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COUNTRY REPORT: BELGIUM

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Belgium

Marie-Claire Foblets, Zeynep Yanasmayan, and Patrick Wautelet¹

1 Introduction

Since 1984, Belgian legislation regarding citizenship has been based on five clear principles (Closset 2004: 83-107; Verwilghen 1980: 46-48). Firstly, the Code of Belgian Nationality² (hereafter CBN) favours *ius sanguinis* as the criterion for attributing nationality by virtue of parentage, but also allows in a large measure acquisition of Belgian citizenship based on birth in Belgium, i.e. *ius soli*. The Code, secondly, makes it possible for foreigners residing in Belgium to obtain citizenship, recognizing that they should have access to all rights deriving from citizenship. It therefore provides, among other things, for different modes for the acquisition of citizenship based on residence. Thirdly, the legislature is concerned about the respect for equality between all nationals (especially between men and women and between all children, whether born in wedlock or not) and has therefore abandoned the system whereby the citizenship of the husband/father was the reference for the other members of his family, his wife and children. Henceforth a foreigner who marries a Belgian or whose partner becomes a Belgian citizen does not automatically become Belgian herself or himself (art. 16 CBN). However, Belgium has not (yet) extended the equal treatment to partnerships. Moreover, both the mother and the father now transmit their Belgian nationality to their children.

These measures also serve as a means of realising the fourth principle: combating particular forms of fraud, especially sham marriages and the ‘cross-border kidnapping’ of children. By conferring on the child its Belgian parent’s citizenship, be it the father’s or the mother’s, the Belgian authorities gain more possibilities to negotiate the return of the child, since the Belgian child enjoys diplomatic protection abroad (Fulchiron 2005). Finally, the CBN has sought to avoid statelessness, but contains hardly any provisions likely to prevent the accumulation of nationalities. For example, arts. 8 and 9 of the CBN relating to the attribution of Belgian nationality to a child on the grounds of parentage, or via adoption by a Belgian, have led to an impressive increase in the number of dual or multiple nationals (see below at 2.4. and 3.3.).

¹ The original report, authored by Marie-Claire Foblets and Zeynep Yanasmayan and published in 2009, was comprehensively revised and updated by Patrick Wautelet in 2013.

² Law of 28 June 1984 dealing with certain aspects of the requirements for foreigners and the introduction of the Code of Belgian Nationality (hereafter named Code of Nationality, Code or ‘CBN’), *Belgian Official Gazette*, 12 July 1984. In line with the other reports in this series we use the concept ‘citizenship’ here, instead of ‘nationality’, which is however more common in Belgian law. We have therefore kept the concept ‘nationality’ in the references to formal legal texts and decrees.

Throughout this report, we illustrate how these five principles are formulated in the CBN and how they have governed access to citizenship in Belgium since 1984. As we will try to make clear in the next three parts, the Belgian citizenship regime has continuously evolved under the influence of external factors. Among these migration policy figures prominently. This has led to a series of rapid and fundamental changes, which often made the pendulum swing in opposite directions. At times, this resulted in Belgium having one of the most flexible systems when one compared the conditions for acquisition of nationality that are in place in other European countries. Two striking examples of this flexibility are the removal of the integration condition for naturalisation and the possibility to become Belgian by a mere declaration after seven years of residence, which were introduced when the CNB was amended in 2000.³ The criticism voiced by those who are in favour of stricter conditions led then to a new swing in the other direction. Throughout the analysis, we will seek to show how this movement has affected the requirements for acquisition of citizenship. Part of the explanation for this evolution lies in the specific Belgian context and in particular its federal system which generates different political dynamics for the adoption of measures that facilitate nationality acquisition. Therefore, we can claim that Belgium provides an intriguing case for citizenship studies not least due to its complex federal system. Below, we will show how the Belgian legislature got there.

In the Belgian context, citizenship usually implies the voting rights mainly associated with European citizenship. In Flanders, the concept now also refers to the integration policy set up by the government, starting from the early 1990s, with a view to giving guidance to newcomers who apply for indefinite residence. In some cases this guidance is not just an offer, but is compulsory. The term used in this context is *inburgering*, which - when literally translated - would produce the following expression in English: ‘the process of becoming a citizen’. In this report, however, we use the term ‘citizenship’ in a broader sense. It refers to a system that encompasses not only nationality legislation, but also the philosophy and political discussions behind it. However, it must be borne in mind that the term most commonly used in daily practice in Belgium when implementing the CBN, remains ‘nationality’ (*nationalité/nationaliteit*), and not citizenship. We have therefore kept the concept ‘nationality’ when referring to formal legal texts and decrees. In addition, this updated and revised version of the report originally published in 2009 comprehensively accounts for the changes brought about by the 2012 reform of nationality laws, which came into force on 1 January 2013.

2 Historical developments

2.1 Nationality law in Belgium from 1804 up to 1909: the move to Belgian independence

Belgium became an independent country in 1830. Previously, the territory had been successively under the spheres of influence of the French and the Dutch. After the Belgian provinces were annexed by France in 1795, Napoleon’s Code Civil which regulated French citizenship came into effect there in March 1803. More specifically, the principles of the law can be found in arts. 9, 10, 12, 17 and 19 of the Napoleonic Code and can be summarised as follows (Gerard 1859: 12): (1) Citizenship was granted at birth, following the principle of *ius sanguinis paterni*: a child whose father was French had French citizenship, even if she or he was born abroad (art. 10 Code Civil). This mode of acquisition was legitimised by the

³ Law of 1 March 2000 modifying a series of provisions relating to Belgian nationality, *Belgian Official Gazette*, 6 April 2000.

nationalist conviction that citizenship cannot simply follow from accidentally having been born in a certain territory, but has to be seen as the heritage of a people, which is made up of individuals who together form a sovereign nation (Verwilghen 1985: 18; Closset 1984: 782). (2) If a foreigner was born in France, he or she could nevertheless voluntarily opt for French citizenship by making a *déclaration de domiciliation* [declaration of domicile] within one year after reaching the age of 22 (art. 9 Code Civil). The theory of Jean-Jacques Rousseau was put into practice by means of this policy. According to Rousseau the acquisition of citizenship constitutes a contract to which an individual can voluntarily choose to adhere. (3) The principle of ‘one family, one citizenship’ was also stressed (arts. 12 and 19 Code Civil). Until 1985, the Belgian legislation continued to be based largely on this principle: a married woman took the citizenship of her husband and so did the children born in wedlock. The loss and re-acquisition of French citizenship were regulated in arts. 17 and 20 of the Code Civil. (4) French citizenship was withdrawn from a person who acquired a foreign citizenship or who settled abroad and did not show any evidence of a desire to return. Some of the modes of loss have found their way into the CBN (art. 22, para. 1 5° CBN).

During the Dutch-Belgian Union from 1815 to 1830, the Napoleonic Code remained in effect⁴ for the most part, but was supplemented by some provisions of the *Loi fondamentale* of 24 August 1815 concerning public offices and services. Thus, certain principles of *ius soli* were re-introduced, such as the granting of Dutch citizenship to everyone born in the kingdom or in the colonies and whose parents were residents there (Closset 2004: 36-41).

Upon Belgium’s independence in 1830, an amalgam of old and new legislation regulating citizenship was enacted. Thus the above-mentioned articles of the Code Civil remained in effect and the Constitution provided for transitional measures to guide the move towards independence (art. 133). It also introduced new modes of citizenship acquisition (arts. 8 and 9). It introduced, for instance, naturalisation by an act of Parliament as a specific mode of acquisition.⁵

From 1831 to 1909, the legislation remained basically unchanged: the importance of *ius sanguinis* was confirmed, but supplementary legislation was passed which made it possible to acquire nationality by naturalisation. Moreover, the fact that the legislation was spread over multiple sources of law meant that the case law had great practical impact (Verwilghen 1985: 23; Gérard 1859: 12).

After 1931, several provisions were added to the Code Civil: beside the rules regulating the modes of voluntary acquisition of Belgian citizenship by option and by naturalisation,⁶ other provisions stipulated that Belgian citizenship was granted to certain categories of persons, more specifically to those people born in Belgium of legally unknown parents.⁷ Still other provisions regulated the re-acquisition of Belgian citizenship, particularly when this had been lost on a voluntary basis.⁸ Finally, several laws were passed that entailed

⁴ Only art. 9 (declaration of domicile) was repealed.

⁵ However, a distinction was introduced between ordinary and full naturalisation, whereby only the latter conferred the right to enjoy all political rights. This distinction would remain in effect until the amendment of the Constitution in 1991 (see below: 3.1)

⁶ In this regard, see especially the laws of 6 and 7 August 1881 and of 27 September 1935 concerning naturalisation. The law of 1 April 1879 determined the period of time after which citizenship by option could be granted (art. 9).

⁷ Law of 15 August 1981 attributing Belgian citizenship to children born in Belgium of legally unknown parents, *Belgian Official Gazette*, 18 August 1881.

⁸ Law of 21 June 1865, *Belgian Official Gazette*, 24 June 1865, and Law of 25 March 1894 concerning acquisition of Belgian nationality, *Belgian Official Gazette*, 1 April 1894.

the approval of a number of international conventions.⁹

2.2 The nationality law of 1909: a first liberalisation

As the application of the Code Civil became ever more intricate, among other reasons because the legislation was spread over several sources of law, the call for new legislation grew louder. This tendency was reinforced by the rising social, legal and political interest in the *ius soli* principle (Closset, 2004: 42).

The law of 1909 thus abrogated the provisions of the Code Civil regarding citizenship and of certain specific laws,¹⁰ and introduced a whole new set of rules. This law was liberal for the time of its promulgation, as it provided for the application of the *ius soli* principle beside *ius sanguinis*. More precisely, citizenship was also granted to every child born in Belgium of parents with an undefined status and to all persons turning 23, who had lived in Belgium during their 22nd year and did not indicate a desire to retain their foreign citizenship, provided that either the person was born in Belgium and had been domiciled in Belgium for at least 6 years or the person was born in Belgium of foreign parents, at least one of whom was also born in Belgium or had resided there continuously for ten years.

2.3 The nationality law of 1922 and the law of 1932: towards concise nationality legislation

The liberal legislation of 1909 would soon come to an end. After World War I the desire for protectionism and greater restriction in granting Belgian citizenship to foreigners formed the basis of the law of 15 May 1922, which fairly radically repealed the law of 1909. The law of 1922 stood for a return to the primacy of the *ius sanguinis* principle. It also introduced the acquisition of citizenship by ‘possession of Belgian status’ (*possession d’état de Belge*). The latter refers to the acquisition of Belgian citizenship by a person who acted for many years (at least ten years) in good faith as a Belgian and/or was presumed to be a Belgian citizen.

However, some further modifications proved to be necessary in order to address particular lacunae in the law. Thus the law of 4 August 1926 specified the terms within which persons who had been unable because of war to opt in due time for Belgian citizenship, could still do so. The law of 30 May 1927 provided for a system of publication of the House of Representatives’ decisions on naturalisation, and the law of 15 October 1932 tightened both the rules intended to prevent the existence of statelessness as well as the conditions required in order to be naturalised by a parliamentary act.¹¹

The laws of 1922, 1926, 1927 and 1932 were finally bundled by the Royal Decree of 14 December 1932 known as the ‘Law on acquisition, loss and re-acquisition of

⁹ Law of 11 July 1869 approving the Convention concluded at Brussels on 16 November 1868 between Belgium and the United States of America to regulate the nationality of migrants and military service, *Belgian Official Gazette*, 15 July 1869; Law of 30 December 1891 approving the Convention between Belgium and France of 30 July 1891 concerning military service, *Belgian Official Gazette*, 30 January 1892; Law of 19 May 1898 approving the article added to the declaration signed on 11 December 1897 and concluded on 15 January 1898 between Belgium and Portugal concerning military service, *Belgian Official Gazette*, 30 July 1898.

¹⁰ Other laws were, on the other hand, retained, such as the law of 6 August 1881 on naturalisation.

¹¹ These laws were published in the *Belgian Official Gazette*, respectively on 9 and 10 August 1926, on 4 June 1927 and on 4 December 1932.

citizenship'.¹² In its general terms, this text remained in force up to the introduction of the new Code in 1984.

The fundamental principles of the aforementioned law of 1932 can be summarised as follows: (1) The strict application of the *ius sanguinis* principle was confirmed. (2) Furthermore, *ius sanguinis* was once again applied solely with reference to the father, at least as far as legitimate filiation was concerned (see below: 'one family, one citizenship'). A legitimate child, i.e. born in wedlock, could thus acquire Belgian citizenship only through a Belgian father. In contrast, the child of a stateless father and a Belgian mother was (also) deemed stateless. *Ius sanguinis paterni* was defined conformingly to the views prevailing in those days: it meant for example that even foundlings in Belgium were presumed to have been born to a Belgian father and were thus presumed to be Belgian (Closset 2004: 47). By contrast, in the case of so-called 'natural children'¹³ a very limited opening was left for the acquisition of citizenship by means of filiation through the mother: such children were considered Belgian solely if maternal filiation was known with certainty before the paternal one, and under the condition that the mother was Belgian (art. 2). (3) Among spouses, the principle of unity of nationality within the family was considerably weakened. It became possible for a woman who married a Belgian or whose partner acquired Belgian citizenship by option to refuse the Belgian citizenship which she would have acquired, up to then automatically. It was sufficient that she made a declaration to this effect within six months following the wedding (art. 4). (4) A similar regulation existed for the children of a foreigner who voluntarily became Belgian: they could relinquish Belgian citizenship before they reached the age of 23 (art. 6). (5) The 1932 Decree also enabled people to change their citizenship more easily, unless such a change would lead to statelessness or multiple citizenship. As an illustration of the latter: Belgian citizenship could not be acquired with naturalisation by a parliamentary act if the legislation of the country of origin allowed for the (voluntary) retention of the first citizenship (which would, by necessity, result in multiple citizenship; art. 14). In conformity with the first endeavour, that is, the desire on part of the legislature to prevent statelessness, a Belgian woman who married a foreigner, for example, or whose partner no longer remained Belgian, would indeed lose her Belgian citizenship, however on condition that she acquired the citizenship of her husband (art. 18, 2°).

2.4 The law of 28 June 1984: introduction of the new Code of Belgian Nationality (CBN)

In the course of time, especially since the stabilisation of massive post-war immigration, the legislation governing Belgian citizenship has become ever more evidently an instrument of integration policy. This is true in particular since the 1980s. The discussions in the Parliament however reveal diverging views. While some considered that a country like Belgium should show openness and readiness to evolve into a multicultural society, notably by setting a minimum number of requirements for foreigners who wish to adopt the citizenship of their country of residence (Belgium), others continued to oppose and insist upon the necessity of strict conditions. On the whole though, since the early 1980s, policymakers have proceeded to conceive of Belgian citizenship as one of the main ways to integrate migrants and newcomers – hence their unremitting efforts to lend more substance to this policy.

The law of 28 June 1984 introduced an entirely new Code, which replaced the previous Royal Decree of 1932 and substantially modified the rules governing the attribution,

¹² *Belgian Official Gazette*, 17 December 1932.

¹³ Children born out of wedlock.

acquisition, loss and re-acquisition of Belgian citizenship. It introduced a number of new elements (Closset 2004: 49-53; Heyvaert 1986; Liénard-Ligny 1984-1985; Mignon 1989a; Mignon 1989b; Verwilghen 1985: 52-138) which we briefly summarize here. (1) While under the previous legislation the conditions and procedures for acquiring Belgian citizenship considerably limited foreigners' rights to become Belgian, the 1984 Code on the contrary strikingly simplified these conditions and procedures in order to facilitate the integration – via citizenship – of foreigners who settled in Belgium. One such example was the strengthening of the *ius soli* principle which was broadened in order to facilitate access to citizenship by migrants and stateless people. (2) At the same time, the principle of *ius sanguinis*, which was the main criterion since 1922 for the granting of Belgian citizenship was somewhat altered, giving way on the one hand to an adjustment of that criterion¹⁴. (3) Recent developments in the area of family law further contributed to the weakening of the previously generally accepted principle of a single citizenship for all members of a family ('one family, one citizenship'). It was considered to be incompatible with the evolution at the level of both domestic and international law, towards equal treatment within the family. The inequality of sexes and discrimination suffered by adoptive children and by children born out of wedlock were no longer considered legitimate. (4) With respect to multiple citizenship, the Belgian legislature adopted a twofold attitude: after having made possible numerous cases of dual nationality (mainly in the case of foreigners acquiring Belgian citizenship),¹⁵ the 1984 Code also increased the instances in which Belgian citizenship can be lost.

Nevertheless, the legislation did not completely detach from the past. As we will show, on numerous points the 1984 Code continues to be rooted in the previous regulation: if it is no longer the sole criterion for the acquisition of citizenship, *ius sanguinis* has not been abandoned; the conditions and procedures for opting for Belgian nationality and for naturalisation, although relaxed and simplified, to a large extent however remain similar to those provided by the law of 1932; the distinction between the system applicable to adults and to minors is maintained; the same goes for the distinction between Belgians by birth¹⁶ and those who acquire it at a later stage in life; the principle of non-retroactivity of the granting, acquisition, loss and recovery of citizenship has also been maintained.

Unlike the former laws, however, that evoked only moderate political interest, the 1984 CBN since has been modified repeatedly. With the law of 4 December 2012, the CBN has undergone six fairly substantial modifications in twenty five years.¹⁷ While most of the changes brought over this period aimed to facilitate the acquisition of nationality by foreigners, other changes went in the opposite direction, illustrating the pendulum swing

¹⁴ The CBN no longer grants Belgian citizenship in all cases to a Belgian parent's child. Distinctions are made depending on whether or not the child or his or her (Belgian) parent was born in Belgium.

¹⁵ Especially through the attribution of Belgian citizenship to a child born to a Belgian mother and a foreign father (see below at Part 3.1).

¹⁶ The concept of being 'Belgian by birth' was, however, suppressed by the law of 6 August 1993 because it had become largely irrelevant: at that time the Parliament had already approved two amendments to the Constitution that removed the difference between full and ordinary naturalisation (see below at Part 3.1).

¹⁷ For purposes of clarity, we list here, once again, the amendments adopted in the period 1991-2013: Law of 13 June 1991 changing the Code on Belgian nationality and arts. 569 and 628 of the Judicial Code, *Belgian Official Gazette*, 3 September 1991; Law of 6 August 1993 changing the Code on Belgian nationality and the Law regarding naturalisation, *Belgian Official Gazette*, 23 September 1993; Law of 13 April 1995 changing the naturalisation procedure and the Code on Belgian nationality, *Belgian Official Gazette*, 10 June 1995; Law of 22 December 1998 changing the naturalisation procedure of Code on Belgian nationality, *Belgian Official Gazette*, 6 March 1999; Law of 1 March 2000 changing certain provisions regarding Belgian nationality, *Belgian Official Gazette*, 6 April 2000; Law of 27 December 2006 incorporating various provisions, *Belgian Official Gazette*, 28 December 2006, arts. 379 to 389 and Law of 4 December 2012 amending the Code of Belgian Nationality in order to make it migration-neutral, *Belgian Official Gazette*, 14 December 2012.

which characterized Belgian nationality policy over the last decades. In the next part we discuss in more detail the current modes of acquisition and loss of nationality and the political discussions that have accompanied the developments in Belgian nationality law since 1984. It is worth noting that throughout these changes, Belgium clearly ignored the development of the international conventional law, sometimes even going so far as to renege on obligations it had previously accepted.

3 The current citizenship regime

3.1 Main modes of acquisition and loss of citizenship

Acquisition of Belgian citizenship

The CBN makes a distinction between automatic (*toekenning* – attribution) and non-automatic (*verkrijging* – acquisition) modes of acquiring citizenship. Whereas the latter requires an explicit expression of intent by the target person, the automatic modes of acquisition provide *ex lege* access to citizenship.

Automatic acquisition

Respect for *ius sanguinis*, to take the first principle, remains a basic criterion for access to citizenship: the CBN grants Belgian citizenship to children who were born to a Belgian parent, provided they were born in Belgium. However, filiation to a Belgian parent does not always automatically lead to the acquisition of citizenship. The CBN requires indeed a minimal territorial link with Belgium and thus avoids the possibility of generations of persons who no longer have any genuine link with Belgium passing on their citizenship. Accordingly the following persons are considered Belgian: children born in Belgium of a Belgian parent and children born abroad of a Belgian parent, provided the latter was himself or herself born in Belgium. If both child and parent were born abroad, the parent must make a statement before the child reaches the age of five requesting that Belgian citizenship be granted to the child¹⁸. This mode of acquisition, which is defined by the Belgian legislation as automatic, is known as acquisition by registration (art. 8 CBN). If no such statement was made, the child can still acquire Belgian citizenship by declaration once it reaches adulthood, provided it resides sufficiently long in Belgium (art. 12bis CBN).

The law of 13 June 1991 that came into force on 1 January 1992 has definitely confirmed the determining role of the place of birth in acquiring Belgian citizenship (*ius soli*). It has also simplified the possibility of acquiring Belgian citizenship for second and third generation migrants. Belgian citizenship can also be (provisionally) acquired by a minor child who is found in Belgium (art. 10, § 2 CBN) or who is born in Belgium and would be stateless if Belgian citizenship were not awarded (art. 10, § 1 CBN).¹⁹ Third generation foreigners, that is, children who are born in Belgium from parents of whom at least one was

¹⁸ This statement is not subject to additional requirements such as payment of a fee, demonstration of integration or knowledge of one of the national languages.

¹⁹ In order to prevent fraudulent use of this possibility, the law of 27 December 2006 (see note 17 above) provides that Belgian citizenship will only be granted if the child's statelessness does not result from the parents' unwillingness to have the child registered with the diplomatic or consular representatives in the country of ordinary residence (art. 10, 2° CBN).

also born in Belgium, can also acquire Belgian citizenship in a simple manner. It is sufficient that one parent has resided legally in Belgium during five of the ten years before the birth and the child must be formally registered (art. 11 § 1 CBN). A more flexible system of acquisition of nationality was also developed for second-generation foreigners, i.e. children born in Belgium of foreign parents. If such a child has lived in Belgium since his or her birth, (adoptive) parents who have resided in Belgium for ten years can request that the child be granted Belgian nationality by making a statement to that effect at the registrar (art. 11 § 2 CBN).²⁰ This mode of acquisition is defined by Belgian law as an *ex lege* mode, since the registrar cannot on his/her own initiative prevent the registration of the child as a Belgian national. However, the public prosecutor can challenge the acquisition if in his/her view the statement was not made ‘in the interest of the child’ (art. 15 § 6 CBN). A refusal may be appealed before the civil judge. The immediate consequence of the changes made by the law of 1991 was the granting, by full force of law, of Belgian nationality to several thousand minors of foreign origin (Closset 2004: 57-59; Lambein 1991-1992; Liénard-Ligny 1991).

Furthermore, minor children whose father or mother acquires Belgian citizenship are, by extension, also entitled to automatic acquisition of citizenship, provided the child is habitually resident in Belgium (art. 12 CBN). This mode of acquisition is called ‘collective’ acquisition. The other parent who retains his or her foreign citizenship cannot prevent this. However, if a child accumulates several citizenships it may renounce the (collective acquisition of) Belgian citizenship after the age of eighteen (art. 22, § 1, 2° CBN).

Finally, citizenship can also be acquired by an adopted child. However, also in this case, a territorial link with Belgium is required, so that the adoption of a minor by a Belgian father or mother is not in itself a sufficient basis for the acquisition of citizenship. In this way, a system similar to that of ordinary filiation was established. If the adopted child or the adopting parent was born in Belgium, the child acquires citizenship automatically. If not, the adopting parent must register the adoption within five years (art. 9 CBN).

In order to ensure equality between men and women, the Code has since 1984 - as we have already mentioned above - abandoned the system whereby children only acquire the nationality of the father. Both the mother and the father were henceforth able to transmit their Belgian nationality to their children. In addition, the Code also eliminated the old distinction between legitimate children and children born out of wedlock, and thus anticipated the later reform of the law on parentage by transposing into internal Belgian law the principles of the Marckx case as judged by the European Court of Human Rights condemning Belgium for being discriminatory towards natural children.²¹ Regarding transmission of citizenship, legitimate parentage and natural parentage are henceforth governed by an identical system.

Non-automatic modes of acquisition

The CBN distinguishes two basic non-automatic methods of acquisition of Belgian

²⁰ Since the law of 27 December 2006 (see note 17 above) only the years of residence covered by a permit for an unlimited period count towards the ten years.

²¹ Marckx vs. Belgium, Application No: 6833/74, European Court of Human Rights, judgment of 13 June 1979. However, in Closset’s view the Code introduces a new type of inequality among children, i.e. from another point of view: the law had not previously made any distinction in the modes of acquisition of Belgian citizenship by right of birth according to the place of birth. The new (1984) Code makes such a distinction (arts. 8 and 9 CBN) and children born in Belgium now acquire Belgian citizenship under more flexible conditions than those born abroad (Closset 2004: 99).

citizenship: acquisition upon declaration and acquisition by naturalisation. These two modes require that the person concerned formally expresses the desire to become Belgian.

The acquisition of citizenship by declaration is the main mode of acquisition for foreigners not born in Belgium. It has undergone a substantial change with the Act of 4 December 2012: before this law was adopted, foreigners could acquire the Belgian citizenship through the declaration without having to demonstrate positively that they were duly integrated. The integration was only assessed in a negative fashion, i.e. by excluding those foreigners with a criminal history. This resulted from a series of change to the procedure of declaration, culminating with the law of 1 March 2000. These changes aimed to broaden access to citizenship. They resulted in a very flexible framework, which even made it possible for a foreigner born and residing abroad to obtain Belgian nationality without having set foot in Belgium, provided one of his/her parents had obtained Belgian nationality. The impact of this increased flexibility is also apparent from the statistics: the number of foreigners who applied for citizenship by declaration rose from about 5,250 in 1999 to 24,587 in 2001, 19,7070 in 2002, 15,972 in 2003 and 13,414 in 2004. Since then the numbers have remained stable: 11,340 (2005), 11,571 (2006), 11,576 (2007), 12.603 (2008), 12.776 (2009) and 14.550 (2010).²² This flexibility has been subject to intense criticism, which finally resulted in the changes brought by the law of 4 December 2012.

Acquisition of citizenship by declaration requires that the foreigner lodges a declaration with the registrar of his/her main residence in Belgium. Citizenship may be acquired without having to go through any judicial procedure, as the process is mainly handled by administrative authorities. Since the coming into force of the law of 4 December 2012,²³ the procedure applying to the acquisition of citizenship by declaration (art. 12bis CBN) makes it possible for foreigners who have reached the age of eighteen to obtain the Belgian nationality provided they meet one of the following conditions: (1) A foreigner is eligible if he or she was born in Belgium and has had his or her legal and main residence there since birth. (2) Alternatively, the declaration can be made by a foreigner who was born abroad and has resided legally in Belgium for five years, provided evidence is brought that the applicant is duly integrated (3) A declaration may also be filed by a foreigner married to a Belgian citizen, provided the spouses have lived together during the last three years and the applicant has resided legally in Belgium for five years²⁴. In the same category, a declaration may be made for a foreigner who is the parent of a Belgian child. (4) Access to Belgian nationality through declaration is also possible for foreigners who have resided in Belgium for five years, without any requirement as to integration if the person concerned is handicapped, invalid or retired (5) The procedure also applies to foreigners who have had their main legal residence in Belgium for at least ten years at the time of declaration. The integration requirement applicable to this last category are less demanding and only pertain to

²² SPF Economie, DG Statistique et information économique/Registre national [Federal Public Service for Economy, Directory General 'Economical statistics and data'/National Register] and 2011 Annual Report on Migration (Centre for Equal Opportunities and Opposition to Racism).

²³ See note 17 above.

²⁴ Acquisition by a foreign spouse married to a Belgian citizen was formerly an independent ground of acquisition, which led to the acquisition by option (Article 16 CNB, abolished by the law of 4 December 2012). This law has made it more difficult for foreigners to obtain Belgian nationality based on their marriage with a Belgian citizen. The CNB has, however, remained true to the main principles adopted in 1984: marriage does not have an automatic effect on either of the spouses' citizenship. Instead, it opens a special possibility to obtain the nationality, provided other requirements are met. The CNB has also retained the principle of gender equality: the CBN has since 1984 abandoned the system whereby the foreign woman automatically took the citizenship of her Belgian husband. Finally, no distinction is made based on the nature of the marriage. Acquisition is also possible for spouses of the same sex. It is, however, not open for partners bound by a partnership.

the knowledge of one of the local languages and the contacts with the local community. Finally, the procedure of acquisition by declaration is open to any person who lost his or her Belgian citizenship by means other than by forfeiture (art. 23 CBN)²⁵ and who wishes to reacquire it (art. 24 CBN)²⁶.

In all these cases, a declaration may only be filed by persons who have been authorised to reside in the country pursuant to the provisions of the law on residence of foreigners of 15 December 1980²⁷. This means that a main residence in Belgium that does not correspond to a legal residence, i.e. that is not covered by a formal permit does not offer the possibility to acquire Belgian nationality by declaration.²⁸ A difference is made between the type of permit required depending on the moment at which the permit is required: the applicant must possess a permit of indefinite duration when filing the declaration²⁹, whereas he/she must only have a permission to stay for a limited duration (i.e. 3 months) for the period preceding the application.

In contrast with the situation which prevailed until 2013, applicants who wish to obtain the Belgian nationality by declaration must demonstrate that they are duly integrated. The introduction of this requirement signals a change of perspective: while the procedure of declaration used to be strongly underpinned by the second principle mentioned in the introduction of this report (i.e. enabling broader access to citizenship), it now is balanced with the concern to limit acquisition to those foreigners deemed sufficiently integrated.

The requirement of integration is defined differently depending on the category. An applicant born in Belgium and who has resided there all his/her life, does not need to demonstrate that he/she is integrated. Likewise, an applicant who has resided five years in Belgium and is handicapped, invalid or retired, does not bear the burden of showing integration. All other categories must demonstrate knowledge of one of the three national languages³⁰. Integration is further defined by reference to so-called 'social integration' and 'economic participation'. These elements are defined in details by the law, with reference to coursework followed by the applicant and work experience gained by the applicant³¹.

It is interesting to note that integration is not assessed through ad hoc testing, as in

²⁵ A person, who lost Belgian citizenship as a result of it being declared forfeit, can only reacquire it through naturalisation by a parliamentary act.

²⁶ Reacquisition is only possible provided the applicant is at least eighteen years old and has had his/her main residence in Belgium at least during the year preceding the declaration.

²⁷ Law of 15 December 1980 concerning access to the territory, residence, establishment and removal of foreigners, *Belgian Official Gazette*, 31 December 1980 as amended. Hereafter named 'law on residence of foreigners'.

²⁸ There has been some confusion previously on this issue, as a former version of the CNB did not indicate clearly whether an applicant should merely have its 'main residence' in Belgium or should also be authorized to stay in Belgium, and if the latter interpretation was correct, what type of residence permit would qualify. This has given rise to a controversy which led to a Supreme Court ruling (Court of Cassation, 16 January 2004), in which the Court held that it was not relevant whether the foreigner possesses a legal residence permit in the country throughout the entire required period, as long as his or her main residence was established for a sufficiently long time in Belgium and he or she has a legal residence at the time of the declaration. This ruling was overturned by a change of the law, with Parliament deciding that legal residence is required (law of 27 December 2004, *Belgian Official Gazette*, 31 December 2004, ed. 2).

²⁹ This may be an authorisation to settle or an authorisation/permission to stay for an unlimited duration.

³⁰ The required level is A2 on the Common European Framework of Reference for Languages. There is no requirement to demonstrate knowledge of the region in which the applicant resides.

³¹ Economic participation may for example be demonstrated by showing that the applicant has worked (as an employee or civil servant) during at least 468 days during the five years preceding the application or has been self employed and has duly paid social security contributions during at least 6 terms during the five years preceding the application.

other countries. Rather, the applicant is required to file documents (such as certificates of attendance, diploma, employment contracts, payslips and other documents showing that the applicant was duly employed or self-employed). The assessment will be made by the competent authorities based solely on the documents filed, without having recourse to the possibility to hear the applicant.

After the declaration has been made, the public prosecutor must give advice concerning the acquisition of citizenship. Within a time period of four months³², the Public Prosecutor's Office must investigate whether there is an impediment 'on account of important facts pertaining to the individual applicant'.³³ The Prosecutor must also verify that the applicant complies with the statutory requirements (duration of residence, main residence, age requirement(s), etc.) and that the applicant has duly shown that he/she complied with the integration requirements. If the prosecutor's advice is negative, the applicant may challenge it before the Court of First Instance, which will review the application *ab novo*. The prosecutor can no longer give a negative opinion for the reasons that the applicant seems not sufficiently willing to integrate. This willingness is assumed to exist solely by virtue of the declaration of Belgian citizenship. This presumption is part of the new approach to (non-automatic) citizenship acquisition adopted by the Belgian legislature in 2000.

Besides acquisition of citizenship by declaration, Belgian citizenship can also be obtained as the result of a discretionary procedure conducted by the Chamber of Representatives on the basis of a voluntary act by a foreigner who did not have any prior close ties to Belgium by birth, parentage or residence at an early age (arts. 18-21 CBN). The specific term 'naturalisation' applies to this mode of (non-automatic) citizenship acquisition. Naturalisation is not an act of the executive branch of Government, but of the legislative authority (Nuyts 2001: II.4-11-15). Access to this procedure was during much of the past decades facilitated. The law of 13 April 1995 for example purported to speed up the procedure of naturalisation while the law of 1 March 2000 made the naturalisation procedure free of charge. The law of 4 December 2012 on the other hand severely limited access to the naturalisation procedure: this mode of acquisition is now only available to foreigners who can demonstrate that they have exceptional merits, such as qualifying for an international sport competition or obtaining a doctorate degree (art. 19 §1-3° CBN). It is expected that with this

³² The 2000 law provided for a uniform time limit of one month, which in practice proved to be too short and thus impracticable. The law of 27 December 2006 (see note 17 above) therefore extended this deadline of one month to four months. This time frame has not been modified in 2012.

³³ The concept of important facts pertaining to the individual applicant' was first introduced in 1984. While it has given rise to substantial case law and has been explained in various Circular Letters issued by the Minister of Justice (see e.g. Circular letter of 6 August 1984, *Belgian Official Gazette*, 14 August 1984; Circular Letter of 8 November 1991 *Belgian Official Gazette*, 7 December 1991 and Circular letter of 20 July 2000, *Belgian Official Gazette*, 27 July 2000, ed. 2), it was first defined by the Law of 4 December 2012. According to Article 1 par. 2-4° of the CBN, it may be considered a serious personal impediment that the applicant "belongs to a movement or and organisation deemed dangerous by the Intelligence Agency", the fact that it is impossible to verify the identity or the main residence of the applicant or the fact that the applicant is in a situation which could lead to the loss of Belgian nationality by forfeiture (art. 23 CBN). Courts are further instructed by a Royal Decree (art. 2 Royal Decree of 14 January 2013, *Official Gazette* 21 January 2013) to take into account all criminal conviction which led to jail time. It remains to be seen whether courts will uphold their previous case law according to which not every criminal conviction constitutes an important fact. In the past, courts have indeed taken into account the fact that a conviction happened a long time ago, that it involved a minor offence, or that there were mitigating circumstances.

new framework, the naturalisation will apply to a very limited number of foreigners.

To apply for naturalisation, a foreigner must meet the following conditions: he or she should have reached at least the age of eighteen and should have his or her main residence in Belgium. Until recently, applicants needed to demonstrate a minimum period of residence, which covered three years (and five years before the law of 2000). With the law of 4 December 2012, the minimum residence period has been replaced by more substantial requirements. The applicant must indeed demonstrate that he/she possesses exceptional merits. The law explicitly links such merits to achievements in the fields of sport and culture, such as being qualified to attend a world championship or having been selected to attend the final of an 'international cultural contest' (art. 19 § 1). These requirements do not guarantee access to citizenship, as Parliament must also take into account the 'integration' and the knowledge of one of the national languages by the applicant.

The residence period remains decisive for one category of applicants, i.e. those who have been recognized stateless in Belgium. According to art. 19 § 2 CBN, those persons may apply for naturalization after two years of residence in Belgium. Strangely enough, the accelerated possibility to obtain the naturalisation which existed for refugees until 2012 has disappeared. It may be asked whether this is in compliance with the international obligations accepted by Belgium pursuant to the 1951 Geneva Convention.

All candidates for naturalisation should maintain their residence in Belgium throughout the procedure (art. 19, §2 CBN). As was required earlier by the jurisprudence of the Chamber's Commission for Naturalisation which handles the applications, the residence of the applicant in Belgium must be based on a residence permit of unlimited duration in Belgium. Persons who only stay temporarily in Belgium cannot have recourse to this mode of acquisition.

In the past, the CBN provided for two types of naturalisation: ordinary and full naturalisation. Only full naturalisation placed the person concerned on a completely equal footing with other Belgians in terms of political rights. Ordinary naturalisation, by contrast, did not grant those political rights for which the Constitution or other legislation required full naturalisation (e.g., the right to vote).³³ Since the modification of the Constitution in 1991, the difference between full and ordinary naturalisation has been abandoned.³⁴ With the law of 6 August 1993, this difference has also been removed from the CBN, so only one type of naturalisation remains.

When it examines the file, the Chamber retains a discretionary power in the matter of naturalisation.³⁵ Therefore, naturalisation is considered a favour and not a 'right' strictly

³³ The right to vote was granted after the modification of the Electoral Code by the law of 5 July 1976. The persons who were not 'Belgian by birth' or by full naturalisation however remained excluded from the following political rights: the right to be a minister or a secretary of state; a deputy, a senator; a member of the Flemish Council, of the Council of the French-speaking Community and the Walloon Regional Council; a member of the Flemish Executive or the Executive of the French-speaking Community or the Executive of the Walloon Region; or a member of a provincial council (see respectively: arts. 86 and 91bis (old) Constitution; art. 50 (old) Constitution and art. 223 of the electoral Code currently repealed; art. 56 (old) Constitution and art. 224 of the Code of Elections currently repealed; art. 24 of the special law of 8 August 1980 on institutional reforms; art. 23 of the organic law of 19 October 1921 concerning the provincial elections).

³⁴ Amendment to the Constitution of 1 February 1991, *Belgian Official Gazette*, 15 February 1991 (suppression of art. 5 para.2; modification of art. 50 and 86 relating to eligibility for the Chamber of Representatives and ministerial offices); amendment to the Constitution of 17 April 1991, *Belgian Official Gazette*, 3 May 1991 (modification of art. 56 relating to eligibility for the office of senator).

³⁵ In the past, it was not uncommon for the Commission for Naturalisation of the Chamber of Representatives to postpone or reject the application before eventually approving or not the application. In the period 2007-2008, out of 19.834 applications, the Commission accepted 7.882, adjourned 4.907 and rejected

speaking and there is consequently no appeal against a negative decision. Furthermore, given the principle of separation of powers, the judicial branch has no authority to overrule a naturalisation act. In this regard, the Constitutional Court ruled that even though it may review formal laws such as the naturalisation laws, it would not be able to do so without calling into question another fundamental constitutional principle, namely the sovereign competence of the legislature to decide in this case.³⁶

Next to the naturalisation and the declaration, the CNB also included a third, non-automatic way to acquire Belgian citizenship, i.e. the option procedure. This possibility of opting for Belgian citizenship, which was reserved to persons who were considered to have a strong link with Belgium, by their birth, their filiation or their residence in Belgium at a young age,³⁵ was abolished by the Act of 4 December 2012. The option procedure was also available in the case of marriage with a Belgian, possession of Belgian status (*possession d'état de Belge*)³⁶ and re-acquisition of Belgian citizenship. While the first and the last category have now been subsumed in the larger declaration procedure,³⁷ the possibility to obtain Belgian nationality on the basis of '*possession d'état*' has been deleted with the act of 4 December 2012, without any further explanation.

Loss of Belgian citizenship

Just as with the acquisition of Belgian citizenship, different modes of loss can be distinguished. A special mode of loss is the forfeiture of nationality as a penalty for wrongdoing (see below).

Until 2007, the adult Belgian person who acquired a foreign citizenship on his or her own initiative was legally considered to have renounced Belgian citizenship and therefore lost his/her citizenship (art. 22, § 1, 1° CBN)³⁸. This ground of loss was not free of criticism, as foreigners acquiring voluntarily Belgian citizenship were on the other hand not required to lose their nationality of origin³⁹. In 2006, the legislator put an end to this asymmetry by

1.932. It also proposed to reject another 5.113 (Annual Report 2007-2008, Chamber of Representatives, 81-82).
³⁶ Decision of the Constitutional Court (*Cour constitutionnelle/Grondwettelijk Hof*) n° 75/98 of 24 June 1998.

³⁵ More specifically, four categories of foreigners qualified as having a special connection with Belgium: (1) a child born in Belgium (who does not qualify for acquisition by declaration because the main residence in Belgium has been interrupted); (2) a child born abroad and who was adopted by a Belgian; (3) a child born abroad whose (adopting) parent (s) had Belgian citizenship before or at the time of the birth of the child (and who did not acquire Belgian citizenship *ex lege* because a territorial link with Belgium is lacking); and (4) a child who before the age of six has had his or her main residence in Belgium for at least one year together with a parent or legal guardian (art. 13 CBN).

³⁶ This category included persons who have erroneously been considered Belgian by the Belgian authorities for a continuous period of at least ten years (*possession d'état de Belge*). The person concerned had to prove his or her Belgian citizenship (inclusion in electoral rolls, completion of military service if applicable, uninterrupted possession of Belgian identity papers, etc.) and express the will to keep it within one year counting from the date on which he or she was officially notified that he or she does not actually hold Belgian citizenship (art. 17 CBN). The one-year deadline was extended to the age of nineteen if the target person was a minor when it was ascertained that he or she was not Belgian.

³⁷ This does not make in practice a significant difference as the option procedure had since the law of 22 December 1998 been closely aligned on the acquisition procedure by declaration.

³⁸ As is most often the case, this ground of loss did not apply if the foreign citizenship was acquired indirectly (e.g. as an automatic effect of marriage with a foreigner).

³⁹ The flexible attitude towards foreigners acquiring the Belgian nationality can be in part traced to the

allowing Belgian citizens who voluntarily acquire another citizenship to keep their Belgian nationality⁴⁰. With the law of 27 December 2006⁴¹ Belgians are also allowed to acquire foreign citizenship without thereby automatically losing their Belgian one.

The voluntary renunciation of Belgian citizenship constitutes the second mode of loss (art. 22, §1, 2° CBN). Belgian citizenship will be lost if a declaration is made to this effect and if the person concerned proves that he or she already acquired foreign citizenship or will acquire foreign citizenship by renouncing Belgian citizenship⁴².

A minor whose (adoptive) parent(s) voluntarily renounce their Belgian citizenship, or who is adopted by a foreigner, will also lose Belgian citizenship if he or she acquires or already possesses another citizenship (art. 22, §1, 3° & 4° CBN).

A fourth mode consists of the loss of Belgian citizenship by failure to declare one's intention to retain it, in cases where such a declaration is required (art. 22, § 1, 5° CBN). A person who was born abroad, and who never had his or her main residence in Belgium between the ages of eighteen and 28, must declare his or her intention to retain Belgian citizenship before turning 28. Failing such declaration, Belgian nationality is lost.⁴³ Should it happen that a person lost Belgian citizenship by failure of declaring/renewing his or her intention to retain it, and would regret it, Belgian citizenship can in such cases be re-acquired by means of the procedure of acquisition by declaration (art. 24 CBN).

For a long time, Belgian nationality could only be forfeited if it was shown that the person concerned was seriously in breach of his or her obligations as Belgian citizen (arts. 22, § 1-7° and 23, § 1 CBN, as it stood until 2006). This was determined during a special procedure before the Court of Appeal. Unsurprisingly, this special procedure was very rarely applied, with only a handful of cases decided after the Second World War. Starting in 2006, the possibility to lose Belgian nationality by forfeiture has been broadened. The law of 27 December 2007 first introduced a new ground of forfeiture, i.e. in case of fraud, deceit or false statements, all of which are perpetrated with views of acquiring Belgian citizenship. The law of 4 December 2012 went even further. From the 1st of January 2013, forfeiture is possible if the person concerned has been convicted of one the crimes included in a list of the most serious crimes (art. 23/1, §1-1° CNB).⁴⁴ The same provision makes forfeiture possible if

wish on the part of the Belgian legislature to conceive citizenship as a facilitator of integration policy and to smooth the path of acquisition of Belgian citizenship for foreigners who have settled in the country.

⁴⁰ This change was prepared by several bills which were introduced over the last decade to modify art. 22 CBN in order to offer such an option to Belgians residing abroad – see Proposal of Mahoux and Istasse, Doc. parl. Senate., extr. sess. 2003, no 3-11/1; Proposal of Roelants du Vivier, Doc. parl. Senate., extr. sess. 2003, no 3-42/1; Proposal of de Bethune, Doc. parl. Senate., extr. sess. 2003, no 3-146/1; Proposal of Milquet and Viseur, Doc. parl. Ch.Repr., extr. sess. 2003, no 510061/004; Proposal of Collard and Bellot, Doc. parl. Ch.Repr., extr. sess. 2003, no 510105/001.

⁴¹ See note 17 above. In order for the change to be fully effective, Belgium had to denounce chapter I of the Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality. The denunciation took effect on 28 April 2008.

⁴² In the latter case, the renunciation will only take effect when the foreign nationality is effectively acquired or recovered.

⁴³ Until the law of 27 December 2006, such a declaration was to be renewed every ten years. This obligation no longer holds.

⁴⁴ The list includes among others attempts to kill the King or overthrow the government, crimes linked to the violation of the domestic and international security of the State (high treason – such helping enemies of the Kingdom to invade the country), but also crimes deemed as such under international law such as genocide, crime against humanity or war crime. The list also includes acts linked to terrorism and human trafficking and migrant smuggling.

Belgian citizenship was acquired by marriage and the marriage has been annulled as a marriage of convenience (art. 23/1, §1-3 CNB). Forfeiture is also in order if the person concerned has been convicted of a crime which was made possible or made easier because he/she possessed the Belgian nationality (art. 23/1, §1-2 CNB).

In all cases, forfeiture can only apply to Belgians who did not acquire citizenship from a Belgian parent at the time of their birth or as a consequence of birth in Belgium as a second or third generation foreigner (art. 11 CNB). While forfeiture under art. 23 CNB can only be decided by the Court of Appeal, the new ground of forfeiture included in art. 23/1 CNB may be assessed by any court. A court seized for a request to annul a marriage could, if it finds that the marriage must indeed be annulled, also rule on an additional request by the public prosecutor to strip one of the spouses of the Belgian nationality it acquired following the marriage. Further, unlike the grounds of forfeiture listed in art. 23 CNB, the grounds newly included in art/ 23/1 may lead to forfeiture even if this results in the person concerned becoming stateless.

Statistical developments

Since the policy with respect to Belgian citizenship has been modified several times one may wish to look at the statistical impact of different amendments to the CBN to observe the concrete outcome of these successive modifications.

We concentrate here particularly on the impact of the law of 1984 which introduced the new CBN, of the law of 1991 in extending the modes of acquisition of nationality by *ius soli* and of the law of 2000, which substantially relaxed the conditions of access to the various procedures for acquiring citizenship (Verschueren 1995; Bietlot, Caestecker, Hardeman & Rea 2002). While it is too early to have figures on the impact of the law of 4 December 2012, it is certain that the changes brought by this law will lead to a significant decrease in the number of foreigners acquiring Belgian nationality by declaration and naturalisation. Before turning to the various figures, it is useful to draw attention to the concerns raised by the availability and relevance of the reliable statistics. These concerns arise because, even though different authorities intervene in the process of citizenship acquisition, there is no central authority with a complete and precise system of registration of applications for nationality, neither by place and date of filing of the application, nor by the profile of the applicants. Further, experience has shown that there are discrepancies in the figures according to the source consulted (municipalities, prosecutors' departments, Office of Foreigners' Affairs or National Security). Finally, the data of the National Institute on Statistics, which makes use of the national register to determine the number of foreigners who have acquired Belgian citizenship and the legal procedure by which they have done so, were available only with some delay (Perrin 2007)

The introduction of the new Code of 1984 was intended to make the acquisition of Belgian citizenship easier, especially for the second- and third-generations. In practice, however, the Code did not immediately have the expected effect. On 1 January 1985, the date that the CBN came into force, a large number of children from mixed marriages did at once become Belgian (about 60,000). However, the acquisition of citizenship via other ways - in particular on a voluntary, non-automatic basis - did not meet with great success. Generally speaking, between 1986 and 1991, just over 8,000 foreigners acquired Belgian citizenship per year (Dumon & Adriaensens 1989: 24).

The causes of this limited long-term success are to be found in a number of administrative and legal barriers, such as the high costs and the lengthy duration of the different procedures. The disbelief of foreigners that the acquisition of Belgian citizenship would be a solution to their precarious social situation may provide a second explanation.

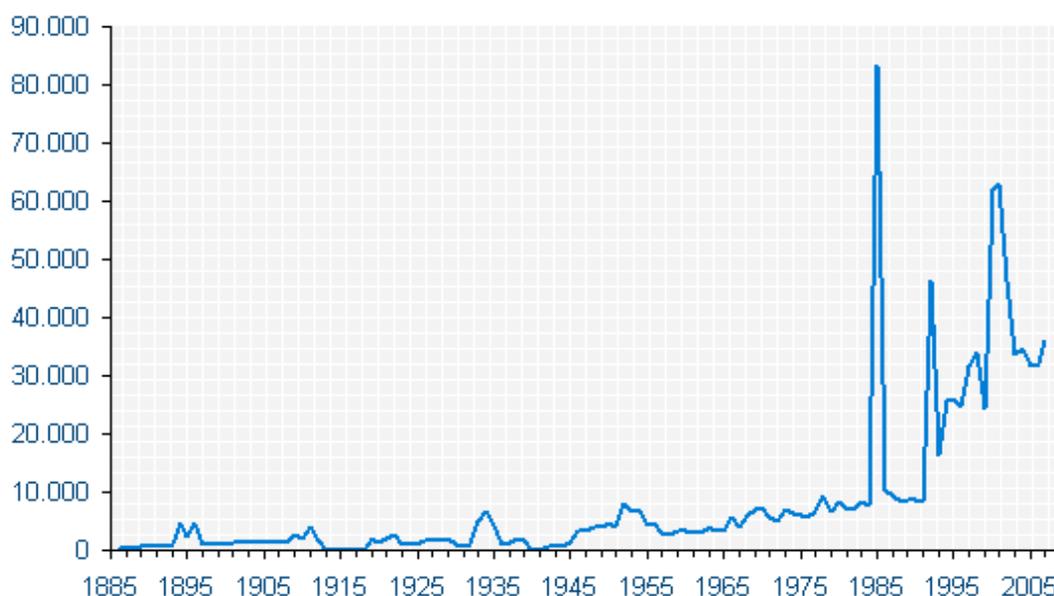
As we have already mentioned, some fundamental changes to the CBN were made in 1991. The most striking amendment, which also had the most impact, was the extension of the types of acquisition based on the *ius soli* principle. As a consequence, in 1992 approximately 46,000 foreigners obtained Belgian citizenship. About 38,500 of them made use of the new modes provided for in the Code: The acquisition of Belgian citizenship by mere registration when third-generation migrants are concerned (new art. 11 CBN), and by declaration in case of second-generation migrants (new arts. 11bis and 12bis CBN, as they existed at that time). In 1993, the number of acquisitions of citizenship was also higher than in the years preceding the amendment of 1991. The total number was about 16,000 acquisitions of which half were obtained by second-generation migrants.

The figures of 1992 and 1993 make evident that third-generation migrants from EU countries in particular made use of the easy access to Belgian citizenship by registration, while mostly non-EU nationals benefited from the measures concerning second-generation migrants. (Poulain 1994: 13-14, 47-49; Verschueren 1995: 250-251).

We now turn to the statistical impact of the law of 2000. In a study conducted one year after it came into force (Bietlot et al. 2002), it was shown that by facilitating the conditions of access to Belgian citizenship and simplifying the steps to be taken, the law of 2000 induced a significant increase in applications for and acquisitions of Belgian citizenship.⁴⁸

More specifically, an average of between 1,000 and 2,500 applications for citizenship (all procedures combined) were filed every month before May 2000. Immediately after the law of 2000 entered into force, the number of applications fluctuated between 6,000 and 8,000, and had, in December 2000, stabilised round 4,000 applications per month, which is about twice the average observed before the law of 2000. From 2002 on, the growth seems to have diminished and current statistics are likely to show a stabilisation. Based on information collected by the National Institute for Statistics the total number of foreigners who acquired Belgian citizenship in the period 01 January 2000 to 01 January 2008 amounts to 339,277. The following table shows the total number of foreigners who have acquired Belgian citizenship between 1885 and 2007:

⁴ ⁸ In 2000 in response to the amendments easing naturalisation, the number of applications almost tripled. Since in the following years, the applications have stagnated around the same amount, the particular rise in 2000 confirms the statistic impact of the legislative change.



3.2 Institutional arrangements: A synopsis

The legislative process

Belgium is a federal state comprised of three regions and three Communities, which are all endowed with legislative and executive powers as well as their own administrations (art. 1 Constitution).⁴⁵ The regions have competence over mostly economic matters, while the Communities deal with culture, education and personal affairs, such as the reception and integration of immigrants.⁴⁶ Citizenship, immigration and political rights, however, remain the prerogative of the federal legislative authority (Van de Putte & Clement 2000: 22-24; Alen 1995: 368, 471).

The federal competence in the matter of citizenship is enshrined in the Constitution, which stipulates that the federal legislative power shall be the body that is in charge of deciding who can call himself or herself a Belgian citizen. Accordingly, the federal legislative authority is expected, on the one hand, to establish the general rules governing citizenship regime and, on the other, to decide on individual cases of naturalisation (arts. 8 and 9, Belgian Constitution).

The Federal Chamber of Representatives and the Senate, both acting on an equal footing, are entitled to formulate the general legislation with regard to citizenship. Individual decisions on naturalisation are, however, taken by the Chamber of Representatives without

⁴ ⁵ Respectively the Flemish, Walloon and Brussels-Capital regions and the Flemish, French and German-speaking communities.

⁴ ⁶ Art. 5 para. 1, II, 33 Special law of 8 August 1980 reforming the institutions, *Belgian Official Gazette*, 15 August 1980.

intervention from the Senate. Naturalisation by a parliamentary act requires a special procedure to be followed (art. 21 CBN; Closset 2004; 321 sq.)

The question of political rights is also settled at the federal level: only the federal legislature can grant foreigners active and passive voting rights for the elections of the European, federal, community and regional parliaments as well as for provincial councils, municipal councils and district territorial bodies (art. 8 and art. 41, §2 Constitution). As we will explain below, in Belgium the right to vote in municipal elections has been granted to both EU nationals and - at a later stage - also to third-country nationals.

A final aspect of the legislative process to be mentioned here relates to the power-sharing between different ministries. While the matter of citizenship is within the remit of the Ministry of Justice, the Minister of the Interior collaborates in drafting the policy relating to foreigners' residence in the territory (migration law).

The process of implementation: the different bodies involved

Various official bodies are involved in the implementation of the different procedures for the acquisition and loss of Belgian citizenship. Beside the registrar and the prosecutor's department in certain cases, the courts and the Chamber of Representatives also have a task to fulfil. We will briefly expand on the functions of these bodies and particularly on the interplay between them (see also: Bietlot et al. 2002: 159-185; Caestecker, Bietlot, Hardeman & Rea 2001: 255).

A foreigner applying for acquisition of Belgian citizenship through declaration must file a form to that effect with the registrar of the city where he/she resides. The registrar is entitled to verify that the application includes all necessary documents (such as birth certificate, evidence of knowledge of one of the local languages, etc.). This review should be conducted within a specified time frame, i.e. 30 days. The registrar must also verify that the application fee has been duly paid. The registrar may, however, not conduct a substantial review of the application. Applications deemed to be exhaustive must be sent by the registrar to the Public Prosecutor, the Office of Foreigners' Affairs and of National Security. The registrar may only hold an application when it is found that the surname of the applicant is recorded differently in various official documents and registers.

The Public Prosecutor must advise on the application within four months after having received the application. The prosecutor will incorporate in its advice the information received from the Office of Foreigners' Affairs and of National Security. The prosecutor may only issue negative advice if it is found that the applicant does not comply with the statutory requirements or if there are serious personal impediments preventing the acquisition of the nationality. When the advice is not provided in due time, it is deemed to be positive. If the public prosecutor concludes that there is no reason to give negative advice, he or she then sends a statement to this effect to the registrar. The latter must in this case immediately register the declaration in the ad hoc registers. The same applies when no advice has been given before the expiration of the deadline. The person concerned then becomes Belgian from the moment of registration.

When negative advice is given, the applicant has the possibility to challenge the advice before the Court of First Instance⁴⁵. The matter is heard by the court on the basis of

⁴⁵ Until the last change to the CNB (Law of 4 December 2012), applications were automatically sent to

general rules of civil procedure. The court has jurisdiction to fully review the application and the advice issued by the prosecutor. The court rules on the matter with a reasoned opinion. It is not uncommon for the court to find that the negative advice issued by the public prosecutor must be disregarded. The ruling may be appealed before the Court of Appeal.

A foreigner who applies for naturalisation has to submit a motivated application which, since 2000, must contain the following handwritten declaration: ‘I declare that I wish to become a Belgian citizen and that I shall comply with the Constitution and the laws of the Belgian people and the European Convention for the Protection of Human Rights and Fundamental Freedoms.’

The application for naturalisation is in principle addressed either directly to the Chamber of Representatives or to the registrar of births, deaths and marriages of the place where the applicant has his or her main residence, who then sends the application to the Chamber. The civil registrar is entrusted with checking whether the application includes all necessary documents. As for acquisition through declaration, the registrar may hold an application when it is found that the surname of the applicant is recorded differently in various official documents and registers. The registrar must also verify that the application fee has been duly paid. When the application is directly filed with the Chamber of Representatives, these verifications are made by the secretariat of the Chamber.

Once it is handed in, several bodies then engage in the processing of the application, ranging from the prosecutor’s office, to the Office of Foreigners’ Affairs and of National Security. The advice of the Office of Foreigners’ Affairs is limited to communicating the administrative situation of the applicant. It cannot amount to a recommendation on the desirability or non-desirability of the acquisition of Belgian citizenship. The Office of National Security is expected to communicate its opinion only if there is a serious problem of public safety (security) and interest that therefore puts an obstacle to acquisition of Belgian citizenship. The Public prosecutor should advise on whether the statutory requirements are met. All such advices should be handed in within four months.

Within the Chamber of Representatives, the file is first prepared by the secretariat. It is then reviewed by the Naturalisation Committee, comprising 20 MPs. Each file is assigned to a special committee composed of 3 MPs. After reviewing the application, the special committee agrees on a recommendation, which is submitted to the Naturalisation Committee. The Committee decides whether or not to recommend granting the application. The recommendations of the Committee is sent to the Plenary, where a vote takes place on each individual case.

4 Belgian Nationality Law : which vision of citizenship?

In this final section, we examine which vision of citizenship is reflected in the provisions of the Code of Belgian Nationality, as it now stands but also as it previously stood. This examination will reveal a profound change in the vision of citizenship and membership in Belgian society throughout the consecutive amendments of the CNB.

Federal legislation has tried to ascribe various roles to the acquisition, possession and

the Chamber of Representatives in case of negative advice. The application was then treated as an application for naturalisation by an act of parliament. This has been abandoned.

loss of Belgian citizenship since 1984. Some have used the expression ‘instrumentalization’ of the CBN to describe this type of legislative policy. One might also speak of pragmatism on the part of the legislators. Three functions have been accordingly assigned to citizenship: (1) citizenship as marker of the integration of foreigners into (Belgian) society; (2) citizenship as guarantor of parliamentary democracy, opening up the citizen’s political participation at all levels; and (3) citizenship as a guardian of the migration policy. We shall try to show how since 1984 the Belgian legislature has constantly relied on the CBN and its various provisions to play these three specific roles, either simultaneously or in turn.

The history of the concept of citizenship in Belgian law has already been extensively discussed in the literature (Carlier & Goffin 1996; Closset 2004: 31-59; De Valkeneer 1984; Foblets & Foqué M. Verwilghen 2002; Liénard-Ligny 1985: 222; Louis 1995; Maeckelberghe 1989: 146; Marescaux & Taverne 1984; Verschuere 1995; Verwilghen 1984; Verwilghen 1992). Different phases may be distinguished throughout the twentieth century.

The law of 1909 provided that beside the conservation of the principle of *ius sanguinis*, the *ius soli* rule would be applied. The rules of 1932 relied, as we have indicated above, almost exclusively on the principle of *ius sanguinis*. In the 1980s, more particularly through the CBN and its successive amendments, the principle of *ius soli* was reintroduced whereby people who are born in Belgium of foreign parents could henceforth acquire Belgian citizenship. As in many other European countries, these changes were in part brought about by the concern to avoid the disenfranchisement of those born in Belgium and who had been educated there. However, the basic logic behind the rules remained unchanged, providing a greater claim to the right to acquire Belgian citizenship as there are indications that a foreigner has become integrated into Belgian society or at least is presumed to be willing to integrate. At the same time, the introduction of a possibility to acquire Belgian citizenship based on birth in Belgium, did not adversely impact the legal framework prevailing at that time for migration.

Subsequent changes to the provisions governing acquisition of the Belgian nationality brought an end to the coherent framework. Two laws deserve special attention in this respect: on the one hand the law of 2000, which may be considered the most far-reaching reform since 1984 as far as the relaxation of the conditions for various procedures for acquisition of Belgian citizenship is concerned (Foblets 2000-2001; Foblets 2003: 261-275; Guillain 2002; Stockx 2000). On the other hand the law of December 2012, which not only undid much of the changes brought about in 2000, but also tilted the Code towards another end of the spectrum, deserves close attention.

Before turning to these developments, it is worth noting that throughout all the changes which were brought to the CBN, the legislator never paid much attention to the issue of dual nationality – except on one occasion, i.e. when it repealed the voluntary acquisition of a foreign nationality as a ground of loss, in order to make it possible for Belgian citizens living abroad to acquire the nationality of their place of residence without losing Belgian nationality. The various changes brought to the CBN were not neutral when it comes to dual nationality: overall, these changes have significantly increased the (potential) number of dual nationals (Verwilghen 2002 : 520-523).

4.1 Acquisition of nationality and the quest for integration

Until the law of 2000, acquisition of the Belgian nationality by an adult required proof

of integration. The law of 2000 represented a major shift. In essence, the law removed the requirement to show sufficient willingness to integrate which had prevailed until then for all forms of acquisition of the Belgian nationality by adults. As a result, the different modes of acquisition rested almost exclusively on the applicant's duration of residence in the country.

The radical elimination of the willingness to integrate as a basic condition for acquiring Belgian citizenship had been advocated following research showing that it was the subject of a much divided and often contradictory case law (De Decker & Suykerbuyk 1993; de Moffarts 1987; de Moffarts 1995; Lambein 1993: 513; Sluys 1991; Verhellen 1998; Walley 1989).

This pragmatic approach was, however, accompanied by a new vision of citizenship and membership in Belgian society which emerged during the drafting process of the 2000 law. This vision was optimistic about the potential(s) of citizenship as a means of integration into society. The Minister of Justice's commentary on the bill preceding the aforesaid amendments of 2000 reveals the following underlying optimistic approach: a foreigner wishing to acquire Belgian citizenship was seen as a citizen of the world, with a positive attitude to cultural diversity and prepared to co-invest in the future of the multicultural society. Foreigners seeking to obtain Belgian citizenship were conceived of as people willing to contribute to the success of (the future of) such society.⁴⁶ The series of measures approved in 2000 are therefore to be understood against the background of that idealistic vision of membership in contemporary society.

As has been shown, the law of 2000 represented a major departure from the basic rationale which had been followed during the previous decades, i.e. that acquisition of the Belgian nationality by foreigners not born in Belgium should go hand in hand with a demonstration that the foreigner had become integrated into Belgian society

During the adoption of the law and after the change had been adopted, it was argued that the new CBN did not only eliminate all considerations of integration, but also all incentives to integration, thereby reducing the concept to insignificance. Under the previous law, for instance, at least within the Naturalisation Commission of the Chamber of Representatives, the prevailing opinion was that the criterion of willingness to integrate was an important condition for justifying the rejection or postponement of applications for naturalisation.⁵⁰ Postponement was intended to motivate applicants to improve their skills in (at least) one of the national languages, and possibly to make the necessary efforts to integrate in their milieu. During the debates that took place on the occasion of the drafting of the 2000 law, it was therefore suggested that removing integration as a condition for naturalisation calls into question the efforts of many years of integration policy.

The elimination of all considerations linked to integration was said to be even more regrettable since the CBN did not provide at that time for any possibility to declare persons forfeit in cases of abuse or fraud on their part.⁴⁷

⁴⁶ Chamber of Representatives 1999-2000, Parl. St., plen. 034, 11 and 31-3.

⁵⁰ From the statistics made available by the Naturalisation Commission of the Chamber of Representatives concerning the applications for naturalisation since the coming into force of the law of 13 April 1995 which changed the procedure, it does indeed appear that no less than 45 per cent of the applications adjourned were on grounds of insufficient integration. In practice, what the Commission considered 'insufficient integration' was in most cases the clear lack of knowledge of one of the national languages.

⁴⁷ As it stood in 2000, the CBN did not foresee any procedure that would make it possible to strip someone of Belgian citizenship, possibly with retroactive effect in case of fraud. In the meantime however, the issue has been resolved, as we have explained in the previous sub-section: with the amendments of December

The law of 2000 not only broke away from the previously accepted link between acquisition of citizenship and integration. It also introduced substantial inconsistencies within the CBN. The best example of this inconsistency within the various provisions of the CBN could be found in art. 12bis, § 1, 2° CBN (as it existed until 2013), which made it possible for adult foreigners who were born abroad and who had a Belgian parent, to acquire Belgian citizenship by mere declaration. Strikingly, the acquisition was not conditioned on any residency requirements. Moreover, there were no conditions regarding the parents' mode of acquisition of Belgian citizenship. Even a recently acquired citizenship was sufficient.⁴⁸ This new mode of acquisition introduced a difference in treatment between, on the one hand, biological and adopted children and, on the other, between children born in Belgium and those who were born abroad.⁴⁹

The severance of the link between acquisition of nationality and integration also had consequences in other areas of law where nationality played a role. One such area is private international law. The traditional role of citizenship, in the sense of offering a criterion for one's identity, finds support in the codification of Belgian private international law,⁵⁰ which provides that the national law of a person applies, at least in areas of one's personal status (e.g. in determining someone's full name, in defining the relevant basic conditions for the validity of a marriage, and in cases of (adoptive) filiation). Part of the rationale for the application of the person's national law lies in the idea that the sense of identity will be better respected through the connection to a person's citizenship. Restricting this respect to the question whether a person indeed habitually resides in the country considerably weakens the meaning of the principle of the 'closest connection', on the basis of which private international law was developed. On the basis of this principle one seeks always to identify at best the core interests of an individual in the specific context within which he or she lives and to ascertain with accuracy the intensity of his/her integration within a social and legal system, before determining which law is applicable in any given case (Erauw 2002: 414-423; Meeusen 1997: 110). Traditionally, in private international law, citizenship is perceived as standing for a significant link between an individual and the country of his or her citizenship, unless concrete indicators would prove otherwise.

The law of 2000 did not go unnoticed: it was soon branded an example of bad policy and derided as the 'Quick Belgian Act'. Looking at the provisions of the CBN, it did indeed

2006, it has been made possible to include cases of fraud as ground of loss of the Belgian nationality.

⁴⁸ The law of 27 December 2006 (see note 17 above.) stipulates however that parties have to prove that they remained in contact with each other. The law provides that in this respect a declaration by the parent who has obtained Belgian nationality would be sufficient.

⁴⁹ The first internal inconsistency followed from the observation that the acquisition of citizenship by declaration provided for in art. 12bis, §1, 2° CBN concerned only children who were born abroad. Although foreigners who were born in Belgium are usually able on other legal grounds to acquire Belgian nationality by simple declaration, this was not always the case. Such differential treatment, dealing less favourably with those who were born in Belgium than with those born abroad, did not seem to be consistent with the logic of the CBN. The second internal inconsistency related to adopted children. Adopted children who are born abroad and who had a Belgian adopting parent could at that time only acquire citizenship by option (art. 13, 2° CBN as it stood). They still had to satisfy an age and residency requirement, as art. 14 CNB (as it existed at that time), required that they had their main residence in Belgium during the twelve months preceding the option and also during at least nine years or continuously from the age of fourteen to eighteen. This was not the case for adopted children making use of the facilitated acquisition procedure under art. 12bis. This inconsistency was addressed by the law of 27 December 2006, which made it possible for adopted children, just like biological children who are born abroad and have a Belgian parent, to use the much simpler procedure of acquisition by declaration.

⁵⁰ Law of 16 July 2004 concerning the code of private international law, *Belgian Official Gazette*, 27 July 2004.

appear that the acquisition of Belgian citizenship was so simplified that since 1 May 2000 the CBN ranked among the most flexible in Europe. Further, the CBN as amended by the law of 2000 was difficult to reconcile with other policies pursued in the field of migration. This was in particular so in regard to the disappearance in 2000 of any requirement that foreigners demonstrate a knowledge of (one of) the language(s) of the country of residence as a condition for the acquisition of citizenship (D'Hondt 2002: 270-277). The absence of any such condition was said to go against efforts undertaken by regional authorities in the field of integration. This was particularly so with the policy adopted in Flanders. According to the so-called *Vlaams Inburgeringsdecreet* ('Flemish Decree on Integration')⁵¹ new immigrants were required to undergo training programmes, providing them with the necessary knowledge that will subsequently allow them to participate as citizens in the life of society. These programs included an obligation to attend language courses. Making access to Belgian citizenship totally disconnected from any knowledge of national languages could run against such initiatives: the foreigner who acquired Belgian citizenship was not obliged to know the language of the place of residence, while an immigrant who is a newcomer in Flanders is subject to such an obligation.

If one considers the implementation of the law of 2000, some nuances must be brought to the critical picture which was generally painted. While it is true that the law went a long way to relax the criteria for acquisition, it appears that various agencies entrusted with the application of the law adopted an interpretation of the law which contradicted the extensive simplification of access to citizenship. In some municipalities, applications for acquisition by declaration were not accepted when it appeared that the applicant lacked a sufficient command of the local language. In addition, some public prosecutors and courts continued to apply integration requirements when deciding on applications for acquisition by declaration. Finally, the Chamber of Representatives adopted criteria which were used to filter requests for naturalizations. Some of these criteria turned on the integration of the candidate (De Jonghe, D. & Doutrepoint, M 2012 : 35-37). There was therefore some tension between on the one hand the law as it stood in the books and on the other hand the way it was applied in practice.

Against this background, discussions to amend the CBN began in earnest in 2007. A central theme throughout the many bills introduced was the concern to reintroduce integration as a requirement for the acquisition of Belgian nationality (Foblets, M.-C. 2011). The majority view was that access to citizenship should no longer be pursued to facilitate the integration of foreigners into society, but rather to recognize a successful integration process. It was, however, difficult to reach an agreement on how to define and test the integration.

The new version of the Code does not offer a general definition of what constitutes integration. Rather, it requires that applicants demonstrate that they have reached various targets, such as having obtained a sufficient knowledge of one of the national languages, having worked for a given period, or having studied in Belgium. It is only after reaching these milestones that the applicant is considered sufficiently integrated to justify the acquisition of citizenship. The CBN puts much emphasis on integration as a process and not only as a result. Integration is indeed not tested at once when an application for acquisition of the citizenship is filed. Rather, it must be demonstrated with reference to milestones which have been reached by the applicant in the past.

⁵¹ Decree of 28 February 2003 on the Flemish integration policy, *Belgian Official Gazette*, 8 May 2003, amended by Decree of 14 July 2006, *Belgian Official Gazette*, 9 October 2006 and, more recently, by Decree of 1 February 2008, *Belgian Official Gazette*, 21 February 2008. Newcomers – with the exception of non-Belgian EU citizens – who wish to settle permanently in Flanders, as well as certain already-established groups of immigrants, are required to follow a training programme.

The CBN since 2012 looks at citizenship in a new way, closely linking the concept to one's integration into a society. A foreigner's residence in Belgium does not possess the same effect as it did. In effect, the legislation takes as its point of departure the view that the foreigner must already be integrated before obtaining Belgian nationality and that mere residence on the state's territory for a certain number of years does not, as a rule, qualify to demonstrate integration.

The effect of the 2012 amendment is also that the CBN recovers its internal coherence. Further, the new version of the CNB is much more in line with other policies, particularly with migration policy.

4.2 Acquisition of nationality and political participation

A second dimension associated with the acquisition of citizenship lies in the possibility to exercise political rights. The debates on acquisition of Belgian citizenship have indeed been linked to the issue of giving people access to political citizenship.

The issue of foreigners' voting rights is not new in Belgium but arose with the stabilisation on the national territory of the post-war waves of migration. It is tied to the question of whether a legislator can exclude entire communities of foreigners from voting for the sole reason that they do not (yet) hold Belgian citizenship, in some cases voluntarily and in other cases because they are bound by a foreign law forbidding them to renounce their first citizenship. In the 1990s, the question became all the more burning, as very often such communities had settled in the country for many years and children born in Belgium started to come of age.

The subject has been discussed extensively and was first resolved for European Union nationals. Their right to vote and eligibility for municipal elections are recognised since the amendment of the Belgian Constitution on 11 December 1998 (art. 8 Constitution).⁵² However, for years, the enfranchisement of non-EU nationals remained an extremely sensitive issue, especially in Flanders. As no consensus could be found within the ruling coalition on the federal level in 2000 to extend the right to vote to non-EU nationals, the coalition chose to further relax the conditions for acquiring Belgian citizenship, in this case, in order to encourage access to political citizenship.

After much debate, non EU-nationals were eventually granted the right to vote in local elections in 2004.⁵³

The 2012 reform did not affect the possibility for non-EU nationals to vote in local elections. By making it more difficult to acquire Belgian citizenship, this reform will, however, have an impact on the possibility to obtain full political citizenship. The right to stand election and hold (local) public office is indeed reserved to nationals (and EU citizens).

⁵² *Belgian Official Gazette*, 15 December 1998.

⁵³ Law of 19 March 2004 granting the right to vote at the municipal elections to foreigners, *Belgian Official Gazette*, 23 April 2004. In order to vote, non-EU nationals must register with local authorities, demonstrate that they have had their main legal residence in Belgium for five years and declare that they will comply with the Constitution, the Belgian laws and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

4.3 Acquisition of nationality and regulation of migration

A third function which has long since been assigned to the provisions of the CBN regarding the acquisition of Belgian nationality, lies in the control over the laws on immigration. From the very start, the CBN was conceived in the shadow of the law of 1980 regulating entry to Belgium (Verwilghen 1984 : 161 ff.).

Successive amendments to the CBN attempted to maintain the coherence between the two sets of legal rules. The amendment of art. 16 CBN by the law of 6 August 1993 is particularly noteworthy in this regard. As explained above (see above at 3.1.), this modification was intended to further combat so-called ‘sham marriages’. Henceforth, a foreigner who married a Belgian partner and who came to settle in Belgium as a consequence of his or her marriage was bound to wait a period of three years before being authorised to make a declaration of option for citizenship. This period did not apply to a foreigner who, at the time of marriage, was already authorised to stay in Belgium on a permanent basis: for him or her, the waiting period was only six months (art. 16, §2 CBN). This difference in treatment of two categories of spouses in Belgian law can be explained by the third function of citizenship regulation: the acquisition of Belgian citizenship was encouraged, but not to the detriment of the (restrictive) Belgian immigration policy. The foreigner who might be suspected of using marriage to a Belgian national primarily as a means to gain not only easier access to the territory of the country, but also Belgian citizenship, will have to wait longer.

As in other respects, the law of 2000 represented a significant breach with tradition. Next to the fact that some of the provisions of the CBN were no longer compatible in their mutual relationships,⁵² the CBN as it was modified also allowed foreigners to circumvent the legislation on immigration to Belgium that applied to non-EU nationals and which was much more restrictive. Regarding immigration, the Belgian legislation indeed does not grant adult children a right to family reunification with their parents in Belgium, unless there are humanitarian reasons such as a serious handicap that makes the child remain dependent on his parents even as an adult. Yet based on art. 12bis, §1, 2° CBN as it was adopted in 2000, the legislation granted such right, albeit indirectly⁵³. Hence, by indirectly granting a right of

⁵² The inconsistencies were also addressed in a ruling of the Constitutional Court. The Court found that the petitions was inadmissible (Judgement of the Constitutional Court n° 93/2005 of 25 May 2005). Interestingly, the Constitutional Court also noted that: ‘B.3. It is true that the option offered to an adult foreigner born abroad, and who has at least one parent who at the time of the declaration holds Belgian nationality, to acquire Belgian nationality subject only to the conditions of Article 12bis, §1, 2°, is not justified if one compares his or her situation to that of other categories of foreigners mentioned in the preliminary question and who are required to have their principal residence in Belgium. Nevertheless, it is up to the legislator to put an end to this discrepancy.’ In the law of 27 December 2006 (see note 17 above), the discrepancy is eliminated by extending the provision of art. 12bis, § 1, 2° to children born in Belgium and to foreigners adopted by Belgians. For the latter category, this applies on condition that the adoption took place while the child was a minor, in order to avoid sham adoptions.

⁵³ Art. 10, §1, 2° and art. 15 of the law of 15 December 1980 concerning access to territory, residence, establishment and removal of foreigners provides for the right of residence to be granted to foreigners who fulfil the legal conditions for acquiring Belgian citizenship by declaration (as is the case for art. 12bis, §1, 2° CBN) or by option. These foreigners are fully entitled to reside in the country, without having to seek prior authorisation from the competent Minister or the Office of Foreigners’ Affairs - since they hold the right of residence and without having to make a formal declaration to acquire citizenship. This combined reading of two legal texts leads to the conclusion that, when a foreigner acquires Belgian citizenship, any of his or her children born abroad, as soon as they are adult, are also entitled to citizenship and to residence in Belgium. This is clearly inconsistent with the basic principles that serve as guidelines to the legislation on immigration of non-EU nationals, including family reunification: parents (non-EU nationals) who would like their grown-up children living abroad to join them, are not authorised to do so. Yet, the simplified access to Belgian citizenship provides

residence to adult foreigners who according to Belgian immigration laws would not be entitled to long-term residence, the legislation of citizenship acquisition neutralised, and even damaged the effects the legislator had tried to achieve when regulating migration to Belgium (Renauld 2005: 35-38).

The heavy criticism which was voiced against the 2000 reform had an impact. One of the main drivers of the reform which took place in 2012 was indeed to render the provisions of the CBN migration-neutral (Foblets, M.-Cl., 2011). This was done by making it impossible for foreigners to request the acquisition of Belgian nationality without residence in Belgium. An application can only be filed provided the applicant demonstrates that he/she effectively resides in Belgium. In addition, the requirements relating to the residence have been tightened. According to Article 7bis of the CBN, an applicant must demonstrate that he/she resides legally in Belgium when filing an application. The residence period preceding the application must also be covered by a residence title. A difference is made between the type of permit required depending on the moment at which the permit is required: the applicant must possess a permit of indefinite duration when filing the declaration⁵⁴, whereas he/she must only have a permission to stay for a limited duration (i.e. 3 months) for the period preceding the application.

On the other hand, the 2012 reform brought about a new inconsistency. The reform abolished the possibility for persons recognized as refugee on the basis of the 1951 Geneva Convention to request the acquisition of the Belgian nationality through a fast track procedure. Refugees are subject to ordinary rules for acquisition. This creates an inconsistency with the international obligations assumed by Belgium on the basis of the 1951 Geneva Convention.

Making the CBN simultaneously play various roles currently leads to the loss of its coherence, because, some types of citizenship acquisition neutralise, or even damage the effects the legislature has tried to achieve by other legislation. Thus one observes counterproductive effects.

them with the solution. By extending the scope of art. 12bis, §1, 2° CBN to adult foreigners adopted by one or two Belgians, the 2006 amendment resolved one internal inconsistency, but created a new external inconsistency.

⁵⁴ This may be an authorisation to settle or an authorisation/permission to stay for an unlimited duration.

5 Conclusions

Belgian citizenship law has just emerged from a long period of intense tension. During the period between 1984 and 2000, various reforms were adopted which aimed to make acquisition of nationality easier. While most of these reforms did not break the coherence between citizenship legislation and migration policy, the changes which came into force on 1 March 2000 were perceived to relax access to Belgian citizenship so much that it neutralized, or even damaged the effects the legislators have tried to achieve by other legislation. This led to counterproductive effects such as a very restrictive application of the law by various authorities.

The 2012 reform put an end to this troubled period. The new model of citizenship is much more in line with current practice in other European countries: acquisition of citizenship requires a positive demonstration of integration. Mere residence in Belgium is not sufficient, save in exceptional circumstances. This reform is the first since 1984 which puts an end to the gradual relaxation of the criteria for acquisition of citizenship. By doing so, the legislator has embraced a more traditional vision of citizenship, which is linked not only to one's residence on the territory, but rather to one's integration into a society. The legislator has also brought some much needed consistency in the rules governing acquisition of the nationality.

While the reform will certainly bring back some coherence in the relationship between acquisition of nationality and regulation of migration, it does not put an end to the discussion about integration of foreigners in society. Acquisition of nationality is indeed but one of the instruments which can be used to promote integration of foreigners and people of immigrant origins into society. The intense debate which took place over the last few years on the CBN have left little room for discussion and more importantly action in other fields, such as the struggle against discriminatory treatment, the effective penalising of racist behaviour or the setting up of training programmes for newcomers.

Further, it is noteworthy that the 2012 reform came about at a point where the role of nationality has decreased significantly. Looking at political participation or the possibility to access civil service, nationality has during the last years continued to lose some of its practical impact. This decreased significance is not reflected in the massive investment which took place during the debate which led to the 2012 reform.

Finally, the new concept of citizenship should certainly be closely watched. The complexity of the rules of acquisition and the insistence on documentary evidence in order to demonstrate integration, may have unintended effects. In particular, one should pay attention to the position of women whose access to nationality may have been overly restricted.

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