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COUNTRY REPORT: BELARUS

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Report on Belarus

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Belarus

Iryna Ulasiuk

1 Introduction

After the disintegration of the Soviet Union and the subsequent formation of fifteen independent states, the issues of citizenship have proved to be extremely contentious in the former republics. As Ginsburg (1992: 1) put it, ‘sorting out who will “belong” to whom’ inevitably entailed a range of problems, legal considerations but also ‘such primal (volatile) concerns as ethnic affiliation, cultural affinity, minority entitlements, and human rights’. The ‘zero option’ adopted in Belarus with the introduction of the new citizenship law granted citizenship¹ to all the individuals, who at the moment of the entry into force of the law (12 November 1991) were residing permanently on the territory of the Republic of Belarus. However, while the Soviet Union was quickly dissolving, many citizens of the then Byelorussian Soviet Socialist Republic (BSSR) found themselves in other Soviet republics. This led to a situation in which they acquired a new citizenship (other than Belarusian). In some cases this acquisition was in correspondence with the will of the persons concerned, in others, the latter were just unaware of the fact. Similarly, many citizens of the USSR, residing permanently in Belarus, automatically acquired Belarusian citizenship when the corresponding law came into force, sometimes not knowing that they were also citizens of other republics. Further complexity was added where persons who held BSSR citizenship, but who happened not to be residing permanently there on 12 November 1991, lost it, independently of their own will. As a result, families were ‘separated’: spouses, parents and children ended up being citizens of different states.² The most recent 2002 citizenship law with subsequent amendments aimed at redressing the described complexities and responding to present day necessities. To what extent this goal has been achieved or has remained an unfulfilled objective will be explored in the present report.

The report is informed by an in-depth study of legislative and policy documents, supplemented by references to research done so far³ in order to provide a better understanding of the actual ways in which citizenship issues are managed in the Republic of Belarus. The argument is structured in three parts. The first part familiarises the reader with the historical development of the Belarusian state as a necessary background for comprehending present day citizenship laws and policies. The second part presents an overview of laws and regulations governing citizenship issues in Belarus through the prism of international standards. Although Belarus is not a member of the Council of Europe and thus not a party to the 1997 European Convention on Nationality, an attempt will be made to see whether and to what extent Belarusian legislation voluntarily complies with the requirements of the

¹ Similarly to other countries of the former Soviet Union, the Belarusian legislator makes a distinction between the terms ‘citizenship’ and ‘nationality’. Whereas ‘citizenship’ makes reference to the legal bonds of the person with the state; ‘nationality’ is associated with the ethnicity of the person. <http://eudo-citizenship.eu/citizenship-glossary/terminology>.

² К. Anufrievich, ‘The Law Divided My Family’ [Ануфриевич К., Закон разделил мою семью], *Sovetskaiia Belorussia*, 11 November 1996; Yu. Belous, ‘Without Citizenship but with Two Passports?’, [Белоус Ю. Если без гражданства но с двумя паспортами?], *Soiuz Belarus-Rossia*, 11 October 2001.

³ There is an obvious lack of English language material on Belarusian citizenship and even materials in the original languages (Russian and Belarusian) are not easily traceable.

Convention, together with other relevant international instruments. The third part addresses two issues which are currently debated in Belarus, namely dual citizenship and Belarusian reaction to the introduction of the ‘Polish Ethnicity Card’ by Poland. The conclusions sum up the most important findings of the report.

2 Historical background and changes

The history of Belarus ‘has been exceptionally intertwined’ (Sanford 1997: 231) with that of Kievan Rus, Lithuania, Poland and Russia. In the fourteenth century the Belarusian lands became part of the Grand Duchy of Lithuania. The 1569 Lublin Treaty united Poland and the Grand Duchy in a Commonwealth of the two nations that later became known as the Polish Republic. From the partitioning of Poland in the late eighteenth century up to the 1917 revolution, Belarusian lands were part of the Russian Empire. In 1918, an independent Belarusian state – the People’s Republic of Belarus – was proclaimed. However, its existence lasted only for a few months ‘due to the overwhelming odds against it’: the presence of foreign armies, claims on its territory by Russia and Poland, and the Belarusian population’s low national consciousness (Zaprudnik 1998: 51).

In 1921, the Treaty of Riga divided the country between Poland and Soviet Russia, with the eastern territory becoming part of the BSSR, proclaimed in 1919. The Belarusian lands were reunited twenty years later, in 1939. One of the first acts of the government of Belarus concerning citizenship was the Decision of the Sovnarkom (Government) On Granting Belarusian Citizenship to Foreigners adopted on 19 November 1921. Less than a year later, on 4 August 1922 it was replaced by a more comprehensive Law on Foreigners which stipulated a detailed procedure of the acquisition and loss of Belarusian citizenship.

According to this law, all subjects of the former Russian Empire who had permanent residence in the BSSR, including refugees, were recognised as citizens of the BSSR. Citizens of other Soviet Republics shared common rights and obligations with the citizens of the BSSR. All adults could apply for Belarusian citizenship. Children under the age of fourteen acquired Belarusian citizenship automatically, while for children over fourteen their consent was necessary. Additionally, anyone could renounce citizenship. Persons acquiring citizenship had to make a signed statement that they ‘pledge to respect and defend the constitutionally established state order’. According to Article 3 (14) persons permanently residing abroad lost Belarusian citizenship if they either left Belarus without due permission of the authorities; or voluntarily served in foreign military forces fighting against the Soviet power, or renounced their right to Belarusian citizenship (Vashkevich 1997: 182). The 1930s citizenship laws of the USSR declared that citizens of the USSR who lived in the territory of a Soviet Republic would become citizens of that Republic, unless they opted for citizenship of another Soviet Republic in view of their nationality, that is, their ethnic origin. However, up to the demise of the Soviet Union, republican citizenship was overshadowed by Soviet citizenship and remained symbolic rather than real (Ginsburgs 1983: 30). This situation was destined to change dramatically in the 1990s.

1991-2002

Citizenship issues have been a matter of intense legal regulation in Belarus since the 1990s. The BSSR issued its Declaration of State Sovereignty on 27 July 1990.⁴ This was the first

⁴ Available in Russian at: <http://pravo.kulichki.com/zak2007/bz63/dcm63406.htm>.

step towards eventual independence in 1991. Following the August 1991 *coup d'état* in Moscow and declarations of independence by Estonia, Latvia and Ukraine, the Supreme Soviet in Minsk declared the independence of Belarus on 25 August 1991 by giving its Declaration of State Sovereignty the status of a constitutional document and officially changing the name of the state from the Byelorussian Soviet Socialist Republic to the Republic of Belarus. In view of the imminent dissolution of the Soviet Union⁵ questions of citizenship and state succession were two extremely important aspects which have given rise to extensive debates in all Soviet republics (Brubaker 1992, Barrington 1995) and have affected relations between former Soviet republics on numerous occasions, as the practice of post-Soviet decades has demonstrated. One by one the Soviet Republics started to enact the relevant legislation to clarify the status of persons in regard to their citizenship and connected issues arising from state succession (Gasca 2009, Järve and Poleshchuk 2009, Kruma 2009, Kuris 2009, Makaryan 2010, Shevel 2010). In Belarus a long and hard debate culminated on 18 October 1991 in the adoption of a new Law on Citizenship,⁶ which 'was described as the victory of civic wisdom and sense of responsibility for the destiny of those who lived there' (Ginsburgs 1993: 253), a 'liberal' law (Mitskevich 1996: 31) and even the most 'humane' law in the post-Soviet space (Vashkevich 1997: 193). The law was 'purged of all ingredients capable of inciting socio-political tensions' and thus void of elements which could lead to 'distrust in the regime' (Ginsburgs 1993: 253). In Belarus it was proposed to deal with citizenship by adopting the so-called 'zero option', which is quite common in the practice of state succession (Bloed 1998: 45). The zero option foresees granting citizenship to all people living in a given state territory either at the moment of the declaration of independence or from the date when the corresponding law was adopted. It generally sets out, however, either a period of time within which persons can declare 'their belonging to citizenship' (Vasilevich 2003: 282-283), or situations in which the automatic acquisition of citizenship is possible unless a person officially rejects citizenship in a given state. Basically, in correspondence with Article 15 of the Universal Declaration of Human Rights, which stipulates the *right* of every person to citizenship, it combines automatic acquisition derived from residence with a right to free choice, either positive or negative.

Based on the provisions of Article 2 (1) of the 1991 Law on Citizenship, persons permanently residing in the territory of Belarus at the moment of this law's entry into force were recognised as citizens of Belarus.⁷ Foreigners and stateless people constituted an exception.⁸ The reliance on the principle of permanent residence brought up the issue how to legally define the latter. The *Resolution on the Order of the Entry into Force of the Law on Citizenship*⁹ of 18 December 1991 provided very broad definition of 'persons permanently residing on the territory of Belarus'. In this way the number of persons qualifying for Belarusian citizenship was expanded widely to include the following groups of people:

⁵ Belarusian, Russian and Ukrainian leaders met on 8 December 1991 in the Belavezhszkaya Puscha to formally declare the dissolution of the Soviet Union and the formation of the Commonwealth of Independent States.

⁶ The Law of the Republic of Belarus of 17 October 1991 'On Citizenship of the Republic of Belarus' No. 1181-XII.

⁷ It should be mentioned that that the criterion of permanent residence has been used in practice by a number of other newly independent states, including Armenia, Moldova and Ukraine (Gasca 2009, Makaryan 2010, Shevel 2010).

⁸ They were specifically excluded through an amendment to the Resolution of 18 October 1991 by the Law of the Republic of Belarus of 15 June 1993 No. 2410-XII 'On Amendments and Alterations to the Current Legislative Acts on Citizenship'.

⁹ Resolution of the Supreme Soviet of the Republic of Belarus of 18 October 1991 'On the Order of the Entry into Force of the Law of the Republic of Belarus "On Citizenship"' No. 182-XII.

- a) persons who had come into the country before the Law entered into force, residing and permanently employed in its territory, if this could be proved by entries in their employment records and by a stamp in their passport showing that they had left the previous place of permanent residence;
- b) persons who were serving in the Armed Forces on conscription at the moment the Law entered into force and who remained in Belarus for permanent residence after the term of service was over;
- c) persons who had come to Belarus to study and who were temporarily residing in the country but after graduation were employed in Belarus and chose it as their place of permanent residence.

The Resolution also provided a list of persons who were considered to be permanently residing on the territory of Belarus and hence Belarusian citizens despite their temporary absence, e.g. those on military service, away or abroad on professional grounds (sailors, geologists etc.), students, people in hospitals, children in orphanages or staying with people acting as guardians or trustees.

The Constitutional Court of the Republic of Belarus¹⁰ in its decision of 15 June 2001¹¹ also adopted a very wide interpretation of the term ‘permanently residing’. The Court ruled that:

On defining the place of permanent residence one should take into consideration not only the place of the factual staying of a person at this or that moment (in the Republic of Belarus or outside its borders), but his intention to have this place as a place of his permanent residence. The content of this term is determined by the purposes of going out of (leaving) the Republic of Belarus: whether this leaving is temporary or for permanent residence in a different state.¹²

Moreover, a special law was introduced in 1992 with regard to the citizenship of military personnel and the members of their families. It granted those military personnel and their families the right to acquire Belarusian citizenship provided that they took an oath to the Belarusian state and expressed their wish to become citizens of Belarus.¹³

The attractiveness and relative accessibility of the Belarusian citizenship for citizens of the former Soviet Union is evidenced by the instances of acquisition of citizenship already in the first years of independence (Samusev 1998: 10). From the period of 1991 to 2001 about 18,000 stateless persons from the CIS countries entered the territory of Belarus. For two-thirds of them the main reason for migration was the absence of guarantees of rights to citizenship in other post-Soviet republics (Mikhaleva 2007: 68).

¹⁰ Established in 1994, the Constitutional Court of the Republic of Belarus supervises the constitutionality of enforceable acts of the state. Acts which are considered unconstitutional by the Constitutional Court shall be deemed invalid in accordance with Article 116 of the Constitution of Belarus.

¹¹ Decision of the Constitutional Court of the Republic of Belarus of 15 June 2001 No. P-120/2001 ‘On the Legal Position of the Constitutional Court with Regard to the Term “Citizen of the Republic of Belarus Permanently Residing in the Republic of Belarus” used in Article 80 of the Constitution of the Republic of Belarus’. This decision concerned the eligibility to run for the presidential post of a person who was residing abroad.

¹² Author’s translation.

¹³ Law of the Republic of Belarus of 22 December 1992, No. 2059-XII ‘On Acknowledging as Citizens of the Republic of Belarus of Persons Who are Covered by the Status of Military Personnel and Members of their Families’. The law expired on 31 December 1993.

While undoubtedly the 1991 Law on Citizenship solved the problem of citizenship for millions of Belarusians and other citizens of the former Soviet Union, it had one fundamental flaw. By adopting the zero option, Belarus did not declare succession of citizenship of the BSSR, and thus overlooked a wide group of citizens of the former BSSR. The Czech Republic recommended not using it in case of the dissolution of the federation which have internal dual citizenship because it ‘would create confusion’:

In the case of the dissolution of a federal State or separation from a federal State of one of its component units, why should the citizenship of such unit recognised under the federal Constitution be disregarded and habitual residence be the only relevant criterion? The citizenship of a component unit of a federation is a reliable criterion for resolving the problem of nationality for those residing both inside and outside the territory concerned. On the contrary, the presumption based on habitual residence, although it may be easily applied to those living within the territory concerned, does not help to clarify the situation of those living abroad. In the case of the dissolution of a federation, this presumption would even create confusion.¹⁴

The newly-established Belarusian state automatically attributed its citizenship to all persons who had the citizenship of the Soviet Union *and* who had their permanent residence in the Belarusian territory. Thus, while the drafters of the law aimed at taking into account the interests of persons permanently residing in Belarus and those who had some connections with the Belarusian land (Mikhaleva 2007: 67), they ignored those citizens of the BSSR who had left Belarus before the adoption of the law. Nationals who previously were citizens of the former Soviet Union and left Belarus for permanent residence abroad before 12 November 1991 were considered, independently of their will, as not having citizenship of the Republic of Belarus since the date they officially moved their permanent residence registration (in Russian *propiska*) to a place outside the Republic of Belarus. Belarusian citizenship was withdrawn ‘before such persons effectively acquire the nationality’ of another state.¹⁵ In this way the Belarusian legislation contributed to the emergence of statelessness in the immediate post-Soviet period.

The most recent 2002 Law on Citizenship made an attempt to address this problem and meet the interests of Belarusian citizens who had left Belarus for good (see the discussion below). Yet those who permanently left Belarus before 12 November 1991 would not have their citizenship automatically returned. To obtain Belarusian citizenship, they would have to apply for admission to citizenship of the Republic of Belarus according to the procedure stipulated in the 2002 law.¹⁶

Two articles of the 1991 Law on Citizenship excluded the possibility of dual citizenship. Article 13(5) regulated the acquisition of Belarusian citizenship on the condition that citizenship of another state was renounced. Even more importantly, Article 20(1) prescribed the loss of Belarusian citizenship in case of voluntary acquisition of another

¹⁴ UN Doc. A/CN.4/493 Nationality in Relation to the Succession of States, *Yearbook of the International Law Commission 1999*, Vol. 2, Part 1, p. 163, available at:

[http://untreaty.un.org/ilc/publications/yearbooks/Ybkvolumes\(e\)/ILC_1999_v2_p1_e.pdf](http://untreaty.un.org/ilc/publications/yearbooks/Ybkvolumes(e)/ILC_1999_v2_p1_e.pdf).

¹⁵ *International Law Commission 1997*, Vol. 2, Part 2, p. 26.

¹⁶ Interview with the Head of the Citizenship and Migration Department of the Ministry of the Interior, Alexei Begun, ‘Conferences and Discussions. Topic of the discussion “Head of the Citizenship and Migration Department of the Ministry of the Interior at sb.by. Ask Questions!”’ [Конференции и обсуждения Тема обсуждения: ‘Начальник Департамента по гражданству и миграции МВД на SB.BY. Задавайте вопросы!’], <http://discuss.sb.by/?area=search&topic=109&start=3>.

citizenship¹⁷: '[t]he citizenship of the Republic of Belarus will be lost ... upon acquisition, by the person concerned, of the citizenship of another State, unless otherwise provided by a treaty binding upon the Republic of Belarus... The loss of citizenship becomes effective at the moment of the registration of the relevant fact by the competent authorities'.¹⁸

The legislator tried to address the problematic issues of the 1991 Law in the 2002 Law on Citizenship.

3 Current citizenship regime

At present the citizenship regime in Belarus is determined by the following legislative acts, which will be referred to in the rest of the report:

- a) the 1994 Constitution of the Republic of Belarus (Articles 10-12, 30, 84(17));
- b) the 2002 Law 'On Citizenship in the Republic of Belarus',¹⁹ referred to from now as Law on Citizenship;
- c) the Treaty on the Creation of the Union between Belarus and Russia (Articles 14-16), signed on 8 December 1999;²⁰
- d) three international treaties on the simplified procedure for the acquisition and change of citizenship: the agreement of the Republic of Belarus with Kazakhstan;²¹ the agreement of the Republic of Belarus with Kazakhstan, Kyrgyzstan and the Russian Federation;²² and the agreement with Ukraine²³ (Smirnova 2002, Vassilieva & Shuntov 2004: 28-35).

Procedural details of the acquisition and loss of citizenship of the Republic of Belarus along with other issues connected with citizenship left unsettled by the legislator are authorised by Presidential Decrees, Resolutions of the Government and other sub-legislative acts, such as,

¹⁷ The 1991 Law is here in accordance with the Hague Convention on Nationality of 1930 where it states that any naturalisation (presumably voluntary) of an individual in a signatory State leads to the loss of the citizenship of origin (Article 1). In the same vein, the 1963 Council of Europe Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality envisaged that persons who voluntarily acquire another citizenship through naturalisation, option or recovery, lose their previous citizenship (Article 1). By contrast, Article 7 (1a) of the 1997 European Convention on Nationality no longer requires, but merely permits that states withdraw their citizenship as a result of the voluntary acquisition of another citizenship.

¹⁸ Law No. 1181-XII of 18 October 1991 as amended by Law No. 2410-XII of 15 June 1993.

¹⁹ Law No. 136-Z On Citizenship in the Republic of Belarus of 1 August 2002.

²⁰ Available in Russian at: <http://www.soyuz.by/ru/?guid=10447>.

²¹ Agreement between the Republic of Belarus and the Republic of Kazakhstan on the simplified Procedure of for the Acquisition of Citizenship by Citizens of the Republic of Belarus Coming to the Republic of Kazakhstan for Permanent Residence and Citizens of the Republic of Kazakhstan Coming for Permanent Residence to the Republic of Belarus for Permanent Residence, signed on 17 January 1996 in Minsk, entered into force on 31 July 1998.

²² Agreement between the Republic of Belarus, the Republic of Kazakhstan, the Republic of Kyrgyzstan and the Russian Federation on the Simplified Procedure of for the Acquisition of Citizenship, signed on 26 February 1999 in Moscow, entered into force on 26 February 1999.

²³ Agreement between the Republic of Belarus and Ukraine on the Simplified Procedure of for the Change of Citizenship by Citizens of the Republic of Belarus, Residing Permanently in Ukraine and Citizens of Ukraine, Residing Permanently in the Republic of Belarus, signed on 12 March 1999 in Kiev, entered into force on 8 April 2000.

for example, the Regulation on the Procedure of Considering Issues Connected with Citizenship of the Republic of Belarus of 17 November 1994.²⁴

3.1 Principles of citizenship

The Constitution of Belarus and the Law on Citizenship set forth the general principles which must determine the functioning of the institution of citizenship: openness, voluntariness, equality and stability of citizenship, and dominance of international norms in the field of citizenship over national legislation.

First, citizenship of the Republic of Belarus is of open character. Its openness is firstly manifested in Article 3 of the Law on Citizenship stating that ‘every person is entitled to citizenship’ (Article 3) and in relatively flexible norms for the acquisition of citizenship by naturalisation (discussed below). Secondly, it is manifested in the desire of the Belarusian state to reduce the number of stateless people, as explicitly indicated in Article 3 and reiterated in Article 13 which provides that a child born on the territory of Belarus from stateless parents is automatically granted Belarusian citizenship. As indicated by some scholars (Vassilieva & Shuntov 2004: 5), this latter provision was motivated by a perspective of Belarus’s accession to the European Convention on Nationality.

Second, citizenship of the Republic of Belarus is voluntary. Belarusian citizenship may not be conferred to a person against his or her will, nor may a person be deprived of Belarusian citizenship against his or her will. The latter is particularly important because it amends the previous state behaviour towards the expatriates of the 1991 law and especially in view of a wide-spread practice in the former Soviet Union of depriving citizens whose ideas were not welcome by the authorities of their citizenship (Ginsburgs 1983: 238-245).²⁵ Moreover, it reflects the 1992 Helsinki Document (para. 55), later Article 4c of the 1997 European Convention on Nationality, which states that ‘no one shall be arbitrarily deprived of his or her nationality’. Furthermore, in compliance with Article 15 of the Universal Declaration of Human Rights Article 10 (2) of the Constitution and Article 3 of the Law on Citizenship explicitly guarantee freedom to choose citizenship and to change it. Article 23 envisages the possibility to change citizenship for fourteen-eighteen year olds in case their parents change citizenship.

Third, the principle of equality is stipulated by Article 3 of the Law on Citizenship which guarantees equality of rights regardless of the ways in which citizenship has been acquired, whether by naturalisation, registration or birth (Yasinskaia-Kazachenko 2008: 82). However, as Vashkevich (1997: 184) remarks, in November 1996 a norm contradicting this principle was introduced into the Constitution on the initiative of the President Lukashenko. According to this norm, only a citizen who has acquired citizenship *by birth* and has been permanently resident on the territory of Belarus for no less than ten years preceding the election can be elected President of the Republic of Belarus.²⁶

Fourth, the principle of stability implies that citizenship is a long-term relationship between the state and its citizen and cannot be lost due to a citizen’s emigration or residence

²⁴ Regulation on the Order of Considering Issues Connected with Citizenship of the Republic of Belarus approved by the Decree of the President of the Republic of Belarus of 17 November 1994, No. 209.

[Положение о порядке рассмотрения вопросов, связанных с гражданством Республики Беларусь].

²⁵ As discussed below, however, there have been allegations that the current government has also deprived critics of the regime of their citizenship.

²⁶ Article 80 of the 1996 version of the 1994 Constitution.

in another state (Article 6). Neither can it be lost because of marriage to a citizen of another state or a stateless person (Article 7), which is in compliance with Article 1 of the 1957 Convention on the Nationality of Married Women.

Last, but not least, is the principle of priority of international law over national legislation generally guaranteed by Article 8 of the Constitution and Articles 16, 20, 44 of the Law on Citizenship. Article 44, for example, establishes that provisions of an international treaty to which Belarus is a party shall apply if they provide for rules different from those contained in the Belarusian Law. The significance of this development must be appreciated against the background of the previous experience in the Soviet Union. The Soviet legal system was protected from any direct penetration of international law by its reliance on the doctrine of transformation: the international obligations of the Soviet state would be applicable internally only if they were transformed by the legislature into a separate law. In this way, the Soviet Union was able to sign numerous international treaties and still avoid implementing some or all of their provisions in the domestic legal order. Vasilevich (2000: 62) notes that the new approach taken by Belarus in opening its constitution to international law has become an important element of the overall legal reform ongoing in the country.

Finally, the above described principles lay an important theoretical foundation for the adequate functioning of the institution of citizenship in Belarus. However, as the discussion below shows, the effectiveness of these principles is often weakened by their poor or non-implementation.

3.2 Acquisition of citizenship

Pursuant to Article 12 of the Law on Citizenship, citizenship of the Republic of Belarus may be acquired:

- a) by birth (Article 13);
- b) by naturalisation or admittance to citizenship²⁷ of the Republic of Belarus (Articles 14, 16);
- c) by registration (Articles 15, 16);
- d) by other reasons provided in this Law or in international treaties of the Republic of Belarus (Articles 23, 25, 27).

Acquisition of citizenship by birth

The most common ground for the acquisition of citizenship in Belarus is by descent.

Citizenship by birth is regulated mainly by the principle of *ius sanguinis*, but there are some significant cases in which the principle of *ius soli* is also applied. This in itself is not unusual. The legislation of a vast number of states to a various extent is based on both (Smirnova 1999: 58-59). This approach was also confirmed by the Constitutional Court of the Republic of Belarus. When the Court was called to define ‘citizen by birth’, it made a

²⁷ In Russian ‘принятие в гражданство’ (admittance to citizenship).

reference to both *ius sanguinis* and *ius soli* as equally plausible grounds for qualifying as a citizen of the Republic of Belarus.²⁸

Ius sanguinis

According to the recently amended Article 13(1), a child shall obtain Belarusian citizenship by birth provided that on the date of his or her birth at least one of the parents is a citizen of the Republic of Belarus regardless of the child's place of birth.²⁹ A simple comparison of the wording of this Article with the 1991 and 2002 versions of the Law on Citizenship evidences the evolution it has undergone over the last years. The 1991 law also envisaged that if at least one parent of a child was a Belarusian citizen, the child was automatically entitled to Belarusian citizenship irrespective of the place of birth and citizenship of the other parent. There was, however, an exception for children born from parents permanently living abroad if one of the parents was not a Belarusian citizen. In this case the parents were asked to define the citizenship of their child in a written declaration (Article 10). In practice, this meant that they had to make an application to the consul asking for a birth certificate within one year after the birth of the child (Vashkevich 1997: 188). The 2002 version of the law presupposed that if one of the parents of the child was a citizen of Belarus and the other a foreign citizen, the child was granted Belarusian citizenship *by a joint request of the parents*, regardless of the place of birth of the child. This provision was amended in 2006. While presenting the draft law to the parliament, the then Belarusian minister of the interior, Vladimir Naumov, noted that the institution of citizenship had undergone significant changes and acquired new features, due to the expanding international relations of Belarus with other countries in the CIS space and the world. As a consequence, acquisition of citizenship by birth for children born abroad had become especially complicated. Vladimir Naumov thus explained that the 2002 Law risked favouring the acquisition of just the other citizenship, as both the parents were required to file an application for citizenship for their child in order to get Belarusian citizenship. Without the agreement of the foreign parent the child could not get Belarusian citizenship. Custody did not in itself change the situation. The only circumstances under which a waiver of the consent of the other parent could be considered would be if the other parent was deprived of parental rights. A court decree to this effect would have to be provided. The amendments introduced in 2006 were therefore supposedly aimed at protecting the rights of Belarusian citizens by simplifying the citizenship acquisition: the agreement of the foreign parent is no longer required.³⁰ It should also be noted that in accordance with the law, parents have now the right to choose whether to keep Belarusian citizenship for their child or not. If the latter is opted for, a joint application of the parents is required.³¹

²⁸ Decision of the Constitutional Court of the Republic of Belarus No. P-121/2001 of 19 June 2001 'On the Legal Position of the Constitutional Court with Regard to the Term "Citizen of the Republic of Belarus by Birth" Used in Article 80 of the Constitution of Belarus'. [Рашэнне Канстытуцыйнага Суда РБ № P-121/2001 ад 19 чэрв. 2001 г. Аб прававой пазіцыі Канстытуцыйнага Суда адносна выкарыстоўваемага ў артыкуле 80 Канстытуцыі Рэспублікі Беларусь паняцця "грамадзянін Рэспублікі Беларусь па нараджэнню"].

²⁹ Law of the Republic of Belarus of 22 June 2006 No. 129-3.

³⁰ 'Belarus Parliament Amends Citizenship Law', 1 June 2006, available at: <http://bhtimes.blogspot.com/2006/06/president-visits-mtz-by-backs-off.html>.

³¹ Regulation on the Procedure of Considering Issues Connected with Citizenship of the Republic of Belarus approved by the Decree of the President of the Republic of Belarus of 17 November 1994, No. 209, point 65 [Положение о порядке рассмотрения вопросов, связанных с гражданством Республики Беларусь].

Ius soli

While the principle of *ius sanguinis* is prevailing in the legislation of Belarus, in some cases the legislation on citizenship takes into consideration the principle of *ius soli* as well. Article 13 states that a child shall obtain citizenship by *ius soli* at birth provided that the child's parents (or a single parent) reside permanently in the Republic of Belarus as stateless persons.³²

The same principle applies to children born in Belarus from parents (or a single parent) permanently residing in the Republic of Belarus and holding a foreign citizenship provided that they do not confer their country of origin's citizenship to the child by descent. Article 13 reflects directly Article 24(3) of the UN Covenant on Civil and Political Rights³³ and Article 7(1) of the Convention on the Rights of the Child³⁴ which states that 'the child... shall have the right from birth to... acquire a nationality', and presumably aims at the eradication of statelessness, as Article 4(b) of the European Convention on Nationality requires.

Acquisition of citizenship by naturalisation

Article 14 of the Law on Citizenship introduced a list of specific conditions to apply for Belarusian citizenship through naturalisation. It stipulates that any person who has reached the age of eighteen may apply for citizenship of the Republic of Belarus, provided he or she meets the following requirements.

First and foremost, the applicant undertakes the responsibility to follow and respect the Constitution and the legislative acts of the Republic of Belarus.

Second, the applicant is supposed to know at least one official language of the Republic of Belarus - Russian or Belarusian - within communication limits. Here it should be clarified that the 1991 Law on Citizenship required the knowledge of the Belarusian language only. UN experts questioned the reasonableness of such requirement since only a small proportion of the population used Belarusian as primary language (Smirnova 1999: 59). The 1994 Belarusian constitution proclaimed Belarusian as the sole state language and Russian acquired the status of a language of inter-ethnic communication.³⁵ However, on 14 May 1995 when the question 'Do you agree to give the Russian and Belarusian languages equal status?' was posed before Belarusian citizens in a national referendum, the majority of the respondents agreed. Therefore, in the amended 1996 Constitution the two languages were declared official. Thus, to meet the language condition for the acquisition of Belarusian citizenship, knowledge of either of the two languages may suffice. Interestingly, no testing procedure has

³² The same applies to children born in Belarus from unknown parents.

³³ Belarus ratified the Covenant on 12 November 1973.

³⁴ Belarus ratified the Convention on 9 October 1990.

³⁵ During the Soviet era, Ukraine and Belarus were subjected to the highest degree of Russification of their national languages to the extent that their very existence was threatened. The introduction of Belarusian in Belarus and Ukrainian in Ukraine as the sole state languages had a strong symbolic emphasis. Unlike Ukraine, however, Belarus has proved unable to revive its national language and the society remains primarily Russian speaking.

yet been developed. The only instance when it was mentioned was in the Regulation of 1994³⁶ where it is said that the applicant's command of one of the state languages is verified by an employee of the Ministry of the Interior (point 21) or an employee of the diplomatic service (point 37) who receives the application. Absence of the clearly defined criteria for the 'sufficient command of the language for communication' might make the language requirements a point of contention. The whole process thus depends entirely on the discretion of the civil servant in charge of the application. However, it needs to be said that no language complaints have been registered so far, also because many of the 'naturalised' persons are former Soviet Union citizens, therefore in most cases fluent Russian language speakers.

Third, the law introduces the notion of 'qualifying period of residence', which means uninterrupted residence in Belarus. Seven years is the period entitling a foreigner to request citizenship, provided the applicant has not left Belarus for more than three months in seven years. The existing law, though, allows citizens with a permanent residence permit to live and work abroad for a longer time and after seven years apply for citizenship. The law also envisages in the third part of Article 14 situations in which the seven year permanent residence criterion can be reduced or waived. These concern former Belarusians, persons who identify themselves as Belarusians, and their descendants (direct blood relatives: children, grandchildren, great grandchildren) who were born outside the current territory of the Republic of Belarus. Exceptions apply also to persons who have outstanding merits to the Republic of Belarus for high achievements in the areas of science, technology, culture or sport, or those who possess a profession or qualification of public interest, and finally, to foreign citizens or stateless persons who have previously been citizens of the Republic of Belarus. The 2002 version of the Law contained one more exception: the residence requirement was shortened or not applied at all to persons who possessed citizenship of the Republic of Belarus or a right to citizenship of the Republic of Belarus, and whose parents (or foster parents) chose another citizenship for them. The latter exception was excluded from the law in 2006.

Fourth, a person is supposed to be regularly employed and have a legal source of income.

Fifth, the law imposes the condition of renunciation of a former citizenship as a prerequisite for granting Belarusian citizenship. A person is supposed to lose his or her foreign citizenship in case of acquisition of Belarusian citizenship. The applicant must have submitted a renunciation of his or her citizenship of origin to the competent agency, except for cases when renunciation is impossible for reasons the applicant cannot control. Doubts arise as to the consistency of the described requirement with the proclaimed principles of openness and voluntariness of Belarusian citizenship.

Finally, the legislator in 2006 specified that all procedures of naturalisation are discretionary.³⁷ In addition, Article 34 states that the review of an application shall not exceed one year.

Recognised refugees³⁸ are specifically mentioned in Article 14. They may be admitted to citizenship seven years after their status has been recognised, provided they have met the

³⁶ Regulation on the Procedure of Considering Issues Connected with Citizenship of the Republic of Belarus approved by the Decree of the President of the Republic of Belarus of 17 November 1994, No. 209.

[Положение о порядке рассмотрения вопросов, связанных с гражданством Республики Беларусь].

³⁷ 'Belarus Parliament Amends Citizenship Law', 1 June 2006, available at: <http://bhtimes.blogspot.com/2006/06/president-visits-mtz-by-backs-off.html>.

³⁸ In accordance with the data provided by the UN Refugee Agency, as of January 2010 there are 580 refugees in Belarus. See <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e48d256>.

language and income requirements, they do not possess a foreign citizenship and they respect Belarusian legislation. However, as a 2009 report of the European Council on Refugees and Exiles (ECRE) indicates, in practice ‘in most cases, refugees who have filed an application for citizenship are refused. No explanation is given on the reasons for refusal’.³⁹ Thus, for example, in accordance with a 2007 ECRE report, in 2007, four persons applied to the Refugee Counselling Service who were recognised refugees in the Republic of Belarus and were refused citizenship.⁴⁰ In spite of a request for an explanation of the reasons for refusal no clear answer was received.

There seems to be another unresolved problem, namely renunciation of their previous citizenship by refugees. As the report states, some recognised refugees are afraid to file a request to renounce their citizenship ‘because of the possible negative consequences of such an application’.⁴¹ The fact that there is no proof of citizenship renunciation automatically deprives such a person of the possibility to acquire Belarus citizenship. This in itself is contrary to the established practice in the international law, which requires that asylum states are guided by the best interests of applicants in the area of granting citizenship. The very status of a refugee should bring about exceptions from the obligatory requirement to renounce a previous citizenship prior to acquiring Belarusian citizenship.

In 2007, there were occasions when recognised refugees’ applications for citizenship were rejected due to the fact that ‘it is not in the interests of the Republic of Belarus’. Some people had their citizenship applications rejected due to the fact that ‘they have not yet integrated into Belarusian society’ (this reason was expressed by state migration service officials in informal conversations with the applicants). Those who received rejection on these grounds included: recognised refugees who live alone, who are not officially married, do not have children and do not work for state enterprises.⁴²

Acquisition of citizenship by registration

Registration is a simplified form of procedure of naturalisation which, in principle, reflects the aspirations of Article 6 (4) of the European Convention on Nationality. Registration was first introduced in June 1993 through an amendment to the then Article 17(1) of the 1991 Law on Citizenship and is conditioned to belonging in one way or another to the Belarusian nation (Yasinskaia-Kazachenko 2008: 90).

Article 15 of the 2002 Law on Citizenship stipulates the conditions that must be met in order to acquire Belarusian citizenship through registration. In accordance with this article two groups of persons may qualify for the acquisition of citizenship through registration.

The first group comprises persons above eighteen years of age who were citizens of the USSR and were born, or permanently resided, within the territory of the Republic of

³⁹ ECRE Republic of Belarus Country Report 2009: Situation for Refugees and Asylum Seekers, p. 7, http://www.ecre.org/files/ECRE_Report_Bel_eng_with_cover_preview.pdf.

⁴⁰ ECRE Country Reports 2007: Belarus, Moldova, Russian Federation and Ukraine Situation for Refugees, Asylum Seekers and Internally Displaced Persons (IDPS), pp. 10-12, http://www.ecre.org/files/Annual_report_2007_General_English.pdf.

⁴¹ ECRE Country Reports 2007: Belarus, Moldova, Russian Federation and Ukraine Situation for Refugees, Asylum Seekers and Internally Displaced Persons (IDPS), p. 11, http://www.ecre.org/files/Annual_report_2007_General_English.pdf.

⁴² ECRE Country Reports 2007: Belarus, Moldova, Russian Federation and Ukraine Situation for Refugees, Asylum Seekers and Internally Displaced Persons (IDPS), p. 11.

Belarus before 12 November 1991, including their spouses and descendants. The legislator turned out to be quite liberal with regard to the documents which could certify the person's residence on the territory of the former BSSR. An open, and not exclusive list of documents which can be produced in order to certify one's residence on the territory of Belarus was introduced.⁴³

The other group of persons who are eligible for Belarusian citizenship through registration comprises children permanently residing in the country. This can be done by a joint application of the parents, of whom at least one must be citizen of the Republic of Belarus, or by application of one parent, citizen of the Republic if the whereabouts of the other parent are unknown. Also the Article makes reference to children staying in the Republic of Belarus whose only known parent(s) have died, have been deprived of parental rights, have given their consent to their adoption, or who have been judicially acknowledged missing or dead, as well as incapable persons under custody or guardianship. In this case a guardian (trustee) can apply for the child's citizenship in coordination with a guardianship and trusteeship agency.

Unlike naturalisation, registration allows for the acquisition of citizenship under a reduced list of conditions outlined in Article 14 of the Law. Three conditions should be met. These comprise the responsibility on the part of the applicant to follow and respect the Constitution and other legislative acts of the Republic of Belarus; the knowledge of at least one official language of the Republic of Belarus within communication limits. Finally, the third requirement relates to the renunciation of a former citizenship as a prerequisite for granting Belarusian citizenship.

As previously stated, registration is a simplified procedure, as exemplified by the time frame envisaged for it.⁴⁴ Article 34 stipulates that the processing time for an application through registration 'shall not exceed two months' compared to a year time period for the processing of ordinary naturalisation.

It should also be mentioned that a simplified procedure of the acquisition of Belarusian citizenship is envisaged in the international agreements which Belarus signed with some other former Soviet republics. The Agreement between Belarus and Kazakhstan contains the right to a simplified (registration) procedure for the acquisition of citizenship (Article 1 (1)) with a three months time limit for processing the applications.⁴⁵ Similar provisions are contained in the agreement between Belarus and Ukraine, the main objective of which was eliminating statelessness.⁴⁶ Finally, a joint agreement between Belarus,

⁴³ Regulation on the Procedure of Considering Issues Connected with Citizenship of the Republic of Belarus approved by the Decree of the President of the Republic of Belarus of 17 November 1994, No. 209, point 53 [Положение о порядке рассмотрения вопросов, связанных с гражданством Республики Беларусь]. Similar provisions were contained in the Instructions on the Procedure of Processing by the Bodies of the Diplomatic Service of Issues Related to the Citizenship of the Republic of Belarus approved by Resolution of the Ministry of Foreign Affairs of the Republic of Belarus on 24 January 2003 No. 6/1, point 39 (5) and also Instructions on the Procedure of Processing by the bodies of the interior of materials on issues of citizenship of the Republic of Belarus approved by Resolution of the Ministry of the Interior of the Republic of Belarus, on 23 January 2003, No. 16, point 22 (3).

⁴⁴ 'Speeded-up' procedure would be an appropriate word. I borrowed this term from Ginsburgs (1983: 53).

⁴⁵ Agreement between the Republic of Belarus and the Republic of Kazakhstan on the simplified Procedure of the Acquisition of Citizenship by Citizens of the Republic of Belarus Coming to the Republic of Kazakhstan for Permanent Residence and Citizens of the Republic of Kazakhstan Coming for Permanent Residence to the Republic of Belarus, signed on 17 January 1996 in Minsk, entered into force on 31 July 1998.

⁴⁶ Agreement between the Republic of Belarus and Ukraine on the Simplified Procedure of the Change of Citizenship by Citizens of the Republic of Belarus, Residing Permanently in Ukraine and Citizens of Ukraine, Residing Permanently in the Republic of Belarus, signed on 12 March 1999 in Kiev, entered into force on 8 April 2000.

Kazakhstan, Kyrgyzstan and Russia⁴⁷ also foresees a simplified procedure for the acquisition of citizenship and stipulates the following conditions as necessary for that: permanent residence in one of the four states, former USSR citizenship, relatives living permanently residing in the state, free will of the applicant to change citizenship (Article 1). Interestingly, this latter agreement also mentions the obligation on the participating parties ‘to take measures to unify their citizenship laws’ (Article 5). Moreover, Article 7 contains an invitation to other CIS countries to join the agreement and thus facilitate the process of access to citizenship by former Soviet citizens.

At this point, it might be useful to examine some data. The following table on the acquisition of Belarusian citizenship is quite telling. Registration has been the most frequently used method of access to Belarusian citizenship until 2010.⁴⁸ The table also points to other features, namely a notable increase in the number of acquisitions since the Law on Citizenship was passed in 2002 and a gradual decrease in the number of acquisitions since the 2006 amendments with the lowest figures in 2010.

Table 1. Acquisitions of Belarusian citizenship by naturalisation and registration

Year	Naturalisation (Article 14)	Registration (Article 15)
2002	702	193
2003	957	2,731
2004	803	2,520
2005	493	1,940
2006	637	1,263
2007	582	1,300
2008	674	1,139
2009	1,014	1,002
2010	910	678
Total	6,772	12,766

⁴⁷ Agreement between the Republic of Belarus, the Republic of Kazakhstan, the Republic of Kyrgyzstan and the Russian Federation on the Simplified Procedure of the Acquisition of Citizenship, signed on 26 February 1999 in Moscow, entered into force on 26 February 1999.

⁴⁸ Unlike other European countries, this information is not publicly available in Belarus and is provided upon request by Belarusian authorities. I would like to thank the Department on Citizenship and Migration of the Department of the Interior of Brest [Управление по гражданству и миграции УВД Брестского облисполкома] for the data.

Other modes of acquisition of citizenship

Among other modes of acquisition of citizenship the following are worth mentioning. Article 25 of the Law on Citizenship specifies that if one parent obtains Belarusian citizenship but the other parent is a foreign citizen or stateless, the child may obtain Belarusian citizenship provided that the parents make a joint request, or, if the whereabouts of the other parent are unknown, that only the parent acquiring Belarusian citizenship makes a request. Furthermore, a child who would otherwise be stateless because his or her parent who is not obtaining Belarusian citizenship is also stateless automatically becomes a citizen of Belarus. In the latter case, a child who is a foreign citizen or stateless acquires Belarusian citizenship from the date of adoption, if he or she is adopted by a citizen of the Republic of Belarus or a married couple who are citizens of the Republic of Belarus or by a married couple when one spouse is a citizen of the Republic of Belarus and the other is stateless. Besides, a child who is a foreign citizen or stateless may acquire citizenship of the Republic of Belarus at joint request of the foster parents, if adopted by a married couple where at least one spouse is a citizen of the Republic of Belarus.

A Belarusian who is adopted by foreign citizens is entitled to retain citizenship of the Republic of Belarus at adoption. Citizenship can be renounced when the child reaches the age of eighteen.

3.3 Grounds for rejection of applications for citizenship

Article 16 of the 2002 Law on Citizenship strictly regulates the grounds on which an application for citizenship may be rejected. This can be the case if an applicant: has been convicted for a crime against peace and security of the humanity, for a war crime, a crime against the state; has been suspected or accused of, prosecuted or convicted for a grave or a particularly grave crime in the Republic of Belarus or even outside the country, if that is recognised as such by Belarusian law. The application can also be rejected if the person is currently serving a sentence in custody until the end of the term of the sentence. Another reason is if the applicant has been deported or expelled from the Republic of Belarus or has provided false information or fake documents or, finally, if the applicant is serving in the military, police, security, justice or other public agencies of a foreign country. The list is not exhaustive and recently a new ground has been added which would enable the authorities to reject the application straightforwardly. The 2010 amendment to the Regulation on the Procedure of Considering Issues Connected with Citizenship of the Republic of Belarus included that an application can be rejected if the applicant was repeatedly (three or more times) charged on the territory of Belarus with administrative misdemeanours until the end of the administrative punishment. Most often, administrative misdemeanours are violations of traffic rules (the crossing of a road in the wrong place, parking in the place where it is not allowed, unfastened seat belt, etc.).

⁴⁹ Regulation on the Order of Considering Issues Connected with Citizenship of the Republic of Belarus approved by the Decree of the President of the Republic of Belarus of 17 November 1994, No. 209, point 14, para. 7 [Положение о порядке рассмотрения вопросов, связанных с гражданством Республики Беларусь], amended by Decree of the President of the Republic of Belarus of 13 August 2010, No. 422.

⁵⁰ 'Belarusian Citizenship: To Allow or to Reject', an interview with Marina Petrenko, a civil clerk at the department of citizenship and migration of one of the districts of the Belarusian capital city, Minsk [Белорусское гражданство: разрешить или отказать, интервью Марины Петренко, заместителя

Would that mean that the Belarusian authorities are making the acquisition of Belarusian citizenship more difficult? The answer is a more probable ‘yes’ than ‘no’.⁵¹

Moreover, the 2006 amendment to the Regulation on the Procedure of Considering Issues Connected with Citizenship of the Republic of Belarus⁵² states that during the examination of citizenship applications the Commission under the President of the Republic of Belarus (which is responsible for making the final decision on granting/refusing Belarus citizenship) shall take into consideration the interests of the Republic of Belarus (point 49). As the above discussion on the granting of citizenship to refugees suggests, this broad definition is being abusively used by the authorities when taking a decision on granting or refusing citizenship to the most vulnerable groups of people, including refugees.

3.4 Loss of citizenship

Article 17 of the 2002 Law on Citizenship prescribes that Belarusian citizenship can be terminated either voluntarily through the renunciation or involuntarily through withdrawal (Article 17).

In accordance with Article 18, voluntary renunciation shall be carried out only within the procedure established by the President of the Republic of Belarus and according to the conditions listed in Article 20. In practical terms this means that the Law lists concrete circumstances when exit from Belarusian citizenship can be denied. For example, when a citizen of the Republic of Belarus:

- a) is under trial or when there is a valid court sentence in his or her regard;
- b) has tax indebtedness or other outstanding debts and liabilities to the Republic of Belarus, its legal or physical persons;
- c) does not have any other citizenship or a guarantee to acquire such.

A viable option for a voluntary renunciation is a written application of the parents (of a single parent) concerning their child who obtained by birth the citizenship of the Republic of Belarus along with the citizenship of a foreign State. A qualification is introduced concerning children aged between fourteen and eighteen: in such case the loss of the citizenship is allowed only if the child gives his or her written consent and if this consent is notarised (Article 23).

Article 19, on the other hand, sets the grounds on which the Belarusian state can withdraw a person’s citizenship. An individual loses his or her Belarusian citizenship if he or she has been enlisted in the military, police, security or justice services or other public agencies of a foreign country. A person may also lose Belarusian citizenship on the grounds listed in the international treaties, ratified by the Republic of Belarus.

начальника отдела гражданства и миграции Заводского района г. Минска], *Vechernij Minsk*, 15 February 2010, available at: <http://news.open.by/country/20512>.

⁵¹ O. Antipenko, ‘Not Everyone will Be Able to Become a Citizen of Belarus’, *Ekonomicheskaja Gazeta*, 9 June 2006 [Ольга Антипенко, Статья гражданином Беларуси сможет не каждый, *Экономическая газета*], <http://www.neg.by/news/3860.html>. See also the statistics on the acquisition of citizenship above.

⁵² Decree of the President of the Republic of Belarus of 12 December 2006 No. 755 on the Introduction of Amendments and Alterations to Decree of the President of the Republic of Belarus of 17 November 1994 No. 209.

The discussed provisions explicitly indicate that no one shall be arbitrarily deprived of Belarusian citizenship or of the right to change it. Recent events show that there is still a wide gap between what is written in the laws and how they are being implemented in practice. An independent Belarusian journalist, Paval Sheremet, has allegedly been deprived of his Belarusian citizenship. Reportedly, Sharamet who is permanently living in Moscow, received official notification from the Belarusian embassy in Moscow that his Belarusian citizenship had been withdrawn on the grounds that he is also a Russian citizen.⁵³ This journalist has always taken a critical position towards Belarusian authorities. Thus, there are strong grounds to believe that the decision is politically motivated. The situation reminds of the Soviet era when dissidents were deprived of their citizenship without any court decision and expelled from the country and questions the basic principle of stability of citizenship. The decision can, of course, be appealed. The Belarusian law includes, at least theoretically, procedural safeguards for the respect for the rule of law, such as the requirement that decisions relating to citizenship shall be open to effective judicial review. In accordance with the procedure stipulated by Articles 21-22 of the Law on Citizenship ‘the decision on acquisition or revocation of citizenship of the Republic of Belarus may be cancelled if it was taken based on admittedly false data or fake documents’. Cancellation of decisions on issues of citizenship is possible within seven years upon their adoption. However, to what extent one can rely on the objectivity of the judicial review taken into account its questionable independence is yet another issue which might give reasons for concern.⁵⁴

4 Recent debates

4.1 Dual citizenship

Post-Soviet Belarus rejects the possibility of dual citizenship. Thus, Article 13(5) of the 1991 Law on Citizenship made acquisition of Belarusian citizenship dependant on the absence of the citizenship of another state. Even more importantly, Article 20 (1) prescribed the loss of Belarusian citizenship in case of the acquisition of another citizenship. Children who by birth were citizens of Belarus and of another state, in accordance with Article 10⁵⁵ were allowed to retain both citizenships until the age of 16. Within six months of the completion of 16 years the parents were required to submit to a Belarusian authority a document certifying the renunciation of the child’s foreign citizenship. If such a document was not submitted, the Republic of Belarus would withdraw the child’s citizenship.

The Belarusian Constitution in Article 30 stipulates the right of the citizens to freely move and choose the place of residence within the territory of the Republic, to leave the country and return to it. Since the fall of the ‘iron curtain’ the number of Belarusians travelling abroad has risen. Also the number of marriages of Belarusians with foreign citizens

⁵³ ‘Belarusian Journalist “Loses Citizenship”’, Radio Free Europe, at: http://www.rferl.org/content/Belarusian_Journalist_Loses_Citizenship/1999211.html; ‘Paval Sharamet deprived of Belarusian citizenship’, 31 March 2010, <http://belarus.world-countries.net/archives/1241>; ‘Committee to Protect Journalists has Called upon Returning Citizenship to Sharamet’, 1 April 2010, <http://belarus.world-countries.net/archives/1234>.

⁵⁴ See for example, UN Human Rights Committee Communication No. 814/1998: Belarus, CPR/C/78/D/814/1998 where the Human Rights Committee addressed the issue of the independence of the judiciary in Belarus: <http://www.unhchr.ch/tbs/doc.nsf/0/3101566e6a189c1ac1256da900315d3d?Opendocument>.

⁵⁵ With amendments introduced by Law of 30 December 1999, No.346-3.

has increased significantly (Mermer 2004). Therefore problems have arisen with regard to citizenship of married women and children born in mixed families (Mermer 2005).

Article 11 of the 2002 Law on Citizenship states that dual citizenship is not allowed for citizens of the Republic. However, a reservation is made further in the text. It concerns the theoretical possibility, at least, of dual citizenship when an international treaty to which the Belarusian state is party to provides so. Thus, recognition of the dual citizenship is potentially left to bilateral agreements between Belarus and another state. In reality, however, Belarus has not signed any treaty of this kind to this date.

It may be of interest to note, though, that Belarus signed the Charter of Union (1997) and later the Treaty on the Creation of the Union state with Russia (1999). The Union State does – in a way – provide a common citizenship, also referred to in the Russian-language literature on the topic as ‘integrationist’ citizenship (Grigoriev 2004: 138), ‘shared’ citizenship (Vassiliev 1992: 59) or ‘additional’ citizenship (Chupris 1997: 25), comparable in a way to the EU citizenship for EU member states. The basic principles of such type of citizenship can be formulated in the following way:

- a) citizenship of the Union is valid on the territory of the two states;
- b) a citizen of Belarus or Russia retains his or her Belarusian or Russian citizenship;
- c) a citizen of Belarus or Russia automatically acquires the Union citizenship;
- d) a citizen of Belarus or Russia is not viewed as a foreigner on the territory of the two states;
- e) a citizen of Belarus or Russia has rights and duties resulting from the state’s citizenship, on the one hand, and those resulting from the Union’s citizenship, on the other.

Thus, citizens of Russia and Belarus do not lose their national citizenship but they do not acquire another state’s citizenship either. At the same time, while citizens of Russia and Belarus retain their national passports and other identification papers, they have the right to work and permanently settle in either country. Alongside this, they also acquire additional rights, namely diplomatic protection, participation in the management of the Union affairs, the right to be elected to bodies of local self-government on condition of permanent residence in the other state, equal property rights.⁵⁶

Returning to dual citizenship, it should be mentioned that while the legislator with Article 11 expressly pronounces that Belarus does not recognise citizenship of another state, it does not seem to contest the possibility of a citizenship granted to a Belarusian citizen by another state either. In fact, the Law says that those citizens who hold dual (multiple) citizenship may not be limited in rights or evade duties or be exempt from liability ensuing from the citizenship of the Republic of Belarus. Moreover, the Civil Code of the Republic of Belarus⁵⁷ makes an explicit reference to the possibility of holding a dual citizenship. In accordance with Article 1103 ‘if a person has, along with the citizenship of the Republic of Belarus, citizenship of two and more foreign states, the law of the Republic of Belarus shall be considered his or her personal law’. Thus, Belarusians who have acquired foreign

⁵⁶ Treaty between the Republic of Belarus and Russian Federation on the Equal Rights of Citizens of 25 December 1998, available in Russian at:

http://www.soyuzinfo.ru/ru/juridical_library/statutory_acts/index.php?usage4=1.

⁵⁷ Civil Code of the Republic of Belarus of 7 December 1998 No. 218-Z.

citizenship after the adoption of the 2002 Law on Citizenship remain citizens of Belarus for Belarusian authorities and have all the national rights. The second citizenship of such persons constitutes a kind of ‘sleeping’ citizenship for Belarusian authorities.⁵⁸ As a result, persons who left Belarus for permanent residence after 12 November 1991 and acquired another citizenship after 17 August 2002 may either get a new passport of the Republic of Belarus or submit documents to renounce the citizenship of the Republic of Belarus. It should be recalled that the 1991 Law on Citizenship, which operated until August 2002, provided for an automatic loss of Belarusian citizenship in case of acquisition of another citizenship.

4.2 The Polish Ethnicity Card and Belarusian distress

Unlike in other European countries, the introduction by the Polish state of a Polish Ethnicity Card stirred a wave of controversy in Belarus and triggered an extremely negative reaction by Belarusian authorities. It should be recalled that the law on the Polish Ethnicity Card passed in September 2007 applies to ethnic Poles living in CIS and Baltic countries who cannot obtain dual citizenship. The card allows them to freely cross into Poland, be admitted into Polish educational institutions, and receive government stipends. Holders of the card are also eligible to work in Poland.

The Belarusian authorities called the introduction of the Polish Ethnicity Card ‘absurdity, political bribery and provocation’,⁵⁹ claiming that ‘the selective approach to the issuance of the Polish Ethnicity Card leads to the differentiation of the Belarusian citizens of the Polish origin and discrimination.’⁶⁰ They went even further and said that the introduction of the Polish Ethnicity Card could ‘seriously destabilize relations between the two nations, increase tension in Belarusian society, and breed mistrust between Belarusian citizens of different nationalities’.⁶¹

This negative reaction on the part of the Belarusian authorities is however not at all unexpected. Górný and Pudzianowska (2009: 134) give the following explanation:

On the one hand, apart from Ukrainians, Belarusian citizens are expected to be the main recipients of the Polish Ethnicity Cards. On the other hand, the negative reaction of Belarus is in line with the more general Belarusian policy towards the Polish minority in Belarus, marked as it is by a variety of more or less openly demonstrated conflicts and repressions from the Belarusian authorities.

⁵⁸ ‘Belarusian Citizenship: To Allow or to Reject’, an interview with Marina Petrenko, a civil clerk at the department of citizenship and migration of one of the districts of the Belarusian capital city, Minsk [Белорусское гражданство: разрешить или отказать, интервью Марины Петренко, заместителя начальника отдела гражданства и миграции Заводского района г. Минска], *Vechernij Minsk*, 15 February 2010, available at: <http://news.open.by/country/20512>.

⁵⁹ E. Yarmolaeva, ‘Why did the “Pole’s Card” frighten the Belarusian authorities?’, 13 February 2008 [Екатерина Ярмолаева, Чем испугала белорусские власти "Карта поляка"?], <http://euroradio.fm/ru/388/reports/13409/>.

⁶⁰ ‘Minsk Calls on Warsaw to be Unbiased towards all Ethnic Poles in Belarus’, 25 February 2010, <http://news.belta.by/en/news/politics?id=495144>.

⁶¹ ‘Belarus Expresses Concern over “Polish Card”’, 26 February 2008, <http://www.washprofile.org/ru/node/7467>. See also ‘Belarus Bewildered to Learn that Poland Started Exercising “Pole’s Card” Law’, 2 April 2008, <http://news.belta.by/en/news/politics?id=209031>; ‘Foreign Ministry: Belarus Offers to Impose Moratorium on Pole’s Card Law’, 7 February 2008, <http://news.belta.by/en/news/politics?id=198960>.

Indeed, the relations of Belarusian authorities with the Polish minority have been tense recently. Several requests for Polish language schools have been denied.⁶² No permission has been given by local authorities to construct Polish schools in Grodno and Novogrudok. The reasons behind these decisions are indeed unclear especially with a view to the fact that the money for the construction of the two schools was to be provided by the Polish diaspora.⁶³ More recently, Minsk has sanctioned the arrest of ethnic Polish activists and evicted prominent Polish groups from their headquarters.⁶⁴

Oddly enough, notwithstanding the criticism the Belarusian authorities have directed upon Polish authorities with regard to the introduction of the Polish Ethnicity Card, the Belarusian authorities are now developing the so-called 'Belarusian's Card', similar to the Polish Ethnicity Card (Górny and Pudzianowska 2009: 134), which can be explained as the Belarusian authorities' wish to enlarge the population of Belarus due to its gradual decrease.⁶⁵

5 Conclusion

The break-up of the Soviet Union and Belarusian independence, alongside nation building and state building dilemmas, brought to the fore the issue of citizenship, the significance of which was generally weakened during the Soviet era. The institution of citizenship in present day Belarus has undergone significant changes over the years. Unlike other post-Soviet states, Belarus has adopted a nearly all-inclusive approach to citizenship which might have been politically motivated and enabled Belarusian authorities to placate the population and avoid any serious political tensions characteristic of other ex-Soviet republics. While not without flaws, the two citizenship laws adopted in 1991 and 2002 seemed to have fulfilled their primary objectives. In 1991, the law adopted the 'zero option' and granted citizenship to all permanent residents of Belarus. The 2002 law addressed and partly resolved what had been left unattended by the legislator in 1991, namely the problem of citizens of Belarus residing abroad and, connected with that, the issue of multiple citizenship. The analysis has also revealed that despite the theoretically democratic nature of the institution of citizenship, citizenship issues prove to be politically motivated both domestically and internationally and the implementation of citizenship laws is still dependent on the will of those in power. Notwithstanding that and notwithstanding a 'uniquely' isolated position of Belarus in the European arena, the overview of citizenship regulations has also shown that they generally comply with the international and European standards. This may pave the way for Belarus's eventual ratification of the European Convention on Nationality.

⁶² D. Marples, 'Belarus-Poland Dispute Reflects Lukashenka's Growing Mistrust of the West', *Eurasia Daily Monitor*, 2(2005):151, available at:

http://www.jamestown.org/single/?no_cache=1&tx_ttnews%5Btt_news%5D=30736.

⁶³ <http://www.belarus-misc.org/plnbel-99.htm>.

⁶⁴ Belarusian Crackdown on Polish Minority Puts EU Relations at Risk, 7 February 2010,

http://www.rferl.org/content/Belarusian_Crackdown_On_Polish_Minority_Puts_EU_Relations_At_Risk/196103_9.html.

⁶⁵ In accordance with the data of the 1999 and 2009 all-Belarusian censuses, the population of the republic dropped from 10,045,200 people to 9,503,800 in 2009: <http://belstat.gov.by/homep/en/census/main0.php>.

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