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# EUDO CITIZENSHIP OBSERVATORY

## ***COUNTRY REPORT: ICELAND***

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Pétursson, Thorbjörn Björnsson

Revised and updated January 2013



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***Report on Iceland***

**Gudni Th. Jóhannesson, Gunnar Thór Pétursson, Thorbjörn Björnsson**

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## Iceland

Gudni Th. Jóhannesson, Gunnar Thór Pétursson and Thorbjörn Björnsson

### 1 Introduction

Historically, Iceland has been among the world's most homogenous countries. For centuries, since the settlement of the island by Norse and Celtic people in the eighth and ninth centuries, practically the whole population spoke the same language, held the same faith and experienced neither emigration nor immigration. In European context, the situation is almost unique and perhaps only the Faroese share a similar experience. This uniqueness has of course been of interest to observers of citizenship and national identity. As David Miller put it, with regard to the principle of self-determination: 'If all the world were like Iceland—a culturally homogenous political community inhabiting a well-defined territory to which no other community has any claims—the principle of self-determination would be perfectly valid. But unfortunately the Icelandic case is quite exceptional' (Miller 2000: 125–126).

In the first centuries after settlement, Iceland was a free state, without a king or an executive of any kind. In the early tenth century, the chieftains of the land agreed to form a national assembly, the *Althing* (which still remains the name of the Icelandic Parliament today). They also decided to adhere to a set of laws, based mostly on local laws in Norway. In some areas, the law distinguished between local men and 'foreigners', and a distinction was also made between Nordic individuals and other outsiders. In the wider world, however, the inhabitants of Iceland considered themselves Nordic rather than Icelandic.

In 1262–1264, after decades of civil strife, the Icelandic chieftains pledged allegiance to the King of Norway, while receiving the guarantee that local officials should be Icelandic. Furthermore, in a new set of laws a distinction was still made between Icelandic and foreign individuals. In the fourteenth century, Norway (and therefore Iceland) came under Danish rule. Iceland was thus part of the Danish Kingdom in 1776, when the Danish king promulgated an act on *indfødsret* or *ius indigenatus*, making access to public positions in the Kingdom the prerogative of native-born subjects and those who were deemed to be of equal standing to them.

Although Iceland was under Danish rule for centuries, the Icelanders kept their own language and separate customs. In the nineteenth century, Icelandic intellectuals started the struggle for increased rights within the Danish Kingdom. In 1874, Iceland was granted a separate constitution, but the country remained an inseparable part of the Kingdom. Thus, when Denmark adopted its first nationality law, in 1898, it applied with equal force in Iceland. With this law, the *ius sanguinis* principle became the fundamental principle for the acquisition of citizenship, although there was still scope for the granting of citizenship by statute.

In 1918, Icelandic and Danish paths diverged. Iceland became a sovereign state, but in a royal union with Denmark through a Union Treaty, which could be denounced by either side

after 25 years.<sup>1</sup> Somewhat strangely, the Union Treaty did not contain criteria or provisions on the creation of a separate Icelandic citizenship. A year later, in 1919, the first law on citizenship was passed in Iceland, describing the conditions for becoming a citizen after the acquisition of sovereignty the year before. Apart from the provisions on this new aspect of Icelandic citizenship, the act corresponded with the 1898 law; the *ius sanguinis* principle prevailed although parliament could grant citizenship through statute.

In the 1920s, Iceland's citizenship law was modified in line with developments in the Nordic region. It is noteworthy, however, that Icelandic officials never took part in Nordic deliberations in this field, mostly because of financial reasons and a lack of manpower and expertise. In 1944, Iceland dissolved all ties with Denmark and became a republic. As in 1918–1919, the division from Denmark was trouble-free, and as in the 1920s, Nordic deliberations on revised citizenship acts led to modifications in Iceland as well. In 1952, a new citizenship act was passed, and it is still in force although it has been amended several times.

A unique feature in Iceland from the 1950s to the mid 1990s was the insistence by the authorities that an individual who acquired Icelandic citizenship was required to adopt an Icelandic name, either by dropping his previous names completely (or modifying them so that they became 'Icelandic'), or by adding an Icelandic first name to his previous first name(s). This demand—put forward to preserve the Icelandic name system of patronymics—summed up the fear, so prevalent among both the public and Members of Parliament (MPs) throughout most of the twentieth century, that an influx of foreigners might endanger long-established Icelandic customs. Furthermore, it signified the notion that by accepting Icelandic citizenship, an individual must become 'Icelandicised', as it were.

The present citizenship regime in Iceland closely resembles that of the other Nordic countries. Furthermore, the regime has taken account of international treaties to which Iceland has become a party. In the following chapters the term *citizenship* is generally used. The term 'citizenship' can be translated into Icelandic as *ríkisborgararéttur*. Furthermore, the term *ríkisfang* is used, but the words *ríkisfang* and *ríkisborgararéttur* are synonymous. *Ríkisborgararéttur* or 'citizenship' is, however, the term mainly used in the Citizenship Act no. 100/1952, although the term *ríkisfang* is also used. The title of the act is *lög um ríkisborgararétt* and that has been the case since the first statutory act on citizenship in 1919. Therefore, when describing the legal bonds between the state and the individual the term *ríkisborgararéttur* would be the most appropriate term, particularly since the latter part of the word *ríkisborgararéttur*, i.e. 'réttur' means *right*, and the first part ('ríkisborgari') means *citizen*. Thus, a direct translation of the word *ríkisborgararéttur* would be 'citizen's right'.

The term 'nationality' is usually translated as *þjóðerni*. The term *þjóðerni* is not used at all in the Citizenship Act, but as a legal term it is used *inter alia* in the non-discrimination provisions of the Icelandic Constitution. Generally the term is understood as referring to ethnicity or cultural background. However, in general use the distinction between *ríkisborgararéttur* and *þjóðerni* is not always clear-cut, and the long-established homogeneity of Iceland's inhabitants probably explains the loose use of the terms.

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<sup>1</sup> The Union Treaty of 1918 between Iceland and Denmark.

## 2 Historical development

### 2.1. From settlement to the struggle for independence

Iceland was among the last tracts of land on earth to be inhabited by humans. Sometime before the ninth century, Celtic and Norse voyagers discovered the island and over the course of one hundred years or so, in the ninth and tenth centuries, about 30,000–40,000 people settled there. The majority were of Norse origin, most of them from Norway, although others landed from Sweden, Denmark, Britain and Ireland. The settlers also brought with them people of Celtic origin, to serve as slaves or wives.

A few centuries later, the settlement of Iceland was documented in the *Landnámabók* [Book of Settlements], partly, as one of its writers commented, ‘to prove to foreign men that we are not descendants of slaves and scoundrels’. Furthermore, the work was probably written to strengthen the notion of a separate society in Iceland, free from Norwegian rule (Rafnsson 2008: 185–186).

Although the new society did not pledge allegiance to the king of Norway or other rulers, local assemblies were established around the island, based on Norwegian custom, and in or around 930, a national assembly, the *Althing*, was formed. Each year, the chieftains of the land met there to set laws and dispense justice. Initially, a Law Speaker (head of the national assembly) would recite the law of the land, but in the early twelfth century, the *Althing* agreed to have all laws written down. In the consequent collection of laws, a clear distinction was made between the rights and duties of local men and ‘foreigners’ (*útlendingar, utanlandsmenn*). For instance, a man could not take a seat in a court of arbitration unless he was fluent in one of the Nordic tongues. Similarly, laws on tax, inheritance and vengeance differentiated between ‘Icelandic men’ and ‘foreigners’. With regard to vengeance, relatives of Danes, Swedes and Norwegians slain in Iceland also had more rights of retribution than other foreigners (*Grágás* 1992).

In 1262–1264, after decades of civil strife, Icelandic chieftains pledged allegiance to the king of Norway and the country became part of the Norwegian Kingdom. Still, distinctions between ‘locals’ and ‘foreigners’ remained. For instance, the agreement on Norwegian rule (*Gamli sáttmáli, The Old Covenant*) stipulated that the Law Speaker should be Icelandic, and in an amendment to the agreement in 1302 this provision was also made to apply to the district magistrates of the country. Similarly, in a new collection of laws a similar distinction was made between Icelandic and foreign men (*Jónsbók* 2004).

Overall, these legal stipulations should neither be construed as a sign of a primordial Icelandic ‘citizenship’, nor a clear cut Icelandic identity. After the initial age of settlement, very few people moved to Iceland and outside the Nordic world the island’s inhabitants seem to have identified themselves as Nordic rather than Icelandic (Jakobsson 1999).

After Iceland became part of the Norwegian Kingdom (along with Greenland and the Faroe Islands), the Norwegian king laid claim to all waters between Norway and Greenland, forbidding anyone other than his subjects to sail there. In 1380, Denmark and Norway (and therefore Iceland) came to be ruled by the same king and subsequently, Norway came under Danish rule. Restrictions on trade and fishing by ‘foreigners’ remained in place and at the beginning of the seventeenth century, Danish merchants were granted a monopoly on trade in Iceland, which they held until 1787.

It was only in 1776, however, that *Danish citizenship* was defined by law, with the passing of an act on *indfødsret* (rights of native-born persons; *ius indigenatus*). In the main, the act reserved the right to hold public positions to people born in the Danish Kingdom or those who were born to native-born parents while they were abroad (Ersbøll 2006: 108–109).

The act was never published in Iceland but it applied there nonetheless (as well as in Norway and the duchies of Schleswig and Holstein, which were also parts of the Danish state). Moreover, in a 1787 royal decree on trading towns in Iceland, the validity of the *indfødsret* was confirmed. By law, therefore, all native-born subjects within the Danish Kingdom had equal rights in Iceland and the *ius soli* principle was adhered to. Even so, the Icelanders had their separate language and did not consider themselves Danes in any way. Additionally, immigration was still almost non-existent, apart from Danish merchants and officials who usually resided only temporarily on the island (Möller 1981: 46–47). Arguably, few nations were as isolated in Europe at this time as the Icelanders.

## 2.2. The struggle for independence, 1845–1918

In 1800, the old *Althing* was abolished (having become a purely judicial body in the immediately preceding centuries). By the middle of the nineteenth century, revolutionary fervour in Europe reached Icelandic shores and in 1843, the Danish king agreed to the formation of an advisory parliament in Iceland. The reinstated *Althing* convened in 1845 and the Icelandic struggle for increased rights within the Danish Kingdom had begun (initially, the demand for complete independence was hardly uttered). In Denmark itself, citizens gained additional rights and national consciousness increased; in 1849 the first Danish constitution was adopted, admittedly without a mention of nationality or citizenship but containing provisions on *indfødsret* as a condition for civil appointments and voting rights in parliamentary elections.

The constitution was of course valid throughout the Kingdom and the authorities in Copenhagen resisted all moves by the Icelanders which could upset the equality of its citizens. For instance, bills from the *Althing* which made residence in Iceland a precondition for trading rights in the country were constantly rejected.<sup>2</sup>

In 1871, an Act on Iceland's standing within the Kingdom stated that the country was an 'inseparable part of Denmark, with special territorial rights'. Three years later, the king granted Iceland a separate constitution. Eligibility to sit in the *Althing* was restricted to those with voting rights, with the added caveat that they must not be citizens of another state or in the service of another state. Furthermore, a candidate had to have resided for the last five years 'in those countries of Europe which belong to the Danish Kingdom' (Article 18). A noticeable break was also made with the principle of equal rights for citizens within the Kingdom, since knowledge of Icelandic was made an allowable precondition for appointment as a civil servant (Article 4).<sup>3</sup> It could also be argued, as the Swedish constitutional writer Ragnar Lundborg did in 1908, that with the separate constitution for Iceland in 1874 a *de*

<sup>2</sup> E. Arnórsson, '40 ára afmæli innlendrar stjórnar' [Fortieth anniversary of local rule] *Morgunblaðið* [daily newspaper], 8 February 1944.

<sup>3</sup> Article 18, Constitution on the separate affairs of Iceland, 1874. [www.stjornarskra.is](http://www.stjornarskra.is).

*facto* separate citizenship for Iceland was established. The constitution stated that a public servant had to pledge allegiance to the constitution (Article 4) and since separate laws existed in some fields, a Danish official in Iceland or an Icelandic official in Denmark could not be beholden to two dissimilar constitutions (Lundborg 1908: 102).

At the close of the nineteenth century, international travel and communication had become increasingly easy and common, making it logical to rethink the rights of native-born citizens and foreigners. In the 1880s, Norway, Denmark and Sweden formed a commission to discuss the reform of citizenship law. In 1888, Norway adopted a new citizenship act and Sweden followed suit in 1894. In both cases, the *ius sanguinis* principle was used, as had been customary in Sweden. On 19 March 1898, the Danish Parliament passed a new nationality law which followed similar lines. In short, a child born in wedlock now acquired Danish *indfødsret* if the father had that right, whether the birth took place on Danish soil or abroad. An illegitimate child acquired Danish *indfødsret* if the mother had that right. However, the *ius soli* principle was not wholly abandoned, those who had become Danish nationals through residence in the Danish Kingdom did not lose their status and those who were born and raised there could usually acquire Danish *indfødsret ex lege* at the age of nineteen. The principle of family unity was also emphasised in the act, so that a foreign woman who married a Danish national acquired *indfødsret*, as did their children if they were less than eighteen years old and unmarried (Ersbøll 2006: 112–116).

The 1898 act also contained provisions on the acquisition of *indfødsret* through naturalisation, which could only be given by statute. Furthermore, the act stipulated that individuals could be released from their nationality relationship with Denmark, or have their *indfødsret* suspended, if they lived continuously abroad for ten years (Ersbøll 2006: 114).

Naturally, this new nationality act applied to Iceland as well as other parts of the Danish Kingdom. On 11 May 1898, it was published in Iceland, as the law ‘on the acquisition and loss of the right of native-born people’ (Ragnarsson 1965: 172). Likewise, small amendments to the nationality act in 1908 applied in Iceland. Four years before, Iceland had been granted home rule and in 1908, the Icelandic electorate rejected a bill which would have given Iceland increased autonomy, primarily because it did not grant Iceland full independence or a separate Icelandic citizenship. The great majority of Icelandic voters were now determined to seek a near complete separation from Denmark.

At the beginning of the twentieth century the constitutional status of Iceland within the Danish Kingdom remained unchanged but legal exceptions which confirmed the ‘special status’ of the island increased each year. In 1907, the *Althing* made residence in Iceland a precondition for the ownership of the island’s valuable waterfalls; when the University of Iceland was founded in 1911, a law was passed giving those with a degree from that university a monopoly on public positions in Iceland in their respective fields. Similarly, a Danish law from 1912 exempted Icelanders with residence in Iceland from military service (Arnórsson 1923: 81). Slowly but surely the separate status of Icelanders within the Danish Kingdom was being codified.

### **2.3. Union Treaty, law on Icelandic citizenship and a new constitution, 1918–1920**

As the First World War drew to a close, demands for the rights of nations to self-determination became ever louder. Inevitably, this development encouraged the Icelanders (who numbered 91,897 on 1 January 1919). Meanwhile, the Danish government campaigned for the rights of Danish speaking people in Schleswig to join Denmark if they so wished, and

recognised at the same time that the Icelanders must be granted similar rights. Negotiations on the constitutional relationship between Iceland and Denmark ensued and led to the Union Treaty between the two countries, ratified on 1 December 1918. The treaty, which could be denounced after 25 years, stated that Denmark and Iceland were ‘free and independent countries’, joined in a royal union and agreeing on certain joint issues.

One of these issues concerned the equal standing of Icelandic and Danish citizens residing in the two countries (Article 6). The understanding in Reykjavík and Copenhagen was that the ‘independence of the countries entails independent citizenship [*indfødret*]’ for each country. Consequently, it was agreed that all restrictions on the realisation of equality for Danes and Icelanders in the two countries would have to be abolished: for instance certain curtailments on voting rights in Icelandic electoral law. Stipulations in law with regard to residence or knowledge of Icelandic/Danish could still be maintained, however. To take an example, a Dane residing in Reykjavík could not be denied voting rights there or the right to engage in fishing; however, his or her application for a civil position could be denied if he or she was not fluent in Icelandic.

Arguably, provisions on the establishment of Icelandic and Danish citizenship—with rules on whether citizens of the Danish Kingdom should remain Danish or become citizens of Iceland—should have been included in the Union Treaty. It does indeed seem remarkable that the Treaty did not contain specifications on this matter. The Danish side felt, however, that such articles were unnecessary because of the provisions on the full equality of Danish and Icelandic citizens (Arnórsson 1923: 132). Presumably, both the Danish and the Icelandic negotiators considered it obvious who would fall into which category.

Also, it was foreseen that future laws and regulations on the acquisition and loss of citizenship in Iceland and Denmark would be ‘inherently coordinated’.<sup>4</sup> Hence, in the following year, the *Althing* passed an act on the acquisition and loss of citizenship.<sup>5</sup> Articles 1–8 corresponded almost completely with the 1898 national law (with modifications in 1908). Thus, a child born in wedlock became an ‘Icelandic citizen’ if that was the case with the father, and an illegitimate child became an ‘Icelandic citizen’ if that was the case with the mother (Article 1). A child who was born in Iceland but did not receive citizenship according to Article 1 would still receive citizenship if he or she resided continuously in the country until the age of 19, unless he or she declared in writing the wish not to acquire Icelandic citizenship in the year prior to that date, along with a proof of citizenship in another country. However, a person could not bind his or her descendants by a declaration of this kind (Article 2).

A woman would acquire her husband’s citizenship upon marriage, as would any children they had had before marriage (Article 3). Likewise, a woman lost her Icelandic citizenship if she married a foreigner (including a Danish citizen) and the same applied to any children born before the marriage (Article 6). However, if the citizenship of a ‘woman in Iceland’ changed through marriage, this was not to affect the citizenship of children she might have had with other men (Article 7). And if the citizenship of a child could not be confirmed at birth, he or she would be deemed Icelandic until proven otherwise (Article 9).

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<sup>4</sup> Explanations with parliamentary bill 215 in 1926, on the change of the law on citizenship. *Alþingistiðindi* A 1926 [Parliamentary Papers, section A], 457.

<sup>5</sup> Act No. 21, 6 October 1919.

Citizenship could also be provided by statute (Article 4). The wording of this article implied that only men could apply for citizenship by that means since it stated that the status of ‘a man’s wife and their children’ would be determined by the provisions in Article 3, and the status of illegitimate children by the provisions in Article 1, unless the law stated otherwise.

If an Icelandic (male) citizen became a citizen of another state he would lose his Icelandic citizenship ‘as would his women and children in wedlock, unless they maintain residence in Iceland’. A man could also be relieved of his Icelandic citizenship by ‘the King’, if he could prove that he was to acquire citizenship elsewhere (Article 5).

The principle of *ius sanguinis* (while not excluding the *ius soli* principle), the emphasis on family unity and avoidance of dual nationality—factors which had been so apparent in the Danish 1898 nationality act—were all re-confirmed in the Icelandic act of 1919. Its novel parts, however, could be found in Articles 9–12, the provisions on the acquisition of Icelandic citizenship in connection with the Union Treaty on 1918. Most importantly, all those who had legal residence in Iceland on 1 December 1918 became Icelandic citizens, apart from citizens of states other than Iceland and Denmark and stateless persons. Also, Danish citizens who held legal residence in Iceland on 1 December 1918 but would not become citizens of Iceland under the provisions of the 1919 act maintained Danish citizenship unless they declared a claim for Icelandic citizenship to a local police chief by the end of 1921. Such a declaration would pertain to a man’s wife (if they had not separated) and their children in wedlock, and in the case of an unmarried woman it would apply to her illegitimate children (Article 9).

The wife of a man who gained Icelandic citizenship through residence in Iceland on 1 December 1918 gained Icelandic citizenship as well, regardless of her legal address at the time—unless she had separated from her husband. The same applied to children in wedlock if the father became an Icelandic citizen through residence and to illegitimate children if the mother became an Icelandic citizen (Article 10).

In accordance with the rights of Danish citizens residing in Iceland, which were declared in Article 9, those Iceland-born citizens who had legal residence ‘in the Danish Kingdom’ became Icelandic citizens although, if they so wished, they could claim Danish citizenship before the end of 1921. The same applied to those who had resided outside both Iceland and the Danish Kingdom; they became Icelandic citizens unless they held another citizenship (Article 11).

The Icelandic Minister of Justice was to declare whether an individual fulfilled the necessary requirements to become an Icelandic citizen in accordance with Articles 9–11, although the Minister’s decision could be appealed to the courts (Article 12).

The establishment of Icelandic citizenship through the Union Treaty of 1918 and the subsequent nationality act of 1919 was uncontroversial and trouble-free. Generally the ‘new’ Icelandic citizens had lived for a long time in Iceland and the relatively few Danish residents there were free to choose their citizenship. The division of Iceland and Denmark into two independent states must rank among the most orderly events of the kind in history.

Legal uncertainties did arise in certain cases, however. This was mostly because Danish provisions on citizenship pertaining to the 1918 Union Treaty were only established in 1950, with the act on ‘the order of certain nationality issues’. The Act stated that ‘a native-born Dane’ who had legal residence in Iceland on 1 December 1918, but had not acquired Icelandic citizenship, was deemed not have lost his Danish citizenship with the separation between Iceland and Denmark that year.<sup>6</sup> The delay in establishing this principle seems not to have caused problems for individuals, both because of the principle of equality of Icelandic and Danish citizens and the willingness of officials to solve problems on an ad hoc basis. However, ‘it is most likely’, as an official in the Icelandic Ministry of Justice later wrote, ‘that in this period [1918–1950], many passports were issued in both countries against the formal letter of the law, or in spite of the lack of legal provisions’ (Möller 1981: 47–48).

The new status of Iceland in 1918 called for a new constitution, which was ratified in 1920.<sup>7</sup> Now, nobody could be appointed to a civil position unless he or she had Icelandic citizenship (Article 16). Voting rights and eligibility were also restricted to Icelandic citizens (Articles 29–30), foreigners could only acquire citizenship through an act of parliament and legal restrictions on their rights to property in Iceland could be imposed (Article 62). However, in accordance with the equality principle of the Union Treaty, it was declared that the conditions in the aforementioned articles did not apply to Danish citizens (Article 75). Furthermore, a temporary provision stated that individuals without Icelandic or Danish citizenship who had acquired voting rights and eligibility before the application of this constitution would retain those rights.

With the new constitution, a separate Icelandic citizenship was well and truly established. In 1921, the ‘choosing’ period was over and, incidentally, in that year the first foreigner was granted Icelandic citizenship by statute (a German-born Catholic priest, Martin Meulenberg, who later became the first Catholic bishop in Iceland since the Reformation).<sup>8</sup>

#### 2.4. Women’s rights and immigration fears, 1926–1935

In the early 1920s, the three Scandinavian countries revised their citizenship laws, increasing the rights of women to maintain their citizenship even if they married a foreigner. The new rules took effect in Norway and Sweden in 1924 and in Denmark the following year. In 1926, Iceland followed this initiative, both because of an increased understanding of women’s rights, but also because the Union Treaty of 1918 had stipulated that the citizenship laws of Iceland and Denmark should correspond as closely as possible.<sup>9</sup>

A woman’s right to maintain her Icelandic citizenship was pre-conditioned on her residing in Iceland (Article 5). In addition, a woman who had married a foreign citizen before the law came into effect, and thus lost her Icelandic citizenship, could reclaim it if she had been an Icelandic citizen at birth and lived in Iceland during her married life (Article 8).

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<sup>6</sup> Article 1, Act No. 504, 20 December 1950 (Denmark).

<sup>7</sup> Constitution of the Kingdom of Iceland, 1920. [www.stjornarskra.is](http://www.stjornarskra.is).

<sup>8</sup> ‘Frá Alþingi’ [News from the *Althing*], *Morgunblaðið* [daily newspaper], 3 April 1921.

<sup>9</sup> Explanations with parliamentary bill 215 in 1926, on the change of the law on citizenship. *Alþingistiðindi* A 1926 [Parliamentary Papers, section A], 457.

Inevitably, this led to a number of women and children acquiring dual nationality as they stood to receive citizenship in the husband's home country (Ólafsson 1942: 99).

The 1926 Act also contained a new provision on the loss of Icelandic citizenship. Icelandic men and unmarried Icelandic women who were born abroad and had never resided in Iceland stood to lose their citizenship at the age of 22, although they could apply to maintain it (Article 6).

On 1 January 1931, the population of Iceland was registered as 106,360. Of these, almost 1,500 people were citizens of another country; 745 Danes, 437 Norwegians, 121 Germans and the remainder from a total of 14 countries. Of these, five were from the USA and 43 from Canada (the large majority presumably descendants of emigrants from Iceland to North America in the late nineteenth and early twentieth centuries). All foreign citizens in the country came from either North America or Europe.<sup>10</sup>

When the members of the *Althing* discussed applications for citizenship by statute, they did not have formal rules to guide them. Accordingly, the debates could be a haphazard affair, where MPs in favour of an applicant recounted how he had been a good citizen, liked by the locals and determined to stay in the country. Apparently, most applications were accepted, but that is not to say that the number of Icelandic citizens grew massively: from 1921–1935, 62 individuals were granted Icelandic citizenship by statute (Jóhannesson 1952: 11).<sup>11</sup>

In the 1930s, the Great Depression, the rise of Nazism and fascism and the increasing number of refugees in Europe led to a policy of protectionism in Iceland, as in many other European countries. Employment was considered so scarce that foreigners should not be welcomed in Iceland, and both centre- and right-wing politicians and newspapers regularly spoke of the possible danger to the 'racial purity' of the Icelanders. In this, they probably enjoyed the support of a sizable part of the population and in the 1930s Icelandic policies towards refugees and immigrants were tougher than elsewhere in the Nordic region (Heimisson 1992: 117–262).

Consequently, in late 1934 the government, a coalition of the socialist and agrarian parties', proposed a bill in parliament which was intended to curtail the granting of citizenship by statute. 'There is political unrest throughout the continent', was stated in explanations justifying the bill, and increased danger was deemed to emanate from 'countless rioters'. Therefore, the Icelandic state would have to show more caution in the granting of citizenship and impose restrictions which would be at least as strict as the nationality laws of other countries.<sup>12</sup>

In 1935, the bill became law without much debate. Parliament retained the right to grant citizenship, but only to those individuals who had resided continuously in Iceland for a decade before their application (five years in the case of those who had worked in the public sphere). Furthermore, citizenship could not be granted if the applicant was in arrears due to having received parochial relief in Iceland, or if he had been found guilty of 'disgraceful'

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<sup>10</sup> 'Dagbók' [Diary], *Morgunblaðið* [daily newspaper], 29 October 1933.

<sup>11</sup> 'Veiting ríkisborgararjettar' [The granting of citizenship], *Morgunblaðið* [daily newspaper], 16 August 1938.

<sup>12</sup> Explanations with parliamentary bill 460 in 1934, on the change A 1934 [Parliamentary Papers, section A], 698-699.

conduct in Iceland or abroad. Lastly, the applicant would have to prove that he had been completely relieved of his previous citizenship and all duties to another state (Article 4).

Arguably, the law did not serve its stated purpose of reducing the granting of citizenship. In 1936–1940, a total of 51 men were granted citizenship (excluding ‘attached persons’, i.e. women and children) (Jóhannesson 1952: 11).<sup>13</sup> In addition, the law was in fact unconstitutional since the constitution gave parliament the right to grant citizenship, without adding any criteria, and the same law-giving body could not, by adoption of an ordinary statute, restrict that right (Ragnarsson 1965: 173). Even so, the law remained unchanged until 1952.

## 2.5. The independent republic, and the issue of names, 1944–1996

In April 1940, Denmark became occupied by Germany. The *Althing* immediately passed an act granting the government (and later a regent) the powers which the Danish king had hitherto enjoyed in Iceland. Then, in 1944, Iceland denounced the Union Treaty with Denmark from 1918, declared independence, adopted a new constitution and became a republic.<sup>14</sup> At the same time, an act was passed which granted Danish citizens in Iceland the same equality rights which they had enjoyed since the passing of the Union Treaty in 1918. In 1946, another act stated that Danish citizens who were resident in Iceland before March 1945, when the German occupation of Denmark came to an end, should enjoy equal rights as Icelandic citizens in Iceland (Ragnarsson 1965: 182). Near the end of the twentieth century, some 30 Danish citizens still enjoyed equality rights in Iceland based on these acts (Brynjúlfsdóttir 1996: 11–12).

In the first years after the Second World War, the fear of excessive immigration had not vanished. The authorities deemed it essential to show ‘caution’ in the granting of citizenship, and one Minister of Justice recommended the rule of thumb that only those who had once acquired Icelandic citizenship and then lost it, or those of Icelandic descent, should be granted this privilege.<sup>15</sup>

In reality, the granting of citizenship continued to be subject to irregularities. In parliament itself, MPs from all political parties complained about what one of them dubbed ‘the corrupt law of cronyism’ whereby a successful applicant would use his personal contact with an MP to advance his cause (Brynjúlfsdóttir 1996: 48–50). A ‘utility’ approach was also apparent. In 1949, for instance, two German fish scientists and their wives and children were granted citizenship although they had never resided in the country. The government justified this exception by pointing out that the scientists’ expertise would be extremely useful for the Icelandic fishing industry, and that the two men had promised to settle in the country. As it happened, they did not and were last heard of in Argentina.<sup>16</sup> Also, socialist/communist MPs

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<sup>13</sup> ‘Veiting ríkisborgararjettar’ [The granting of citizenship], *Morgunblaðið* [daily newspaper], 16 August 1938.

<sup>14</sup> Constitution of the Republic of Iceland, 1944. [www.stjornarskra.is](http://www.stjornarskra.is).

<sup>15</sup> ‘Varúð sjálfsögð’ [Sensible caution], *Morgunblaðið* [daily newspaper], 28 May 1947.

<sup>16</sup> ‘Dr Metzner’, *Alþýðublaðið* [daily newspaper], 8 February 1951.

complained that if an applicant for citizenship was a known or suspected ‘communist’, he stood little chance of having his application accepted.<sup>17</sup>

After the war, Denmark, Norway and Sweden cooperated again in preparing new nationality laws which were ratified in 1950. Iceland did not take part but followed the proceedings and then, in 1952, passed a nationality law on similar lines. Apart from amending the unconstitutional aspect of the 1935 act, the new law decreased substantially the gender imbalance which had been inherent previously. (Since the current citizenship regime in Iceland is based to a large degree on the 1952 Citizenship Act, it will be discussed in detail in Chapter 3.)

From the 1950s, the procedure involved in the acquisition of citizenship by statute became more formal. Debates in parliament about the merits of certain individuals all but vanished and in 1955, the parliamentary committees involved (the General Committee of both the lower and the upper house) set themselves clear guidelines: The applicant would have to have an ‘unblemished reputation’ and this would have to be confirmed by two ‘upstanding’ individuals in his place of residence. Foreigners from outside the Nordic region were to have held legal residence in Iceland for ten years; Nordic citizens for five years. The husband or wife of an Icelandic citizen could be granted citizenship after three years of marriage, but only if the Icelandic partner had held his or her citizenship for at least five years.

Foreign citizens whose mother or father held Icelandic citizenship could acquire citizenship after three years if the other parent was Nordic; if not, the period was five years. ‘Icelanders who had become foreign citizens’ could reclaim their citizenship after one year’s residence in Iceland. And an ‘Icelandic woman’ who had lost her citizenship through marriage but then left that marriage and established residence in Iceland, could reclaim citizenship during her first year in the country, on condition that she declare her intention to stay there. The same would apply to her children under sixteen years of age (Jóhannesson 1978: 78).

In the 1950s, the application procedure was also standardised. A person seeking Icelandic citizenship by statute needed to apply to the Ministry of Justice and supply the required letters of recommendations from two ‘upstanding’ citizens. The Ministry then sought comments from the local chief of police and town council. After that, the Minister of Justice put forward a bill in parliament, containing the names of individuals who were to receive citizenship (and sometimes names would be added after discussions in parliament) (Ragnarsson 1965: 178). Although guidelines and procedures were established, there still remained scope for exceptions and ad hoc decisions, for instance in 1963, when eighteen refugees who received asylum in Iceland after the Hungarian revolt in 1956 were granted citizenship, i.e. before they had resided in the country for ten years.<sup>18</sup>

In 1952, the same year that the current nationality act was passed, a novel and unique proviso for the acquisition of Icelandic citizenship was introduced. The naming system in Iceland was (and is) different from that in other European countries. A small segment of Icelandic citizens (5 per cent in 1994) bore a family name as a last name but for the overwhelming majority, the ‘surname’ (technically a patronymic) was drawn from the father’s name (Jón Gunnarsson being Jón, the son of Gunnar and Anna Jónsdóttir being Anna, the

<sup>17</sup> ‘Útlendingahatur’ [Hate of foreigners], *Þjóðviljinn* [daily newspaper], 25 February 1947.

<sup>18</sup> ‘Nýir íslenskir ríkisborgarar’ [New Icelandic citizens], *Morgunblaðið* [daily newspaper], 22 March 1963.

daughter of Jón). In 1925, parliament had banned the adoption of new family names in order to preserve this old system, the law also stating that infants could only be given ‘established’ Icelandic names.

This originally did not apply to foreign-born people who acquired Icelandic citizenship later in life. In 1931, for instance, the foreign-sounding Paul Smith, Harald Aspelund and Ernst Fresenius were granted citizenship, with the obvious possibility that their future children would keep these new family names.<sup>19</sup> After the Second World War, the number of new names in this manner had become a cause for concern in Iceland, as could be seen from debates in the media and parliament. One newspaper commented that most of these foreign names were ‘ugly’, ‘e.g. international Jewish names or names so alien to the Icelandic tongue that they have a ridiculous ring to them’.<sup>20</sup>

There were some MPs and commentators who felt that people must be allowed to keep their names, or that foreign-born individuals who received Icelandic citizenship should only be required to adopt an Icelandic given name, so that their future children could then get their patronymic surname from that new name (Brynjúlfsdóttir 1996: 66–68). This was a minority view, however, and from 1952, parliament conditioned the granting of citizenship on the complete adoption of Icelandic names. Hence, in that year the new citizen Harry S. Rosenthal notified the Ministry of Justice, as required, that henceforth his name was Höskuldur Markússon. Max Keil became Magnús Teitsson, Gerda Syre became Gerða (d replaced with the Icelandic ð) Ólafsdóttir, Harald Hansen turned into Haraldur Hansson, etc.<sup>21</sup> Should the men have children in future, they would be Markússon or Markúsdóttir, Teitsson or Teitsdóttir, etc.

Some foreigners who had long lived in Iceland declined to apply for citizenship because of these rules. Furthermore, in everyday life the new citizens often went by their old established names. In the following years, a few MPs made sporadic attempts to change the law, usually suggesting (as noted above) that foreign-born citizens be allowed to keep their names, while adding an Icelandic name which would then be used as the basis for their children’s surname (Brynjúlfsdóttir 1996: 71–72).<sup>22</sup> These attempts were unsuccessful, however, until the early 1970s. In 1972, an internationally renowned musician, Vladimir Ashkenazy, sought Icelandic citizenship, having married an Icelandic woman and emigrated from the Soviet Union, his place of birth. He refused, however, to change his name. In this particular case, the Icelandic authorities accepted the argument that an individual could have valid reasons not to abandon a name given at birth. ‘His name is known worldwide and also recognised by all in Iceland,’ Minister of Justice (and former professor of law) Ólafur Jóhannesson stated in parliament: ‘Therefore I will, whatever the law may say, follow common sense in these matters and not insist on a name change.’<sup>23</sup>

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<sup>19</sup> ‘Lög frá Althingi’ [Laws from parliament], *Alþýðublaðið* [daily newspaper], 19 August 1931.

<sup>20</sup> ‘Erlend nöfn og íslenskur borgararéttur’ [Foreign names and Icelandic citizenship], *Vísir* [daily newspaper], 28 December 1951.

<sup>21</sup> ‘Nýju ríkisborgararnir taka upp fðurnöfn að góðum íslenskum sið’ [New citizens adopt surnames according to good Icelandic custom], *Morgunblaðið* [daily newspaper], 14 September 1952.

<sup>22</sup> ‘Um ræður um nöfn útlendinga’ [Debates on the names of foreigners], *Morgunblaðið* [daily newspaper], 15 March 1957.

<sup>23</sup> Minister for Justice (and Prime Minister), *Alþingistiðindi* B 1971 [Parliamentary debates], col. 1793.

Thus Icelandic citizen Vladimir Ashkenazy kept his name unchanged and since a precedent had been set, another foreign citizen, who had long resided in Iceland but refused to seek citizenship because of the name-change stipulation, seized the opportunity. In 1972, Tom Holton was granted citizenship without having to become Tómas Róbertsson or something similar, as he had been advised previously.<sup>24</sup> From the mid-1970s, the name requirement was modified so that successful applicants for citizenship only had to add an Icelandic first name to their previous names. In 1996, parliament accepted a change in the law on names, dropping completely the demand that new citizens adopt an Icelandic name.

The insistence on the adoption of Icelandic names epitomised the fear of foreign influence on Icelandic society, so prevalent among both the public and the authorities for the best part of the twentieth century. Moreover, it demonstrated the notion that the granting of citizenship ought to equal near total assimilation and the ‘Icelandisation’ of the successful applicant. In 1993, the question of knowledge of Icelandic as a prerequisite for citizenship also arose in parliament. This requirement was not agreed on, however, with the argument made that it might prevent settled foreigners with work and residence permits from ultimately receiving citizenship and integrating better into society (Bjarnason 1993). Today, however, individuals who receive citizenship by statute need to demonstrate basic knowledge of Icelandic (see Chapter 3.3).

From 1987, parliament took up the working procedure of proposing two citizenship bills in each session. In autumn, the list of applicants for citizenship would include those who ‘clearly’ met all criteria or could be treated as ‘emergency’ cases (stateless persons, for instance). In spring, parliament would debate ‘borderline’ cases (Brynjúlfsdóttir 1996: 53). After the name-change demand was dropped, the granting of citizenship through statute was rarely the cause of controversy or interest among the public or media. It was primarily when foreign-born athletes were ‘fast-tracked’ so that they might compete for Iceland that criticism was voiced.<sup>25</sup>

### 3 The current citizenship regime

The citizenship regime in Iceland is based on an act on citizenship adopted in 1952, no. 100/1952 (hereinafter ‘the Citizenship Act’). As described in Chapter 1, the Citizenship Act was inspired by Danish law on citizenship, due to the countries’ common historical background. The citizenship regime in Iceland has been amended substantially through the years, in order to take into account international obligations, but also legislative and social developments in Iceland and the other Nordic countries.

The first revision of the Citizenship Act was made in 1982, with Act no. 49/1982 (‘the 1982 Amendment’). The major changes brought about by the 1982 Amendment concerned gender equality, adoption rules, rules to avoid statelessness and the privileged position of Nordic citizens. The second revision of the Citizenship Act came in 1998, with the act no. 62/1998 (‘the 1998 Amendment’). The most important changes introduced by the 1998

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<sup>24</sup> ‘Tom Holton’, *Frjáls verslun* [monthly journal] 38(2) 1979, 54.

<sup>25</sup> E. Einarsson, ‘Ísland fyrir Íslendinga’ [Iceland for Icelanders], *Helgarpósturinn* [weekly newspaper], 30 May 1996.

Amendment concerned an administrative procedure of awarding citizenship, on the basis of criteria also introduced by the 1998 Amendment. Furthermore, the 1998 Amendment laid down rules which were meant to increase gender equality. The third major amendment came with the 2003 Amendment, Act no. 9/2003 ('the 2003 Amendment'). The main changes of the 2003 Amendment concerned the abolition of a rule which prohibited dual citizenship. The next major amendment consists of the recent changes introduced in 2007, with Act no. 81/2007 ('the 2007 Amendment'). The most important features of the 2007 Amendment concern the limitation of the administrative procedure of granting citizenship and new criteria to be fulfilled in order to receive citizenship, such as economic status and language requirements. In 2010 the Citizenship Act was further amended as part of a larger legislative change of the law on marriages, i.e. the Single Marriage Act no. 65/2010, which sought to allow and eliminate legal discrimination against same sex marriages ('the 2010 Amendment'). Two rules were introduced with the 2010 Amendment: Firstly, if a man and a woman conceive a child in accordance with the law on artificial insemination, Act no. 55/1996, the child will acquire an Icelandic citizenship if either the mother or the father is an Icelandic citizen. Secondly, if there are two women who have a child, the child will only receive Icelandic citizenship if the woman who gives birth to the child is an Icelandic citizen.

In the following chapters the main features of the current citizenship regime will be described (Chapter 3.1), and also the privileged position of Nordic citizens (Chapter 3.2). Finally, the current special institutional arrangement will be explained, particularly with the aim of shedding light on the peculiar relationship between the awarding of citizenship by statutory law versus the administrative procedure (Chapter 3.3).

### 3.1. Main general modes of acquisition and loss of citizenship

#### *Acquisition of Icelandic citizenship*

*Ius sanguinis* is the main principle for awarding citizenship in Iceland. This has been the case since the adoption of the first Icelandic law on citizenship, Act no. 21/1919, which was greatly inspired by the Danish law on citizenship as stated in Chapter 1. Currently the *ius sanguinis* principle is found in Article 1 of the Citizenship Act. There it is stated that a child acquires citizenship automatically by birth if the *mother* is an Icelandic citizen, and if the *father* is an Icelandic citizen *and* married to the mother of the child.

The initial wording of the 1952 Act stated that a child would only receive citizenship if born in wedlock and the *father* was an Icelandic citizen. However, the mother could pass on the nationality to the child in the exceptional cases where the father was a stateless person or the child would not acquire the nationality of the father at birth. In such cases there would be less risk of dual citizenship, which was to be avoided (Jóhannesson 1978: 75). Furthermore, if the child was born out of wedlock the mother's nationality would be transferred to the child if she was an Icelandic citizen.

Equality between men and women, when it comes to passing on their nationality to the child, was improved by the 1982 Amendment. By the 1982 Amendment, Article 1 of the Citizenship Act was modified in such a way that it did not matter, in the case of the *mother* being Icelandic citizen, whether the child was born in or out of wedlock. Therefore, the child would acquire Icelandic citizenship if born in wedlock, and either the mother or the father was an Icelandic citizen. Furthermore, if born out of wedlock, the child would acquire the mother's citizenship. This meant, however, that there was an inequality between men and

women in respect of children born out of wedlock. In preparatory documents to the 1982 Amendments, this inequality was mentioned, but no amendments were made, since dual citizenship was to be avoided at all costs (Schram 1999: 96).

The gender inequality was remedied by the 1998 Amendment by introducing a rule based on *ius soli* in the current Article 2 of the Citizenship Act. This was also inspired by the 1997 European Convention on Nationality. Therefore, Article 2 currently states that if an unmarried woman, who is a foreign national, gives a birth to a child *in Iceland* the child shall acquire Icelandic citizenship if the *father* is an Icelandic citizen (the term ‘father’ is defined in the Children's Act no. 76/2003). Furthermore, if an unmarried woman, who is a foreign national, gives a birth to a child *abroad*, and the *father* is an Icelandic citizen, the father may, before the child reaches the age of eighteen, apply to the Ministry of Interior<sup>26</sup> for the child to receive Icelandic citizenship, but shall consult the child if it is over the age of twelve. The Ministry of Interior is to evaluate as whether satisfactory evidence concerning the child and its paternity have been submitted and is to confirm by a decision. Additionally, the child acquires Icelandic citizenship automatically, until the age of eighteen, if the parents marry.

In paragraph 2 of Article 1 of the Citizenship Act the well-known rule on *foundlings* is laid down. That rule has its origins in the law from 1919. Currently the rule states that a child that is found in Iceland is to be regarded as an Icelandic citizen until the contrary is established.

Article 2(a) of the Citizenship Act concerns the grant of citizenship to *adopted* children. This type of provision was first introduced in the 1982 Amendment, and then inspired by the Danish citizenship act. The rules were amended with the 1998 Amendment to align to international agreements on adoption (i.e. the 1993 Hague Convention), to which Iceland had become a party. Currently the rule states that a foreign child under the age of twelve adopted by an Icelandic citizen with the approval of the Icelandic authorities will become an Icelandic citizen when adopted. Current understanding of this rule is that a notification has to be sent to the Ministry of Interior concerning the adoption, and a request made for an approval of the adoption and confirmation of the citizenship. In the case of a foreign child, under the age of twelve, being adopted by an Icelandic citizen by way of approval of a foreign authority (i.e. the parent living abroad), the child will become an Icelandic citizen by a confirmation from the Ministry of Interior of such a request from the adopting parent.

In the first Icelandic law on citizenship, Act no. 21/1919, dual citizenship was not permitted. Consequently, anyone who gained another citizenship through application or clear consent would lose his or her Icelandic citizenship. This provision was maintained in the initial 1952 Act and the policy of avoiding dual citizenship inspired many provisions of the Act, i.e. the ones concerning transferring citizenship from both parents to the child, as previously stated. In the 2003 Amendment, the provision regarding loss of citizenship in case of another citizenship being gained (then Article 7, point 1), was deleted. The reasons for this amendment, according to the preparatory documents for the 2003 Amendments, were the

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<sup>26</sup> On 1 January 2011 the Ministry of Justice and the Ministry of Transportation and Municipal Affairs were merged to a Ministry of Interior. For clarification the present text will refer to the Minister of Interior when discussing the content of the 1952 Citizenship Act, although at the time that most of the provisions were first introduced they referred to Ministry of Justice.

complaints of Icelandic citizens who had lost their citizenship and the fact that dual citizenship did already exist to a degree, since those who received citizenship through application (see Chapter 3.3) were not required to specifically renounce their other citizenship under the Citizenship Act. Furthermore, concerns related to potential conflicting military duties, which had been the main reason for this policy in Europe, were not relevant in Iceland since the country has never had a military.<sup>27</sup>

The 2003 Amendment did also amend Article 3 of the Citizenship Act, concerning the rights of *foreign children* who have grown up in Iceland to get citizenship through domicile. Initially this rule came with the 1982 Amendment and was inspired by the 1961 UN Convention on the Reduction of Statelessness. The 2003 Amendment increased the rights of foreign children in this situation and currently Article 3 of the Citizenship Act states that a foreign national who has been domiciled and resident in Iceland continuously since reaching the age of eleven, or, in the case of a stateless person, since the age of thirteen, may acquire Icelandic citizenship by notifying the Ministry of Interior in writing, after reaching the age of eighteen and before reaching the age of twenty.

The 1998 Amendment to the Citizenship Act made several amendments to align the Act to the 1997 European Convention on Nationality and the 1989 UN Convention on the Rights of the Child, particularly concerning the rights of the child and rules to avoid statelessness. Among those was the introduction of the provision currently found in Article 10 of the Citizenship Act which states that the Minister of Interior may grant Icelandic citizenship to a child *born in Iceland* who has demonstrably not acquired other citizenship at birth and has not yet acquired Icelandic citizenship or the right to acquire it when the application is made. The child shall have been domiciled and resident in Iceland for at least three years from birth.

As will be described further in Chapter 3.3, the Citizenship Act contains, in addition to the above described mode of acquisition of citizenship, the alternative of awarding citizenship through the adoption of statutory law or with an administrative decision of the Minister of Interior (naturalisation), based on criteria in the Citizenship Act.

### *Loss of Icelandic citizenship*

Rules regarding *loss of citizenship* have through the years been simplified, e.g. with the departure from rules to avoid dual citizenship. Presently loss of citizenship is mainly dealt with in Article 12 of the Citizenship Act, which states that an Icelandic citizen who has been born abroad and has never been domiciled in Iceland, or resided in Iceland for any purpose which may be interpreted as an indication that he or she wishes to be an Icelandic citizen, shall lose Icelandic citizenship on reaching the age of 22. However, the Minister of Interior may permit the citizen to retain his or her Icelandic citizenship if the citizen applies to the Minister before reaching the age of 22. A citizen shall, however, not lose Icelandic citizenship if this results in statelessness. Additionally, as stated in Article 13 of the Citizenship Act, the Minister of Interior may *release* a person who is resident abroad and has become, or wishes to become, a foreign national from his Icelandic citizenship if the person demonstrates that he or

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<sup>27</sup> *Alþingistiðindi* A 2003 [Parliamentary Papers, section A], 1220.

she is, or will become, a foreign citizen within a certain time. If the person is resident in Iceland, he or she may not be released from Icelandic citizenship unless there are special reasons for this in the view of the Minister of Interior.

### 3.2. Specific rules and status for certain groups

#### *Nordic citizens*

Nordic citizens (Danish, Finnish, Norwegian and Swedish) enjoy a privileged position under the Citizenship Act. This situation is based on a long common historical background (as can be seen in Chapter 1) and on Nordic legislative cooperation regarding citizenship, which dates back to 1880. Iceland was not formally a party to the Nordic group which was established in 1946 in order to reform the Nordic citizenship laws. However, Iceland did monitor closely the work of the committee and did review and update the Icelandic legislation to take into account the outcome of the committee's work. (Jóhannesson: 1978). This resulted in the adoption of the 1952 Act, which still forms the basis for the citizenship legislation in Iceland.

The work of the Nordic group led to new laws on citizenship being adopted in Denmark, Norway and Sweden (all enacted in the year 1950) which (among other issues) contained identically worded provisions on the privileged position of Nordic citizens. Iceland did not take up similar provisions in its 1952 revision. In the preparatory documents for the Citizenship Act, the new Nordic provisions are described in detail and also their background. They were, however, not implemented into the Icelandic Act at that stage, due to Iceland's 'unique status as a small population'.<sup>28</sup> The provisions were, however, incorporated by the 1982 Amendment, and the main provisions regarding Nordic citizens are currently found in Article 14 of the Citizenship Act. There it is stated that domicile in a Nordic state shall be assessed as equivalent to domicile in Iceland in several instances (Article 14 (A)). Furthermore, a citizen of a Nordic state who has acquired citizenship by another mode of acquisition than by naturalisation; has reached the age of eighteen and been domiciled in Iceland for the past seven years; and has not been sentenced to prison or equivalent, may acquire Icelandic citizenship by a notification to the Minister of Interior (Article 14 (B)). Lastly, a person who has lost Icelandic citizenship and ever since doing so been a citizen of a Nordic state, shall re-acquire Icelandic citizenship by informing the Ministry of his desire to do so, providing that the applicant has been granted domicile in Iceland (Article 14 (C)).

The ideas behind these rules reflect the close relationship between the Nordic countries and also their wish to facilitate free movement across the Nordic borders. Additionally, the rules do to some extent ease the pressure on the countries' naturalisation systems (Ersbøll 2006: 121). The full effect of these rules did not come into effect in Iceland until the entry into force of a Nordic agreement—between Iceland, Denmark, Finland, Norway and Sweden—regarding the application of the rules, which, in the case of Iceland, entered into force in 1998.

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<sup>28</sup> *Alþingistiðindi* A 1952 [Parliamentary Papers, section A], 237.

### 3.3. Special institutional arrangements—the role of the *Althing* and administrative procedures

The government of Iceland is, like most democracies in Europe, based on the tripartite system, i.e. the separation of power into three branches, the legislature, executive and judiciary. This is confirmed in Article 2 of the Icelandic Constitution of 17 June 1944.

Iceland's Constitution of 1944, the first constitution of the republic, had a provision on citizenship which stated that 'foreigners can only receive citizenship *by* statutory law' (Article 68). A similar provision was in fact also found in Iceland's Constitutions of 1874 and 1920, when Iceland was still officially part of the Kingdom of Denmark.

The provision in the Icelandic Constitution had its origins in the Danish Constitution of 1849, which in turn was inspired by the Belgian Constitution. The idea behind the provision in the Danish Constitution was to make sure that the competence of granting citizenship (*infødesret*) was transferred from the King to the legislature (the King and the Parliament), and therefore preventing the King, the administrator, from being the sole grant-awarding authority. Instead, the legislature would grant naturalisation either by a general act, or a personal (singular) act. There were no indications, however, on how the legislature should deal with the issue of naturalisation (Ersbøll 2006: 136–7). The same can be said about the provision in the Icelandic Constitution. No criteria for awarding citizenship were laid down in the Icelandic Constitution, which, lacking an administrative procedure of granting citizenship, was criticised (Jóhannesson 1978: 78). It is, however, a flexibility which allows the parliament to react to special circumstances and grant a foreigner Icelandic citizenship and to become a full member of Icelandic society, even though general legal conditions, usually related to residence requirements, are not fulfilled (Thorarensen 2008: 123).

Awarding citizenship by enacting statutory law, has therefore, traditionally been the main rule in Iceland, if an individual did not comply with conditions regarding automatic granting of citizenship or through notification. The *Althing*, has twelve standing committees. One of the standing committees, the General Committee (*Allsherjarnefnd*), has been the committee responsible for preparing the statutory act of granting citizenship, which has normally been passed twice a year, under the normal procedure for adopting statutory law.

The parliament is not bound by any criteria, as such, when adopting the act for awarding citizenship, except the constitution, and general constitutional principles. Anything else would conflict with the very nature of law making, i.e. the general rule that the legislature is free to enact any legislation, as long as it complies with the constitution and general constitutional principles. The sitting parliament cannot therefore lay down binding criteria to be followed by future parliaments by enacting statutory law (see Chapter 2.4). The General Committee, has however, been working on the basis of internal rules for a long time. Those rules were initially not public, but were published in the Committee's opinions in 1978 and 1990.<sup>29</sup> Although the internal rules appear to have been followed in the majority of cases, several exceptions exist, as mentioned in Chapter 2.5.

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<sup>29</sup> *Alþingistiðindi* B 1978 [Parliamentary Papers, section B], 3211 and *Alþingistiðindi* B 1990 [Parliamentary Papers, section B], 3982-83.

In 1995 the Icelandic Constitution of 1944 was amended, and Article 68 renumbered (currently Article 66) and modified. Instead of stating that foreigners could only receive citizenship *by* statutory law, it now states that foreigners can only receive citizenship *in accordance with* statutory law. This was a small, though significant, change. The purpose was to open up the possibility for the legislature to lay down criteria for awarding citizenship and allowing the executive branch, i.e. the Minister of Interior, to award citizenship by an administrative decision, based on those criteria. It was to be up to the legislature to decide as to whether this alternative solution would be used alone or alongside the award of citizenship by the traditional (parliamentary) method.<sup>30</sup>

In 1998 the Citizenship Act was amended (the 1998 Amendment) in such a way that the Minister of Interior was given the authority to grant citizenship through an administrative procedure, i.e. with an administrative decision. The 1998 Amendment introduced a new Article 7 in the Citizenship Act, which stipulates that the Minister of Interior *may* grant citizenship to an applicant ‘after having received the opinion of the relevant chief of police and the Directorate of Immigration’. Additionally the 1998 Amendment laid down criteria to be fulfilled by an applicant for citizenship, in the new Articles 8–9 of the Citizenship Act. The criteria introduced by the 1998 Amendment was largely in line with the guidelines in use by the General Committee, although somewhat more stringent.

Currently the first set of criteria is found in Article 8 of the Citizenship Act and relates mainly to residence requirements, where the main rule is seven years of residence, but other and less restrictive residence requirements exist, i.e. in the case of an applicant married to an Icelandic citizen (three years), Nordic citizens (four years) and for refugees (five years). Additional criteria are found in Article 9 of the Citizenship Act and can be summarised as follows:

- 1) The applicant shall have demonstrated his or her identity satisfactorily (introduced with the 2007 Amendment).
- 2) The applicant shall be employable and have a good reputation, which shall be demonstrated by testimonials from two reputable Icelandic citizens.
- 3) The applicant shall have passed a test in Icelandic (introduced with the 2007 Amendment, but did not enter into force until 1 January 2009).
- 4) The applicants shall have no unpaid tax duties, been declared bankrupt or have had his or her property subject to bankruptcy proceedings, for the past three years.
- 5) The applicant shall be capable of supporting him or herself in Iceland and may not have received a support grant from a local authority for the past three years (introduced with the 2007 Amendment).
- 6) The applicant may not, either in Iceland or abroad, have been fined or imprisoned or be involved in a criminal case pending in the justice system in which he or she is suspected of, or charged with, conduct which is criminal according to Icelandic law. There are exceptions for minor offences, which according to rather complex criteria lead to delay periods of different lengths for granting of citizenship in accordance with the gravity of the offence(s).

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<sup>30</sup> *Alþingistiðindi* A 1994-95 [Parliamentary Papers, section A], 2087-88.

The 1998 Amendment did not alter the role of the parliament as such, and the aim was to introduce the administrative procedure as an additional method, to be used for those who complied fully with the criteria of the law, but other applicants would have to rely on the traditional method and turn to the parliament for its application.<sup>31</sup>

In 2002 an applicant was denied citizenship by the Minister of Interior due to the fact, it appears, that the applicant had not received a positive opinion, or recommendations, from the relevant chief of police and the Directorate of Immigration. The applicant did, however, comply with all other criteria laid down in Article 8 and Article 9 of the Citizenship Act. The applicant complained to the Parliament's Ombudsman (*Umboðsmaður Alþingis*), who decided upon the matter on 21 February 2003.<sup>32</sup>

In the view of the Ombudsman, it could not be excluded that the changes in the Citizenship Act should be interpreted as not granting an applicant the 'right' to be granted citizenship, even if the applicant complied with the objective criteria laid down in Articles 8–9 of the Citizenship Act. However, in the view of the Ombudsman, there were some indications to the opposite in the preparatory documents for the 1998 Amendment. The Ombudsman ruled that it did, however, not seem to have been the intention of the legislature to alter the nature of granting citizenship in Iceland, whereby an applicant does not have the 'right' to claim citizenship. Therefore, in the view of the Ombudsman, the Minister of Interior was able to deny an applicant citizenship, even if he or she complied with the objective criteria laid down in Articles 8–9 of the Citizenship Act. In this context the Ombudsman emphasised that Article 7 of the Citizenship Act used the word 'may' and not 'shall', when describing the administrative process. However, the Ombudsman was of the opinion that any negative decision of the Minister of Interior would have to comply with the general principles of administrative law, i.e., be based on objective criteria and proportional in light of the aim of the Citizenship Act. Finally, the Ombudsman stated that it was important for the individuals concerned to have this uncertainty removed and that the laws be improved to make it clear as to whether the Minister of Interior could deny an applicant citizenship, even if the applicant complied with the objective criteria. Therefore, the Ombudsman recommended that the Citizenship Act be reviewed.

In 2007 the Citizenship Act was again amended (the 2007 Amendment). One of the main amendments concerned the above described administrative procedure for granting citizenship. It is stated in the proposal, which later became the 2007 Amendment, that it should be clearly confirmed that the main rule for granting citizenship is by way of adoption of statutory law and the granting power lies, therefore, in principle with the parliament. It was thus clear that the grant of citizenship through an administrative procedure should be the exception, not the rule.<sup>33</sup>

The 2007 Amendment inserted a section into Article 7 of the Citizenship Act, stating that the Minister of Interior may grant citizenship by administrative decision 'notwithstanding Article 6', which concerns the traditional method. Furthermore, the wording of Article 7 was changed, stating that the Minister's authority was to be limited to those applicants who clearly complied with the criteria in Articles 8–9. In addition it stated that the Minister was always

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<sup>31</sup> *Alþingistiðindi* B 1997-98 [Parliamentary Papers, section B], 1646.

<sup>32</sup> Case no. 3574/2002, accessible on [www.umbodsmaduralthingis.is](http://www.umbodsmaduralthingis.is).

<sup>33</sup> *Alþingistiðindi* A 2006-7 [Parliamentary Papers, section A], 3678.

allowed to transfer any application to the parliament for further processing. Lastly, a section was added to Article 7 stating that the Minister's decisions were not subject to chapters III–V. of the Administrative Act no. 37/1993 and the Access to Information Act no. 50/1996. The excluded chapters of the Administrative Act cover in essence all basic administrative principles to be followed in normal administrative procedures.

In summary the situation is, therefore, such that the Minister of Interior is only to deal with cases where it is clear that the applicant complies with the objective criteria laid down in the Citizenship Act, but in other cases to transfer applications to the parliament. The decisions of the Minister will not have to be reasoned or otherwise comply with general administrative principles in force in Iceland and the applicant is unable to have the decision reviewed by a higher administrative authority. In the preparatory documents for the 2007 Amendment it is stated that one of the reasons for the changes proposed is that the number of foreigners in Iceland has increased in recent years and totally changed the circumstances in this field.<sup>34</sup> The preparatory documents refer to statistics in this respect, both concerning the growth in the actual number of citizenships awarded, part of which is to be found below in Table 1, and also an estimate of the number of citizenships to be granted in the future, based on the number of long-term foreign immigrants to Iceland, part of which is also found below in Table 2.

Table 1

| Year                    | 1996 | 1997 | 1998 | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 |
|-------------------------|------|------|------|------|------|------|------|------|------|------|------|
| <b>New Citizenships</b> | 288  | 248  | 317  | 273  | 339  | 419  | 422  | 585  | 804  | 836  | 843  |

In the proposal it is stated that the ratio of citizenships granted, compared to the number of foreign citizens that have moved to Iceland seven years before, is for the last six years close to 47 per cent, but 39 per cent for the last 10 years. If a 45 per cent ratio is applied the estimated number of new citizenships, according to the proposal, from 2007–2013 will be the following:

Table 2

| Year                    | 2007  | 2008  | 2009 | 2010 | 2011  | 2012  | 2013  |
|-------------------------|-------|-------|------|------|-------|-------|-------|
| <b>New Citizenships</b> | 1,108 | 1,132 | 835  | 609  | 1,130 | 2,109 | 2,925 |

In this context it should be added that the total population in Iceland has grown from 267,958 in January 1996 to 319,368 in January 2009. At the same time the number of foreign citizens in Iceland has grown from 5,148 in December 1996 to 24,379 in January 2009.<sup>35</sup>

As stated above, one of the changes introduced with the 2007 Amendments was a language requirement. The language condition is currently laid down in Article 9 of the Citizenship Act, and secondary legislation with further details has been adopted in the form of a regulation (*Reglugerð*) no. 1129/2008, issued by the Minister of Interior. The first language

<sup>34</sup> *Alþingistiðindi* A 2006-7 [Parliamentary Papers, section A], 3680.

<sup>35</sup> Source: *Statistics Iceland*, www.statice.is.

test of this nature was held in June 2009, but the aim is to have two tests per year. A total of 209 individuals participated in the test, 198 of whom passed (94 per cent), and 12 of whom failed (6 per cent).<sup>36</sup> At first the results attracted some criticism, particularly that the test was discriminatory towards those who speak tonal languages, those less educated, and the very old.<sup>37</sup> However, such criticism has not been given much voice since then.

In 2012 a minor amendment to the Citizenship Act was introduced, which mainly made the criteria on criminal offences, which could either lead to rejection or delay in the granting of Icelandic citizenship, less strict. This was, *inter alia*, to counterbalance the fact that fines had increased dramatically in the previous years (partly as a consequence of the collapse of the Icelandic economy), which meant that the same or similar offences had very different consequences in terms of the possibility to obtain citizenship. In addition, the law codified working procedures of the Ministry of Interior on the interpretation of the condition that criminal offences could not be repeated.

#### 4 Current political debates and reform plans

On 24 March 2011 the *Althing* approved Act no. 90/2010 on the appointment of a Constitutional Council. The Council was to revise the Icelandic Constitution, taking into account, *inter alia*, the views of 950 randomly selected individuals in the year 2010 (National Forum) on the preferred future content of the Icelandic Constitution. By a Resolution of the *Althing* adopted on 24 March 2011, 25 individuals were appointed as members of the Council. The Council concluded its work on 27 July 2011 by approving unanimously a proposal for a new Constitution. On 20 October 2012 an advisory referendum accepted that the Constitutional Council's proposals were to form the basis of a new Constitution for the Republic of Iceland. The proposal of the Constitutional Council included a modified provision on citizenship (Article 4).<sup>38</sup>

In light of criticisms that the Constitutional Council's proposal received, the *Althing's* standing Committee on Constitutional and Supervisory Affairs appointed an ad hoc group of experts to review the proposals, *inter alia* in order to eliminate internal inconsistencies and ensure compatibility with international obligations.<sup>39</sup> The expert committee returned a report to the Constitutional and Supervisory Committee on 12 November 2012. Its report included a modified version of the proposal of the Constitutional Council (based on the amendments proposed by the expert group). The form of the modified version was such that the *Althing's* Constitutional and Supervisory Committee agreed to introduce it as a legislative proposal to the *Althing* (in other words it was presented as a bill). It should be noted that after it has been introduced as a bill it has to face the actual legal procedure for amending the Icelandic

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<sup>36</sup> Press release from the Ministry of Justice, 9 July 2007, available at [www.domsmalaraduneyti.is](http://www.domsmalaraduneyti.is).

<sup>37</sup> Interview with Ms. Ingibjörg Hafstað 13 July 2009, in the web journal [visir.is](http://www.visir.is), available at <http://www.visir.is/article/20090713/FRETTIR01/391682393>.

<sup>38</sup> Stjórnlagaráð, Frumvarp til stjórnskipunarlaganna [The Constitutional Council, A Proposal for a new Constitution for the Republic of Iceland]. English version available at [http://www.stjornlagarad.is/other\\_files/stjornlagarad/Frumvarp-enska.pdf](http://www.stjornlagarad.is/other_files/stjornlagarad/Frumvarp-enska.pdf).

<sup>39</sup> Skilabréf sérfræðingahóps um tillögur stjórnlagaráðs að nýrri stjórnarskrá til stjórnskipunar- of efrlitsnefndar Alþingis [Report of an ad hoc expert committee on the proposal of the Constitutional Council on a new Constitution], Reykjavík 2012, available at [http://www.althingi.is/pdf/skilabref\\_fylgiskjol.pdf](http://www.althingi.is/pdf/skilabref_fylgiskjol.pdf).

constitution, i.e. being approved by the majority by two consecutive compositions of the Althing – before and after general elections.

The citizenship provision of the proposal (Article 4), as modified by the Expert Committee, is worded as follows:

Persons with a parent of Icelandic nationality at birth shall have the right to Icelandic citizenship. In other respects, citizenship shall be granted in accordance with law.

No one may be deprived of Icelandic citizenship.

However, the loss of Icelandic citizenship may be provided by law for individuals who possess the citizenship of another country or will, with their consent, gain citizenship of another country

[...] <sup>40</sup>

The original proposal of the Constitutional Council would have called for substantive changes of the current citizenship regime; mainly because according to the proposal it was impossible to deprive any individual of the right to Icelandic citizenship.<sup>41</sup> The report of the expert group states that it was clear from the explanatory notes accompanying the proposal of the Constitutional Council that this was not the actual intention of the Council. The expert group also emphasised that for some individuals it would be problematic not to be able to renounce their Icelandic citizenship (e.g. dual citizens wanting to enter into public service abroad). The provision was thus changed to reflect the current citizenship regime.<sup>42</sup>

The modified provision, as suggested by the Expert Group, still entails one substantive change from the current citizenship regime, as the *ius sanguinis* principle would, under the proposal, be codified as a constitutional norm. This means that the principle cannot be changed except through a modification of the Icelandic Constitution, a much more complicated process than an amendment of statutory law. Although this is a rather theoretical possibility without much practical relevance, this would nevertheless mean the end of ‘unfettered’ discretion of the *Althing* to legislate on the citizenship regime within the boundaries of the constitution and general constitutional principles.

## 5 Conclusion

Although the first generations of settlers in Iceland regarded themselves as ‘Nordic’ rather than ‘Icelandic’, the separation between the locals and ‘foreigners’ can be traced back to Iceland’s oldest set of laws, *Grágás*, which were in force in the country since the foundation of the *Althing*, the nationwide assembly of chieftains. Interestingly, since then, Nordic citizens have enjoyed a privileged position in Iceland.

Iceland became a part of the Norwegian Kingdom in 1264 and later a part of the Danish Kingdom. Iceland gradually increased its independence from the Danish Kingdom and

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<sup>40</sup> Frumvarp til stjórnskipunarlaganna [Constitutional Bill], working document of 13 November 2012, available at <http://www.althingi.is/pdf/frumvarpsdreg12112012.pdf>.

<sup>41</sup> See also memorandum prepared by Fanney Óskarsdóttir on request of the ad hoc expert group, dated 26 September 2012, available at [http://www.althingi.is/pdf/minnisblod\\_serfraedingahop.pdf](http://www.althingi.is/pdf/minnisblod_serfraedingahop.pdf).

<sup>42</sup> Frumvarp til stjórnskipunarlaganna (see f.n. 40).

in 1874 a separate constitution for Iceland entered into force. Full independence came with the adoption of the current Icelandic Constitution of 17 June 1944. This background explains why the first nationality laws that applied in Iceland were in fact Danish law and why the first citizenship act, in 1919, though passed by the Icelandic Parliament, largely mirrored the then current Danish citizenship act.

The Citizenship Act of 1952 forms the current basis for the citizenship legislation in Iceland. The Citizenship Act has been amended substantially on five occasions, in the years 1982, 1998, 2003, 2007 and 2010. The amendments reflect that Iceland has not been a forerunner when it comes to amendments to the Citizenship Act but has traditionally followed developments in the Nordic countries while also respecting international agreements to which it has become a party. *Ius sanguinis* is the main principle for granting citizenship under the Citizenship Act, but certain *ius soli* rules do exist, in order to create a more balanced gender approach. Furthermore, the Citizenship Act contains traditional methods for awarding citizenship through notification, e.g. in the case of children who have been domiciled in Iceland since the age of eleven (or thirteen in the case of statelessness) and for Nordic citizens. Additionally, simplified rules for granting citizenship apply in the case of adopted children and stateless children born in Iceland.

Until 1998, under the Citizenship Act, naturalisation only occurred through the adoption of statutory law by parliament. This method had its basis in the Icelandic Constitution that required that foreigners would only receive citizenship ‘by statutory law’. Amendments to the Constitution in 1995 paved the way for a new administrative procedure for awarding citizenship, which was introduced in the Citizenship Act by the 1998 Amendment. After amendments to the Citizenship Act in 2007, the administrative procedure is, however, to be limited to the cases where the applicant ‘clearly complies’ with the awarding criteria, also laid down in the Citizenship Act. Furthermore, the decisions of the Minister of Interior do not have to comply with general administrative principles, laid down in the Administrative Act no. 37/1993. The Minister of Interior, may, however, refer any application to the parliament for further processing.

In Iceland, and in international comparison, this type of interplay between the legislator and the executive branch is unusual. Furthermore, an administrative procedure, which does not have to comply with general administrative principles, is exceptional. The underlying reason for this seems to be to secure the situation where the parliament is the main awarding authority, with the flexibility to grant citizenship without any explicit criteria. Also, the situation where an applicant has *a right* to citizenship, due to compliance with the criteria in the Citizenship Act, is not at this stage a welcome scenario. Even if the 1998 Amendment could possibly/arguably been interpreted to provide for such a right, the 2007 Amendment made it clear that such a right does currently not exist.

The present state of affairs results in a situation where an applicant cannot claim the *right* to receive citizenship, even if compliant with the criteria for naturalisation in the Citizenship Act. Furthermore, alternatives for an administrative or judicial review are limited. First of all, an administrative review is restricted mainly due to the fact that the decisions of the Minister of Interior do not have to comply with the general administrative principles since they are positively excluded in the Citizenship Act, as amended by the 2007 Amendment. Secondly, in the case of the ‘statutory procedure’, to bring a case before the courts to challenge an act, or even to require the parliament to act, is also a farfetched alternative. The Icelandic court system is such that no court can annul legislation that has been enacted by the parliament. A court could however, rule that the act in question is in breach of the constitution, but it would be up to the parliament itself to withdraw the act. In addition, for an

individual to challenge before a court an act regarding the awarding of citizenship is also problematic from a *locus standi* point of view, since the individual would have to establish a direct legitimate interest in having that act challenged. This would be difficult since statutory law is normally of general application, i.e. normative, and is aimed at having legal effects that apply to all citizens, not certain individuals only. Lastly, it would also be difficult to form a legitimate claim before the court, apart from having the act deemed unconstitutional, since an individual cannot claim that the parliament enacts an act in his or her favour.

The current situation shows that awarding citizenship is still a sensitive issue and to allow for citizenship to be *a right* does not seem to be on the agenda. Undoubtedly this can be explained by the fact that Iceland is a small nation and potentially there exists a fear that *a right* to citizenship would alter the nation's 'unique status as a small population'.<sup>43</sup> Irrespective of this, statistics do not seem to reveal an unusually low naturalisation rate, and the citizenship regime in general is largely in line with that of the Nordic countries.

The present proposals on modifications of the Constitution are not likely to bring significant changes to the current regime, as it is uncertain to what degree it will be amended before it will be brought before the *Althing* and whether a future majority of the *Althing* will be interested in concluding the amendment process, which in many ways has been controversial. Accordingly, it may still be too soon to discuss its impact. It may also be noted that public debate on the proposals of the Constitutional Council has focused on other issues than citizenship.

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<sup>43</sup> *Alþingistiðindi* A 1952 [Parliamentary Papers, section A], 237.

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