

12 Malta's citizenship law: Evolution and current regime¹

Eugene Buttigieg

Malta's legal regime on citizenship is relatively young as it came into being on the day of Malta's acquisition of independence from British rule in 1964. Throughout these years, however, particularly over the past two decades, it has undergone extensive alterations marking changes in the governing principles. This chapter first traces the evolution of the citizenship laws during these years, noting the important policy changes, their possible causes and implications. It then explores the different modes of acquisition and loss of citizenship under the current regime. Finally, statistical data is produced to highlight the extent to which persons seeking to acquire or reacquire Maltese citizenship by registration or naturalisation benefited from these legislative changes, apart from the non-quantifiable number of persons who through these legislative changes acquired or reacquired citizenship automatically.

12.1 Historical background

Malta was a British colony from 1800 until 21 September 1964 when it acquired independence from British rule. All persons born in Malta during this period were automatically British subjects according to British law. It was thus only on Independence Day, 21 September 1964, that Malta acquired its first provisions conferring and regulating Maltese citizenship. The Constitution of Malta, that entered into force on Independence Day, contained provisions conferring Maltese citizenship that were typical of independence constitutions drafted by the British for their colonies. The Constitution contained a section, chapter III, on citizenship, that conferred Maltese citizenship automatically on all persons who were born in Malta and were citizens of the United Kingdom and Colonies before 21 September 1964, provided that one of the parents was also born in Malta; thus a combined application of the *ius soli* and *ius sanguinis* principles. This was necessary to avoid imposing Maltese citizenship on children born in Malta to British military personnel families and British nationals stationed in Malta, while Malta was a British colony. Persons born abroad also acquired Maltese citi-

zanship on 21 September 1964 provided the father and a paternal grandparent were both born in Malta.

On the other hand, persons born on or after the date of independence acquired Maltese citizenship by mere birth in Malta irrespective of whether or not any of their parents were born in Malta; in other words on the strength of the *ius soli* principle only. In practice, this meant that children born of foreign parents in Malta acquired Maltese citizenship by birth even if they were not of Maltese descent.

Chapter III of the Constitution also established that a Maltese citizen should have no other citizenship. Adults in possession of another citizenship had to renounce it by 21 September 1967. If a minor who was a Maltese citizen possessed any other citizenship, upon reaching his or her eighteenth birthday, he or she would have had to renounce any other citizenship within a year if he or she wished to retain Maltese citizenship. Moreover, Maltese adults who acquired the citizenship of any other country would have automatically forfeited Maltese citizenship while foreigners who acquired Maltese citizenship by registration or naturalisation would have had to renounce any other citizenship held by them within six months from registration or three months from naturalisation.

Not unlike the general policy worldwide at the time, in the case of children born abroad, the question whether the child would acquire Maltese citizenship or not depended on whether it was the father or the mother who possessed Maltese citizenship at the time of birth. If the father was Maltese (by birth in Malta, by registration, or by naturalisation) though not the mother, the child would acquire Maltese citizenship but if the father was non-Maltese even though the mother was Maltese the child would not acquire Maltese citizenship. Thus, a Maltese mother could not transmit her citizenship to her child born outside Malta unless she was unmarried. Likewise, consistent with the international trend at the time, while the foreign wife of a Maltese citizen was entitled to become a citizen of Malta by registration, a foreign husband of a Maltese citizen was not.

The first law that complemented the Constitution on citizenship matters was the Maltese Citizenship Act (chapter 188 of the Laws of Malta) that was enacted the following year in 1965. This regulated in particular the acquisition of Maltese citizenship by registration and naturalisation. The law was prejudiced in favour of Commonwealth citizens as the latter could acquire Maltese citizenship by registration after five years of residence in Malta, while other foreigners required six years of residence in Malta to acquire Maltese citizenship by naturalisation. The next development in this field was the enactment of the Immigration Act (chapter 217 of the Laws of Malta) in 1970 that laid down rules providing for the control of immigration into Malta.

12.1.1 *The 1989 amendments*

Although throughout the years various amendments were made to all these laws, necessitated *inter alia* by Malta's transformation into a republic on 13 December 1974, the first major reform in the citizenship laws took place in August 1989 when chapter III of the Constitution, the Maltese Citizenship Act and the Immigration Act (via Acts XXIII, XXIV and XXV of 1989 respectively) were radically amended to indicate a clear change of policy regarding citizenship by (i) making an exception to the prohibition against dual citizenship for emigrants born in Malta and who had spent at least six years abroad² – this had significant implications as, especially in the 1950s and 1960s, well over 100,000 Maltese citizens (more than one fourth of the current population) had emigrated to countries such as the United Kingdom, Australia, Canada and the United States to seek employment and thereby obtained a second citizenship (ii) shifting to a rule based more on *ius sanguinis* than on *ius soli* (iii) allowing Maltese mothers to transmit their citizenship to their children born abroad (iv) granting the same rights to foreign husbands of citizens of Malta as foreign wives of citizens of Malta by allowing them to be registered as citizens of Malta and (v) reintroducing acquisition of citizenship by adoption.

This change in policy was due to the influence of changing international trends favouring *ius sanguinis* over *ius soli* and a greater international acceptance of dual and multiple citizenship as well as the increasing recognition at the international level of the need to safeguard gender equality in the citizenship laws. Malta has always participated actively in international fora and endorsed international instruments in this field and has moulded its policy accordingly. Moreover, the government had been elected in 1987 on the strength of an electoral mandate that included the promise to allow expatriates to regain their lost citizenship retrospectively by acquiring dual citizenship and that citizenship laws would guarantee gender equality. A number of overseas associations representing expatriates also exerted pressure for this concession to expatriates to be extended to further generations.

As a result of these amendments, Maltese emigrants were now allowed to hold dual citizenship. Art. 27(3) of the Constitution was amended to enable Maltese emigrants born in Malta to hold dual citizenship, provided of course that the country of which they were citizens recognised the concept of dual citizenship. This applied retrospectively. A Maltese citizen born in Malta who, as the law stood at the time, had automatically lost his Maltese citizenship upon emigrating and acquiring the citizenship of the country to which he had emigrated, would now be deemed never to have lost his Maltese citizenship, provided he had spent at least six years in that country. Thus, his

dual citizenship would be backdated to the date when he acquired the foreign citizenship. This also affected children born of a Maltese emigrant father who had lost his Maltese nationality because he had acquired another nationality. Since the dual nationality would be backdated so that the father is deemed never to have lost his Maltese citizenship, children who were born of fathers who had 'lost' their Maltese citizenship at the time of their birth and who were therefore deemed not to be Maltese citizens, also acquired Maltese citizenship with this amendment, effective from their date of birth, once their fathers were reinstated in their previous status as citizens of Malta.

It should be noted that under the current legislation, only Maltese persons habitually resident in Malta have voting rights in national general elections and voting does not take place abroad in Malta's embassies or consulates. So this extension of citizenship to expatriates does not signify any right to participate in the process of democratic self-determination of the country.

As stated above, under the Constitution, anyone born in Malta automatically became a citizen of Malta by mere birth in the country. However, with the 1989 amendments to the Constitution this has changed, as these amendments limit such acquisition by adding the *ius sanguinis* to the *ius soli* criterion in establishing that, as from the coming into force of these amendments on 1 August 1989, a person born in Malta will acquire Maltese citizenship only if at least one of the parents is a citizen of Malta or was born in Malta and emigrated and enjoys freedom of movement in Malta in terms of art. 44 of the Constitution.

The amendments also removed gender inequality in two respects: (i) in relation to Maltese mothers of children born abroad and (ii) with respect to foreign men married to Maltese women.

Prior to 1989 Maltese citizenship was transmitted to the children only if the father was a Maltese citizen. However, with these amendments it now suffices that either of the parents is a Maltese citizen (by birth in Malta, by registration, or by naturalisation). The Maltese mother just as the Maltese father may now transmit citizenship to her children born abroad.

Before the 1989 amendments to the Constitution, while a foreign woman married to a citizen of Malta or to someone who became a citizen of Malta was entitled to acquire Maltese citizenship by registration, a foreign husband of a female Maltese citizen was not. This was therefore discriminatory against foreign husbands as compared to foreign wives. The amendments extended this right to foreign husbands of Maltese citizens so that they are now on a par with foreign wives of Maltese citizens. Moreover, this right now extends even to the widow or widower of a person who was a citizen of Malta at the time of death

or would have been on 21 September 1964 had he or she lived till that day.

Another significant change in policy is related to the acquisition of citizenship by adoption. Until 1976 it was possible under Maltese law to acquire Maltese citizenship through adoption, i.e. a person lawfully adopted by a citizen of Malta would acquire Maltese citizenship by that adoption. This was no longer possible following a legislative amendment on 1 January 1977. In 1989, the amendments to the Constitution reintroduced this facility for the acquisition of citizenship through adoption, subject to the proviso that the child adopted must be under ten years of age on the date of adoption.

In 1989, the distinction made in the Maltese Citizenship Act between Commonwealth citizens and other foreigners for the acquisition of Maltese citizenship by residence in Malta, a remnant of British influence, was abolished, so now any person may be naturalised as a citizen of Malta if he or she has resided in Malta for at least five years. The 1989 amendments to the Maltese Citizenship Act also extended naturalisation to any person who, being descended from a person born in Malta, is a citizen of a country other than the one in which he or she resides and whose access to the country of which he or she is a citizen is restricted.

12.1.2 *The 2000 amendments*

In 2000, further changes were made to the citizenship laws (via Acts III and IV of 2000) building on and fine-tuning the 1989 amendments, in particular by now completing the shift in policy towards dual and multiple citizenship.³ One major legislative change was designed to dissuade marriages of convenience whereby foreigners were marrying Maltese citizens simply to acquire the benefits of Maltese citizenship since, according to the prevailing law, marriage with a Maltese citizen immediately entitled the foreign spouse to apply for Maltese citizenship.

The detailed provisions on citizenship in chapter III of the Constitution were transferred to the Maltese Citizenship Act that thereby became the main law regulating citizenship while the Constitution now only contains the general principles on citizenship in art. 22.

Dual citizenship that was hitherto permitted only exceptionally in the case of Maltese emigrants has now become the rule, following the amendments of 2000, as Maltese citizens are now allowed to hold dual or even multiple citizenship.⁴ Thus, as from the entry into force of the amendments on 10 February 2000, Maltese citizens who acquire another citizenship do not lose their Maltese citizenship. Moreover, since minors holding another citizenship only lost their Maltese citizenship

if they did not renounce the foreign citizenship by their nineteenth birthday, all citizens of Malta having another citizenship who were minors on that date or had not reached their nineteenth birthday by that date were able to retain both citizenships after their nineteenth birthday. Likewise, foreigners who acquire Maltese citizenship by naturalisation or registration are no longer required to renounce their other citizenships.

Not only was there this complete shift in policy in favour of multiple citizenship but these provisions were made applicable retrospectively to persons born in Malta or abroad and who had Maltese citizenship by birth or descent but had lost this citizenship when they acquired another citizenship, provided they had resided outside Malta for an aggregate period of at least six years. In such cases, they would be deemed never to have lost their Maltese citizenship; with this provision they regained their lost citizenship automatically.⁵ On the other hand, those who had lost their Maltese citizenship because they had acquired another citizenship before this date but had not resided abroad for such an aggregate period of time or their Maltese citizenship had been acquired by registration or naturalisation not by birth or descent may regain Maltese citizenship only by registration (and so not automatically).⁶ Irrespective of where they are currently residing they may submit an application to be registered as citizens of Malta.

Building on the reform of 1989 that had extended citizenship to children born to Maltese mothers abroad, the law was further changed to entitle such children born between 21 September 1964 (date of independence) and 1 August 1989 (date of coming into force of the 1989 amendments) to be registered as Maltese citizens, irrespective of whether or not they reside or resided in Malta while allowing them to retain their other citizenship.

As stated above, with a view to discouraging marriages of convenience, the law was amended to provide that foreigners married to Maltese citizens may apply for Maltese citizenship on the strength of their marriage only if they have been married for at least five years and no longer immediately following the marriage.⁷

Another legislative change related to the position of foundlings. Until 2000, a new-born infant found abandoned in Malta was deemed to have been born in Malta but could not acquire Maltese citizenship as long as the identity and nationality of the parents remained unknown. As stated above, since 1989 it has become an essential pre-requisite for Maltese citizenship that at least one of the parents is a citizen of Malta. So this meant the child would be stateless. But in 2000 the Maltese Citizenship Act was amended to the effect that, notwithstanding that the nationality of the parents was unknown, such a child would be deemed

to be a citizen of Malta until his or her right to any other citizenship is established.⁸

Malta's accession to the European Union in 2004 did not necessitate nor lead to any changes in the country's laws and policies on citizenship.

12.2 Current modes of acquisition and loss of citizenship

12.2.1 Modes of acquisition of citizenship

*Acquisition by ius soli and/or ius sanguinis*⁹

Every person born in Malta *before* the date of independence (21 September 1964), who until then was a citizen of the United Kingdom and Colonies and either of whose parents was born in Malta, automatically acquired Maltese citizenship on the date of independence. Moreover, even a person born outside Malta *before* the date of independence automatically acquired Maltese citizenship on the date of independence if he or she was a citizen of the United Kingdom and Colonies until the date of independence and his or her father and a paternal grandparent were both born in Malta.

On the other hand, for those who were born in Malta *on or after* the date of independence but before 1 August 1989, the mere fact of being born in Malta was enough to entitle that person to automatically acquire Maltese citizenship at birth. The only exception is in the case of someone born in Malta during this period where both parents are non-Maltese with the father enjoying diplomatic immunity. Those born outside Malta during this period acquired citizenship at birth only if at the time of birth the father¹⁰ was a citizen of Malta whether by birth in Malta, by registration or by naturalisation.

However, following the 1989 amendments, for persons born on or after 1 August 1989, birth in Malta no longer sufficed to entitle the person to acquire Maltese citizenship at birth: one of the parents must also have been a citizen of Malta at the time of his or her birth. For those born outside Malta on or after 1 August 1989 citizenship is also acquired automatically at birth if, at the date of birth, one of the parents was a citizen of Malta whether by birth in Malta, by registration or by naturalisation. Thus, the essential requirement now is descent, not birth on Maltese territory.

An exception to this rule is made in the case of newborn infants found abandoned anywhere in Malta who would as a result be stateless. Such infants are deemed to have been born in Malta and are considered citizens of Malta, even though the identity and citizenship of the parents are unknown, until such time as their right to any other citizenship is established.

A person who became a citizen of Malta on 21 September 1964 or at birth but subsequently lost this citizenship, having acquired or retained the citizenship of another country, reacquired citizenship automatically and retrospectively following the entry into force of the amendments of 2000 on 10 February 2000, that removed the prohibition of dual and multiple citizenship for Maltese citizens, if he or she resided outside Malta for an aggregate period of at least six years. By virtue of these amendments they are deemed retrospectively to never have lost their Maltese citizenship.¹¹

*Acquisition by adoption*¹²

Since 1 August 1989, Maltese citizenship may also be acquired automatically by adoption when a person is lawfully adopted (under Maltese law) on or after this date with one of the adopting parents being a citizen of Malta at the time of adoption, provided that the person adopted is under ten years of age on the date of adoption.

For persons whose adoptions took place prior to this date but after 31 December 1976, adoption did not automatically lead to acquisition of Maltese citizenship even if the adopters were citizens of Malta. This was because during this period adoptions were considered by law as without effect as far as Maltese citizenship is concerned. Persons adopted during these years would have to apply to be naturalised as citizens of Malta, a mode of acquisition that is discussed below. Although the granting of citizenship in these cases is subject to the discretion of the minister responsible for matters related to Maltese citizenship (hereinafter 'the minister'), it has, since 1987, been generally granted on humanitarian grounds as a matter of policy.

Adoptions that took place before 1 January 1977 did lead to automatic acquisition of Maltese citizenship by the adopted person on adoption but, in the case of a joint adoption, as in the case of any other birth outside Malta at the time, it had to be shown that at least the male adopter was a citizen of Malta. It would not have sufficed if only the female adopter were a citizen of Malta.

*Spousal transfer of citizenship*¹³

A non-Maltese person married to a citizen of Malta may, after five years of marriage, acquire Maltese citizenship by applying to be registered as a citizen of Malta, provided the spouses are still married and living together (if the Maltese spouse is still alive) at the time the application for citizenship is made. However, if the couple were to separate *de iure* or *de facto* after five years of marriage the foreign spouse may still apply for Maltese citizenship provided the spouses had lived together during those five years of marriage. Moreover, if the Maltese spouse dies before the fifth year of marriage, the foreign spouse may still apply for

Maltese citizenship following the lapse of the fifth year from the date of marriage, provided that up to the time of death the spouses were living together.

Citizenship may also be acquired, if, although at the time of marriage both spouses were non-Maltese, subsequently one of the spouses acquires Maltese citizenship through some other mode of acquisition. The other spouse would now be entitled, subject to the conditions mentioned above, to apply to be registered as a citizen of Malta on the strength of the marriage.

A foreign spouse is entitled to apply to be registered as a citizen of Malta even where the marriage took place before the date of independence so that at the time of marriage neither of the spouses was a citizen of Malta, if on independence the other spouse either (i) became, or would have become were it not for his or her death, a citizen of Malta on the date of independence or (ii) became a citizen of Malta after independence.

*Acquisition by registration*¹⁴

Apart from the special case of spousal transfer of citizenship, there are other instances where a person may acquire Maltese citizenship by registration.

Former citizens who, having lost their citizenship before 2000 because of the possession or acquisition of another citizenship as prescribed by the law prevailing at the time, fail to qualify for automatic reacquisition of this citizenship either because they had not spent the requisite six years abroad or because they were formerly citizens of Malta by registration or naturalisation and not by birth, may nevertheless apply to be registered as citizens of Malta.

Furthermore, an emigrant who was formerly a citizen of Malta by birth or descent but ceased to be a citizen of Malta after emigrating may also reacquire citizenship by registration if he or she returns to Malta and takes up permanent residence.

Likewise, persons born outside Malta before 1 August 1989 who are not citizens of Malta because their mother rather than their father was a citizen of Malta by birth, registration or naturalisation, may also acquire Maltese citizenship by registration.

Citizenship is acquired by registration only if the applicant takes an oath of allegiance to the country and in some instances, such as in the case of the spousal transfer of citizenship, provided the granting of citizenship to the applicant is not contrary to the public interest. With this mode of acquisition, citizenship takes effect from the date of registration and not retrospectively.

*Acquisition by naturalisation*¹⁵

Any person, including stateless persons, may apply to acquire Maltese citizenship by naturalisation if he or she has resided in Malta during the year immediately preceding the date of application and for a further aggregate period of at least four years over the past seven years immediately preceding the date of application, provided he or she has an adequate knowledge of the Maltese or English language, is of good character and is deemed to be a suitable citizen of Malta.

In practice, however, unless the applicant is of Maltese descent, as described below, the Department for Citizenship and Expatriate Affairs follows a strict policy of granting naturalisation only where the applicant has resided in Malta for quite a number of years and has children born in Malta. Every case is dealt with on its own merits and the Minister enjoys a non-reviewable discretion as explained below; but while in the past residence alone would not have been a ground for naturalisation, today the general policy is to consider favourably requests for naturalisation by residents who have been residing in Malta for a substantial number of years and have formed a family here. Income and property are not determining factors. Nor is any exception made to this long-term residence rule for labour migrants.

However, no residence conditions apply where the applicant was born abroad of a father that was likewise born abroad but the paternal grandfather and great-grandparent were both born in Malta. In such cases the person born abroad may apply for naturalisation merely on the strength of his or her Maltese descent. It should be noted, though, that the policy is that applications under this category would normally be accepted only if the applicant resides in Malta.

Likewise, no residence conditions apply where the applicant had been a citizen of Malta by birth before he or she emigrated from Malta and ceased to be a citizen of Malta or if he or she had emigrated before the date of independence and failed to obtain Maltese citizenship on independence merely because he or she had ceased to be a citizen of the United Kingdom and Colonies on the date of independence. There have been few applications under this category as most persons that fall under this category already enjoy dual citizenship.

Again, no residence conditions apply to persons who prove descent from a person born in Malta and who are citizens of a country other than the country of their residence and who are denied access to the country of which they are citizens. They may apply to acquire Maltese citizenship by naturalisation merely on the strength of their Maltese descent. However, there have been few instances of naturalisation under this category because not many persons would qualify under it, as it requires the applicant to produce all the birth and marriage certificates starting from his or her own birth up to the ancestor who was

born in Malta. If the link is broken or cannot be proven by documentary evidence or if the birth certificate of the ancestor born in Malta cannot be traced, the application for citizenship would not be successful. Persons in this category are usually persons of Maltese descent residing in North African countries who may generally encounter great difficulties to trace the documents in these countries that would prove this descent.

Special rules apply for those who are and have always been stateless but were born in Malta of parents who are not citizens of Malta. In such cases the person is entitled to naturalisation as a citizen of Malta only if he or she has been ordinarily resident in Malta for a period of five years up to the date of his or her application and has not been convicted in any country of an offence against the security of the state or sentenced to a punishment depriving personal liberty for a term of not less than five years.

If the stateless person was not born in Malta but either of his or her parents was a citizen of Malta at the date of his or her birth, he or she is entitled to naturalisation as citizen of Malta only if he or she has been ordinarily resident in Malta for a period of three years up to the date of his or her application and has not been convicted in any country of an offence against the security of the state. So once again, where Maltese descent can be shown, the conditions for naturalisation are less stringent than where only the connection by birth on Maltese territory can be proved.

As in the case of citizenship by registration, where citizenship is acquired by naturalisation, it takes effect from the date upon which the applicant was naturalised.¹⁶ All applications are made to the Minister and there is no right of appeal against the decision of the Minister on any such application nor is such a decision subject to review in any court.¹⁷ However, in the Cabinet Citizenship Guidelines that were issued in 1987, it is stated that all applications for citizenship by the following persons are given favourable consideration:

- a. former citizens of Malta;
- b. children born abroad of returned migrants;
- c. foreign citizens born in Malta to a parent who is a citizen of Malta;
- d. children born to parents who were non-Maltese but who later acquired Maltese citizenship; and
- e. those born abroad but of Maltese descent.

It is stated that, on the other hand, applications from those who do not fall under any one of these categories will only be given favourable consideration if there are humanitarian grounds.¹⁸

Since the drawing up of these guidelines in 1987, significant changes have been made to the Maltese Citizenship Act in 1989 and

2000, as shown above. Hence those falling into categories (a) and (b) have practically all been re-instated as Maltese citizens or are now Maltese citizens automatically in view of the dual citizenship amendments to the law. Moreover, following these amendments, persons falling under category (c) may re-acquire Maltese citizenship simply by registration.

Though refugees in Malta are granted some rights they have no right to Maltese citizenship nor are there any provisions in the law that facilitate the granting of citizenship to refugees.¹⁹

Since, as stated above, the law prescribes that one of the conditions for naturalisation is that there should be evidence of the applicant's good character and suitability for citizenship, apart from being supported by documents attesting to the applicant's place of residence, birth and Maltese descent, the application in question must also be sponsored by persons that are deemed trustworthy (such as lawyers, notaries, magistrates, judges, members of parliament, police officers, medical practitioners, parish priests, etc.) who, having had occasion to assess the applicant in the course of exercising their profession or vocation, are thereby able to vouch for his or her integrity. As in the case of citizenship by registration, the applicant is required to take an oath of allegiance to the country before he or she may be naturalised.

12.2.2 *Modes of loss of citizenship*

Acquisition or retention of another citizenship no longer leads to the denial or forfeiture of Maltese citizenship as dual and multiple citizenship is now fully acknowledged by Maltese law.²⁰ This also means that in the case of mixed marriages, the children can acquire the citizenship of both parents. The only ways in which citizenship may be lost are detailed below.

*Renunciation of citizenship*²¹

Any citizen of Malta who is also a national of another country may renounce citizenship by making a declaration to this effect and upon registration of this declaration he or she would cease to be a citizen of Malta. It is a condition for renunciation that the Maltese citizen should also be a national of another country so that acceptance of the renunciation would not lead to the person becoming stateless. Such renunciation may be refused if it is made during any war in which Malta is engaged or if in the opinion of the Minister it would otherwise be contrary to public policy.

*Deprivation of citizenship acquired by registration or naturalisation*²²

A citizen of Malta who acquired his or her citizenship by registration or naturalisation may be deprived of this citizenship by order of the Minister if the Minister is satisfied that:

- a. the registration or naturalisation was obtained by means of fraud, false representation or the concealment of any material fact; or
- b. the citizen has shown himself or herself by act or speech to be disloyal or disaffected towards the President or the government of Malta; or
- c. the citizen has, during any war in which Malta was engaged, unlawfully traded or communicated with an enemy or been engaged in or associated with any business that was to his or her knowledge carried on in such a manner as to assist an enemy in that war; or
- d. the citizen has within seven years after becoming naturalised or being registered as a citizen of Malta, been sentenced in any country to a punishment depriving personal liberty for a term of not less than twelve months; or
- e. the citizen has been ordinarily resident in foreign countries for a continuous period of seven years and during this time has neither been at any time in the service of Malta or of an international organisation of which the government of Malta was a member nor given notice in writing to the Minister of his or her intention to retain citizenship of Malta.

However, in all of these cases a person shall be deprived of his or her citizenship only if the Minister is satisfied that it is not conducive to the public good that the person should retain his or her citizenship and in the case referred to in (d) above only if it appears to the Minister that that person would not thereupon become stateless.

Before the Minister issues an order depriving a person of his or her citizenship, the person concerned must be given notice in writing informing him or her of the ground on which the order will be issued and of his or her right to an inquiry. If the person requests an inquiry the Minister will have to refer the case to a committee of inquiry appointed by the Minister but presided over by a person with judicial experience.

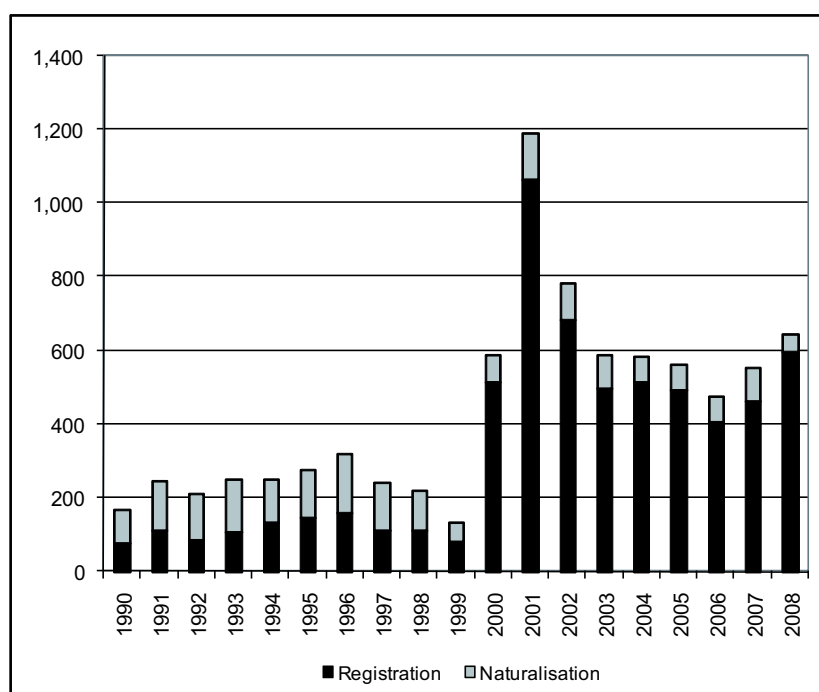
12.3 Statistical developments

These legislative amendments, particularly the shift to dual and multiple nationality, and the 2007 amendments described below (see section 12.4) are reflected in the statistical developments in the period 1990-2008. Statistics from the Department for Citizenship & Expatriate Af-

Table 12.1 Acquisition of Maltese nationality by registration for 1998-2008 according to the grounds for registration

Acquisition by registration	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
By virtue of marriage via art. 4 or art. 6	107	75	162	682	354	240	267	197	197	228	160
Resettling permanently in Malta after having emigrated and ceased to be citizens of Malta via art. 4(4)	4	4	-	-	-	-	-	-	-	-	-
Being children born abroad to female citizens of Malta via art. 5(2)(a)	-	-	173	241	221	192	210	268	180	179	184
Being former citizens of Malta via art. 8	-	-	177	139	109	64	37	25	29	21	25
Minor children of Maltese descent	-	-	-	-	-	-	-	-	-	5	62
Persons of Maltese descent	-	-	-	-	-	-	-	-	-	27	163
Total	111	79	512	1,062	684	496	514	490	406	460	594

Source: Department for Citizenship & Expatriate Affairs

Figure 12.1 Number of naturalisations and registrations in Malta, 1990-2008

Source: Department for Citizenship & Expatriate Affairs

fairs for the years 1990-2008 show that the number of citizenships acquired by registration rose sharply from the year 2000 onwards (see Figure 12.1, which also shows that the change in policy regarding dual and multiple citizenship in 2000 had a greater effect on registrations than naturalisations). From an annual average of 111 in the 1990s the number of registrations shot up to 512 in 2000 and 1,062 in 2001 and has remained in the region of 500 a year ever since.

The figure of 1,062 in 2001 remains the highest figure ever recorded for citizenship registrations in Malta. This increase is attributed by the National Statistics Office (NSO) in the *Demographic Review 2001* to the removal of the prohibition against dual and multiple nationality by the legislative amendments that entered into force in February 2000. The figure remained high in 2002 when 684 registrations were recorded.²³ This might be attributed to the fact that until 2002 Australian law prohibited dual and multiple nationality²⁴ and this prevented the many Maltese emigrants residing in Australia from taking advantage of the changes in the Maltese legislation in 2000 and registering for Maltese citizenship. When Australia changed its law on 4 April 2002 and removed the prohibition, this resulted in a surge of registrations in 2002 by persons who were now able to retain both Maltese and Australian citizenship.²⁵ In 2003 and 2004, the number of registrations decreased to 496 and 514, respectively,²⁶ and remained at this level up to 2007. The 2007 amendments, described in section 12.4. below, have again served to trigger an increase in citizenship registrations, though not to the level of the 2000 amendments since they affect more remote generations, raising the number of registrations to 594 in 2008.

Table 12.1 gives a breakdown of the figures for acquisition by registration for 1998-2008 according to the grounds for registration and shows that it was mostly (i) foreign spouses; (ii) children born abroad to female citizens of Malta; and (iii) former citizens of Malta who had lost their citizenship because of the possession or acquisition of another citizenship that took advantage of the change in policy regarding dual and multiple citizenship to acquire citizenship by registration. The last two grounds, 'minor children of Maltese descent' and 'persons of Maltese descent' are the new grounds introduced by the 2007 amendments.

12.4 Recent reforms

In 2007 important amendments to the Maltese Citizenship Act were passed by the House of Representatives (Act X of 2007) bringing three significant changes to Malta's citizenship law.

First, in response to repeated requests by the Maltese diaspora, dual citizenship has been extended to second and subsequent generations of Maltese born outside Malta and living abroad. The 1989 amendments to the Act had introduced dual citizenship for those who had been Maltese citizens by birth in Malta but who had emigrated and given up their Maltese citizenship, in order to enable them to reacquire Maltese citizenship. The 2000 amendments went a step further by extending dual citizenship to those who had been Maltese citizens by descent (i.e. because at least one of their parents was born in Malta) rather than by birth in Malta and who had subsequently lost this citizenship upon acquisition of citizenship in another country. This made it possible for children of Maltese emigrants born abroad to acquire or retain Maltese citizenship provided one of their parents had been born in Malta. However, this still excluded the offspring of these children, i.e. second and subsequent generations, from citizenship, because in their case, neither parent, though Maltese, had been born in Malta. The 2007 amendments extend dual citizenship to these generations, as the *ius soli* requirement was moved even further up the line of ancestry; provided that somewhere along the applicant's direct line of Maltese ancestry there is an ascendant who was born in Malta of a parent likewise born in Malta, applicants would be entitled to Maltese citizenship even though neither of their parents had been born in Malta.

Following the entry into force of the 2007 amendments on 1 August 2007 (LN 178 of 2007), art. 5 of the Citizenship Act now provides that those born outside Malta on or after the date of independence are entitled to apply for registration as citizens of Malta if they prove (through documentary evidence such as birth, marriage and death certificates) that they are the direct descendants of a Maltese ascendant born in Malta of a parent likewise born in Malta. However, if the applicant has parents, grandparents and other ancestors who are still alive and are also direct descendants themselves in this sense, they would also have to apply for Maltese citizenship under the new provision, as otherwise the Maltese citizenship link would have been broken down the line. If any of these ascendants entitled to Maltese citizenship died before 1 August 2007 or if a parent dies within three years from this date without applying for citizenship, he or she would still be deemed to have acquired citizenship for the purposes of this provision and so the line of Maltese citizenship throughout the generations would not be considered broken (i.e. a three-year grace period).

It has been reported that since the 1989 amendments, the Citizenship Department has confirmed the right to dual citizenship for 12,250 applicants, a number that is expected to increase following this 2007 amendment, though not to the same extent, as obviously second-gen-

eration and subsequent-generation Maltese are not as attached to Malta as first-generation Maltese.²⁷

The second amendment, which came into force on 6 July 2007, makes an exception to the rule that a spouse of a citizen of Malta may acquire citizenship only five years after the marriage. A new provision in art. 10 provides that the Prime Minister may, by means of a notice published in the Government Gazette, authorise the Minister to grant a certificate of naturalisation to the spouse of any citizen of Malta without any residence requirements when either the spouse or the said citizen has rendered 'exceptional services' to Malta or humanity.

A third amendment that entered into force on 1 August 2007 rectified an anomaly in the Act. Hitherto, those who were born outside Malta before the date of independence were deemed to have automatically acquired Maltese citizenship on the date of independence only if they were citizens of the United Kingdom and Colonies up to that date and their father and a paternal grandparent were both born in Malta. Conversely, those with a non-Maltese father whose mother and a maternal grandparent had both been born in Malta could acquire citizenship only by satisfying a five-year residency requirement. The amendments now redress this anomaly by introducing new provisions in art. 3 that remove this residency requirement and entitle such persons irrespective of any residency period to be registered as Maltese citizens because of their mother's and a maternal grandparent's birth in Malta. Moreover, the first amendment concerning dual citizenship for second and subsequent generations described above also benefits those born abroad before the date of independence who prove that they are descendants in the direct line of an ascendant born in Malta with a parent likewise born in Malta.

Apart from these legislative amendments, a policy decision has recently been taken that benefits a small category of foreigners who, while themselves not qualifying for Maltese citizenship in terms of the Maltese Citizenship Act, have children who are Maltese citizens because they were born in Malta before 1989, when the law as it stood then conferred citizenship on them, notwithstanding that they were not of Maltese descent. Maltese citizenship has been extended on the basis of a policy decision to these parents if they have been residing in Malta for fifteen years.²⁸

12.5 Conclusions

The main motive for the acknowledgement of dual and multiple citizenship was to do justice to the thousands of Maltese citizens who had lost their citizenship when, due to economic circumstances, they had

been forced to emigrate to seek work overseas and thereby acquired foreign citizenship. By extending citizenship to the third generation, the link to the diaspora has been extended beyond former Maltese citizens. Not only have Maltese diaspora regained their legal ties to their or their ancestors' homeland but, following Malta's accession to the European Union, they may now also partake of the benefits of European citizenship. Throughout the years, through its participation in international fora debating nationality issues Malta has regularly reviewed and revised its nationality policies in line with evolving concepts so that gender inequalities and other forms of discrimination prevailing in the law have now been mostly redressed bringing the legal regime in line with international trends.

However, although Malta has signed, though not yet ratified, the European Convention on Nationality, the Maltese Citizenship Act has yet to fully embrace the principle of non-discrimination between its nationals incorporated in art. 5(2) of the Convention as the provisions on deprivation of citizenship in art. 14(2) of the Act discriminate against persons who acquired citizenship by registration or naturalisation. Maybe this is one reason why Malta has yet to ratify the Convention that it signed on 29 October 2003, though it should be noted that art. 5(2) of the Convention does not have a mandatory effect but only constitutes a 'declaration of intent' by the signatories.²⁹ This discriminatory issue has not been the subject of any public debate or controversy in Malta.

Following accession to the European Union, although accession itself did not necessitate changes in Maltese citizenship laws as the laws were already in consonance with internationally accepted norms, the fact that Maltese citizenship now automatically confers European citizenship rights on holders of Maltese citizenship means that Maltese authorities must now consider the wider implications of any policy changes relating to the acquisition and loss of citizenship, particularly in relation to its immigration policy.

Chronological list of citizenship-related legislation in Malta

Date	Document	Content	Source
1964	Constitution of Malta (chapter III)	Contains provisions conferring and regulating Maltese citizenship based on a combination of the <i>ius soli</i> and <i>ius sanguinis</i> principles and prohibiting dual or multiple citizenship	http://docs.justice.gov.mt

Date	Document	Content	Source
1965	Maltese Citizenship Act, chapter 188 of the Laws of Malta	Introduces more detailed provisions and regulates in particular the acquisition of Maltese citizenship by registration and naturalisation	http://docs.justice.gov.mt
1974	Act LVIII amending the Maltese Citizenship Act and the Constitution of Malta	Amendments necessitated by Malta's transformation into a republic	http://docs.justice.gov.mt
1975	Act XXXI amending the Maltese Citizenship Act	Slightly amends provisions on naturalisation	http://docs.justice.gov.mt
1977	Act IX amending the Maltese Citizenship Act	Prohibits acquisition of citizenship by adoption	http://docs.justice.gov.mt
1989	Act XXIII amending the Constitution of Malta and Act XXIV amending the Maltese Citizenship Act	Introduces an exception to the prohibition against dual citizenship for expatriates; shifts to a rule based more on <i>ius sanguinis</i> than on <i>ius soli</i> by providing that mere birth in Malta would no longer suffice to confer citizenship at birth but must be accompanied by Maltese descent of at least one of the parents; amends some of the provisions that were resulting in gender inequality; reintroduces acquisition of citizenship by adoption; removes the distinction between Commonwealth citizens and other foreigners for naturalisation purposes; extends the grounds for naturalisation	http://docs.justice.gov.mt
2000	Act III amending the Constitution of Malta and Act IV amending the Maltese Citizenship Act	Allows dual and multiple citizenship; introduces restrictions in the provisions on spousal transfer of citizenship to discourage marriages of convenience; transfers the detailed provisions on citizenship in chapter III of the Constitution to the Maltese Citizenship Act	http://docs.justice.gov.mt

Date	Document	Content	Source
2007	Act X amending the Maltese Citizenship Act	<p>that thereby becomes the main law regulating citizenship while the Constitution now only contains the general principles on citizenship; makes further amendments to redress gender inequality; introduces provisions to improve the position of foundlings</p> <p>Introduces the right to dual or multiple citizenship for second- and subsequent- generation Maltese born outside Malta and living abroad; introduces an exception to the five-year rule for spouses of Maltese citizens who render 'exceptional services' to Malta or humanity; extends citizenship by registration to persons born abroad before 1964 of a non-Maltese father if their mother and a maternal grandparent were both born in Malta</p>	http://docs.justice.gov.mt

Notes

- 1 The author would like to thank Joseph Mizzi, Director at the Department for Citizenship and Expatriate Affairs, and Joseph Treeby Ward, former Director, for their valuable information and helpful comments on earlier drafts.
- 2 Hitherto only minors were allowed to have dual citizenship until their nineteenth birthday.
- 3 These legislative changes were preceded by the White Paper on Proposed Legislation to Amend the Citizenship and Immigration Laws, Office of the Prime Minister (OPM), 10 August 1998 that explained the proposed amendments.
- 4 Art. 22 of the Constitution and art. 7 of the Maltese Citizenship Act.
- 5 Maltese Citizenship Act, art. 9.
- 6 Ibid., art. 8.
- 7 Ibid., arts. 4 and 6.
- 8 Ibid., art. 5.

- 9 Ibid., arts. 3-5, 17.
- 10 Except in the case of illegitimate children where the national status of the mother becomes relevant – *ibid.* art 17.
- 11 Ibid., art. 9.
- 12 Ibid., art. 17.
- 13 Ibid., arts. 4 and 6.
- 14 Ibid., arts. 8 and 9.
- 15 Ibid., art. 10.
- 16 Ibid., art. 12.
- 17 Ibid., art. 19.
- 18 These guidelines currently appear on the website of the relevant ministry, the Ministry for Justice and Home Affairs, www.mjha.gov.mt.
- 19 However, recently a government minister (Minister for the Family and Social Solidarity, Dolores Cristina, as reported in *The Times* of 18 June 2005 on p. 19) announced that the government is considering a change in policy in this regard in favour of granting citizenship to refugees who have been living in Malta for ten years so as to enable them to integrate better into society. So far, however, there has been no official change in policy on these lines.
- 20 Maltese Citizenship Act, art. 7 and art. 22(2) of the Constitution.
- 21 Maltese Citizenship Act, art. 13.
- 22 Ibid., art. 14.
- 23 *Demographic Review 2002*, National Statistical Office (NSO) 2003.
- 24 Art. 17 of Australia's law on citizenship did not allow dual citizenship so that citizens of Australia would lose citizenship if they acquired another citizenship voluntarily through registration.
- 25 Ministry for Justice and Home Affairs, Annual Report 2001-2002.
- 26 *Demographic Review 2003*, NSO 2004.
- 27 Home Affairs Minister Borg, House of Representatives, sitting of 13 February 2007 and press conference of 15 May 2007. However, for the second and subsequent generation Maltese living in a non-EU country, such as Australia, the US and Canada, and the much smaller communities still living in Egypt and Tunisia, there is the added attraction that Maltese citizenship brings with it the right to travel, study, live and work in any EU country.
- 28 Home Affairs Minister Borg, House of Representatives, sitting of 13 February 2007.
- 29 Explanatory Report to the European Convention on Nationality, point 45.