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Report on Belgium

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Belgium

Marie-Claire Foblets and Zeynep Yanasmayan

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 Nationality¹ (hereafter CBN) favours *ius sanguinis* as the criterion for attributing nationality by virtue of parentage, but adds to it *ius soli*, i.e., the criterion of birth in Belgium. The Code, secondly, allows for broad access to citizenship in order to facilitate the integration of foreigners into society. 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 others 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). 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.).

Throughout this report, we illustrate how these five principles are formulated in the CBN and how they govern access to citizenship in Belgium since 1984. As we will try to make clear in the next three parts, the Belgian citizenship regime is among the most flexible systems when one compares the conditions for acquisition of nationality that are in place in other European countries. Not surprisingly, this flexibility has also been severely criticised by those who are in favour of stricter conditions. Throughout the analysis, we will seek to display an accurate picture of the background of this flexibility. 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. At a time when integration tests are proliferating across Europe, the amendments² to the CBN of 2000

¹ 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.

² Law of 1 March 2000 modifying a series of provisions relating to Belgian nationality, *Belgian Official Gazette*, 6 April 2000.

abolished the provision relating to proof of ‘the willingness to integrate’ from the legislation. These amendments can be explained by a combination of factors which are embedded in the Belgian context. The particular federal system 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 legislator 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 nineties, 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.

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 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 takes the citizenship of her husband and so do 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. These modes of loss have also been incorporated into the current CBN (art. 22, paras. 1, 10 and 5° CBN).

During the Dutch-Belgian Union from 1815 to 1830, the Napoleonic Code remained

in effect³ 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.⁴

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 jurisprudence 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,⁵ 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.⁶ Still other provisions regulated the re-acquisition of Belgian citizenship, particularly when this had been lost on a voluntary basis.⁷ Finally, several laws were passed that entailed the approval of a number of international conventions.⁸

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

³ Only art. 9 (declaration of domicile) was repealed.

⁴ 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)

⁵ In this regard, see especially the laws of 27 September 1935 and of 6 and 7 August 1881 concerning naturalisation. The law of 1 April 1879 determined the period of time after which citizenship by option could be granted (art. 9).

⁶ Law of 15 August 1981 attributing Belgian citizenship to children born in Belgium of legally unknown parents, *Belgian Official Gazette*, 18 August 1881.

⁷ 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.

⁸ 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.

and of certain specific laws,⁹ 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 and who were 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.¹⁰

The laws of 1922, 1926, 1927 and 1932 were finally grouped by the Royal Decree of 14 December 1932 known as the ‘Law on acquisition, loss and re-acquisition of citizenship’.¹¹ 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’¹² 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

⁹ Other laws were, on the other hand, retained, such as the law of 6 August 1881 on naturalisation.

¹⁰ 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.

¹¹ *Belgian Official Gazette*, 17 December 1932.

¹² Children born out of wedlock.

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 (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 unveil clashing 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, 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; the principle of *ius sanguinis* as the main criterion since 1922 for the granting of Belgian citizenship was significantly altered, giving way on the one hand to an adjustment of that criterion,¹³ and on the other to the *ius soli* principle, with a view to facilitating the integration of migrants and stateless people. (2) 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 judged to be incompatible with the evolution at the level of both domestic and international law, towards equal treatment within the family. The inequality of

¹³ 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 parent was born in Belgium.

sexes and discrimination suffered by adoptive children and by children born out of wedlock were no longer considered legitimate. (3) 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),¹⁴ 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 ancient 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 birth¹⁵ 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. The text of the law of 1 March 2000, better known by the public as the ‘quickly-Belgian-law’, represents, after the laws of 13 June 1991, 6 August 1993, 13 April 1995 and 22 December 1998, the fifth fairly substantial modification of the Code in barely twenty years.¹⁶ The basic motivation underlying these reforms of the CBN has remained unchanged: facilitating the integration of foreigners into society. The law was last amended in December 2006.¹⁷ 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.

¹⁴ 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).

¹⁵ 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).

¹⁶ For purposes of clarity, we list here, once again, the amendments adopted in the period 1991-2000: 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 and Law of 1 March 2000 changing certain provisions regarding Belgian nationality, *Belgian Official Gazette*, 6 April 2000.

¹⁷ On 27 December 2006, the Belgian government approved a law which addresses a number of points of criticism (*Belgian Official Gazette*, 28 December 2006, arts. 379 to 389). We will systematically refer to that law and the amendments it introduced, when relevant.

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 abroad, on condition that they were born to a Belgian parent. However, filiation to a Belgian parent does not always automatically lead to the acquisition of citizenship. The CBN requires, moreover, 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 who 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 child. 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 option once it reaches adulthood (art. 13, 3° CBN).

The law of 13 June 1991 that came into force on 1 January 1992 has definitely confirmed this determining role of the place of birth in acquiring Belgian citizenship (*ius soli*) and has also simplified the possibility of acquiring Belgian citizenship for second and third generation migrants. Belgian citizenship can also be 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).¹⁸ Third generation foreigners, that is, children who are born in Belgium from parents of whom at least one was also born in Belgium, can now acquire Belgian citizenship in a simple manner. It is sufficient that one parent has resided in Belgium during five of the ten years before the birth and the child must be formally registered (art. 11 CBN). A more flexible system of acquisition of nationality was also developed for second-generation foreigners, i.e., children of foreign parents but born in Belgium. If such a child has lived in Belgium since his or her birth, (adoptive) parents who have resided in Belgium for ten years can make a statement at the registrar (art. 11bis CBN).¹⁹ This mode of acquisition is defined by Belgian law as an *ex lege* mode, since the registrar cannot on his own initiative prevent the registration of the child as a Belgian

¹⁸ 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).

¹⁹ 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.

national. However, the public prosecutor can refuse the acquisition if in his view the statement was not made 'in the interest of the child'. 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 (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 filiations 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 can now 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 has 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.²⁰ Regarding transmission of citizenship, legitimate parentage and natural parentage are henceforth governed by an identical system.

Non-automatic modes of acquisition

The CBN distinguishes three basic non-automatic modes of acquisition of Belgian citizenship: acquisition upon declaration, acquisition by option, and acquisition by naturalisation. All three modes require that the person concerned formally expresses the will to become Belgian.

The acquisition of citizenship by declaration is a mode by which foreigners who were born in Belgium can acquire Belgian citizenship without, in principle, having to go through any procedure. Moreover, with the law of 1 March 2000, access to this mode of acquisition was made more flexible. Thus, for example, it is no longer required that a foreigner makes the declaration between the age of eighteen and thirty, since the upper age limit has been removed.

Since the coming into force of the law of 1 March 2000²¹ the procedure applying to

²⁰Marckx 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).

²¹ See note 2 above.

the acquisition of citizenship by declaration (art. 12bis CBN) also applies to foreigners who have reached the age of eighteen and who 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 to a parent (at least one) who at the time of the declaration had Belgian nationality. (3) Finally, the procedure also applies to foreigners who have had their main legal residence in Belgium for at least seven years at the time of declaration and who have been authorised to reside in the country pursuant to the provisions of the law on residence of foreigners of 15 December 1980²². The procedure of declaration is strongly underpinned by the second principle mentioned in the introduction of this report that consists in enabling broader access to citizenship.

Yet, as mentioned in the introduction, some have severely criticised the 2000 law for exhibiting what they see as too much flexibility towards the acquisition of Belgian citizenship. Two illustrations of this flexibility are the opportunity to become Belgian through a mere declaration, given to these last two groups. Birth in Belgium is in their case no longer required; the condition of residence is removed for the second group, and its length is reduced to a period of no more than seven years for the third group. 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) and 11,576 (2007).²³ We will further elaborate on art. 12bis CBN (see below at part 4) since it raised quite a bit of discussion when the 2000 law was drafted.

There has been confusion about the interpretation of the expression ‘main residence’ in the legal texts, in particular in reference to art. 12bis, §1, 2° & 3° CBN, since it was unclear which type(s) of residence permit(s) would qualify as such.²⁴ In principle, 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.²⁵ The interpretation was confirmed in a circular letter of 25 April 2000,²⁶ where the Minister of Justice supported that position. However, the text of the law limits itself to the wording ‘main residence’; it does not mention the condition that the residence be ‘legal’. In a much discussed decision, the Court of Cassation (Supreme Court) stated that it is therefore 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.²⁷ To avoid new misunderstandings, the legislature however, by law of 27 December 2004, confirmed the interpretation according to which legal residence is required.²⁸ The Court of Cassation has in the meantime changed its jurisprudence accordingly.²⁹ It would perhaps have been preferable to speak of a ‘residence based on legal

²² 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’.

²³ SPF Economie, DG Statistique et information économique/Registre national [Federal Public Service for Economy, Directory General ‘Economical statistics and data’/National Register].

²⁴ The different sorts of residence permits are: authorisation to settle, authorisation/permission to stay for an unlimited duration, or authorisation and permission to stay for a limited duration.

²⁵ Chamber of Representatives 1999-2000, Parl. St. 0292/001 and 0293/001, 10-11

²⁶ *Belgian Official Gazette*, 6 May 2000.

²⁷ Court of Cassation, 16 January 2004.

²⁸ *Belgian Official Gazette*, 31 December 2004, ed. 2.

²⁹ Court of Cassation, 20 June 2005.

authorisation' wherever the expression 'legal residence' is used in the CBN. This would have prevented misunderstandings.³⁰

After the declaration has been made, the public prosecutor must give advice concerning the acquisition of citizenship. In this respect, the law of 2000 has also redefined the competences of the Public Prosecutor's Office in order to expedite the procedure. Firstly, the time limit within which the Prosecutor's Department has to provide its advice was uniformly reduced.³¹ Secondly, the public prosecutor can issue a negative advice only when there is an impediment 'on account of important facts pertaining to the individual applicant',³² and when the basic conditions of the procedure are not met: duration of residence, main residence, age requirement(s), etc. The prosecutor can no longer give a negative advice 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 further facilitated, consecutively by the laws of 13 April 1995, 22 December 1998 and 1 March 2000. Moreover, since 2000 the naturalisation procedure is free of charge.

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 had his or her main residence in Belgium for three years (instead of five years, as was the case before the law of 2000). The period is reduced to two years for a foreigner whose status as a refugee or stateless person is recognised in Belgium (art. 19, §1 CBN). The person concerned should, in principle, maintain his or her main residence in Belgium throughout the procedure or at least keep an intensive bond with the country (art. 19, §2 CBN) and, according to the jurisprudence of the Chamber's Commission for Naturalisation which handles the applications, the main residence must be based on a residence permit of unlimited duration in Belgium. Persons who only stay temporarily in Belgium cannot, in principle, have recourse to this mode of acquisition.

³⁰ The law of 27 December 2006 (see note 17 above) limits main residence to the cases in which the person concerned holds a valid residence permit for a limited or unlimited period, other than for a short stay.

³¹ 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.

³² The term 'important facts pertaining to the individual applicant' is explained in the Circular letter of 6 August 1984 (*Belgian Official Gazette*, 14 August 1984) and in the Circular Letter of 8 November 1991 (*Belgian Official Gazette*, 7 December 1991). In the Circular letter of 20 July 2000 (*Belgian Official Gazette*, 27 July 2000, ed. 2) the Minister of Justice recalled the fact that 'not every criminal conviction constitutes an important fact pertaining to the individual applicant. Thus if a conviction happened a long time ago, involved a minor offence, or if there were any mitigating circumstances, this may mean that the conviction is not considered serious enough to affect an individual's application. Conversely, an impediment may exist even without any criminal conviction: for example, if the person has previously received an expulsion order from the Belgian territory. Similarly, acts of serious delinquency – whether or not a person has been convicted for them – violations of state security, terrorist activities, espionage or pronounced refusal to live by the Belgian laws, can serve as grounds for refusal. Furthermore, a foreign conviction can also be taken into account.'

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 Commission for Naturalisation of the Chamber of Representatives may postpone or reject the application before eventually approving or refusing the naturalisation.³⁵ The Chamber retains a discretionary power in the matter of naturalisation. Therefore, naturalisation is considered a favour and not a 'right' strictly speaking and there is consequently no appeal against a negative decision. Furthermore, given the principle of separation of powers, the judicial power has no authority to overrule a naturalisation act. In this regard, the Constitutional Court ruled that even though it has the fundamental competence to 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

A third, non-automatic way to acquire Belgian citizenship is the option procedure. The possibility of opting for Belgian citizenship is reserved to persons who are considered to have a strong link with Belgium, by their birth, their filiation or their residence in Belgium at a young age. Particular application of this procedure is made in the case of marriage with a Belgian, possession of Belgian status (*possession d'état de Belge*) and re-acquisition of Belgian citizenship.

More specifically, four categories of foreigners would qualify 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).

By the law of 22 December 1998, this procedure was almost made entirely equivalent

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 period 2007-2008, out of 19.834 applications, the Commission accepted 7.882, adjourned 4.907 and rejected 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.

to the simple mode of acquisition by declaration (see above). Here too, the willingness to integrate is presumed to be present by sole virtue of making the declaration of option. The only difference between the two procedures lies in the conditions regarding age and residence requirements. The foreigner must opt for Belgian citizenship between the age of eighteen and 22 and he or she must have had his or her main residence in Belgium during the twelve months preceding the declaration, and also during at least nine years or continuously from the age of fourteen to eighteen (art. 14 CBN).

A particular form of acquisition by option is the one applied to the foreign spouse of a Belgian (art. 16 CBN). Following the third abovementioned principle of gender equality, the CBN has since 1984 abandoned the system whereby the foreign woman automatically took the citizenship of her Belgian husband. It now provides that marriage does not have an automatic effect on either of the spouses' citizenship. Instead, it introduces a distinction based on the type of residence status available to the foreign spouse: the foreigner who at the time of the marriage has a right to reside legally and with no time restraints in Belgium on grounds other than his or her marriage, and who thus cannot be suspected of contracting the marriage for citizenship acquisition purposes, can begin the procedure of acquiring Belgian citizenship by option after six months of cohabitation. By contrast, the foreigner who depends on his or her marriage to a Belgian citizen to get a permission to stay in Belgium (on the base of family reunification), will have to wait at least three years before being permitted to file such an application. However, no specific minimum or maximum age is specified and since 1 June 2003 the homosexual spouse of a Belgian national can also make use of this mode of acquisition.³⁷

A further category of foreigners who can make use of the procedure of acquisition by option is composed of those 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 must be able 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).³⁸

Finally, the procedure of acquisition by option is open to any person who lost his or her Belgian citizenship by a means other than by forfeiture (art. 23 CBN)³⁹ and who wishes to re-acquire it (art. 24 CBN). Before they can acquire Belgian citizenship by option they must, in principle, be at least eighteen years old and have had their main residence in Belgium at least during the year preceding the declaration.

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).

³⁷ Law of 13 February 2003 making marriage to persons of the same sex possible and changing a number of provisions of the Civil Code, *Belgian Official Gazette*, 28 February 2003.

³⁸ The one-year deadline will be extended to the age of nineteen if the target person was a minor when it was ascertained that he or she was not Belgian.

³⁹ A person, who lost Belgian citizenship as a result of it being declared forfeit, can only reacquire it through naturalisation by a parliamentary act.

Until recently, with the amendment of the law of 27 December 2006, the adult Belgian person who acquired a foreign citizenship on his or her own initiative was legally considered to have renounced (lost) Belgian citizenship (art. 22, § 1, 1° CBN). The loss resulted from a formal act by the person who had expressed the wish to acquire a foreign citizenship. However, Belgian citizenship could not be lost as long as there was no such prior legal act or if the foreign citizenship was acquired indirectly (e.g., as an automatic effect of marriage with a foreigner).

Strikingly, Belgian legislation displays a much more tolerant approach towards foreigners who voluntarily acquire Belgian citizenship: They are allowed to keep their other citizenship(s). This flexible attitude is partly linked with the second abovementioned principle that conceives of citizenship as a facilitator of integration policy: the wish on the part of the Belgian legislature to smooth the path of acquisition of Belgian citizenship for foreigners who have settled in the country. Quite understandably, this asymmetry was contested by some since they believed that it was unjustified. For Belgians, acquiring on a voluntary (non-automatic) basis another, adopted citizenship indeed had a fairly radical impact on them, and in particular on their (Belgian) citizenship. Being stripped of citizenship constituted a much more severe treatment than the one that applies to foreigners acquiring Belgian citizenship. While the CBN provided for the automatic loss of Belgian citizenship by someone who, after the age of eighteen, voluntarily acquires a foreign citizenship (art. 22, § 1, 1° CBN), there is no equivalent requirement for those who voluntarily acquire Belgian citizenship. Legal action has therefore been undertaken, in particular by Belgians who had settled abroad with their families but wished to retain their Belgian citizenship even if they have acquired, or are about to acquire, the citizenship of the country of their habitual residence. Over the last decade, several bills aiming at modifying art. 22 CBN were introduced in order to offer such an option to Belgians residing abroad.⁴⁰ Eventually permission was granted when the law of 27 December 2006 came into force.⁴¹ Henceforth, 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 citizenship.

A minor whose (adoptive) parent(s) lost 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. Otherwise Belgian nationality is lost. Until recently, such a declaration was to be renewed every ten years. Since the law of 27 December 2006 the latter obligation no longer holds.⁴² Should it happen that a person lost Belgian citizenship by failure

⁴⁰ 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.

⁴² See note 17 above.

of declaring/renewing his or her intention to retain it, and would regret it, Belgian citizenship can in such case easily be re-acquired by means of the procedure of acquisition by option (art. 24 CBN).⁴³

A special mode of loss is the forfeiture of citizenship (arts. 22, § 1 7° and 23, § 1, 2° CBN). Belgians who did not acquire citizenship from a Belgian parent at the time of their birth or from a foreign parent who was likewise born in Belgium and had his or her main residence there for at least five of the ten years preceding the birth (arts. 11 and 11bis CBN) may be declared forfeit by virtue of a judgement handed down by the Court of Appeal. Forfeiture however requires that a person is seriously in breach of his or her obligations as Belgian citizen. In practice therefore, the procedure was rarely started for, in its rationale, art. 23 aims especially at cases of violation of the domestic and international security of the State (high treason). According to reports on the issue, so far there have been in total only 38 Belgians whose citizenship has been forfeited, four before and 34 after the Second World War. Yet the main problem with such a restrictive condition is that it leaves cases of fraud, deceit or false statements, all of which are perpetrated with views of acquiring Belgian citizenship, unpunished, i.e. Belgian citizenship is not lost. This lacuna has now been remedied in the law of 27 December 2006⁴⁴ by insertion of a new specification in art. 23 (art. 23, § 1, 1° : Persons who in their attempt at acquiring Belgian citizenship have been found guilty of any of these acts may, even without serious breach of their obligations as Belgian citizens in the sense of art. 22, § 1, 7° and/or art. 23, § 1, 2° CBN, nevertheless lose Belgian citizenship (art. 23, § 1, 1° CBN).

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).

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

⁴³ The requirement of renewing the declaration was removed by law of 27 December 2006. (See note 17 above.).

⁴⁴ See note 17 above.

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). 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. At the initiative of the administration, especially the Ministry of Justice, the effectiveness and efficiency of this law was investigated one year after it came into force (Bietlot et al. 2002). Before lingering on the numerical data provided in the study, it might be useful to draw attention to the concerns raised by the investigation regarding the availability and relevance of the then available statistics.

The authors of the study (Bietlot et al. 2002) concluded that the study in question could not be exhaustive, since no central authority had at the time organised 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. This would be necessary because different authorities intervene in the process of citizenship acquisition (see above at 3.2.). Furthermore, the data collection highlighted 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.

Notwithstanding the lack of data and the discrepancies between the sources, the authors made clear 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 2007 amounts to 303,214.

⁴⁸ 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.

By way of conclusion regarding the numbers, one should notice that in 2000, 7.2 per cent of the foreign adult population living in Belgium applied for Belgian citizenship and that, since then, citizenship is mostly acquired by the declaration of an adult foreigner who has his or her main residence in Belgium for at least seven years and who is authorised to stay in Belgium for an unlimited time (art. 12bis, § 1, 1^o CBN).

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 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 over the last years 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).

⁴⁵ Respectively the Flemish, Walloon and Brussels-Capital regions and the Flemish, French and German-speaking communities.

⁴⁶ Art. 5 para. 1, II, 33 Special law of 8 August 1980 reforming the institutions, *Belgian Official Gazette*, 15 August 1980.

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).

In practice, a foreigner who applies for naturalisation has to submit a motivated application which, since 2000, no longer asks for evidence of integration, but 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 in charge of checking the documents submitted to him or her at the time of the application for citizenship. If there emerges a dispute concerning the validity of any of these documents the assessment thereof belongs to the judicial power or, should the case arise, to the Naturalisation Commission in the Chamber of Representatives.

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.⁴⁷ These should send their remarks, if they have any, to the public prosecutor. 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.

Within the framework of a procedure of acquisition by declaration or by option, the public prosecutor can give positive or negative advice. When the advice is not provided in due time, it is deemed to be positive. Usually, the public prosecutor concludes that there is no reason to give a negative advice; he or she then sends a statement to this effect to the registrar, who immediately has to register it 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 a negative advice is given, the file is in principle automatically sent to the Chamber of Representatives where it will be considered an application for naturalisation by an act of parliament. But the case can also be brought before the court if such is the wish of the applicant (which happens in one out of every four applications). After listening to the plaintiff, a substantiated verdict is given on the legitimacy of the negative advice. Eventually, an appeal can also be filed against that verdict with the Court of Appeal.

⁴⁷ Circular letter of 25 April 2000 concerning the law of 1 March 2000, *Belgian Official Gazette*, 6 May 2000.

4 Current political debates and reform plans

4.1 Flexibility of access to Belgian citizenship: pros and cons.

In this final section, we examine a few bottlenecks that have resulted from the consecutive amendments to the CBN and in particular since the drafting of the 2000 law. Regarding these matters, one has in particular to go back to the parliamentary discussions during the adoption process of the 2000 law, since these reforms may be considered the most far-reaching reforms 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; Guillaïn 2002; Stockx 2000).

It seems that during the process of drafting the 2000 law, a new vision of citizenship and membership in Belgian society has played an increasingly important role. This vision is optimistic about the potential(s) of citizenship as a means of integration into society. However, idealism cannot be taken as the sole explanation for the fact that the CBN was amended and made surprisingly more flexible in 2000 (and on several occasions since).

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 is 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 are conceived of as people willing to contribute to the success of (the future of) such society.⁴⁹ The series of measures approved in 2000 are therefore to be understood against the background of that idealistic vision of membership in contemporary society.

The opposition in the Parliament, however, voiced strong criticism of the governmental proposals, considering them to have been inspired less by idealism than by political pragmatism and by a serious lack of a sense of reality. We shall now look in greater detail at a few of these criticisms, and in particular at the so-called 'instrumentation' of the citizenship rules which refers to the three different functions that the 2000 amendments attribute to the concept of citizenship. We will also briefly put in context some of the changes introduced in 2006 and that are, at least partly, a response to some of the critiques uttered on the occasion of the drafting of the 2000 law.

Federal legislation has tried to ascribe various roles to the acquisition, possession and loss of Belgian citizenship since 1984. Some have used the expression 'instrumentation' 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 facilitator 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 guardian of the restrictive 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; Verschueren 1995; Verwilghen 1984; Verwilghen 1992). Different phases may be distinguished throughout the twentieth

⁴⁹ Chamber of Representatives 1999-2000, Parl. St.,plen. 034, 11 and 31-3.

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. However, the basic logic behind the rules remained untouched, 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.

The consistency with which this basic rationale has been followed for decades has, however, notably weakened under the law of 2000. The possibility for the authorities to keep control over the applications for Belgian citizenship has declined or at least become more difficult for mainly two reasons: on the one hand, the different modes of acquisition hinge more and more exclusively on the applicant's duration of residence in the country and, on the other hand, the legislation has radically eliminated from all procedures the requirement to show sufficient willingness to integrate.

Certainly several authors had, even before the amendments of 2000, suggested eliminating the willingness to integrate as a basic condition for acquiring Belgian citizenship since it was the subject of a much divided and often contradictory jurisprudence (De Decker & Suykerbuyk 1993; de Moffarts 1987; de Moffarts 1995; Lambein 1993: 513; Sluys 1991; Verhellen 1998; Walley 1989). However, one of the main criticisms of the text of the law of 2000 was that the new CBN does 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.

Yet, the elimination of all considerations linked to integration was even more a concern of some critics in 2000 since the CBN did not provide for any possibility to declare persons forfeit in cases of abuse or fraud on their part. The law does not foresee any procedure that would make it possible to strip someone of Belgian citizenship, possibly with retroactive effect. By way of outcome, some suggested to resort to art. 23 of the Code. The problem, as we have already indicated above, is that art. 23 CBN cannot serve this purpose as the legal grounds for withdrawal of Belgian citizenship in the case of art. 23 are different (serious breach of one's obligations as Belgian citizen) and do not target abuses and/or fraud within the framework of the CBN. This solution would therefore be unfortunate. In the meantime however, the issue has been resolved, as we have explained in the previous subsection: with the amendments of December 2006, the channel for losing citizenship in case of

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.

fraud has recently been unblocked.

The conclusion seems obvious: once foreigners have acquired Belgian citizenship, the authorities can no longer compel this category of ‘new’ citizens to integrate. This would in any case be contrary to the Constitution and to a series of binding international human rights treaties which demand that once a foreigner has acquired citizenship, he or she be considered formally equal and treated on an equal footing with other nationals.⁵¹ Obliging only a specific group of (new) nationals to complete extra integration requirements could be considered discriminatory.

From a cursory comparison, it appears that the acquisition of Belgian citizenship is nowadays so greatly simplified that since 1 May 2000 the CBN ranks among the most flexible in Europe. The reasons for this ease of acquisition of Belgian citizenship are also to be sought elsewhere. They are linked to the second abovementioned function of citizenship in Belgian law: 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.

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. This was also the case for the Flemish Liberals (the VLD), one of the largest political parties in the country at that time and a member of the coalition in 2000, which was reluctant to grant voting rights to non-EU nationals. To break the deadlock, the government had chosen not to grant voting rights to these foreigners, but to pass the law of 1 March 2000, aimed at further relaxing the conditions for acquiring Belgian citizenship, in this case, in order to encourage access to political citizenship.

Eventually, the granting of voting rights to non-EU nationals and their eligibility to stand in municipal elections was discussed again and voted on in Parliament in the course of 2004.⁵³ Since then, EU nationals who are registered, have had their main residence in Belgium for five years and have filed an application to obtain the status of voter, have the right to vote in municipal elections. They also have to declare that they will comply with the Constitution, the Belgian laws and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Yet a third function that the Belgian legislature has sought through some provisions of the CBN is to keep control over the laws on immigration. The amendment of art. 16 CBN by the law of 6 August 1993 is particularly noteworthy in this regard. As explained above (see

⁵¹ Art. 10 of the Constitution states that all Belgians are ‘equal before the law’. This being said, the status of all Belgians is not identical in every respect: some categories continue to be subject to special rules. Belgians of foreign origin can, for instance, in times of war be the object of special measures restricting their rights.

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. The Law of 23 December 2005 specifying various provisions, *Belgian Official Gazette*, 30 December 2005, 2nd edition, states explicitly that the condition regarding principal residence should be understood as meaning ‘legal main residence’.

above at 3.1.), this modification was intended to further combat so-called ‘sham marriages’. Henceforth, a foreigner who marries a Belgian partner and who comes to settle in Belgium as a consequence of his or her marriage is bound to wait a period of three years before being authorised to make a declaration of option for citizenship. This period does 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 is only six months (art. 16, §2 CBN). This difference in treatment of two categories of spouses in Belgian law is to be attributed to the third function of citizenship regulation: the acquisition of Belgian citizenship is 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.

4.2 Promoting further reforms?

Making the CBN simultaneously play various roles currently leads to the loss of its coherence, because, on the one hand, inconsistencies are being created in the legislation and, on the other hand, the roles which the various branches of the law ascribe to citizenship are not necessarily compatible. The inconsistencies are internal as well as external. Internal inconsistency means that the provisions of the Code lack compatibility in their mutual relationships. The external inconsistencies relate to contradictions between various provisions of the CBN and other legislation. Some types of citizenship acquisition neutralise, or even damage the effects the legislators have tried to achieve by other legislation. Thus one observes counterproductive effects.

We will limit ourselves here to one example, which demonstrates both internal and external inconsistencies: art. 12bis, § 1, 2° CBN was introduced by the law of 2000 and provides adult foreigners who were born abroad and who have a Belgian parent with the possibility of acquiring Belgian citizenship by mere declaration. They do not have to fulfil any residency requirements. Moreover, there are no conditions regarding the parents’ mode of acquisition of Belgian citizenship. Even a recently acquired citizenship is sufficient.⁵⁴

While passing this mode of acquisition, the legislature in 2000 does not seem to have realised that it introduced two internal inconsistencies in the CBN: 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. By indirectly granting a right of residence to adult foreigners who according to Belgian immigration laws would not be entitled to long-term residence, it also introduced an external inconsistency. (Renauld 2005: 35-38). We will start with the internal inconsistencies here.

The first internal inconsistency follows from the observation that the acquisition of citizenship by declaration provided for in art. 12bis, §1, 2° CBN concerns only children who were born abroad. Although the foreigners who were born in Belgium are usually able on other legal grounds to acquire Belgian nationality by simple declaration, it appears that this is not always the case. Thus, a person born in Belgium but who grew up abroad, and of whom one parent acquires Belgian citizenship, cannot acquire Belgian citizenship by simple

⁵⁴ 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.

declaration but only by option, which requires that the child fulfils the restrictive conditions regarding age and residency of art. 14 CBN. By contrast, if he or she had been born abroad, he or she does not need to meet these conditions. Such differential treatment, dealing less favourably with those who were born in Belgium than with those born abroad, does not seem to be consistent with the logic of the CBN.

The second internal inconsistency relates to adopted children. Up to the 2006 amendment,⁵⁵ adopted children who are born abroad and who had a Belgian adopting parent could only acquire citizenship by option (art. 13, 2° CBN). In this respect they still had to satisfy an age and residency requirement: they could opt for Belgian citizenship between the age of eighteen and 22 if 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 (art. 14 CBN). The law of 27 December 2006 addresses this inconsistency: as from now adopted children, just like biological children who are born abroad and have a Belgian parent, can make use of the much simpler procedure of acquisition by declaration, which only requires that the child has reached the age of eighteen. Thus, rules for granting citizenship to the adopted child are now as flexible as they already were, since 2000, for a child whose origin is determined by biological filiation.⁵⁶

A question was put to the Constitutional Court concerning the here aforementioned inconsistencies. The Court however qualified the petitions as inadmissible.⁵⁷

Yet, by settling the inconsistencies between the articles 12, 13 & 14 CBN, the extension by the 2006 law of the acquisition of Belgian citizenship by mere declaration to adult adopted children did not resolve all the problems of inconsistencies. It indeed left untouched the following external inconsistency between, on the one hand, the rules on citizenship acquisition and, on the other hand, the legislation on immigration to Belgium that applies to non-EU nationals and which is 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, the legislation grants such right, be it indirectly: art. 10, §1, 2° and art. 15 of the law of 15 December 1980 concerning access to territory, residence, establishment and removal of foreigners⁵⁸ 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

⁵⁵ See note 17 above.

⁵⁶ The preparatory stages of the law of 2000 indicate that the legislators wished in this way to rule out sham adoptions: 'Abuses of the procedures would indeed be a risk if adoption by a Belgian was in itself sufficient to allow a foreigner adopted as an adult by a Belgian to become a Belgian by declaration' (Doc. Parl. Chambre, 1999, no: 50- 0292/001, 10).

⁵⁷ 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.

⁵⁸ See note 22 above.

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 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.

These internal and external inconsistencies demonstrate that making access to Belgian citizenship easier can have wider effects: it undermines or at least neutralises the very impact for which certain other provisions have been passed.

Yet another effect of such a policy, on which we shall conclude here, concerns the different roles citizenship (still), occupies in various fields of Belgian law, and which are not always compatible with the gradual relaxation of the criteria for its acquisition. Extensive simplification of access to citizenship, as is the case in Belgium since 2000, might cause citizenship to acquire new functions. The Code now allows for broad access to citizenship in order to facilitate the integration of foreigners into society. However, it does so without any longer requiring any (objective) proof of willingness on the part of the foreigner to effectively integrate: all requirements, apart from length of stay in Belgium, have been abandoned.

The CBN since 2000 seems to be according a new role to the concept of citizenship, whereby citizenship is closely linked to one's residence on the territory and not as much to one's integration into a society. Or, as mentioned above, the legislation takes as its point of departure the view that the foreigner is already integrated solely by virtue of having resided on the state's territory for a certain number of years.

Neither of these two different roles is, however, sufficient in itself, since, on the one hand, easy access to citizenship does not necessarily induce that a person would therefore no longer identify with the country of origin, and, on the other hand, settling in a new environment does not necessarily further the harmonious integration of an individual into the surrounding society, even when this settlement alone suffices to allow someone to acquire - after a certain time - citizenship of the place of his or her new residence. In order that both roles be fulfilled at the same time, it is essential that they balance each other out. However, by radically opting for a residence-based concept of citizenship, which does not require the applicant to prove he or she is willing to integrate or even has a basic knowledge of one of the national languages spoken in Belgium, this balance seems to be lacking.

Yet there is more to say to this: restricting the conditions for acquiring citizenship to mere residence requirements also clashes with principles that still apply in other areas of law. One such area is private international law. The traditional role of citizenship, in the sense of offering a criterion for one's identity, is currently still supported in the recent codification of Belgian private international law,⁵⁹ which provides that the national law of a person applies, at least in areas of one's personal status (e.g., the national law is applied in matters of determining someone's full name, in defining the relevant basic conditions for the validity of a marriage, and in cases of (adoptive) filiation). It thereby considers 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

⁵⁹ Law of 16 July 2004 concerning the code of private international law, *Belgian Official Gazette*, 27 July 2004.

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.

It does not seem then reasonable to have recourse to the integrative purpose of citizenship without taking into account sociological parameters other than the duration of residence as conditions for acquisition of citizenship. More specifically, a sufficient basic knowledge of one of the three national languages (Dutch, French and German) and, possibly, proof of the intention to continue residing on the territory should, for instance, be seen as more solid requirements.

Furthermore, the knowledge of (one of) the language(s) of the country of residence is a condition that one finds in most legislation currently in force in the various European countries regarding the acquisition of citizenship (D’Hondt 2002: 270-277). It might therefore come as a surprise that it was precisely on this issue that the Belgian legislature in 2000 demonstrated such laxity. In Flanders, the legislature has opted for a different policy. A few years ago, the Flemish Parliament passed the so-called *Vlaams Inburgeringsdecreet* (‘Flemish Decree on Integration’).⁶⁰ Its purpose is to set up training programmes for new immigrants, providing them with the necessary knowledge that will subsequently allow them to participate as citizens in the life of society. Making access to Belgian citizenship totally disconnected from any knowledge of national languages brings such initiatives into disrepute: the foreigner who acquires Belgian citizenship is not obliged to know the language of the place of residence, while the immigrant who is a newcomer in Flanders is subject to such an obligation.

The issue of integration gained (renewed) actuality/topicality??? with the latest regularisation campaign. This was initiated in 15 September 2009, and aimed to last for 3 months. It will soon entitle thousands of newcomers in Belgium to lawfully establish themselves in the country. However, for those who decide to establish themselves in Flanders it also entails an obligation to go through the ‘integration’ procedure. Questions vividly discussed regarding this campaign therefore relate to who is to pay for these integration programmes, and who is to guarantee that there are sufficient language classes offered? The Flemish Minister in charge of integration (Bourgeois) hastened to vividly criticise the situation in early September 2009, arguing that this regularisation came as a surprise and that it will, by necessity, induce high public expenses.⁶¹

⁶⁰ 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.

⁶¹ See www.vreemdelingenrecht.be for new references of most recent developments.

5 Conclusions

The idea of making integration easier for foreigners through the acquisition of nationality is certainly not new. The Belgian legislators have pursued this notion ever since the early 1980s. However, making access to nationality easier should not be pushed to the point that it might later slow down the integration of those who would have been ready to meet a number of reasonable conditions for adapting to the society of their new place of residence. That is the risk some new nationals in Belgium currently face, more so due to a number of measures relaxing access to Belgian citizenship which came into force on 1 March 2000.

There are obviously other instruments to promote integration of foreigners and people of immigrant origins into society. One thinks in particular of the intensified struggle in the last few years against discriminatory treatment, the effective penalising of racist behaviour or some forms of newly introduced training programmes for newcomers, as these are currently set up in several European countries. Would it not be far better if the legislation in general, including the law on access to citizenship, were to reflect a more consistent view of membership of a state, a nation, a community at large?

It is up to the legislature to determine which rules govern state membership. If this is not done in a clear and consistent way, some foreigners will take advantage of the situation, while others who were hoping to acquire nationality in order to effectively participate in the life of the society of their new homeland will be left aside. Though citizenship cannot have as its sole objective the final evidence of the integration process, one should not fall into the opposite extreme, and reduce it to a mere confirmation of one's residence. One could legitimately argue that this is, however, what has happened to Belgian citizenship since 2000.

Nowhere in Europe are the conditions for the granting of citizenship to foreigners as flexible as in Belgium. As long as European Member States retain sovereignty over the granting and/or loss of their own citizenship, discrepancies between national legislations in this regard cannot be excluded (de Groot 2004). But one should also be ready to accept the consequences. Flexible rules inevitably have the effect of drawing people in. This is all the more so when European citizenship is also tied to the acquisition of citizenship of one of the Member States. By means of a flexible law, Belgium is giving European citizenship to foreigners who would not qualify for this in any of its neighbouring countries. Sooner or later this situation is going to add a new argument to the discussion of whether the rights tied to European citizenship can still be made dependent - mainly, if not exclusively - upon the possession of citizenship of one of the Member States.

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