

## 8 Czech citizenship legislation between past and future<sup>1</sup>

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The main contours of the Czech (formerly Czechoslovak) citizenship laws were shaped by momentous historic events. Administrators, judges and lawyers smoothed over rough outlines made by political forces, adding to them exceptions, interpretations and remedies. Consequently, Czech citizenship legislation has always been complex.<sup>2</sup> This chapter follows the main trends of its development and gives a brief account of Czech citizenship legislation and the politics and policies linked with it since 1918. It focuses on responses to unprecedented social changes and challenges in the last two decades, which may be stimulating for the current debates on citizenship policies in the European and transnational context.

### 8.1 History of Czechoslovak citizenship policies

#### 8.1.1 *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.<sup>3</sup> Former Austro-Hungarian nationals, 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 treaties<sup>4</sup> and constitutional laws<sup>5</sup> 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: 38-39; Kristen 1989: 83). 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.<sup>6</sup> This was the case, for instance, with the *ius sanguinis* principle laid down in the 1811 Austrian Civil Code.

The end of the Second World War<sup>7</sup> 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 (both forced and voluntary) migration. 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 nationals of German and Hungarian ethnic origin were deprived of Czechoslovak citizenship.<sup>8</sup> On the other hand, Constitutional Act No. 74/1946 Coll. Concerning 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: 40-49). 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.

After the communists seized power in Czechoslovakia in February 1948, deprivation of citizenship was introduced as a supplementary penalty for certain political offences. A complex new citizenship legislation was adopted in 1949. Act No. 194/1949 Coll. on 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 community 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 community connected by shared dreams and ideals' (Černý & Červenka 1963: 19).

The law also provided for depriving people of Czechoslovak citizenship. It was applied as 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 and those who lived abroad for more than five years without a 'valid passport permitting its holder to live abroad'. These legal provisions existed until 1990.

The Prague Spring of 1968, a movement towards the liberalisation of communist rule, was accompanied by the Slovak national movement.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup> Under this legislation, Czechoslovak nationals automatically acquired the citizenship of either the Czech or Slovak Republic, based on their place of birth and some supplementary criteria.

The new legislation gave people a right to change the republic-level citizenship at their discretion but this right was rarely exercised. The reason was trivial: the republic-level citizenship had no practical consequences whatever. In fact, most citizens were not even aware of their republic-level citizenship.<sup>13</sup> 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.

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'.<sup>14</sup> In 1990, Act No. 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,<sup>15</sup> identified one strand of future development in the field of citizenship legislation that I will call *restitution* legislation.

### 8.1.2 *Break-up of Czechoslovakia and creation of the Czech citizenship*

The demise of the communist regime opened a space for the resurgence of nationalist feelings and politics.<sup>16</sup> In Czechoslovakia, the rebirth of the Slovak nationalist movement led to a consensual break-up of the federal state. In the fall of 1992, as the break-up of Czechoslovakia was increasingly becoming a realistic option (negotiated and carried through by the ruling political elite),<sup>17</sup> many Czechoslovaks started to think about their future in terms of citizenship.<sup>18</sup> 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. Until the end of 1992, some 65,000 Slovak republic-level citizens 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.<sup>19</sup> The primary aim of the law was to identify nationals of the new state and to prevent dual (Czech and Slovak) citizenship.<sup>20</sup>

The provisions of the new legislation fell into two main categories. The first was a set of transitory provisions regulating *initial determination* of nationals of the new state,<sup>21</sup> complemented by provisions governing the option for Czech citizenship. The other category involved rules of permanent nature, regulating e.g. acquisition of the Czech citizenship by birth, naturalisation or loss of Czech citizenship.

**Table 8.1** *Conceptual scheme of Act No. 40/1993 Coll. on the Acquisition and Loss of Citizenship of the Czech Republic*

	<i>Norms regulating initial determination of citizenship</i>		<i>Norms regulating standard procedures for acquisition and loss of citizenship (e.g. by birth, naturalisation)</i>
	<b>overall initial determination of citizenship</b>	<b>supplementary and corrective initial determination</b>	
<b>time aspect</b>	automatic operation of laws taking effect on 1 January 1993	temporary application of norms	permanent application
<b>personal scope</b>	core of nationals 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 same approach as regards overall (collective) initial determination was adopted by Slovak legislators. This prevented *de iure* statelessness in the wake of the break-up of Czechoslovakia.<sup>22</sup>

The primary rule was supplemented with a set of transitory provisions regulating the right of option and facilitating naturalisation for certain Slovak citizens. In the period from 1 January 1993 to 30 June 1994, 240,000 former Czechoslovak citizens acquired Czech citizenship under the option clauses.

The criteria for exercising this right of option, however, included not only two years of permanent residence in the territory of the Czech Republic, but also a clean criminal record.<sup>23</sup> The application of the latter condition had a disproportionate impact on members of the Roma (Gypsy) minority.<sup>24</sup> It was criticised by Czech human rights activists as well as by the international community. The criticism led to piecemeal adjustments and a softening of Act No. 40/1993 Coll. in relation to former Czechoslovak (now Slovak) nationals.<sup>25</sup>

In the decade following the establishment of the independent Czech Republic, public and political discourse on citizenship matters was dominated by one issue: 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 the autumn of 1998, with the change of government (from liberal-conservative to social-democratic), a more profound reform of citizenship legislation was put on the government agenda. This led to (a) significant alterations of the transitory 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 nationals. A ruling of the Constitutional Court of the Czech Republic of 5 May 1997<sup>26</sup> also fostered this development. The Court held that one does not lose Czech citizenship by one's declaration to opt for citizenship in the Slovak Republic. (These individuals became dual nationals.)<sup>27</sup> 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 nationals of Czechoslovakia to acquire Slovak citizenship without losing their Czech citizenship. (This is an exception to one of the declared principles of the Czech citizenship legislation, i.e. the prevention of dual citizenship.)

The law also introduced a simplified procedure for acquisition of Czech citizenship by declaration for former Czechoslovak nationals who had been living continuously in the territory of the Czech Republic since the break-up of Czechoslovakia. This was a corrective provision. It provided for acquiring 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.<sup>28</sup>

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 nationals 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 the lost Czech citizenship by declaration. The amendment also gave the right to acquire the Czech citizenship by declaration to certain groups of Slovak nationals who were minors at the time of the break-up of Czechoslovakia.<sup>29</sup>

(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. Originally, the applicability of the law was limited to five years after its entry into force.

## 8.2 Basic principles of acquisition and loss of Czech citizenship

As stated above, the citizenship legislation has gone through a series of adjustments since 1993. While the greater part of the fine-tuning was related to the situation of former Czechoslovak nationals, there have been other changes, such as acquisition of citizenship by children or naturalisation. Some changes reflected reforms of the administrative structures. This section describes the main principles of Czech citizenship legislation in force as of 1 January 2008. It does so only selectively in so far as they reflect topical political discussions or indicate new trends.

### 8.2.1 *Acquisition of citizenship*

There are four ways of acquiring Czech citizenship: a) acquisition of citizenship by former Czechoslovak citizens by option, declaration or facilitated naturalisation (as described above), b) acquisition of citizenship by birth, adoption and establishment of paternity, c) acquisition 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, one 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 (i.e. a green-card holder).<sup>30</sup> A natural person found in 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 conditions for *naturalisation* are strict:<sup>31</sup> permanent residence for at least five years, clean criminal record,<sup>32</sup> passing a Czech language test, renunciation of the previous citizenship,<sup>33</sup> no infringement of immigration law, and fulfilment of certain statutory duties, such as paying taxes, health, social and retirement insurance. The permanent residence status is an eligibility criterion that may not be waived. Under the immigration legislation in force until April 2006 an immigrant could apply for permanent resident status (i.e. a green card) only after ten years of continuous legal residence in the Czech Republic and after eight years in cases of family reunion. Exemptions were made only for those related to Czech citizens or permanent residents and on humanitarian grounds. Thus, the waiting period for naturalisation for many immigrants was in fact fifteen years or more.<sup>34</sup>

There are statutory exemptions for certain categories (such as recognised refugees and stateless persons). For instance, refugees are eligible for naturalisation without having to renounce their original citizenship. (They acquire permanent resident status by virtue of being granted asylum.) Most of the requirements can be waived at the discretion of the Ministry of the Interior if certain conditions are met. For instance, the Ministry may waive the five-year duration of permanent residency (but not the permanent resident status as such) for applicants born in the Czech Republic, former Czech (or Czechoslovak) nationals, spouses of Czech nationals, children of Czech nationals, 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 nationals) 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, for example, situations when the applicant's renunciation of the previous citizenship involves unreasonable fees or other demands not acceptable in a democratic state, when naturalisation is in the interest of the Czech Republic because of the ex-

pected significant contribution to the Czech society in science, societal life, culture or sports or when the applicant is a former Czech (or Czechoslovak) national.<sup>35</sup> 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.

The relatively simple language test is waived for all Slovak nationals and for any one else at the discretion of the authorities.

The Ministry also screens all applicants in order to 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).

### 8.2.2 *Loss of citizenship*

Since the Czech Constitution prohibits deprivation of citizenship against one's own will, it may not be imposed as a penalty. In conformity with the principle of *ius sanguinis* even later generations of Czech descent born and living abroad cannot lose Czech citizenship by mere operation of law.

A Czech national can lose citizenship in two ways: by a *declaration of renunciation* and by *acquisition of foreign* citizenship at his or her request. 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).<sup>36</sup> A Czech citizen automatically loses Czech citizenship as a consequence of acquiring a foreign citizenship if the latter citizenship is acquired at his or her own request. (This does not apply if the acquisition of a foreign citizenship is automatic, for example by descent.) This mode of automatic loss of citizenship was introduced by the 1993 Citizenship Act and did not exist before 1 January 1993.<sup>37</sup> This provision became controversial in practice.<sup>38</sup> 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.<sup>39</sup>

The 2003 amendment to the 1993 Citizenship Act (Act No. 357/2003 Coll.) introduced an exemption from the loss of citizenship in relation to marriage. If a Czech national acquires the citizenship of his or her spouse during the marriage, he or she will not lose Czech citizenship.<sup>40</sup>

### 8.2.3 *Dual and multiple citizenship*

The Czech legislation is becoming generally more tolerant about dual (and multiple) citizenship. This trend is clearly visible in spite of the

fact that the official citizenship policy followed the principle of prevention of dual citizenship until recently. In reality, there are numerous dual and multiple nationals who acquired the status legally. These are e.g. former Czech and Czechoslovak citizens who reacquired Czech citizenship by declaration under the restitution laws, people who became dual Czech and Slovak nationals due to the break-up of Czechoslovakia, applicants for naturalisation for whom the Ministry of the Interior waived the requirement for them to renounce their former citizenship (including cases of achievement-based naturalisation), naturalised refugees, and Czech spouses of foreign citizens. There are those who acquired dual citizenship by descent and emigrants who acquired foreign citizenship but never lost their Czech (or Czechoslovak) citizenship.

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).

#### 8.2.4 *International treaties*

The Czech Republic is party to certain bilateral and multilateral treaties concerning citizenship. The current trend is toward accession to multilateral treaties<sup>41</sup> as most bilateral treaties were terminated, primarily because they were not compatible with the provisions of the 1997 European Convention on Nationality as regards the preservation of dual citizenship for children whose parents have different citizenship. These terminated bilateral agreements were with the former Soviet Union and some of its successor states as well as the German Democratic Republic, Hungary, Poland, Bulgaria, and Mongolia.

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.<sup>42</sup> 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.

#### 8.2.5 *Procedure*

The Ministry of the Interior is responsible for citizenship issues. The Ministry decides on naturalisations. It 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.<sup>43</sup> Decisions on citizenship are open to

judicial review.<sup>44</sup> Fees are relatively high – 10,000 Czech crowns (approximately 400 euros) for granted naturalisation. The acquisition of citizenship by declaration is free of charge.

### 8.3 Current political 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 a new phenomenon: increasing migration to the Czech Republic and evolving integration policies (Baršová 2005; Baršová & Barša 2005: 231-238).

An impetus for an overall revision of the citizenship legislation came from the government Council for Human Rights.<sup>45</sup> Following an Analysis of Dual Citizenship Issues submitted to the government and the adoption of major amendments to the 1993 Citizenship Act in 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. 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.<sup>46</sup>

The Analysis discusses the fundamental principles of the new citizenship law. It suggests 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.

- a. As regards the grounds for this profound reform, the Ministry refers to both the prevailing trends toward liberalisation abroad and practical aspects. There are countries which do not allow, in legislation or in practice, renunciation of one's citizenship. This is a source of undue administrative burden, according to the Ministry.<sup>47</sup>
- b. The Ministry suggests that foreign nationals born in the territory of the Czech Republic should have the right to 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. 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 is still a positive change in the national context. At present the Czech citizenship legislation does not have any provisions specifically addressing the issue of second and third generation immigrants. The proposed rule would at least

eliminate the need to apply for membership in the community where the applicant was born and grew up.

On the other hand, the Ministry states that the strict conditions for naturalisation should be maintained or even be tightened. It proposes excluding from naturalisation applicants who are likely to become a public burden. The Analysis also contemplates some changes in language testing: the testing should be more professional.<sup>48</sup>

In July 2005, the government approved the Analysis.<sup>49</sup> A year later, in June 2006, the Ministry of the Interior circulated the first framework draft of the new legislation. In addition to the changes mentioned above, the Ministry proposes to amend the Constitution so as to allow the withdrawal of citizenship in cases of false acquisition of citizenship (e.g. fraudulent use of documents). Another controversial proposal of the draft concerns 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).

The parliamentary elections held in June 2006 and the subsequent establishment of a right-wing centrist government slowed down the legislative process, but they have so far not brought about a major reorientation.<sup>50</sup> On 17 March 2008, the government discussed the new draft framework legislation submitted by the Minister of the Interior.<sup>51</sup> The blueprint consisted of two pieces: the framework Constitutional Act on Citizenship of the Czech Republic and the framework Law on Citizenship of the Czech Republic.<sup>52</sup>

The primary aim of the proposed constitutional act is to implement the two controversial changes discussed above. It also proposes to exempt from judicial review a denial of naturalisation if it is 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. According to the opinion of the Council, it is neither necessary nor advisable to amend the constitution for the purposes of the intended reform.<sup>53</sup>

However, the government approved the framework citizenship law and decided that the Minister of the Interior should submit a full version of the bill for approval no later than 31 May 2009. The law should enter into force as of 1 January 2010.

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 en-

abling 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 Beneš decrees 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 one'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 have criticised the proposal. Martin Rozumek of OPU (Organisation for Aid to Refugees) argues: 'The proposal requires that foreigners fulfil a number of conditions which most Czech citizens would find difficult to fulfil'.<sup>54</sup>

The blueprint includes an unrestricted acceptance of dual (multiple) citizenship on both the entry and exit sides. However, there are indications that this liberal approach may change in the future, albeit only with regard to foreigners applying for naturalisation. In fact, the government urged the Minister of the Interior to reconsider this particular issue in further stages of legislative drafting.<sup>55</sup> The liberalisation on the exit side (that is in relation to Czech citizens who acquire foreign nationality) remains unchallenged.

As one of the conditions for property restitution introduced in the early 1990s was the Czechoslovak (Czech) citizenship of the applicant, 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,<sup>56</sup> this restriction has been retained both by the legislature and by the Constitutional Court.<sup>57</sup> 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.<sup>58</sup>

The link between the restitution or the retention of citizenship and the restitution of property also plays a key role in relation to the Beneš decrees, which deprived people of German and Hungarian ethnic origin of their Czechoslovak citizenship. The interpretation of these decrees still plays a role in some restitution cases and remains highly controversial.<sup>59</sup> 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.

Among the practical problems repeatedly brought to the attention of the government by non-governmental organisations and other actors, such as the Ombudsman, is the extensive discretion of the Ministry of the Interior in decisions on naturalisation and the way it is exercised. In practice, the Ministry's negative decisions do not often constitute grounds for rejection of an application, but refer vaguely to administrative discretion as such and to the fact that there is 'no legal right to be granted citizenship'. Until recently the courts conducting the judicial reviews have sustained the practice.<sup>60</sup> It was only a few legal scholars who expressed doubts about whether 'granting citizenship is, indeed, an act of mercy, exercised by the state at its own good will' or is rather in the interest of society (Chlad 2004: 350; Molek & Šimíček 2005: 142-144). A cautious shift in the jurisprudence regarding the use of discretion in naturalisation procedures was brought about by the Supreme Administrative Court (established in 2003).<sup>61</sup> 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. However, the Ministry of the Interior, a key player in the formulation of citizenship policies, still rejects the idea strongly.<sup>62</sup>

#### 8.4 Statistics<sup>63</sup>

If we exclude Slovak nationals, the numbers of persons naturalised annually in the Czech Republic have been surprisingly stable in the last decade, with a maximum of 2,000 persons and a minimum of 837 per annum, as shown in Table 8.2.

**Table 8.2** *Naturalisations (excluding Slovak nationals) in the Czech Republic, 1993-2007*

Year	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
	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

Source: Ministry of the Interior

The number of Slovak nationals granted Czech citizenship based on supplementary and corrective initial rules (see Table 8.1) is still significant (Act No. 40/1993 Coll., Sections 18a, 18b and 18c).

**Table 8.3** *Number of Slovak and other nationals acquiring Czech citizenship from 2001-2007*

Year	2001	2002	2003	2004	2005	2006	2007
Total	6,321	4,532	3,410	5,020	2,626	2,346	1,877
Declaration based on Act No. 139/1999 Coll.	1,607	1,273	1,154	1,784	190	205	225
Act No. 40/1993 Coll. – total	4,714	3,259	2,256	3,236	2,436	2,141	1,652
Slovakia – Act No. 40/1993 Coll. – total	3,593	2,109	989	1,741	1,259	786	625
Slovakia – declaration section 18a*	3,378	1,862	850	627	565	375	268
Slovakia – declaration section 18b**	–	–	55	364	123	63	49
Slovakia – declaration section 18c***	–	–	5	573	325	167	177
Slovakia – naturalisation section 7	215	247	79	177	246	181	131
Other naturalisations (section 7) – Act No. 40/1993 Coll.	1,121	1,150	1,267	1,495	1,177	1,355	1,027

Source: Czech Statistical Office

\* Former Czechoslovak nationals who had lived continuously in the territory of the Czech Republic since the break-up of Czechoslovakia

\*\* Former Czechoslovak nationals who were naturalised in Slovakia in the period from 1 January 1994 to 1 September 1999

\*\*\* Former Czechoslovak nationals born in Slovakia who were minors during the break-up of Czechoslovakia, but with at least one parent a Czech republic-level citizen

In 2007, the total number of persons naturalised was 1,158. This number included 424 Ukrainian nationals, 131 Slovak nationals, 102 Russian nationals, 50 Polish nationals, 40 Vietnamese nationals, 39 Belarusian nationals, 36 Romanian nationals, 33 Moldovan nationals, 31 Greek nationals and 28 Armenian nationals.<sup>64</sup>

**Table 8.4** *Slovak nationals who acquired Czech citizenship by declaration (Section 18a of Act No. 40/1993 Coll.)*

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

Source: Ministry of the Interior

Table 8.4 shows that at the end of 1990s there were still a number of former Czechoslovak citizens living in the Czech Republic whose status was not adequately regularised. The decreasing numbers indicate that the problem is diminishing.

**Table 8.5** Former Czechoslovak nationals who (re-)acquired Czech citizenship by declaration under Act No. 193/1999 Coll.

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

Source: Ministry of the Interior

\* 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.

Act No. 193/1999 Coll. concerns those who emigrated during the communist regime. As they live all over the world, the process requires time both for spreading the information on the right to reacquire the Czech citizenship and for the actual exercising of that right. The numbers show that the deletion of the deadline for making the declaration is warranted.

## 8.5 Conclusions

The consensual division of Czechoslovakia caused many problems regarding citizenship. The new legislation did not generate *de iure* stateless persons, as was sometimes mistakenly contended by its critics. Rather, 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.<sup>65</sup> This revealed the need to clarify international rules concerning cases of state succession.<sup>66</sup> It also raised a more puzzling question: Does the right to a 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 shows that there are situations in which it is not justified to deny a person the right to dual citizenship. Cases of dual Czech and Slovak citizenship are numerous.

Conditions are unfavourable as regards naturalisation except for foreign nationals with strong family links to Czech citizens (spouses, chil-

dren). They involve long waiting periods to fulfil the eligibility criteria as regards the residence requirement. Longer periods of absence are not tolerated and only formal continuous legal status counts. There is also a Czech language test (although kept at a reasonably easy level). As a rule, applicants have to relinquish their original citizenship and a number of additional criteria are tested. There are no specific provisions for automatic acquisition of the Czech citizenship by second- and third-generation immigrants (not even at the age of majority) or facilitated naturalisation for this category. Decisions denying naturalisation are open to judicial review but both in theory and practice administrative discretion is applied very broadly in naturalisation cases. On the other hand, the legal status of naturalised citizens is secure as a ban on the deprivation of citizenship is guaranteed under the Constitution.

At present, Czech citizenship legislation is at a crossroads. Issues related to the break-up of Czechoslovakia, which have dominated the political debates, are losing their topicality. New challenges are linked to increasing immigration. In particular, the restrictive nature of current as well as proposed naturalisation provisions, which reflects the surviving parochial character of Czech society, is in conflict with the declared need for effective integration policies. The proposed comprehensive citizenship reform should address the issue more adequately. It is also important that the considered liberal approach to former Czechoslovak and Czech citizens and their descendants is not in practice narrowed down to an ethnic preference. At a more general level, the proposed reform can be seen as a key element in the transformation of the Czech self-image from an ethnic to a civic nation.

#### Chronological list of citizenship-related legislation in Czechoslovakia/the Czech Republic

Date	Document	Content	Source
1920	Act of 29 February 1920, No. 121 Coll. of Acts of the Czechoslovak Republic, introducing the Constitutional Charter of the Czechoslovak Republic	Provides for a single Czechoslovak citizenship and prohibits dual citizenship	
1920	Constitutional Act of 9 April 1920, No. 236, Supplementing and Amending Existing Provisions on the Acquisition and Loss of Citizenship and on Domicile in the Czechoslovak Republic	Implements provisions of the peace treaties concerning the state succession in relation to citizenship; determines who are Czechoslovak citizens; provides for the continuation of Austro-Hungarian citizenship legislation	

Date	Document	Content	Source
1945	President's Constitutional Decree No. 33/1945 Coll. Concerning Czechoslovak Citizenship of Persons of German and Hungarian Ethnicity	Deprives most ethnic Germans and Hungarians of the Czechoslovak citizenship	<a href="http://sudetengermans.freeyellow.com">http://sudetengermans.freeyellow.com</a>
1946	Constitutional Act No. 74/1946 Coll. Concerning the Naturalisation of Compatriots Returning to the Homeland	Facilitates naturalisation of returnees who were ethnic Czechs, Slovaks or members of other Slavonic nations	
1949	Act No. 194/1949 Coll. on the Acquisition and Loss of Czechoslovak Citizenship, amended by the Act No. 72/1958 Coll. Modifying the Regulations on the Acquisition and Loss of Czechoslovak Citizenship	New citizenship code adopted after the communist coup d'état in February 1948	
1968	Constitutional Act No. 143/1968 Coll. on the Czechoslovak Federation	Transforms centralised Czechoslovakia into a federation of two entities: the Czech Republic and the Slovak Republic	
1968	Federal Act No. 165/1968 Coll. on the Principles of Acquisition and Loss of Citizenship	Provides a framework for the introduction of republic-level (Czech and Slovak) citizenship	
1969	Act No. 39/1969 Coll. of Czech National Council on Acquisition and Loss of Citizenship of the Czech Socialist Republic	Introduces republic-level Czech citizenship	
1990	Act No. 88/1990 Coll. Amending and Supplementing Legislation on Acquisition and Loss of Czechoslovak Citizenship	Provides for the reacquisition of Czechoslovak Citizenship by emigrants who have lost it during the period of the communist rule; deletes the provisions on withdrawal of citizenship	
1993	Constitution of the Czech Republic	Contains the provision that 'no one shall be deprived of his or her citizenship against his or her will'	<a href="http://www.psp.cz">www.psp.cz</a> (in Czech and English)
1993	Act No. 40/1993 Coll. on Acquisition and Loss of Citizenship of the Czech Republic	New citizenship code which enters into force in the Czech Republic after the dissolution of Czechoslovakia	<a href="http://www.legislationline.org">www.legislationline.org</a>
1993	Act No. 272/1993 Coll.,	Introduces changes to the	<a href="http://www.legislationline.org">www.legislationline.org</a>

<b>Date</b>	<b>Document</b>	<b>Content</b>	<b>Source</b>
	Amendment of the Act No. 40/1993 Coll.	right to opt for Czech citizenship with regard to certain Czechs born in the territory of Slovakia before 31 December 1939	
1995	Act No. 140/1995 Coll., Amendment of the Act No. 40/1993 Coll.	Facilitates the naturalisation of those who immigrated to the Czech Republic upon invitation by the government; concerns in particular the members of the Czech minority from the Chernobyl area	<a href="http://www.legislationline.org">www.legislationline.org</a>
1996	Act No. 139/1996 Coll., Amendment of the Act No. 40/1993 Coll.	Introduces discretionary waiver of the clean criminal record requirement in naturalisation procedures with regard to Slovak citizens who were former Czechoslovak citizens and have been living in the Czech Republic since the break-up of Czechoslovakia	<a href="http://www.legislationline.org">www.legislationline.org</a>
1999	Act No. 193/1999 Coll. on the Citizenship of Some of the Former Czechoslovak Citizens	Provides for the reacquisition of Czech citizenship by emigrants who have lost it in the period of communist rule and were not able to make use of Act No. 88/1990 Coll.	<a href="http://www.legislationline.org">www.legislationline.org</a>
1999	Act No. 194/1999 Coll., Amendment of the Act No. 40/1993 Coll.	Introduces significant remedial changes in relation to the situation of former Czechoslovak citizens living in the Czech Republic since the break-up of Czechoslovakia	<a href="http://www.legislationline.org">www.legislationline.org</a>
2003	Act No. 357/2003 Coll., Amendment to the Act No. 40/1993 Coll.	Introduces further remedial provisions with regard to former Czechoslovak nationals and certain liberal changes, in particular with regard to dual nationality	

Date	Document	Content	Source
2006	Act No. 46/2006 Coll., Amendment to Act No. 193/1999 Coll. on the Citizenship of Some of the Former Czechoslovak Citizens	Removes the deadline for making declarations on reacquisition of Czech citizenship by some of the former Czechoslovak citizens (emigrants)	

## Notes

- 1 The author and editors would like to thank Tibor Papp from the Institute of Informatics and Statistics in Bratislava for providing the most recent information on the draft bill in section 8.3 and the data for 2006 and 2007 in section 8.4.
- 2 See the leading handbooks on Czech citizenship law Černý & Valášek 1996 and Valášek & Kučera 2006.
- 3 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.
- 4 E.g. Treaty of Versailles (1919), Treaty of Saint-Germain-en-Laye (1919) and Treaty of Trianon (1920).
- 5 Constitutional Act of 9 April 1920, No. 236, Supplementing and Amending Existing Provisions on the Acquisition and Loss of Citizenship and on Domicile in the Czechoslovak Republic and Act of 29 February 1920, No. 121 Coll. of Acts of the Czechoslovak Republic, introducing the Constitutional Charter of the Czechoslovak Republic. The basic principles of the Czechoslovak citizenship were thus regulated by constitutional laws and treaty provisions. The system, however, failed to achieve the declared aim of protecting minorities and preventing statelessness.
- 6 In Slovakia, provisions of former Hungarian laws remained in force. See also Kusá in this volume.
- 7 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 Bohemia and Moravia. The complex legal consequences in terms of citizenship are described by Verner (1947, Appendix II: 227-270).
- 8 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.
- 9 See also Kusá in this volume.
- 10 Constitutional Act No. 143/1968 Coll. on the Czechoslovak Federation.
- 11 The corresponding law regulating the same issue in the Slovak Republic was the Act of the Slovak National Council No. 206/1968 Coll.
- 12 In this paper, the term *republic-level citizenship* is used to denote membership in the constitutive entities of the federal state. The term *(state) citizenship* is used exclusively to indicate membership of a sovereign state. In Czech language and legal terminology, the term *state citizenship* (*státní občanství*) is used for both legal statuses.

- 13 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.
- 14 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.
- 15 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, two issues are important. First, the law did not go back to before 1948 to cover former Czechoslovak citizens who were deprived of Czechoslovak citizenship by the post-war Presidential Decrees (Germans and Hungarians). Second, the law provided a relatively short period to exercise the right to request the reacquisition of citizenship. It expired on 31 December 1993.
- 16 See Kusá in this volume.
- 17 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.
- 18 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 a 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.
- 19 The drafting and the adoption of the law took place in exceptional circumstances. The whole process was finished within two months.
- 20 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.
- 21 For the concept of the *initial determination (Erstabgrenzung)*, see the work by Krombach (1967).
- 22 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.
- 23 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.
- 24 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.
- 25 The first significant change 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. See Linde 2006 for a

comprehensive explanation of the causes that have led to the state's changes in attitude.

- 26 File No. IV US 34/97.
- 27 The ruling was confirmed by a subsequent ruling on 14 November 2000 (File No. 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.
- 28 See also below Table 8.4.
- 29 See below Table 8.3, sections 18b, 18c.
- 30 The situation of children born to a stateless parent without permanent residence is not regulated adequately.
- 31 I do not distinguish between *eligibility* and *conditions* for naturalisation. In Czech citizenship legislation, the conditions for naturalisation fall into two categories: a) conditions *sine qua non*, which cannot be waived, and b) conditions, which can be waived at the discretion of the authorities.
- 32 The applicant has not been convicted for an intentional crime in the last five years.
- 33 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.
- 34 Act No. 326/1999 Coll., as amended (Aliens Act). The amendment of the Aliens Act, Act No. 161/2006, 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).
- 35 This does not apply to Slovak citizens.
- 36 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.
- 37 We assume that the intention of the drafters of the law was to reduce the cases of Czech citizens living abroad transferring Czech citizenship over several generations.
- 38 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.
- 39 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 are 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 Ruling published under No. 6/1996 Coll. Concerning the Proposal to delete Section 17 of Act No. 40/1993 Coll. on the Acquisition and Loss of Citizenship of the Czech Republic.
- 40 This provision existed previously, but the wording was not clear and, in practice, it was incorrectly applied only to rare cases of automatic acquisition of citizenship through marriage.
- 41 The Czech Republic is party to the following multilateral treaties: 1997 European Convention on Nationality (No. 76/2004 Collection of International Treaties, henceforth Coll. of I. T.), date of entry into force: 1 July 2004; 1961 UN Convention on the Reduction of Statelessness (No. 43/2002 Coll. of I. T.), date of entry into

- force: 19 March 2002; 1954 UN Convention Relating to the Status of Stateless Persons (No. 108/2004 Coll. of I. T), date of entry into force: 17 October 2004.
- 42 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.
- 43 In 2007, the Ministry issued 577 negative decisions regarding naturalisation. 319 unsuccessful applicants appealed. In 92 cases the Minister of the Interior overturned the negative decision (Ministry of the Interior 2008: 155).
- 44 Act No. 150/2002 Coll. on Judicial Reviews of Administrative Acts. For judicial review in naturalisation cases see section 8.3 of this chapter.
- 45 The Council for Human Rights is an advisory body to the government. See Resolution of the Government of the Czech Republic No. 493/2002 Related to the Communication by the Council for Human Rights on the Citizenship of the Czech Republic. The communication concerned certain urgent issues, such as the incompatibility of the remaining bilateral agreements with the requirements of the European Convention on Nationality. It also brought to the attention of the government certain problems of interpretation and practice in the field of citizenship law.
- 46 Ministry of the Interior, Document No. VS – 473/50/2-2004.
- 47 The fundamental incentives for the switch towards toleration of multiple citizenship thus seem to be those described by Hagedorn (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.
- 48 At present, the state authorities processing applications for naturalisation carry out the testing. This does not guarantee uniform standards of testing.
- 49 Ministry of the Interior, *Analýza úpravy nabývání a pozbývání státního občanství*. [Analysis of the regulation on acquisition and loss of state citizenship] Adopted on 13 July 2005 by Government Resolution No. 881.
- 50 The governing coalition consists of the liberal-conservative Civic Democratic Party, Christian Democrats and the Greens. In its programme declaration, the new government stated that it would ‘consider the possibility of simplifying the acquisition of dual nationality’. See the Programme Declaration of the government, available at [www.vlada.cz](http://www.vlada.cz).
- 51 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. Consultations on the draft legislation within the administration and with other stakeholders took place from July to November 2007.
- 52 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.
- 53 See Stanovisko Legislativní rady vlády ze dne 7. února 2008 [Opinion of the Legislative Council adopted on 7 February 2008].
- 54 See Martin Rozumek, ‘Připomínky Organizace pro pomoc uprchlíkům k návrhu věcného záměru nového zákona o nabývání a pozbývání 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](http://www.migraceonline.cz).

- 55 Government Resolution of 17 March 2008, No. 254, point II.
- 56 The Human Rights Committee expressed in 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]'.  
57 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.
- 58 The Chamber of Deputies passed the bill on 23 November 2005. One hundred and two deputies voted for the bill and 49 against. The Act No. 46/2006 Coll. was published and entered into force on 27 February 2006.
- 59 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. Decision of the Supreme Administrative Court of 27 November 2003, ref. no. 6 A 90/2002-82 ([www.nssoud.cz](http://www.nssoud.cz)) and the Judgment of the Constitutional Court of 29 June 2005, 1ÚS 98/04 ([www.concourt.cz](http://www.concourt.cz)).
- 60 See Molek & Šimíček 2005.
- 61 Resolution by the Supreme Administrative Court of 23 March 2005, ref. no. 6A 25/2002-42 and Decision by the Supreme Administrative Court of 4 May 2006, ref. no. 2As 31/2005-78. ([www.nssoud.cz](http://www.nssoud.cz)). In the former case the Court decided that negative decisions on naturalisation can be reviewed by administrative courts. (The Ministry of the Interior as well as some courts were of the opinion that naturalisation cases, unlike other citizenship cases, can not be reviewed by courts because of the non existence of the legal entitlement to citizenship.) In the latter case the Court confirmed its opinion on the possibility of administrative review of naturalisation cases and rejected the whole theory of unlimited administrative discretion in these procedures.
- 62 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.
- 63 As part of a new, more active approach to the issues of immigration and integration, the Czech Statistical Office started to gather and analyse data on naturalisation in a systematic manner. These statistics however only cover the period since 2001. They can be found at [www.czso.cz](http://www.czso.cz).
- 64 See Czech Statistical Office, [www.czso.cz](http://www.czso.cz).
- 65 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.
- 66 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.

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