

EUDO CITIZENSHIP OBSERVATORY

NATURALISATION PROCEDURES FOR IMMIGRANTS LUXEMBOURG

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Naturalisation Procedures for Immigrants

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Denis Scuto

1. Introduction

More than three years have passed since the entering into force of the law of the 23 October 2008 on the Luxembourg nationality, on the date of the 1st January 2009. This law, which introduced the principle of double and multiple nationality as well as the double *ius soli* (article 1, point 5°), has had a considerable impact. The number of valid demands for naturalisation quadrupled, going from 1065 in 2008 to 11770 for the period of the 1st January 2009 to the 31 December 2011. The Luxembourgish nationality was granted to 11736 persons, quasi 4000 per year.¹

33 demands were denied for lack of condition of repute and one demand for lack of condition of residence. By comparison, in 2008, only 1215 persons acquired the Luxembourg nationality.

Furthermore, by double *ius soli*, 3414 persons of less than 18 years age, born in the Grand-Duchy of foreign parents of whom one was also born in Luxembourg, acquired Luxembourg nationality on the 1st January 2009. Following the assessment of the STATEC (National Institute of Statistics and Economic Studies), from 2009 to 2011, approximately another 1000 children became Luxembourgers by double *ius soli*, and 2491 children were naturalised along with one of their parents. A total of about 18500 new Luxembourgers in three years, mainly because of the innovations introduced by the law of 2008.

Despite this success, the law of 2008 remains ambiguous and reprehensible in many aspects.

In my PhD, I described the new law of 2008 as a “cultural revolution with bémols”. I used this phrase because a person that wants to acquire Luxembourg nationality isn’t forced anymore to abandon his/her original nationality; because *double ius soli* (abolished in 1940) has been reintroduced; because Luxembourgers who live abroad no longer lose their Luxembourg nationality when acquiring the nationality of their host country; because the cases of loss of Luxembourg nationality have been reduced to three: in practice, you only lose Luxembourg nationality by renouncing it willingly. And I called it a ‘cultural revolution’ because it has become an administrative practice with a time limit of 8 months and the possibility of appeal.

I used the term “bémols” because optional rights for the spouse and for the children of foreign parents who themselves are not born in Luxembourg have been abolished, and because the minimum compulsory period of residence in the country has been increased from 5 to 7 years. Another reason is because a linguistic barrier has been introduced by the law of 2008. In a trilingual country (with Luxembourgish,

¹ http://www.mj.public.lu/chiffres_cles/index.html#IND

French and German as official languages), the naturalisation candidate has the obligation to pass an evaluation test in spoken Luxembourgish, a test with a relatively high level of difficulty. Furthermore, the test takes no account of the level of education of the applicants. According to the census of 2001, 35 % of foreigners have only a degree in elementary education, while the test requires a level of secondary education.

These bémols have been tackled also by the NGOs working in the field of immigration (CLAE /ASTI), by the Council of State, the Chamber of Commerce, the labor unions as well as the opposition parties (liberals and ecologists) (cf. Luxembourg country report at Eudo Citizenship Observatory).

2. The administrative practices and procedures

Let us look closer at the administrative practices and procedures on naturalisations around the 2008 Law.

Promotion

The Luxembourg authorities help applicants to meet legal conditions in multiple ways. While there are no state-run or -funded naturalisation campaigns, there is an official promotional webpage on the internet site of the Ministry of Justice (www.mj.public.lu) with a link to the “Dossier Nationality” on the front page (www.mj.public.lu/nationalite). Here, brochures on the new law on Luxembourg nationality (in German, French and English language) with practical information for those who wish to acquire or re-acquire the Luxembourg nationality, can be downloaded. Forms and information leaflets regarding Luxembourg nationality procedures can also be downloaded from here. Requirements are written in simplified language and content covers the procedure and benefits of naturalisation.

On the same internet site, naturalisation applicants are invited to use the infoline “Nationalité” (from Luxembourg, 8002 1000, free, and from abroad +352 2478 8588) for all further request of information. Application forms are available on the website of the ministry and on paper in several government agencies and in the municipalities. They can be downloaded online, but have to be submitted on paper.

There are no official fees for naturalisation, only costs for fiscal stamps (2 or 4 €) and for registration of the residence certificate (12 €).

According to the new law of 2008, the naturalisation candidates must successfully pass an evaluation test in the spoken Luxembourg languages (exemptions for those who have completed at least 7 years of their schooling in Luxembourg public education system and those who have resided in Luxembourg since 1984). The enrolment fees for the language evaluation test are reimbursed by the state to the naturalisation candidate in accordance with terms determined by grand-ducal regulation. Candidates who withdraw without reason or who are not present at the time of the tests are not reimbursed and must re-enrol. Requests for the reimbursement of enrolment fees for the evaluation test and Luxembourg language courses must be submitted to the Ministry of Justice, Office in Charge of Luxembourg Nationality (Service de l’indigénat).

According to the new law, there is also an obligation to follow citizenship courses (without evaluation test). Enrolment in citizenship courses is free of charge.

There are no citizenship ceremonies.

Documentation and Bureaucracy

As stipulated in the naturalisation procedure (article 10), the municipality of the residence of the applicant receives the written application for naturalisation, which must be signed by the applicant and must be submitted personally.

Provided the legal conditions are met and the application for naturalisation along with all its supporting documents are included in the file, the civil registrar records a declaration of naturalisation. He or she transmits the file, directly and immediately, to the Ministry of Justice, to the Office in charge of Luxembourg nationality (Service de l'Indigénat). This authority carries out the administrative enquiry: it confirms that the application is complete, that all the documentation is correct. The documentation is checked once before a decision is taken.

The applicant must attach the following documents to the application for naturalisation:

1. The birth certificate of the applicant and, if applicable, the birth certificate of the applicant's minor children, issued by the civil registrar of the competent municipality.
2. A precise biographical record: to this effect, the applicant must complete a questionnaire available online. Forms and information leaflets regarding Luxembourg nationality procedures can be downloaded from the Internet site of the Ministry of Justice: www.mj.public.lu/nationalite.

The applicant must:

- use the model of the biographical questionnaire supplied by the Ministry of Justice;
- complete the biographical questionnaire in a comprehensive and truthful manner;
- place his or her signature and the date of signature on the biographical questionnaire;
- place his or her signature and the date of signature on an information sheet accompanying the biographical questionnaire.

3. A certificate stating the compulsory period of residence, issued by the college of mayor and aldermen of the municipalities in which the foreigner has resided during his or her compulsory period of residence in the country and they must be registered;

4. A copy of the passport of the applicant or, for the applicant recognised in Luxembourg as a refugee under the Geneva Convention of 28 July 1951 relating to the status of refugees, a certificate testifying to this status and issued by the Immigration Office (Direction de l'immigration) of the Ministry of Foreign Affairs and Immigration.

5. An extract from the Luxembourg police records issued by the Department of Police Records (Service du casier judiciaire) of the Public Prosecution Office (Parquet

général) and a similar police record document issued by the competent authorities of the country of origin and previous countries of residence in which the applicant has lived from the age of 18 onwards during the 15 years preceding the submission of the application. The applicant recognised in Luxembourg as a refugee pursuant to the Geneva Convention of 28 July 1951 relating to the status of refugees is exempt from having to submit the above-mentioned documents of the country of origin.

6. A certificate confirming a successful pass of the evaluation test of the spoken Luxembourg language. Grand-Ducal regulation of 31 October 2010 provides that the Institut national des langues (INL) – formerly Centre de langues Luxembourg – is responsible for assessing and certifying competence levels in the spoken Luxembourg language in view of naturalisation being granted. Several different public and private entities provide Luxembourg language courses.

The following naturalisation candidates are exempt from having to pass an evaluation test in the spoken Luxembourg language:

1. those who have completed at least 7 years of their schooling in Luxembourg within the Luxembourg public education system or the private education system applying Luxembourg public education curricula; or
2. those who obtained a residence permit for Luxembourg territory prior to 31 December 1984 and who have resided since at least that date in Luxembourg.

According to the new law, no right to exemption from language assessment is stipulated either on humanitarian grounds (e. g. for refugees, stateless) or on vulnerability grounds (e.g. age, illiteracy, mental/physical disability). Nevertheless, in the application of the law, in case of a medically certified, mental disability or a physical one (e. g. being deaf-mute), the Minister of Justice can grant the Luxembourg nationality, overriding the requirement of a successful pass in the evaluation test of the spoken Luxembourg language.

7. A certificate confirming attendance at the Luxembourg citizenship courses. The Adult Training Service (Service de la formation des adultes) of the Ministry of National Education and Vocational Training is responsible for organising citizenship courses, which must be attended in order for naturalisation to be granted. The applicant must attend at least three courses. There is no exam at the end of the courses. A participation certificate is issued in accordance with a record of attendance.

Here are the compulsory courses:

- a. Citizens' fundamental rights and public life
- b. Luxembourg state institutions

Other courses:

- a. History of the Grand Duchy of Luxembourg: the birth of a nation state during the 19th century
- b. History of the Grand Duchy of Luxembourg: Luxembourg during the 20th century
- c. Luxembourg and European unification
- d. Luxembourg municipal institutions
- e. The economic structures of the Grand Duchy of Luxembourg
- f. Labour law in Luxembourg
- g. The principle and system of social security in Luxembourg

h. Media in Luxembourg

The applicant must choose at least one course among the subjects listed under “Other courses”.

The application qualifies as a declaration of naturalisation only if all the required documents and items have been attached to the application. All the documents must be translated, into either French or German, by a certified translator.

Discretion

Naturalisation is granted or refused by order of the Minister of Justice (article 5). A decision to refuse naturalisation must be supported by reasons, based on a standard interpretation specified in national law and binding guidelines.

Before approval or refusal, due account is taken of

1. Age: 18 years on the day of submitting the application for naturalisation (article 6, point 1°).
2. Residence: the naturalisation applicant must have resided in the country for at least 7 years, which must be consecutive and immediately precede the application (article 6, point 2°). As evidence, residence certificates must be submitted.
3. Fraud or not: naturalisation is refused if it is established that the applicant made false statements, committed fraud or concealed important facts (article 7, point 2° a).
4. Personal behaviour of the candidate: naturalisation is refused:
 - if the candidate, either in the country or abroad, has been sentenced for a criminal offence or received a custodial sentence of one year or more; and
 - when the facts underlying the sentence by a foreign jurisdiction also constitute a criminal act under Luxembourg law; and
 - when, if applicable and without the benefit of rehabilitation, the sentence has been definitively served less than 15 years prior to the submission of the naturalisation application (article 7, point 2° b).
5. Linguistic knowledge: The naturalisation candidate must show proof of sufficient active and passive knowledge of at least one of the languages foreseen by the law of 24 February 1984 on the languages regime and successfully pass an evaluation test in the spoken Luxembourg language (article 7, point 1° b).
6. Citizenship courses: The naturalisation candidate must follow at least three citizenship courses (article 7, point 1° c).

The Minister of Justice must announce a decision within a timeframe of 8 months from the date on which the application for naturalisation qualifies as a declaration of naturalisation (article 11). Nevertheless, this timeframe does not apply:

1. during the process of the file being suspended in the event of a judicial criminal proceeding; and
2. for naturalisation or option applications, which have been lodged prior to 1 January 2009.

During the procedure, applicants have the right to be informed, through the infoline or through physical contact with a clerk of the Service de l'Indigénat, on the progress of their application and to be heard by the deciding authority.

The naturalisation enters into effect on the day of the ministerial decision. The Minister of Justice notifies the interested party of the order granting or refusing the naturalisation for use as a document of title (article 11). Notification of the ministerial order is made by the municipality, either in a special duplicate register or in the birth certificate register. The order is not published in the Mémorial.

The status of Luxembourger can be withdrawn if said Luxembourg nationality has been obtained (article 15):

1. either through false statements, fraud or the concealment of important facts;
2. or on the basis of a forgery or the use of a forgery or else on the basis of the appropriation of a name and in so far as the person has been found guilty of one of these offences in a final court judgment.

Withdrawal is not possible if it is to result in the person concerned being rendered stateless.

In the context of a special procedure, which is intended to be used only very rarely, the naturalisation decision is made by Parliament (article 8).

Even when legal conditions have not been met, naturalisation may be conferred, in exceptional circumstances, to the adult foreigner who renders or has rendered distinguished services to the state. Naturalisation can furthermore, in the absence of an application, be proposed by the government.

The application or proposal for naturalisation is submitted to Parliament, which decides whether or not to adopt this application or proposal.

The law that confers the naturalisation is published by extract in the Mémorial (article 9). The Minister of Justice issues the interested party with a certified copy of the law conferring the naturalisation for use as a document of title.

No appeal is possible if Parliament refuses the naturalisation in the context of the above-mentioned special procedure.

Review

The law of 23 October 2008 on Luxembourg nationality creates appeal procedures, and more particularly the establishment of a two-tier jurisdiction (article 26).

Given that the ministerial order to refuse a naturalisation or a re-acquisition constitutes an administrative decision, authority is attributed to the administrative jurisdictions.

At first instance, the Administrative Tribunal has the jurisdiction to give a ruling on the appeals lodged against the ministerial orders refusing naturalisation applications. The appeal is filed with the Administrative Court.

Against the ministerial orders refusing naturalisation or re-acquisition applications, the timeframe for taking legal action is 3 months from the date of notification of the decision. Against the decisions of forfeiture, the timeframe for taking legal action is 3 months from the transcription of this decision.

The claim is lodged with the Administrative Court. The timeframe for lodging a claim is 40 days from the notification of the judgment of the Administrative Tribunal by the office of the court clerk. The appeal before the Administrative Tribunal and the claim before the Administrative Court are carried out by application signed by a barrister.

The communication to the interested party in question of his or her personal nationality file is possible only in the context of an appeal.

As we mentioned in our introduction, the Luxembourg nationality was granted to 11736 persons from 2009 to 2011. 33 demands were denied by the Minister of Justice for lack of condition of repute and one demand for lack of condition of residence. From 2009 to 2011, five applicants lodged an amendment appeal with the Administrative Tribunal against the ministerial order refusing their naturalisation. In two cases, the decision of the Minister of Justice was amended and the applicants became Luxembourgers by judgment of the Administrative Tribunal. In one case, an applicant lodged a claim with the Administrative Court against the judgment of the Administrative Tribunal. This claim was dismissed (cf. database “Jurisprudence administrative du Grand-Duché de Luxembourg en matière d’immigration et de protection internationale” – www.emn.lu).

There is no appeal process for the language test, despite the high level of competence to be attained in the spoken Luxembourg language (level B1 of the Common European Framework of Reference for Languages in terms of oral comprehension and level A2 of the same framework in terms of oral expression) and despite the fact that the Luxembourg language is only one of the three languages foreseen by the law of 24 February 1984 on the languages regime (beside French and German). The proportion of failures in the language evaluation test has increased from 23,9 % in 2009 to 32,3 % in 2011. As there is no right to appeal, applicants can only repeat the language test, as often as they want.

3. Reform claims and proposals

The assessment report of the Ministry of Justice

The Office in charge of questions of nationality at the Ministry of Justice (Service de l’Indigénat) raised several points in his assessment of the impact of the new law and of the difficulties met in practice.

Concerning the compulsory period of residence, the strict condition of at least seven years which must be consecutive and immediately precede the application leads to numerous practical problems. Some applicants don’t have a residence permit over the whole period. Others can’t deliver residence certificates over the total seven years. Children who have lived their entire childhood and completed their schooling in Luxembourg, but have to return with their families to their country of origin for some

reason, when coming back to Luxembourg to get a job, they have to wait another seven years before being allowed to submit a naturalisation application.

This problem was brought to the attention of a broader public by the case of David Caiado, a Portuguese football player, who stands as a candidate for the Luxembourg national team. Born in Luxembourg in 1987, he has lived there for 12 years before transferring to Portugal to begin a professional football career. As a compulsory period of residence must be consecutive and immediately precede the application, Caiado can't submit a naturalisation application.²

Concerning the language evaluation test, the officials point out that the test in oral comprehension (level B1 of the Common European Framework of Reference for Languages) turns out to be too difficult for many candidates, thus becoming a barrier on the way of integration. This question has also been raised by the European Commission against Racism and Intolerance (ECRI) of the Council of Europe in his report of December 2011. Adaptations of the test are asked for in the assessment by the Service de l'Indigénat.

Furthermore, in order to increase the number of Luxembourg citizens in the total population, the Service de l'Indigénat suggests to extend *ius soli* to the first generation of foreigners born in the Grand Duchy.

Finally, as Luxembourg has signed on 26 May 2008 the European Convention on nationality (STCE n° 166) of the Council of Europe, new provisions will be necessary to facilitate acquisition of nationality for some categories of persons: foreign spouses, foreign children born in Luxembourg, stateless, refugees. A royal wedding in Luxembourg in October 2012 will confront the public with the question of the acquisition of nationality for foreign spouses: Prince Guillaume, Hereditary Grand Duke of Luxembourg is about to marry Countess Stephanie de Lannoye, of Belgian nationality. The Government therefore brought in a bill on 3 September 2012 that grants naturalisation to the future spouse of Guillaume according to articles 8 and 9 of the law of 2008. Is there a double standard at work here?³

The claims of NGOs

Several of the points of the report have also been raised by NGOs working in the field of immigration. In the resolution of its general assembly (5 July 2012) the CLAE (Comité de Liaison et d'Action des Etrangers) points out four topics.⁴

1. The language evaluation test should be abolished and replaced by a certificate confirming attendance at Luxembourg language courses. If this proposal is rejected, CLAE requests that the levels of the test have to be reconsidered. 2. The compulsory period of residence must be reduced again from 7 to 5 years. 3.

² <http://www.lesessentiel.lu/fr/sports/story/25656024>

³

http://www.chd.lu/wps/PA_1_084AIVIMRA06I4327I10000000/FTSByteServletImpl/?path=/export/exped/sexpdata/Mag/132/186/113815.pdf

⁴

http://www.clae.lu/pdf/mouvements_associatifs/cla_e_plateforme/resolution_ag_5_%20juillet_2012.pdf

According to the European Convention on Nationality of 2008, new provisions will be necessary to facilitate acquisition of nationality for foreign spouses, foreign children who have lived in Luxembourg before the age of 18, stateless, refugees. 4. Not only double but simple *ius soli* is asked for children born in Luxembourg of whom one parent resides there.

The ASTI (Association de soutien aux travailleurs immigrés) as well as the principal labor unions (OGB-L, LCGB) repeatedly insisted on the reduction of the compulsory period of residence and to lower the levels of competence of the language evaluation test.

The Chamber of Commerce fighting for more integration

Beside these NGOs, it is important to notice that also the Luxembourg Chamber of Commerce, defending the interests of the employers, supports the cause of a reform and further liberalization of nationality law. The title of its publication “Actualité & tendances”, nr 12 (march 2012) is clear: “La diversité règne, l’intégration piétine: La Chambre de commerce analyse l’apport socio-économique des étrangers et plaide pour une meilleure intégration politique.”⁵

While underlining that 43% of the inhabitants of Luxembourg are not citizens and 75 % of wage earners and entrepreneurs are not Luxembourgers, the Chamber of Commerce points out the democratic deficit in the political representation of foreigners: 70% of electors are or non-actives (51%) or wage earners in the public service (20%). Only 45% of the resident population has the right to vote in national elections! Therefore the CC pleads for only 5 years of residence prior to naturalisation and more flexibility in the language evaluation test.

4. Concluding remarks

Three years after the entering into force of the new law on nationality, Luxembourg’s Minister of Justice, François Biltgen, taking into consideration the reform claims and needs, wanted to present a revised law to the parliament in December 2012. In a press conference held on 7 July 2012, he announced that he wants feedback from Grand Duchy residents about dual citizenship, language evaluation test. Therefore, he plans a debate on the nationality law where not only political parties but the whole of civil society is to be consulted.

In a statement released on the web site of the Ministry of Justice, on 31 July 2012, Biltgen agreed to take into account the questions raised by myself in my PhD as well as the questions raised by the evaluation of the law through the Service de l’Indigénat. Here is the exact wording of the press statement:⁶

As Justice Minister François Biltgen states that a commitment to openness will guide the debate and the reform on nationality law, Luxembourg will hopefully enter into a new period in this field, inspired by this fundamental challenge for countries that, like Luxembourg, have experienced a high degree of immigration for more than

⁵ http://www.cc.lu/uploads/media/AT_12.pdf

⁶ http://www.mj.public.lu/actualites/2012/07/Denis_Scuto/index.html

a century: How can we use nationality legislation to bring as many people as possible into a political and societal common future project?

