EUDO CITIZENSHIP OBSERVATORY

CITIZENSHIP POLICY MAKING IN MEDITERRANEAN EU STATES: PORTUGAL

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1 Introduction

This report focuses on the most recent changes that have occurred in the Portuguese legal framework with regard to nationality, while presenting some preliminary statistical evidence on the effective impacts of the new law which came into force in 2006.

Making sense of this framework's legal characteristics, and especially of its differentiating features with regard to previous legal frameworks, implies looking also at the political debates underlying its creation, and at the evolution of the country's emigration and immigration profile as a major factor for change.

The analysis of the evolution of nationality laws, their intended impacts and the political agendas underlying their release as outputs of the governmental system, reveals Portuguese nationality as both a set of legal devices and of social practices marked by a continuous balance between ius soli and ius sanguinis.

Several factors have influenced immigration and nationality policies in Portugal. This report suggests some factors as being predominant in the making of such policies over the last decades:

> 1) the colonialist period, and the impact it had on the definition of a mixed system with a predominance of the ius soli tradition, accompanied by a multilevel citizenship, that is, *citizenship by layers*, with individuals having different access to rights on the basis of variables such as racial background or gender;

> 2) the decolonisation process, which dates back to the 1970s**,** and the subsequent need, as perceived by the political elites, to restrict the possible growth of immigrant flows from places that were no longer part of the national territory;

> 3) the intensity of legal and illegal immigrant flows, especially in the mid-1990s, when several national projects (construction of highways, football stadiums, cultural infrastructure, schools, hospitals, etc.) were set in motion causing great labour force demands which were mostly answered by immigrants;

> 4) the diaspora and more specifically the type of relationship that the state began to foster with it after the decolonisation period. The need to strengthen ties with a vast emigrant community spread around the world has been interpreted, as we shall note, as a sign of the state's recognition of its loss of territorial and demographic relevance after decolonisation, as well as of the economic (but also social and political) importance of not losing contact with second and third generations of Portuguese emigrants.

> 5) the gender (im)balance, with Portuguese laws of nationality in the post-revolutionary period progressing in line with the cause of gender equality. Equality of gender was legally embraced after 1974 (art. 13 of the Constitution),[1] and although society still struggles to overcome practices that contradict this constitutional principle, it has become a solid legal institution totally absorbed by the present law of nationality, as we shall see below.

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[1] The present constitution was approved in the last session of the constitutive parliament (*Assembleia Constituinte*) in 2 April 1976. Having been in force since 25 April 1976, it has been revised seven times, most recently in 2005 (Constitutional Law no 1/2005 of 12 of August).

6) the democratisation period, subsumed in some of the previous factors and itself a major factor of change, as it meant not only the end of the colonialist era, but also the opening of the country to international legal trends with regard to respect for human rights;

7) the European context, most evident after the country's accession to the then Communities in 1986, and the compliance of national policymaking with European legal demands such as the need to make the Nationality Law compatible with the European Convention on Nationality.

The report also identifies the actors which may be considered more relevant in the decision-making process that lead to the most recent changes to the legal framework of nationality. We will highlight the role of political parties,[2] of governments, and of civil society, with especial emphasis on NGOs, trade unions, migrant associations and the Catholic Church.

This mere enunciation of actors and factors does not explain much so far, but as we hope the report will show, they will prove useful in explaining Portuguese nationality policymaking.

2 A new century, a new approach to the country's immigration profile

This section provides a quick picture of the country's demography as far as immigration is concerned.

Table 1 presents the total numbers of non-nationals since 1981. In 2008, the total of non-national residents in Portugal was eight times bigger than in 1981 (8,013 to be more precise).

Some years have registered a particular growth. The abnormal growth of the alien population in 1993 and 1994, for instance, was the result of the first extraordinary regularisation that took place in order to respond to the growing number of illegal immigrants in the country. A second extraordinary regularisation occurred in 1996 (following Law 17/96 of 24 May), during the socialist government of António Guterres. Both regularisations were meant to respond to the growing number of illegal immigrants that were being attracted by the country's ongoing projects connected to big events (such as the world exhibition Expo-98 which lead to a considerable redefinition of Lisbon's urban landscape) and by the relative permeability of its external borders. The effects of this regularisation were quite evident in 1999 and in 2000, with a total growth of 7.3 per cent and 8.61 per cent respectively[3] in the total non-national resident population.

From 2001 on, the statistics must be read in accordance to the introduction of two distinct legal conditions of aliens: the non-national residents (long-term residents) entitled to permits of residence (*autorizações de residência*), and the temporary migrants entitled only to permits of stay (*autorizações de permanência*).

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[2] But only of those with parliamentary seats, due to their greater capacity to determine the making of public polices.

[3] The first major growth in the foreign population occurred in 1983. This came as part of the new legal framework of nationality. As we will see ahead, the reinforcement of ius sanguinis by the Nationality Act 37/81 may have brought the country closer to its diaspora, but at the same time transformed thousands of individuals, who had been national citizens under the previous legal framework of 1959 (dominated by the ius soli principle) into aliens. This situation would only be rectified in the following decades, with special emphasis in Framework Law 1/2004 of 15 January and more recently Organic Law 2/2006 of 17 April.

The permits of stay, created by the Decree-Law 4/2001 of 10 January, were basically a legal device meant to alleviate the pressure of illegal immigration in the country. The permits of stay helped to regularise thousands of immigrants, while opening to them the possibility of applying for permits of residence after a five year period of regular stay.

These permits ended shortly after they were created, in November 2001. In the following years, the permits of stay that were granted under the Decree-Law 4/2001 only contemplated exceptional cases when properly justified, applications made before November 2001, and all the applications that according to the Decree-Law 4/2001 had the right to a renewal of up to five years.[4]

Table 1 Evolution of the non-national resident population in Portugal

Year	Non-national residents in the country (a)	Permits of stay/prorogation of PS 2005 and 2006 (b)	Prorogation of long term visas (2005-2006) (c)	Total of (a)+(b)+(c)	Growth %
1981	54,414				
1982	58,674				7.82
1983	67,484				15.01
1984	73,365				8.71
1985	79,594				8.49
1986	86,982				9.28
1987	89,778				3.21
1988	94,694				5.47
1989	101,011				6.67
1990	107,767				6.68
1991	113,978				5.76
1992	123,612				8.45
1993	136,932				10.77
1994	157,073				14.70
1995	168,316				7.15
1996	172,912				2.73
1997	175,263				1.35
1998	178,137				1.63
1999	191,143				7.30
2000	207,577				8.61
2001	223,997	126,901		350 898	69.02
2002	238,929	174,558		413 487	7.84
2003	249,995	183,665		433 650	4.87
2004	263,353	183,833		447 155	3.12
2005	274,631	93,391	46,637	414 659	-7.27
2006	332,137	32,661	55,391	420 189	1.23
2007	401,612	5,741	28,383	435 736	3.70
2008	436,020		4,257	440 277	1.04

Sources: ABS (Alien and Borders Service), SEF (Serviço de Estrangeiros e Fronteiras) *(several statistics)*

It is thus relevant to note that in table 1, the growth of the foreign population in the country shown after 2001, reflects the total number of alien residents entitled to permits of

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[4] Before its official extinction, the permit of stay could be granted to immigrants holding a valid labour contract or, at least, a valid labour proposal regardless of the legality of his/her status. It lasted for one year and could be renewed up to five years, after which period the individual could apply for a permit of residence. Considering that in the end of 2001 there were still applications to be answered, and considering the legal right to apply for a renewal in the following five years, it is understandable that 2005/2006 still had to include concessions and prorogations in the total of foreign population legally living in the country.

residence and the total number of aliens entitled to permits of (temporary) stay. While the second column reveals a constant growth of the non-national resident population, the last column is sensitive not only to this column's behaviour but also to that in the third and forth columns. As a result, 2005 has registered a negative growth, following the decrease in the concession of prorogations of permits of stay. In other words, the total of long-term residents continued to grow (from 263,353 in 2004 to 274,631 in 2005), but the total number of immigrants who were granted a permit of temporary stay decreased (from 183,665 in 2004 to 93,391 in 2005). As a consequence, the total number of legal immigrants living in the country in 2005 (including the 46,637 prorogations of long-term stay) was less than the total in 2004.

As noted, the growth of the non-national resident population has stayed positive numerically. In regard to its expression as part of the total population, there has been an obvious growth, from a quite negligible value in 1981 (0.5 per cent in a total of 9,883,940 inhabitants), to 4.1 per cent in 2008 (in a total of 10,627,250 inhabitants). Still, this is a rather modest percentage in comparison with other European countries such as Germany, Italy, or Spain.[5]

As for the composition of the country's immigrant profile, and according to the data provided by the ABS the most relevant communities in 2008 were from Brazil, Ukraine, Cape Verde, Angola, Romania, Guinea Bissau and Moldova. Together they represented 71 per cent of the non-national resident population (ABS, 2008: 27).

Table 2 Most representative largest foreign populations

	2007	2008
Country	%	%
Angola	8	6
Brazil	15	24
Cape Verde	15	12
Guinea Bissau	5	6
Moldova	*	5
Romania	*	6
Ukraine	9	12
Others	48	29
* not present as most representative		

Source: ABS Statistics *(several statistics)*

The most significant growth has been registered in the Brazilian community, which jumped from 66,354 legal residents in 2007 – being then the second largest community with 15 per cent of the total of legal foreign population – to 106,961 residents in 2008, which made it the largest foreign community with 24 per cent of the total foreign population. In 2003, in the context of a visit to Portugal by the Brazilian president, Lula da Silva, the two countries celebrated the Lula Agreement, which foresaw the extraordinary regularisation of all Brazilians with valid labour contracts who had come to Portugal up to the date of the agreement, 11 July 2003. The total number of individuals in this situation was then estimated at 30,000. The agreement helped to regularise only 18,000 individuals, which lead to several

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[5] According to Eurostat, in 2007, the provisional crude immigration rate per 1000 population was 4.4 per cent in Portugal while 22.6 in Spain, 9.4 in Italy and 8.3 in Germany, just to mention the EU Member States with the largest immigrant populations in absolute terms (Lazieri 2008).

critiques from the Brazilian migrant associations in the country. In 2006, the Portuguese government of José Socrates refused to go on with the extraordinary legalisation of the community under the Lula Agreement after it was set to expire in 2008, arguing that it would be unfair to keep this positive discrimination with regard to other communities in the country that were facing similar conditions to the Brazilian community. However, this did not prevent the announcement by the Portuguese PM during an official visit to Brasilia, of 6,500 more permits of temporary residence for Brazilians that were still in the country with pending applications and no labour contracts. The interest in keeping good relations with the 'brother country' was also evident during the first EU-Brazil Summit in 4 July 2007, with the symbolic announcement of the new Portuguese immigration law (Law 23/2007 of 4 July), presented as a law designed to make regularisation faster and easier. The PM Sócrates stressed then that according to the new law, applications for visas no longer needed to be supported by labour contracts, it being sufficient to possess a declaration of intent to offer a job from an employer.

We should stress that these data may look contradictory with the immigrant profile that statistics were revealing since the nineties in regard to resident communities. Indeed, despite the still-predominant presence of Portuguese speaking communities, there is also a strong presence of Eastern European communities. According to the ABS, the explanation for the presence of new countries in the composition of the immigrant profile is in the recent methodological changes that this organisation has implemented under its new information system SIISEF (*Sistema Integrado de Informação SEF* – ABS integrated information system) and which in consequence has changed the forms and results of data collection. But the ABS's explanation may cause confusion, leading some to think that the eastern presence was not perceived as a strong one before this methodological change happened. In reality though, the presence of Romanian, Ukrainian and Moldovan communities has been quite evident since the late 1990s.[6] To acknowledge this requires us to understand that there was a legal difference between resident non-nationals and temporary immigrants, with eastern communities entering the statistics on the latter. In other words, they were already statistically relevant as temporary immigrants, but not yet as long-term immigrants. Presently, the scenario has changed. But methodological adjustments don't explain it all. The fact seems also to be that these communities have finally entered the cycle of long term residence as the lusophone communities had done already in the past and continue to do.

A second explanation has to do with changes in the types of visas[7] and permits. Presently there are only permits of residence, which means that statistics no longer present

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[6] There were differences between the profile of resident immigrants and that of temporary immigrants at the beginning of the century (Carvalhais 2007: 59-91). While the former was still dominated by Portuguese-speaking countries, particularly Cape Verde and Brazil, the latter announced already the presence of new communities from Eastern Europe. But in 2001, it was still too early to know exactly what the behaviour of these new communities would be: would they stay and apply for permits of residence after the expiration of their permits of stay, or would they leave the country, reinforcing the argument that Portugal is mostly a platform for access to the European space? One decade after those preliminary profiles, it has become obvious that these communities have entered into the country's immigrant profile on a long term basis.

[7] Presently, and according to the Immigration Law (Law 23/2007 of 4 July), there are five general types of visas: transit visas (two kinds: *visto de escala* and *visto de trânsito*), short term visas, temporary stay visas and resident visas which by their turn contemplate 6 sub-types of visas: residence visa for the exercise of a professional activity as a subordinate (dependent labourer); residence visa for the exercise of a professional activity as an entrepreneur or independent professional; residence visa for research activities or highly skilled activities; residence visa for study, student exchange, professional training activities or volunteering activities; residence visa for exchange of high education students; residence visa for family reunification.

separated data for long-term residents and for temporary migrants.[8] This may also cause the impression that there are new communities of residents but in fact statistics do not show whether they are long-term residents or not. Finally, it is worth noting that despite the presence of eastern communities, their percentage is still smaller (23 per cent) than that of lusophone communities (48 per cent).

Regardless of these considerations, Portugal's profile as an immigrant country became quite obvious, stressing its need for a policy of integration that could provide answers to the new challenges to the relationship between the receiving society and its new (and less new) foreign communities.

The reform of the nationality act came as part of the whole political effort of integration, considering that the legal frame of nationality built in the aftermath of the democratic revolution could no longer be adequate for growing numbers of second and third generation immigrants. But although the political class may recognise the existence of a link between policies of integration and the management of national citizenship, to transform that implicit recognition into explicit political actions (such as reforming the nationality laws), is ultimately a political choice. This explains why a country such as Spain has different approaches to nationality, with a legislator that seems, so far, less interested in adapting the regulation of naturalisation and the mechanisms to obtain Spanish nationality as a way to facilitate the integration of immigrant communities (Martín Pérez & Fuentes 2010: 27).

3 Political analysis of the trajectory of nationality laws in Portugal

The excellent work of Baganha and Sousa (2005) and Piçarra and Gil (2009) are extremely helpful in providing an accurate view on the trajectory of Portuguese nationality laws. The profound entanglement of that trajectory with the colonialist past of the country; with the fears caused by the inevitability of its disappearance; and with the recognition of a new

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[8] There is only one type of permit: the permit of residence. Permits of residence may be of temporary or permanent residence. The permit of temporary residence is a title of residence that allows legal foreigners to reside for a specific period of time, normally one year, and which may be afterwards renewed for periods of two consecutive years (or whenever there has been a change to the holder's data). The permit of permanent residence is a title of residence that allows legal foreigners to reside in Portugal for an indeterminate period of time. It has no temporal validity but must be renewed every five years or whenever there have been changes to the personal data. The permits of residence are also classified in accordance with the purposes that have justified their concession. There can be: permits for the exercise of dependent labour activities, or independent/entrepreneurial activities; for the exercise of highly-skilled activities, research activities or teaching activities (in secondary or high education institutions); for the accomplishment of non-remunerated professional training courses, or volunteering programmes; and for purposes of family reunification. To be granted with a permit of temporary residence there are ten general requirements: to hold a valid visa of residence; to be physically in Portuguese territory; absence of facts that if known by the authorities at the time of the visa concession would have impeded the entrance in the country; to have sufficient means of subsistence; to have accommodation; to be registered in the Social Security system; absence of criminal record for crimes that may be punishable according to the Portuguese law with a sentence to prison superior to one year; not be in the period of interdiction of entrance in the country following a previous order of expulsion; not be referred in the Schengen System of Information, nor in the ABS integrated information system of admissibility to enter. The permit may also be refused for reasons related to public order, public safety and public health. Permits of permanent residence can be granted to applicants who gather all the following conditions: to hold a title of temporary residence for at least five years; not have been sentenced over the last five years of residence prior to the request, for crimes punishable with sentences to prison superior to one year; to have sufficient means of subsistence, and accommodation; to prove to have basic knowledge of the Portuguese language.

collective self in face of recent social events such as the gradual openness of Portugal to new immigration flows becomes quite obvious.

3.1 Ius soli under the colonialist language – the Act of Nationality of 1959

The Portuguese system of nationality may be defined as a mixed one, with the predominance of the ius soli or of the ius sanguinis principles in different moments of history, but with a general balance that clearly has favoured the prevalence of ius soli since the seventeenth century. In 1603, King Philip was responsible for the first compilation of legislation that set the first legal arrangements for Portuguese citizenship. Title LV of the Second Book of the *Ordenações Filipinas* regulated the acquisition at birth only, and gave place to a mixed system with prevalence for ius soli. According to Ramos (1992: 7-12) legitimate children born in Portugal to a foreign father would be Portuguese as long as the father had resided in Portugal for at least ten years and had property in the country, which means that despite the prevalence of ius soli, it did not work as the sole criterion. In 1822, the first Liberal Constitution kept the mixed system though gave a more prevalent role to ius sanguinis (but only *a pater)*. Ius soli predominance was then reduced as children born to a foreign father in Portugal would only be Portuguese if resident in Portugal and if they declared that they wanted to be Portuguese once reaching their adulthood (art. 21(V)). In 1826, the Constitutional Charter came into force for only two years, being restored between 1834-1836 and then again in 1842 until the end of the Monarchy and the establishment of the Republic on 5 October 1910. The Charter restored the mixed system giving prevalence to ius soli, considering all those born on Portuguese territory as Portuguese citizens. Between 1838 and 1842, a new Constitution was in place, which favoured the ius sanguinis principle. But again in 1867, the Civil Code, which became a fundamental piece of the Portuguese legal system over one hundred years, adopted a mixed system of acquisition of national citizenship at birth with prevalence for ius soli, though with less predominance than in the 1826 Charter, as Ramos notes (1992: 30). The next significant change in the Portuguese legal system of nationality was to happen in 1959 with the Act of Nationality 2098 which would remain into force until 1981. This continued the mixed system with prevalence for ius soli. So, in general terms, at least since 1603, the mixed system has been dominated more by ius soli than by ius sanguinis, which does not mean either the absence of ius sanguinis, nor the predominance of pure ius soli rule.[9]

The ius soli principle was compatible with the language of colonisation that Portugal began to master after the fifteenth century's discoveries. Indeed, more than ius sanguinis, ius soli seemed to be capable of concretising the aspiration of the colonial order to a confluence of human resources towards a single powerful entity: the empire. That might have been otherwise, had Portugal ever had the demographic capacity to expand to colonised territories. But that was never the fact, which means the country depended on local natives to give demographic relevance to the empire.

This demographic fragility was made quite evident with the discoveries which initiated a phenomenon of emigration that would characterise the country over the centuries, causing on several occasions (as in the beginning of the twentieth century and later on in the 1960s) what was commonly named in books as demographic *sangria* (bloodshed).[10]

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[9] For a more detailed historical description see Ramos (1992), Baganha & Sousa (2006), Piçarra & Gil (2009).

[10] In only one decade, back in the 1960s, more than one million people left Portugal to become 'guestworkers' and 'soutiers de l'Europe' (Guichard 1990), namely in countries such as Germany and France.

In the twentieth century, this colonialist language favouring the ius soli rule was best represented in the Act of Nationality 2098 of 1959, under the authoritarian rule of Oliveira Salazar. According to the Act, all individuals born on Portuguese ground (colonies included, therefore), were to be considered Portuguese nationals.

The attribution of nationality at birth by ius soli should not be equated however with the access to citizenship, that is, with the access to political and civic rights. On the contrary, to become a citizen fully recognised by law and society under the authoritarian regime of the *Estado Novo*[11] was rather more difficult and complex than to become a national.[12] Citizenship was internally divided into 'layers' and access to its various layers or levels was controlled not only by a social code of informal norms, but also by a set of formal restrictions.

This was very much the case for women, who could be nationals under the legal provisions of the Nationality Act, but had only limited access to political citizenship and civic rights.[13] But the best example was the creation of the Status of the Indigenous (*Estatuto dos Indígenas*) that regulated the access to citizenship in regard to racial and ethnic backgrounds. Between 1926 and 1961 the *Estatuto do Indígenas* was the legal expression of a rather discriminating categorisation of citizenship within colonial rule, which reinforced clearly the general understanding of Portuguese elites about how social relations should be structured and the traditional social *status quo* preserved.

Along with society's tacit admission of a category of white Portuguese living in the metropolis (the Europeans), and the white Portuguese living in the colonies, there were, according to the *Estatuto*, the *mestiços* (African people holding two predominant – European and African – genetic heritages) and the indigenous (born in the colonies with no genetic link to the white European population).

Indigenous individuals were clearly separated from citizens. For an indigenous to become a citizen, that is, a 'true Portuguese', he or she had to comply with a series of conditions that could put him/her side by side with other European Portuguese citizens. To comply with such conditions lead to the person becoming an 'assimilated person' (*assimilado*).[14] It was not up to the individual to become one, but up to the discretionary power of decision of the provincial governments installed in the colonies.

In the context of the Portuguese-speaking African colonies, the *assimilados* were no more than 0.8 per cent of the population by 1961 when the statute was finally abolished (Pinto

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[11] The expression means 'new state' and designates broadly the period of Salazar's dictatorship between 1926 and 1974.

[12] The common idea of nationality as a sacred gate to enter the realm of citizenship, presented as a precious commodity of restricted access, recalls a major European tradition in regard to the relationship between nationality and citizenship. However, there isn't such a thing as a single tradition on this matter. Europe may be the historical locus of nation-states as Habermas states (1994) and where the forged relationship between nationality and citizenship became so successful that it lead to a complex synonymy of which the *national citizenship* formula is one of its ultimate expressions (Carvalhais 2004, 2007b). However, this simplified truth does not annul the variety of specific cultural and political traditions existent in the European history of nationality and citizenship (Bellamy, Castiglione & Santoro 2004, Beyme 1985, Rokkan 1970), which for instance explain the existence of European multinational states. In the Portuguese case, it was not access to nationality that was quite difficult to accomplish by sectors of the population (such as the indigenous populations, or women), but access to citizenship, a fact that in Portugal might be explained by what Ramos calls the elitist, urban and liberal roots of the national citizenship project (2004a, 2004b).

[13] Gender discrimination at various levels throughout Europe, with a legal basis (and not just reproduced in social practices) was, however, far from being a characteristic of authoritarian regimes alone, at least until the second half of the twentieth century.

[14] The *mestiços* were understood as naturally assimilated, thus the statute did not apply to them. This fact reveals how Portuguese society valued socially and culturally the proximity to white European heritage.

2000: 56). This insignificant number expresses how difficult it was to access this category, which implied admission criteria such as: to speak and write in Portuguese; to possess a regular, legally recognised and socially valid profession; to be broadly acquainted with European habits (having for that purpose to give up native practices such as polygamy) (Sumich 2008: 325). These requirements may look quite similar to those presently asked of aliens who want to be naturalised, but let us not forget that in the case under scrutiny, the potential *assimilados* were not aliens trying to access naturalisation; instead they were subjects of an empire who would be 'normal national citizens' under the prevalence of the ius soli principle, had they not the legal (but also cultural, social and political) disadvantage of a non-white background. At bottom, it was basically a question of being or not being white.

3.2 The end of the colonial adventure and the re-equation of the country's destiny: the ius sanguinis answer

'*E depois do amor/E depois de nós/O adeus/O ficarmos sós*' (and after love/and after us/the farewell/to be alone). The lyrics of the song *E depois do Adeus* hold a very special meaning in the popular narrative regarding the events that lead to the Carnation Revolution on 25 April 1974. But José Niza's verses are also quite powerful in translating what happened after 1974 with regard to nationality. Suddenly, the more or less arrogant certainties of the colonial order, gave way to the anxieties of a country that had to re-learn how to live with a smaller version of itself. What had been a motive of satisfaction, at least for parts of the elites, and which the deceased dictator synthetically elaborated in the expression '*orgulhosamente sós*' (proudly alone), was now a motive of expectation as well as of fears about the future.

The ius soli language seemed reasonable under the premises of an empire, but no longer acceptable under the new social and political coordinates of a re-born country, limited to what history had alloted it in the Iberian territory. The era of the 'Portuguese totality' (Mattoso, 1994: 485-486) was now over.

After the dictatorship collapsed in 1974, the ex-African colonies became the new independent states of Angola, Mozambique, Guinea Bissau, São Tomé and Príncipe and Cape Verde.[15]

The effects of decolonisation on Portuguese nationality were made evident in the concerns of one of the laws made in the aftermath of the revolution, though still under the old legal framework of the Nationality Act 2098 of 1959 which would remain into force until 1981.

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[15] In 1822, Brazil became the first independent territory. Only a century and a half later did the African territories achieve their independence: Guinea Bissau in September 1974, Mozambique in June, Cape Verde and São Tomé e Príncipe in July, and finally Angola in November, all these in 1975. The Indian territories of Goa, Damão, Diu, Dadrá and Nagar Aveli had already been claimed by the Indian Union in 1961, but only in October 1974 would the new Portuguese regime officially recognise this. Meanwhile, a small territory in East Asia, known as East Timor (or Timor Lorosae), was violently annexed by Indonesia in December, 1975. Only in 2001 did it become a free nation, the first democratic nation born in the 21st Century, admitted to the United Nations Assembly in 2002.

The Decree-Law 308-A/75 of 24 June

The Decree-Law 308-A/75 of 24 June intended to regulate the impacts of decolonisation, by settling who was and who was not to remain with Portuguese nationality. This redefinition raised both a legal and a social problem as it stipulated the loss of nationality for thousands of people that had been born in the ex-colonies, or who had lived there for many years, but who would have liked to remain Portuguese. The Decree-Law 308-A/75 did not take such considerations into account.

At the same time, particularly in 1975, and regardless of the nationality status that would now result for many individuals as a consequence of that new law, the country witnessed the arrival of more than half a million people. Known as the *retornados* (returnees), they were around 61 per cent from Angola and 33 per cent from Mozambique, meaning a 6 per cent growth of the Portuguese population estimated by then at nearly ten million (Esteves 1991).[16]

3.3 The 1980s and the redefinition of the legal framework of nationality – the new Nationality Act of 1981

The Law 37/81 of 3 October brought with it reinforcement of ius sanguinis as the predominant principle of nationality.[17] This shift from a ius soli to a ius sanguinis matrix revealed the political impacts that the decolonisation process began to cause, namely in the sudden demographic growth of the population, a fact that challenged the country's economic capacities and social stability while also causing 'fears that Portugal could become a country of strong immigration especially from its former colonies' (Esteves 1991: 121). At the same time, the political choice for ius sanguinis revealed also the need to establish proximity to the children of the diaspora, who would otherwise end up losing their cultural connection to Portugal within the prevalence of a ius soli frame.

Of the three reasons listed, perhaps the most relevant though was the need to regain some collective confidence by securing the bonds between Portugal and its diaspora.[18] Indeed, the legislator's decision for ius sanguinis followed not only the need to set a new legal pattern in nationality matters that would bring Portugal closer to the European tradition (Baganha & Sousa 2005: 448), but also the recognition of emigrants as an important resource that the state could not afford to discard (Ramos 1994: 117).

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[16] The arrival of around 500,000 people between 1974 and 1975 was demanding for the country but proved also its capacity to answer it efficiently. The state made a significant financial effort to help with the immediate needs of people's resettlement, proving to be capable of such expenses. The fact that the dictatorship had left the public treasury in good shape seems important. But credit should also be given to the strength of social networks (families in particular), which were quite important in distributing the weight of re-settlement. In any case, the state faced the challenge rather well. In return, both state and society profited from the arrival of skilled labour force and entrepreneurial people willing to regain control over their lives. Gradually, the initial fears that all these people would come 'to steal jobs' gave way to a peaceful and quiet absorbance into society, until the *retornado* became a word of the past.

[17] The Nationality Act 2098 of 29 July 1959 contemplated also ius sanguinis, though it was less relevant than ius soli in defining the general character of that legal title (Ramos 1996: 601). Indeed, the only situation in which ius sanguinis determined automatically and independently the acquisition of citizenship at birth was in the case of children born abroad to a Portuguese father or mother (article II).

[18] Official statistics point to a diaspora population of around 5 million individuals.

As Baganha & Sousa stress, '[c]learly what was on the political agenda at the time was emigration' (2005: 449) and that political ground is definitely important in understanding the motivations to create a law that went against the previous ius soli tradition.

The demographic flows in the late seventies and early eighties were not only coming from the ex-colonies. The difficulties felt by the European economies since the oil crisis in 1973, and the necessity to appease some emerging socio-political tensions (Malheiros 1996: 59), were already forcing European governments to create progressively more rigid migration policies. This affected thousands of Portuguese emigrants who had been guest-workers in France and Germany, the two main destinations of the European diaspora in the sixties.

At the same time, the political democratisation of Portugal and its first steps in the establishment of a social policy more sensitive to the needs of the people functioned as attractive factors for emigrants willing to return in the face of the new difficulties felt in the guest countries (especially for those that went abroad after the oil crisis when the European economies were already closing doors, and who were still undocumented). Obviously, the attractive factors for emigrants were also working as dissuasive factors for national citizens who could be planning to migrate.[19]

In the beginning of the 1980s, the country's demographic profile had changed significantly from that of 1960. In twenty years, the Portuguese population had increased by 12 per cent and the foreign resident population had increased by 313 per cent (Esteves 1991: 21). The increase in the Portuguese population was both the result of incoming flows from the ex-colonies, and from European countries as a consequence of the economic crisis. As for the increase in the total foreign population, this was mostly a phenomenon that resulted from the combination of the incoming flows from the ex-colonies and the recent predominance of ius sanguinis in the definition of Portuguese nationality. In other words, the new legal dispositions set by the Decree-Law 308-A/75 contributed to this dual situation: on the one hand there were thousands of people who remained with Portuguese nationality and who were now arriving, contributing to an increase in the total Portuguese population; on the other hand, the same Decree-Law had set the terms for the loss of nationality for thousands of other people who under the Nationality Act of 1959 were considered nationals following the ius soli principle. These people who had suddenly lost their Portuguese nationality were part of the same flows coming from the ex-colonies, but due to their new legal status they were now part of the total foreign population.[20]

The composition of the foreign resident population had changed too. In 1960, 67 per cent of the total were from European countries, while only 1.5 per cent were from Africa. In 1981, 44 per cent of non-nationals were from Africa, of which 42 per cent from 'Portuguese-Speaking African Countries' (PALOP) (Esteves 1991).

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[19] Even if less intensively, emigration has never stopped. It simply took on new destinations such as Venezuela, Argentina, Canada, the United States of America and Switzerland among others. More recently, the UK, Ireland and the Netherlands also became destinations with statistical relevance.

[20] The Law 37/81, along with the previous Decree-Law 308-A/75, became quite sensitive issues especially for Portuguese-Speaking African communities living in Portugal, since this new juridical reality meant, as already referred, that thousands of individuals were now excluded or had simply lost Portuguese nationality without giving their consent on that matter. Some social disruptions caused by the new legal framework of nationality were only to be eliminated by Framework Law 1/2004 of 15 January, which came to alter the premises for the reacquisition of Portuguese nationality for all those individuals who, as a result of previous legislation, had lost the right to Portuguese nationality without their consent. The Framework Law 1/2004 came also to facilitate the reacquisition of nationality for women who had lost it in consequence of marriage to a foreigner, revealing gender equality as another preoccupation in the making of the new legal framework of nationality, following on from the country's adherence to democratic principles.

3.4 The mid 1990s and the first approaches to the country's new immigrant profile

There is not enough time or space to explain in detail the emergence of Portugal as an immigrant country most notably in the 1990s (Carvalhais 2007a). But we mention it here because it provides a good example of how immigration does impact on the dynamics of nationality laws, as proved by the Law 25/94 of 19 August, the first amendment to the Law 37/81.

The major contribution made by this amendment was the creation of a much more restrictive system for the attribution of citizenship at birth to children born to foreign parents in Portugal. It was no longer enough that the parents had regular residence in Portugal at the time of birth; they needed also to hold a permit of residence. This meant that all children of illegal parents as well as all other legal residents with different kinds of permits such as the already-mentioned permits of temporary stay, could not apply for the acquisition of nationality.

The Law 25/94 brought also a new distinction between aliens from Portuguese-speaking countries who had to have a minimum of six years of legal residence, and aliens from other countries who had now to have no less than ten years of legal residence. This new distinction was applicable both in the cases of attribution of citizenship at birth to children born to foreign parents (art. 1 (1c)), and acquisition of citizenship by naturalisation (art. 6 (1b)).

The requirements to obtain national citizenship through marriage were also changed and a new minimum of three years of marriage for the spouse of a Portuguese citizen was now necessary before the application. Finally, the law 25/94 brought also the inversion of who was to make the proof of an effective link to the community. Instead of the state, which according to the Law 37/81 had the possibility to oppose the acquisition of nationality on the basis of the applicant's lack of integration, it was now up to the applicants to prove the existence of that link (art. 9a).

The Law 25/94 was initially based on a proposal for a law[21] which was an integrated and comprehensive effort of the social-democratic government of Cavaco Silva to create a legal system that would be much more restrictive to the presence of immigrants, who had begun to choose the country both as a primary destination and as a platform of access to other European countries. These immigrants were arriving not only from the traditional sending regions (such as Brazil and the Portuguese-Speaking African countries) but also from non-lusophone parts of Africa, from Asia, and mostly from Eastern European countries, as a result of the collapse of the communist regimes.

The Law 25/94 (aligned with the Immigration Act, Decree-Law 59/93 of 3 March, designed to regulate the entrance, permanence and expulsion of foreigners) mirrored thus the concerns of a centre-right government which had already been forced to make in 1993 an extraordinary process of regularisation of immigrants as a result of the number of illegal immigrants the country was attracting in the early nineties, when much infrastructure was still under construction.

By the mid-nineties, the political agenda accompanying the debates on nationality was in fact substantially different from the political agenda of 1981. As Baganha & Sousa underline:

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[21] *Proposta de Lei* (Bill Proposal) 91/VI.

> Whilst in the 1981 Nationality Act debate, the legislator's concern and the political agenda were how to facilitate a right to Portuguese nationality for Portuguese emigrants across the world, what concerned the Government in 1994 was how to stem the growing number of immigrants acquiring Portuguese nationality as well as various scandals related to fictitious marriages of convenience. The debate centred entirely on restrictions that should be placed on foreigners' rights to nationality (2006: 450).

But the political agenda surrounding this law was not only composed of domestic concerns. It was also a reflection of a wider agenda, the European Union one, still much concerned with the eventual behaviour of recently freed Eastern societies and the eventual impact of new migrant flows on the demographics of EU Member States.

3.5 Legal frameworks in comparison: Law 37/81 and Law 2/2006

This section presents the latest reform in nationality, embedded in Organic Law 2/2006.[22] The presentation also presents a comparison with Law 37/81, in order to highlight better their major differences.[23]

As surprising as it sounds, the Act of Nationality of 1959 remained in force after the democratic revolution and until 1981 when it was definitively substituted with the Nationality Act 37/81. Obviously, the aftermath of the revolution had already produced the need for some changes, as reflected in the Decree-Law 308-A/75 of 24 June which set, as already signalled, the terms of who retained (articles 1 and 2) and who lost (article 4) Portuguese nationality.

But the law of nationality needed to adjust not only to the new political and demographic reality of the country. It needed also to adjust to the new values that ought to be implied in a democratic constitutional order. In regard to this second demand, Law 37/81 brought respect for the principle of gender equality[24] (arts. 1 and 30),[25] the principle of non-discrimination of children born out of the wedlock (since the law refers to parents without specifying their spousal status), as well as the end of the distinction between legitimate and illegitimate children, which in legal terms meant ius sanguinis *a mater* was made equal to ius sanguinis *a pater* (Baganha & Sousa 2005: 445).

Closely related to the principle of gender equality was the end of marriage as a ground for the acquisition or loss of nationality, which had affected many women who had married foreigners in the past. Under the new law, marriage to a Portuguese citizen (male or female) no longer granted access to Portuguese nationality, although it could be one of the grounds for the voluntary acquisition of it. By the same token, marriage to a foreigner no longer brought the loss of Portuguese citizenship.

The spirit of the new democratic constitution, as we see, was also changing the grounds for the loss of national citizenship. Indeed, this was now made exclusively voluntary

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[22] The political debate surrounding Organic Law 2/2006 will be analysed in the following section. We consider that the previous presentation of the main characteristics of the law will provide a better understanding of the political discussions.

[23] For more detailed information on this law as well on previous legal documents, see Piçarra & Gil (2009: 5-12).

[24] The principle of equality has been enshrined in article 13 of the Constitution and the principle of non-discrimination between sexes in article 36.

[25] Article 30 declared that that a woman who might have lost Portuguese nationality by reason of marriage, could now reacquire it, by declaration.

following the idea of citizenship as a basic human right, therefore only lost by consent and not as a form of political punishment, as had happened during the dictatorship period. Once the loss of nationality became exclusively voluntary, '[t]he loss of citizenship could no longer be used by the state as a means of punishing an individual for not having a link to the Portuguese community or for not having been loyal to the state' (Piçarra & Gil 2009: 9).

Following this idea of citizenship as a basic human right and in order to avoiding statelessness, the voluntary loss of Portuguese nationality required also the existence of dual citizenship, so that the individual would remain attached to a citizenship in case of voluntary loss of Portuguese citizenship. This was possible because the law was tolerant about dual citizenship, a characteristic that remains to this day.[26]

The new political and demographic reality of the country brought the uprising of ius sanguinis, while ending predominance of the ius soli which was no longer considered an autonomous criterion for the acquisition of nationality.

Under ius sanguinis, proof of residence in Portugal was no longer needed for matters of acquisition of nationality by the children of Portuguese born abroad. It took simply a declaration of intent or the registration of the birth in the Portuguese civil register. Again the idea was to make sure Portugal would not lose ties with its millions of emigrants and particularly with the younger generations.

On the other extreme, for children of foreign parents born in Portugal, ius soli was now made dependent on an expression of intent and on their parents having lived legally in Portugal for a period of no less than 6 years (art. 1(c)) (Ramos 1996: 610, Baganha & Sousa 2005: 445).

The acquisition of nationality after birth was also made dependent on specific requirements, as introduced by article 6. Individuals had to prove they had an effective bond to the national community, that they possessed civic integrity, as well as the capacity to run their lives and to provide themselves with the means for their subsistence.

As for the formal procedures, with regard to the acquisition of nationality via naturalisation, the processes fell within the domain of the Ministry of Internal Affairs.

This legal frame was subject subsequent adjustments, as already mentioned, but the deepest changes have recently been brought by Organic Law 2/2006 at which we will now look.

We can already anticipate that the most relevant changes brought by Organic Law 2/2006 have been: the return to a reinforcement of the ius soli principle, the lessened bureaucracy implied in the processes of acquisition of nationality by naturalisation, and the change of ministerial responsibilities, from the Ministry of Internal Affairs to the Ministry of Justice.

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[26] Dual citizenship was not made explicit in Law 37/81, though easily understandable as we read article 27 on conflict between Portuguese and foreign nationalities, which stated that if someone had one or more nationalities and one of them was Portuguese, only this one would be relevant in the face of the Portuguese legal system. But it did not say that the other nationalities should be abdicated or that Portuguese nationality could not co-exist simultaneously with other nationalities. In fact, the acquisition of Portuguese citizenship no longer relied on renouncing other citizenships. By the same token, and contrary to the previous legislation, the acquisition of a foreign citizenship no longer resulted in the loss of Portuguese citizenship. As for Law 2/2006, its article 8 states that 'Those who, being nationals of another state, declare that they do not want to be Portuguese will lose Portuguese nationality.' This means thus that the loss of Portuguese nationality is made dependent on the will of the individual and not on legal incompatibility with another nationality.

Although the current citizenship requirements 'can still be described as a mixed system of acquisition at birth, with a predominance of ius sanguinis' (Piçarra & Gil 200: 15), a first substantial change brought by Organic Law 2/2006 has been the reinforcement of the ius soli principle.

In regard to the automatic acquisition of national citizenship at birth (ex lege) by ius sanguinis, this now applies to the children of a Portuguese mother or father who were born in Portugal (joint effect of ius soli and ius sanguinis) and to the children of a Portuguese mother or father born abroad if the parent was serving the Portuguese state. As for the ex lege acquisition at birth by ius soli, it contemplates, to begin with, all those who were born on Portuguese soil and possess no other citizenship (to avoid the situation of statelessness contrary to human rights protection). It contemplates also the children born in Portugal of a foreign parent also born in Portugal, requiring only that the parent born in Portugal resides there at the time of the children's birth, regardless of holding a legal permit. Art. 1(d) sets thus the access of third generation immigrants to Portuguese nationality, in which case, the ancestor has to prove that she or he was born in Portugal through a birth registry and that he or she resides in Portugal.

Organic Law 2/2006 sets out also the arrangements for the voluntary acquisition of citizenship at birth. Contrary to the ex lege situations, the voluntary acquisitions, as the name indicates, imply always an expression of intent. The relevant fact is that, once the expression of intent and the other legal requirements are fulfilled, the voluntary acquisition by ius sanguinis or ius soli will work automatically. The state cannot prevent it, contrary to the situation of voluntary acquisition *after* birth.[27]

In voluntary acquisition through ius soli, citizenship can be granted at birth to children born in Portugal to foreign parents (second generation immigrants), following the accumulative fulfilment of these three requirements: 1) that at the time of birth one of the parents had resided legally in Portugal for at least five years;[28] 2) that such parent was not in Portugal serving a foreign state; 3) that the child declares (in person or through a legal agent if the person is minor) the wish to be Portuguese. As we can see, contrary to the ius sanguinis situation, in the acquisition by ius soli, ius soli does not suffice as a criterion, and needs to be supported by other requirements such as the situation of the parents (not in the service of another state), the length of residence at the time of the child's birth (at least five years)[29] and their legal status.

Finally, the rules of naturalisation have also been changed. Of all forms or means of acquisition of citizenship after birth, naturalisation is by far the most relevant. Naturalisation is never an automatic procedure, but one resulting from voluntary will, that is, from an expression of intent by the individual who wishes to access nationality. This gives naturalisation a special political meaning, because, ultimately, it is all about the individual choice to embrace a national community.

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[27] For information on other forms of acquisition of citizenship (adoption, filial, partner and spousal transfer), consult Piçarra & Gil 2009: 17-18.

[28] As we can see, as far as the minimum period of legal residence is concerned, there is no distinction between lusophone and non-lusophone residents, contrary to Law 37/81 as amended by Law 25/94. The end of this positive discrimination was seen as necessary to guarantee greater compatibility between the new law of nationality and the European Convention on Nationality.

[29] This means that if at the time of birth one of the parents has not been legally resident for at least 5 years, there cannot be acquisition at birth. This was one of the aspects of the new law criticised by immigrant associations during the public discussion, because it discriminated, for matters of acquisition at birth, against all second generation immigrants born before their parents had completed at least five years of legal residence.

A major novelty of the new law in regard to naturalisation has been the introduction of a *subjective right to naturalisation* for minor children born in Portugal to foreign parents, if the following requirements are fulfilled:

a) The parents have not been convicted for crimes that carry prison sentences of three years or more, in accordance with Portuguese law;
b) The parents have sufficient knowledge of the Portuguese language;
c) There exists one of the following situations: that the children have completed the first cycle of compulsory education (of four years) *or* that one of the parents has legally resided in Portugal for a period of five years previous to the application (art.6(2)).

There is also the recognition of a subjective right to naturalisation for immigrants, following compliance with the requirements enunciated in article 6 (1):

a) To be legally emancipated or to be of legal adult age;
b) To be legally residing in the country for six years;
c) To have sufficient knowledge of the Portuguese language;[30]
d) To have a clean criminal record, that is, not having been convicted for crimes punishable with criminal sentences of a maximum of three or more years.

No references thus are made to the necessity of proving sufficient means of subsistence as was the case of Law 37/81 (art.6 (1)). There is no need also to prove the existence of a link to the Portuguese community (subject to verification by the public administration). The dubious requirement of civic suitability (*idoneidade)* has also been suppressed, giving place to the need for a clean criminal record under certain circumstances.

Finally, second generation immigrants born in Portugal to foreign parents, may also access nationality by naturalisation if they have been residing regularly in Portugal, regardless of their legal residence status, for the ten years previous to their application. In this case the individual does not have a subjective right to naturalisation, which is under the discretionary power of the state.[31]

As for other relevant changes, it is worth stressing that naturalisations now fall within the domain of the Ministry of Justice. The ABS is now called into action but only to elaborate non-binding assenting opinions (*pareceres*) for the applications for naturalisation that now may enter any civil register. The passage from the Ministry of Internal Affairs to the Ministry of Justice holds an important political meaning. Frequently pro-immigrants' rights organisations have called attention to the fact that keeping matters on the acquisition of nationality by foreigners under the Ministry of Internal Affairs, more specifically under the control of the ABS, which is a police force, was a negative sign that revealed how the state was still looking at potentially new citizens not as potential nationals but as aliens, thus as external matters to be treated by the instruments of national security. Instead, acquisitions of nationality should be under the umbrella of the Ministry of Justice, as this is after all the ruling ministry for any other Portuguese citizen who might have issues about his or her nationality.

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[30] The legal document *Portaria* 1403-A/2006 of 15 December regulates the various aspects regarding the evaluation of the candidates on matters of language proficiency.

[31] The law allows discretionary naturalisation also in the case of foreigners who have held Portuguese citizenship, who are descendants of Portuguese citizens, members of communities of Portuguese origin or who have performed or who will perform notable services to the Portuguese state or to the Portuguese community (art. 6(6)), such as in the case of athletes, sportsmen and sportswomen.

Other novelties brought by the new Law of Nationality include:

a) partnerships of unmarried (homosexual and heterosexual) couples (*uniões de facto*) receive the same treatment of formal marriages (*casamentos*);[32]
b) it is no longer up to the individual to prove his or her capacity to acquire nationality by adoption or marriage, but to the Public Ministry to prove otherwise;
c) legal proceedings on nationality move from judicial to administrative courts.

Finally, also worth mentioning is the significant reduction of bureaucracy, as legal residence for purposes of naturalisation or attribution at birth can be proved by any valid title of stay and no longer exclusively by the permits of residence as was since Law 25/94.

4. The political debate around Organic Law 2/2006[33]

This section illustrates the political debate around the new law of nationality approved in 2006. We will look first at the contributions of political parties and governments, considering the period previous to the approval of the new Act of Nationality, that is, the period corresponding to the tenth legislature between 2005 and 2006.

We will then look at some contributions coming from diverse agents located in civil society, namely immigrant associations, the Catholic Church, trade unions and NGOs.

Baganha & Sousa have stated that 'neither the original version of the Nationality Act of 1981, nor the new wording of 1994, nor the minor changes in 2004, raised heated debates or political divisions' (2005: 450). This is also very much the reality of the debates around Law 2/2006.

A distinction should be made though between the attention paid by civil society and the attention paid by the political class. None has registered heated debates, but for different motives. While there was a general consensus within the political class about the need to re-assess the rules of acquisition of nationality, the debates within civil society were mostly confined to restricted groups of interest and never caught the general public's attention.

The media, for instance, paid much less attention to the new law of nationality than to the new law regulating the entrance, permanence and expulsion of foreigners that would be approved one year later, in 2007.[34] This might be explained by two intertwined aspects.

On the one hand, the entrance of aliens is definitely more politicised and publicised for all the social, economic, cultural and political challenges it may bring to the guest society.

On the other hand, society in general has a limited vision about nationality and reads it as a 'domestic issue', that is, not directly implicated in the management of immigration flows which, by its turn, can be a quite hot issue especially if followed by inflamed populist speeches. As far as Portugal is concerned, political discussions around nationality issues have

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[32] According to art. 3(3) on the acquisition of nationality through marriages or spousal partnerships, a foreigner who lives in a spousal partnership (*união de facto*) with a Portuguese national for more than 3 years, may apply for the acquisition of nationality, following the recognition of that partnership by a court of law. The recognition does not mean any juridical transformation of the partnership into a marriage.

[33] On the legislative process, institutional arrangements, procedures and registry that accompany the approval of an organic law in Portugal, we recommend Piçarra & Gil (2009: 31-33).

[34] Law 23/2007 of 4 July regulated by the *Decreto Regulamentar* (Regulating Decree) 84/2007 of 5 November.

been definitely much less interesting to the media, than discussions on immigration management, legalisation, or maintenance of the quota system.[35]

4.1 The debate within the political class

The governmental bill 32/X and the parties' projects: from the left wing to the right wing in Parliament

The year 2005 saw the political discussion on the reform of the nationality act, with both the government and all political parties with parliamentary seats submitting their proposals and projects of law.

The socialist government lead by José Socrates submitted to parliamentary scrutiny a proposal for a new law of nationality[36] which intended to recover the relevance of ius soli in the acquisition of citizenship at and after birth, on the basis that the previous law had become obsolete in face of the demographic changes of the country and of the evolution of the international legal context (namely the adherence to the European Convention on Nationality). It contemplated already the subjective right to naturalisation, as well as the transfer of the capacity of decision on naturalisation applications from the Ministry of Internal Affairs to the Ministry of Justice. The proposal considered also as relevant the need to define the concept of legal residence for matters of nationality, bringing more objectiveness and homogeneity to it.

According to the proposal, the definition of the concept of legal residence should coincide with residence with any title, visa, or permit as allowed by the legal regime of entrance, permanence and expulsion of aliens, as well as by the regime of asylum. This was seen as a major step to make the access to citizenship simpler and faster, as not only titles of residence but other documents would now be accepted.

In the same period of time, left-wing parties also submitted their projects of law. The Green Party submitted to the Parliament a project[37] (quite similar to one already submitted in the previous legislature in 2004)[38] stressing the need to reinforce the ius soli principle, so that the children of immigrants, born in Portugal, could be Portuguese nationals.

The project proposed, among other aspects, the automatic attribution of Portuguese nationality to all children of foreign parents living in the country on a regular basis and not in the service of other states or on international missions. It proposed the elimination of the capacity of subsistence as a criterion for the naturalisation processes and that spousal

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[35] The quota system was first introduced in Portugal in 2002, during the coalition government of PSD and CDS-PP, lead by Durão Barroso. It has been criticised on several occasions by civil society, political parties and even the head of the ABS in 2005: Jarmela Palos declared openly that the Portuguese Law of Immigration based on a quota system was a complete failure, being also the most restrictive as well as 'rigorous and intransigent' in the European context (Público, 30 August 2005). Since 2007, Portugal stopped talking about the quota system and instead has what the government calls a 'flexible global contingent' (Público, 13 May 2009) subject to periodic (annual) updating in accordance to the labour needs of the country. For civil society, more specifically trade unions and immigrant associations and pro-migrants' rights organisations, this change in terminology hasn't changed the nature of the policy and consequently its negative impact on the country's capacity to legalise new immigrants.

[36] *Proposta de Lei* (Bill Proposal) 32/X.

[37] *Projecto de Lei* (Bill Project) 31/X/1.

[38] *Projecto de Lei* (Bill Project) 335/IX.

partnerships be recognised as legally equivalent to marriages for matters of acquisition of nationality.

Also in 2005, the Bloco de Esquerda (Left Block) presented its project[39] (following another already submitted in 2003),[40] proposing an automatic right to nationality by ius soli to all individuals born in Portugal (third and second generation immigrants included). This was one of the most radical changes proposed and helps explain the abstention of the party in the final voting that lead to the present law, since the final version of the governmental proposal was still behind the expectations of these more radical views. Indeed, as already seen, the acquisition of nationality at birth for second generation immigrants leaves out all children whose parents at the time of birth were not legally resident for at least five years. When the present law came into discussion and to final approval, the BE thus accused the government of lacking courage to go deeper into the relevance conferred on the ius soli principle.

As for the acquisition of nationality after birth, by naturalisation, the BE proposed as criteria the knowledge of the Portuguese language and the existence of *effective* residence with a minimum of six years, that is, residence on a regular basis in the country regardless of the legal status, as opposed to the concept of legal residence where migrants must hold valid documents. It proposed also the recognition of spousal partnerships as legally equivalent to marriages for matters of acquisition of nationality.

The project presented by the communist party was in several aspects quite close to those presented by the BE and Os Verdes. It proposed the recognition of Portuguese nationality to all residents born in Portugal of foreign parents, as well as the recognition of spousal partnerships as equivalent to marriages for matters of acquisition of nationality and the elimination of the requirement of a minimum of three years of marriage before the application for Portuguese nationality.[41]

It should be stressed that the left-wing parties were the most sensitive to the various appeals coming from civil society, as we will see below when looking at civil society's main contributions to the debate.

Moving from the left to the right wing, also in 2005, the CDS-PP (Popular Party) presented a proposal[42] which stressed the need to keep a minimum period of legal residence before the individual could apply for national citizenship, this period being of six years regardless of his or her origin. Along with the need to maintain the criterion of knowledge of the Portuguese language, other criteria should be kept, namely the existence of an effective link to the national community,[43] the capacity of subsistence and civic suitability of the applicant. As a new requirement in comparison to Law 37/81 as amended by Law 25/94, the project proposed also the suspension of the naturalisation process in cases where the individual could be under criminal investigation.

Following the contents of the project, the abstention of the party in the final voting that lead to the present law did not come as a surprise. In the words of the party's member and leader of the parliamentary group at the time of the final voting: 'It cannot be Portuguese

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[39] *Projecto de Lei* (Bill Proposal) 18/X/1.

[40] *Projecto de Lei* (Bill Project) 325/IX.

[41] Contrary to the intentions of these parties, the new law has kept the three years requirement. After that, a foreigner who has been married to a Portuguese national can acquire Portuguese nationality by declaration (art. 3 (1)).

[42] *Projecto de Lei* (Bill Project) 173/X/1 (no projects in the previous legislature).

[43] These were basically the requirements found in the previous law of nationality with its amendments brought by Law 25/94, and which put the onus upon the individual, a rule that has been inverted in accordance to the new law, which obliges the public administration to provide proof.

whoever wants it, but whoever deserves it' (ACIDI, 16 February 2006). The idea of merit was closely connected to the party's concerns about naturalisation, as, in its opinion, this is acquisition of nationality made dependent upon the individual's will, therefore, on the individual's responsibility to deserve to gain it.

Though rooted in a wider conception of society, this meritocratic reading was also attached to a more pragmatic agenda regarding national security. The CDS-PP considered that national security would be under threat if the new law on nationality enabled an individual under criminal accusation to go on with his or her naturalisation process and eventually become a national citizen whilst still under criminal accusation. Therefore, and as a new requirement for applications for the acquisition of nationality by naturalisation, the project proposed the suspension of the naturalisation process in cases where the individual might be under criminal investigation.

Still, the party did not vote against the final text, which was also politically relevant as the party did in fact recognise that a new law was needed and that a return to a system with prevalence for ius soli was fundamental as a path for better integration of third and second generation immigrants.

Finally, the project of the PSD (social democrat party)[44] was in many aspects closer to the governmental proposal. In fact, no party from right to left was against the need to turn the nationality law into a more inclusive system. By the same token, no party was against the end of the positive discrimination between lusophone and non-lusophone citizens for matters of access to citizenship, as a way to respect the European Convention on Nationality that appeals for the elimination of all forms of discrimination.[45]

As most parties have done, the PSD also proposed reform of the criteria for the acquisition of citizenship by naturalisation, namely that residence and knowledge of Portuguese could be valid criteria in substitution of the demand for an effective link to the national community (which was similar to what the BE, the Verdes and the PCP had proposed), while also proposing the maintenance of the criteria of civic suitability and capacity of subsistence (as in the project of the CDS-PP).

Recent developments in the parliamentary debate

Despite some divergences between the socialist government's initial proposal in 2005 and the political parties' projects, a rather consensual law was approved in February 2006, with the favourable votes of the PSD, PS, PCP and Os Verdes, and with the abstentions of the BE, CDS-PP, as well as three MPs of the social democrat party.[46]

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[44] *Projecto de Lei* (Bill Project) 170/X/1. Previous projects: *Projecto de Lei* 140/VIII, in the eight legislature (2002).

[45] There was great consensus about ending the discrimination between lusophones and non-lusophones for matters of access to citizenship. However, we believe that this subject is far from being politically innoccuous, as it brings out questions on how the country should be dealing with its historical responsibilities as far as Portuguese-speaking communities are concerned. Spain seems to have a similar struggle as Martín Pérez & Fuentes note on the 'privileged treatment currently enjoyed by Latin-Americam migrants.'(2009: 28).

[46] The political debate had also the contribution of historic figures such as the socialist Mário Soares, former president of the republic. Soares was somehow paradigmatic of the political class's behaviour, revealing a sort of smooth conflict between a more progressive and a more conservative view on nationality. He stated publicly that a new law was needed in face of the country's new demographic reality. He went even further, favouring the idea of opening nationality to the lusophone community of Portuguese-speaking countries around the world. But

Four years later, the parties that voted in favour are still positive about the new law of nationality and its effects. The PCP, for example, notes that its political role has contributed 'in a decisive manner for a *good* nationality law'[47] (O Militante 2007). And that has been in general terms the political opinion about the law: a good one, that is, the best possible. But for those who were unsatisfied or at least not totally satisfied with its approval, the reasons to begin a substantial new reform remain.

In 2008, the CDS-PP submitted a new project of law[48] aiming at reforming Organic Law 2/2006. The main critique of the present law was with regard to its openness and flexibility. The party considers that it was necessary and socially understandable to have a more inclusive law with regard to second and third generations, but considers it excessive that nationality may be accessible regardless of the title of residence and to people who may reside illegally in the country as long as they have been there for at least 10 years before the application.

The party also finds that it is not in national security's best interest nor in the national identity's interest that an application for the acquisition of nationality is not suspended while the individual is under criminal investigation, or that the individual may access nationality by naturalisation even if he or she has been convicted for crimes punishable with criminal sentences of less than three years.

The party sees this as particularly dangerous, as it allows the access to nationality to individuals associated with urban criminality and 'other crimes that relate to the essentials of integration in the community of nationals', such as crimes of disrespect against national symbols and offences to the president of the republic. All these characteristics are reasons enough to reform the law.

The party's project proposes therefore several revisions. In regard to the criteria to access nationality, for instance, the candidates must know the Portuguese language both in the oral and written form[49] and must also possess sufficient knowledge of the 'fundamental

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he quickly tempered his comments by stating also that this was a 'complex problem' needing to be 'pondered', and assessed within the European Union context (*Diário de Notícias*, 6 December 2005). In fact, and taking into consideration the various projects as well as the governmental proposal, we realise that a major focus of attention was not on opening or closing the system (in general terms, all political forces favoured a more inclusive system), but instead on the terms on which it could be made more open, and in that regard the European legal context was a major constraining factor to ideas on forms of positive discrimination.

[47] Italics ours.

[48] *Projecto de Lei* (Bill Project) 592/X(4ª).

[49] There are presently three way of proving knowledge of the Portuguese language: if the individual has not been integrated in the Portuguese educational system (whether in private, corporative or public institutions), there are a series of diagnostic tests. These tests follow the model approved by the Ministries of Justice and Education (as published in Portaria 1403-A/2006 of 15 December) and may be performed in any of the institutions of education appointed by the Ministry of Education. Second, if the individual has been integrated in the Portuguese educational system, then proof will be made through a certificate issued by an officially recognised institution of education. Third, if the individual has learnt the language abroad, then the proof is made by a certificate of competency in Portuguese as a foreign language. This certificate must first be recognised as valid by a centre of evaluation recognised for such matters by the Ministry of Education (art. 25 of the Nationality Regulation). According to the CDS-PP, the present tests are not exigent and demanding enough to prove the existence of solid knowledge of the Portuguese language (according to art. 1(2), it is considered as sufficient knowledge of Portuguese to have the equivalent of the A2 level of the Common European System of Reference for Languages). Besides, there are no oral exams which according to the party would be relevant to determine the level of oral competence of the individual in daily tasks. Finally, in the Party's view the tests try to assess the capacity of the individual to deal with daily situations on various scenarios but do not prove the acquaintance of the individual with the state's fundamental values, nor with its political organisation, symbols, etc. It should be noted however that presently oral exams are possible, but only for cases of people over the age of 65 or with

values of the Portuguese State of Law (*Estado de Direito*)', with the introduction of an obligation to sit a written exam once the application for naturalisation is submitted. The project proposes also the reintroduction of the capacity of subsistence as well as the criterion of legal residence in the country for at least six years, and the absence of convictions for crimes punishable with criminal sentences of a maximum of one or more years.[50]

In regard to the acquisition of nationality by naturalisation, applications should be suspended whenever the candidate is under criminal investigation. The project's reform of the nationality law follows the party's idea that the present law of nationality is by far less demanding than the present law of immigration, while both should be in synchrony instead. For example, the Law of Immigration sets that the expulsion of resident aliens may occur whenever the individual has performed acts against national security or against public order (art 101 (3)) or if there are strong reasons for authorities to believe that he/she may commit serious criminal acts (art. 111 to 116). According to the CDS-PP's view this means that a legal resident who has performed a crime, whose sentence to prison is greater than one year, can be expelled by authorities under the Law of Immigration. He may also be expelled even without being previously sentenced to prison, as long as there are already strong indicators of dangerous activities that justify the beginning of an investigation process by the ABS which will then be presented to court. But paradoxically, the same individual, if an applicant for nationality, will only see the application suspended for a five year period if she/he has been actually sentenced in court and for crimes whose sentences according to the Portuguese Law exceed (isolated or in accumulation with other sentences) one year. Of course, if we make this rather simplistic reading, like the CDS-PP, one law will look too severe and the other too soft. However, the Law of Immigration is not that severe, since it contemplates a series of situations where individuals cannot be expelled.[51]

Also in 2008, another project of law was submitted to the Parliament by the PSD.[52] One of the project's central goals is the right of the grandchildren of Portuguese emigrants residing abroad to Portuguese nationality, through a simple expression of intent, leading thus to a reinforcement of ius sanguinis.[53]

The second goal of the project is to be a law-frame *(lei-quadro)* that synthesises all rights and duties of nationals residing abroad, and the obligations of the Portuguese state towards them, such as the State's responsibility for fostering the political participation of the Portuguese communities (art. 6), as well as the specific obligations of the Government, namely:

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serious health conditions who can't write and/or read in Portuguese. This possibility seems however to be insufficiently publicised as many immigrants are not aware of it when they enrol for written tests.

[50] According to the Project, to have been convicted for crimes that carry a prison sentence of one or more years, is also a basis for opposition to the acquisition of nationality after birth.

[51] Art. 101 (2) declares that in the decision for expulsion, as an additional punishment after the individual has been convicted in court for crimes punishable with sentences greater than one year, it must be taken into consideration: the seriousness of the committed acts; the personality of the individual; the likelihood of repeating those acts; the length of his/her residence, the level of social integration in the country. Furthermore, expulsion as an additional sentence cannot be applicable to individuals: who were born and resided regularly in Portugal; who have minor children residing in Portugal and were parentally responsible for them at the time of the acts that justified the sentence, and who still provide the children's means of subsistence and education, and whose children will still be minors at the time predicted for the expulsion; who have been regularly resident in Portugal before the age of ten. Art. 104 also sets that expulsions cannot contemplate as destinations countries where the individual may have his or her human rights violated.

[52] *Projecto de Lei* (Bill Project) 482/X(3ª).

[53] Presently, the grandchildren of Portuguese emigrants residing abroad can access nationality by naturalisation.

a) the governmental responsibility for the creation and promotion of an information system that will help citizens to keep updated about their political and social rights in Portugal and abroad, as well as regularly in touch with the lusophone world (art. 7);

b) the governmental responsibility for the development of mechanisms of consular protection and social support; and for the reinforcement of the consular net;

c) the governmental responsibility in incrementing the conditions for associativism (art. 9), and the access to Portuguese education and culture (art. 12);

d) the governmental responsibility for creating measures to support returning members of the diaspora (art. 13).

The third goal of the project is to include new rights such as the right of residents abroad to vote and to be elected in local elections in Portugal (art. 5 (3)), following the specifications of the electoral law for that matter.[54] Needless to say, this is highly controversial both among politicians and scholars as it raises many doubts and questions about the conditions and political quality of participation of people who may share very little in common with Portugal, besides a remote cultural link.[55]

The parliamentary commission on foreign affairs and Portuguese communities was particularly critical in its assessment report to the project. It considered it as an unexpected initiative of 'exaggerated relevance' whose contents by no means would justify its presentation as a law-frame.[56] Contrary to a law-frame, which 'must integrate not only the guiding lines, but also the principles of a policy sufficiently elaborated', the project was considered to be of great vacuity, with a lack of systematisation, lack of innovation, and even contrary to national legislation in force.

In the mean time, and since the submission of these two projects of law, no further developments in the political debate about the law of nationality have occurred.

Note that also in the same period, other political debates took place that although not directly related to the nationality law, can be considered as quite related and relevant for the whole debate on nationality and national identity.[57] We would like to mention only one such political debate, which emerged around the political rights of the diaspora. This started with the socialist party submitting a very controversial project of law[58] that aimed at reforming the electoral law specifically with regard to the form of electoral participation of emigrants. The

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[54] So far, emigrants are entitled to vote and to be elected in legislative elections. The only exception in regard to the right to be elected, is for emigrants with other nationalities, who cannot be candidates to the external electoral circle that includes his/her other nationality (EU circle or the International circle) (art. 6(2) of the Organic Law 2/2001 of 15 August). Emigrants are also entitled to the right to vote in presidential elections according to Organic Law 5/2005 of 8 September (art. 1(1) and (2), arts.1-A and 1-B). Emigrants with dual nationality residing abroad do not have the right to vote (art. 2(2)), as well as Portuguese citizens who have been entitled to the statute of equality of rights in Portuguese speaking countries (art. 3(1), following the reciprocity clause in art. 15(3) of the Constitution which permits the existence of quasi-citizenship status.

[55] Piçarra & Gil are already concerned about the subjective right to naturalisation for the grandchildren of emigrants as proclaimed in the recent law of nationality, since in their opinion '[t]hese are distant descendants of expatriates, so their link with Portugal is weak.' (2009: 38). Therefore, to entitle these citizens to extended political rights is far from being a settled matter.

[56] Assessment report presented by the Commission of Foreign Affairs and Portuguese Communities, available in the Diary of the Assembly, DAR II - A No. 80/X/3 2008.04.12.

[57] The bill proposal 262/X(4a) relates only indirectly to the nationality law but it is still worth mentioning it, as it relates to the establishment of the criminal policy of the country for the years 2009-2011, in accordance with the Law-Frame of the Criminal Policy, 17/2006 of 23 May. The government's proposal aims, among other issues, to establish which crimes whose investigation must be prioritised. Among them, convenience marriages appear as crimes to prioritise (art. 4(1, f)). Convenience marriages had already been considered crimes by the new immigration law, law 23/2007 of 4 July.

[58] *Project de Lei* (Bill Project) 562/X.

project intended to end the system of votes by mail while introducing the obligation of emigrants to go personally to vote (art. 79(1)) in local Portuguese consulates (art. 40-A).

The project was approved in the Parliament with socialist and communist votes but was fiercely opposed by the popular party and particularly by the social democrat party that, as we have already seen in its bill project 482/X(3), proposed instead the extension of political rights to emigrants abroad, to the local level.

The project's journey culminated with the presidential veto of Cavaco Silva in February 2009. The President claimed that the law would simply bring more difficulties to the participation of emigrants in Portuguese democracy and would quite likely raise the rates of abstention as it would force thousands of people to travel long distances simply to make use of their political rights.

4.2 The debate within civil society

Migrant associations, trade unions, joint platforms and the Catholic Church

Despite the sound feeling that this was a reform that needed to be made, there were divergent sensitivities also among the political actors located in civil society.

This section concentrates on the debates and public demonstrations that occurred in civil society. We will analyse such debates and public demonstrations as they were, that is, regardless of how accurate or inaccurate the arguments were about the real content of the previous law of nationality, as well as about the governmental proposal and the parties' projects of law that we have presented. As soon as the governmental proposal was presented in 2005, immigrant associations demonstrated against it, on the basis that though it was reinforcing the ius soli principle, it would not grant nationality automatically to second-generation immigrants born in Portugal, but would still make it dependant on the parents' legal residence.[59]

Also in 2005, other organisations expressed moderate concerns about the government's proposal. The Anti-Racism Front, for instance, saw the governmental proposal as a positive but still quite limited step towards the reinforcement of the ius soli principle. In its view, it was regretful that nationality could not be granted automatically to children of foreign parents, born in Portugal, but would still have to depend on criteria such as the length of residence of the parents (*Jornal de Notícias*, 10 July 2005). In other words, a true reform of the law would make it more radically inclusive, looking at nationality as a fundamental human right that should be automatically acquired by any children living in the country.

This concern about the second-generation immigrants was also present in the protests of the Platform of Immigrant Organisations (*Plataforma de Organizações de Imigrantes*). Created in December 2004, the platform gathers several immigrant associations and anti-racism organisations, as well as the national trade unions CGTP (*Confederação Geral de Trabalhadores Portugueses*), UGT (*União Geral de Trabalhadores*), and the OCPM (*Obra Católica Portuguesa das Migrações*). In 2005, following the government's proposal, the platform made public its manifesto to the government. In it, the platform argued for a reform

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[59] The absence of an absolute ius soli principle for second-generation immigrants was seen as major concern for immigrant associations, in a context where it was estimated that 100,000 to 150,000 people were second-generation immigrants who would thus be affected by the restrictiveness of the new law.

of the nationality law that could actually solve a major social problem which would otherwise emerge from the government's proposal: the exclusion of many second generation immigrants from what the platform characterised as a true sense of belonging to the Portuguese community.

This Platform was the major responsible party for most of the mobilisations that took place during the public debate about the new law of nationality. Both its dynamism and cluster structure explain why there weren't many references in the *media* to entities such as trade unions in isolated manifestations, since most of the actions were being planned within the context of the platform.

In general terms, the Catholic Church and Catholic organisations considered that reforming the nationality law was a fight for better integration.

Among its leading actors there was the Portuguese Catholic Work of Migrations (OCPM) which, despite of its integration in the Platform of Immigrant Organisations, had also a role of its own. The OCPM welcome the idea of a new law of nationality closer to the ius soli principle, because the acquisition of nationality by those born on Portuguese territory was considered both a social need and a moral right (*Ecclesia* 2005).

After the new law was approved, the Church saw it as balanced one and an important step towards citizenship in the words of Father Rui Pedro, former head of the OCPM. But there was also the feeling that more could have been done, especially in regard to a stronger improvement of the ius soli principle (*Ecclesia*, 23 February 2006).

Civil society at present

Four years after the law came into force, civil society has somehow shifted its main focus of discussion. A substantial part of the criticism no longer concentrates on the law, but on the deficiencies in its implementation.

The Agenda of Lagos that followed the third Forum of the representative structures of the immigrant communities, PERCIP, states that '[i]n regard to the implementation of the laws of nationality and of foreigners and some of the administrative practices followed by the government', it is important '[t]o dismantle the obstacles caused by "excesses of zeal" and the delays occurred in many processes on the acquisition of nationality' (PERCIP, 2008). The main concern therefore is not with the righteousness of the law but with the existence of administrative obstacles that prevent faster realisation of the law.

Another example comes from the CGTP. In its assessment report on the governmental preparatory project that preceded the Plan of Integration of Migrants implemented in 2007,[60] the confederation underlined the need to speed up the efficient implementation of the new law of nationality, namely by making it less bureaucratic and more user-friendly in regard to the naturalisation processes (CGTP, 2007).

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[60] The Plan of Integration of Migrants implemented in 2007 can be consulted at
http://www.portugal.gov.pt/pt/Documentos/Governo/PCM/Plano_Integracao_Imigrantes_Anteprojecto.pdf.

4.3 The European context

We have looked at the most relevant political actors within the political class and civil society. But a third element must also be contemplated: the European context.

As stated by ACIDI,[61] the balance in the attribution of nationality implicates a set of rules that may guarantee inclusion while not compromising the rigour and coherence of the system 'as well as the general aims of the national policy of immigration properly articulated with our international European commitments, *namely those following the European Convention on Nationality that Portugal has ratified*'[62] (ACIME, 2005: 1).

The European Convention on Nationality that Portugal signed in 6 November 1997 was in fact a legal constraint of significant strength in determining the need of reforming the previous law of nationality (Piçarra & Gil 2009: 11). The reform was an imperative, namely in regard to art. 4(c) and (d) of the convention which declares that 'no one shall be arbitrarily deprived of his or her nationality', and that 'neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse.

Also important is art. 5(1) on non-discrimination and the need to abolish 'distinctions or include any practice which amount to discrimination on the grounds of sex, religion, race, colour or national or ethnic origin.' Therefore, the previous regime which benefited lusophone non-nationals for matters of acquisition of nationality as far as the length of legal residence was concerned, was against the rule of non-discrimination and had thus to be revised.

The Convention helps also to understand the need for a reform that would now contemplate the acquisition of nationality ex lege for third generation immigrants (art. 6(1)(a)) and that would facilitate the acquisition of nationality for 'persons who were born on its territory and reside there lawfully and habitually (art. 6(4,e)), and 'persons who are lawfully and habitually resident on its territory for a period of time beginning before the age of 18, that period to be determined by the internal law of the State Party concerned' (art. 6(4f)).

Following the priorities of integration set by the Common Agenda for Integration (COM (2005) 389 final), a recent publication sponsored by the European Commission notes also that,

> 'In an inclusive environment immigrants… acquire more rights and assume more responsibilities over time as policies secure their residence, promote their participation, facilitate reunion with family members, *encourage naturalisation*,[63] and combat discrimination.' (*Handbook on How to Implement a One-Stop-shop for Immigrant Integration*, 2009, p. 7)[64].

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[61] High Commissioner for Immigration and Intercultural Dialogue (*Alto-Comissariado para a Imigração e Diálogo Intercultural*), previously know as ACIME (*Alto-Comissariado para a Imigração e Minorias Étnicas).*
[62] Italics ours.
[63] Italics ours.
[64] Funded by the European Commission INTI Fund (Directorate-General Justice, Freedom and Security) and promoted by the High Commission for Immigration and Intercultural Dialogue (ACIDI, I.P.) as part of the Project "One-Stop-Shop: a new answer for immigrant integration" (JLS/2006/INTI/148).

The acquisition of nationality, namely by naturalisation is thus clearly understood in the European Union discourse as a tool of integration of immigrant communities and therefore as a means of social cohesion for multicultural societies.

5. Statistical evidence on the new Act of Nationality in a comparative perspective

As table 3 reveals, under the legal frame of Law 37/81, the amount of requests for acquisition of nationality by naturalisation were quite low and constant.

There was also a constant balance between the amount of positive and negative answers emanated from the ABS, with very few exceptions.[65]

Table 3. Requests for acquisition of nationality via naturalisation between 1993 and December 2006

	Total of requests	Positive answer	Negative answer
1993	858	12	0
1994	802	144	29
1995	783	30	692
1996	918	147	6
1997	866	153	2
1998	787	512	0
1999	1,036	584	156
2000	1,464	1,142	209
2001	1,946	9,56	135
2002	2,912	1,136	211
2003	3,628	2,043	456
2004	4,925	1,413	403
2005	3,802	1,655	222
2006	4,149	7,662 (*)	350

Legend: (*) This total gathers the existence of pending processes.

Source: ABS *(several statistics)*

However, as shown by table 4, the entrance into force of the new law of nationality in 2006 brought as a most significant change the substantial increase in the amount of requests for naturalisation.

According to the ABS 2008 Report, 34,326 applications for acquisition of nationality through naturalisation received assenting opinions (*pareceres*)[66] from this service (2008:

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[65] The high amount of negative answers in 1995 was clearly a sign of a period marked by scandals about convenience marriages which ultimately affected the whole political context surrounding the nationality law 25/94.

[66] Under Organic Law 2/20006, the ABS no longer controls the attribution of naturalisations, but it is still relevant with regard to issuing residence certificates regarding the applications for acquisition at birth through ius soli; to issuing opinions for applications for voluntary acquisition and acquisition by adaptation; and to issuing both certificates and opinions for applications for naturalisation of adults and minors.

80).[67] These new numbers seem clearly the result of less administrative bureaucracy, but most importantly of the substantial reform of the requirements for the acquisition of nationality by naturalisation that lead to an increase in the total number of foreign people eligible for naturalisation.

Table 4. Requests for acquisition of nationality via naturalisation

Naturalisation Applications	Assenting Opinions
(01.2006 - 12.2007) 8,970	8,958
(01.2008 - 12.2008) 34,568	34,497

Source: ABS *(several statistics)*

As for the most expressive populations in 2008, we see that the numbers are after all in accordance with the evolution of the immigrant profile of the country over the last years. On the one hand, Portuguese speaking communities still take the lead (Brazil, Cape Verde, Angola etc.) which is understandable for various historical and cultural reasons. On the other hand we see a significant presence of applications by Moldovan citizens. In general terms, the seventeen most relevant communities in the total number of applications reflect both the increasing ethnic diversity of the country and the effects of the new nationality law in attracting more applicants for the acquisition of nationality.

Table 5: Total of requests for acquisition of nationality in 2008 – most representative nationalities[68]

Cape Verde	9,926
Brazil	8,391
Guinea Bissau	4,589
Angola	4,463
Moldavia	4,449
S. Tome & Principe	2,193
Ukraine	1,567
India	1,412
G. Conakry	838
Russia	836
Bangladesh	562
Mozambique	483
Romania	480
Morocco	374
China	351
Pakistan	288
Senegal	180

Source: ABS *(several statistics)*

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[67] The total number of residence certificates (32,846) issued in 2008 is not here included, as these certificates can be issued also for applications for acquisition of nationality at birth through ius soli.

[68] These are the totals as presented by the ABS report in 2008. The report refers to the applications by nationality but does not differentiate them in accordance to the types of applications, thus it is not possible to know exactly the number of requests for naturalisation per nationality.

Conclusion

Organic Law 2/2006 has set a far more inclusive legal frame of access to nationality by ius soli than its predecessor, while still maintaining the attachment to the ius sanguinis principle as a result of the weight of Portugal's diaspora. This is actually what marks the identity of the new law: the reinforcement of ius soli, while keeping the relevant presence of ius sanguinis. Indeed, ius sanguinis has even been reinforced, as the new laws recognise a subjective right to naturalisation for the grandchildren of emigrants, which is far from being an agreed issue of the law (Piçarra & Gil: 38). But the reinforcement of the ius soli principle has been by far the most publicised aspect of the law. It is therefore worth mentioning some of its most relevant aspects.

The recognition of the possibility for third generation immigrants to access national citizenship automatically has been pointed out as leading mark of the new law. So it is with the reduction and harmonisation (with no further discrimination on the basis of origin) of the period of legal residence for parents of second generation immigrants, the creation of naturalisation for minors and the possibility of granting naturalisation to immigrants born in Portugal even if residing there illegally. These new possibilities exist because there has been a significant reform in the criteria of access to citizenship. Criteria such as the capacity to rule their own persons or the capacity to prove sufficient means of subsistence are no longer applicable, which shows the new law to be much more democratic, in the sense of being far less arbitrary and selective, than the previous law 37/81.

The new law can also be said to be one that favours the idea of integration as a process, allowing access to nationality regardless of the immigrants' legal situation if they are third generation immigrants (automatic acquisition at birth), if they are minors who have finished the first cycle of compulsory education (acquisition through a subjective right to naturalisation) or if they have been residing in the country during the last ten years before the application (acquisition by discretionary naturalisation).

Again, it must be noted that this reinforcement of ius soli has not changed the whole identity of the law. As Piçarra & Gil note:

> Birth on Portuguese soil still does not imply in itself the acquisition of Portuguese citizenship. (…) The ius sanguinis is still prevalent. Despite being considered the most profound since 1981, the new reform has not changed the spirit and identity of the Nationality Act. That is perhaps why the Act was not replaced by a new one, but simply amended (Ramos 2007: 199, 2009: 36).

But in a comparative perspective, it is a rather liberal law that favours the integration of immigrant communities. This is politically far more relevant for two basic reasons. First, this is a country with a long emigrant tradition which might have signified a closer attachment to ius sanguinis. Second, this happens in a context where other European member states still have more parsimonious forms of access to nationality for immigrants and their descents, as in the case of Italy (Zincone & Basili 2009) or Spain (Marín & Sobrino 2009), just to name two countries in Southern Europe also with a long emigrant tradition that have met new realities in the recent past regarding the presence of immigration flows.

The new law was rather consensual among the political class. However true this is, it should not make us ignore the extant divergences between right-wing and left-wing parties. These divergences are in some cases profound and correspond to quite opposite readings of

the presence of immigrants in Portugal and about the type of relationship that the country should develop with them in a democratic context. These divergent positions explain why for some the new law is a dangerous invitation to the devaluation of nationality and to the jeopardising of national security (CDS-PP) and why for others this law has not gone as far as it could in consecrating the ius soli principle as the predominant one (BE, Os Verdes, PCP).

Previous work (Carvalhais, 2007a) has shown that Portuguese political class is still struggling about different interpretations of the presence of non-national residents, particularly in regard to the political meaning of that presence.

One the one hand, the denationalisation of political rights and the reinforcement of quasi-citizenship[69] are perceived as devaluations of national citizenship, a sacred realm that is on the edge of becoming too accessible to go on being relevant.[70] On the other hand, the reinforcement of citizenship rights for non-nationals especially since 1997[71] is perceived as the right way to go towards stronger and healthier democracy in a multicultural context.

By the same token, the nationality law too reveals the existence of struggling views.

On the one hand, the flexibilisation of nationality is seen by the most conservative sectors of society as an incautious invitation to make national citizenship less respected and less valued. On the other hand, the flexibilisation of nationality is perceived as a quite reasonable answer to promote both the social and political inclusion of immigrant communities and of their descendants.

Looking at the new law of nationality presently in force since 2006, it seems that at least for the time being, the most progressive forces both in civil society and in the political class have won the battle. This has so far resulted in an increase of applications by those wishing to acquire Portuguese nationality. But new data after 2008 are needed before we may present a definite trend on the behaviour of resident non-nationals as far as the acquisition of nationality is concerned.

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[69] The Portuguese constitution determines in its art. 15(3) that citizens of Portuguese-speaking countries who live in Portugal can have access to the same citizenship status as the Portuguese citizens, as long as the principle of reciprocity is met, that is, that the Portuguese citizens residing in the lusophone countries enjoy the same rights. Presently only Brazilians enjoy this quasi-citizenship status because the reciprocity clause is only in place with regard to Brazil.

[70] This is most notorious in right-wing parties of a conservative nature, though we should avoid sticking to ideological connotations as, at least in the Portuguese context which is the one under scrutiny in this work, much more determinant than the ideological position of the party seems to be the existence or the absence of governmental responsibilities at a given time of the political discourse.

[71] The Declaration 2-A/97 has set the first list of countries with passive and active electoral rights at the local level in Portugal. The declaration symbolises the democratisation of political citizenship beyond national constraints and therefore the first opening of what is sometimes seen as the last sacred realm of citizenship: the political sphere (Carvalhais 2007a). The list has been subsequently updated for the local elections of 2001, 2005 and 2009. The list comprehends presently all EU member-states as well as the countries with reciprocity clauses: Brazil and Cape Verde (the only lusophone countries present), Uruguay, Peru, Chile, Argentine, Venezuela, Iceland and Norway. As residence conditions, the law establishes two years for Brazil and Cape Verde; and three years for all other nationalities. In this case, the principle of positive discrimination exists, which is not surprising in most democratic contexts (Waldrauch 2003).

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