Acquisition and Loss of Nationality
Policies and Trends in 15 European States

Volume 2: Country Analyses
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Acquisition and Loss of Nationality

Policies and Trends in 15 European States

Volume 2: Country Analyses

edited by
Rainer Bauböck
Eva Ershøll
Kees Groenendijk
Harald Waldrauch

IMISCOE Research

Amsterdam University Press
This publication is based on research funded by the Community’s Sixth Framework Programme and cofunded by the Austrian Federal Ministry for Education, Science and Culture.

Cover illustration: © The Scotsman Publications Ltd. / Donald Macleod Muhammed Maqsood and children during first citizenship ceremony (photo The Scotsman 20 January 2005)

Cover design: Studio Jan de Boer BNO, Amsterdam
Lay-out: Fito Prepublishing, Almere

 ISBN-13 978 90 5356 949 8 (both volumes)
 ISBN-10 90 5356 949 9

 ISBN-13 978 90 5356 920 7 (volume 1)
 ISBN-10 90 5356 920 0

 ISBN-13 978 90 5356 921 4 (volume 2)
 ISBN-10 90 5356 921 9

NUR 741 / 763

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From summer 2004 to the end of 2005 an international network of researchers analysed the rules and practices regulating the acquisition and loss of nationality in the fifteen ‘old’ EU Member States. The results of this EU-funded project with the acronym NATAC (The acquisition of nationality in EU Member States: rules, practices and quantitative developments) are published in two volumes. The first volume consists of comparative reports on specific modes of acquiring and losing nationality, on nationality statistics, on European trends in nationality legislation and on statuses of ‘denizenship’ and ‘quasi-citizenship’. It also contains an account of the comparative methodology that has been developed specifically for this project, a chapter on international and European law and an assessment of the implementation of nationality law from the perspective of NGOs counselling immigrants who apply for naturalisation. The second volume consists of chapters that provide in-depth analyses of each country in our sample. In addition to these two volumes, we make available statistical data, the answers to our questionnaires and more extensive versions of several comparative chapters on the internet at www.imiscoe.org/natac. We hope that this material will be widely used for further research.

Whereas Volume 1 focuses on cross-country comparison, the country chapters collected in Volume 2 analyse the internal dynamics of nationality policy in each Member State and inform about the national background of legislative trends.

The authors of these country reports were involved in the development of the common conceptual framework and analytical instruments of the project. Their chapters are structured according to a common grid in order to facilitate comparative analyses. In this way, the present volume is the result of a stronger collaborative effort than previous collections of case studies on nationality law and policies.

The introductory part in each chapter gives an overview of the development of nationality law and the administrative practice of granting and withdrawing nationality, with particular emphasis on the period since 1985 and the political motives and objectives behind the amendments.
The chapters then describe the main historical changes in nationality law followed by a detailed analysis of the specific modes of, and conditions for, acquiring and losing nationality under current regulations. Here the focus is on the rules for acquisition of nationality by birth and after birth (naturalisation), on specific regulations for spouses and children, and on the modes of facilitated naturalisation for various other groups. In this context, the authors also discuss rules governing the status of quasi-citizens, expatriates or co-nationals abroad. Other features covered in this part are the framework for political decision-making, the application of nationality law in practice and political motives behind reforms.

A further section deals with statistical developments and provides figures and trends. Statistics on naturalisation are collected in different ways and there is a strong variation with regard to detail and availability of data. As pointed out in Chapter 6 of Volume 1, comparison across countries is therefore very difficult. Since each state’s citizenship policies also determine who will enjoy the privileges of Union citizenship in all other Member States, the lack of common standards for data-gathering and statistical evaluation is not only a concern for academic research, but also for policymaking at both national and European levels.

Finally, each chapter discusses the institutional arrangements for lawmaking and implementation of nationality legislation. Here the authors analyse the impact of the framework for decision-making on nationality policies and the role of the bureaucracy in implementation, e.g. with regard to the duration of the naturalisation process or regional differences in the application.

In current academic debates on citizenship some authors assume that the legal status of nationality has lost in importance due to the development of human rights, a denizenship status and European Union citizenship. Contrary to this hypothesis, our study has found a growing density of legal regulation and an escalation of political debates on nationality policies since the 1990s. Naturalisation and loss of nationality are still at the core of sovereignty of the nation state, with only limited influence of international conventions and EU citizenship. Although these developments have diminished gaps in the legal position and rights of citizens and aliens, absolute security of residence, the right to vote and an unrestricted right to family reunification and free movement in the European Union are still a privilege of nationals of the Member States. Immigrants falling under the remit of the EU directive on the status of long-term, resident third country nationals have to be granted equal treatment with nationals with regard to access to the labour market and working conditions, education and training, health
and access to goods, services and housing, but access to this status may be made conditional on the fulfilment of integration conditions. Third country nationals with less than five years of residence in one Member State, or those who per se cannot accede the status due to lack of legal residence (e.g., rejected asylum seekers who cannot be deported), still face unequal treatment and insecurity of residence.

Nationality legislation, which has been a ‘dormant’ political field characterised by a high degree of stability and few major changes in legislation up to the 1990s, is now a strongly contested policy field in many Member States. Although the development of nationality legislation over time has not been the main focus of the project, the country reports clearly document a general growth of politicisation of nationality and a resulting volatility of policies that has also increased the impact of party composition of governments on the direction of nationality reforms. Brubaker’s (1992) argument that nationality regimes are inherently stable since they reflect specific paths of nation-building and constructions of national identity seems to have become less salient in contemporary Europe. Our study provides the evidence but does not fully explore the reasons for this development. This will be a task for further in-depth comparison that correlates our data with independent variables such as changes in government.

One obvious reason for the return of nationality regulations into politics is the growing importance of the linkage between immigration and naturalisation, which has profoundly affected traditional conceptions of national membership and belonging. Meanwhile, all fifteen states in our sample are countries of immigration, and naturalisation is seen as an element in a process of immigrants’ integration. The connection made between integration and naturalisation, however, differs considerably among the Member States, ranging from an understanding of naturalisation as a tool for integration to perceiving the acquisition of nationality as a reward for successful integration. Conditions for naturalisation for the first, second or third generation, the acceptance of multiple nationality or the specific combination of ius soli and ius sanguinis vary widely, and there are no clear trends across all Member States. Clusters of ‘liberal’ and ‘restrictive’ Member States can be identified with regard to different dimensions of nationality legislation, but these clusters do not form a coherent and stable picture. For example, in Germany a major liberal reform in 1999 was followed a few years later by new restrictions through naturalisation tests introduced in 2006. Mediterranean countries with similar traditions of emigration and recent experiences of large inflows have lately diverged strongly in their nationality laws. Portugal adopted a very liberal reform in February 2006, while Italy, Spain and especially Greece have, for the time being, retained restrictive legislations. In 2000, Belgium introduced
much easier access to its nationality, while its northern neighbour has since moved in the opposite direction.

Although there is neither direct harmonisation of nationality laws in Europe, nor a clear overall trend towards convergence, Member States’ legislations are to a certain degree influenced by other countries’ policies. First, there are clear hints that legislation has often been influenced by concepts and practices developed in other EU Member States. This is particularly visible in the field of language requirements and naturalisation tests, which have become a common feature of naturalisation in Europe in recent years. Apart from such borrowing across state borders within the European Union, there is also a much more direct impact of sending states on regulations and reforms in the receiving states. The best example for this is the interplay between Turkish and German policies. In 1995, Turkey introduced the so-called ‘pink card’ granting former Turkish nationals rights to inherit and own property, to return to and to take up residence in Turkey as well as other citizenship rights apart from the franchise. The ‘pink card’ was introduced as an incentive for Turkish immigrants to formally renounce their Turkish nationality in order to naturalise in Germany. When it turned out that many immigrants were nevertheless unwilling to pay this price for naturalisation, Turkey simplified the reacquisition of Turkish nationality after naturalisation in another country. However, the 1999 reform in Germany removed a clause that had precluded the withdrawal of German nationality from residents in the country. Shortly before the provincial and federal elections of 2005, German authorities started to enforce the ban on dual nationality by declaring null and void the German nationality of up to 50,000 persons who had reacquired Turkish nationality since 2000.

As this example shows, nationality is re-entering the political arena not only in response to immigration but also to emigration. Many Member States privilege emigrants or people they deem to be ‘co-ethnics’ with regard to access to or retention of nationality or grant nationality iure sanguinis to their descendants. In order to maintain ties with their emigrants, some Member States allow them to naturalise abroad without losing their nationality of origin, while in others acquisition of a new nationality leads to automatic loss of the previous one. Special citizenship rights of expatriates include today, in twelve of the states in our sample, voting rights in home country elections and in a few cases (France, Italy and Portugal) even reserved seats in parliament to represent the external electorate.

These developments, which are described in Volume 1, also raise important questions with regard to the normative foundations of democracy and nationality: Over how many generations shall emigrants be allowed to transfer their nationality of origin to their descendants, even
if these do not have genuine ties with that country, and how does this privilege compare with the reluctance of many Member States to grant voting rights to third country nationals who have resided in their territory for many years? Are we witnessing a deterritorialisation of nationality and a re-emergence of a quasi-feudal model of political representation? Will the inclusive dynamics of citizenship be once again superseded by its function as a boundarymarker for national communities?

Holding the nationality of one Member State does not only guarantee a set of core rights in that state, but also entails access to Union Citizenship, which includes freedom of movement and residence and the right to vote in local elections and European Parliament elections in other Member States. Despite this European dimension of Member State nationality, there is still no common understanding of the concept at the European level, and the regulation of access to nationality remains the exclusive prerogative of the Member States. The conditions for access to the common status of Union Citizenship therefore vary considerably across states.

This lack of common standards is not only questionable from a normative point of view, but might even impede access to Union Citizenship by mobile individuals: residence periods for naturalisation vary greatly from Member State to Member State and are not added up. Third country nationals residing consecutively in several Member States, without reaching the required period of residence in any one country, might stay for years in the European Union without having opportunities of access to Union Citizenship. Although nationality law clearly lies in the competence of the Member States, these problems show the need for future action. The institutions of the Union have recognised the need to exchange information and to promote good practices in this area, but there has been no follow-up action.¹²

Empirical research within the project has centred on several main questions. One is the relation between ius sanguinis and ius soli. As the chapters in this volume show, there has never been a clear-cut distinction between ius soli and ius sanguinis regimes; most countries have made use of both approaches during the last sixty years, and the often-proclaimed trend towards strengthening ius soli elements (e.g. Hansen & Weil 2001; Joppke 2003) has not yet reached several of the more peripheral European countries.

The continued dominance of ius sanguinis is also reflected in specific regulations for expatriates and their descendants, which can be found in nearly all countries and which grant these groups facilitated naturalisation, double nationality or iure sanguinis transmission of nationality abroad across several generations. In five states (Germany, Greece, Ireland, Portugal and Spain), preferential regulations even give access to citizenship to co-ethnic diasporas or descendants of former ci-
tizens who reside abroad. These tendencies have been interpreted as indicating a new trend towards the ‘re-ethnicisation’ of citizenship in liberal democracies that counterbalances a more general trend towards de-ethnicisation in the admission of immigrants (Joppke 2003, 2004). Such mixed models of collective belonging challenge the widespread idea that nationality in Europe has become a formal legal expression of a universalistic conception of citizenship.

A further focus of the chapters concerns the toleration of multiple nationality. In contrast to the assumption of a clear trend towards acceptance of multiple nationality, our reports show a more wavering attitude, with phases of growing and of declining acceptance, depending on changes in government and political climate. As with the aforementioned topics, the country studies can be seen as a caveat against overgeneralisation and hasty conclusions about general tendencies. Politics does also matter in nationality policies, and apparently clearly established lines of development may be turned around under changing circumstances.

The legislative process and the implementation of nationality legislation by public administrations show an even broader variety. Whereas in some countries policy-making in this field is restricted to the political parties, in others churches, social partners or non-governmental organisations are also involved. Although our research did not include a systematic comparison of the policy making process, the chapters in the present volume show the decisive influence of national patterns and a strong impact of public administrations on policy outcomes. In this respect, the reports draw specific attention to widespread regional differences in the implementation of nationality laws not only within federal states, which creates the same normative problem of unequal conditions of access to a common status that we have already discussed with regard to European Union citizenship.

It is astonishing to see how little effort the analysed states put into encouraging their potential citizens to naturalise and informing them on how to do so. This lack of promotion of new citizens contrasts sharply with the prevailing attitude in traditional immigration countries such as the USA, Canada or Australia, which provide targeted information to applicants for naturalisation and generally regard high naturalisation rates as indicators of successful integration.

The ongoing debate about convergence or divergence in nationality law cannot easily be settled. Convergence has partly been initiated by international conventions, particularly the Council of Europe’s Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality of 1963 and the European Convention on Nationality of 1997. The European Union has not played an important role in the development of the nationality policies of its
Member States yet, and the decisions of the European Court of Justice covering the topic (see Chapter 1 in Volume 1) have hardly had a significant impact on policy developments in the Member States. Nationality policies still seem to be an exclusive matter of the nation-state, constrained to a certain extent only by international, but not yet by European Union law.

Nationality law reform has become a conflict-loaded issue in many countries. As the reports in this volume show, the development of nationality legislation reflects societal conflicts about national self-understanding as well as about immigrant integration and thus cannot be understood without knowledge of the historic context. The thick history of nationality policies in the Member States and the growing dissent between political actors over their future also casts doubts on extrapolations of short term trends into the future. In the area of citizenship, the nation-state still defines the most important aspects for policy development. A thorough understanding of citizenship policies in Europe thus requires both comparative analyses across countries and historically grounded thick descriptions of national traditions and contemporary politics. We believe therefore that the chapters collected in this volume provide not merely background material that complements the core results of our project presented in Volume 1. They are also important starting points for future projects that attempt to compare the trajectories of citizenship in particular European states.

Notes


Bibliography

1 Austria

Dilek Çınar and Harald Waldrauch

1.1 Introduction

The acquisition and loss of Austrian nationality are regulated by the Federal Law on Austrian Nationality 1985,¹ which was last amended in 2005; the new provisions came into force in March 2006.² Because the period of investigation of this book ends with mid 2005, this chapter primarily covers the legal status after the amendment to the nationality law in 1998, which came into force in January 1999.³ Nevertheless, the conclusions contain a summary of the current legal status as of March 2006. The Nationality Law of 1985 is based on five principles (Mussger, Fessler, Szymanski & Keller 2001: 26ff). First, according to the principle of ius sanguinis, a child born in wedlock acquires Austrian nationality by birth if one of the parents is an Austrian national. According to the same principle, children born abroad to Austrian expatriates acquire Austrian nationality by birth. Second, the Nationality Law of 1985 contains certain provisions to avoid statelessness. The third principle characteristic of the Austrian Nationality Law is the ban on multiple nationality. The fourth principle of individual autonomy provides for equality between men and women. Finally, the law contains several provisions to ensure that members of a family share the same nationality. Although these principles have been characteristic of the Austrian nationality legislation for many decades, the priority attached to the different principles has changed over time. In particular, the principle that members of a family should have a common nationality has become less important, because of legislative reforms to achieve gender equality with respect to the acquisition and loss of Austrian nationality (Mussger et al. 2001: 28).

Since the introduction of legal provisions concerning Austrian nationality in the nineteenth century, the principle of ius sanguinis has been predominant in Austrian nationality legislation. Although Austria has been transformed from an emigration country to an immigration country over the last decades, Austrian Nationality Law still does not contain provisions based on the principle of ius soli. Thus, birth in Austria does neither entail automatic acquisition of the Austrian na-
nationality nor does it constitute a legal entitlement to naturalisation for the children of immigrants during minority or upon reaching majority.

The main modes of acquisition after birth are discretionary naturalisation and legal entitlement to be granted Austrian nationality. Naturalisation by discretion requires at least ten years of residence, the absence of criminal convictions, sufficient income, sufficient knowledge of German (since 1999), an affirmative attitude toward the Republic and renunciation of the original nationality. The requirement of ten years of residence may be reduced to four or six years for ‘special reasons’. This applies to recognised refugees, minor children and EEA-nationals, who may acquire Austrian nationality after four years of residence; persons born in Austria, persons who can prove their ‘sustainable integration’, persons who are former nationals and persons recognised for special achievements may be naturalised after six years of residence. Different groups of foreign nationals who enjoy legal entitlement to the acquisition of Austrian nationality include, among others, (1) spouses and children of Austrian nationals, (2) spouses and children of applicants for naturalisation who will be granted Austrian nationality (extension of naturalisation), (3) long-term residents, i.e., persons who have been resident in Austria for fifteen years and can prove their sustainable integration and (4) persons who have been resident in Austria for 30 years or (5) stateless persons. 4

According to art. 11 (1) of the Constitution, nationality legislation is a federal matter, whereas the execution of the law is a matter of the nine federal provinces. The government of the respective federal province is the highest executive authority. As there are no official guidelines concerning the implementation of legal provisions, the authorities have a wide margin of interpretation in discretionary naturalisation, and decisions on matters of nationality are frequently subject to judicial review by the Administrative Courts. The administration of nationality legislation by the federal provinces was a major source of anomalies in the past, especially with respect to naturalisations after at least four years and less than ten years of residence for ‘special reasons’. The law did not lay down the special reasons justifying the reduction of the residence requirement of ten years until the reform of 1998. The province of Vienna made use of this clause from the late 1980s until the mid-1990s in order to facilitate the naturalisation of immigrants and of their family members. At the same time, profound changes in the legal framework regulating the entry, residence and employment of foreign nationals made the option of naturalisation for many immigrants increasingly attractive. While during the 1980s between 8,000 and 10,000 persons were naturalised annually, in the following years the number of naturalisations increased steadily.