

## EUDO CITIZENSHIP OBSERVATORY

### *NATURALISATION PROCEDURES FOR IMMIGRANTS CROATIA*

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# Naturalisation Procedures for Immigrants

## Croatia

Juraj Sajfert

### 1. Introduction

The Croatian Citizenship Law has been one of the most enduring Croatian pieces of legislation. Introduced alongside the proclamation of independence in 1991, it remained largely unchanged up until 2011.<sup>1</sup> During the first 20 years of its application the Act provided for legal continuity, and all those who were Yugoslav citizens before independence and had Croatian “republic citizenship”<sup>2</sup> became Croatian citizens. Moreover, Yugoslav citizens who were residing in Croatia but did not have Croatian “republic citizenship” could have opted for Croatian citizenship. Finally, the Act facilitated the acquisition of Croatian citizenship for ethnic Croats living abroad.

There was very little citizenship-related legislative activity until 2007. On 13 July 2007, the Croatian Parliament adopted the Migration Policy for the Republic of Croatia in 2007/2008.<sup>3</sup> The goal of this document was to kick-off the alignment of Croatian legislative framework on migration with the EU *acquis communautaire*. As a result, the Asylum Act was amended in 2010, while in 2011 the new Aliens Act was adopted and the Croatian Citizenship Act was (finally) amended.

The 2011 Amendments of the Croatian Citizenship Act raised the threshold for naturalisation of foreigners from 5 to 8 years of interrupted stay in Croatia, and introduced the status of permanent resident as a prerequisite for naturalisation.<sup>4</sup> They were also aiming at strengthening the role and importance of knowledge of Croatian language and culture in the naturalisation process.<sup>5</sup> The procedure has been facilitated for legal residents who were residing in Croatia before the independence, yet still have not obtained the Croatian citizenship.<sup>6</sup> This measure should ease the naturalisation of the returnees (mostly ethnic Serbs and Bosniaks). Finally, some vagueness surrounding the procedure for ethnic Croats living abroad has been cleared, but they are still privileged compared to other applicants.<sup>7</sup>

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<sup>1</sup>The original text was published in the Official Gazette (*Narodne Novine*) No. 53/91. Some provisions of the law were quashed by the Constitutional Court in 1992 (Official Gazette No. 28/92). The law was slightly amended in 1993 (Official Gazette No. 113/93). It was substantially amended in 2011 (Official Gazette No. 130/11).

<sup>2</sup> Yugoslav citizens had a *sui generis* dual citizenship: Yugoslav citizenship and citizenship of a certain federal republic.

<sup>3</sup> Official Gazette No. 83/2007.

<sup>4</sup> Article 8.1.(3) of the Croatian Citizenship Act.

<sup>5</sup> The old requirement of knowledge of Croatian language and Latin script has been extended to Croatian culture and society (Article 8.1(4) of the Croatian Citizenship Act).

<sup>6</sup> Article 9 of the Croatian Citizenship Act requires from applicants born on the territory of Croatia to simply renounce their old citizenship, show their respect for public order and Croatian customs and obtain permanent residence in Croatia.

<sup>7</sup> Article 11 of the Croatian Citizenship Act requires from applicants who are ethnic Croats merely to respect Croatian public order and customs.

On 1 July 2013, Croatia should become the 28<sup>th</sup> Member State of the European Union. The recent Monitoring Report<sup>8</sup> of the European Commission identified the need to further align and reform Croatian migration policy before the date of accession. The Ministry of Interior is currently preparing the new Migration Policy for 2013-2016, which should be sent to the Croatian Parliament by the end of 2012, and could suggest additional modifications of the Croatian Citizenship Act.<sup>9</sup>

A Zagreb-based NGO, *Centar za mirovne studije* (Centre for Peace Studies), particularly interested in migration criticized the lack of migration strategy in Croatia,<sup>10</sup> since no policy document was adopted after the above mentioned 2007/2008 Migration Policy. A study from June/July 2011 labelled the Croatian integration policy as “rudimentary”.<sup>11</sup> These findings and criticism are however mostly addressed to Croatian asylum policy. When narrowing the focus to acquisition of citizenship, the legislative framework could hardly be judged as restrictive. Yet the problems applicants have been facing so far are severe procedural delays,<sup>12</sup> discretion and non-transparency exercised by the Ministry of Interior<sup>13</sup> and, since 2012, the administrative burdens stemming from the recognition of permanent residence,<sup>14</sup> a new prerequisite for the acquisition of citizenship.

In order to explain the application of the Croatian Citizenship Act on naturalisation procedure better, this paper will focus on promotion of citizenship acquisition by national authorities, the bureaucracy running the proceedings, the margin of discretion it exercises, the documents it requires, and the applicant’s access to judicial remedy.

## 2. Promotion

Croatia has not run or funded naturalisation campaigns over the last 10 years. All the relevant information concerning the naturalisation process is given on the Ministry of Interior website.<sup>15</sup> The website explains the procedure, lists the necessary documents and contains the relevant forms ready for download. In addition, there is a FAQ section. The Ministry of Interior provides the telephone information service<sup>16</sup> as well, where the applicants can ask questions and follow the progress of their application. Physically, the necessary forms and information can be obtained at police administration offices throughout the country.

Nevertheless, one specific programme does require special attention, since it resulted in a high number of positively resolved applications for Croatian citizenship. The national

<sup>8</sup> Communication of the Commission on the main findings of the Comprehensive Monitoring Report on Croatia’s state of preparedness for EU membership, SWD (2012) 338 final, 10.10.2012.

<sup>9</sup> <http://www.glas-slavonije.hr/179776/1/Strancima-lakse-dijaspori-teze-do-drzavljanstva-RH>, last visited on 28.10.2012.

<sup>10</sup> Interviews of Ms Sandra Kranjec with *h-alter* in April 2012 and *tportal* in July 2012, <http://www.h-alter.org/vijesti/ljudska-prava/stranci-nisu-dobrodosli>; <http://www.tportal.hr/vijesti/svijet/202428/Sud-za-ljudska-prava-zabranjuje-vracanje-izbjeglica-u-Grcku.html#.UI0708XA9Zg>, last visited on 28.10.2012.

<sup>11</sup> Senada Šelo Šabić, Saša Čvrljak and Vedrana Baričević, Welcome? Challenges of integrating asylum migrants in Croatia, Institute for International Relations, Zagreb, 2011.

<sup>12</sup> Advice to applicants provided by the Legal Clinic, Faculty of Law, Zagreb, <http://klinika.pravo.unizg.hr/content/stjecanje-hrvatskog-drzavljanstva>, last visited on 29.10.2012

<sup>13</sup> This was recognized by a number of Administrative Court and Constitutional Court judgments

<sup>14</sup> E.g. <http://www.vecernji.hr/vijesti/prije-ce-dobiti-lotu-nego-stalni-boravak-hrvatskoj-clanak-364421>, last visited on 28.10.2012.

<sup>15</sup> <http://www.mup.hr/39.aspx>, last visited on 31.10.2012.

<sup>16</sup> The number is +385/(0)1-3788-589.

Roma programme,<sup>17</sup> in place since 2003, started to tackle the issue of members of the Roma minority, long-term residents of Croatia who did not hold any documents. The implementation of this programme managed to, *inter alia*, regulate the status of many members of Roma minority in Croatia, including their right to citizenship.

### 3. Bureaucracy

Citizenship applications are submitted to the local police administration (in Croatia) or the Croatian embassy (abroad). After the receiving authority verifies that the application is complete, it is sent to the Ministry of Interior headquarters in Zagreb, where the actual administrative procedure and the verification of the application's correctness takes place. The final decision on whether to reject or accept the application lies with the Minister of the Interior, even though the 2011 Amendments have opened the doors for a possibility of transferring the final decision to a high civil servant.<sup>18</sup>

During the administrative proceedings, the Ministry of the Interior makes inquiries and obtains documents from other public authorities, courts, other Ministries, the Tax Authority and the secret services. The Ministry requires active involvement from the applicant, who should be available for further statements, clarifications and additional documents.

The final decision is sent to the applicant in the form of the written decision of the Minister of Interior. Hence, the final decision is in the hands of the politically appointed official. If the application is successful, the applicant becomes a Croatian citizen the moment he/she receives the decision of the Minister of the Interior.

The applicant has to pay the costs of the administrative procedure, and the language test, in addition to the costs stemming from the acquisition of necessary documents. The Croatian language test is held in a certified institution, and currently these are six universities across the country, namely: Faculty of Philosophy, Zagreb University, Faculty of Philosophy, Rijeka University, Faculty of Philosophy, J.J. Strossmayer University in Osijek, Faculty of Philosophy, Zadar University, Faculty of Philosophy, Split University, and Faculty of Philosophy, Juraj Dobrila University in Pula. The test costs around 1,000 HRK<sup>19</sup> (around 130 EUR). The elderly (over 60 years of age) are exempt from the language test requirement.

The application fee to the Ministry of Interior is paid only if the application is successful. It amounts to 1,500 HRK (around 200 EUR).

The biggest problems facing applicants is the length of proceedings and non-compliance of the Ministry of Interior with the provisions of the Administrative Procedure Act. According to that Act, the maximum length of any administrative procedure is set at 60 days. However, the actual length of the naturalisation procedure varies, depending on the complexity of the application. A significant proportion of applicants are facing severe delays and usually a couple of years pass before the decision is adopted.<sup>20</sup> The security checks take long and the prolongations are not reasoned or justified. Usually, the delays occur while the

<sup>17</sup>[http://www.vlada.hr/hr/uredi/ured\\_za\\_nacionalne\\_manjine/nacionalni\\_program\\_za\\_rome](http://www.vlada.hr/hr/uredi/ured_za_nacionalne_manjine/nacionalni_program_za_rome), last visited on 31.10.2012.

<sup>18</sup>The wording "Minister of Interior" has been changed to "Ministry of Interior" (Article 25 of the Croatian Citizenship Act).

<sup>19</sup>Croatian currency - kuna

<sup>20</sup><http://klinika.pravo.unizg.hr/content/stjecanje-hrvatskog-drzavljanstva>, last visited on 29.10.2012.

Ministry is performing internal checks with other government agencies. In theory, the applicant could, when faced with lengthy proceedings, start an administrative dispute. In practice, this remedy is inefficient and rarely used. Hence, the Ministry of the Interior does not face any significant consequences when delaying the adoption of its decision.

#### 4. Discretion

Even though the Ministry of the Interior claims that the naturalisation procedure is not discretionary,<sup>21</sup> some provisions of the Croatian Citizenship Act and the practice of the Ministry of the Interior show that, in reality, the central administration of the Ministry of Interior in Zagreb enjoys a wide manoeuvring space in accepting or refusing applications. The Group fighting against discrimination and for minority rights of the Legal Clinic at the Faculty of Law in Zagreb has identified a pattern of discrimination against certain nationalities during the naturalisation process.<sup>22</sup> The fourth report of the European Commission against Racism and Intolerance (ECRI) welcomed the facilitation of naturalisation for returnees, but underlined the privileged status of ethnic Croats, as a form of discrimination against non-Croat applicants. Roma, Serbs, and Bosniaks were identified as the ones facing biggest obstacles.<sup>23</sup>

Two provisions of the Croatian Citizenship Act provide the Ministry with discretionary powers, in practice. Article 26(2) enables the Ministry to refuse the applicant even if he/she has satisfied all the conditions prescribed by law if it establishes that there are reasons in the interest of the Republic of Croatia to reject the application. There are no written guidelines on circumstances which should be taken into account when applying this provision. In addition, Article 8.1(5) sets out that it must be conclusive from the applicant's behaviour that he/she respects the Croatian legal order and customs. This is another vague provision which may be used in many different ways. Usually, the Ministry uses this provision to perform internal checks of the applicant (with the Tax Authority, the courts, other Ministries, but also the secret services).

Nevertheless, it should be emphasized that the most common grounds for refusal are insufficient stay in Croatia and a previous criminal record.<sup>24</sup>

On the other hand, the Ministry can use Article 12 of the Act to simplify the naturalisation process by waiving most of the conditions for granting citizenship, if it is in the special interest of the Republic of Croatia to grant citizenship. In such cases, the only absolute condition is the applicant's respect of Croatian legal order and customs. The other four conditions do not have to be satisfied, namely: 18 years of age and full legal capacity, renunciation of the previous citizenship, 8 years of interrupted stay in Croatia and the status of permanent resident and knowledge of Croatian language, culture and society.<sup>25</sup>

<sup>21</sup>Official answer to the author of this report received on 5 June 2012.

<sup>22</sup><http://klinika.pravo.unizg.hr/content/stjecanje-hrvatskog-dravljanstva-prirodenjem>, last visited on 29.10.2012.

<sup>23</sup> ECRI Fourth Report on Croatia, CRI(2012)45, 25.9.2012.

<sup>24</sup> see footnote 21.

<sup>25</sup>Article 8 of the Croatian Citizenship Act.

## 5. Documentation

When applying for Croatian citizenship, the applicant has to submit a substantial number of documents accompanying the application form. Four documents need to be obtained from the country of origin: proof of current citizenship, birth certificate, certified copy of ID and the excerpt from the criminal record (with a certified translation to Croatian language). The applicant needs to draft a C.V. as well, and submit the marriage certificate (if married) issued not more than 6 months ago.

Since he/she needs to be a permanent resident in Croatia with a minimum eight years period of interrupted stay in Croatia (before 1 January 2012, five years would suffice), this status has to be proven as well. In order to do so, the applicant has three documents he/she can choose from, and submit one: a Croatian ID for foreigners, a Croatian residence certificate or a passport with a registered residence in Croatia.

The applicant does not need to show that he/she has sufficient economic resources in the citizenship proceedings. However, he/she needs to do so in order to obtain the status of a permanent resident in Croatia, which is a prerequisite for naturalisation.<sup>26</sup>

The applicant must take a specific language test for naturalisation. A new by-law on the language and culture test entered into force on 3 November 2012.<sup>27</sup> It broadened the possibilities for applicants to prove their knowledge of the Croatian language. Language tests can now be organized not only by universities, but also by vocational training institutions and high schools. In addition, applicants who have completed their primary, secondary or tertiary education in Croatia do not have to pass the separate language test. A certificate from an educational institution in the Croatian language from abroad is also accepted, as well as a certificate of knowledge of Croatian language at B1 level.

Knowledge of Croatian culture and society is now tested through a questionnaire that the applicant has to fill when submitting the application, in front of the respective civil servant and without any sort of help. The applicant is faced with 15 randomly chosen questions. In order to pass, he/she needs to have at least 10 correct answers. The 15 questions will be randomly chosen from 100 questions that were annexed to the respective by-law, which means that all questions are publicly available and applicants can prepare in advance.

The applicant should also prove that he/she has renounced the old citizenship, or undertake the obligation to do so, subject to success of his/her application. Renunciation is not required from stateless applicants or from applicants that will, through naturalisation, lose their previous citizenship *ex lege*. If the country of origin does not allow the loss of citizenship or is imposing impossible conditions for the loss of citizenship, the applicant's statement of renunciation should suffice. There is another issue identified by ECRI<sup>28</sup> linked with this requirement. Ethnic Croats are exempt from renunciation of their current citizenship. Such practice is deemed as discriminatory against all other, non-Croat applicants.

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<sup>26</sup> The criteria are laid down in the By-law on status and employment of foreigners in the Republic of Croatia (Pravilnik o statusu i radu stranaca u Republici Hrvatskoj) and the By-law on calculation and amount of sufficient means of foreigners in the Republic of Croatia (Uredba o načinu izračuna i visini sredstva za uzdržavanje stranca u Republici Hrvatskoj) (both Official Gazette No. 52/12).

<sup>27</sup> Official Gazette No. 118/2012.

<sup>28</sup> See footnote 23



## 6. Review

There is no right to appeal against the decision of the Ministry of Interior on the application for citizenship. Instead, the decision could be challenged in front of the competent Administrative Court, where the applicant is entitled to initiate the administrative dispute. He/she can do so within 30 days from the day on which the decision of the Ministry was communicated to him/her. There are four Administrative Courts in Croatia, in the four biggest cities: Zagreb, Split, Rijeka and Osijek. These Courts may examine both the legality of the decision and the Ministry's failure to act. The applicant may challenge the decision on both procedural and substantive grounds. The most common situation the Administrative Court<sup>29</sup> had to face in naturalisation cases were negative decisions by the Ministry that were not supported by substantive reasoning. In such cases, the Administrative Court would normally annul the decision of the Ministry and order the adoption of a new decision, with instructions on what is required or missing. The Court has an option to simply decide the matter itself, which is rarely used. If it does decide the matter, the applicant becomes entitled to another remedy; an appeal against the judgment to the High Administrative Court. The grounds for such an appeal are however limited to the Court's breach of the procedural law, wrongful determination of facts or wrongful application of substantive law.

The last remedy at the applicant's disposal is the possibility of a constitutional complaint to the Constitutional Court. Grounds for the constitutional court complaint are limited to the violation of a human right or a fundamental freedom guaranteed by the Constitution.

When it comes to the language test, the applicant can file an appeal with the appeal's committee of the institution in which he/she took the exam. The appeal triggers the hierarchical review of the test, since the appeal's committee is composed of the appraisers who were not testing the applicant. The appeal's committee may modify the decision in merit, i.e. pass the language requirement.

## 7. Conclusion

The Croatian Citizenship Law, dating from the date of the Declaration of Independence (8 October 1991), enjoyed a substantial makeover only in 2011, after 20 years of its application. The amendments that came into force on 1 January 2012 tightened the conditions for foreign legal residents, by raising the eligibility bar from 5 to 8 years of interrupted stay in Croatia, and introduced a criterion of approved permanent residence in Croatia. They have coincided with the administrative dispute reform, which introduced the adversary aspect to the administrative court proceedings.

Although the naturalisation procedure is not discretionary on paper, the practice shows that the Ministry of Interior enjoyed a wide margin of discretion when refusing or approving the applications. There are several provisions of the Croatian Citizenship Act vague enough to enable the Ministry to disadvantage certain applicants and put them on a slow track, at the same time favouring other applicants. The new structure of administrative dispute has a potential to further scrutinize the procedure, so it could push the Ministry of the Interior towards a more transparent and faster procedure. Yet, a foreign legal resident has to satisfy

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<sup>29</sup> The described organisation of administrative adjudication is quite recent. Until 2012, there was only one Administrative Court (in Zagreb) and no High Administrative Court. The proceedings did not have the adversary aspect.

the conditions for permanent residence in order to become eligible for Croatian citizenship. This prerequisite might make the naturalisation procedure more cumbersome for the applicants, by adding more conditions to granting the permanent residence, a procedure which now must precede the naturalisation procedure and falls outside the scope of the Croatian Citizenship Act. In addition, renunciation of previous citizenship is required from all applicants but ethnic Croats. Such framework may perpetuate identified discriminatory practices against vulnerable ethnic groups: Roma and returnees, namely Serbs and Bosniaks. Finally, the upcoming Croatian accession to the EU and the necessity to satisfy the requirements set in the European Commission's Monitoring Report might result in the adoption of a new Croatian Migration Policy by the end of 2012. Consequently, the Croatian Citizenship Act and its provisions on the acquisition of citizenship might be amended in the course of 2013.

