Recent trends in European nationality laws: a restrictive turn?
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Abstract:
This note was presented by the authors for a workshop organised by the Committee on Constitutional Affairs on 25/26 March 2008. The paper examines the question whether it is desirable that a considerable part of the population of the European Union remain third country nationals, excluded from participation in national and European elections. The author notes a restrictive trend in naturalisation procedures in several member states and questions their justification in view of increasing trans-border migration.
1. Introduction

Although nationality law is still considered an area of almost exclusive competence for the nation-states, several trends of convergence in European nationality laws can be observed. The dominant view on trends in nationality law is that in the first phase of large scale immigration to Northern European countries after the Second World War, nationality laws remain largely untouched (Hansen and Weil 2001).

In the second phase of immigration, since the 1980s, it became clear that immigration had become permanent. European states aimed at integrating the large and stable immigrant communities. One way to achieve integration was to liberalise nationality laws. In this phase, naturalisation was perceived as a means of integration. Three instruments were used: 1. facilitating the acquisition of nationality by second generation immigrants, 2. lowering the requirements for naturalisation by first generation immigrants, 3. acceptance of multiple nationality (Joppke, 2003).

By now, several authors have noted a more recent trend of restrictive naturalisation policies since about the year 2000 (De Hart and Van Oers 2006; Joppke, 2007; Joppke and Morawska 2003). In stead of a means of integration, naturalisation is more and more seen as the crowning of a completed integration process (Bauböck, Ersböll, Groenendijk et al 2006:24), resulting in higher barriers for nationality acquisition. This paper looks at the development of nationality access of second and first generation immigrants to nationality of the receiving country, and pays attention to this new, restrictive trend. The paper will not address the third instrument of facilitated nationality acquisition, dual nationality.

As will be demonstrated, the picture is rather mixed. In recent years, some countries have made access to nationality for second generation immigrants easier, while other Member States have restricted access for second generation immigrants. In the same vein, some countries have made naturalisation for first generation immigrants easier (e.g. by introducing naturalisation-as-of right), while others have put up barriers, e.g. by introducing naturalisation tests. This paper will look at the rationale behind both developments and its consequences.

The material for this paper is based on earlier comparative work on naturalisation policies in the 15 ‘old’ Member States of the European Union (De Hart and Van Oers 2006, Baubock et al 2006). supplemented by work done by the Centre for Migration Law on naturalisation policies and naturalisation tests (Van Oers 2006).  

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1 Material was also drawn from a seminar on naturalisation and integration tests organised by the Centre on 115 February 2008 in Nijmegen and ongoing research by Van Oers.
2. Second generation immigrants

In the second phase of immigration, practically all of the 15 'old' Member States provide for a form of ius soli acquisition at or after birth for second generation immigrants born in the country or with residence in that country for a certain period of time. Second generation children acquire the nationality of the country of residence upon birth on the territory (ius soli), or they are granted a right to opt for nationality upon majority. This trend of convergence is perceived as the most striking in the second phase of immigration. The rationale between the two instruments is the same: through birth and upbringing in the country of residence, including school attendance, second generation immigration are integrated and as such, can acquire the nationality without further requirements.

2.1 Facilitating nationality acquisition for second generation immigrants

Three Member States, Belgium (2000), Germany (2000) and Portugal (2006) have recently facilitated nationality acquisition by second generation immigrants.

Belgium

Foreigners who are born on Belgian territory can acquire Belgian nationality by opting for nationality, in a simple procedure. In 2000, access to Belgian nationality for this second generation became more flexible. It is no longer required that the declaration is made between the age of 18 and 30, since the age limit has been removed. To be able to make the declaration, a foreigner 1. has to be born in Belgian and must have had main residence there. 2. must be born abroad to a parent who at the time of the declaration had Belgian nationality, or 3. must have been authorised to reside in the country and had main residence in the country for at least seven years pursuant to the provisions of the law (Foblets and Loones 2006).

Germany

In 1999, Germany has introduced automatic ius soli acquisition for children born on German soil of foreign parents who are legally resident in the country for at least eight years. Since 2004, these parents have to have a settlement permit which requires a higher degree of proficiency of German language.

The introduction of ius soli was the result of political compromise after long deliberations on reform of German nationality law, which aimed at limiting the large number of permanently resident foreigners in Germany, who were excluded from the political community. In 1998, 7.32 foreigners were living in Germany, 9 % of the population. 30 % of them were living in Germany for more than 20 years, 50 % more than 10 years (Hailbronner 2006). The case of Germany clearly demonstrates the effects of facilitated nationality by second generation immigrants. The introduction of ius soli has
lowered the percentage of children born in Germany with foreign nationality from 10.9% in 1991 to 4% in 2006.²

Between the age of 18 and 23, the second generation immigrants who also acquire the foreign nationality of the parents and as a result possess dual nationality, have to choose which of the two nationalities they want to retain. If they do not make the choice, German nationality is lost automatically. Now that in 2008, the first young adults will be faced with this choice, the so-called ‘option right’ has again become the subject of debate.

**Portugal**

In 2006, Portugal improved *ius soli* by the second generation if one parent has at least five years of residence and introduced double *ius soli* for the third generation.

### 2.2. Restricting nationality acquisition by the second generation

The idea that second generation immigrants are integrated, has to compete with other ideas, which might lead to the restriction of nationality acquisition by second generation immigrants. The first is the desire to restrict illegal immigration or, in case of *ius soli*, so-called ‘birth tourism’. This was the rationale behind Ireland’s restriction of *ius soli* acquisition by legal residence requirements in January 2005. Introducing such residence requirements as a condition for *ius soli* acquisition establishes a strong link between immigration law and nationality law (Groenendijk, 2003). The second competing idea is that the integration of second generation immigrants is not complete and does not yet warrant easy access to nationality. In this line of thinking, in 2004 Denmark has abolished option rights altogether for other than Nordic second generation immigrants. Like first generation immigrants, second generation youngsters, born and bred in Denmark have to naturalize, and fulfil the language and societal knowledge requirement (see below par. 3.1). Other countries have not abolished, but restricted option rights. This counts for Luxembourg, which introduced language requirements in 2001, and Finland, which introduced a public order requirement. The Netherlands also introduced a public order requirement, in 2003, and an obligatory naturalisation ceremony in 2006, complemented with a declaration of alliance to be introduced later in 2008. The Dutch government has also planned to introduce the obligation to renounce the former nationality for groups of second generation children who were not born in the Netherlands, but came at a young age.³ The effects of these restrictions will probably remain limited however, since most second generation immigrants in the Netherlands, do not become Dutch nationals through option, but because they are naturalised as minors together with their parents. However, the number of children naturalised with their parents has dropped considerably, since after the introduction of the naturalisation exam naturalisation numbers in general have dropped considerably (see below par 3.2). The result is both measures that a smaller number of

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³ Children resident since age four and youngsters resident 5 years before reaching maturity, art 6 section 1 e Dutch Nationality Act and art. 9 section 3 c DNA.
second generation immigrants acquire Dutch nationality as a minor together with their parents, or independently as a youngster upon majority (see table 1).

| Nationality acquisition by second generation immigrants in the Netherlands |
|-----------------------------|----------------|----------------|
|                             | Option| Naturalisation together with parents | Total per year |
| 2004            | 1,970 | 8,565 | 10,355 |
| 2005            | 2,276 | 6,302 | 8,578 |
| 2006            | 2,856 | 5,625 | 8,481 |
| Total           | 6,922 | 20,492 | 27,414 |

Table 1. source: Indiac.

It is not clear yet what the effect of the introduction of the naturalisation test is for second generation children who naturalise independently. This question requires further study. What is clear is that there is a trend to limit access of second generation immigrants to nationality.

3. First generation immigrants

3.1 Introduction of naturalisation tests

In general, naturalisation for the first generation immigrants becomes more of a right than a favour by replacing vague assimilation criteria with clearer language and integration criteria. In Belgium, proof of the willingness to integrate was abolishes altogether by the Act of 1 March 2000. Here, residence, is the most important criterion from which integration is deduced. The rationale is that integration can be furthered by facilitating naturalisation; naturalisation is a step in the integration process. However, in other Member States it is becoming harder for applicants for naturalisation to fulfil language and integration requirements. These Member States have adopted a competing paradigm: naturalisation is considered the crowning of a completed integration process. Since 2000, six Member States have introduced formalised naturalisation tests, which require immigrants to proof sufficient knowledge of language and society: Denmark in 2002, the Netherlands in 2003, United Kingdom and France in 2005, Austria in 2006 and Germany in September 2008.

The introduction of the naturalisation test was the result of similar political developments, as the cases of Denmark, the Netherlands, Germany and Austria demonstrate.

Denmark

In Denmark, anti-immigration parties have demanded stricter language requirements since the 1990s. In 2002, the government of the liberal Venstre party and the conservative Konservative Folkeparti, with the support of the Danish People’s Party, concluded a party agreement for stricter language requirements. Although in the second half of the 1990s the naturalisation rate was not higher than 3,4
%, (Waldrauch, 2006), the parties thought naturalisation was to easy and should be the crowning of a completed integration process. Applicants for naturalisation had to master Danish at level 2, which complies with level B1 of the Common European Framework for Reference. The introduction of the stricter language test results in a considerable drop of the number of naturalisations (see below). In spite of these lower naturalisation numbers, the Danish People’s Party demands even stricter language requirements. After the elections of 2005, with good results for the Danish People’s Party, the Danish government decides again to strengthen the language requirement to level B2. Since 2007, the applicant also has to prove his knowledge of society, an exam of 40 questions on Danish culture, society and history. 28 questions have to be answered correctly. Since 2004, second generation immigrants of non-Nordic origin have to naturalize, including taking the test. Only those with grade 9 or 10 from public school, with mark 6 for every subject, or the test from language school level Danish 2 are exempted. Exemptions are also possible in case of severe physical or psychological illness.

Austria
In Austria, the parties FPÖ and ÖVP campaigned against facilitated naturalisation, while the Greens and SPÖ campaigned for more liberal naturalisation laws. In a political compromise, the SPÖ and ÖVP stated that naturalisation was the final step in the integration process. Although in 1998, the naturalisation rate was not higher than 2,6 % (Waldrauch 2006), in the same year, a stricter language proficiency requirement was introduced as a condition for naturalisation. The later coalition of ÖVP and BZÖ agreed that naturalisation numbers had to be reduced. The Nationality Act of 2006 introduced knowledge of German and basic knowledge of Austria’s democratic order and history and of the respective province as a condition for naturalization. The required level of language proficiency was level A2. Exemptions are possible for survivors of the Holocaust, minor children attending primary school, elderly people and for medical reasons.

Germany
The language requirement was introduced in the revised German Nationality Law of 1999, to compensate for the lowering of the residence requirement from 15 to 8 years in the same law. Since it was not clear what language proficiency was required, the Lander applied the requirement differently. In 2005, the Bundesverwaltungsgericht ordered that only sufficient reading qualities and not writing skills could be required of the applicant for naturalisation. In 2007, the German Nationality Law was amended in order to allow for written language skills. The Act requires language proficiency at level B1. Starting September 2008, knowledge of society will also be required (article 10 section 1 number 7 StAG). The Nationality Act was amended to make an end to the ‘situation in which two Lander-

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4 The levels of language proficiency referred to in this paper are from the Common European framework for Reference of the Council of Europe. Level A is the basic user, level B the independent user level C the skilled user.
Baden Wurttemberg and Hessen) applied a test without legal basis. There are exemptions for those with a German diploma, physical or medical impediment, and elderly people (over 65, with residence not longer than ten years).

Netherlands
In the Netherlands, Christian Democrats have started demanding stricter language requirements since the second half of the 1990s. In 1996, the naturalisation rate was 11% (Waldrauch 2006). Together with the liberal VVD the Christian Democrats questioned the rising numbers of naturalisations, which were the result of the liberalised Dutch Nationality Act of 1985. The government of Social Democrats, and conservative and progressive Liberals agreed to introduce a naturalisation test, including reading and writing. This test is effective since April 1, 2003. The required level of language proficiency is A2. In 2007, the test was replaced by the test of the Integration Act. Exceptions exist in case of eight years of school attendance in the Netherlands between the age of six and sixteen, Belgians and Surinamese who speak Dutch are exempted, and exceptions are possible for medical reasons and illiterates.

3.2 Effects of naturalisation tests

Denmark
When looking at the results of the naturalisation test, the effects of its introduction may seem not dramatic, in 2007, of 4,2000 persons tested, about 96% succeeds. However, the naturalisation numbers in Denmark dropped considerably. In 2001-2002, before the introduction of the first test on level A1, 18,240 persons naturalised. In 2002-2003, the year after the introduction of the test the number of naturalisations dropped to 4,175. In 2005, 6,583 persons were naturalised, a drop of 64%. The exemptions for medical reasons are implemented restrictively: of 209 applications in December 2005, only 14 were granted.5

Austria
The effects of the introduction of the stricter naturalisation test in Austria is not yet clear. Here also, the success rate of the naturalisation test is high, 95% in Vienna. However, the decline of naturalisations in 2007 as compared to 2006 was 46%.6

Netherlands
The effects of the naturalisation test introduced in the Netherlands in 2003 were extensively studied by Van Oers (2006). Her study demonstrates a much lower success rate than in Denmark and Austria of 46% of almost 20,000 candidates. This lower success rate can be partly explained because one-third

6 Presentation by Bernard Perchinig Seminar Language and Integration Tests, 15 February 2008
of the candidates for the test did not take it, presumably because of the costs. In the Netherlands, the naturalisation numbers dropped with 50.5 in 2006 as compared to 2002. With 4.1% the Dutch naturalization rate is back to the level before the introduction of the Dutch Nationality Act of 1985, which, as we have already seen, aimed at facilitating naturalisation in the second phase of immigration (see graph on this page).

Van Oers study also demonstrated that the test excluded immigrants from naturalisation who had low education, but were sometimes very well integrated. A category of immigrants who had trouble with the exam were immigrants who resided in the Netherlands for a long time, spoke sufficiently Dutch, but had trouble with reading and writing, because of their low educational background. It can logically be expected that the naturalisation tests in Denmark, Austria and other Member States have similar effects. In this respect, naturalisation tests have a selective working: they do not exclude those not integrated, but those not educated.

Source: Bööcker et al 2005

The case studies of Denmark, Austria and the Netherlands clearly demonstrate the lower naturalisation numbers since the introduction of the naturalisation tests. They are exemplary of a restrictive trend in naturalisation policies in several of the old Member States of the European Union. Are these effects what governments of the Member States wanted? How can the restrictive trend be explained?

In the three countries, already in the 1990s the idea emerged that naturalisation had become too easy. This is quite soon after the earlier liberalisation of naturalisation laws, in the Netherlands, about ten

230 Euros, besides the 366 Euro for the application for naturalisation.
years after the DNA of 1985. Once the liberalisation was a success, resulting in a higher number of naturalisations, its success was frowned upon.

Secondly, the integration of immigrants was perceived as flawed even by political parties from right to left. Parties on the right stressed the special value of citizenship, which was emotional. Naturalisation should not be just instrumental.

This idea is put into words by the Dutch Christian Democrats:

> Acquiring Dutch nationality is something different than being able to manage in Dutch society. It is much more, namely the crowning of integration(...) one has to feel connected with our society, feel at home, one has to feel Dutch, but also really master the Dutch language.

Thirdly, the link between immigration policy and naturalisation policy had become stronger. The improvement of the legal position of immigrants in the second phase of immigration, was based on the idea that immigration had stopped. It became clear that large scale immigration had not stopped, but followed by family migration and asylum seekers; large scale immigration that was considered unwanted. Restriction of naturalisation policies is an effort to restrict immigration. This aim is demonstrated in a quote from the Austrian Chancellor Schüssel:

> Our target is full employment. We could have full employment without such a high immigration. Imagine what it means for a small country to naturalise like last year, 40,000 foreigners, 25,000 partners and children and parents can come with them, who at the same moment have a right to residence and access to the labour market.

4. Conclusions

In the second phase of immigration, the dominant paradigm was that integration had to be furthered by facilitating naturalisation. The new, restrictive trend, which has been described by several authors, resulted in a change of paradigm: naturalisation is the crowning of a completed integration process. But it has also become clear that the restrictive trend cannot only be explained by changing ideas about the link between integration and naturalisation. The wish to restrict immigration was also an important factor.

The effects are clear; lower naturalisation rates in the Member States. To some extent, this was exactly what politicians wanted. Because of the selective working of the naturalisation test, it must be expected that a considerable part of the permanently residing immigrants in the Member States will be permanently excluded from naturalisation. In the second phase of integration, the dominant paradigm was that it was undesirable that a considerable part of the permanently resident immigrants remain excluded from the political community.
Of course, the question of whether an individual possesses the nationality of a Member State of the European Union will be settled solely by reference to the national law of the Member State concerned and is not a matter for EU-law. However, the institutions of the Union have recognised the need to exchange information and to promote good practices in this arena.  

In this context, the question should be addressed whether it is desirable that a considerable part of the population of the Union remains third country nationals, excluded from participation in national and European elections. The question of the (un)desirability of this exclusion should be reconsidered in the light of the restrictive trend described above.

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Literature


