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COUNTRY
REPORT
2020/05

MARCH
2020

REPORT ON CITIZENSHIP LAW: GERMANY

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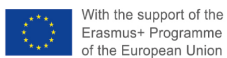
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Global Citizenship Observatory (GLOBALCIT)
Robert Schuman Centre for Advanced Studies
in collaboration with
Edinburgh University Law School

Report on Citizenship Law: Germany
RSCAS/GLOBALCIT-CR 2020/5
March 2020



Anuscheh Farahat and Kay Hailbronner, 2020
Printed in Italy
European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)

www.eui.eu/RSCAS/Publications/
cadmus.eui.eu

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Research for the 2019 GLOBALCIT Reports has been supported by the European University Institute's [Global Governance Programme](#), and the British Academy Research Project CITMODES (co-directed by the EUI and the University of Edinburgh).

The financial support from these projects is gratefully acknowledged.

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Report on Citizenship Law

Germany

Anuscheh Farahat and Kay Hailbronner¹

1. Introduction

The turn of the millennium marked an important change in German nationality law. The Nationality Law of 1913 (*Reichs- und Staatsangehörigkeitsgesetz*), valid from the German Empire to the Third Reich and the Federal Republic and subject to many changes and amendments, was replaced by the Nationality Act,² which came into force on 1 January 2000.

The new nationality law was the result of a highly controversial debate between the major political parties in 1998, preceding the federal parliamentary elections. Although in many respects still based upon the provisions of the law of 1913, the Nationality Act of 2000 (*Staatsangehörigkeitsgesetz*) has conformed to the trend of recent European nationality laws by substantially facilitating naturalisation; including a stronger toleration of dual nationality; replacing discretionary regulations with individual rights; introducing new modes of acquisition and, in particular, by introducing a *ius soli* element into German nationality law.

As indicated by the Act's name, German nationality law refers to the term *Staatsangehörigkeit* (nationality) rather than *Staatsbürgerschaft* which may be translated as 'citizenship'. *Staatsbürgerschaft* has a somewhat stronger political connotation and may refer particularly to the substantial democratic rights and obligations related to legal status. Following German legal terminology, the term 'nationality' will be used in the following report.

¹ The report on Citizenship Laws in Germany was originally authored by Kay Hailbronner and published in November 2009. The report was subsequently revised and updated by Anuscheh Farahat in October 2012, December 2014 and December 2019. The present version of the report was published in February 2020.

² *Staatsangehörigkeitsgesetz* (StAG) of 15 July, 1999, *Federal Law Gazette*, vol. I, p. 1618.

2. Historical background and recent developments

2.1 German nationality law until 2000

The German Nationality Law (*Reichs- und Staatsangehörigkeitsgesetz*) of 22 July 1913 introduced for the first time a common German nationality for all the nationals of the various states constituting the ‘German Reich’ of 1870. German nationality did not fully replace the nationality of each of the states of the federation, but supplemented it. Under the Constitution of 1919, German nationality provided that every national simultaneously acquired German nationality. Each German was granted the same rights and duties, every German inside and outside the territory of the German Empire was entitled to protection, and it was forbidden for nationals to be extradited to any foreign government for the purpose of punishment or persecution.

Under the Nazi regime, German nationality law was repeatedly changed, primarily for ideological and racial reasons. One of the first measures was the abolition of the nationality of the *Länder* as a result of the establishment of Germany as a unitary state. The law of 14 July 1933 provided for the withdrawal of naturalisation granted during the period between 1918 and 1933, and the withdrawal of German citizenship from persons having violated a duty of loyalty to the German Empire or the ‘German nation’. According to further regulations, all Jews having their ordinary residence abroad were collectively deprived of citizenship.

As a result of the ‘reunification’ with Austria and the territorial acquisitions from 1933 to 1941 in Eastern Europe, German nationality was generally granted collectively to persons considered to be ethnic Germans living in the territories incorporated into the German Reich or attached as protectorates to the Empire (Hailbronner & Renner 2005: 16). Another reason for collective acquisition of German nationality was to facilitate admission to the Wehrmacht, SS, police, or Nazi organisations, provided that the persons were of German ethnic origin.

The Federal Republic of Germany of 1949 decided to base its nationality law upon the nationality law of 1913, rather than enacting a completely new law. In addition to regulations and changes made by the Allied Powers from 1945–1949, the nationality law of 1913 was substantially changed by three amendments, in 1955, 1956, and 1957. The first Act of 1955, amending the Nationality Act of 1913, addressed collective naturalisations, which took place between 1938, and 1945. Those who had received German citizenship during that period were still legally considered German citizens. However, if a person had been collectively naturalised but did not wish to be a German citizen, he or she could opt out during a period of one year after the law came into force.³ The validity of such collective naturalisations had been a matter of dispute in the jurisprudence and literature of the Federal Republic (Hailbronner & Renner 2005: 63; Genzel 1969a: 113; Genzel 1969b: 98). By the second law of 1956, the collective acquisition of German nationality by Austrians was reversed (Makarov 1956: 744). Austrians, however, could re-acquire German nationality by declaration if they had established permanent residence in Germany by that time.

The third law of 1957, and the subsequent legislation of 1969 established equal treatment of men and women in relation to the acquisition of German nationality by spouses and descendants of German nationals.

³ Voigt (1955/1956): Entstehung und Inhalt des Gesetzes vom 22. Februar 1955, in: ZAÖRV Vol. 16, S. 661 (663).

Between 1969 and 1990, the debate on German nationality focused upon issues concerning the division of Germany. While originally the law in the German Democratic Republic (GDR) provided for a common German nationality, with the adoption of the nationality law of the GDR (*Staatsbürgerschaftsgesetz*) in 1967 the idea of a common German nationality was relinquished and replaced by separate citizenship of the GDR. The Federal Republic of Germany reacted by insisting upon a common German nationality, based upon the nationality law (*Reichs- und Staatsangehörigkeitsgesetz*) of 1913. Thereby, every German, acquiring German nationality by descent, was still considered a German national, regardless of whether the person permanently resided in the Federal Republic or the GDR. The legal basis for this position was the insistence upon an inseparable common German nationality attached to the legal continuation of the German Empire.⁴ This concept enabled the Federal Republic to issue passports and to claim as German citizens every citizen of the GDR who managed to legally, or illegally, leave the territory of the GDR and arrive at a consulate or embassy of the Federal Republic of Germany (Hailbronner 1981: 712-713; Vedder 2003: 11 ff.; Klein 1983: 2289).

The Treaty on the Basic Relations between the Federal Republic of Germany and the GDR of 12 December 1972 (*Grundlagenvertrag*), as well as the treaties with the Soviet Union and Poland of 1970 and Czechoslovakia of 1973, omitted the controversial issue of German nationality. It was explicitly stated in a protocol attached to the *Grundlagenvertrag* that the treaty would facilitate a solution to issues of nationality. The Federal Constitutional Court held that these treaties could not be interpreted as causing a loss of such for Germans who acquired German nationality under the nationality law of 1913 or under the Basic Law.⁵

After the reunification of Germany on 3 October 1990, the East German laws and regulations on nationality were abolished. With the accession of the GDR to the Federal Republic, the nationality legislation valid in the Federal Republic became fully applicable in the territory of the former GDR and in Berlin. A number of questions, however, remained to be resolved concerning the effects of naturalisation and other issues related to the effects of East German nationality legislation (Renner 1999: 230). These issues have yet to be completely resolved.

Subsequent changes to the nationality legislation were primarily devoted to a solution to the problem of integration of the immigrant population by facilitating access to German nationality. In the early 1990s a discussion started about the political rights of the immigrant population. By the end of 1998 there were 7.32 million foreign nationals living in Germany, accounting for 9 per cent of the German population. Most foreigners living in Germany had been living there for many years. By the end of 1997, approximately 30 per cent of all foreigners had been in Germany for twenty years or more, 40 per cent for at least fifteen years and almost 50 per cent for more than ten years. Almost two thirds of all Turks and Greeks, 31 per cent of Italians and 80 per cent of Spaniards had lived in Germany for more than ten years and 1.59 million (21.7 per cent of all foreigners) had been born in Germany.

The figures showed a basic dilemma of German immigration policy: An increasing number of children of migrant workers had been born and had grown up in Germany, received their schooling and professional education in Germany, would eventually work in Germany and yet were children of 'foreign' nationals (despite the fact that their nationality has frequently become a mere emotional attachment to the home country of their parents, and is sometimes considered a mere reassurance, a sort of 'alternative' nationality). There is in principle no dispute about the need to integrate large parts of the foreign population into

⁴ Decisions of the Federal Constitutional Court, vol. 36, p. 1.

⁵ Decisions of the Federal Constitutional Court, vol. 40, p. 141; vol. 41, p. 203.

Germany by inducing them to become German citizens. All German governments have declared that there is a public interest in the naturalisation of foreigners living permanently in Germany.⁶ There is no consensus, however, on the ways and conditions under which German citizenship should be acquired.

The particular issue was the acquisition of German citizenship by birth on German territory, which introduced an element of *ius soli* into the German concept of citizenship and which has given rise to a heated controversy between the major political parties in recent years.

An attempt was made in some of the *Länder* to solve the fundamental dilemma arising from the exclusion of a substantial part of the population from political rights by granting limited voting rights at a local level to foreigners. This failed due to the decision by the Federal Constitutional Court declaring such an attempt to be unconstitutional.⁷ The Court stated that the concept of democracy as laid down in the Basic Law does not permit a disassociation of political rights from the concept of nationality. Nationality therefore is the legal prerequisite for the acquisition of political rights, legitimising the exercise of all power in the Federal Republic of Germany. The Court, however, also stated that the only possible approach to solving the gap between the permanent population and democratic participation lies in changing the nationality law, for example, by facilitating the acquisition of German nationality by foreigners living permanently in Germany and thereby having become subject to German sovereignty in a manner comparable to German nationals.

In the context of the general debate about Germany's immigration policy and its factual change into an immigration country, pressure increased for a reform of German citizenship legislation. There were numerous proposals ranging from simplifying the naturalisation process and increasing the acceptance of multiple nationality to introducing a *ius soli* principle for third-generation foreigners born in Germany (Apel 1992: 99; Blumenwitz 1993: 151; Hobe 1994: 191; d'Oliveira 1990: 114; John 1991: 85; Löwer 1993: 156; Lübke-Wolff 1996: 57; Mangoldt 1994: 33, Marx 1997: 67; Meireis 1994: 241; Münch 1994: 1199; Predeick 1991: 623; Renner 1994: 865; Schrötter & Möhlig 1995: 437).

The *Bundestag* decided in 1990 to facilitate the acquisition of German citizenship for young foreigners aged sixteen to 23 to a substantial degree, provided that they renounced their previous citizenship, had lived permanently and lawfully in Germany for eight years, had attended school in Germany for at least six years and had not been prosecuted for a criminal offence. In addition, the acquisition of German citizenship for the first generation of recruited migrant workers was also facilitated substantially, provided that certain requirements were met:

- legal habitual residence in Germany for fifteen years;
- renunciation of previous nationality;
- absence of criminal conviction;
- ability to earn a living.

Originally, facilitated naturalisation of young foreigners and of long-term residents was granted 'as a rule', i.e., administrative discretion was very limited. Another amendment in June 1993 changed these rules by establishing an individual right entitling every foreigner

⁶ See for example the statement of the Federal Government in: *Bundestagsdrucksache* (Official Records of the Bundestag), No. 10/2071, 3rd October 1984.

⁷ Decisions of the Federal Constitutional Court, vol. 83, p. 37, 59.

fulfilling the aforementioned requirements to demand naturalisation (Hailbronner 1999b: 1).⁸ Although these provisions of the Aliens Act granting an entitlement to German citizenship required renunciation of previous nationality, a number of exceptions were made which led in fact to a steadily increasing number of naturalisations with dual nationality. Exceptions were granted, for instance, if a foreigner could not renounce his or her previous nationality or only under particularly difficult conditions, e.g., if the original home country required military service before giving up nationality.

The general number of naturalisations in 1995 increased to 313,606 compared to 34,913 in 1985 (in 1997, however, the number decreased to 278,662). However, it must be taken into account that this figure includes a substantial number—up to three-quarters—of naturalisations of German repatriates (*Aussiedler*), who acquire German citizenship very easily on the basis of Article 116 of the Basic Law in connection with the Expellees Act, giving them a constitutional right to obtain German citizenship as a refugee or expellee of German ethnic origin or as their spouse or descendant, provided that they had been admitted to the territory of the ‘German Reich’ within the frontiers of 31 December 1937. Nevertheless, in 1990, naturalisations based upon the provisions of the Aliens Act for the immigrant population increased at a rate of about 35 per cent, in 1994 at a rate of 54 per cent and in 1996 by 20 per cent compared to the preceding year (*Beauftragte der Bundesregierung für Ausländerfragen* 1999: 11); in 1997, however, the number of naturalisations decreased by about 4 per cent. With Germany having 1.18 per cent of the total foreign population of Europe, the rate of naturalisations in 1996 was still relatively small compared to other western European states, although it had quadrupled since 1986.⁹ The share of women was substantially higher, with 1.37 per cent, compared to that of men, with 1.03 per cent.

According to an agreement between the Christian Democratic Party and the Liberal Party of 1994, the introduction of a special nationality for children (*Kinderstaatszugehörigkeit*) of the third generation who were born in Germany was envisaged.¹⁰ In order to be eligible for this special nationality, which was intended to ensure equal treatment between German nationals in the issuing of German identity cards, at least one of the child’s parents would have to be born in Germany and both would have to reside lawfully in Germany during the ten years preceding the child’s birth. Additionally, both parents would have to be entitled to an unlimited residence permit. The ‘quasi-nationality’ for children would require an application by parents before the child’s twelfth birthday. With the child’s eighteenth birthday, the young adult would acquire full German nationality upon renouncing his or her prior nationality. It is very doubtful whether the proposal was practicable and whether a ‘quasi-nationality’ would have been acceptable in international relations and what effect such a special nationality might have had, for instance, with regard to the application of international treaties relating to visa and travel documents (*Europäisches Forum für Migrationsstudien* 1995: 11, 19; Lübke-Wolff 1996: 57; Ziemske 1995: 380, 381). The proposal was never put into practice, nor indeed were any of the other proposals, due to political developments in the *Bundestag* and *Bundesrat*.

Following a shift of power in the *Länder* in 1999, the *Bundesrat*, the upper house of Parliament, representing the German *Länder*, which were then dominated by the Christian Democratic Party, suggested that German nationality would be acquired automatically by a child whose foreign parents were born in Germany and who, at the time of the child’s birth,

⁸ This was part of the so-called *Asylkompromiss*, *Bundesgesetzblatt* (Federal Law Gazette), vol. I, p. 1062.

⁹ Ethnic Germans are not included in this rate of naturalisation.

¹⁰ As to the coalition agreement see Eylmann (1995: 161, 163); Leutheuser-Schnarrenberger (1995: 81, 85); Ziemske (1995: 80) and the *Plenarprotokoll des Deutschen Bundestages* (Parliament’s Plenary Protocol), No. 13/18, p. 1217.

had a valid residence permit.¹¹ Children whose parents were in possession of an unlimited residence permit and have been living in Germany for five years were to be given a right to naturalisation. In both cases, the acquisition of German citizenship would not require the renunciation of previous nationality.

The proposals of the Social Democratic Party and the Green Party were going in the same direction. The Social Democratic Party suggested supplementing the principle whereby German nationality is acquired by descent (*ius sanguinis*) with the principle of territoriality (*ius soli*). Children of foreign parents therefore ought to automatically acquire German citizenship as a result of birth on German territory, provided that at least one parent has been born in Germany and has secured his or her permanent residence in Germany. Dual nationality is not to be prevented in such cases. Additionally, for permanent residents, individual rights to the acquisition of German nationality were to be created independently of renunciation of their previous nationality. The draft suggested a facilitation of naturalisation for the following groups of citizens:

- foreigners with a permanent residence permit after eight years of residence;
- foreigners belonging to the so-called second generation aliens who have grown up in Germany;
- spouses of Germans after three years of lawful residence, provided that they have been married for at least two years.

Additionally, the proposal provided for a facilitation of discretionary naturalisation, which would be enabled after residence of five years and only be dependent upon the capacity to earn a living, absence of a criminal conviction for a serious offence and absence of a reason for expulsion for endangering public safety or violent behaviour.¹²

Following another shift in the distribution of political power across the Federation and the *Länder*, the proposal could not be realised: the Christian Democratic Parties had won some state elections and it became uncertain whether the draft bill would receive a majority in the *Bundesrat*. A ‘compromise’ was worked out by the Liberal Party, which provided for the acquisition of full nationality by birth on German territory if both parents apply and at least one of the parents has a right of residence in Germany. The proposal of the Liberal Party suggested a loss of dual nationality by obliging the naturalised person to opt for one nationality once that person has reached the age of 21. If the previous (dual) nationality were not given up, German nationality would be lost.¹³

A renewal of the discussion was provoked when the coalition agreement between the Social Democrats and Bündnis '90/Die Grünen of 20 October 1998 was presented to the public. According to the intentions of the coalition, German citizenship should be conferred at birth to children born on German territory if one foreign parent was born on German territory or if he or she had entered Germany before the age of fourteen, furthermore requiring that, in both cases, he or she at the time of birth is in possession of a residence permit (*Aufenthaltserlaubnis*). Other amendments intended by the coalition were a facilitation of the naturalisation process when applying on the grounds of an entitlement to German citizenship. It was proposed that naturalisation be allowed if a foreigner was able to sustain himself or herself and his or her dependants, if there were no convictions for criminal offences and, finally, if no grounds for expulsion or deportation had arisen; the residence requirement was

¹¹ *Bundestagsdrucksache* (Official Records of the Bundestag), No. 13/9815.

¹² *Bundestagsdrucksache* (Official Records of the Bundestag), No. 13/259.

¹³ On the optional model, see the report by the Reference and Research Services of the Bundestag (eds.), No. WF III-49/99 of 10 October 1996.

to be reduced from fifteen to eight years. Other proposed amendments related to a right to naturalisation for minors and a reduction of the residence requirement to three years for spouses of German nationals. Dual or multiple nationality was to be accepted in all these cases (Hailbronner 1999a: 51)

2.2 The nationality law reform of 2000

These proposals met heavy resistance by some of the *Länder*, particularly since the first draft presented by the Ministry of the Interior provided for a broad acceptance of dual and multiple nationality and the introduction of the *ius soli* principle.¹⁴ Due to changing majorities in Parliament a new proposal was submitted by the Social Democrats, Bündnis '90/Die Grünen and the Liberal Party (FDP) comprising not only the introduction of the *ius soli* principle, but also the insertion of the 'optional model'. Both chambers went on to adopt this draft with minor changes¹⁵ in May 1999.¹⁶ The new law on the reform of the German citizenship law of 15 July 1999 entered in force on 1 January 2000.¹⁷ In addition, administrative guidelines for its application were to be adopted.

One of the major changes was the introduction of the *ius soli* principle in Article 4 of the German Nationality Law implying that a child of foreign parents acquires German citizenship under the 'optional model' on the condition that one parent has legally had her habitual residence in Germany for eight years and that he or she has been in the possession of a residence permit, an *Aufenthaltsberechtigung* or an unlimited *Aufenthaltsurlaubnis* for three years; the model of the 'double *ius soli*' in force in some other European states has therefore not been introduced. Foreign children legally residing in Germany were entitled to naturalisation upon their tenth birthday if the above-mentioned conditions were fulfilled at the time of birth (para. 40b StAG; transitional regulation which expired on 31 December 2000). Due to the fact that children usually acquire the nationality of their parents by descent, the introduction of the *ius soli* principle will entail at least double if not multiple nationalities for foreign children born in Germany. Thus, para. 29 StAG introduced the highly disputed optional model and the obligation to decide upon reaching the age of eighteen which nationality to keep and which to renounce. If the young adult declares that he or she intends to keep his foreign nationality or if he or she does not declare anything on reaching the age of eighteen, he or she will lose his or her German nationality. If, on the other hand, he or she declares an intention to keep German citizenship, the young adult is obliged to prove the loss or renouncement of the foreign nationality (para. 29 (2) StAG) unless German authorities have formally approved that he or she may keep his foreign nationality. According to para. 29 (4) StAG, this permission to retain the former nationality (*Beibehaltungsgenehmigung*) is to be issued if renunciation of the foreign nationality is either impossible or unreasonable or if—in the case of naturalisation—multiple nationality would be accepted according to the general rules.

¹⁴ *Zeitschrift für Ausländerrecht* 1999, 50: *ZAR-Nachrichten*: 'Zuwanderung, Integration und Reform des Staatsangehörigkeitsrechts'; Barwig, Brinkmann, Hailbronner, Huber, Kreuzer, Lörcher & Schumacher 1999.

¹⁵ *Bundestagsdrucksache* (Official Records of the Bundestag), No. 14/867.

¹⁶ *Plenarprotokoll des Deutschen Bundestages* No. 14/40, p. 3415 ff.; *Bundesratsdrucksache* (Records of the *Bundesrat*) No. 296/99; on the consultation of the Committee on the Interior see *Bundestagsinnenausschuss-Protokoll* (Protocol of the Committee on the Interior) No. 12, dated 13 March 1999

¹⁷ *Bundesgesetzblatt* (Federal Law Gazette), vol. I, p. 1618; on the amendments see Hailbronner 1999c; Huber & Butzke 1999, 2769.

Aside from the introduction of the *ius soli* principle the naturalisation process has also been facilitated. The foreigner is entitled to naturalisation after a residence period of eight instead of fifteen years on the condition that he or she declares himself bound to the free and democratic order of the Constitution (*freiheitliche und demokratische Grundordnung*), that he or she is in possession of a residence permit, that he or she is capable of earning a living without any recourse to public assistance or unemployment benefits (except in those cases in which the dependence on those benefits is not attributable to the applicant's fault or negligence), that there is no criminal conviction and, finally, that loss or renunciation of the previous nationality occurs. Dual nationality is accepted in more cases, e.g., if the applicants are elderly persons and dual nationality is the only obstacle to naturalisation, if the dismissal of the previous nationality is related to disproportionate difficulties, and if a denial of the application for naturalisation would constitute a particular hardship; moreover, double nationality is accepted in cases in which the renunciation of the previous nationality entails—in addition to the loss of civil rights—economic or financial disadvantages, or (generally in the case of EU citizens) provided that reciprocity exists.

Due to the fact that the acquisition of German citizenship has been facilitated, some amendments relate to the loss of German citizenship and the limitation of acquisition by descent. Acquisition of German citizenship abroad is excluded if the German parent who has his or her habitual residence abroad was born abroad after 31 December 1999, except in those cases that would result in statelessness. Despite this provision, the acquisition of German citizenship remains possible if both parents are in possession of German citizenship, unless they were both born abroad after 31 December 1999. Acquisition of German citizenship remains also possible if the one parent who has German citizenship notifies the competent diplomatic representation within one year after birth.

2.3 The Immigration Act of 2004

The law reform of 1999/2000 was considered as part of a major reform of nationality law. The intention was to make further revisions in a two-phase procedure for adjusting the nationality law to a new comprehensive migration policy and changes in the residence rights of EU citizens. It was also intended to devise a special administrative law for nationality issues and to reform the legislation on repatriated Germans.

The Immigration Act of 2004 made some adjustments to the changes in immigration law but did not yet provide for further changes. One of the major features of the Immigration Act has been the emphasis upon integration requirements.

Some changes were required by the new system of residence titles introduced by the new Immigration Act. Since the Immigration Act provides for a residence permit and a settlement permit as the only residence titles replacing a number of different titles under the Aliens Act of 1990, the nationality law requirements had to be adjusted to the new system with the requirement of a settlement permit in those cases in which an unlimited residence permit was previously necessary. The Immigration Act has also abolished the EU residence permit. Therefore, the new provision now requires only the right of freedom of movement, which is certified by a formal declaration to EU citizens upon taking up residence in Germany. EU citizens remain privileged with regard to naturalisation. Already under the law of 1999, EU citizens were entitled to naturalisation without renouncing their previous nationality provided that reciprocity was granted. The issue as to under what conditions reciprocity is granted had been a matter of controversy between the *Länder*. Some of the

Länder have required that reciprocity only be guaranteed if another EU Member State provides the right to naturalisation. Other *Länder* considered it sufficient if a German national was in fact naturalised without the requirement of giving up German nationality. The matter was finally settled by a decision of the Federal Administrative Court deciding in favour of a more liberal interpretation which states that reciprocity does not require a formal similarity in terms of granting an individual right to naturalisation if in fact German nationals will be naturalised without having to renounce their German nationality.¹⁸

In principle, the provisions on *ius soli* acquisition have remained largely unchanged. A request, by the opposition parties, to replace the provisions on *ius soli* acquisition by a more restrictive rule whereby only children whose parents were born in Germany should be entitled to *ius soli* acquisition of German nationality, did not receive a majority in the Bundestag.¹⁹

A declaration of loyalty had already been introduced by the reform of 1999. The new Section 37 requires that the naturalisation authorities have to submit the personal data of any applicants who have reached the age of sixteen to the secret services.

Major points of controversy were again the question of acceptance of dual nationality, the legal status of German repatriates and the conditions for the admission of repatriates, particularly regarding the proof of knowledge of the German language and diverse procedures for consulting with the secret services in the naturalisation proceedings.

The law reform of 1999/2000 was accompanied by a political decision to renounce the 1963 Convention on Dual Nationality, which provides only for a very restricted acceptance of dual nationality. By signing the European Convention on Nationality on February 2002, Germany subscribed to the basic principles of the European Convention on Nationality allowing states party in Article 14 to provide for dual nationality for children automatically acquiring the nationality of a host state at birth and for married partners possessing another nationality. In addition, Article 15 in other cases leaves it up to the contracting states to allow, under its internal laws, multiple nationality if its nationals acquire or possess the nationality of another state.

With regard to the loss of nationality, the optional model, in the view of the German government, required a reservation to the European Convention on Nationality whereby Germany declared that loss of German nationality *ex lege* may, on the basis of the option provision in Section 29 of the Nationality Law (opting for either German or a foreign nationality upon coming of age), be effected in the case of persons who, in addition to a foreign nationality, acquired German nationality by virtue of having been born in Germany. With regard to Article 7 para. 1 (f) and (g), Germany has also declared that loss of nationality may occur if, upon a person coming of age, or in the case of an adult being adopted, it be established that the requirements governing the acquisition of German nationality were not met.

2.4 The 2007 reform of nationality law

The 2007 Act on implementing EU directives in the area of immigration and asylum law²⁰ included a legislative reform of nationality law by a number of substantial changes although not all these changes were related to the implementation of EU legislation. Despite some

¹⁸ Judgement of 20 April 2004, *Deutsche Verwaltungsblätter* 2004, vol. 22, p. 1430.

¹⁹ *Bundestagsdrucksache* (Official Records of the Bundestag), No. 15/955, p. 38 ff.

²⁰ *EU-Richtlinienumsetzungsgesetz* of 28 August 2007, BGBl. I, p. 1970.

critique in the literature (Sturm 2008: 129) the Act contained 24 amendments to the nationality law. Critics argued that the combination of implementation of EU legislation with a somewhat controversial amendment to the nationality law was a tactical instrument to facilitate the adoption of a ‘package-deal’ which most deputies were neither willing nor able to raise openly (Sturm 2008: 129, 130). Some of the legislative changes were—although not required by changes to the immigration law—indirectly related to immigration law, such as increased integration requirements, which had been introduced by the immigration law reform of 2004. The focus of the legislative amendments was clearly on new provisions on the acquisition of German nationality by treatment as a German national for 12 years. According to the new Section 3 para. 2, German nationality is acquired by someone who has been treated by the German authorities for 12 years as a German national regardless of permanent domicile in Germany.²¹ The acquisition is valid *ex tunc*, dating back to the time at which German authorities for the first time treated a person as a German national, for instance at the occasion of a marriage, birth, adoption or naturalisation. Section 3 para. 2 mentions as relevant official acts the issuance of a nationality certificate or passport or identity card. The acquisition is also valid for descendants who derive their nationality from the person having acquired German nationality by way of being treated as a German national.

A further requirement is that the person in question is not responsible for the error of the authorities.²² In order to acquire German nationality by factual treatment as a German national, it is necessary that the person in question did not intentionally or by negligence cause the error. The explanatory comments to the draft legislation²³ mention as examples the deceit or the concealment of relevant facts such as the reacquisition of a former nationality without having permission to maintain the German nationality according to section 25 para. 2 of the nationality law. Descendants having acquired German nationality by factual treatment cannot be made responsible for deceit or concealment by their parents (Sturm 2008: 131).

A second major topic was the change in the naturalisation requirements relating to standards of knowledge of the German language and the adoption of integration tests. The Federal Administrative Court in a judgment of 20 October 2005²⁴ decided that in order to fulfil naturalisation requirements an applicant did not need to be able to write German provided that he or she was able to understand a simple text of daily life and to dictate letters in German (for a critical review see Hailbronner 2007: 201; Münch, 2007: 236). The amendment now requires sufficient knowledge of the German language by providing a certificate in German at level B of the Common European Reference Framework for Languages. Thereby it has been clarified that certain standards of oral as well as writing capacities are necessary in order to prove sufficient knowledge of the German language.²⁵ There are exceptions for older people and juveniles, for sick persons and disabled persons. Persons beyond 16 years of age need to prove only language knowledge corresponding to his or her age. Older people, sick and disabled persons may be dispensed of the requirement to prove sufficient knowledge of the German language if they are not able to participate at language courses or acquire the language certificate.

New requirements are laid down in section 10 on the right to naturalisation. Whether corresponding requirements are also applicable with respect to a discretionary naturalisation

²¹ For a historical model in the Prussian nationality legislation of 2 July 1812 which, however, has based the acquisition of a status as a Prussian subject on persons who had been settled for at least ten years in one of the Prussian states see Sturm, *Das Standesamt* 2008, p. 130 at fn. 11.

²² In German: ‘*und dies nicht zu vertreten hat.*’

²³ BT-Drs. 16/5065, p. 227.

²⁴ BVerwGE 124, 268, 273.

²⁵ See Sect. 10 para. 4, 2. sentence of the nationality law.

under section 8 of the nationality law is somewhat unclear since there is no explicit provision to that extent in the law. For that reason, it is sometimes assumed that in spite of the legislative amendment in Section 10 a discretionary decision for persons who do not fulfil the language requirements was still possible. There are, however, good reasons for the contrary argument that it would be against the purpose of the legislative amendment to naturalise persons who do not fulfil the minimum language requirements under section 10 (Sturm 2008: 134). In addition, the legislative amendment was clearly intended to put an end to the diverse practices of the *Länder* with regard to the necessary level of knowledge of the German language. Therefore, the interior ministers in their decision of 4/5 May 2006 and 16/17 November 2006 agreed upon uniform standards with regard to language requirements, the introduction of integration tests and higher standards of law obedience. The legislative changes were intended to implement these decisions.

Integration tests and integration courses have been introduced in Section 10, para. 1 as requirements for naturalisation under Section 10. As a rule, an applicant for naturalisation may prove knowledge of basic facts of the political and social system and the living conditions in Germany²⁶ by passing successfully a test, normally following an integration course. There are other possibilities to prove the necessary knowledge, for instance by acquiring a German primary school certificate (*Hauptschulabschluss*). The courses are not obligatory. By law, the Federal Ministry of the Interior has been authorised to adopt a uniform integration test within the framework of the legislative provision on integration courses. Since the implementation of this provision required some time, the provision only entered into force on 1 September 2008. The integration test was adopted on 5 August 2008.²⁷ An intensive and controversial debate about integration tests proposed by some *Länder* preceded this amendment (for a critical discussion see Hanschmann 2008) The new integration test provides for questionnaires with 33 questions, a passing grade being 17 or more questions correct. First experiences indicate that approximately 99 per cent of all applicants have passed the test. It is, however, possible that a considerable number of potential applicants are deterred by the integration test (Göbel-Zimmermann/Eichhorn 2010a: 300). The Federal Government indicated that it would evaluate the practical effects of the new rules on sufficient knowledge of the German language and of the integration courses and tests five years after entry into force of the law dated of 28 August 2007.²⁸

In order to provide incentives for particular integration efforts the law also provides that the standard time in order to naturalise may be abbreviated from 8 to 6 years, particularly if the applicant proves a high level of knowledge of the German language.

The interior ministers in their meetings in 2006 criticised the existing barriers for naturalisation as too low with respect to criminal offences. The previous threshold of 180 daily fines²⁹ has been reduced to 90 daily fines (*Tagessätze*) and with respect to imprisonment from six to three months on probation. In addition, a multitude of small criminal sentences which are not beyond the threshold may now be cumulated by the naturalisation authorities. The law provides for a discretionary possibility to grant naturalisation in case of a court sentence only slightly beyond the threshold put down in the law. Other criminal court sanctions such as withdrawal of a driver's licence or a professional licence may—according to

²⁶ In German: '*Kenntnisse der Rechts- und Gesellschaftsordnung und der Lebensverhältnisse in Deutschland.*'

²⁷ *Verordnung zu Einbürgerungstest und Einbürgerungskurs (Einbürgerungstestverordnung)* of 5 August 2008, BGBl. I, p. 1649.

²⁸ See BR-Drs. 224/07 at p. 435.

²⁹ Regular punishments are either the imposition of a fine or imprisonment. The amount of the fine due is determined by daily payments. Their amount is determined by regular income of an offender

the discretion of the naturalisation authorities—be taken into account in order to refuse naturalisation.

The amendment removes a privilege for applicants below the age limit of 23 years relating to the proof of having sufficient means for existence. In principle, the right to naturalisation under Section 10 of the nationality law does not cease to exist if an applicant becomes dependent upon social assistance or job seeker's allowances provided that he or she cannot be made responsible for this situation. Until now, however, it has been a privilege for applicants below 23 years of age since they kept a right of naturalisation even if they could be made responsible. According to the legislator the provision is counterproductive for integration efforts. A number of organisations representing the interests of migrant workers, however, have heavily criticised the new provision as making the integration of juvenile foreigners more difficult. It should be kept in mind, however, that even for applicants below the age limit of 23 who are entitled to financial assistance for professional education or study³⁰ these restrictions are not applicable.

Substantial changes with regard to the acceptance of dual nationality were made with regard to EU nationals and Swiss citizens. Until 2007, dual nationality was accepted only under the condition of reciprocity with the EU country of origin of an applicant. The application of this provision created a substantial amount of legal difficulties. There were various controversial decisions on what basis reciprocity could be examined if an EU Member State did in practice allow discretionary naturalisation on the basis of dual nationality, although the law provided in principle for a requirement of abandoning previous nationality. The application of these provisions not only caused diverse jurisprudence but also created administrative difficulty in finding out the practice and law of other EU Member States with regard to the grant of reciprocal treatment. The new legislation, therefore, has abolished the requirement of reciprocity. All nationals of EU Member States are entitled to acquire German nationality without having to renounce their previous nationality. As a consequence, German nationals who are applying for a nationality of an EU Member State or of Switzerland, are not required any more to apply for special permission to maintain their German nationality.

It has been frequently criticised that acquisition of German nationality has been reduced to a very informal bureaucratic procedure, which is not suitable for demonstrating to new German nationals the importance of nationality. The interior ministers in their meeting in May 2006 in principle agreed on a more formal procedure although no agreement could be reached on the introduction of a loyalty oath as prescribed, for instance, by the US legislation. The compromise reached provides for a formal declaration at the occasion of receiving the naturalisation certificate.³¹ It is in dispute whether the formal declaration is a requirement of validity of naturalisation, as the explanatory report of the draft suggests,³² while the wording of the provision is not altogether clear since it says that naturalisation becomes valid by the handing out of the naturalisation certificate. Since it is very unlikely that the certificate will ever be passed on without the formal declaration, the issue seems to be more of a theoretical nature (for a discussion see Sturm 2008: 135; for a different view Berlitz 2007: 467).

A minor change concerns the right to naturalisation of former Germans living abroad. Previously, the privileged access to naturalisation of former Germans was applicable to their

³⁰ See 7th report of the *Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration*, December 2007, p. 145.

³¹ In German: '*Ich erkläre feierlich, dass ich das Grundgesetz und die Gesetze der Bundesrepublik Deutschland achten und alles unterlassen werde, was ihr schaden könnte.*' (I hereby declare that I will respect the Basic Law and the law of the Federal Republic of Germany and omit everything which could cause damage to the Federal Republic of Germany), see Sec. 16 of the nationality law.

³² BT-Drs. 16/565, p. 230.

descendants as well as adopted children regardless of their age provided that they fulfilled the minimum requirements of discretionary naturalisation according to section 8 of the nationality law. According to the amended Section 13 of the nationality law, only minor children are entitled to the privileged naturalisation procedure since the federal legislator came to the conclusion that there is no public interest in facilitating the naturalisation of adult descendants of former Germans living abroad.³³

Minor changes concern the establishment of a register storing all decisions relating to nationality. By a new provision, a legal basis has been created for the storing and processing of decisions relating to the acquisition, existence and loss of nationality, embracing as well the storing of decisions after 31 December 1960. The *Bundesverwaltungsamt* is responsible for maintaining the register. All nationality authorities are obliged to transmit the relevant personal data on decisions relating to nationality to the register. The nationality authorities are, in addition, obliged to inform the foreign representations of the Federal Republic as well as the local authorities about a naturalisation or loss of nationality. The legislative purpose is to avoid mistakes in the establishment of voter registers or the issuance of passports as a result of the loss of German nationality (as was indicated at a public hearing in the Interior Committee of the Bundestag at 23 May 2007).³⁴

The acquisition of German nationality of foreigners by birth on German territory on the basis of section 4 para. 3 is also registered on the basis of a new provision in the birth register, in which the birth of a child is documented.³⁵ Contrary to a proposal by the *Bundesrat*³⁶ this ratification, however, does not contain proof for the existence or non-existence of German nationality.³⁷

The 2007 reform legislation introduces a new administrative procedure on the determination of the nationality status of a person by application or in the case of a particular public interest. The *ex officio* procedure maybe started with the purpose of determining formally the nationality status of a person by the nationality authorities. The certificate on existence or non-existence of German nationality has binding force and is subject to appeal. The burden of proof is on the applicant who claims to possess the German nationality. Only in case of a loss of German nationality is it with the nationality authorities to prove the loss of German nationality.³⁸

2.5 The 2009 amendment of nationality law on the loss and withdrawal of nationality

The law on amending the nationality law of 5 February 2009³⁹ is primarily a reaction to decisions of the Federal Constitutional Court and the Federal Administrative Court on the legal requirements for withdrawing German nationality due to fraud or deceit and to the legal effects of an *ex lege* loss of nationality or withdrawal of nationality for descendants. Until

³³ See BT-Drs. 16/5065, p. 230.

³⁴ In the 42nd session, protocol No. 16/42, p. 60 it has been criticised that the creation of a central register was not necessary and that it would be sufficient to update the registers on the civil status of persons (Personenstandsregister), see also 7th report of the *Beauftragte der Bundesregierung für Migration, Flüchtlinge und Integration*, op. cit. December 2007, at p. 47.

³⁵ *Personenstandsrechtsreformgesetz* of 19 February 2007, BGBl. I, p. 122.

³⁶ BT-Drs. 16/5527, p. 11.

³⁷ For a critical comment see Sturm, *Das Standesamt*, op. cit. at p. 138, who refers to the legislation of other legal systems defining the legal status of persons also with regard to nationality.

³⁸ See also Sturm, *Das deutsche Staatsangehörigkeitsrecht* 2001, p. 115.

³⁹ BGBl. 2009 I, p. 158.

February 2009 no provisions were laid down in the German nationality law relating to the withdrawal of German nationality or the legal effects of a loss or a renunciation of nationality for descendants. While the new legislation clarifies the situation, it produces negative consequences in residence law: According to the higher courts the retroactive loss of nationality does not lead to a revival of the former residence permit and thus leaves the persons concerned in a situation of legal uncertainty (for a critical discussion see: Göbel-Zimmermann/Eichhorn 2010b: 349; Marx, 2009).

The legislative changes were induced by several decisions by the Federal Constitutional Court and the Federal Administrative Court. The Federal Constitutional Court in its ruling of 24 May 2006⁴⁰ had to decide whether nationality authorities could rely on the general provisions of the Administrative Procedure Act on withdrawal of administrative acts in order to withdraw a naturalisation which had been brought about on the basis of incorrect information provided intentionally by the person seeking naturalisation. The Court in principle decided in favour of the constitutionality of the application of these provisions to withdrawal of nationality. Since withdrawal of nationality may have effects on other persons, in particular descendants, the Court requested legislative rules for the solution of problems relating to the withdrawal of a naturalisation.

A second ruling of the Constitutional Court⁴¹ dealt with the retroactive loss of German nationality of a child as a result of a successful judicial appeal determining that the applicant was not the father of the child. The Constitutional Court declared the retroactive loss of German nationality of the child as constitutional since the minor child was at an age at which it could normally not develop a legitimate trust on the existence and continuity of its status as a German national. However, the Constitutional Court warned the legislator that this decision could not be generalised and that it would depend upon the circumstances of each case whether a retroactive loss of German nationality in such cases would be facing constitutional limits.

A parallel question arose with regard to the withdrawal of a residence permit as a result of fraud with legal consequences for the *ius soli*-acquisition of a child of the person deceiving the authorities.⁴² The problem of the legal effects of withdrawal of nationality, that is, to say the loss of German nationality for descendants, has been solved by introducing a minimum age requirement. Children may not lose German nationality until they have completed their fifth year of age. The legislator, in imposing the five-year age-limit, has relied upon the constitutional argument that in general children below the age of five have not yet developed their own consciousness of their German nationality and therefore the constitutional prohibition of renouncing German nationality (Article 16 para. 1 of the Basic Law) did not apply. According to Section 17 para. 3 the five-year rule is also applicable with respect to administrative decisions on the basis of other laws with retroactive effect on German nationality of third persons. The law explicitly mentions the withdrawal of a settlement permit, the withdrawal of a certificate according to Section 15 of the law on expellees of German descent and with respect to the non-existence of fatherhood according to Section 1599 of the Civil Code.

A second amendment concerned a new provision on withdrawal of illegal naturalisations or illegal permits to maintain German nationality in the case of acquisition of a foreign nationality. Such administrative decisions can only be withdrawn if the administrative act has been brought about by wilful deceit, threat or corruption or by intentionally incorrect

⁴⁰ 2 BvR 669/04.

⁴¹ Decision of 24 October 2006, 2 BvR 696/04.

⁴² Federal Administrative Court, decision of 5 December 2006, 1 C 20.05.

or incomplete submission of information essential for the adoption of the administrative act. The law now explicitly provides that withdrawal is not excluded by the fact that the affected person may become stateless as a result of losing German nationality. There is, however, a time limit according to Section 35 para. 3 of five years. If the withdrawal of the naturalisation or the permit to maintain German nationality has legal effects upon the legality of administrative acts based upon the nationality law relating to third persons, the nationality authorities have to pass a discretionary decision on the withdrawal or non-withdrawal of such administrative decisions. Relevant aspects are a possible participation of a third person in the wilful deceit, threat or corruption or in the intentionally incorrect or incomplete information. These aspects have to be balanced with legitimate concerns of the third person, in particular the legitimate interests of children.

An additional provision introduced a new criminal sanction for persons providing incorrect or incomplete information of essential importance for a naturalisation procedure or persons using such information to gain naturalisation for themselves or for other persons.

2.6. The 2014 reform of the ‘option duty’

The constant debate over dual nationality and the legality of the ‘optional model’ finally led the grand coalition of the Social Democratic Party (SPD) and the two Christian Democratic Parties (CDU/CSU) to ease the ‘option duty’ to a significant degree and to exempt a vast majority of *ius soli* children. According to the coalition agreement, the duty to opt between German and a foreign nationality should be abolished for children, who were ‘brought up’ in Germany by foreign parents; multiple nationalities would thereby be accepted for *ius soli* children. However, soon after the new government had taken office, disputes arose between the coalition parties over the meaning of ‘born and raised in Germany’. While Social Democrats favoured abolition of the ‘optional model’ and acceptance of multiple nationalities for the *ius soli* children, Christian Democrats and Christian Socialists argued that only those children who demonstrate a particular link to German society may retain German and another nationality.

In summer 2014 the coalition finally reached a compromise. According to the new law, the ‘option duty’ will be waived for children of immigrants born in Germany who have either eight years of residence before turning 21, or have attended a German school for at least six years. The eight-year residence requirement for the parents remains intact. Also the requirements for *ius soli*-children were changed and slightly adapted to the requirements of children with ‘option duty’. The new law came into force on 20 December 2014.⁴³

The new bill improved the situation of the vast majority of *ius soli* ‘children’ in Germany. An estimated number of 40,000 young Germans per year could benefit from the new regulation as from 2018. However, the bill falls short of the historical move towards full acknowledgment of dual citizenship and retains the ‘option duty’ as a general principle. Apart from this amendment, only minor changes have taken place in recent years, mostly concerning technical issues and editorial corrections.

⁴³ Regarding the contents of the 2014 law, see chapter 3.1.

2.7. Reforms between 2015 and 2019:

In November 2016, the Federal Administration Office's competence to document administrative decisions on matters of citizenship has been extended. While, prior to November 2016, the Federal Administration Office was only competent to document information about decisions on the loss of citizenship (§33 Nationality Act), it may now collect information about decisions on the existence and continuance of citizenship. It had been able to register the date, but now moreover is able in addition to register the legal basis for the acquisition or loss of citizenship. In a person's file it can now register whether there is an information ban regarding personal information. An information ban arises in circumstances where the registration office comes to the conclusion that a person does not need to share personal information (e.g. their habitual residence), because this could lead to dangers for the person's life, health, personal freedom or similarly important rights, §51 BMG (Federal Registration Law). Also, since May 2017, if a person can become a German citizen on the basis of *ius soli*, the registration office has to forward to the competent nationality authority whether there is an information lock in the sense of §51 BMG.

Substantial and widely controversial changes to the Nationality Act were made in August 2019. The amendment had been instigated by a public debate about German citizens who voluntarily joined the Islamic State. The government wanted to allow for a withdrawal of citizenship and introduced the legal grounds for such a withdrawal in §28 StAG with the parliamentary votes of the CDU/CSU and SPD. The amendment faced strong criticism in political discourse. Anyone who 'concretely participates in the fighting of a terrorist organisation abroad', will now lose his/her German citizenship. Such participation is considered as an act which is disloyal to Germany and the conduct of such persons is considered to be seriously prejudicial to the vital interests of Germany according to the reasoning provided by the legislator in the draft bill. Given that Art. 16 Basic Law prohibits loss of nationality if this renders the person stateless, withdrawal of citizenship is only possible if the person has dual citizenship. This condition in particular caused a lot of criticism. It is argued that the German citizenship in combination with another citizenship has become a second-class citizenship by means of the amendment as only holders of one single passport are protected against withdrawal. It has also been argued that Germany is shifting problems with its own citizens to other countries in order to render participation in the IS a 'foreign' problem. Before August 2019, there had been already a corresponding regulation relating to entry into the official armed forces of another country.

Another amendment that received wide criticism was passed in August 2019 concerning §35 (3) StAG. According to the new regulation the period within which newly acquired citizenship may be withdrawn has been extended from five to ten years in cases of identity fraud. This amendment is accompanied by the amendment of §8 (1) StAG according to which a person can only be naturalised by discretion if their identity and former nationality are known. As naturalisation now also requires a complete proof of identity, many refugees could not become German citizens in the foreseeable future. The lack of a hardship clause for this group has been subject to criticism.

There are also new requirements for naturalisation. The citizenship law of August 2019 introduced an additional condition for naturalisation under §10 StAG: Applicants to German citizenship need to prove their 'integration into conditions of life in Germany' ('*deutsche Lebensverhältnisse*'), in particular they have to prove that they are 'not married to several spouses at the same time'. Up until then it was only necessary to effectively commit to

the free democratic basic order. This amendment was the result of court proceedings before the Federal Administrative Court, where the court ruled that a second marriage that was concluded abroad by the applicant does not preclude an effective commitment to the free democratic basic order within the meaning of § 10 (1) sentence 1 StAG (old version). Therefore, the legislator amended §10 StAG and added the necessity of ‘integration into conditions of life in Germany’. The intention was to exclude naturalisation in case of polygamy, as polygamy was considered to be against the German living conditions, namely the German understanding of gender equality and marriage.

3. Current citizenship regime

3.1 Modes of acquisition and loss

A major purpose of the 2000 law, supported by the ruling Social Democratic party and the coalition partner Bündnis '90/Die Grünen as well as the liberal party, was the promotion of acquisition of German nationality for migrant workers and their second and third generation descendants as an essential prerequisite of their integration into the German society. Until 1 January 2000 one of the predominant features of German nationality law and practice, although not explicitly laid down in the law of 1913, had been that acquisition of German nationality through naturalisation was an exception, rather than the rule.

One of the main novelties of the 1999/2000 reform was the introduction of the *ius soli* principle in para. 4 of the law. Children of a foreign parent acquire German citizenship on condition that one parent has had lawful habitual residence in Germany for eight years and that he or she is in possession of a secure residence permit. Since January 2004, the threshold has been raised for acquisition by *ius soli* by requiring a settlement permit or, in the case of EU citizens, a right to free movement. Since the settlement permit requires a higher level of knowledge of the German language than the possession of an unlimited residence permit, which until 2004 had been sufficient for naturalisation, *ius soli* acquisition will only take place in the case of a high degree of integration on the part of a foreign parent.

Another major feature has been the facilitation of naturalisation. A foreigner is entitled to naturalisation after habitual lawful residence of eight years rather than fifteen years as previously. In addition, naturalisation depends upon a number of requirements, including a declaration of loyalty to the free and democratic constitutional order, possession of a regular residence permit or freedom of movement as an EU citizen, or an equally privileged right under the EEA Agreement. In addition, the foreigner has to prove the ability of earning a living without any recourse to social welfare or similar social benefits (unemployment assistance), absence of a criminal record and the renunciation or loss of a previous nationality.

The Immigration Act of 2004 has slightly changed the requirements of naturalisation. Integration requirements have been introduced making the right to naturalisation dependent upon a proof of sufficient knowledge of the German language. In addition, successful attendance at an integration course—consisting of a language course and a course on basic facts of German history and the political system—reduces the required time of lawful residence for naturalisation from eight to seven years. In case of the existence of facts indicating that a foreigner supports or engages in unconstitutional political activities or is subject to expulsion due to a terrorist affiliation, naturalisation could also be denied.

One of the central issues of the German nationality law of 1999/2000 was that of dual nationality, the avoidance of which had hitherto been an essential element of the German nationality law.

Following a highly emotional debate on dual nationality, the reform of 1999/2000 maintained the principle of avoiding dual nationality. Today, the general rule is that a foreigner is not obliged to renounce his or her previous nationality if renunciation entails serious disadvantages or is dependent upon particularly difficult conditions. Therefore, the nationality law closely follows the pattern of other European states by admitting dual nationality more generously. In addition to the many dual nationals by birth, today dual nationality is accepted in almost 60 per cent of all naturalisations.⁴⁴

Due to the fact that children usually acquire the nationality of their parents by descent, the introduction of the *ius soli* principle will entail at least dual, if not multiple nationalities for foreign children born in Germany. Since, despite this development, the issue of dual nationality has remained a politically controversial concept, the nationality law of 2000 used the ‘optional model’, which obliges foreign children to decide by the end of their eighteenth year which nationality to keep and which to renounce. If they declare the wish to keep the foreign nationality or if they do not declare anything by the end of their 23rd year, German nationality will be lost within a specified period of time. If they declare an intention to keep German nationality, however, they are obliged to prove the loss or renunciation of their foreign nationality until their 23th birthday, unless the German authorities have formally approved the retention thereof. They can apply for permission to retain their former nationality until their 21st birthday. Permission will be granted if renunciation of the foreign nationality is either impossible or unreasonably burdensome, or if multiple nationality would have to be accepted according to the general rules on naturalisation. Whether the ‘optional model’ in its initial version has been compatible with Article 3 para. 1 and 16 para. 2 of the Basic Law, was controversial in the literature (see, for a critical view, Wallrabenstein 1999: 223 ff.; 2007: 5 ff.; Farahat 2012: chap. 6 A.I.; Niesler 2007; Göbel-Zimmermann/Eichhorn 2010a: 296; for a different view see Hailbronner, NVwZ 1999, 1273; Berlitz, GK-StAR, §29 StAG, Rn.13-28; Masing 2004, in Dreier (ed.), Grundgesetz Bd.1, Art. 16, Rn.71).

Naturalisation under Section 8 of the nationality law is in principle dependent upon the non-existence of a reason that would justify expulsion, and on the capability to earn a living. The Immigration Act has considerably expanded previously existing possibilities for making exceptions to these requirements. Previously, it was only possible to make an exception to the requirement of the capability of earning a living in the case of aliens up to the age of 23 or aliens who were unable to earn a living through no fault of their own. The new provision provides discretionary exceptions for reasons of public interest or to avoid a particular hardship. This enables a considerably larger amount of discretion (Renner 2004:176, 179). The particular hardship clause requires unusual disadvantages or difficulties in the case of non-naturalisation.

Since the new provisions enable a weighing of interests (public interest or particular individual hardships) it will be possible to take into account the reasons for dependence on social benefits and the degree of dependence on social welfare. Similar considerations apply when making an exception to the requirement of the absence of criminal conviction. The discretionary clause, however, applies only if there is no individual right to naturalisation

⁴⁴ According to statistical data from 2018 by the Federal Office of Statistics, see: https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Bevoelkerung/Migration-Integration/Publicationen/Downloads-Migration/einbuengerungen-2010210187004.pdf?__blob=publicationFile&v=4#page=134

under Section 10 of the law. Section 12a gives an implicit indication of the kinds of criminal convictions which are to be tolerated.

In December 2014 the aforementioned significant easing of the ‘option duty’ to a significant degree and the exception of a vast majority of *ius soli* children came into force. Whilst the ‘option duty’ has not been abolished in general, in its amended version it applies only to *ius soli* ‘children’ who were not been raised in Germany. Children who were born and raised in Germany do not have to opt between German and their foreign nationality. Section 29 para. 1a of the Nationality Act stipulates that a person must have fulfilled eight years of residence in Germany before turning 21, have attended a German school for at least six years, have graduated from a German school or completed a professional education in Germany to count as having been ‘raised in Germany’. The new law acknowledges sociological membership in various ways. Even if none of the enumerated criteria are satisfied, a *ius soli* ‘child’ may still be able to prove a comparable close link to Germany. However, this requires that the duty to opt would impose a particular hardship in the individual case. Under the new ‘optional model’, the citizenship administration will have to decide on a case-by-case basis whether a child is exempt from the ‘option duty’ and can keep both citizenships. Accordingly, the new Section 34 requires registry offices to provide citizenship authorities with the necessary information to decide whether or not the duty to opt applies in a particular case. This includes *inter alia* information concerning previous addresses in Germany and the dates when the person moved to Germany or left Germany for the last time respectively.

The latest amendment of the ‘option model’ has again enhanced the acceptance of dual nationality in Germany. However, there remain elements in German nationality law which seek to limit the effects of dual nationality in the long run. Already in its 2000 reform, the German legislator abolished the so-called national clause (*Inlandsklausel*). Since 1 January 2000, the acquisition of a foreign nationality based on an application leads to the automatic loss of German nationality even if the national retains domicile on German territory. In contrast, according to the former legal situation, German nationality was lost only when the national did not keep his or her habitual residence in Germany (see Section 25 para. 1 of the Imperial Nationality Act).⁴⁵ Second, automatic loss of German nationality also results from voluntary entry in a foreign army without permission of the German Ministry of Defence, if the national possesses the nationality of this foreign state in addition to his or her German nationality.

Apart from these amendments, the modes of losing German nationality were not affected by the reform of 1999/2000. German nationality is lost by release from citizenship upon request if a person has applied for the acquisition of a foreign nationality and when the conferment of this nationality is assured; by voluntary renunciation of German nationality by a dual or a multiple national; or by adoption by a foreign national if the foreign nationality is thereby acquired.

By its 2009 reform, the legislator introduced two qualifications regarding withdrawal and loss of nationality. These qualifications revolved around the consequences of loss or withdrawal of nationality for third persons, namely children. According to Section 17 para. 2 of the Nationality Act, children may only be liable to lose their German nationality up to the age of five. Before that, children are considered too young actually to develop legitimate expectations regarding the continuation of their nationality.

A second amendment in the course of the 2009 reform clarified that naturalisation may only be withdrawn on the basis of illegal acquisition if the naturalisation has been achieved by

⁴⁵ *Reichs- und Staatsangehörigkeitsgesetz* (RuStAG) of 22 July, 1913, Imperial Law Gazette, p. 583.

wilful deceit, threat or corruption, or by intentionally incorrect or incomplete submission of information essential for the adoption of the naturalisation. Withdrawal is not excluded by the fact that the affected person may become stateless as a result of losing German nationality. However, a withdrawal may only take place five years after completing the naturalisation procedure (Section 35 para. 3). Where the withdrawal of naturalisation affects third parties, the nationality authorities have to take into account several aspects in their discretionary decision, namely: the third party's possible participation in wilful deceit, threat or corruption, or in the provision of intentionally incorrect or incomplete information. These aspects have to be balanced against the legitimate concerns of the third party, in particular the legitimate interests of children.

Despite the 2009 reform, the general modes of losing German nationality have largely remained untouched.

The same holds true for the traditional modes of acquisition of German nationality, which also remain largely unchanged. German nationality is acquired by descent from a German mother or a German father, by legitimisation, by adoption or by naturalisation. In the absence of a marriage, descent from a German father requires a formal procedure to determine fatherhood or a formal recognition of fatherhood. The abuse of this instrument by providing false declarations of parenthood prompted the legislator to introduce a procedure to challenge the recognition of parenthood.⁴⁶ By this law, the legislator established a possibility to challenge a recognition of parenthood by the competent authorities in order to prevent an intentionally false recognition of parenthood for the purpose of achieving a residence permit.⁴⁷ However, the Federal Constitutional Court declared this law unconstitutional.⁴⁸ In December 2013 the Constitutional Court held that such a challenge by public authorities is unconstitutional insofar as it amounts to a withdrawal of the child's nationality. Since the child had no influence on the declaration of fatherhood or the motivations of its parents, the loss of its nationality would be contrary to Article 16 para. 1 of the Basic Law. While it would not be unconstitutional in general to sanction fraudulent motivations on the part of the parents, even if this generated negative effects for the innocent child's nationality, the concrete regulation was held to be too broad and unspecific. The law did not provide any clear-cut criteria to identify cases of fraudulent motivation. Moreover, it disadvantaged virtually all unmarried couples where the mother was not a German national and where the two partners did not share a domicile. Thereby, it failed to take into account the parental right under Article 6 para. 1 of the Basic Law and changes in contemporary family life.

Spouses of German nationals are entitled to naturalisation on the condition that they renounce their previous nationality unless there is a reason for acceptance of dual nationality and if certain integration requirements are met. According to the administrative practice a residence of three years is required and a marriage of two years. The applicant must be able to express him- or herself in the German language.⁴⁹

One of the most important changes can be found in the changed perception of the acquisition of German nationality which dates back to the reform of 2000. Since 1 January 2000, naturalisation and acquisition of German nationality is considered as being in the public interest of Germany rather than as an unavoidable fact. This change in nationality law also reflects a substantial change in the perception of migration. The original assumption that the migrant workers recruited in the early 1970s would eventually return to their home countries

⁴⁶ *Gesetz zur Ergänzung des Rechts zur Anfechtung der Vaterschaft* of 13.3.2008, BGBl. I p. 313.

⁴⁷ BT-Drs. 16/3291, p. 9.

⁴⁸ 1 BvL 6/10, www.bverfg.de.

⁴⁹ See Decisions of the Federal Administrative Court, vol. 79 p. 94.

has been abandoned. Only about 12,000 to 17,000 persons were naturalised each year from 1974 until 1989, in spite of an increasing number of persons having their permanent residence in Germany. This situation changed substantially with the new Nationality Act giving a legal right to naturalisation if certain conditions were fulfilled. As a result, the number of naturalisations went up substantially since the new law entered into force. With the Immigration Act of 2004 (*Zuwanderungsgesetz*) some amendments have been introduced in order to take account of the new integration requirements introduced by it as well as the security considerations resulting from the anti-terrorism legislation following 11 September 2001. Under Section 11 of the Nationality Act, the right to naturalisation is precluded in 2 cases. First, if a foreigner does not have sufficient knowledge of the German language. Second, if there are either sufficient facts indicating that the foreigner is engaged in or supporting activities directed against the free democratic order or the security of the Federal Republic or a *Land*, or if an applicant is intending unlawful disruption of the functioning of the constitutional organs of the federation or a *Land* or their members, or is endangering by use of force or preparatory actions the external affairs of the Federal Republic of Germany. A similar exclusion clause applies in the case of participation in terrorist organisations or support for terrorist activities.

According to Article 116 of the Basic Law, ethnic Germans expelled as a result of post-war measures as well as their families, relatives and descendants are entitled to privileged acquisition of German nationality. The details are regulated by the Federal Expellees Act (*Bundesvertriebenengesetz*) since 19 May 1953. Between 1950 and 1987, a total of approximately 1.4 million ethnic Germans and their family members entered Germany, mostly without major integration problems. The law is inseparably connected to an assumption of the persecution of ethnic Germans who were expelled after the Second World War and their family relatives. Contrary to a frequently made assumption, there is no acquisition of German nationality for persons of ‘German ethnic origin’ as such. The law is therefore becoming obsolete with the disappearance of the consequences of expulsion for the second and third generation of expelled persons.

With the large increase of the number of immigrants of German ethnic origin as a result of the liberalisation and democratisation in the Eastern Bloc, substantial changes were made in the law in order to gain more control over the immigration patterns of ethnic Germans. In 1993, an annual quota of 225,000 was introduced and on 1 January 2000 the quota was reduced to around 100,000 persons, a figure corresponding to the number of ethnic Germans entering Germany in 1998. In addition, prior to entry, a German language test was introduced. Until 2000, ethnic Germans possessing the legal status of a German without German nationality under Article 116 para. 1 of the Basic law were entitled to naturalisation on the basis of their admission to German territory. Since 1 January 2000, repatriated Germans and their spouses and children acquire German nationality automatically by entering German territory on the basis of a previous admission title.

After 2000, the composition of the category of repatriate Germans (*Aussiedler*) changed as only a few of the family relatives and their descendants tended to be of German ethnic origin as well. Since family members did not have to prove sufficient knowledge of the German language in the admission procedure, unless they applied for repatriate status themselves, an increasing percentage of repatriate Germans did not have sufficient command of the German language and were therefore subject to social marginalisation. In the Immigration Act of 2004 the provisions of the Federal Expellees Act were changed by introducing a condition of proof of basic knowledge of the German language for non-German

spouses as well as non-German descendants⁵⁰ intending to acquire German nationality based upon the special provisions of the Expellees Act and the Basic Law.

As a result, the number of repatriated Germans entitled to German nationality went down substantially. In 2006 only 7,626 persons from the former Soviet Union moved to Germany as compared to 35,369 in 2005. Only one application out of eight has been successful as compared to two out of three in the years before the entry into force of the Immigration Act 2004.⁵¹

In 2006/2007 the political debate on the increased recognition of dual nationality in Germany nationality law, and the facilitation of naturalisation of foreigners recruited by post-war agreements on *Gastarbeiter* and their descendants to the second and third generation, was revived in the context of a general debate on the success or failure of integration efforts. Particularly troublesome was the question of the extent to which sufficient knowledge of the German language and basics of the German constitutional order and political system should be required in order to become a German national. A highly controversial debate arose about various proposals by the *Länder* to introduce naturalisation tests requiring proof of sufficient knowledge of the German politics, history and culture as well as administrative guidelines for naturalisation authorities in Baden-Württemberg to examine doubts as to the constitutional loyalty of applicants for naturalisation (for a critical discussion see Hanschmann 2008).

The different practices in the *Länder* concerning the necessary standard of knowledge of the German language in reading and writing became a matter of intensive public debate regarding the relevance of insufficient knowledge of the German language as a reason for the economic failure of substantial parts of the juvenile foreign population in the labour market. The decision of the Federal Administrative Court of 20 October 2005⁵² partially dispensing with a requirement of knowledge of the written German language was one of the reasons for a legislative amendment in 2007. Another was an ongoing controversy within the jurisprudence on the question of withdrawal of naturalisation. The Federal Constitutional Court's ruling of 24 May 2006⁵³ upheld the existing administrative practice of withdrawing naturalisation on the basis of general rules of the Administrative Procedure Act; with regard to the legal effect of such withdrawals for spouses and descendants, the Court requested the legislator to provide for rules taking into account the different public and private interests at stake.

Political analysis

Although there was a basic consensus among the major political parties that the integration of the foreign population, recruited in the 1960s as migrant workers, and their descendants, had been neglected to a substantial degree in the following decades, no agreement could be reached on the role of naturalisation and the acquisition of German nationality in the process of integration. While the ruling Social Democratic Party in 1999 considered the acquisition of German nationality to be an essential instrument in achieving integration, the opposition Christian Democratic Parties (CDU/CSU) argued that naturalisation should complete the process of integration rather than pave the way towards it. The disagreement focussed upon the issue of dual nationality. While the Social Democratic Party and its coalition partner, Bündnis '90/Die Grünen, with the assistance of the Liberal Party, advocated a concept of toleration of dual nationality based upon a dual attachment to different nations and dual

⁵⁰ The status 'ethnic German' according to Art. 116 of the Basic Law is not transferred to descendants.

⁵¹ Immigration Report for 2006, 1st ed. December 2007 at p. 50 ff.

⁵² BVerwGE 124, 268, 273.

⁵³ 2 BvR 669/04, www.bverfG.de.

cultural and political ties, the opposition parties maintained that dual nationality was a typical indication of a lack of integration and an unwillingness to accept requirements of loyalty and identity attached to a more traditional ethno-cultural concept of nationality. The German public appeared deeply divided over the issue. While a clear majority of the mass media as well as the churches and humanitarian organisations were in favour of multiculturalism and dual nationality, parts of the German population became increasingly critical about a substantial increase of dual nationals resident in Germany. Surveys showed that a majority supported easier access to German nationality, but opinions were deeply divided on whether or not this should be achieved by introducing elements of *ius soli* and/or accepting dual nationality. The issue acquired prominence in several regional electoral campaigns.

Against this political backdrop legal disputes arose about the impact of constitutional law and international treaties, such as the Council of Europe Convention on the Reduction of Dual Nationality of 1963. The doctrine of avoiding dual nationality had been frequently put forward as an argument based on constitutional and international law. Although the Constitutional Court stated in its decision on the voting rights of aliens that dual or multiple nationality is regarded as an evil that, if possible, should be avoided or eliminated, in the interest of states as well as in the interests of the affected citizen, the Court clearly had argued on the basis of the then-existing law, shared by the obligation of the European Convention of 1963 as well as by the traditional German concept of nationality. Supporters of a reform legislation have argued that the traditional arguments voiced against dual nationality do not outweigh the need to integrate second- and third-generation foreigners into the political system of the Federal Republic of Germany. As a more practical argument in favour of dual nationality, one may point to the increasing number of dual nationals, particularly as a result of a large number of mixed marriages and naturalisations, who during the validity of the Nationality Act of 1913 were in fact living in Germany and have not created any substantial problems in the application of international treaties or in the exercise of diplomatic protection. There is, in fact, no precise account of the exact number of dual nationals who acquired German nationality simply on the basis of descent from a German parent or by naturalisation. One argument put forward in the political debate was that almost all Germans repatriated on the basis of Article 116 of the Basic Law as expelled Germans of ethnic German origin had acquired German nationality, maintaining as a rule their previous nationality of the USSR or the 1990 successor states of the USSR. One could also point to the fact that an original provision on the registration of dual nationality had been given up, obviously for the reason that the number of dual nationals did not create substantial problems in administrative practice.

Against the objection concerning the conflict of loyalties it has been argued that the concept of the German state has, similar to the developments in other European states, undergone substantial changes through the immigration of a large foreign population and the process of European integration. As a *de facto* immigration country, Germany could not ignore the fact that a substantial part of its population consisted of migrant workers and their children. Therefore, the argument was that the basis for German nationality can no longer be seen exclusively from the viewpoint of a nation with a cultural and historical identity primarily transferred by descent. One must note, however, that the common objection to German nationality law—particularly by foreign observers—that German nationality law is ethno-centric and based primarily upon ethnicity was an incorrect interpretation of the existing legislation even before 1990. The privileged treatment of ethnic Germans and their descendants, expelled as a result of post-war measures, does not indicate such a concept. The very basis of Article 116 of the Basic Law is the protection of ethnic Germans and their relatives, who were conceived as victims of post-war measures, although the protection aspect

has, over the course of time and due to the substantial political changes in Eastern Europe, lost most of its validity—particularly if one considers that some of the successor states of the USSR are now EU Member States.

Although the adoption of the new Nationality Act in 1999 did not bring to an end the public debate on the concept of German nationality, emotions were somewhat calmed when it became apparent that a considerably smaller number of foreign nationals were acquiring German nationality under the new *ius soli* regime or by naturalisation in comparison to what had been originally envisaged. The Immigration Act 2004, therefore, did not attract much attention in terms of changing the nationality legislation since its focus was on immigration, although an unsuccessful attempt was made to substantially restrict the scope of application of the *ius soli* rule.

Within the reforms of 2007 and 2009, the *ius soli* principle has been confirmed by the legislation. The acceptance of multiple citizenship in exceptional cases and its other legal consequences have been put in a clear wording as demanded by the constitutional jurisprudence of 2006. In fact, as the result of the current legislation, dual nationality has become the rule rather than the exception, since dual nationality is accepted in around 50 per cent of all naturalisations (see Göbel-Zimmermann/Eichhorn 2010a: 296). In a decision on the acceptance of dual nationality by German nationals residing abroad and applying for naturalisation in their host state, the Federal Administrative Court has concluded from the legislative amendments of Section 25 of the German Nationality Act that the legislator has attributed less weight to the principle of avoidance of dual nationality and a higher weight to the private interests of German nationals residing abroad in retaining German nationality.⁵⁴

Statistical development

The statistical evaluation of the nationality reform of 1999/2000 reveals mixed results: While there is a considerable increase in accepting dual citizenship mainly due to the introduction of *ius soli* elements, naturalisation numbers still remain at an unsatisfactory low level. As far as the *ius soli* rules are concerned there are a variety of new administrative tasks. Only in 2008 did the nationality authorities deal with the issue of the ‘option model’ for the first time for a yearly average of 40,000 persons. Concerning the administration of this complicated model, difficulties arose regarding the practical operation and legal uncertainties (for administrative issues see Krömer 2000: 363). An important factor for the operation of the nationality law reform of 1999/2000 is the statistical development of naturalisations. However, one has to be careful when interpreting statistics (see Renner 2004: 176; Göbel-Zimmermann 2003: 65).

The number of naturalisations since the mid-1970s remained fairly constant until the end of the 1980s, between 25,000 and 45,000. From 1981 until 1985, 69,000 foreigners were naturalised by regular procedure (discretion) and 117,770 by the legal right to naturalisation (primarily repatriating ethnic Germans). A significant development can be seen if one looks at the statistics from 1991–1995. In the same period there were 489,004 discretionary and 926,283 obligatory naturalisations (*Beauftragte der Bundesregierung für Ausländerfragen* 1997: 60). The latter category were mainly ethnic Germans in the sense of Article 116 of the Basic Law, who acquired the status of a German upon admission to German territory, and after August 1999 by a certificate of admission whereby they automatically acquired German nationality for themselves and their descendants.

⁵⁴ BVerwGE (Federal Administrative Court) 131, 121 (125).

As a result, they were no longer counted in the statistics on naturalisation after August 1999. This explains why the number of naturalisations, which in 1998 had been at a peak of 291,331, dropped to 248,206 in 1999 and to 140,731 in 2003. Until August 1999, repatriated ethnic Germans accounted for up to two-thirds of the naturalisations. In general, repatriate Germans kept their previous nationality. Dual nationality of repatriate Germans has always been accepted under the respective laws although hardly any Germans knew about this situation. Therefore, the largely theoretical dual nationality of repatriate Germans has never been a subject of public controversy.

The 186,688 foreigners who achieved German nationality by naturalisation in 2000 indicated an increasing willingness of foreigners to become German nationals. However, the numbers have fallen in the following years to 140,000 in 2003, and 101,570 in 2010. This amounts to a decrease of more than 40 per cent between 2000 and 2010, which needs to be taken as a serious sign that the nationality legislation has not reached its goals in the long run. Even today, the average time of residence prior to naturalisation is 15.3 years. This number suggests that despite the legislative residence requirement of eight years for ordinary naturalisation, the other requirements pose serious obstacles. Another possible explanation may be a lack of promotional activities in most of the *Länder*. As a result of new provisions in the German Aliens Act of 1990 (*Ausländergesetz*) which provided for the individual right to naturalisation, the number of naturalisations had already increased in the mid 1990s from 45,000 (1993) to 106,790 (1998). The overall rate of naturalisations rose from 0.46 per cent in 1991 to 2.43 per cent in 2001 and then again fell to 2.2. in 2010. The increase in the number of naturalisations of foreigners in 1999 was primarily due to an increase in naturalisations of Turkish citizens. In 1999, former Turkish citizens made up two-thirds of all naturalisations of foreigners.⁵⁵ The increase in 2000 of 30 per cent is largely attributed to the ability to deal with problematic applications more quickly as a result of the entry into force of the new provisions of 1 January 2000. For example, numerous applications by Iranian applicants could be decided positively since the new provisions reduced the required time of habitual residence to eight years and since the new provisions made it possible to accept dual nationality on a much larger scale if an application for renunciation had been communicated to the Iranian authorities. This also explains to some extent the relatively high number of naturalisations without renunciation of a previous nationality of 44.9 per cent in 2000.

The statistics demonstrate a significant impact of the nationality legislation on the acceptance of dual nationality. While in 1998 only 15,006 (19.1 per cent) of 78,474 persons were naturalised under the general provisions of Section 85 of the Aliens Act and by acceptance of dual nationality, in 2000 as much as 80,856 (44.9 per cent) of 186,688 naturalisations were by acceptance of dual nationality, compared to 57,285 out of 142,406 in 2003. In 2010 dual nationality has been accepted in the figure of 53,930 (53.1 per cent) out of 101,570 naturalisations and in the figure of 49.7 per cent of all naturalisations in 2013.⁵⁶ In some of these cases acceptance of dual nationality is only temporary. By law the loss of nationality takes place only if a former national has acquired the nationality of a different state, in order to prevent statelessness. In the German administrative practice, temporary dual nationality arises as a result of naturalisation on the promise to submit an application for renunciation, which may sometimes take years. Temporary dual nationality is subsequently

⁵⁵ See Press Release *Statistisches Bundesamt* (Federal Statistical Office Germany) of 28 December 2000: 'Einbürgerungen von Ausländern 1999 gegenüber 1998 um ein Drittel gestiegen'. www.destatis.de.

⁵⁶ For current statistical data on naturalisation see: *Statistisches Bundesamt* (Federal Statistical Office Germany): <https://www.destatis.de/DE/ZahlenFakten/GesellschaftStaat/Bevoelkerung/MigrationIntegration/EingebuergerterPersonen/Tabellen/StaatsangehoerigkeitEinbuengerungen.html>.

ended by renunciation of a previous nationality. This cannot properly be taken into account in the statistics. Despite such inaccuracies, dual nationality has in fact become quite customary in German naturalisation law primarily for nationals refusing to release their nationals from their nationality or making release dependent upon unreasonably difficult conditions. There may however also occur inaccuracies on the other side of the dual nationality coin: For a short period, the statistics on acquisition of German nationality by renouncing a previous nationality may have led to an incorrect impression of the actual number of dual nationals. This has been particularly so in the case of Turkish citizens where the German nationality was regularly acquired under a criticised procedure of renouncing the former Turkish nationality and with an almost simultaneous reacquisition of Turkish nationality once the applicants had been naturalised as German citizens. This somewhat strange legal situation was made possible by the provision according to the nationality law valid until the end of 1999 whereby the German nationality was not lost as a result of the voluntary acquisition of a foreign nationality if the German national's permanent residence remained in Germany. Turkish nationals with the silent agreement of the Turkish authorities did in practice almost immediately after formal renunciation of their Turkish nationality reacquire the Turkish nationality once they had received the German nationality.

Abuse of this loophole in the law was stopped by the nationality law reform of 1999/2000 providing for a loss of German nationality upon voluntary acquisition of a foreign nationality even in the case of applicants maintaining their permanent residence in Germany. Unfortunately, the legal change was not noticed by many Turkish citizens and obviously not even by the Turkish authorities. Therefore, it is estimated that 40,000 Turks, almost unnoticed, lost their German nationality after the entry into force of the new nationality law and upon the reacquisition of their Turkish nationality. Section 38 of the Residence Act, however, has provided for a settlement permit for persons who have lost their German nationality in this way by taking into account that German nationals might also lose German nationality under the 'option model'. This provision has been used to also grant a secure residence permit to Turkish citizens who have involuntarily lost their German nationality, since they were assuming that they could reacquire their Turkish nationality.

This anecdote of the never-ending struggle about dual nationality in Germany should, however, not be over-estimated and certainly remained of minor statistical importance. Moreover, the effects of these withdrawals no longer influence the current statistical data.

The statistics show a substantial difference in acceptance of dual nationality. Nationals of the Iranian Republic, Serbia and Montenegro (former Yugoslavia), Afghanistan, Morocco, Ukraine, Israel, the Russian Federation, Lebanon, Tunisia, and Syria are generally naturalised (between 80 and 100 per cent) without having to renounce their previous nationality.

The naturalisation of Union citizens, however, has initially been rather insignificant in spite of the privileged possibility to maintain their previous nationality on the basis of reciprocity. In 2003, of 1,849,986 EU citizens living in Germany, only 4,025 were naturalised as German citizens, of which 3,203 kept their previous citizenship. This represented merely 1.83 per cent of the total number of naturalisations in Germany in 2003 (*Statistische Bundesamt*, 20 September 2004). The quota of dual nationals was, at almost 80 per cent, considerably above the average quota of 40.2 per cent of all naturalisations at the time. In 2010, 14,687 Union citizens naturalised in Germany. Meanwhile, the naturalisation of EU citizens significantly increased to roughly 21 per cent of all naturalisations in 2013, that is, a total of 23,635.

New developments with regard to the number of naturalisations in Germany in general show a continuous decline until 2010. 124,566 applicants were naturalised in 2008, which

means a decline of 43 per cent compared to 2005 (217,241 naturalisations).⁵⁷ In 2010, only 101,570 applicants were naturalised, whereas in 2013 the number of naturalisations increased slightly to 112,353. Since the enactment of the 1999/2000 Nationality Act 1,029,024 persons were naturalised up to 1 Jan 2007. With regard to the naturalisations in 2006, 33,388 applicants came from Turkey (26.8 per cent), 12,601 came from Serbia and Montenegro (10.1 per cent) and 6,907 came from Poland (5.5 per cent). In 2013, 27,970 Turkish nationals were naturalised, 10,872 came from African countries and 26,155 from Asia. Among the latter group, 3,150 persons came from Iraq and 3,054 from Afghanistan. The number of naturalisations of Turkish nationals has fallen remarkably from 44.4 per cent in 2000 to 26.8 per cent in 2006 to 25.8 per cent in 2010 and finally 24.9 per cent in 2013. All in all, the naturalisation quota of Turkish nationals has fallen from 4.9 per cent in 1999 to 1.9 per cent in 2006 (Thränhardt 2008: 12) and 1.8 per cent in 2010. In 2013, the naturalisation quota of Turkish nationals was 2 per cent. Given the general interest of Turkish nationals in Germany in dual nationality and the fact that dual nationality was accepted in only 17.5 per cent of all naturalisations of Turkish nationals in 2013, it is plausible that this number would be significantly higher if dual nationality were generally accepted by German citizenship law.

As to the practical effects of the reform legislation on *ius soli* acquisition of German nationality, the statistics show a somewhat diverse picture. The initial assumption of the number of *ius soli* acquisitions (about 100,000 per year; 300,000 to 350,000 non-recurring additional naturalisations based on Section 40b of the Nationality Act) was largely wrong. In 2000, 41,257 children acquired *ius soli* German nationality by birth on German territory.⁵⁸ This number remained more or less constant in the following years with 36,819 persons in 2003. In addition, in 2001 and 2002 approximately 43,700 children were naturalised according to the special provision of Section 40b of the Nationality Act which, for a limited period, made it possible for children born before the entry into force of the new law to acquire German nationality on the basis of *ius soli* if they would have fulfilled the requirements of *ius soli* acquisition had the law been in force at that time. An attempt to prolong this provision beyond 2001 was rejected in the *Bundestag*.

The relatively small number of *ius soli* acquisitions was sometimes attributed to the requirement that one parent must be in possession of an unlimited residence permit. This requirement was fulfilled by slightly less than half of the foreign population living in Germany on 1 January 2004.

According to subsequent reports by the Statistical Office, the number of naturalisations in 2013 increased slightly to 112,353. The naturalisation rate in 2013 was 2.3 per cent compared to only 2.2 in 2010 and 2.28 in 2011. This means that of 45 persons with a foreign passport who had fulfilled the naturalisation requirements only one person has in fact successfully applied for a German passport. The largest group of naturalised persons still comes from Turkey (27,970, which is equal to 24.9 per cent of all naturalisations), followed by naturalisations from persons from the EU Member States (23,635). Naturalisations of citizens from Ukraine still amount to roughly 4,500, while the number of naturalisations from Iraq slightly decreased (3,150 compared to 4,790 in 2011) followed by 3,054 naturalisations of nationals from Afghanistan.

While, according to the Statistical Office, naturalisation numbers have gone down between 2013 and 2016, they were almost back to the same level as 2013 by the end of 2017 (112,211 people naturalised) and 2018 (112,340 people naturalised) each. A total of 36,185

⁵⁷ *Migrationsbericht des Bundesamtes* (Report on migration by the Federal Office) 2006, December 2007, p. 173.

⁵⁸ See *Bundestagsdrucksache* (Official Records of the Bundestag) No. 14/9815, p. 5.

new citizens came from other EU countries. Most of the naturalised Union citizens were originally citizens of the United Kingdom (6,640), Poland (6,220), and Romania (4,325). The largest group of naturalised persons still comes from Turkey (16,700).

3.2 Special categories and quasi-citizenship

The status of ethnic Germans living in Eastern and Central Europe and presumed to be victims or descendants of victims of expulsion or persecution by post-war measures has been regulated by the Federal Expellees Act (*Bundesvertriebenengesetz*) since 19 May 1953. It was repeatedly amended, most recently by the Immigration Act of 30 July 2004.⁵⁹ Repatriates have a special constitutional position as Germans without German nationality. This means that they are entitled to take up residence in Germany and acquire German nationality. Until 1999, German repatriates who had passed a reception procedure in their country of origin and had received a certificate of admission (*Aufnahmebescheid*) were entitled to naturalisation according to Section 6 of the *Staatsangehörigkeitsregelungsgesetz* (Peters 2003: 193; Hailbronner & Renner 2005: 451). The nationality reform legislation of 1999/2000 changed the legal situation. Repatriates and family relatives and descendants are automatically granted German nationality by the issuance of a certificate as a German repatriate (*Spätaussiedlerbescheinigung*) according to Section 15 of the Federal Expellees Act (see also Section 7 of the *Staatsangehörigkeitsgesetz*). This still requires them to pass the aforementioned admission procedure according to the Federal Expellees Act. To receive the status of a German repatriate it is in principle necessary for persons born after 1923 to prove descent from an ethnic German and adherence to the German nation, which is generally indicated by the acquisition of knowledge of the German language within the family. The Federal Administrative Court decided that the required knowledge of the German language must be achieved by adulthood.⁶⁰ The law of 7 September 2001 on German repatriates⁶¹ reacted by clarifying that membership to the German nation must be demonstrated by acquisition of the German language within the family, which means that the applicant is able to have a conversation in German at the time of emigration (Renner 2003: 913, 923).

Since the entry into force of the Immigration Act of 2004 the family relatives and non-German descendants of a German repatriate are only included in a certificate of admission (*Aufnahmebescheid*) upon proof of basic knowledge of the German language. The requirement of basic knowledge of the German language, which until then had been absent, was included in order to promote the integration of immigrants and incite potential applicants to learn German in their country of origin. The legislation thereby reacted to the fact that in 2002 only 22 per cent of persons admitted under the provisions were in fact ethnic Germans while 64 per cent were non-German spouses and descendants and other relatives. In most cases the non-German family relatives did not have any knowledge of the German language. It is not altogether clear whether basic knowledge of the German language is equal to the language requirements under the general naturalisation provisions of the Nationality Act.⁶²

Since the entry into force of the 2004 Immigration Act, German repatriates as well as their family relatives are also entitled to participate in an integration course and to receive

⁵⁹ *Bundesgesetzblatt* (Federal Law Gazette), vol. I, p. 1950.

⁶⁰ Federal Administrative Court, *Neue Zeitschrift für Verwaltungsrecht*-Rechtsprechungsreport 2001, vol. 5, p. 342.

⁶¹ *Spätaussiedlerstatusgesetz* of 30 August 2001, *Bundesgesetzblatt* (Federal Law Gazette), vol. I, p. 2266.

⁶² See *Bundestagsdrucksache* (Official Records of the Bundestag), No. 15/3479, p. 16, 47.

further assistance for integration, particularly in order to facilitate professional education and the education of juveniles.

The procedure for acquiring legal status as a German repatriate is divided into two steps. The first step in the readmission procedure is to find out whether a person meets the basic requirements for admission under the Federal Expellees Act and whether admission is within the quota for admission. A person who has passed the admission procedure receives a certificate of admission (*Aufnahmebescheid*), which entitles the person to take up permanent residence in Germany. After entering into Germany, a further procedure results in the issuing of a certificate of recognition as a German repatriate (*Spätaussiedlerbescheinigung*) according to Section 15 of the Federal Expellees Act which states with binding force for all authorities that the person is entitled to all privileges and rights as a German repatriate. The issuing of this certificate leads to the automatic acquisition of German nationality according to Section 7 of the *Staatsangehörigkeitsgesetz*.

The fact that this occurs in two separate procedures has been subject to criticism. A certain coordination has been achieved by concentrating the authority for both certificates in the *Bundesverwaltungsamt* in Berlin. The certificate of recognition as a German repatriate is issued automatically on the entry into force of the Immigration Act and does not require an application. However, there are a number of unresolved issues relating to the acquisition of German nationality by German repatriates. Restrictions concerning the necessary knowledge of the German language have been generally acknowledged as an essential element of the general integration policy. About 50 per cent of all applicants do not pass the German language test. From an administrative point of view, it is envisaged to replace the existing two-step procedure by a single procedure, which terminates in the recognition of the legal status as a repatriate.

3.3 Institutional arrangements

Institutional arrangements concerning nationality law first of all reflect the fact that Germany is a federal state. The legislative competences and executive competences to implement the law are divided between the State and the German *Länder* as laid down in the German Basic Law.

The legislative process

Under Article 73 of the Basic Law, the Federation has the exclusive power to legislate with respect to citizenship in the Federation. Special authority is granted the Federation by Article 116 of the Basic Law which defines a German as a person who either possesses German citizenship or has been admitted to the territory of the German Reich within the boundaries of 31 December 1937 as a refugee or expellee of German ethnic origin or as a spouse or descendant of such persons. Article 116 para. 1 provides explicitly for further legislation ('unless otherwise provided by a law').

The exclusively federal legislation on nationality means that nationality issues are usually dealt with by the Federal Ministry of the Interior, which is in charge of matters of nationality. However, the law reforms during the last fifteen years have been substantially controversial and frequently accompanied by an emotional public debate. As a result of the development of Germany into a *de facto* immigration country with a high percentage of immigrants, nationality issues have become very closely connected with general migration

issues and questions of homogeneity and identity. This explains why naturalisation and toleration of dual nationality have been very closely connected to a general debate on the right concept for the integration of foreigners into German society. While the more conservative parties have maintained that integration cannot be equivalent to a toleration of split loyalties and multiculturalism, the Social Democratic Party and the Greens have very much promoted the idea of a ‘republican concept’ of nationality, requiring the ‘members of the club’ to comply with the laws and to respect the basic principles of the Constitution as the only prerequisites for acquisition of nationality. The debate regarding the term *Leitkultur* (guiding culture) has indicated that German society is divided as to what the right concept for the integration of foreigners is. This explains also why German nationality issues have frequently played a dominant role in federal and state elections. The repeated attempts of the Social Democratic Party to reach an informal agreement between the major political parties about leaving controversial issues of nationality law out of the electoral campaigns were therefore never much more than rhetorical.

Due to the exclusive power of the Federation, the *Länder* as single entities do not have a substantial role to play in the legislative process. The Basic Law distinguishes between laws requiring the consent of the *Bundesrat* as the representatives of the *Länder*, and those laws against which the *Bundesrat* may enter an objection within a certain period, which, however, may be overridden by the *Bundestag*. Nationality law as a rule falls into the category of those laws requiring the consent of the *Bundesrat*. While nationality law as such falls under the exclusive competence of the Federation, the *Länder* have the power to execute federal laws in their own right and may regulate the establishment of the authorities and the administrative procedures if federal laws enacted with the consent of the *Bundesrat* do not otherwise provide. Since nationality law generally requires administrative regulations, any substantial reform of nationality law will usually be dependent upon the consent of the *Bundesrat*.

The history of the Federal Republic has shown that the distribution of political power in federal and state elections does not follow the same pattern. Frequently, in state elections voters decide upon a different political composition of the state government in order to achieve a certain distribution of power between the Federation and the *Länder*. This means that in order to pass laws the federal government needs to achieve a consensus amongst the opposition parties representing the majority of the state governments in the *Bundesrat*. To achieve the necessary consent of the *Bundesrat* for nationality laws it has generally been necessary to seek a compromise between the major political parties or to persuade some governments of the *Länder* so that a majority in the *Bundesrat* can be achieved.

As regards the passing of nationality laws, the legislative procedure follows the general pattern of a politically controversial law. Generally, the federal government or a state will introduce a bill in the *Bundestag* which shall first be submitted to the *Bundesrat*. If no agreement can be reached, the *Bundesrat* will demand that a committee for joint consideration of bills, composed of members of the *Bundestag* and the *Bundesrat*, be convened. This was the case with the nationality law in 1998/1999 when at first no compromise could be reached. Generally, the legislative process is also accompanied by a hearing of experts in the internal affairs committee. If the committee reaches an agreement and proposes an amendment to the adopted bill, the *Bundestag* will vote on it a second time followed by the consent of the *Bundesrat*.

It is highly controversial to what extent constitutional provisions on the principle of democracy, of Article 3 (equal treatment), Article 16 and Article 116 (both on nationality) set constitutional limits to the legislative competences in nationality matters. Article 16 para. 1 of the Basic Law provides that no German may be deprived of his or her citizenship. Citizenship

may be lost only pursuant to a law and against the will of the person affected only if he or she does not become stateless as a result. These provisions have been used in order to argue the unconstitutionality of the legislative reform 1999/2000 and particularly the ‘option model’. However, finally, no attempt has been made to challenge the nationality legislation in the Constitutional Court. This may be due to the fact that Article 116 of the Basic Law does provide a relatively broad legislative power to define German citizenship by legislation (for an opinion on the constitutional reform see Hailbronner 1999c: 1273).

The implementation process

It is within the competence of the *Länder* to execute federal laws in their own right. Under Article 84 of the Basic Law they are authorised to regulate the establishment of authorities and administrative procedures insofar as federal laws enacted with the consent of the *Bundesrat* do not otherwise provide such. With the consent of the *Bundesrat* the federal government may issue general administrative rules (Article 84 para. 2 of the Basic Law).

It follows that the *Länder* may issue administrative guidelines on their own to the extent that there are no federal administrative rules enacted with the consent of the *Bundesrat*. Since nationality law frequently leaves a wide margin of interpretation, administrative guidelines of the *Länder* may differ substantially according to the different political aims of the *Länder* governments.

Based upon Article 84 para. 2 of the Basic Law and previously Section 39 of the *Reichs- und Staatsangehörigkeitsgesetz* 1913 authorising the federal government to issue administrative guidelines with respect to the administrative procedures and the cooperation between the various competent authorities, as well as to formal matters, a number of administrative rules have been enacted since 1950 covering such matters as

- the exceptional permit to retain German nationality in case of voluntary acquisition of a foreign nationality;
- the acquisition of German nationality by appointment as a German civil servant.

A federal administrative regulation of 2000 exists but is meanwhile partly outdated. Due to political controversies between the federal government and the *Länder*, it has been impossible to adopt a new version ever since. The Guidelines of the Federal Ministry of Interior of 2009 are not binding for the *Länder*, since formal Administrative Rules can only be enacted by the consent of the *Bundesrat*. Nevertheless, the administrative courts frequently refer to the non-binding guidelines as administrative practice.

4. Current debates

Debates in recent years have mainly concerned the acceptance of dual or multiple nationality. The discussion gained momentum because figures indicated that although dual nationality is meant as an exception to the German nationality law, in practice there has been an enormous increase of naturalisations in acceptance of dual nationality. In 2013, 49.7 per cent (2010: 53 per cent) of applicants who naturalised did not have to renounce to their previous nationality. The requirement of renouncing the former nationality has been exceptionally dispensed with in regard to applicants from Iran, Morocco, Afghanistan, Lebanon and Syria. Furthermore, the former nationality of applicants from the member states of the European Union (for example the UK, Poland, Italy, Greece) was generally accepted. Thus, the legal exception has actually

become common practice. Despite these facts the German government announced in June 2009 that it has currently no plans to change the existing legislation in this regard.⁶³ The Government considers that by introducing the principle of *ius soli* in the German Nationality Act and by reducing the requirement of prior legal residence from 15 to 8 years, nationality law has been made flexible.⁶⁴ The controversial assessment of the ‘option model’ has always been linked to this debate. While some in the literature praised the ‘option model’ – despite existing problems – as a success story (Lämmermann 2011), others argued that this legislation violates constitutional provisions and gives rise to legal uncertainty for many young German nationals (Göbel-Zimmermann/Eichhorn 2010a: 295). This debate has also formed the background of the recent amendment of the ‘option model’. While the Social Democratic Party initially favoured a general acceptance of dual nationality, the Christian Democratic Party argued only for a modest relaxation of the ‘option duty’. The recent legislative amendment is a compromise between these two positions and can be expected to settle the question for the time being. However, the government has been criticised by NGOs and lawyers for creating new administrative hurdles and upholding the ‘option duty’ for purely symbolic reasons.

A second, ongoing controversy concerns the question of withdrawal of nationality. This question is gaining a new relevance as in some cases withdrawal is now possible within a period of ten instead of five years after the acquisition. While the legal situation has been clarified by the legislative changes in 2009, the new regulation produced new problems with regard to the consequences of withdrawal in residence law (see Göbel-Zimmermann/Eichhorn 2010b: 349). According to the higher courts, the retroactive withdrawal of nationality, which is properly called nullification, does not lead to a revival of the former residence permit. This means that a former German national in theory may be obliged to leave the country since he is now a foreign national without residence permit. In practice former German nationals will either receive a residence permit or may apply for naturalisation since naturalisation authorities are obliged to consider alternative grounds for naturalisation. Problems related to the right to residence may, however, occur in some exceptional cases.

Third, as a result of the enlargement of the European Union, it might become necessary to redefine the concept of a German repatriate. Until now, the Baltic states are still included in the scope of application of the Expellees Act. It is, however, very doubtful whether one can still assume that ethnic Germans or their second- or third-generation descendants in these countries are still in need of special protection by privileged access to German nationality. *De facto*, the number of ethnic Germans arriving in Germany and consequently the number of applications for a German passport has significantly decreased due to the fact that the language requirement now also applies to family reunification of ethnic Germans. There are also good arguments for terminating the special legal status of ethnic Germans and their descendants expelled after the Second World War. After the collapse of the Soviet Union, the situation justifying protection has substantially changed and one may well ask whether the need for protection still exists.

⁶³ *Bundestagsdrucksache* (Official Records of the Bundestag), No. 16/13558, p. 8, 9.

⁶⁴ *Bundestagsdrucksache* (Official Records of the Bundestag), No. 16/13558, p. 11.

5. Conclusions

German nationality law has undergone significant changes since the beginning of the new millennium. The most important reform to the German nationality act of 1913 was in 2000. Prior to the reform, Germany strongly followed the principle of *ius sanguinis* for the acquisition of German nationality. In other words: children usually acquired German nationality if a parent was a German national, irrespective of the place of birth. The new law introduced *ius soli* elements and made it easier for foreign residents in Germany and especially their German-born children to acquire German citizenship. Today, children born on or after 1 January 2000 to non-German parents acquire German citizenship at birth if at least one parent has been legally residing in Germany for at least the past eight years and has an unlimited right of residence. In case such children hold other nationalities, they must declare between the age of 18 and 23 whether they wish to retain German nationality unless they have been raised in Germany according to Section 29 para. 1a of the Nationality Act. If they have not been raised in Germany and wish to keep their German nationality, they are required to renounce any foreign nationalities or lose their German nationality. This provision is the result of an ongoing debate about the extent to which dual nationality is accepted under German law.

As a general rule, foreigners now have the right to become naturalised after eight years of habitual residence in Germany, provided that they meet the relevant conditions, instead of the fifteen years previously required. The minimum period of residence for spouses of German nationals is usually shorter. For naturalisation, it is necessary to prove adequate knowledge of German. A clean record and commitment to the tenets of the Basic Law (Constitution) are further criteria. Another requirement introduced in 2019 is the integration into conditions of life in Germany. The person to be naturalised must also be able to financially support him- or herself. Since 1 September 2008, applicants have to prove knowledge of civic matters, among other things. Proof is generally possible by passing a naturalisation test which consists of 33 questions, out of which 17 need to be answered correctly. There several exceptions: people who have a German school-leaving certificate do not have to take the test. Also exempt are applicants for naturalisation who cannot fulfil the required levels of knowledge on account of illness or disability or on account of their age. The test aims at fostering integration. In fact, 99 per cent of the applicants pass the test

Nonetheless, most recent reports indicate that the number of naturalisations decreased significantly since 2000 and still remains at a low level. According to the information by the Statistical Office in 2013 the naturalisation rate was only 2.3 per cent. This means that of 45 persons with a foreign passport who had fulfilled the naturalisation requirements only one person has in fact successfully applied for a German passport. This number dropped even further in the following years, reaching the lowest naturalisation rate since 2008 in 2015, which was at 2.15 percent. In 2018 the naturalisation rate was at 2.19 percent. This leads to ongoing discussions on the role of acquisition of nationality in the integration process and the acceptance of dual nationality. Despite these debates, the Government considers that by introducing the principle of *ius soli* into the German nationality law and by reducing the requirement of prior legal residence from fifteen to eight years, nationality law has been made flexible.⁶⁵ The latest amendment easing the ‘option duty’ marks a further step towards acknowledging sociological membership and dual nationality.

⁶⁵ *Bundestagsdrucksache* (Official Records of the Bundestag), No. 16/13558, p. 11.

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2020/05

