



## **UPDATE: Changes in the Hungarian Citizenship Law and adopted on 26 May 2010**

*On May 26, 2010, the Hungarian Parliament has amended the Citizenship Law. In what follows, EUDO CITIZENSHIP expert Judit Tóth summarizes what has changed in the law, and in the executive rules to implement the amendments.*

### **Changes to the Hungarian Citizenship Law July 2010**

1. After the general elections of April 2010, a Bill on the amendment to the Act on Hungarian Nationality was submitted to the Parliament on 17 May 2010. This was formally a proposal from five deputies of the winning party coalition (FIDESZ and Christian-Democratic Party), but it substantially reflected the principles of the nationality law supported by the new ruling power, so it was urgently submitted and discussed even before the new government had been set up.

Consequently, neither the public administration, nor public opinion leaders (academics, NGOs, social partners) were involved into debates. Act XLIV of 2010 amending Act LV of 1993 on the Hungarian Nationality was passed by the plenary session on 26 May 2010. Not surprisingly, the text of the Bill was not changed or improved by the Parliament due to this high speed legislation. The President signed and promulgated it in the Official Gazette soon (Magyar Közlöny 2010/89). Although the President is entitled to request a re-discussion by the plenary session or a review of the passed act by the Constitutional Court, he did not make use of either option, but signed the act as an expression of his legal and political acceptance.

2. The modification will enter into force on 1 January 2011 but requests for preferential acquisition of Hungarian citizenship can already be submitted after 20 August 2010, which is a national holiday commemorating the medieval Hungarian king St. Stephen.

3. The modifications of executive rules to implement the amendment have not yet been issued by the government. This delay is perhaps due to the changing competence of ministries. The nationality issues move from the Office for Immigration and Nationality (OIN) under the auspices of the Ministry of the Interior/Justice and Law Enforcement to the Ministry of Justice and Public Administration. This means that nationality affairs will be separated from immigration issues, the OIN has to be reformed, and, in a significant break with its traditional competence in this area since 1879, the newly established Ministry of the Interior will no longer be responsible for the Hungarian nationality law.

#### **4. What are the major changes in the law?**

##### *a. Naturalisation*

- i. The conditions for non-preferential naturalisation contain a more restrictive public order requirement [Art.4(1)d]. Accordingly, a non-Hungarian citizen may be naturalised upon request if his/her naturalisation is not considered to be a threat to

- the *public order or national security* of the Republic of Hungary – replacing the formula of ‘a threat to the interest of the state’ in the previous version of the law.
- ii. The strongest option of preferential naturalisation will be offered to non-Hungarian citizen whose ascendant was a Hungarian citizen or *whose origin from Hungary is probable, and whose Hungarian language knowledge is proved*. This applicant has to meet two further requirements: first, a clean criminal record according to Hungarian laws and not being indicted in any criminal proceedings before a Hungarian court; second, his/her naturalization must not be considered a threat to the public order or national security of the Republic of Hungary. [Art.4(3)] In brief, unlike for ordinary naturalisations, neither residence or subsistence in Hungary, nor a test on knowledge of the constitution is required. Furthermore, proof of Hungarian language knowledge may not be required for persons who are legally incompetent or of diminished mental capacity. [Art 4(8)] These applicants (minors, mentally disabled persons) can probably submit their own claims for naturalisation without any test or certificate. According to the Explanatory Note to the bill the strongest mode of preferential naturalisation refers back to the referendum of 5 December 2004 on dual citizenship for ethnic Hungarians living in the adjacent states, which was invalid due to low turnout but was supported by the majority of participants.

*b. Re-naturalisation*

- i. Upon request, a person whose Hungarian citizenship was ceased can be re-naturalised under the same conditions as for applicants of Hungarian ancestry: the applicant’s language knowledge must be proved, the applicant must have a clean criminal record according to Hungarian laws and not be indicted in any criminal proceedings before a Hungarian court, and his/her naturalisation must not be considered a threat to the public order or national security of the Republic of Hungary [Art 5]. This new provision *eliminates residence and subsistence conditions in Hungary, while the applicant’s language-knowledge shall be tested or certified somehow*. There is no explanation for these changes in the Explanatory Note.

*c. Procedural and competence rules in matters of nationality*

- i. The applicant for naturalisation shall take an oath or pledge of allegiance before the local mayor, or if he or she does not reside in Hungary, before the representative of the competent foreign mission of Hungary [Art 7(1)].
- ii. Applications in nationality issues shall be submitted to the local/regional registrar office, consular office or *to the responsible unit* (of the Ministry of Justice and Public Administration) [Art 13(1)]. This competent unit shall be determined by the Government [Art.24(4)].
- iii. This responsible unit (of the Ministry of Justice and Public Administration) will prepare the applications for naturalisation and re-naturalisation and finally forward these to the Minister. The duration of the ministerial preparatory procedure *will not be longer than three months, not including the periods for obtaining required documents and expert opinion from other authorities*. Within these three months the Minister has to submit applications to the President for decision. [Art 17(2)] This new subsection means an accelerated procedure compared to the previous one, which could last for years. However, the Bill provides no further personnel or resources to these extra administrative burdens and the whole naturalisation procedure remains free of charge for applicants.

## **Changes in the executive rules to implement the recent amendment of the Hungarian Citizenship Law, August 2010**

### **1. Government injects additional budget resources to deal with expected rush towards preferential naturalisation**

The Hungarian Government has decided to commit an additional budget of almost € 300 000 to implement the amendment to the Hungarian citizenship law passed on 26 May 2010 (Act XLIV of 2010 amending Act LV of 1993 on Hungarian Nationality). According to the Government Resolution (No. 1162 of 4 August 2010), this additional budget shall be transferred immediately from the Treasury to the public administration in charge of naturalisations before the expected rush of ethnic Hungarians from adjacent states submitting applications for preferential naturalisation. In the following years all involved ministries (Ministry of the Interior, Foreign Affairs, Public Administration and Justice, and Defence) will plan into their regular yearly budget the costs of infrastructural, institutional and personnel development required by this citizenship reform. The short resolution proves that the Hungarian nation-building project in the near abroad is also considered a human resource for defence, and public financing for this accelerated naturalisation – its length may not exceed 3 months if all required documents are attached to the application – is available despite the economic recession and tight budgeting constraints. Furthermore, the task of implementation is assigned to the Ministry of the Interior and its Immigration and Nationality Office (OIN) instead of the Ministry of Public Administration and Justice (MPAJ). The latter has been made formally responsible for matters concerning nationality and civic registration (nationality, marital status, local registration) by Act XLII of 2010 passed on 20 May 2010 after national elections in spring. However, the OIN operating under the auspices of the Ministry of the Interior remains unchanged and it is deeply involved in the preferential naturalisation procedure, whereas the Minister of Public Administration and Justice is politically responsible for nationality law. While the new preferential cases will be administered in an accelerated way, the applicants of pending cases have been waiting for at least two years. According to the State Secretary of the MPAJ, the government promises that capacity building will support deciding the currently pending 2000 cases until the end of the year (as reported by MTI, the official Hungarian news agency, on 19 July 2010). At the same time, the Government appointed a special rapporteur on “dual citizenship issues” inside this Ministry. This rapporteur announced that the inter-ministerial working group coordinating the policy implementation projects about 400,000 applicants in 2011 (*Népszabadság* 6 August 2010) but the total amount in the following period may reach the numbers of persons currently holding an ethnic Hungarian certificate, who have been mostly recently counted as 923,000 (MTI 30 July 2010). The cost of processing applications is calculated as € 1.4 million within two budget years. This urgent financial injection covers the recruitment of additional 200 civil servants (today the total staff of the OIN and ministerial citizenship section is 70 civil servants).

### **2. Regulations for processing the preferential naturalisation of Hungarians abroad**

The Government Decree No. 224 of 4 August 2010 has modified the executive rules for the implementation of the Act on Hungarian Nationality (previously laid out by Government Decree 125 of 22 September 1993). Certain procedural requirements for the acquisition and renunciation of nationality will be changed on 20 August 2010 (a national Hungarian holiday commemorating King Saint Stephen). This is the twelfth modification since 1993, the year when Hungarian Citizenship Act entered into force. There are several minor changes, such as

the renaming of offices (e.g. Public Administration Office instead of Regional Governmental Office). The most relevant amendments in the processing of citizenship are the following ones:

- a. Although the Citizenship Act provides for shared competences among the government agencies and ministries, the OIN under the auspices of the Ministry of the Interior remains the designated government agency that receives and administers all citizenship application files. These files shall be forwarded to the responsible Minister of Public Administration and Justice for approval who then passes them on to the President of Hungary for the formal decisions. Local civic registrars and consular officials will also be entitled to receive the completed applications and to forward them to the OIN.
- b. When receiving applications for re-naturalisation or for accelerated naturalisation, the local civic registrars, the consular officials or the OIN officials shall check not only the identity of the applicant or certify his or her authentic signature but shall also certify “*the Hungarian language knowledge of the applicant*” [Section 2]. This means, first, that there will be no need for an official certification of the authenticity of the identity and signature by authorities of the state of residence and current citizenship – despite some bilateral agreements that would require this. Second, the required language knowledge will not be verified by substantive or formal standard procedures. It remains unclear how a consular official or a local registrar in each municipality will be able to test language competence and what the required level of knowledge will be. The only point specified in the vague instructions is that a CV in Hungarian shall be attached to the form completed by an applicant living outside of Hungary [Section 4(8)]. Will there be only a short conversation with the official? What would be the consequences if the form and CV is written by another person and the applicant can only make a signature?
- c. Applicants for naturalisation and re-naturalisation shall give a declaration that they have a clean criminal record and are not under any criminal investigation or have been sentenced for an intentionally committed offence during the last five years. Naturally, the OIN shall verify the facts by referring to the registry of criminal offenders, the population register and the records of the aliens police. If the applicant lives abroad, however, he or she shall attach a certificate of a clean criminal record issued by the responsible authority of his or her country of residence upon request of the OIN [Section 3(2)]. This means that the Hungarian authority has no own information on the criminal record of applicants for accelerated naturalisation residing abroad and may not be able to obtain such data in the absence of a standardised certificate issued by the foreign authority. How will the Hungarian authority then evaluate the threat to national security, public order and a criminal record of the applicants, which are criteria for excluding them from accelerated naturalisation?
- d. Non-Hungarian immigrants who can only apply for ordinary naturalisation and are excluded from the accelerated procedure will be discriminated against with regard to fees. The administrative fee for the exam on the Hungarian constitution will be raised from € 20 to € 129, which amounts to 50% of the

monthly minimum wage. Other conditions for the citizenship test are not changed, including the difficult Hungarian language exam.

- e. The form for the accelerated naturalisation is the same as for re-naturalisation [Appendix 10]. This supposedly reflects the homogeneity of the two groups, although the large majority of possible applicants for accelerated naturalisation have never been Hungarian citizen – only very old persons born before 1920 or those who lived in one of territories annexed during World War Two and then lost again in 1945. Applicants have to give details on how their citizenship was lost or terminated, on their family lineage, descent and changes in the citizenship status of their relatives (parent, grandparent, child, grandchild, brother/sister etc.) including who has acquired Hungarian citizenship within the last ten years. The applicant also has to sign the following declaration in the form: “*I declare that I can understand and speak the Hungarian language*”. Furthermore, the applicant living abroad is entitled to choose the place (embassy or municipality in Hungary) where she or he would take the citizenship oath. Finally, applicants may request the modification of their surnames and given names after accelerated naturalisation regardless of their place of residence. The applicant has to attach documents (e.g. proving the loss of Hungarian nationality, marital status, birth registration) to the application. Providing these documents may turn out to be the most frequent cause of delays in the accelerated procedure.

### **3. The future rights of naturalised Hungarians residing abroad**

The special rapporteur on “dual citizenship issues” has announced that voting rights or social rights in Hungary will not be available for citizens naturalised by accelerated procedure residing abroad, because under current laws these rights require a residence registration in Hungary. However, it is well known that obtaining a residence registration is not too complicated in local registrar offices. Moreover, the rapporteur indicates that there is also a projected strong increase of applications for Hungarian passports, so administrative capacity needs to be further improved.

According to the legislative schedule, an amendment to the Act on the ethnic Hungarian certificate and benefits (the so-called Status Law, Act LXII of 2001) is planned for autumn. This amendment would preserve for current holders of this certificate all existing benefits they enjoy while residing abroad also after accelerated naturalisation (MTI 30 July 2010). However this amendment could re-ignite constitutional debates about equal treatment of all citizens.