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# EUDO CITIZENSHIP OBSERVATORY

## *REPORT ON CITIZENSHIP LAW: DENMARK*

Eva Ersbøll

Revised and updated July 2015



<http://eudo-citizenship.eu>

European University Institute, Florence  
Robert Schuman Centre for Advanced Studies  
EUDO Citizenship Observatory

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EUDO Citizenship Observatory  
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# Citizenship Law

## Denmark

*Eva Ersbøll*<sup>1</sup>

### Abstract

Unlike many other European countries, Denmark did not reform its citizenship law in 2000. Hence the country did not follow the European trends in citizenship law of facilitating naturalisation, extending citizenship entitlement, accepting multiple citizenship and introducing *ius soli* elements into its citizenship law. Far from providing easier access to citizenship, Denmark has made the conditions for citizenship acquisition stricter in the 2000s.

This trend towards restriction came to an end after the Danish centre-left government came into office in autumn 2011. There is now a new trend towards facilitation of citizenship. In 2013 naturalisation was facilitated, and in 2014 the Citizenship Act was amended in three respects. Firstly, all children born of a Danish parent (father, mother, or ‘co-mother’) now acquire Danish citizenship automatically at birth. Secondly, the children of immigrants who are born in Denmark are now, under certain conditions, entitled to Danish citizenship by a declaration submitted before the age of nineteen. Thirdly, as of September 2015 multiple citizenship is fully accepted for emigrants as well as for immigrants.

But Denmark is still the only Nordic country with a general residence requirement of nine years and a conduct requirement excluding aliens from naturalisation on a permanent basis (in so far as they have been sentenced to imprisonment for eighteen months or more). The Danish language requirement, which was made more stringent, first in June 2002 and in December 2005 and November 2008, has been, as of 15 June 2013, at the Council of Europe level B1.

The restricted requirements have led to a fall in the number of naturalisations. A new condition, according to which applicants for naturalisation must be self-supporting, has contributed to this. Until June 2013, it was a requirement that the applicant must not have received social benefits for more than an aggregate period of half a year within the last five years. With the latest amendments, receipt of social benefits for up to two-and-a-half years within the last five years is accepted.

In spite of these new relaxations, it is fair to conclude that Denmark has the most stringent barriers to naturalisation among the Nordic countries, which may have to do with the fact that criteria for naturalisation are not adopted by law, but negotiated and agreed upon by political parties representing a majority in Parliament.

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<sup>1</sup> The report on Citizenship Law in Denmark, authored by Eva Ersbøll, was first published in September 2009 and subsequently revised and updated by the author in June 2013 and May 2015. The present version was published in June 2015.

## 1. Introduction

In general, Danish citizenship legislation is based on Danish citizenship traditions. Danish citizenship law has its origin in political conditions which go back to the Eighteenth century. Foreigners, especially Germans, had at the time strong influence in the state administration which in 1776 made the Danish king promulgate an act of Indfødsret or Ius Indigenatus according to which access to public positions in the kingdom became the prerogative of native-born subjects and those who were considered equal to them.

The Act on Indfødsret was not a citizenship law in the current sense of the term, but it had many of the characteristics of a citizenship law. The acquisition of 'native-born' status was, in principle, based on ius soli, but ius sanguinis soon became of importance, as only children born on Danish territory of Danish parents acquired indfødsret at birth, while children born on the territory of alien parents had to remain in the Danish kingdom in order to fulfil the acquisition criteria. As for immigrants, the only way to acquire a status equal to that of native-born persons was through naturalisation by the king.

When Denmark became a democracy in 1849, the King lost his sole authority to grant naturalisation, as the Constitution stated that aliens could only henceforth acquire indfødsret [(ius indigenatus)] by statute. Around this time, indfødsret was increasingly seen as a citizenship or nationality concept, as political rights became attached to this status.

Apart from its provisions on naturalisation (changed by the 1849 Constitution), the 1776 act was in force until 1898, when Denmark adopted its first general 'citizenship law', changing the fundamental acquisition principle from ius soli to ius sanguinis. The new law was named 'The Act on the Acquisition and Loss of Indfødsret'.

Denmark operated at that time with both the status indfødsret and citizenship based on domicile which had different implications, but there was a wish to simplify things by equalising indfødsret and citizenship. Therefore, in the new draft act every time the term 'indfødsret' was mentioned, it was explained by adding 'citizenship'- with brackets around 'citizenship'. However, Parliament hesitated as to whether this was a proper solution. The final answer was negative, but in the 20th century the two concepts merged. Since then, Danish legislation has used the terms 'indfødsret' and 'citizenship' (in Danish 'statsborgerret' or 'statsborgerskab') synonymously. A reform of citizenship law was passed in 1925 and again in 1950 when gender equality was introduced as a principle. The citizenship law in force at present is the 1950 act, although it has been amended several times, especially over the last fifteen years.

Since the late 1890s, Danish citizenship law has been based on Nordic cooperation. Until recently, the Nordic citizenship laws have been almost identical. The differences in regards to naturalisation stem to a large extent from the Danish constitutional requirement on alien acquisition of Danish citizenship by statute, which means that decisions on naturalisation are made by the legislative power in acts granting citizenship, mentioning each of the applicants by name etc.

The end of Nordic homogeneity regarding citizenship law has, among other things, been triggered by changing perceptions of multiple citizenship. Traditionally, all Nordic countries disapproved of this status. Citizens lost their citizenship in cases of voluntary acquisition of another citizenship, and in cases of naturalisation applicants were normally required to renounce their former citizenship. However, since toleration of multiple citizenship was made acceptable by the 1997 European Convention on Nationality, Sweden, Finland, and Iceland have introduced toleration of multiple citizenship as a main principle. Denmark has for long strongly maintained its traditionally negative attitude towards this status.<sup>2</sup> However, this changed in after the present centre-left government came into office. In December 2014 a broad majority in Parliament amended the Citizenship Act by providing for acceptance of multiple citizenship as of 1 September 2015 when Denmark's denunciation of the European Convention on the Reduction of Cases of Multiple nationality and Military Obligations Consequent upon Multiple Nationality] 1963 takes effect.

Compared to the other Nordic states, Denmark has in the Twenty-first century responded differently to new challenges stemming from globalisation and immigration, among other things by increasing its relatively high barriers to naturalisation. Hence Denmark is the only Nordic country with a general residence requirement of nine years (eight years for refugees and stateless persons), and a conduct requirement excluding aliens from naturalisation on a permanent basis (if they have been sentenced to imprisonment for eighteen months or more). The Danish language requirement was made more stringent, first in June 2002 and subsequently in December 2005 and November 2008. The effect was a sharp fall in the number of naturalisations from 2002 to 2003, followed by an increase until 2006 when the figure began to decrease. The decrease was intensified by a new condition according to which applicants for naturalisation should be self-supporting. The 2008 restrictions required that applicants for naturalisation should not have received social benefits for more than an aggregate period of six months within the last five years.

However, in May 2013 a majority among the political parties agreed upon new naturalisation requirements, and on 15 June 2013 a new naturalisation circular came into force.<sup>3</sup> According to the new circular, the language requirement is lowered to the level adopted in 2002 and the self-sufficiency requirement has to a certain extent been eased (reception of social benefits for up to two- and- a-half years within the last five years is accepted). In addition, as of 1 January 2014 a new citizenship test has replaced the former naturalisation test. The new test differs in so far as it focuses on daily and political life in modern Denmark rather than on history etc. Nevertheless, requirements for naturalisation are relatively strict.

The requirements do not apply to citizens from the Nordic countries. Traditionally, Denmark has facilitated acquisition of citizenship by Nordic citizens. In the aftermath of the Second World War the Nordic countries discussed the introduction of a common Nordic citizenship. However, the issue was set-aside for more urgent matters. Rather, a Nordic agreement was concluded, entitling citizens from the Nordic countries to privileged acquisition of citizenship through notification/declaration and facilitated naturalisation. Today the residence requirement for the naturalisation of Nordic citizens is two years.

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<sup>2</sup> See E. Ersbøll, 'Statsborgerskab - Medborgarskap - Europæisk Konvergens - Nordisk Divergens? ', *Mennesker og Rettigheder, Nordic Journal of Human rights*, 21 (2003), 147-64.

<sup>3</sup> See Circular no. 9253 of 06 June 2013 on naturalisation at <https://www.retsinformation.dk/Forms/R0710.aspx?id=152087>

Ethnically, Denmark has had a homogeneous population since 1864, and whilst Denmark has now, like other European countries, become a land of immigration, it has not identified itself as such. On the other hand, until recently Denmark did not give much consideration to its own emigrants either, and the approximately 25,000 Danes who have emigrated annually in recent decades have complained about both their loss of Danish citizenship and the lack of voting rights in Danish parliamentary elections owing to a Danish constitutional condition requiring residence in Denmark. Expatriates have attempted to soften the interpretation of the residence requirement through the political system, but so far it is generally understood that an extremely difficult amendment of the constitution is necessary to extend expatriates' electoral rights.

A third problem has been the legislative barriers for expatriates wishing to settle in Denmark with their foreign family owing to an amendment of the Danish Aliens Act in 2002. The purpose of the Act was to curb immigrants' rights to family reunification with spouses from their country of origin. However because many immigrants have acquired Danish citizenship, the law was changed and Danish citizens and non-citizens have to meet the same requirements. Among other stipulations, in order to settle in Denmark with a foreign spouse, the couple's aggregate ties to Denmark have to be stronger than the couple's aggregate ties with any other country. This 'attachment requirement' has prevented many expatriates from resettling in Denmark with their foreign family. Strong public criticism of the arrangement made the government change the law again in 2003 and since then Danish citizens who have held Danish citizenship for 28 years or more (since 2012, 26 years or more) no longer have to fulfil the attachment requirement. The amendment has, however, created a new problem of discrimination between Danish citizens, depending on the length of time they have been citizens.<sup>4</sup>

The fact that Danish citizenship law has the highest barriers to naturalisation among the Nordic countries may not only be a matter of Danish history and traditions and domestic politics. This may also have to do with the special Danish procedural arrangement for naturalisation and that naturalisation criteria are not adopted by law, but negotiated and agreed upon behind closed doors by political parties representing a majority in Parliament. Making naturalisation criteria a matter of agreement between political parties may have curbed more in-depth considerations of the meaning of citizenship and its influence on immigrant integration into Danish society.

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<sup>4</sup> See the Danish Supreme Court judgment U 2010.1035H concerning the principle of non-discrimination between nationals based on when and how they have acquired their nationality (ECN article 5(2)) at <http://eudo-citizenship.eu/databases/citizenship-case-law/?search=1&name=&year=&country=Denmark> The case was lodged with the European Court for Human Rights, see [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-141941#{"itemid":\["001-141941"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-141941#{). In its chamber judgment of 25 March 2014 the Court held by four votes against three that there had been no violation of ECHR art. 14 in conjunction with art. 8. The case was referred to the Grand Chamber that held a hearing 1 April 2015, see [http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-5053563-6214716#{"itemid":\["003-5053563-6214716"\]}](http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-5053563-6214716#{). See also Eva Ersbøll: Biao v. Denmark – Discrimination among citizens, at [http://cadmus.eui.eu/bitstream/handle/1814/32015/RSCAS\\_ERS%20\\_2014\\_79.pdf?sequence=1](http://cadmus.eui.eu/bitstream/handle/1814/32015/RSCAS_ERS%20_2014_79.pdf?sequence=1)

## 2. Historical background and changes

### 2.1 Pre-constitutional time

The Danish state has been a kingdom known as Denmark from around 900. Due to its favourable geopolitical position at the entrance to the Baltic Sea the Danish monarchy was able to exercise hegemony over Northern Europe since the late Middle Age. The Danish state has been described as a composite state stretching from the North Cape to Hamburg. However, in the middle of the seventeenth century Denmark lost its hegemony over Northern Europe to the newly established Swedish empire around the Baltic (Østergaard 2000: 147).

In 1660, the Estates handed over to the King the realm as a kingdom of inheritance, and the absolute monarchy came into being. The Royal Act of 1665 allowed the King freely to choose his ‘servants’. Persons of noble birth lost their privileges, and the King invited foreigners, especially German aristocrats, to serve as high officials in order to exclude the Danish nobility from re-gaining political influence. In the eighteenth century, public discontent with the German influence in state administration erupted. A growing nationalism was fuelled by J. F. Struensee’s regime from 1770–1772. Struensee was German-speaking and considered a foreigner, and he ruled the country through cabinet orders on behalf of the King. After his regime was brought down, a Danish-minded government became a necessity and the Act on Indfødsret (*Ius Indigenatus*) supported Danish national politics.

The title of the 1776 Act was ‘Indføds-Retten, according to which all public positions in his Majesty’s Kingdom are exclusively reserved for native-born subjects and those who are respected as equal to them’. In the preamble, it was considered reasonable and fair that ‘the children of the country should enjoy the bread of the country and that the advantages of the state should fall to the lot of its citizens’. For the first time, the subjects of the state were acknowledged as the citizens of the state. It is worth noting, however, that the Act on Indfødsret was not Danish as such, as the Danish state at that time consisted of the Kingdoms of Denmark and Norway and the duchies of Schleswig and Holstein,<sup>5</sup> and all residents in the multinational state were considered the King’s subjects.

The aim of the act was to secure public positions for native born subjects. Therefore, the first section of the act stated that in order to obtain a public position, a person should be born in the states or born to native-born parents who were travelling or serving the King abroad. However, public positions could also be given to persons who were considered equal to native-born persons, especially those who served the King and wealthy estate owners. In order to achieve such an equal status, a letter of naturalisation was required from the King.

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<sup>5</sup> In addition, the state comprised the Atlantic dependencies of Iceland, the Faroe Islands and Greenland plus colonies in the West Indies, West Africa and India.



The legal status of foreigners and their children was otherwise regulated in sect. 9 of the act. According to this provision, all foreigners who were not considered equal to native-born persons (through naturalisation) would have the same freedom to reside and work in the Kingdom and the same protection by the government as formerly. Furthermore, it was established that such foreigners' 'children who are born in the Danish State one and all shall be respected and regarded completely as native-born if they remain in the State'. This provision was, after a while, interpreted as limiting the *ius soli* principle in the first section of the act such that only children born of native-born parents acquired *indfødsret* at birth. For other children, the acquisition was conditional on their staying in the country. It seems fair to suggest that all children born in the territory were considered native-born, but children born of foreign parents would only acquire the rights attached to the status if they remained in the realm; if, eventually, this condition was not fulfilled, the *ius indigenatus* would lapse.

## 2.2. The first Danish Constitution, 1849

In the Napoleonic wars, Denmark-Norway and Sweden were on opposite sides. After Napoleon's defeat, the Danish King was, as a result of his alliance with Napoleon, compelled to cede Norway to Sweden in 1814; 'in return' for Norway, the King received the Duchy of Lauenburg. This altered the balance between the Nordic and the German populations in the composite state. With the duchies, Schleswig and Holstein and Lauenburg, as part of the realm, around a third of the population became German. The Dual Monarchy gave way to the so-called *Gesamtstaat* ('Helstat' or United Monarchy) (Østergaard 2000: 155).

Separate Schleswig-Holstein and Danish movements evolved and demanded on the one hand German unification and on the other hand Nordic unity. The revolutions abroad influenced the national movements, and the Three Years War between Prussia and Denmark broke out in 1848. At that time, the Danish King had appointed a new, national-liberal government to draft a constitution. For the drafters of the constitution, the Belgian Constitution became an important model, which, among others, is reflected in the Constitution's provision according to which no alien in the future could acquire *indfødsret* 'except by statute'. During the discussions on this provision, there were political disagreements between the Eider-Danish National Liberals, who wanted Schleswig incorporated in Denmark (and the Southern border of Denmark at the River Eider between Schleswig and Holstein), and the supporters of the multinational united monarchy (Østergaard 2000: 157). On the one side, a Scandinavianist, the famous Danish minister and poet, N. F. S. Grundtvig, suggested that citizens from Sweden and Norway should be entitled to *indfødsret* after a certain period of residence in Denmark. On the other side, an influential supporter of the united monarchy and future Prime Minister, A. S. Ørsted, was completely opposed to proper Danish legislation on the acquisition of *indfødsret* as long as uncertainties existed about the duchies' relations with Denmark.

The first Danish constitution was adopted on 5 June 1849. It did not contain any provision on citizenship, but some provisions dealt with the concept of *indfødsret*; apart from the provision for aliens' acquisition of *indfødsret* by statute, the Constitution contained provisions on having *indfødsret* as a condition for appointment as civil servant and for electoral rights at parliamentary elections.

As the June Constitution was adopted at a time of uncertainty as to the duchies' attachment to Denmark it only applied to the Danish Kingdom. However when in 1851 the Three Years War ended and the united monarchy lived on it became necessary to adopt a common constitution for the entire monarchy. By the new Constitution of 1855, *indfødsret* became a common matter for the whole Kingdom. However, problems amongst the pro-German and the Danish population continued, and in 1858 the Constitution was annulled for Holstein and Lauenburg. In 1863, Denmark tried to tie Schleswig to the Kingdom through a new common Eider-Danish Constitution, but this provoked the German powers, and in 1864, Prussia and Austria declared war on the Danish state. Eventually Denmark suffered a 'self-inflicted defeat' and had to cede Schleswig, Holstein and Lauenburg in 1864. (Østergaard 2000: 156). As a result, Denmark became a 'nation state' with an ethnically homogeneous population, and more than 150,000 Danes ended up living outside the Danish state (Lundgreen-Nielsen 1992: 145). According to the Vienna Treaty of 1864, art. XIX, they could optionally retain their status as Danish subjects if they moved to Denmark within a six year time limit. Thousands of persons used this opportunity each year until 1872, when the new German Empire changed its legislation in such a way that the persons concerned could stay in Germany as Danish subjects.

### 2.3. Danish Emigration

Around the mid nineteenth century, Denmark started to become a country of emigration. Factors like a growing population, poverty, low income, high prices for land, unemployment and better possibilities for transportation made many, especially young Danes, emigrate overseas, first and foremost to America. Danish emigration was also caused by the loss of Northern Schleswig in 1864. Although the more than 150,000 Danes who then came under the German regime were able to opt for Denmark, many of them considered America to be a more attractive alternative. Danish emigration culminated in the 1880s, when around 80,000 Danes left their native country (Stilling & Olsen 1994: 30).

For the Danish-Americans it was important to become American citizens. The concept of *indfødsret* had then increasingly become the legal expression of being 'Danish', but the 1776 Act did not include provisions for renunciation or loss of *indfødsret*. This legal situation was unpractical, as foreign states could require the renunciation of all legal connections with the country of origin as a condition for naturalisation. In practice, Denmark would release a person from his or her status as a Danish subject, but this would not lead to the loss of Danish *indfødsret*. Therefore in 1871, an act on the loss of *indfødsret* was adopted (Act No. 54 of 25 March 1871 including an Addition to the Act on *Indfødsret* of 15 January 1776).

According to this law, Danish native-born subjects who were naturalised as foreign citizens could no longer enjoy the rights attached to Danish *indfødsret* and neither were they under any obligations stemming from the *indfødsret*. However, upon taking up residence in Denmark again, their subjecthood might change; if they had not been released from their subjecthood to the foreign state they could notify the Minister for the Interior of their wish to be released and if they stayed in Denmark for two years or more, they were presumed to have resigned from their foreign subjecthood (unless this was counteracted by international treaty).<sup>6</sup>

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<sup>6</sup> The so-called Bancroft-treaties (1868–1874) between the United States and a number of other states illustrate another effort to solve the problems connected to migration and naturalisation. The important consideration was

Still, from a citizenship law perspective, the legal situation was chaotic. Even though *indfødsret* was to be considered a citizenship concept, another Danish citizenship concept existed at the same time. The Danish Ministry of the Interior described the difference between the two concepts by reference to the fact that Danish *indfødsret* was inalienable, while this was not the case with Danish citizenship: ‘anyone who by taking up habitual residence in Denmark has entered into a permanent subjecthood to the Danish state is without any formal act considered a Danish citizen... hence it follows that reckoned among the Danish subjects are also persons without Danish *indfødsret*. It may frequently happen that Danish subjects are released entirely from their subjecthood by a formal act, especially when this is necessary for becoming naturalised in a foreign state, but such release does not lead to the loss of a person’s *indfødsret*.’<sup>7</sup>

The legal uncertainty as to who were citizens and who were foreigners became increasingly intolerable. In other countries, the distinction between the two concepts had at that time become clear, and a consistency between the national and international perceptions of the citizenship concept was achieved, though not in Denmark. A Danish citizenship law reform became therefore imperative.

#### 2.4. The 1898 citizenship law reform

During the nineteenth century, citizens increasingly participated in public life, public authorities assumed more functions, social assistance was developed, access to international communication and travel became increasingly easy, and international cooperation was strengthened. These developments contributed to making the citizen/foreigner distinction more relevant, and it became natural to introduce fundamental citizenship principles, such as the principles of *ius sanguinis* and family unity into Danish citizenship law (Larsen 1948b: 118).

Moreover, in 1888, Denmark and Sweden ratified a bilateral agreement on poverty relief and repatriation, which also made it clear that more uniform citizenship law reforms were necessary. The two countries prepared a provisional draft recognising that the Danish provisions were based on principles ‘from times past’, and that an amendment was necessary with a view to international cooperation.<sup>8</sup> Denmark and Sweden wanted Norway to participate in a common citizenship law reform, and a commission with delegates from the three countries was set up to work out draft acts.<sup>9</sup>

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to achieve an arrangement for the migrants’ military obligations making it possible for the state of emigration to consider the naturalisation lapsed if an emigrant returned to his native country. A Danish-American convention in this respect was signed 20 July 1872.

<sup>7</sup> Letter of 18 September 1875 (1332/1875) to the Ministry of Foreign Affairs, see K. Larsen, *Indfødsretslovene Ii, Cirkulærer Og Afgørelser* (Copenhagen: Ejnar Munksgaard, 1948a) at 47.

<sup>8</sup> Provisional draft of a legislation as uniform as possible for Denmark and Sweden concerning acquisition and loss of nationality (*Foreløbigt udkast til en saa vidt muligt ensartet Lovgivning for Danmark og Sverige angaaende Erhvervelse og Fortabelse af Statsborgerret*) (1888).

<sup>9</sup> Until 1905, Norway and Sweden formed a personal union, as two separate kingdoms under a common monarch and a common foreign policy.

In 1890, the draft was finished.<sup>10</sup> Norway had already adopted a new citizenship act in 1888. In Sweden, a new act (the first Swedish act on citizenship) was passed in 1894; like the Norwegian act, it was based on the *ius sanguinis* principle, confirming the former Swedish customary rules. A similar bill on Danish *indfødsret* was presented to the Parliament in 1896 equating ‘*indfødsret*’ with ‘citizenship’ (as already mentioned with brackets round ‘citizenship’). According to the preparatory work, the reason for granting a person *indfødsret* and thereby political rights etc. was that said person was affiliated to the state as citizen/national; furthermore, by using the word *indfødsret* synonymously with citizenship in the new act, an amendment of the Danish Constitution became unnecessary.

In Parliament, however, there were, as mentioned in the introduction, hesitations as to whether it would be a proper solution to abruptly replace the old citizenship concept with a new one, which should only be granted to native-born persons. The result would be that persons affiliated to the Danish state through many years of residence could claim diplomatic protection from foreign states, and Danish expatriates without *indfødsret* could become ‘stateless’.

Consequently, the bracketed word ‘citizenship’ was removed, and it was emphasised in the act that it did not change the legal status of persons who had become Danish citizens by taking up residence in Denmark. With this amendment, the new act was adopted as Act No. 42 of 19 March 1898 on the Acquisition and Loss of *Indfødsret*.

The act introduced, as already mentioned, *ius sanguinis* as the fundamental acquisition principle. According to the first section, a child born in wedlock acquired Danish *indfødsret*, if the father had Danish *indfødsret*, and it was emphasised that this applied irrespectively of whether the child was born in the country or abroad. Sect. 9 on children born out of wedlock stated that an illegitimate child would acquire Danish *indfødsret* if the mother had Danish *indfødsret*. However, if the mother’s citizenship status was changed due to her marriage with another man than the child’s father, there would not be a change of the child’s *indfødsret*. Furthermore, sect. 10 contained the well-known rule of presumption establishing that children who are found in the realm and whose citizenship cannot be ascertained are considered citizens until the contrary has been established.

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<sup>10</sup> Draft Law on Acquisition and Loss of Nationality, prepared by commissioners for Denmark, Sweden and Norway (*Udkast til Lov om Erhvervelse og Tab af Statsborgerret, udarbejdet af Kommitterede for Danmark, Sverige og Norge*) (1890).

It was underlined in the preparatory work that the recognition of the *ius sanguinis* principle and the introduction of conferring *indfødsret* by descent should not exclude other modes of ‘conferring *indfødsret* without the will of the individual’, which would lead to the malpractice known from France, where foreigners in accordance with the principle of descent had been able to transfer their foreign citizenship to their offspring during an indefinite number of generations. A solution to this problem could have been to introduce a rule of presumption similar to the French double *ius soli* principle, but this idea was given up, as a complete socialisation was considered normally to occur already for the first generation of foreigners born and brought up on the territory. Instead, the act stated in sect. 2 that a person born and brought up in Denmark would acquire Danish *indfødsret ex lege* at the age of nineteen, unless said person already had a foreign citizenship and within the previous year had declared his or her wish not to acquire Danish *indfødsret*. Children of foreigners who themselves had retained a foreign citizenship in this way could not give such a declaration. Danish *indfødsret* acquired by a man via this mode would be extended to his wife and children. The provision in sect. 2 was rather similar to sect. 9 in the 1776 Act, as it had been interpreted in practice by 1898.

At that time, most countries followed the principle of family unity as to citizenship, and due to the husband’s principal status, a foreign married woman acquired her husband’s citizenship by marriage. This principle was also codified in the new act, sect. 3. By such a marriage also the couple’s children would acquire Danish *indfødsret*, if they were less than eighteen years old and unmarried. The provision caused some concern, but it was considered to be in harmony with liberal ideas on the right to respect for family life without interference from the authorities.

It was incontrovertible that it should continue to be possible to acquire Danish *indfødsret* through naturalisation, however the naturalisation requirements were not laid down in the new act, which in sect. 4 confined itself to refer to the constitutional provision, according to which no alien could acquire *indfødsret* except by statute. In addition, it was stated that naturalisation of a man also included his wife and children unless otherwise decided. Hitherto, it had been a precondition for naturalisation that all persons to be naturalised were explicitly mentioned by name in an act on acquisition of *indfødsret*, but as a consequence of the recognition of the principle of family unity, Parliament agreed upon a rule of presumption, according to which it would normally be in the best interest of all parties that wife and children acquired *indfødsret* with the husband.

In a time of emigration, it was natural to legislate on the loss of *indfødsret*, as renunciation of a former citizenship was often made a condition for naturalisation abroad. Therefore, according to sect. 5, a Dane who acquired a foreign citizenship would lose Danish *indfødsret*, and if said person was a married man, and the foreign citizenship was extended to his wife and children, they would also lose their *indfødsret*, unless they stayed in Denmark. This new rule applied regardless of whether the person in question acquired the foreign citizenship voluntarily or not.

Another innovative rule was contained in sect. 5, para. 2, which stated that a person who wished to become a foreign citizen could be released from his or her citizenship relationship to Denmark by a royal resolution, conditioned by said person’s acquisition of a foreign citizenship within a certain time limit.

As to a Danish woman's loss of *indfødsret* by marriage to a foreigner, the act established that also the couple's children born before the marriage would lose their *indfødsret* upon the parents' marriage, if the children were under majority and unmarried – even if they became stateless.

Furthermore, the law contained provisions on the suspension of *indfødsret* for persons who resided abroad continuously during a period of ten years. These rules were considered an alternative to rules on loss of citizenship by expatriation, but they were repealed in 1908, before they had any legal effect. Like larger emigration countries, Denmark recognised the importance of emigrants being able to retain their original citizenship and the importance for the Danish state of emigrants being affiliated to Denmark.

When the First World War began, many Danish subjects and persons with Danish *indfødsret* lived in Northern Schleswig with unclear legal status. The provision on *ius indigenatus* in the Vienna Peace Treaty of 1864, art. XIX, para. 5, was interpreted differently in Denmark and Prussia. The primordial French text which stated that '(l)e droit d'indigénat, tant dans le Royaume de Danemarck que dans les Duchés, est conservé à tous les individus qui les possèdent à l'époque de l'échange des ratifications du présent Traité' (Larsen 1948b: 54). Denmark understood the term '*indfødsret*' to mean the same as the German term '*Statsangehörigkeit*', but in German law '*Statsangehöriger*', *Unterthan*' and '*Statsbürger*' were analogous terms (national, subject and citizen), and the Prussian government considered an option for subjecthood to be decisive for the option of '*indigénat*', whereas Denmark considered it to be possible for a person with *indigénat/indfødsret* to be released from his or her subjecthood while still retaining *indigénat/indfødsret* and '*citizenship rights*', with, among others, the right to remain in and return to the country of citizenship/*indfødsret* (Matzen 1907: 4).

This legal uncertainty created many problems for persons who had opted for Denmark, but remained in Schleswig. Prussia had promised not to expel persons who had opted for Denmark from Germany, and in 1914 they were ordered to do German military service, although many of them had already done or were doing their military service in Denmark. This made the Danish government pass an act granting *indfødsret* to such persons. The events illustrate which problems the unique peculiarity of Danish citizenship law created, and within the following years it was accepted in Danish law and practice, that Danish *indfødsret*, subjecthood, citizenship and nationality were to be seen as synonymous concepts.

In 1916–1918, the extension of the Danish realm changed again. Denmark transferred the West Indian Islands to the USA and recognised Iceland as an independent state.<sup>11</sup> According to the Act on the Danish-Iceland Federation, Icelandic citizens in Denmark were granted equal rights to those of Danish citizens, and vice versa. Another important change of the area of the realm took place at the end of the First World War, when it was decided by the Treaty of Versailles, that Germany should cede parts of Southern Jutland to Denmark. Following a referendum, the Northern part of Schleswig was reunited with Denmark in 1920, and all inhabitants in this area acquired Danish citizenship and lost their German citizenship, however with the possibility to opt differently within a two years' period.

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<sup>11</sup>According to Act no. 619 of 30 November 1918 on the Danish-Iceland Federation, Denmark and Iceland were free and sovereign states, united by a common king and the agreement included in the Federation Act. Iceland opted out of the federation and became a sovereign republic in 1941

## 2.5. The 1925 citizenship law reform

The First World War and the general social development invoked a new reform of the citizenship laws. Again, Sweden invited Denmark and Norway for talks, and this time the crucial question was the status of married women. Women were gaining civil and political rights equal to men, and women's organisations lobbied for equality regarding citizenship rights as well. The question of gender equality was controversial, but eventually, in 1924–1925 Denmark, Norway and Sweden adopted new citizenship laws based on a new common Nordic report.<sup>12</sup>

It turned out that the time was not yet ripe for giving married women independence in terms of citizenship. In many other countries, the citizenship law still provided for the loss of a woman's citizenship by her marriage to a foreigner, and consequently, it was considered necessary to let foreign women married to Danish men acquire their husband's citizenship by marriage, disregarding the inconvenience created by this arrangement. Therefore, the new Citizenship Act's sect. 3 contained a provision that was almost similar to sect. 3 of the 1898 Act on automatic transfer of Danish citizenship to a foreign woman by her marriage to a Danish man – and likewise to the couple's unmarried children below eighteen years of age.

Furthermore, the new law continued the former provision on automatic acquisition of citizenship at birth, *ex lege*, by descent. A child born in wedlock acquired Danish citizenship, if the father was a Danish citizen, and a child born out of wedlock acquired Danish citizenship if the mother was a Danish citizen. (The new law placed both rules in sect. 1). Also the 1898 Act's acquisition modes for foundlings (sect. 1(2)) and second and third generations of immigrant descent (sect. 2) were continued, and so was the naturalisation rule (sect. 4).

Delegates from the Nordic countries had suggested in their common report that the Swedish and Norwegian provisions on naturalisation should attach importance to the applicant's age, residence and period of residence in the country in question, conduct and ability to provide for his or her family plus loss of a former citizenship. Such conditions were also part of the Danish naturalisation practice, according to which the residence requirement was fifteen years for aliens in general, and less for citizens from Norway and Sweden (ten years, since 1914).<sup>13</sup> There was a requirement of 'honest and sober conduct'. Crimes committed which were considered degrading resulted in a waiting period of 25 years and rehabilitation was required, while imprisonment with hard labour excluded naturalisation. Only persons who could provide for themselves and their family could gain citizenship. Applicants should master the Danish language, and their children should receive a Danish education and attend Danish school.

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<sup>12</sup> New draft citizenship laws, prepared by delegates from Denmark, Norway and Sweden, 1921 (*Udkast til nye Statsborgerretslove, udarbejdede af Delegerede for Danmark, Norge og Sverige*, 1921).

<sup>13</sup> The general residence period suggested in the Norwegian and Swedish draft Acts was five years.

When a person who was granted naturalisation had a wife and unmarried children younger than eighteen years of age, they would be naturalised simultaneously unless otherwise decided (sect. 4 (2)). However, in terms of loss of citizenship, a significant change was introduced for married women and their children, as their loss of Danish citizenship was made conditional on them acquiring a new citizenship (sect. 5). Thus, if the man was stateless, or if the law in his country did not transfer his citizenship to his wife and children, they would keep their Danish citizenship. In Parliament, there was even a wish to couple the loss of citizenship to voluntary acquisition of a new citizenship, but opposition towards dual citizenship hindered this solution. Another innovation was a provision, according to which the loss of a citizenship acquired by birth only became effective upon emigration from Denmark (sect. 5, last sentence). This rule has been called a modern 'adscription' (Larsen 1948b: 344).

A new rule on the loss of Danish citizenship due to birth and residence abroad was introduced (sect. 6). According to this new rule, a Danish man or an unmarried Danish woman who was born abroad and had never resided in Denmark would lose Danish citizenship upon attaining 22 years of age. Citizenship could however be retained by means of a royal resolution. If a married man lost his citizenship via this mode, the loss would include his wife and children born in marriage. The same rule on loss applied to a woman and her children born out of marriage.

The 1925 Law was in force until 1950, but the Second World War led to some amendments. The rule on the loss of Danish citizenship due to birth and residence abroad was suspended at the outbreak of the war, and after the end of the war certain other provisions on automatic acquisition of citizenship were suspended regarding German citizens and persons of German origin including Danish women married to Germans, due to radically changed circumstances.

One of the suspended rules was the socialisation-based mode of acquisition for second generation of immigrant descent. The rule was based on an assumption of integration, which could not be taken for granted in relation to second generation of German origin after the German occupation of Denmark, 9 April 1940, where Germans had settled in Denmark and endeavoured to strengthen resident Germans' German-national sentiment. Neither could it be presumed that a marriage between a Danish man and a German woman was entered into without regard to the woman's future citizenship status. The third group whose right to Danish citizenship was suspended was Danish women married to Germans. Such women could no longer retain their Danish citizenship, irrespective of whether they had acquired it at birth and still lived in Denmark. This suspension in particular was considered problematic, and it was only in force until 1947, while the other suspensions lasted until 1948. In the interim period, individuals from the groups excluded from obtaining Danish citizenship in accordance with the suspended provisions might acquire Danish citizenship through naturalisation based on the legislature's individual assessment of their case. The government regretted this arrangement, but due to the constitutional requirement on aliens' acquisition of citizenship by statute it was impossible to leave any discretion to administrative authorities.



## 2.6. The 1950 citizenship law reform

During the Second World War, a wish for further Nordic cooperation arose, and the introduction of a common Nordic citizenship was discussed. A Danish citizenship expert, the head of the Ministry of the Interior's Citizenship Office, Knud Larsen, drew up a booklet on Nordic citizenship of May 1944. He presented the idea of establishing a union citizenship common for all citizens of the Nordic union and 'no one else'. The common Nordic citizenship should be attached to the internal citizenship of each member state; he concluded that, as a consequence, the countries would need uniform citizenship legislation (Larsen 1944: 39). Naturalisation would, one way or another, be a matter of common interest, as it would bring with it rights in other member states. Therefore, in cases of naturalisation, a hearing procedure amongst the countries should be established (Larsen 1944: 77).

Apart from the question of a common Nordic citizenship, it was especially the unsatisfactory citizenship status of married women that made a citizenship reform necessary. In a common Nordic report of 1949, Nordic delegates pointed out that the principle of equality as well as the states' interest in being able to control their citizenry made a citizenship law reform necessary.<sup>14</sup> Nevertheless, the unity of the family should be taken into consideration. If spouses in mixed marriages had different citizenship then a married woman might lose her unconditional right to stay in her husband's country and her social citizenship rights. Therefore, the Aliens Act should be administered in such a way that a wife would not be separated from her husband, unless a pressing social need necessitated her expulsion, and the social welfare system should be reconsidered. Moreover, a foreign spouse to a Danish citizen should be able to acquire Danish citizenship on favourable conditions.

As the Nordic delegates feared that the introduction of a common Nordic citizenship would postpone the general citizenship law reforms, they could not recommend the introduction of such a status at once. Instead, they recommended that rules illustrating the mutual connection between the Nordic states should be adopted. Among other things, each of the Nordic states should grant citizens from the other Nordic states an optional right to their citizenship, and residence in another Nordic state should to a certain extent be considered equivalent to residence in the state granting its citizenship. Finland and Iceland did not participate in the negotiations, but the rules on preferential treatment of Nordic citizens should also come into force in these countries by an agreement between the countries.

The bill introduced in the Danish Parliament in 1950 was in complete conformity with the delegates' recommendations. Apart from the suggestions on gender equality and the special rules for Nordic citizens, it contained a provision on natural-born Danish citizens' reacquisition of a lost Danish citizenship and a provision on deprivation of Danish citizenship due to violation of the Danish Criminal Code's parts 12 and 13 on gross disloyalty towards the Danish state.<sup>15</sup> Except for the provision on deprivation of citizenship, the bill was adopted in 1950 (as Act No. 252 of 27 May 1950 on Danish Citizenship). This act is still in force today, but has been subject to several amendments.

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<sup>14</sup>Report including new draft citizenship laws for Denmark, Norway and Sweden, prepared by delegates from the three countries. (*Betænkning med udkast til nye statsborgerretslove for Danmark, Norge og Sverige, afgivet af delegerede for de tre lande*) (1949).

<sup>15</sup> According to the bill, it was a precondition for deprivation of citizenship that said person had been sentenced to imprisonment for at least one year. The proposal on expatriation had its background in situations of treason during the Second World War, but was rejected by Parliament for several reasons.

The 1950-Act continued the 1925-Act's provisions on acquisition of Danish citizenship through descent at birth (*ius sanguinis*), but despite the introduction of the principle of gender equality as to granting women an independent citizenship, it did not give a married woman the right to pass her citizenship on to her children. The reason for this omission was animosity against dual citizenship. As an exception, a married woman could (only) pass her citizenship on to the children in cases where the husband was a stateless person or where the child would not acquire the citizenship of the father at birth (sect. 1). As to a child born out of wedlock of a Danish father and an alien mother, the principle of transfer of the father's citizenship to the child by the parents' marriage (legitimation) was re-enacted, among other things, in order to achieve equality among siblings born before and after the marriage (sect. 2).

In regard to the second generation of immigrant descent, it was indisputable that those born and raised in the country should have an unconditional right to Danish citizenship, but the provision on this mode of acquisition (sect. 3) was reformulated due to the fact that in many countries the automatic acquisition of citizenship as applied until then would not lead to the loss of a former citizenship, and neither would the acquisition of a new citizenship before the age of 21. Therefore, the second-generation immigrant offspring's acquisition of citizenship was made dependent on making a declaration to that effect between the ages of 21 and 23 (addressed to the county governor or other relevant authority). A person who was stateless or who would lose his or her foreign citizenship by the acquisition of Danish citizenship could already make the declaration having attained the age of eighteen. Furthermore, based on experiences from the war, a new provision was introduced excluding citizens from an enemy state from the scope of the provision.

Another novelty was the introduction of the right to reacquisition of citizenship, already known from the Norwegian and Swedish citizenship law. Although the right only applied to persons with a genuine link to Denmark – as only natural-born Danish citizens with residence in Denmark until attaining the age of eighteen were covered – and although there was a two years' residence requirement, the rule caused misgivings in Parliament. The reactions had to do with Denmark's frontier with Germany. There were objections to the fact that while young German-minded persons from Northern Schleswig having acquired German citizenship during the World War were able to reacquire Danish citizenship from the perspective *ubi bene, ibi patria*, elderly, Danish-minded persons born in the region while it was in German hands, would fall outside the scope of the provision requiring the declaring person to be a natural-born Danish citizen. Eventually the rule was included in the Danish citizenship law (sect. 4) driven by a wish for Nordic legal unity.

The new provision on naturalisation (sect. 6) was identical to the traditional Danish naturalisation rule, but it originated from the gender equality principle that a wife was no longer part of her husband's naturalisation. It was, however, assumed that a married woman should be able to acquire her husband's citizenship under favourable conditions (more favourable than those regarding a husband applying for his wife's citizenship). Children would still acquire citizenship by extension when their parents were granted citizenship, either by declaration (sect. 5) or naturalisation (sect. 6 (2)).

It had hitherto been the rule that any acquisition of a foreign citizenship would lead to the loss of Danish citizenship, regardless of whether the acquisition was voluntary or involuntary. This would no longer be the case. According to the 1950 Act's sect. 7(1), (2) and (3), Danish citizenship would be lost by (1) any person who acquired a foreign citizenship upon application or with his or her express consent, (2) any person who acquired a foreign citizenship by entering the public service of another country and (3) an unmarried child under eighteen years of age who became a foreign citizen by the fact that either parent holding or sharing custody of the child acquired a foreign citizenship in the manner indicated in para. 1 or 2 hereof, unless the other parent retained Danish citizenship and shared custody of the child.

Furthermore, according to sect. 8, Danish citizenship might be lost due to permanent residence abroad. Any person, born abroad and who had never lived in Denmark nor been staying abroad under circumstances indicating some association with the country would lose his or her Danish citizenship on attaining the age of 22. Furthermore, if such a person had a child who has acquired Danish citizenship through him or her, the child would also lose his or her citizenship. In 1950, the loss would occur regardless of whether it created statelessness, but this is no longer the case (see sect. 2.7 and 2.9). There is also a provision to grant an application for retention, submitted before the applicant's 22nd birthday.

Sect. 9 contained a provision on voluntary renunciation of Danish citizenship, following an application and conditioned by the acquisition of another citizenship within a certain time limit.

Finally, the 1950 Act introduced specific rules regarding citizens from the Nordic countries. Under a Nordic agreement, the King could decide that one or more of the rules in sect. 10 A–C should be applied. According to the rule under A, birth in an agreement country was equivalent to birth in Denmark, and residence in an agreement country until the declaring person's twelfth birthday was equivalent to residence in Denmark; the reason for this was the close relationship between the Nordic countries regarding language, culture and way of life.<sup>16</sup>

According to the rule under B, a citizen from an agreement country, who had acquired his or her citizenship by another mode of acquisition than naturalisation, could after ten years of residence in Denmark acquire Danish citizenship by making a declaration if between the ages of 21 and 60 years; a precondition was, however, that the person concerned had not been sentenced to imprisonment or any measure equivalent to imprisonment. This rule was not only seen as a confirmation of the close relationship between the countries, it was also meant to ease the pressure on the countries' naturalisation systems.

According to the rule under C, a person who had lost Danish citizenship and had subsequently remained a citizen of a Nordic country could recover his or her Danish citizenship by submitting a declaration to that effect to a county governor or other relevant authority after having taken up residence in Denmark. The aim of this provision was to facilitate movement over the Nordic borders.<sup>17</sup>

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<sup>16</sup> By limiting the age to twelve, it was intended to secure that the declaring person had attended Danish school for a period of two to three years.

<sup>17</sup> On 21 December 1950, Denmark, Norway and Sweden agreed to implement the provisions mentioned under A-C.

## 2.7. The 1968 and 1978 changes to the Act on Danish citizenship

Apart from legislation passed as a consequence of the German occupation and the gender equality principle, the first substantial amendment of the 1950 Act was made in 1968. It was brought about by a recommendation from the Nordic Council on easing the existing rules on access to citizenship for Nordic citizens and the adoption of the 1961 UN Convention on the Reduction of Statelessness. Denmark was reluctant to ratify the 1961 Convention due to its art. 8 (3) allowing a contracting state to retain provisions on deprivation of citizenship for citizens who had acted inconsistently with their duty of loyalty towards the state.<sup>18</sup>

However, the Nordic countries agreed to amend their citizenship laws in order to follow the Convention's requirements on the reduction of statelessness and the Nordic Council's recommendations on facilitating the acquisition of their citizenship for citizens from the other Nordic countries. The Danish Citizenship Act was changed by Act No. 399 of 11 December 1968 amending sect. 3 in such a way that birth on Danish territory was no longer a requirement for second generation immigrant descendants' acquisition of Danish citizenship; instead they could acquire citizenship by making a declaration to that effect between the ages of 21 and 23 years, insofar as they had lived in Denmark for at least five years before the age of sixteen and permanently between the ages of sixteen and 21. The right also applied to persons aged eighteen who had lived in the country permanently for the previous five years and prior to that for a total of at last five years if they were stateless or would automatically lose their former citizenship as a result of the acquisition of the new citizenship.<sup>19</sup> In general, upbringing in Denmark was considered sufficient to create the link necessary for the acquisition of citizenship.

Furthermore, the Citizenship Act's sect. 8 (2) was brought into conformity with the 1961 Convention's art. 6, according to which a child's extended automatic loss of citizenship shall be conditional upon the possession or acquisition of another citizenship, and in agreement with the recommendation from the Nordic Council, residence in another Nordic country for an aggregate period of not less than seven years should be considered equivalent to residence in Denmark (in which case the provision on loss due to permanent residence abroad, see sect. 8 (1), would not be applicable). Lastly, the period of ten years required before a Nordic citizen could acquire Danish citizenship by declaration, see sect. 10 B, was reduced to seven years, and the residence requirement for Nordic citizens in regard to naturalisation was reduced to three years.

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<sup>18</sup> The Convention was ratified by Denmark ten years later.

<sup>19</sup> The provision should fulfil the requirements in art. 1 of the 1961 Convention as to a contracting state's granting of its citizenship to persons born on its territory who would otherwise be stateless, see art. 1 (1) (b) and 1 (2). It comprised any foreigner born on the state territory, as it was often difficult to prove whether a person was stateless or not.

The next matter of principle to be discussed in Parliament was the question of a married woman's right to pass her citizenship on to her children. Since the recognition of a married woman's right to an independent citizenship, the Parliament did several times take up this question for consideration. It was agreed that a solution should be found within the framework of the Nordic cooperation, but in 1969 and 1972 the question came up again in Parliament due to the many 'foreign workers' who had arrived in Denmark and the increasing number of mixed marriages. Again, the question was referred to the Nordic Council, but in 1977 a private bill was passed and adopted, amending sect. 1 of the Citizenship Act by granting a child born in wedlock Danish citizenship at birth if at least one of the child's parents was a Danish citizen.

At the same time, a new provision, sect. 2 A, was included in the law, granting a foreign adopted child under the age of seven a right to Danish citizenship by declaration if the child resided in Denmark with the adoptive parents both being Danish citizens. Again here, the dislike of dual citizenship was the reason for choosing the acquisition mode of 'declaration' instead of automatic acquisition, *ex lege*, by adoption.<sup>20</sup>

Furthermore, sect. 9 on the renunciation of citizenship was changed by the inclusion of a new para. 2 according to which a foreign citizen permanently resident in a foreign country cannot be denied release from his or her (additional) Danish citizenship. This amendment was brought about by the 1977 European protocol (amending the 1963 Convention on reduction of multiple citizenship, which was ratified by Denmark in 1972), stating in art. 1 that a contracting state may not withhold its consent to release if the applicant has his or her ordinary residence outside the territory of the state.

Finally, the 1978 amendment contained a new rule on the loss of citizenship by residence in an agreement country and a transitional rule on the acquisition of Danish citizenship by a person born in wedlock of a Danish mother between 1 January 1961 and 1 January 1979 by the mother submitting a declaration in this regard between 1 January 1979 and 31 December 1981.

## **2.8. Political changes affecting naturalisation debates in the 1980s and 1990s**

Since the First World War, Denmark had pursued a rather restrictive immigration policy, but the years 1969-1971 marked an exception. In Denmark as well as in other European countries with full employment, migrant workers were recruited as 'guest workers', and Denmark had a net immigration of around 20,000 foreigners from non-EC and non-Nordic countries. However, in 1973 things changed (Ersbøll 2001: 246). The oil-crisis contributed to bringing an end to immigration, Denmark joined the EC, and a landslide election changed the party-political structure; support for the 'old parties' fell, and new parties entered Parliament, among them the Progress Party fighting high taxation and a big public sector. The composition of the different governments became more complex and their parliamentary base narrower (Rerup & Christiansen 2005). The political climate changed, and the changes influenced the parliamentary debates on naturalisation.

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<sup>20</sup> Only in 1986 was the provision changed in order to grant foreign adopted children Danish citizenship automatically by virtue of the adoption order.

Traditionally, naturalisation acts had been adopted without discussion in Parliament, but this practice changed gradually in the 1970s and 1980s. In 1976, a member representing the Progress Party in the Parliamentary Committee on Citizenship suggested a bill on naturalisation to be amended by the exclusion of an applicant. The reason for this proposal, which was criticised as something historically unique, was that the applicant did not fulfil the normal criteria (of a consecutive residence period) for naturalisation, and the Progress Party was unwilling to grant him Danish citizenship in order to make it possible for him to become a Danish civil servant. In 1978, Members of the Progress Party declared their general discontent about the naturalisation of applicants who had sold or used drugs, and in 1981, they proposed to exclude three applicants from a bill, as they were against granting Danish citizenship to persons who had committed a crime within the required residence period of seven years; also this proposal was met with strong opposition from the other parties, and in order to protect the applicants' right to privacy, two parties, the Centre-Democrats and the Socialist People's Party, tried to get the doors closed during the parliamentary reading of the bill. Nevertheless, the naturalisation criteria were tightened when a new circular on naturalisation was published in 1981 in order to implement a recommendation from the Nordic Council on the reduction of the residence requirement for Nordic citizens to two years and on naturalisation of men and women in mixed marriages on equal terms.

In the following years, there was no disagreement on citizenship law (apart from an incident on naturalisation of a sportsman in order to allow him to play for the national team), but strong disagreement arose in 1983 regarding the new Aliens Act. The Social Democrats had relinquished power in 1982. A new coalition government came into office under the leadership of a Conservative prime minister, and the problems came out into the open when the opposition managed to get the new Aliens Act adopted with very liberal admission criteria. In the late 1980s, elections were called at short intervals, and refugee and immigration issues moved into the centre of the political debate.

By Act No. 159 of 18 March 1991, the Minister for the Interior was authorised to issue regulations regarding fees for application for naturalisation. A fee of DKK 3000 (around 400 Euro) was suggested, but the political parties disagreed as to the fairness of requiring a fee from applicants without any certainty of being naturalised. However, following re-election of the government, the Minister for the Interior agreed to reduce the fee to DKK 1000 (around 135 Euro), and the proposal was adopted.

In 1993, the longest-reigning Prime Minister since the end of the Second World War had to step down following an inquiry into the Conservative Minister for Justice's illegal inactivity concerning the handling of applications from Tamil refugees on family reunification (the so-called 'Tamil case'). This paved the way for a new Social Democratic government (Rerup & Christiansen 2005). The political atmosphere was severely affected by the preceding events. Customarily, the Progress Party suggested amendments to the bills on naturalisation, which – since 1953 – were passed three times a year. The party disagreed with the naturalisation criteria agreed upon by a majority among the political parties, and the Party's representatives on the parliamentary standing committee on citizenship, the Naturalisation Committee of the Danish Parliament, proposed that a number of applicants who fulfilled the naturalisation criteria nevertheless be excluded due to crimes, public debt or 'insufficient knowledge of the Danish language'. The proposals were formulated in such a way that the applicants in question could be identified by name through their number in the bill. Questions were raised as to the legality of this practice, which seemed to violate the right to privacy, but since the Ministry of Justice did not confirm its illegality, the practice continued.

During the debate on fees for applications for naturalisation, the Progress Party had raised the question of the introduction of rules for the deprivation of citizenship, and in the following years the party put forward several proposals for parliamentary resolutions on tightened requirements for the acquisition of Danish citizenship. Almost identical proposals were put forward again and again for several years, not only on strengthening the requirements for naturalisation, but also on the introduction of a quota system for naturalisation (maximum 1000 naturalisations per year).

In 1994, also the Liberals and the Conservatives put forward a proposal for a parliamentary resolution on more rigorous requirements for naturalisation. They regarded Danish citizenship as a 'seal of approval' which should be deserved, and therefore, applicants should be able to read and write Danish to a reasonable extent, and they should not have any public debt. Furthermore, they should have been free of crimes for a number of years, and serious crimes should prohibit naturalisation. Also this proposal was reintroduced during the following three years, and in the wake of all the proposals, naturalisation practice changed further.

Previously, only members of the Progress Party had proposed amendments to the bills on naturalisation with a view to excluding applicants with a criminal record, public debt etc., but after 1994, members of the Liberals (with one exception) and the Conservatives also stated their wish to make it more difficult for foreigners with a criminal record and public debt to acquire Danish citizenship, and later the Liberals also proposed amendments to the bills suggesting that a number of applicants be excluded.

Subsequently, the Social Democratic led government came to an agreement with the Liberals and the Conservatives on a tightening of the criteria for naturalisation. However, already one year later new disagreements arose after the Naturalisation Committee of the Danish Parliament had decided to include some applicants in a bill on naturalisation against the wish of Liberal committee members. After that, both the Liberals and the Conservatives proposed that a number of applicants should be excluded from the bills, although in far fewer numbers than those proposed by the Progress Party and the Danish People's Party (a new party formed by a breakaway group from the Progress Party, which had split into two sections in 1995). Like the Progress Party, the Danish Peoples Party made several proposals for parliamentary resolutions on tightening the requirements for naturalisation etc.

In 1997-1998, the parliamentary debate on citizenship quietened down. The Commissioner of the Council of the Baltic Sea States on Democratic Institutions and Human Rights, including the Rights of Persons belonging to Minorities, had published his report from 1996 on Criteria and Procedures for Obtaining Citizenship in the CBSS Member States, and representatives of the Socialist People's Party approached the Minister for Justice for an interpellation on the government's intention to follow the recommendations. With the exception of the Progress Party and the Danish People's Party, all political parties agreed to a parliamentary resolution in which Parliament stressed the importance of considering the acquisition of Danish citizenship as a crucial positive element in the process of foreigners' integration in Denmark. In this connection the Parliament emphasised the importance of meeting international obligations and safeguard good administrative practice (transparent legislation and procession of applications for citizenship within a reasonable time).

## 2.9. Implementation of international conventions in 1997 and 1998

For a short period it seemed as if the political debate on citizenship would be more harmonious. The Act on Danish Citizenship was amended in 1997 in order to implement the Hague Convention on the Protection of Children and Cooperation in Respect of Inter-country Adoption (1993)<sup>21</sup> and in 1998 in order to implement the European Convention on Nationality (1997).<sup>22</sup> By the 1998 amendment, children born out of wedlock were granted equal rights with children born in wedlock to acquire either of the parents' Danish citizenship, with the exception of children born abroad to a Danish father and a foreign mother. Furthermore, an alien child, under twelve years of age, adopted through a Danish adoption order or a decision on adoption taken abroad and valid under the Danish Act on Adoption will become a Danish citizen if adopted by a married couple where at least one of the spouses is a Danish citizen, or by an unmarried Danish citizen. The rules on second generation's acquisition of Danish citizenship were made more flexible by allowing the last five year period to be spent in Denmark within a six year period, among other things in order to give these young people the same opportunity as other young people to spend one year abroad before starting an education, without hampering their entitlement to Danish citizenship. Finally, it was made a condition for the loss of citizenship due to permanent residence abroad that the person in question did not thereby become stateless.

## 2.10. Frequent restrictions of the Citizenship Act around the new Millennium

Soon, however, new political disagreements cropped up. Among the proposals for parliamentary resolutions from the mid 1990s there had been a proposal from the Liberals and the Conservatives to make the mode of acquisition of citizenship by declaration for second-generation offspring of immigrant descent conditional on the absence of a criminal record. This proposal was reintroduced in 1999 and followed by proposals from the Danish People's Party and Freedom 2000 (another new party formed by members of the then dissolved Progress Party). Both parties wanted the declaration mechanism to be abolished. In their opinion it would be more in harmony with the Constitution's sect. 44 (1) on aliens' acquisition of citizenship by statute to let the democratically elected politicians consider all applications for citizenship through the naturalisation procedure. As a result, the Minister for Justice (responsible for citizenship matters) introduced a bill on making second generation immigrant descendants' access to citizenship by declaration conditional on the absence of a criminal record. The bill was introduced even though the Minister in 1996 had defended the existing entitlement to citizenship (by declaration) as fair and moreover based on the Nordic Agreement. The amendment was adopted within about one week.<sup>23</sup>

Other proposals for parliamentary resolutions from the 1990s regarded deprivation of citizenship. The Danish People's Party had in 1997 and 1998 suggested legislation providing for deprivation of citizenship in cases of fraud and imprisonment for serious crimes. At first, the Minister for Justice turned down the proposal, but in the autumn of 2001, he introduced a bill on amendment of the Citizenship Act making deprivation of citizenship possible for persons who have acquired Danish citizenship by fraudulent acts.

<sup>21</sup> Act No. 233 of 2 April 1997.

<sup>22</sup> Act No. 1018 of 23 December 1998.

<sup>23</sup> Act No. 1102 of 29 December 1999.



A general election was called for 20 November 2001 and in the light of the terrorist attacks on the World Trade Centre on 11 September 2001 the election campaign had been supposed to centre on Denmark's role in the fight against terror. Instead refugee and immigration issues took centre stage. The Social Democrats and the left-wing parties lost many of their mandates, and the Liberals became Denmark's largest political party. Together with the Conservatives they formed a government with parliamentary support from the Danish People's Party (Rerup & Christiansen 2005).

The Liberals had promised to strengthen the immigration and asylum policy and to carry through a better integration of foreigners into Danish society before the elections, and a Ministry for Refugee, Immigration and Integration Affairs (the Ministry for Integration) was subsequently established to implement this policy. This Ministry became responsible for citizenship issues, and the new Minister for Integration reintroduced the bill (annulled due to the elections) on deprivation of citizenship, which was adopted on 19 March 2002 (as sect. 8 A).

At almost the same time the Minister introduced another bill including two different proposals for changes. The first proposal implied that persons acquiring Danish citizenship according to the special rules for Nordic citizens should prove that they thereby lose their former citizenship. Even though Denmark has constantly wished to avoid multiple citizenship, such a provision had not before then been necessary as all the Nordic countries had provided for loss of their citizenship *ex lege* in cases of voluntary acquisition of a foreign citizenship; but the situation changed when Sweden accepted dual citizenship, and by making Nordic citizens' acquisition of citizenship by declaration conditional on proof that any other citizenship will thereby be lost, the new provision (adopted as sect. 4 A) neutralised the effects of Sweden's toleration of multiple citizenship.<sup>24</sup> The other amendment was a rule divesting a marriage contracted by a person already married of legal effects under the Citizenship Act as long as both (bigamous) marriages subsist (adopted as sect. 2 B). Consequently, children born of a second marriage are considered to be born out of wedlock. This change would not affect the citizenship of children born in Denmark, since all children born in Denmark (whether in or out of wedlock) are given equal citizenship rights; but (until July 2014) this equality of status did not apply to children born abroad, and whereas children born in a bigamous marriage from a citizenship point of view were considered to be born out of marriage, such children with a Danish father and an alien mother would not acquire their father's Danish citizenship *ex lege* at birth. The reason for this amendment was that the government considered it offensive that Danish citizenship could be acquired automatically on the basis of a person's several – co-existing – marriages.<sup>25</sup>

In 2003, the Danish People's Party entered into agreement with the government on carrying through rules on repealing second generation immigrant descendants' entitlement to Danish citizenship by declaration and deprivation of citizenship due to committed crimes, and in 2004, a bill was presented to Parliament to fulfil the agreement.

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<sup>24</sup> The proposal was based on a new Nordic Agreement on Nationality (of 14 January 2002).

<sup>25</sup> See Act No. 193 of 5 April 2002.

Following the change, only second-generation immigrant descendants from the Nordic countries had access to citizenship by declaration; furthermore, a condition was included that the declarants must prove that the acquisition of Danish citizenship will cause them to lose their former citizenship. The ground given for the amendment was that the actual composition of the Danish population no longer afforded the necessary certainty as to the requisite integration of persons from non-Nordic countries falling under the declaration rule (sect. 3). It was mentioned in the explanatory notes that the existing provision entitling second generation of immigrant descent to acquire Danish citizenship (sect. 3) aimed at fulfilment of Denmark's obligations resulting from the UN Convention of 30 August 1961 on the Reduction of Statelessness as to persons born in the realm without a citizenship. The proposed limitation of sect. 3 implied that these obligations should be fulfilled in another way. Therefore, the Ministry of Integration should – after having informed the Naturalisation Committee – include persons covered by the 1961 Convention in a bill on naturalisation;<sup>26</sup> other stateless persons who had fallen under the declaration-rule even though they were not covered by the 1961 Convention would in the future be treated in accordance with the normal guidelines for naturalisation.

It was taken into consideration that the state according to the European Convention on Nationality (1997) shall facilitate the acquisition of its citizenship for persons who are born and/or lawfully and habitually resident in its territory for a period of time beginning before the age of eighteen. But since it was already provided for in the normal guidelines that some Danish born persons may be granted facilitated naturalisation and that persons who arrive in Denmark before the age of fifteen may apply for naturalisation at the age of eighteen, it was considered that the Danish obligations pursuant to the 1997 Convention were fulfilled.<sup>27</sup>

Also deemed to be in accordance with the 1997 Convention was a new provision (sect. 8 B) on deprivation of citizenship due to certain crimes against the state included in the Criminal Code's Parts 12 and 13. The explanatory notes state that citizenship and citizenship rights presuppose loyalty to Denmark and the vital interests of the Danish society, and if a person is convicted for crimes against the state, the said person has, according to the view of the government and the Danish People's Party, shown such a lack of loyalty that there ought to be a possibility for deprivation of citizenship. The provision on deprivation of citizenship applies to all Danish citizens regardless of whether they are citizens by birth or have acquired their citizenship subsequently and therefore it is considered to be in harmony with art. 5 (2) of the 1997 Convention prohibiting discrimination between citizens. Furthermore, as the provision does not authorise deprivation of citizenship if that will make the person concerned stateless, the provision is considered in accordance with Denmark's international obligations to avoid statelessness.<sup>28</sup>

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<sup>26</sup> Problematic with respect to an effective implementation of the entitlement to citizenship (for persons who fulfil the 1961 Convention's requirements) is that it has not found expression in any Danish regulation, including the new 2005 agreement, see below.

<sup>27</sup> Apparently, the Nationality Division was later convinced that the facilitation requirement was not met in general. Consequently, applications from immigrant descendants were subsequently dealt with in advance – as a kind of 'facilitation'. Still, there remains some doubt as to the proper fulfilment of the facilitation requirement.

<sup>28</sup> See the 1997 Convention, art. 7 recognising deprivation of citizenship without creating statelessness in cases of conduct seriously prejudicial to the vital interest of the state party (including treason and other activities directed against the vital interests of the state but not criminal offences of a general nature according to the explanatory report).

The amendment of the Citizenship Act was adopted with a narrow majority by the votes of the Liberals, the Conservatives and the Danish People's Party (61) against the votes of the Social Democrats, the Socialist People's Party, the Social Liberals, the Red-Green Alliance and the Christian People's Party (50).

## 2.11 Introduction of test requirements and requirements on self-support in the 2000s

The first bill on naturalisation that was presented in Parliament in spring 2002 comprised 4,263 foreigners with children. According to the spokesman of the Danish People's Party there was in total '7,551 strangers whom the Members of Parliament had no possibilities of knowing and controlling.' Granting these people naturalisation by an act on naturalisation would, in his opinion, come close to a violation of the constitution. In his opinion Danes at risk of becoming strangers in their own country.<sup>29</sup> This viewpoint was rejected by the government parties, the Liberals and the Conservatives, but these parties agreed with the Danish People's Party on the need for restriction of the naturalisation criteria, and since the three parties formed a majority in Parliament, they were able to decide the citizenship policy among themselves.

Thus, in May 2002, the three parties entered into an agreement on new strengthened requirements for naturalisation. The agreement was transformed into a new circular on naturalisation, No. 55 of 12 June 2002. It was agreed that in future only two bills on naturalisation should be presented in Parliament annually. As of 2002, applicants must sign a declaration on faithfulness and loyalty to Denmark. The residence requirements were increased by two years (nine years for aliens with no special status, eight years for refugees and stateless persons and from six to eight years for spouses of citizens – depending on the length of their marriage). The rules on conduct were strengthened, i.e. a sentence to imprisonment of between one and two years implied a waiting period of eighteen years, and a sentence of more than two years excluded naturalisation forever. Any overdue debts owed to the state also precludes naturalisation. Lastly, an examination certificate was required as documentation of the applicants' knowledge of the Danish language, society, culture and history; furthermore, the former exception for persons over the age of 65 was repealed, which was heavily criticised by the opposition.

The 2002 restrictions resulted in a decline in the annual number of naturalisations. While the number in 2002 had been 17,727 (applicants including children), it dropped in 2003 to 6,184 (applicants including children). However, in 2004 a new increase appeared after many applicants, whom the new requirement on a language examination certificate had forced to put their applications on hold, had passed a language exam. The Danish People's Party demanded a language test at a higher level comparable to school leaving examination of the public lower secondary school. The then Minister for Integration maintained that Danish language at the already given level: Danish Test 2 (comparable to ALTE level 2 and the Council of Europe level B1) was sufficient; with this level, students would be able to take part in discussions on issues concerning society at the level required in school leaving exams.<sup>30</sup>

<sup>29</sup> E. Ersbøll, *Dansk Indfødsret I International Og Historisk Belysning* (Copenhagen: Jurist- og Økonomforbundets Forlag, 2008) at 685ff.

<sup>30</sup> Minister Bertel Haarder, see [www.ft.dk/Samling/20041/salen/L58\\_BEH1\\_17\\_8\(NB\).htm](http://www.ft.dk/Samling/20041/salen/L58_BEH1_17_8(NB).htm)

In 2004 and 2005, the annual number of naturalisations increased to 9,485 and 10,037, respectively, and there were reasons to believe that the increase would continue. The Danish People's Party, whose position had been strengthened by the 2005 parliamentary election, declared that it was time for the second phase of the aliens policy. Among the initiatives announced was a requirement that an applicant for naturalisation had to be self-supporting for at least ten years. The Party was again involved in the negotiations on new naturalisation criteria while negotiations with the Social Democrats and the Social Liberals failed.

The issue had to do with the party composition of the Parliament. Once again after the 2005 election, the Liberals and the Conservatives formed a majority together with the Danish People's Party, and once again, the Liberals had set new goals for their coming term in government. This was a continuation of the 'contract policy' developed by the Prime Minister before the 2001 election; the strategy was to create a 'contract' with the voters based on clear pledges in a limited number of clearly identified fields.<sup>31</sup> As the Prime Minister did not want to break his word, the safety net for fulfilment of the promises was to get support from the Danish People's Party, who in turn wanted concessions in order to pursue their goals. Thus, on 8 December 2005, a new naturalisation agreement was concluded between the government parties and the Danish People's Party.

The agreement, which entered into force 12 December 2005, was transformed into a new circular on naturalisation, No. 9 of 12 January 2006. It stipulated that applicants for citizenship must declare that they have not committed any crime against the state (i.e. crimes dealt with in the Criminal Code's Parts 12 and 13, cf. sect. 19 (1)). The rules on conduct were further strengthened, i.e. a sentence to a term of imprisonment of more than 60 days for violations of the Criminal Code's Parts 12 and 13 as well as a sentence to a term of imprisonment of more than eighteen months exclude naturalisation forever (sect. 19 (2)).<sup>32</sup> As a new condition, the applicants must be self-supporting, which at that time was defined in the sense that they could not have received social benefits according to the social assistance law or the integration law (at that time) for more than one out of the last five years (sect. 23).

In addition, the Danish language skill requirements were raised considerably from Test in Danish 2 (comparable to ALTE level 2 and the Council of Europe level B1) to Test in Danish 3 (comparable to ALTE level 3 and the Council of Europe level B2). The tests require three years Danish language courses: 'Danish Education Programme 2' and 'Danish Education Programme 3', respectively, and while the target group of Danish Education programme 2 is persons with relatively short term school attendance, the target group of Danish Education Programme 3 is persons with an average or long term school attendance, i.e. a vocational education, upper-secondary school or long term higher education. At that time, the language schools reported that on a national basis only around 25-30 per cent of all participants were referred to Danish Education Programme 3.

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<sup>31</sup> See the website of the Liberals: <http://www.venstre.dk/index.php?id=4620>

<sup>32</sup> There are other intensifications, i.e. any fine for violation of the Criminal Act's chapters 12 and 13 incur a waiting period of 6 years, and imprisonment of up to 60 days for such violations leads to a waiting period of 12 years from when the sentence is served.

Exemption from the new language test requirement was possible only under very special circumstances, such as documented very severe physical or psychological disease resulting in the applicant not being able to fulfil the language requirements. In a note to the provision on exemption (sect. 24) it was made clear that the Ministry of Integration was presumed to submit the cases for exemption to the Naturalisation Committee in cases where the applicant had a severe physical handicap (such as Downs' Syndrome), was brain-injured, blind or deaf, or had severe psychological diseases such as (paranoid) schizophrenia, a psychosis or a severe depression. It added that the Ministry was supposed to refuse applications for exemption from persons suffering from PTSD (Posttraumatic stress disorder) – 'even if the condition is chronic and this is documented by a medical declaration'. The Minister for Integration explained that the reason for the exclusion was that PTSD 'is not a mental disease of such a severe nature that it can form the basis for submission to the Naturalisation Committee'.<sup>33</sup>

Another novelty was the introduction of a citizenship test by which the applicants should demonstrate their knowledge of Danish culture, history and society. The test was introduced under the provision of sect. 24 (2) in the naturalisation circular and implemented in May 2007. It was organised by the language schools across Denmark as a multiple choice test with a list of potential answers to each question – modelled on the Dutch societal knowledge test with a total of 40 questions to be asked out of which 28 should be answered correctly within 60 minutes.<sup>34</sup>

Among the 40 questions, 35 were selected from a question bank with 200 questions (in Danish). The question bank was made public at the homepage of the Ministry of Integration, where the applicants could read both the 200 questions and the corresponding correct answers. Based on this arrangement where the applicant could learn all the answers to the questions in the test bank by heart, about 97 per cent of the tested persons passed the test. Many applicants considered the citizenship test a 'piece of cake'. As a whole it gave rise to criticism. It was widely held that the test was very easy to pass and therefore needless. Immigrant descendants wondered why they had to take the citizenship test – many had a Danish education and had been in Denmark a long time. They considered it highly unfair to be compelled to take a test concerning their knowledge about Denmark in order to be allowed to apply for Danish citizenship. Other participants said that they disliked a test that only tested their ability to learn by heart.<sup>35</sup>

The Danish People's Party also found the test too easy to pass and made demands for a revision, but the Conservatives refused to introduce further restrictions for applicants for naturalisation.<sup>36</sup> At that time, the impact of the restricted language requirements had appeared; in 2006, the annual number of naturalisations had decreased to 6960 (applicants including children), and a vague decrease continued in the following years.

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<sup>33</sup> Letter of 20 January 2006 to the Rehabilitation and Research Centre for Torture Victims.

<sup>34</sup> See E. Ersbøll, 'On Trial in Denmark', in Eva Ersbøll, Dora Kostakopoulou, and Ricky Van Oers (eds.), *A Re-Definition of Belonging? Language and Integration Tests in Europe* (forthcoming 2009).

<sup>35</sup> *Ibid*

<sup>36</sup> *Berlingske Tidende*, 13 May 2008; Tom Behnke, the chairman of the parliamentary standing committee on citizenship, the Naturalisation Committee of the Danish Parliament, added that even if it was possible to pass the test with parrot learning, the applicants would know more than many Danes, and under all circumstances it was too early to make amendments.

In mid-2008 the political situation changed as a result of the 25 July 2008 Metock judgement from the European Court of Justice (ECJ).<sup>37</sup> The judgement in which the court maintained that union citizens who have made use of their right to freedom of movement pursuant to the Free Movement Directive (2004/38/EC) have a right to family reunification with a third country national family member irrespective of whether the family member has previously stayed legally in an EU member state, caused strong reactions in Denmark. Among members of the government parties and in particular among members of the Danish People's Party it was widely held that complying with the judgement would lead to an undermining of the 'fair and consistent' Danish aliens policy. The Danish People's Party voiced the possibility of neglecting the judgment; the government, however, stood firm on the judgment's implementation. In return, on 22 September 2008, the government entered into a political agreement with the Danish People's Party - with a view to 'combat the possible negative consequences of the Metock judgment'. According to the political agreement, the principles behind the Danish immigration policy would be upheld; the government would implement the Metock-judgment, but at the same time strive towards an amendment of the EC Free Movement Directive. New control mechanisms in immigration cases should be established and, surprisingly, the naturalisation criteria, the language and the citizenship test requirements were strengthened.

Thus, with effect from 10 November 2008,<sup>38</sup> the citizenship test questions and answers could no longer be found on the homepage of the Ministry of Integration; only sample questions were accessible. In addition, 32 out of the 40 questions (instead of 28) were to be answered correctly in order to pass the test, and the applicants had only 45 minutes (instead of an hour) to complete the test. Since the new test requirements applied to applicants who had already registered for the December test, only 4,684 out of 5,636 enrolled remained registered for the test. Among these 1,014 passed; thus the pass rate December 2008 was 22 per cent. During the years, however, the pass-rate increased to around 70 per cent.

As to the Danish language requirement it was no longer sufficient to pass Danish Test 3 (B2) (passing required a mark of 6 on a 13-point scale or a mark of 2 on the 7-step scale). After the agreement, the general language requirement was set to a certificate of having passed Danish Test 3 with an average mark of at least 7 on the 13-point scale or 4 on the 7-step scale (or another comparable exam).<sup>39</sup>

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<sup>37</sup> Case C 127/08.

<sup>38</sup> See Circular No. 61 of 22 September 2008 on naturalization.

<sup>39</sup> Sufficient language skills may still be proved by a certificate of the lower secondary school leaving examination after 9<sup>th</sup> or 10<sup>th</sup> grade with an average mark of at least 6 (at the 13-point scale) or 2 (after the 7-step scale) in the Danish disciplines, see Circular No 61 of 22 September 2008. The restriction as to DT3 resulted from the agreement of 22 September 2008 between the government and the Danish People's Party on the handling of the EU-legislation on free movement see sect. 4.1.

## 2.12 The case of statelessness

In 2010, the Ministry of Integration informed the Parliament that applications for citizenship from stateless persons born in Denmark who were entitled to Danish citizenship according to the 1961 Convention, article 1(1-2), had wrongly been turned down during some years. This had happened in 22 cases, and similar wrongdoings had taken place in fourteen cases regarding stateless children born in Denmark who were entitled to Danish citizenship according to the Naturalisation Circular, section, 17 (implementing article 7 in the Convention on the Rights of the Child (CRC)). Thus, in 36 cases, the ministry had wrongly refused applications for Danish citizenship from stateless persons born in Denmark.

At the beginning of 2011 these wrongdoings received intensive press coverage, and the then Minister for Integration had to resign; a commission of inquiry was established in order to clarify what had actually happened in the ministry. Before the minister resigned, she sought to make amends to the 378 stateless persons who were born in Denmark and who, according to the conventions, could have claimed Danish citizenship in the years since 1991 (when the CRC came into force in Denmark).<sup>40</sup> Taking into account that these stateless persons might previously have been misinformed about their entitlement to Danish citizenship, they were informed in March 2011 by individual letters about the entitlement and that they now could apply for Danish citizenship.<sup>41</sup>

During the public debate of the case it became clear that the great majority of the registered stateless persons were stateless Palestinians. Other stateless persons who originated from other parts of the world, especially stateless Kurds from Syria, had wrongfully been registered in the Civil Registration System as ‘nationals’ of their country of habitual residence (and not correctly as ‘stateless persons’). When this became clear to the Danish Institute for Human Rights (DIHR), the institute entered into negotiations with the Immigration Service with a view to improve the registration procedures and get wrongful registrations corrected.<sup>42</sup> Since then, the Immigration Service has introduced new registration procedures and many stateless persons have had a wrongful civil registration changed or are in the process of attaining a change.

<sup>40</sup> Cf. <http://statsloesekommissionen.dk/621.html>

<sup>41</sup> Following the 2004 amendment excluding the descendants of non-Nordic immigrants from entitlement to Danish citizenship (Section 3), it was presumed that the obligation stipulating in the 1961 convention to grant Danish citizenship to Danish born stateless persons should be fulfilled in another way, cf. Section 2.10. However, as the citizenship law was not amended accordingly, the entitlement to Danish citizenship was no longer explicitly mentioned in any written law, which partly explains misinterpretation and infractions.

<sup>42</sup> See the DIHR homepage with links to the institutes memorandums of 4 October and 27 October 2011 on correct registration of among other things statelessness:  
<http://www.humanrights.dk/focus+areas/research/results/statesless-c3-+succesful+interaction+made+a+difference>

In 2011, the Ministry of Integration published the criteria it would apply when granting stateless persons born in Denmark Danish citizenship in accordance with the UN-conventions.<sup>43</sup> Stateless children born in Denmark are entitled to Danish citizenship by naturalisation on the condition that they have a residence right in Denmark (CRC article 7). At majority, such stateless persons keep their entitlement to Danish citizenship until turning 21, but it is a condition that they continuously have been stateless and have resided in Denmark for five years immediately before they submit their application or alternatively, that they have resided in Denmark for eight years altogether. Lastly, it is a condition that they have not been found guilty of an offence against national security and have not been sentenced to imprisonment for five years or more for a criminal offence (cf. the 1961-convention article 1). This last condition stating that a refusal on citizenship requires ‘a sentence’ has caused profound political disagreement and opposition since it became clear that applicants, whom the National Security Service considers a potential ‘danger to national security’ may be included in a bill on naturalisation and subsequently granted Danish citizenship. This has led the Danish People’s Party to vote against the adoptions of bills and the Conservative Party and the Liberals to ask the government to enter into negotiations with other countries with a view to re-interpret or amend the 1961 convention. They argue that some other countries shelve applications in such situations, and they want a similar practice to be introduced in Denmark (see below under 2.14).

### **2.13 A turning point: the election of a new centre-left government**

In 2011, a new government comprising the Social Democrats, The Socialist People’s Party and the Social Liberals was elected. Before the election, the Social Democrats and the Socialist People’s Party had agreed on a common integration policy which implied that the Socialist People’s Party gave up their resistance against certain rules which was introduced by the Liberal-Conservative government, for instance some conditions for family reunification (the 24 years age requirement and the requirement on stronger attachment to Denmark than to any other country). The parties considered this a necessity in order to win the election. For that purpose they also presented a common election manifesto in order to demonstrate that they could form a stable alliance with the Social Liberals.

One of the first decisions of the new government was to close the Ministry of Integration as an independent ministry (as of 3 October 2011). The ministry’s responsibilities were transferred to The Ministry of Justice (citizenship matters), the Ministry of Children and Education, the Ministry of Social Affairs and Integration and the Ministry of Employment.

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<sup>43</sup> See the homepage [http://www.nyidanmark.dk/en-us/coming\\_to\\_dk/danish\\_nationality/naturalisation-of-stateless-persons-born-in-denmark.htm](http://www.nyidanmark.dk/en-us/coming_to_dk/danish_nationality/naturalisation-of-stateless-persons-born-in-denmark.htm)



After the election, the three parties agreed upon a government platform entitled ‘A Denmark that stands together’.<sup>44</sup> A section on ‘Citizenship – equal opportunities for all’ stated that the rules on citizenship must promote integration. According to the government platform, the government wants to send the signal that foreigners who have lived in Denmark for several years and whose integration has been successful, can become Danish citizens. The requirements must be high as Danish citizenship is something special, but they should not exclude foreigners who make an effort, just because they do not have a sufficiently high education.

The following relaxations were announced: The knowledge test requirements to foreigners must not be so high that they cannot be met by many Danes, the language requirement should be reduced to Council of Europe level B1 and the requirement on self-support should be eased. The rest of the requirements would be maintained.

However, some reforms would be introduced. Multiple citizenship should be tolerated, immigrant descendants, who are born and raised in Denmark, should be offered Danish citizenship after school-leaving exam or at the latest at the age of eighteen, unless they had been sentenced for having committed serious crimes. Lastly, the applicants’ legal rights should be strengthened. The naturalisation criteria should be adopted by an act rather than by alternating political agreements.

The first step in the implementation of these predictions was a new political agreement of 23 May 2013 on the naturalisation criteria, which led to the adoption of a new circular on naturalisation.<sup>45</sup> The agreement parties were the governing parties and the Red-Green Alliance acting as a supporting party for the government. The agreement accomplished the predictions on facilitation of the language and civic knowledge requirements and of the requirement on being self-supporting. Moreover, the discriminatory rule which precluded applicants with PTSD from applying for dispensation from the naturalisation requirements (cf. above under 2.11) was repealed. As part of the agreement, resources were allocated with the aim of reducing the long waiting periods in the Ministry of Justice. The aim was to reduce the processing time of the Ministry of Justice to seven months by the end of 2014.

The amendments concerning acceptance of dual citizenship and entitlement to Danish citizenship to immigrant descendants were adopted in 2014, see below in section 3.

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<sup>44</sup> See the platform at [http://www.stm.dk/publikationer/Et\\_Danmark\\_der\\_staar\\_sammen\\_11/Regeringsgrundlag\\_okt\\_2011.pdf](http://www.stm.dk/publikationer/Et_Danmark_der_staar_sammen_11/Regeringsgrundlag_okt_2011.pdf)

<sup>45</sup> The agreement is implemented in circular on naturalisation no. 9253 of 6 June 2013, accessible at <https://www.retsinformation.dk/Forms/R0710.aspx?id=152087>

## 2.14. Parliamentary debates on entitlement to Danish citizenship for Danish born stateless persons who are under surveillance of the National Security Service

As mentioned above, in 2010 the then Ministry of Integration discovered that it had wrongfully refused applications from Danish born stateless persons who were entitled to Danish citizenship according to international conventions, and in 2011, the administration was put on the right track. However, immediately after the new centre-left government had come into office, political disagreement broke out since it appeared that a person whom the National Security Service considered a potential danger was included in a bill on naturalisation. The then Ministry of Integration had asked other European countries about their handling of such cases and (probably based on misreading of the answers) some parliamentarians got the impression that a number of countries suspended the consideration of such cases – regardless of an applicant’s entitlement to their citizenship based on the 1961 convention. The Liberals and the Conservatives argued for a reinterpretation or renegotiation of the convention, and the Danish People’s Party voted against the adoption of the bill – as the only party to do so. Another stateless person who was also under surveillance of the National Security Service was included in the bill on naturalisation which was presented in Parliament in spring 2012, and the same happened for a third stateless person in the spring 2013 bill on naturalisation. Each time the parliamentary debate on the bills centred about the rightness of including such applicants in bills on naturalisation, although the question on whether such confidential information could legally and/or morally be discussed in public was also brought to the front. The latter discussion also related to questions on the meaning of the constitution’s sect. 44 according to which foreigners can only acquire Danish citizenship by law. The question was whether bills on naturalisation could be debated in Parliament in the same way as other bills.

## 2.15. Decrease in numbers of naturalisations

The restrictive rules from the 2000s did, as already mentioned, lead to changes in naturalisation numbers (even though the number of immigrants who enrolled at Danish Education Programme 3 – which prepared students for the language test at level B2 – increased).<sup>46</sup> Since 2009, only about 3500 - 4000 applicants, including their children, have been naturalised per year. The Ministry received fewer applications and more refusals of naturalisation were given. While the percentage of refusals was 16.2 in 2001, it increased to more than 50 per cent in 2009.<sup>47</sup>

In parallel, the numbers of dispensations from the naturalisation criteria – first and foremost the language requirement - decreased. Until 2003, most of the applications for dispensation from the language requirement were met. In 2003 and 2004 less than half of the applications were met (106 out of 227 and 105 out of 275 respectively). In 2005 an even more dramatic change happened as only 65 out of 540 applicants were granted dispensation. The following years the numbers of applicants granted dispensation were 103 out of 359 (2006), 37 out of 108 (2007), 41 out of 227 (2008), 74 out of 133 (2009) and 65 out of 119 (2010).

<sup>46</sup> Eva Ersbøll and Laura Katrine Gravesen (2010) at [http://www.ru.nl/publish/pages/621216/denmark\\_intec\\_final.pdf](http://www.ru.nl/publish/pages/621216/denmark_intec_final.pdf)

<sup>47</sup> Ibid.

However, after the election in 2011 the political composition of the Naturalisation Committee changed, and more dispensations have been granted. Also applicants who earlier had been met with a refusal of their application for dispensation were allowed to apply again on the same basis and subsequently granted dispensation.

Nevertheless, in spring 2013 the number of applicants included in a naturalisation bill was the lowest in many years. In the two naturalisation bills presented to Parliament over the year, only 1,788 applicants had been included. The reason given by the Minister for Justice was that the Ministry's Nationality Division had gone through a large number of cases in order to analyse more general problems relating to citizenship matters, moreover, the Division had performed a huge task by assisting the Investigation Committee which has to clear up what happened in the so-called 'statelessness case'.

However, the decrease continued during the first half of 2014 when only 679 applicants were included in the naturalisation bill. This was explained by the resource demanding implementation of the new guidelines for naturalisation from June 2013 and the extended access to present cases on dispensation to the Parliamentary Naturalisation Committee.<sup>48</sup> Eventually, in the second half of 2014 the trend reversed, as 1,592 applicants were included in the naturalisation bill and naturalised (together with their 886 children).

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<sup>48</sup> See the Minister of Justice's answer of 13 May 2014 to the Naturalisation Committee's question no. 1 (bill L 179)

### 3. Current citizenship regime

#### 3.1 The main modes of acquisition and loss of citizenship

##### *Acquisition of citizenship*

As in other European countries, the main rule for attribution of citizenship is *ius sanguinis* at birth. According to the Citizenship Act, sect. 1, a child is a Danish citizen if born to a Danish father, mother, or [co-mother]. Section 1 was amended in 2014 to comply with the judgement of the European Court of Human Rights (ECtHR) in *Genovese vs. Malta* that prohibits discrimination between children born in and out of wedlock in cases of acquisition of citizenship by birth.<sup>49</sup>

Moreover, according to sect. 1 (2), a child found abandoned in Denmark is, in the absence of evidence to the contrary, considered a Danish citizen. A foundling's automatic acquisition of citizenship at birth is based on the presumption that at least one of the parents are Danish. If it later appears that the parents are foreigners, the conclusion is that Danish citizenship was never acquired but was a nullity. No time limits exist, and the Citizenship Act does not include a clause protecting against statelessness.<sup>50</sup>

Another birthright-based mode of citizenship acquisition is legitimation. According to sect. 2, a child of a Danish father and an alien mother who has not acquired Danish citizenship at birth will acquire Danish citizenship through the parents' subsequent marriage. It is a condition that the child is unmarried and under eighteen years of age at the time of the marriage.

An alien child under the age of twelve adopted through a Danish adoption order will become a Danish citizen by adoption if the child is adopted by a married or cohabiting couple in which at least one of the spouses or the cohabiting partners is a Danish citizen, or by a single Danish national (sect. 2 A (1)).<sup>51</sup>

It is explicitly stated in the Citizenship Act that a marriage contracted by a person already married has no legal effect under the Citizenship Act (sect. 2 B). A stateless child born and resident in Denmark has since 1992 been entitled to naturalisation (the naturalisation circular, sect. 17).<sup>52</sup>

<sup>49</sup> See the ECtHR's judgement in *Genovese vs. Malta* of 11 January 2012 (Final) at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-106785#{"itemid":\["001-106785"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-106785#{). The provision in the Danish Citizenship Act sect. 1 applies to children who were born after 1 July 2014, cf. act no. 729 of 25 June 2014 amending the Citizenship Act. Children who were born of a Danish father and a foreign mother out of wedlock and abroad before that date did not, according to the former Sect. 1(1), automatically acquire Danish citizenship at birth. Such children may, however, acquire Danish citizenship by naturalisation, regardless of whether they fulfil the normal naturalisation criteria, cf. the 2013-naturalisation circular (Sect. 16). Before 2013, it was a requirement that the father had (shared) custody over the child. This requirement was repealed in 2013 in order to comply with *Genovese vs. Malta*.

<sup>50</sup> Cf. ECN article 7(1)(f) and 7(3) which establish that loss of nationality owing to loss of a family relationship can only happen during a child's minority, and in any case such a loss may not result in statelessness.

<sup>51</sup> Sect. 2 A (1) was amended by Act no. 1525 of 27 December 2014 on amendment of the Act on Adoption, the Act on Parental Responsibility, and the Act on Danish Nationality (Access for cohabitants to adopt together).

<sup>52</sup> However, see above under 2.12 on the so-called 'statelessness-case.'

In 2014 Denmark reintroduced *ius soli*-based entitlement to Danish citizenship for the descendants of immigrant. According to the Citizenship Act, sect. 3 A, immigrant descendants who were born in Denmark may acquire Danish citizenship by submitting a declaration to a regional Danish state administration office. Apart from birth in the country, the main criteria are that the individual: 1) has passed the school leaving exam with at least a grade point average at two or has turned eighteen;<sup>53</sup> 2) has not turned nineteen; 3) resides and has resided in Denmark for at least twelve years of which an aggregate period of not less than five years must be within the last six years, and 4) has not been convicted or charged with a criminal offence. Furthermore, until 1 September 2015 when multiple citizenship was accepted, the individual must be released from his or her former citizenship.<sup>54</sup> For the majority of immigrant descendants, it has been more or less impossible to fulfil this condition with the deplorable effect that most declarations have been turned down.<sup>55</sup> The Danish state administration, the competent authority, cannot exercise any discretion since, according to the Danish constitution, the legislature grants citizenship to foreigners.

The most important rules on the acquisition of citizenship after birth is the general residence-based naturalisation rules, as provided for in the Citizenship Act sect. 6 and the naturalisation circular, chapter 3. As we have seen, citizenship by naturalisation is granted to foreigners with a permanent residence permit normally after at least nine years of residence and fulfilment of other rather restrictive conditions, among others (until September 2015) renunciation of former citizenship, good conduct, no debts to the state, certification of knowledge of the Danish language (level B1), passing a citizenship test, and proof of having been self-supporting for one year prior to the introduction of the naturalisation bill in Parliament and for two- and- a- half years within the last five years.<sup>56</sup>

Spouses' acquisition of Danish citizenship is facilitated under slightly relaxed conditions (if only regarding the residence requirement). The rules on spousal transfer are contained in the naturalisation circular, sects. 8 and 9, stating that a person who has lived in marriage with a Danish citizen may be naturalised after six consecutive years of residence in Denmark when the marriage lasted and the spouse has been Danish for not less than three years. When a marriage is of two years' duration, seven years of residence is required, and where a marriage is of one year's duration, eight years of residence is required. Up to one year's cohabitation prior to marriage is considered equivalent to marriage during the period in question. Under certain conditions, aggregate periods of residence may count.

For immigrants' descendants the most important rule may be the Citizenship Act sect. 6 (2), according to which children of naturalising parents acquire Danish citizenship simultaneously with the parents. Filial extension of citizenship is conditioned by the parents having custody over the child, the child being unmarried, and under the age of eighteen years and residing in Denmark. If a child is over the age of fifteen, conduct requirements apply.

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<sup>53</sup> According to sect. 3 A (3), this requirement is not applicable for persons who have turned fifteen and are able to document, by a medical declaration, that they suffer from a lasting disability and therefore cannot pass the school leaving examination.

<sup>54</sup> See Act no. 730 of 25 June 2014 amending the Citizenship Act.

<sup>55</sup> In a letter of 20 January 2015, the Ministry of Justice informed the Naturalisation Committee that, by 15 January 2015 the state administration had received 468 declarations, and only 13 of the declarants had by then received Danish citizenship. The Ministry has attempted to draft special agreements with embassies in order to resolve the renunciation problem. See the Naturalisation Committee document, IFU Alm. Del Bilag 69.

<sup>56</sup> In 2014 a new citizenship test questioning more up- to -date knowledge may be introduced, and dual citizenship is likely to be accepted.

As a rule, if a child has a parent who (theoretically) can apply for naturalisation, the child cannot independently acquire Danish citizenship by naturalisation. This means that, if parents cannot fulfil the naturalisation requirements, their children cannot naturalise. Only if the parents are prevented from applying for naturalisation, for instance because they have already become naturalised, can their children apply for naturalisation individually.<sup>57</sup> Naturalisation of adopted children falls under the rules on descendants.

Children who are adopted by Danish citizens and who have not acquired Danish citizenship automatically by adoption, cf. above, may acquire Danish citizenship by naturalisation. This applies to, among others, adopted children over the age of twelve and adopted stepchildren. They may acquire Danish citizenship by naturalisation after two years of residence before their eighteenth birthday. Certain other conditions apply, among them language, civil knowledge, and conduct requirements. A number of favourable acquisition rules apply to Nordic citizens (see below under 3.2).

### ***Loss of citizenship***

Renunciation of Danish citizenship is possible when a person wishes to become a foreign citizen. If that person is a foreign resident, release cannot be denied (Citizenship Act, sect. 9).

Until 1 September 2015, Danish citizenship is automatically lost when a Danish citizen acquires foreign citizenship either upon application with his or her express consent or by entering the public service of another country. Unmarried children who become foreign citizens together with their parents will also, as a rule, in such cases lose their Danish citizenship (sect. 7).

Furthermore, according to the Citizenship Act, sect. 8, any person born abroad who has never lived or stayed in Denmark under circumstances indicating some association with the country will lose his or her Danish citizenship automatically upon the age of 22 unless this will make the person stateless. Danish military service, a stay in Denmark of longer duration, for instance at a folk high school or for educational purposes, and longer recurrent vacations in Denmark indicate association with Denmark thus ensure retention of citizenship. Aggregated stays in the country for at least one year in total will normally prevent loss of citizenship.

In the absence of such associations with Denmark, the only act that can prevent loss of Danish citizenship is an application for retention that must be filed with the Ministry of Justice before the applicant's twenty-second birthday. Important criteria for being granted retention of citizenship are mastering the Danish language, attachment to Denmark through holidays, and contact with Danish relatives or Danish societies abroad. The Danish authorities are not obliged to alert foreign-born Danish citizens to imminent loss and cannot handle applications that are lodged too late. Neither is there any entitlement to re-acquisition in such cases.<sup>58</sup>

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<sup>57</sup> However, it should be noted as explained above, that immigrant descendants who were born in Denmark may acquire Danish citizenship by declaration either after the school leaving examination or between the ages of eighteen and nineteen.

<sup>58</sup> About re-acquisition of citizenship, see below.

Deprivation of Danish citizenship is possible in cases in which Danish citizenship is acquired by fraudulent conduct (sect. 8 A) and where a person is convicted of a violation of Part 12 or 13 of the Criminal Code concerning crimes against the state (sect. 8 B). In the latter case, deprivation of citizenship must not make the person concerned stateless. Cases of deprivation of citizenship are resolved by court order, and the proceedings are governed by the rules of administration of justice. According to the public prosecutor, there have so far been ten cases of deprivation of citizenship pursuant to sect. 8 A and three cases of deprivation of citizenship pursuant to sect. 8 B.<sup>59</sup> Until now, Danish courts have in four cases deprived citizens of their citizenship pursuant to section 8 A, while they have, so far, rejected all claims of deprivation of citizenship pursuant to sect. 8 B.<sup>60</sup>

The ILEC project (Involuntary Loss of European Citizenship: Exchanging Knowledge and Identifying Guidelines for Europe)<sup>61</sup> has focused on situations in which a person is confronted with the discovery that he or she never had the citizenship of the country involved, even though the authorities of the country have treated him or her as a citizen. In the survey Rules on Loss of Nationality in International Treaties and Case Law, Gerard René de Groot has defined such loss of citizenship as ‘quasi-loss’.<sup>62</sup>

In Denmark a person may experience quasi- loss of citizenship owing to loss of a family relationship or as a consequence of administrative error. Quasi- loss of citizenship owing to loss of a family relationship may occur in a number of situations, among others cases of breached paternity assumptions, invalid adoption orders, or if it is later discovered that a foundling was not born of Danish parents. In addition, this occurs in cases in which it is later discovered that a person, owing to an administrative error, has been wrongly registered as a Danish citizen, for instance in the Civil Registry or has wrongfully been issued a Danish passport.<sup>63</sup> In such cases the authorities will establish that acquisition of Danish citizenship has not taken place, regardless of whether the person concerned is left stateless or has reached majority.<sup>64</sup> Principles of administrative law cannot resolve such problems in Denmark since the Danish Constitution establishes that foreigners must acquire Danish citizenship by statute. Consequently, it is the general viewpoint that a person who does not fulfil the legislature’s requirements for acquisition of Danish citizenship cannot acquire Danish citizenship by an administrative act or a court decision.<sup>65</sup> However, in February 2013 the Ministry of Justice introduced a new practice according to which the parliamentary Naturalisation Committee may grant a person whom the authorities have wrongfully considered to be a Danish citizen exemption from the normal naturalisation requirements. By subsequent naturalisation, Denmark can protect the legitimate expectations of the person concerned.<sup>66</sup>

<sup>59</sup> See the Minister of Justice’s answer of 12 June 2014 to the Naturalisation Committee’s question no. 600 (REU Alm.del).

<sup>60</sup> See <http://eudo-citizenship.eu/databases/citizenship-case-law/?search=1&name=&year=&country=Denmark>

<sup>61</sup> See <http://www.ilecproject.eu/>

<sup>62</sup> Paper available at <http://www.ceps.be/publications/survey-rules-loss-nationality-international-treaties-and-case-law>

<sup>63</sup> Cf. Gerard René de Groot and Patrick Wautelet: [Reflections on quasi-loss of nationality in comparative, international and European perspective] at <http://www.ceps.eu/publications/reflections-quasi-loss-nationality-comparative-international-and-european-perspective>

<sup>64</sup> Cf. ECN Article 7 (1) (f) and 7 (3) that establishes that in their internal law contracting states may not provide for loss in these situations.

<sup>65</sup> Cf. 2012 judgment of the Danish High Court available at <http://eudo-citizenship.eu/databases/citizenship-case-law/?search=1&name=&year=&country=Denmark&national=1>

<sup>66</sup> Information given in a letter of 12 February 2015 by the Ministry of Justice within the framework of the ILEC project. According to the Ministry, applicants in nine ‘quasi-loss’ cases that were presented to the Naturalisation Committee have been granted dispensation from the general requirements for naturalisation and have

### ***Re-acquisition of citizenship***

A Danish-born citizen who has lived in Denmark until the age of eighteen is entitled to recover his or her lost Danish citizenship by submitting a declaration to the Danish State Administration (or to the High Commissioner of the Faroe Island or the High Commissioner of Greenland) provided that he or she has resided in Denmark during the last two years preceding the declaration, cf. the Citizenship Act sect. 4 (1).<sup>67</sup> Residence in another Nordic country until the age of twelve counts as residence in Denmark (sect. 4 (3)).<sup>68</sup> Former Danish citizens who cannot fulfil these requirements may recover their lost Danish citizenship by naturalisation. It follows from an annex to the Naturalisation Circular that the normal residence requirement is reduced to one year for applicants who have acquired Danish citizenship by birth and are born and have stayed in Denmark until they turned twelve. For other former Danish citizens, the normal residence requirements apply in principle. However, the Naturalisation Committee may grant dispensation.

As of 1 September 2015, a transitional re-acquisition provision will apply to former Danish citizens who have lost their Danish citizenship by acquisition of foreign citizenship. It is a requirement that they have not been sentenced to imprisonment. They (and their children by extension) may re-acquire Danish citizenship by submitting a declaration to that effect within five years to the [State Administration].<sup>69</sup>

### ***Summing up***

Summarising the characteristics of Danish citizenship law, it is noteworthy that Denmark has finally accepted multiple citizenship. The general question of the toleration of multiple citizenship was for the first time debated in Parliament in 2008 and 2009 on the initiative of Danish emigrants. Proposals for parliamentary resolutions were presented by two political parties, the Liberal Alliance and the Social Liberals, but they were turned down by a majority (including members of the Liberals, the Conservatives, the Danish People's Party, and the Social Democrats). The parties' attitude towards multiple citizenship has broadly, changed (see below under 4.2).

Looking into Danish citizenship legislation and practice of 2015, the most striking peculiarities are the limited access to socialisation-based acquisition of citizenship and the unique naturalisation procedure followed in Denmark, leaving out, among other things, the possibility of appeal (in its strict sense).

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subsequently been naturalised.

<sup>67</sup> Residence in another Nordic country until the declarant's twelfth birthday is equivalent to residence in Denmark (sect. 4 (3)). Also, a person who has lost Danish citizenship and has subsequently remained a citizen of a Nordic country will recover Danish nationality by declaration after having taken up residence in Denmark (sect. 4 (2)).

<sup>68</sup> Until 1 September 2015, the declarant must prove the loss of foreign citizenship. Re-acquisition of Danish citizenship by declaration will include the declarant's children (sect. 5).

<sup>69</sup> See sect. 3 in Act nr. 1496 of 23 December 2014 amending the Citizenship Act.



As we have seen, the descendants of immigrants have for more than 200 years been entitled to Danish citizenship. From 1776 to 1950, the entitlement was *ius soli*-based and Danish citizenship was acquired automatically at majority. In 1950 acquisition by declaration was introduced, but immigrant descendants retained a legal right to Danish citizenship. In 1976 the *ius soli*-based entitlement to Danish citizenship at majority was replaced by a residence-based entitlement, that is, five years of residence before the declaration and ten years of residency in total during childhood. By the end of 1999, restrictions commenced. First, a conduct requirement was introduced, and in 2004 the general entitlement rule was repealed. Thereafter, the descendants of immigrants were referred to apply for Danish citizenship by naturalisation and they had to fulfil the general naturalisation requirements.

The naturalisation circular facilitates access to naturalisation for applicants who have entered Denmark prior to the age of fifteen as they may apply for Danish citizenship at the age of eighteen. Applicants who have undergone a substantial part of their general education or vocational training in Denmark may apply for naturalisation after four years of residence in Denmark. However, for immigrant descendants who were born in Denmark or who have settled in Denmark as minors, these facilitations have no substantial impact. Thus they hardly count as ‘facilitations’ required by the ECN, article 6 e and f.

For children who are born in Denmark, the 2014 amendment of the Citizenship Act has to a certain extent resolved this problem. However, a number of conditions must be fulfilled. According to sect. 3 A, children who are born in Denmark and have resided in the country for twelve years may acquire Danish citizenship by declaration, either after the Leaving Examination of the Folkeskole or at majority. However, if they cannot pass the school leaving examination with the required grades, they can only use the declaration procedure in one year, from when they turn eighteen to when they turn nineteen. Also, if they have a criminal record, they are not covered by the new entitlement provision. As we have seen, there is the temporary problem that, until 1 September 2015 when dual citizenship is accepted, these young people must prove that they will lose their foreign citizenship by the acquisition of Danish citizenship, cf. the Citizenship Act sect. 4 A. For many declarants, this condition has turned out to be impossible to fulfil, and if they turned nineteen by 1 September 2015 they cannot benefit from the rule, and naturalisation will be their only means of acquiring Danish citizenship.

In 2015 28 per cent of the Danish immigrants and 68 per cent of descendants are Danish citizens. These percentages have decreased in recent years. In this regard, it has to be taken into consideration that, until July 2014, as a rule the Danish language requirement applied to all applicants for citizenship, regardless of age and regardless of which ‘immigrant generation’ they belonged to, that is, first, second, third etc., and a former exemption of persons over the age of 65 was repealed in 2002. The language requirement was, until the change of 15 June 2013, at the highest level in Europe (B2) and had an exclusive effect, since (among others) persons with little schooling or learning difficulties and many elderly people were unable to pass the language test despite their best efforts.<sup>70</sup>

This point leads to the final peculiarity, namely the Danish naturalisation procedure. The procedure is a legislative one which has implications for the obligation to give reasons for refusal of citizenship and the right to review (see the ECN article 11 and 12). These issues will be examined in section 3.3.

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<sup>70</sup> Ersbøll, 'On Trial in Denmark'.

### 3.2 Specific rules and status for certain groups

As we have seen, Nordic citizens have special status. Descendants of Nordic citizens have retained their entitlement to Danish citizenship since the Citizenship Act's entitlement provision concerning immigrant descendants was amended in 2004. Hence citizens of a Nordic country may acquire Danish citizenship by making a declaration to that effect to a regional Danish state administration office if they: have attained the age of eighteen, but are not yet 23; currently reside in Denmark and have resided in Denmark for an aggregated period of not less than ten years of which an aggregate period of not less than five years must be within the last six years, and have no convictions and not currently charged with a criminal offence (sect. 3).

Furthermore, entitlement to Danish citizenship by declaration is granted adult Nordic citizens who have acquired their Nordic citizenship in a manner other than by naturalisation when they have resided in Denmark for the last seven years without being sentenced to imprisonment.

Residency in another Nordic country counts to a certain extent as residency in Denmark. This is the case for Nordic citizens making declarations between the age of eighteen and 23, but only if residency in the other Nordic country precedes, by not less than five years, the making of the declaration and the declarant's sixteenth birthday (sect. 3 (4)). A person who has lost Danish citizenship and has subsequently remained a Nordic citizen may acquire Danish citizenship by declaration by taking up residency in Denmark (sect. 4 (3)). Moreover, persons who are born abroad and have never lived in Denmark may retain their Danish citizenship on attaining the age of 22 if they have lived for an aggregate period of seven years or more in another Nordic country (sect. 8 (3)).

Naturalisation is also facilitated for Nordic citizens and persons who have previously held Danish citizenship or who are of Danish descent as well as for Danish-minded persons from South Schleswig. For some among these groups, only two years' residency is required, but supplementary conditions may apply.

### 3.3. Special institutional arrangements

#### *The impact of the Danish Constitution*

Like most European democracies, Denmark has a trinity of power: the legislative, the executive, and the judicial power (see sect. 3 of the Constitutional Act of Denmark [1953]). The legislative authority is conjointly vested in the King (the government) and the Parliament (the Folketing). The only constitutional provision on the acquisition of citizenship is sect. 44 (1), according to which 'no alien shall be naturalised except by statute', instituted by the first Danish Constitution of 1849. The idea was to transfer the competence of granting *indfødsret* from the (former) sovereign King to the King and the Parliament (the legislature). As we have seen, the model for the rule was a similar provision in the Belgian Constitution. The Constituent Assembly considered such a provision to be rooted in 'general constitutional concepts'. The aim was to avoid the King (the administration) being the sole grant-awarding authority. Rather, the legislature should grant naturalisation either by a general or a personal (singular) act. There was no further indication as to how the legislature should deal with naturalisation matters.

When the new Parliament (the Rigsdag) read the first bill on naturalisation, there were different opinions on the procedure to be followed. The Three Years War and the national division between the supporters of the Eider policy and the united monarchy (helstats) policy influenced the debate. Among other things, it was argued whether citizens from the Nordic countries and citizens from Germany should be dealt with in the same way or not.

A practice soon developed, however, according to which the ministry responsible for the indfødsret legislation (under the 1849 Constitution, the Ministry of the Interior) drafted bills on naturalisation including applicants whom the Ministry presumed fulfilled the legislature's requirements for naturalisation. At first, it was assumed that the 1776 Act's conditions on acquisition based on special achievement for the country should be taken into consideration. But in practice affiliation to 'the people' became decisive. Among the crucial elements from the start was knowledge of the Danish language. In addition, a long period of residence on state territory and good conduct were necessary preconditions. A bill on naturalisation contained the names of the individual applicants, small biographies, and information as to whether the local authorities could recommend their naturalisation. Over time, general guidelines from the Parliament to the Ministry were given in the form of circulars,<sup>71</sup> and sensitive information regarding the applicants was removed from the bills.<sup>72</sup>

Bills on naturalisation are, like other bills, subject to three readings in the Chamber. After the first reading, the bill is referred to a committee which, since 1953, has been the standing Naturalisation Committee of the Parliament (the Indfødsretsudvalg) that is composed of seventeen Members of Parliament representing the major parties. The Naturalisation Committee may receive confidential information on the applicants' conduct, language ability etc. and ask questions of the relevant minister. When the Committee has dealt with the bill, it submits a report to Parliament. Traditionally, as the practice developed, Parliament felt a kind of obligation to grant citizenship to all persons included in a bill on naturalisation.<sup>73</sup> In the late 1980s this practice changed, and several amendments for exclusion of certain applicants from the bills became, as we have seen, a common feature of the committee reports. This did, however, change again with the 2005 agreement according to which the political parties behind the agreement, including the Danish People's Party, agreed to vote for the government's bill on naturalisation.<sup>74</sup> The statelessness case and the subsequent political disagreement on the consequences of the 1961 convention on reduction of statelessness in relation to persons who, according to the National Security Service, may be a danger to national security did, however, result in a breach of the agreement on unanimous voting, (see above under 2.14).

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<sup>71</sup> Only recently have all the criteria been published; until 1997 the more detailed guidelines were contained in a confidential 'office circular'.

<sup>72</sup> At present, the applicants' name, municipality, year of birth, country of origin and former nationality are published in the bills on naturalisation. Confidential information as to residence, language abilities, public debt and possible punishable acts are given to the Naturalisation Committee.

<sup>73</sup> For a long period there were amendments to include additional applicants, but the only applicants to be excluded would be those who had died or withdrawn their application.

<sup>74</sup> So far, the Danish People's Party has proposed amendments, which could not be agreed upon, and the Party was not put under an obligation to vote for the government's bill. In future, the only amendments for exclusion to be expected will be the Minister for Integration's own amendments concerning applicants whose conditions have changed in the period between their inclusion in the bill and its reading in Parliament.

In the course of time, an increasing number of foreigners have applied for naturalisation. From 1 January 1850 to 31 December 1914, 11,495 foreigners were naturalised,<sup>75</sup> which is less than the number of naturalised persons each year from 1999 to 2004 (except for 2003). It is self-evident that it is no longer possible for the Naturalisation Committee to deal with each applicant's case. The examination is left to the relevant ministry, now the Ministry of Justice. However, doubtful cases are referred to the Committee, which decides whether an applicant is to be included in a bill.

Overall, the legislative naturalisation process is out-of-step with present-day conditions. The naturalisation criteria, which were agreed upon earlier by the members of the Naturalisation Committee, are subsequently reviewed by four out of the eight political parties currently represented in Parliament. There is no in-depth public discussion of the criteria in Parliament. Applicants who fulfil the criteria may expect to be naturalised, but they have no legal guarantee. The processing of applications takes a long time, the criteria may be amended at relatively short intervals (and have even been amended with retroactive effect). And there is no accessible regulation on doubtful cases and exemptions from the general criteria, which seems inconsistent with the rule of law (Ersbøll 1997: 202; 2008: 772) (Koch 1999: 26). It has been a general perception, as naturalisation is based on the discretion of Parliament, that no one has a right to Danish citizenship. In principle, there are no restraints on Parliament's and the Naturalisation Committee's discretionary powers other than the limitations which follow from international agreements and conventions ratified by Denmark (Kleis & Beckman 2004: 106). During reading of the bills, there has been some division in Parliament, giving rise to much discussion. The legislative treatment of naturalisation cases may lead to delays for even obvious cases – as most of the cases are. For the time being, the processing time in the Ministry of Justice is fourteen to sixteen months – although for new cases it is estimated to be ten to twelve months. However, added to this comes another six months with the scrutiny of the National Security Service and the reading of the bill in Parliament. During the June 2013 agreement on the naturalisation criteria, the parties agreed to find means to reduce the Ministry's processing time to seven months by the end of 2014. The Citizenship Office in the Ministry of Justice was supplied with more staff, which, however, did not resolve the problem. Accordingly, in 2014 the staff situation was improved by adding more than 30 new positions. On this basis, the Ministry of Justice sought to reduce the processing time to seven months by the end of 2015. In general, the process is detrimental to the applicants' legal rights, also because of the lack of possibilities to appeal.<sup>76</sup>

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<sup>75</sup> Alphabetic list of names of persons naturalised in the years 1850–1915, drawn up by the Ministry of the Interior (1916).

<sup>76</sup> As a consequence of the Constitution's sect. 44 (1), Denmark has made a reservation to the European Convention on Nationality, art. 12 on the right to an administrative or judicial review. In the reservation it states that the legislature grants naturalisation and as the legislature is not bound by the general rules of administrative law, no rights exist for an administrative review.

A more up-to-date arrangement might be brought about in three different ways. For several reasons, the best solution would be to amend the Constitution's sect. 44 (1). However, amending the Danish Constitution is very difficult. The Constitutional Act's sect. 88 requires firstly that Parliament pass a bill for the purpose of a new constitutional provision. Secondly, that writs shall be issued for the election of a new Parliament and that the bill shall be passed unamended by the new Parliament. Subsequently, the bill shall, within six months after its final passage, be submitted to the electors for approval or rejection by direct voting. In order for the bill to come into force, it is required that a majority of the persons taking part in the voting and at least 40 per cent of the electorate vote in favour of the bill. The last requirement is considered especially difficult to fulfil.<sup>77</sup>

Another solution might be to adopt a general act on naturalisation, authorising the administration to grant naturalisation by entitlement if and when the conditions of the act are met. In order to comply with the Constitutional Act, such act must contain completely distinct naturalisation criteria. The text must not leave any room for discretionary administrative decisions and must not include vague clauses. The only task which may be left to the administration is to ascertain that the applicants meet the act's criteria whereby they will have acquired citizenship (directly) 'by statute'. Consequently, (discretionary) decisions on dispensation from the general criteria must still rest with the legislature. The adoption of such a general act on naturalisation by entitlement was discussed in Parliament at the beginning of the twentieth century. A similar proposal was advocated in Danish literature around the turn of the twenty-first century (Koch 1999: 35).

The government platform from 2011 announced that naturalisation criteria are to be listed in a general act on naturalisation. It is unclear whether this implies that the competence of granting naturalisation should be removed or should still rest with Parliament. In any case, a legislative procedure would ensure an open parliamentary debate on the naturalisation criteria and allow the participation of all Members of Parliament. It would, however, not in itself resolve delays or the lack of review possibilities etc. In any case, the government will hardly accomplish the announced reform, at least not in its first term in office that ended 15 September 2015.

### *The process of implementation*

In future, applications for naturalisation must be submitted to the Ministry of Justice via a digital self-service arrangement.<sup>78</sup> However, under the present system, it is for the police to receive application forms and check formalities, e.g. whether the forms have been correctly filled in and whether all the required documentation has been submitted. In addition, the police shall ensure that the applicant has understood the significance of giving information and making statements by solemn declaration. Thereafter, the individual cases are sent to the Ministry of Justice, which checks whether the naturalisation criteria are met and, if so, includes the applicants in a bill on naturalisation.<sup>79</sup>

<sup>77</sup> Since 1849 the Constitution has only been (substantially) amended four times.

<sup>78</sup> The amendment was adopted 14 April 2015. It is for the Ministry of Justice to decide when the amendment shall enter into force.

<sup>79</sup> See the Danish report on naturalisation procedures at <http://eudo-citizenship.eu/admin/?p=file&appl=countryProfiles&f=CITIMP-Denmark.pdf>

The applicant must fill in a ‘citizenship application kit’ comprising an application form and a form documenting the applicant’s ability to self-support. The applicant is responsible for filling in the forms and for furnishing the necessary documentation. When an application for naturalisation is submitted to the police, a fee of 1000 DKK (about 135 €) must be paid. Fees are not paid for children who are naturalised together with their parents and for some other children. As of 1 September 2015, only applicants for Danish citizenship who have turned 18 have been charged a fee, and from then, the fee is raised to 1,200 DKK (about 160 €).<sup>80</sup>

The police will not play the same role in naturalisation cases in the future. As we have seen, Parliament has amended the Citizenship Act providing for a digital self-service arrangement, and with the introduction of the obligatory digital self-service arrangement, applications for naturalisation shall be submitted directly to the Ministry of Justice and no longer to the police. According to the amendment, applications for naturalisation that are submitted in a way other than by digital self-service will, as a rule, be rejected by the Ministry of Justice. However, if an applicant cannot, owing to special circumstances, use the digital self-service arrangement, the Ministry may allow him or her to apply in another way. The Ministry of Justice may also under certain circumstances refer a case to the police for an interview with the applicant.<sup>81</sup>

The amendment was adopted by votes from all the political parties in Parliament except the Danish People’s Party and the Red Green Alliance. The Danish People’s Party believes that naturalisation is too serious a matter to be settled by digital applications without interrogation by the police. The Red Green Alliance is in principle in favour of a digital solution that may contribute to reduce the unduly long processing time of applications. However, the party finds the possibility of derogation from the digital self-service arrangement too narrow.<sup>82</sup>

Bills on naturalisation are introduced in Parliament in April and October. In order to include an applicant in a naturalisation bill either in April or October, his or her application must be fully examined by the Ministry by mid-January or mid-August respectively. Thus if, for instance, a submitted application is not fully examined at mid-August, the applicant will have to wait until April the following year before he or she can be listed in a naturalisation bill.

The reading of the bills normally takes from two to three months. After their adoption, the Ministry of Justice will notify the persons included and send them proof of their Danish citizenship. Persons whose naturalisation is conditioned by their release from former citizenship will receive proof of their Danish citizenship only after they have documented their release. However, according to an interim provision, persons who are naturalised conditionally and who have not been released from their foreign citizenship by 1 September 2015, from which time multiple citizenship has been tolerated, may subsequently acquire Danish citizenship by submitting a declaration to a regional Danish State Administration Office, without fulfilling any other requirements.

<sup>80</sup> The provision on payment of fees (sect. 12(1)) was amended by the amending the citizenship Act that provided for acceptance of dual citizenship, Act. No. 1496 of 23 December 2014 that enters into force 1 September 2015.

<sup>81</sup> See act no. amending the Citizenship Act, available at <https://www.retsinformation.dk/Forms/R0710.aspx?id=169551>. The bill is available at [http://www.ft.dk/samling/20141/lovforslag/1125/html\\_som\\_fremsat.htm](http://www.ft.dk/samling/20141/lovforslag/1125/html_som_fremsat.htm)

<sup>82</sup> See the Naturalisation Committee’s report concerning the bill, available at <http://www.ft.dk/samling/20141/lovforslag/L125/betaenkninger.htm#dok>

Whilst the Ministry of Justice and Parliament (and so far, the police) share responsibility for the implementation of the rules on naturalisation of foreigners, the Ministry of Justice alone is responsible for issuing citizenship certificates, making decisions about whether a Danish citizen with permanent residence abroad may keep his or her Danish citizenship (sect. 8 (1)), and making decisions on release from Danish citizenship (sect. 9).

Also, the Ministry has competence in other areas, among them decisions on DNA testing in citizenship cases. When the Citizenship Act sect. 1 was amended in 2014, providing for automatic acquisition of Danish citizenship at birth for all children with a Danish parent and those born abroad and out of wedlock, a new provision was inserted in sect 12 (7), establishing that, if necessary, a target person in a citizenship case and the person to whom that person claims consanguinity must participate in a DNA test in order to confirm the relationship. The Ministry of Justice has issued an order on DNA testing in citizenship cases.<sup>83</sup>

Regional authorities such as the regional Danish [state administration] offices, the High Commissioner of the Faroe Islands, and the High Commissioner of Greenland are responsible for the implementation of provisions on the acquisition of citizenship by declaration (by entitlement, see sect. 3, 3A and 4). Persons entitled to Danish citizenship may submit a declaration to these authorities. Once a declaration is received, it cannot be withdrawn. If the conditions specified in the relevant provision of the Citizenship Act are met at the date on which the declaration is received, citizenship is acquired and effective from that date, and a citizenship certificate is subsequently issued to the declaring person. The process of implementation shall, in principle, be uniform, as the Constitution's sect. 44 (1) leaves no room for discretionary decisions. The task of the authorities is merely to ascertain whether the unambiguously formulated conditions are met, in which case citizenship is acquired *ex lege* (by statute). When a declaration is submitted, a fee of 1,100 DKK (about 147 €) must be paid, cf. the Citizenship Act sect. 12 (1).<sup>84</sup> It should be noted that, as of 1 September 2015, the fee was raised to 1,200 DKK (about 160 €).<sup>85</sup>

The competence to make decisions on deprivation of citizenship owing to fraudulent conduct during the procedure of acquisition of Danish citizenship (sect. 8 A), or owing to violation of part 12 and 13 of the Danish Criminal Code (sect. 8 B), lies with the courts of justice (normally the district court where the person concerned lives or resides). It is the responsibility of the prosecutor, at the request of the Ministry of Justice, to institute proceedings for deprivation of citizenship. Proceedings are governed by the rules for the administration of criminal justice.

The Ministry of Justice has published information on the conditions for acquisition and loss of citizenship etc., but there are no public outreach programmes encouraging immigrants to naturalise (or expatriates to reclaim Danish citizenship).<sup>86</sup>

<sup>83</sup> Bekendtgørelse nr. 873 of 4. juli 2014 om dna-undersøgelser til brug for behandlingen af sager om dansk indfødsret.

<sup>84</sup> The rule on payment of a fee in cases of declaration of citizenship was inserted in the Act in 2014 by the amendment providing for entitlement to citizenship for descendants of immigrant born in Denmark.

<sup>85</sup> See the amendment of the Citizenship Act adopted 23 December 2014.

<sup>86</sup> See the Ministry's homepage at <http://www.justitsministeriet.dk/arbejdsomr%C3%A5der/statsborgerskab>

While, as a rule, the legislature's decisions on naturalisation cannot be appealed – at least appeal cannot be made to an administrative authority – the regional authorities' decisions may be taken to the Ministry of Justice and afterwards brought before the Parliamentary Ombudsman and/or a court of justice. Until recently, there was an open question as to whether an applicant could bring the Ministry of Justice's refusal of citizenship before a court of justice. It has now been affirmed by the Danish Supreme Court after a hearing on 5 September 2013 that this possibility exists.<sup>87</sup> However, while there is a right to judicial review as to whether international law obligations have been violated in a naturalisation case, there is no right to judicial review of the applicant's right to acquire Danish citizenship. Such judicial review is precluded by the constitution.<sup>88</sup>

### *Citizenship ceremonies*

Since 2006 the Presidium (the presiding committee) of the Parliament has decided each year to invite new Danish citizens to an official welcoming celebration. All new citizens who have been naturalised during the preceding year and their family are invited to the Citizenship Day where they may listen to speeches and talk with Members of Parliament.<sup>89</sup> These arrangements have been highly valued by the participants.

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<sup>87</sup> According to the Supreme Court judgement of 13 September 2013, an applicant who has not been included in an act of naturalisation has a right to judicial review of whether international law obligations have been violated, and whether for this reason the applicant can claim compensation. Such judicial review does not violate the constitution which, however, precludes judicial review of a claim on acquisition of citizenship. See the judgement on judicial review of decisions on naturalisation at <http://eudo-citizenship.eu/databases/citizenship-case-law/?search=1&name=&year=&country=Denmark>

<sup>88</sup> Ibid.

<sup>89</sup> The initiative comes from the Social Liberals following American and Canadian models.



#### 4. Current political debates and reforms

Unlike several other European countries, Denmark has not formulated a unified approach to the promotion of the acquisition of citizenship. The former government declared that: ‘one shall deserve becoming a Danish citizen’.<sup>90</sup> The present government stipulates that foreigners for whom the integration has succeeded can become Danish citizens.

In 2002 the Liberal-Conservative government expressed a wish to sharpen the conduct and language requirements, among other things because the naturalisation criteria were seen as instrumental in the process of integration. Danish citizenship was seen as something to strive for, a ‘carrot’ reward for foreigners to adapt to Danish society, be independent, learn Danish, and be able to socialise with Danes. In 2005 a new requirement on self-support was introduced.

The Social Democrats have, by and large, accepted the tests and the conduct and self-support requirements that were introduced in the 2000s, which may be seen as a reflection of the trend described in the literature (Howard 2009) of mainstream parties moving further to the right on citizenship issues most likely to capture vote shares going to far right parties. However, in 2013 the requirements were somehow eased by the Social Democratic party-led government in order to avoid exclusion of applicants with less education. The Socialist People’s Party had affiliated itself with the Social Democrats, and the Social Liberals have somehow adapted themselves to the current policy as a governing party. The government’s supporting party, the Red-Green Alliance, has made an effort, but not been able to negotiate more extensive facilitations than already provided for by the government platform. The party has, however, made an impact when financial means have been allocated to reduce the processing time of naturalisation applications. It has also contributed to the now clearly increased possibilities of dispensation from the naturalisation requirements, including demands for language skills and knowledge of Danish society.

Toleration of multiple citizenship has also been evolving. Most parties are now in favour of the acceptance of multiple citizenship, with the Danish People’s Party as an obvious exception. A newly incited debate has centred on Denmark’s international obligations according to the 1989 Convention on the Rights of the Child and the 1961 Convention on Reduction of Statelessness. The opposition parties find that the latter convention is outdated in a time where European countries are threatened by terrorist attacks. In their opinion, Denmark should not be bound to grant stateless applicants born in the country Danish citizenship if they are under surveillance from the security service (but have not been sentenced for having committed a crime against the state). Also, members of the government parties had some reservations in this regard before the 2011 election, but they now adhere firmly to the principle that international convention obligations must be respected.

In August 2014 in a proposal to a new aliens policy, the Liberals declared that they wanted either a new interpretation of the 1961 convention, an amendment, or possibly renunciation of the convention.<sup>91</sup>

<sup>90</sup> The Liberals’ programme (Time for change)’

<sup>91</sup> See the proposal at

<http://www.venstre.dk/Resources/Persistent/4689b69077e55e9c209b150c5727ef7ce1c850b1/Udlaendingepolitik---Danmark-for-dem-der-kan-og-vil---aug-2014.pdf>

In December 2014 the Liberals' proposal was followed by another proposal concerning initiatives to counter radicalisation in Denmark. This proposal came from four parties, the Liberals, the Danish People's Party, the Conservatives, and the Liberal Alliance. They criticised the conventional obligations which they wanted to change in order to make it possible to deprive Danish citizens of their citizenship in case of terrorist activities, regardless of whether the deprivation would result in statelessness. Likewise, they sought to get rid of the obligation to grant Danish citizenship to Danish-born stateless persons who were under surveillance by the security service, but not sentenced for having committed terrorist acts.<sup>92</sup>

In the media, representatives of the Liberals and the Conservatives explained their viewpoints. They sought a discussion of whether all the conventions that are ratified by Denmark can still be considered reasonable. They realise that it may be impossible to expel stateless persons who are either born in Denmark or formerly Danish citizens. Rather, they envisage that such persons may be referred to a tolerated stay in Denmark, thus be deprived of citizenship privileges.<sup>93</sup>

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<sup>92</sup> See the proposal at <http://www.venstre.dk/Resources/Persistent/eda32ce6e01c29de2ae7756e024a51247c8ee934/Initiativer-mod-radikalisering.pdf>

<sup>93</sup> See the article of 3 December 2014 at <http://jyllands-posten.dk/politik/ECE7256398/BI%C3%A5+blok+vil+tage+opg%C3%B8r+med+Statsl%C3%B8sekonventionen/>

## 5. Conclusion

Denmark was originally a rather typical nation- state consisting of several entities. However, after having been defeated in a number of wars, it lost most of its territories. In the nineteenth century, Denmark evolved into a homogeneous nation-state with a political culture and identity based on an interaction between language, people, nation, and state (Østergaard 2000: 143). It has been pointed out that the Danish national identity and political culture combine features of what is often referred to as Eastern European integral nationalism typical of smaller, recently independent, nation-states and the patriotic concept of citizenship in the older Western European state-nations, and that the explanation for this apparent paradox is that Denmark belongs to both families (Østergaard 2000: 144).

Danish citizenship policy should be seen in a broad historical perspective which takes into account Denmark's geopolitical position. When it comes to the naturalisation of foreigners, Denmark has pursued a more exclusive policy than its Nordic neighbours, especially by setting up requirements for longer periods of habitual residence in its territory. Historically, during parliamentary debates on citizenship issues it has been indicated that Denmark has had an immigration policy that differs from other Nordic countries. One of the reasons may have been that the Danish capital is located at the edge of Denmark and very close to Sweden. For instance, around the beginning of the First World War, Members of Parliament were concerned about the fact that ten times as many Swedish citizens moved to and were naturalised in Denmark, compared with Danish citizens who moved to and were naturalised in Sweden. They argued for more restrictive naturalisation criteria, asserting that the Swedish applicants were motivated by the Danish social welfare system, although the Minister for the Interior – in down- to-earth fashion – suggested that the attractive Danish capital close to the Swedish hinterland could be part of the explanation. An even more influential factor has probably been the fact that the only neighbouring country directly connected to Denmark is Germany, which historically has had a strong, competing influence on Denmark; German states were at war with Denmark at the time of its constitution and for a long time immigrants from Germany formed another major fraction of naturalisation applicants.

In recent decades, the legislature has continuously demonstrated that it is divided on matters of immigration and citizenship. A decisive factor is the party composition of the legislature. The former government led the so-called 'contract policy' and in order to retain its credibility by living up to 'the contract' with the voters on crucial questions, it needed to be in agreement with the Danish People's Party, while this party stood firm on restrictive naturalisation criteria. The Social Democrats are now convinced that they cannot benefit from the debate on issues surrounding immigration and citizenship. Therefore, the party claimed before the latest election that as a governing party they would only introduce relatively moderate changes in this area. In addition, while they have been in office they have in several regards pursued a restrictive aliens policy. Recently, this policy has been endorsed even by the Social Liberals.

As matters stand, the present Act on Danish Citizenship dates from 1950 and apart from toleration of multiple citizenship, no regular reform has seriously been considered – in spite of increasing immigration to Denmark and almost comparable Danish emigration.

To sum up, Danish citizenship law was, by and large, consonant with the citizenship legislation of many other European and especially Nordic countries in the twentieth century, excepting the latter's naturalisation policy. This has changed, not only owing to the tougher Danish criteria for the acquisition and loss of citizenship, but maybe even more because some other countries have provided for even easier access to citizenship. Insofar as there has been a converging development, this can to some extent be traced to international agreements and conventions, which have set some standards as well as some limitations. The general contemporary acceptance of multiple citizenship comes on top of this. Another factor is that the threat of terrorism and radicalisation has prompted opposition parties to suggest that, eventually, Denmark may renounce conventional obligations to avoid statelessness. Fortunately, it is not unprecedented that political parties have changed similar views when entering into a new government.

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