies, *Official Gazette of the Republic of Slovenia*, 29/1995, 44/1996 – Constitutional Court Decision.
40 *Official Gazette of the Republic of Slovenia*, 37/2003 and 39/2006. The officially consolidated text was published in the *Official Gazette of the Republic of Slovenia*, 59/2006.
41 *Official Gazette of the Republic of Slovenia*, 44/2006.
42 *Official Gazette of the Republic of Slovenia*, 35/1996.
43 *Official Gazette of the Republic of Slovenia*, 7/2002.
44 The Council for Slovenians in Neighbouring Countries is composed of six representatives of the Slovenian minority in Austria, four from Italy and two from Hungary and Croatia. The Council for Slovenians Abroad consists of four representatives of Slovenians living in European states, three from South America and North America respectively, two from Australia and one from Slovenians residing in other countries around the world.
45 The Statistical Office of the Republic of Slovenia does not gather and analyse data on naturalisation. Tables in this section draw on data provided by the Ministry of the Interior.
46 This promise was given by all political parties and in the Letter of Good Intent (*Official Gazette of the Republic Slovenia*, 40/1990) adopted by the Slovenian Assembly prior to the plebiscite on the autonomy and independence on which all permanent residents could vote. Furthermore, the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia (*Official Gazette of the Republic Slovenia*, 1/1991-I) in art. 13 specially provided that citizens of other republics having permanent residence registered in Slovenia on the day of the plebiscite and who actually lived there should have equal rights and duties as Slovenian citizens during the transitional period with regards to the acquisition of Slovenian citizenship. Questions concerning the correct interpretation of this

document, however, have arisen specifically concerning the implementation of the Aliens Act.

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Part IV: Mediterranean post-imperial states

Chapter 9: Malta's citizenship law: Evolution and current regime[1]

Eugene Buttigieg

Malta's legal regime on citizenship is relatively young as it came into being on the day of Malta's acquisition of independence from British rule forty-two years ago. Yet throughout these years, particularly over the past two decades, it has undergone extensive alterations marking changes in the governing principles. This chapter first traces the evolution of the citizenship laws during these years, noting the important policy changes, their possible causes and implications. It then explores the different modes of acquisition and loss of citizenship under the current regime. Finally, statistical data is produced to highlight the extent to which persons seeking to acquire or reacquire Maltese citizenship by registration or naturalisation benefited from these legislative changes, apart from the non-quantifiable number of persons who through these legislative changes acquired or reacquired citizenship automatically.

9.1 Historical background

Malta was a British colony from 1800 until 21 September 1964 when it acquired independence from British rule. All persons born in Malta during this period were automatically British subjects according to British law. It was thus only on Independence Day, 21 September 1964, that Malta acquired its first provisions conferring and regulating Maltese citizenship. The Constitution of Malta, that entered into force on Independence Day, contained provisions conferring Maltese citizenship that were typical of independence constitutions drafted by the British for their colonies. The Constitution contained a section, chapter III, on citizenship, that conferred Maltese citizenship automatically on all persons who were born in Malta and were citizens of the United Kingdom and Colonies before 21 September 1964, provided that one of the parents was also born in Malta; thus a combined application of the ius soli and ius sanguinis principles. This was necessary to avoid imposing Maltese citizenship on children born in Malta to British military personnel families and British nationals stationed in Malta, while Malta was a British colony. Persons born abroad also acquired Maltese citi-

zenship on 21 September 1964 provided the father and a paternal grandparent were both born in Malta.

On the other hand, persons born on or after the date of independence acquired Maltese citizenship by mere birth in Malta irrespective of whether or not any of their parents were born in Malta; in other words on the strength of the ius soli principle only. In practice, this meant that children born of foreign parents in Malta acquired Maltese citizenship by birth though they were not of Maltese descent.

Chapter III of the Constitution also established that a Maltese citizen should have no other citizenship. Adults in possession of another citizenship had to renounce it by 21 September 1967. If a minor who was a Maltese citizen possessed any other citizenship, on reaching his or her eighteenth birthday, he or she would have had to renounce any other citizenship within a year if he or she wished to retain Maltese citizenship. Moreover, Maltese adults who acquired the citizenship of any other country would have automatically forfeited Maltese citizenship while foreigners who acquired Maltese citizenship by registration or naturalisation would have had to renounce any other citizenship held by them within six months from registration or three months from naturalisation.

As was the policy generally in most jurisdictions world-wide at the time, in the case of children born abroad, the question whether the child would acquire Maltese citizenship or not depended on whether it was the father or the mother who possessed Maltese citizenship at the time of birth. If the father were Maltese (by birth in Malta, by registration, or by naturalisation) though not the mother, the child would acquire Maltese citizenship but if the father were non-Maltese even though the mother was Maltese the child would not acquire Maltese citizenship. Thus, a Maltese mother could not transmit her citizenship to her child born outside Malta unless she was unmarried. Likewise, consistent with the international trend at the time, while the foreign wife of a Maltese citizen was entitled to become a citizen of Malta by registration, a foreign husband of a Maltese citizen was not.

The first law that complemented the Constitution on citizenship matters was the Maltese Citizenship Act (chapter 188 of the Laws of Malta) that was enacted the following year in 1965. This regulated in particular the acquisition of Maltese citizenship by registration and naturalisation. The law was prejudiced in favour of Commonwealth citizens as the latter could acquire Maltese citizenship by registration after five years of residence in Malta, while other foreigners required six years of residence in Malta to acquire Maltese citizenship by naturalisation. The next development in this field was the enactment of the Immigration Act (chapter 217 of the Laws of Malta) in 1970 that laid down rules providing for the control of immigration into Malta.

9.1.1 The 1989 amendments

Although throughout the years various amendments were made to all these laws, necessitated *inter alia* by Malta's transformation into a republic on 13 December 1974, the first major reform in the citizenship laws took place in August 1989 when chapter III of the Constitution, the Maltese Citizenship Act and the Immigration Act (via Acts XXIII, XXIV and XXV of 1989 respectively) were radically amended to indicate a clear change of policy regarding citizenship by (i) making an exception to the prohibition against dual citizenship for emigrants born in Malta and who had spent at least six years abroad[2] – this had significant implications as, especially in the 1950s and 1960s, well over 100,000 Maltese citizens (more than one fourth of the current population) had emigrated to countries such as the United Kingdom, Australia, Canada and the United States to seek employment and thereby obtained a second citizenship (ii) shifting to a rule based more on ius sanguinis than on ius soli (iii) allowing Maltese mothers to transmit their citizenship to their children born abroad (iv) granting the same rights to foreign husbands of citizens of Malta as foreign wives of citizens of Malta by allowing them to be registered as citizens of Malta and (v) reintroducing acquisition of citizenship by adoption.

This change in policy was due to the influence of changing international trends favouring ius sanguinis over ius soli and a greater international acceptance of dual and multiple citizenship as well as the increasing recognition at the international level of the need to safeguard gender equality in the citizenship laws. Malta has always participated actively in international fora and endorsed international instruments in this field and has moulded its policy accordingly. Moreover, the Government had been elected in 1987 on the strength of an electoral mandate that included the promise to allow expatriates to regain their lost citizenship retrospectively by acquiring dual citizenship and that citizenship laws would guarantee gender equality. A number of overseas associations representing expatriates also exerted pressure for this concession to expatriates to be extended to further generations.

As a result of these amendments Maltese emigrants were now allowed to hold dual citizenship. Art. 27(3) of the Constitution was amended to enable Maltese emigrants born in Malta to hold dual citizenship, provided of course that the country of which they were citizens recognised the concept of dual citizenship. This applied retrospectively. A Maltese citizen born in Malta who, as the law stood at the time, had automatically lost his Maltese citizenship having emigrated and acquired the citizenship of the country to which he had emigrated, would now be deemed never to have lost his Maltese citizenship, provided he had spent at least six years in that country. Thus, his dual citi-

zenship would be backdated to the date when he acquired the foreign citizenship. This also affected children born of a Maltese emigrant father who had lost his Maltese nationality because he had acquired another nationality. Since the dual nationality would be backdated so that the father is deemed never to have lost his Maltese citizenship, children who were born of fathers who had 'lost' their Maltese citizenship at the time of their birth and who were therefore deemed not to be Maltese citizens, also acquired Maltese citizenship with this amendment, effective from their date of birth, once their fathers were reinstated in their previous status as citizens of Malta.

It should be noted that under the current legislation, only Maltese persons habitually resident in Malta have voting rights in national general elections and voting may not take place abroad in Malta's embassies or consulates. So this extension of citizenship to expatriates does not signify any right to participate in the process of democratic self-determination of the country.

As stated above, under the Constitution, anyone born in Malta automatically became a citizen of Malta by mere birth in the country. However, with the 1989 amendments to the Constitution this has changed, as these amendments limit such acquisition by adding the ius sanguinis to the ius soli criterion in establishing that, as from the coming into force of these amendments on 1 August 1989, a person born in Malta will acquire Maltese citizenship only if at least one of the parents is a citizen of Malta or was born in Malta and emigrated and enjoys freedom of movement in Malta in terms of art. 44 of the Constitution.

The amendments also removed gender inequality in two respects: (i) in relation to Maltese mothers of children born abroad and (ii) in respect of foreign men married to Maltese women.

While prior to 1989 Maltese citizenship was transmitted to the children only if the father was a Maltese citizen, with these amendments it now suffices that either of the parents is a Maltese citizen (by birth in Malta, by registration, or by naturalisation). The Maltese mother just as the Maltese father may now transmit citizenship to her children born abroad.

Before the 1989 amendments to the Constitution, while a foreign woman married to a citizen of Malta or to someone who became a citizen of Malta was entitled to acquire Maltese citizenship by registration, a foreign husband of a female Maltese citizen was not. This was therefore discriminatory against foreign husbands as compared to foreign wives. The amendments extended this right to foreign husbands of Maltese citizens so that they are now on a par with foreign wives of Maltese citizens. Moreover, this right now extends even to the widow or widower of a person who was a citizen of Malta at the time of death

or would have been on 21 September 1964 had he or she lived till that day.

Another significant change in policy related to the acquisition of citizenship by adoption. Until 1976 it was possible under Maltese law to acquire Maltese citizenship through adoption, i.e. a person lawfully adopted by a citizen of Malta would acquire Maltese citizenship by that adoption. This was no longer possible following a legislative amendment on 1 January 1977. In 1989 the amendments to the Constitution reintroduced this facility for the acquisition of citizenship through adoption, subject to the proviso that the child adopted must be under ten years of age on the date of adoption.

In 1989 the distinction made in the Maltese Citizenship Act between Commonwealth citizens and other foreigners for the acquisition of Maltese citizenship by residence in Malta, a remnant of British influence, was abolished, so now any person may be naturalised as a citizen of Malta if he or she has resided in Malta for at least five years. The 1989 amendments to the Maltese Citizenship Act also extended naturalisation to any person who, being descended from a person born in Malta, is a citizen of a country other than the one in which he or she resides and whose access to the country of which he or she is a citizen is restricted.

9.1.2 The 2000 amendments

In 2000 further changes were made to the citizenship laws (via Acts III and IV of 2000) building on and fine-tuning the 1989 amendments, in particular by now completing the shift in policy towards dual and multiple citizenship.[3] One major legislative change was designed to dissuade marriages of convenience whereby foreigners were marrying Maltese persons simply to acquire the benefits of Maltese citizenship since, according to the prevailing law, marriage with a Maltese citizen immediately entitled the foreign spouse to apply for Maltese citizenship.

The detailed provisions on citizenship in chapter III of the Constitution were transferred to the Maltese Citizenship Act that thereby became the main law regulating citizenship while the Constitution now only contains the general principles on citizenship in art. 22.

Dual citizenship that was hitherto permitted only exceptionally in the case of Maltese emigrants has now become the rule, following the amendments of 2000, as Maltese citizens are now allowed to hold dual or even multiple citizenship.[4] Thus, as from the coming into force of the amendments on 10 February 2000, Maltese citizens who acquire another citizenship do not lose their Maltese citizenship. Moreover, since minors holding another citizenship only lost their Maltese citi-

zenship if they did not renounce the foreign citizenship by their nineteenth birthday, all citizens of Malta having another citizenship who were minors on that date or had not reached their nineteenth birthday by that date were able to retain both citizenships after their nineteenth birthday. Likewise, foreigners who acquire Maltese citizenship by naturalisation or registration are no longer required to renounce their other citizenships.

Not only was there this complete shift in policy in favour of multiple citizenship but these provisions were made applicable retrospectively to persons born in Malta or abroad and who had Maltese citizenship by birth or descent but had lost this citizenship when they acquired another citizenship, provided they had resided outside Malta for an aggregate period of at least six years. In such a case, such persons would be deemed never to have lost their Maltese citizenship; with this provision they regained their lost citizenship automatically.[5] On the other hand, persons who had lost their Maltese citizenship because they had acquired another citizenship before this date but had not resided abroad for such an aggregate period of time or their Maltese citizenship had been acquired by registration or naturalisation not by birth or descent may regain Maltese citizenship only by registration (and so not automatically).[6] Irrespective of where they are currently residing they may submit an application to be registered as citizens of Malta.

Building on the reform of 1989 that had extended citizenship to children born to Maltese mothers abroad, the law was further changed to entitle such children born between 21 September 1964 (date of independence) and 1 August 1989 (date of coming into force of the 1989 amendments) to be registered as Maltese citizens, irrespective of whether or not they reside or resided in Malta while allowing them to retain their other citizenship.

As stated above, with a view to discouraging marriages of convenience, the law was amended to provide that foreigners married to Maltese citizens may apply for Maltese citizenship on the strength of their marriage only if they have been married for at least five years and no longer immediately following the marriage.[7]

Another legislative change related to the position of foundlings. Until 2000, a new-born infant found abandoned in Malta was deemed to have been born in Malta but could not acquire Maltese citizenship as the identity and nationality of the parents would be unknown. As stated above, since 1989 it has become an essential requisite for Maltese citizenship that at least one of the parents must be a citizen of Malta. So the child would be stateless. But in 2000 the Maltese Citizenship Act was amended to the effect that, notwithstanding that the nationality of the parents be unknown, such a child would be deemed to be a

citizen of Malta until his or her right to any other citizenship is established.[8]

Malta's accession to the European Union in 2004 did not necessitate nor lead to any changes in the country's laws and policies on citizenship.

9.2 Current modes of acquisition and loss of citizenship

9.2.1 Modes of acquisition of citizenship

Acquisition by ius soli and/or ius sanguinis[9]

Every person born in Malta *before* the date of independence (21 September 1964), who until then was a citizen of the United Kingdom and Colonies and either of whose parents was born in Malta, automatically acquired Maltese citizenship on the date of independence. Moreover, even a person born outside Malta *before* the date of independence automatically acquired Maltese citizenship on the date of independence if he or she was a citizen of the United Kingdom and Colonies until the date of independence and his or her father and a paternal grandparent were both born in Malta.

On the other hand, for persons who were born in Malta *on or after* the date of independence but before 1 August 1989, the mere fact of birth in Malta was enough to entitle that person to automatically acquire Maltese citizenship at birth. The only exception is in the case of a person born in Malta in this period of parents who are both non-Maltese with the father enjoying diplomatic immunity. Persons born outside Malta during this period acquired citizenship at birth only if at the time of birth the father[10] was a citizen of Malta whether by birth in Malta, by registration or by naturalisation.

However, following the 1989 amendments, for persons born on or after 1 August 1989, birth in Malta no longer sufficed to entitle the person to acquire Maltese citizenship at birth: either of the parents must also have been a citizen of Malta at the time of his or her birth. For persons born outside Malta on or after 1 August 1989 citizenship is also acquired automatically at birth if, at the date of birth, either of the parents was a citizen of Malta whether by birth in Malta, by registration or by naturalisation. Thus, the essential requirement now is descent, not birth on Maltese territory.

An exception to this rule is made in the case of new-born infants found abandoned in any place in Malta who would as a result be stateless. Such infants are deemed to have been born in Malta and are considered citizens of Malta, even though the identity and citizenship of the parents are unknown, until such time as their right to any other citizenship is established.

A person who became a citizen of Malta on 21 September 1964 or at birth but subsequently lost this citizenship, having acquired or retained the citizenship of another country, reacquired citizenship automatically and retrospectively following the entry into force of the amendments of 2000 on 10 February 2000, that removed the prohibition of dual and multiple citizenship for Maltese citizens, if he or she resided outside Malta for an aggregate period of at least six years. By virtue of these amendments such persons are deemed retrospectively to never have lost their Maltese citizenship.[11]

Acquisition by adoption[12]

Since 1 August 1989, Maltese citizenship may also be acquired automatically by adoption when a person is lawfully adopted (under Maltese law) on or after this date with one of the adopting parents being a citizen of Malta at the time of adoption, provided that the person adopted is under ten years of age on the date of adoption.

For persons whose adoptions took place prior to this date but after 31 December 1976, adoption did not automatically lead to acquisition of Maltese citizenship even if the adopters were citizens of Malta. This was because during this period adoptions were considered by law as without effect as far as Maltese citizenship is concerned. Persons adopted during these years would have to apply to be naturalised as citizens of Malta, a mode of acquisition that is discussed below. Although the granting of citizenship in these cases is subject to the discretion of the Minister responsible for matters related to Maltese citizenship (hereinafter 'the Minister'), it has, since 1987, been generally granted on humanitarian grounds as a matter of policy.

Adoptions that took place before 1 January 1977 did lead to automatic acquisition of Maltese citizenship by the adopted person on adoption but, in the case of a joint adoption, as in the case of any other birth outside Malta at the time, it had to be shown that at least the male adopter was a citizen of Malta. It would not have sufficed if only the female adopter were a citizen of Malta.

Spousal transfer of citizenship[13]

A non-Maltese person married to a citizen of Malta may, after five years of marriage, acquire Maltese citizenship by applying to be registered as a citizen of Malta, provided the spouses are still married and living together (if the Maltese spouse is still alive) at the time the application for citizenship is made. However, if the couple were to separate *de iure* or *de facto* after five years of marriage the foreign spouse may still apply for Maltese citizenship provided the spouses had lived together during those five years of marriage. Moreover, if the Maltese spouse dies before the fifth year of marriage, the foreign spouse may still apply for

Maltese citizenship following the lapse of the fifth year from the date of marriage, provided that up to the time of death the spouses were living together.

Citizenship may also be acquired, if, although at the time of marriage both spouses were non-Maltese, subsequently one of the spouses acquires Maltese citizenship through some other mode of acquisition. The other spouse would now be entitled, subject to the conditions mentioned above, to apply to be registered as a citizen of Malta on the strength of the marriage.

A foreign spouse is entitled to apply to be registered as a citizen of Malta even where the marriage took place before the date of independence so that at the time of marriage neither of the spouses was a citizen of Malta, if on independence the other spouse either (i) became, or would have become were it not for his or her death, a citizen of Malta on the date of independence or (ii) became a citizen of Malta after the date of independence.

Acquisition by registration[14]

Apart from the special case of spousal transfer of citizenship, there are other instances where a person may acquire Maltese citizenship by registration.

Former citizens who, having lost their citizenship before 2000 because of the possession or acquisition of another citizenship as prescribed by the law prevailing at the time, fail to qualify for automatic reacquisition of this citizenship either because they had not spent the requisite six years abroad or because they were formerly citizens of Malta by registration or naturalisation and not by birth, may nevertheless apply to be registered as citizens of Malta.

Furthermore, an emigrant who was formerly a citizen of Malta by birth or descent but ceased to be a citizen of Malta after emigrating may also reacquire citizenship by registration if he or she returns to Malta and takes up permanent residence.

Likewise, persons born outside Malta before 1 August 1989 who are not citizens of Malta because their mother rather than their father was a citizen of Malta by birth, registration or naturalisation, may also acquire Maltese citizenship by registration.

Citizenship is acquired by registration only if the applicant takes an oath of allegiance to the country and in some instances, such as in the case of the spousal transfer of citizenship, provided the granting of citizenship to the applicant is not contrary to the public interest. With this mode of acquisition, citizenship takes effect from the date of registration and not retrospectively.

Acquisition by naturalisation[15]

Any person, including stateless persons, may apply to acquire Maltese citizenship by naturalisation if he or she has resided in Malta during the year immediately preceding the date of application and for a further aggregate period of at least four years over the past seven years immediately preceding the date of application, provided he or she has an adequate knowledge of the Maltese or English language, is of good character and is deemed to be a suitable citizen of Malta.

In practice, however, unless the applicant is of Maltese descent, as described below, the Department for Citizenship and Expatriate Affairs follows a strict policy of granting naturalisation only where the applicant has resided in Malta for quite a number of years and has children born in Malta. Every case is dealt with on its own merits and the Minister enjoys a non-reviewable discretion as explained below; but while in the past residence alone would not have been a ground for naturalisation, today the general policy is to consider favourably requests for naturalisation by residents who have been residing in Malta for a substantial number of years and have formed a family here. Income and property are not determining factors. Nor is any exception made to this long-term residence rule for labour migrants.

However, no residence conditions apply where the applicant was born abroad of a father that was likewise born abroad but the paternal grandfather and great-grandparent were both born in Malta. In such cases the person born abroad may apply for naturalisation merely on the strength of his or her Maltese descent. It should be noted, though, that the policy is that applications under this category would normally be accepted only if the applicant resides in Malta.

Likewise, no residence conditions apply where the applicant had been a citizen of Malta by birth before he or she emigrated from Malta and ceased to be a citizen of Malta or if he or she had emigrated before the date of independence and failed to obtain Maltese citizenship on independence merely because he or she had ceased to be a citizen of the United Kingdom and Colonies on the date of independence. There have been few applications under this category as most persons that fall under this category already enjoy dual citizenship.

Again no residence conditions apply to persons who prove descent from a person born in Malta and who are citizens of a country other than the country of their residence and who are denied access to the country of which they are citizens. They may apply to acquire Maltese citizenship by naturalisation merely on the strength of their Maltese descent. However, there have been few instances of naturalisation under this category because not many persons would qualify under this category that requires the applicant to produce all the birth and marriage certificates starting from his or her own birth on up to the ances-

tor who was born in Malta. If the link is broken or cannot be proven by documentary evidence or if the birth certificate of the ancestor born in Malta cannot be traced, the application for citizenship would not be successful. Persons in this category are usually persons of Maltese descent residing in North African countries who may generally encounter great difficulties to trace the documents in these countries that would prove this descent.

Special rules apply for persons who are and have always been stateless but were born in Malta of parents who are not citizens of Malta. In such cases the person is entitled to naturalisation as a citizen of Malta only if he or she has been ordinarily resident in Malta for a period of five years up to the date of his or her application and has not been convicted in any country of an offence against the security of the state or sentenced to a punishment depriving personal liberty for a term of not less than five years.

If the stateless person was not born in Malta but either of his or her parents was a citizen of Malta at the date of his or her birth, he or she is entitled to naturalisation as citizen of Malta only if he or she has been ordinarily resident in Malta for a period of three years up to the date of his or her application and has not been convicted in any country of an offence against the security of the state. So once again where Maltese descent can be shown the conditions for naturalisation are less stringent than where only connection by birth on Maltese territory can be proved.

As in the case of citizenship by registration, where citizenship is acquired by naturalisation, it takes effect from the date on which the applicant was naturalised.[16] All applications are made to the Minister and there is no right of appeal against the decision of the Minister on any such application nor is such a decision subject to review in any court.[17] However, in the Cabinet Citizenship Guidelines that were issued in 1987, it is stated that all applications for citizenship by the following persons are given favourable consideration:

a. former citizens of Malta;
b. children born abroad of returned migrants;
c. foreign citizens born in Malta to a parent who is a citizen of Malta;
d. children born to parents who were non-Maltese but who later acquired Maltese citizenship; and
e. persons born abroad but of Maltese descent.

It is stated that, on the other hand, applications from persons who do not fall under any one of these categories will only be given favourable consideration if there are humanitarian grounds.[18]

Since the drawing up of these guidelines in 1987, significant changes have been made to the Maltese Citizenship Act in 1989 and

2000, as shown above. Hence the persons falling in categories (a) and (b) have practically all been re-instated as Maltese citizens or are now Maltese citizens automatically in view of the dual citizenship amendments to the law. Moreover, following these amendments, persons falling under category (c) may re-acquire Maltese citizenship simply by registration.

Though refugees in Malta are granted some rights they have no right to Maltese citizenship nor are there any provisions in the law that facilitate the granting of citizenship to refugees.[19]

Since, as stated above, the law prescribes that one of the conditions for naturalisation is that there should be evidence of the applicant's good character and suitability for citizenship, apart from being supported by documents attesting to the applicant's place of residence, birth and Maltese descent, the application in question must also be sponsored by persons that are deemed trustworthy (such as lawyers, notaries, magistrates, judges, members of parliament, police officers, medical practitioners, parish priests etc.) who, having had occasion to assess the applicant in the course of exercising their profession or vocation, are thereby able to vouch for his or her integrity. As in the case of citizenship by registration, the applicant is required to take an oath of allegiance to the country before he or she may be naturalised.

9.2.2 Modes of loss of citizenship

Acquisition or retention of another citizenship no longer leads to the denial or forfeiture of Maltese citizenship as dual and multiple citizenship is now fully acknowledged by Maltese law.[20] This also means that in the case of mixed marriages, the children can acquire the citizenship of both parents. The only ways in which citizenship may be lost are detailed below.

Renunciation of citizenship[21]

Any citizen of Malta who is also a national of another country may renounce citizenship by making a declaration to this effect and upon registration of this declaration he or she would cease to be a citizen of Malta. It is a condition for renunciation that the Maltese citizen should also be a national of another country so that acceptance of the renunciation would not lead to the person becoming stateless. Such renunciation may be refused if it is made during any war in which Malta is engaged or if in the opinion of the Minister it would otherwise be contrary to public policy.

Deprivation of citizenship acquired by registration or naturalisation[22]
A citizen of Malta who acquired his or her citizenship by registration or naturalisation may be deprived of this citizenship by order of the Minister if the Minister is satisfied that:

a. the registration or naturalisation was obtained by means of fraud, false representation or the concealment of any material fact; or
b. the citizen has shown himself or herself by act or speech to be disloyal or disaffected towards the President or the Government of Malta; or
c. the citizen has, during any war in which Malta was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his or her knowledge carried on in such a manner as to assist an enemy in that war; or
d. the citizen has within seven years after becoming naturalised or being registered as a citizen of Malta, been sentenced in any country to a punishment depriving personal liberty for a term of not less than twelve months; or
e. the citizen has been ordinarily resident in foreign countries for a continuous period of seven years and during this time has neither been at any time in the service of Malta or of an international organisation of which the Government of Malta was a member nor given notice in writing to the Minister of his or her intention to retain citizenship of Malta.

However, in all such cases a person shall be deprived of his or her citizenship only if the Minister is satisfied that it is not conducive to the public good that the person should retain his or her citizenship and in the case referred to in (d) above only if it appears to the Minister that that person would not thereupon become stateless.

Before the Minister issues an order depriving a person of his or her citizenship, the person concerned must be given notice in writing informing him or her of the ground on which the order will be issued and of his or her right to an inquiry. If the person requests an inquiry the Minister will have to refer the case to a committee of inquiry appointed by the Minister but presided over by a person with judicial experience.

9.3 Statistical developments

These legislative amendments, particularly the shift to dual and multiple nationality are reflected in the statistical developments in the period 1990-2004. Statistics from the annual reports of the Department for Citizenship & Expatriate Affairs for the years 1990-2004 show that the

number of citizenships acquired by registration rose sharply from the year 2000 onwards (see Figure 9.1 below which also shows that the change in policy regarding dual and multiple citizenship in 2000 had a greater effect on registrations than naturalisations). From an annual average of 111 in the 1990s the number of registrations shot up to 512 in 2000 and 1,062 in 2001 and has remained in the region of 500 a year ever since.

The figure of 1,062 in 2001 remains the highest figure ever recorded for citizenship registrations in Malta. This increase is attributed by the National Statistics Office (NSO) in the *Demographic Review 2001* to the removal of the prohibition against dual and multiple nationality by the legislative amendments that entered into force in February 2000. The figure remained high in 2002 when 684 registrations were recorded.[23] This might be attributed to the fact that until 2002 Australian law prohibited dual and multiple nationality[24] and this prevented the many Maltese emigrants residing in Australia from taking advantage of the changes in the Maltese legislation in 2000 and registering for Maltese citizenship. When Australia changed its law on 4 April 2002 and removed the prohibition, this resulted in a surge of registrations in 2002 by persons who were now able to retain both Maltese and Australian citizenship.[25] In 2003 and 2004 the number of registrations decreased to 496 and 514 respectively[26] indicating that in future the number of

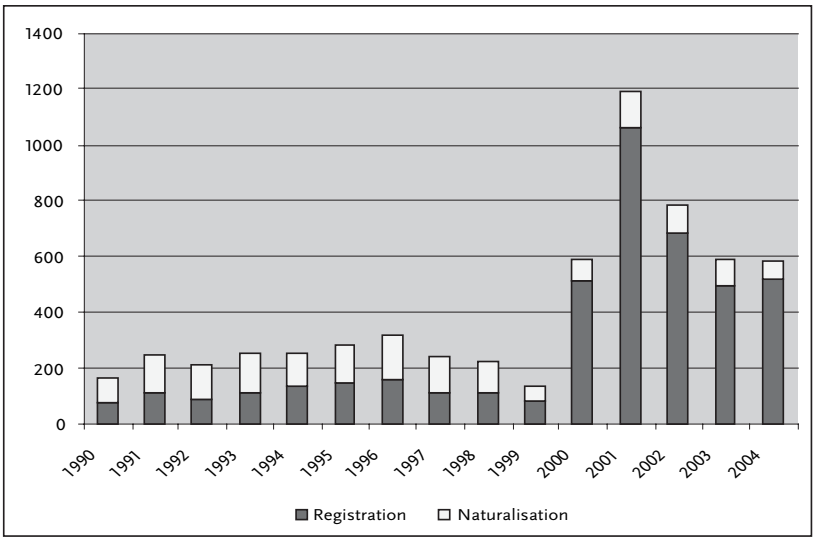

Figure 9.1: Number of naturalisations and registrations in Malta, 1990-2004
Source: Annual Reports of the Department for Citizenship & Expatriate Affairs published in the Annual Reports of Government Departments

registrations will probably stabilise itself at the year 2000 level of approximately 500 new registrations annually.

Table 9.1 gives a breakdown of the figures for acquisition by registration for 1998-2004 according to the grounds for registration and shows that it was mostly (i) foreign spouses; (ii) children born abroad to female citizens of Malta; and (iii) former citizens of Malta who had lost their citizenship because of the possession or acquisition of another citizenship that took advantage of the change in policy regarding dual and multiple citizenship to acquire citizenship by registration.

Table 9.1: Acquisition of Maltese nationality by registration for 1998-2004 according to the grounds for registration

Acquisition by registration	*1998*	*1999*	*2000*	*2001*	*2002*	*2003*	*2004*
By virtue of marriage via Arts 4 or 6	107	75	162	682	354	240	267
Resettling permanently in Malta after having emigrated and ceased to be citizens of Malta via Art 4(4)	4	4	–	–	–	–	–
Being children born abroad to female citizens of Malta via Art 5(2)(a)	–	–	173	241	221	192	210
Being former citizens of Malta via Art 8	–	–	177	139	109	64	37
TOTAL	111	79	512	1062	684	496	514

Source: Abstract of Statistics 2000, NSO 2003 and Department for Citizenship & Expatriate Affairs

9.4 Conclusions

Acknowledgment of dual and multiple citizenship has done justice to the thousands of Maltese citizens who had lost their citizenship when, due to economic circumstances, they had been forced to emigrate to seek work overseas and acquired a foreign citizenship. Not only have Maltese diaspora regained their legal ties to their or their ancestors' homeland but, following Malta's accession to the European Union, they may now also partake of the benefits of European citizenship. Throughout the years, through its participation in international fora debating nationality issues Malta has regularly reviewed and revised its nationality policies in line with evolving concepts so that gender inequalities and other forms of discrimination prevailing in the law have now been mostly redressed bringing the legal regime in line with international trends.

However, although Malta has signed, though not yet ratified, the European Convention on Nationality, the Maltese Citizenship Act has yet to fully embrace the principle of non-discrimination between its nationals incorporated in art. 5(2) of the Convention as the provisions on

deprivation of citizenship in art. 14(2) of the Act discriminate against persons who acquired citizenship by registration or naturalisation. Maybe this is one reason why Malta has yet to ratify the Convention that it signed on 29 October 2003, though it should be noted that art. 5(2) of the Convention does not have a mandatory effect but only constitutes a 'declaration of intent' by the signatories.[27] This discriminatory issue has not been the subject of any public debate or controversy in Malta.

Following accession to the European Union, although accession itself did not necessitate changes in Maltese citizenship laws as the laws were already in consonance with internationally accepted norms, the fact that Maltese citizenship now automatically confers European citizenship rights on holders of Maltese citizenship means that Maltese authorities must now consider the wider implications of any policy changes relating to the acquisition and loss of citizenship, particularly in relation to its immigration policy.

Chronological list of citizenship-related legislation in Malta

Date	Document	Content	Source
1964	Constitution of Malta	Chapter III contained provisions conferring and regulating Maltese citizenship based on a combination of the ius soli and ius sanguinis principles and prohibiting dual or multiple citizenship.	docs.justice.gov.mt
1965	Maltese Citizenship Act, chapter 188 of the Laws of Malta	Introduced more detailed provisions and regulated in particular the acquisition of Maltese citizenship by registration and naturalisation.	docs.justice.gov.mt
1974	Act LVIII amending the Maltese Citizenship Act and the Constitution of Malta	Amendments necessitated by Malta's transformation into a republic.	docs.justice.gov.mt
1975	Act XXXI amending the Maltese Citizenship Act	Minor amendments to the provisions on naturalisation.	docs.justice.gov.mt
1977	Act IX amending the Maltese Citizenship Act	Acquisition of citizenship by adoption no longer allowed.	docs.justice.gov.mt
1989	Act XXIII amending the Constitution of Malta and Act XXIV amending the	Introduced an exception to the prohibition against dual citizenship for expatriates;	docs.justice.gov.mt

Date	Document	Content	Source
	Maltese Citizenship Act	shifted to a rule based more on ius sanguinis than on ius soli by providing that mere birth in Malta would no longer suffice to confer citizenship at birth but must be accompanied by Maltese descent of at least one of the parents; amended some of the provisions that were resulting in gender inequality; reintroduced acquisition of citizenship by adoption; removed the distinction between common-wealth citizens and other foreigners for naturalisation purposes; and extended the grounds for naturalisation.	
2000	Act III amending the Constitution of Malta and Act IV amending the Maltese Citizenship Act	Complete shift in acknowledgment of dual/ multiple citizenship; restrictions introduced in the provisions on spousal transfer of citizenship to discourage marriages of convenience; the detailed provisions on citizenship in chapter III of the Constitution were transferred to the Maltese Citizenship Act that thereby became the main law regulating citizenship while the Constitution now only contains the general principles on citizenship; further amendments made to redress gender inequality; and provisions introduced to improve the position of foundlings.	docs.justice.gov.mt

Notes

1 The author would like to thank Mr J Treeby Ward and Mr Joseph Mizzi, Director and Assistant Director respectively at the Department for Citizenship and Expatriate Affairs, for valuable information and for their helpful comments on an earlier draft.
2 Hitherto only minors were allowed to have dual citizenship until their nineteenth birthday.
3 These legislative changes were preceded by the White Paper on Proposed Legislation to Amend the Citizenship and Immigration Laws, Office of the Prime Minister (OPM), 10 August 1998 that explained the proposed amendments.
4 Art. 22 of the Constitution and art. 7 of the Maltese Citizenship Act.
5 Maltese Citizenship Act, art. 9.
6 Ibid., art. 8.
7 Ibid., arts. 4 and 6.
8 Ibid., art. 5.
9 Ibid., arts. 3-5, 17.
10 Except in the case of illegitimate children where the national status of the mother becomes relevant – ibid. art 17.
11 Ibid., art. 9.
12 Ibid., art. 17.
13 Ibid., arts. 4 and 6.
14 Ibid., arts. 8 and 9.
15 Ibid., art. 10.
16 Ibid., art. 12.
17 Ibid., art. 19
18 These guidelines currently appear on the website of the relevant ministry, the Ministry for Justice and Home Affairs, www.mjha.gov.mt.
19 However, recently a Government minister (Minister for the Family and Social Solidarity, Dolores Cristina, as reported in *The Times* of 18 June 2005 on p. 19) announced that the Government is considering a change in policy in this regard in favour of granting citizenship to refugees who have been living in Malta for ten years so as to enable them to integrate better into society. So far, however, there has been no official change in policy on these lines.
20 Maltese Citizenship Act, art. 7 and art. 22(2) of the Constitution.
21 Maltese Citizenship Act, art. 13.
22 Ibid., art. 14.
23 *Demographic Review 2002*, National Statistical Office (NSO) 2003.
24 Art. 17 of Australia's law on citizenship did not allow dual citizenship so that citizens of Australia would lose citizenship if they acquired another citizenship voluntarily through registration.
25 Ministry for Justice and Home Affairs, Annual Report 2001-2002.
26 *Demographic Review 2003*, NSO 2004.
27 Explanatory Report to the European Convention on Nationality, point 45.

Chapter 10: Nationality and citizenship in Cyprus since 1945: Communal citizenship, gendered nationality and the adventures of a post-colonial subject in a divided country

Nicos Trimikliniotis

Mapping out the complex historical, structural, politico-legal and cultural setting that has generated a specific mode of nationality in the context of Cyprus is no easy task. In fact, we cannot speak of a *nationality policy as such*; such a policy has never been formally declared or publicly discussed, save for times in which the media hysterically criticised the granting of nationality.[1] It is however possible to deduce a policy from the practices of the last 45 years (Trimikliniotis 2005).

In an area of 9,251 km^2, the total population of Cyprus is around 754,800, of whom 666,800 are Greek-Cypriots (living in the Cyprus Republic-controlled area). On independence in 1960 Turkish-Cypriots constituted 18 per cent of the population, whilst the smaller 'religious groups', as referred to in the Constitution, consisting of Armenians, Latins, Maronites and 'others' (such as Roma), constituted 3.2 per cent of the population. It is the third largest island of the Mediterranean; its geographical position, in the far eastern part of the Mediterranean Sea, historically adjoining Europe, Asia and Africa has been both a blessing and a curse. Invaders and occupiers for centuries sought to subordinate it for strategic reasons, followed by British colonial rule.

It became an independent Republic in 1960. In post-colonial years, there was inter-communal strife and constant foreign intervention of one kind or another, until 1974 when a coup by the Greek junta and EOKA B[2] was used as a pretext for the invasion by the Turkish army and the subsequent division of the island (Hitchens 1997; Attalides 1979). Turkey still occupies 34 per cent of the territory, whilst 200,000 remain displaced and 80,000 Turkish-Cypriots remain in the northern, occupied territories. Attempts to resolve the Cyprus problem have not been successful. Following the overwhelming rejection of the UN plan to resolve the problem by the Greek-Cypriots and the overwhelming endorsement on the 24 April 2004 by the Turkish-Cypriots, Cyprus has entered the EU with the Cyprus problem in a state of limbo. Cypriot policy makers still hope that the policy of accession to the EU will eventually act as a catalyst in the effort to find a settlement, but the

two sides are divided over about how to proceed (Hannay 2005; Palley 2005).[3]

To evaluate the question of nationality/citizenship, one is forced to view the ever-present 'Cyprus problem' in the historical and politico-social context of the island and the wider troubled region of the near Middle East. While the 'Cyprus problem' persists and the *de facto* divide continues, the politics of 'citizenship' has not been 'frozen' in time. Citizenship has played a central role in political discourse, both during and following the referendum on the UN plan in April 2004. The particular construction of the Cyprus Republic was such that the conflict for legitimacy was elevated to the primary struggle for control of the state. In this conflict the two communal leaderships – the Greek-Cypriots and the Turkish-Cypriots – sought to materialise their 'national aspirations': For Greek-Cypriots the aim for *Enosis* (union with Greece) and for the Turkish-Cypriots the goal of *Taksim* (partition) would continue post-independence. The very concept of citizenship was not only ethnically/communally defined by the Constitution, but it was also a sharply divisive issue between the Greeks and Turks, acquiring strong ethnic and nationalistic overtones (see Tornaritis 1982; Chrysostomides 2000; Trimikliniotis 2000, 2001).

10.1 History of nationality policy since 1945

10.1.1 The national subject under the colonial spell: 'Modernising' the millet system, divide and rule and the rise of irredentist nationalism

Following the opening of the Suez Canal in 1864, the UK persuaded the Ottomans to cede Cyprus to the UK.[4] The British colonialists took over from the Ottoman rulers by order of Council on 7 October 1878. They immediately embarked on a programme of 'modernisation' from above and from outside by introducing an administrative system superseding Ottoman law with English law. Britain formally annexed Cyprus in 1914, following Turkey's support for Germany in the First World War; in 1923, under the Treaty of Lausanne, Turkey formally relinquished all its claims to Cyprus and it became a Crown Colony in 1925.

In the historical setting prior to the modern era,[5] 'identity' was not based on 'ethnicity': The notion of 'citizenship' did not exist under Ottoman rule outside the *millet* system. This implied that the Ottomans basically recognised the religious leaders of the flock and were co-operating with them in the administration (Katsiaounis 1996; Kyrris 1980).[6] Cypriots became 'natives of the colony', but the essential characteristics of the Ottoman *millet* system, a system that was based on communal organisation and leadership along the lines of faith, were

more or less kept intact. Hence, the Muslim community and Christian-orthodox community *millets* were gradually 'modernised' by the British administrator. There was a transformation of the quasi-medieval community elites into 'ethno-communal' elites: on the one hand, the traditional religious leader of the Christian Orthodox flock, the archbishop, became the leader of the Greek community and, on the other, the old Ottoman administrators, who represented the fusion of the political and religious order of the sultanate-caliphate at local level, were transformed into the new political leadership of the Turkish community. The Cypriot 'natives of the colony' were thus gradually *ethnocised*. Nevertheless, the leaders of the autocephalous Greek-orthodox Church retained their '*ethnarchic* role' (i.e. political leadership of the flock), and the old Ottoman administrators were eventually transformed into the Kemalist elite, following the rise of Mustafa Kemal to power in the Turkish Republic (which succeeded the Ottoman empire).[7]

10.1.2 Moments of (in)dependence: Ethno-communal citizenship and the nationalising of legally divided subjects (1959-1963)

The establishment of the Cyprus Republic marks an important development in the history of Cyprus, as the island became an independent republic for the first time since antiquity, albeit in a limited way (see Attalides 1979; Faustmann 1999). The anti-colonial struggle had started in the 1930s.[8] The four-year armed campaign by the Greek-Cypriot EOKA (1955–59) for *Enosis* and the Turkish-Cypriot response for *Taksim* brought about a regime of 'supervised' independence by three foreign 'guarantor' nations (UK, Turkey and Greece). The Cyprus Constitution, adopted under the Zurich-London Accord of 1959, contains a rigorous bi-communalism, whereby the two 'communities', Greek-Cypriots, who made up 78 per cent of the population, and Turkish-Cypriots, who accounted for 18 per cent of the population, share power in a consociational system. Citizenship is strictly ethno-communally divided. There are also three other minority groups who have the constitutionally recognised status of 'religious groups': the Maronites, the Armenians and the Latins. In addition, there is a small Roma community, registered as part of the Turkish-Cypriot community.

10.1.3 The 'national' rift: Collision and division between Greek-Cypriots and Turkish-Cypriots (1963-1974)

In 1963, following a Greek-Cypriot proposal for amendment of the Constitution, the Turkish-Cypriot political leadership 'withdrew' from the Government. Since then, the administration of the Republic has been carried out by the Greek-Cypriots. Inter-communal strife ensued

until 1967. In 1964 the Supreme Court ruled that the functioning of the Government must continue on the basis of the 'law of necessity', or better the 'doctrine of necessity', in spite of the constitutional deficiencies created by the Turkish-Cypriot withdrawal from the administration.[9] The short life of the consociation did not manage to generate a strong enough inter-communal or trans-communal citizenship. This brief period of peaceful inter-communal political co-existence was tentative; we cannot therefore speak of a 'nationality policy' as such, above and beyond the politics of the Cyprus conflict and the separate national aspirations of Greek and Turkish Cypriots, who continued to work towards *Enosis* and *Taksim* respectively, even after independence. Although *de iure* the Republic continued to exist as a single international entity, in practice there were two *de facto* regimes in the enclaves, each group controlled, one for the Greek-Cypriots and one for the Turkish Cypriots – a situation aptly called 'the first partition' by one scholar (Droussiotis 2005). The fierce fighting between 1963 and 1967 was followed by efforts to reconciliation until 1974, but these efforts failed.

10.1.4 The de facto partition: 1974-2003 following the invasion and occupation

Since 1974 the northern part of Cyprus, some 35 per cent of its territory, has been under Turkish occupation and outside the control of the Cyprus Government. Some 100 Greek-Cypriots inhabit the northern territory, whilst only a few hundred Turkish-Cypriots continue to live in the Government–controlled south (ECRI 2001; Kyle 1997) However, since the end of May 2003 the regime in the occupied territories has allowed Turkish-Cypriots to visit the Republic-controlled south on the condition that they return before midnight and the Greek-Cypriots to visit the north, on the condition of passport inspection and with restrictions on their stay.

During this 30-year long period the *de facto* partition meant that in effect there were two separate 'stories' about nationality: the story of the Greek-Cypriots, who lived in the reduced territory of the internationally recognised Republic of Cyprus, and that of the Turkish-Cypriots, who lived under an unrecognised regime, the 'Turkish Republic of Northern Cyprus', which relied heavily on Turkey to maintain it. Turkish-Cypriots are entitled to citizenship/nationality of the Cyprus Republic and a few thousands obtained a passport. However, the vast majority did not have access to the authorities and was not allowed to cross over to the 'other side' by the occupying regime; up to April 2003 there were few opportunities for ordinary Greek-Cypriots and Turkish-Cypriots to meet; while Greek-Cypriots did not have access to the occu-

pied territories, Turkish-Cypriots were not allowed by the regime in the north to enter the area controlled by the Republic.

The period between 1974 and 2003 was characterised by the attempts of the break away regime to consolidate partitionism in Cyprus (Dodd 1993). In spite of the efforts to reach an agreement on a solution based on the 'High Level Agreements' of 1977 and 1979[10] the Turkish side continued its route towards separatism. The 'Turkish Republic of Northern Cyprus' (TRNC), a regime only recognised by Turkey, was declared.

The constitution of the TRNC provides for an ethno-religious-based nationality and citizenship to a large extent reproducing the provisions of the Cyprus Republic (Dodd 1993). However, TRNC nationals cannot make use of the nationality of an unrecognised state. Hence, many Turkish-Cypriots sought passports of Turkey and the Republic of Cyprus – particularly after accession to the EU. In the late 1990s the TRNC leadership attempted to criminalise the access to the passport of the Republic of Cyprus, but such efforts were subsequently abandoned as the numbers of Turkish-Cypriots seeking passports grew and there was a reversal of this policy once the Annan Plan (version 1) was first introduced in late 2002. In fact, many Turkish-Cypriot politicians now criticised the authorities of the Republic of Cyprus for failing to respond quickly enough to ensure the swift and full provisions of access to citizenship, passports and the public goods that are available to the nationals of the Republic of Cyprus.

During the post-1974 period the Republic of Cyprus attempted to reinforce its legitimacy claiming that Turkish-Cypriot citizens enjoy full and equal rights under the Republic's Constitution, such as general civil liberties and the rights provided by the European Court of Human Rights (ECHR) as well as other human rights, save for those provisions, that have resulted from (a) the 'abandoning' of the governmental posts in 1963–64 and (b) the consequences of the Turkish invasion. The 'doctrine of necessity' would apply to allow for the effective functioning of the state, whilst the relevant provisions of the Constitution would be temporarily suspended, pending a political settlement (for more on this see Chrysostomides 2000; Loizou 2001). However, Turkish-Cypriot citizens of the Republic had been denied their electoral rights since 1964, a matter that was found to be in violation of the European Convention on Human Rights,[11] save for the European Parliament elections in 2004. A new law was passed to at least partially remedy the situation before the Parliamentary elections in May 2006.

All Governments of the Republic of Cyprus have maintained that Turkish-Cypriots are entitled to full citizenship rights and the nationality of the Republic. The children of Cypriots who now reside in the occupied territories or abroad and were born after 1974 are entitled to na-

tionality (as with Greek-Cypriots and 'others'). The bureaucratic elements involved are due to the non-recognition of any documentation such as e.g. birth certificates from the TRNC.[12] The policy regarding the treatment of Turkish-Cypriots, who are Cyprus Republic nationals, is rather contradictory. This reflects the complexity of the Cyprus conflict and the constant conflict for legitimacy and recognition. Inevitably, 'the discourse of recognition' (Constantinou & Papadakis 2002) spilled-over into nationality politics, making a mess of the official policy of 'rapprochement'. Ultimately, the consequences of the situation resulted in failing to properly treat ordinary Turkish-Cypriots as 'strategic allies', in the context of independence from the Turkish-Cypriots' nationalistic leadership, who are perceived as 'mere pawns of Ankara'.

Even today, the Republic of Cyprus seems to be failing to address certain basic matters: Since Turkish is an *official language* of the Republic, allowing Turkish-Cypriots to communicate with Government Officials in their own language and making the laws, regulations and forms available in Turkish is a matter that could have been resolved, without much difficulty, and would protect the Republic from claims of discrimination and unconstitutionality. Moreover, the enjoyment of all rights, including the right to property (of those Turkish-Cypriots who fled their homes in 1963, 1967 and 1974), could have been handled with greater sensitivity and care, so that the Turkish-Cypriots, who are Cypriot citizens, would feel more welcome. At the same time one has to appreciate the context, particularly the massive displacement of 100,000 Greek-Cypriots from the north, many of whom are housed in Turkish-Cypriot properties.

10.1.5 New issues for nationality/citizenship-policies

In the 1990s and early 2000 a number of key issues opening up the issue of citizenship and nationality and requiring a declared and consistent policy emerged.

First, the arrival of migrant workers, who today make up 15 per cent of the total working population of the island, is a significant factor altering the ethnic make up of the population. Although the initial design was that they be 'temporary', they seem to be a permanent feature of Cypriot society (Matsis & Charalambous 1993; Trimikliniotis 1999; Trimikliniotis & Pantelides 2003; Trimikliniotis & Demetriou 2005).

Second, the arrival of Turkish-Cypriot Roma from the poorer (occupied) north in the south between 1999 and 2002 created a panic of being 'flooded' with 'gypsies'. In spite of the fact that we are dealing with a group of Cypriots, who moved to the south, the reaction of the authorities, the media and the public at large displayed a hostile attitude as if they were 'alien citizens' and unwanted. Studies indicate that

there is wide-spread resentment by the local Greek-Cypriot residents to the Turkish-speaking Roma arriving in their neighbourhood in Limassol and 'causing trouble'. There is evidence of discrimination against Roma in the Republic (Spyrou 2003; Trimikliniotis 2003), as they are generally viewed with suspicion by Greek-Cypriots, even by Turkish-Cypriots. The arrival of large numbers in the south was greeted with fear and suspicion,[13] particularly when the then Minister of Justice and Public Order alleged that they may well be 'Turkish spies',[14] whilst the Minister of the Interior assured Greek-Cypriots that the authorities 'shall take care to move them to an area that is far away from any place where any people are living', in response to the racially motivated fears of local Greek-Cypriot residents.[15] The socio-economic position of this generally destitute group renders them particularly vulnerable and dependent on welfare; the rights that derive from their citizenship status were thus mediated by the way various state authorities approached them (e.g. their lifestyle and harassment means that many do not have the necessary documents for claiming nationality such as birth certificates, identity cards etc.). Hence the failure to take into account the socioeconomic conditions of the Roma may result in the denial of the right to obtain a passport, as was found in cases investigated by the Cyprus Ombudsman.[16]

Third, the opening of the 'borders' which allowed many thousands of Turkish-Cypriots to visit the south were generally greeted by both Turkish-Cypriots and Roma residing in the south with relief and optimism.[17] However, there was a tense atmosphere generated in the run up and aftermath of the referendum on the Annan plan to reunite the island on the 24 of April 2004, the rejection of which by the Greek-Cypriots has given rise to nationalist sentiments in the south (see Hadjidemetriou 2006).

The fourth issue concerns the children of settlers who are married with Turkish-Cypriots. This is a highly controversial issue as it brings out the conflict over the nature of the Cyprus problem: the Turkish policy of colonising the north seems to be a major obstacle to a solution. There is a misguided conflation of the inter-nationally condemned policy by an aggressor country, with the fact that we are also dealing with some basic rights and humanitarian issues relating to the rights of children and individuals who marry, found families and continue with their lives. The granting of nationality rights to children and spouses of Turkish-Cypriots is a major political issue which has increasingly taken up the headlines and is discussed in the last section of this paper. Moreover, the condemnation of a war crime (colonisation) must not be conflated and confused with issues regarding the conditions of sojourn and living conditions of poor undocumented workers, who are primarily present so as to be exploited as cheap foreign labour.

Finally, the issue of gender has become an important issue as regards citizenship. The position of women in the processes of nation-building and nationalism raises the crucial question of a *gendered* Cypriot nationality, in what one scholar referred to as 'the one remaining bastion of male superiority in the present territorially divided state' (Anthias 1989: 150). This last 'bastion' was formally abolished with an amendment of the citizenship law in 1999 (No. 65/99), which introduced entitlement to citizenship for descendants of a Cypriot mother and a non-Cypriot father. The apparent reluctance of Cypriot policy-makers to amend the citizenship law, allegedly due to the concern about upsetting the state of affairs as it existed prior to 1974, cannot stand closer examination. After all, there have been seven amendments to the citizenship law prior to the amendment No. 65/99. It is apparent that the issue of gender equality had not been a particularly high political priority. Besides, in the patriarchal order of things, the role of Cypriot women as 'symbolic reproducers of the nation', particularly in the context of 'national liberation', as transmitters of 'the cultural stuff', required that potential association and reproduction of women with men outside the ethnic group be strictly controlled (Anthias 1989: 151).

10.1.6 The rise of trans-communal subjectivity: Challenging the ethno-communal boundaries

On 23 April 2003 there was a sudden decision by the authorities of the unrecognised TRNC, to partially lift the ban on freedom of movement. This has taken most by surprise, as the TRNC was abandoning the long-term vigorous opposition to Greek-Cypriot and Turkish-Cypriot contacts. The Turkish-Cypriot leadership allowed the possibility for a course of action the peace and rapprochement movement had been advocating for years; yet the move was certainly a surprise. The issue of 'passport control' between the check points became an issue of tension between Greek-Cypriot politicians and media and their Turkish-Cypriot counterparts. However, this bureaucratic measure which attempts to force on people the issue of 'recognition' has become part of the 'struggle for legitimacy and recognition' between the two political regimes, even though it is up to states and international organisations to recognise them.

Cross-boundary contacts and interaction opened up new possibilities for nationality policy, as the barbed-wire at last became penetrable. The fluidity of the situation makes any sober analysis rather risky. The current measures cannot be a substitute for a settlement; it is an awkward state of limbo, whereby the 'nationals' are divided along ethnic lines, even though all Turkish-Cypriots are entitled to citizenship in the Republic of Cyprus and many thousands have actually acquired citizen-

ship and passports. The three years of contact have created a pattern whereby a consistent number of persons cross over for work, leisure or other activities, estimated at about 20 per cent of the population.[18] The Third ECRI Report on Cyprus notes that a large number of Turkish-Cypriots has been issued with Cyprus passports (35,000), identity cards (60,000) and birth certificates (75,000), all of which are relevant figures as far as Cypriot citizenship is concerned (ECRI 2006: para. 78). Interestingly, according to the Demographic Survey Report (PIO 2006: 12), the population of Cyprus is estimated at 854,300 at the end of 2005 (compared to 837,300 at the end of the previous year), of whom 766,400 live in the territories under the control of the Republic. Turkish-Cypriots are said to be 87,000 persons, Greek-Cypriots 656,000 and foreign citizens 110,000. The same report estimates, on the basis of data from Turkish Cypriot sources, that about 58,000 Turkish Cypriots have emigrated since 1974. The number of 'illegal settlers from Turkey' is said to be 'most probably in the range of 150-160 thousand, which is estimated on information of significant[19]arrivals of Turks in the occupied area' (PIO 2006: 11). The study by Hatay (2005) shows significantly lower figures for settlers and higher numbers for Turkish-Cypriots.

10.2 Modes of acquisition and loss of citizenship

Following the annexation of Cyprus by the UK,[20] all Ottoman citizens who were born in or normally resided in Cyprus became British subjects.[21] From that day on the basic law regarding the granting of nationality in Cyprus was the British Nationality and Status of Aliens Act of 1914 and later the 1948 British Nationality Act. Post-independence art. 198 of the Constitution of the Cyprus Republic, and Annex D of the Treaty of Establishment, which was annexed to the Constitution, regulated the initial determination of the citizenry and the granting of citizenship/nationality. Annex D was implemented with independence, as required by art. 195, which provides for the general principle of international law that all residents of the former colonial territory would automatically become citizens of the Republic (Tornaritis 1982: 35; Loizou 2001: 441).[22] Art. 198.1(b) provided that 'any person born in Cyprus, on or after the date of the Constitution coming into force, shall become a citizen of the Republic if on that date his father has become a citizen of the Republic or would but for his death have become such a citizen under the provisions of Annex D of the Treaty of Establishment'.

This was the case until the enactment of the main Law on Citizenship (*περί Πολίτου Νόμος*) in 1967.[23] In 2002, a new Law on the Popu-

lation Data Archives No. 141(I)/2002 unified all provisions regarding the archiving of births and deaths, registration of residents, registration of constituent voters and the registration of citizens. It also introduced special provisions for the issuing of passports/travel documents and refugee identity cards to refugees. The new Law has so far been amended four times; however none of these changes affected the acquisition and loss of citizenship.[24] Together with Annex D this law currently regulates the acquisition and loss of Cypriot citizenship.

Cypriot policy-makers have followed the 'mixed' principle that combines ius soli and ius sanguinis (Tornaritis 1982: 38-39). However ius sanguinis is far more important in the regulations than ius soli, as Cypriot descent is the primary criterion for acquisition of citizenship as will be shown further down. Citizenship can be acquired automatically, via registration and naturalisation, but at the core of citizenship policy remains the notion that all persons of Cypriot descent are entitled to apply.

10.2.1 Acquisition by descent

A person born in Cyprus or abroad on or after 16 August 1960 automatically acquires Cypriot citizenship provided that at the time of his or her birth either of the parents was a citizen of the Republic or, in the case that the parent(s) were deceased at the time of his or her birth, either of them was entitled to acquire citizenship had he or she not been deceased. In cases of permanent residents abroad, this provision is not applicable unless the child's birth is registered in the prescribed manner.[25] Moreover, there are two exceptions to this general rule:

Firstly, the current law provides that children born to parents, one of whom unlawfully entered or resides in the Republic, do not automatically become citizens of Cyprus even if the other parent holds or would have been entitled to Cypriot citizenship. They can become citizens only following a decision of the Council of Ministers.[26] This amendment was apparently directed against Turkish nationals who settled in the north at a time when it was deemed politically 'necessary' or 'expedient' by policy-makers. However, it is obviously discriminatory against persons who have Turkish-Cypriot descent from one parent and is contrary to the Constitution and international obligations of the Republic.

Whether children of Turkish nationals should be granted Cypriot citizenship is a hot political issue and there are conflicting accounts of what categories of persons are affected. Media reports and right-wing politicians seem to concur that the issue at stake is the granting of citizenship to children who have one Cypriot parent and another who is a settler. However, ministry officials claim that persons falling under this category are invariably granted nationality, albeit in a manner that does not cause strong reactions.[27] In any case, making a child's nationality

conditional on the status of 'legality' or 'illegality' of the parents, or even worse of one of the two parents, not only violates the rights of children, as provided for in the UN Convention for the Rights of the Child, but also constitutes discrimination against the children who are victimised by the political situation and whom the Republic has an obligation to protect and respect. Due to the lack of transparency, it is not possible to assess the implementation of this law. The Third ECRI Report on Cyprus (2006: 8) notes that the Cyprus Ombudsman is currently investigating 'the conformity of this procedure with national and international standards'. Moreover, it notes that 'citizenship has been granted by this procedure to children whose Cypriot parent was a Turkish Cypriot and whose other parent was a citizen of Turkey'; however, it also states that 'decisions to grant nationality have resulted in intolerant and xenophobic attitudes in public debate'.

Secondly, sect. 109(3) of law 141(I)/2002 expressly prescribes that the above provisions for acquisition of citizenship do not come into force in cases where a person is born in Cyprus or abroad between 16 August 1960 and 11 June 1999, if his or her claim is based solely on his or her mother's citizenship, or the fact that she was entitled to citizenship of the Republic. However, the law stipulates that the person (or if the person is a minor, his or her father or mother) may submit an application to the Minister to be registered as a citizen of Cyprus. The Equality Body of Cyprus examined a complaint claiming discrimination on the grounds of sex/gender and nationality (and indirectly ethnic or racial origin) for descendants of women of Cypriot origin born between 16 August 1960 and 11 June 1999.[28] The Equality Body (the Ombudsman in its capacityas the Equality and Anti-discrimination Body) considered that the said provision was indeed discriminatory; however in a rather obscure decision, it refused to take any further action, due to the 'transitory nature of the provision, to counter the situation and the expectations that had formed up to 1999 on the basis of the regimen of acquiring citizenship'.[29] In any case these persons are entitled to obtain nationality via registration.

Another mode of acquisition (sect. 109(3)) is provided for persons born on or after 16 August 1960 and who are of Cypriot origin, i.e. descendants of a person who:

a. became a British citizen on the basis of the Cyprus (Annexation) Order-in-Council between 1914 and 1943; or
b. was born in Cyprus between 5 November 1914 and 16 August 1960 during which time his or her parents were ordinarily resident in Cyprus.

These persons are entitled to be registered as citizens provided that they are adults and of sound mind,[30] apply to the Minister[31] via the de-

signated means and provide an official confirmation of loyalty to the Republic, according to the format provided in the Second Table annexed to the law.[32]

10.2.2 Acquisition via registration

The following persons are entitled to be registered as Cypriot citizens upon application to the relevant Minister:

1. citizens of the United Kingdom and Colonies or a country of the Commonwealth,[33] who are of Cypriot descent,[34] provided that they:
   - ordinarily reside in Cyprus and/or resided for a continuous period of twelve months in Cyprus or a shorter period that the Minister may accept under special circumstances of any specific case, immediately before the date of the submission of their application, or are serving in the civil or public service;
   - are of good character;
   - intend to remain in the Republic, or depending on the circumstances, continue serving in the civil or public service (sub-sect. 110(1)); and
   - sign an official confirmation of loyalty to the Republic.
2. spouses or widowers/widows of persons who were citizens of the Republic, or spouses of persons who, had they not been deceased, would have become or would have the right to become citizens of the Republic, provided that they:
   - ordinarily reside in Cyprus and/or resided there for a period not less than three years;[35]
   - are of good character;
   - intend to remain in the Republic, or depending on the circumstances, continue serving in the civil or public service of the Republic or the educational service of the Republic or the Police Force of the Republic even after registration as citizens of the Republic (subsect. 110(2)); and
   - sign an official confirmation of loyalty to the Republic.
3. underage children of any citizen. In this case the application for citizenship has to be submitted by the parent or the guardian of the child.

A person who has renounced his or her citizenship of the Republic or has been deprived of it may not be registered as citizen of the Republic according to sect. 110, but may still be registered with the approval of the Minister (subsect. 110(4)). Persons who have been registered under this section become citizens of the Republic from the date of their registration (subsect. 110(5)).

For this provision again Cypriot descent is at the core of the right to acquire citizenship; spouses and under-age children who are resident in Cyprus can apply but their application is treated as dependent on the person of Cypriot origin. Moreover, there is an issue as to the way the rights of spouses and dependents are implemented. In fact, the practice of the immigration authorities to deport migrants who have been living in Cyprus for several years continued in spite of criticism from legal circles, human rights NGOs, from the Ombudsman and from the Commissioner for Legislation.[36] Within a time span of only a few weeks, the Court cancelled deportation orders on numerous instances.[37]

10.2.3 Acquisition via naturalisation (πολιτογράφηση)

A non-Cypriot who resides lawfully in the Republic may acquire citizenship via discretionary naturalisation if he or she fulfils all of the following conditions formulated in Table 3 annexed to the law (subsect. III):

a. he or she has lawfully resided in the Republic of Cyprus for the entire duration of twelve months immediately preceding the date of application;
b. over and above the twelve months referred to above, an additional continuous period of seven years in the period immediately prior to this, the applicant must have ordinarily resided in the Republic, or have been serving in the civil or public service of the Republic, or a bit of both, for periods amounting in total to no less than four years;
c. he or she is of good character; and
d. he or she intends to reside in the Republic.

The law also provides for acquisition of citizenship via naturalisation for students, visitors, self-employed persons, athletes and coaches, domestic workers, nurses and employees who reside in Cyprus with the sole aim of working there as well as spouses, children or other dependent persons. The prerequisites are that they must have ordinarily resided in the Republic for at least seven years and one year in the period immediately prior to the application their stay must be 'continuous'.[38] There are also exceptional situations where citizenship may be granted.[39]

One must bear in mind that all of the above are based on the discretion of the Council of Ministers and the Minister of the Interior. Moreover, given that there has been a policy that migrant worker permits cannot be extended beyond four years, the chance of acquiring citizenship for these groups is rather slim, unless they are married to a Cy-

priot or are granted leave to stay on other exceptional grounds. Cypriot authorities are very reluctant to grant citizenship to migrants. The Cyprus Government failed to transpose Directive 203/109/EC by 23 January 2006. The law was passed in February 2007; following criticism by NGOs and strong trade union opposition, the restrictive criteria originally foreseen for granting long-term migrants this special status, which included proficiency in Greek language, history and civilisation, were eventually dropped by the Parliament.

The naturalisation procedure has been criticised in the Second ECRI Report on Cyprus as the conditions apparently 'leave a wide margin of discretion to the Naturalisation Department as concerns decisions to grant citizenship'; moreover the same Report claims that 'there have been complaints that these decisions are sometimes discriminatory' (ECRI 2001: 9). The same practice was criticised by the Third ECRI Report (2006: 8), which also notes that 'decisions are still excessively discretional and restrictive' but that 'this is reflected not only in the use made of public order considerations, but also in the application of residency and language requirements'.

The 'Cyprus problem' is often quoted as a 'national priority' and is invoked by Greek-Cypriot authorities as the reason for their reluctance to open up citizenship rules so as not to alter the demography, particularly in the context of the Turkish policy of settlement in the occupied northern territories. However, this does not stand close examination as numerous amendments were made to facilitate various population policies that benefit what is perceived as 'the Greek-Cypriot interest'.

Several decisions by the Ombudsman have criticised a number of practices of the Population Data Archives regarding the process of granting citizenship. In particular, criticism is directed at the restrictive approach of the Director of the Population Data Archives as regards the acquisition of citizenship via registration and naturalisation; particularly critical are the decisions regarding the rejection of applications for citizenship based on marriage with Cypriots.[40] Moreover, the decisions also highlight considerable delay in processing the applications, prejudice based on the religion of the applicant and the exercising of administrative discretion in the interpretation of the regulation that excludes those who have entered the country illegally from acquiring citizenship.[41]

Overall, the implementation of the rules on naturalisation and with the wide margin of discretion provided for by the legislation, is an issue of concern regarding the fairness of these policies. There is little encouragement and information for persons entitled to be naturalised and there are bureaucratic obstructions making the application for naturalisation unattractive and cumbersome. One can explain this policy as a mixture of the colonial legacy and the keenness of the authorities

to hold on to their 'sovereignty' on the area of entry, sojourn, residence and citizenship, particularly as the protracted Cyprus conflict is often invoked as a pretext. The consequence is a restrictive regime that requires reform if it is to observe international law standards on the subject.

10.2.4 Renunciation and deprivation of citizenship

Any adult citizen of sound mind who is also a citizen of another state may renounce his or her citizenship by submitting a confirmation of renunciation, and the Minister will take the appropriate action for the registration of such confirmation (sect. 112).

Deprivation of citizenship is possible, only for citizens who acquired citizenship via registration or naturalisation, via an Order of the Council of Ministers (sect. 113) under the following circumstances:

a. When it is established that the registration or certification of citizenship was obtained by deceit, false pretences or concealment of a material fact (subsect. 113(2)).
b. If the Council of Ministers (subsect. 113(3)) is satisfied that:
   - through deeds or words this person has demonstrated a lack of loyalty to the laws of the Republic,[42] or
   - in a war fought by the Republic this person was illegally involved in an exchange with, or contacted the enemy or was in any way involved in any operation in which he knowingly assisted the enemy; or
   - within five years from naturalisation, he or she is convicted in any country for a crime carrying a sentence of one year or more.
c. If the Council of Ministers (subsect. 113(4)) is satisfied that the naturalised citizen has ordinarily resided in foreign countries for a continuous period of seven years.

The Council of Ministers cannot deprive a person of citizenship unless it is satisfied that it is not in the public interest that the said person remains a citizen of the Republic (sub-sect. 113(5)).

It is apparent that the above is contrary to art. 5 of the 1997 European Convention on Nationality, which Cyprus is yet to sign. In fact the Second and Third ECRI Reports on Cyprus recommend that Cyprus signs and ratifies this Convention. In any case, there is a complaint before the Equality and Anti-discrimination Body arguing that the above provision is contrary to the general prohibition of discrimination as laid down in art. 1 of Protocol 12 to the European Convention on Human Rights, which has been ratified by the Republic of Cyprus.

It is apparent that the decisive element in the granting of citizenship is Cypriot descent which is combined with birth to form the various ca-

tegories of rights provided. First, we can identify the following categories of persons of Cypriot descent:

1. Greek-Cypriots (and the three religious groups) born in the area controlled by the Republic of Cyprus: this category is not really an issue as citizenship is granted automatically.
2. In principle, the same ought to apply to Turkish-Cypriots born in Cyprus and to children who have at least one Cypriot parent. Turkish-Cypriots born in the occupied territories are automatically entitled to citizenship provided that they submit documents of their parents or grandparents issued by the Republic of Cyprus or the colonial authorities (TRNC documents are not recognised). However in practice art. 109 of the Law referred to above may result in a more discretionary regime for persons, one of whose parents is a Turkish national, even if they reside in the area under control of the Republic.
3. Persons of Cypriot origin born abroad, who have one Cypriot parent, are entitled to citizenship.
4. Persons of Cypriot origin born abroad between 16 August 1960 and 11 June 1999 and whose entitlement to Cypriot citizenship is solely based on their mother being Cypriot (or being entitled to Cypriot citizenship) are not entitled to citizenship. They may however apply to acquire citizenship via registration.
5. Children born in Cyprus to non-Cypriot migrants who legally entered and reside in Cyprus and have acquired or would have been entitled to acquire Cypriot citizenship via naturalisation are entitled to citizenship.

'Collateral' policies have been developed to use tax incentives and national service 'discount' for men (six months if under 26 and three months if over 26 instead of the 25 months of normal national service) to attract Greek-Cypriots from abroad to live in Cyprus.

Second, persons who are not of Cypriot origin can only acquire citizenship via naturalisation or registration. Therefore,

1. Non-Cypriots who legally entered and reside in Cyprus are not entitled to acquire Cypriot citizenship. But they can acquire citizenship by discretionary naturalisation, providing that they fulfil the required qualifications.
2. Children born in Cyprus to migrants who do not hold Cypriot citizenship or have a right to acquire it are not entitled to citizenship.

10.3 Current debates: The challenges of gender equality, migration, Europeanisation and reunification

10.3.1 Europeanisation

There is little doubt that the language of 'Europe' has become dominant in Cyprus as there is an orientation of political discourse and rhetoric towards Europe as a reference point.[43] The question is whether the process of *Europeanisation* has touched upon citizenship and nationality. One issue is the European citizenship itself, which affects the Cypriot divided citizenship.

European Citizenship has different aspects relevant to the potential for transformation of the citizenship/nationality issue in Cyprus. First it may provide an all encompassing identity that has the potential to overcome the ethnic divide between Greek-Cypriots and Turkish-Cypriots. It is argued that 'shared cultural experience' between Greek-Cypriots and Turkish-Cypriots – many times suppressed by nationalists in the past 'in order to focus on ethnic differences' – could become a new focus as there are common aspects of identity that can unite the two communities. According to this optimistic view, EU membership may emphasise the shared culture and help in finding a solution to the Cyprus problem (Botswain 1996: 94). Moreover, EU Citizenship may have a positive impact on human rights as the EU is expected to act as a guarantor of rights, such as the freedom of movement, settlement and ownership of land as provided in the Treaty of Rome and in line with the '*acquis communautaire*'. 'Citizenship' would underpin rights (communal/individual) thus assisting in creating a better climate of trust and security through the European Court of Justice, the European Court of Human Rights, the Council of Europe and the EU in general.[44] The European Conventions of the Council of Europe and other international instruments for 'minority rights' (Thornberry 1994), although technically outside the *acquis*, could arguably be a useful mechanism from which Turkish-Cypriots stand to gain;[45] however, Turkish-Cypriots are not a 'minority' but a 'community' in a consociation regime.

Moreover, matters are, in practice, far more complicated. Since the rejection of the UN plan in April 2004, the Europeanisation issues have not acted as a constructive force: the issue of EU accession has become yet another point of contestation between Greek-Cypriots and Turkish-Cypriots and the question of what kind of future 'European solution' there will be for the Cyprus problem, is becoming a dominant question. Inevitably, the questions of citizenship have been more or less put on hold as they are subordinate to the solution of the Cyprus problem. It is however highly likely to return in the near future as it remains one of the key issues in the Cyprus problem.

10.3.2 Reunification, partition and settlers: Nationality turns into a hot political issue

This is perhaps the greater challenge in the adventures of nationality in Cyprus. We have already referred to some of the issues as regards the period 1974-2004 and the challenges of migration. However, the central question arises out of the latest efforts to resolve the Cyprus problem, which resulted in the UN plan known as 'the Annan Plan'.

The issue of *who is entitled to nationality* is a hot political issue. In the northern territories the policy of Turkey is to 'replace' Turkish-Cypriot émigrés with Turkish settlers from the mainland or to distort the demographic balance of the Cyprus population by giving TRNC nationality to a large number of settlers.[46] In the area under the control of the Republic of Cyprus there are between 15,000 to 20,000 Pontian Greeks from the former Soviet Union, a few of whom were granted nationality, after staying for a period of seven years in Cyprus.[47]

The UN proposal for resolution contains specific provisions over the number of settlers who would be granted nationality. This has proved to be a particularly sore point for the Greek-Cypriots, who eventually rejected the plan. In fact, it is widely believed that one of the reasons for the Greek-Cypriots 'NO' to the Plan was due to the fear over the 'large numbers' of settlers who would eventually be allowed to remain.[48] Nevertheless, these provisions were seen by Greek-Cypriots as problematic in that they were alleged to allow for a 'perpetual inflow of settlers', in spite of the 5 per cent cap for any future migration from Turkey and Greece.[49]

In the 'main articles' of the Foundation Agreement of the Annan plan (art. 3) there is reference to 'a single Cypriot citizenship' regulated under federal law as well as the 'internal constituent state citizenship status' to be enjoyed by 'all Cypriot citizens'; moreover, the plan lays out a set of complicated rules about preserving the 'identity' (see appendix 1). The acquisition of citizenship is regulated by an agreed constitutional law which essentially deals with the issue of settlers from Turkey. Moreover the plan envisages a federal law on 'aliens and immigration' (Foundation Agreement, Attachment 5, Law 1) as well as a federal law for international protection and the implementation of the Geneva Convention Relating to the Status of Refugees and the 1967 Protocol on the Status of Refugees (Foundation Agreement, Attachment 5, Law 2) which, in the event of a settlement, would replace the current laws on immigration and refugees.

The plan was rejected by the Greek-Cypriots, but still remains on the negotiating table as *the basis for negotiating a future settlement*. In the absence of a solution, prior to the referendum and soon after, a number

of public debates erupted that centred on the question of nationality policy. The question of moving towards an *effective* right to nationality by providing passports for the Republic of Cyprus has been relevant particularly since accession. For the Greek-Cypriot post-referendum political arena, an issue that became a hot political issue was the question of granting the right of nationality to children of Turkish-Cypriots who married Turkish settlers. Right-wing media and television channels attacked the cabinet decision to grant nationality rights to 703 people one of whose parents was a Turkish settler.[50] The Government was forced to go on the defensive with the Minister of the Interior claiming that 'the legislation does not allow the granting of nationality, either to settlers or an alien from another country, who has entered the Republic illegally.'[51] The media as well as some members of the coalition partners[52] stated that because 'invasion, colonisation and changing the demographic character of a country' is a 'war crime', granting nationality to the offspring of colonisers is never justified. In fact there are allegations that there is an unofficial moratorium on the subject to freeze the applications of children of settlers married to Cypriots; a practice that has been criticised by human rights organisations.[53]

The current situation in Cyprus leaves the nationality policy regarding this category of persons in a state of limbo. In practice, pending a resolution of the problem, the Cyprus problem will always predominate and colour the nationality policy. The greatest challenge for Cypriot policy-makers is to adopt a nationality and citizenship policy that enhances the possibility for reunification and thus not consolidate and indirectly officially endorse partition.

10.4 Statistical developments since 1985: The 'politics of numbers' and the 'numbers game'

Apart from the statistics on residence and migration cited above, statistical figures are not easily available. Regarding the numbers of acquisitions of Cypriot nationality, the Civil Registry Migration Department and the Population Data Archives provide the following figures.[54]

The latest figures cover the period up to 2003, when the numbers of acquisitions of citizenship were computerised for the purpose of providing accurate data in the run up to the final negotiations of the Annan plan in 2004. The figures are indicative of the overall picture of acquisitions of citizenship in Cyprus; however some discrepancies in the way they are categorised are apparent. As far as categories 1 and 2 of Table 10.1 are concerned, the total number of acquisitions of Cypriot citizenship by naturalisation (2,295) is bigger than the number of persons naturalised after having completed a seven years stay in Cyprus

Table 10.1: Acquisitions of Cypriot citizenship by categories from 1985 until 31 December 2003

1	Persons who were naturalised after having completed a seven years stay in Cyprus	2,135
2	Total number of immigrants granted the citizenship of Cyprus by naturalisation	2,295
3	Foreign women married to Cypriot men	7,304
4	Foreign men married to Cypriot women (since 1999 when the Cyprus Law changed allowing men married to Cypriots to naturalise)	1,126
5	Total number of immigrants granted the citizenship of Cyprus by marriage	9,018
6	Estimated number of persons who acquired citizenship due to origin (expatriate Cypriots)	24,000 - 25,000
7	Turkish-Cypriots who acquired passports of the Republic of Cyprus since 1995	34,654

Sources: Civil Registry Migration Department and the Population Data Archives

(2,135) because the total number includes persons of Cypriot origin born in the Commonwealth prior to 1960 and who could only acquire Cypriot citizenship via naturalisation and others who renounced or were deprived of Cypriot citizenship to acquire another citizenship (e.g. German).

There is a discrepancy between the figures of categories 3, 4 and 5 of the Table as the total number of immigrants granted the citizenship of Cyprus by marriage is said to be 9,018, but when we add up the number of women who became nationals on grounds of marriage with Cypriot men and men who became nationals on grounds of marriage with Cypriot women, 7,304 and 1,126 respectively, we have a total of 8,510. Same sex marriage is not recognised in Cyprus, hence there is no explanation for this discrepancy.[55] Apparently, about half of the applications for naturalisation are from Greek Pontians residing in Cyprus; in 2004 there were about 400 approved and in 2005 about 500.[56]

As to persons who acquired citizenship based on their origin (expatriate Cypriots), this figure is an estimation based on the yearly applications for citizenship and the number of people granted citizenship, as there is no system of statistically recording this category, nor is there a computerised system.[57] It is estimated that the number of persons of Cypriot origin who have acquired citizenship is 24,000 to 25,000.[58] We are informed that after accession to the EU, the numbers of applications for citizenship more than doubled; for instance in 2005 there was a total of 4,000 applications pending, as there is a backlog of three years. [59]

It is noteworthy that the number of Turkish-Cypriots who acquired passports of the Republic of Cyprus since 1995 is 34,654, which is rele-

vant to the national specificity of Cyprus: nationality politics is an important dimension of the Cyprus problem.

10.5 Conclusions: Charting out the 'nationality policies'

The mechanics of acquisition, renunciation and deprivation of citizenship in the Republic of Cyprus revolves around Cypriot descent: persons of Cypriot origin are basically entitled to citizenship, whilst persons of non-Cypriot descent may be allowed to apply if they have resided in Cyprus for seven years to acquire citizenship via registration and naturalisation mechanisms. The reference of one of the very few Cypriot legal scholars dealing with the subject, Criton Tornaritis (1982: 39), that Cyprus has adopted a 'mixed principle combining ius soli and ius sanguinis' is not very helpful as Cypriot descent forms the core.

Although, we cannot locate a *declared* policy on citizenship/nationality as such in the Republic of Cyprus, what we do find instead is a practice that derives from the long-standing Cyprus conflict as well as international developments such as accession to the EU, economic development and migration, and to some extent changing attitudes, particularly as regards the question of gender. Other factors are also of relevance, such as population control, economic and welfare issues, social policy etc. As for the unrecognised Turkish Republic of Northern Cyprus, the issue of citizenship is totally subsumed in its own 'struggle for recognition' and it is a mirror image of the country it broke away from and yet can never escape from, the Republic of Cyprus.

In the context of Cyprus, nationality policy is inevitably subordinated to the unique historical conjunctures that perpetuate the island's protracted ethno-national conflict. In fact, the question of nationality goes to the heart of the existence of the country's very own 'nation-state dialectic' (see Trimikliniotis 2000, 2005): the challenge for a citizenship that manages to transcend the ethno-national conflict and the ethno-communal divide is perhaps the greatest challenge of all for this country's European aspirations for a re-united and peaceful future.

Chronological list of citizenship-related legislation in the Republic of Cyprus

Date	Document	Content	Source
1960	Constitution of the Republic of Cyprus:		www.kypros.org
	Annex D	Regulated initial determination of Cypriot citizenry after independence.	and www.legislationline.org
	Article 198	Regulated acquisition of citizenship.	
1967	Citizenship Law No. 43/1967	First important main law since independence providing for acquisition and deprivation of citizenship; basic criterion for acquisition is the person's descent on his or her father's side.	www.legislationline.org or www.coe.int
1972	Citizenship (Amendment) Law No. 1/1972	Extended the Minister's discretion regarding deprivation or renunciation of citizenship, if the Minister is of the opinion that the aim of such a declaration is to avoid military service or criminal prosecution	www.coe.int
1983	Citizenship (Amendment) Law No. 74/1983	Extended entitlement to citizenship to persons born in Cyprus prior to independence and whose father was of Cypriot descent; deleted subsect. 4 (d) which entitled 'persons born in Cyprus, who are not entitled by birth to acquire any other citizenship' to Cypriot citizenship.	www.coe.int
1996	Citizenship (Amendment) Laws No. 19(I)/1996	Extended the right to citizenship via registration to persons whose father was a British subject on the basis of the Annexation of Cyprus Orders of Council 1914-1943 or was born in Cyprus between 1914-1960.	
1996	Citizenship (Amendment) Law No. 58(I)/1996	Regulated the naturalisation procedure for persons of non-Cypriot descent residing and	

Date	Document	Content	Source
		working in Cyprus; conditions included: a total of nine years of residence out of the previous thirteen years, plus twelve months of continuous residence immediately prior to application.	
1996	Citizenship (Amendment) Law No. 70(I)/1996	Introduced facilitated naturalisation for reasons of public interest irrespective of residence rules.	
1997	Citizenship (Amendment) Law No. 50(I)/1997	Extended the right to apply for naturalisation to spouses, children or other dependent persons.	
1998	Citizenship (Amendment) Law No. 102(I)/1998	Deleted a section in the Second Table of the main law which empowered the Council of Ministers to use discretion for extending citizenship to persons of Cypriot descent.	
1998	Citizenship (Amendment) Law No. 105(I)/1998	Empowered the Minister to grant citizenship to spouses or widows/ widowers married to a Cypriot for at least two years.	
1999	Citizenship (Amendment) Law No. 65(I)/1999,	Extended the right to citizenship to any person of Cypriot descent (i.e. regardless of whether the father or the mother is Cypriot); made automatic acquisition of citizenship conditional on lawful entry and stay in the Republic (effectively this covers children one of whose parents is a Turkish settler).	
1999	Citizenship (Amendment) Law No. 128(I)/1999	Deleted the subsection empowering the Minister of the Interior to register as citizens the wives or widows of Cypriots provided that he is satisfied that they meet the required conditions.	

Date	Document	Content	Source
2001	Citizenship (Amendment) Law No. 168(I)/2001	Extended the period of marriage before spouses or widows/widowers can acquire citizenship by registration to at least three years.	
2002	Population Data Archives Law No. 141(I)/2002	Unified the Citizenship law with various other population issues such as archives, elections, registration, identity cards, passports and deaths into one law called Population Data Archives Law No. 141 (I)/2002.	
2004	Annan Plan: Foundation Agreement	Comprehensive restructuring of population issues including citizenship.	www.cyprus-un-plan.org

Notes

1 This occurred when the Government decided to grant citizenship to children of Turkish-Cypriots married to settlers in 2004 and 2005.

2 This was an illegal terrorist organisation launched allegedly to campaign for *Enosis*, i. e. union with Greece; it carried out bombings, murders of civilians and tried several times to assassinate President Makarios (Droussiotis 1994).

3 These are two contrasting approaches as regards the refenda on 24 July 2004 and they have implications on how to proceed if a solution is to be found.

4 In return for protection from the expansionist aims of Russia and an annual payment to Turkey of the sum of £12,000.

5 The 'modernisation' began before the British arrived in Cyprus; however it was intensified with the arrival of the British colonists at the end of the nineteenth and the beginning of the twentieth century (see Katsiounis 1996).

6 Such were the privileges granted to the Cypriot Greek Orthodox Church of Cyprus that the archbishop of Cyprus had direct recognition from the Sultan, as Ethnarchic leader, the 'millet bashi'.

7 The beginning of the twentieth century saw a conflict between the 'traditionalists' and the 'modernists' in the Turkish-Cypriot community; a battle that was decisively won by the modernists (Anagnostopoulou 2004).

8 In the 1940s, the Left had risen and competed with the church as to the leadership of the anti-colonial movement (Katsiaounis 2000). By the mid 1950s the church re-established its authority with EOKA. EOKA (*Ethniki Organosis Kyprion Agoniston* – National Organisation of Cypriot Fighters) was the Greek-Cypriot nationalist organisation which started a guerrilla campaign against British colonial rule aimed at self-determination and union with Greece (*Enosis*). The political leadership of EOKA was the church.

9 The case was Attorney General of the Republic v Mustafa Ibrahim and Others (1964), Cyprus Law Reports 195 (see also Nedjati 1970; Loizou 2001).
10 These agreements set the basis for a bi-communal and bi-zonal federal Republic following the invasion.
11 See Aziz v. Republic of Cyprus, ECHR, Application No. 69949/01. The full text of the judgement is available on the website of the European Court of Human Rights: www.echr.coe.int.
12 Hence the requirements to produce documents relating to birth of their Cypriot parents prior to 1974.
13 M. Hadjicosta, 'Fears over gypsy influx', *The Cyprus Weekly*, 13-19 April 2001. www.domresearchcenter.com.
14 J. Matthews, 'More gypsies crossing from north as Koshis warns about spies', *The Cyprus Mail*, 3 April 2001. www.domresearchcenter.com.
15 Apparently, the Minister of the Interior at the time, Mr. C. Christodoulou, now Governor of the Central Bank, said that he would not reveal the options discussed, because, 'in this country, when it comes to illegal immigrants or gypsies (moving into an area), everyone reacts'. See 'Our reaction to gypsies raises some awkward questions', *The Cyprus Mail*, 10 April 2001. www.domresearchcenter.com.
16 A Turkish-Cypriot woman filed a complaint because her application to be registered in the Republic's Citizens Record was rejected, on the basis that the birth of her mother had not been recorded in the Republic's archives. The complainant's mother had been born to Roma parents who failed to register her birth. It was also noted that the complainant was inconvenienced for several months due to ill advice by Government officers as to the procedure with regard to her registration. In addition, she complained about the rejection of her application to enrol her child in school because the child did not have a birth certificate from the Republic. Following the Commissioner's report on the matter, her child was finally enrolled in school.
17 They thought that they could no longer be singled out, targeted and harassed and there was a general feeling of optimism and rapprochement (Trimikliniotis 2003).
18 Research by the college of Tourism in April 2004 is indicative.
19 The term 'significant' is not explained in the Demographic Report of 2005.
20 The Cyprus (Annexation) Order-in-Council 1914, No. 1629 Statutory Rules and Orders Rev. (1948), vol. V, pp. 577-578. The order can also be found in *Cyprus*, (1920), Handbook No. 65 in the series, London: HMSO.
21 The Cyprus (Annexation) Order-in-Council 1917, No. 1374 S.R & O. and The Cyprus (Annexation) Order-in-Council 1914, No.1629 S.R & O. Rev. (1948), vol. V, pp. 578-582.
22 The provisions of Annex D are quite detailed governing different categories of persons and set out the basic structure of citizenship acquisition that was to follow also in the subsequent legislation on the subject (Tornaritis 1982: 33-41).
23 Law No. 43/67, as amended by Laws No. 1/72, 74/83, 19(I)/96, 58(I)/96, 70(I)/96, 50(I)/97, 102(I)/98, 105(I)/98, 65(I)/99, 128(I)/99, 168(I)/2001.
24 With laws No. 65(I)/2003, 76(I)/2003, 62(I)/2004 and 13(I)/2006.
25 Sects. 109(1) and (2) of Law No. 141(I)/2002 provide for the procedure and the appropriate forms. In cases where the applicant is under age, the application can be made by a parent.
26 Art. 109 Population Data Archives Law No. 141(I)/2002. This clause was first introduced by Law 65(I)/1999 that came into force on 11 June 1999.
27 This information was provided by the officer of the Population Data Archives of the Ministry of the Interior, Christiana Ketteni, on 15 December 2006. She stated that the standard practice of the Council of Ministers is to approve ten to fifteen applications each time there is a meeting of the Council of Ministers. Moreover, she

claimed that the people affected by the Council of Ministers' discretion are 'persons who have a Cypriot grandparent', but it remained unclear how this category could fall under art. 109.

28 It was alleged that discrimination is ongoing as the specific provision has resulted in the perpetual and future discrimination of this category of persons and their descendants since the principle of anti-discrimination is not only momentarily applied, but it is also forward looking. It is likely that this provision is in violation of the laws against discrimination and in the particular Law No.142(I)/2004, which transposes the antidiscrimination *acquis* and more importantly Protocol 12. See File No. 62/2005 of the Ombudsman's Report.

29 See File No. 62/2005 of the Ombudsman's Report.

30 The Greek text refers to '*πλήρης ικανότητα*', which literally translated means 'full ability', but it must be construed as meaning of 'sound mind', which was the old British formulation.

31 The relevant Minister is the Minister of the Interior.

32 A number of Tables are annexed to the Law. The First Table specifies the fees for issuance of passports; the Second Table includes the format of making a formal oath of allegiance to the Republic of Cyprus; the Third Table describes the conditions for naturalisation.

33 For subsect. 110, 'a country of the Commonwealth' includes every country excluding the Republic of Cyprus, on the date of entering into force of the Law, which is a member of the British Commonwealth and includes the Republic of Ireland and any other country that has been declared by an Order of the Council of Ministers as a Commonwealth Country for the purposes of this section.

34 For the purposes of subsect. 110, a person of Cypriot descent is defined as any person born in Cyprus and whose parents ordinarily resided in Cyprus at the time of his or her birth and includes every person that descends from these persons.

35 There are also specific provisions allowing the Minister to take measures after less than three years, but it is restricted to a minimum of two years. Also, for the purposes of this subsection 'ordinary residence' requires at least six months stay in Cyprus but in any case the total residence in Cyprus during the preceding three years prior to submission of the application must not be less than two years.

36 L. Leonidou , 'Authorities in the dock over treatment of immigrants', *The Cyprus Mail*, 15 January 2006.

37 Some indicative cases are the following: Lali Jashiashvili & Costas Hadjithoma v. The Ministry of the Interior and the Immigration Officer and Nebojsa Micovic v. The Republic of Cyprus through the Chief Immigration Officer, where the Supreme Court cancelled the deportation order against nationals living with their families and working in Cyprus since 1998. Another case involved the deportation order issued against the Pakistani national Mahmoud Adil when his asylum application was rejected. The deportation order was cancelled by the Court on 13 January 2006 based on the argument that the immigration authorities should have taken into account the fact that the appellant was married to a Polish (and therefore EU) citizen.

38 Introduced by amendment 58(I)/1996.

39 Introduced by amendment 70(I)/1996.

40 See relevant Ombudsman Reports, Files No. 2599/2005, 1958/2005, 2059/2005, 2368/2005, 2599/2005, 2780/2005.

41 See Ombudsman Report, File No. 727/2006.

42 The Greek term used is *νομιμοφροσύνη*.

43 One scholar termed this as 'the Europeanisation of political thinking' (Theophylactou 1995: 121), whilst another scholar interpreted this as the embracing of a 'Euro-centric ideology' by the Greek-Cypriot political elite (Argyrou 1996: 43).

44 It is sometimes assumed that possible 'weaknesses' in the settlement would gradually be somehow eliminated by the operation of the *acquis* and via access to the European Court of Justice and the European Court of Human Rights.

45 Minority rights for 'old' ethnic minorities have a significantly long tradition of protection under various treaties and authorities, even from the last century, though these were very restricted and at the whim of the great powers (Hannum 1996: 50-74). However art. 8 of the European Convention on Human Rights guarantees the right to private and family life (which has been interpreted as to include ethnic identity) and art. 9 guarantees 'the right to freedom of thought, conscience and religion'. More specifically, art. 27 of the Covenant on Civil and Political Rights refers to the rights of 'ethnic, religious or cultural minorities' to 'enjoy their own culture, to profess and practice their own religion, or use their own language', but these are set to be extended in other areas of freedom (Hannum 1996: 62-63). However, the European 'regime' on ethnic minority groups' protection, is problematic, as there is a distinct lack of enforcement mechanisms. These rights are heavily dependent on the nation-states for implementation; in any case the mechanisms for implementation are very weak if not irrelevant (Hannum 1996).

46 The veteran Turkish-Cypriot leader has often been quoted saying: 'A Turk leaves, another Turk comes'.

47 It appears that in the days of the collapse of the USSR, Greek-Cypriot policy-makers toyed with the idea of bringing to Cyprus Greek-Pontians rather than other migrants, due to their ethnic origin, in part to unofficially and quietly 'redress' the Turkish settler policy. Officially this was never admitted by right-wingers, and nationalists regularly referred to the Pontians as the alternative to 'an Afro-Asian' new minority (see Trimikliniotis 1999).

48 Obviously there was scare mongering and exaggeration by the Greek-Cypriot 'No campaign' about the figures and misinformation about the actual provisions. Palley (2005) has a chapter devoted to the subject and puts forward the case for the Greek-Cypriot side and the reasons for the Greek-Cypriot rejection as regards this issue.

49 The provisions were depicted by Greek-Cypriot anti-Annan critics as rewarding the policy of colonisation. However, this is a highly complex issue which requires a detailed analysis and a resolution that bears in mind the principles of justice and international law, as well as the humanitarian, the individual rights and the personal dimensions of the problem.

50 See G. Psyllides, 'Citizenship for settler children: Christou hits back', *Cyprus Mail*, 1 July 2004.

51 Minister Andreas Christou quoted in *Politis*, 7 June 2004. Also see the explanations of the legal regulations in section 2.1 of this chapter.

52 See *Cyprus Mail*, 1 July 2004. Palley (2005) deals with the legal and political issues of the settlers. Also see Hannay (2005).

53 In a press release dated 2 July 2004 the human rights NGO 'KISA' (Action for Equality, Support and Antiracism) expressed concern over the intolerant and racist attitudes developing around the issue of granting nationality to these children.

54 The figures were confirmed by the official of the Population Data Archives, Ministry of the Interior, Christiana Ketteni, who was asked to comment on the categories, figures and the underlying policies (15 December 2006).

55 Christiana Ketteni, who was asked to comment on the subject, could not provide any explanation for this (15 December 2006).

56 Christiana Ketteni, 15 December 2006

57 Christiana Ketteni, 15 December 2006.

58 Christiana Ketteni, 15 December 2006.

59 Christiana Ketteni, 15 December 2006.

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Chapter 11: Changing conceptions of citizenship in Turkey[1]

Zeynep Kadirbeyoglu

International migration and globalisation are factors which affect citizenship practices throughout the world. Increasing tolerance of multiple citizenship is, amongst other things, one of the results of these trends. This paper analyses the Citizenship Law in Turkey and argues that the most important changes in the law were made to accommodate the needs and wishes of the emigrants who – even up to the third generation – maintain vibrant ties with their home countries. The paper starts with the history of citizenship in Turkey. The following section outlines the amendments to the current law that regulates the acquisition and loss of citizenship. Subsequently the main forms of acquisition and loss of citizenship in Turkey are mapped out. A final section looks at the statistics of people acquiring and losing citizenship in Turkey.

11.1 History of Turkish citizenship law

11.1.1 From the Ottoman Empire to the founding of the Republic

An analysis of the history of Turkish citizenship should begin with the last period of the Ottoman Empire. Whereas prior to the 1869 Ottoman Citizenship Law (*Tabiyet-i Osmaniye Kanunu*) the subjects of the Ottoman Empire were divided along religious lines, the new law recognised all residents of the Ottoman territories as nationals of the Empire. It was based on the ius sanguinis principle, but allowed for non-Ottoman children born in the Ottoman territories to apply for citizenship in the Empire when they reached adulthood (İçduygu, Çolak & Soyarık 1999).

The first constitution of the Republic of Turkey (1924) granted Turkish nationality to all residents of the Republic irrespective of race or religion. The nationality law of the Republic was accepted in 1928 and, like its Ottoman predecessor, it was based on ius sanguinis but was complemented by a territorial understanding (İçduygu et al. 1999: 193). Aybay (2001: 45) argues that behind this decision was the desire to extend Turkish nationality to as many people as possible.[2]

İçduygu et al. (1999: 195), for example, argue that the notion of nationality was not defined solely in terms of ethnic background since the new Turkish nationality was 'open to non-Turkish Muslim groups [...] so long as they were willing to assimilate culturally and linguistically into the Turkish culture.' However, the analysis of groups that were given the right to settle in Turkey reveals that in practice the ability to enjoy full citizenship rights was related to ethnicity and religion (Kirişçi 2000: 1).

Specifically, in accordance with the Law on Settlement adopted in 1934[3], Turkey provided refugee and immigrant status to groups such as Muslim Bosnians, Albanians, Circassians, Tatars, etc., but declined to accept the settlement of groups such as Christian Orthodox Gagauz Turks and Shi'a Azeris. This policy effectively pre-screened those applying for citizenship and helped Sunnis settle in Turkey, in spite of official statements that only those of Turkish descent and culture would be so favoured (Kirişçi 2000).[4]

At the beginning of the twentieth century, Anatolia (Asia Minor) was a heterogeneous piece of land and was home to Rum (an Orthodox Christian Greek speaking group), Armenian, Kurdish, Jewish, Circassian, Laz and some other ethnic or religious groups. The spread of nationalism from Western Europe, its birthplace, to the Ottoman lands led to conflicts and to the disappearance of heterogeneity by way of the forced migration of Armenians during the First World War and the population exchange with Greece in 1923. During the War of Independence there was a clear reference to the multicultural nature of Anatolia. However, after the Sheikh Said uprising of 1925,[5] there was no longer any reference made to the 'peoples of Turkey' and thus all citizens of Turkey were expected to adopt Turkish identity (Ergil 2000: 125). This was a fabricated umbrella identity and was instituted through education and cultural policies but carried the name of one of the ethnic groups (the Turks). The group which was not willing to identify with this were the Kurds. Their struggle for autonomy, and sometimes secession, led to a battle between the PKK (Kurdistan Workers Party) and the army. At the height of this armed conflict, the President at the time, Suleyman Demirel, began a discussion on constitutional citizenship, which was intended to create a new common identity (İçduygu et al. 1999: 192). However, these discussions were short-lived and did not lead to any policy changes.

11.1.2 The impact of Turkish emigration to Western Europe

The current law that regulates the acquisition and loss of Turkish citizenship was put into effect in 1964.[6] This period also marks the beginning of the migration of guest-workers to Western Europe. As of 2005,

3.1 million Turkish citizens were living in Europe. Together with another 530,000 Turkish citizens living in other parts of the world, Turkey's emigrant population numbers an approximate 3.6 million (TCCSGB 2005).

In order to understand the economic significance of these emigrants for Turkey, we should first examine the initial goals of the process of labour force exportation to Western European countries. According to Sayarı (1986) the main goals included fighting the rising unemployment within Turkey and bolstering foreign exchange reserves in order to cover trade deficits. A secondary goal was to increase the skill level of workers who would, then, through remittances, be able to increase the level of investment in small and medium sized companies in the emigrants' home towns in Turkey (Sayarı 1986). The remittances were very important for Turkey. During the 1980s, 24 per cent of Turkey's imports were covered by the cash remittances and foreign exchange deposits of Turkish workers abroad (Kumcu 1989).

Germany was the main destination for guest-workers from Turkey. Turkish workers in Germany were encouraged to maintain their ties to Turkey and not to undergo 'Germanisation'[7] so that a constant flow of remittances could be guaranteed (Hunn 2001). Migrants were encouraged to remit their savings by means of special interest rates given to foreign currency saving accounts in Turkey and by certain privileges that were extended to emigrants who wished to import goods to Turkey (Sayarı 1986). Lately, in addition to remittances, direct investments by the second generation of Turkish emigrants, especially in the textiles industry, are increasing in importance (Faist 1998: 213). In addition to the economic investment, it is expected that Turkey will enjoy political benefits thanks to the migrants living in Western Europe. The lobbying potential of migrants living in European countries has been seen as an asset by Governments in Turkey.[8]

The realisation that Turkish workers are not temporary guests in their host countries has led to significant amendments to the citizenship law in Turkey. The motives of politicians and bureaucrats have been shaped by the demands of emigrants who faced problems related to military service, property ownership, and lack of political rights in their countries of immigration. A fairly organised and quasi-official process was used to communicate the needs of citizens living abroad to the Turkish officials.

The first amendment to the law took place in 1981 and legalised dual citizenship as long as the person acquiring a second nationality informed the Government (Keyman & İçduygu 2003); otherwise public authorities could withdraw his or her Turkish citizenship. Furthermore, the amendment initiated gender equality in the transfer of citi-

zenship to children; as a result women can also transfer their citizenship to their children through ius sanguinis.

The change in article 23/III of the Citizenship Law made it possible to release individuals from Turkish nationality if they wished to acquire another country's citizenship.[9] In the following years, many individuals who acquired a new citizenship reacquired their Turkish citizenship immediately after renouncing it. This was supported and encouraged by Turkish authorities and embassies. This method of circumventing German Citizenship Law – which prohibits dual citizenship – was legally possible only until 2000. The pre-2000 law maintained only that the person naturalising in Germany should not have another nationality. Yet, the new law made it possible for German officials to withdraw German citizenship from those who had taken up another citizenship following their naturalisation in Germany – hence those who had become dual citizens 'illegally'.[10] Based on this clause, the German Government declared that 48,000 people of Turkish origin who had naturalised in Germany since 2000 had lost their German nationality because they had become 'illegal dual citizens'.[11] These people were to have their German nationality withdrawn but could stay in Germany as permanent residents and reapply for naturalisation there provided they were willing to renounce their Turkish nationality.[12]

This did not have a significant impact on the public debate in Turkey but was strongly opposed by Turkish associations in Germany. These associations blamed the Turkish Government for not responding even though they had encouraged these 48,000 people to reacquire Turkish nationality. Even though the spokesperson for the German Ministry of the Interior claimed that they had compiled a list of those who were 'illegal' dual citizens from the records collected at borders and in government offices, there were claims that the Turkish authorities had submitted the list because of threats that their EU application process would not be supported.[13] There is evidence that the German regional authorities have been contacting those they suspect of holding two passports by mail and asking them whether they had acquired a second nationality. The results of these inquiries and bureaucratic confusion are yet to be seen.

The 1981 change was debated in a secret session by the National Security Council because it was initiated by the Ulusu Government, which was established following the military coup.[14] The amendment also facilitated the processes for stripping individuals of their citizenship.[15] The clause added to the law stated that those who are outside the borders of Turkey and who have been charged with endangering the internal or external security of the country will have their Turkish citizenship withdrawn unless they return within three months during regular periods and one month under emergency rule.[16]

Following the coup, 227 people had their Turkish citizenship withdrawn by means of this clause. However, in February 1992, the Parliament removed this clause after hearing arguments that the clause had permitted a violation of human rights.[17] Those who wished were able to reacquire their citizenship and to have their property reinstated or receive compensation for the value of confiscated property.[18]

Parliamentary debates on issues of citizenship and/or problems of Turkish citizens living abroad have not been restricted to amendments of the laws pertaining to citizenship. The events in Solingen, where five Turkish emigrants died as a result of an arson attack on their house, were debated in the Turkish Parliament on 8 June 1993. During these debates, the ANAP (centre right party) group spokesperson emphasised the importance of having the right to vote in Germany. He claimed that there are individuals who, despite having lived in Germany for the last 30 years, are still denied the right to vote. According to this argument, the right to vote is key to finding a long-term solution to the problems faced by Turkish persons residing in Germany. He claimed that under the current circumstances dual citizenship rights were of greater importance and the Turkish Government ought to propose that Germany put this issue on its agenda.[19]

The SHP (centre left party) group spokesperson claimed that in addition to the security aspects surrounding the Solingen events, political and legal issues should also be debated. He stated that obtaining equal rights in the political, economic and social spheres by obtaining German citizenship would not automatically prevent these attacks, but that extreme right parties would be more cautious about taking an anti-immigration stance as immigrants would form part of the electorate. His argument was that as long as Germany banned dual citizenship, the goal of the Turkish State should be to encourage emigrants to naturalise in Germany while maintaining their rights in Turkey.[20]

Following this logic, the amendment to the Turkish Citizenship Law in 1995 instituted what is known as the 'pink card' or the privileged non-citizen status.[21] In the statement giving reasons for this amendment, the Government stressed the fact that it was a result, among other factors, of the actions of countries that refused to accept multiple citizenship.

The proposal for this amendment was drafted by Rona Aybay (a prominent law professor specialising on citizenship issues) after he had attended meetings in Germany at the invitation of the *Türkische Gemeinde in Deutschland* (TGD).[22] Once accepted in 1995, the amendment created a privileged non-citizen status. This status permits holders of a pink card[23] to reside, to acquire property, to be eligible for inheritance, to operate businesses and to work in Turkey like any citizen of Turkey. Pink card holders were only denied the right to vote in

local and national elections.[24] Aybay states that the head of the TGD, Hakkı Keskin, a very old friend of his, invited him to find a solution to citizenship-related problems faced by Turkish people living in Germany.[25] He makes it quite clear that the main issue was how to devise a mechanism that would allow people living in Germany to acquire German citizenship without losing their rights in Turkey.[26] This was the motivation behind the creation of the special non-citizen status.[27]

During the parliamentary debates when this amendment was discussed, the spokesperson of the ANAP group argued that this law was what all factions of Turkish emigrants in Germany had been demanding for years. He claimed that these emigrants wanted to have political rights in Germany and that this amendment would ease their difficulties in acquiring German citizenship. He also mentioned that Turkish emigrants would become a key electoral group in Germany, with some influence in the tight electoral competition between the two major parties.[28] Another MP emphasised the benefits of this amendment by referring to the possibility of Turkish people becoming elected representatives in Germany and, therefore, politically strengthening the position of Turkey.[29]

Some MPs raised their concern as to whether this amendment would enable the 'Armenians, Jews, Rum, etc.'[30] (who had renounced their Turkish citizenship in order to acquire another citizenship) to come back to Turkey and reclaim property that had been confiscated when they changed their citizenship. This is telling in that it demonstrates that the tolerance for dual citizenship and special rights for those who had renounced their citizenship was intended to apply exclusively to Turkish emigrants who had left the country under specific conditions; the amendment was never intended to include the minorities who left Turkey before 1981, and explicitly stated that the privileged non-citizen status would apply only to those who had acquired Turkish citizenship by birth and who had relinquished it by being granted permission by the Council of Ministers.[31] This way of renouncing Turkish citizenship was made possible only after the amendments to the citizenship law in 1981.

Despite good intentions, the special non-citizen status was criticised by groups who were dissatisfied with its implementation. The TGD organised a summit in July 2000 and produced a declaration pertaining to the problems and expectations of the Turkish citizens living in Germany. The declaration stated that there were many problems in the practical use of the pink card in Turkey as the bureaucracy was not informed about it. Therefore, people who had renounced their Turkish citizenship were facing problems in their interactions with the bureaucracy in Turkey.

During the same summit there was a call for Turkey to stop releasing its citizens and to make it impossible for Turkish citizens to renounce their citizenship through a new legislation. This would enable Turkish citizens to enjoy dual citizenship through an exception in the new German Law which states that in cases where the country of origin does not permit its citizens to relinquish their original citizenship, Germany might allow dual citizenship. This instance shows how the demands of immigrant organisations have changed depending on the situation in Germany.

11.1.3 Policies towards historic Turkish groups abroad

Emigrants were not the only group that influenced the amendments to the citizenship law in Turkey. The disintegration of the USSR and the increasing numbers of arranged marriages in Turkey alerted authorities and the amendment in 2003 requires spouses to wait for three years before spousal transfer of nationality is possible.[32] The second amendment that same year made it possible for citizens of Northern Cyprus to easily acquire Turkish citizenship.[33] In 2003, a total of 2,403 Cypriots acquired Turkish citizenship.[34] The latest amendment was passed in 2004 and concerned a minor issue relating to the pink card.

As can be seen from the amendments that were outlined above, apart from the one attempting to prevent arranged marriages, there is no debate about immigrants in Turkey. The focus has been on emigrants from Turkey who live in Western Europe. Politicians in Turkey feel little need to respond to immigrant issues because these are not yet politicised, which is a common feature of countries that have only recently begun receiving economic immigrants.

Prior to the 1980s, immigrants accepted to Turkey have been predominantly from among peoples considered to be 'of Turkish descent and culture' and they were settled using the Law on Settlement.[35] The Law on Settlement allowed for two types of migration to Turkey: those who were settled by the state and those who settled themselves (Doğanay no date). According to Doğanay this law was considered insufficient during the last two decades and it was amended to accommodate those forced to migrate to Turkey from Bulgaria in 1989. Many of the Bulgarian Turks who arrived with the first wave of migration in 1989 were granted Turkish nationality. When these migrants could reacquire their Bulgarian nationality and passports in 2000 (hence become dual citizens), Turkish politicians encouraged them to vote in the elections in Bulgaria in order to strengthen the political party representing ethnic Turks and play a positive role in establishing cooperation between two countries on the way to EU membership. Some Bulgarian Turks, who had not been able to naturalise in Turkey, were sent back to Bulgaria

towards the end of the 1990s.[36] Special laws were enacted in order to regulate the settlement of other groups known to have ethnic Turkish origin such as Afghan immigrants and Ahiska Turks who migrated from Russia.[37]

There are not many organised immigrant groups in Turkey able to place significant pressure on the Government. Two of the few immigrant groups that made it to the media, for instance, were the Network of Foreign Spouses and Muslim immigrants such as Bulgarian Turks. The Network of Foreign Spouses referred to ideals of fairness and demanded more rights for individuals who are foreigners in Turkey.[38] The pragmatic nature of the debates on citizenship and the reactive policy-style hinders the politicisation of, and reciprocation of tolerance towards, immigrants in Turkey.[39] In other words, if values that underlie the promotion of dual citizenship for Turkish emigrants were brought into the public sphere, they could lead to demands of reciprocity for immigrants in Turkey.

11.2 Modes of acquisition and loss of Turkish citizenship

The law currently regulating the acquisition and loss of Turkish citizenship was put into effect in 1964[40] and was amended as described in the previous section. There are three broad principles through which Turkish citizenship can be acquired or lost: change of status can be brought about ex lege, by a decision of the authorities and through option.

11.2.1 Ex lege acquisition of citizenship

The acquisition of citizenship for children of Turkish mothers or fathers is automatic whether the child is born in Turkey or abroad. This rule is clearly based on ius sanguinis. Children of non-Turkish citizens born in Turkey become Turkish citizens automatically if they cannot acquire the citizenship of their parents (the ius soli exception). Marriage with Turkish citizens does not automatically transfer citizenship. There is a waiting period of three years after which the spouse can acquire Turkish citizenship by option. However, those who lose their original citizenship due to marriage automatically become Turkish citizens. Turkish citizenship is extended to children of women who marry a Turkish citizen, if the child's father is dead, unknown or stateless or if the mother has custody over the child.

11.2.2 Acquisition of nationality through the decision of authorities

There are three types of acquisition within this category. The first is the regular mechanism through which naturalisation takes place and is regulated by art. 6 of the Law. The conditions for application are the following. The person should:

a. be an adult (eighteen years or older)
b. have five years of residence in Turkey
c. have decided to settle in Turkey
d. have good moral conduct
e. not have a threatening illness
f. speak sufficient Turkish
g. have a job or revenue to support himself or herself and dependents.

The second mechanism, exceptional acquisition, can apply to the following categories of persons without enforcing requirements b) and c): the adult children of those who have lost Turkish citizenship, those who are married to a Turkish citizen and their adult children, those who are of Turkish descent, their spouse and their adult children, those who are residents of Turkey with the intention of marrying a Turkish citizen and those who have or will serve Turkey as industrialists, scientists or artists (achievement-based acquisition of nationality).

The third path, which is reacquisition, applies to all those who have renounced their Turkish citizenship in the past for various reasons. In all three types of acquisition the procedure for naturalisation is lengthy and goes through the Ministry of Internal Affairs and the Prime Minister. The decision to grant citizenship is given by the Council of Ministers.

11.2.3 Acquisition through option

Children who lost their Turkish citizenship when their parents renounced their citizenship can choose to reacquire their citizenship upon reaching adulthood. As mentioned above, foreign spouses also can acquire their partner's Turkish nationality by option three years after the marriage. There is no residency requirement for the naturalisation of spouses as long as they remain married.

11.2.4 Loss of citizenship ex lege

This is valid only for women who wish, upon marriage, to automatically receive the foreign citizenship of their husband. Although Turkish nationality law calls this a loss by law, it is in fact an optional loss since

it occurs only if there is a declaration by the individual to the relevant authorities.

11.2.5 Loss through a decision of the authorities

The *first* method through which Turkish citizenship can be lost is to renounce it (i.e. to ask for a permission to exit). This path of loss is mostly used by citizens who wish to naturalise in countries that do not accept dual citizenship. The release from citizenship may be granted by the Ministry of the Interior by declaration if certain conditions are satisfied. The procedures do not permit renunciation if it results in statelessness.

The *second* method is the nullification of Turkish citizenship for people who have acquired it in the last five years and who have submitted false information in their application. The *third* method is the withdrawal of Turkish citizenship from individuals because of specific actions, such as working against the interests of Turkey in a foreign country despite warnings, acquiring another citizenship without informing the Turkish authorities, working for a foreign state which is at war with Turkey, not responding to a call to military service for three months and residing abroad for more than seven years and not showing any interest in maintaining ties with Turkey.

11.2.6 Loss through option

This mode of loss applies to children who acquired Turkish citizenship when their mothers naturalised in Turkey. They can renounce their Turkish citizenship within a year of reaching adulthood as long as this does not result in statelessness. Furthermore, women who acquired Turkish citizenship upon marriage can renounce it upon divorce.

11.3 Statistics

In this section I will undertake a preliminary analysis of the statistics on the acquisition and loss of citizenship. The statistics on acquisitions through the law are shown in Table 11.1. The data for the years 1997-1999 are missing yet it is possible to conclude that following the disintegration of the Soviet Bloc there has been a steady rise in the number of women who acquired Turkish citizenship through spousal transfer. Consequently, the change in 2003 of the law on spousal transfer of citizenship led to a sharp decline in numbers in the following year.

Table 11.1: Automatic acquisition of Turkish citizenship, 1990-2004

Year	*Acquisition through mother or father*	*Through adoption*	*Ius soli principle*	*Through marriage*	*Total*
1990	187	–	5	491	683
1991	118	–	7	1,067	1,192
1992	339	–	7	1,057	1,403
1993	344	–	9	1,380	1,733
1994	434	–	25	1,590	2,049
1995	290	–	25	1,148	1,463
1996	104	–	3	933	1,040
2000	259	1	41	5,384	5,685
2001	230	n/a	57	7,630	7,917
2002	231	n/a	52	8,416	8,699
2003	659	n/a	n/a	6,912	7,571
2004	885	n/a	n/a	528	1,413

Source: General Directorate of Population and Citizenship, Ankara

The statistics on acquisition through the decision of authorities are shown in Table 11.2 below.

Table 11.2: Acquisition of Turkish citizenship through a decision of the authorities, 1990-2004

Year	*Regular Acquisition*	*Exceptional acquisition*	*Reacquisition*	*Total*
1990	119	785	N/A	904
1991	1,172	475	N/A	1,647
1992	888	452	N/A	1,340
1993	634	439	N/A	1,073
1994	949	467	N/A	1,416
1995	1,229	710	N/A	1,939
1996	955	3,927	N/A	4,882
2000	633	736	13,004	14,373
2001	1,161	3,917	28,317	33,395
2002	745	14,564	8,330	23,639
2003	1,236	12,938	3,040	17,214
2004	1,276	6,434	1,999	9,709

Source: General Directorate of Population and Citizenship, Ankara

The statistics provided by the General Directorate of Population and Citizenship reveal that in the category of regular acquisition by a decision of the authorities, 60 per cent were Greek *heimatloss*[41] in 1991 whereas 9 per cent were Iranian citizens. Between 2000 and 2003 approximately 50 per cent of this same category were Bulgarians. Between 1990 and 1993 the majority of those who acquired Turkish citizenship on exceptional grounds had previously held Iraqi citizenship (31 per

cent for 1990, 32 for 1991, 23 for 1992 and 34 per cent for 1993). The largest group within this category were Bulgarians (they constituted 82 per cent of the total exceptional acquisition in 2002 and 84 per cent in 2003).

Table 11.3 shows the statistics on the numbers of withdrawals of Turkish citizenship (the third method explained in section 2.5 above). It should be noted that within the group of people who lost their Turkish nationality between 2000 and 2005 there is no case of loss resulting from failure to reside in the country during the preceding seven years. The majority of people whose citizenship was withdrawn were those who did not return to the country to fulfil their military service despite being called up by the authorities – for instance, out of 1,920 people who lost their Turkish citizenship in 2000, 1,868 were in this category. This figure is 2,689 out of 2,735 in 2001, 2,193 out of 2,316 in 2002, 5,077 out of 5,489 in 2003, 1,975 out of 2,367 and 178 out of 464 in 2005.

The number of Turkish citizens whose nationality was withdrawn because they did not inform the Turkish authorities that they were acquiring another citizenship increased between 2000 and 2005. The numbers are 42 for 2000, 24 for 2001, 81 for 2002, 272 for 2003, 246 for 2004 and 242 for 2005. The application of this rule is random at best since there are many people in this situation who have maintained their Turkish citizenship for many years. The increase in the numbers in this category cannot really be explained with the available data or information. The only possibility is the sensitisation of the authorities as a result of events that led to the withdrawal of the Turkish citizenship of a Member of Parliament who had sworn allegiance to the US by becoming citizen there prior to the elections in Turkey.

Table 11.3: Loss of Turkish citizenship by a decision of the authorities, 2000-2004

Year	*Withdrawal of citizenship*
2000	1,920
2001	2,735
2002	2,316
2003	5,489
2004	2,367
2005	464

Source: General Directorate of Population and Citizenship, Ankara

Statistics on loss of citizenship are also published for those who have subsequently reacquired their Turkish citizenship (see Table 11.4 below). Up until 2002 individuals who renounced their Turkish citizenship could easily reacquire their original citizenship following naturalisation in Germany. However, the realisation that a new law can lead to

nullification of their German citizenship if it is discovered that they have reacquired their original citizenship has led to a sharp drop in the number of individuals who reacquired Turkish citizenship thereafter.

Table 11.4: Previous loss of citizenship by those who have reacquired Turkish citizenship according to three main categories, 2000-2004

Reason for Loss	*2000*	*2001*	*2002*	*2003*	*2004*
Permission to exit	12,635	27,576	8,027	2,874	1,828
Inappropriate conduct	29	71	58	85	121
Loss by option	340	670	245	81	50
Total	13.004	28.317	8.330	3.040	1.999

Source: General Directorate of Population and Citizenship, Ankara

11.4 Conclusions

The findings suggest that maintaining vibrant economic links with citizens living abroad (especially those living in Germany) has been a constant concern for Turkish Governments despite the severe neglect for the social problems faced by these groups. The research results show that there are a number of organisations and actors, especially within Germany, that pressure the policy-makers in Turkey to accommodate their need to integrate into their host country without having to relinquish their rights to land ownership and inheritance in Turkey. The main amendments to the Law on Citizenship in Turkey were made as a result of the realisation that the guest-workers were in fact permanent residents in their host countries. The most interesting finding is the interaction between the Turkish and German Governments and the attempts of the former to formulate legislation based on the developments in Germany.

Turkish Governments have demonstrated a willingness to address the practical problems faced by the Turkish people living abroad. In many cases the intentions were sincere even though official actions to solve the problems were either slow or non-existent. However, this inability did not stem from apathy towards the real problems or the aim of strategically using the issue for political gain. It was rather the result of a general lack of political incentives, as those persons living abroad who still possess the right to vote in Turkey cannot practically do so unless they return to Turkey during elections.[42]

As outlined in the sections above, there is a very pragmatic debate concerning citizenship in Turkey. The principles of citizenship acquisition and loss are seldom discussed and immigrants have not been a real concern of policy-makers, either because they are not mobilised or because the issue is not politicised. Foreigners, like Bulgarian Turks or

those coming from Central Asia, are not considered part of these immigrant groups since, in most cases, they acquired Turkish citizenship based on their cultural, linguistic and religious background.

There are many cases of immigrants who find ways of working in Turkey and leaving the country every three months (this applies to many Bulgarian Turks who do not have citizenship). Many foreigners who do not need a visa to enter Turkey are employed in Turkey illegally. Even some Western European citizens who reside in Turkey without a work permit resort to this method. Very few of these immigrant groups have organised and begun trying to pressure the Turkish state. *Brücke*, a German-Turkish bridging organisation, and the Association of Foreign Wives are exceptions. Hence, if in the next five to ten years immigration issues become more important and appear in the public sphere we might begin to see more pressure applied to Turkey.[43]

Chronological list of citizenship-related legislation in Turkey

Date	Document	Content	Source
1869	Ottoman Nationality Regulation	Recognised all residents of the Ottoman territories as nationals of the Empire.	
1924	Constitution of the Republic of Turkey	Granted Turkish nationality to all residents of the Republic irrespective of race or religion.	
1928	Law No. 1312/1928: Turkish Citizenship Act	Based on ius sanguinis but complemented by a territorial understanding.	
1934	Law No. 2510/1934 on Settlement	Provided refugee and immigrant status to groups such as Muslim Bosnians, Albanians, Circassians, Tatars, etc.	www.ifc.org
1961	Constitution of the Republic of Turkey	The Constitution was renewed following the coup. It stated that children born to Turkish mothers or fathers were Turkish and that it was not possible to revoke the citizenship of individuals unless they had been disloyal to the country. Children born to Turkish mothers and foreign fathers were to acquire citizenship based on the citizenship law.	www.legislationline.org or www.hri.org
1964	Law No. 403/1964: Turkish Citizenship Act	The citizenship law was formulated based on the	www.coe.int

Date	Document	Content	Source
		principles outlined in Article 54 of the 1961 Constitution.	
1981	Law No. 2383/1981 amending Law No. 403/1964	Dual citizenship became legal provided that the person acquiring a second nationality informed the Government.	www.legislationline.org
1982	Constitution of the Republic of Turkey (as amended in 1987, 1995, 2001)	Kept the same principles regarding citizenship as the 1961 Constitution.	www.tbmm.gov.tr
1989	Law No. 3540/1989 amending Law No. 403/1964	Amended two articles of the law regulating the process of acquisition of Turkish citizenship and specifically regarding the procedure for conditional naturalisation. If persons who are supposed to fulfil a requirement fail to do so within two years following naturalisation, they are likely to lose their citizenship.	
1992	Law No. 3808/1992 amending Law No. 2383/1981	Removed the clause added to the law, stating that those who are outside the borders of Turkey and who have been charged with endangering the internal or external security of the country will be stripped of Turkish citizenship unless they return within three months during regular periods and one month under emergency rule.	
1995	Law No. 4112/1995 amending Law No. 403/1964	Instituted the privileged non-citizen status (also known as the pink card).	www.legislationline.org
1999	Law No. 4465/1999	Ratified an agreement between the Turkish Republic and the Republic of Northern Cyprus on facilitating the naturalisation of Cypriots in Turkey.	
2003	Law No. 4866/2003 amending Law No. 403/1964	Introduced a waiting period of three years for acquisition of citizenship	

Date	Document	Content	Source
		by spouses.	
2003	Law No. 4862/2003 amending Law No. 403/1964	Introduced facilitated acquisition of Turkish citizenship for citizens of Northern Cyprus.	
2004	Law No. 5203 amending Law No. 403/1964	Clarified the rights linked to the privileged non-citizen status: 1) retention of attained social insurance rights; 2) loss of voting rights and the ability to be elected and employed in the civil service.	

Notes

1 The author wishes to thank Esra Derle, Selçuk Uğuz and Özlem Atikcan for their help in facilitating access to resources.

2 It should not be forgotten that this was taking place in the context of sharp declines in the size of the population of Anatolia as a result of the First World War.

3 Law No. 2510/1934 on Settlement.

4 Sunni Islam, which is considered to be the mainstream, differs from Shi'a Islam.

5 The Sheikh Said uprising was one of the first important rebellions against the state. The Sheikh gathered support on the basis of tribal and religious allegiance, and hence the insurgency was not exclusively one of Kurdish nationalism (Robins 1993: 660).

6 Law No. 403/1964 on Turkish Citizenship.

7 Turkish authorities were counselling emigrants not to lose their socio-cultural identity and to maintain ties with Turkey. Germanisation, according to this perspective, would distance emigrants from Turkey.

8 Parliamentary Minutes, 7 June 1995, Period 19, Legislative Year 4, Volume 88, 89-109.

9 Law No. 2383/1981 on Turkish Citizenship.

10 German Citizenship Law, art. 25. The only exceptions to the strict ban on dual citizenship are those who have a second passport from a European Union country and those who have applied for permission.

11 Y. Özdemir, 'Ankara-Berlin Kıskacında: Çifte Vatandaşlık Gerçeği' [Caught between Ankara and Berlin: the Truth about Dual Citizenship], *Evrensel* [daily newspaper], 26 January 2005. This move came at a critical juncture in German politics whereby expelling these citizens impacted on the number of voters. According to one estimate, approximately 20,000 out of 600,000 German-Turkish voters were disenfranchised in the general elections of 2005 (*Deutsche Welle*, 17 September 2005, www.dw-world.de).

12 *Radikal* [daily newspaper], 11 February 2005.

13 Y. Özdemir, 'Ankara-Berlin Kıskacında: Çifte Vatandaşlık Gerçeği' [Caught between Ankara and Berlin: the Truth about Dual Citizenship], *Evrensel* [daily newspaper], 26 January 2005.

14 After the military coup Bülend Ulusu was given the responsibility of forming a technocratic Government (www.tbmm.gov.tr). Until the Advisory Council was formed the National Security Council (NSC) sanctioned all decisions of the Government. The members of the NSC were the four generals and one admiral who staged the coup. The minutes of the 13 February 1981 meeting of the National Security Council (38th Meeting, Volume 1, 1981) indicate that the members of the Council voted in favour of debating all amendments related to Turkish Citizenship Law in a secret session. The debate lasted for approximately two hours.
15 *Cumhuriyet*, 15 February 1981.
16 Law No. 2383/1981 amending Law No. 403/1964 on Turkish Citizenship.
17 Law No. 3808/1992 amending Law No. 2383/1981. In between these two amendments there is Law No. 3540/1989, which amended two articles of the law regulating the process of acquisition of Turkish citizenship.
18 Parliamentary Minutes, 27 May 1992, Period 19, Legislative Year 1, Volume 12, 53-55.
19 Parliamentary Minutes, 8 June 1993, Period 19, Legislative Year 2, Volume 36, 189-192.
20 Ibid., 203-206.
21 Law No. 4112/1995 amending Law No. 403/1964 on Turkish Citizenship.
22 The Turkish Immigrants Union (later to become Almanya Türk Toplumu – TGD) was established in 1985. It is an umbrella association with around 200 members, including the German Turkish Academics Association Union, German Turkish Students Association Union and various occupational organisations. TGD promotes the interests of the Turkish population of Germany vis-à-vis both the German and the Turkish Governments, attempts to influence public opinion, and to secure rights through legislative changes (www.tgd.de/).
23 The pink card is the document given to the people who have the special non-citizen status.
24 Law No. 4112/1995 amending Law No. 403/1964 on Turkish Citizenship.
25 Interview with Rona Aybay, 20 August 2002.
26 People who have acquired Turkish citizenship by means other than birth do not have the right to a pink card.
27 Parliamentary Minutes, 8 June 1993, Period 19, Legislative Year 2, Volume 36, 203-206.
28 Parliamentary Minutes, 7 June 1995, Period 19, Legislative Year 4, Volume 88, 89-90.
29 Ibid., 96.
30 Speaker of the RP (*Refah Partisi* – religious right wing party) group (Parliamentary Minutes, 7 June 1995, Period 19, Legislative Year 4, Volume 88, 103). Many other MPs voiced their concern on this issue as well.
31 Art. 29 of Law No. 4112/1995 amending Law No. 403/1964 on Turkish Citizenship. This provision is against the principle of non-discrimination between citizens by birth and by naturalisation incorporated in the 1997 European Convention on Nationality. Turkey has not signed this Convention.
32 Law No. 4866/2003 amending Law No. 403/1964 on Turkish Citizenship.
33 Law No. 4862/2003 amending Law No. 403/1964 on Turkish Citizenship. The citizens of the Turkish Republic of Northern Cyprus (TRNC) have always enjoyed preferential treatment in Turkey. Law No. 4465/1999 further strengthened this by attempting to provide TRNC citizens with all the social and economic rights of Turkish citizens except voting rights. Since TRNC is not a recognised state (except by Turkey) TRNC citizens could travel abroad only with a Turkish passport (except for the UK and USA which recognised the TRNC passport as an identity card and issued visas for TRNC citizens on a blank page and not the passport itself). TRNC citizens

could obtain a Turkish passport without becoming a citizen of Turkey. They also had the right to be dual citizens and Law No. 4465/1999 states that there shall be a fast-track process for the citizenship applications of those TRNC citizens who want to acquire the citizenship of the Republic of Turkey. Dual citizenship has also existed for those Turkish citizens who settled in the TRNC. Those with five years residence are granted TRNC citizenship provided that they fulfil certain conditions (Law No. 25/1993 TRNC Nationality Law). Yet the TRNC Council of Ministers can also grant TRNC citizenship on a discretionary basis. The TRNC Government was accused of such discretionary behaviour prior to the 2003 elections in order to influence the election results (Hylland 2003).

34 Data used in this paper related to citizenship in Turkey were provided by the General Directorate of Population and Citizenship, Ankara.

35 Law No. 2510/1934 on Settlement. The Council of Ministers was in charge of determining which groups were considered to be of Turkish descent. Groups such as Pomacks, Roma and Albanians have also been settled in Turkey by being assigned this status (Şahin no date).

36 'Sofya'da bir Kurultay', *Milliyet* [daily newspaper], 16 July 2000; 'Soydaşa Green Card', *Milliyet*, 4 March 1997; 'Menderes: "Çifte Vatandaşlık Kolaylaştırılsın"', *Milliyet*, 24 February 1997.

37 Law No. 2641/1982 and Law No. 3835/1992 respectively.

38 The majority of the women in this association were Germans and they did not want to naturalise in Turkey because they would lose their German citizenship.

39 For a classification of policy styles see Richardson (1982).

40 Law No. 403/1964 on Turkish Citizenship.

41 The term Greek *Heimatloss* is used to refer to those Greek citizens of Western Thrace (of Turkish origin) who were expelled from Greek citizenship.

42 Voting during general elections in Turkey has been a widely debated issue. Legally it is possible for Turkish people living abroad to vote during elections from the country where they reside. However, due to practical problems, such as setting up ballot boxes in other countries and the insecurity of mail ballots, this has never been practised. Fuat Boztepe, who is the head of the department in charge of workers abroad at the Ministry of Labour, stated that the greatest problem occurs in countries where there are a significant number of workers and the host country does not allow ballot boxes to be put in public spaces. Given the number of people who could vote, setting up ballot boxes only in the consulates and embassies does not provide a solution (interview with Fuat Boztepe, Head of the Department of External Relations and Services for Workers Abroad at the Turkish Ministry of Labour and Social Security, 14 May 2003).

43 Ahmet İçduygu, Bilkent University, Department of Political Science, confirmed this possibility (interview: 15 May 2003).

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