

New phenomena and old legislation: regulations regarding the acquisition of citizenship in Poland

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Introduction

The establishment of the III Republic of Poland in 1989 have implied a necessity of deep economic and political reforms in the country. In addition, changes in the citizenship law were already considered as necessary at the beginning of 1990s when new problems and phenomena requiring solutions on the ground of Polish citizenship legislation appeared. Restoring Polish citizenship to people who lost it during the communist time and the repatriation of Poles from territories of the former Soviet Union came into prominence. Also, a visible increase in immigration to Poland at the beginning of 1990s created a need for more elaborate regulations regarding naturalisation in Poland. However, a new legislation on Polish citizenship has not been introduced yet.

The article is to demonstrate selected aspects of legislation-forming process in the filed of citizenship in Poland in the 1990s and 2000s. I argue that, in last years, focus of law- and policy-makers were emigrants and the Polish Diaspora. It is visible in the enacted as well as in drafted and discussed legislation, as I demonstrate in the first section of the article. The second section is devoted to the description of current legislation and selected changes in the policy on Polish citizenship devoted mainly to satisfy interests of the Polish Diaspora. In the third section, I turn to statistics on naturalisations showing that a problem of naturalisation of immigrants that started to come to Poland in the 1990s is still marginal.

1. Law-making in progress

The problem concerning repatriation was the first issue solved on a legal ground, in the III Republic of Poland, through the enactment of the Repatriation Act in 2000. Repatriates are entitled to Polish citizenship without any restriction,, becoming Polish citizens upon crossing the Polish border with a repatriation visa in their hands. A candidate for a repatriate has to satisfy three conditions jointly: he/she declares his/her Polish nationality, proves his/her attachment to the Polish culture by cultivating the Polish language and tradition and when one of his/her parents, grandparents or both great grandparents are either of Polish ethnicity or used to have Polish citizenship.¹ Such a procedure implies that, for repatriates, the right to Polish citizenship is exclusively based on ethnicity criterion.

Remaining 'new problems' were to be dealt with by a new act on Polish citizenship. Three drafts of act on Polish citizenship had been already discussed in the Polish Parliament without any result although the majority of MPs agreed on the main contents of the most recent draft from 2001 (see Górny, Grzymała-Kazłowska, Koryś and Weinar, 2003). In this draft, alike in all the Acts on Polish

Citizenship, the basic rule for being recognised as a Polish citizen was the **blood principle**. The draft also introduced a special procedure for people intending to restore their Polish citizenship that they lost in the past. In fact, as stated in the introduction of the draft, the problem of ‘returning Polish citizenship to all those who have the right to it’ was considered to be highly important by draft-makers. The proposed returning procedure applied to those who had lost Polish citizenship on the basis of previous Acts on Polish Citizenship (1920, 1951, 1962) and their relinquishment of Polish citizenship had not been ‘fully voluntary’². To be entitled to use this procedure, applicants did not have to live permanently in Poland. Instead, they needed to prove that they have had Polish citizenship in the past.

As far as naturalisation procedure is concerned, the draft of act on Polish citizenship extended a list of requirements proposed in the 1962 Act by introducing criteria designating applicants’ level of social, economic and cultural integration into Polish society. They included: adequate knowledge of the Polish language, proof of the applicants’ ability to maintain themselves in Poland, absence of a criminal record and behaviour not violating loyalty towards the Polish state. It was a proposal aiming at setting more precise and less discretionary criteria for naturalisation in Poland.

Analysis of parliamentary debates revealed that the above proposals did not create great controversies. Thus, they can be treated as indicators of the approach towards citizenship matters observed on the contemporary Polish political scene. Origins of the lack of consensus on the draft that led to its removal from the parliamentary works are not obvious. It seems, however, that the issue which divided the Polish Parliament was the problem of acceptance for dual citizenship (compare Górny, Grzymała-Kazłowska, Koryś, Weinar, 2005 forthcoming).

Right-wing, post-Solidarity policy-makers supporting the Polish Diaspora were putting forward the need for higher acceptance for dual citizenship whereas the less radical left side of the Parliament was promoting the present status quo – silent/unofficial tolerance for it. This tolerance is conditioned by interpretation of the following statement included in the 1962 Act on Polish Citizenship: ‘a Polish citizen, according to the Polish law, can not be recognized as a citizen of another country at the same time’. At the moment, the interpretation is that a Polish citizen can possess foreign citizenship, but he/she can not use the foreign citizenship (also a foreign passport) when in Poland. In the communist past, however, there was a tendency to interpret this as a lack of acceptance for dual citizenship (compare, Zdanowicz, 2001).

2. Current legislation and some elements of a new policy

According to the Act of 1962, there are three procedures of granting Polish citizenship: conferment, acknowledgement and marriage procedures. In addition, Polish citizenship can be acquired by means of repatriation. The procedure of restoring citizenship applies only to people who lost their Polish citizenship as a consequence of marriage to a foreigner.

Conferment procedure (Article 8) is the most discretionary and can be considered as a ‘fast path’ of granting Polish citizenship. Within this procedure, the President has virtually unrestricted power to grant and refuse Polish citizenship without giving justification. A foreigner **can be granted** Polish citizenship ‘when he/she lives in Poland, on the basis of permanent residence permit, at least 5 years’, but the President can also grant Polish citizenship in ‘particularly justified cases’. The

President can also make the acquisition of Polish citizenship conditional on the renunciation of foreign citizenship of an applicant.

Acknowledgement procedure (Article 9). Within this procedure, **a stateless person** or a person whose citizenship is unknown **can be** granted Polish citizenship, when he/she lives in Poland, on the basis of the permanent residence permit, for at least 5 years. Acknowledgement procedure is less discretionary than the conferment procedure, as a voivode who is acknowledging citizenship is obliged to justify and explain his/her decision.

Marriage procedure (Article 10). Within this procedure, a person married to a Polish citizen **acquires, upon application,** Polish citizenship when he/she lives in Poland, on the basis of a permanent residence permit, for at least 6 months or is married for at least 3 years and 6 months. The practice shows that this procedure is the least discretionary among the three described paths.

As demonstrated above, the main requirement for being successfully naturalised in Poland concerns the duration of a stay in Poland. The Act does not require from applicants proof of their attachment to the Polish nation and culture. It does not say anything about their knowledge of the Polish language. However, the statement that 'citizenship can be granted', used in the descriptions of the two main procedures (Articles 8 and 9), is making naturalisation in Poland highly discretionary. It has been observed that Polish citizenship was refused due to an unsatisfactory level of an applicant's integration to the Polish society in cultural, social or economic terms (Jagielski, 2001). Analysis of decisions regarding granting Polish citizenship in Warsaw voivodeship in 1989-98 revealed that an applicant's Polish origins could be used to his/her advantage (compare, Górny, 2001).

In general, the greatest freedom of decisions about granting Polish citizenship belongs to the Polish President. Consequently, in the III Republic of Poland, the Presidential conferment procedure became a channel for restoring Polish citizenship to people who lost it in the past. The President was restoring Polish citizenship since the beginning of 1990s. It was, however, made public only in 1998, on the 60th anniversary of the March 1968 (mass expulsion of people of Jewish origin from Poland) when President Aleksander Kwaśniewski announced that he would be returning Polish citizenship without requiring relinquishment of foreign citizenship in such cases.

Another example of the moves and policy of the President Chancellery was an initiation, in 1999, of the termination of bilateral conventions concerning avoidance of dual citizenship that remained from the communist period. These included conventions with some ex-USSR successors and other former Soviet Bloc countries: Czech Republic, Slovakia and Mongolia. While being in force, they were making it impossible for nationals of **selected** countries to hold their foreign citizenship upon naturalisation in Poland. The termination of the conventions eliminated then an inequality among applicants for Polish citizenship.

3. Naturalisation versus re-naturalisation: selected statistics

In 1992-2000, the two subsequent Polish Presidents, using the conferment procedure, granted Polish citizenship to 8,223 persons. Almost one fifth of newly admitted Polish citizens were German nationals. Other important national groups constituted: Canadians (8%), Israeli (8%), Bulgarians

(6%) and Americans (4%). Next, as much as 19% of applicants originated from the former Soviet Union.

Table 1. Foreigners granted Polish citizenship in ‘conferment procedure’ in 1992-2000 by foreign citizenship; top nationalities

Citizenship	Number of persons	Percent of the total
American	370	4%
Bulgarian	461	6%
Canadian	653	8%
German	1369	17%
Israeli	642	8%
the former Soviet Union ^a	1533	19%
Other	3195	39%
Total	8223	100%

^a I have included the general category of the ex-USSR, since, for as many as 804 persons, statistics do not give a name of the former Soviet Union republic from which they originated.

Source: My own elaboration on the basis of data provided by the Polish President Chancellery

The high proportion of applicants for Polish citizenship originated from countries constituting traditional areas of destination for Polish emigrants: Germany, U.S., Canada and various countries in Western Europe (e.g. France). This selection of national groups and a high number of Israeli people naturalised in Poland are outcomes of the restoration policy of the President.

Certainly, data on the conferment procedure demonstrate only part of the phenomenon of naturalisations in Poland, but, in my opinion, they quite accurately demonstrate the national groups interested in Polish citizenship except for ex-USSR nationals - the major group of immigrants to Poland in the 1990s - that were using the acknowledgement procedure during the 1990s. In 1989-98, in Warsaw voivodeship, 76% of ex-USSR citizens (stateless persons at the moment of submitting an application) used the acknowledgement procedure and citizens of this area constituted as much as 94% of all applicants using this procedure. In fact, the number of persons using the acknowledgement procedure was slightly higher than those using the conferment procedure in the 1990s. In 1997, this was 725 compared to 555 persons. In Warsaw voivodeship, between 1992-1998, the discrepancy was 656 opposed to 585. In the 2000s the acknowledgement procedure lost its importance as a consequence of the termination of conventions concerning the avoidance of dual citizenship³.

The remaining marriage procedure played a secondary role in the 1990s. In 1997, for example, only 52 foreign women used this path. In Warsaw voivodeship, for 1992-98, it was 73 women. At the same time, the annual numbers of mixed marriages contracted in Poland were around 3 thousand in the 1990s. The small interest of foreigners married to Polish citizens to naturalise within this procedure was due to the fact that it was available only to women and that it required a difficult restriction in the manner that an application had to be made within 3 months from a marriage to a Pole. For many foreigners this was too short time to begin to think about naturalisation. Moreover, the procedure was beyond the reach of ex-USSR citizens, as it was impossible for them to renounce

their foreign citizenship within such a short time. Beginning in 1999, when the amendment to the 1962 Act made the procedure available for men in addition to women and changed the period when the application should be made (see above), the procedure became much more popular although the annual number of mixed marriages contracted in Poland did not increase much in the 2000s. In addition, the termination of conventions on avoidance of dual citizenship made the marriage procedure available to ex-USSR citizens contributing to the growth of its popularity.

The final path towards the acquisition of Polish citizenship is repatriation. The volume of people repatriated in the late 1990s and at the beginning of 2000s is very small. The controversies around the repatriation influenced the final shape of the 2000 Repatriation Act making the procedure limited to persons who had lived permanently in some Asiatic republics before 2000. The requirement that a would-be repatriate has to be invited by the official institution or a private person further limits the availability of the repatriation procedure.

All in all, in 1997-2003, only 3255 repatriation visas were issued and 4259 persons arrived within the repatriation programme. The number of persons that were naturalised in Poland falls between these two numbers, since the group of those who arrived also includes members of repatriates' families of non-Polish nationality. In 2001-2003, 2053 people acquired Polish citizenship as repatriates. Table 2 demonstrates countries of previous residence of repatriates (visas issued).

Table 2. Repatriation visas to Poland in 1997-2003 by countries of previous residence of repatriates

Country of previous residence	1997	1998	1999	2000	2001	2002	2003
Total	316	281	278	662	804	613	301
Belarus	-	10	15	45	140	127	43
Czech Republic	-	-	-	-	2	4	1
Georgia	-	-	-	-	-	1	3
Kazakhstan	316	245	172	361	216	194	156
Lithuania	-	-	11	16	20	3	-
Latvia	-	1	1	10	-	-	-
Moldova	-	1	2	10	9	5	2
Russian Federation	-	7	8	10	36	31	11
Ukraine	-	15	69	210	381	245	77
Uzbekistan	-	2	-	-	-	2	8

Source: Central Statistical Office from Kępińska (2004)

Conclusions

Although the introduction of new citizenship legislation was considered to be important and necessary, already by politicians taking part in the negotiations at the Round Table leading to the establishment of the III Republic of Poland in 1989, a new act on Polish citizenship has not been enacted yet. The Act on Polish Citizenship of 1962 with some amendments introduced in the 1990s (major changes are from 1999) is still in force. None of the drafts of act on Polish citizenship,

discussed in 1999-2001, have been accepted. It seems that the source of the lack of consensus on the proposed drafts had to do with an issue concerning dual citizenship. Other ideas included in the drafts did not create many controversies. These ideas were in line with the approach observed in the III Republic in Poland where emigrants, the Polish Diaspora and problem of repatriation are still the focus of Polish citizenship matters. The importance of the 'emigration aspect' is visible also in statistics on acquisitions of Polish citizenship. A great share – around half for the 1990s – of newly admitted Polish citizens are people who restored their Polish citizenship lost during the communist period and those coming to Poland as repatriates.

Lack of changes in Polish citizenship law is acceptable because the 1962 Act gives significant freedom to decision-makers in the realm of granting Polish citizenship. Consequently, changes of the policy regarding Polish citizenship can be introduced without changes in the legislation. The problem is not so pressing also due to the small volume of naturalisations. In the 1990s, annual numbers of persons granted Polish citizenship were not reaching 3000 although the beginning of the 1990s brought about a visible increase in the volume of naturalisations⁴.

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¹ Compare the Article 5 of the Repatriation Act; *Journal of Law*, 106, 2000, 1118.

² They had not expressed a will to lose Polish citizenship (deprivation on the basis of the Act of 1920) or they were 'forced' to relinquish Polish citizenship (deprivation on the basis of the Acts of 1951 and 1962).

³ According to an interview with a civil servant dealing with acquisitions of Polish citizenship. At the moment, the number of people acquiring Polish citizenship within acknowledgement procedure does not reach 20 people per annum.

⁴ For example, in Warsaw voivodeship, 26 and 80 persons had been granted Polish citizenship in 1990 and 1991, whereas for 1992, the respective number had amounted to 203 and following years did not bring a visible decrease in a volume of acquisitions.