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Czech Republic

Andrea Baršová[1]

1 Introduction

The development of Czechoslovak (1918) and Czech (1993) citizenship legislation exhibits a cyclical model consisting of revolutionary, evolutionary and consolidation phases. The last revolutionary phase is linked to the 1989 overthrow of the communist regime and the creation of an independent Czech Republic in 1993. It found its expression in the 1990 Citizenship Amendment Act which allowed for restitution of citizenship by those who left the country during the communist era, a constitutional ban on the deprivation of citizenship and a controversial 1993 Citizenship Act. The following evolutionary decade (1993 – 2003) was an era of piecemeal, remedial changes aimed mainly at eliminating some negative consequences of law related to the break-up of Czechoslovakia. In 2003, with the last major amendment to the 1993 citizenship law, most of the unique problems related to the break-up of Czechoslovakia had been solved. At the same time, the launch of legislative work on a new citizenship code prompted by, *inter alia*, increased immigration signalled a shift towards a consolidation phase in which the issue of standard citizenship rules, such as those on naturalisation, returned to the agenda. The consolidation phase has been very slow, but was finally completed by the adoption of the Act No. 186/2013 Coll., on the Citizenship of the Czech Republic, which entered into effect on 1 January 2014.[2]

The most striking feature of the 2013 Citizenship Act law is a broader toleration of dual and multiple citizenship. This is an important development as the main intention of the 1993 Citizenship Act was to prevent dual citizenship, in particular, dual Czech and Slovak citizenship. However, the legislation largely failed to meet this objective, as will be described in detail below. In this regard the Czech case seems to be a good illustration of the claim made by Faist, Gerdes & Rieple who wrote: 'Once some exceptions have been granted, new interpretations of individual rights and new claims of other categories of persons combined with court cases could easily lead to a further increase of exceptions. Problems of justification and rising cost of administrative procedures may well lead to a general tolerance of dual citizenship in the long run.' (2004: 939). Another noteworthy feature of the 2013 Citizenship Act is a more inclusive approach towards second generation migrants.

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[1] This paper is based on a chapter in the book by R. Bauböck, B. Perchinig & W. Sievers (2009). All translations from Czech into English are by the author. The report was initially published in September 2009 and was subsequently revised and updated by the author in March 2013 and December 2014. The present version covers citizenship-related legislative developments up to September 2014.

[2] The long title of the new act is Act No. 186/2013 Coll. concerning the citizenship of the Czech Republic and amending certain acts"; the short title is "Czech Citizenship Act. In Czech: Zákon č. 186/2013 Sb. o státním občanství České republiky a o změně některých zákonů (zákon o státním občanství České republiky). The Act is available online at http://www.zakonyprolidi.cz/cs/2013-186

However, little has changed in regards to the traditional statist spirit of the law. In spite of changing political regimes some fundamental features of the Czech citizenship legislation[3] have remained constant. The enduring statist spirit, which we can broadly characterise as prioritising the state's perspective over the rights and needs of individuals, dates back to the nineteenth century Habsburg Empire.[4] It manifests itself best in the approach to naturalisation. Naturalisation, from this perspective, is an act of mercy by the state, exercised in a sphere of almost unlimited administrative discretion.

One may be tempted to say that the 'statist' spirit of the law also manifests itself in the language. The legal term used for citizenship is 'státní občanství', which is equivalent to German (Austrian) 'Staatsbürgerschaft' and literally translates as 'state citizenship'. The term comes from old Austrian law. The term 'národnost' ('Nationalität'), which is also used in the Czech language, is not equivalent to the English word 'nationality' or the French 'nationalité', but means 'ethnicity', 'ethnic origin' or 'ethnic belonging'.[5] In this paper, I use the word 'citizenship' for 'státní občanství' and 'ethnic origin' or 'ethnicity' for 'národnost'.

The purpose of this paper is to provide succinct account of the Czech citizenship regime against the background of its historical development and the most significant political and legal debates. It is devided in 4 sections. Section 2 (which follows the Section 1 – Introduction) gives brief historical account and focuses on responses to the unprecedented social changes and challenges of the last 25 years. Section 3 summarizes the current Czech citizenship regime. Section 4 summarises the main findings.

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[3] In this paper, I use occasionally the term Czech where the term 'Czechoslovak' would strictly speaking be correct.

[4] Another incarnation of the statist spirit provides legislation on national minorities. In the Czech Republic, only citizens are considered as persons belonging to national minorities. As regards the origin of the statist spirit, it is linked rather with the transformation of the Austrian citizenship regime in the 2nd half of the nineteenth century than with its early history after 1811(see Burger 2000: 88-172).

[5] See also Schmied (1974) at page 12, 14. Schmied observes that after 1945, the term '*státní občanství'* was preserved as it was in line with the Soviet use of the term (Ibid: 14). On the same issue Černý & Červenka (1963: 17) wrote: 'The socialist epoch did not introduce its own term for the status of individual in the new societal system.' As regards the term '*národnost*', it is not completely without relevance in the sphere of citizenship legislation. We can find it e. g. in the Constitutional Decree No. 33/1945 Coll. (see below). The 1945 circular, which implemented the decree, explained that '*národnost*' is not identical with the German '*Volkszugehörigkeit*' as used by Germans in the occupation era. In determining concrete nationality ('*národnost*'), it is necessary to take the usual aspects into consideration, such as subjective declaration by the person concerned as confirmed by objective findings, such as official the declaration made in the 1930 census return, or language, etc. See Verner (1947) at p. 131-133 for details.

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2. Historical background and changes

2.1 Czechoslovak citizenship policies from 1918 to 1993

Czechoslovak citizenship came into existence with the creation of Czechoslovakia on 28 October 1918. It was linked to the municipal right of domicile that had been an important instrument regulating migration within the Habsburg monarchy.[6] Former Austro-Hungarian citizens, who had a right of domicile in municipalities that became part of the Czechoslovak territory after the break-up of the Austro-Hungarian Empire, acquired Czechoslovak citizenship. The basic rule was modified by peace treaties[7] and constitutional laws [8] which regulated the issue of citizenship in order to protect ethno-national minorities and provided options to choose the citizenship of an ethnic kin state. The creation of Czechoslovakia led to the massive remigration of ethnic Czechs and Slovaks, in particular from Austria (Vaculík 2002; Kristen 1989). Apart from specific provisions linked to the creation of the new state, provisions of old Austrian laws on citizenship remained in force in the Czech lands of Bohemia and Moravia.[9] This was the case, for instance, with the ius sanguinis principle laid down in the 1811 Austrian Civil Code and the naturalisation rules. The 1920 Constitution prohibited dual citizenship. Naturalisation was viewed as an 'act of mercy by the state' (Verner 1932: 984) and renunciation of any previous citizenship upon naturalisation was requested.

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[6] Domicile *('domovské právo'*, *'Heimatrecht'*) refers to membership in a municipal community. In the Czech lands (Bohemia and Moravia) as parts of the Austro-Hungarian Empire, domicile was regulated by Act No. 105/1863 Coll. [Collection] of Acts of the Empire, as amended by Act No. 222/1896 Coll.

[7] E.g. Treaty of Versailles (1919), Treaty of Saint-Germain-en-Laye (with Austria) (1919), Treaty of Saint-Germain-en-Laye (with Czechoslovakia) (1919) and Treaty of Trianon (1920).

[8] Constitutional Act No. 121/1920 Coll. introducing the Constitutional Charter of the Czechoslovak Republic and Constitutional Act No. 236/1920 Coll. Supplementing and Amending Existing Provisions on the Acquisition and Loss of Citizenship and on Domicile in the Czechoslovak Republic. The basic principles of the Czechoslovak citizenship related to state succession were thus regulated by treaty provisions and constitutional laws. The system, however, failed to achieve the declared aim of protecting minorities and preventing statelessness.

[9] In Slovakia, the provisions of former Hungarian laws remained in force.

The end of the Second World War [10] and the restoration of Czechoslovakia led to the adoption of ad hoc laws that introduced the criterion of ethnicity into citizenship legislation. The new legislation was linked to post-war migration which was both voluntary and forced in character. Under the President's Constitutional Decree No. 33/1945 Coll. concerning Czechoslovak Citizenship of Persons of German and Hungarian Ethnicity (one of the so-called 'Beneš decrees'), Czechoslovak citizens of German and Hungarian ethnic origin were deprived of Czechoslovak citizenship.[11] The decree provided an internal legal basis for the expulsion of the German population from the Czech lands (Petráš 2009: 97-99). On the other hand, Constitutional Act No. 74/1946 Coll. on the Naturalisation of Compatriots Returning to the Homeland and its implementing regulations provided for facilitated naturalisation of ethnic Czechs, Slovaks and members of other Slavonic nations who settled or re-settled in Czechoslovakia. Naturalisation was often linked to changes of names to Czech or Slovak ones (Vaculík 2002). In the post-war years, more than 200,000 Czechs, Slovaks and members of other Slavonic nations immigrated to Czechoslovakia while more than 2,820,000 inhabitants of German ethnicity were expelled. In the late 1940s and 1950s, remedial legislation was adopted under which some stateless inhabitants of German and Hungarian ethnic origin (created by the previous legislation) were granted Czechoslovak citizenship.

After the communists seized power in Czechoslovakia in February 1948, deprivation of citizenship was introduced as a supplementary penalty for certain political offences.[12] Complex new citizenship legislation was adopted in 1949. Act No. 194/1949 Coll. on the Acquisition and Loss of Czechoslovak Citizenship (modified by Act No. 72/1958 Coll.), replaced the old legislation, but preserved many of its features, such as the ius sanguinis principle and the principle of a single citizenship. Both in the communist ideology and in legal theory, citizenship meant not only legal but also factual bonds between a citizen and the society. A legal textbook published in 1963 defines 'socialist citizenship' in the following way: 'Socialist citizenship is not only a legal bond between a citizen and the state, but it means also belonging to a collective of working people, who participate in the building of socialist (communist) society and in the building and defence of the socialist state; it means belonging to the collective of working people connected by shared dreams and ideals' (Černý & Červenka 1963: 19). Leaving this collective brought about a loss of citizenship.

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[10] In October 1938, Czechoslovakia lost parts of its territory inhabited mainly by a German population. In March 1939, after the secession of Slovakia, the rest of the Czech lands were turned into the Protectorate of Bohemia and Moravia. For the complex legal consequences in terms of citizenship, see Verner (1947, Appendix II: 227-270).

[11] The Presidential Decree exempted from withdrawal of citizenship those citizens of German and Hungarian ethnicity who had joined the fight for liberation or were persecuted by the Nazis. The legislation also established a possibility to apply for the restitution of Czechoslovak citizenship within six months after the entry of the Decree into force. Most of the Czechoslovak citizens concerned had actually acquired German or Hungarian citizenship in the period 1938-1945.

[12] Such withdrawal of citizenship through Court judgment was possible from 24 October 1948 till 31 December 1956 (see Černý & Valášek, 1996: 71-72, 80-81).

Thus, the law provided for depriving citizens of Czechoslovak citizenship. It was applied as a penalty to those citizens who lived abroad and had engaged in activities 'which might endanger state interests', those who had left the territory of Czechoslovakia 'illegally', those who had not returned to Czechoslovakia when requested to do so by the Ministry of the Interior, those who were dual citizens and those who lived abroad for more than five years without a 'valid passport permitting its holder to live abroad'.[13] These legal provisions existed until 1990.

In the two decades following 1949 (with the exception of remedial laws), the citizenship law was almost static. Only the Prague Spring initiated innovative developments. The Prague Spring of 1968, a movement towards the liberalisation of communist rule, was accompanied by the Slovak national movement.[14] This movement demanded the introduction of a federal system within a multi-ethnic, but centralised, Czechoslovakia. As of 1 January 1969, the unitary Czechoslovak state was transformed into a federal state, composed of the Czech and the Slovak republics.[15] At the level of citizenship legislation, this change was reflected by the adoption of Federal Act No. 165/1968 Coll. on the Principles of Acquisition and Loss of Citizenship, which was followed by the Act of the Czech National Council No. 39/1969 Coll. on the Acquisition and Loss of Citizenship of the Czech Socialist Republic, adopted in April 1969.[16] The new legislation introduced, in addition to the (federal) Czechoslovak citizenship, citizenship of the two (Czech and Slovak) Republics as the constituent entities of the Federation.[17] Under this legislation, Czechoslovak citizens automatically acquired the citizenship of either the Czech or Slovak Republic, based on their place of birth and some supplementary criteria. The new legislation made it simple to switch between the republic level citizenships, but this possibility was not exercised in practice. The reason was trivial: the republic-level citizenship had no practical consequences whatsoever. In fact, many citizens were not even aware of their republic-level citizenship.[18] In addition, the freezing period of 'normalisation' in the 1970s and 1980s, which followed the suppression of the Prague Spring, pushed most people into private and family life as the only remaining space for meaningful activities, where the question of citizenship had no significance. After the changes linked to federalisation were adopted, the citizenship legislation shifted into a stagnant phase for almost two decades.

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[13] The last condition was added in 1958.

[14] See also Kusá 2009.

[15] Constitutional Act No. 143/1968 Coll. on the Czechoslovak Federation.

[16] The corresponding law regulating the same issue in the Slovak Republic was the Act of the Slovak National Council No. 206/1968 Coll.

[17] In this paper, the term 'republic-level citizenship' is used to denote membership in the constitutive entities of the federal state. The term 'citizenship' is used exclusively to indicate membership of a sovereign state. In Czech language and legal terminology, the term 'státní občanství' ('state citizenship') is used for both legal statuses.

[18] The republic-level citizenship was not recorded in any official documents, such as birth certificates, ID cards or passports. On the other hand, the ID and other documents recorded the ethnic origin ('národnost'), (e.g. Czech, Slovak, Hungarian), which was based, in principle, on one's own declaration.

The fall of the communist regime in November 1989 prompted new developments in all spheres, including citizenship legislation. The first task for the new democratic government was to remedy injustices caused by deprivations of citizenship under the communist rule. In response to communist abuses of power, a constitutional provision was introduced, to stipulate that, 'no one shall be deprived of his or her citizenship against his or her will'.[19] Act No. 119/1990 Coll. on Judicial Rehabilitation abolished sentences for criminal offences to which the withdrawal of citizenship was attached, and consequently, the citizenship of the persons concerned was ex lege restored.[20] At the same time, Act No. 88/1990 Coll. was adopted, which provided for the reacquisition of the Czechoslovak citizenship by emigrants who had lost it in the period of communist rule. The law, which was not free of certain restrictions and shortcomings,[21] launched a new strand of future development in the field of citizenship legislation that I will call restitution legislation.

[19] Constitutional Act No. 23/1991 Coll. introducing the Charter of Fundamental Rights and Freedoms. The Act amended art. 5 of Constitutional Act No. 143/1968 Coll. on the Czechoslovak Federation. The Act came into force on 8 February 1991. Later, it was transformed into art. 12(2) of the Czech Constitution. The provision offers stronger protection against deprivation of citizenship than art. 15(2) of the Universal Declaration of Human Rights, which only bans arbitrary deprivation of citizenship.

[20] The concerned persons became, in many cases, dual citizens. (See Černý & Valášek, 1996: 71-72, 80-81).

[21] Act No. 88/1990 Coll. provided for the reacquisition of Czechoslovak citizenship by former Czechoslovak citizens who had lost Czechoslovak citizenship in the period between 1 October 1949 and 31 December 1989. The reacquisition took effect in certain cases (i.e. when the citizenship was withdrawn) through a simple declaration with *ex tunc* effects. In the other category of cases (release from citizenship) facilitated naturalization with *ex nunc* effects was possible. However, the scope of application of the law was limited by several factors. First, the law did not cover, due to its time limitation, former Czechoslovak citizens who were deprived of Czechoslovak citizenship by the 1945 Presidential Decree (Germans and Hungarians) as well as other persons who lost citizenship before 1 October 1949. Second, it also indirectly excluded those former Czechoslovak citizens who lost Czechoslovak citizenship due to the application of the 1928 Naturalisation Treaty with the USA. Third, the law did not provide for the acquisition of citizenship by children of emigrants. Finally, the law provided a relatively short period to exercise the right to request the restitution of citizenship. It expired on 31 December 1993.

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2.2 Break-up of Czechoslovakia and creation of the Czech citizenship in 1993

The demise of the communist regime opened a space for the resurgence of nationalist feelings and politics.[22] In Czechoslovakia, the rebirth of the Slovak nationalist movement led to a consensual break-up of the federal state. In the autumn of 1992, as the break-up of Czechoslovakia was increasingly becoming a realistic option (negotiated and carried through by the ruling political elite), [23] many Czechoslovaks started to think about their future in terms of citizenship.[24] The dormant provisions of the existing citizenship legislation, which allowed for a simple switch between the Czech and the Slovak republic-level citizenships, started to be widely invoked. By the end of 1992, some 65,000 Slovak republic-level citizens had applied for the Czech republic-level citizenship. On 1 January 1993, the Czech and the Slovak Republics were established as successor states to the former Czechoslovakia. In the Czech Republic, citizenship issues were regulated by the hastily drafted and adopted Act No. 40/1993 Coll. on the Acquisition and Loss of Citizenship of the Czech Republic. [25] The primary aim of the law was to identify citizens of the new state and to prevent dual (Czech and Slovak) citizenship.[26]

The provisions of the new legislation fell into two main categories. The first was a set of transitory provisions regulating the initial determination of the citizens of the new state,[27] complemented by provisions governing the option for Czech citizenship. The other category involved rules of permanent nature, regulating e.g. acquisition of the Czech citizenship by birth, naturalisation or loss of Czech citizenship.

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[22] See also Kusá 2009.

[23] The Constitutional Act No. 542/1992 Coll. on the Dissolution of Czechoslovakia on 31 December 1992 was adopted by the Federal Assembly on 25 November 1992.

[24] Since the establishment of Czechoslovakia in 1918, there has been much intra-state migration. For instance, in the period 1918-1938 many Czechs went to Slovakia as part of the new Czechoslovak administration. After 1945, there was continuous economic emigration from Slovakia to Bohemia and Moravia. One important element of the post-war internal movements of inhabitants was (both spontaneous and state-organised) resettlement of Slovak Roma in industrial towns and cities of Moravia and Bohemia.

[25] The drafting and the adoption of the law took place in exceptional circumstances. The whole process was finished within two months.

[26] The possibility of dual (Czech and Slovak) citizenship was the most divisive issue between the ruling political elites – Slovak nationalists and Czech pragmatists. It was favoured by the former and denied by the latter. Since an agreement on state succession regarding citizenship had not been reached, two separate, non-harmonized citizenship laws regulated the citizenship of the successor states.

[27] For the concept of the initial determination ('Erstabgrenzung'), see the work by Krombach (1967).

Table 1 Conceptual scheme of Act No. 40/1993 Coll. on the Acquisition and Loss of Citizenship of the Czech Republic (as of 1 January 1993)

	Norms regulating initial determination of citizenship		*Norms regulating standard procedures for acquisition and loss of citizenship (e. g. by birth, naturalization)*
	overall initial determination of citizenship	***supplementary and corrective initial determination***	
time aspect	automatic operation of laws taking effect on 1 January 1993	temporary application of norms	perpetual application
personal scope	core of citizens of the new state, the category was established by operation of law – all former Czech republic-level citizens	solves individual cases, takes into account the will of individuals concerned	plurality of cases, not to be defined in advance

As regards the initial overall determination of citizenship, Act No. 40/ 1993 Coll. stipulated that, 'natural persons, who were citizens of the Czech Republic as of 31 December 1992, [...] are citizens of the Czech Republic as of 1 January 1993.' Leading Czech jurists explain the establishment of Czech citizenship in the following way.

'As a consequence of the disappearance of Czechoslovakia and the establishment of the Czech Republic as an independent entity under public international law, the Czech republic-level citizenship acquired as of 1 January 1993 an international dimension and turned into full-fledged state citizenship' (Černý & Valášek 1996: 99).

The Slovak legislators adopted the same approach as regards overall (collective) initial determination. This prevented de iure statelessness in the wake of the break-up of Czechoslovakia.[28] The primary rule was supplemented by a set of transitional provisions regulating the right of option and facilitating naturalisation for certain Slovak citizens.

According to statistics published by the Czech Statistical Office in 2007, the final numbers of Slovak citizens who acquired Czech citizenship under the option clauses was 292,000 persons, whereas 2,500 Slovak citizens acquired citizenship through facilitated naturalisation in the same period.[29] These specific provisions were in force until 30 June 1994.

[28] The same criterion, i.e. republic-level citizenship, was used in some countries of former Yugoslavia (Slovenia, Croatia), while the countries of the post-Soviet Eurasia applied a permanent residency criterion instead.

[29] See publication Život cizinců v ČR 2006 [Life of Foreigners in the Czech Republic], Appendix, Table 3.3., published 18 January 2007, at http://www.czso.cz/csu/2006edicniplan.nsf/p/1118-06 .Some other sources provide different numbers.

The criteria for exercising this right of option, however, included not only two years of permanent residence in the territory of the Czech Republic and renunciation of Slovak citizenship, but also a clean criminal record.[30] The application of the latter condition had a disproportionate impact on members of the Roma (Gypsy) minority.[31] In 1994, a group of 46 deputies submitted a petition to the Constitutional Court challenging the constitutionality of the new citizenship legislation on several points, including the option clauses, but the Court rejected the complaint.[32] The law was criticised by Czech human rights activists as well as by the international community and the European Union (Filip 1999:1). The criticism led to piecemeal adjustments and a softening of Act No. 40/1993 Coll. in relation to former Czechoslovak (now Slovak) citizens.[33]

In the decade following the establishment of the independent Czech Republic, one issue dominated public and political discourse on citizenship matters: the intentional and accidental consequences of the break-up of Czechoslovakia. In the shadow of this central theme, some problems related to the restitution of Czechoslovak (now Czech) citizenship for emigrants were also discussed. In 1998, after the change of government (from liberal-conservative to social-democratic) a more profound reform of citizenship legislation was put on the government agenda.[34] This led to (a) significant alterations of the transitional provisions of the 1993 Citizenship Act, and (b) the adoption of Act No. 193/1999 Coll. on the Citizenship of Some of the Former Czechoslovak Citizens, which was another piece of restitution legislation.

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[30] The right to opt for Czech citizenship was restricted by the requirement that the person had not been convicted in the last five years for an intentional criminal offence.

[31] Most Roma migrated to Czech lands from Slovakia after 1945. Consequently, many Czech Roma became Slovak citizens by the application of the general rules of initial determination.

[32] Pl US 9/94, see English translation Pl. US. 9/94 - Citizenship Law at http://www.concourt.cz/file/2170. In principle, The Court failed to recognise the difference between the specific legislation linked to state succession and naturalisation.

[33] The first change of the law was adopted in October 1993. A significant change responding to the critique was introduced by Act No. 139/1996 Coll., which allowed for exceptions in naturalisation procedures from the clean criminal record requirement for former Czechoslovak citizens who had resided in the territory of the Czech Republic since the break-up of Czechoslovakia.

[34] The reform was announced in the government manifesto adopted in August 1998 (Resolution of the Government No. 504/1998).

(a) The former legislation mitigated the harsh consequences of the break-up of Czechoslovakia for some groups of former Czechoslovak citizens. A judgment of the Constitutional Court of the Czech Republic of 5 May 1997[35] also fostered this development. The Court held that a person does not lose Czech citizenship by virtue of a simple declaration to opt for citizenship of the Slovak Republic. The estimated number of such persons was 65,000.[36] These individuals became dual citizens.[37] Major amendments to the 1993 Citizenship Act were implemented by Act No. 194/1999 Coll. which not only transformed this ruling into a statutory provision, but also allowed all Czech citizens who were former citizens of Czechoslovakia as of 31 December 1992 to acquire Slovak citizenship without losing their Czech citizenship. This is a further exception to one of the declared principles of the Czech citizenship legislation, the prevention of dual citizenship.

Most importantly, the 1999 amendment also introduced a simplified procedure for acquisition of Czech citizenship by declaration for former Czechoslovak citizens who had been living continuously in the territory of the Czech Republic since the break-up of Czechoslovakia (as well as their children). This was a corrective provision. It provided for the acquisition of Czech citizenship by those who for various reasons (legal or personal) could not opt or apply for Czech citizenship before. The necessity of the remedy is demonstrated by this figure: 6,278 former Czechoslovak citizens acquired Czech citizenship in 1999 alone, by invoking the new provision. It was only in 2003 that the number of the annual acquisitions based on the new provision fell below one thousand. This clearly shows that at the end of 1990s, there were still a number of former Czechoslovak citizens whose status was not adequately regularised. In 2011, there were 83 cases. The decreasing numbers indicate that the problem has diminished.

Table 2: Slovak citizens who acquired Czech citizenship by declaration (Section 18a of Act No. 40/1993 Coll.)

Year	*1999*	*2000*	*2001*	*2002*	*2003*	*2004*	*2005*	*2007*	*2008*	*2009*	*2010*
Total Num.	6,278	5,377	3,378	1,862	850	627	565	268	227	171	116

Year	*2011*	*2012*
Total Num.	83	63

Source: Ministry of the Interior & Czech Statistical Office

[35] See IV. ÚS 34/97 at www.concourt.cz (Czech original) and IV. US. 34/97 - Dual Citizenship at http://angl.concourt.cz/angl_verze/cases.php (English translation).
[36] See Explanatory Report to the Act No. 194/1999 Coll., Chamber of Deputies' Print No. 159, 1999, III. electoral period, www.psp.cz.

[37] The judgment was confirmed by a subsequent judgment on 14 November 2000 (I. US 337/99). The Court argued that exercising the right of option does not mean that a person acquired foreign, i.e. Slovak citizenship at his or her own request, which would lead to automatic loss of Czech citizenship. In practical terms, this ruling concerned mostly ethnic Czechs living in Slovakia.

A subsequent amendment to Act No. 40/1993 Coll. adopted in 2003 (Act No. 357/2003 Coll.) introduced further remedial provisions. It gave former Czechoslovak citizens who were granted Slovak citizenship (i.e. were naturalised in Slovakia) in the period from 1 January 1994 to 1 September 1999 the right to (re-)acquire their lost Czech citizenship by declaration (Section 18b). The amendment also gave the right to acquire the Czech citizenship by declaration to certain groups of Slovak citizens who were minors at the time of the break-up of Czechoslovakia (referred to as persons born in Slovakia to a Czech parent, Section 18c). These provisions (Section 18b, 18c) concerned a rather limited number of persons (Table 3).

Table 3: Slovak citizens who acquired Czech citizenship by declaration - (Section 18b and 18c of Act No. 40/1993 Coll.)

Year	*2003*	*2004*	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*
Sect. 18b	55	364	123	63	49	47	25	24	15	9
Sect. 18c	5	573	325	167	177	144	124	96	41	53

Source: Ministry of the Interior & Czech Statistical Office

(b) Act No. 193/1999 Coll. on the Citizenship of Some of the Former Czechoslovak Citizens, reintroduced and broadened the right of reacquisition of Czech citizenship by declaration. It applied to emigrants who had lost Czechoslovak citizenship under communist rule, but for legal or practical reasons had not been able to make use of the first restitution act of 1990.[38] Originally, the applicability of the law was limited to five years after its entry into force.

Table 4: Former Czechoslovak citizens who (re-)acquired Czech citizenship by declaration under Act No. 193/1999 Coll.

Year	*1999*	*2000*	*2001*	*2002*	*2003*	*2004**	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*
Total Number	798	1,899	1,607	1,273	1,154	1,784	190	205	225	229	173	171

Source: Ministry of the Interior & Czech Statistical Office

*The deadline for making the declaration expired on 2 September 2004. The Act No. 46/2006 Coll. deleted the deadline and thus made the law operational again. It was published and entered into force on 27 February 2006.

[38] These are, in particular, those who lost the Czechoslovak citizenship due to the 1928 Naturalisation Treaty between the United States and Czechoslovakia.

To sum up, the citizenship legislation adopted after the creation of an independent Czech Republic has gone through a series of adjustments. Altogether, ten amendments to the 1993 Citizenship Act were adopted during the period of 1993 – 2013. Act No. 193/1999 Coll. on the Citizenship of Some Former Czechoslovak Citizens has gone through two amendments. While the greater part of this fine-tuning was related to the situation of former Czechoslovak citizens there were other changes as well (e. g. concerning the conditions for naturalisation). Some changes reflected reforms of administrative structures. Despite extensive amendments, the citizenship regime established by the 1993 Citizenship Act preserved at large its initial principles, which in turn reflected a deeper historical continuity. The only exception was the gradually relaxed approach to dual citizenship, which led to the paradigm change of legislation in 2014.

3. The current Czech citizenship regime

This section summarises the main principles of Czech citizenship regime in force as of 1 January 2014 under Act No. 186/2013 Coll., on the Citizenship of Czech Republic.[39] It also describes how these changes were achieved. It tries to find a compromise between the legal perspective, which calls for a complex and exact description of citizenship legislation, and the political science approach, which focuses on what is new, dominant or unique. A reader who is seeking legal information should consult law texts and recognised law handbooks.[40]

On the way to the new 2013 Citizenship Act

The impetus for an overall revision of citizenship legislation came from the government Council for Human Rights in 2002.[41] A positive response by the Ministry of Interior was a turning point. The major concerns of the Council and the Ministry were different. While the Council's interest was in improving the situation of second generation immigrants, the Ministry's primary intention was to consolidate fragmented legislation and terminate remaining rules related to the break-up of Czechoslovakia.

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[39] The long title of the new act is Act No. 186/2013 Coll. concerning the citizenship of the Czech Republic and amending certain acts"; the short title is "Czech Citizenship Act. In Czech: Zákon č. 186/2013 Sb. o státním občanství České republiky a o změně některých zákonů (zákon o státním občanství České republiky). The Act is available online at http://www.zakonyprolidi.cz/cs/2013-186 .

[40] See the leading handbooks on Czech citizenship law Černý & Valášek 1996, Valášek & Kučera 2006 and Gronwaldtová Wagnerová & Morávková 2009: 173 – 282. Čižinský & al. (2012) provide an updated overview of the current Czech citizenship legislation at pp. 318 – 344. For the content of the new legislation see also Čižinský, Pavel. (2013). New law on the acquisition of Czech citizenship: introduction to the main changes valid as of January 2014. Available at Migraceonline.cz, http://www.migrationonline.cz/en/new-law-on-the-acquisition-of-czech-citizenship-introduction-to-the-main-changes-valid-as-of-january-2014.

[41] The Council for Human Rights is an advisory body to the government. See Resolution of the Government of the Czech Republic No. 493/2002. The communication concerned the incompatibility of the some bilateral agreements with the requirements of the European Convention on Nationality, and some issues, criticised later also by the Ombudsman and the Supreme Administrative Court.

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Nevertheless, there was broader agreement on certain issues, in particular the need to reconsider the single - dual citizenship dilemma. Further impetus was the 1997 European Convention on Nationality (ratified by the Czech Republic in 2004), which also called for a deeper review of existing legislation (Henych 2000: 383). Finally, one can also see this development as part of a broader process of consolidation in Czech legal structure that has been underway in many spheres of the law. [42]

Following the Analysis of Dual Citizenship Issues submitted to the government in 2002 and the adoption of major amendments to the 1993 Citizenship Act in 2003, a plan for the comprehensive reform of citizenship legislation was finally launched. In February 2003, the government decided that the Ministry of the Interior should prepare a comprehensive analysis of citizenship legislation based on broad public consultation and submit it to the government by 30 June 2005.[43] The Ministry circulated a consultation paper in the autumn of 2004 and subsequently, in May 2005, a draft for the Analysis of the Legislation on the Acquisition and Loss of Citizenship. In July 2005, the government approved the Analysis.[44]

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[42] Major recodifications in criminal law, civil law and labour law had to close the post-revolutionary period, in which numerous amendments were added to the old pre-revolutionary laws. The planed re-codification of citizenship law shares some characteristics of this process.

[43] See Resolution of the Government of 24 February 2003, No. 186.

[44] Ministry of the Interior, Analýza právní úpravy nabývání a pozbývání státního občanství [Analysis of the regulation on acquisition and loss of citizenship] Adopted on 13 July 2005 by Government Resolution No. 881. The Analysis discussed the fundamental principles of the new citizenship code. It suggested the following crucial moves towards liberalisation: a) full toleration of dual (multiple) citizenship on both entry and exit sides and b) facilitated acquisition of citizenship by second and third-generation migrants. Regarding the grounds of the former proposal, the Ministry referred to both the prevailing trends towards liberalisation abroad and to practical aspects. With regard to the latter proposal, the Ministry suggested that foreign citizens born in territories of the Czech Republic should acquire Czech citizenship by declaration within two years after the age of majority if they are permanent residents and have a clean criminal record. The same should apply to those who have lived continuously in the Czech Republic since early childhood. The underlying justification is both factual and legal: increasing immigration and the 1997 European Convention. Even if this proposal is not a very favourable solution in comparison with other options (such as the application of ius soli at birth), it would still present a positive change in the national context. On the other hand, the Ministry stated that strict conditions for naturalisation should be maintained or even be tightened. It proposed, for example, excluding from naturalisation applicants who are likely to become a public burden. The Analysis also contemplated some changes in language testing, including that the testing be more professional. A year later, in June 2006, the Ministry circulated the first framework draft of the new legislation. In addition to the changes mentioned above, it proposed amending the Constitution so as to allow the withdrawal of citizenship in cases of fraudulent acquisition of citizenship (e.g. use of false documents). Another controversial proposal concerned an amendment to the Constitution introducing the clause that there is ‘no legal right to be granted citizenship’. This proposal can be regarded as the Ministry’s response to the criticism that it was making extensive use of discretion in naturalisation cases.

The parliamentary elections held in June 2006 and the subsequent establishment of a right-wing /centrist government initially slowed down the legislative process, but have not brought about a major reorientation.[45] On 17 March 2008, the government discussed the new draft framework legislation.[46] The blueprint was comprised of two elements: the framework Constitutional Act on Citizenship of the Czech Republic and the framework Act on Citizenship of the Czech Republic.[47] In April 2009, the Ministry circulated a draft of the new citizenship code for inter-ministerial comments,[48] but did not submit the draft to the government in May as planned. This was due to the unexpected fall of the government in spring 2009 and the subsequent decision to hold new parliamentary elections.[49] The legislative procedure resumed after the new government, created by right wing political parties, was established after parliamentary elections in May 2010.

Finally, the Government introduced the bill on Czech Citizenship to the Chamber of Deputies in October 2012. For another year the law was discussed by both chambers of the Parliament. On 11 June 2013 the Czech Chamber of Deputies cast a final vote on the new citizenship law. By this vote the Chamber outvoted the amendments proposed by the Senate, which, inter alia, contained a proposal which would retain broader judicial review. [50] Out of 175 deputies only six supported the Senate amendments whereas 94 were against. Furthermore, the Lower Chamber enacted the bill as it had been approved earlier on 27 March 2013.[51] An absolute majority, that is 101 votes in favour, was required to enact the bill. Out of 178 deputies who cast the vote, 120 supported the Chamber version and only thirteen were against. The new citizenship Act finally entered into force on 1 January 2014.

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[45] The coalition consisted of the liberal-conservative Civic Democratic Party, Christian Democrats and the Greens. In its programmatic declaration, the new government stated that it would 'consider the possibilities of simplifying the acquisition of dual nationality'. See www.vlada.cz.

[46] Under the government's legislative rules, a framework law (věcný záměr zákona) normally precedes the full legislative draft if a law regulates new and complex issues. These blueprints represent a step in legislative drafting at government level. As such, they are not subject to consultation with, or decision by, the parliament. Consultations on the draft legislation within the administration and with other stakeholders took place from July to November 2007.

[47] Ministry of the Interior, Návrh věcného záměru ústavního zákona o státním občanství České republiky a návrh věcného záměru zákona o státním občanství České republiky, VS-1283/50/2-2007 [The proposal of the framework for the Constitutional Act on Citizenship of the Czech Republic and the framework for the Act on Citizenship of the Czech Republic]. The government took its decision by Resolution of 17 March 2008, No. 254. The primary aim of the proposed constitutional act was to implement the two controversial changes discussed above. It also proposed to exempt from judicial review a denial of naturalisation if it was justified on the grounds of possible risks to the sovereignty, security or democratic foundations of the state. Guided by the opinion of its Legislative Council, the government eventually rejected the proposed constitutional legislation.[47] However, the government approved the framework citizenship law and decided that the Minister should submit a full version of the bill for approval no later than 31 May 2009.

[48] *Návrh zákona o státním občanství České republiky a o změně některých zákonů*. [Draft Act on the Citizenship of the Czech Republic and on Amendments to Certain Laws.] 17 April 2009, MV-13709/LG-2009. The proposal was also published on the government run open web page Knihovna legislativního procesu [Legislative Process Library] at http://eklep.vlada.cz/eklep/page.jsf.

[49] On 24 March 2009, the Chamber of Deputies expressed a vote of no-confidence in the government. On 8 May 2009, the right-wing centrist government of the Prime Minister Mirek Topolánek was replaced by the interim government of Prime Minister Jan Fischer.

[50] The Senate discussed the bill on 16 May 2013. The most heated amendment proposed by the Senate in May concerned Section 26 of the bill which contains an exemption from judicial review for cases when a

The main characteristics of the 2013 Citizenship Act

The 2014 Czech Citizenship Act replaces all previous citizenship legislation (Act No. 40/1993 concerning the Acquisition and Loss of Citizenship of the Czech Republic as amended, and Act No. 193/1999 concerning the Citizenship of Certain Former Czechoslovak citizens as amended). Thus, the Act consolidates all citizenship legislation into a single law. The Act terminates the provisions, incorporated in the 1993 Citizenship Act, related specifically to the break-up of Czechoslovakia and the creation of an independent Czech Republic on 1 January 1993.[52]

Most strikingly, the 2014 Czech Citizenship Act brings a paradigm shift in regard to the approach to dual (multiple) citizenship, namely a liberal approach to dual (multiple) citizenship for both incoming and outgoing naturalisations. Czech citizens are permitted to have dual and multiple citizenship and foreigners seeking naturalisation are permitted to retain their original citizenship. The possibility to retain former citizenship by foreigners seeking naturalisation has been welcomed by many immigrants as well as NGOs. Previously, naturalisation without a prior loss of former citizenship was an exception. Now it became the rule. However, further conditions for naturalisation go in the opposite direction and aim towards tightening the requirements for naturalisation. Three reasons explain this development. First, and most importantly, the bill codifies existing practices (e.g. in regard to the screening of applicants from an integration perspective). Second, the bill reacts to broader European trends already partly incorporated in Czech immigration legislation (in particular in regard to language tests). Third, one may see the tightening of some conditions for naturalisation as a sort of equalising measure related to the increased number of eligible migrants once the renunciation of prior citizenship was not a condition for naturalisation anymore.[53]

A major change also concerns the approach to EU citizens. While the 1993 Czech citizenship legislation did not distinguish between the EU citizens and third country nationals, the new legislation establishes a more favorable regime of access to Czech citizenship for citizens of the EU, Switzerland and the EEA (particularily in regard to the naturalisation of children born out of wedlock).

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naturalisation application was rejected on security grounds. Senators proposed to retain judicial review also in these cases and to introduce some special procedures so that classified information is protected. Other changes proposed by the Senate concerned inter alia the deletion of general exemption from the Czech language and civic knowledge tests for certain categories of applicants for naturalisation and the competencies of magistrates of major cities Brno, Ostrava and Plzeň in naturalisation procedures. The amendment proposed by the Senate is available at: < http://www.senat.cz/xqw/xervlet/pssenat/htmlhled?action=doc&value=68541 >

[51] The version of the bill as approved finally by the Chamber of Deputies is available at: < http://www.psp.cz/sqw/text/tiskt.sqw?o=6&ct=827&ct1=6 > .

[52] Some of these provisions can still be used in a transitory period, which expires on 1 January 2015. See Act No. 186/2013 Coll., concerning Citizenship of the Czech Republic, Section 72. According to this transitory provision within one year after the new Citizenship Act is effective a citizen of the Slovak Republic can obtain citizenship of the Czech Republic by making a declaration under Sections 18a, 18b and 18c of the Act No. 40/1993 Coll. (the old citizenship act).

[53] In other words, the state still has enough means to manage naturalisation and to exclude undesirable individual forms of citizenship. The underlying concept, the critics say, is the notion of 'citizenship as an award' rather than 'citizenship as a rule'

Access to the acquisition of Czech citizenship was also relaxed for one and a half generation and second-generation immigrants. They are exempt from the naturalisation procedure and can acquire Czech citizenship as a right through declaration.

Further significant changes involve achievement-based acquisition of citizenship, stricter conditions for acquisition of citizenship through ius soli for children otherwise stateless, acquisition of citizenship through paternity determination and the acquisition of citizenship by declaration.

Interestingly, direct influence of political parties on the reform plans does not seem to be a dominant factor in shaping citizenship legislation. This corresponds to the fact that citizenship reform was not a high priority on the political agenda of any major political party. The likely reason is that respective constituencies perceive citizenship as a marginal issue. However, this is a hypothesis which deserves empirical verification.

3.1 Acquisition and loss of Czech of citizenship

Acquisition

There are several ways of acquiring Czech citizenship: [54]
a) Acquisition of citizenship by birth,
b) Acquisition of citizenship by establishment of paternity,
c) Acquisition of citizenship by adoption,
d) Acquisition of citizenship by being found in territories of the Czech Republic,
e) Acquisition of citizenship by naturalisation (including acquisition of citizenship by specific naturalisation procedures),
h) Acquisition of citizenship by declaration, or
g) Acquisition of citizenship in relation to foster care.

a) Acquisition of citizenship by birth[55]

Under the ius sanguinis principle a child acquires Czech citizenship at birth if at least one parent is a Czech citizen. The place of birth is not relevant. The acquisition of citizenship by so called *specific naturalisation procedure*[56] functions as an exception to this rule. (See also below.) Ius soli, the acquisition of Czech citizenship by birth, also applies if both parents are stateless and at least one of them holds the permission to stay in territories of the Czech Republic for longer than 90 days, provided that the child would be otherwise stateless.[57]

[54] Act No. 186/2013 Coll., concerning Citizenship of the Czech Republic, Section 3.
[55] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 4.
[56] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 28.

[57] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 5.

b) Acquisition of citizenship by establishment of paternity

The acquisition of citizenship by established paternity is a new regulation. A child acquires Czech citizenship automatically if the court establishes the paternity of the Czech citizen.[58] Furthermore, a child automatically acquires Czech citizenship when a paternity declaration is made jointly by her or his father – a Czech citizen and her or his mother, provided that the mother is a citizen of the Member State of the European Union, the Swiss Confederation, the Member State of the EEA, is stateless or (if she is a citizen of another state) she holds a permanent residence permit.[59] If the mother does not fall into the above mentioned categories, a child may acquire Czech citizenship automatically by a joint paternity declaration if paternity is proven by a genetic test.[60] If the child does not acquire the Czech citizenship automatically through the paternity declaration, his or her parents can apply for naturalisation under specific naturalisation provisions of the law.[61]

c) Acquisition of citizenship by adoption

A child may acquire Czech citizenship by adoption, provided that at least one of the adoptive parents is a Czech citizen and the adoption is executed by Czech authorities.[62] If the adoption was executed by a decision of foreign state authorities, the adoption must be recognised under private international law. [63]

d) Acquisition of citizenship by being found in the territory of the Czech Republic

A child under three years of age, found in the territories of the Czech Republic, whose identity is not established, acquires Czech citizenship on the date, when he or she was found, provided that within six months it is not established that the child acquired the citizenship of another state.[64]

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[58] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 6.

[59] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 7 (1).

[60] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 7 (2).

[61] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 28.

[62] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 8.

[63] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 9. The law refers to the Section 63 of the Act No. 91/2012 Coll. on the private international law.

[64] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 10.

e) Acquisition of citizenship by naturalisation

The acquisition of citizenship through naturalisation[65] has gone through certain changes. The most important of which are the tolerance of dual (or multiple) citizenships, stricter language and new civic knowledge tests and the broadly formulated general 'integration requirement'. The law explicitly stipulates that it does not understand naturalisation as a legal right.[66] Excluded from naturalisation are applicants who pose danger to the security, sovereignty or territorial integrity of the state, to democratic foundations, lives, health or property.[67] For this reason, the application for naturalisation is accompanied by opinions of the Police and Intelligence Services.[68] An application rejected on security grounds falls outside the scope of judicial review.[69] The period for making a decision on the application has been prolonged to 180 days (formerly 90 days). [70]

The conditions that must be met by applicants[71] involve a permanent residence permit, the duration of the residence (with permanent residence permit) for at least five years (or three years for the EU, EEA and Swiss citizens) or at least ten years of legal residence. An applicant older than fifteen years has to possess a clean criminal record (he or she must not be sentenced for an intentional or unintentional crime, if the sentence is unconditional). The applicant must further prove knowledge of the Czech language (level B1 of the Common European Reference Framework) and basic knowledge of the constitutional system of the Czech Republic and basic orientation in cultural, social, geographical and historical facts. The level is set at Elementary school level. The exam may be passed at one of the centers run by the Charles University in Prague.[72] The content of the test is laid down in detail by a decree of the Ministry of the Education, Youth and Sports No. The test consists of a written and oral Czech language exam and a written section testing basic Czech knowledge. The applicants must pay for the exam. The language test costs (for 2014) CZK 3,300 (approximately EUR 132) and the knowledge test CZK 1,600 (approximately EUR 64).

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[65] Acquisition of citizenship by naturalization is regulated under Sections 11 – 30 of the Act No. 186/2013 Coll., concerning citizenship of the Czech Republic.

[66] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 12. The provision stipulates that "There is no legal right to be granted a citizenship."

[67] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 22 (3).

[68] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 26.

[69] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 26.

[70] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 23(1).

[71] The basic conditions for naturalisation are to be found in Section 14. See Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 14. Section 14 has 8 paragraphs. Section 15 regulates exceptions, which are situations in which the Ministry can mitigate some of these conditions.

[72] See the information at http://obcanstvi.cestina-pro-cizince.cz/index.php?p=zakon-o-statnim-obcanstvi-cr&hl=en_US and at http://ujop.cuni.cz/en/exam/czech-language-exam-and-czech-life-and-institutions-exam-for-candidates-for-czech-citizenship Vyhláška č. 433/2013 Sb. o prokazování znalosti českého jazyka a českých reálií pro účely udělování státního občanství České republiky. Available from http://www.sbirka.cz/POSL4TYD/NOVE/13-433.htm [online].

Certain categories of applicants for naturalisation are exempt from the language and knowledge tests. These are applicants who have attended for at least three years a school with the Czech language as a language of instruction (be it elementary, secondary school or university), applicants under fifteen or older than 65 years of age, or mentally or physically disabled applicants.[73]

Further requirements relate to the fulfillment of legal duties from the last three years stemming from immigration laws, public health insurance, social insurance, rent insurance, employment, taxes, duties and other payments, the nutritional obligation towards a child who permanently resides in the territories of the Czech Republic and a duty toward the municipality where the applicant resides. The applicant must also prove the source of his or her income and extent of his or her income in the last three years. The applicant must also meet the criteria of not being an undue burden to the public social system.

As under the 1993 legislation, the Ministry of the Interior, which decides naturalisation, can relax some of the requirements. [74]

Apart from all of the specific conditions, the applicant must also meet the above mentioned broadly formulated integration clause. [75] The integration clause stipulates that citizenship can be granted if the applicant is integrated into Czech society, in particular in regard to the integration of family, work and social interactions. Although this provision is new in the letter of the law, it has been in practice established for a long time.[76]

The Act also newly regulates achievement based citizenship.[77] Compared to the old legislation foreigners applying for naturalisation on the grounds of their specific achievements in science, education, culture, sports, the fulfilment of the international commitment of the Czech Republic or humanitarian purposes, are to be exempted from a broad spectrum of standard naturalisation conditions. However, they must be permanent residents and have a clean criminal record. The bill newly specifies that an applicant for the VIP citizenship has to submit a document issued by a ministry or other branch of central administration, the Office of the President, a state or public university or public research institution in support of his or her application.[78]

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[73] Act No. 186/2013 Coll. Section 14, paragraph 4 and 5.

[74] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 15.

[75] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 13 (1).

[76] See Gronwaldtová Wagnerová & Morávková 2009: 214- 223, p. 215.

[77] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 16.

[78] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 16 (2).

Finally, we must also briefly mention the acquisition of citizenship through specific naturalisation procedures.[79] This mode is linked to the acquisition of the citizenship by paternity; if the acquisition is not achieved automatically, as described above. In this situation, the parents can apply for the naturalisation of their child within one year after the joint declaration on paternity has been made. The application may be approved provided that the child lives with the father in the same household; the father participates in his or her upbringing and fulfils the nutrition duty.[80]

It will remain to be seen to what extent the new provisions will impact the traditionally very low number of naturalisations. If we exclude Slovak citizens, the numbers of persons naturalised annually in the Czech Republic have been surprisingly low and stable (Table 5). The picture principally remains the same if we include Slovak citizens since 2001 when the consequences of the break-up of Czechoslovakia were over (Table 6). Against the background of increasing numbers of foreigners living in the Czech Republic who are permanent residents (Table 7), this calls for explanation. One may assume that strict naturalisation legislation, as well as rigorous way it is applied, play important role. [81]

Table 5 Naturalisations (§ 7 Act No. 40/1993 Coll.) (excluding Slovak citizens) in the Czech Republic, 1993-2012

Year	*1993*	*1994*	*1995*	*1996*	*1997*	*1998*	*1999*	*2000*	*2001*	*2002*	*2003*	*2004*	*20*
Total Number	1,469	1,412	2,000	1,380	837	1,128	1,031	1,059	1,121	1,150	1,267	1,495	1,1

Year	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*
Total Number	1,355	1,027	1,087	1,017	947	1,414	1,565

Source: Ministry of the Interior and Czech Statistical Office

[79] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 28.

[80] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 28(1). The purpose of the provision is to exclude cases where the paternity declaration is made primarily with the aim to obtain Czech citizenship. However, the law obviously does not prevent the situation when a child, whose father is a Czech citizen, does not acquire Czech citizenship.

[81] Cases dealt with by courts conducting judicial review, the Ombudsman and some non-governmental organizations offer some insight into the restrictive practice in naturalisation procedures. An interesting, more general account of the practices of the Ministry is contained in a recent handbook on personal status issues (Gronwaldtová Wagnerová & Morávková 2009: 214- 223). In particular, the eligibility condition to waive the renunciation requirement consisting of the existence of 'a genuine link' to the Czech Republic is considered strictly. The genuine link is assimilated with the 'overall integration of the applicant into the Czech society, in particular at the work, family and social (including cultural) levels' (ibid: 215). See also study by L. Kučera [2011].

Table 6 Naturalisations (§7 Act 40/1993 Coll.) of Slovak citizens in the Czech Republic, 1993-2012

Year	*1993 - 2000*	*2001*	*2002*	*2003*	*2004*	*2005*	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*
Total Number	45 170*	215	247	79	177	246	181	131	103	111	141	239	206

*Data for individual years not available.

Source: Ministry of the Interior and Czech Statistical Office

Table 7 Foreigners with permanent residence status in the Czech Republic, 1993 -2012

Year	*1993*	*1994*	*1995*	*1996*	*1997*	*1998*	*1999*	*2000*	*2001*	*2002*	*2003*	*2004*	*2005*
Total Number	31	33	39	46	57	64	67	67	70	75	81	99	111

Year	*2006*	*2007*	*2008*	*2009*	*2010*	*2011*	*2012*
Total Number	139	158	172	180	189	196	212

Source: Ministry of the Interior and Czech Statistical Office

In 2012, the top three countries of immigration (this includes temporary residence status) were the Ukraine (112,647 persons), Slovakia (85,807 persons) and Vietnam (57,360 persons). These three groups of immigrants make up 70 % of all immigrants with long or permanent resident status (Ministry of the Interior, 2013: 3). In 2012 naturalisations included 512 Ukrainian citizens, 180 Polish citizens, 163 Russian citizens, 79 Vietnamese citizens, 70 Romanian citizens, 63 Armenian citizens, 26 Bosnia and Herzegovina citizens and 24 citizens of Belarus.[82]

h) Acquisition of citizenship by declaration

This way of acquiring Czech citizenship relates to two significant and numerous categories of persons: a) former Czech or Czechoslovak citizens[83] and b) second generation immigrants.[84] It further involves some very specific and limited categories of persons (c).[85] Unlike naturalisation, the acquisition of citizenship by declaration is not discretionary. If the conditions set for declaration are fulfilled, Czech citizenship must be recognised.

[82] Ministry of the Interior, Zpráva o situaci v oblasti migrace a integrace cizinců na území České republiky v roce 2012, s. 100. Dostupné z http://www.mvcr.cz/clanek/migracni-a-azylova-politika-ceske-republiky-470144.aspx?q=Y2hudW09NA%3D%3D

[83] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 31.

[84] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 35.

In regard to former Czech and Czechoslovak citizens, the law replaces the provisions of the specific Act No. 193/1999 Coll. on the Citizenship of Some Former Czechoslovak Citizens. Former Czech or Czechoslovak citizens can acquire Czech citizenship by mere declaration. Currently, the date of the loss of Czech or Czechoslovak citizenship is not decisive (the previous legislation was limited to the period from 25 February 1948 to 28 March 1990). However, some categories of former Czechoslovak citizens are excluded. These are those who lost Czechoslovak citizenship under the 1945 presidential decree on the adjustment of citizenship of persons of German and Hungarian ethnicity and under the treaty with the Soviet Union on the Ciscarphatian Ukraine and those who as of 1 January 1969 became Slovak citizens and those who are Slovak citizens.[86]

The new 2013 Citizenship Act newly gives the right to acquire Czech citizenship by declaration to so called second generation immigrants.[87] Such a declaration can be made by foreign citizens aged eighteen to 21 who have been permanent residents from ten years of age to until the time when the declaration is made. The applicant must have resided for two thirds of that period in territories of the Czech Republic. A person, who wants to make such a declaration must further not have a criminal record. Under.the special transitory provision, [88] within one year after the law is effective, such a declaration may also be made by those who are 21 years and older

A very specific temporary provision[89] covers a category of persons who were born outside the territories of the Czech Republic in the period between 1 October 1949 and 7 May 1969, provided that one of his or her parents was a Czechoslovak citizen and as of 1 January 1969 became (or would have become) Czech citizens. This declaration may only be submitted prior to 1 January 2015.

Another specific category of persons who may acquire Czech citizenship by declaration are those, who were issued papers confirming Czech citizenship by error, provided that the person concerned believed in good will that she or he was a Czech citizen.[90]

Declarations on the acquisition of citizenship are accepted by regional offices (krajské úřady) or by embassies abroad.

Finally, it should be mentioned again that while the new citizenship act terminated the specific regime vis-à-vis some of the Slovak citizens (Sections 18a, 18b and 18c of the Act No. 40/1993 Coll.), it allows use of the old provisions prior to 1 January 2015.[91]

g) Acquisition of citizenship in relation to foster care

A child born in the territories of the Czech Republic who remains stateless and is on the Czech territory under the Aliens or Asylum acts, acquires Czech citizenship through the decision by the court and the placement of the child into foster care.[92]

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[85] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 32, 33 and 34.

[86] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 31 (1)..
[87] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 35.
[88] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 73.
[89] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 33.
[90] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 34.
[91] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 72.
[92] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 38.

Loss of citizenship

Since 1 January 2014, the only way to lose Czech citizenship is by voluntary renunciation.[93] A declaration of renunciation can be made by a Czech citizen who lives permanently abroad, is not a permanent resident in the Czech Republic, and at the same time is a citizen of another country or applies for citizenship of another country and makes the declaration in relation to the acquisition of new citizenship. Proceedings on renunciation of Czech citizenship are led by regional offices (krajské úřady) or embassies abroad.

In conformity with the principle of ius sanguinis even later generations of Czech descendants born and living abroad do not lose Czech citizenship automatically.

As of 1 January 2014 Czech citizens do not thus automatically lose Czech citizenship upon obtaining foreign citizenship, dual and multiple citizenship is permitted.

3.3 Dual and multiple citizenship

As indicated already, the most remarkable development since the creation of the Czech Republic in 1993 in the field of citizenship legislation has been a 'U turn' in relation to dual and multiple citizenship.

The developments after 1989 increased the numbers of dual citizens almost inevitably. The possibility for restitution of Czech citizenship to emigrants which was perceived as a matter of justice, would be largely meaningless if dual citizenship was not accepted. The break-up of Czechoslovakia – which is likely to be the main source of the increase in dual citizens – is a more interesting case. In this situation the original intention was to prevent dual Czech and Slovak citizenship and, consequently, the 1993 Citizenship Act adhered strictly to the principle of preventing dual citizenship in all possible dimensions. However, this attempt failed. From the first remedial provisions adopted in October 1993 onwards,[94] every change paved the way for yet another change. Once the legislator gave the benefit of dual citizenship to a particular group, perceived as disadvantaged, it became more difficult to deny the same benefit to another category. As a result, a specific, preferential regime developed in relation to dual Czech and Slovak citizenship.[95] Other changes in the single citizenship regime (described above) follow the same 'slippery slope' rule.

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[93] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 40.

[94] The Act No. 272/1993 Coll. modified the right to opt for the Czech citizenship with regard to two categories of former Czechoslovak citizens determined as Slovak citizens by the overall initial determination rules. The first category was a peculiar group of persons, who were born on in Slovakia before 31 December 1939, but their parents were born in the territory of Czech Republic (and thus likely were ethnic Czechs) and those Slovak citizens who were 60 or older in 1993.

[95] This regime is not coherent. It is a rather set of patchy rules. For instance, a Czech citizen who was a Czechoslovak citizen of 31 December 1992 would not lose Czech citizenship upon naturalisation in Slovakia. However, a Slovak citizen seeking to naturalise in the Czech Republic would be, in principle, requested to renounce his Slovak citizenship. The intention to terminate this regime, which is in the opinion of the Ministry of Interior overcome and unjustified, is one of the incentives for the planned citizenship reform.

As noted already, the Czech case is a good illustration of the claim made by Faist, Gerdes & Rieple who wrote: 'But once some exceptions have been granted, new interpretations of individual rights and new claims of other categories of persons combined with court cases could easily lead to a further increase of exceptions. .... Problems of justification and rising cost of administrative procedures may well lead to a general tolerance of dual citizenship in the long run.' (2004: 939).

At present, there are numerous dual and multiple citizens who acquired the status legally.[96] Moreover, there are many cases in the grey zone. For instance, if the Czech authorities were not informed of the acquisition of a foreign citizenship by a Czech citizen or by the foreign state concerned, which is often the case, they still treat the person as a Czech citizen (e.g. they will grant him or her a passport).

The new legislation will inevitably increase the number of dual and multiple nationals. Paradoxically, however, it will be more difficult to acquire Czech citizenship for Slovak citizens, who thus far were privileged. (Slovak citizens, as noted above, are exempt from the acquisition of citizenship by declaration.) This signals another 'U turn' in Czech citizenship legislation from the last two decades.[97]

[96] See František Emmert (2011) who covers most cases of dual citizenship.

[97] It is highly probable that the reason for the exemption of Slovak citizens relates to numbers. In fact, if such an exemption was not made, all former Czechoslovak citizens, who are now Slovak citizens could claim Czech citizenship by declaration. At the same time, it will be more difficult for Slovak citizens to naturalise in the Czech Republic since changes in Slovak legislation.

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3.4 International treaties

The Czech Republic is party to certain bilateral [98] and multilateral treaties concerning citizenship. The current trend is toward accession to multilateral treaties.[99] Bilateral treaties with the former socialist countries were terminated, partly because they were not compatible with the provisions of the 1997 European Convention on Nationality in regards to the preservation of dual citizenship for children whose parents have different citizenship.[100]

Politically, the most controversial of the bilateral agreements was the 1928 Naturalisation Treaty between the United States and Czechoslovakia, which precluded dual citizenship of emigrants.[101] The Treaty was valid until 20 August 1997. The application of the Treaty excluded many former Czechoslovak citizens from restitution of their property lost during the communist regime.

3.5 Procedure, administrative review and judicial review

The 2013 Citizenship Act brought little changes in regard to procedures. The Ministry of the Interior is responsible for citizenship issues and decides on naturalisations. Regional administrative authorities (krajské úřady) administer other associated citizenship agenda such as accepting and processing applications for naturalisation. They issue certificates on acquisition of citizenship by birth and process acquisitions of citizenship by declaration.[102] The Ministry maintains a central register of persons who have acquired or lost Czech citizenship.[103] A decision by the Ministry on naturalisation may be appealed. In this case, the Minister of the Interior decides. The Minister receives the opinion of a special consulting commission, but is not bound by it.

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[98] In 1994, The Czech Republic and the Slovak Republic signed a treaty concerning the regulation of certain issues in the area of registers and citizenship [*Smlouva mezi Českou republikou a Slovenskou republikou o úpravě některých otázek na úseku matrik a státního občanství*]. The Treaty was published as No. 235/1995 Coll. The treaty facilitates the communication between administrative bodies of the contracting parties. It also concerns the regular exchange of lists of citizens of one contacting party who acquired the citizenship of the other contracting party. There are also old bilateral treaties which are rather of historical relevance.

[99] The Czech Republic ratified or acceded to the following multilateral treaties: 1997 European Convention on Nationality (No. 76/2004 Collection of International Treaties, henceforth Coll. of I. T.), ratified in 2004; 1961 UN Convention on the Reduction of Statelessness (No. 43/2002 Coll. of I. T.), acceded to in 2001; 1954 UN Convention Relating to the Status of Stateless Persons (No. 108/ 2004 Coll. of I. T), acceded to in 2004. The Czech Republic also succeeded to the 1957 Convention on the Nationality of Married Woman (No. 72/1962 Coll.).

[100] These terminated bilateral agreements were with the former Soviet Union and some its successor states as well as the German Democratic Republic, Hungary, Poland, Bulgaria and Mongolia.

[101] Published as Act No. 169/1929 Coll. The treaty established a rule that in the case of naturalisation, the citizenship of the state of origin is automatically lost.

[102] These administrative bodies are the regional authorities [krajské úřady], in Prague the city district offices [úřady městských částí] and the magistrates [magistráty] in cities of Brno, Plzeň and Ostrava.

[103] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 55 and the following.

In 2012 the Ministry issued 277 negative decisions regarding naturalisation, which was 66 cases less than in 2011. 205 unsuccessful applicants appealed. In 41 of those cases the Minister of the Interior overturned the negative decision (Ministry of the Interior, 2013: 100). The high number of rejected applications can be seen partly as a consequence of the peculiar naturalisation procedures, which are dominated by the wide use of discretionary powers.

Decisions on citizenship are open to judicial review. Nevertheless, applicants for naturalisation who were rejected on security grounds are excluded from judicial review.[104]

Under the 1993 Citizenship Act the fees were relatively high – 10,000 Czech crowns (approximately 400 euros) for naturalisation. The acquisition of citizenship by declaration was free of charge. Under the 2013 Citizenship Act the administrative fees are lower. The administrative fee for naturalisation is 2,000 CZK for an adult person (approximately EUR 80) and CZK 500 (EUR 20) for a minor or a person granted international protection. In justified cases the administrative fees can be lowered. In cases of naturalisation the citizenship is acquired by oath. The oath is taken in public, festive manner.[105] If the oath is not taken within one year after the naturalisation is authorised, the naturalisation is cancelled.

Given the wide discretionary powers of the Ministry and the opaque nature of the naturalisation procedure, it is vital that the executive is under the control of independent bodies. In this regard, the establishment of the institution of the Public Defender of Rights (Ombudsman) in 2001[106] and the Supreme Administrative Court in 2003[107] brought about major improvements. In the last couple of years, the combined pressure of these two institutions brought about some positive changes and more transparency to the administrative routine.

4 Political debates relating to citizenship

The gradual solution to the problem of the break-up of Czechoslovakia, which dominated the citizenship agenda in the first decade after 1993, created some space for fresh approaches to the fundamental issues of citizenship legislation. The shift of perspective was also due to two new phenomena: increasing migration to the Czech Republic and evolving integration policies (Baršová & Barša 2005: 219-256, Drbohlav et al. 2010). Nevertheless, during the whole first two decades the citizenship issue remained a rather marginal issue, discussed mostly by lawyers or human rights activists.

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[104] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 26.

[105] Act No. 186/2013 Coll., concerning citizenship of the Czech Republic, Section 27.

[106] Act No. 349/1999 Coll. on Public Defender of Rights. Public Defender of Rights in the Czech Republic acts to protect the persons from the conduct of offices and other institutions undertaking state administration, should such conduct be contrary to the law or, even if not contravening the law, then otherwise faulty, erroneous or incorrect. The office became functional in 2001, after the election of the first ombudsman in December 2000 and his deputy in January 2001. See www.ochrance.cz (also available in English).

[107] Act No. 150/2002 Coll. Code of Administrative Justice. The Supreme Administrative Court, seated in Brno, is the highest judicial authority in matters falling within the competence of administrative courts. See the web page of the Court www.nssoud.cz (also available in English).

Restitution and citizenship

As one of the conditions for property restitution introduced in the early 1990s was the Czechoslovak (Czech) citizenship of the applicant,[108] legislators and the general public have consistently viewed citizenship legislation and its changes in this context. Notwithstanding the criticism of various international bodies, including the UN Human Rights Committee,[109] this restriction has been retained both by the legislature and by the Constitutional Court.[110] The need to protect legal certainty, ownership rights, and the stability of the legal order were raised to defend the status quo. As a result, the link between restitution of citizenship and restitution of property hampered the adoption of more inclusive citizenship legislation. Lukewarm attitudes towards Czech emigrants among part of the local population also influenced the discussion on the possible extension of the legislation on reacquisition of Czech citizenship at the turn of the century. Finally, the 2006 amendment to Act No. 193/1999 Coll. on the Citizenship of Some Former Czechoslovak Citizens merely abolished the deadline for making a declaration on the reacquisition of Czech citizenship. The Senate, without support of the government, pushed the bill through parliament.[111]

The link between the restitution or the retention of citizenship and the restitution of property also plays a key role in relation to the 1945 Beneš decree, which deprived people of German and Hungarian ethnic origin of their Czechoslovak citizenship. The interpretation of the post-war decrees is crucial in some restitution cases and remains highly controversial.[112] The prevailing public opinion on the restitution of German property is negative. Therefore, it is not surprising that the government did not incorporate any changes in the 2013 Citizenship Act in this regard. The decrees thus remain a sensitive political issue not only in Slovakia and Hungary, but also in the Czech Republic.

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[108] This requirement was not contained in all restitution laws.

[109] The Human Rights Committee expressed in its views in several cases, e.g. No. 516/ 1992 (*Simunek et al.*), 586/1994 (Joseph Adam), 857/1999 (*Blazek et al.*) and 747/ 1997 (*Dr. Karel Des Fours Walderode*), that 'a requirement in the law for citizenship as a necessary condition for restitution of property previously confiscated by the authorities makes an arbitrary, and, consequently a discriminatory distinction between individuals who are equally victims of prior state confiscations, and constitutes a violation of article 26 of the Covenant [on Civil and Political Rights]'. Alone in 2008, the Committee expressed its views in five similar cases. Case No. 1484/2006 (*Lněnička*) illustrates that the acquisition of citizenship under the second restitution act (No. 193/1999 Coll.) had no impact on the property restitution claim made by a person, who lost the Czech citizenship due to the 1928 naturalisation treaty with the US.

[110] See Judgement of the Constitutional Court published under No. 185/1997 Coll. The European Court of Human Rights declared cases that concerned the restitution of property inadmissible. See European Court of Human Rights, Grand Chamber decisions of 10 July 2002 as to the admissibility of application no. 38645/97, Polacek v. the Czech Republic and application No. 39794/98, *Gratzinger* v. *The Czech Republic*.

[111] A mixed group of senators, most of whom were independent, prepared the bill. At the same time, most of them were members of the Standing Committee of the Senate for the Compatriots Living Abroad.

[112] Some of the judicial cases concern the citizenship of deceased persons, as the right to restitution by heirs depends on this issue. In certain cases, the Ministry of the Interior completed legal proceedings that had started in the late 1940s, using the then valid citizenship legislation. (See e.g. Judgment of the Supreme Administrative Court of 27 November 2003, ref. no. 6 A 90/2002-82 (www.nssoud.cz) and the Judgment of the Constitutional Court of 29 June 2005, 1ÚS 98/04 (www.concourt.cz).

Discretion and judicial review

The establishment of the institution of the Ombudsman in 2001 and the Supreme Administrative Court in 2003 were greatly beneficial for the theory and practice in the citizenship area.

In the sphere of citizenship law, the Ombudsman was critical to administration of naturalisation. He criticised, *inter alia*, a routine of considering additional criteria in naturalisation procedure that are not stipulated in any regulation[113] and the practice of extending for several years deadlines for furnishing a document proving a loss of previous citizenship (in situations where an applicant is objectively not able to take effective steps to renounce his previous citizenship).[114] Further repeated objections concerned the absence failure to give reasons in the negative decisions of the Ministry to grant citizenship in certain cases.[115] The ombudsman also expressed an opinion that legislation based on the principle of exclusive and sole citizenship is unjustifiably strict.[116]

As confirmed by the ombudsman, the most problematic aspect of the naturalisation procedure is the extensive discretion of the Ministry of the Interior and the way in which the Ministry uses it. In practice, the Ministry's negative decisions did not often constitute grounds for rejection of an application, but referred vaguely to administrative discretion as such and to the fact that there is 'no legal right to be granted citizenship'. The Ministry altered this practice to some extent in reaction to the criticism by Ombudsman and the new approach by the Supreme Administrative Court (see below). Nevertheless, writing in 2005 Viktor Kučera observed that 'cases of extremely vague and unsatisfactory justifications, which evoke by their content a negative decision resulting not from discretionary, but arbitrary considerations of the administrative organ, are not an exceptional' (Kučera, 2005: 666).

Prior to the establishment of the Supreme Administrative Court, the courts conducting the judicial reviews have sustained the practice. They agreed with the Ministry that naturalisation cases cannot be reviewed by courts because naturalisation is the expression of unlimited state sovereignty and takes place in the sphere of absolute administrative discretion (see also Molek & Šimíček 2005, Kučera 2005). The newly established Supreme Administrative Court brought about a cautious shift in the jurisprudence regarding the use of discretion in naturalisation procedures (Molek & Šimíček, 2005: 145-146). Finally, in 2005, the Court ruled that the naturalisation procedure is subject to judicial review and, in 2006; the Court also rejected the whole theory of unlimited administrative discretion in these procedures .[117] Nevertheless, more than two years after the Court issued its unequivocal judgment concerning judicial review (2006), it had to confirm the earlier decision by yet another ruling.[118]

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[113] Annual Report on the Activities of the Public Defender of Rights 2007, Section III. 2.15, www.ochrance.cz.

[114] Annual Report on the Activities of the Public Defender of Rights 2006, Section II. 2.21, www.ochrance.cz, Annual Report on the Activities of the Public Defender of Rights 2005, Section II. 2.9, www.ochrance.cz.

[115] Annual Report on the Activities of the Public Defender of Rights 2004, Section III. 2.3. The criticised absence of justifications was linked to the examination of the applicants from the perspective of national security.

[116] Annual Report on the Activities of the Public Defender of Rights 2004, Section III. 1.10.

[117] Resolution by the Supreme Administrative Court of 23 March 2005, 6A 25/ 2002-42 and Judgment by the Supreme Administrative Court of 4 May 2006, 2As 31/2005-78. (www.nssoud.cz). In the former resolution the Extended Senate of the Court decided that the applicant for naturalisation has a legal right to submit complaint against the negative decision on naturalisation, if he maintains that his rights as a party in administrative

Recently the idea that discretionary naturalisation should be completed or replaced by granting a right to naturalisation once the specified conditions are met, is gaining some ground within the administration and the justice system.[119]

One may point to the deep roots of the idea of absolute discretion in the pre-war Czechoslovak legal scholarship and jurisprudence in order to explain why the executive and part of the judiciary resists attempts to introduce more accountability and transparency into naturalization procedures (see Kučera 2005, Pipková 2005). However, there are also non-legal, cultural factors playing a role. They influence the divergent opinions on the desirability of including 'others' into the national body.

Nevertheless, the Ministry of the Interior, a key player in shaping citizenship policies, managed to push through its opinion on the 'discretionary nature' of naturalisation into legislation.[120] Although such a provision is largely symbolic and does not alter legal status, it clearly shows the strength of the Ministry's determination to preserve the old approach. Moreover, the Ministry was also successful in exempting some cases from judicial review,[121] which presents a more substantial drawback in the standards of protection.

Yet it would be mistaken to focus on naturalisation alone. Naturalisation as one way of obtaining citizenship should be seen in context, particularly in close relation with the growing number of foreigners who can acquire Czech citizenship as a right by declaration under the new 2013 Citizenship Act.

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proceedings have been violated. In the latter case the Court rejected the theory of unlimited administrative discretion in these procedures and ruled that in naturalisation procedures the Ministry decides on the individual (subjective) public right of the applicant, even if there is no legal entitlement to be granted naturalisation. This implies that all naturalisation decisions can be reviewed.

[118] Judgment by the Supreme Administrative Court of 20 August 2008, 8 As 41/2007 - 33, (www.nssoud.cz). In this case the Municipal Court in Prague disregarded the above discussed Supreme Administrative Court' jurisprudence.

[119] In the discussion on the draft citizenship legislation in 2007-2008, the Ministry of Justice, the Supreme Administrative Court and the Minister of Human Rights and Minorities supported this idea.

[120] Section 12 of the Act No. 186/2013 which reads:" There is no legal entitlement to be granted citizenship."

[121] Section 26 of the Act No. 186/2013 which reads:" The decision to reject the application based on Section 22 para 3 is not subject to judicial review."

5 Conclusions

Since its creation in 1918, the Czechoslovak and later Czech (1993) citizenship legislation has developed a peculiar, dual nature. On the one hand, there is a set of rules linked to certain momentous historical events, such as the creation or rebirth of the state, shifts of borders or changes in political regime. Due to a turbulent history of the twentieth century, these rules were numerous and complex. On the other hand, there is an underlying layer of standard rules and practices which, in spite of changing political regimes (ranging from 19th century Austrian monarchy to democratic republic and communist regime) and state power, remain largely stable and develop slowly. These rules have so far preserved the overarching 'statist' spirit of the Czech citizenship law, which the 2013 Citizenship Act preserved.

Seen as a whole, Czech citizenship legislation seems to develop in cycles. A revolutionary period dominated by the former set of dynamic rules is followed by an evolutionary phase in which some consequences of the previous Jacobin rules are smoothed down. Finally, the consolidation phase follows in which standard rules and practices shift to the focus of policies.

The fall of the communist regime in 1989, the break-up of Czechoslovakia and the establishment of an independent Czech state in 1993 brought about the last revolutionary phase. The 1989 'Velvet Revolution' resulted in two changes in the sphere of citizenship law: the constitutional ban on deprivation of citizenship against one's will and new laws which regulated restoration of citizenship by persons who lost it under the communist rule. As the revolutionary ethos faded the former achievements received increased pressure. So far, counter forces were strong enough to prevent introduction of any draconian measures in this regard. [122]

The latter has evolved into a permanent, broadly formulated preferential incorporation for some former Czechoslovak and Czech citizens and their descendants. The relaxed regime for former citizens can be justified by the enduring need to remedy past injustices. Yet, it is an open question whether it constitutes a kind of veiled ethnic preference as well. In this regard, one has to keep in mind that the former Czechoslovakia was a 'residual' multiethnic state. Even if minority groups were dramatically weakened after the Second World War and the 2013 Citizenship Act incorporates the 1945 'Beneš decree' on citizenship, it is still quite probable that some former citizens are ethnic Germans, Slovaks, Hungarians and Ukrainians. Therefore, my explanation is that it is a cultural preference coupled with another emanation of the statist spirit of the law. With a bit of irony one could perhaps say that in the Czech case, the 'blessed ties that bind' are not blood or territory, but the state.

[122] The 2013 Citizenship Act regulates explicitly in Section 39 the renewal of the citizenship procedures. Section 39 refers to the Code of Administrative Conduct. It is difficult to foresee to what extend the provision will be used in practice.

The consensual division of Czechoslovakia caused many problems regarding citizenship. The new legislation did not generate de jure stateless persons. However, the consequence of the restrictive and inadequate citizenship legislation was that some former Czechoslovak citizens ended up with the citizenship of a successor state in which they did not live and to which they were only formally attached.[123] In other words, the genuine link between the state and its citizen was missing, whereas such a link clearly existed in relation to another state. This revealed the need to clarify international rules concerning the state succession in relation to citizenship.[124] It also raised a puzzling question: Does the right to citizenship imply a right to choose one's own citizenship?

By the application of remedial provisions introduced in the period 1993-2003, most of the problems related to the break-up of Czechoslovakia have been solved. Nonetheless, the original intention of the legislators to avoid dual Czech and Slovak citizenship has not been fully achieved. On the contrary, the precarious position of some groups of citizens showed that there are situations in which it is not justified to deny a person the right to dual citizenship. The effect of the 'slippery slope', coupled with court decisions, also played a role in the piecemeal extension of toleration outside the 'post-revolutionary' (restoration of citizenship) and the 'post-partition' (dual citizenship in relation to state succession) domains. In this way, the 'out of necessity' toleration of dual nationality finally led to the full abandonment of the single citizenship principle. As of 1 January 2014, Czech citizenship legislation embraces dual and multiple citizenships.

With the 2013 Citizenship Act the Czech citizenship legislation reached a consolidation phase. In addition to a new approach to dual citizenship it also brought a more open approach to second generation immigrants. However, the statist spirit of the law as well as the wide powers of the Ministry of the Interior, were preserved. It will remain to be seen to what extent the changes in legislation will have a real impact in practice.

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[123] In many cases, Slovak citizens living in the Czech Republic had even difficulties to acquire permanent resident status (Boučková & Valášek 1999). In some of these cases, the situation developed into de facto statelessness.

[124] The variety of solutions adopted in the numerous cases of state succession made it difficult to prove the presence of a concrete and detailed customary law on state succession and citizenship. It was only the 1997 European Convention on Nationality that introduced certain generally applicable rules on citizenship in cases of state succession.

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