

6 Germany

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6.1 Introduction

The new millennium marked a major change in German nationality law. The nationality law of 1913 (*Reichs- und Staatsangehörigkeitsgesetz*), valid from the German Empire through the 'Third Reich' and the Federal Republic – which was subject to many changes and amendments – was replaced by a new nationality law, the Nationality Act,¹ which entered into force on 1 January 2000. The new nationality law was the result of a highly controversial debate between the major political parties in 1998, preceding federal parliamentary elections. The nationality law (*Staatsangehörigkeitsgesetz*) – although in many respects still based upon the provisions of the law of 1913 – has taken up the trend of some of the more recent European nationality laws by substantially facilitating naturalisation, by including a stronger toleration of dual nationality, by a replacement of discretionary regulations with individual rights, by introducing new modes of acquisition, and in particular by introducing a *ius soli* element into the nationality law.

A major purpose of the law, supported by the ruling Social Democratic party and the coalition partner *Bündnis 90/Die Grünen* as well as the liberal party, was the promotion of acquisition of German nationality for migrant workers and their second and third generation descendants as an essential prerequisite of their integration into the German society. Until 1 January 2000 one of the predominant features of German nationality law and practice, although not explicitly laid down in the law of 1913, had been that acquisition of German nationality through naturalisation was an exception rather than the rule.

One of the main novelties of the 1999/2000 reform was the introduction of the *ius soli* principle in para. 4 of the law. Children of a foreign parent acquire German citizenship under the condition that one parent has had a lawful habitual residence in Germany for eight years and that he or she is in possession of a secure residence permit. Since January 2004, the threshold has been raised for the acquisition under *ius soli* by requiring a settlement permit or in the case of EU citizens a right of free movement. Since the settlement permit requires a higher level of knowledge of the German language than previously and the

possession of an unlimited residence permit, which until 2004 had been sufficient for naturalisation, *ius soli* acquisition will only take place in the case of a higher degree of integration of a foreign parent.

Another major feature has been the facilitation of naturalisation. A foreigner is entitled to naturalisation after a habitual lawful residence of eight years rather than previously fifteen years. In addition, naturalisation depends upon a number of requirements, including a declaration of loyalty to the free and democratic constitutional order, possession of a regular residence permit or freedom of movement as an EU citizen, or an equally privileged right under the EEA-Agreement. In addition, the foreigner has to prove the ability of earning a living without any recourse to social welfare or similar social benefits (unemployment assistance), absence of a criminal record and the renunciation or loss of a previous nationality.

The Immigration Act of 2004 has slightly changed the requirements on naturalisation by declining a right to naturalisation in the absence of sufficient knowledge of the German language and the existence of facts indicating that a foreigner supports or engages in unconstitutional political activities or is subject to expulsion due to a terrorist affiliation.

One of the central issues of the new German nationality law of 1999/2000 was the principle of avoiding dual nationality, which hitherto had been an essential element of the German nationality law.

Following a highly emotional debate on dual nationality, the reform of 1999/2000 maintained the principle of avoiding dual nationality. To a certain extent it takes into account the interests of the immigrant population in maintaining their previous nationality by providing for a large number of exceptions to the requirement of relinquishing a prior nationality. The general rule is that a foreigner is not obliged to renounce his or her previous nationality if renunciation entails serious disadvantages or is dependent upon particularly difficult conditions. Therefore the nationality law closely follows the pattern of other European states by admitting dual nationality more generously.

Due to the fact that children usually acquire the nationality of their parents by descent, the introduction of the *ius soli* principle will entail at least dual, if not multiple nationalities for foreign children born in Germany. Since the issue of dual nationality has turned out to be a highly controversial concept, the new law uses the 'optional model', which obliges foreign children to decide by the end of their eighteenth year which nationality to keep and which to renounce. If they declare the wish to keep the foreign nationality or if they do not declare anything by the end of their eighteenth year, German nationality will be lost within a specified period of time. If they declare an intention to keep German nationality, however, they are obliged to prove the loss or

renunciation of their foreign nationality, unless the German authorities have formally approved the retention thereof. The permission to retain the former nationality will be granted if renunciation of the foreign nationality is either impossible or unreasonable, or if multiple nationality would have to be accepted according to the general rules on naturalisation.

In order to limit dual nationality, further amendments concerning the loss of German nationality have been adopted. The first one affects the abolition of the so-called national clause (*Inlandsklausel*). Since 1 January 2000, the acquisition of a foreign nationality based on an application leads to the automatic loss of German nationality even if the national retains domicile on German territory. In contrast, according to the former legal situation, German nationality was lost only when the national did not keep his or her habitual residence in Germany (cf. sect. 25 para. 1 of the Imperial Nationality Act²). Second, automatic loss of German nationality also results from voluntary entry in a foreign army without permission of the German Ministry of Defence, if the national possesses the nationality of this foreign state in addition to his or her German nationality.

Apart from these amendments, the modes of losing German nationality were not affected by the reform of 1999/2000. German nationality is lost by release from citizenship upon request if a person has applied for the acquisition of a foreign nationality and when the conferment of this nationality is assured, by voluntary renunciation of the German nationality by a dual or a multiple nationality, or by adoption by a foreign national if the foreign nationality is thereby acquired.

The traditional modes of acquisition of German nationality have also remained largely unchanged. German nationality is basically acquired by descent from a German mother or a German father, by legitimisation, by adoption or by naturalisation. In the absence of a marriage, descent from a German father requires a formal procedure to determine fatherhood.

Spouses of German nationals are entitled to naturalisation on the condition that they renounce their previous nationality unless there is a reason for acceptance of dual nationality and if certain integration requirements are met. According to the administrative practice a residence of three years is required and a marriage of two years. The applicant must be able to express him- or herself in the German language.³

The most important change of the reform legislation can be found in the changed perception of the acquisition of German nationality. Since 1 January 2000, naturalisation and acquisition of the German nationality is considered being in the public interest of Germany rather than an unavoidable fact. The change in nationality law also reflects a substantial change in the perception of migration. The original as-

sumption that the migrant workers recruited in the early 1970s would eventually return to their home countries, has been abandoned. Only about 12,000 to 17,000 persons were naturalised each year from 1974 until 1989, in spite of an increasing number of persons having their permanent residence in Germany. This situation changed substantially with the new Nationality Act giving a legal right to naturalisation if certain conditions were fulfilled. As a result, the number of naturalisations went up substantially since the new law entered into force (see sect. 6.3.2).

With the Immigration Act of 2004 (*Zuwanderungsgesetz*) some amendments have been introduced in order to take account of the new integration requirements introduced by it as well as the security considerations resulting from the anti-terrorism legislation following 11 September 2001. Under sect. 11 StAG the right to naturalisation is precluded if a foreigner does not have sufficient knowledge of the German language and if there are sufficient facts indicating that the foreigner is engaged in or supporting activities directed against the free democratic order or the security of the Federal Republic or a *Land*, or if an applicant is intending unlawful disruption of the functioning of the constitutional organs of the federation or a *Land* or their members, or is endangering by use of force or preparatory actions the external affairs of the Federal Republic of Germany. A similar exclusion clause applies in the case of participation in terrorist organisations or support of terrorist activities.

According to art. 116 of the Basic Law, ethnic Germans expelled as a result of post-war measures as well as their families, relatives and descendants are entitled to privileged acquisition of German nationality. The details are regulated by the Federal Expellees Act (*Bundesvertriebenengesetz*) since 19 May 1953. Between 1950 and 1987, a total of approximately 1.4 million ethnic Germans and their family members entered Germany, mostly without major integration problems.

With the large increase of the number of immigrants of German ethnic origin as a result of the liberalisation and democratisation in the Eastern Bloc, substantial changes were made in the law in order to gain more control over the immigration patterns of ethnic Germans. In 1993, an annual quota of 225,000 was introduced and on 1 January 2000 the quota was reduced to around 100,000 persons, a figure corresponding to the number of ethnic Germans entering Germany in 1998. In addition, prior to entry, a language test was introduced in order to prove that persons are actually ethnic Germans. Until 2000, ethnic Germans possessing the legal status of a German without German nationality under art. 116 para. 1 of the Basic law, were entitled to naturalisation on the basis of their admission to German territory. Since 1 January 2000, repatriate Germans acquire German nationality automa-

tically by entering German territory on the basis of a previous admission title.

After 2000, the composition of the category of repatriate Germans (*Aussiedler*) changed as only a few of the family relatives and their descendants tended to be of German ethnic origin as well. Since family members did not have to prove sufficient knowledge of the German language in the admission procedure, unless they applied for repatriate status themselves, an increasing percentage of repatriate Germans did not have sufficient command of the German language and were therefore subject to social marginalisation. In the new Immigration Act of 2004 the provisions of the Federal Expellees Act were changed by introducing a condition of proof of basic knowledge of the German language for non-German spouses as well as non-German descendants⁴ intending to acquire German nationality based upon the special provisions of the Expellees Act and the Basic Law.

6.2 Historical development

6.2.1 German nationality law until 2000

The German Nationality Law (*Reichs- und Staatsangehörigkeitsgesetz*) of 22 July 1913 introduced for the first time a common German nationality for all the nationals of the various states constituting the 'German Reich' of 1870. The German nationality did not fully replace the nationality of each of the states of the federation, but in fact supplemented it. German nationality under the Constitution of 1919 provided that every national of a federal state simultaneously acquired German nationality. Each German was granted the same rights and duties and every German inside and outside the territory of the German Empire was entitled to protection and was not allowed to be extradited to any foreign government for the purpose of punishment or persecution.

Under the rule of the Nazi regime the German nationality law was repeatedly changed, primarily for ideological and racial reasons. One of the first measures was the abolition of the nationality of the *Länder* as a result of the establishment of Germany as a unitary state. The law of 14 July 1933 provided for the withdrawal of naturalisations in the period between 1918 and 1933 and the removal of German citizenship from persons having violated a duty of loyalty to the German Empire or the 'German nation'. According to further regulations, all Jews having their ordinary residence abroad were collectively deprived of citizenship.

As a result of the 'reunification' with Austria and the territorial acquisitions from 1933 until 1941 in Eastern Europe, German nationality was generally granted collectively to persons considered as ethnic Germans living in the territories incorporated into the German Reich or at-

tached as protectorates to the Empire (Hailbronner & Renner 2005: 16 ff). Another reason for collective acquisition of German nationality was the admission to the *Wehrmacht*, SS, police or Nazi organisations, provided that the persons were of German ethnic origin.

The Federal Republic of Germany of 1949 decided to base its nationality law upon the nationality law of 1913, rather than enacting a completely new law. In addition to regulations and changes made by the Allied Powers from 1945-1949, the nationality law of 1913 was substantially changed by three amendments of 1955, 1956 and 1957. The first Act, amending the Nationality Act of 1913, abolished collective naturalisations between 1938 and 1945. The validity of such collective naturalisations had been a matter of dispute in the jurisprudence and literature of the Federal Republic (Hailbronner & Renner 2005: 63; Genzel 1969a: 113; Genzel 1969b: 98). By the second law of 1956 (Makarov 1956: 744), the collective acquisition of German nationality by Austrians was abolished. Austrians, however, could reacquire German nationality by declaration if they had established permanent residence in Germany by that time.

The third law of 1957 and the subsequent legislation of 1969 established equal treatment of men and women in nationality legislation by equal treatment in the acquisition of German nationality by spouses and descendants of German nationals.

Between 1969 and 1990, the debate on German nationality was very much focused upon issues concerning the separation of Germany. While originally the law of the German Democratic Republic provided for a common German nationality, in 1967 with the adoption of the *Staatsbürgerschaftsgesetz* of the GDR the idea of a common German nationality was relinquished and replaced by a separate citizenship of the GDR. The Federal Republic of Germany reacted by insisting upon a common German nationality, based upon the *Reichs- und Staatsangehörigkeitsgesetz* of 1913. Thereby, every German, acquiring German nationality by descent, was still to be considered as a German national, regardless of whether the person had his or her permanent residence in the Federal Republic or the GDR. The legal basis for this position was the insistence upon an inseparable common German nationality attached to the legal continuation of the German Empire.⁵ This concept enabled the Federal Republic to issue passports and to claim as German citizens every citizen of the GDR who managed to legally or illegally leave the territory of the GDR and arrive at a consulate or embassy of the Federal Republic of Germany (Hailbronner 1981: 712-713; Vedder 2003: 11 ff.; Klein 1983: 2289).

The Treaty on the Basic Relations between the Federal Republic of Germany and the GDR of 12 December 1972 (*Grundlagenvertrag*) as well as the treaties with the Soviet Union and Poland of 1970 and Cze-

choslovakia of 1973 left out the controversial issue of German nationality. In a protocol it was explicitly stated in the treaty on the relations between the GDR and the Federal Republic of Germany that the treaty will facilitate a solution of issues of nationality. The Federal Constitutional Court decided that these treaties could not be interpreted as effectuating a loss of nationality of Germans having acquired German nationality under the nationality law of 1913 or under the Basic Law.⁶

After the reunification of Germany on 3 October 1990, the East German laws and regulations on nationality were abolished. With the accession of the GDR to the Federal Republic the nationality legislation valid in the Federal Republic became fully applicable in the territory of the former GDR and in Berlin. A number of questions, however, remained to be solved concerning the effects of naturalisations and other issues related to the effects of the East German nationality legislation (Renner 1999: 230). These issues have not yet been completely solved.

Subsequent changes of the nationality legislation were primarily devoted to a solution of the problem of integration of the immigrant population by facilitating access to German nationality. In the early 1990s a discussion started about the political rights of the immigrant population. By the end of 1998 there were 7.32 million foreign nationals living in Germany, already accounting for 9 per cent of the German population. Most foreigners living in Germany have been living there for a long time. By the end of 1997, approximately 30 per cent of all foreigners had been in Germany for twenty years or more, 40 per cent for at least fifteen years and almost 50 per cent for more than ten years. Almost two thirds of all Turks and Greeks, 31 per cent of Italians and 80 per cent of Spaniards had lived in Germany for more than ten years and 1.59 million (21.7 per cent of all foreigners) had been born in Germany.

The figures show a basic dilemma of German immigration policy: An increasing number of children of migrant workers were born and have grown up in Germany, received their schooling and professional formation in Germany, will eventually work in Germany and yet are children of 'foreign' nationals in Germany, although their nationality has frequently become only an emotional attachment to the home country of their parents, and is sometimes considered a mere reassurance, a sort of 'alternative' nationality. There is in principle no dispute about the need to integrate large parts of the foreign population into Germany by inducing them to become German citizens. All German governments have declared that there is a public interest in the naturalisation of foreigners living permanently in Germany.⁷ There is no consensus, however, on the ways and conditions under which German citizenship should be acquired.

The particular issue was the acquisition of German citizenship by birth on German territory, which introduced an element of *ius soli* into the German concept of citizenship and which has given rise to a heated controversy between the major political parties in recent years.

An attempt to solve the fundamental dilemma arising from the exclusion of a substantial part of the population from political rights by granting limited voting rights at a local level to foreigners in some of the *Länder* failed due to the decision by the Federal Constitutional Court declaring such an attempt to be unconstitutional.⁸ The Court stated that the concept of democracy as laid down in the Basic Law does not permit a disassociation of political rights from the concept of nationality. Nationality therefore is the legal prerequisite for the acquisition of political rights, legitimising the exercising of all power in the Federal Republic of Germany. The Court, however, also stated that the only possible approach to solving the gap between the permanent population and democratic participation lies in changing the nationality law, for example, by facilitating the acquisition of the German nationality by foreigners living permanently in Germany and thereby having become subject to German sovereignty in a manner comparable to German nationals.

In the context of the general debate about Germany's immigration policy and its factual change into an immigration country, pressure increased for a reform of German citizenship legislation. There were numerous proposals ranging from simplifying the naturalisation process and increasing the acceptance of multiple nationality to introducing a *ius soli* principle for third generation foreigners born in Germany (Apel 1992: 99; Blumenwitz 1993: 151; Hobe 1994: 191; d'Oliveira 1990: 114; John 1991: 85; Löwer 1993: 156; Lübke-Wolff 1996: 57; Mangoldt 1994: 33; Marx 1997: 67; Meireis 1994: 241; Münch 1994: 1199; Predeick 1991: 623; Renner 1994: 865; Schrötter & Möhlig 1995: 437).

The *Bundestag* decided in 1990 to substantially facilitate the acquisition of German citizenship for young foreigners aged sixteen to 23, provided that they renounced their previous citizenship, had lived permanently and lawfully in Germany for eight years, had attended a school in Germany for at least six years and had not been prosecuted for a criminal offence. In addition, the acquisition of German citizenship for the first generation of recruited migrant workers was also facilitated substantially, provided that certain requirements were met:

- legal habitual residence in Germany for fifteen years,
- renunciation of previous nationality;
- absence of criminal conviction;
- ability to earn a living.

Originally, facilitated naturalisation of young foreigners and of long-term residents was granted 'as a rule', i.e., administrative discretion was very limited. Another amendment in June 1993 changed these rules by establishing an individual right entitling every foreigner fulfilling the aforementioned requirements to demand naturalisation (Hailbronner 1999b: 1 ff).⁹ Although these provisions of the Aliens Act granting an entitlement to German citizenship provided for a renunciation of the previous nationality, a number of exceptions were made which led in fact to a steadily increasing number of naturalisations with dual nationality. Exceptions were granted for instance if a foreigner could not renounce his or her previous nationality or only under particularly difficult conditions, e.g., if the original home country required military service before giving up nationality.

The general number of naturalisations in 1995 increased to 313,606 compared to 34,913 in 1985 (in 1997, however, the number decreased to 278, 662). However, it must be taken into account that this figure includes a substantial number – up to three quarters – of naturalisations of German repatriates (*Aussiedler*) who acquire German citizenship very easily on the basis of art. 116 of the Basic Law in connection with the Expellees Act, giving them a constitutional right to obtain German citizenship as a refugee or expellee of German ethnic origin or as their spouse or descendant, provided that they had been admitted to the territory of the 'German Reich' within the frontiers of 31 December 1937. Nevertheless, in 1990, naturalisations based upon the provisions of the Aliens Act for the immigrant population increased at a rate of about 35 per cent, in 1994 even at a rate of 54 per cent and in 1996, by 20 per cent compared to the preceding year (Beauftragte der Bundesregierung für Ausländerfragen 1999: 11); in 1997, however, the number of naturalisations decreased by about 4 per cent. With 1.18 per cent of the total foreign population, the rate of naturalisations in 1996 was still relatively small compared to other western European states, although it had quadrupled since 1986.¹⁰ The share of women was substantially higher with 1.37 per cent than that of men with 1.03 per cent.

According to an agreement between the Christian Democratic Party and the Liberal Party of 1994, the introduction of a special nationality (*Kinderstaatszugehörigkeit*) for children of the third generation who were born in Germany was envisaged.¹¹ In order to be eligible for this special nationality, which was intended to ensure equal treatment between German nationals (issue of German identity card), at least one of the child's parents would have to be born in Germany and both would have to reside lawfully in Germany during the ten years preceding the child's birth. Additionally, both parents would have to be entitled to an unlimited residence permit. The 'quasi-nationality' for chil-

dren would require an application by parents before the child's twelfth birthday. With the child's eighteenth birthday, the young adult would acquire full German nationality upon renouncing his or her prior nationality. It is very doubtful whether the proposal was practicable and whether a 'quasi-nationality' would have been acceptable in international relations and what effect such a special nationality might have had for instance with regard to the application of international treaties relating to visa and travel documents (Europäisches Forum für Migrationsstudien 1995: 11, 19; Lübbe-Wolff 1996: 57; Ziemske 1995: 380, 381). The proposal was never realised nor any of the other proposals, due to political developments in the *Bundestag* and *Bundesrat*.

Following a shift of power in the *Länder* in 1999, the *Bundesrat*, the upper house of Parliament, representing the German *Länder*, which were then dominated by the Christian Democratic Party, suggested that German nationality would be acquired automatically by a child whose foreign parents were born in Germany and who, at the time of the child's birth, disposed of a residence permit.¹² Children whose parents are in possession of an unlimited residence permit and have been living in Germany for five years were to be given a right to naturalisation. In both cases, the acquisition of German citizenship would be independent of the renunciation of a previous nationality.

The proposals of the Social Democratic Party and the Green Party were going in the same direction. The Social Democratic Party has suggested supplementing the principle whereby German nationality is acquired by descent with the principle of territoriality (*ius soli*). Children of foreign parents therefore ought to automatically acquire German citizenship as a result of birth on German territory, provided that at least one parent has been born in Germany and has secured his or her permanent residence in Germany. Dual nationality is not to be prevented in such cases. Additionally, for permanent residents, individual rights to the acquisition of German nationality were to be created independently of renunciation of their previous nationality. The draft suggested a facilitation of naturalisation for the following groups of citizens:

- foreigners with a permanent residence permit after eight years of residence,
- foreigners belonging to the so-called second generation aliens who have grown up in Germany,
- spouses of Germans after three years of lawful residence, provided that they have been married for at least two years.

Additionally, the proposal provided for a facilitation of discretionary naturalisation, which should be enabled after a residence of five years and only be dependent upon the capacity to earn a living, absence of a

criminal conviction for a serious offence and absence of a reason for expulsion for endangering public safety or violent behaviour.¹³

Following another shift in the distribution of political power in the Federation and the *Länder*, the proposal could not be realised as in the meantime the Christian Democratic Parties had won some state elections and it became uncertain whether the draft bill would receive a majority in the *Bundesrat*. A 'compromise' was worked out by the Liberal Party, which provided for the acquisition of a full nationality by birth on German territory if both parents apply and at least one of the parents does have a right of residence in Germany. The proposal of the Liberal Party suggested a loss of dual nationality by obliging the naturalised person to opt for one nationality once that person has reached the age of 21. If the previous (dual) nationality were not given up, German nationality would be lost.¹⁴

A renewal of the discussion was provoked when the coalition agreement between the Social Democrats and *Bündnis 90/Die Grünen* of 20 October 1998 was presented to the public. According to the intentions of the coalition, German citizenship should be conferred at birth to children born on German territory if one foreign parent had already been born on German territory or if he or she had entered Germany before the age of fourteen, furthermore providing that, in both cases, he or she at the time of birth is in possession of a residence permit (*Aufenthaltserlaubnis*). Other amendments intended by the coalition were a facilitation of the naturalisation process when applying on the grounds of an entitlement to German citizenship. It was proposed that naturalisation be allowed if a foreigner was able to sustain himself or herself and his or her dependants, if there were no convictions for criminal offences and, finally, if no grounds for expulsion or deportation had arisen; the residence requirement was to be reduced from fifteen to eight years. Other proposed amendments related to a right to naturalisation for minors and a reduction of the residence requirement to three years for spouses of German nationals. Dual or multiple nationality was to be accepted in all those cases (Hailbronner 1999a: 51 ff.).

6.2.2 *The nationality law reform of 2000*

These proposals met heavy resistance by some of the *Länder*, particularly since the first draft presented by the Ministry of the Interior provided for a broad acceptance of dual and multiple nationality and the introduction of the *ius soli* principle.¹⁵ Due to changing majorities in Parliament a new proposal was submitted by the Social Democrats, *Bündnis 90/Die Grünen* and the Liberal Party (FDP) comprising not only the introduction of the *ius soli* principle, but also the insertion of

the 'optional model'. Both chambers went on to adopt this draft with minor changes¹⁶ in May 1999.¹⁷ The new law on the reform of the German citizenship law of 15 July 1999 became law on 1 January 2000.¹⁸ In addition, administrative guidelines for its application were to be adopted.

One of the major changes was the introduction of the *ius soli* principle in art. 4 of the German Nationality Law implying that a child of foreign parents acquires German citizenship under the 'optional model' on the condition that one parent has legally had their habitual residence in Germany for eight years and that he or she has been in the possession of a residence permit, an *Aufenthaltsberechtigung* or an unlimited *Aufenthaltsurlaubnis* for three years; the model of the double *ius soli* in force in some other European states has therefore not been introduced. Foreign children legally residing in Germany were entitled to naturalisation upon their tenth birthday if the above-mentioned conditions were fulfilled at the time of birth (para. 4ob StAG; transitional regulation which expired on 31 December 2000). Due to the fact that children usually acquire the nationality of their parents by descent, the introduction of the *ius soli* principle will entail at least double if not multiple nationalities for foreign children born in Germany. Thus, para. 29 StAG introduced the highly disputed optional model and the obligation to decide upon reaching the age of eighteen which nationality to keep and which to renounce. If the young adult declares that he or she intends to keep his foreign nationality or if he or she does not declare anything on reaching the age of eighteen, he or she will lose his or her German nationality. If, on the other hand, he or she declares an intention to keep German citizenship, the young adult is obliged to prove the loss or renouncement of the foreign nationality (para. 29 (2) StAG) unless German authorities have formally approved that he or she may keep his foreign nationality. According to para. 29 (4) StAG, this permission to retain the former nationality (*Beibehaltungsgenehmigung*) is to be issued if renunciation of the foreign nationality is either impossible or unreasonable or if – in the case of naturalisation – multiple nationality would be accepted according to the general rules.

Aside from the introduction of the *ius soli* principle the naturalisation process has also been facilitated. The foreigner is entitled to naturalisation after a residence period of eight instead of fifteen years on the condition that he or she declares himself bound to the free and democratic order of the Constitution (*freiheitliche und demokratische Grundordnung*), that he or she is in possession of a residence permit, that he or she is capable of earning a living without any recourse to public assistance or unemployment benefits (except in those cases in which the dependence on those benefits is not attributable to the applicant's fault or negligence), that there is no criminal conviction and, finally,

that loss or renunciation of the previous nationality occurs. Dual nationality is accepted in more cases, e.g., if the applicants are elderly persons and dual nationality is the only obstacle to naturalisation, if the dismissal of the previous nationality is related to disproportionate difficulties, and if a denial of the application for naturalisation would constitute a particular hardship; moreover, double nationality is accepted in cases in which the renunciation of the previous nationality entails – in addition to the loss of civil rights – economic or financial disadvantages, or, generally in the case of EU citizens, provided that reciprocity exists.

Due to the fact that the acquisition of German citizenship has been facilitated, some amendments relate to the loss of German citizenship and the limitation of acquisition by descent. Acquisition of German citizenship abroad is excluded if the German parent who has his or her habitual residence abroad was born abroad after 31 December 1999, except in those cases that would result in statelessness. Despite this provision, the acquisition of German citizenship remains possible if both parents are in possession of German citizenship or if the one parent who has German citizenship notifies the competent diplomatic representation at the time of birth.

6.2.3 *Immigration Act of 2004*

The law reform of 1999/2000 was considered as part of a major reform of nationality law. The intention was in a two-phase procedure to make further revisions for adjusting the nationality law to a new comprehensive migration policy and changes in the residence rights of EU citizens. It was also intended to devise a special administrative law for nationality issues and to reform the legislation on repatriate Germans.

The Immigration Act of 2004 made some adjustments to the changes in immigration law but did not yet provide for further changes. One of the major features of the Immigration Act has been the emphasis upon integration requirements. Therefore, integration requirements have been introduced making the right to naturalisation dependent upon a proof of sufficient knowledge of the German language. In addition, the successful attendance of an integration course, consisting of a language course and a course on basic facts of German history and the political system reduces the required time of lawful residence for naturalisation from eight to seven years.

Major points of controversy were again the question of acceptance of dual nationality, the legal status of German repatriates and the conditions for the admission of repatriates, particularly regarding the proof of knowledge of the German language and diverse procedures for consulting with the secret services in the naturalisation proceedings.

Some changes were required by the new system of residence titles introduced by the new Immigration Act. Since the Immigration Act provides for a residence permit and a settlement permit as the only residence titles replacing a number of different titles under the Aliens Act of 1990, the nationality law requirements had to be adjusted to the new system with the requirement of a settlement permit in those cases in which an unlimited residence permit was previously necessary. The Immigration Act has also abolished the EU residence permit. Therefore, the new provision now requires only the right of freedom of movement, which is certified by a formal declaration to EU citizens upon taking up residence in Germany. EU citizens remain privileged with regard to naturalisation. Already under the law of 1999, EU citizens were entitled to naturalisation without renouncing their previous nationality provided that reciprocity was granted. The issue as to under what conditions reciprocity is granted had been a matter of controversy between the *Länder*. Some of the *Länder* have required that reciprocity only be guaranteed if another EU Member State provides the right to naturalisation. Other *Länder* considered it sufficient if a German national was in fact naturalised without the requirement of giving up German nationality. The matter was finally settled by a decision of the Federal Administrative Court deciding in favour of a more liberal interpretation which states that reciprocity does not require a formal similarity in terms of granting an individual right to naturalisation if in fact German nationals will be naturalised without having to renounce their German nationality.¹⁹

In principle, the provisions on *ius soli* acquisition have remained largely unchanged. A request by the opposition parties to replace the provisions on *ius soli* acquisition by a more restrictive rule whereby only children whose parents were born in Germany should be entitled to *ius soli* acquisition of German nationality, did not receive a majority in the Bundestag.²⁰

Naturalisation under Sec. 8 of the nationality law is in principle dependent upon the non-existence of a reason which would justify expulsion or on the capability to earn a living. The Immigration Act has considerably expanded previously existing possibilities for making exceptions to these requirements. Previously, it was only possible to make an exception to the requirement on the capability of earning a living in the case of aliens up to the age of 23 or aliens who were unable to earn a living through no fault of their own. The new provision provides discretionary exceptions for reasons of public interest or to avoid a particular hardship. This enables a considerably larger amount of discretion (Renner 2004:176, 179). The particular hardship clause requires unusual disadvantages or difficulties in the case of non-naturalisation.

Since the new provisions enable a weighing of interests (public interest or particular individual hardships) it will be possible to take into account the reasons for dependence on social benefits and the degree of dependence on social welfare. Similar considerations apply when making an exception to the requirement of the absence of criminal conviction. The discretionary clause, however, applies only if there is no individual right to naturalisation under sect. 10 of the law. Sect. 12a gives an implicit indication the kinds of criminal convictions that will be tolerated.

A declaration of loyalty had already been introduced by the reform of 1999. The new sect. 37 requires that the naturalisation authorities have to submit the personal data of any applicants who have reached the age of sixteen to the secret services.

The law reform of 1999/2000 was accompanied by a political decision to renounce the 1963 Convention on dual nationality, which provides only for a very restricted acceptance of dual nationality. By signing the European Convention on Nationality on February 2002, Germany subscribed to the basic principles of the European Convention on Nationality allowing state parties in art. 14 to provide for dual nationality for children automatically acquiring the nationality of a host state at birth and for married partners possessing another nationality. In addition, art. 15 in other cases leaves it up to the contracting states to admit, under its internal laws, multiple nationality if its nationals acquire or possess the nationality of another state.

With regard to the loss of nationality, the optional model, in the view of the German government, required a reservation whereby Germany declared that loss of German nationality *ex lege* may, on the basis of the option provision in sect. 29 of the Nationality Law (opting for either German or a foreign nationality upon coming of age), be effected in the case of persons who, in addition to a foreign nationality, acquired German nationality by virtue of having been born in Germany. With regard to art. 7 para. 1 lit. f and lit. g Germany has also declared that loss of nationality may occur if, upon a person coming of age, or in the case of an adult being adopted, it be established that the requirements governing the acquisition of German nationality were not met.

6.3 Recent developments and current institutional arrangements

6.3.1 Political analysis

Although there was a basic consensus among the major political parties that the integration of the foreign population, recruited in the 1960s as migrant workers, and their descendants, had been largely neglected in the following decades, no agreement could be reached on

the role of naturalisation and the acquisition of German nationality in the process of integration. While the ruling Social Democratic Party in 1999 considered the acquisition of German nationality to be an essential instrument in achieving integration, the opposing Christian Democratic Parties (CDU/CSU) argued that naturalisation should complete the process of integration rather than pave the way towards integration. The disagreement focussed upon the issue of dual nationality. While the Social Democratic Party and its coalition partner, *Bündnis 90/Die Grünen*, with the assistance of the Liberal Party advocated a concept of toleration of dual nationality based upon a dual attachment to different nations and dual cultural and political ties, the opposition parties maintained that dual nationality was a typical indication of a lack of integration and an unwillingness to accept requirements of loyalty and identity attached to a more traditional ethno-cultural concept of nationality. The German public appeared deeply divided over the issue. While a clear majority of the mass media as well as the churches and humanitarian organisations were in favour of multiculturalism and dual nationality, the German population became increasingly critical about a substantial increase of dual nationals resident in Germany. Surveys showed that a majority supported easier access to German nationality, but opinions were deeply divided on the issue of whether this should be achieved by introducing elements of *ius soli* and/or accepting dual nationality.

Against this political backdrop legal disputes arose about the impact of constitutional law and international treaties, such as the Council of Europe Convention on the reduction of dual nationality of 1963. The doctrine of avoiding dual nationality had been frequently put forward as an argument based on constitutional and international law. Although the Constitutional Court stated in its decision on the voting rights of aliens that dual or multiple nationality is regarded as an evil that, if possible, should be avoided or eliminated, in the interest of states as well as in the interest of the affected citizen, the Court clearly had argued on the basis of the then existing law, shared by the obligation of the European Convention on avoiding dual nationality of 1963 as well as by the traditional German concept of nationality. Supporters of a reform legislation have argued that the traditional arguments voiced against dual nationality do not outweigh the need to integrate second and third generation foreigners into the political system of the Federal Republic of Germany. As a more practical argument in favour of dual nationality, one may point to the increasing number of dual nationals, particularly as a result of a large number of mixed marriages and naturalisations, who during the validity of the nationality law of 1913 were in fact living in Germany and have not created any substantial problems in the application of international treaties or in exercising

of diplomatic protection. There is in fact no precise account of the exact number of dual nationals who acquired German nationality simply on the basis of descent from a German parent or by naturalisation. One argument put forward in the political debate was that almost all Germans repatriated on the basis of art. 116 of the Basic Law as expelled Germans of ethnic German origin had acquired German nationality, maintaining as a rule their previous nationality of the USSR or the 1990 successor states of the USSR. One could also point to the fact that an original provision on the registration of dual nationality had been given up, obviously for the reason that the number of dual nationals did not create substantial problems in administrative practice.

Against the objection concerning the conflict of loyalties it has been argued that the concept of the German state has, similar to the developments in other European states, undergone substantial changes through the immigration of a large foreign population and the process of European integration. As a *de facto* immigration country, Germany could not ignore the fact that a substantial part of its population consisted of migrant workers and their children. Therefore, the argument was that the basis for German nationality can no longer be seen exclusively from the viewpoint of a nation with a cultural and historical identity primarily transferred by descent. One may note, however, that a common objection against German nationality law, particularly by foreign observers, that German nationality law is ethno-centred and based primarily upon ethnicity was an incorrect interpretation of the existing legislation even before 1990. The privileged treatment of ethnic Germans and their descendants, expelled as a result of post-war measures, does not indicate such a concept. The very basis of art. 116 of the Basic Law is the protection of ethnic Germans and their relatives, who were conceived as victims of post-war measures, although the protection aspect has, in the course of time, and due to the substantial political changes in Eastern Europe, lost most of its validity, particularly if one considers that some of the successor states of the USSR are now EU Member States.

Although there was a general debate on the reform of the German nationality law in the election year 1998, no bill was presented that year. After the Social Democratic Party and the Green Party had won the federal parliamentary elections in September 1998, the new government presented a new nationality law on 13 January 1999. In addition to abandoning the principle of avoiding of plural nationality, the bill introduced an element of *ius soli* acquisition of German nationality. In the following debate on this bill the issue of *ius soli* acquisition of German nationality became a predominant topic in the elections in the state of Hessen. The Christian Democratic Party in Hessen very successfully launched a public campaign collecting signatures against

the Bill proposed by the Social Democratic Party. The whole topic became extremely controversial and emotional. Proponents of the introduction of *ius soli* elements argued that problems relating to unequal treatment and growing discrimination could only be solved through automatic acquisition of German nationality for third-generation foreigners born on German territory and that actions like the public campaign against dual nationality were supporting xenophobia and discrimination. On the other hand, it was argued that acquisition of German citizenship on the basis of *ius soli* had been alien to the German concept of nation, which never considered itself as a country of immigration, unlike traditional immigration countries like the US and Canada which have their very social and political foundation in an open immigration policy. The fact that Germany had become a *de facto* country of immigration did not speak in favour of changing its basic rules as to who should be admitted to German citizenship. From a practical point of view it was argued that *ius soli* acquisition excluded any examination whether there was a sufficient prospect of integration. Since experience had shown that the fact of being born in Germany could not be considered as a sufficient indicator for integration, *ius soli* acquisition of German nationality should not be introduced into German nationality law.

When the Christian Democratic Union overwhelmingly won the state election in Hessen, it was at least partly attributed to the campaign against the nationality legislation of the federal government. As a further result the federal government lost its previous majority in the Federal Council (*Bundesrat*), which would have been required in order to pass the bill. Therefore, the federal government withdrew its first proposal and replaced it by a bill that retained the principle of avoiding dual nationality, conceding, however, a number of exceptions in specified situations. The bill, nevertheless, maintained the introduction of the *ius soli* principle with the so-called optional model in order to avoid permanent dual nationality. A joint proposal of the Social Democratic Party and its coalition partner, *Bündnis 90/Die Grünen*, together with the Liberal Party²¹ created the basis for the approval by the *Bundestag* and *Bundesrat* to the law.²² A draft bill supported by the Christian Democratic Parties²³ did not receive the necessary majority in Parliament. Both bills had been the subject of intense public debate by experts in the competent parliamentary committee.²⁴ The law entered into force on 1 January 2000, the general administrative guidelines of 13 December 2000 entered into force on 1 February 2001.

Although the adoption of the new Nationality Law in 1999 did not bring to an end the public debate on the concept of German nationality, the emotions were somewhat calmed when it became apparent that a considerably smaller number of foreign nationals were acquiring German nationality under the new *ius soli* regime or by naturalisation as

had been originally envisaged. The Immigration Act 2004, therefore, did not attract much attention in terms of changing the nationality legislation since its focus was on immigration, although an unsuccessful attempt was made to substantially restrict the scope of application of the *ius soli* rule.

6.3.2 *Statistical development*

It may be somewhat early to try to statistically evaluate whether the nationality reform of 1999/2000 has been a success in terms of achieving the aims of the reform. As far as the *ius soli* rules are concerned there are a variety of new administrative tasks. It is only beginning in 2008 that the nationality authorities have to deal with the issue of the optional model for a yearly average of 40,000 persons, it is difficult to make any predictions as to the practical operation and legal difficulties that will arise in the relationship to the optional model (for administrative issues see Krömer 2000: 363). An important factor for the operation of the nationality law reform of 1999/2000 is the statistical development of naturalisations. However, one has to be careful when interpreting statistics (see Renner 2004: 176; Göbel-Zimmermann 2003: 65).

The number of naturalisations since the mid-1970s remained fairly constant until the end of the 1980s, between 25,000 and 45,000. From 1981 until 1985, 69,000 foreigners were naturalised by regular procedure (discretion) and 117,770 by the legal right to naturalisation (primarily repatriating ethnic Germans). A significant development can be seen if one looks at the statistics from 1991-1995. In the same period there were 489,004 discretionary and 926,283 obligatory naturalisations (Beaufragte der Bundesregierung für Ausländerfragen 1997: 60). The latter category were mainly ethnic Germans in the sense of art. 116 of the Basis Law, who acquired the status of a German upon admission to German territory, and after August 1999 by a certificate of admission whereby they automatically acquired German nationality for themselves and their descendants.

As a result, they were no longer counted in the statistics on naturalisation after August 1999. This explains why the number of naturalisations, which in 1998 had been at a peak of 291,331 dropped to 248,206 in 1999 and to 140,731 in 2003. Until August 1999, repatriating ethnic Germans accounted for up to two-thirds of the naturalisations. In general, repatriate Germans kept their previous nationality. Dual nationality of repatriate Germans has always been accepted under the respective laws although hardly any Germans knew about this situation. Therefore, the largely theoretical dual nationality of repatriate Germans has never been a subject of public controversy.

The 186,688 foreigners who achieved German nationality by naturalisation in 2000 indicates an increasing willingness of foreigners to become German nationals. Although the numbers in the following years have fallen to 140,000 in 2003, the general assessment is that this cannot be taken as a sign of a failure of the nationality legislation. Different reasons are given for the decline in numbers, one of them being that with the entry into force of the new legislation a number of applications had accumulated which could be granted rather quickly when the new law entered into force.

As a result of new provisions in the German Aliens Act of 1990 (*Ausländergesetz*) which provided for the individual right to naturalisation, the number of naturalisations had already increased in the mid 1990s from 45,000 (1993) to 106,790 (1998). The overall quota of naturalisations rose from 0.46 per cent in 1991 to 2.43 per cent in 2001. The increase in the number of naturalisations of foreigners in 1999 was primarily due to an increase in naturalisations of Turkish citizens. In 1999, former Turkish citizens made up two-thirds of all naturalisations of foreigners.²⁵ The increase in 2000 of 30 per cent is largely attributed to the ability to deal with problematic applications more quickly as a result of the entry into force of the new provisions of 1 January 2000. As an example, numerous applications by Iranian applicants could be decided positively since the new provisions reduced the required time of habitual residence to eight years and since the new provisions made it possible to accept dual nationality on a much larger scale if an application for renunciation had been communicated to the Iranian authorities. This also explains to some extent the relatively high number of naturalisations without renunciation of a previous nationality of 44.9 per cent in 2000.

The statistics demonstrate a significant impact of the nationality legislation on the acceptance of dual nationality. While in 1998 only 15,006 (19.1 per cent) of 78,474 persons were naturalised under the general provisions of sect. 85 of the Aliens Act and by acceptance of dual nationality, in 2000 as much as 80,856 (44.9 per cent) of 186,688 naturalisations were by acceptance of dual nationality. The interpretative value of this statement must, however, not be overestimated. In many cases acceptance of dual nationality is only temporary. By law the loss of nationality takes place only if a former national has acquired the nationality of a different state, in order to prevent statelessness. In the German administrative practice temporary dual nationality arises as a result of naturalisation on the promise to submit an application for renunciation, which may sometimes take years. Temporary dual nationality is subsequently ended by renunciation of a previous nationality. Therefore, developments like a subsequent loss of a previous nationality cannot properly be taken into account in the sta-

tistics. On the other hand, the statistics on acquisition of German nationality by renouncing a previous nationality may lead to a wrong impression of the actual number of dual nationals. Particularly in the case of Turkish citizens where the German nationality was regularly acquired under a legally doubtful procedure of renouncing the former Turkish nationality and with an almost simultaneous re-acquisition of Turkish nationality once the applicants had been naturalised as German citizens. This somewhat strange legal situation was made possible by the provision according to the nationality law valid until the end of 1999 whereby the German nationality was not lost as a result of the voluntary acquisition of a foreign nationality if the German national's permanent residence remained in Germany. Turkish nationals with the silent agreement of the Turkish authorities did in practice almost immediately after formal renunciation of their Turkish nationality re-acquire the Turkish nationality once they had received the German nationality.

Abuse of the law was stopped by the nationality law reform of 1999/2000 providing for a loss of German nationality upon voluntary acquisition of a foreign nationality even in the case of applicants maintaining their permanent residence in Germany. Unfortunately, the legal change was not noticed by many Turkish citizens and obviously not even by the Turkish authorities. Therefore, it is estimated that 40,000 Turks almost unnoticed lost their German nationality after the entry into force of the new nationality law and upon the reacquisition of their Turkish nationality.

The statistics show a substantial difference in acceptance of dual nationality. Nationals of the Iranian Republic, Yugoslavia, Afghanistan, Morocco, Ukraine, Israel, The Russian Federation, Lebanon, Tunisia and Syria are generally naturalised in the range, between 80 and 99 per cent without having to renounce their previous nationality. The general statistics in 2003 show a number of 142,406 naturalisations of which 57,285 were under acceptance of dual nationality.

The naturalisation of Union citizens, however, has been rather insignificant in spite of the privileged possibility to maintain their previous nationality on the basis of reciprocity. In 2003 of 1,849,986 EU citizens, only 4,025 were naturalised as German citizens, of which 3,203 kept their previous citizenship. The number may rise significantly with the EU enlargement with the eastern European states.

In general, the provision on privileged naturalisation which was intended to promote the naturalisation of EU citizens has not had its intended effect. Naturalisations of EU citizens correspond only to 1.83 per cent of the total number of naturalisations in Germany in 2003 (information from the *Statistische Bundesamt* of 20 September 2004); the quota of dual nationals was, at almost 80 per cent, considerably above the average quota of 40.2 per cent of all naturalisations. The statistics

indicate that there is no substantial need or interest by Union citizens to acquire German nationality, due to the secure residence status granted by Union citizenship.

As to the practical effects of the reform legislation on *ius soli* acquisition of German nationality, the statistics show a somewhat diverse picture. The original assumption of the number of *ius soli* acquisitions (about 100,000 per year; non-recurring 300,000 to 350,000 additional naturalisations based on Sec. 40b of the Nationality Law) had been largely wrong. In 2000, 41,257 children acquired *ius soli* German nationality by birth on German territory.²⁶ This number remained more or less constant in the following years with 36,819 persons in 2003. In addition, in 2001 and 2002 approximately 43,700 children were naturalised according to the special provision of sect. 40b of the Nationality Law which, for a limited period, made it possible for children born before the entry into force of the new law to acquire German nationality on the basis of *ius soli* if they would have fulfilled the requirements of *ius soli* acquisition had the law been in force at that time. An attempt to prolong this provision beyond the year 2001 was rejected in the *Bundestag*.

The relatively small number of *ius soli* acquisitions is sometimes attributed to the requirement that one parent must be in possession of an unlimited residence title. This requirement had been fulfilled by slightly less than half of the foreign population living in Germany on 1 January 2004.

6.3.3 *Special categories and quasi-citizenship*

The status of ethnic Germans living in Eastern and Central Europe and presumed to be victims or descendants of victims of expulsion or persecution by post-war measures has been regulated by the Federal Expellees Act (*Bundesvertriebenengesetz*) since 19 May 1953. It was repeatedly amended, for the last time by the Immigration Act of 30 July 2004.²⁷ Repatriates have a special constitutional position as Germans without German nationality. This means that they are entitled to take up residence in Germany and acquire German nationality. Until 1999, German repatriates who had passed a reception procedure in their country of origin and had received a certificate of admission (*Aufnahmebescheid*) were entitled to naturalisation according to sect. 6 of the *Staatsangehörigkeitsregelungsgesetz* (Peters 2003: 193; Hailbronner & Renner 2005: 451). The nationality reform legislation of 1999/2000 changed the legal situation. Repatriates and family relatives and descendants are automatically granted German nationality by the issuance of a certificate as a German repatriate (*Spätaussiedlerbescheinigung*) according to sect. 15 of the Federal Expellees Act (cf. sect. 7 of the *Staat-*

sangehörigkeitsgesetz). This still requires them to pass the aforementioned admission procedure according to the Federal Expellees Act. To receive the status as a German repatriate it is in principle necessary for persons born after 1923 to prove descent from an ethnic German and adherence to the German nation, which is generally indicated by the acquisition of knowledge of the German language within the family. The Federal Administrative Court decided that the required knowledge of the German language must be achieved by adulthood.²⁸ The law of 7 September 2001 on German repatriates²⁹ reacted by clarifying that membership to the German nation must be demonstrated by acquisition of the German language within the family, which means that the applicant is able to have a conversation in German at the time of emigration. (Renner 2003: 913, 923).

Since the entry into force of the Immigration Act 2004 the family relatives and non-German descendants of a German repatriate are only included in a certificate of admission (*Aufnahmebescheid*) upon proof of basic knowledge of the German language. The requirement of basic knowledge of the German language, which until then had not been required, was included in order to promote the integration of the immigrants and incite potential applicants to already learn German in their country of origin. The legislation thereby reacted to the fact that in 2002 only 22 per cent of persons admitted under the provisions were in fact ethnic Germans while 64 per cent were non-German spouses and descendants and other relatives. In most cases the non-German family relatives did not have any knowledge of the German language. It is not altogether clear whether basic knowledge of the German language is equal to the language requirements under the general naturalisation provisions of the Nationality Law.³⁰

Since the entry into force of the Immigration Act 2004 German repatriates as well as their family relatives are also entitled to participate in an integration course and to receive further assistance for integration, particularly in order to facilitate professional formation and the education of juveniles.

The procedure for acquiring legal status as a German repatriate is divided into two steps. The first step in the readmission procedure is to find out whether a person meets the basic requirements for admission under the Federal Expellees Act and whether admission is within the quota for admission. A person having passed the admission procedure receives a certificate of admission (*Aufnahmebescheid*), which entitles the person to take up permanent residence in Germany. After entering into Germany a further procedure results in the issuing of a certificate of recognition as a German repatriate (*Spätaussiedlerbescheinigung*) according to sect. 15 of the Federal Expellees Act which states with binding force for all authorities that the person is entitled to all privileges

and rights as a German repatriate. The issuance of this certificate leads to the automatic acquisition of German nationality according to sect. 7 of the *Staatsangehörigkeitsgesetz*.

The fact that this occurs in two separate procedures has been subject to criticism. A certain coordination has been achieved by concentrating the authority for both certificates in the *Bundesverwaltungsamt* in Berlin. The certificate of recognition as a German repatriate is issued automatically as the entry into force of the Immigration Act and does not require an application. However, there are a number of unsolved issues relating to the acquisition of German nationality by German repatriates. Restrictions concerning the necessary knowledge of the German language have been generally acknowledged as an essential element of the general integration policy. About 50 per cent of all applicants do not pass the German language test. From an administrative point of view it is envisaged to replace the existing two-step procedure by a single procedure, which terminates in the recognition of the legal status as a repatriate.

As a result of enlargement of the European Union it will be necessary to redefine the concept of a German repatriate. Until now, the Baltic States are still included in the scope of application of the Expellees Act. It is, however, very doubtful whether one can still assume that ethnic Germans or their second- or third-generation descendants in these countries are still in need of special protection by privileged access to the German nationality. There are also good arguments for terminating the special legal status of ethnic Germans expelled after the Second World War and their descendants. After the collapse of the Soviet Union the situation justifying protection has substantially changed and one may well ask whether need for protection still exists.

6.3.4 Institutional arrangements

6.3.4.1 The legislative process

Under art. 73 of the Basic Law, the Federation has the exclusive power to legislate with respect to citizenship in the Federation. Special authority is granted the Federation by art. 116 of the Basic Law which defines a German as a person who either possesses German citizenship or has been admitted to the territory of the *German Reich* within the boundaries of 31 December 1937 as a refugee or expellee of German ethnic origin or as a spouse or descendant of such persons. Art. 116 para. 1 provides explicitly for further legislation ('unless otherwise provided by a law').

The exclusively federal legislation on nationality means that nationality issues are usually dealt with by the Federal Ministry of the Interior, which is in charge of matters of nationality. However, the law reforms

during the last fifteen years have been heavily controversial and frequently accompanied by an emotional public debate. As a result of the development of Germany into a de facto immigration country with a high percentage of immigrants nationality issues have become very closely connected with general migration issues and questions of homogeneity and identity. This explains why naturalisation and toleration of dual nationality have been very closely connected to a general debate on the right concept for integration for foreigners into the German society. While the more conservative parties have maintained that integration cannot be equivalent to a toleration of split loyalties and multiculturalism, the Social Democratic Party and the Greens have very much promoted the idea of a 'republican concept' of nationality, requiring the 'members of the club' to comply with the laws and to respect the basic principles of the Constitution as the only prerequisites for acquisition of nationality. The debate on the term '*Leitkultur*' (guiding culture) has indicated that German society is divided on what the right concept for the integration of foreigners is.

This explains also why German nationality issues have frequently played a dominant role in federal and state elections. The repeated attempts of the Social Democratic Party to reach an informal agreement between the major political parties about leaving controversial issues of nationality law out of the electoral campaigns were therefore never much more than rhetorical.

Due to the exclusive power of the Federation, the *Länder* as single entities do not have a substantial role to play in the legislative process. The Basic Law distinguishes between laws requiring the consent of the *Bundesrat* as the representation of the *Länder* and those laws against which the *Bundesrat* may enter an objection within a certain period, which, however, may be overridden by the *Bundestag*. Nationality law as a rule falls into the category of those laws requiring the consent of the *Bundesrat*. While nationality law as such falls under the exclusive competence of the Federation, the *Länder* have the power to execute federal laws in their own right and may regulate the establishment of the authorities and the administrative procedures if federal laws enacted with the consent of the *Bundesrat* do not otherwise provide. Since nationality law generally requires administrative regulations, any substantial reform of nationality law will usually be dependent upon the consent of the *Bundesrat*.

The history of the Federal Republic has shown that the distribution of political power in federal and state elections does not follow the same pattern. Frequently, in state elections voters decide for a different political composition of the state government in order to achieve a certain distribution of power between the Federation and the *Länder*. This means that in order to pass laws the federal government needs to

achieve a consensus amongst the opposition parties representing the majority of the state governments in the *Bundesrat*. To achieve the necessary consent of the *Bundesrat* for nationality laws it has generally been necessary to seek a compromise between the major political parties or to persuade some governments of the *Länder* so that a majority in the *Bundesrat* could be achieved.

In passing nationality laws the legislative procedure follows the general pattern of a politically controversial law. Generally, the federal government or a state will introduce a bill in the *Bundestag* which shall first be submitted to the *Bundesrat*. If no agreement can be reached, the *Bundesrat* will demand that a committee for joint consideration of bills, composed of members of the *Bundestag* and the *Bundesrat*, be convened. This was the case with the nationality law in 1998/1999 when at first no compromise could be reached. Generally, the legislative process is also accompanied by a hearing of experts in the internal affairs committee. If the committee reaches an agreement and proposes an amendment to the adopted bill, the *Bundestag* will vote on it a second time followed by the consent of the *Bundesrat*.

It is highly controversial to what extent constitutional provisions on the principle of democracy and of art. 116 on nationality provide constitutional limits to the legislative competence of the Federation in nationality matters. Art. 116 para. 1 of the Basic Law provides that no German may be deprived of his or her citizenship. Citizenship may be lost only pursuant to a law and against the will of the person affected only if he or she does not become stateless as a result. Both provisions have been heavily used in order to argue the unconstitutionality of the legislative reform 1999/2000. However, finally no attempt has been made to challenge the nationality legislation in the Constitutional Court. This may be due to the fact that art. 116 of the Basic Law does provide a relatively wide legislative power to define German citizenship by statutory legislation (for an opinion on the constitutional reform see Hailbronner 1999c: 1273).

Recently, the loss of nationality for Turkish citizens, who in ignoring the reform legislation 1999/2000 have reacquired their Turkish citizenship after previously renouncing it, has become the subject of political controversy. Some 40,000 Turkish nationals, who had acquired German nationality, had lost their German nationality as a result of a new provision leading to the loss of German nationality due to the acquisition of a new nationality. They had ignored the change in legislation, which previously had made it possible to retain the nationality of the country of origin in case of naturalisation if the persons concerned had their habitual residence in Germany. The loss of German nationality has led to proposals for a legislative change in order to provide for a facilitated procedure to reacquire the German nationality (upon re-

nouncement of the Turkish nationality). The Immigration Act, however, has provided for a settlement permit for those Germans having lost the German nationality taking into account that German nationals might lose German nationality when the optional model becomes operational. This provision will now be used to also grant a secure residence permit to Turkish citizens who have involuntarily lost their German nationality since they were assuming that they could reacquire their Turkish nationality with the cooperation of the Turkish authorities which readily assisted in circumventing the previous German legislation without any adverse consequences. As a result a number of legal problems have arisen concerning the legal status of former Turkish dual nationals who have lost their German nationality wanting to get back their German nationality by giving up their Turkish nationality (this time not only formally). The federal government so far does not see any need to change the legislation. The opposition parties have claimed that at the last elections at which a substantial number of German nationals of Turkish origin participated may have been influenced by the votes of a substantial number of people who at the time of voting had no political rights.

6.3.4.2 *The process of implementation*

It is within the competence of the *Länder* to execute federal laws in their own right. Under art. 84 of the Basic Law they are authorised to regulate the establishment of authorities and administrative procedures insofar as federal laws enacted with the consent of the *Bundesrat* do not otherwise provide such. With the consent of the *Bundesrat* the federal government may issue general administrative rules (art. 84 para. 2 of the Basic Law).

It follows that the *Länder* may issue administrative guidelines on their own to the extent that there are no federal administrative rules enacted with the consent of the *Bundesrat*. Since nationality law frequently leaves a wide margin of interpretation, administrative guidelines of the *Länder* may differ substantially according to the different political aims of the *Länder* governments.

Based upon art. 84 para. 2 of the Basic Law and previously sect. 39 of the *Reichs- und Staatsangehörigkeitsgesetz* 1913 authorising the federal government to issue administrative guidelines with respect to the administrative procedures and the cooperation between the various competent authorities, as well as to formal matters, a number of administrative rules have been enacted since 1950 covering matters like

- the exceptional permit to retain German nationality in case of voluntary acquisition of a foreign nationality,
- the acquisition of German nationality by appointment as a German civil servant,

- rules on fees for nationality procedures,
- the type and form of nationality certificates,
- the exchange of information in matters of nationality with other states,
- the rules on the examination of nationality for German repatriates,
- the rules on naturalisation,
- the rules on the acquisition and loss of German nationality by legitimation as child through adoption,
- the rules on naturalisation in case of dependence on social benefits.

In addition to these federal rules, the different *Länder* have adopted a variety of administrative rules supplementing the federal provisions of the law and providing interpretative guidelines for the application of federal provisions (for a comprehensive survey of administrative rules see Hailbronner & Renner 2005: 1242 ff.).

Among the federal administrative rules the administrative circular on naturalisation of 1 September 1977 (Hailbronner & Renner 2005: 1246) has played a large practical role. Rules on exercising administrative discretion were commonly drafted by the *Bund* and the *Länder* in 1977 and were used during the following decades to determine the large scope of discretionary power, which was given by the nationality law on matters of naturalisation. The *Bund* and *Länder* have commonly agreed in principle on rules on the extraordinary retention of the German nationality in case of acquisition of a foreign nationality and rules on the relevance of development aid in naturalisation proceedings. In 1991 the new *Ausländergesetz* 1990 was adopted which provided for some changes in the rules for naturalisation, in particular with respect to the facilitation of dual nationality and the granting of individual rights to naturalisation. The Federation, in order to give some guidance to the *Länder* authorities issued informal non-binding federal administrative guidelines (*Vorläufige Anwendungshinweise*) which were not adopted by the *Bundesrat*. Only between 1995 and 1998 did the Federal Ministry of Interior submit a draft for administrative guidelines to the Aliens Act, which was approved finally by the *Bundesrat* with 159 amendments.³¹ The administrative guidelines to the Aliens Act were adopted on 28 June 2000 by the federal government.³²

After the adoption of the nationality law reform 1999/2000 the draft of the general administrative guidelines was submitted to the *Bundesrat* in December 1999. The *Bundesrat* in April 2000 proposed more than 80 amendments.³³ In January 2001 the administrative guidelines to the new nationality law³⁴ were proclaimed and entered into force on 1 February 2001.³⁵ After lengthy negotiations the Federation has managed to agree on common administrative guidelines with the *Länder*, represented by the *Bundesrat*. There are substantial gaps and uncertain-

ties particularly in areas where the Federation and the majority of the *Länder* differ on matters of political importance. Two examples can be quoted to demonstrate this point.

Until 1 January 2005 the practice of the *Länder* with regard to the examination of the constitutional loyalty of applicants for naturalisation differed substantially. Some *Länder*, primarily but not exclusively those *Länder* that had objected to the reform of the nationality law and were ruled by the Christian Democratic Party, made obligatory that before an application for naturalisation was to be granted the security services in charge of the protection of the Constitution (*Verfassungsschutzbehörden*) had to be consulted with a formal request for information.³⁶ The same procedure was adopted by Bavaria, Saxony and Thuringia. In some other *Länder*, the security services were only consulted in particular cases where there were concrete indications for unconstitutional activities. In another group of *Länder* the practice differed according to the country of origin of the applicants for naturalisation. In Berlin, applicants from a specific list of countries, which was subsequently enlarged, were checked through the security services.

Some *Länder* introduced an obligatory check by the security services after 11 September 2001, while others maintained the practice of consulting with the security services only in cases where there were concrete indications relating to terrorist or unconstitutional activities.

After 11 September 2001, the *Länder* Baden-Württemberg and Bavaria submitted a proposal to change the federal regulations by the introduction of an obligatory referral to the security services for applicants having completed their sixteenth year of age. The federal government refused to accept this amendment. The obligatory referral to the security services for naturalisations has only been included in nationality law because of compromises reached in the Immigration Act 2004. Since 1 January 2005, the naturalisation authorities have to transmit all personal data of applicants for naturalisation and according to the existing rules the security services are obliged to immediately inform the naturalisation authorities about any information regarding unconstitutional or terrorist activities.³⁷

A second similarly political issue concerns the administrative rules on sufficient knowledge of the German language. In spite of the general principle that there should be a requirement for knowledge of the German language as a prerequisite for the acquisition of German nationality, there was a substantial disagreement between the Federation and the majority of the *Länder* on the concrete requirements with regard to the level of knowledge and the procedure to be followed for examining the language knowledge. Although one may identify a certain trend whereby the *Länder* ruled by the Christian Democratic Parties appear to be stricter than *Länder* ruled by the Social Democratic Party in

coalition with the Greens, the different practices cannot be wholly attributed to political affiliations. There are other factors, like the number of foreigners, the particular integration problems of some *Länder* and different categories of foreigners influencing the general attitude of the *Länder* with regard to the requirement for sufficient knowledge of the German language. Hessen, for instance, having followed a rather strict line in matters of dual nationality, does not require a written test, which has led to a decision by the Administrative Court of Appeal ruling that the practice is not in accordance with federal law.³⁸ In Bavaria and Baden-Württemberg, Berlin, Brandenburg, Bremen and Saxony, the proof of sufficient knowledge of the German language also requires a written test with varying requirements as to the level of writing.

There are no indications of discriminatory treatment of certain groups of applicants for naturalisation on ethnic or racial grounds. Organisations advocating the rights of immigrants have frequently complained about the bureaucratic nature of naturalisation proceedings, the fees to be paid and the length of the procedure. The complaints by particular groups of applicants for naturalisation, however, cannot be attributed to discrimination on the basis of race or ethnicity. Sometimes, there are particular problems, like in the case of former Yugoslavs, due to the fact that it is frequently unclear which nationality has to be relinquished since attribution of an applicant to a particular successor state may create difficulties. In the case of Kosovo-Albanians administrative difficulties arose due to the fact that the Yugoslavian authorities require a certificate that the applicant does not owe taxes in Albania (Beauftragte der Bundesregierung für Ausländerfragen 2002: 62). It is not known if any of the numerous initiatives, programs or actions against racial and ethnic discrimination in particular are connected to discriminatory practices related to the acquisition of German nationality.

After the adoption of the reform legislation 1999/2000, the *Länder* have either started or supported to a varying degree programmes promoting naturalisation. Some of the *Länder* like Berlin with an average of 6,500 naturalisations since 2000 have achieved substantial success in higher naturalisation figures. Other *Länder* have had relatively low naturalisation figures. However, comparison is very difficult due to the difference in numbers of foreign residents and the categories of foreign residents. No comparison is possible, in particular, between the new *Länder* and the old *Länder* due to a completely different situation with regard to foreign populations.

Individuals or authorities not involved in a decision on the acquisition of nationality have no right to appeal against decisions by authorities on matters of nationality. According to the German Administrative Court Procedures Act, persons affected by an administrative decision

may file an appeal with the administrative court against a negative decision of the naturalisation authorities. A further appeal may be filed with the Administrative Appeal Court and in particular with the Federal Administrative Court, if an appeal is accepted by the Federal Court, or if the Administrative Court of Appeal admits an appeal for the reasons laid down in the Administrative Court Procedures Act.

6.4 Conclusions

The reform of the nationality law in German in 1999/2000 has brought about a substantial change to the traditional German nationality law which was based upon the Nationality Act of 1913. The nationality legislation of 1999/2000 has brought the German legislation very much in line with the predominant pattern of most European nationality laws, providing for easier access for foreigners to the German nationality. The nationality law therefore appears to be a logical consequence of the fact that Germany had in fact become a *de facto* country of immigration, while at the time neither nationality law nor the immigration law had fully taken account of this development. The nationality law can therefore be considered as a further step towards the adjustment of Germany as a country with a large number of immigrants. Facilitation of the naturalisation of foreigners who have been permanently resident on German territory for a long time not only corresponds to a basic principle of democracy but also reflects the increasing need to integrate foreigners into the social and political life of Germany which is in the interest of the German nation as a whole. In this perspective one can clearly see a connection between the nationality legislation and the Immigration Act of 2004, which also provides for integration of the foreign population by obligatory integration courses and a further facilitation of the acquisition of secure residence status and subsequent naturalisation.

One has to be careful, however, as to whether the nationality legislation has brought about a substantial change in the perception of the German nation. There is clearly a shift in the perception of the inclusion of foreigners into German society. Though one may generally observe that acquisition of German nationality and naturalisation are recognised as not only unavoidable but also desirable effects of the change in composition of the population living permanently on German territory, public opinion as well as the political parties are deeply divided on the fundamental question as to what conditions have to be fulfilled in order to be admitted to the 'club'. The debate on dual nationality has been a significant indicator for the criticism of a large part of the German people against replacing traditional concepts of histori-

cal, cultural and ethnic identity by a concept exclusively based upon the observance of the law and certain common constitutional principles. With European citizenship these traditional concepts may gradually become less important. It is, however, an open question as to what extent the traditional concepts of who is to be considered a 'German' will persist.

The nationality law reform of 1999/2000 is only a first step in drafting a new comprehensive nationality legislation. Some changes to the nationality law have been adopted in the Immigration Act 2004. There are, however, a number of further issues which may arise in the future. Legal issues arise particularly regarding the application and implementation of the new nationality provisions, notably how to deal with the duty to opt for or against German nationality between the ages of eighteen and 23, which will arise in 2008, and the fact that aside from some practical problems, this might be the starting point for an ever broader acceptance of double and multiple nationality in those cases. Further reforms will probably be necessary concerning the loss of German nationality when persons having acquired dual nationality return permanently to their country of origin. Issues might also arise with regard to the assertion of minority rights of dual nationals. Until now the international treaties and national provisions on the protection of minorities in Germany have not been applied to immigrants. However, with a substantial part of the German population currently having a different cultural, linguistic and ethnical background, these questions might well arise in the future.

Finally, it will be important to see to what extent citizenship law will influence the integration of foreigners. It should be noted that changes in nationality law have an influence upon integration, but that they are not by themselves a means of integration. The main objective must be the active participation of that part of the German population which is of foreign origin, in the actual political and social life of Germany. Therefore, economic integration and measures against unemployment and a low level of education and professional knowledge of persons of foreign origin, whether German nationals or not, may play a much bigger role than nationality issues.

Chronological table of major reforms of German nationality law since 1945

Date	Document	Content of change
22 February 1955	First Act on Regulation of Questions of Nationality (Erstes Gesetz zur Regelung von Fragen der Staatsangehörigkeit)	Regulations regarding the nationality of persons who became Germans as residents of occupied areas or members of the Wehrmacht during the Second World War. Legal claim for victims of the Nazi Regime to (re)obtain German nationality.
17 May 1956	Second Act on Regulation of Questions of Nationality (Zweites Gesetz zur Regelung von Fragen der Staatsangehörigkeit)	Regulation on the expatriation of Austrians who obtained German citizenship after the annexation of Austria except for some specific cases.
19 August 1957	Third Act on Regulation of Questions of Nationality (Drittes Gesetz zur Regelung von Fragen der Staatsangehörigkeit)	Regulation regarding naturalisation of wives of Germans. Time limit for people to raise their claims according to the law of 1955.
19 December 1963	Amendment of the German Nationality Act (Gesetz zur Änderung des Reichs- und Staatsangehörigkeitsgesetzes)	Regulation of the nationality of the children of German women.
8 September 1969	Amendment of the German Nationality Act (Gesetz zur Änderung des Reichs- und Staatsangehörigkeitsgesetzes)	Provisions regarding the naturalisation of spouses of German citizens.
29 September 1969	Ratification of the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality of 6 May 1963 (Übereinkommen über die Verringerung der Mehrstaatigkeit und über die Wehrpflicht von Mehrstaatern)	The Convention contains regulations regarding the loss of citizenship in case of obtaining the citizenship of another country by naturalisation. Additionally, it provides that people with multiple nationalities should only serve in the military once.
27 August 1973	Ratification of the Convention on the Nationality of Married Women of 20 February 1957 (Übereinkommen über die Staatsangehörigkeit verheirateter Frauen)	The Convention provides that women may keep their original citizenship despite of marriage or their husband's change of nationality.
20 December 1974	Amendment of the German Nationality Act (Gesetz zur Änderung des Reichs- und Staatsangehörigkeitsgesetzes)	Provisions regarding the nationality of illegitimate children of German women; regulation on the release from German nationality.
12 April 1976	Ratification of the Convention relating to the Status of Stateless	Provisions regarding the legal status of stateless persons; these

Date	Document	Content of change
2 July 1976	Persons of 28 September 1954 (Übereinkommen über die Rechtsstellung der Staatenlosen) Amendment of the German Nationality Act provided for by the Act on Legal Adoption (Gesetz über die Annahme als Kind und zur Änderung anderer Vorschriften – Adoptionsgesetz)	persons obtain a legal status comparable to refugees. Regulation of the naturalisation and expatriation in the case of adoption.
29 June 1977	Act on the Implementation of the Convention on the Reduction of Statelessness of 30 August 1961 and of the Convention on the Reduction of Cases of Statelessness of 13 September 1973 – Act on the Reduction of Statelessness (Ausführungsgesetz zu dem Übereinkommen vom 30.8.1961 zur Verminderung der Staatenlosigkeit und zu dem Übereinkommen vom 13.9.1973 zur Verringerung der Fälle von Staatenlosigkeit – Gesetz zur Verminderung von Staatenlosigkeit)	Regulations in order to reduce the cases of statelessness (e.g., by restrictions regarding the loss of German nationality, or simplification of naturalisation for children).
9 July 1990	German Aliens Act (Gesetz über die Einreise und den Aufenthalt von Ausländern im Bundesgebiet – Ausländergesetz)	Facilitation of naturalisation of long-term residents and of young aliens.
30 June 1993	Amendment of the German Nationality Act provided for by the Act on the Amendment of Regulations on Asylum Procedure, Aliens and Nationality Law (Gesetz zur Änderung asylverfahrens-, ausländer- und staatsangehörigkeitsrechtlicher Vorschriften)	The 1990 facilitations of naturalisation were converted into legal claims.
16 December 1997	Act on the Reform of Legitimation Law (Gesetz zur Reform des Kindschaftsrechts)	Amendment of the regulations on legitimation.
15 July 1999	Act on the Reform of Nationality Law (Gesetz zur Reform des Staatsangehörigkeitsrechts)	Introduction of the acquisition of the German nationality by <i>ius soli</i> , connected with the obligation to opt for one of both nationalities after attaining majority; facilitation of the naturalisation of long-term residents (eight instead of fifteen years of legal habitual residence); new conditions for a claim to naturalisation, e.g., sufficient knowledge of the German

Date	Document	Content of change
13 December 2000	General Administrative Regulation on Nationality Law (Allgemeine Verwaltungsvorschrift zum Staatsangehörigkeitsrecht)	language, protective clause preventing extremist aliens from naturalisation; a few new exceptions to the non-acceptance of dual nationality.
16 February 2001	Amendment of the German Nationality Act provided for by the Act on Termination of Discrimination of Homosexual Partnerships (Gesetz zur Beendigung der Diskriminierung gleichgeschlechtlicher Gemeinschaften – Lebenspartnerschaftsgesetz)	The Administrative Regulation was enacted in order to ensure that the different authorities enforce the law of 1999 in similar manner. Facilitation of naturalisation of registered homosexual partners (so-called Lebenspartner).
3 December 2001	Amendment of the German Nationality Act by the sixth Act on the Introduction of Euro (Sechstes Euro-Einführungsgesetz)	Conversion of DM-amounts into Euro.
20 December 2001	Denunciation of the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality of 6 May 1963 (Übereinkommen über die Verringerung von Mehrstaatigkeit und über die Wehrpflicht von Mehrstaatern)	See above (notification of 29 September 1969).
9 January 2002	Amendment of the German Nationality Act provided for by the Act on Combatting International Terrorism (Terrorismusbekämpfungsgesetz)	Cases of support of international terrorism added to the above-mentioned protective clause.
4 February 2002	Signature of the European Convention on Nationality of 6 November 1997 (Europäisches Übereinkommen über die Staatsangehörigkeit)	Regulation regarding questions of multiple nationality, military obligations and the prevention of statelessness.
21 August 2002	Amendment of the German Nationality Act provided for by the Act on Amendment of Regulations on Administrative Procedure (Gesetz zur Änderung verwaltungsverfahrensrechtlicher Vorschriften)	Exception for procedures regarding nationality while electronic exchange of documents in administrative procedures is generally introduced.
13 May 2004	Act on the European Convention on Nationality of 6. November 1997 (Gesetz zu dem	See above (4 February 2002).

Date	Document	Content of change
30 July 2004	<p>Europäischen Übereinkommen vom 6.11.1997 über die Staatsangehörigkeit)</p> <p>Amendment of the German Nationality Act provided for by the Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners – Immigration Act (Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern und Ausländern – Zuwanderungsgesetz)</p>	<p>Adaptation of the regulations on naturalisation to the new system of residence permits; introduction of a new regulation on hardship cases concerning naturalisation by discretion; introduction of a standard request for information on any anti-constitutional records prior to the decision on naturalisation.</p>

Notes

- 1 Staatsangehörigkeitgesetz (StAG) of 15 July, 1999, Federal Law Gazette, vol. I, p. 1618.
- 2 Reichs- und Staatsangehörigkeitgesetz (RuStAG) of 22 July, 1913, Imperial Law Gazette, p. 583.
- 3 See Decisions of the Federal Administrative Court, vol. 79, p. 94.
- 4 The status 'ethnic German' according to art. 116 of the Basic Law is not transferred to descendants.
- 5 Decisions of the Federal Constitutional Court, vol. 36, p. 1.
- 6 Decisions of the Federal Constitutional Court, vol. 40, p. 141; vol. 41, p. 203.
- 7 See for example the statement of the Federal Government in: Bundestagsdrucksache (Official Records of the Bundestag), No. 10/2071.
- 8 Decisions of the Federal Constitutional Court, vol. 83, p. 37, 59 ff.
- 9 This was part of the so-called *Asylkompromiss*, Bundesgesetzblatt (Federal Law Gazette), vol. I, p. 1062.
- 10 Ethnic Germans are not included in this rate of naturalisation.
- 11 As to the coalition agreement see Eylmann 1995: 161, 163; Leutheuser-Schnarrenberger 1995: 81, 85; Ziemske 1995: 380 and the Plenarprotokoll des Deutschen Bundestages (Parliament's Plenary Protocol), No. 13/18, p. 1217.
- 12 Bundestagsdrucksache (Official Records of the Bundestag), No. 13/9815.
- 13 Bundestagsdrucksache (Official Records of the Bundestag), No. 13/259.
- 14 On the optional model see the report by the Reference and Research Services of the Bundestag (eds.), No. WF III-49/99 of 10 October 1996.
- 15 *Zeitschrift für Ausländerrecht* 1999, 50: ZAR-Nachrichten: 'Zuwanderung, Integration und Reform des Staatsangehörigkeitsrechts'; Barwig, Brinkmann, Hailbronner, Huber, Kreuzer, Lörcher & Schumacher 1999.
- 16 Bundestagsdrucksache (Official Records of the Bundestag), No. 14/867.
- 17 Plenarprotokoll des Deutschen Bundestages No. 14/40, p. 3415 ff.; Bundesratsdrucksache (Records of the Bundesrat) No. 296/99; on the consultation of the

- Committee on the Interior see Bundestagsinnenausschuss-Protokoll (Protocol of the Committee on the Interior) No. 12, dated 13 March 1999.
- 18 Bundesgesetzblatt (*Federal Law Gazette*), vol. I, p. 1618; on the amendments see Hailbronner 1999c; Huber & Butzke 1999: 2769 ff.
- 19 Judgement of 20 April 2004, *Deutsche Verwaltungsblätter* 2004, vol. 22, p. 1430.
- 20 Bundestagsdrucksache (Official Records of the Bundestag), No. 15/955, p. 38 ff.
- 21 Bundestagsdrucksache (Official Records of the Bundestag), No. 14/533; see *Zeitschrift für Ausländerrecht* 1999, 98: ZAR-Nachrichten: 'Neue Gesetzentwürfe zur Reform des Staatsangehörigkeitsrechts'.
- 22 Plenarprotokoll des Deutschen Bundestages No. 14/40, p. 3415 f.; Plenarprotokoll des Deutschen Bundesrats (Federal Chamber's Plenary Protocol) No. 738; see *Zeitschrift für Ausländerrecht* 1999, 150: ZAR-Nachrichten: 'Reform des Staatsangehörigkeitsrechts verabschiedet'.
- 23 Bundestagsdrucksache No. 14/535.
- 24 On consultation of the Committee on the Interior (*Innenausschuss*) see Bundestagsinnenausschuss-Protokoll No. 12; see *Zeitschrift für Ausländerrecht* 1999, 150: ZAR-Nachrichten: 'Reform des Staatsangehörigkeitsrechts verabschiedet'.
- 25 See Press Release Statistisches Bundesamt (Federal Statistical Office Germany) of 28 December 2000: 'Einbürgerungen von Ausländern 1999 gegenüber 1998 um ein Drittel gestiegen'. www.destatis.de.
- 26 See Bundestagsdrucksache (Official Records of the Bundestag) No. 14/9815, p. 5.
- 27 Bundesgesetzblatt (*Federal Law Gazette*), vol. I, p. 1950.
- 28 Federal Administrative Court, *Neue Zeitschrift für Verwaltungsrecht-Rechtsprechungsreport* 2001, vol. 5, p. 342.
- 29 Spätaussiedlerstatusgesetz of 30 August 2001, Bundesgesetzblatt (*Federal Law Gazette*), vol. I, p. 2266.
- 30 See Bundestagsdrucksache (Official Records of the Bundestag), No. 15/3479, p. 16, 47.
- 31 See Official Records of the Bundesrat (Bundsratsdrucksache), No. 350/99.
- 32 In the meantime, a decision of the Constitutional Court had declared the authorisation of the Federal Minister of Interior unconstitutional, interpreting art. 84 as a competency of the federal government as a whole, Decisions of the Federal Constitutional Court, vol. 100, p. 249.
- 33 Official Records of the Bundesrat (Bundsratsdrucksache), No. 749/99.
- 34 Federal Administrative Guidelines on Nationality Law (StAR-VwV).
- 35 *Bundesanzeiger* No. 21a of 21 January 2001; Hailbronner & Renner 2005: 1250.
- 36 See for instance StAR-VwV of Baden-Württemberg of 5 January 2001, supplementing No. 86.2 StAR-VwV.
- 37 According to an analysis of the Bavarian practice, the obligatory consultation of the security services from 1996-1998 provided relevant information in 300 cases of a total of 28,100 naturalisations, corresponding to a quota of 1.07 per cent.
- 38 Decision of the Administrative Appeal Court of 19 August 2002, *Das Standesamt* 2003, vol. 1, p. 15.

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