

## Czech Parliament Debates the New Citizenship Bill

By Andrea Baršová, EUDO citizenship expert, Prague, 9 November 2012

On Wednesday, October 10, the government of the Czech Republic introduced a new bill on Czech citizenship to the Chamber of Deputies.<sup>1</sup> The bill was approved at the cabinet meeting on October 3. The introduction of the bill was preceded by legislative preparations and discussions at the governmental level for almost a decade. If passed by Parliament, the new law on citizenship will bring a major overhaul of existing rules in terms of dual (multiple) citizenship and the (re)acquisition of Czech citizenship of former Czech (Czechoslovak) citizens and their descendants. The bill will also bring substantial improvements to the situation of the 1.5 and second generation of immigrants and to foreign children placed into foster care.

At the same time, the bill raises a number of conditions that a foreigner must meet to acquire Czech citizenship by naturalisation, including a newly introduced civic knowledge test. It also brings new, broadly formulated *integration requirements*. Dependence on welfare benefits is construed as an obstacle to naturalisation. Wide discretionary powers of the Ministry of the Interior as regards naturalisation are retained, and even increased.

The adoption of the bill by the cabinet did not receive much attention by the media. At the press conference following the cabinet meeting on 3 October, the approval of the citizenship bill was neither mentioned by members of the cabinet, nor was there any inquiry by the press.<sup>2</sup> The only reaction was from NGOs working with migrants, who criticised the bill as too tough for foreigners seeking naturalisation and expressed concern over other points, such as the proposal that children born out of wedlock with a foreign mother, who is a third country national, and a Czech father can gain citizenship only after a DNA test proving their father's identity. The NGOs summed up their objections in an open letter published prior to

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<sup>1</sup> Sněmovní tisk 827: VI. n. z. o státním občanství České republiky. In: *Poslanecká sněmovna Parlamentu České republiky* [online]. Praha, 2012 [2012-10-14]. Available at: <http://www.psp.cz/sqw/historie.sqw?o=6&T=827>

<sup>2</sup> See notes of the press conference after the sitting of the cabinet on 3 October, 2012. Tisková konference po jednání vlády, 3. října 2012. In: *Vláda České republiky* [online]. Praha, 3.10.2012 [2012-10-07]. Available at: <http://www.vlada.cz/cz/media-centrum/tiskove-konference/tiskova-konference-po-jednani-vlady--3--rijna-2012--99580/>

the cabinet meeting on October 2.<sup>3</sup> The bill does not change the constitution and thus a simple majority in both chambers of the Czech Parliament, the Chamber of Deputies and the Senate, is enough for its adoption. The first reading in the plenary is scheduled for the meeting of the Chamber starting on 23 October. If approved in the first reading, the bill will be discussed first by the Security Committee. If passed, the bill will enter into force on 1 January 2014.

On most points, the bill follows the draft circulated by the Ministry of the Interior for comments in September 2011, but there are some changes. A major shift concerns dual (multiple) citizenship for persons applying for acquisition of Czech citizenship through naturalisation<sup>4</sup>

Summary of the main points of the new legislation:

### ***Consolidation of citizenship legislation***

One of the main aims of the proposed reform is the consolidation of citizenship legislation into a single law. Currently, the citizenship legislation is split into two laws: the 1993 Citizenship Act (Act No. 40/1993 Coll.) and the specific 1999 Act on the Citizenship of Some Former Citizens (Act No. 193/1999 Coll.). The bill also aims to terminate the specific citizenship provisions, incorporated in the 1993 Citizenship Act, related to the break-up of Czechoslovakia and the creation of the independent Czech Republic on 1 January 1993.

### ***Termination of the specific regime relating to the break-up of Czechoslovakia***

The draft also aims to terminate the specific citizenship provisions related to the break-up of Czechoslovakia (Czech and Slovak Federal Republic) and the creation of the independent Czech Republic. This regime involved a set of specific provisions regulating the simplified acquisition of Czech citizenship by former Czechoslovak citizens, which are still invoked. However, the Ministry of the Interior points to the fact that the numbers are decreasing. In 2009, 431 former Czechoslovak citizens (Slovak nationals) acquired Czech citizenship by

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<sup>3</sup> Dopis premiérovi, ministryním a ministrům vlády České republiky. In: [online]. Praha: *Konsorcium neziskových organizací pracujících s migranty*, 2.10.2012 [2012-10-07]. Available at: [http://www.konsorcium-no.cz/dokumenty/dopis-clenum-vlady-novy-zakon-o-statnim-obcanstvi-je-neprimerene-prisny\\_201210032031293.pdf](http://www.konsorcium-no.cz/dokumenty/dopis-clenum-vlady-novy-zakon-o-statnim-obcanstvi-je-neprimerene-prisny_201210032031293.pdf) For more detailed information on the critique by the NGOs see: ČIŽINSKÝ, Pavel. Stručná analýza některých problémů návrhu zákona o státním občanství ČR. *Migraceonline.cz* [online]. 26.4.2012 [2012-10-07]. Available at: <http://www.migraceonline.cz/e-knihovna/?x=2341889>

<sup>4</sup> See also EUDO Citizenship news: BARŠOVÁ, Andrea. Czech Republic: Major Points of Change of the New Draft Citizenship Law. *European Union Democracy Observatory on Citizenship* [online]. 6.11.2011 [2012-10-07]. Available at: <http://eudo-citizenship.eu/news/citizenship-news/522-czech-republic-draft-citizenship-law>. This article updates the information.

declaration on grounds of these provisions. In 2010, the number was 377, and in 2011, 144 former citizens.

### ***Dual (multiple) citizenship on the entry and exit side proposed***

The bill proposes major change as regards the approach to dual (multiple) citizenship: a liberal approach to dual (multiple) citizenship for both incoming and outgoing naturalisations. On this point the bill goes back to some earlier versions of the draft legislation. Under existing legislation, singular citizenship is still regarded as a rule (despite a growing number of exceptions).

The rule of automatic loss (lapse) of Czech citizenship upon acquisition of a foreign nationality was introduced in 1993, with the adoption of the new citizenship legislation in relation to the break-up of Czechoslovakia. Together with the renunciation of citizenship, this lapse of citizenship is currently one of the two modes of loss of citizenship in Czech law. While there had been consensus for a long time at the governmental level about the need to change this approach, the toleration of dual (multiple) for foreign nationals acquiring Czech nationality remained an open issue for a long time.<sup>5</sup> Now the bill proposes that the renunciation of a prior citizenship is no longer a condition for naturalisation. For many immigrants, this change may set aside a major obstacle for naturalisation, as they will be able to retain their original citizenship (if their country of origin accepts this).

### ***Stricter conditions for naturalisation***

The option to retain former nationality by foreigners seeking naturalisation is clearly a new liberal element in the naturalisation procedure, welcomed by many immigrants as well as NGOs. Further conditions for naturalisation (Section 13 – 15) go in the opposite direction. They broadly follow current law and administrative practice and aim towards tightening the conditions for naturalisation. They involve permanent residence status, stay in the territory for a specified period of time, a clean criminal record and absence of substantial breach of laws and norms (rules on immigration, taxes, social security, health insurance, etc.) by the applicants within a *three year period* prior to lodging the application. (At present, there is no time limit, which creates problems in practice.) New conditions added by the bill include that

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<sup>5</sup> See EUDO Citizenship news: BARŠOVÁ, Andrea. Czech Republic: Major Points of Change of the New Draft Citizenship Law. *European Union Democracy Observatory on Citizenship* [online]. 6.11.2011 [2012-10-07]. Available at: <http://eudo-citizenship.eu/news/citizenship-news/522-czech-republic-draft-citizenship-law>.

the applicant has to prove the legal source of his/her income and also that he/she is not an unjustifiable burden for the welfare system. In addition to stricter language tests, the applicant will also have to pass a civic knowledge test, involving knowledge of the constitutional system as well as basic knowledge of the cultural, societal, geographical and historical situation of the Czech Republic (Section 14, see below for further details).

In addition to the concrete conditions for naturalisation described above (Section 14), the bill also contains an open-ended integration requirement (Section 13, para 1), which reads: “The citizenship of the Czech Republic may be granted, if the applicant is integrated into the society in the Czech Republic, in particular as regards integration from family, work or social perspectives ....” This provision should give legal backing to broad use of discretion by the Ministry of the Interior in naturalisation procedures criticised in the past by the Supreme Administrative Court and the Ombudsman.<sup>6</sup>

At least three reasons may be identified for this development. First, and perhaps most importantly, the bill codifies existing practices (e.g. as regards the above discussed evaluation of applicants from an integration perspective). Second, the bill reacts to broader European trends already incorporated in Czech immigration legislation (in particular as regards language tests). Finally, one may also see the tightening of conditions for naturalisation as a sort of equalising measure related to the increased number of eligible migrants once the renunciation of prior citizenship is not a condition for naturalisation. The underlying concept, the critics say, is rather “citizenship as an award” than “citizenship as a rule”.

### ***Language and civic knowledge tests***

Language tests, which exist also under the current legislation, should be carried out more professionally. Such tests, as well as the newly introduced civic knowledge tests, will be provided for by certified schools, school facilities and universities (Section 69). The level and content of both the language and civic knowledge tests will be determined by a decree of the Ministry of Education, Youth and Sports (Section 75). Those who studied for at least a 3 year

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<sup>6</sup> See BARŠOVÁ, Andrea. Czech Republic Country Report. In: *European Union Democracy Observatory on Citizenship* [online]. 2012 [ 2012-10-15].

Available at: <http://eudo-citizenship.eu/docs/CountryReports/Czech%20Republic.pdf>

period at the elementary school, secondary school or university with Czech language as a language of instruction are exempt *ex lege* from the test, as well as applicants younger than 15 years of age and applicants over 65 years.

### ***Achievement-based acquisition of nationality***

A new provision will regulate in a more complex way the achievement-based acquisition of nationality (Section 16). Compared to the legislation in force, foreigners applying for naturalisation on grounds of their specific achievements in science, education, culture or sports or on the basis of *state interest* are to be exempted from a broad spectrum of standard naturalisation conditions, but they still have to be permanent residents and have a clean criminal record. The bill newly specifies that the applicant has to submit a document issued by a ministry or other organ of central administration, the Office of the President, state or public university or public research institution (Section 16, para 2).

### ***Stricter conditions for acquisition of citizenship through ius soli for children otherwise stateless and through paternity determination***

With the aim of preventing the abuse of law, the bill retains some controversial conditions for the acquisition of citizenship through *ius soli* for children otherwise stateless, foundlings and through paternity determination. These provisions are summed up under the heading *specific rules for granting the Czech citizenship* in Sections 28 – 30.

One of the most controversial provisions relates to the determination of paternity. A child born to a foreign mother and a Czech father (whose fatherhood has been determined by a consensual declaration by parents, that is a child born out of wedlock,) acquires Czech citizenship *ex lege* through the determination of paternity only if the mother is a citizen of an EU member state, Switzerland or EEA state. If the mother is a third country national, the acquisition of citizenship at birth is not automatic. The parents have two options: either they submit to the Ministry the DNA test proving the fatherhood (Section 7, para 2) or they have to apply for the citizenship for the child under the above mentioned *specific provision of the bill*. Under specific provision (Section 28), the Ministry of the Interior investigates whether the declaration of fatherhood was not made “exclusively on purpose”, with the aim to obtain Czech citizenship for the child and its mother or misuse public social assistance. The Ministry thus investigates circumstances such as whether the child and father live in the same household, whether the father participates in the upbringing of the child and fulfils his duty to

uphold the child financially. These provisions are criticised by some NGOs and other actors, who point out that the provisions on DNA test are not in line with the social concept of fatherhood incorporated in Czech legislation and for their potentially destructive consequences for the child and the family.<sup>7</sup>

The Ministry of the Interior will also check whether a baby, born in the territory of the Czech Republic, is stateless only because of intentional neglect by parents (e.g. because the parents did not register their child at the diplomatic office of their home country). In such a case, Czech citizenship should not be acquired (Section 29, para 4). It is also proposed that only foundlings under three years of age will acquire Czech citizenship automatically. In the case of older foundlings (e.g. mentally handicapped persons), the decision of the Ministry is necessary for the acquisition of Czech citizenship (Section 30).

#### ***Acquisition of citizenship for former citizens and their descendants by declaration***

The bill proposes a more liberal regime for the (re)acquisition of Czech citizenship (Sections 31-32) by former Czech (or Czechoslovak) citizens who lost their citizenship before the entry into force of the new law (i.e. 1 January 2014). These persons will be entitled to reacquire Czech citizenship by declaration. Slovak citizens and those who fall within the scope of the 1945 Beneš decree and the post-war treaty with the USSR concerning the Transcarpathian Ukraine (“Zakarpatská Ukrajina” or “Podkarpatská Rus”)<sup>8</sup> are excluded from (re)acquisition. The same rule applies to the descendants of former Czech (Czechoslovak) citizens: their children and grandchildren. In other words, one parent or one grandparent out of four meeting the conditions qualifies a foreigner for the acquisition of Czech citizenship by declaration.

These provisions build on the previous specific legislation for the reacquisition on Czech (Czechoslovak citizenship) adopted after 1989, which dealt with the communist past,<sup>9</sup> but are significantly broader. They are also linked to the new approach to dual (multiple) citizenship. Since Czech citizens will no longer lose Czech citizenship automatically, if they acquire a foreign citizenship, there is a need to allow for the reacquisition of Czech citizenship for those emigrants who lost it after 1993.<sup>10</sup> Further potential beneficiaries of the new rules are,

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<sup>7</sup> See above footnote 3. The provision is also in conflict with Section 4 of the bill which proposes unequivocally that a child acquires Czech citizenship by birth, if at least one of his/her parents is a Czech citizen.

<sup>8</sup> Acts no. 33/1945 Coll. and no. 186/1946 Coll.

<sup>9</sup> Acts no. 88/1990 Coll. and no. 193/199 Coll.

<sup>10</sup> In other words, it does not seem just to insist on the consequences of a rule that has been abandoned.

according to the explanatory memorandum, persons who lost Czech (Czechoslovak) citizenship due to some bilateral treaties, such as the 1928 Treaty between the United States and Czechoslovakia on naturalisation and treaties on prevention of dual (multiple) nationality concluded between some former socialist countries. These treaties are no longer in force and thus it may seem unjust to insist on their consequences, i.e. the loss of Czech (Czechoslovak) citizenship.

This mode of acquisition of Czech citizenship is not subject to any further requirements, such as permanent residence, knowledge of the Czech language, a clean criminal record, etc.

### ***Substitute ius soli for generation 1.5 and second-generation migrants***

The bill introduces a substitute for *ius soli*, a right to citizenship based on residence before the age of majority, for generation 1.5 (i.e. children born abroad who immigrated as minors) and the second generation of migrant origins (Section 34).

At present, facilitated naturalisation is available for persons born in the Czech Republic. Under the newly proposed rules, foreign children could also acquire Czech citizenship on the basis of a period of prior residence in the territory. A foreign child *living* in the territory since at least the age of 10 could obtain citizenship by declaration at majority (18 years). The period for making the declaration is 3 years after achieving majority. However, he/she has to meet further restrictive conditions, which involve permanent residence status, qualified residence in the territory (2/3 of the period between age 10 and the date of submitting the declaration) and a clean criminal record. Those who fulfil these conditions have a right to obtain Czech citizenship automatically by mere declaration, without need to pass a language or civic knowledge test. Neither the place of birth of the person nor his or her parents' residence and status are relevant. According to the explanatory memorandum, the newly proposed mode of acquisition transposes the obligations under the European Convention on Nationality.<sup>11</sup>

### ***Acquisition of citizenship for children placed in foster care by declaration***

The bill newly proposes that a child staying legally in the territory of the Czech Republic can obtain Czech citizenship by declaration, if the child was placed in foster care (Section 35).

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<sup>11</sup> See Article 6, Para 4, letter f), European Convention on Nationality.

### ***Renewal of procedure in matters of citizenship acquisition (new fraud provision)***

The draft law proposes to introduce a new possibility to reopen (renew) a naturalisation procedure or other procedures that has led to the acquisition of Czech citizenship (e. g. through declaration) for reasons and under conditions stipulated by the Administrative Code (Section 38). At present, an explicit fraud provision is missing in the Czech citizenship legislation. Withdrawal of citizenship acquired by fraud is considered compatible with the constitutional ban on the deprivation of citizenship against one's own will, as in these cases citizenship was acquired improperly. Consequently, the provisions on the renewal of procedure are included in Chapter II which deals with the acquisition of citizenship.

### ***Loss of citizenship***

The only mode of loss of citizenship under the new bill, legally speaking, is voluntary renunciation of Czech citizenship (declaration on the relinquishment of citizenship, Section 39). A citizen can only relinquish his/her Czech citizenship through declaration, if he/she lives permanently abroad, he/she is not registered as a permanent resident in the Czech Republic and he/she is a citizen of another state or he/she applies for the citizenship of another state and makes this declaration in relation to this application.

### ***EU citizens, EU law***

At present, the Czech citizenship legislation in force does not distinguish between EU citizens and third country nationals. The bill proposes to establish a more favourable regime of access to citizenship for the citizens of the EU, Switzerland and the EEA. The citizens of these states will qualify for naturalisation after 3 years of permanent residence, whereas the citizens of other countries need 5 years (Section 14, para 1). Also, as explained above, only children born out of wedlock to a mother who is a citizen of the EU (or of an EEA state or Switzerland) obtain Czech citizenship based on declaration of fatherhood (by a Czech citizen) automatically, without further conditions. However, this more favourable regime for EU citizens is not elaborated systematically. For instance, there is no preferential treatment for EU citizens in relation to acquisition of citizenship by declaration at majority.

The explanatory report also makes reference to EU law, namely Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents. In relation to naturalisation conditions the draft refers “by analogy” to the Directive (e.g. requirement of stable resources sufficient to live without recourse to the social

assistance system, sickness insurance). However, foreign residents who seek naturalisation in the Czech Republic are by definition of law permanent residents and their citizenship status has no impact on their access to welfare.

### ***Procedures and Judicial Review***

The procedures and the institutional setup remain substantially unaltered. The Ministry of the Interior decides on naturalisations, whereas processing the acquisition of citizenship by declaration remains a competence of regional authorities (*krajské úřady*) and city district authorities (*úřad městské části*) in Prague, which act as organs of the state (transferred competence). The responsibilities of magistrates of the cities of Brno, and Ostrava and Plzeň (which seem not to be systemic) will be replaced by the competence of corresponding regional authorities (*krajské úřady*).

The regional authorities, the city district authorities in Prague and the embassies abroad are competent for dealing with the renunciation of citizenship.

The naturalisation process will take longer. Under current legislation, the Ministry decides within 90 days after the application was transferred to the Ministry by the responsible authority; this period will be extended to 180 days.

Some changes relate to administrative fees, which will be calculated differently (in cases of individual adult persons who naturalise, they will be substantially lower, approximately EUR 80, compared to the current EUR 400).<sup>12</sup>

The draft law proposes to introduce an exception from judicial review in naturalisation cases rejected on grounds of state security (Section 26). The explanatory memorandum states that in the period 2005-2010 the number of naturalisation applications rejected on this ground was around 5 per cent of all rejected applications. This exception is criticised by the Supreme Administrative Court and the Ombudsman.

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<sup>12</sup> At present, the basic fee for issuing naturalization decree is CZK 10 000 (that is EUR 400), but the decree may involve more members of the family. The fee will be lowered to CZK 2000 (that is EUR 80) for an adult and to CZK 500 (EUR 20) in case of minor applicants. Each applicant has to pay separately. The proposed fee for a declaration on citizenship is CZK 500 (EUR 20).

## Overview:

	<i>Legislation in force</i>	<i>Draft law</i>
Legal basis	<ul style="list-style-type: none"> <li>• Law no. 40/1993 Coll. on Acquisition and Loss of Citizenship of the Czech Republic</li> <li>• Law no. 193/1999 Coll. on Reacquisition of Citizenship</li> </ul>	<ul style="list-style-type: none"> <li>• Single law on citizenship</li> </ul>
Modes of acquisition of citizenship	<ul style="list-style-type: none"> <li>• Descent or birth in the territory</li> <li>• Paternity determination</li> <li>• Adoption</li> <li>• Through being found on the territory (foundlings)</li> <li>• Naturalisation</li> <li>• Declaration under Law no. 40/1993 Coll. - former Czechoslovak citizens in relation to the split-up of Czechoslovakia as of 1 January, 1993, in particular those who had been living continuously on the territory of the Czech Republic since 31 December, 1992;</li> <li>• Declaration under Law no. 88/1999 Coll. former Czechoslovak citizens who lost Czechoslovak citizenship in the period from 1 October 1949 till 31 December 1990</li> </ul>	<ul style="list-style-type: none"> <li>• Descent or birth in the territory</li> <li>• Paternity determination</li> <li>• Adoption</li> <li>• Through being found on the territory (foundlings)</li> <li>• Naturalisation</li> <li>• <i>Declaration (former Czech / Czechoslovak citizens (and their children and grandchildren) who lost Czech / Czechoslovak citizenship prior the entry of the law into force (1 January, 2014);</i></li> <li>• <i>Acquisition based on socialisation (as a substitute for ius soli) for 1.5 and second generation migrants (by declaration);</i></li> <li>• <i>By declaration in relation to placing a child into foster care.</i></li> </ul>
Modes of loss of citizenship	<ul style="list-style-type: none"> <li>• Voluntary renunciation of citizenship</li> <li>• Automatic loss of Czech citizenship upon acquisition of foreign citizenship at one's own request</li> </ul>	<ul style="list-style-type: none"> <li>• Voluntary renunciation of citizenship</li> <li>• <i>Renewal of procedure in matters of citizenship acquisition within three years* (See above.)</i></li> </ul>

