INTRODUCTION

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1 Nationality and citizenship in Europe: a common concern for all Member States

Nationality or citizenship has been called upon to be all things to all people: civil rights, political participation, social welfare, identity and recognition, the common good and the consciousness of community (Liebich 1995: 27). Formally, nationality is defined as the legal bond between a person and a state. It is a guiding principle of international law that it is for each state to determine under its own law who are its nationals. However, with the development of human rights since the Second World War, the trend has been towards recognition of the right to a nationality as a human right and it has been accepted that, in matters of nationality, states shall also take individual interests into account. Nationality not only links an individual to a state, it also links individuals to international law; in the EU it also provides individuals with a specific set of rights within this supranational Union.

All fifteen EU Member States compared in this volume have experienced immigration as well as emigration and they face the same legitimate expectations from both immigrants and emigrants. However, their responses have been quite different. Some states have reacted to problems with immigrant integration by promoting naturalisation and by granting second and third generations of immigrant descent a right to their nationality, while others have made access to nationality more difficult for immigrants and their descendants. Some states have seen an interest in maintaining ties with their emigrants by allowing them to naturalise abroad without losing their nationality of origin, while others have refused to do so.

The nationality policy of each individual state determines who becomes a Union citizen with corresponding rights in all Member States. This might call for common European standards with regard to nationality. Although international law has traditionally recognised the exclusive jurisdiction of individual states in nationality matters, the possibilities for adopting more uniform nationality rules have been discussed before (Rosenne 1972: 48). Thus, in 1924 the International Law Association prepared a draft regarding the uniform regulation of questions

of nationality. One suggestion was to embody the relevant clauses in national legislation via a 'model statute', but the proposal was turned down by the experts preparing The Hague Codification Conference in 1930. The quest for uniformity was considered problematic in the absence of universal jurisdiction and common jurisprudence, so that the different countries' practical application and interpretation of the law could not be expected to be identical.

According to the EC Treaty, every person holding the nationality of a Member State is a citizen of the Union and, as such, has the right to move and reside freely within the Member States. The Court of Justice has held that it is not permissible for a Member State to restrict the effects of the grant of the nationality of another Member State by imposing additional conditions for recognition of that nationality with a view to the exercise of the fundamental freedoms provided for in the EC.[1] Thus, Member States with harsh naturalisation criteria are not entitled to withhold the benefits of fundamental freedoms under Community law from Union citizens who have naturalised on easier terms in other Member States.

In the EU, regulating access to nationality in a Member State and thereby access to Union citizenship has, however, been fully devolved to Member States. This is surprising, compared to the quite different solution arrived at when a Nordic Union was discussed after the Second World War (Larsen 1944). As in the EU, the national identity of each Nordic state was seen as an obstacle to introducing a common Nordic nationality. It was therefore recommended that Nordic Union citizenship should complement rather than replace the nationality of a Member State. But, unlike in the EU, this led to a discussion of the consequences for the Member States' regulations on acquisition and loss of nationality and it was concluded that significant differences between the Member States' nationality legislation could not be maintained. For example, it would have been an odd situation if a foreigner born in Denmark could acquire Danish nationality at the age of nineteen and then move to Finland and enjoy equal rights there with native Finns in Nordic Union matters, while a foreigner born and raised in Finland would still be deprived of such rights. Since Nordic Union citizenship was meant to be attached to the nationality of each Member State, more uniform legislation on the acquisition and loss of nationality was found to be necessary.

This conclusion has not been drawn in the European Union. Harmonisation of nationality laws clearly falls outside the competence of the Union. However, the institutions of the Union have recently recognised the need to exchange information and to promote good practices in this area.[2] In this book we provide the necessary background for this goal. We examine and compare in depth the nationality laws of the fif-

teen old Member States, we identify trends and areas of special concern and we make recommendations for minimum standards and highlight good practices.

2 Terminology and research design

This volume summarises the results of the EU-funded project, 'The Acquisition of Nationality in EU Member States: Rules, Practices and Quantitative Developments (NATAC)'. Due to its stringent methodology and terminology, the research design of this project differed considerably from other comparative studies of nationality policies.[3] Frequently, such studies are mainly collections of country reports from which few, if any, comparative conclusions are drawn. In contrast, the ambition of this project was to be truly and more directly comparative by asking the same detailed and structured questions in all countries and by applying, as far as possible, the same terminology in this process. Below we give a short overview of the main parts of this publication, the project on which it is based and the methodology applied.

As a first step, a glossary of important terms in the area of acquisition and loss of nationality was drafted, which all project participants were urged to respect when writing their contributions for the project. Definitions concern different statuses (nationality, citizenship, special nationality status, multiple nationality, etc.) as well as types (by birth, naturalisation, declaration, etc.) and modes of acquisition (e.g. ius sanguinis, residence-based or affinity-based acquisition, transfer or extension of acquisition) and loss of nationality (lapse, withdrawal, renunciation, etc.). Most importantly, we use the term 'nationality' in this context, rather than 'citizenship', to denote the legal relationship between a person and a state as recognised in international law. We are aware that citizenship and nationality are often used synonymously and that some domestic laws use only the former concept. We are also aware of the ambiguities of 'nationality' which, in some contexts, refers to national identity or membership of a national minority. Public international law, however, interprets the term 'nationality' in the same sense as we do, i.e. as a legal relationship between individuals and states. The term 'citizenship', by contrast, is used for the sum of legal rights and duties of individuals attached to nationality under domestic law. The complete glossary can be found in the annex to this volume.

As with most other projects, country reports were commissioned in which the history of nationality law and policy as well as the most important features of current nationality law and administrative practice in this area are described and analysed for each of the fifteen EU Member States before the latest round of accessions in May 2004. Project

partners were given detailed guidelines concerning the required contents and structure of these reports. The country reports provided important input for most of the other sections of the project described below and they are published in Volume 2 of this publication.

In order to be able to compare different ways of acquiring and losing nationality more directly than would have been possible on the basis of a country report approach alone, typologies of 27 generally defined modes of acquisition and fifteen modes of loss were developed, which are outlined in Chapter 2. All the national regulations concerning acquisition and loss of nationality in the fifteen countries compared were then classified on the basis of these typologies and short descriptions of the most important conditions and procedural aspects were produced for all national modes in force at the end of 2004 or at the beginning of 2005, as well as for all important modes in force at some point since 1985. Additionally, we selected modes of acquisition and loss for in depth-analysis that we regarded as specifically important because of their numerical, political or normative salience. These were then described on the basis of detailed questionnaires, which covered basic technical information (legal basis, entry into force and expiry), procedural characteristics (type of procedure, responsible authorities, possibilities of appeal, etc.) and material conditions (residence requirements, integrity clauses, conditions of integration, reasons for loss of nationality, etc.) as well as major changes to procedural details and conditions since 1985. These descriptions were the main input for two extensive comparative reports on current rules as well as for the analysis of patterns, developments and regime types with respect to the acquisition and loss of nationality. The short versions of these reports are contained in this volume as Chapters 3 and 4, whereas the long versions are available under www.imiscoe.org/natac. On this website, you can also find the collected short descriptions of all modes of acquisition and loss of nationality, as well as the completed questionnaires for the most important modes. We hope that this wealth of material will be useful for references purposes regarding specific countries or regulations, but also for further research and analysis by other scholars.

The project team considered it very important not just to use laws, decrees and other legal texts as sources of information in the analysis, but also to take into account administrative practice in the area of the acquisition of nationality. However, due to the limited time and resources available, it was impossible to conduct interviews with public officials responsible for administering acquisition procedures or even with persons undergoing naturalisation themselves. We decided therefore to ask NGOs providing counselling in this field about their experiences. The project coordinators developed a questionnaire covering various aspects of acquisition procedures (acquisition requirements, multi-

ple nationality, fees, documents and other procedural aspects, preparatory courses and counselling) and nationality policy in general (legal and political trends, incentives for the acquisition of nationality, unintended consequences of nationality policy, naturalisation campaigns), which the Brussels-based Migration Policy Group (MPG) used to conduct a survey among NGOs in the fifteen countries covered. The comparative report by the MPG on NGOs' experiences, evaluations, recommendations and demands for policy change can be found in Chapter 5 of this volume.

Certain transversal questions could not be answered exhaustively on the basis of the aforementioned country reports and questionnaires. These questions concern issues of gender equality, the rights of multiple nationals and expatriates, and the statuses of three groups of persons – 1) denizens, 2) quasi-citizens and 3) nationals whose rights are restricted because of the short time they have held nationality, the way they acquired nationality or because of their status as 'special nationals' (e.g. British Overseas Territories Citizenship in the United Kingdom). The rights of these groups are more extensive than those of newly immigrated foreign nationals, but still not on a par with those of 'regular' nationals residing in the country and enjoying all the rights of citizenship. To gather information on these issues, a separate 'special questionnaire' was developed, which was answered by each of the fifteen country correspondents. Gender equality issues are analysed in Chapter 7, concerning trends in nationality law and practice and summarised in section 3.2 below, while the other questions are dealt with in three separate chapters. The comparative chapters on denizens (Chapter 9) and quasi-citizens (Chapter 10) shed additional light on the intricate distinctions between the status of nationals and non-nationals and the rules of transition between them. The same is true for nationals with restricted citizenship, whose rights and obligations are analysed in Chapter 8, together with those of expatriates and multiple nationals.

Even though nationality law is one of the core areas of state sovereignty, public international law as well as European law nevertheless exert a certain influence on the nationality policies of EU Member States. The project, therefore, also included the drafting of a chapter on the legal frameworks of public international law and European law and their implications for the Member States' nationality laws (Chapter 1). In this analysis, special emphasis was placed on the acquisition and loss of nationality, questions of multiple nationality, implications for the co-ordination of Member States' nationality laws and the concept of European Union citizenship.

Existing comparative studies either concentrate mainly on rules and/or administrative practices in the area of the acquisition of nationality,

or they primarily analyse statistics concerning nationality acquisitions. Studies of the first type thus mostly fail to make precise comparative statements about the quantitative importance of different modes of nationality acquisition, while those of the second type are frequently unable to provide exact information concerning which modes of acquisition are actually covered by the statistics and which are not. The significance of comparisons is seriously called into question in both cases. By contrast, the NATAC project was intended to bring these two strands of research together for the first time and to include statistics on loss of nationality at the same time. The ultimate aim was a complete account of all acquisitions and losses of nationality at birth and after birth that would allow general statements about the emphasis states put on different, broader types of acquisition and loss of nationality. The main result of the analysis of the statistics in Chapter 6 is, unfortunately, that the availability and quality of statistical data in this area leave a lot to be desired. In a few states, not even the most basic statistics on the acquisition of nationality are available, in most states, technical information on the actual content of statistics regarding the acquisition (and loss, if available at all) of nationality is very superficial and, in practically all states, certain modes of acquisition of nationality (even those after birth) are not covered by the available statistics.

Finally, all project sections described above were sources of information for two additional chapters that were drafted for this volume. On the one hand, Chapter 7 summarises the general trends in nationality law and practice in the EU15 states and thus complements the analysis of trends and developments with respect to specific modes of acquisition and loss of nationality in Chapters 3 and 4. On the other hand, in Chapter 11 we evaluate the policies described in the previous chapters and propose a number of detailed recommendations with respect to various aspects of nationality policy on the basis of a small number of general guiding principles (see section 4 below).

3 Main Trends

3.1 Sources of convergence and divergence

The comparative and country reports in this book demonstrate a bewildering complexity of rules and regulations for the acquisition and loss of nationality. There is no overall 'European model' of citizenship legislation, nor is it immediately possible to group several countries into internally coherent clusters with similar citizenship regimes. For a number of reasons, this is not entirely surprising. First, nationality laws, and citizenship policies more broadly, have been shaped by particular histories of state and nation building and European history is probably

more diverse in these respects than that of any other geographic region. Second, nationality law is still a policy domain within which the states in our sample have maintained almost unlimited national sovereignty. While emerging norms of international law, most importantly those codified in the 1997 European Convention on Nationality, have had a clear impact in setting minimum standards, political integration within the European Union has so far not been a major cause of convergence. Third, nationality laws tend to become more complex over time. Countries often start with fairly short laws that spell out fundamental principles for the initial determination of nationality after independence or regime change and for acquisition at birth, leaving naturalisation and loss of nationality within a broad area of discretion for the administrative authorities. Where significant political pressure has built up from domestic pro-immigrant and anti-immigrant forces, as well as from expatriates, European governments tend to respond by refining legal provisions and increasing the frequency of amendments. We can therefore discern a general trend towards more complex regulation which automatically increases the diversity of provisions we find across our sample.

Political scientists distinguish different sources of policy convergence across countries: enforcement, coordination, imitation and normative pressure. In the absence of Community competence in matters of nationality law, there is clearly no enforcement and even less coordination initiated from above. We find, however, growing evidence for imitation across borders. Imitation occurs, first, at the level of governments observing how others (often of similar party composition) respond to problems regarding immigrant integration or populist anti-immigrant pressure; second, within the judiciary, where lawyers and judges increasingly borrow normative arguments that have been successful in deciding a controversy over nationality law in another country; and, third, within civil society where NGOs and migrant organisations often spread or cooperate across borders (even if their influence on policy-making at state level is generally weak).

While these forces are too weak to generate overall convergence, we still find specific trends with regard to certain modes of acquisition or loss of nationality. These are extensively described in Chapters 3, 4 and 7 of this book. Here we will merely summarise the impact of international law and the most important tendencies we have found in domestic reforms in the fifteen countries we have examined.

3.2 Trends in public international law and their impact

Since the nineteenth century, states have cooperated on nationality issues. A number of bilateral conventions have been concluded between

immigration and emigration countries, often with a view to solving problems relating to dual nationality and military service. In the twentieth century, a number of general international and regional conventions on nationality matters were concluded. The Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws (1930) was the first multilateral treaty concerning nationality law. With the adoption of the Universal Declaration on Human Rights (1948), the right of everyone to a nationality was recognised.

Subsequently, international cooperation has focused especially on how to solve the problems of statelessness – *de jure* and *de facto*. The Conventions relating to the Status of Refugees (1951) and the Status of Stateless Persons (1954) prescribe that the contracting states shall as far as possible facilitate the naturalisation of refugees and stateless persons and the Convention on the Reduction of Statelessness (1961) bases the right to a nationality for persons who would otherwise be stateless on ties with the state in which they were born or in which a parent held nationality at the time of their birth.

Later, the rights of married women and children to a nationality were brought into focus by conventions including the Convention on the Nationality of Married Women (1957), the International Covenant on Civil and Political Rights (1966), the European Convention on the Adoption of Children (1967), the Convention on Elimination of All Forms of Discrimination Against Women and the Convention on the Rights of the Child (1989). Other international instruments dealing with the right to a nationality include the Convention on the Elimination of All Forms of Racial Discrimination (1966) and the European Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality (1963).

A number of general principles were reflected in these conventions: the individual right to a nationality, the avoidance of statelessness and multiple nationality, the unity of family, the elimination of discrimination (especially gender discrimination), and the principle that the attribution of nationality to a person should be based on a genuine link with the state whose nationality is acquired. Over the years, legal developments have changed the relative weight of these principles, which is especially true for the avoidance of multiple nationality, which has given way to widespread tolerance. Therefore, the Council of Europe considered it necessary to adopt a new comprehensive convention with modern solutions to issues relating to nationality, suitable for all European states and, in 1997, the European Convention on Nationality (ECN) was adopted.

The ECN is considered one of the most important conventions of the Council of Europe. It has further developed the right to a given nationality and has already had a considerable impact on the nationality

laws of the states in our sample. Among the fifteen states, only five have not signed or ratified the ECN (Belgium, Ireland, Luxembourg, Spain and the UK). Thus, ten states shall refrain from acts which would defeat the object or purpose of the Convention and among these states, six have until now given their consent to be bound by ratification (Austria, Denmark, Germany, the Netherlands, Portugal and Sweden). As will be clear from Chapters 3, 4, 5 and 7, the Convention's influence in terms of relaxing the requirements for the acquisition of nationality is clear in matters of tolerance of multiple nationality, avoiding statelessness and gender equality with respect to the transfer of nationality to children. In terms of restrictive measures, it might be assumed that the ECN has been an incentive for recent amendments leading to a withdrawal of nationality in cases of fraud or conduct prejudicial to the vital interests of the state, but it seems more likely that the Convention has prevented more far reaching changes concerning the withdrawal of nationality, advocated by certain political parties.

3.3 Trends in domestic legislation

Chapter 7 on trends in nationality law describes and analyses recent developments in nationality law and policy in the fifteen old Member States. In addition, Chapters 3 and 4 provide further insights into trends with respect to certain modes of acquisition and loss of nationality, especially over the past decade. The most important finding is a new trend in many Member States since 2000 towards more restrictive naturalisation policies (especially in Denmark, France, Greece, the Netherlands, the United Kingdom and in Austria). However, countertrends were also observed in other states (Belgium, Finland, Germany, Luxembourg, Sweden and, most recently, in Portugal).

In the literature on nationality law, the assumption is of convergence towards more liberal naturalisation policies, with the aim of including large groups of permanently resident immigrants. Naturalisation has been perceived and used as an instrument supporting the integration of immigrants. Thus, the acquisition of nationality by second generation immigrants was facilitated, the requirements for naturalisation by first generation immigrants were reduced and multiple nationality was accepted. On these three issues, we observed recent developments in the opposite direction. Although almost all countries in our research have shown tendencies to facilitate the acquisition of nationality by second generation immigrants, this trend has been followed by a countertendency towards restricting the rights of the second generation. Access to naturalisation by first generation immigrants has become more difficult in several countries with the introduction of stricter language and integration requirements. There has been an even broader trend

since the early 1990s to make acquisition for the spouses of nationals or the extension of naturalisation to spouses more difficult by lengthening residence and marriage duration requirements and by removing exemptions from other naturalisation requirements. The purpose of this seems to be to reduce the incidence of marriages of convenience. Finally, and contrary to the restrictive tendencies in other areas, multiple nationality has been accepted in most countries. Only five of the fifteen Member States still require renunciation upon naturalisation: Sweden and Finland abolished the ban on multiple nationality in the past five years, and Luxembourg is discussing doing so in 2006.

The convergence hypothesis also cannot account for two country-specific phenomena. One is that Southern European countries (particularly Greece and Italy), although faced with large scale immigration, have generally adopted highly restrictive attitudes towards naturalisation. However, Spain has experienced a considerable increase in the number of naturalisations over the past five years and the Portuguese parliament has recently adopted a new nationality law that substantially liberalises naturalisation. The second phenomenon is that, since about 2000, several Western and Northern European countries have partly reversed their previous liberal policies. The concept of 'naturalisation as a means of integration' is apparently being replaced by another paradigm of naturalisation as the 'crowning of a completed integration process'. The implications of this policy shift are evident, for example, in the introduction of formal examinations of language skills and knowledge of society. Tests of knowledge about the country in naturalisation procedures were introduced in Denmark in 2002, in France and the Netherlands in 2003, in Greece in 2004, in the United Kingdom in 2005 and in Austria in 2006, and their introduction is currently (end of 2005) on the political agenda in Luxembourg. Since September 2005, a bill has been pending in the Dutch parliament that would even introduce mandatory language tests for persons who have already acquired Dutch nationality by naturalisation or by birth in the Netherlands Antilles.

However, several countries deviate from this trend towards more restrictive policies. The most obvious case in this respect is Belgium. It not only abolished the integration requirement for naturalisation and reduced the required residence period in 2000, but also introduced a new right to acquire nationality by simple declaration after seven years of residence. This change resulted in a substantial increase in acquisitions of nationality. However, the fear that naturalisation has become too easy has surfaced in this country as well. Other states that have considerably liberalised the rules for naturalisation since the beginning of the millennium are Germany (especially in reducing the required residence period from fifteen to eight years and in stating conditions

more clearly), Finland and Sweden (acceptance of multiple nationality) and Luxembourg (reduction of the required residence period from ten to five years, acceptance of multiple nationality is currently being discussed). As mentioned above, Portugal has joined this group in 2006.

3.3.1 Implementation of naturalisation policies

Opportunities to acquire a country's nationality are determined not only by the formal conditions laid down in nationality laws, but also by their practical implementation and more general public policies of welcoming or deterring new citizens. Long procedures, broad discretion, regional differences in implementation and the lack of effective rights of appeal are hardly less relevant as obstacles to naturalisation than formal requirements. Several Member States have made efforts to reduce the duration of naturalisation procedures, e.g. by introducing legal maximum durations or by decentralising the procedure. Only in three countries (the Netherlands, Luxembourg and Germany) is the discretion of authorities responsible for deciding on applications for ordinary naturalisation severely limited. In addition, in Belgium the authorities' room for discretion in procedures involving the acquisition of nationality by declaration after seven years of residence is also strongly curtailed. In the other countries, applicants are either entitled to acquire nationality, but the conditions they have to meet leave much room for interpretation by the authorities (Spain), or the competent authorities have the power to deny applications, even if all the statutory requirements have been met (all other states). Reducing administrative discretion, however, may also lead to more restrictive policies, as demonstrated by the introduction of formal language and integration examinations in the Netherlands and Denmark. Empirical information on the implementation of naturalisation policies may provide a very different and more accurate picture of access to nationality, of the actual effects of naturalisation policies and of those countries operating a liberal or restrictive policy. We suggest that more empirical research on the implementation of naturalisation policies is needed. In our book, analyses of implementation are based on assessments by academic experts and NGOs that provide counselling immigrants. Future research should also involve interviews with civil servants and studies accompanying immigrants through the application process (see Wunderlich 2005).

Chapter 7 also discusses two subjects that receive less attention in most of the literature on citizenship and nationality law: gender discrimination and the position of emigrants.

3.3.2 Gender

In general, gender inequality in nationality law is considered a thing of the past. However, our findings show that gender is still a topical issue in most countries, resulting in legislative activity in recent years. This activity relates mainly to the nationality of children. All fifteen countries have now gender-neutral ius sanguinis from both the father's and the mother's side. However, past gender discrimination in this respect has not been corrected consistently. Italy and Luxembourg introduced a fully retroactive option for nationality for these children, whereas in Austria and the Netherlands they could only make their claims within a transitional period.

The opposite kind of gender discrimination still persists in various forms for children born out of wedlock. In six of the countries covered by our study they do not automatically acquire their father's nationality at birth, even if the paternity has been established. Combating 'bogus recognitions' seems to be a concern that overrides gender equality in these cases.

3.3.3 Emigrants

Most literature on nationality law focuses on naturalisation policies concerning immigrants and neglects the facilitated acquisition or reacquisition of nationality by nationals abroad. However, many of the liberalising legislative activities in recent years in Southern and Northern European countries have actually focused on emigrants more than on immigrants. In some countries (especially in Sweden and Finland), tolerance of multiple nationality in naturalisations came about as a response to demands from expatriates.

Developments since 2000 could be qualified as a process of 're-ethnicisation'. With regard to emigrants, policies have generally become more liberal, whereas the inclination of Member States to be inclusive to immigrants living on their territory has declined. The former tendency is also evident in a growing number of states that grant their emigrants voting rights in general elections (see Chapter 8, section 8.4.1). It is still uncertain whether the restrictive trend towards immigrants will result in convergence and whether it will be a lasting trend. Another question is whether the ECN and the institution of Union citizenship will impose limits on this trend.

3.3.4 Affinity-based acquisition of nationality

Facilitating the reacquisition of nationality by former nationals is one element of the broader policies of promoting the acquisition of nationality by persons with an ethnic and/or cultural affinity to the country. Other groups of persons targeted by such affinity-based granting of nationality are descendants of former nationals, nationals of certain co-

lingual or otherwise culturally related foreign states, ethnic diasporas in particular regions of the world and persons with the same ethno-cultural background as the majority population of the country in question. As Chapter 3 demonstrates, the EU15 Member States can be grouped into three clusters in this respect. The first cluster is made up of Austria, Finland, the Netherlands, Sweden and the United Kingdom, which all facilitate the reacquisition of nationality to a certain degree as well as the acquisition of nationality by nationals of certain foreign states in some cases, but do not make special rules for persons simply on the basis of their ethno-cultural background. Belgium, Denmark, France, Italy and Luxembourg go further, in that they also facilitate the acquisition of nationality by persons with a certain ethnic or cultural background or descendants of former nationals, but usually only once they have (again) taken up residence in the country. Due to its policy of very smooth nationality acquisition by former nationals and their descendants residing abroad throughout much of the 1990s, Italy has a lot in common with the third cluster of states, which comprises Germany, Greece, Ireland, Portugal and Spain. The main shared feature of these states is that they all have policies for granting nationality to ethnic diasporas or descendants of former nationals, even if these persons reside abroad. In addition, Germany and Greece also aim to 'repatriate' ethnic diasporas from the former Soviet Union, but in the late 1990s and early 2000s both states tightened the initially very liberal rules for the acquisition of nationality for such ethnic 'repatriates' to some degree. By contrast, Spain eased the conditions for descendants of former nationals (irrespective of where they reside) and both Spain and Portugal have recently liberalised their rules for reacquisition by former nationals residing abroad.

3.3.5 Loss of nationality

Chapter 4 describes modes of loss of nationality and highlights a number of trends in this area. Two of the reasons for a loss of nationality have clearly become less commonplace in recent years. The first is the acquisition of a foreign nationality, which may now lead to the loss of nationality under certain circumstances in eleven states. Sweden and Finland abolished the corresponding provision within the past five years and Austria, the Netherlands and Spain have introduced extended possibilities for retention of nationality for certain groups of nationals in cases where naturalisation takes place abroad. The main counter-example is Germany which, in 2000, abolished the rule that nationality is not lost if a foreign nationality is acquired, but residence in Germany is maintained. This change has dramatic effects for tens of thousands of Germans of Turkish origin who reacquired Turkish nationality after naturalisation in Germany. The second reason for loss of nationality

that has occurred less frequently in recent years is serious criminal offences: the corresponding provisions have been abolished in France (1998) and the United Kingdom (2002).

On the other hand, laws have been toughened regarding a number of rules for the loss of nationality. Most importantly, this concerns the withdrawal of nationality because it was acquired by fraudulent means. Such rules have been introduced in the laws of Denmark, Finland and the Netherlands since 2002 and, in Belgium, new or tighter rules are currently on the political agenda. Secondly, in the aftermath of 11 September 2001, some states also facilitated the loss of nationality when crimes against the state, including terrorism, have been committed. The United Kingdom, Denmark and the Dutch government have tightened existing rules or introduced new ones since 2002, or are currently planning such provisions. The only counter-example is Spain, where crimes against the external security of the state ceased to be reasons for the withdrawal of nationality in 2002.

Finally, extended residence abroad as a reason for the loss of nationality does not receive much public or academic attention, even though it exists in some form or another in nine of the EU15 states. Such provisions should be of special interest to the EU since they may have the effect of depriving Union citizens of their status because they make use of their rights of free movement (see also section 4.2 below). The past few years have seen considerable legislative activity in this area, but there is no clear trend. Spain introduced its provisions only in 1990 and 2002, and Ireland (2001), Finland and the Netherlands (both 2003) extended the groups of persons affected by their regulations. With the exception of Ireland, however, all these states also made it easier to take action to avoid this loss. In addition, Denmark (1999) and Sweden (2001) limited the applicability of their rules to persons who also hold a foreign nationality. Most importantly, though, in 1998 Greece abolished the heavily-criticised rule that nationals who are not of Greek orthodox descent could be deprived of their nationality, even if this made them stateless, once they abandoned Greek territory 'with no intention of returning'.

3.3.6 Quasi-citizens, denizens and nationals with restricted citizenship

In Chapters 9 and 10 we discuss the status of two categories of immigrants closely related to nationality. Both statuses relate to non-citizens who are treated almost as citizens, but for some reason do not enjoy full citizenship of the country of residence: quasi-citizens and denizens. The term *denizen* describes the status of a person approximately halfway between a citizen and a non-citizen. It is often used for immigrants who are granted free access to the labour market, the same rights as nationals to social security, a form of protection against sud-

den expulsion from the country and, sometimes, some political rights as well. *Quasi-citizenship* is defined as a status of enhanced denizenship that entails almost identical rights as those enjoyed by resident nationals, including voting rights at some level (local or national) or access to public office, as well as full protection from expulsion.

From the survey in Chapter 10, it appears that the legislation of six old Member States (Denmark, Greece, France, the Netherlands, Portugal and the UK) provides for one or more forms of quasi-citizenship. This status is related to the process of decolonisation or to the integration of immigrants, or it is granted to descendants of emigrants who left the country many generations previously. It is a transitional status often governed by rules closely related to those of nationality law. In countries that do not grant ius soli nationality to the children of immigrants at birth, the status of quasi-citizenship provides equal treatment during childhood and paves the way for the acquisition of nationality upon reaching the age of majority.

In most Member States, the rights attached to permanent residence status granted under national law remained unchanged after 2000. However, the general tendency in recent years has been to make it more difficult to acquire and more easy to lose this status. So far, the adoption of Directive 2003/109/EC on the status of long-term resident third country nationals appears to have had the 'perverse' effect of making access to denizenship status more difficult, with the introduction of a language and integration requirement or of longer residence requirements, as in France and the Netherlands. The UK, where the directive does not apply, has also adopted such conditions. Facilitation of access to this status occurred only in Spain. In Member States where this status has been easily accessible, once the residence requirement was met, very large numbers of non-nationals acquired this status. This is a clear indication that immigrants value access to denizenship, even if some of them might not yet consider naturalisation an attractive next step.

Alongside the growing numbers of non-nationals with nearly full citizenship, there are still several groups of nationals who do not enjoy full citizenship. In Chapter 8 we analyse such restrictions, including those affecting British nationals from overseas territories who are subject to immigration control, Danish nationals who must have held their nationality for 28 years in order to enjoy full rights to family reunification and a pending bill in the Dutch parliament that would impose integration tests on large numbers of naturalised citizens.

4 Main recommendations

4.1 General principles

The concluding chapter of Volume 1 contains our evaluation of laws and policies in matters of nationality and recommendations directed towards Member State governments and the European Union. These are grounded in four basic principles, the first of which is democratic inclusion. Long-term immigrants and their descendants should have access to nationality in order to promote their overall integration into society and to reduce the deficit of representation in democracies where the right to vote in national elections is tied to nationality, but where large numbers of the resident population remain excluded because of their foreign nationality.

Secondly, we propose a principle of stakeholding that recognises that expatriates, as well as their countries of origin, have a legitimate interest in retaining legal and political ties across international borders. While first generation emigrants must be free to renounce their nationality, they should not be deprived of it against their will. States should recognise that most migrants are stakeholders in two different countries. Dual nationality should therefore be tolerated not merely when it emerges at birth, but also through naturalisation. The principle of stakeholding does, however, restrict access to a nationality without any genuine link and leads to a recommendation that ius sanguinis acquisition of citizenship should generally expire with the third generation, i.e. for children born abroad, both of whose parents were also born abroad.

Thirdly, nationality laws should fully take into account human rights norms enshrined in the international conventions discussed in section 3.2 above. These entail facilitated access to nationality for refugees and stateless persons, as well as the principles of non-discrimination, including between men and women, between persons who have acquired nationality at birth or through naturalisation and between particular nationalities of origin. Finally, human rights principles also require that the rule of law and principles of due process be fully applied to naturalisation and loss of nationality.

Fourthly, states should adopt laws and policies that can be generalised and do not jeopardise friendly international relations. This would require states not to adopt policies towards their expatriates that they are not willing to accept as sending state policies towards foreign nationals on their own territory. The power of states to determine their own nationals must also be constrained when it subverts the legitimate interests of other states, which may be the case when a Member State of the European Union creates large numbers of new nationals abroad

who then enjoy the right to enter any other Member State of the Union.

4.2 Taking Union citizenship into account

The fact that Union citizenship is derived from Member State nationality and cannot be directly accessed intensifies the responsibility of Member States to take the European effects of their nationality laws into account. The lack of coordination between Member States in this matter creates three types of problem for the Union: first, the problem of fairness if conditions for access to the rights of Union citizens are very unequal among the Member States; secondly, the problem of the adverse impact of actions by one Member State on all others; and, thirdly, the negative consequences of geographic mobility within the Union for acquisition and loss of nationality.

While the first two problems can be addressed through the general principles outlined so far, the third problem calls for specific action in the European arena. Exercising one's right of free movement under Community law should not imply disadvantages concerning the acquisition and loss of nationality in a Member State. Currently, this is the case when nationality is lost after a longer period of residence abroad. States with such provisions in their laws should either abolish them altogether or adopt the recent Dutch reform that residence in another Member State does not lead to a loss of nationality. A similar argument applies to residence conditions for the acquisition of nationality. Union citizens or long-term resident third country nationals will be at a disadvantage with regard to access to nationality in another Member State if they have used their mobility rights under Community law extensively and cannot meet a residence requirement for naturalisation in that state. This problem can be greatly alleviated by generally reducing residence requirements for naturalisation. However, we make an additional recommendation that residence periods spent in another Member State should be taken into account, even if they may be given less weight or if a minimum time has to be spent in the country where nationality is being acquired.

Although all Member States face similar challenges to adapt their policies on nationality and citizenship to large-scale migration and European integration, variations between nationality laws partly reflect specific circumstances, such as immigration from former colonies or the existence of a large co-ethnic diaspora. We therefore do not suggest that the Union should strive for legal competence in matters of nationality that would enable it to harmonise legislation among Member States. Instead, we propose applying the open method of coordination in order to encourage mutual learning from good practices and conver-

gence towards minimum standards, grounded in the principles suggested above. For this process, a better knowledge of the facts will be essential. As discussed in Chapter 6, many Member States do not even collect or publish essential statistical data that would allow a comparison of the exact rates of acquisition and loss of nationality among different migrant populations and different countries. Current attempts to harmonise statistical data on migration should include a requirement that all Member States must provide reliable, comparable and sufficiently differentiated data on all modes of acquisition and loss of nationality.

4.3 Main recommendations for acquisition and loss of nationality

Our recommendations are based on a generational approach. Access to nationality should be automatic for the third generation whose parents were born in that country, entitlements to optional acquisition should be granted to the second generation and the 'generation 1.5' - those who were born abroad but raised in the country in question.

For first generation immigrants, naturalisation requirements should be clearly defined and implemented in ways that enable and encourage them to acquire the nationality of their country of long-term residence. We identify good practices along these lines in states that require a legal residence of no more than five years, do not require the renunciation of a previous nationality and do not exclude immigrants below a certain income threshold. The recent trend towards more extensive 'integration tests' should be evaluated by asking whether these provide positive incentives for immigrants or serve rather to exclude larger numbers from naturalisation. Expecting applicants for naturalisation to acquire basic language skills can promote their socio-economic integration and enable new citizens to participate in public political life. Written tests on language and knowledge of society, history and the constitution, however, do not provide sufficient flexibility in judging relevant skills and deter many poorly- skilled or elderly immigrants. On the other hand, vague criteria such as good character, level of integration or assimilation often give too much scope to arbitrary decisions or the discriminatory treatment of migrants of different origins.

Four categories of persons enjoy facilitated access to naturalisation in many countries. These are 1) refugees and stateless persons, 2) the spouses and minor children of nationals and of immigrants who are applying for naturalisation, 3) immigrants with historic ties or cultural affinity to the country of immigration and, 4) citizens of other EU Member States. We strongly advocate easier access to nationality for groups one and two because their claims are based on individual needs for protection through new citizenship or for family unity in matters of

nationality. Facilitated naturalisation based on ascriptive grounds of national or ethnic origin may be justified in specific contexts, but will often become problematic over time when immigration by people of many different origins increases, since easier access for some nationals will then be experienced as discriminatory by other immigrants with longer periods of previous residence.

Emigrants, although they will not be able to enjoy most of the citizenship rights of nationals residing in their country of nationality, still have a general claim to retention of that nationality. When they acquire the nationality of their country of residence, they must be free to renounce their previous nationality, but we suggest that they should not be forced to do so. Our recommendation for tolerating dual nationality among migrants who are stakeholders in two countries applies to immigrants as well as to emigrants. Several states in our sample also make specific provisions for the reacquisition of nationality by emigrants who have lost it under prior legislation, especially through marriage or because of a former renunciation requirement. We generally support these provisions but criticise the fact that some countries allow reacquisition only if the nationality was acquired by birth rather than through naturalisation.

Our final set of recommendations concerns the institutional arrangements and procedures for naturalisation. Even where the law itself does not create difficult hurdles, access to nationality may be blocked by administrative practices and implementation procedures. We recommend that applicants for naturalisation should not be burdened by high fees and excessive demands for official documents. There should be a maximum period within which applications have to be decided. Civil servants dealing with naturalisation should be trained and supervised, negative decisions should always have to be justified in writing and applicants should have the opportunity to complain and the right of appeal. Public administrations ought to provide assistance and cooperate with migrant organisations in helping immigrants prepare their applications and meet language requirements. In countries where the implementation of nationality laws is delegated to regional or local authorities, it is important to ensure uniform standards in applying the law.

Democratic countries of immigration should not only grant immigrants the opportunity to acquire nationality, but they also have a vital interest in encouraging them to do so. Common citizenship provides a reference point for solidarity in societies made up of people of diverse origins. Public campaigns promoting naturalisation and public nationality award ceremonies can be useful instruments. Such campaigns have been rare in Europe; not only would they raise the numbers of ap-

plications, they would also contribute to a more positive perception of immigrants as new citizens within the general population.

Notes

1 Case C-200/02 – Chen v. Secretary of State for the Home Department, ECR 2004, I-3887.
2 See the Presidency Conclusions of the Tampere European Council in October 1999 and the Communications by the Commission COM (2000) 757 and COM (2003) 336.
3 e.g. Nascimbene (1996), Aleinikoff & Klusmeyer (2000, 2001), Hansen & Weil (2001).