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COUNTRY REPORT: CZECH REPUBLIC

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Report on Czech Republic

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Czech Republic

Andrea Baršová¹

1 Introduction

The development of Czechoslovak (1918) and Czech (1993) citizenship legislation exhibits a cyclical model consisting of revolutionary, evolutionary and consolidation phases. The last revolutionary phase is linked to the 1989 overthrow of the communist regime and the creation of an independent Czech Republic in 1993. It found its expression in the 1990 Citizenship Amendment Act which allowed for restitution of citizenship by those who left the country during the communist era, a constitutional ban on the deprivation of citizenship and a controversial 1993 Citizenship Act. The following evolutionary decade (1993 – 2003) was an era of piecemeal, remedial changes aimed mainly at eliminating some negative consequences of law related to the break-up of Czechoslovakia. In 2003, with the last major amendment to the 1993 citizenship law, most of the unique problems related to the break-up of Czechoslovakia had been solved. At the same time, the launch of legislative work on a new citizenship code prompted by, *inter alia*, increased immigration signalled a shift towards a consolidation phase in which the issue of standard citizenship rules, such as those on naturalisation, returned to the agenda. However, the process has been slow and a clear trend emerged towards watering down the initial, more liberal vision of the future citizenship regime. Preference for sticking to the *status quo* is becoming increasingly dominant.

At present, Czech citizenship legislation is at a crossroads. It is not only a new, open approach to dual nationality or towards second generation migrants which is at stake, but also, at a deeper level, the statist spirit of the law. In spite of changing political regimes, some fundamental features of the Czech citizenship legislation² remain constant. The enduring statist spirit, which we can broadly characterise as prioritising the state's perspective on issues such rights and the needs of individuals, dates back to the nineteenth century Habsburg Empire.³ It manifests itself best in the approach to naturalisation. Naturalisation, from this perspective, is an act of mercy by the state and is exercised in a sphere of unlimited administrative discretion. Since the establishment of the institution of Ombudsman in 2001 and the Supreme Administrative Court in 2003, such archaic views are increasingly under attack. The new citizenship code could codify changes enforced by these institutions and could represent a milestone on a path towards modern, more liberal legislation. However, if the statist spirit prevails, the code may cause stagnation or even reverse development, in particular with regard to the securing of citizenship status and the restraining of administrative discretion.

One may be tempted to say that the 'statist' spirit of the law also manifests itself in the language. The legal term used for citizenship is 'státní občanství', which is equivalent to German (Austrian) 'Staatsbürgerschaft' and literally translates as 'state citizenship'. The term comes from old Austrian law. The term 'národnost' ('Nationalität'), which is also used in the

¹ This paper is based on a chapter in the book by R. Bauböck, B. Perchinig & W. Sievers (2009). All translations from Czech into English are by the author.

² In this paper, I use occasionally the term Czech where the term 'Czechoslovak' would strictly speaking be correct.

³ Another incarnation of the statist spirit provides legislation on national minorities. In the Czech Republic, only citizens are considered as persons belonging to national minorities. As regards the origin of the statist spirit, it is linked rather with the transformation of the Austrian citizenship regime in the 2nd half of the nineteenth century than with its early history after 1811 (see Burger 2000: 88-172).

Czech language, is not equivalent to the English word ‘nationality’ or the French ‘nationalité’, but means ‘ethnicity’, ‘ethnic origin’ or ‘ethnic belonging’.⁴ In this paper, I use the word citizenship for ‘státní občanství’ and ‘ethnic origin’ or ‘ethnicity’ for ‘národnost’.

The purpose of this paper is to provide a more detailed account of these developments and observations. It gives a brief description of Czech citizenship legislation and policies linked to it since 1918 and focuses on responses to the unprecedented social changes and challenges of the last two decades (Section 2). Against this background, it summarizes the current Czech citizenship regime (Section 3) and sketches reform plans and some salient political and legal debates (Section 4). The final section summarises the main findings and draws attention to some more general, topical issues on which the Czech developments throw some fresh light.

2. Historical background and changes

2.1 Czechoslovak citizenship policies from 1918 to 1993

Czechoslovak citizenship came into existence with the creation of Czechoslovakia on 28 October 1918. It was linked to the municipal right of domicile that had been an important instrument regulating migration within the Habsburg monarchy.⁵ Former Austro-Hungarian citizens, who had a right of domicile in municipalities that became part of the Czechoslovak territory after the break-up of the Austro-Hungarian Empire, acquired Czechoslovak citizenship. The basic rule was modified by peace treaties⁶ and constitutional laws⁷ which regulated the issue of citizenship in order to protect ethno-national minorities and provided options to choose the citizenship of an ethnic kin state. The creation of Czechoslovakia led to the massive remigration of ethnic Czechs and Slovaks, in particular from Austria (Vaculík 2002; Kristen 1989). Apart from specific provisions linked to the creation of the new state, provisions of old Austrian laws on citizenship remained in force in the Czech lands of Bohemia and Moravia.⁸ This was the case, for instance, with the *ius sanguinis* principle laid down in the 1811 Austrian Civil Code and the naturalisation rules. The 1920 Constitution

⁴ See also Schmied (1974) at page 12, 14. Schmied observes that after 1945, the term ‘státní občanství’ was preserved as it was in line with the Soviet use of the term (Ibid: 14). On the same issue Černý & Červenka (1963: 17) wrote: ‘The socialist epoch did not introduce its own term for the status of individual in the new societal system.’ As regards the term ‘národnost’, it is not completely without relevance in the sphere of citizenship legislation. We can find it e. g. in the Constitutional Decree No. 33/1945 Coll. (see below). The 1945 circular, which implemented the decree, explained that ‘národnost’ is not identical with the German ‘*Volkszugehörigkeit*’ as used by Germans in the occupation era. In determining concrete nationality (‘národnost’), it is necessary to take the usual aspects into consideration, such as subjective declaration by the person concerned as confirmed by objective findings, such as official the declaration made in the 1930 census return, or language, etc. See Verner (1947) at p. 131-133 for details.

⁵ Domicile (‘*domovské právo*’, ‘*Heimatrecht*’) refers to membership in a municipal community. In the Czech lands (Bohemia and Moravia) as parts of the Austro-Hungarian Empire, domicile was regulated by Act No. 105/1863 Coll. [Collection] of Acts of the Empire, as amended by Act No. 222/1896 Coll.

⁶ E.g. Treaty of Versailles (1919), Treaty of Saint-Germain-en-Laye (with Austria) (1919), Treaty of Saint-Germain-en-Laye (with Czechoslovakia) (1919) and Treaty of Trianon (1920).

⁷ Constitutional Act No. 121/1920 Coll. introducing the Constitutional Charter of the Czechoslovak Republic and Constitutional Act No. 236/1920 Coll. Supplementing and Amending Existing Provisions on the Acquisition and Loss of Citizenship and on Domicile in the Czechoslovak Republic. The basic principles of the Czechoslovak citizenship related to state succession were thus regulated by treaty provisions and constitutional laws. The system, however, failed to achieve the declared aim of protecting minorities and preventing statelessness.

⁸ In Slovakia, the provisions of former Hungarian laws remained in force.

prohibited dual citizenship. Naturalisation was viewed as an ‘act of mercy by the state’ (Verner 1932: 984) and renunciation of any previous citizenship upon naturalisation was requested.

The end of the Second World War⁹ and the restoration of Czechoslovakia led to the adoption of ad hoc laws that introduced the criterion of ethnicity into citizenship legislation. The new legislation was linked to post-war migration which was both voluntary and forced in character. Under the President’s Constitutional Decree No. 33/1945 Coll. concerning Czechoslovak Citizenship of Persons of German and Hungarian Ethnicity (one of the so-called ‘Beneš decrees’), Czechoslovak citizens of German and Hungarian ethnic origin were deprived of Czechoslovak citizenship.¹⁰ The decree provided an internal legal basis for the expulsion of the German population from the Czech lands (Petráš 2009: 97-99). On the other hand, Constitutional Act No. 74/1946 Coll. on the Naturalisation of Compatriots Returning to the Homeland and its implementing regulations provided for facilitated naturalisation of ethnic Czechs, Slovaks and members of other Slavonic nations who settled or re-settled in Czechoslovakia. Naturalisation was often linked to changes of names to Czech or Slovak ones (Vaculík 2002). In the post-war years, more than 200,000 Czechs, Slovaks and members of other Slavonic nations immigrated to Czechoslovakia while more than 2,820,000 inhabitants of German ethnicity were expelled. In the late 1940s and 1950s, remedial legislation was adopted under which some stateless inhabitants of German and Hungarian ethnic origin (created by the previous legislation) were granted Czechoslovak citizenship.

After the communists seized power in Czechoslovakia in February 1948, deprivation of citizenship was introduced as a supplementary penalty for certain political offences.¹¹ Complex new citizenship legislation was adopted in 1949. Act No. 194/1949 Coll. on the Acquisition and Loss of Czechoslovak Citizenship (modified by Act No. 72/1958 Coll.), replaced the old legislation, but preserved many of its features, such as the *ius sanguinis* principle and the principle of a single citizenship. Both in the communist ideology and in legal theory, citizenship meant not only legal but also factual bonds between a citizen and the society. A legal textbook published in 1963 defines ‘socialist citizenship’ in the following way: ‘Socialist citizenship is not only a legal bond between a citizen and the state, but it means also belonging to a collective of working people, who participate in the building of socialist (communist) society and in the building and defence of the socialist state; it means belonging to the collective of working people connected by shared dreams and ideals’ (Černý & Červenka 1963: 19). Leaving this collective brought about a loss of citizenship.

Thus, the law provided for depriving citizens of Czechoslovak citizenship. It was applied as a penalty to those citizens who lived abroad and had engaged in activities ‘which might endanger state interests’, those who had left the territory of Czechoslovakia ‘illegally’, those who had not returned to Czechoslovakia when requested to do so by the Ministry of the Interior, those who were dual citizens and those who lived abroad for more than five years

⁹ In October 1938, Czechoslovakia lost parts of its territory inhabited mainly by a German population. In March 1939, after the secession of Slovakia, the rest of the Czech lands were turned into the Protectorate of Bohemia and Moravia. For the complex legal consequences in terms of citizenship, see Verner (1947, Appendix II: 227-270).

¹⁰ The Presidential Decree exempted from withdrawal of citizenship those citizens of German and Hungarian ethnicity who had joined the fight for liberation or were persecuted by the Nazis. The legislation also established a possibility to apply for the restitution of Czechoslovak citizenship within six months after the entry of the Decree into force. Most of the Czechoslovak citizens concerned had actually acquired German or Hungarian citizenship in the period 1938-1945.

¹¹ Such withdrawal of citizenship through Court judgment was possible from 24 October 1948 till 31 December 1956 (see Černý & Valášek, 1996: 71-72, 80-81).

without a ‘valid passport permitting its holder to live abroad’.¹² These legal provisions existed until 1990.

In the two decades following 1949 (with the exception of remedial laws), the citizenship law was almost static. Only the Prague Spring initiated innovative developments. The Prague Spring of 1968, a movement towards the liberalisation of communist rule, was accompanied by the Slovak national movement.¹³ This movement demanded the introduction of a federal system within a multiethnic, but centralised, Czechoslovakia. As of 1 January 1969, the unitary Czechoslovak state was transformed into a federal state, composed of the Czech and the Slovak republics.¹⁴ At the level of citizenship legislation, this change was reflected by the adoption of Federal Act No. 165/1968 Coll. on the Principles of Acquisition and Loss of Citizenship, which was followed by the Act of the Czech National Council No. 39/1969 Coll. on the Acquisition and Loss of Citizenship of the Czech Socialist Republic, adopted in April 1969.¹⁵ The new legislation introduced, in addition to the (federal) Czechoslovak citizenship, citizenship of the two (Czech and Slovak) Republics as the constituent entities of the Federation.¹⁶ Under this legislation, Czechoslovak citizens automatically acquired the citizenship of either the Czech or Slovak Republic, based on their place of birth and some supplementary criteria. The new legislation made it simple to switch between the republic level citizenships, but this possibility was not exercised in practice. The reason was trivial: the republic-level citizenship had no practical consequences whatsoever. In fact, many citizens were not even aware of their republic-level citizenship.¹⁷ In addition, the freezing period of ‘normalisation’ in the 1970s and 1980s, which followed the suppression of the Prague Spring, pushed most people into private and family life as the only remaining space for meaningful activities, where the question of citizenship had no significance. After the changes linked to federalisation were adopted, the citizenship legislation shifted into a stagnant phase for almost two decades.

The fall of the communist regime in November 1989 prompted new developments in all spheres, including citizenship legislation. The first task for the new democratic government was to remedy injustices caused by deprivations of citizenship under the communist rule. In response to communist abuses of power, a constitutional provision was introduced, to stipulate that, ‘no one shall be deprived of his or her citizenship against his or her will’.¹⁸ Act No. 119/1990 Coll. on Judicial Rehabilitation abolished sentences for criminal offences to which the withdrawal of citizenship was attached, and consequently, the citizenship of the persons concerned was *ex lege* restored.¹⁹ At the same time, Act No.

¹² The last condition was added in 1958.

¹³ See also Kusá 2009.

¹⁴ Constitutional Act No. 143/1968 Coll. on the Czechoslovak Federation.

¹⁵ The corresponding law regulating the same issue in the Slovak Republic was the Act of the Slovak National Council No. 206/1968 Coll.

¹⁶ In this paper, the term ‘republic-level citizenship’ is used to denote membership in the constitutive entities of the federal state. The term ‘citizenship’ is used exclusively to indicate membership of a sovereign state. In Czech language and legal terminology, the term ‘státní občanství’ (‘state citizenship’) is used for both legal statuses.

¹⁷ The republic-level citizenship was not recorded in any official documents, such as birth certificates, ID cards or passports. On the other hand, the ID and other documents recorded the ethnic origin (‘národnost’), (e.g. Czech, Slovak, Hungarian), which was based, in principle, on one’s own declaration.

¹⁸ Constitutional Act No. 23/1991 Coll. introducing the Charter of Fundamental Rights and Freedoms. The Act amended art. 5 of Constitutional Act No. 143/1968 Coll. on the Czechoslovak Federation. The Act came into force on 8 February 1991. Later, it was transformed into art. 12(2) of the Czech Constitution. The provision offers stronger protection against deprivation of citizenship than art. 15(2) of the Universal Declaration of Human Rights, which only bans arbitrary deprivation of citizenship.

¹⁹ The concerned persons became, in many cases, dual citizens. (See Černý & Valášek, 1996: 71-72, 80-81).

88/1990 Coll. was adopted, which provided for the reacquisition of the Czechoslovak citizenship by emigrants who had lost it in the period of communist rule. The law, which was not free of certain restrictions and shortcomings,²⁰ launched a new strand of future development in the field of citizenship legislation that I will call restitution legislation.

2.2 Break-up of Czechoslovakia and creation of the Czech citizenship in 1993

The demise of the communist regime opened a space for the resurgence of nationalist feelings and politics.²¹ In Czechoslovakia, the rebirth of the Slovak nationalist movement led to a consensual break-up of the federal state. In the autumn of 1992, as the break-up of Czechoslovakia was increasingly becoming a realistic option (negotiated and carried through by the ruling political elite),²² many Czechoslovaks started to think about their future in terms of citizenship.²³ The dormant provisions of the existing citizenship legislation, which allowed for a simple switch between the Czech and the Slovak republic-level citizenships, started to be widely invoked. By the end of 1992, some 65,000 Slovak republic-level citizens had applied for the Czech republic-level citizenship. On 1 January 1993, the Czech and the Slovak Republics were established as successor states to the former Czechoslovakia. In the Czech Republic, citizenship issues were regulated by the hastily drafted and adopted Act No. 40/1993 Coll. on the Acquisition and Loss of Citizenship of the Czech Republic.²⁴ The primary aim of the law was to identify citizens of the new state and to prevent dual (Czech and Slovak) citizenship.²⁵

The provisions of the new legislation fell into two main categories. The first was a set of transitory provisions regulating the initial determination of the citizens of the new state,²⁶ complemented by provisions governing the option for Czech citizenship. The other category

²⁰ Act No. 88/1990 Coll. provided for the reacquisition of Czechoslovak citizenship by former Czechoslovak citizens who had lost Czechoslovak citizenship in the period between 1 October 1949 and 31 December 1989. The reacquisition took effect in certain cases through a simple declaration. However, the scope of application of the law was limited by several factors. First, the law did not cover, due to its time limitation, former Czechoslovak citizens who were deprived of Czechoslovak citizenship by the 1945 Presidential Decree (Germans and Hungarians) as well as other persons who lost citizenship before 1 October 1949. Second, it also excluded those former Czechoslovak citizens who lost Czechoslovak citizenship due to the application of the 1928 Naturalisation Treaty with the USA. Third, the law did not provide for the acquisition of citizenship by children of emigrants. Finally, the law provided a relatively short period to exercise the right to request the restitution of citizenship. It expired on 31 December 1993.

²¹ See also Kusá 2009.

²² The Constitutional Act No. 542/1992 Coll. on the Dissolution of Czechoslovakia on 31 December 1992 was adopted by the Federal Assembly on 25 November 1992.

²³ Since the establishment of Czechoslovakia in 1918, there has been much intra-state migration. For instance, in the period 1918-1938 many Czechs went to Slovakia as part of the new Czechoslovak administration. After 1945, there was continuous economic emigration from Slovakia to Bohemia and Moravia. One important element of the post-war internal movements of inhabitants was (both spontaneous and state-organised) resettlement of Slovak Roma in industrial towns and cities of Moravia and Bohemia.

²⁴ The drafting and the adoption of the law took place in exceptional circumstances. The whole process was finished within two months.

²⁵ The possibility of dual (Czech and Slovak) citizenship was the most divisive issue between the ruling political elites – Slovak nationalists and Czech pragmatists. It was favoured by the former and denied by the latter. Since an agreement on state succession regarding citizenship had not been reached, two separate citizenship laws regulated the citizenship of the successor states.

²⁶ For the concept of the initial determination ('Erstabgrenzung'), see the work by Krombach (1967).

involved rules of permanent nature, regulating e.g. acquisition of the Czech citizenship by birth, naturalisation or loss of Czech citizenship.

Table 1 Conceptual scheme of Act No. 40/1993 Coll. on the Acquisition and Loss of Citizenship of the Czech Republic (as of 1 January 1993)

	Norms regulating initial determination of citizenship	<i>Norms regulating standard procedures for acquisition and loss of citizenship (e. g. by birth, naturalisation)</i>	
	<i>overall initial determination of citizenship</i>	<i>supplementary and corrective initial determination</i>	
<i>time aspect</i>	automatic operation of laws taking effect on 1 January 1993	temporary application of norms	perpetual application
<i>personal scope</i>	core of citizens of the new state, the category was established by operation of law – all former Czech republic-level citizens	solves individual cases, takes into account the will of individuals concerned	plurality of cases, not to be defined in advance

As regards the initial overall determination of citizenship, Act No. 40/ 1993 Coll. stipulated that, ‘natural persons, who were citizens of the Czech Republic as of 31 December 1992, [...] are citizens of the Czech Republic as of 1 January 1993.’ Leading Czech jurists explain the establishment of Czech citizenship in the following way.

‘As a consequence of the disappearance of Czechoslovakia and the establishment of the Czech Republic as an independent entity under public international law, the Czech republic-level citizenship acquired as of 1 January 1993 an international dimension and turned into full-fledged state citizenship’ (Černý & Valášek 1996: 99).

The Slovak legislators adopted the same approach as regards overall (collective) initial determination. This prevented *de iure* statelessness in the wake of the break-up of Czechoslovakia.²⁷ The primary rule was supplemented by a set of transitional provisions regulating the right of option and facilitating naturalisation for certain Slovak citizens.

According to statistics published by the Czech Statistical Office in 2007, the final numbers of Slovak citizens who acquired Czech citizenship under the option clauses was 292,000 persons, whereas 2,500 Slovak citizens acquired citizenship through facilitated naturalisation in the same period.²⁸ These specific provisions were in force until 30 June 1994.

The criteria for exercising this right of option, however, included not only two years of permanent residence in the territory of the Czech Republic and renunciation of Slovak citizenship, but also a clean criminal record.²⁹ The application of the latter condition had a disproportionate impact on members of the Roma (Gypsy) minority.³⁰ In 1994, a group of 46 deputies submitted a petition to the Constitutional Court challenging the constitutionality of the new citizenship legislation on several points, including the option clauses, but the Court

²⁷ The same criterion, i.e. republic-level citizenship, was used in some countries of former Yugoslavia (Slovenia, Croatia), while the countries of the post-Soviet Eurasia applied a permanent residency criterion instead.

²⁸ See publication *Život cizinců v ČR 2006* [Life of Foreigners in the Czech Republic], Appendix, Table 3.3., published 18 January 2007, at <http://www.czso.cz/csu/2006edicniplan.nsf/p/1118-06>. Some other sources provide different numbers.

²⁹ The right to opt for Czech citizenship was restricted by the requirement that the person had not been convicted in the last five years for an intentional criminal offence.

³⁰ Most Roma migrated to Czech lands from Slovakia after 1945. Consequently, many Czech Roma became Slovak citizens by the application of the general rules of initial determination.

rejected the complaint.³¹ The law was criticised by Czech human rights activists as well as by the international community and the European Union (Filip 1999:1). The criticism led to piecemeal adjustments and a softening of Act No. 40/1993 Coll. in relation to former Czechoslovak (now Slovak) citizens.³²

In the decade following the establishment of the independent Czech Republic, one issue dominated public and political discourse on citizenship matters: the intentional and accidental consequences of the break-up of Czechoslovakia. In the shadow of this central theme, some problems related to the restitution of Czechoslovak (now Czech) citizenship for emigrants were also discussed. In 1998, after the change of government (from liberal-conservative to social-democratic) a more profound reform of citizenship legislation was put on the government agenda.³³ This led to (a) significant alterations of the transitional provisions of the 1993 Citizenship Act, and (b) the adoption of Act No. 193/1999 Coll. on the Citizenship of Some of the Former Czechoslovak Citizens, which was another piece of restitution legislation.

(a) The former legislation mitigated the harsh consequences of the break-up of Czechoslovakia for some groups of former Czechoslovak citizens. A judgment of the Constitutional Court of the Czech Republic of 5 May 1997³⁴ also fostered this development. The Court held that a person does not lose Czech citizenship by virtue of a simple declaration to opt for citizenship of the Slovak Republic. The estimated number of such persons was 65,000.³⁵ These individuals became dual citizens.³⁶ Major amendments to the 1993 Citizenship Act were implemented by Act No. 194/1999 Coll. which not only transformed this ruling into a statutory provision, but also allowed all Czech citizens who were former citizens of Czechoslovakia as of 31 December 1992 to acquire Slovak citizenship without losing their Czech citizenship. This is a further exception to one of the declared principles of the Czech citizenship legislation, the prevention of dual citizenship.

Most importantly, the 1999 amendment also introduced a simplified procedure for acquisition of Czech citizenship by declaration for former Czechoslovak citizens who had been living continuously in the territory of the Czech Republic since the break-up of Czechoslovakia (as well as their children). This was a corrective provision. It provided for the acquisition of Czech citizenship by those who for various reasons (legal or personal) could not opt or apply for Czech citizenship before. The necessity of the remedy is demonstrated by this figure: 6,278 former Czechoslovak citizens acquired Czech citizenship in 1999 alone, by invoking the new provision. It was only in 2003 that the number of the annual acquisitions

³¹ Pl US 9/94, see English translation Pl. US. 9/94 - Citizenship Law at <http://www.concourt.cz/file/2170>. In principle, The Court failed to recognise the difference between the specific legislation linked to state succession and naturalisation.

³² The first change of the law was adopted in October 1993. A significant change responding to the critique was introduced by Act No. 139/1996 Coll., which allowed for exceptions in naturalisation procedures from the clean criminal record requirement for former Czechoslovak citizens who had resided in the territory of the Czech Republic since the break-up of Czechoslovakia.

³³ The reform was announced in the government manifesto adopted in August 1998 (Resolution of the Government No. 504/1998).

³⁴ See IV. ÚS 34/97 at www.concourt.cz (Czech original) and IV. US. 34/97 - Dual Citizenship at http://angl.concourt.cz/angl_verze/cases.php (English translation).

³⁵ See Explanatory Report to the Act No. 194/1999 Coll., Chamber of Deputies' Print No. 159, 1999, III. electoral period, www.psp.cz.

³⁶ The judgment was confirmed by a subsequent judgment on 14 November 2000 (I. US 337/99). The Court argued that exercising the right of option does not mean that a person acquired foreign, i.e. Slovak citizenship at his or her own request, which would lead to automatic loss of Czech citizenship. In practical terms, this ruling concerned mostly ethnic Czechs living in Slovakia.

based on the new provision fell below one thousand. This clearly shows that at the end of 1990s, there were still a number of former Czechoslovak citizens whose status was not adequately regularised. In 2008, there were 227 cases. The decreasing numbers indicate that the problem has diminished.

Table 2: Slovak citizens who acquired Czech citizenship by declaration (Section 18a of Act No. 40/1993 Coll.)

Year	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Total Number	6,278	5,377	3,378	1,862	850	627	565	375	268	227

Source: Ministry of the Interior & Czech Statistical Office

A subsequent amendment to Act No. 40/1993 Coll. adopted in 2003 (Act No. 357/2003 Coll.) introduced further remedial provisions. It gave former Czechoslovak citizens who were granted Slovak citizenship (i.e. were naturalised in Slovakia) in the period from 1 January 1994 to 1 September 1999 the right to (re-)acquire their lost Czech citizenship by declaration. The amendment also gave the right to acquire the Czech citizenship by declaration to certain groups of Slovak citizens who were minors at the time of the break-up of Czechoslovakia. These provisions concerned a rather limited number of persons (Table 3).

Table 3: Slovak citizens who acquired Czech citizenship by declaration - (Section 18b and 18c of Act No. 40/1993 Coll.)

Year	2003	2004	2005	2006	2007	2008
Sect. 18b	55	364	123	63	49	47
Sect. 18c	5	573	325	167	177	144

Source: Ministry of the Interior & Czech Statistical Office

(b) Act No. 193/1999 Coll. on the Citizenship of Some of the Former Czechoslovak Citizens, reintroduced and broadened the right of reacquisition of Czech citizenship by declaration. It applied to emigrants who had lost Czechoslovak citizenship under communist rule, but for legal or practical reasons had not been able to make use of the first restitution act of 1990.³⁷ Originally, the applicability of the law was limited to five years after its entry into force.

Table 4: Former Czechoslovak citizens who (re-)acquired Czech citizenship by declaration under Act No. 193/1999 Coll.

Year	1999	2000	2001	2002	2003	2004*	2005	2006	2007
Total Number	798	1,899	1,607	1,273	1,154	1,784	190	205	225

Source: Ministry of the Interior & Czech Statistical Office

*The deadline for making the declaration expired on 2 September 2004. The Act No. 46/2006 Coll. deleted the deadline and thus made the law operational again. It was published and entered into force on 27 February 2006.

³⁷ These are, in particular, those who lost the Czechoslovak citizenship due to the 1928 Naturalisation Treaty between the United States and Czechoslovakia.

3. The current Czech citizenship regime

As stated above, the citizenship legislation has gone through a series of adjustments since 1993. Since its adoption, there have been nine amendments to the 1993 Citizenship Act. The Act No. 193/1999 Coll. on the Citizenship of Some Former Czechoslovak Citizens has gone through two amendments. While the greater part of the fine-tuning was related to the situation of former Czechoslovak citizens, there have been other changes, as affecting the acquisition of citizenship by children through adoption or in the conditions for naturalisation. Some changes reflected reforms of the administrative structures. Despite extensive amendments, the citizenship regime preserved in large measure its initial principles, which in turn reflected a deeper historical continuity. These are, in particular, the principle of *ius sanguinis*, the strict naturalisation conditions and the extensive administrative discretion as regards to naturalisation.

Due to a peculiar construction of the law, discretion enters into the decision-making process at several stages. First, the Ministry has a certain level of discretion to in determining if an applicant for naturalisation fulfils conditions prescribed by law. Second, the Ministry has the discretionary power to waive some of the conditions provided that ‘conditions to waive’ exist. Finally, even if the applicant meets all naturalisation conditions, the Ministry reserves the right not to grant citizenship. As a result, the outcome of the procedure is hardly predictable for the applicant (see Molek & Šimíček, 2005: 142).

The only exception to continuity of the citizenship regime as established in 1993 are shifts in relation to dual citizenship and the consequent establishment of a specific, more relaxed regime in relation to Slovak citizens and Slovak citizenship.

This section summarises the main principles of the Czech citizenship regime in force as of 1 January 2009. It tries to find a compromise between the legal perspective, which calls for a complex and exact description of citizenship legislation, and the political science approach, which focuses on what is dominant or unique. A reader who is seeking legal information should consult texts of the law and recognised law handbooks.³⁸

3.1 Acquisition and loss of Czech of citizenship

Acquisition

There are several ways of acquiring Czech citizenship: a) acquisition of citizenship by former Czechoslovak citizens (and their children) by option³⁹ or declaration (as discussed above),⁴⁰ b) acquisition of citizenship by birth, adoption, and establishment of paternity, c) acquisition

³⁸ See the leading handbooks on Czech citizenship law Černý & Valášek 1996, Valášek & Kučera 2006 and Gronwaldtová Wagnerová & Morávková 2009: 173 – 282.

³⁹ Still in force is a specific option clause, not discussed above, which concerns the former Czechoslovak citizens, who as of 31 December 1992 had neither the Czech republic-level citizenship nor the Slovak republic-level citizenship. Such cases are extremely rare and are not even included in available statistics.

⁴⁰ To sum up, there are: 1) corrective rules adopted after 1993, included in Act No. 40/1993 Coll., which unlike the original option clauses and facilitated naturalisation are formulated as permanent rules, and 2) Act No. 193/1999 Coll. on the Citizenship of Some of the Former Czechoslovak Citizens. Under both laws, declaration means acquisition of citizenship as of right, provided that the qualifying conditions are met.

of citizenship by being found in the territory of the Czech Republic and d) acquisition of Czech citizenship by naturalisation.

Under the *ius sanguinis* principle, a person acquires Czech citizenship at birth if at least one parent is a Czech citizen. The place of birth is not relevant. *Ius soli* applies if the parents are stateless and at least one of them is a permanent resident.⁴¹ A natural person found on the territory of the Czech Republic is a Czech citizen unless it is proved that he or she acquired the citizenship of another state at birth. The *ius sanguinis* principle remains the traditional and dominant feature of Czech citizenship legislation whereas the application of *ius soli* is extremely limited.

The conditions for naturalisation are strict: permanent residence for at least five years, renunciation of previous citizenship,⁴² clean criminal record,⁴³ no infringement of immigration law, fulfilment of certain statutory duties (such as paying taxes, health and social insurance) and passing a Czech language test.

Most of the requirements can be waived at the discretion of the Ministry of the Interior if certain conditions are met. The Ministry cannot waive two of the requirements: permanent residence status and clean criminal record. For instance, the Ministry may waive the five-year duration of permanent residency (but not the permanent resident status as such) for certain categories, such as applicants born in the Czech Republic, former Czech (or Czechoslovak) citizens, spouses of Czech citizens, children of Czech citizens, stateless persons or refugees.

There is a long list of discretionary exemptions from the requirement to renounce one's original citizenship. (This list was extended by Act No. 357/2003 Coll. partly because of an initiative by the Human Rights Council, see below.) Applicants may keep their previous citizenship (and become dual or multiple citizens) if they are permanent residents, have stayed legally in the territory for at least five years, have a genuine link to the Czech Republic and, in addition, satisfy one of the prescribed conditions. These are situations when the applicant's renunciation of their previous citizenship is not possible in law or in practice, involves unreasonable fees or other demands not acceptable in a democratic state, a danger of persecution exists, when naturalisation is in the interest of the Czech Republic because of the expected significant contribution to the Czech society in science, societal life, culture or sports or when the applicant is a former Czech (or Czechoslovak) citizen.⁴⁴ There is also an exemption for applicants who have resided legally in the Czech Republic for at least twenty years and have held permanent resident status for five years or more. In practice, the Ministry applies the exception from the renunciation requirement strictly.⁴⁵

The relatively simple language test is waived for all Slovak citizens and for any one else at the discretion of the authorities. The Ministry also screens all applicants in order to

⁴¹ The situation of children born to a stateless parent without permanent residence, as well as of other children who are born in the territory, but are stateless for other reason, is not regulated adequately.

⁴² The applicant has to submit a certificate of the loss of his or her previous citizenship or a certificate that by the acquisition of Czech citizenship he or she will lose his or her previous citizenship.

⁴³ The applicant has not been convicted for an intentional crime in the last five years.

⁴⁴ The last provision does not apply to Slovak citizens.

⁴⁵ Cases dealt with by courts conducting judicial review, the Ombudsman and some non-governmental organizations offer some insight into the restrictive practice in naturalisation procedures. An interesting, more general account of the practices of the Ministry is contained in a recent handbook on personal status issues (Gronwaldtová Wagnerová & Morávková 2009: 214- 223). In particular, the eligibility condition to waive the renunciation requirement consisting of the existence of 'a genuine link' to the Czech Republic is considered strictly. The genuine link is assimilated with the 'overall integration of the applicant into the Czech society, in particular at the work, family and social (including cultural) levels' (ibid: 215).

assess the security risk that they pose to the state. Some authors consider passing the security test an additional condition for naturalisation (Valášek & Kučera 2006: 85).

The permanent resident status, a condition *sine qua non* for naturalisation, is a vital nexus between the citizenship legislation and the immigration laws since conditions regulating the access to permanent resident status predetermine the access to citizenship. For instance, under the immigration legislation in force until 2006 an immigrant could normally apply for permanent resident status only after ten years of continuous legal residence in the Czech Republic and after eight years in cases of family reunion. Thus, the waiting period for naturalisation for many immigrants was in fact fifteen years and more. With the change in immigration legislation in 2006, which cut the waiting period for permanent resident status to 5 years, the access to citizenship was facilitated.⁴⁶ Another direct link between the immigration legislation and the citizenship legislation is the requirement that the applicant fulfils the duties imposed by the immigration law. The more numerous and strict these duties are, the more difficult it is for the immigrant to become a citizen. These examples illustrate that that one should always view citizenship and immigration issues as intertwined.

If we exclude Slovak citizens, the numbers of persons naturalised annually in the Czech Republic have been surprisingly stable (Table 5). The picture principally remains the same if we include Slovak citizens since 2001 when the consequences of the break-up of Czechoslovakia were over (Table 6). Against the background of increasing numbers of foreigners living in the Czech Republic who are permanent residents (Table 7), this calls for explanation. One may assume that strict naturalisation legislation, as well as rigorous way it is applied, play an important role.

Table 5 Naturalisations (§ 7 Act 40/1993 Coll.) (excluding Slovak citizens) in the Czech Republic, 1993-2008

Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Total Number	1,469	1,412	2,000	1,380	837	1,128	1,031	1,059	1,121	1,150	1,267	1,495	1,177	1,355	1,027	1087

Source: Ministry of the Interior and Czech Statistical Office

Table 6 Naturalisations (§7 Act 40/1993 Coll.) of Slovak citizens in the Czech Republic, 1993-2008

Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Total Number	45,170*								215	247	79	177	246	181	131	103

*Data for individual years not available.

Source: Ministry of the Interior and Czech Statistical Office

⁴⁶ The amendment of the Aliens Act, Act No. 161/2006 Coll., which entered into force on 27 April 2006, cut the waiting period for permanent resident status to five years in order to implement EU Directive 2003/109/EC Concerning the Status of Third-country Nationals who are Long-term Residents, OJ L 16, 23. 1. 2004, p. 44.

Table 7 Foreigners with permanent residence status in the Czech Republic, 1993 -2008 (in thousands)

Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Total Number	31	33	39	46	57	64	67	67	70	75	81	99	111	139	158	173

Source: Ministry of the Interior and Czech Statistical Office

In 2008, the top five countries of immigration (this includes temporary residence status) were Ukraine, Slovakia, Vietnam, Russia and Poland..⁴⁷

Loss of citizenship

Since the Czech Constitution prohibits deprivation of citizenship against one's own will, it may not be imposed as a penalty or a sanction. However, this rule is now under pressure (see below section 4. 1). In conformity with the principle of *ius sanguinis*, even later generations of Czech descendants born and living abroad do not lose Czech citizenship automatically.

A Czech national can lose citizenship in two ways: by a declaration of renunciation and by acquisition of foreign citizenship. A Czech citizen may lose his or her citizenship by a declaration of renunciation if he or she stays abroad and at the same time possesses the citizenship of a foreign state (cases of dual and multiple citizenship).⁴⁸ A Czech citizen automatically loses Czech citizenship as a consequence of acquiring a foreign citizenship if the latter citizenship is voluntarily acquired at his or her own expressed request. This mode of automatic loss of citizenship was introduced by the 1993 Citizenship Act and did not exist before 1 January 1993.⁴⁹ This provision became controversial in practice.⁵⁰ Its constitutionality was also challenged with reference to the ban on deprivation of citizenship against one's will but was eventually confirmed by the Constitutional Court.⁵¹

The loss of citizenship does not occur if the acquisition of a foreign citizenship is automatic, for example by descent. The law also contained an exception in relation to marriage but the wording was confusing. In practice, the Ministry applied the provision only to rare cases of automatic acquisition of citizenship through marriage. Therefore, the 2003 amendment to the 1993 Citizenship Act (Act No. 357/ 2003 Coll.) refined up the wording of the relevant provision. If a Czech national acquires the citizenship of his or her spouse during the marriage, he or she will not lose Czech citizenship. However, in 2007 the Supreme Administrative Court ruled that such a restrictive interpretation of the contested provision (as

⁴⁷ See web page of the Czech Statistical Office www.czso.cz

⁴⁸ In order to avoid statelessness, there is no provision allowing for the renunciation of Czech citizenship if the person concerned is not a citizen of another state.

⁴⁹ The provision can be seen as a reaction to the constitutional ban on the deprivation of citizenship. Its purpose was preventing dual Czech and Slovak citizenship as well as reducing cases of Czech citizens living abroad transferring Czech citizenship over several generations.

⁵⁰ It had particularly precarious consequences for Czech women who married citizens of some Islamic countries. The status of non-citizens put them at a disadvantage with regard to inheritance rights, for example whereas the potential loss of Czech citizenship in the case of naturalisation would deprive them of diplomatic protection. Another category adversely affected are citizens who applied for a foreign citizenship before the law entered into force but were granted a foreign citizenship after 1 January 1993.

⁵¹ In the Court's opinion, there is a distinction between deprivation of citizenship, prohibited by the Constitution, and loss of citizenship. Those who apply for a foreign citizenship should be aware of the legal consequences attached to the act, which is provided for by law. Thus, the loss of citizenship based on the acquisition of foreign citizenship does not constitute deprivation of citizenship against one's will. See No. 6/1996 Coll. and Pl. US. 5/95 - Citizenship Loss at <http://www.concourt.cz/file/2176> (in English).

in force before 1993) was wrong.⁵² In addition to teleological, linguistic and logical arguments, the Court also emphasized that if the content of the legal rule is confusing or perhaps allows for several interpretations then it is always necessary to choose an interpretation which does not hurt the party. The beneficiaries of this provision are dual citizens.

3.3 Dual and multiple citizenship

The Czech legislation is becoming generally more tolerant of dual and multiple citizenship. This trend is clearly visible in spite of the fact that the official citizenship policy still follows the principle of the prevention of dual citizenship.

The developments after 1989 increased the numbers of dual citizens almost inevitably. The possibility for restitution of Czech citizenship to emigrants which was perceived as a matter of justice, would be largely meaningless if dual citizenship was not accepted. The break-up of Czechoslovakia – which is likely to be the main source of the increase in dual citizens – is a more interesting case. In this situation the original intention was to prevent dual Czech and Slovak citizenship and, consequently, the 1993 Citizenship Act adhered strictly to the principle of preventing dual nationality in all possible dimensions. However, this attempt failed. From the first remedial provisions adopted in October 1993 onwards,⁵³ every change paved the way for yet another change. Once the legislator gave the benefit of dual citizenship to a particular group, perceived as disadvantaged, it became more difficult to deny the same benefit to another category. As a result, a specific, preferential regime developed in relation to dual Czech and Slovak nationality.⁵⁴ Other changes in the single nationality regime (described above) follow the same ‘slippery slope’ rule.

The Czech case thus seems to be a good illustration for the claim made by Faist, Gerdes & Rieple who wrote: ‘But once some exceptions have been granted, new interpretations of individual rights and new claims of other categories of persons combined with court cases could easily lead to a further increase of exceptions. Problems of justification and rising cost of administrative procedures may well lead to a general tolerance of dual citizenship in the long run.’ (2004: 939).

At present, there are numerous dual and multiple citizens who acquired the status legally. Moreover, there are many cases in the grey zone. For instance, if the Czech authorities are not informed of the acquisition of a foreign citizenship by a Czech citizen or by the foreign state concerned, which is often the case, they still treat the person as a Czech citizen (e.g. they will grant him or her a passport).

⁵² Supreme Administrative Court, Judgment of 30 May 2007, 1 As 62/2006-82, www.nssoud.cz

⁵³ The Act No. 272/1993 Coll. modified the right to opt for the Czech citizenship with regard to two categories of former Czechoslovak citizens determined as Slovak citizens by the overall initial determination rules. The first category was a peculiar group of persons, who were born on in Slovakia before 31 December 1939, but their parents were born in the territory of Czech Republic (and thus likely were ethnic Czechs) and those Slovak citizens who were 60 or older in 1993.

⁵⁴ This regime is not coherent. It is a rather set of patchy rules. For instance, a Czech citizen who was a Czechoslovak citizen of 31 December 1992 would not lose Czech citizenship upon naturalisation in Slovakia. However, a Slovak citizen seeking to naturalise in the Czech Republic would be, in principle, requested to renounce his Slovak citizenship. The intention to terminate this regime, which is in the opinion of the Ministry of Interior overcome and unjustified, is one of the incentives for the planned citizenship reform.

3.4 International treaties

The Czech Republic is party to certain bilateral⁵⁵ and multilateral treaties concerning citizenship. The current trend is toward accession to multilateral treaties.⁵⁶ Bilateral treaties with the former socialist countries were terminated, partly because they were not compatible with the provisions of the 1997 European Convention on Nationality in regards to the preservation of dual citizenship for children whose parents have different citizenship.⁵⁷

Politically, the most controversial of the bilateral agreements was the 1928 Naturalisation Treaty between the United States and Czechoslovakia, which precluded dual citizenship of emigrants.⁵⁸ The Treaty was valid until 20 August 1997. The application of the Treaty excluded many former Czechoslovak citizens from restitution of their property lost during the communist regime. (See also section 4. 2.)

3.5 Procedure, administrative review and judicial review

The Ministry of the Interior is responsible for citizenship issues and decides on naturalisations. Lower administrative authorities administer other associated agenda such as accepting and processing the applications for naturalisation, including the language testing. They issue certificates on acquisition of citizenship by birth and process the acquisition of citizenship by declaration.⁵⁹ The Ministry maintains a central register of persons who have acquired or lost Czech citizenship. A decision by the Ministry may be appealed. In this case, the Minister of the Interior decides. The Minister receives the opinion of a special consultative commission, but is not bound by it. In 2008, the Ministry issued 633 negative decisions regarding naturalisation. 320 unsuccessful applicants appealed. In 113 cases the Minister of the Interior overturned the negative decision (Ministry of the Interior, 2009: 63). The high number of rejected applications can be seen as a consequence of the peculiar naturalisation procedures, which are dominated by the wide use of discretionary powers. Decisions on citizenship are open to judicial review. The fees are relatively high – 10,000 Czech crowns (approximately 400 euros) for naturalisation. The acquisition of citizenship by declaration is free of charge. In cases of naturalisation, the citizenship is acquired by oath. As in other European countries, there are plans to make the oath more ceremonial.

⁵⁵ In 1994, The Czech Republic and the Slovak Republic signed a treaty concerning the regulation of certain issues in the area of registers and nationality [*Smlouva mezi Českou republikou a Slovenskou republikou o úpravě některých otázek na úseku matrik a státního občanství*]. The Treaty was published as No. 235/1995 Coll. The treaty facilitates the communication between administrative bodies of the contracting parties. It also concerns the regular exchange of lists of citizens of one contracting party who acquired the citizenship of the other contracting party. There are also old bilateral treaties which are rather of historical relevance.

⁵⁶ The Czech Republic ratified or acceded to the following multilateral treaties: 1997 European Convention on Nationality (No. 76/2004 Collection of International Treaties, henceforth Coll. of I. T.), ratified in 2004; 1961 UN Convention on the Reduction of Statelessness (No. 43/2002 Coll. of I. T.), acceded to in 2001; 1954 UN Convention Relating to the Status of Stateless Persons (No. 108/ 2004 Coll. of I. T.), acceded to in 2004. The Czech Republic also succeeded to the 1957 Convention on the Nationality of Married Woman (No. 72/1962 Coll.).

⁵⁷ These terminated bilateral agreements were with the former Soviet Union and some its successor states as well as the German Democratic Republic, Hungary, Poland, Bulgaria and Mongolia.

⁵⁸ Published as Act No. 169/1929 Coll. The treaty established a rule that in the case of naturalisation, the citizenship of the state of origin is automatically lost.

⁵⁹ These administrative bodies are the regional authorities [krajské úřady], in Prague the city district offices [úřady městských částí] and the magistrates [magistráty] in cities of Brno, Plzeň and Ostrava.

Given the wide discretionary powers of the Ministry and the opaque nature of the naturalisation procedure, it is vital that the executive is under the control of independent bodies. In this regard, the establishment of the institution of the Public Defender of Rights (Ombudsman) in 2001⁶⁰ and the Supreme Administrative Court in 2003⁶¹ brought about major improvements. In the last couple of years, the combined pressure of these two institutions brought about some positive changes to the administrative routine (See section 4.2. below).

4 Current political reforms and debates

The gradual solution to the problem of the break-up of Czechoslovakia, which dominated the citizenship agenda in the first decade after 1993, created some space for fresh approaches to the fundamental issues of citizenship legislation. The shift of perspective was also due to two new phenomena: increasing migration to the Czech Republic and evolving integration policies (Baršová & Barša 2005: 231-238). Around 2003, the idea of a new citizenship code started to gain ground with some of the key stakeholders, in particular the Ministry of the Interior. In this section, I give an overview of the consecutive steps taken in this regard (4.1). Further, I draw attention to some related political and legal debates (4.2)

4.1 The planned reform of the citizenship legislation

The impetus for an overall revision of the citizenship legislation came from the government Council for Human Rights in 2002.⁶² A positive response by the Ministry of Interior was a turning point. Yet the major concerns of the Council and the Ministry were different. While the Council's interest was in improving the situation of second generation immigrants, the Ministry's primary intention was to consolidate the fragmented legislation and terminate remaining rules related to the break-up of Czechoslovakia. Nevertheless, there was broader agreement on certain issues, in particular the need to reconsider the single - dual citizenship dilemma. Further impetus was the 1997 European Convention on Nationality (ratified by the Czech Republic in 2004), which also called for a deeper review of the existing legislation (Henyck 2000: 383). Finally, one can also see this development as a part of a broader process of consolidation of the Czech legal order that has been underway in many spheres of law.⁶³

⁶⁰ Act No. 349/1999 Coll. on Public Defender of Rights. Public Defender of Rights in the Czech Republic acts to protect the persons from the conduct of offices and other institutions undertaking state administration, should such conduct be contrary to the law or, even if not contravening the law, then otherwise faulty, erroneous or incorrect. The office became functional in 2001, after the election of the first ombudsman in December 2000 and his deputy in January 2001. See www.ochrance.cz (also available in English).

⁶¹ Act No. 150/2002 Coll. Code of Administrative Justice. The Supreme Administrative Court, seated in Brno, is the highest judicial authority in matters falling within the competence of administrative courts. See the web page of the Court www.nssoud.cz (also available in English).

⁶² The Council for Human Rights is an advisory body to the government. See Resolution of the Government of the Czech Republic No. 493/2002. The communication concerned the incompatibility of the some bilateral agreements with the requirements of the European Convention on Nationality, and some issues, criticised later also by the Ombudsman and the Supreme Administrative Court.

⁶³ Major recodifications in criminal law, civil law and labour law had to close the post-revolutionary period, in which numerous amendments were added to the old pre-revolutionary laws. The case of the 1993 citizenship law is, of course, specific nevertheless it also shares some characteristics of this process.

Following the Analysis of Dual Citizenship Issues submitted to the government in 2002 and the adoption of major amendments to the 1993 Citizenship Act in 2003, a plan for comprehensive reform of legislation was finally launched. In February 2003, the government decided that the Ministry of the Interior should prepare a comprehensive analysis of the citizenship legislation based on broad public consultation and submit it to the government by 30 June 2005.⁶⁴ The Ministry circulated a consultation paper in the autumn of 2004 and subsequently, in May 2005, a draft Analysis of the Legislation on the Acquisition and Loss of Citizenship. In July 2005, the government approved the Analysis.⁶⁵

The Analysis discussed the fundamental principles of the new citizenship code. It suggested the following crucial moves towards liberalisation: a) full toleration of dual (multiple) citizenship on both the entry and exit sides and b) facilitated acquisition of citizenship by second and third-generation migrants. Regarding the grounds of the former proposal, the Ministry referred to both the prevailing trends towards liberalisation abroad and to practical aspects.⁶⁶ With regard to the latter proposal, the Ministry suggested that foreign citizens born in the territory of the Czech Republic should acquire Czech citizenship by declaration within two years after the age of majority if they are permanent residents and have a clean criminal record. The same should apply to those who have lived continuously in the Czech Republic since early childhood. The underlying justification is both factual and legal: increasing immigration and the 1997 European Convention. Even if this proposal is not a very favourable solution in comparison with other options (such as the application of *ius soli* at birth), it would still present a positive change in the national context.

On the other hand, the Ministry stated that the strict conditions for naturalisation should be maintained or even be tightened. It proposed, for example, excluding from naturalisation applicants who are likely to become a public burden. The Analysis also contemplated some changes in language testing, including that the testing should be more professional. A year later, in June 2006, the Ministry circulated the first framework draft of the new legislation. In addition to the changes mentioned above, it proposed to amend the Constitution so as to allow the withdrawal of citizenship in cases of fraudulent acquisition of citizenship (e.g. use of false documents). Another controversial proposal concerned an amendment to the Constitution introducing the clause that there is 'no legal right to be granted citizenship'. This proposal can be regarded as the Ministry's response to the criticism that it was making extensive use of discretion in naturalisation cases (see below section 4.2).

The parliamentary elections held in June 2006 and the subsequent establishment of a right-wing centrist government slowed down the legislative process, but initially have not brought about a major reorientation.⁶⁷ On 17 March 2008, the government discussed the new draft framework legislation.⁶⁸ The blueprint comprised two elements: the framework

⁶⁴ See Resolution of the Government of 24 February 2003, No. 186.

⁶⁵ Ministry of the Interior, *Analýza právní úpravy nabývání a pozbývání státního občanství* [Analysis of the regulation on acquisition and loss of citizenship] Adopted on 13 July 2005 by Government Resolution No. 881.

⁶⁶ The fundamental incentives for the switch towards toleration of multiple citizenship thus seem to be those described by Hagedorn, namely the information gap and a substantial administrative burden (2003). Obviously, citizens and immigrants campaign for dual citizenship for different reasons. Dual citizenship corresponds to the needs of both expatriates and immigrants and offers them a greater scope for individual choice.

⁶⁷ The coalition consisted of the liberal-conservative Civic Democratic Party, Christian Democrats and the Greens. In its programmatic declaration, the new government stated that it would 'consider the possibilities of simplifying the acquisition of dual nationality'. See www.vlada.cz.

⁶⁸ Under the government's legislative rules, a framework law (*věcný záměr zákona*) normally precedes the full legislative draft if a law regulates new and complex issues. These blueprints represent a step in legislative drafting at government level. As such, they are not subject to consultation with, or decision by, the parliament.

Constitutional Act on Citizenship of the Czech Republic and the framework Act on Citizenship of the Czech Republic.⁶⁹

The primary aim of the proposed constitutional act was to implement the two controversial changes discussed above. It also proposed to exempt from judicial review a denial of naturalisation if it was justified on the grounds of possible risks to the sovereignty, security or democratic foundations of the state. Guided by the opinion of its Legislative Council, the government eventually rejected the proposed constitutional legislation.⁷⁰ However, the government approved the framework citizenship law and decided that the Minister should submit a full version of the bill for approval no later than 31 May 2009.

The approved blueprint builds upon the analysis and suggests merging all legislation on citizenship into a single code. The transformation provisions of the existing citizenship law relating to the break-up of Czechoslovakia would be deleted. Broadly formulated provisions enabling former Czechoslovak and Czech citizens, as well as their descendants, to acquire Czech citizenship by declaration, would replace the existing specific restitution legislation. Excluded are, however, those who lost Czechoslovak citizenship under the 1945 Beneš decree and their descendants. Acquisition of citizenship by declaration is also suggested for second-generation migrants. The acquisition of citizenship by declaration is in both cases construed as a legal right with relatively simple qualifying conditions. This is in marked contrast with the proposed naturalisation rules. Conditions for naturalisation are detailed and strict. They allow for a thorough screening of applicants and include, inter alia, a test of written Czech proficiency as well as knowledge and orientation tests, stricter requirements regarding a person's criminal record, and compliance with an extensive range of public law obligations, obligations in relation to the municipality where the applicant lives, and even some civil law obligations.

Because of the rigorous naturalisation requirements, activists from various human rights organisations criticised the proposal. For instance, Martin Rozumek of OPU (Organisation for Aid to Refugees) argued that 'the proposal requires that foreigners fulfil a number of conditions which most Czech citizens would find difficult to fulfil'.⁷¹

However, the blueprint still included an unrestricted acceptance of dual (multiple) citizenship on both the entry and exit sides. Yet, there were indications that this liberal approach would change in the future, albeit only with regard to foreigners applying for naturalisation - the government urged the Minister to reconsider this particular issue in further stages of legislative drafting.⁷² The liberalisation on the exit side (that is in relation to Czech citizens who acquire foreign nationality) remained unchallenged.

Consultations on the draft legislation within the administration and with other stakeholders took place from July to November 2007.

⁶⁹ Ministry of the Interior, Návrh věcného záměru ústavního zákona o státním občanství České republiky a návrh věcného záměru zákona o státním občanství České republiky, VS-1283/50/2-2007 [The proposal of the framework for the Constitutional Act on Citizenship of the Czech Republic and the framework for the Act on Citizenship of the Czech Republic]. The government took its decision by Resolution of 17 March 2008, No. 254.

⁷⁰ According to the opinion of the Council, it is neither necessary nor advisable to amend the constitution for the purposes of the intended reform. Stanovisko Legislativní rady vlády ze dne 7. února 2008 [Opinion of the Legislative Council adopted on 7 February 2008].

⁷¹ See Martin Rozumek, 'Připomínky Organizace pro pomoc uprchlíkům k návrhu věcného záměru nového zákona o nabytí a pozbytí státního občanství České republiky [Comments of the Organisation for Aid to Refugees concerning the framework proposal of the new Czech Citizenship Law]', 15 August 2007, www.migraceonline.cz.

⁷² Government Resolution of 17 March 2008, No. 254, point II.

In April 2009, the Ministry circulated a draft of the new citizenship code for inter-ministerial comments,⁷³ but did not submit the draft to the government in May as planned. This was due to the unexpected fall of the government in spring 2009 and the consequent decision to hold new parliamentary elections.⁷⁴ It is most probable that the legislative procedure will resume after the new government is established.

The draft code largely follows the blueprint discussed above. It diverges substantially, but not surprisingly, only in one point, namely the question of dual citizenship on the entry side. According to the draft, it remains a general condition for naturalisation that the foreigner renounces his previous citizenship.⁷⁵ However, the draft code extends somewhat the conditions for waiving the requirement.⁷⁶

In line with the aim of tightening up conditions for naturalisation, the Ministry proposed in the 2009 draft (in addition to the conditions mentioned in the 2007 blueprint) a further eligibility criterion for naturalisation, namely the integration requirement. The applicant has to prove that there is a close, permanent and factual relationship between him or herself and the Czech Republic and, further, that he or she is integrated into the Czech society, in particular as regards integration from the family, work and social perspective. In sum, the conditions for naturalisation are so extensive and vague that proving them in practice would in many cases prove difficult and burdensome.

The draft law also introduces a special procedure to withdraw the citizenship within three years after its acquisition by naturalisation or declaration, if the acquisition was a result of fraud. The special procedure is called ‘renewal of procedure to grant citizenship’. The draft contains a considerable number of controversial provisions, some not mentioned in previous drafts, such as limiting the judicial review in naturalisation cases to procedural aspects only.⁷⁷ The major liberalising provisions concern, in line with previous drafts, facilitated acquisition of citizenship by former Czechoslovak and Czech citizens and their children and grandchildren and by second-generation immigrants. These categories would acquire Czech citizenship by declaration, if they meet eligibility requirements.⁷⁸

⁷³ *Návrh zákona o státním občanství České republiky a o změně některých zákonů*. [Draft Act on the Citizenship of the Czech Republic and on Amendments to Certain Laws.] 17 April 2009, MV-13709/LG-2009. The proposal was also published on the government run open web page Knihovna legislativního procesu [Legislative Process Library] at <http://eklep.vlada.cz/eklep/page.jsf>.

⁷⁴ On 24 March 2009, the Chamber of Deputies expressed a vote of no-confidence in the government. On 8 May 2009, the right-wing centrist government of the Prime Minister Mirek Topolánek was replaced by the interim government of Prime Minister Jan Fischer.

⁷⁵ The explanatory report to the draft law does not give any detailed reasons why the Ministry finally preferred this solution over the formerly discussed liberal alternative.

⁷⁶ The Ministry can, inter alia, waive the condition for any foreigner who (being otherwise eligible for naturalisation) lives in the Czech Republic for ten years and five years thereof as a permanent resident. At present, it is 20 years. Most foreigners seeking naturalisation will be able to meet this requirement at a certain point in time. Nevertheless, if we consider the restrictive practices of the Ministry in relation to the waiver of the renunciation requirement, it is not likely that the provision, if adopted, would alter the *status quo* in a significant way.

⁷⁷ Further problematic points include, but are not limited to the following. The draft gives priority to alleged public interest and security concerns over the principle of eliminating statelessness, disadvantages certain children born out of wedlock in relation to acquisition of citizenship and extends the duration of administrative proceedings.

⁷⁸ In the 2009 draft the qualification requirements with regard to the three groups, former citizens, children and grandchildren of former citizens and second generation migrants, vary. They are most relaxed in relation to the first category, where a one-year stay on the territory or permanent resident status is sufficient. For the second category, the permanent resident status plus one-year stay are requested. The third category has to meet the strictest criteria, which includes the clean criminal record.

To summarise, the analytical documents and legislative drafts produced so far present a mixed picture. One trend that we can clearly observe is a gradual shift from a more open, liberal vision to a more restrictive regime. This partly reflects political changes at the governmental level. In particular, the stricter attitude to dual nationality in relation to naturalisation can be seen in context of integration policies. Whereas the social democratic government focused more on integration policies, the following centrist-right wing government preferred temporary labour migration. A complementary explanation says that the Ministry produced the drafts within the context of a dispute between the executive, on the one hand, and the judiciary, the Ombudsman and non-governmental sector, on the other (see also section 4.2. below). In this perspective, the proposed statutory restrictions react to pressure for more liberalisation exercised by independent stakeholders.

The direct influence of political parties on the reform plans does not seem to be dominant. I assume that this corresponds to the fact that citizenship reform is not high on the political agenda of any major political party as respective constituencies perceive this issue as marginal. This is, however, a hypothesis which would deserve some empirical verification.

4.2. Political and legal debates

Restitution and citizenship

As one of the conditions for property restitution introduced in the early 1990s was the Czechoslovak (Czech) citizenship of the applicant,⁷⁹ legislators and the general public have consistently viewed citizenship legislation and its changes in this context. Notwithstanding the criticism of various international bodies, including the UN Human Rights Committee,⁸⁰ this restriction has been retained both by the legislature and by the Constitutional Court.⁸¹ The need to protect legal certainty, ownership rights, and the stability of the legal order were raised to defend the status quo. As a result, the link between restitution of citizenship and restitution of property often hampered the adoption of more inclusive citizenship legislation. Lukewarm attitudes towards Czech emigrants among part of the local population also influenced the discussion on the possible extension of the legislation on reacquisition of Czech citizenship. Finally, the 2006 amendment to Act No. 193/1999 Coll. on the Citizenship of Some Former Czechoslovak Citizens merely abolished the deadline for making a declaration on the reacquisition of Czech citizenship. The senate, without support of the government, pushed the bill through parliament.⁸²

⁷⁹ This requirement was not contained in all restitution laws.

⁸⁰ The Human Rights Committee expressed its views in several cases, e.g. No. 516/ 1992 (*Simunek et al.*), 586/1994 (Joseph Adam), 857/1999 (*Blazek et al.*) and 747/ 1997 (*Dr. Karel Des Fours Walderode*), that ‘a requirement in the law for citizenship as a necessary condition for restitution of property previously confiscated by the authorities makes an arbitrary, and, consequently a discriminatory distinction between individuals who are equally victims of prior state confiscations, and constitutes a violation of article 26 of the Covenant [on Civil and Political Rights]’. Alone in 2008, the Committee expressed its views in five similar cases. Case No. 1484/2006 (*Lněnička*) illustrates that the acquisition of citizenship under the second restitution act (No. 193/1999 Coll.) had no impact on the property restitution claim made by a person, who lost the Czech citizenship due to the 1928 naturalisation treaty with the US.

⁸¹ See Judgement of the Constitutional Court published under No. 185/1997 Coll. The European Court of Human Rights declared cases that concerned the restitution of property inadmissible. See European Court of Human Rights, Grand Chamber decisions of 10 July 2002 as to the admissibility of application no. 38645/97, *Polacek v. the Czech Republic* and application No. 39794/98, *Gratzinger v. The Czech Republic*.

⁸² A mixed group of senators, most of whom were independent, prepared the bill. At the same time, most of them were members of the Standing Committee of the Senate for the Compatriots Living Abroad.

The link between the restitution or the retention of citizenship and the restitution of property also plays a key role in relation to the 1945 Beneš decree, which deprived people of German and Hungarian ethnic origin of their Czechoslovak citizenship. The interpretation of the post-war decrees is crucial in some restitution cases and remains highly controversial.⁸³ The prevailing public opinion on the restitution of German property is negative. Therefore, it is not surprising that the government does not contemplate any change in the citizenship legislation in this regard. The decrees thus remain a sensitive political issue not only in Slovakia and Hungary, but also in the Czech Republic.

Discretion and judicial review

As indicated above, the establishment of the institution of the Ombudsman in 2001 and the Supreme Administrative Court in 2003 were greatly beneficial for the theory and practice in the citizenship area.

In the sphere of citizenship law, the Ombudsman was critical to administration of naturalisation. He criticised, *inter alia*, a routine of considering additional criteria in naturalisation procedure that are not stipulated in any regulation⁸⁴ and the practice of extending for several years deadlines for furnishing a document proving a loss of previous citizenship (in situations where an applicant is objectively not able to take effective steps to renounce his previous citizenship).⁸⁵ Further repeated objections concerned the absence failure to give reasons in the negative decisions of the Ministry to grant citizenship in certain cases.⁸⁶ The ombudsman also expressed an opinion that legislation based on the principle of exclusive and sole citizenship is unjustifiably strict.⁸⁷

As confirmed by the ombudsman, the most problematic aspect of the naturalisation procedure is the extensive discretion of the Ministry of the Interior and the way in which the Ministry uses it. In practice, the Ministry's negative decisions did not often constitute grounds for rejection of an application, but referred vaguely to administrative discretion as such and to the fact that there is 'no legal right to be granted citizenship'. The Ministry altered this practice to some extent in reaction to the criticism by Ombudsman and the new approach by the Supreme Administrative Court (see below). Nevertheless, 'cases of extremely vague and unsatisfactory justifications, which evoke by their content a negative decision resulting not from discretionary, but arbitrary considerations of the administrative organ, are not an exceptional' (Kučera, 2005: 666).

Until recently, the courts conducting the judicial reviews have sustained the practice. They agreed with the Ministry that naturalisation cases can not be reviewed by courts because naturalisation is the expression of unlimited state sovereignty and takes place in the sphere of

⁸³ Some of the judicial cases concern the citizenship of deceased persons, as the right to restitution by heirs depends on this issue. In certain cases, the Ministry of the Interior completed legal proceedings that had started in the late 1940s, using the then valid citizenship legislation. (See e.g. Judgment of the Supreme Administrative Court of 27 November 2003, ref. no. 6 A 90/2002-82 (www.nssoud.cz) and the Judgment of the Constitutional Court of 29 June 2005, 1ÚS 98/04 (www.concourt.cz)).

⁸⁴ Annual Report on the Activities of the Public Defender of Rights 2007, Section III. 2.15, www.ochrance.cz.

⁸⁵ Annual Report on the Activities of the Public Defender of Rights 2006, Section II. 2.21, www.ochrance.cz, Annual Report on the Activities of the Public Defender of Rights 2005, Section II. 2.9, www.ochrance.cz.

⁸⁶ Annual Report on the Activities of the Public Defender of Rights 2004, Section III. 2.3. The criticised absence of justifications was linked to the examination of the applicants from the perspective of national security.

⁸⁷ Annual Report on the Activities of the Public Defender of Rights 2004, Section III. 1.10.

absolute administrative discretion (see also Molek & Šimíček 2005, Kučera 2005). The newly established Supreme Administrative Court brought about a cautious shift in the jurisprudence regarding the use of discretion in naturalisation procedures (Molek & Šimíček, 2005: 145-146). Finally, in 2005, the Court ruled that the naturalisation procedure is subject to judicial review and, in 2006, the Court also rejected the whole theory of unlimited administrative discretion in these procedures.⁸⁸ Nevertheless, more than two years after the Court issued its unequivocal judgment concerning judicial review (2006), it had to confirm the earlier decision by yet another ruling.⁸⁹

Most recently, the idea that discretionary naturalisation should be completed or replaced by granting a right to naturalisation once the specified conditions are met, is gaining some ground within the administration and the justice system.⁹⁰ However, the Ministry of the Interior, a key player in the formulation of citizenship policies, still rejects the idea strongly.

One may point to the deep roots of the idea of absolute discretion in the pre-war Czechoslovak legal scholarship and jurisprudence in order to explain why the executive and part of the judiciary resists attempts to introduce more accountability and transparency into naturalisation procedures (see Kučera 2005, Pipková 2005). However, there are also non-legal, cultural factors playing a role. They influence the divergent opinions on the desirability of including 'others' into the national body.

5 Conclusions

Since its creation in 1918, the Czechoslovak and later Czech (1993) citizenship legislation has developed a peculiar, dual nature. On the one hand, there is a set of rules linked to certain momentous historical events, such as the creation or rebirth of the state, shifts of borders or changes in political regime. Due to a turbulent history of the twentieth century, these rules were numerous and complex. On the other hand, there is an underlying layer of standard rules and practices which, in spite of changing political regimes, remain largely stable and develop slowly. These rules have so far preserved the overarching 'statist' spirit of the Czech citizenship law.

Seen as a whole, the Czech citizenship legislation seems to develop in cycles. A revolutionary period dominated by the former set of rules is followed by an evolutionary phase in which some consequences of the previous Jacobin rules are smoothed down. Finally, the consolidation phase follows in which standard rules and practices shift to the focus of policies.

⁸⁸ Resolution by the Supreme Administrative Court of 23 March 2005, 6A 25/ 2002-42 and Judgment by the Supreme Administrative Court of 4 May 2006, 2As 31/2005-78. (www.nssoud.cz). In the former ruling the Court decided that the applicant for naturalisation has a legal right to submit complaint against the negative decision on naturalisation, if he maintains that his rights as a party in administrative proceedings have been violated. In the latter case the Court rejected the theory of unlimited administrative discretion in these procedures and ruled that in naturalisation procedures the Ministry decides on the individual (subjective) public right of the applicant, even if there is no legal entitlement to be granted naturalisation. This implies that all naturalisation decisions can be reviewed.

⁸⁹ Judgment by the Supreme Administrative Court of 20 August 2008, 8 As 41/2007 - 33, (www.nssoud.cz). In this case the Municipal Court in Prague disregarded the above discussed Supreme Administrative Court's jurisprudence.

⁹⁰ In the discussion on the draft citizenship legislation in 2007-2008, the Ministry of Justice, the Supreme Administrative Court and the Minister of Human Rights and Minorities supported this idea.

The fall of the communist regime in 1989, the break-up of Czechoslovakia and the establishment of an independent Czech state in 1993 brought about the last revolutionary phase. The 1989 ‘Velvet Revolution’ resulted in two changes in the sphere of citizenship law: the constitutional ban on deprivation of citizenship against one’s will and new laws which regulated restoration of citizenship by persons who lost it under the communist rule. As the revolutionary ethos fades, the former achievement is under increased pressure. The latter is likely to evolve into a permanent, broadly formulated preferential incorporation for some former Czechoslovak and Czech citizens and their descendants. The proposed open citizenship regime for former citizens and their children and grandchildren is a striking contrast with the closed naturalisation regime. The relaxed regime for former citizens can be justified by the enduring need to remedy past injustices. Yet, it is an open question whether it constitutes some kind of veiled ethnic preference as well. In this regard, one has to keep in mind that the former Czechoslovakia was a ‘residual’, multiethnic state. Even if minority groups were dramatically weakened after the Second World War and the draft legislation incorporates the 1945 ‘Beneš decree’, it is still quite probable that some former citizens are ethnic Germans, Slovaks, Hungarians and Ukrainians. Moreover, the children and grandchildren are likely to have diverse identities. Therefore, my explanation is that it is rather a cultural preference coupled with another emanation of the statist spirit of the law. With a bit of irony one could perhaps say that in the Czech case, the ‘blessed ties that bind’ are not blood or territory, but the state.

The consensual division of Czechoslovakia caused many problems regarding citizenship. The new legislation did not generate *de jure* stateless persons. However, the consequence of the restrictive and inadequate citizenship legislation was that some former Czechoslovak citizens ended up with the citizenship of a successor state in which they did not live and to which they were only formally attached.⁹¹ In other words, the genuine link between the state and its citizen was missing, whereas such a link clearly existed in relation to another state. This revealed the need to clarify international rules concerning the state succession in relation to citizenship.⁹² It also raised a puzzling question: Does the right to citizenship imply a right to choose one’s own citizenship?

By the application of remedial provisions introduced in the period 1993-2003, most of the problems related to the break-up of Czechoslovakia have been solved. Nonetheless, the original intention of the legislators to avoid dual Czech and Slovak citizenship has not been fully achieved. On the contrary, the precarious position of some groups of citizens showed that there are situations in which it is not justified to deny a person the right to dual citizenship. The effect of the ‘slippery slope’, coupled with court decisions, also played a role in the piecemeal extension of toleration outside the ‘post-revolutionary’ (restoration of citizenship) and the ‘post-partition’ (dual citizenship in relation to state succession) domains. In this way, the ‘out of necessity’ toleration of dual nationality finally led to the debate on the full abandonment of the single nationality principle.

In 2003, with the decision to prepare a new citizenship law, the legislation entered into a consolidation phase. However, different stakeholders viewed reasons for the reform and its

⁹¹ In many cases, Slovak citizens living in the Czech Republic had even difficulties to acquire permanent resident status (Boučková & Valášek 1999). In some of these cases, the situation developed into *de facto* statelessness.

⁹² The variety of solutions adopted in the numerous cases of state succession made it difficult to prove the presence of a concrete and detailed customary law on state succession and citizenship. It was only the 1997 European Convention on Nationality that introduced certain generally applicable rules on citizenship in cases of state succession.

desirable outputs with differing preferences. The Ministry of the Interior, the strongest player, wanted to consolidate the legislation into a single code, to terminate the specific regime which evolved in relation to the Slovak citizenship and Slovak citizens in the remedial phase and to put the legislation fully in line with the 1997 European Convention on Nationality. Other stakeholders, such as the Human Rights Council and non-governmental organisations representing immigrants' interests, saw the need to respond to challenges linked to increasing immigration as core task for the reform.

Currently, the reform plans are delayed and there is a trend towards abandoning the original, more liberal vision and limiting changes to a minimum. Moreover, the Interior Ministry sees the reform as a chance to defend the old, 'statist' spirit of the law and some of the contested practices, which are becoming increasingly under attack by the new independent bodies, the Ombudsman (established in 2001) and the Supreme Administrative Court (2003).

At present, the Czech citizenship legislation is stuck between the past and the future. The proposed reform can, after the legislative process resumes following parliamentary elections, bring some vital changes regarding the approach to dual citizenship and in relation to second generation immigrants. It could be a milestone on the road towards a more liberal and modern understanding of citizenship. This liberal version could be seen as a new sequence in the process of softening the traditionally strict citizenship regime which started with the revolutionary ban of deprivation of citizenship and continued with broader tolerance towards dual nationality. However, the planned reform could also turn out to be a Trojan horse in the camp of those who adhere to liberal, cosmopolitan and human rights approaches to citizenship. While offering some minor concessions, the reform can cement the archaic features of the citizenship regime for decades to come.

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