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# EUDO CITIZENSHIP OBSERVATORY

## *COUNTRY REPORT: POLAND*

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Revised and updated June 2013



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European University Institute, Florence  
Robert Schuman Centre for Advanced Studies  
EUDO Citizenship Observatory

***Report on Poland***

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*Revised and updated June 2013*

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## Poland

*Agata Górny & Dorota Pudzianowska*

### 1 Introduction

Until recently, Polish citizenship operated under a statute adopted in 1962.<sup>1</sup> The law was adjusted to new social and political realities on an *ad hoc* basis. Whilst repeated proposals for a new law on citizenship were made after the 1989 democratic transition, it was not until 2009 that a new statute was adopted.<sup>2</sup> The 2009 Act on Polish Citizenship came into force in 2012. During the previous years, the most salient parliamentary and scholarly problems of citizenship were mostly linked to issues around the Polish diaspora. These included the problems of the reinstatement of Polish citizenship to persons who had lost it during communist times, the repatriation of persons of Polish origin from the former Soviet republics, the giving of certain privileges to Polish external minorities, and the problem of multiple citizenship. Two acts concerning the Polish kin-minority in the former Soviet republics were adopted: the Act on Repatriation in 2000<sup>3</sup> and the Act on the Polish Ethnicity Card in 2007.<sup>4</sup> Issues concerning immigration have been of secondary importance, mostly due to the small numbers of immigrants (c.a. 1 per cent of the population) and the acceptance of the legislative *status quo*, which consisted of the discretionary power of the president in naturalisation procedures. The new law on Polish citizenship introduces some important changes to naturalisation procedures.

The development of the legal notion of Polish citizenship has followed a winding path, shaped by the history of the country. Belonging to the Polish nation has not always meant belonging to the Polish state. Radical reconfigurations of Poland's borders in the last century explain this conceptual inconsistency as much as substantial political and economic emigration from Poland does. Moreover, the Polish People's Republic promoted the communist idea of a single socialist community comprised of the inhabitants of Soviet Bloc

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<sup>1</sup> Act on Polish Citizenship, *Journal of Law* 10, 1962, 49.

<sup>2</sup> Act on Polish Citizenship, *Journal of Law* 2012, 161.

<sup>3</sup> Repatriation Act, *Journal of Law* 160, 2000, 1118.

<sup>4</sup> Act on the Polish Ethnicity Card, *Journal of Law* 180, 2007, 1280. In the official English translation, the Polish Ethnicity Card is sometimes called the 'Polish Charter' and there can be nothing more misleading. It is important to note that the Polish Ethnicity Card in the title of the act refers to the document that is issued under the act to certain persons who are not Polish citizens, but who are citizens of other states and entitled to certain privileges within Polish territory. The card thus does not determine the identity of the subject and can be compared to a student card inasmuch as it serves as proof of certain entitlements under the act. In its symbolic function, the card is deemed to assure that its holder 'belongs to the Polish Nation', defined in ethnic terms in this statute (art. 3).

countries. Thus, geopolitics defined a concept of the nation that was far removed from how many Polish people construed their own identities.

In the Polish case, it is therefore justified to differentiate between the distinct concepts of ethnicity and citizenship. The latter concept refers to the affiliation to the state and thus denotes the 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.<sup>5</sup> Such a distinction is necessary in an examination of Polish citizenship regulations and practice. In our opinion, ethnicity was very important in the formulation of the law on citizenship in the Polish People's Republic and still plays a role in current Polish legislation.

In some languages there are two different words to describe, on the one hand, the formal membership of a state and, on the other, the substantial rights and duties of citizens. For example, the French word *nationalité* means formal membership in a state while *citoyenneté* refers to the rights and duties connected with formal membership. In the Polish language there is no such distinction and one word *obywatelstwo* is used for both aspects of citizenship. The word nationality is often used to indicate a person's membership in a national group. In this text, the word citizenship stands for *obywatelstwo*.

The goal of this report is to show how Polish citizenship laws and policies have evolved, particularly focusing on its acquisition and loss. We present changes not only in the written law, but also in administrative practice regarding Polish citizenship. This is necessary because of the high level of discretion that the Polish public authorities have in this field. Analyses of regulations are further enriched with selected statistics on the acquisition of Polish citizenship in order to better represent the nature of the phenomenon in Poland.

## 2 Historical background and changes

Polish regulation on citizenship reaches back to the re-birth of the Polish state in 1918. The population of the Polish state at that time was not clearly defined from the standpoint of political allegiance. Residents of the recreated Polish state were ethnically heterogeneous and were citizens of the former partitioning powers: Russia, Germany and Austria-Hungary. It was therefore not an easy task to decide who had the right to Polish citizenship and the matter became a subject of international treaties. The most important of these was the Polish Minorities Treaty signed at Versailles on 28 June 1919 between the principal Allied and Associated Powers and Poland. Only in 1920 was the Act on the Citizenship of Poland<sup>6</sup> adopted which regulated 'secondary' ways to acquire Polish citizenship.

According to the Permanent Court of International Justice, the main aim of the Minority Treaties (and the Polish Treaty in particular) was to prevent new states and states which as a result of war had their territories considerably enlarged 'from refusing their nationality on racial, religious or linguistic grounds to certain categories of persons, in spite of a link which effectively attached them to the territory allocated to one or other of these states'.<sup>7</sup>

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<sup>5</sup> It is beyond the scope of this report to discuss the complex relationship between ethnicity and nationality. Following, for example, Thomas Hylland Eriksen (1999: 35), it is worth mentioning that the distinguishing mark of nationalism (when talking about nationality he refers to nationalism) is by definition its relation to the state. A nationalist holds that political boundaries should be coterminous with cultural boundaries, whereas many ethnic groups do not demand command over the state.

<sup>6</sup> Act on Citizenship of Poland, *Journal of Law* 7, 1920, 44.

<sup>7</sup> Acquisition of Polish nationality, Advisory Opinion of 15 September 1923, PCIJ, Series B, no 7, p. 15.

The Polish Minorities Treaty stipulated that Poland was under an obligation to declare as Polish nationals *ipso facto* German, Austrian, Hungarian or Russian nationals habitually resident at the date of the coming into force of the Treaty in territory which is (or may be) recognised as part of Poland (art. 3 of the Treaty). However, this principle was restricted concerning German nationals by the date of their settlement (art. 91 of the Treaty of Versailles). German citizens or their descendants who became resident in these territories after 1 January 1908 would not acquire Polish citizenship without the special authorization of the Polish state. This date was set at the demand of Poland because the Prussian *Landtag* had enforced a new expropriation act allowing the government to compulsorily purchase Polish estates in Poznań [Posen] (Stearns 2002: 512). Moreover, those who were born in territories which were or may have been recognised as forming part of Poland and of parents habitually resident there became Polish nationals. This was even if at the date of the Treaty's coming into force they were not themselves habitually resident in Poland or Polish territories. Finally, all persons born in Polish territories who were not born citizens of another state were automatically declared to be Polish citizens.

The right to opt for the citizenship of another state was also provided for by the Treaty. In the case of persons habitually resident in the territory, the entitlement to opt for any other citizenship was available to anyone over 18 years of age. For example, art. 70 of the Peace Treaty with Austria stipulated that persons over 18 years of age who lost their Austrian nationality and had obtained a new nationality were entitled, within a period of one year from the coming into force of the Treaty, to opt for the nationality of the state in which they possessed rights of citizenship before acquiring such rights in the transferred territory. There was a similar provision in art. 91 al. 2 of the Treaty of Versailles applied for Germany. Persons who exercised the right to opt for an alternative citizenship had to transfer their place of residence within the succeeding twelve months to the state for which they opted. In the case of those born in the territory of parents who were habitually resident there, those persons had to make a declaration within two years of the coming into force of the Treaty before the competent Polish authorities in the country in which they were resident stating that they abandoned Polish nationality.

As for former citizens of the Russian Empire, provisions on nationality were included in the Treaty of Riga of 1921 signed between Poland and Soviet Russia and Soviet Ukraine. This ended the Polish-Soviet war of 1919-1920. Title VI of this Treaty stipulated that all persons over 18 years of age who at the moment of ratification of the Treaty resided in Poland but who had citizenship of the Russian Empire on 1 August 1914 and were included in relevant registers could opt for Russian or Ukrainian nationality.

The Act on Nationality of Poland of 1920, the first statute on citizenship in independent Poland, declared 'secondary' ways of acquiring nationality after the statute came into force. This statute did not include any regulations concerning the consequences of territorial changes in the sphere of nationality (Czapliński 1992: 1). The statute of 1920 stated that the right to Polish citizenship was given to every person regardless of gender, age, confession or nationality, who was settled on the Polish territory if she or he did not have the right to any other citizenship, who was born on the territory of Poland, or who was entitled to Polish citizenship under the terms of the international treaty (art. 2).

The three acts on Polish citizenship – enacted in 1920, 1951<sup>8</sup> and 1962 – shared important elements. First of all, the acquisition of Polish citizenship by birth has always been driven by the principle of descent (*ius sanguinis*), with the territorial principle (*ius soli*) merely playing an auxiliary role. Secondly, due to radical changes in Poland's international

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<sup>8</sup> Act on Polish Citizenship, *Journal of Law* 5, 1951, 25

borders and long periods of emigration from Poland, establishing whether a given individual holds Polish citizenship has always been crucial to Polish legislation on this matter. Finally, rules concerning foreigners' naturalisation in Poland have been of secondary importance in the debates and legislation on Polish citizenship, despite considerable growth in immigration to Poland since the early 1990s.

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 with it the problem of repatriating Polish citizens from the new 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, 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 citizenship upon repatriation to Poland. The repatriation agreements signed with the Soviet Union also concerned the resettlement of Polish citizens of non-Polish (Ukrainian, Belarusian, Russian, etc.) ethnicity to the USSR. Thus, in both repatriation actions ethnicity constituted a decisive criterion.

Nevertheless, the biggest national group expatriated from Poland in the post-war period, on the basis of the Potsdam agreements, were Germans. They were officially excluded by the Act on the Exclusion of Persons of German Ethnicity from Polish Society (1946).<sup>9</sup> This applied to Germans not verified as Polish nationals or those manifesting their German origins.<sup>10</sup> Ethnic Poles, even those who had been German citizens before the Second World War, were entitled to stay in Poland. Special public bodies were established and appropriate legal rules introduced to verify the Polish ethnicity of those who wished to stay in Poland.<sup>11</sup> Two pivotal legal acts announced at that time were the Act on Polish Citizenship of Persons of Polish Ethnicity Inhabiting the Regained Territories (1946)<sup>12</sup> and a similar decree for inhabitants of the former Free City of Gdańsk [Danzig] (1947).<sup>13</sup> These acts directly linked a person's nationality to his or her ethnicity.

Verification of ethnicity and objective ethnicity criteria were also included in the 1951 Act on Polish Nationality. 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 citizenship was based primarily on ethnic criteria. This link was also reflected in two subsequent legal acts concerning the permission for the renunciation of Polish citizenship for people of German (1956)<sup>14</sup> and Jewish (1958)<sup>15</sup> ethnicities who left for their ethnic homelands (Albiniak & Czajkowska 1996: 324-325). Such acts were designed to simplify the renunciation of Polish

<sup>9</sup> Act on the Exclusion of Persons of German Ethnicity from the Polish Society, *Journal of Law* 66, 1946, 404.

<sup>10</sup> The exclusion involved forced resettlement from the Polish territory and the loss of property in Poland.

<sup>11</sup> To be positively verified as Polish, a person had to prove that he or she came from a Polish family and express his or her desire to belong to the Polish nation.

<sup>12</sup> Act on Polish Citizenship of Persons of Polish Ethnicity Inhabiting the Regained Territories, *Journal of Law* 15, 1946, 106.

<sup>13</sup> Act on Polish Citizenship of Persons of Polish Ethnicity Inhabiting the Former Free City of Gdańsk, *Journal of Law* 65, 1947, 378.

<sup>14</sup> Decree of the Council of the State No. 37/56 of 1956 Concerning the Permission for German Repatriates to Renounce Polish Citizenship, (unpublished).

<sup>15</sup> Decree of the Council of the State No. 5/58 of 1958 Concerning the Permission for People Leaving for Israel to Renounce Polish Citizenship, (unpublished).

nationality. Behind these acts, however, lay the idea of expelling those with non-Polish ethnicity from the country. The fact that this pressure was directed towards selected ethnic groups is symptomatic of this trend.

Another Act on Polish Citizenship was passed in 1962. This Act remained in effect, without any major amendments, until the end of the communist era in Poland. It did not challenge the rules of acquisition and loss of Polish citizenship included in the 1951 Act. The 1962 Act did not directly address the issue of Polish ethnicity, although it still accorded special rights to repatriates returning to Poland.<sup>16</sup>

The link between the ethnicity of a person and his or her right to Polish citizenship was made an issue in the late 1960s. Polish authorities officially challenged the loyalty of Polish citizens of Jewish origin. These people, who were perceived as having ‘dual loyalties’ and had often been active in some way in political life, were forced to leave Poland after signing a document expressing their intention to renounce their Polish citizenship upon acquisition of Israeli nationality (Stola 2000). The legal basis for this ‘action of mass renunciation of Polish citizenship’ was the aforementioned Decree of 1958. It is not within the scope of this analysis to present the comprehensive political background behind this move asking Jews to repudiate their Polish citizenship.<sup>17</sup> This episode demonstrates, however, how the concept of Polish ethnicity and its tight connection to the right to Polish citizenship was exploited in Poland under the communist regime.

Furthermore, the communist authorities often required Polish emigrants to relinquish their Polish citizenship whenever they came to visit Poland. If they refused to do so, they risked being imprisoned in Poland for illegally overstaying abroad. Here ‘a need to renounce’ Polish citizenship was justified not in terms of the ethnicity criterion, but in terms of a lack of loyalty towards the Polish People’s Republic and its ideology.

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

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, policymakers claimed as early as 1989 that there was a need for a new citizenship law. However, the 1962 Act on Polish Citizenship, with some amendments made in the late 1990s and at the beginning of the 2000s, was in force until mid-2012.<sup>18</sup> Nevertheless, some policy changes regarding Polish nationality have been introduced before. These changes in policy take advantage of the way provisions of the 1962 Act on Polish Nationality were formulated. Therefore, an approach based on a high level of discretion of public officials in conferring Polish citizenship has been continued in the Third Republic of Poland.

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<sup>16</sup> In fact, few people took advantage of this procedure, as there were no appropriate guidelines for its implementation.

<sup>17</sup> It would be an oversimplification to look for origins of that action only in the anti-Semitic attitudes of the Polish elites and society. Not all Jews were forced to leave Poland. Moreover, some of them remained not only in Poland but also in various Polish political structures.

<sup>18</sup> Act on Polish Citizenship, *Journal of Law* 28, 2000, 353 (version including amendments).

The most significant amendments to the 1962 Act were introduced in 1997-1998. Rules regarding the loss of Polish citizenship were changed since one of the clauses of the Act – namely that ‘acquisition of a foreign citizenship results in the loss of Polish nationality’ – violated the 1997 Polish Constitution<sup>19</sup> (Jagielski 2000). An amendment was passed to make it impossible to deprive anybody of Polish citizenship unless he or she expressed the desire to renounce it. A definition of the type of stay (permanent residence permit) was added to the five-year residence requirement for naturalisation. Although the exact period of total legal residence in Poland varied for different groups of foreigners, in practice, this change amounts to at least ten years of residency before a foreigner could apply for naturalisation, because it takes at least five years to obtain a permanent residence permit. Changes were also introduced to the procedure of acquiring citizenship by marriage. Whereas this path to Polish citizenship was previously open only to foreign women married to Poles, foreign men can now also acquire Polish citizenship by marrying a Polish woman.

A significant change to Polish citizenship policy was initiated by the Polish President in 1999 when he expressed his will (in the form of a legal act) to terminate all of the remaining conventions with other former communist countries concerning prevention of dual citizenship.<sup>20</sup> These conventions had affected foreigners’ naturalisation processes by creating inequality among applicants for Polish nationality. Most former Soviet Bloc citizens were not allowed to retain their previous citizenships upon naturalisation in Poland, whereas other foreigners were, subject to the discretionary decision of the Polish President. Since 2002, as a consequence of the President’s initiative, Poland has ceased to be a party to those conventions.<sup>21</sup>

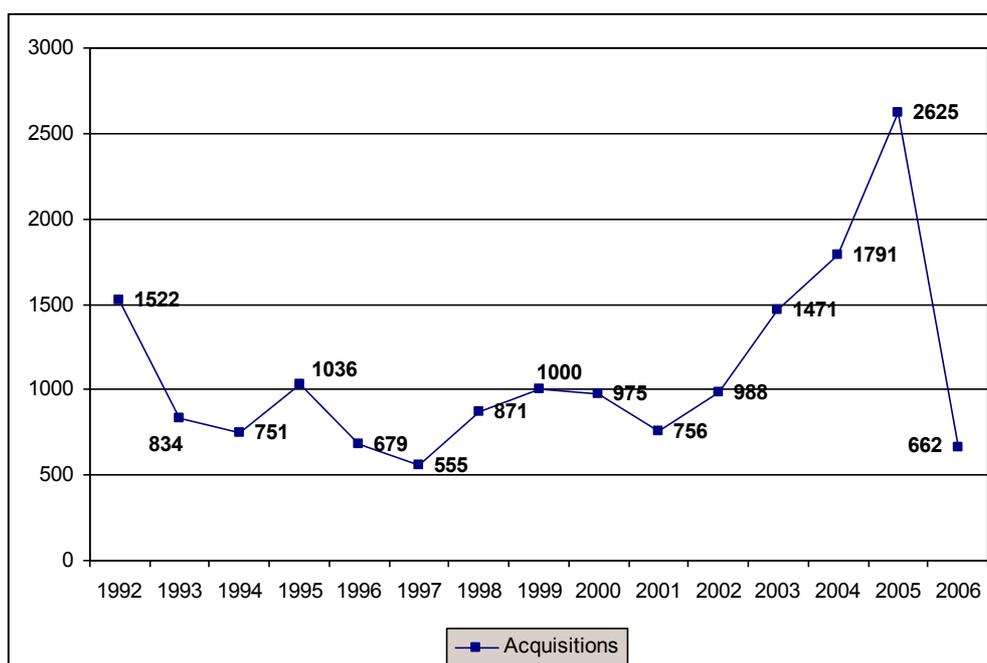
The introduction of a seemingly stricter rule for naturalisation in the form of a requirement for a permanent residence permit did not have a profound impact on the naturalisation rate. On the contrary, as portrayed in Figure 1, an increase in the number of naturalisations in the conferment procedure (for the description of procedures see next section) has been observed.

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<sup>19</sup> Constitution of the Republic of Poland, *Journal of Law* 78, 1997, 483.

<sup>20</sup> They include conventions signed with the Soviet Union (1965), Czechoslovakia (1965), Bulgaria (1972), Mongolia (1975) and the German Democratic Republic (1975) (Albiniak & Czajkowska 1996).

<sup>21</sup> At the time of writing, only the Ukrainian government has not ratified the termination of the convention.

**Figure 1: Acquisitions of Polish citizenship by conferment (1992-2006)**

Source: Own compilation based on Kępińska (2007) and data provided by the Chancellery of the President of the Republic of Poland

The dramatic increase (56 per cent) in the number of acquisitions in 1998 can be partly explained by the following factors. First, 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 promise of a ‘broad and uncomplicated restoration’ of Polish citizenship to Jews who lost it in 1968. In 1997, the President granted Polish nationality to only nineteen Israelis, whereas in 1998, the respective number was six times higher (114 persons).

Secondly, termination of the conventions with other former communist countries concerning the prevention of dual citizenship had an effect on modes of naturalization of ex-USSR citizens constituting the major group of immigrants into Poland in the 1990s and 2000s. In the 1990s, the majority of them (according to research carried out in Warsaw *voivodeship* – or consular district – it could have been even over three fourths in 1989-1998, compare Górny 2001) renounced their original citizenship upon naturalisation in Poland. After 2000 they started to use the conferment procedure to allow them to retain their original citizenship while becoming Polish citizens. Nevertheless, until the mid 2000s, a major increase in the numbers of naturalisations of ex-USSR citizens in Poland had not been observed.

A crucial factor that cannot be omitted in explaining the change in the number of acquisitions of citizenship by conferment is the policy of the Chancellery of the President of the Republic of Poland at any given moment. Its role is visible in the sharp decrease in the number of acquisitions of Polish citizenship by conferment in 2006. Its main cause is the change of the Head of State: Lech Kaczyński, who was close to the right-wing parties, replaced Aleksander Kwaśniewski, who came from the main post-communist party. In 2005 – the last year of the Kwaśniewski presidency – many cases were processed faster than usual in order to be completed before his term came to an end. Thereafter, President Kaczyński appeared to be reluctant to grant Polish citizenship, at least at the beginning of his term.

The central role of the President in granting Polish citizenship was associated with a high level of discretion in this field. The Ordinance of the President of the Republic of Poland put into force in 2000<sup>22</sup> was a step towards reducing discretion in decisions regarding the acquisition and loss of Polish citizenship, although it did not change the procedures significantly. However, while these procedures previously had no legally binding basis, the 2000 Ordinance lists all of the documents and forms required by the Presidential Chancellery to process appropriate applications.

In 2001, provisions concerning repatriation were removed from the Act on Polish Citizenship. A separate legal act known as the Repatriation Act that dealt with this issue was implemented in 2000. Interestingly enough, the implementation of this Act also has had a relatively small impact on the number of repatriates coming to Poland (see Table 1).

**Table 1: Repatriation visas to Poland in 1997-2003, by repatriates' previous country of residence**

Country of previous residence	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
Total	316	281	278	662	804	613	301	269	252	239
Azerbaijan	-	-	-	-	-	-	-	-	-	1
Belarus	-	10	15	45	140	127	43	39	30	25
Czech Republic	-	-	-	-	2	4	1	1	1	1
Georgia	-	-	-	-	-	1	3	-	3	3
Kazakhstan	316	245	172	361	216	194	156	122	155	125
Lithuania	-	-	11	16	20	3	-	1	1	1
Latvia	-	1	1	10	-	-	-	-	-	-
Moldova	-	1	2	10	9	5	2	-	2	1
Russian Federation	-	7	8	10	36	31	11	35	32	40
Ukraine	-	15	69	210	381	245	77	56	23	27
Uzbekistan	-	2	-	-	-	2	8	15	5	14

*Source: Central Statistical Office, from Kępińska (2007: 95)*

In 2002, even though the number of repatriation visas issued almost doubled when compared to the previous year and a further increase was observed for 2001 (804 visas issued), these increases were temporary. Already in 2003, the number of repatriation visas issued was close to the number granted in 1999 when less transparent procedures based on the Act on Polish Citizenship were used (for details of this procedure see the next section).

Poland's accession to the European Union boosted discussions on immigration to Poland in the context of the shift of the EU border to Poland's eastern border. However, it did not affect the discourse on Polish citizenship, which was absent from the political and public agenda in pre- and post-accession periods. This 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'. Work on legislation relating to nationality issues was resumed in the fifth (2005-2007) and sixth (2007-2011) legislative periods when the post-Solidarity parties had a majority in Parliament.

However, Polish accession to the EU had an effect on the interest in Polish citizenship among diaspora members. The number of applications for certification/recognition of Polish

<sup>22</sup> Ordinance of the President of the Republic of Poland concerning the procedure in cases of conferment or giving permission to renounce one's Polish citizenship, as well as specimen certificates and applications, *Journal of Law* 18, 2000, 231.

citizenship submitted to Polish consulates abroad, especially outside Europe, grew in the 2000s. In 2000, only 765 such applications were registered, whereas in 2004 their number reached 3,807. In 2000-2002, the largest number of applications came from Germany. In 2003, Argentina was first with 505 applications (Centre of Migration Research 2005). We are certainly not speaking of acquisitions of Polish citizenship, but about situations whereby people, usually descendants of Polish emigrants, who are entitled to citizenship but 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.

The issues of certifying and recognising Polish citizenship are directly linked to the phenomenon of dual citizenship held, first of all, by Polish emigrants and their descendants. The *ius sanguinis* principle governing the acquisition of Polish citizenship implies that emigrants who have at least one parent who is a Polish national acquire Polish citizenship at birth. Though the numbers of Polish citizens living abroad and possessing Polish and foreign citizenship at the same time are unknown, it can be expected that they constitute a reasonable share of the numerous Polish diaspora (some estimates say there are about 20 million members of the diaspora, compare [www.polonia.org](http://www.polonia.org)).

Another numerous, though specific, group of dual citizens is so called ethnic Germans – members of the German minority in Poland living in Poland or in Germany – who, being Polish citizens, are also entitled via extra-territorial *ius sanguinis* to German citizenship. In the 2002 population census, out of 448,515 dual citizens (possessing Polish and foreign citizenship) identified in the census, 280,828 held both Polish and German citizenship. Interestingly almost half of the Polish-German citizens were abroad during the census. It is not within the scope of this report to discuss the situation of this group in Poland and Germany. It is worth mentioning, however, that ethnic Germans constitute one of the most mobile groups of Polish citizens who had been enjoying freedom of movement and work in the EU countries long before Poland's accession to the European Union. In numbers, the importance of this group of dual citizens will diminish in the future alongside the shrinking number of Polish citizens entitled to German citizenship (compare Górny, 2007).

### 3. The current citizenship regime

The legal regulations concerning Polish citizenship can be found in the Act on Polish Citizenship of 2009 as well as in the Repatriation Act of 2000. The 1997 Polish Constitution formulated two principles concerning citizenship (art. 34). One states that the basic mode of acquisition of Polish citizenship is by birth to parents who are Polish citizens (the *ius sanguinis* principle).<sup>23</sup> The other principle stipulates an absolute guarantee that no one can be deprived arbitrarily of his or her Polish citizenship.

Other principles are stated in the Act on Polish Citizenship itself. The principle of the continuity of Polish citizenship (art. 2) translates the idea of the persistence of Polish citizenship in time (from the moment of its acquisition until the moment of its loss) into law. Under this principle, the citizenship status acquired under a given statute survives all subsequent changes in the statute, i.e. it is always considered under the law in force at the moment of acquisition. The principle of the exclusivity of Polish citizenship (art. 3) means that a person with dual or multiple citizenship is treated (domestically but also abroad) as a Polish national by the Polish public authorities; it cannot be interpreted as forbidding dual citizenship. The principle of equal citizenship rights for both husband and wife (art. 5) means

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<sup>23</sup> This is a guiding principle for the legislature, meaning that the preference in the citizenship regime should be given to the *ius sanguinis* principle and that other principles should only play an auxiliary role.

that a conclusion of marriage by a Polish national with a person who is not a Polish national does not produce an automatic change in citizenship for either husband or wife.<sup>24</sup>

Polish law provides for several modes of acquiring Polish citizenship, which can be divided into two basic groups according to their legal form. The first group comprises modes of acquiring citizenship *ex lege* (acquisition at birth, acquisition through adoption and acquisition through the repatriation procedure). The second group comprises modes of acquisition through application (acquisition by conferment, acknowledgement and restitution).

Acquisition of citizenship at birth is mainly based on the *ius sanguinis* principle. A child acquires Polish citizenship irrespective of the place of birth when at least one parent is a Polish citizen (art. 14 (1)). Children born in Poland to foreign parents do not acquire Polish citizenship unless they would otherwise be stateless. This means that *ius soli* is treated as an auxiliary principle to determine the citizenship of a child found or born in the Polish territory if the child's parents are unknown, stateless or their citizenship cannot be established (art. 14(2) and art. 15). All changes in the determination of a parent of a child or with regard to the citizenship of one or both parents will be considered in determining the citizenship of a child only if they occur within one year from the birth of the child (art. 6.1) Hence, acquisition of citizenship by legitimisation, for instance, is possible until the child's first birthday. Afterwards, legitimisation has no effect on the child's citizenship.

The Act on Polish citizenship of 2009 introduced a new mode of automatic acquisition of citizenship – through adoption. If a minor is adopted by a Polish national or by Polish nationals and the full adoption takes effect before the child reaches 16 years of age he/she acquires Polish citizenship. Such a minor is deemed to have acquired Polish citizenship at birth.

Automatic acquisition of citizenship is also possible through repatriation. This is the only mode of acquiring Polish citizenship not defined in the Act on Polish Citizenship but in a separate statute, namely the Repatriation Act of 2000. According to this act, those holding a repatriation visa automatically acquire Polish citizenship on the day they cross the Polish border (art. 4). Repatriation visas are granted to those of Polish descent, which is further defined to include those who once had Polish citizenship, or who have at least one parent or grandparent or two great-grandparents who were ethnic Poles or held Polish citizenship. Other conditions include a declaration by the person concerned that he or she is of Polish ethnicity, and proof of attachment to Polish culture by nurturing the Polish language, traditions and customs (art. 5). Thus, this law uses both an ethnic criterion (Polish descent) and a cultural criterion to determine a person's belonging to the Polish nation.<sup>25</sup>

As was mentioned above, Polish citizenship can be acquired in two procedures based on application: those procedures can lead to the acquisition of Polish citizenship either by conferment by the President or by acknowledgement by the *Voivod* (i.e. the regional governor). Under the previous law, a foreigner could only be granted Polish citizenship by conferment (regular naturalisation) if he or she has resided in Poland for at least five years on the basis of one of three types of permanent residence permit. According to the new law, the President has the power to grant citizenship in any case he/she wishes (no conditions apply whatsoever). It follows that the conferment procedure has come to be entirely discretionary. However, the *Voivods'* power to grant citizenship is also widened, which means that the

<sup>24</sup> This refers only to automatic change of citizenship as a consequence of marriage. Polish citizenship law does provide for facilitated naturalisation of foreign spouses of Polish citizens.

<sup>25</sup> It should be noted that these conditions are defined differently in the recently adopted Act on the Polish Ethnicity Card.

acknowledgment of citizenship procedure is transformed in such a way that it applies to any foreigner meeting the relevant criteria. Previously, the *Voivod*'s powers extended only to stateless people and Polish nationals' spouses. As the acknowledgment of citizenship procedure now extends to all applicants and is not discretionary, guarantees linked with judicial review of decisions are extended to certain foreigners. Moreover, the regulations are phrased in a way which suggests that there is little room for a discretionary decision: if the conditions as under the statute are fulfilled by a foreigner, the *Voivod* is obliged to grant citizenship by acknowledgment.

Foreigners who fulfill the following conditions will be granted citizenship by the *Voivod* under Article 30 of the 2009 Act on Polish Citizenship:

- those who have resided uninterruptedly and legally on Polish territory for at least ten years, are in possession (at the moment of application) of one of three types of permanent residence permit, who have a stable and regular income and a legal title to habitable premises, and who know the Polish language (Article 30.1(6), Article 30.2);
- those who have resided uninterruptedly on Polish territory for at least three years on the basis of one of three types of permanent residence permit, who have a stable and regular income and a legal title to habitable premises, and who know the Polish language (Article 30.1(1); Article 30.2);
- those who have resided uninterruptedly on Polish territory for at least two years on the basis of one of three types of permanent residence permit, who have been married to a Polish citizen for at least three years, and who know the Polish language (Article 30.1 (2a); Article 30.2);
- those who have resided uninterruptedly on Polish territory for at least two years on the basis of one of three types of permanent residence permit and who are stateless, and who know the Polish language (Article 30.1 (2b); Article 30.2);
- those who have resided uninterruptedly on Polish territory for at least two years on the basis of a residence permit that was acquired in connection with refugee status granted in Poland and who know the Polish language (Article 30.1 (3); Article 30.2).
- certain categories of foreigners with Polish origin (Article 30.1 (4) (5) (7)); the Polish language knowledge requirement does not apply to underage foreigners [pol. – małoletni cudzoziemiec] of Polish origin.

We could say that in this way a legal entitlement to citizenship is created for some categories of foreigners. However, this statement has to be tempered by two observations. First, even if the foreigner fulfils the abovementioned conditions, he or she can be denied citizenship if the *Voivod* decides he or she poses a threat to the county's safety, defence or public order. Secondly, in some cases the *Voivod* is not obliged to justify a negative decision when such justification could pose a threat to the county's safety, defence or public order.

Under Polish law (art.7-8), Polish citizenship acquired by parents through conferment and acknowledgment can be extended to their minor children. When both parents acquire Polish citizenship by conferment or acknowledgement, it is automatically extended to children under sixteen years of age, whereas the child's consent is necessary if the child is sixteen or older. If only one parent acquires citizenship, it may be extended to a child if other conditions are fulfilled – either the child is under this parent's exclusive parental authority or the other parent issues a relevant declaration consenting to the acquisition of Polish citizenship by the minor. Such consent is needed also if the other parent is a Polish citizen. This is different

from previous provisions comprised in the 1962 Act on Polish citizenship. Another difference in relation to the 1962 Act is that filial extension of acquisition of Polish citizenship through the acknowledgement procedure takes place even if these children do not reside in Poland.

The new mode of acquiring Polish citizenship introduced by the Act on Polish Citizenship of 2009 is the procedure for restitution of Polish citizenship. During the communist period, many emigrants lost their citizenship against their will and for many years could not regain it. Now, restitution of Polish citizenship on application is possible if a foreigner lost Polish citizenship before 1 January 1999 on the basis of regulations in three acts on Polish citizenship of 1920, 1951, and 1962. However, citizenship is not restored to a foreigner who, during the period between 1 October 1939 and 8 May 1945, voluntarily performed military service in the troops of the Axis powers or their allies. The same exclusion applies to a foreigner who in this period accepted an official post in the service of the Axis powers or their allies. Moreover, citizenship is not restored to those who acted to the detriment of Poland, especially its independence and sovereignty, or participated in acts in violation of human rights. Those who are considered to pose a threat to the country's safety, defence or public order are also not to be reinstated in their citizenship (art. 38). Citizenship is restored by the Minister for Internal Affairs by an administrative decision, which means that normal administrative procedures apply (i.e. the requirements of a formal administrative decision and judicial review; art. 39).

It is too early to see any trends in the statistics on the numbers of people acquiring citizenship under the new legislation. The only available statistics concern the operation of the 1962 nationality law. In 1992-2001, two consecutive Polish presidents granted Polish citizenship to 8,979 people under the conferment procedure. In this period, the biggest national group of newly admitted Polish citizens were Germans (16 per cent). Other significant groups were Israelis (8 per cent), Canadians (8 per cent), Bulgarians (5 per cent) and Americans (4 per cent) (see Table 2). However, as much as 20 per cent of the applicants originated from the former Soviet Union.

**Table 2: Foreigners granted Polish citizenship by conferment in 1992-2001 and by conferment, acknowledgement and spousal acquisition in 2002-2006, by (former) citizenship.**

Citizenship	Acquisitions by conferment procedure 1992-2001		All acquisitions 2002-2006	
	Number of persons	Percent of the total	Number of persons	Percent of the total
German	1,416	16%	328	4%
Israeli	726	8%	469	5%
Canadian	676	8%	184	2%
Bulgarian	490	5%	165	2%
American	381	4%	149	2%
The former Soviet Union, including the Baltic states	1,778	20%	4,392	51%
Other	3,512	39%	2,925	34%
Total	8,979	100%	8,612	100%

<sup>a</sup> We 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.

<sup>b</sup> Does not include acquisitions by repatriation which are demonstrated in Table 1.

Source: Own compilation based on *Kępińska (2007)* and data provided by the Polish President's Chancellery

In the 1990s, under the conferment procedure, most applicants for Polish citizenship originated from countries constituting traditional destination areas for Polish emigrants: Germany, the 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 citizenship matters for their families. It is evident that the conferment procedure has been used by successive Presidents to restore Polish citizenship to Polish emigrants who had lost it. This also explains the high number of Israelis 'naturalising' in Poland.

The number of ex-USSR citizens naturalising via the conferment procedure in Poland in the 1990s and 2000s is also 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 citizenship in accordance with bilateral conventions on the prevention of dual citizenship, which were still in effect between Poland and countries of the former Soviet Bloc in the 1990s. As these persons were generally stateless, they qualified for the acknowledgement procedure. In 1989-1998, in the Warsaw *voivodeship*, ex-USSR citizens constituted 94 per cent of all those applying for naturalisation under this procedure (compare Górný 2001).

The significant numbers of applicants for Polish citizenship originating from the ex-USSR is more visible in the data on acquisitions for 2002-2006, where all three procedures are included. Newly naturalised Polish citizens from this area constitute as much as 51 per cent of the total, with the Ukrainians being the leading group (27 per cent of the total number of acquisitions and 54 per cent of the acquisitions by nationals of the former Soviet Union). Similarly the EUROSTAT data show that in 2006 the three main previous citizenships of persons acquiring Polish citizenship were: Ukrainian (42.2 per cent), Russian (13.0 per cent), Belarusian (10.2 per cent) (Eurostat statistics in focus, 108/2008: 5). Immigrants from the

former Soviet Union have constituted the main segment of the ‘new wave’ of immigration to Poland, which began in the late 1980s, and these migrants began qualifying for naturalisation in the second half of the 1990s. The subsequent termination of bilateral conventions on the prevention of dual citizenship with some Soviet Bloc countries allowed more and more ex-USSR citizens to use the conferment procedure.

The remaining procedure, i.e. spousal acquisition, played a secondary role in the 1990s and is still of only marginal importance. In 1997, for example, only 52 foreign women used this mode of acquisition. In the Warsaw *voivodeship* during the period 1992-1998, the number was 73 women. At the same time, the annual numbers of mixed marriages in Poland were much higher – between 3,000 and 3,500 were concluded in the 1990s and 2000s, respectively. Spousal acquisition gained more importance after 1999 when it started applying not only to women, but also to men, and when conditions regarding applications became more ‘reasonable’. It is likely to increase in importance, since ex-USSR citizens no longer have to relinquish their foreign citizenship upon naturalisation in Poland. In 2002, for example, from among 3,552 mixed marriages concluded in Poland, over 40 per cent involved citizens of post-Soviet countries.

### *Loss of citizenship*

As we have already mentioned, Polish citizenship cannot be withdrawn against the will of the person concerned. A Polish citizen can lose his or her citizenship if he or she renounces it; the loss is conditional upon the consent of the President of Poland (art. 46). The decision concerning the issuing of this consent is the President’s constitutional prerogative and is thus not subject to administrative or judicial review. A permit to renounce one’s Polish citizenship issued by the President extends to children who are under parental authority if both parents are losing their citizenship. It is automatic unless the children are sixteen years of age or older (in which case their agreement is necessary). A permit given to only one parent extends to children under parental authority if the second parent has no parental authority or if the other parent issues a relevant declaration consenting to the loss of Polish citizenship by the minor (art. 7.2).

### *Dual citizenship*

Dual and multiple citizenship is allowed under Polish law. Under the Act on Polish Citizenship of 1962, there were, however, certain nuances concerning the possibility of acquiring this status. Dual nationals by birth were never required to choose one citizenship over the other (neither upon reaching the age of majority nor at any other time). Naturalisation procedures, by contrast, distinguished between, on the one hand, individuals seeking to become naturalised Polish citizens and, on the other hand, Polish citizens seeking to naturalise in another state. The 1962 citizenship law favoured the latter and Polish citizens could freely obtain other nationalities while retaining their Polish citizenship. Foreigners seeking to access Polish citizenship, however, could be required – at the discretion of relevant public authorities – to relinquish other citizenship ties.

The wording of art. 2 of the 1962 Act on Polish Citizenship was not very clear. The article stated that ‘according to the law, a Polish national cannot be recognised as a national of another country’. The Highest Administrative Court interpreted this provision as a prohibition of dual or multiple citizenship in one of its judgments.<sup>26</sup> Such an interpretation seemed,

<sup>26</sup> Judgment of 28 December 1994, VSA 1507/94; see Mincer-Jaśkowska 1996.

however, inconsistent with the wording of the very article as it used the term ‘recognised’ (*uznawany*). This was obviously not the same as stating a prohibition against having multiple nationalities, and the 1962 Act refrained from restating an explicit prohibition of multiple citizenship in earlier regulations. Therefore, the view that Polish law generally prohibits dual citizenship does not prevail and was – correctly – not shared by most legal scholars (Jagielski 1998; Ramus 1968; Mincer-Jaśkowska 1996). Art. 2 should have been interpreted as a rule resolving a very particular problem, which arose in domestic law when a Polish citizen held several nationalities. Accordingly, a dual or multiple national was always to be treated as a Polish national by Polish public authorities inside the Polish territory as well as abroad. A multiple citizenship holder thus could not claim rights that stemmed from an additional citizenship status or avoid obligations stemming from Polish citizenship or ask to be treated as a foreigner (Ramus 1968). In other words, foreign citizenship ties are considered irrelevant before Polish public authorities, and a person is treated as if he or she was Polish only.

The formulation of the provision on multiple nationality in the 2009 citizenship law is much clearer. Article 3 states that a Polish citizen who is also a citizen of another country shall enjoy the same rights and shall be liable to the same duties in respect of the Republic of Poland as any other person holding Polish citizenship only (art. 3.1). Moreover, in relation to the Republic of Poland, a Polish citizen shall not obtain any legal effect from relying on the citizenship of another state or on the rights and duties arising thereunder (art. 3.2). It should be also stressed that foreigners seeking to access Polish citizenship cannot be required (as they could be under the 1962 citizenship law) to relinquish other citizenship ties (Pudzianowska 2013).

#### *Special rules and status for people of Polish origin*

The repatriation procedure was introduced amidst much debate. On the one hand, speculation about thousands of people of Polish descent (not always genuine) who might take advantage of the repatriation procedure was aired in the media and in 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 surrounding repatriation influenced the final shape of the Repatriation Act of 2000 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 certain 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 this procedure.

According to this act, those holding a repatriation visa automatically acquire Polish citizenship on the day they cross the Polish border (art. 4). Repatriation visas are granted to those of Polish descent, which is further defined to include those who once had Polish citizenship or who have at least one parent or grandparent or two great-grandparents who were ethnic Poles or held Polish citizenship. Other conditions include a declaration by the person concerned that he or she is of Polish ethnicity and proof of attachment to Polish culture by nurturing Polish language, traditions and customs (art. 5). Thus, this law uses both an ethnic criterion (Polish descent) and a cultural criterion to determine a person’s belonging to the Polish nation.<sup>23</sup>

In all, during the 1997-2006 period, only 4,015 repatriation visas were issued (compare Table 1) and 5,293 repatriates arrived via the repatriation programme (Kępińska 2004, 2007). The actual number of people who acquired Polish citizenship through the

repatriation procedure is somewhere between these two figures, since new arrivals include non-Polish members of repatriated families. From 2001 to 2006, 2,935 people acquired Polish citizenship as repatriates. As demonstrated in Table 1 in the previous section, people from Kazakhstan represent the majority among repatriates (based on a count of visas issued). Residents 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.

As with other countries in the Central and Eastern European region, Poland has recently passed a law giving certain benefits to members of its kin minorities living abroad. The Act on the Polish Ethnicity Card<sup>27</sup> was passed in September 2007. The first draft of this law was discussed in parliament almost ten years earlier. The scope of the card is restricted to ethnic Poles who are not Polish citizens, but are citizens of one of the fifteen successor states of the Soviet Union republics (art. 2.2). The Polish Ethnicity Card confirms a person's belonging to the Polish nation and the right to benefits provided for by the Act (art. 3). It may be issued to a person who declares himself or herself to be a member of the Polish nation and who fulfils the conditions specified in the statute. These conditions are of mixed ethnic and cultural character, and it should be noted that the ethnic criterion (descent) is not obligatory. Instead of proving Polish descent a certificate issued by one of the non-governmental organisations operating in these countries (specified in the Prime Minister's decree, *obwieszczenie*) may be presented, confirming active engagement in activities concerning Polish language and culture or other involvement in Polish national minority communities for at least three years prior to the application. In any event, it is necessary to prove attachment to 'Polishness' through having at least a basic knowledge of the Polish language, which must be considered by the applicant to be his or her native language, as well as knowledge and practice of Polish traditions and customs (art. 2.1).

The law provides for different benefits, which include easier access to the labour market (holders of the card do not need a work permit and they can undertake economic activity in Poland on the same basis as Polish citizens), and some educational, cultural and health benefits. In order to enter Polish territory, the holder of a Polish ethnicity card still has to apply for a visa, but may be exempted from the fee for a national visa (or this fee may be refunded) (arts. 5-8). The actual meaning of these benefits is different depending on whether a holder of the card is a citizen of a European Union country (in this case Latvia, Lithuania, Estonia) or not. Third country citizens holding the Polish ethnicity card enjoy free access to the labour market, free immediate medical assistance and access to education at tertiary level, free entry to state-run museums and a travel reduction of 37 per cent for train transport. For EU citizens, only the last two benefits are of any significance (Jagielski & Pudzianowska 2008).

The Act on the Polish Ethnicity Card was not easy to draft. It took over ten years of discussions as there was a range of controversies regarding the shape of the successive bills (see Jagielski & Pudzianowska 2008). Many commentators claimed that it was discriminatory, and that it was dangerous to create a privileged group of people having special rights in Poland who are residents of foreign countries. This argument was not specific to Poland and was present in all countries that adopted kin minority legislation (see also the EUDO-Citizenship Reports by Kovacs & Toth, Kusa, Medved and Smilov & Jileva). Moreover, a number of practical arguments against the card were discussed during the parliamentary debates (see Górny, Grzymała-Kazłowska, Koryś & Weinar 2003). These concerned high costs, the danger of abuse of the card by economic migrants, etc. Even though domestic controversies were extensive, it can be argued that the Polish Ethnicity Card did not

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<sup>27</sup> Act on the Polish Ethnicity Card, *Journal of Law* 180, 2007, 1280.

produce much reaction in the international arena (unlike, for example, the Hungarian Status Law of 2001). The Belarusian government's negative reaction is the exception to the rule that can be easily explained. On the one hand, apart from Ukrainians, Belarusian citizens are expected to be the main recipients of the Polish ethnicity cards. On the other hand, the negative reaction of Belarus is in line with the more general Belarusian policy towards the Polish minority in Belarus, marked as it is by a variety of more or less openly demonstrated conflict and repression by the Belarusian authorities. Interestingly enough, preparations for a Belarusian Ethnicity Card have recently been announced.

Foreigners of Polish origin also enjoy a privileged status under the 2009 Law on Citizenship with respect to the set of criteria for the successful acquisition of citizenship under the acknowledgment of citizenship procedure. Importantly, minors are not required to show any fluency in Polish or produce relevant certificates attesting their achievements in speaking Polish (Article 30.2). This condition applies to all other applicants enumerated in Article 30.1. On the other hand, foreigners of Polish origin who reside in Poland, with a residence permit acquired on the basis of Polish origin are not required to substantiate a number of important criteria. They are not required to show a stable and regular source of income or a legal title to an apartment (normally required under Article 30.1 (1) and (6)), and their residence criteria are more favourable since the period of residence with the residence permit required for the acquisition of citizenship is only two years (Pudzianowska 2013).

#### **4. Current political debates and reform plans**

Changes in Polish citizenship law have been planned since 1989. Several bills on Polish citizenship have already been proposed and discussed in the Polish Parliament. Work on citizenship 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 (2001-2005), when post-communist parties held the majority, work on citizenship legislation was postponed (see Górny, Grzymała-Kazłowska, Koryś & Weinar 2003) only to reappear on the agenda during the fifth and sixth legislative terms under a majority of post-Solidarity parties (2005-2007 and 2007-present).

Apart from the ideological rationale for introducing new legislation on citizenship with democratic transition in all CEE countries, new social currents required new solutions for the law on Polish citizenship. For example, it is necessary to establish clear rules concerning reinstatement of Polish citizenship for people who were deprived of it in various 'historical contexts'. 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 rules on naturalisation be re-evaluated and made less discretionary.

The repatriation problem was solved legislatively with the introduction of the Repatriation Act in 2000. Seven years later, the Act on the Polish Ethnicity Card introduced some privileges for members of Polish kin minorities. The enactment of this latter statute can also be regarded as a partial solution to the problem of the reinstatement of Polish citizenship, as part of the diaspora considers it as a symbolic confirmation of their belonging to the Polish nation.

In 2009, a new Act on Polish citizenship<sup>28</sup> was passed by the Polish Parliament. It was transmitted for the final signature to the Polish President, who imposed a constitutional veto.

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<sup>28</sup> Draft law no 1481 adopted by the Polish parliament on 4th April 2009.

In the opinion of the President, the regulations of the bill which give powers to the *voivods* to grant citizenship to foreigners who meet criteria posed in the statute are unconstitutional because the Polish Constitution proclaims in art. 137 that ‘The President grants Polish citizenship’. The President of Poland filed a motion to the Constitutional Tribunal in which it was argued that broadening the competences of *voivods* to grant citizenship (in the special ‘acknowledgement procedure’) violated the Constitution in that it stripped the President of prerogatives of the Presidency. On 18 January 2012, the Constitutional Tribunal decided<sup>29</sup> that the new Polish citizenship law did not violate the Constitution. According to the Tribunal, Article 30 of the new citizenship law that gives new competences to regional governors (voivods) in the field of naturalisation did not violate the constitutional provision according to which ‘the President confers citizenship’. Finally, the Constitutional Tribunal has remarked that the new law presents an ‘open vision of citizenship’.

The new law – prepared in view of the ratification of the European Convention on Nationality of 1997 (Pudzianowska 2013) – introduced some important changes into the Polish law on citizenship. First of all, the law introduced a new mode of acquiring Polish citizenship through application – by reinstatement, and a new mode of acquiring Polish citizenship *ex lege* – through adoption. Secondly, it created a legal entitlement of certain categories of foreigners to acquire Polish citizenship. Thirdly, it abolished the loss (and acquisition) of citizenship by option<sup>30</sup>. Fourthly, a foreigner cannot be required to renounce a previous citizenship in order to apply for Polish citizenship.

## 5. Conclusions

Despite many expectations, the post-communist Third Republic of Poland failed to pass a new law on citizenship for many years. The recent political climate had been favourable for legislation which was aimed primarily at undoing past injustice, therefore, legislation concerning external minorities such as the Repatriation Act and the Act on the Polish Ethnicity Card was adopted. One of the most important changes introduced by the recently adopted new Act on Polish citizenship is the creation of a reinstatement procedure for persons who once lost citizenship against their will.

Lack of a new statute on citizenship during the years after democratic transformation does not mean, however, that nothing changed at the level of practice regarding Polish citizenship. In general, the characteristic feature of legislation on Polish citizenship is the discretionary power given to public officials in making decisions. Consequently, changing policy in citizenship matters does not necessarily require changes in the written law. Therefore, uncovering the mechanisms of this policy in practice requires looking beyond the written law. Even though the 1962 Act on Polish Nationality makes the acquisition of Polish nationality conditional only on the duration and nature of an applicant’s stay in Poland, civil servants also take into account other factors such as a foreigner’s social and cultural integration as well as his or her family and financial situation.

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<sup>29</sup> Case number Kp 5/09.

<sup>30</sup> Under the 1962 Act, Polish citizenship may have been lost shortly after birth due to parental decision (loss by option). For a child who has acquired Polish citizenship at birth, parents could choose the citizenship of a foreign country of which one of the parents was a national. This had to be done within three months of the child’s birth (art. 6.1), regardless of whether the child was born in Poland or abroad. However a child could have reacquired his or her Polish citizenship lost in this way (acquiring Polish citizenship by option, art. 6.3).

Issues concerning immigration were much less important in the debates on changes of citizenship legislation. Poland has a relatively small number of foreigners and its restrictive naturalisation procedure has not been seen as a problem. The fact that naturalisation is a limited phenomenon in Poland may be exemplified by the fact that, according to the EUROSTAT data, Poland has almost the lowest ratio of acquisitions of citizenship seen as a share of total population in the EU-27 states (only Romania has a lower ratio). It cannot be explained by the low number of foreigners – the data show that in 2006 the ratio of the acquisitions of citizenships to the number of foreigners who are resident in the country was similarly almost the lowest for Poland (1.4 per thousand of non-nationals) (Eurostat statistics in focus 2008: 5).

With the entry into force of the new law on citizenship important changes in the citizenship regime were introduced in the field of naturalisation. The *voivods*' powers to grant citizenship were extended which means that foreigners obtain a reasoned decision subject to administrative and judicial review. The procedure has become less discretionary and a legal entitlement to citizenship was created for some categories of foreigners. The procedure before the President is still open to foreigners but is not the only way to obtain Polish citizenship.

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