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# EUDO CITIZENSHIP OBSERVATORY

## ***REPORT ON CITIZENSHIP LAW: ARGENTINA***

Javier I Habib

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

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# Report on Citizenship Law

## Argentina

*Javier I Habib*

### 1. Introduction

Every person born in Argentinian territory is an Argentinian national. The children of an Argentinian national born in a foreign country can opt for Argentinian citizenship. Foreigners who have resided in the country for two uninterrupted years can acquire citizenship by naturalisation. No one can lose her or his condition of being an Argentinian national.

These principles were turned into law in 1869 and still summarise Argentinian citizenship law. Section 1 of this report sheds light to the ideological underpinnings of the Argentinian model. Since the continuity of this model was interrupted twice — first from 1954 to 1956 and then from 1978 to 1984 — section 1 will also describe the features of the models that replaced the original one and the ideas motivating them. The most interesting observation arising from the historical account of Section 1 is that the liberal citizenship law that Argentina gave to itself at its foundational moment can work appropriately today, despite of Argentina's many social and political transformations over the course of its history.

Section 2 outlines Argentinian citizenship law. The first part of section 2 deals with nationality by birth; the second with acquisition by option, its specificities and procedural rules; the third with naturalisation. The fourth part examines 'citizenship annulation', its causes and implications. The fifth part discusses the impossibility of losing Argentinian nationality and elaborates on the 'suspension of citizenship rights'. Section 2 finishes by explaining the Argentinian position on dual nationality.

The last section reports the latest changes in Argentinian migration legislation, explores the interplay between Argentinian migration and nationality laws and speculates about possible changes in migratory policy.

### 2. The ideological underpinnings of Argentinian citizenship law and its two interstices

*On immigration as a means of progress and culture for South America. Means to foment immigration. International treaties. Spontaneous rather than artificial immigration.*

These statements are included in the title of chapter XV of Juan Bautista Alberdi's *Grounds and Departure Points for the Organisation of the Argentinian Republic*, the book that inspired

Argentina's first and still binding constitution of 1853.<sup>1</sup> 'Do we want to root and acclimatize in South America the British freedom, the French culture, the laboriousness of the European man and of the United States?'<sup>2</sup> asks Alberdi. 'Let us bring living pieces of those habits in the customs of their inhabitants and root them here.'<sup>3</sup> 'This is the only means by which America, today deserted, will come to be an opulent world in a short time.'<sup>4</sup> Alberdi believed that without great populations there can be no cultural development, there will be no substantial progress. Without this, 'everything is small and mean.'<sup>5</sup> 'Put the million inhabitants that today populate these lands in the best possible schooling, as instructed a people as the Swiss canton of Geneva, as the most cultivated city in France, will we have with that a great and flourishing state? Certainly not: a million persons in a territory for fifty millions is a rather miserable population.'<sup>6</sup> Reproduction by itself is too slow a means of population increase, Alberdi maintained. How to attract then the desired immigration? The formula is to ensure, for example by international treaties, the freedoms of property, contract and religion.<sup>7</sup> 'The minister of state who does not duplicate the number of these peoples every ten years has lost his time in bagatelles and trifling things.'<sup>8</sup>

Alberdi's plan was made basic law in the national constitution of 1853, which has subsequently been amended on several occasions and most substantively in 1994.<sup>9</sup> Illustratively enough, in the preamble 'We, the Representatives of the People of the Argentinian Nation' commit to 'securing the blessings of liberty to ourselves, to our posterity, and to all men in the world who wish to dwell on Argentine soil' and article 25 prompts the emerging Federal Government to 'promote European immigration'.<sup>10</sup> Article 20 prescribes that foreigners enjoy all the civil rights of citizens, can exercise their industry, trade and profession, own real estate property, buy and sell it, practice freely their religion, make wills and marry under the laws. The plan was not to impose Argentinian citizenship on immigrants by, for example, establishing a regime of automatic naturalisation. Europeans were expected to come to the new nation to work and communicate their culture; if living in Argentina would make them automatically Argentinian citizens, this might have would deterred them from coming, especially since at that time most European states would have deprived them of their nationality if they acquired a second one. Hence, article 20 makes it clear that foreigners 'are not obliged to accept citizenship'. However, if they wanted to become Argentinians, section 20 provided that foreigners may 'obtain naturalisation papers after residing for two

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<sup>1</sup> 'It has been said that Alberdi, with his *Bases* published in 1852 was the "decisive coauthor", "maximum inspirer", "originator of the text" or "principal ideologist" of the Federal Constitution and that the plan of the "Fundamental Argentinian bill has been taken from Alberdi' Ferreyra, 2012: 145 (quotes omitted).

<sup>2</sup> Alberdi, Juan Bautista, *Bases y puntos de partida para la organización política de la República Argentina*, La Cultura Argentina, Buenos Aires, 1915, p.: 89. In <https://archive.org/details/basesypuntosdepa00albe> (12-02-2016)

<sup>3</sup> *Idem*, p. 89.

<sup>4</sup> *Idem*, p. 90.

<sup>5</sup> *Idem*, p. 90.

<sup>6</sup> *Idem*, pp. 90-91.

<sup>7</sup> See *idem*, p. 91 and ss.

<sup>8</sup> *Idem*, p. 90.

<sup>9</sup> In <http://bibliotecadigital.csjn.gov.ar/Constitucion-de-la-Nacion-Argentina-Publicacion-del-Bicent.pdf> (15-02-2016)

<sup>10</sup> Art. 25 says: 'The Federal Government shall promote European immigration; and may not restrict, limit or burden with any tax whatsoever, the entry into the Argentine territory of foreigners who arrive for the purpose of tilling the soil, improving industries, and introducing and teaching arts and sciences.'

uninterrupted years in the Nation'.<sup>11</sup> For this purpose article 64, par. 12 delegated to Congress the special task of enacting 'general laws of citizenship and naturalisation'.<sup>12</sup>

In 1869 Congress passed Law 346 on citizenship. This law merely further regulated the program established in the Constitution. Section 1, par. 1 states that persons born in Argentinian territory are Argentinian nationals. *Ius soli* seemed to have been in the mind of the writers of the Constitution.<sup>13</sup> They saw it as a universal principle of law, established by the first and most civilized nations of the world, a principle that had been accepted even by the nations that had shown most reticence to accept it.<sup>14</sup> In addition, the authors of the Constitution found it inconvenient to endorse a different principle in a country whose population increases mainly due to immigration. Establishing *ius sanguinis* would have entailed that a great part of the population born in the country in the following years would be foreigners. Law 346 also established that the children of an Argentinian born abroad could opt for Argentinian citizenship, repeated the constitutional clause that foreigners could become citizen by naturalisation by residing two continuous years in the country, established circumstances when such choice would not be available and cases for which the residency period could be justifiably shortened. Another remarkable feature of Law 346 is that it provides no clause on the loss of citizenship. We will fully analyse this law in section 2 of this report, since, in spite of the periods during which it was not in force, it is nowadays still Argentina's law of citizenship.

The plan launched by the constitution, the law on citizenship and an immigration law oriented to grant newcomers land franchises and other facilities<sup>15</sup> modified the social

<sup>11</sup> Adding 'but the authorities may shorten this term in favor of those so requesting it, alleging and proving services rendered to the Republic.'

<sup>12</sup> Two notes on this article: First, with the incorporation of the province of Buenos Aires in 1860 a second part was inserted in this article, which part says "based on the principle of nationality by birth or by option for the benefit of Argentina". Second, today this provision is found in section 75, par. 12.

<sup>13</sup> See the discussion in Ramella, 1978: 29-31.

<sup>14</sup> *Idem*, p. 30, where Ramella transcribes the argument from the repertoire of the discussions of the constitutional assembly. One must say, however, that the argument is puzzling, since in the nineteenth century, *ius sanguinis*, as derived from the Napoleonic Civil Code, was predominant all over continental Europe.

<sup>15</sup> Law 817 of immigration and colonization of 1876 (ley de Inmigración y Colonización, available in [http://valijainmigracion.educ.ar/contenido/materiales\\_para\\_formacion\\_docente/textos\\_de\\_consulta/18%20Ley%20817.pdf](http://valijainmigracion.educ.ar/contenido/materiales_para_formacion_docente/textos_de_consulta/18%20Ley%20817.pdf) (15-02-2016)), is divided into two parts, 'on immigration' and 'on colonization'. Chapter I of the first part creates a general department of immigration. It is relevant that art. 3, which establishes the department's functions, has no single paragraph on the security of borders and control of immigration; everything is about fostering immigration and providing services to the immigrant. In the same line, Chapter II, 'on immigration agents abroad', commissions the general administration to designate agents abroad with the task of promoting immigration to the new country. Chapter V deals with 'the immigrant', who is defined as 'all foreign day labourer, artisan, industrialist, farmer or professor who with an age of less than 60 years, good morality and sufficient aptitudes, may arrive to the Republic to establish himself in it' (art. 12). Art. 14 establishes:

Each immigrant that could sufficiently prove his good conduct and his attitude for any industry, art. or useful office, will have the right to enjoy, in his entry to the territory, the following special advantages:

- 1) Be accommodated and maintained at the expense of the Nation, during a fixed period...
- 2) Be employed in an existing job or industry that he may prefer
- 3) Be transferred at the costs of the nation to the point of the republic where he would want to fix his domicile
- 4) Introduce free of legal burdens ... dresses, domestic furniture, agriculture instruments, tools that are useful for the art. or office they may exercise, and a hunting gun for each adult immigrant...

One of the very few norms concerning immigration control is in the chapter VI, 'on the ships conducting immigrants', which says that captains sailing to Argentina cannot embark passengers coming from lands with people with yellow fever or any other epidemic disease (art. 31). Chapter VIII provides norms concerning the organization and provision of 'allocation and support of immigrants'. The law creates also the General Fund for Immigration, with the objective to finance all expenditures that the state may assume in fostering immigration (Chapter X).

composition of the country in less than fifty years.<sup>16</sup> In 1869 the country had 1,737,076 inhabitants, of which 168,970 had come from Europe the previous decade.<sup>17</sup> The population increased considerably thereafter, resulting in a total of 7,885,237 in 1914, of which 27,3%, 2,184,469 inhabitants were born in non-adjacent (mainly European) countries.<sup>18</sup> To be sure, things did not develop exactly as planned. Alberdi and his fellow thinkers had expected northern European immigration. But northern Europeans went mainly to the United States and Commonwealth colonies. Argentina received mainly Italians and Spaniards.<sup>19</sup> At the same time, the plan to populate the extended productive land in an organized program of parceling and distribution failed due to corruption in the allocation of big parts of the public land to private persons who would rent it to immigrants for sometimes abusive sums, and also due to discontinuity in the policies of the government. The result was the overpopulation of cities. In 1914, 60% of Buenos Aires' city population were immigrants.<sup>20</sup> Rosario had 9,785 inhabitants in 1858 and 222,000 in 1914. Something similar happened in Cordoba.<sup>21</sup> Newcomers would provide remunerated services and establish small industries. But they would not be politically integrated. Immigrants organised Clubs (Club Español), hospitals (Hospital Italiano) and political groups, like the French 'Les Egaux' and the German 'Vorwärts', from which the workers movement would emerge. Promoted by anarchists and socialists coming from Europe during the late nineteenth century, unions emerged in all industries, such as the salesmen, railway workers, cart drivers, bakers, tailors, construction workers unions. In 1904 the Italian neighbourhood 'La Boca' elected Alfredo Palacios as the first socialist deputy in America. The working class neighbourhoods of the burgeoning cities would be the places for political and social movements. The dichotomy populism\oligarchy that is so constant in Argentinian history was already well established.<sup>22</sup>

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The second part of the legislation deals with 'colonization'. The law orders the creation of an 'Agency on Lands and Colonies' that would explore the national territories, measure and divide them. The General Administration would eventually decide what parts will be colonized. The state could concede private companies the same task, under the condition that they take charge of introducing 200 families within 4 years. Special missions would be dedicated to gradually bring native peoples to civilized life and establish them by families in parcels of land. For a discussion of the historical context and the parliamentary debates on this law, see Novick, 2008: 134-137.

<sup>16</sup> Conf. Devoto: 542, who maintains that the rights warranted in the constitution and the laws promoting immigration must be particularly considered by the researcher who is interested in examining the decision mechanisms of the immigrant of that time.

<sup>17</sup> See [http://www.migraciones.gov.ar/pdf\\_varios/estadisticas/Censos.pdf](http://www.migraciones.gov.ar/pdf_varios/estadisticas/Censos.pdf) (16-02-2016). These numbers were given in the first official census, which was made exactly in the year of the enactment of the law 346. The census is available in <http://www.scribd.com/doc/201747339/Censo-de-Argentina-de-1869> (16-02-2016).

<sup>18</sup> Conf. [http://www.migraciones.gov.ar/pdf\\_varios/estadisticas/Censos.pdf](http://www.migraciones.gov.ar/pdf_varios/estadisticas/Censos.pdf) (16-02-2016) and also the national census of 1914 in <http://www.redalyc.org/articulo.oa?id=74011761007> (16-02-2016).

<sup>19</sup> <http://web.archive.org/web/20111130000939/http://www.argentina.gov.ar/argentina/portal/paginas.dhtml?pagina=259> (4-2-2016).

<sup>20</sup> *Idem.*

<sup>21</sup> National census of 1914 in <http://www.redalyc.org/articulo.oa?id=74011761007> (12-02-2016).

<sup>22</sup> The liberal government reacted against the insurgency of revolutionary groups with a battery of laws, such as Law 4.144 on Foreigner's Residence of 1902, (Ley de Residencia de Extranjeros, available in [https://es.wikipedia.org/wiki/Ley\\_de\\_Residencia\\_\(Argentina\)](https://es.wikipedia.org/wiki/Ley_de_Residencia_(Argentina)) (16-02-2016)), which legalised the expulsion of immigrants who 'compromise national security or disturb public order' (art. 2) and Law 7.029 on Social Defense of 1910, (Ley de Defensa Social Reglamentando la Admisión de Extranjeros en el Territorio Argentino, in Boletín Oficial, 8 de Julio de 1910), which provided for the expulsion of anarchists and persons convicted of capital crimes in Argentina.

In a discursive analysis of these law's parliamentary debates, Villavicencio and Penchaszadeh note a radically new conception of foreigner. Sometimes, the foreigner is associated with disease: 'we do not want the mad, alcoholic, epileptic...' or reduced to something like an undesirable animal: 'remove that which can be called human beast'. There is a shared belief in the exigency of choosing the good foreigner at the frontier and deporting the bad. The metaphor of plants, which helps Alberdi conveying his idea of rooting culture in the new

Arts. 20, 25 and 64, para. 11 (today 75, par. 12) of the National Constitution and Law 346 still constitute today's system of acquisition of nationality in Argentina. Yet the law did not apply uninterruptedly since its enactment. Interestingly enough, the probably two most significant facts of twentieth century Argentinian history impacted on the legal citizenship regime. These are government of Juan Domingo Peron and the military dictatorship led by Jorge Rafael Videla. Let me briefly describe the laws that were in force under these regimes before systematically analysing the current legal rules.

The overwhelming inequality in the country, the overpopulated cities, the arrival of socialist and anarchist ideas with the new waves of immigration and the corrupt exercise of power by the prevailing oligarchy resulted in social movements that put Juan Domingo Peron in power. Peron had his own views on citizenship. If Alberdi thought that the republic should 'lavishly offer citizenship and domicile to foreigners without imposing them',<sup>23</sup> leaving every inhabitant of the country free to act as individuals with equal civil rights, Peron thought that individuals in the country were members of the social, political and economic community organized by the National State, and consequently wanted to thicken the relation between the individual and the community. Thus, Law 14.354 (1954), which replaced the Law on citizenship 346, introduced a distinction between citizenship and nationality. To be a citizen is to enjoy political rights, and for this one has to have held nationality for five years. Moreover, acquisition of nationality is now promoted. Art. 31 of the Peronist Constitution (1949-1956) established the institution of 'automatic naturalisation', by which foreigners become nationals after five years of continued residency unless they manifest a contrary will. In addition to that, Art. 31 established that the law will specify causes, procedures and conditions for the deprivation of nationality, including measures to expel foreigners from the country. This regulation was anticipated by Decree 6.605 of 1943,<sup>24</sup> which was the first law to establish and regulate the loss of citizenship. Loss of citizenship was applicable only to naturalised Argentinians who exercised political rights in foreign countries, accepted works or honors granted by foreign governments, made acts that affected the sovereignty, integrity or defense of the Argentinian nation, denigrated the national symbols, had expressed ideas which were contrary to the political institutions of Argentina and its form of government, harmed Argentina's credit or government in foreign lands or, in general, broke in any form the loyalty sworn to the nation. A national who resided continuously abroad for two years was deemed to have lost Argentinian nationality.

In 1955 Peron was overthrown by a so-called 'Revolución Libertadora', composed by the military factions that responded to the opposition, mainly the conservative party, characterised by its liberal ideas and relations with the British Empire. Already in 1956 Law 14.354 was repealed and Law 346 reestablished.<sup>25</sup> From 1956 till 1976, Argentina lived through an unstable period: three elected presidents deposed by three military coups, violence

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republic, is this time used against the undesirable immigrant: 'we must take the bad off from its roots'. Villavicencio and Penchaszadeh argue that the political elites are designing a new morality model with statements sounding as if they were deduced from the liberal constitution. In my view there is indeed some discursive continuity. After all, the regime established in the constitution was not that liberal. The constitution established a regime of promotion of immigration for a clearly useful purpose—populate the vast virgin lands with people that know how to work on it and want to do so. Regulation aimed at ensuring that such people is the people who enter the country and not another kind of people should be consonant with the constitution. Villavicencio & Penchaszadeh: 188.

Devodo: 536, points out that legislation of the kind commented in this note were common in various American states from the beginning the first world war.

<sup>23</sup> "[P]rodir la ciudadanía y el domicilio al extranjero sin imponérselos". Alberdi, Juan Bautista, *op. cit.*: p. 125.

<sup>24</sup> Boletín Oficial, 2 de Septiembre de 1943.

<sup>25</sup> Decree-laws 14.194/56 (Boletín Oficial, 14 de Agosto de 1956) and 14.199/56.



and repression, social and economic crises. During this period the migration agency begins to systematically impose restrictions on immigrations.<sup>26</sup> The percentage of European foreigners in the population dropped from the 29.9% reached in 1914 to 7.2%.<sup>27</sup> 1976 witnessed one of the most enduring *coups d'etat*, the so-called 'proceso de reorganizacion nacional'. The military junta that came to power carried out a systematic plan of official kidnapping, torture and murder of people, spreading terror in society and causing many to go into exile. In May 1978 a new law on citizenship was adopted, Law 21.795,<sup>28</sup> which established a completely new regime. Four points are of special interest: First of all, the law strengthened the division between nationality (which is regulated in title I, arts. 3 and 9) and citizenship (title II, arts. 10 and 24). The law is actually called 'on nationality and citizenship'. Secondly, it reformulated and added requirements for naturalisation. According to art. 5, foreigners must have 'honest means of living' (para. d), know how to read, write and express themselves in intelligible form in the national language (para. e), have knowledge of the principles of the constitution (para. f) and not be mentally handicapped (which applies also to deaf-mute who cannot make themselves understood through writing (para. g). Foreigners must also not be, or have been, members of groups or entities in the country or abroad whose doctrines advocate actions that go against the principles of the national constitution (para. j). They must not be a national, nor to have been a national of a country which is at war with the Argentinian nation (para. l); this provision could be suspended if the foreigner shows in his outward conduct adhesion to the Argentinian cause.

A third notable point of the law was the possibility that nationality in general could be lost or cancelled. Article 7 says 'native Argentinians will lose their nationality' by naturalising in a foreign country (para. a) and by betraying the motherland (para. b). Art. 8 deals with the 'cancellation' of nationality in line with the above-mentioned decree 6.605 of 1943. Nationality could be reacquired, according to art. 9, which right can be exercised only once, when the tribunal considered that the reacquisition of the lost or cancelled nationality is conducive to the purposes of the Argentinian nation. The last notable point of Law 21.795 is its regulation of citizenship. Title 2 of the law, called 'The Argentinian Citizenship', defines that Argentinian citizens are the native Argentinians who are older than 18 years and the naturalised Argentinians who have requested citizenship from the competent authority once three years have passed since they acquired nationality and they have had five years of continuous residency in the territory of the Republic (art. 10). This title also contains the

<sup>26</sup> Courtis & Pacecca: 5 (The authors offer several examples of such restrictions).

<sup>27</sup> I am referring to the period of 1970 [http://www.migraciones.gov.ar/pdf\\_varios/estadisticas/Censos.pdf](http://www.migraciones.gov.ar/pdf_varios/estadisticas/Censos.pdf) (16-02-2016).

<sup>28</sup> Law of Citizenship and Nationality, available in <http://www.infojus.gob.ar/21795-nacional-ciudadania-nacionalidad-Ins0000218-1978-05-18/123456789-0abc-defg-g81-20000scanyel> (16-02-2016).

It is worth noticing that the same military government established for the first time a comprehensive immigration regime, Law 22.439, 'General law of migration and promotion of immigration', of 1981. The following are the most relevant aspects of this regime. The law establishes three categories for the admission of foreigners: permanent residency, temporary residency and transitory residency. Transitory residents are not allowed to do remunerated works. Employers and housekeepers who cooperate with irregular migrants can be severely sanctioned by the administrative authority. The migratory authority can prompt the illegal immigrant to leave the country or expel him immediately. The law establishes also causes for the expulsion of all sort of resident who engage in activities that could affect the social peace, the national security or the public order. For the some ideas on the official motivation of this law, see Novick: 138, where the author transcribes interesting fragments of an interview made with one of the drafters. (The author recurs to an interview because parliament was closed during the establishment of the migration law.)

provisions on ‘loss and cancellation of citizenship’ (arts. 11 and 12) and ‘reacquisition of citizenship’ (art. 14).<sup>29</sup>

Democratic government was reestablished in 1983, when Raúl Alfonsín became president. In line with policies regarding the investigation and judgment of the crimes perpetuated by the military dictatorship, Argentina passed Law 23.059,<sup>30</sup> by which the state replaced Law 21.795 on nationality and citizenship by Law 346 (art. 2) and declared invalid and without any effect all the deprivations and cancellations of Argentinian nationality (art. 3) under the abolished law. The persons who were affected by such acts of the state recovered their Argentinian nationality and citizenship by right. Yet these persons had the choice to not reacquire their citizenship, by expressly stating so towards the competent authority (art. 4).

Summarising the main developments, in 1869 Law 346 established the *ius soli* principle and facilitated the option and naturalisation of Argentinian nationality. The two most significant events of Argentinian twentieth century history, the rise of Peron and the last military dictatorship, had an impact on the Argentinian citizenship laws. Each process aimed at partly replacing Law 346. Both retained the principle of *ius soli*. But both tried to distinguish nationality from citizenship. Moreover, under both regimes it was possible to have one’s nationality or citizenship rights withdrawn. The return to democracy in the 80s came with the definitive reestablishment of the old liberal Law 346. True, in regard to immigration, the Argentina of the last years of the twentieth century was very different from the Argentina of the first years of that century. If in the latter period Argentina received migrants, in the former it produced emigrants.<sup>31</sup> However, its law on citizenship remained the same. As we will see, this law establishes a generous citizenship regime. The idea of nationality as different from citizenship does not dominate. If nationality and citizenship are distinguished, this is due to interpretation. Under the regime of Law 346, no one can ever lose nationality. This may have impacted on the economic recuperation of the 2000s and the return of many emigrants of the 1990.

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<sup>29</sup> Art. 11 says: ‘The competent tribunal will decide the loss or cancellation of the Argentinian citizenship where a) the nationality has been lost or cancelled; b) because of the unjustified non-fulfillment of civic duties in two consecutive national elections or three alternate national elections; c) because of a sentence in the republic for crimes with a prison sentence of more than three years, even if the sentence has been completed or there has been indulgence or amnesty’. Art. 12 says: ‘The native Argentinians can also lose their citizenship: a) because of accepting political functions or honours of another state, or performing military services for another state without the previous authorisation of the national executive power; b) because of a refusal to perform military service in the army forces; c) because of violation of the loyalty owed to the Republic, its constitution and its laws; d) because of offences against the national symbols; because of carrying out activities listed in art. 5, para. j of this law.’ The latter point refers to persons who are members of groups that reject the principles of the national constitution or that employ force illegally. <http://www.infojus.gob.ar/21795-nacional-ciudadania-nacionalidad-Ins0000218-1978-05-18/123456789-0abc-defg-g81-20000scanyel> (16-02-2016).

<sup>30</sup> Law 23.059 ‘Invalidation of nationality and citizenship cancellations during the de facto government’ of 1984 in <http://www.infojus.gob.ar/23059-nacional-invalidacion-cancelaciones-nacionalidad-ciudadania-durante-gobierno-facto-Ins0003154-1984-03-22/123456789-0abc-defg-g45-13000scanyel> (16-02-2016).

<sup>31</sup> On Argentinian immigration see Calvelo.

### 3. Argentinian citizenship law

In the Argentinian legal system there are three main reasons why a person would be deemed an Argentinian national: first of all, if this person was born in Argentinian territory (a citizen by birth, or native Argentinian); secondly, if a person was granted the option to choose Argentinian citizenship and formally chose it (a citizen by option, or Argentinian by option); thirdly, if a person was granted the right to request from the Argentinian state to become an Argentinian national and in fact has formally requested this nationality (a citizen by naturalisation, or nationalised Argentinian). In the Argentinian legal system political rights (to vote and to be elected) are in principle acquired by all Argentinian citizens who are 16 years or older.<sup>32</sup> Citizenship and nationality are synonymous.<sup>33</sup>

#### 3.1. Citizenship by birth in Argentinian territory

The general principle is that the persons born in Argentinian territory are Argentinian nationals (*ius soli*). The National Constitution entrenches *ius soli* under the label ‘the principle of natural nationality’ (Art. 75 para. 12) and the law on citizenship (law 346, Art. 1, para. 1)<sup>34</sup> specifies it by saying Argentinians are all persons who have been, or who might have been born in the territory of the republic, regardless of the nationality of their parents, with the exception of the children of the foreign diplomats and members of foreign delegations residing in the republic.

The principle of *ius soli* applies also to the persons born on Argentinian warships wherever they happen to be (art. 1, para.3, Law 346), people born in the diplomatic and consular Argentinian representations in foreign countries (ibid.) and also to persons born in the high seas or in an international zone and its respective air space under the Argentinian flag (art. 1, para. 5). What happens to those persons who were born in Argentinian territorial waters or in planes flying over Argentinian airspace? According to public international lawyers there are no doubts that they would be Argentinians even if the law does not explicitly provide for this.<sup>35</sup>

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<sup>32</sup> The principle arises from Art.7 of Law 346, which says: ‘Argentinians who may have reached the sixteen (16) years old enjoy of all political rights in conformity with the Constitution and the laws of the Republic.’ However, there are some exceptions. Most importantly, there is the constitutional norm which says that to be eligible as president or vice-president of the Republic the person must have been born in Argentina territory, or abroad but to a native Argentinian (Art. 89 of National Constitution).

In addition, Art. 1 of the National Electoral Code (Law 19.945) says that ‘Electors are the native Argentinians and Argentinians by option from their sixteenth year of age and the naturalised Argentinians from their eighteenth year of age.’. Finally, there are age requirement for access to most of the national political offices, such as a age 25 for National Deputy (Art. 48 National Constitution) and age 30 for National Senator (Art. 55 National Constitution) and President of the Republic (Art. 89 National Constitution).

<sup>33</sup> For an argument from a textual analysis of the constitution see Lonigro. The point is debated in constitutional law. González Calderón holds that citizenship is the same as nationality and the only distinction made by the Constitution is between citizens and foreigners. By contrast, Linares Quintana maintains that nationality refers to a civil law bond between the individual and his or her nation of birth, whereas citizenship is a juridical-political status that depends on satisfying conditions laid down in the law and that – unlike nationality – can therefore also be lost (both authors quoted in Trucco, online source).

<sup>34</sup> <http://www.infojus.gob.ar/346-nacional-ley-ciudadania-Ins0003419-1869-10-01/123456789-0abc-defg-g91-43000scanyel> (16-02-2016)

<sup>35</sup> Oyarzábal, 2003a: 17. However, on pages 17 and 18 the author makes some reservations concerning cases of children born on foreign ships in Argentinian territorial sea.

Persons born in the Islas Malvinas, Gergias del Sur y Sandwich del Sur, which Argentina claims as parts of its territory could in principle claim Argentinian nationality. However the Argentinian nationality of these persons would most likely fail to be successfully invoked against the United Kingdom or against those states who do not recognize Argentina's rights over the above-mentioned islands.<sup>36</sup> For the same reasons persons born in the Antarctic territories that Argentina claims for itself would be Argentinian as well, even if recognition of this status by other states may be uncertain. It is important to notice that the fact of being born in Argentinian territory guarantees Argentinian nationality even if the birth took place during an ephemeral presence of the mother or due to some urgency. In addition, any child that was found in Argentinian territory and whose circumstances of birth are unknown can be deemed Argentinian.<sup>37</sup>

The children born to an Argentinian official representative in a foreign sate are also Argentinian nationals by birth. The law explicitly considers the cases of children of employees of Argentinian officials in foreign states, such as consuls, ambassadors and their employees (Law 20.957 del Servicio Exterior de la Nación) and also delegates to international organizations of which Argentina is a member (Law 17.692). The case of children adopted by Argentinian representatives abroad is less clear. Oyarzábal holds that they should not be declared native in the sense of art. 1 para. 1 of the law 346 but that their nationalisation should be obtained through the process of option established by art. 1 para. 2. The argument is that the former interpretation would constitute an unjustified privilege compared to the children adopted by Argentinians who are not agents of the sate.<sup>38</sup> I disagree. If there is a reason for distinguishing the children born to functionaries and children born to other Argentinian nationals abroad that reason should also apply to the case of adoption. Non-differentiation should be applied to all forms of affiliation or to none of them.

One exception to the principle of *ius soli* applies to persons born to foreign diplomatic and consular agents in Argentinian territory.<sup>39</sup> This provision echoes a longstanding and generally accepted norm of international law and it applies only to representatives accredited with the Argentinian government. If the foreign representatives are at the same time Argentinians then the provision does not apply and the children become Argentinian nationals *ipso facto*. In addition, the children will be Argentinian also where the foreign representative's child was born in Argentina out of wedlock and was never recognized by the foreign father.<sup>40</sup>

This is the place to mention Law 16.569, which deals with the special case of children born to Argentinians during their political exile. These children are considered absolutely equal to those born in national territory (art. 1). They can exercise their right from the moment of their entry to the country by claiming it from the competent judge at the last domicile of the exiled parent, or else, at their new domicile. Beneficiaries can exercise this right once they are 18 years old; in case they are minors the right can be exercised by their legal representatives (art. 2). It must be mentioned that the law does not define a conception of political exile. However, in my opinion, the law endorses a comprehensive conception,

<sup>36</sup> See Travieso, 1986: 703 and ss.

<sup>37</sup> Oyarzábal, 2003a: 18.

<sup>38</sup> *Idem*, p. 19.

<sup>39</sup> Art. 1 para. 1, Law 356.

<sup>40</sup> See the argument in Oyarzábal, 2003a: n. 55, p. 18. Foreign representatives must register their child in the inscriptions department of the civil registry of the city of Buenos Aires. They must provide a certificate of the Foreign Affairs Ministry that accredits them as members of the embassy or consulate at stake. The children are then registered with their parent's nationality. The legal limitations for the choice of names under Argentinian laws do not apply to them either.

including those who left the country out of fear for their life or constitutional freedoms. Accordingly, it would suffice for an interested person to prove that her or his parent left Argentina during a nondemocratic government.

### 3.2. Acquisition by option

Acquisition by option in the Argentinian legal system is defined in art. 1 par. 2 of law 346, which says that children of native Argentinians who were born in a foreign country can opt for their citizenship of origin. Comparative lawyers may be tempted to characterize this mode of acquisition as a form of *ius sanguinis*. This is fine so long as it is done with the specification that the mode of acquisition is firstly, optional, and secondly, restricted to those born to first-generation emigrant Argentinian national parents. So acquisition by option requires two conditions: The legitimated person must formally manifest his or her will of being an Argentinian national and also provide sufficient proof of the fact that he or she has been born to an Argentinian-born parent. But before we briefly explain the procedure to opt for Argentinian nationality it is pertinent to clarify a point.

Argentinian scholars differentiate citizenship by birth (nationality of origin) from acquired nationality, such as acquisition by option or naturalisation.<sup>41</sup> The difference is that when a person is declared to be a native Argentinian the effects of such declaration work retroactively and can be applied to acts or facts regarding the nationality of the person before the declaration. In contrast, when the Argentinian citizenship is acquired after birth, the rights and duties entailed by Argentinian citizenship emerge from the moment of declaration.

#### 3.2.1. Acquiring citizenship by option

An option can be exercised abroad or in the country.<sup>42</sup> Abroad, the person must choose the option before the Argentinian consul at his or her domicile. The consul will check the veracity of the link between the petitioner and his Argentinian parent or parents and whether the parent(s) are indeed Argentinian national(s). The requisite documents are the birth certificate of the father or mother, which must in principle have been issued by an Argentinian civil registry, and secondly, a birth certificate of the person who opts for the Argentinian citizenship, which may be issued by an office of the state where the person was born.<sup>43</sup> Then the consul will proceed to register the minor in the civil registry of the consulate and, within less than thirty days, the consul must notify the National Register of Persons in Argentina. When the interested person is less than 18 years old, the same procedure must be carried out by the person or persons who exercise guardianship for them.<sup>44</sup> Some regulations say that where the guardianship is exercised by both parents, both parents must agree to choose Argentinian nationality for the child, even if one of them is non Argentinian. It has also been

<sup>41</sup> Oyarzábal, 2003a: 20.

<sup>42</sup> The procedure is set out in art.2 of National Decree 3.213/1984, which regulates the law 346. In <http://www.infojus.gob.ar/3213-nacional-decreto-reglamentario-sobre-ciudadania-naturalisacion-dn19840003213-1984-09-28/123456789-0abc-312-3000-4891soterced> (16-02-2016).

<sup>43</sup> Some embassies add other requirements, such as the national identity card of the native Argentinian father or mother, that both parents accompany the person who opts to the consular office, or that the option cannot be exercised outside of the consular office. See <http://csidn.mrecic.gov.ar/node/3262> (16-02-2016).

<sup>44</sup> Art. 2, National Decree 3.213/1984 says ‘por quien o quienes ejerzan la patria potestad’ (in para. 1).

maintained that, given the relevance of the act of acquisition of nationality, other legal guardians cannot exercise this choice on behalf of the minors.<sup>45</sup>

Where the option is exercised in the Argentinian territory, art. 5 of Law 346 says that the children must provide proof of the parental link and Argentinian nationality of the parent before a federal judge. However, article 2 of National Decree 3.213/1984, which (in principle) implements Law 346, establishes that the procedure can also be carried out before the authorities of the national register of persons.

In contrast with the acquisition of nationality by naturalisation, this process does not require an oath before the granting authority.<sup>46</sup> Moreover, it is unnecessary that the person who opts for the nationality resides in Argentina, or that the person can prove his or her capacity to work or good conduct. In relation to the latter point, a national court held that that a criminal profile of the applicant—fraud in the case at stake—is no obstacle for the child of a native Argentinian mother who wants to opt for the Argentinian nationality. The decision observed in more general terms that the acquisition of citizenship by option does not depend on the conditions for acquiring citizenship by naturalisation.<sup>47</sup>

### 3.2.2. *Some questions concerning acquisition by option*

Can children born abroad to a person who is *Argentinian by option* (not native) opt for Argentinian nationality? Scholarly opinion holds that the option is available to the child who has been born in a foreign country to an Argentinian by option. As the legislation does not explicitly discriminate, the judge should not do so either, especially since the Argentinian legal system supports a principle of broad recognition.<sup>48</sup>

Can children born abroad to *naturalised Argentinians* opt for Argentinian nationality? The option is not expressly provided to the child born in a foreign country to an Argentinian by naturalisation. Moreover, the interpretative extension applicable to the above-mentioned case is not straightforwardly applicable to the case at hand, for constitutional provisions give better status to persons who are Argentinians by option than to naturalised Argentinians.<sup>49</sup> However, an exemption has been made in certain cases based on the (rather unintelligible) argument that if the option is available to children of persons born abroad to exiled parents, the option should be available also to the children of naturalised Argentinians.<sup>50</sup>

<sup>45</sup> Oyarzábal, 2003a: 22, supports this rule with a dictum of the Dirección General de Asuntos Jurídicos de la Cancillería (1996).

<sup>46</sup> Art. 5, National Decree 3.213/1984.

<sup>47</sup> 'P., P.R. s/ciudadanía por opción', Juzgado Federal No 2, Sec. Laboral No 5, Mar del Plata, 26/10/1995, quoted by Bidart Campos 1996: 6.

<sup>48</sup> Camara Fed de la Capital, 'De la Cuesta, Carlos' 29/4/1946, in *La Ley*, 42: 569-570; Juzgado Nacional Civil y Comercial Federal, no 10, sec. 19, 'Murat Alexandre Joachim Phillippe s/opcion de nacionalidad' 19/3/1999. *Contra* Wallfisch Lotario, Manuel, 12 de septiembre de 1941, in *La Ley* 23: 879, fallo no 12.109 and Oyarzábal, 2003a: 20, who argues that the law is clear on that the option is for children of native Argentinians and Argentinians by option are not native Argentinians.

<sup>49</sup> Namely, art. 89, which legitimizes Argentinians by option to run for president and vice-president of the republic.

<sup>50</sup> CNCiv. Y Com Fed. Sala 1, 'Ricci Rospigliosi, Felipe Slavador s/opción de nacionalidad', 7/8/2001.

### 3.3. Acquisition by naturalisation

By naturalisation a person acquires both nationality and citizenship. In principle they enjoy equality of rights with native Argentinians. The differences are that they cannot exercise the office of president or vice-president of the Republic (art. 89 National Constitution)<sup>51</sup> and they have no duty to bear arms in defense of the nation and constitution. This last exception holds only during a period of 10 years after naturalisation (art. 21 National Constitution).

#### 3.3.1. Regular naturalisation

The foreigner who wants to obtain Argentinian citizenship may do so by naturalisation. There are two alternatives available, ordinary naturalisation discussed in this section, and special naturalisation examined in the next. Ordinary naturalisation is established in art. 20 of the national constitution, which says ‘foreigners ... may obtain naturalisation papers after residing in the Nation for two uninterrupted years’<sup>52</sup>, and regulated in article 2, para. 1 of Law 346, which refers to citizens by naturalisation as foreigners who are older than 18 years, who have resided for two years in the Republic without interruption and who manifest before the federal judges of their domicile the will to be naturalised.<sup>53</sup> There is no condition of renouncing a foreign nationality in case of either special or ordinary naturalisation. Let us examine the three positive conditions in turn.<sup>54</sup>

With regard to the age requirement one question arises: Does the period of the two years residency count from the person’s 18<sup>th</sup> birthday or can persons who have been residing before apply once they turn 18? The answer is that residency before age 18 also counts. So, if a foreigner arrives to Argentina at age 15 and lives in Argentina continuously she can request naturalisation from the moment she turns 18.<sup>55</sup>

What does Argentina understand by ‘residency’?<sup>56</sup> Courts and authoritative scholars in the field have maintained that the term ‘residency’ must be understood as permanent residence status, which can be granted in the country by the ‘Dirección Nacional de Migraciones’ or abroad by a national consulate. It is argued that the ‘resident’ to which Law 346 refers cannot be understood in disregard of the concept of ‘permanent resident’ established by the laws and regulations relating to migration and promotion of immigration.<sup>57</sup>

<sup>51</sup> For an argument against such discrimination, see Chiacchiera Castro, 2010, maintaining that the constitutional norm by which naturalised Argentinians cannot be candidates for the presidency or vice-presidency of the Republic put Argentina in a situation of liability for breach of international treaties. For a contrary view see Acevedo Miño, 2010.

<sup>52</sup> It says: ‘foreigners enjoy within the territory of the Nation all the civil rights of citizens [...] They are not obliged to accept citizenship. [...] They may obtain naturalisation papers residing two uninterrupted years in the Nation; but the authorities may shorten this term in favor of those so requesting it, alleging and proving services rendered to the Republic.’

<sup>53</sup> ‘Son ciudadanos por naturalización: Inc. 1 Los extranjeros mayores de diez y ocho años que residieren en la República dos años continuos y manifiesten ante los Jueces Federales de sección su voluntad de serlo.’ art. 2, Law 346.

<sup>54</sup> These requirements are repeated in art. 3, National Decree 3.213/1984.

<sup>55</sup> Corte Suprema de Justicia de la Nación, Barrios, Manuel, Fallos 230:244.

<sup>56</sup> Art. 3 National Decree 3.213/1984 specifies: “b) tener dos años de residencia legal continuada en el territorio de la República”.

<sup>57</sup> For all, see Oyarzábal, 2003a: 23-24, the argument in p. 24 note 80. The author refers to law 22.439, which was derogated by art. 124 of law 25.871 (B.O. 21/01/2004). However, the point can be made in relation to the regime established by law 25871, which does work with the category of ‘permanent residency’ (art. 20). In <http://www.infojus.gob.ar/25871-nacional-politica-migratoria-argentina-Ins0004849-2003-12-17/123456789-0abc-defg-g94-84000scanyel> (4-2-2016).

Regardless of its merits, this argument has lost its legal weight. In a recent case, the National Supreme Court understood that the requirement to prove two years residency in Argentina has nothing to do with the category of legal residency; it is rather a question of fact that can be justified by various means of proof.<sup>58</sup> As Oyarzábal very eloquently points out, this decision implies that so-called ‘irregular migrants’ could ask for naturalisation whenever they meet the three conditions for doing so.<sup>59</sup>

So there is case law supporting the claim of the irregular immigrant who wants to become Argentinian by naturalisation. But what are the legal provisions applying to the irregular immigrant who wants to request naturalisation? Art. 20 of the National Constitution says foreigners ‘may obtain naturalisation papers after residing for two uninterrupted years in the Nation.’ Nothing is said about the conditions under which the resident must enter and live in the country. A regulation issued by the migration authority or even a law adopted by Congress cannot modify a constitutional principle which demands no special type of residency but simply two years of residency. The problem with this argument is, however, that generally constitutional amendments are of a programmatic nature, meaning they need to be interpreted by law and administrative regulations to be applicable. And this is particularly the case with citizenship, since the constitution explicitly mandates Congress to pass ‘general laws on naturalisation for the whole nation’ (art. 75, para. 12). Yet, there is still space for argument. Law 346 does not explicitly state that the petitioner must have resided in the country as a permanent resident. The condition is an interpretation of Law 346 in connection with the law on migration. Another interpretation could be offered that an irregular condition of the resident is immaterial for the acquisition of nationality. This interpretation would be in the spirit of Law 346 that was adopted as part of the constitutional mandate of promoting immigration (art. 25 and preamble). This interpretation would also find support from the very letter of the decree which regulates the application of Law 346. In article 4, where the procedure for acquiring citizenship by naturalisation is regulated, it says ‘residency in the country can be proven by means of a certification of the Dirección Nacional de Migraciones, without prejudice with regard to other means available’ (‘sin perjuicio de otros medios de prueba de que pudiera disponerse’). In other words, the certificate of the immigration department is one way of proving residency. There are other means too that may suffice to prove factual residency, which was the case in the court decision mentioned above.

The third and last requirement is to ‘manifest before the federal judges the will to be’ an Argentinian. This is a voluntary and formal act. It is voluntary in the sense that the interested party must have will capacity (thus the requirement of being older than 18, which in Argentina has traditionally been the age of acquisition of legal capacity for acts of civil life) and do it with discernment (know what implications citizenship entails) and freely (not be coerced by external forces). On the other hand, it is a highly formal act. Art. 7 of the decree provides a series of formulas for taking the oath. Various religious or secular formulas can be used, such as ‘Juráis por Dios y estos Santos Evangelios respetar fielmente la Constitución Nacional y las Instituciones de la República?’; or ‘Juráis por Dios, respetar fielmente la Constitución Nacional y las Instituciones de la República?’; or ‘Juráis por la Patria y vuestro honor respetar fielmente la Constitución Nacional y las Instituciones de la República?’.

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<sup>58</sup> Corte Suprema de Justicia de la Nación, Ni, I Hsing s/carta de ciudadanía, día 23 de junio de 2009. Before, one federal court accepted as a proofs of residency a rental contract, the communication of a university that the petitioner was enrolled in a course of studies in regular form and the testimony of witnesses. The court held that the term ‘residency’ must be understood in its factual sense, which may or may not coincide with the category under which the foreigner has been placed by the migration authority. CFed de Paraná, Sosa, Rossana Elizabeth s/Ciudadanía, LS Civ 1996-II-1519.

<sup>59</sup> Oyarzábal, 2003a: see fn 57



Without this specific legal process, which ends with an affirmative decision by a federal judge,<sup>60</sup> no one can become an Argentinian by naturalisation.

It must be noted that in addition to the three requirements, the judge also needs to examine possible impediments for naturalisation, which will be discussed in section 2.3.3.

### 3.3.2. *Exceptional naturalisation*

Article 20 of the National Constitution says that the authorities may shorten the period of two years residency for those who can demonstrate that they have rendered special services to the Republic. Article 2 par. 2 of Law 346 allows for a broad understanding of the term ‘service’. It specifies eight grounds on which the interested person may ask for naturalisation without having spent two continuous years in the country.

The first exception is for those who have worked with probity for the nation or provinces in the country or abroad.<sup>61</sup>

The second exception is for those who have served in the army or assisted the country in war or defence of the nation.<sup>62</sup> Even if Argentina has consistently held a pacifist position during the last 25 years, this provision could be also relevant in times of peace.

The third ground is to have established a new industry or introduced a useful invention in the country.<sup>63</sup> In relation to this ground it has been held that the rejection of Argentinian citizenship to a person holding a degree on artistic design but who fails to comply with the two years residency requirement does not imply that naturalising such professional is not advantageous for Argentina but that such degree is not sufficiently important to obviate the two years residency requirement established by law and art. 20 of the constitution.<sup>64</sup>

The fourth ground is to be an entrepreneur or builder of railways in any of the provinces.<sup>65</sup>

The fifth reason is if a person inhabits one of the established colonies or a colony to be newly established, including national and provincial territories, provided that the interested person possesses real estate there.<sup>66</sup> Article 3(2)e of national decree 3.213/1984 looks like an attempt to update the text of the law by granting the exception to the person who inhabits or promotes the population of the national territory of Tierra del Fuego, Antarctica and the islands of the south Atlantic.

<sup>60</sup> As pointed out in the decision ‘Benatar Macias, Menahem Isaac’, in addition to the factual conditions prescribed in Law 346, there is the need of judicial intervention expressed through judicial sentence. Quoted by Pulvirenti, 2014. The author teaches that the naturalisation procedure is of a hybrid nature, it involves a judicial authority but has the typical character of a government decision. The author makes an interesting legal argument to suggest that the procedure should be done before the national administration with due judicial check in n. 1.2.

<sup>61</sup> Art.2, para. 2.1) Law 346. Article 3, para. 2, a) National Decree 3.213/1984 further specifies ‘to have rendered services to the national, provincial or municipal administrations with probity or in the National territories of Tierra del Fuego, Antártida and Islas del Atlántico Sud[...]’ (‘haber desempeñado con honradez empleos en la Administración Pública Nacional, Provincial o Municipal o en el Territorio Nacional de la Tierra del Fuego, Antártida e Islas del Atlántico Sud, dentro o fuera de la República.’).

<sup>62</sup> Article 2, para. 2.2, Law 346 and article 3, para. 2, b) National Decree 3.213/1984.

<sup>63</sup> Article 2, para. 2.3, Law 346 and Article 3, para. 2, c) National Decree 3.213/1984, which adds ‘or having performed any other action which could signify a moral or material progress for the Republic.’ (‘[O] realizado cualquier otra acción, que signifique un adelanto moral o material para la República.’).

<sup>64</sup> ‘Mkrtchyan, Hayk s/ solicitud de carta de ciudadanía’, Cámara Nacional de Apelaciones en lo Civil y Comercial Federal, sala II, 05/06/2015, in *La Ley* 06/11/2015, 6, con nota (favorable) de Justa M. Roca.

<sup>65</sup> Article 2, para. 2.4, Law 346 and article 3, para. 2, d) National Decree 3.213/1984.

<sup>66</sup> Article 2, para. 2.5, Law 346.

The sixth exceptional ground is to inhabit or populate a national territory within the current borders or beyond.<sup>67</sup> In my opinion, the point of this article is geopolitical. Argentina seems to have been interested in populating the border areas of its territory so as to mark the borderlines of its territory with Argentinian population. It also arises from the article that Argentina must have been interested in extending its territory by occupying land with Argentinian citizens.

The seventh circumstance in which a person may request naturalisation without proving 2 years of residency is to be married to an Argentinian woman in any of the provinces.<sup>68</sup> Article 3, para. 2, f) national decree 3.213/1984 updates this by referring to ‘having a native Argentinian spouse or child’. The sex or gender of the petitioner no longer matters since Argentina recognizes same sex marriages.<sup>69</sup> In addition, the extenuating clause applies also to the person who adopted an Argentinian child abroad and moves him or her to the Republic. Some authors maintain that it also applies to irregular unions of the petitioner with an Argentinian partner.

The last extenuating circumstance is for those who exercise a professorship in any branch of education and occupation.<sup>70</sup> It was the interest of the lawmakers to ‘civilize’ the Argentinian population, in the sense of educating it in the modern European way (see section 1 of this report). Teachers and professors who would like to emigrate would, in principle, find a citizenship in Argentina.

### 3.3.3. Situations impeding naturalisation

National decree 3.213/1984 Article 3, para. 3 establishes three causes that impede the granting of Argentinian citizenship by naturalisation. First, not to have an occupation or honest means of subsistence.<sup>71</sup> This first situation operates more like a requirement for applying to the naturalisation process. Indeed, applicants must accompany a ‘justificación de medios de vida’, such as a work contract or tax payment invoice.<sup>72</sup> A recent decision held that this condition couldn’t be met by submitting a declaration of another person stating that the applicant was economically supported by her or him.<sup>73</sup> The second impediment contemplates the person who is under investigation for a crime in Argentina or abroad for an offence considered in Argentinian criminal law until the closure of the judicial process.<sup>74</sup> The last impeding circumstance contemplates the person who has been condemned for an intentional crime (delito doloso) with punishment involving deprivation of freedom for more than three years, unless the person has already served the sentence and five years have passed since then or since an amnesty was granted.<sup>75</sup>

<sup>67</sup> Article 2, para. 2.6, Law 346.

<sup>68</sup> Article 2, para. 2.7, Law 346.

<sup>69</sup> See Law 26.618 on marriage between persons of the same sex in <http://www.infojus.gob.ar/26618-nacional-matrimonio-entre-personas-mismo-sexo-modificacion-al-codigo-civil-Ins0005610-2010-07-15/123456789-0abc-defg-g01-65000scanyel> (16-02-2016).

<sup>70</sup> Article 2, para. 2.8, Law 346. Article 3, para. 2, g) National Decree 3.213/1984.

<sup>71</sup> Article 3, para. 3 a), National Decree 3.213/1984.

<sup>72</sup> See <http://www.argentina.gob.ar/informacion/44- radicarse-en-la-argentina.php> (15-02-2016)

<sup>73</sup> ‘P. M., M. C. s/ solicitud de carta de ciudadanía’, Cámara Nacional de Apelaciones en lo Civil y Comercial Federal, sala I, in *La Ley* 21/03/2014, 5.

<sup>74</sup> Decree 3.213/1984 Article 3, para. 3 b).

<sup>75</sup> Article 3, para. 3 c), National Decree 3.213/1984.

Is it necessary to speak Spanish for requesting Argentinian naturalisation? Art. 10 para. e) of a decree of 19 of December of 1931 establishes that minimal knowledge of the Spanish language is essential for the acquisition of Argentinian citizenship. Still this decree is only available in a website<sup>76</sup> set up, I assume, for educational and research purposes. The decree is not available in the official legislation database (<http://www.infojus.gob.ar>, 16-02-2016). Moreover, the language requirement, which was present in an earlier version of law 346,<sup>77</sup> is no longer present in the binding version, which is a reason for assuming that the legislator deliberately dropped language proficiency as a requirement for naturalisation. In addition, on Argentina's official website ([www.argentina.gob.ar](http://www.argentina.gob.ar)) which offers complete information to the person interested in initiating the naturalisation procedure there is no reference to language requirements.<sup>78</sup>

Article 11 of Law 346 makes it clear that judges will not be able to deny citizenship based on political, ideological, trade union related, religious or racial reasons.<sup>79</sup> Non-illegal acts of the individuals or their physical features are irrelevant.<sup>80</sup> Notwithstanding, the court will be able to deny citizenship when it has been plainly proved that the petitioner intervened in the public sphere with actions that imply the negation of human rights, the substitution of the democratic system, the illegal employment of force or the concentration of personal power.<sup>81</sup> Oyarzabal has put great emphasis on this clause. In his view, it is not only a power of the judges but also their duty to reject the naturalisation requests of those who have been involved in such activities. They cannot maintain that these actions were carried out abroad, or that a penalty has already been served or that ever since they have shown good conduct in Argentina. The person contemplated in this clause 'is disabled or perpetually deprived of the right to acquire Argentinian nationality by naturalisation.'<sup>82</sup>

### 3.3.4. Naturalisation procedure

The procedure for the acquisition of citizenship by naturalisation is regulated in national decree 3.213/1984.<sup>83</sup> The foreigner who might wish to become a naturalised Argentinian must present him- or herself before the competent *federal judge* in his or her domicile. The foreigner must indicate his or her name and surname (including both his mother's and father's), place and date of birth, nationality or citizenship of origin and domicile. The place and time of birth and the nationality or citizenship of origin must be proven in one of the following ways: through a birth certificate, passport of country of origin with a visa issued by the pertinent Argentinian or identity card issued by the Argentinian federal police. In case that

<sup>76</sup> <http://www.dipublico.org/legislacion/Decreto-s-n-1931.pdf> (16-02-2016).

<sup>77</sup> The Law 21610 had added some impediments to acquiring citizenship by naturalisation in title III of Law 346, 'on the procedures and requirements for acquiring the citizenship card'. Among the impediments, para. a) referred 'to not have elemental notions of Castilian'. Later, law 21.795 derogated that version of law 346 by establishing a new regime. When law 23.059 derogated the law 21.795 to reestablish Law 345, it said 'repealing the other modificatory norms' (art. 2), by which the modification of Law 21610, namely, the incorporation of the language requirement, disappeared. See law 23.059 in <http://www.infojus.gob.ar/23059-nacional-invalidacion-cancelaciones-nacionalidad-ciudadania-durante-gobierno-facto-Ins0003154-1984-03-22/123456789-0abc-defg-g45-13000scanyel#OA002> (16-02-2016).

<sup>78</sup> <http://www.argentina.gob.ar/informacion/44-radicarse-en-la-argentina.php> (13-02-2016) A different position is held by Palacios & Lara Correa, 2007, 1, who maintains that basic knowledge of Spanish is an implicit condition, inherent to the nature of the right. The requirement is basic knowledge, necessary to understand the implications, in terms of rights and duties of having Argentinian nationality.

<sup>79</sup> A clause that is repeated at the end of National decree 3.213/1984, Art. 3, para.3.

<sup>80</sup> National Decree 3.213/1984, Article 3, para.3 *in fine*.

<sup>81</sup> *Idem*.

<sup>82</sup> Oyarzábal, 2003a op. cit., p.: 26.

<sup>83</sup> For a detailed description of the procedure: Palacios & Lara Correa, 2007.

the petitioner cannot provide such documentation, supplementary proof in accordance with the criteria established by the intervening court is permitted. The residency in the country could be ascertained by means of the certificate issued by the national migration department; other means of proof may also be provided.<sup>84</sup> Judges who receive the naturalisation petition can require within three days all sort of reports or certificates which they may find appropriate from Argentinian agencies like to the National Directorate of Migration, the Argentinian federal police and the intelligence service. Based on the information thus provided they will decide whether to grant or deny the naturalisation request within a period of ninety days. All decision must be motivated.<sup>85</sup> If the decision of the judge is to grant Argentinian citizenship to the petitioner, the interested person must take an oath (juramento) before the federal judge in charge. Now the judge issues a 'citizenship card' to the new citizen and the latter presents him- or herself with the citizenship card before the national civil registry to solicit documentation.<sup>86</sup> The national register then communicates to the National Electoral Chamber of the new citizen so that the latter includes him or her in the National Register of Electors.<sup>87</sup>

The juridical process of naturalisation is brief and requires no lawyer for the proceedings. The process is also cost-free for the applicant. The only cost for the petitioner is the publication of the favourable decision in certain newspapers. Still, naturalised citizens can be exempted from this fee on grounds of lack of means. This exception would be grounded in the warranty of art. 16 of the National Constitution, which (according to recent decisions)<sup>88</sup> talks about a *concrete* equality before the law.

### 3.4. Nullification of the (putatively) acquired citizenship

Article 15 of Decree 3.213/1984 provides that the acquisition of nationality by option, naturalisation or in the case of option for the children of Argentinians exiled abroad will be nullified when there has been fraud regarding the facts invoked for the sake of acquisition of Argentinian nationality.

Three remarks are pertinent. First of all, the fact that the person who committed fraud is no longer Argentinian after of the procedure does not mean that the state withdrew his or her nationality. It means that the state found out that he or she has never been Argentinian. This is inferred from the terminology used by the law, which talks about nullification, not withdrawal or deprivation. However, it must be also mentioned that the decree charges judicial authorities with the power to establish the 'nullification' of the citizenship in question, and not to declare the 'nullity' of the citizenship-conferring act. This is important because nullification is not the same as nullity in Argentinian legal dogmatism. Whereas the nullity of an act makes it void from its beginning (and therefore all its effects must be undone), nullified acts are void from the moment of the sentence that found it so, and so the effects are not retroactive.<sup>89</sup> So, theoretically, everything the putative citizen did while

<sup>84</sup> National Decree 3.213/1984, art. 4.

<sup>85</sup> Decree 3.213/1984, art. 5.

<sup>86</sup> Art. 6, Ley 346 and art. 11 National Decree 3.213/1984.

<sup>87</sup> National Decree 3.213/1984, art.12.

<sup>88</sup> Conf. CNCiv y Com Fed, sala 2, 'Bulstein, Eva s/solicitud de carta de ciudadanía', 20/2/1997. Available in <http://www.infojus.gob.ar/camara-nac-apelaciones-civil-comercial-federal-federal-ciudad-autonoma-buenos-aires-bulstein-eva-solicitud-carta-ciudadania-fa97030068-1997-02-20/123456789-860-0307-9ots-eupmocsollaf> (5-2-2016) In the same sense, Chausovsky.

<sup>89</sup> Art. 1046 of former Argentinian Civil Code. <http://www.infojus.gob.ar/340-nacional-codigo-civil-Ins0002653-1869-09-25/123456789-0abc-defg-g35-62000scanyel> (16-02-2016).

enjoying his citizenship that is later nullified counts as acts of an Argentinian citizen. Finally, the nullification of a citizenship-conferring act is absolute, which means that the nullifying action is imprescriptible and can be exercised by any public authority whatsoever. The reason for such characterization is that the infringed interest is public.<sup>90</sup>

Actually, art.15 of the Decree 3.213/1984 says that the National Migration Agency (Dirección Nacional de Migraciones), the Federal Police Agency (Policía Federal Argentina), the Intelligence Secretary of the State (Secretaría de Inteligencia de Estado), the National Register of Persons (Registro Nacional de las Personas), the National Register of Recidivism and Criminal Statistics (Registro Nacional de Reincidencia y Estadística Criminal y Carcelaria) or any other public or private agency are obliged to denounce fraud when they learn about it. The denunciation goes to the public prosecutor who acts as contrary part. The abovementioned agencies can also involve themselves in the process. The accused has the right to reject the charge within 15 days and to offer pertinent proof. He or she will be notified at his or her last domicile or by public notification. The accused has a right to public defense.<sup>91</sup> In case of annulation the judge will give notice to the migration office to the effects that the latter considers the situation of the person who is now a foreigner in the country.<sup>92</sup>

Authoritative scholarship has posed the question whether a person's citizenship can be nullified if the person thereby becomes stateless.<sup>93</sup> In my opinion such nullification would contradict the underlying principles of the Argentinian system. For, as I show in more detail in section 2.5.1, Argentina strongly supports the idea that states should avoid acting in ways that result in a person becoming stateless.

### 3.5. Suspension of citizenship rights

#### 3.5.1. Argentinian citizenship can never be lost

In conformity with international conventions signed by Argentina and made an integral part of its constitution, the state cannot arbitrarily deprive its citizens of their nationality.<sup>94</sup> In

<sup>90</sup> Conf. Justice Bulygin in 'Schwammberger jose s/ cancelacion de ciudadania', 20/03/90, Cámara Nacional de Apelaciones en lo Civil y Comercial Federal, Sala 3. In the case, the prosecutor alleged that citizenship would not have been granted to Mr. Schwammberger if the judge had known that Mr. Schwammberger was an SS official. <http://www.infojus.gob.ar/camara-nac-apelaciones-civil-comercial-federal-federal-ciudad-autonoma-buenos-aires-schwammberger-jose-cancelacion-ciudadania-fa90030118-1990-03-20/123456789-811-0300-9ots-eupmocsollaff#> (16-02-2016)

Art. 387 of the new Argentinian Civil and Commercial Code says 'Absolute nullity. Consequences. Absolute nullity can be declared by the judge, even without a request, if it is present at the time of sentencing. It can be argued by the Public Ministry [the body of public prosecutors] and by any interested party, but not by the party invoking his or her own blunder to achieve a benefit...'. In <http://www.infojus.gob.ar/26994-nacional-codigo-civil-comercial-nacion-Ins0005965-2014-10-01/123456789-0abc-defg-g56-95000scanyel> (16-02-2016).

<sup>91</sup> Art.15, National Decree 3.213/1984.

<sup>92</sup> Art.18, National Decree 3.213/1984.

<sup>93</sup> Oyarzábal, 2003a: 29 (no 82).

<sup>94</sup> Art. 15 of the International declaration of human rights says:

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

Art. 20 of the American Convention of Human Rights declares:

1. Every person has the right to a nationality.

2. Every person has the right to the nationality of the state in whose territory he was born if he does not have the right to any other nationality.

3. No one shall be arbitrarily deprived of his nationality or of the right to change it."

Argentina this means that no reason at all would be a justification for Argentina to revoke someone's nationality. The argument invoked most often is that if Argentina could by some reason deprive its nationals of their citizenship, there will be the possibility of statelessness, which is something that by all means should be avoided.

What is more, Argentina does not allow its citizens to renounce their Argentinian citizenship. A recent decision concerning two Argentinians who wanted to renounce their nationality to acquire the Lithuanian one stated: 'The renunciation of nationality effectuated by a naturalised citizen must be understood only as the renunciation to the exercise of political rights, without that implying that the renouncer loses the character of naturalised Argentinian in accordance with Law 346.'<sup>95</sup> The right to enjoy a nationality is a fundamental human right, of which no one can be deprived of. As no one can be deprived of his or her nationality, the argument went, a person cannot renounce his or her nationality either. Involuntary withdrawal and voluntary renunciation are thus considered under the same doctrine.<sup>96</sup> In my opinion something more must be said to justify this stance. First of all, voluntarily renouncing one's nationality is clearly not the same as to be deprived of it by someone else against one's will. Secondly, if the consideration is that otherwise the petitioner would become stateless, this argument does not hold if the petitioner is going to acquire the Lithuanian nationality. Rua advances a reasonable consideration. In Argentina the vote is not only a right but also a duty. Argentinians have the duty to elect authorities where the constitution demands it (art. 37 National Constitution). If one could renounce one's citizenship rights, one could avoid performing a constitutional duty.<sup>97</sup> Notwithstanding, international comparative lawyers have pointed out that the Argentinian norm according to which a person cannot renounce his or her nationality is not in line with international principles,<sup>98</sup> which include the right to change one's nationality.<sup>99</sup>

### 3.5.2. Suspension of political rights

There are certain circumstances under which an Argentinian will not lose nationality but have his or her political rights suspended.<sup>100</sup> The first case is where he or she adopts a foreign nationality through naturalisation. The second case is where the person has rendered services to or received honours from a foreign country without authorisation by Congress.<sup>101</sup> The third case concerns fraudulent bankrupt. The fourth and last instance in which a person will be unable to exercise his or her political rights is where he or she has been condemned to a

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These conventions were made part of the Argentinian constitutional order by art.75, para.22 of the National Constitution. (These conventions are so important in Argentinian constitutional culture that constitutionalists discuss whether these conventions have constitutional status or supra-constitutional status. See discussion in Ayala Corao, 2016: 141 and ss.)

<sup>95</sup> Cámara Nacional Electoral, 'Simoliunas, Christian David y Federico Javier', 5 de marzo de 2009, in *La Ley* 2009-D: 243, con nota de María Isabel Rua, at p. 243, inferring its claim from article 16 decree 3213/84, which says 'The suspension of the exercise of political rights in accordance with the provisions of Article 8 of Law 346 and the lack of will to regain this exercise according to the last part of Article 4 of Law 23,059 do not deprive of rights or exempt from the obligations of Argentina nationality, whether native or acquired.'

<sup>96</sup> Rua, 2009: 243 and ss.

<sup>97</sup> *Idem*, p. 245.

<sup>98</sup> Vonk, 2014: 85.

<sup>99</sup> Universal Declaration of Human Rights, Art. 15, para. 2.

<sup>100</sup> All these circumstances are enumerated in art. 8 Law 346.

<sup>101</sup> Of course there are conditions under which such honours could be accepted and used, which are established in Law 23.732. <http://www.infojus.gob.ar/23732-nacional-autorizacion-ciudadanos-argentinos-recibir-condecoraciones-otros-estados-lns0003566-1989-09-13/123456789-0abc-defg-g66-53000scanyel> (16-02-2016).

dishonourable or capital punishment. This last provision is a strange one, given that capital punishment is totally alien to Argentinian criminal law.

Both the suspension and the rehabilitation of the exercise of citizenship rights are decreed by the national electoral courts. The competent judge is that of the last Argentinian domicile of the person according to the national register of electors.<sup>102</sup> When the domicile is unknown or has been established in a foreign country, the competent judge will be at the national electoral court of the city of Buenos Aires.<sup>103</sup>

The electoral judge decrees the rehabilitation of the exercise of the citizenship rights where the disabling causes have ceased to exist. If the disabling causes remain, the judge will be able to reconsider them only based on a request by the interested party.<sup>104</sup>

### 3.6. Dual Nationality: International Conventions

Dual nationality occurs where a person is recognized as a national by more than one state.<sup>105</sup> In the mid twentieth century dual nationality was considered an anomaly. The principle was: to each person one citizenship. Today, the principle has changed. Argentina puts no bar to a person having two or more nationalities. In a recent case the Supreme Court said that ‘the acquisition of a nationality which is different from the nationality of origin is perfectly admissible and so it is that a person could opt for the Argentinian nationality or naturalise without losing the nationality of origin, or inversely, an native Argentinian can, by option or naturalisation, choose a foreign nationality without even having to renounce the Argentinian nationality.’<sup>106</sup>

Dual nationality, however, can be problematic.<sup>107</sup> If the two countries are engaged in a war against each other, which country should a dual national have to fight for? If a tax is based on the person’s assets, to which country should the person pay? Can a person elect authorities in two different democracies?

Countries have signed conventions to provide solutions for the issues that typically arise where a person possesses two or more nationalities. These conventions establish the nationality that will prevail in cases where it must be decided which of both nationalities must be taken into account without abolishing the other nationality.

Argentina has signed two major conventions of this kind, one with Spain and the other with Italy.<sup>108</sup> Original citizens of one state can acquire the nationality of the other under the

<sup>102</sup> Camara Nacional Electoral. Capital Federal, Ciudad Autónoma De Buenos Aires, 12 de Febrero de 2015, ‘Vilasante, Verónica Cecilia s/ Exclusión del padrón electoral - Art. 8 ley 346 (Ciudadanía española)’, <http://www.infojus.gob.ar/camara-nacional-electoral-nacional-ciudad-autonoma-buenos-aires-vilasante-veronica-cecilia-exclusion-padrón-electoral-art-8-ley-346-ciudadanía-española-fa15140012-2015-02-12/123456789-210-0415-1ots-eupmocsollaf> (16-02-2016).

<sup>103</sup> Art.14, Decree 3.213/1984.

<sup>104</sup> Art.9, Law 346.

<sup>105</sup> See Oyarzábal, 2003b.

<sup>106</sup> CSJN, sentencia de 10 de abril de 2007, XL 330:1436, consideration 6. See the commentary in Rua, 2008.

<sup>107</sup> See Rua, 2008, 2004.

<sup>108</sup> The treatise with Spain was signed in Madrid, 14 April 1969. Approved by Law 18.957 of 23 of March of 1971 in Boletín Oficial 30 de marzo de 1971. (The substance is in Arts. 1 and 4) Accidental modifications in an additional protocol between Argentina and Spain approved by law 25.625 de 117 de Julio de 2002: BO 14 de agosto de 2002. Binding since 1 October 2001. The treatise with Italy was signed in Buenos Aires 29 october 1971. Approved by law 20.588 de 29 de November de 1973 in Boletín Oficial, 7 de febrero de 1973. Binding

conditions established by the legislation of the state granting the new nationality. The acquisition of the new nationality does not entail the loss of the previous one but merely the suspension of the rights inherent in it. Accordingly, the person becomes bound to the legislation of that one of the two countries where she resides and in no case to the legislation of both countries simultaneously. The treaties refer to the exercise of both public and private rights, and especially to the granting of passports, political rights and diplomatic protection. For example, the country of the original nationality renounces to exercise diplomatic protection while the person is subjected to the laws of the other country. By the same legislation the fulfillment of military obligations in one country will be deemed unnecessary if the national is residing in the country of his or her other nationality. The domicile transfer to the country of origin automatically entails the recuperation of all the rights and duties inherent to the anterior nationality.

Rua explains that these conventions were signed in a moment where dual nationality was generally not tolerated. States exposed to processes of emigration would not want that their migrant citizens lose their citizenship as an effect of their affiliation to other states. They could have either changed their internal legislation or signed international treaties. The second was the case of Italy and Spain during the 1970s. They signed agreements with Argentina because they were interested that the Spanish and Italians acquiring Argentinian nationality preserve the Spanish and Italian nationality. Later, however, Spain and Italy changed their internal legislation concerning dual nationality. These states followed the international tendency of accepting dual nationality.<sup>109</sup> As automatic loss of nationality as a consequence of voluntarily adopting a foreign one disappeared from these legal orders, the above-mentioned bilateral treaties lost their point. Thus, in March 2001, Spain and Argentina signed an additional protocol to their dual nationality treaty, according to which the citizen who acquires a new nationality will be able to enjoy the benefits of both nationalities whenever they are not incompatible, expressly mentioning the right to obtain and renew passports of both countries and other identity cards. In August 2005 Argentina and Italy signed a similar document.<sup>110</sup>

Argentina has treaties that regulate the military duties of Argentinians that are also nationals of France, Italy, Spain, Sweden, Norway, Denmark, Finland, Belgium, United Kingdom and Northern Ireland, Austria, Germany and the Netherlands. The bi-nationals that have rendered military services to the state of his or her domicile or residence, or who have been exempted from rendering those services, or have rendered an alternative civil service will not be called to comply with the military duties of the other country in times of peace.<sup>111</sup>

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since 12 September 1974. Accidental modifications in an Act signed in Buenos Aires, 6 December 2002. All these documents are available in Oyarzábal, 2003a: 83-89. See the interesting study by Boggiano, 1973.

<sup>109</sup> According to art.11 of the 1978 Spanish Constitution, no native Spaniard can be deprived of his or her nationality. The Italian citizenship act, No. 91 of 5 February 1992, Art. 11, says 'A citizen who already has, or has acquired or re-acquired a foreign citizenship shall retain Italian citizenship, but may renounce the latter where he or she resides or establishes residence abroad.' [http://eudo-citizenship.eu/NationalDB/docs/IT%20Act%2091%201992%20\(consolidated,%20English\).pdf](http://eudo-citizenship.eu/NationalDB/docs/IT%20Act%2091%201992%20(consolidated,%20English).pdf) (16-02-2016).

<sup>110</sup> Conf. Rua, 2008: no V *in fine*.

<sup>111</sup> See further in Oyarzábal, 2003a: 44 and ss (no 139).



#### 4. Conclusions: Argentinian migration law, its relation with the citizenship law, and final reflections

The National Constitution (1853\60) and Law 346 (1869) established a fully specified legal regime of citizenship acquisition and rights: Every person born in Argentinian soil is an Argentinian national; children to native Argentinians can opt for Argentinian citizenship; and foreign persons can request naturalisation after residing in the Republic for two uninterrupted years; the main effect of citizenship acquisition is the acquisition of political rights. This original legal regime was suspended at two occasions, first during the social movement led by president Peron (law 14.354, valid from 1954 to 1956) and secondly during the last military dictatorship (law 21.795, valid from 1978 to 1984). From 1983 the original legal regime was reestablished and it has been uninterruptedly functioning until today.

Since the 1980s immigration originates in Latin-American countries like Bolivia,<sup>112</sup> Paraguay<sup>113</sup> and Peru,<sup>114</sup> and from Asia and Eastern Europe. Most recently migrants have arrived from Colombia, Cuba, Venezuela, Senegal and Ecuador.<sup>115</sup> The Spanish economic crisis of 2008-2013 has triggered an influx of Spaniards to Argentina. In 2010 alone, 24,000 Spanish citizens immigrated to Argentina.<sup>116</sup> The last Argentinian government, beginning in 2003 with Nestor Kirchner and finishing in 2015 with Cristina Fernandez, did not attempt to modify the legal citizenship regime. Yet the government did modify the laws and regulations concerning the requirements for entry and stay of foreigners.

In 2004 Argentina established a new regime of migration, the Law 25.871 on Argentinian Migratory Policy,<sup>117</sup> which replaces a regime that dates from the laws last military dictatorship.<sup>118</sup> There are two key ideas to understanding this law. First of all, the law treats immigrant from the perspective of human rights. For example, the law talks of the 'right to migrate' as an essential and inalienable right of the person and it grounds this right on a basis of equality and universality.<sup>119</sup> It is a duty of the migration authorities to ensure that any person who has solicited residency enjoys admission criteria and procedures which are non-discriminatory in terms of the rights and warranties established by the National Constitution, international treaties and binding conventions.<sup>120</sup> Also there is the right of

<sup>112</sup> In 1980, the National Institute of Statistics and Census (INDEC) registers 118.141 Bolivians in the total population, in 1991, 143.569 and in 2001, 233.466, a relative increase of 97, 6 per cent. See the numbers in Cerrutti: 14.

<sup>113</sup> In 1980, the INDEC registers 262.799 Paraguayans in Argentina, in 1991, 250.450 and in 2001, 88.260, a relative increase of 23,7 per cent. *Idem*.

<sup>114</sup> In 1980, the INDEC registers 8.561 Peruvians, in 1991 15.939 and in 2001, 233.466, a relative increase of 931,0 per cent. *Idem*

The total number of persons coming from neighbor countries increased from 761.989 in 1980 to 1.011.475 in 2001. *Idem*

<sup>115</sup> Of a foreign population of 1,805,957 registered in 2015, there are 68,831 persons born in non-adjacent American countries, excluding Peru, 31,001 born in Asia and 2,738 born in Africa. INEC Report, p. 5, in <http://www.indec.gov.ar/desaweb/comunidadeducativa/migraciones.pdf> (16-02-2016).

<sup>116</sup> Some of these are return migrants originating from Argentina, who have acquired Spanish citizenship after of their migration to Spain during the Argentinian 2002 economic and political crisis. See Irigaray, J., 'Los españoles emigran otra vez a Argentina,' [Spanish migrating to Argentina once again], in *El Mundo*, 30-11-2010. In <http://www.elmundo.es/america/2010/11/30/argentina/1291145340.html> (16-02-2016)

<sup>117</sup> <http://www.infojus.gov.ar/25871-nacional-politica-migratoria-argentina-Ins0004849-2003-12-17/123456789-0abc-defg-g94-84000scanyel> (16-02-2016)

<sup>118</sup> Law 22.439, 'General law of migration and promotion of immigration', of 1981. See note 37.

<sup>119</sup> Art. 4, Law 25.871.

<sup>120</sup> Art. 3, para. f), Law 25.871.

family reunification<sup>121</sup> and integration into Argentinian society.<sup>122</sup> Art. 7 says that ‘in no case the migratory irregularity of a foreigner will impede admission as a student in an educational institution, public or private, national or provincial, primary, secondary, tertiary or university. The authorities of such institutions shall provide orientation and advice in relation to the procedures pertinent to offset the migratory irregularity.’ Article 8 makes a similar provision in relation to access to health and social assistance. Several provisions are dedicated to develop the duties of state agencies in relation to information and counsel of the immigrant. With this, Argentina aims at harmonizing its legal system with its ‘international commitments on the integration, mobility and human rights of migrants.’<sup>123</sup>

The other characteristic of the new immigration regime is its specific concern with the immigration from neighbouring countries. For example, art. 28 talks about the ‘possibility to establish differential schemes of treatment between the countries that form a region with Argentina [...] prioritizing the necessary measures for the achievement of the final goal of free circulation of persons in MERCOSUR’. As Courtis & Pacea point out, the new law acknowledges the composition of the ‘real’ migration fluxes of today, which is obviously highly beneficial for Latin-American migrants but also for the Argentinian state, specifically in relation to its need of regularizing the situation of undocumented migrants.<sup>124</sup> The migration law was accompanied by a battery of administrative regulations in such sense, the most famous of which is Disposition 53.253 of the National Direction of Migration (13/12/2005) which established a program of normalisation of migratory documentation for foreigners coming from MERCOSUR and associated states, better known as ‘Programa Patria Grande’.

Through the program ‘Patria Grande’ all person coming from Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay and Venezuela can obtain a ‘precarious residence’ status, which allows them to remain, leave and reenter the country, and to study and obtain a fiscal code for working purposes. The precarious residence is convertible into permanent residency and persons proving a parental link with a native or optional Argentinian or with a foreigner with permanent residency are straightforwardly entitled to a permanent residency certificate. It is mentioned that ‘patria grande’ is not amnesty program but a state policy with an orientation towards the future. As to the program’s results, the authorities have celebrated it. In August 2010 there were 423,697 persons enrolled in the program; the authority granted 98,539 permanent residencies and 126,385 temporary residencies. However, a large number (187,729) of the enrolled persons failed to get documentation for not completing the procedure. Six out of ten persons that initiated the procedure are Paraguayans. Together with Bolivians and Peruvians the form the 94.55% of the number total of the program’s beneficiaries.<sup>125</sup>

In conclusion, one could say that the legal immigration regime is the doorstep of the citizenship regime—the immigration law prevents, restricts or gives free entrance to the persons who could eventually be in a condition of requesting naturalisation. In this connection, it is interesting to observe how Law 346 could work effectively with two very different migration policies. This law was established in a context where Argentina wanted to

<sup>121</sup> Art. 10 establishes a right of reunification of immigrants with parents, spouses, single minor children or adult children with different capacities. See also Art.3, para. b.

<sup>122</sup> Article 14 establishes a series of specified duties of the national and provincial state geared to the realisation of such integration. See also Art.3, para. e.

<sup>123</sup> Art Art. 3, par para. a).

<sup>124</sup> Courtis, & Pacea: 10.

<sup>125</sup> Dirección General de Migraciones, ‘PATRIA GRANDE: INFORME ESTADISTICO’, Agosto 2010, at p. 25. In [www.migraciones.gov.ar/pdf\\_varios/estadisticas/Patria\\_Grande.pdf](http://www.migraciones.gov.ar/pdf_varios/estadisticas/Patria_Grande.pdf) (16-02-2016).

attract Northern European people so that they populate and work its vast, virgin lands. Thus Argentina would become a prominent nation. One hundred and thirty years later the same law works with a totally different immigration law. The new law of immigration welcomes the immigrant – not for a certain purpose but because it believes that that is the right thing to do. Now, Law 346, which was made for the laborious northern European who felt so comfortable in the new land that they wanted to become Argentinians, works perfectly well with the Latin-American immigrant.<sup>126</sup> What will the future of this law be? Most probably the regime of nationality will not change. But the immigration regime may. In recent declarations, the current Minister of the Interior (in office since 2015) stated: ‘We have to recover the idea of progress, which means that in Argentina, no matter where you come from, if you are determined to work, to comply with the law, you have secured your family’s development, including their identity cards.’<sup>127</sup> May be we are witnessing a turn back to the origins. It would not be surprising that the government in office since 2015 finds inspiration in the ideals of the national founders: progress and civilization.

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<sup>126</sup> For administrative hurdles faced by immigrants see Courtis, C. and Penchaszadeh, A.P., 2015. ‘El (im) posible ciudadano extranjero. Ciudadanía y nacionalidad en Argentina’, *Revista SAAP* 9(2), pp.375-394.

<sup>127</sup> “Tenemos que recuperar la idea del progreso, que en la Argentina -no importa de dónde vengas-, si estás decidido a trabajar, a cumplir con las leyes, tenés garantizado el desarrollo de tu familia, con sus documentos de identidad”, expresó Rogelio Frigerio, el ministro del Interior, Obras Públicas y Vivienda, en la sede central de la Dirección Nacional de Migraciones (DNM), en ocasión de la celebración de un nuevo aniversario de la institución.” <http://www.migraciones.gov.ar/accesible/indexP.php?noticia=3000> (10-2-2016)

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