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

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Luxembourg

Denis Scuto

1 Introduction

Until 2008, the main Luxembourgish legislation concerning the acquisition and loss of citizenship was the Law of 22 January 1968 on Luxembourgish nationality (nationalité luxembourgeoise) The newest Law on Luxembourgish Nationality of 23 October 2008 (hereinafter the New Law on Luxembourgish Nationality, NLNL) deeply transforms the legislation on citizenship in a liberal sense. Dual or multiple citizenship is made possible for foreign residents in Luxembourg. The re-acquisition of Luxembourgish citizenship for former Luxembourgers now living abroad is no longer subject to the loss of their foreign citizenship. Double ius soli, abolished in 1940, is reintroduced: A child born in Luxembourg to non-Luxembourgish parents, one of whom was born in the Grand Duchy, has Luxembourgish citizenship. This represents a 'cultural revolution' in the legislation on citizenship. Since 1934 the legislation detailed that the acquisition of Luxembourgish citizenship implied the loss of the former one. Since 1940, the main criterion for the acquisition of Luxembourgish citizenship was ius sanguinis.

These liberalising aspects of the NLNL are, however, countered by some restrictive measures concerning minimum years of residence to obtain naturalisation, as well as language and citizenship tests. It is important to note that the obligation to prove knowledge of the Luxembourgish language is an additional obstacle which is particularly difficult for foreigners in a country with a multilingual linguistic culture where the introduction to literacy is done through German and the principal language of communication used in professional life is French and not Luxembourgish.

The overall importance of analysing Luxembourgish citizenship is that it confers certain rights, which include the franchise and access to civil service employment. This last criterion has been shaken by EC law, as well as by the case law of the European Court of Justice, which have largely limited the possibility of an EU member state excluding citizens of other EU states from becoming civil servants.

The complex Luxembourgish linguistic context is well illustrated by the official terms for 'citizenship' and 'nationality'. For the legal link that associates an individual to the state the Luxembourgish term Nationalitéit is used. The Luxembourgish nationality act is written in French and is called Loi du 23 octobre 2008 sur la nationalité luxembourgeoise. In official commentaries on the law in French, German and English, the French term nationalité, the German term Staatsbürgerschaft and the English term 'nationality' are used. This term of 'nationality', when employed in a different sociological context can also be understood as referring to ethnicity or cultural background. The term citoyenneté is used in relation to the participation in decision-making processes and the active civic participation of immigrants (the right to vote in local, European or national elections). Getting Luxembourgish 'nationality' is here seen as one—but not the only—way to access 'citizenship'. The granting of voting rights to non-Luxembourgish citizens has been one of the main issues in the political debate on immigration in Luxembourg in the last three decades. European citizens have the right to vote and to stand in local and European elections. Since 2003, non-EU citizens have also been permitted to vote

in local elections, but without the right to stand for office. For the sake of consistency, in this report the word ‘citizenship’ will be used in preference to ‘nationality’.

The new law of 2008 appears in this general frame as a hopeful but not sufficient liberalising measure in a country where more than 40 per cent of the population does not have Luxembourgish citizenship. It is submitted that the introduction of ius soli not only for the third but also for the second generation of migrants and more flexible language skills requirements (e.g. considering the age, education and general living circumstances of the applicants) will have to be reached in the next decade to face essential democratic challenges of the future.

2 Historical background and changes

Dividing history into five important phases may best outline the development of citizenship law in the Grand Duchy of Luxembourg. These phases are:

-the period of the French Civil Code (1803–1878);

-the liberal period (1878–1940)

-the restrictive period (1940–1968)

-the phase of hesitation between openness and distrust vis-à-vis foreigners (1968–2001)

-the 2001 LNL and the path towards the new law of 2008 (2001–present)

These historical phases will be described one by one. In ancient times, ius sanguinis was the rule. In Roman law, the following rule applied: Filius civitatem ex qua pater eius naturalem originem ducit, non domicilium, sequitur, which can be translated as: ‘the son follows the citizenship of his father’s natural origin, not of his domicile’. In the Middle Ages, the rule was what was called the ancient law (l’ancien droit), which gave predominance to ius soli.

2.1 The period of the French Civil Code (1803–1878)

The French Revolution brought not only lasting changes within France itself, but in several countries of Europe, including Luxembourg. Indeed, French troops occupied Luxembourg (1795–1814), which became the Département des Forêts under Napoleonic rule. Napoléon Bonaparte’s administrative changes, including the introduction of the Civil Code of 1803, have influenced the organisation of the country until today.

After the defeat of Napoléon, a new state was created by the great powers at the Vienna Congress: the Grand Duchy of Luxembourg. The attribution of the Grand Duchy of Luxembourg as a personal possession to the King of the Netherlands, William I, after the Vienna Congress in 1815, formed an intermezzo concerning citizenship legislation: as for the Netherlands, ius soli was applied in the Grand Duchy from 1815 to 1831/1841. The complex administrative situation of Luxembourg cannot be retraced in just a few words. Suffice it to say that William I ruled Luxembourg not as an independent country, but as the 18th province of the Netherlands. As a result,

Luxembourgish towns and districts joined the Belgian revolution in 1830, except the capital city of Luxembourg where a Prussian garrison prevented any kind of rebellion. The great powers met in 1831 in London and decided to create the Kingdom of Belgium.

However, while the Belgians accepted the splitting up of the then Grand Duchy of Luxembourg (part of which is now the province of Luxembourg in Belgium), the Dutch King William I refused to recognise the treaty. Finally, a treaty was signed in London on 18 April 1839, the Grand Duchy of Luxembourg was split and the country as we know it today was born. Thus, 1839 is seen today as the real date of independence of the Grand Duchy. In 1840, William II ruled the country as the King Grand Duke, but now the autonomy of Luxembourg was respected by the sovereign. New laws had to be established to complete the work of the Civil Code.

The Civil Code introduced the system of ius sanguinis to replace ius soli, which was identified with the ancien régime. In these times, a person was attached to the soil of his lord of the manor. Citizenship became the right of a person transmitted by lineal descent, from a father to his children. This transmission of nationality was reserved to the man, while the wife assumed the nationality of her husband.

After Luxembourg's independence, art. 9 of the Civil Code declared that 'a child born of a Luxembourgish father is a Luxembourger'. Birth on the national territory, though, was taken into consideration as an important factor for the acquisition of Luxembourgish citizenship by a foreigner's child. It was stated that 'any person born from a foreigner in [the country of] Luxembourg may, during the year of attaining his or her majority, claim the quality of a Luxembourger'. Some French-speaking observers call this right the option de patrie.

The liberal Luxembourgish Constitution of 1848, influenced by the Constitution of Belgium of 1831, played a big role in the shaping of Luxembourgish citizenship. Firstly, naturalisation became a legislative act: the decision was taken by the parliament and not by the government. Secondly, there was not, unlike the Belgian example, a 'simple' and a 'complex' naturalisation: the naturalised foreigner enjoyed all civil and political rights. The will of the authors of the Constitution of 1848 was—as a sign of openness and trust in the capacity of the young state to integrate newcomers—to transform naturalised persons into fully-fledged Luxembourgers. Access to Luxembourgish citizenship by naturalisation was and still is an individual right, to be enacted with caution and moderation.

2.2 The liberal period (1878–1940)

During this period, two politicians and lawyers, who were both Ministers of Justice, influenced the spirit of the citizenship law in a liberal and still more open way, based on the principle of equality and on the importance given to social integration in the host country.

Paul Eyschen was the Director General of the Justice Department. He was Minister of Justice from 1888 to 1915 and introduced in 1878 the double ius soli rule: a person born in Luxembourg to a foreign father grown up in Luxembourg is a Luxembourger (in 1878 a foreign father; in 1890 a mother who was Luxembourgish originally and who became a foreigner by marriage). The inspiration came from

France, mainly from the law of 1851. Eyschen insisted on the importance of the long term residence in the host country. He proposed that as soon as a person is born in Luxembourg, of parents who were themselves born in Luxembourg, this person should be considered native. He believed that, when somebody has cut ties with their country of origin and father and son have resided for a lengthy period in the Grand Duchy, the son can be assumed to have acquired its habits, therefore Luxembourgish citizenship should be granted for the benefit of society. Thus, the law foresaw that 'a child who grows up in Luxembourg and is born to a parent who has him- or herself grown up in Luxembourg is a Luxembourger'. Thus the grand-children of immigrants were Luxembourgers.

The second prominent personality was René Blum, a socialist MP, who was the Minister of Justice between 1937 and 1940. He took the example of the Belgian law and in 1926 introduced a draft bill which codified and modernised citizenship law.

The new law was adopted on 23 April 1934. It maintained the system of double ius soli. It increased the possibilities for the acquisition of Luxembourgish citizenship, while restricting cases of dual citizenship. In the name of freedom and the emancipation of women, it allowed Luxembourgish women to keep their citizenship in case of marriage.

One of the reasons for adopting this law was to avoid forming national minorities. In a speech to parliament Blum declared that 'in immigration countries like ours or in those countries with small numbers of births, which is also our case, the state should increase as much as possible the number of its citizens by assimilating all those who are born on national soil and thus we avoid the formation of colonies of foreigners in our country'.[1] However, this continuity on the road of citizenship law was to be disrupted by external influences, far removed from the world of politicians and lawyers inspired by the ideas of the French revolution.

2.3 The phase of national restrictiveness (1940–1968)

This phase is characterised by national restrictiveness and by an interesting paradox. First of all, the affirmation of Luxembourg's independence, which took place in the first half of the twentieth century, was done in opposition to Germany, the powerful neighbour that invaded the Grand Duchy twice, during both World Wars (1914 and 1940). In order to defend itself against the German plans of annexation, Luxembourg took over from its German neighbour the principles set out in the German citizenship laws.

After 1933, when the German menace to the independence of Luxembourg became more and more tangible, the political parties, both right- and left-wing, insisted more and more on the concept of Luxembourgishness (Luxemburgertum) as a defence against Germanness (Deutschtum). The cultural difference between the two neighbours was progressively constructed. This strategy led to the Law of 9 March 1940 on Luxembourgish citizenship, which abrogated double ius soli and instated ius sanguinis exclusively.

[1] *Compte-rendu des séances de la Chambre des députes* (CRCD), 1938–1939, p. 1062.

For the first time, the following wording appeared in the legislation: 'Naturalisation will be refused to a foreigner who does not show sufficient assimilation.' This wording was to have a lasting influence.

Although this phase started in the 1930s, this trend had already been apparent since the beginning of the twentieth century. In fact, almost no foreigners were naturalised between 1914 and 1950: no naturalization from 1914 till 1930, only two times were naturalisations granted afterwards (33 people in 1930 and 87 in 1935). An interesting exception was made for the husband of Grand Duchess Charlotte, Prince Felix de Bourbon-Parme. He was naturalised by the initiative of the government one day before their marriage. Otherwise, the Grand Duchess would have lost her Luxembourgish citizenship by civil law and taken the French one through her husband.

This development was also to have a lasting influence after 1945: the phantoms of the 1930s, the fear of spies and of traitors, of those who acquired Luxembourgish citizenship in order to better serve Germany—and after 1945, the memory of the sufferings of the Second World War—were key elements that would become the lenses through which citizenship law would be viewed. These events led to the fourth phase.

2.4 The phase of hesitation between openness and distrust vis-à-vis foreigners (1968–2001)

The post-war laws kept the traces of all these events. Although the content of these laws will be analyzed later, a quick summary of the evolution of citizenship law will be made here in a historical perspective.

The law of 22 February 1968 reinstated the possibilities of option, while reinforcing the conditions of residence. The requirement of fifteen years of residence for the acquisition of Luxembourgish citizenship (naturalisation), as introduced by the law of 1940, was retained in this law. Discrimination against women was also maintained. The double ius soli was kept outside the legislative reform. In 1966, the Minister of Justice, Pierre Werner, gave a speech in which he showed that the influence of the war was still a characterising event. He said that 'many foreigners insufficiently assimilated in the country have only profited from the rights of citizenship to better serve their former fatherland … It does not appear wise to return to the combined laws of 1878 and 1890, which by their automatic mechanism do not allow the competent authorities to set aside the undesirables'.[2]

Part of the discriminatory provisions against women were lifted by the law of 26 June 1975 reintroducing the woman's right to retain or regain her citizenship (abolished in 1940) and the law of 27 April 1977, endorsing the UN Convention on the Nationality of Married Women, which was signed on 20 February 1957 (twenty years before). A transitory provision of the citizenship law allowed all Luxembourgish women who have lost their citizenship of origin through marriage to a foreigner—or through acquisition by the husband of a foreign citizenship, without any

[2] See *Exposé des motifs du projet de loi n° 63 [0](1232) portant modification et complément de la loi du 9 mars 1940 sur l'indigénat luxembourgeois, Compte-rendu des séances de la Chambre des députes* (CRCD), 1967–1968, p. 984.

manifestation of willingness from them (the women)—to recover their Luxembourgish citizenship by a simple declaration at the municipality (état civil).

The law of 11 December 1986 brought equality between fathers and mothers regarding the transmission of citizenship and allowed wider access to Luxembourgish citizenship, notably by offering Luxembourgish citizenship to the children if one of the parents held Luxembourgish citizenship, and by allowing acquisition by option of Luxembourgish citizenship to the foreign spouse (husband or wife).

The attempt to diminish the residence requirement necessary for acquiring Luxembourgish citizenship from ten to five years, which was introduced by the socialist Minister of Justice Robert Krieps, failed particularly because of the criticism of the Council of State.[3] The Council of State put forward the opinion that a long period of residence (ten years) presumed 'sufficient assimilation' to the Luxembourgish community. If the period of residence should be reduced, other criteria would be needed in order to assure 'sufficient assimilation'. Certainly the criterion regarding active knowledge of the Luxembourgish language should come into play. However, the restriction regarding the age needed to acquire Luxembourgish citizenship was lowered from twenty-five to eighteen years. During the parliamentary debate, the arguments that had already been used by Minister René Blum in the 1930s surfaced once more, i.e. Luxembourg as a country of immigration and Luxembourg with a population with a small birth rate. Reference was made to the Calot report of 1978, a report on the demography of Luxembourg (Calot 1978). Everybody used his or her own interpretation of the report. The left-wing members of parliament underlined the necessity of increasing the number of naturalisations and options. The right-wing deputies declared that, due to the size of the country and the reduced Luxembourgish population, the granting of Luxembourgish citizenship must be done with caution.

Just like in 1940 and in 1968, as well as in 2001, the political and demographic realities did not carry enough weight in the light of more nationalistic speeches and arguments. Questions were being asked about the amount of assimilation necessary. Already in May 1939, Minister René Blum had vainly challenged these arguments. He asked the question, 'How can you prove that a foreigner is assimilated? Give me the symptoms of this adaptation'.[4]

In 1986, the politicians in charge of the question found, at last, visible criteria: the knowledge of the languages of the country, especially the Luxembourgish language, which had been declared the official, national language by way of a law in 1984. The majority of the Council of State proposed to add, as a criterion for the refusal of citizenship, the following words: '… if [the foreigner] cannot prove, notably by the way of certificates, to have sufficient knowledge of the Luxembourgish language'.[5] The Government decided however to follow the view of the minority of the Council of State, which was laid down in a supplementary opinion, and which refused to give a prohibitive and exorbitant character to these certificates, opting for a more pragmatic approach.

[3] *Avis complémentaire séparé du Conseil d'Etat du 7 mai 1985 sur le projet de loi 2898/02 portant modification de la loi du 22 février 1968 sur la nationalité luxembourgeoise telle qu'elle a été modifiée dans la suite.*

[4] CRCD, 1938–1939, p. 1072.

[5] See *Avis complémentaire séparé du Conseil d'Etat du 7 mai 1985*, op. cit.

This opinion implied that the obligation to bring forth certificates proving the knowledge of Luxembourgish creates a supplementary obstacle, which is difficult to fulfil for some categories of citizens, especially manual workers. It was contradictory to the efforts made and the calls for a more active participation of foreigners in political life.

In general, after the war, two contradictory aspirations may be noted in the debates in parliament, as well as in the laws themselves. On the one hand, there is a sincere will to facilitate access to Luxembourgish citizenship for foreigners who have resided in the country for a certain amount of time, either through naturalisation or through option. On the other hand, a majority of politicians continue to consider the legislation on citizenship not as means of facilitating the entry of foreigners into Luxembourg's society, but as a means for checking if these foreigners are already sufficiently integrated.

2.5 The 2001 LNL and the path towards the 2008 new law

This consideration became manifest in the law of 24 July 2001. While it facilitated the acquisition of citizenship through naturalisation by reducing the required residence period from ten to five years and by rendering it free of charge, at the same time this law made it more difficult to acquire Luxembourgish citizenship by stipulating that it will be refused to the foreigner 'who does not demonstrate sufficient integration, notably if he or she does not demonstrate sufficient active and passive knowledge of at least one of the [national] languages [i.e. Luxembourgish, French, German] … and if he or she does not have at least a basic knowledge of the Luxembourgish language, underscored by certificates and official documents'.

Thus the word integration has replaced the word assimilation, which was originally planned in the draft bill of 19 December 2000. It therefore took 60 years to change the formula introduced in 1940.

In its opinion, the Council of State developed the same arguments and objections as those contained in the separate opinion of 1985. However, in 2001, political reasons pushed the legislature to opt for a more restrictive or administrative access to citizenship, at least in theory, by requesting the written and oral proof of the candidate's knowledge of the three national languages. This nationalist restrictiveness in 2001 can be explained by an important new political factor: the arrival on the right of the conservative party (Social-Christian Party, CSV) of the Prime Minister, Jean-Claude Juncker; and of a populist party, ADR (Aktiounskomitee fir Demokratie a Rentengerechtegkeet – Committee for Democracy and Pension Justice), which decided to make the Luxembourgish language its hobbyhorse. This party gained seven seats in parliament (of a total of 60) following the general elections of 1999. The language criterion became a decisive issue because of the pressure of public opinion and fear of the electoral advance of the ADR.

The obligation to prove knowledge of the Luxembourgish language is an additional obstacle which is particularly difficult for manual workers to fulfil, in spite of all the services they have provided the Luxembourgish community during long years of economic maintenance of the country. The life of a manual worker essentially takes place in his work and with his family. It is natural that he speaks his native language with his family. It is also well known that the language used in

Luxembourg at the workplace, especially on construction sites, in order to facilitate communication between workers of different nationalities, is French. Therefore, it is very difficult for people already working for ten years in Luxembourg to learn an additional language which is not of great practical use. Thus, the language barrier represents a very effective and subtle threshold, one used by the Luxembourgish authorities to reduce access to Luxembourgish citizenship and to prevent immigrants from having recourse to public services.

The government has not organized any official Luxembourgish language courses with a defined program or standard. Thus, the criterion of knowledge of the Luxembourgish language is rather an arbitrary one. In practice the applicant is examined by a member of the town council in order to determine his proficiency in speaking and understanding the Luxembourgish language.

In the law of 2001, dual citizenship was not tolerated according to the very restrictive rules entailed in art. 25 LNL.

The two major modes of acquisition of Luxembourgish citizenship after birth are naturalisation and option. The main differences between these modes are the following: the main criterion for naturalisation is the time of uninterrupted residence (five years) in the Grand Duchy immediately before application. Option does not have the same residence criterion as it does not require an uninterrupted period of five years immediately prior to application. It does however require a period of residence of one year immediately before the application and an uninterrupted period of residence of five years any time before. Option adds other possibilities for acquiring Luxembourgish citizenship (foreigners acquiring the citizenship of their spouse, children born in Luxembourg to a foreign national etc.). Naturalisation is decided by the legislative power (the Chamber of Deputies), whereas option is submitted to the agreement of the Ministry of Justice.

The barriers for ordinary naturalisation are rather high. On top of the regular conditions (age, legal residence (residence permit) and duration (five years), morality (absence of serious penal conviction or loss of civil rights) and sufficient integration), there are three supplementary requirements:

-proof that the applicant has lost his or her citizenship of origin;

-that naturalisation must not be contrary to the obligations he or she has to fulfil towards the state to which he or she belonged;

-that the applicant be sufficiently integrated, which is proven by an active knowledge of the Luxembourgish dialect, which was instated as a language by law in 1984;

-according to the restrictive rule of art. 25 LNL, expatriates lose their Luxembourgish citizenship if, after residing for twenty years abroad, they abstain from declaring their wish to retain their Luxembourgish citizenship;

-gender equality as well as the equality of filiation (legitimate or natural child) has been introduced by the law of 11 December 1986.

Art. 4 LNL establishes two categories of citizen by distinguishing between the ‘Luxembourger by origin’ and others. The ius soli is, in this case, of importance. The Luxembourgers by origin are those born in the Grand Duchy of Luxembourg before 1 January 1920, as well as their descendants. The legal consequences, however, are not of great importance and will be studied later in the report.

With regard to naturalisation and option, the town council has to justify its advice regarding the granting of citizenship to the applicant. This advice is however not binding. This 'motivated' advice is given in a closed session. The content is therefore not public and the applicant has no way to challenge it. The criteria used in this advice are thus secret and discretionary. The members of parliament take the final decision for naturalisations by way of law, whereas the Ministry of Justice is the competent institution in cases of option.

Since 2001, Luxembourgish leaders discussed the opportunity of a major reform of its legislation on citizenship with the debate on the adoption of dual citizenship. Different factors may explain this debate about liberalisation and easing the conditions for the acquisition of citizenship: the existence of an ever-increasing foreign population, the essential role of foreign manpower in the economic development of the country and of the viability of the social security system, the dynamics of an ever-deeper integration with the European Union.

The law of 2001 was the starting of an interesting evolution and a law of hope. Firstly, it is interesting to note that for the first time after the last World War, the law concerning the acquisition modes of citizenship was not voted with unanimity. The majority, composed of the CSV (Christian-social Party), the liberals (Democratic Party) and the ADR, voted in favour; the socialists, the Green Party and a left-wing deputy voted against. Secondly, members of parliament of majority parties invited the government in a 'motion' to consider the introduction of dual citizenship referring to the example of other European countries.

One year later, Prime Minister Jean-Claude Juncker took up this idea and presented it as a central piece of the integration policy of foreigners in Luxembourg. In an opening speech of a reflection campaign launched by the NGO ASTI (Association de Soutien aux Travailleurs Immigrés) in March 2002 with the title 'Migrations: the issues', Juncker said: 'I am in favour of the concept of dual citizenship, because I believe that it is the only way that will enable us, in the respect of non-Luxembourgers and Luxembourgers, to open an accomplished citizenship to the Non-Luxembourgers' (Juncker 2003: 12). In a press conference in September 2004, Juncker announced that by the end of 2006 the new law on dual citizenship would be adopted. He said: 'adopting Luxembourgish citizenship should not lead to break one's autobiography'.

In January 2004 two law professors of the Université Catholique de Louvain, Francis Delpérée and Michel Verwilghen, presented a report to the Luxembourgish government on the juridical effects of the introduction of dual or multiple citizenship (Delpérée & Verwilghen 2003).

The inclusion of dual citizenship in the governmental programme of 2004 was the start of a process which led to the paradigmatic changes that are currently embedded in the citizenship law. It has pushed Luxembourg into the dynamics of the European Convention on Nationality signed by the Council of Europe in 1997. This Convention invited the states to find solutions in the area of multiple citizenships, while recognizing that, in this area, the interests of the states and those of the individuals must be taken into consideration. In October 2006 the 'law project 5620 on Luxembourgish citizenship' was registered in parliament. The introduction of dual or multiple citizenship is the outstanding innovation of this project. However, it also states that 'in order to integrate those immigrants who wish to acquire Luxembourgish citizenship, courses on the Luxembourgish language and of culture and civic

instruction will be set up and rendered obligatory for the candidates for naturalisation'.

It seems clear that the issue of citizenship has to be seen in the wider context of the immigration policies of governments. As the topic analyzed in this report is not the issue of immigration as such, these considerations are generally left out. However, one can argue that 'the moral and political grounds of double citizenship will be judged according to the daily practice in migration matters' (Wey 2003).

The law was voted on October 15 2008 with the 38 votes of the majority (CSV and socialists) against the 21 votes of the liberals, the Green Party and the ADR. It is in force since January 2009. Let us examine the most important provisions.

3 The current citizenship regime

3.1 Main modes of acquisition and loss of citizenship

Acquisition of Luxembourgish citizenship

The main principle for the acquisition of Luxembourgish citizenship has always been ius sanguinis. The first version in the LNL of 1968 stated this principle in art. 1, 1° LNL as follows: 'a Luxembourger is: 1° the legitimate child born, even in a foreign country, to a father being a Luxembourger at the date of his or her birth; the legitimate child born, even in a foreign country, to a mother being a Luxembourger at the date of his or her birth and to a father being stateless'.

The law of 26 June 1975 provided Luxembourgish citizenship for the adopted child (full adoption) and the minor child whose father acquires or recovers Luxembourgish citizenship.

The law of 11 December 1986 brought two major reforms to the basic law of 22 February 1968 which provided in the modified art. 1, 1° that 'a child born, even in a foreign country, to a Luxembourgish citizen, provided that the filiation of the child is established before he or she turns eighteen and the parent is a Luxembourger at the moment the filiation is established'. First, it establishes solemnly the principle of equality of children; it rejects discrimination based on the circumstances of birth and brings the adoptive filiation closer to the biological one. Second, the affirmation of the equality of gender leads to the rejection of any discrimination against women in the attribution of citizenship.

The law of 1986 constituted a real revolution in Luxembourg because, in addition to gender equality, it established the retroactivity of this new system for a period of eighteen years. Art. 44 provided that the new rules of the LNL, introduced in 1986 and contained in arts. 1 and 2, apply 'even to persons born before the coming into force of the law if these persons are not already, at this moment, eighteen years old' and 'even when the facts likely to lead to the acquisition of Luxembourgish citizenship occurred prior to this law coming into force'.

This rule of retroactivity also applies to adopted children. Although the conditions for acquisition of Luxembourgish citizenship have been eased, too, and despite the fact that the law of 2001 introduced ius soli (art. 1, 3°) for children born in

Luxembourg and having no other citizenship, Luxembourg remained until 2008 firmly attached to ius sanguinis principles.

The law of 2008 (NLNL) thus appears to be a milestone. It reintroduces double ius soli, 68 years after its abolition in 1940. A child born in Luxembourg to non-Luxembourgish parents, one of whom was born in the Grand Duchy, has Luxembourgish citizenship. This was not an initiative of the government but of the parliamentary commission of justice. This provision is not applied only to the children born after 1 January 2009 (the date of entry into force of the law), but also to those who have not reached 18 years of age on 1 January 2009: thus children born between 1 January 1991 and 31 December 2008. By the NLNL full and simple adoption are also treated equally for the transmission of Luxembourgish citizenship to the adopted children.

The great revolution of the NLNL is the introduction of the principle of dual or multiple citizenship. From 1 January 2009 on, to be admitted to naturalisation, the foreigner does not need to prove that he or she has lost his citizenship of origin nor does he or she lose his or her citizenship by the acquisition of Luxembourgish citizenship. This depends however if the law of the foreigner's home state permits multiple citizenship.

This liberalisation of the citizenship is countered by some restricting measures:

1. The minimum number of years of residence before naturalisation is raised from five to seven years.

2. Naturalisation is linked to the applicant's success in a test in the spoken Luxembourgish language and to the obligation to attend at least three citizenship courses. The level of competence to be attained in the spoken Luxembourgish language is level B1 of the Common European Framework of Reference for Languages in terms of aural comprehension, and level A2 of the same framework in terms of oral expression. However, an exemption is given to those who have accomplished at least seven years of their schooling in a Luxembourgish public school (or private school applying the curriculum of the public school) and to those who lived on Luxembourgish territory prior to 31 December 1984.

3. The possibility of option for foreigners married to Luxembourgers, men or women, or for children born in Luxembourg to foreign parents who were not born in the Grand Duchy is abolished.

So, the category that will benefit the most from the introduction of dual citizenship is not that of the foreign citizens in Luxembourg, but the Luxembourgers living abroad. They have now the same possibility to acquire the citizenship of their country of residence without having to renounce their citizenship of origin. Moreover, art. 29 NLNL provides that the descendants in direct line (father or mother), even born abroad, of a Luxembourgish forebear on the date of 1 January 1900 who have lost Luxembourgish citizenship because of prior legal provisions, can recover the citizenship by declaration if made within the next 10 years. The Luxembourgish case confirms in this sense the process of 're-ethnicisation' observed in other European countries.

Loss of Luxembourgish citizenship

Regarding the loss of citizenship, we must first address the cases of automatic loss for certain categories of Luxembourger who have committed no transgressions. This case must be distinguished from the withdrawal of citizenship as stated in arts. 15–18 NLNL, which apply to citizens who prove to be unworthy of keeping Luxembourgish citizenship.

Until 2008, the attitude of the Luxembourg legislature was rather puzzling, because most countries in the world try to protect their human patrimony. The reform of the LNL in 1986 codified scenarios for the loss of Luxembourgish citizenship in a country where the national population is stagnant. Eight cases of loss of citizenship are provided for in art. 25.

Thus, between 1986 and 2001, the doors open to losing Luxembourgish citizenship were much wider than those for gaining it. This is an astonishing fact, considering the stagnation of growth of the national population in comparison to the large increase in the foreign population in Luxembourg.

The law of 2008 considerably reduces the modes of loss of citizenship from eight to three. It confirms (art. 13, 1) the LNL of 1986 that provided for the first time the possibility of losing Luxembourgish citizenship by voluntary renunciation (art. 25, 2). This renunciation is in the form of a simple declaration, made by a person who has reached 18 years of age, recorded by the civil registrar, without judicial control or any witnesses. The only condition being that the applicant has to prove that he or she will not become stateless. A child of less than 18 years loses (art. 13, 2) his or her Luxembourgish citizenship if his or her parents lose their Luxembourgish citizenship by voluntary renunciation (art. 13, 1). Art. 13, 3 NLNL provides that a child whose filiation to a Luxembourgish parent failed to be established before he or she attained eighteen years of age loses his or her Luxembourg citizenship, unless the other parent possesses the status of Luxembourger or the child would become stateless.

Concerning the loss of citizenship by forfeiture, art. 15 NLNL provides that the Luxembourger who has not obtained his or her citizenship through a Luxembourgish parent upon his or her birth, may be declared to have lost Luxembourgish citizenship:

1. if he or she obtains Luxembourgish citizenship by false declarations, fraud or dissimulation of important facts;

2. if he or she obtains Luxembourgish citizenship by presenting a false name or by usurpation of a name.

Forfeiture is not possible if it the person concerned would become stateless. The Ministry of Justice declares the forfeiture of Luxembourg citizenship through an order, which has to be justified.

3.2 A special category of citizen: the Luxembourger by origin

Art. 3 NLNL (as with the LNL of 24 July 2001) makes a distinction between two categories of citizens: the Luxembourger by origin and other Luxembourgers. Luxembourgers born in the Grand Duchy of Luxembourg before 1 January 1920, as well as their descendants, are labelled Luxembourgers by origin. Art. 4 states that 'the status of Luxembourgers by origin is sufficiently established by proof of possession of Luxembourgish citizenship deriving from the parent of the candidate whose citizenship is the condition of its own. Proof to the contrary is possible'. The legal consequences of this distinction are not very significant.

It should be remarked that the number of cases whereby citizenship lapses was extremely low, with the exception of the periods following the two World Wars. However, the psychological impact of such categories existing is in fact more severe than the effects thereof, giving the impression that there are two distinct kinds of citizens, each with different rights: the 'true' Luxembourger and 'imperfect' citizens. Hopefully, this distinction which has almost no real consequences will be removed by the next reform.

3.3 Institutional arrangements

The administrative procedure to acquire citizenship by naturalisation

Another great innovation of the 2008 NLNL is that the procedure of naturalisation becomes an administrative procedure instead of a legislative one, it becomes more transparent, and the applicants have a right to appeal. A brief summary of the procedure of naturalisation according to art. 10 NLNL is presented below.

The naturalisation file is issued to the secretary of the town council where the applicant resides, following a request addressed to the Ministry of Justice. The target person submits a declaration to the registry office.

The file must contain the following documents: birth certificate; biographical notice and questionnaire; certificate of residence; copy of passport; extract from police records; certificate of success in a language test; participation certificate of the citizenship courses.

The town council immediately transmits the request with the file to the ministry of justice. The naturalisation is granted or refused by decree of the minister of justice. In case of refusal, the decision must be justified. The minister of justice must take a decision within 8 months, otherwise the request of naturalisation becomes a declaration of naturalisation. The procedure is free of charge and has been free of charge since the coming into force of the LNL of 24 July 2001 for all requests submitted after 1 January 2002. However, this is not a particularly large incentive for the applicant as the fees existing before 2001 were very low.

The naturalisation comes into force on the day of the decision of the minister. The decree is made known to the applicant and mention of the decree is made by the town council.

The NLNL has created modes of appeal and more particularly a double jurisdiction. As the ministerial decree of refusal is an administrative decision, the competence is allocated to administrative jurisdictions. In first instance, the Administrative Tribunal is competent to decide on the case. Then, appeal can be made to the Administrative Court.

The implementation process

The Ministry of Justice is competent to implement the citizenship law and monitors its correct application. It publishes pamphlets explaining the procedure of acquisition for applicants. These pamphlets are available on the internet.6 The government has no other campaigns to promote the acquisition of Luxembourgish citizenship. Luxembourgish civil society seems rather uninterested in the issue of citizenship acquisition.

Statistics on the Luxembourgish population and the acquisition of citizenship

As mentioned in Table 1 (below) on the state of the Luxembourgish population, the foreign population has constantly been growing since 1981 and currently amounts to nearly 45 per cent of the resident population. This percentage appears to be rather high. However, the word 'foreigner' is no longer appropriate, considering that more or less 90 per cent of the non-Luxembourgers are European citizens. Thus, by defining only the 'non-EU' population as foreigners, it appears that Luxembourg has only 5 per cent of foreigners which is actually a rather small percentage.

[6] See the website of the ministry of justice: http://www.mj.public.lu

Table 1: State of the population in Luxembourg 1981, 1991, 2001, 2004, 2009

Year	1981	1991	2001	2004	2009
Overall population (x1000)	394.6	384.4	439.5	455.0	493.5
Of whom: women	186.7	196.1	223.0	230.3	248.7
Luxembourgers	268.8	271.4	277.2	277.2	278.0
Foreigners (x1000)	95.8	113.0	162.3	177.8	215.5
Out of which: - Portuguese	29.3	39.1	58.7	64.9	80.0
- Italians	22.3	19.5	19.0	19.0	19.4
- French	11.9	13.0	20.0	22.2	28.5
- Belgians	7.9	10.1	14.8	16.2	16.8
- Germans	8.9	8.8	10.1	10.5	12.0
- British	2.0	3.2	4.3	4.7	5.3
- Dutch	2.9	3.5	3.7	3.6	3.9
- Other EU	10.6	6.6	9.2	10.3	19.5
- Other	3.4	9.2	22.5	26.4	29.6
Foreigners in %	26.3	29.4	36.9	39.1	43.7

Source: Service central de la statistique et des études économiques, Luxembourg (STATEC)

As we see in the Table 2 (below), the introduction of the Law of 24 July 2001 had a noticeable impact on the number of naturalisations and options which climbed from 496 in 2001 to 1,236 in 2007, and is marked by the growing presence of the most recent migrants from Portugal and the republics of the former Yugoslavia in the number of naturalisations and options. It is important to mention that there are no campaigns in favour of the acquisition of Luxembourgish citizenship or of the integration of the foreign population other than by a few Luxembourgish NGOs.

Until 2008, two major restrictive factors explained why Luxembourg had the lowest rate of acquisition of citizenship of the entire European Union (0.4 per cent from 2000–2004). These two factors have to be mentioned at the top of the list of classical conditions based on the age of the applicant, regular residence (residence permit) and duration (five years), morality (absence of serious penal conviction or loss of civil rights) and sufficient integration:

-Applicants had to prove that they have lost their citizenship of origin;

-Naturalisation was refused to foreigners if it was contrary to the obligations they have to fulfil towards the state they belonged to.

Table 2: Statistics on naturalisations and options of Luxembourgish citizenship by origin

Year	1980	1990	1995	2001	2002	2003	2004	2005	2006	2007
Naturalisations & options										
All nationalities	489	748	802	496	754	785	841	954	1128	1236
German	125	97	70	45	47	50	62	79	74	95
Belgian	65	79	67	39	87	73	83	101	87	97
French	68	106	78	33	65	57	44	51	74	75
Dutch	21	30	15	13	11	17	6	7	20	10
Italian	124	191	209	105	119	120	111	97	161	138
Portuguese			143	106	147	158	188	252	338	352
Ex-Yugoslavia					40	57	68	100	116	167
Naturalisations										
All nationalities	213	199	270	207	356	344	341	366	343	484
German	50	17	21	15	18	19	27	35	30	45
Belgian	22	17	21	23	50	32	40	51	45	44
French	17	22	20	10	29	23	13	11	19	24
Dutch	10	1	2	7	6	5	3	2	1	2
Italian	62	23	51	46	51	36	16	5	3	14
Portuguese			26	34	51	32	23	30	27	53
Ex-Yugoslavia					25	41	50	60	76	105
Options										
All nationalities	276	549	532	289	398	441	500	588	785	752
German	75	80	49	30	29	31	35	44	44	50
Belgian	43	62	46	16	37	41	43	50	42	53
French	51	84	58	23	36	34	31	40	55	51
Dutch	11	29	13	6	5	12	3	5	19	8
Italian	62	168	158	59	68	84	95	92	158	124
Portuguese			117	72	96	126	165	222	311	299
Ex-Yugoslavia					15	16	18	40	40	62

Source: Ministère de la Justice, Luxembourg

The necessity to prove the renunciation of the former citizenship appeared to be a major obstacle to the liberalisation of access to Luxembourgish citizenship. Of course, these two conditions could be put aside if 'the applicant proves that he or she has asked the competent authority for either a certificate showing that he or she has no more obligations towards the state of origin and that it was impossible to obtain it within a time limit of one year from his or her request, or when the applicant is recognised by the Luxembourgish authorities as a refugee or if he or she is a citizen of a state that does not permit the loss of citizenship or permits it only after the acquisition of a new citizenship'.

These conditions appear to be objective ones. However, one could ask who would judge if the certificate establishes, in a satisfactory way, the loss of former citizenship, or that it was impossible to obtain such a certificate?

With the NLNL, the situation has obviously changed radically. The first six months show that the reform could really turn out to be a great success. According to information gathered by the ministry of justice, the number of applicants for naturalisation has increased by 5 per cent since the law on dual citizenship came into force (1 January 2009).

4 Current political debates

The current political debate about citizenship in Luxemburg is very much influenced by the competition of two policy trends well described recently by Maarten Vink: an 'electorate-driven' and an 'elite-driven' policy. A great part of the socio-political elite which could be called 'modernising' is fully aware that the foreign workforce has been, is and will continue to be essential to the development of the Luxembourgish economy and the viability of the social security system. They know that most immigrants are already integrated into the society in a social and economic sense. Other parts of these elites have a xenophile discourse but support political groups that are defending 'national preferences'. Most of the members of parliament and government identify themselves with the modernizing elite, but they have to take into account the electorate and the basis of their parties that don't necessarily share their liberal and European views.

Luxembourg, as with other countries, has its Modernisierungsverlierer or those who believe that they are the 'pariahs' of the modern society. The sociologist Fernand Fehlen has described in a recent article the break or fracture inside the Luxembourgish population between those who have a permanent and secure job in the state-run sector and those that are or feel threatened in the private labour market by foreigners, whether they be residents or commuters (Fehlen 2008). On both sides of this border line, there is a great interest in maintaining citizenship law as a national protection barrier. As Fehlen states:

'There is a nationalist and populist right-wing electorate. The most vulnerable of the society, those who don't profit from the impudent prosperity, who cannot live decently anymore and who have as their only trump the mastery of the Luxembourgish language against the threat of the wage earners of the three neighbour countries attracted by the high wages, those Luxembourgers have good reasons to give value to their Luxembourgish citizenship and their national language and to raise them as protectionist ramparts' (Fehlen 2009: 233).

This electorate can be found not only in the conservative CSV or in the populist ADR, but also in the socialist party LSAP, profoundly embedded in the working class of the industrial south of the country.

The debate about the recent law has to be seen against this political background. As representatives of an elite-driven policy, the Council of State—which had to formulate the law—has clearly stated that 'the strengthening of the conditions of integration provided by the project confirms that, in the last analysis, the Government continues to consider the acquisition of Luxembourgish citizenship as

the coronation of the integration route'. In a similar position, the Green party and the Democratic Party (liberals) have voted against the law because they want to reduce the residency duration to five years from seven and they ask for a relaxation of the linguistic conditions. The conservative party, CSV, insisted on having rather high levels of linguistic mastery in Luxembourgish (A2 in expressing and B1 in understanding of the spoken Luxembourgish language): a clear concession to the nationalist part of its electorate. The socialist junior partner of the coalition, LSAP, has given up the position held during the opposition years of 1999–2004 when they were against restrictive linguistic conditions, and so yielded to the CSV. The only radical opposition to the new law is represented by the populist ADR, which is against the possibility of dual or multiple citizenship.

Since the passage of the law, citizenship has disappeared as an important topic from the political agenda. In the program of the new government which emerged from the legislative elections of June 2009 (again a coalition between CSV and LSAP), no word is said about the citizenship issue. We will see if the publication of the effects of the implementation of the law in its first year of existence (2009) will lead to new discussions about this subject in the public sphere.

5 Conclusions

In 2008 Luxembourg embarked on a major reform of its citizenship law, which led to a considerable liberalisation of its legislation by making dual or multiple citizenship possible and by reintroducing double ius soli. Considering that nearly 45 per cent of the population living in the Grand Duchy of Luxembourg do not have Luxembourgish citizenship, this touches upon a number of important democratic and demographical issues.

The conservative party, which has the majority in the government and the Chamber of Deputies, put reform of the citizenship law on its political agenda after 2001 and committed itself to adopting the principle of dual citizenship as a way of resolving these issues which are particular to a small country like Luxembourg.

The Luxembourgish legal system was traditionally hostile to dual or multiple citizenship. Its attachment to the principle of the uniqueness of citizenship was founded on the desire to safeguard the national unity of a small country in close contact with countries granting their citizenship according to more liberal criteria.

However, the national unity of Luxembourg has gradually changed due to the duality of its population: the natives and the foreigners. The challenge to the current political authorities is the necessity of promoting national unity in law by gradually integrating the various groups of immigrants into the national community. These groups of immigrants are already de facto part of this community on an economic and social level through their harmonious integration, characterised in particular by a sufficiently long stay in the country and respect for its laws.

The rejection of dual citizenship, sensible in the past, nowadays hinders its initial purpose. A more liberal attitude towards dual citizenship is precisely the way to protect national unity these days in a nation seen as an evolving phenomenon and, in particular, to surpass the concept of a nation based on ethnic criteria, naturally inclined to protect itself by withdrawing into itself and rejecting 'the others'. This

perspective helps to focus, on the contrary, on the elective nation which constitutes an open community harmoniously integrating newcomers.

This dynamic perspective and the concept of an elective nation are not only the way to promote national unity, but also to prepare the way for European integration. However, the general mentality of Luxembourgish citizens is far from being inspired by this concept of an elective nation. The average Luxembourger does not judge whether a person belongs to the nation based on his or her ID card, but, in practice, judges based on something more difficult to acquire than citizenship, namely, perfect proficiency in speaking Luxembourgish.

Thus, the enactment of dual citizenship will probably not be a sufficient answer to the issue of immigration and integration. Campaigns organized by the Luxembourgish state and especially by Luxembourgish NGOs to contribute to a mentality shift, appear, in this light, to be of major importance. Campaigns of these sorts are, at the moment of drafting this report, only initiated by very few NGOs in Luxembourg.

The law of 2008 appears in this general frame as a hopeful but not sufficient measure. The introduction of ius soli not only for the third but also for the second generation of migrants and more flexible language skills requirements will have to be reached in the next decade. The fact that only 45 per cent of the resident population of Luxembourg has the right to vote in national elections underlines the real problem of the democratic legitimacy of the political decision processes in Luxembourg. Or, in the words of the MP of the Green Party, Felix Braz, speaking during the final debate on the NLNL on 15 October 2008: *'Dëst Gesetz, Här Präsident, mécht wuel eng Partie Dieren op, mä dëst Gesetz mécht d'Äerm net op fir d'Leit opzehuelen. Wéini maache mer dat ?*' ('This law, Mr President, no doubt opens some doors, but this law doesn't open arms to welcome people. When shall we do that?').

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