



*Department of Political Science*

*Chair Comparative Constitutional Law*

**A COMPARATIVE ANALYSIS OF  
THE MODELS AND MODES OF CITIZENSHIP  
IN FRANCE, GERMANY, ITALY, AND THE UNITED KINGDOM**

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“So we grow together,  
Like to a double cherry, seeming parted,  
But yet an union in partition;  
Two lovely berries moulded on one stem;  
So, with two seeming bodies, but one heart”  
(William Shakespeare, *A Midsummer Night's Dream*)

To my sister Giorgia

“The polis is a compound made of citizens;  
and this compels us to consider  
who should properly be called a citizen  
and what a citizen really is”

(Aristotle, *Politics*)

“No one is born a good citizen; no nation is born a democracy.  
Rather, both are processes that continue to evolve over a lifetime.

Young people must be included from birth.

A society that cuts itself off from its youth severs its lifeline”

(Kofi Annan)

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## **INTRODUCTION**

In the last thirty years, national citizenship laws have been reformed in many European States due to the permanent phenomenon of immigration and the creation of the additional citizenship of the European Union (EU) for citizens of its Member States. Actually, Italy has not yet carried out a comprehensive reform of its citizenship law (Act no. 91 of 1992), but is discussing it in the current XVII legislature. In this context, a comparative analysis of citizenship laws of some European States may be a good starting point to examine the possible changes of this Italian reform. The ratio behind this study is that, despite different historical backgrounds, European States have faced similar issues concerning citizenship, in particular regarding the integration of immigrants in their societies. Indeed, citizenship has been considered over time both as a means to and as an end of integration of immigrants by those States which have acknowledged the fact that they have become immigration countries. As a consequence, the normative experience of other States may be an example either to emulate or to avoid. Although emulation of other citizenship laws is unlikely to occur because they are rooted in States' history, it is undeniable that recently some convergences have taken place in Europe. Thus, this dissertation aims at providing a detailed comparative study of the models and modes of citizenship in four key European States, specifically France, Germany,

Italy, and the United Kingdom (UK), in order to analyse both the convergent trends in Europe and the attempt of reform of Italian citizenship law.

In particular, States have the exclusive competence to determine who is a citizen at birth and how someone becomes a citizen after birth by choosing the modes of acquisition of citizenship. This State's prerogative stems from the fact that citizenship represents the relationship between the individual and the State since the birth of the State itself. As a matter of law, citizenship is both the legal *status* of being a citizen and the source of rights and obligations of citizens. As a result, States distinguish between citizens and non-citizens in their territories, excluding automatically the latter from participation in their societies. In recent times, this dichotomy has collided with increasing cross-border migration and the freedom of movement in the European Economic Area (EEA). Nevertheless, citizenship is not a static concept and, consequently, States have changed their own citizenship laws over time on the basis of historical circumstances and their national imprinting. Taking into consideration the above points, some questions related to citizenship arise. First of all, what are the main models and modes of citizenship used by States? Secondly, how have citizenship laws of France, Germany, Italy, and the UK evolved up to day? What is the ratio behind the *criteria* adopted by these States for the determination of who is a citizen at birth and who is a citizen after birth? Thirdly, is it possible to deduce the existence of convergent trends concerning citizenship from country analyses? If a process of convergence exists, what are the main trends in Europe? Are they leading towards a common pattern for modes of acquisition of citizenship? Finally, is it possible to find elements of these European convergences in some Italian bills regarding the reform of Act 91 of 1992? All the above mentioned concerns will be addressed in this dissertation. To this purpose, it is divided into three parts which focus on 1) citizenship as a concept in progress, 2) country analyses, and 3) convergences in Europe and the Italian reform respectively.

The first part is composed by two chapters: the first one regards the concept of citizenship, while the second one provides a classification of the models and modes of citizenship. More

precisely, the first chapter illustrates the development of citizenship as a national institution, by paying attention to the definition of citizenship, its main meanings in the history, and the terminological difference between the terms “citizenship” and “nationality”. In general, citizenship law is not a static concept. In fact, from a historical perspective, citizenship has assumed different meanings over time, i.e. in the Greek *polis*, the Roman *res publica*, the absolute States, and the modern nation-States. This is why it is possible to see a shift of citizenship from being a political *status* to a legal *status*, besides an alternation of citizenship as “membership” and “participation”. Finally, “citizenship” is distinguished from “nationality”. Even though in modern States the notion of national citizenship is linked with that of nationality, these terms represent two different concepts. Then, the second chapter presents the general features of the models and modes of acquisition of citizenship. In particular, the citizenship models are two: one based on *ius sanguinis* (the descent principle) and the other one based on *ius soli* (the territoriality principle). Differently, the modes of citizenship are multiple and vary from one State to another. They can be distinguished as modes of acquisition of citizenship at birth and modes of acquisition of citizenship after birth for a total of twenty-seven modes in the classification made by the EUDO Observatory on Citizenship.

Next, what follows in the second part is the description of the citizenship law of France, Germany, Italy, and the UK. For each State, citizenship is shown from both a historical and legal perspective. Indeed, each country analysis includes first an overview of the evolution of the State’s citizenship law from its origins to recent developments along the elucidation of the rationale behind the measures adopted, and then a detail normative illustration of the current modes of acquisition of citizenship at birth and after birth.

Finally, the chapter in the third part draws on the previous country analyses to put in evidence the convergent trends in Europe and analyse the reform of the Italian Act no.91 of 1992. In general, what emerges from the comparative study is that six convergences exist in the European stage: the extension of *ius sanguinis*; the development of mixed models of citizenship; the

increasing acceptance of multiple citizenship; the introduction of language and integrations requirements in naturalisation procedures; the avoidance of statelessness; and the increasing relevance of EU citizenship. Yet, there is not a common model of citizenship due to the different heritage of each State. Overall, the most consistent trend of convergence in Europe is the development of mixed models of citizenship: States have modified their citizenship laws either by introducing *ius soli* elements in *ius sanguinis* models or by adding *ius sanguinis* requirements in *ius soli* models. In addition, this chapter explains the ratio behind both liberalising and restrictive measures adopted by the analysed States taking into consideration their need to deal with the permanent phenomenon of immigration. It is exactly this urgency to integrate immigrants into the societies of these States and to avoid that they may remain non-citizens in the country where they live, that has led States to reform their citizenship laws. Therefore, citizenship is regarded as both a means to and an end of integration of immigrants. Similar considerations can be made also with respect to the reform of Italian citizenship law. In conclusion, the analysis of the bills presented during the current XVII legislature, which are currently before the House of Deputies, will especially detect if changes proposed are in line with these European convergences. Although the debate on the Italian reform is still ongoing, the introduction of acquisition of citizenship *iure soli* at birth seems to be a core concern in Italy as well as in the other European States. Hence, I supported my argument through a comparative analysis of the models and modes of acquisition of citizenship in France, Germany, Italy, and the UK in order to contribute to the political and doctrinal debate about this subject, and provide a more comprehensive picture of the institution of citizenship and the adaptation of citizenship laws to current circumstances as well as recent challenges of States, i.e. the permanent phenomenon of immigration and the EU citizenship.

## **I. CITIZENSHIP: A CONCEPT IN PROGRESS**

## **CHAPTER 1**

### **The development of citizenship as a national institution**

#### **1.1 Defining citizenship**

Before analysing the citizenship law of France, Germany, Italy, and the United Kingdom, it is necessary to examine the definition and the concept of citizenship. Yet, some difficulties arise because citizenship is a polyvalent concept. Despite it is a commonly used term, there is not a comprehensive definition of citizenship. I said “comprehensive” because citizenship has a broad spectrum that is hard to catch in a definition for two reasons. First, citizenship is not only a juridical concept, but also a sociological, philosophical, and political one<sup>1</sup>. Therefore, confusion about this concept is mainly due to the presence of several interpretative traditions. In spite of the inevitable interconnection of the dimensions of citizenship, this chapter focuses only on the juridical concept of citizenship. Second, the meaning of citizenship has varied as a result of historical events. Indeed, definitions of citizenship have been formulated over time in relation to the historical evolution of the relationship between the individual and the political community/State. It is exactly this relationship which is at the core of the concept of citizenship. Thus, historical phases of this relationship are important in the measure to understand current national citizenship laws in Europe.

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<sup>1</sup> Giovanna Zincone, “Cittadinanza: trasformazioni in corso,” *Filosofia politica* XIV, no. 1 (2000): 71.

In addition, I argue that historical events are not the only ones which affect States' citizenship laws. As presented by R. Brubaker, the different understandings of nationhood, such as "civic" nationhood in the case of France and "ethnic" nationhood in the case of Germany, have determined the interests of the States and consequently citizenship policies<sup>2</sup>. I agree with this emphasis on nationhood only to a certain extent because citizenship laws have been modified by national legislators over time, following external events and problems such as migration. Citizenship law is the result of both politics of identity and politics of interests. When we deal with citizenship, historical and political events must be taken into consideration along nationhood which I refer to as "national imprinting". For example, even today a static view of the relationship between the individual and the State is challenged by cross-border mobility as well as regional and international human rights bodies<sup>3</sup>. What emerges is that citizenship is not a static concept at all. It has changed and still does. Nevertheless, as a matter of law, citizenship is the State's institution by which people are classified as citizens. As such, it is first the legal *status* of being a citizen, and then the shared source of rights and obligations of citizens. Citizenship represents the relationship between the individual and the political community/State.

## 1.2 Citizenship as "membership" and "participation"

A starting point to study citizenship is the identification of its principal meanings, i.e. "membership" and "participation". Whilst in the former the individual is a member of the State especially on the basis of a common tradition and culture, in the latter participation in the activities of the *res publica*, loosely meaning "public affair", is the precondition for being a member of the political community. In order to provide a terminological elucidation, "membership" regards State-

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<sup>2</sup> Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge (Mass.): Harvard University Press, 1992), 1-17.

<sup>3</sup> Ayelet Shachar, "Citizenship," in *Oxford Handbook of Comparative Constitutional Law*, ed. Michel Rosenfeld and András Sajó, (Oxford: Oxford University Press, 2012), 1003.

membership, while “participation” a participatory membership to the political community. According to G. Azzariti, it is the notion of citizenship as participation that has been embodied by modern constitutionalism<sup>4</sup>. Yet, both notions have shaped the concept of citizenship until nowadays. One difference is that citizenship as “membership” represents a vertical bond between the individual and the State or the subject and the sovereign, while citizenship as “participation” entails a horizontal bond among all citizens. Although the two notions are more divergent than convergent, they merge only in the XIX century with the birth of the nation-States and the “nationality principle”<sup>5</sup>. This point will be handled in detail in the next paragraph. Now, it is necessary to trace back to the origins and the development of the concept of citizenship.

Historically, the invention of national citizenship has occurred in the Modern Age, but the two mentioned principal notions of citizenship appeared in ancient times, specifically in Athens in the fifth and fourth century BC and in Rome from the third century BC to the first AD. Indeed, the term “citizen” derives from the Latin *civitas* and *civis*, which in turn stemmed from the Greek *polis* and *polites*. As well as the *polites* (πολίτης) was the member of the Athenian *polis* (πόλις), the *civis* was a member of the Roman *res publica*. The study of citizenship starts always from the ambiguous term *politeia* (πολιτεία), but fortunately, the Romans made it clear by using two distinct words: *res publica* for the collective *politeia* (the political power, the constitution, and the democratic regime) and *civitas* for the individual *politeia* (political rights, citizenship)<sup>6</sup>. Finally, to understand the individual *politeia* in Athens, it is useful to take into account the distinction between foreigner (ξένος) and barbarian (βάρβαρος). Whereas the former was just excluded from the community of

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<sup>4</sup> Gaetano Azzariti, “La cittadinanza. Appartenenza, partecipazione, diritti delle persone,” *Diritto Pubblico* 17, no. 2 (2011): 427-431.

<sup>5</sup> Enrico Grosso, “La cittadinanza: appartenenza, identità e partecipazione dallo Stato liberale alla democrazia contemporanea,” in *Storia d'Italia. Annali. V. 14. Legge, diritto, giustizia*, ed. Luciano Violante and Livia Minervini, (Torino: Einaudi, 1998), 116-123.

<sup>6</sup> Enrico Grosso, *Le vie della cittadinanza: le grandi radici, i modelli storici di riferimento* (Padova: CEDAM, 1997), 45-47.



the citizens (πολίται) such as women and slaves, the latter did not belong to the Hellenic world. The Greek concept of citizenship considered only the dichotomy citizens/foreigners, not that citizens/barbarians<sup>7</sup>. Indeed, in Athens citizenship was a political concept, not a cultural one. This is confirmed by the Aristotelian definition of citizen as “one who both rules and is ruled”<sup>8</sup>. The rationale behind Athenian citizenship is that “what makes the citizen the highest order of being is his capacity to rule, and it follows that rule over one’s equal is possible only where one’s equal rules over one”<sup>9</sup>. Thus, political participation in the activities of the *polis* is the key element in the concept of citizenship for Athenians. Every citizen participated in governance of the *polis*, but simultaneously had to comply with its rules. In case of non-compliance, there were sanctions provided for by law, such as the loss of citizenship or even the exile<sup>10</sup>. Nevertheless, taking into consideration the above mentioned dichotomy citizens/foreigners, Athenian citizenship was highly exclusive. In fact, due to the separation of the affairs of the city (*polis*) from those of the family household (*oikos*), slaves and women took care of the household while the patriarchs were free to make political decisions with their equals<sup>11</sup>.

Whereas citizenship among Athenians was associated with collective self-governance, Romans developed the idea of citizenship as a formal legal *status*, carrying with it rights and obligations. According to the Roman jurist Gaius, individuals act upon things (*res*) interacting with other people. For this reason, the possession of things requires regulation by law<sup>12</sup>. In this context, citizens are individuals free to act by law: they can sue and be sued. Citizenship became to be regarded as providing rights to legal protection. Indeed, Roman citizenship is first of all a legal

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<sup>7</sup> *Ivi*, 51-53.

<sup>8</sup> John G. A. Pocock, “The ideal of Citizenship Since Classical Times,” in *Citizenship*, ed. Richard Bellamy and Antonino Palumbo (Farnham: Ashgate, 2010), 5.

<sup>9</sup> *Ibidem*

<sup>10</sup> Enrico Grosso, *cit.*, *supra* note 6, 62.

<sup>11</sup> John G. A. Pocock, *cit.*, *supra* note 8, 6.

<sup>12</sup> *Ivi*, 9.

*status*. Although Roman citizenship was political in its origins as well as in Athens, it was characterized by legal capacity which in turn derived from the *status civitatis*. In particular, under Roman jurisdiction, individuals had both a *status familiae* and a *status civitatis*, which indicated their role in the family (*familia*) and in the community of *cives* (*civitas*) respectively<sup>13</sup>. To sum up, in ancient times citizenship was considered as participation in the political community rather than membership. However, the core element of citizenship was political participation in Athens, whilst legal capacity in Rome. Roman citizenship became a legal *status* which entitled *cives* to certain rights and obligations. This conception of citizenship as legal *status* has endured up to date.

In the Medieval Age, the institution of citizenship has almost disappeared because feudalism created only relationships of obedience between masters and their servants. Yet, citizenship survived as the *status* of the bourgeoisies that were subjects of a prince or a lord, but maintained some rights of self-governance of municipalities<sup>14</sup>. Then, modern citizenship was born along the modern States which required a unitary State-membership instead of several non-territorial master-servant relationships<sup>15</sup>. This was realized first by the absolute State by creating a citizenship-subjection and then by the nation-State by promoting a citizenship-membership based on nationality. Therefore, citizenship has regressed to subjection from this period until the French Revolution (1789-1799). According to R. M. Smith, even in early modern Republic citizens had the same international *status* as national monarchical subjects because of the system created in 1648 with the Treaty of Westphalia<sup>16</sup>. Citizens owed allegiance to the State and in turn received protection. It is especially through the absolute State that citizenship was no longer participation, but subjection to the sovereign. What characterized this phase was the vertical bond between the citizens-subjects and the sovereign.

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<sup>13</sup> Enrico Grosso, *cit.*, *supra* note 6, 98-100.

<sup>14</sup> Rogers M. Smith, "Modern Citizenship," in *Citizenship*, ed. Richard Bellamy and Antonino Palumbo (Farnham: Ashgate, 2010), 107.

<sup>15</sup> Christian Joppke, *Citizenship and Immigration*, (Cambridge: Polity Press, 2010), 8.

<sup>16</sup> Rogers M. Smith, *cit.*, *supra* note 14, 108.

However, in the XIX century the two notions of citizenship, i.e. membership and participation, almost overlapped in the modern national citizenship and the “nationality principle”. As already mentioned, the crucial moment of this change was the French Revolution. In fact, during the first period of the French Revolution, the idea of citizenship-participation remerged under a peculiar form: citizens were those people that met substantial *criteria*, such as common values, participation in the historical, and the belief in equality, freedom and fraternity. Since this moment, citizenship can be defined as a constitutional citizenship because it was linked to given values chosen as cornerstones of the legal order. In this perspective, what mattered was the effective participation of people in the political community rather than nationality<sup>17</sup>. In addition, according to R. Brubaker, citizenship was a key issue of the French Revolution which consisted of a bourgeois revolution, a democratic revolution, a national revolution, and a bureaucratic revolution<sup>18</sup>. Each of these sub-revolutions has contributed to the development of the modern institution of national citizenship. Firstly, as a bourgeois revolution, the French Revolution established civil equality and citizenship as a general membership *status*; secondly, as a democratic revolution, it provided for the institutionalization of political rights as citizenship rights, by making them general rights; thirdly, as a national revolution, it emphasized the nation and defined the boundaries between nation-States; and finally as a bureaucratic revolution, it strengthened the State, and a direct form of State-membership was codified<sup>19</sup>. Yet, after the French Revolution, the Restoration enhanced the nation and the vertical bond between the citizen and the State. Indeed, what happened was a sort of “naturalization” of citizenship which functioned as a legal means to distinguish members of different nations<sup>20</sup>. What kept together people was no longer citizenship, but the nation. This change found a justification in the “nationality principle”, arguing that the nation was a means for the

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<sup>17</sup> Gaetano Azzariti, *cit.*, *supra* note 4, 433-434.

<sup>18</sup> Rogers Brubaker, *cit.*, *supra* note 2, 39-43.

<sup>19</sup> *Ibidem*

<sup>20</sup> Enrico Grosso, *cit.*, *supra* note 6, 229-231.

legitimateness of the State's sovereignty and the individuals acknowledged themselves as members of a given nation<sup>21</sup>. Consequently, in the modern liberal State there has been the coexistence of citizenship-membership and citizenship-participation, i.e. the vertical bond between the individual and the State as well as the reciprocal horizontal bond of individuals that share the feeling of membership to the same nation. In conclusion, since the XIX century citizenship has become an inherently exclusionary institution of the State. Every State has emanated their own citizenship law in order to identify its members and assign to them rights and obligations. Simultaneously, it has excluded non-citizens from enjoying the same rights.

### **1.3 Citizenship and nationality**

Besides the history of citizenship, it is necessary to get clear differences and intersections between citizenship and nationality. As expressed above, these two terms began to be associated in the XIX century with the nation-States, but they refer to two different concepts. Nonetheless, some ambiguities arise around them and make confusion in the understanding of citizenship as a legal institution. This is why both a contextual and linguistic clarification seems appropriate. To begin with, confusion is often made because the term “nationality” has both a sociological and legal meaning. On one hand, it means the historical-sociological reality of a community, that is to say its history, traditions, culture, language, and religion. On the other hand, it refers to the “membership to the State”. According to E. Grosso, this overlapping of meanings in one term is explained by the “nationality principle” and it is the reason why many authors distinguish between a sociological concept of nationality (*nationalité de fait*) and a legal concept of nationality (*nationalité de droit*)<sup>22</sup>. Nevertheless, the terms “citizenship” and “nationality” are intertwined for two reasons: first, the possession of a State nationality is a means to obtain citizenship; second, the institution of

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<sup>21</sup> Enrico Grosso, *cit.*, *supra* note 5, 115.

<sup>22</sup> Enrico Grosso, *cit.*, *supra* note 6, 7-28.

citizenship is strictly linked with the nation-State since the XIX century. In this context, it is useful to list the three interconnected propositions of nationality outlined by D. Miller in his work *Citizenship and National Identity*. First, nationality regards personal identity because national identity (being Italian or French) may be, but not necessarily, a constitutive part of someone's identity. Second, nationality concerns bounded duties given that nations are ethical communities and people are willing to owe duties primarily to their fellow-nationals under an institutional structure. Third, nationality includes political self-determination, that is to say the creation of institutions to deal with issues of the community<sup>23</sup>. Yet, there are five aspects that distinguish nationality from other sources of personal identity: a mutual belief of the members of the community, historical continuity, activism, a particular territory, and the sharing of some traits that differentiate them from other people<sup>24</sup>. What emerges is the belonging to a national community and the exclusion of those who are not members of this community. Thus, citizenship involves a social closure because modern States are both territorial States and nation-States, i.e. "the State "of" and "for" a particular, distinctive, bounded nation"<sup>25</sup>.

Moving our attention to the juridical context, nationality is different from citizenship. Whereas the term "citizenship" indicates citizenship as "participation/membership to a political community", the term "nationality" means citizenship just as "membership to the State". This terminology is used in English as well as in French, and German. Indeed, in these languages participation in a political community or more precisely the legal *status* which transforms an individual into a member of the political community by providing for the holding of rights, is named "*citizenship*" in the United Kingdom, "*citoyenneté*" in France, and "*Staatsbürgerschaft*" in Germany. On the contrary, the terms "*nationality*", "*nationalité*", and "*Staatsangehörigkeit*" refer to

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<sup>23</sup> David Miller, *Citizenship and National Identity* (Cambridge: Polity Press, 2000), 27-28.

<sup>24</sup> *Ivi*, 28-31.

<sup>25</sup> Rogers Brubaker, *cit.*, *supra* note 2, 21-28.

citizenship as State-membership<sup>26</sup>. For instance, in English a “citizen” is “a person who, by either birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil rights and protections; a member of the civil state, entitled to all its privileges”<sup>27</sup>, whilst “nationality” is “the relationship between a citizen of a nation and the nation itself, customarily involving allegiance by the citizen and protection by the state; membership in a nation”<sup>28</sup>. Similarly, in French “*la nationalité est généralement définie comme l’appartenance juridique et politique d’une personne à la population constitutive d’un État*”<sup>29</sup>, and “*citoyenneté*” as the “*situation positive créée par la pleine reconnaissance aux personnes de leur statut de citoyen*”<sup>30</sup>. Finally, with respect to the German terminology, R. Brubaker clarifies that “In German, formal state-membership, participatory citizenship, and ethnocultural nation-membership are designated by distinct terms: *Staatsangehörigkeit*, *Staatsbürgerschaft*, and *Nationalität* or *Volkszugehörigkeit* respectively”<sup>31</sup>. As a consequence, *Staatsangehörigkeitsrecht* means citizenship law and includes norms on how citizenship can be gained, lost, and reclaimed<sup>32</sup>. Differently, Italian makes no distinction between citizenship as State-membership and citizenship as participation, but it uses the sole term “*cittadinanza*” to define the legal *status*. The rationale is that the term “*nazionalità*” (nationality) refers only to the common ethnic background of a population”<sup>33</sup>.

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<sup>26</sup> Pietro Gargiulo, *Le forme della cittadinanza: tra cittadinanza europea e cittadinanza nazionale* (Roma: Ediesse, 2012), 23.

<sup>27</sup> Bryan A. Garner, *Black’s Law Dictionary*, 9<sup>th</sup> ed. (St. Paul: West, 2009), 278.

<sup>28</sup> *Ivi*, 1123.

<sup>29</sup> Paul Lagarde, *La nationalité française*, 2<sup>nd</sup> ed. (Paris: Dallos, 1989), 1.

My translation: “nationality is generally defined as the legal and political membership of a person to the constituent population of a State”.

<sup>30</sup> Encyclopédie Larousse, available at [larousse.fr](http://larousse.fr)

My translation: “positive situation created for the full recognition to people of their status as citizens”.

<sup>31</sup> Rogers Brubaker, *cit.*, *supra* note 2, 50.

<sup>32</sup> Enrico Grosso, *cit.*, *supra* note 6, 28.

<sup>33</sup> EUDO Citizenship Glossary, available at [eudo-citizenship.eu](http://eudo-citizenship.eu)

A detailed clarification about the terminology used in the study of citizenship is available at [eudo-citizenship.eu](http://eudo-citizenship.eu)

Despite their conceptual differences, sometimes the terms “citizenship” and “nationality” are used interchangeably<sup>34</sup>. For example, Art 1 of the 1930 Convention on Certain Questions Relating to the Conflict of Nationality Laws (also known as the 1930 Hague Convention) stands: “It is for each State to determine under its own law who are its nationals. This law shall be recognized by other States in so far as it is consistent with international conventions, international customs, and the principles of law generally recognized with regard to nationality”<sup>35</sup>. Also the 1997 European Convention on Nationality (ECN), uses “nationality” rather than “citizenship”. In particular, Art 2(a) of this Convention enshrines the definition of “nationality” as “the legal bond between a person and a State and does not indicate the person’s ethnic origin”<sup>36</sup>. Moreover, the Explanatory Report on the ECN reaffirms and adds that “23. “Nationality” is defined in Article 2 of the Convention as “the legal bond between a person and a State and does not indicate the person’s ethnic origin”. It thus refers to a specific legal relationship between an individual and a State which is recognized by

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The EUDO citizenship observatory uses the terms “citizenship” and “nationality” as synonyms and in the narrow sense of a legal status linking individuals to a territorial political entity. Moreover, experts provided translations of the terms “citizenship” and “nationality” in the official languages of their countries along the explanation of their use.

<sup>34</sup> Pietro Gargiulo, *Le forme della cittadinanza: tra cittadinanza europea e cittadinanza nazionale* (Roma: Ediesse, 2012), 24.

<sup>35</sup> League of Nations, *Convention on Certain Questions Relating to the Conflict of Nationality Laws*, April 12, 1930, League of Nations Treaty Series (LNTS), LNTS no. 4137, vol. 179, p. 89, available at [treaties.un.org](http://treaties.un.org)

This Convention was adopted on 12 April 1930 in The Hague by the League of Nations and it entered into force after registration on 1 July 1937 in accordance with articles 25 and 26. The ratifications or definitive accessions, the signatures not yet perfected by ratification, and the actions subsequent to the assumption of depositary functions by the Secretary-General of the United Nations are available at [treaties.un.org](http://treaties.un.org)

<sup>36</sup> Council of Europe, *European Convention on Nationality* (ECN), November 6, 1997, Council of Europe Treaty Series (CETS), CETS no. 116, available at [conventions.coe.int](http://conventions.coe.int)

The ECN was adopted by the Council of Europe and opening for signature on 6 November 1997. Under Art 27(1), The Convention is open for signature by the member States of the Council of Europe and non-member States which have participated in its elaboration. Moreover, under Art 28 it is also open for accession by other non-member States. According to Art 27(2) of the Convention, it entered into force on 1 March 2000 after the ratifications of three member States of the Council of Europe. Thus, it is binding for all States having expressed their consent to be bound by the ECN. Among the four States analysed in this dissertation, only Germany has ratified the ECN. The chart of signatures and ratifications is available at [conventions.coe.int](http://conventions.coe.int)

that State. As already indicated in a footnote to paragraph 1 of this explanatory report, with regard to the effects of the Convention, the terms “nationality” and “citizenship” are synonymous<sup>37</sup>. In this dissertation, I will use only the term “citizenship” to refer to the legal relationship between an individual and the State. Nevertheless, given that the term “nationality” is present in many international and national legal documents, whenever citing from them, I will quote the term as used in such documents.

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<sup>37</sup> Council of Europe, *Explanatory Report on the European Convention on Nationality*, November 6, 1997, Council of Europe Treaty Series (CETS), CETS no. 166, available at [conventions.coe.int](http://conventions.coe.int)



## CHAPTER 2

### Models and modes of citizenship

#### 2.1 Two models of citizenship: *ius sanguinis* and *ius soli*

States have the prerogative to decide who can be considered as a citizen and how access to citizenship must be regulated. Given that citizenship is a legal matter, States establish first their predominant model of citizenship and then a variety of modes of acquisition of citizenship. Every State draws the legal boundaries within which some people are included as citizens while others are excluded as non-citizens. It is the citizenship law of a State that provides for rules determining the conditions under which citizenship is either attributed or acquired. In particular, citizenship can be attributed *ex lege* to persons who are deemed to have a genuine bond with the State concerned or can be acquired by persons who claim to have the same genuine bond with the State on the basis of birth, residence, marriage and other reasons<sup>38</sup>. However, people acquire citizenship not because of their choice, but due to fortuitous circumstances, i.e. the citizenship of their parents or their birthplace<sup>39</sup>. Indeed, citizenship is granted according to *ius sanguinis* (literally, the right of the blood) and *ius soli* (literally, the right of the soil). States have chosen to articulate their citizenship

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<sup>38</sup> Maarten P. Vink and Gerard-René de Groot, *EUDO Citizenship Observatory – Birthright Citizenship: Trends and Regulations in Europe*, (2010), 3.

<sup>39</sup> Ayelet Shachar, “Citizenship,” in *Oxford Handbook of Comparative Constitutional Law*, ed. Michel Rosenfeld and András Sajó, (Oxford: Oxford University Press, 2012), 1005.

laws around one of these two models of citizenship: the *ius sanguinis* model based on the descent principle and the *ius soli* model based on the territoriality principle. Although these models do not exist in their pure form on the European stage, the *ius sanguinis* model has been introduced by civil law countries, while the *ius soli* model has been used by common law countries<sup>40</sup>. Therefore, among the mentioned European States, France, Germany, and Italy can be considered as traditional *ius sanguinis* countries, whereas the United Kingdom as a traditional *ius soli* country.

Then, it is useful to look at how these two models of citizenship have taken ground in the world and especially in Europe. In the XVIII century, *ius soli* was the main criterion of citizenship law in the two most powerful kingdoms, i.e. France and the United Kingdom<sup>41</sup>. In broad terms, this model was used in the feudal system where persons were subjects, not citizens. The 1608 landmark *Calvin's Case* is emblematic of the roots of the *ius soli* principle in medieval England through the concept of allegiance<sup>42</sup>. In particular, "Ligeance is a true and faithful obedience of the subject due to his Sovereign. - This ligeance and obedience is an incident inseparable to every subject: for as soon as he is born he oweth by birth-right ligeance and obedience to his Sovereign"<sup>43</sup>. Briefly, in this case law, Edward Coke put into evidence the automatic and indissoluble relationship between the monarch and all subjects who are born within the territory of the monarchy<sup>44</sup>. As a result, a child born within the monarch's dominion was a subject of the sovereign and as such, he enjoyed

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<sup>40</sup> Ivi, 1008.

<sup>41</sup> Patrick Weil, "Access to citizenship: A Comparison of Twenty-Five Nationality Laws," in *Citizenship today: global perspectives and practices*, ed. T. Alexander Aleinikoff and Douglas Klusmeyer (Washington: Carnegie endowment for international peace, 2001), 19.

<sup>42</sup> Ayelet Shachar, *cit.*, *supra* note 39, 1006.

<sup>43</sup> *Calvin's Case*, 77 Eng Rep 377 (KB, 1608), 382.

In this case law, Robert Calvin, born in Scotland, inherited estates in England, but being a Scot, he could not legally own English land. Lord Edward Coke held that Calvin was not an alien and did have the right to hold land in England. A child born in Scotland after the Union of the Crowns in 1603 was considered an English subject under the common law and, as such, entitled to the rights of English law.

<sup>44</sup> Peter J. Spiro, "Interrogating birthright citizenship," in *Who belongs?: immigration, citizenship, and the constitution of legality*, ed. Austin Sarat, (Bingley: Emerald, 2013), 32.

protection of the sovereign in return of allegiance and obedience to the sovereign. Despite the territoriality principle is not expressly mentioned in this medieval case law, as a practical matter, the place of birth became the crucial determinant in the attribution of citizenship by modern States<sup>45</sup>. This means that acquisition of citizenship *iure soli* recalls partially the feudal tradition in which people belonged to the lord who was the owner of the land in which they were born. Subsequently, the *ius soli* model was introduced to the British colonies, currently the United States (US), Canada, South Africa, Ireland, and Australia<sup>46</sup>. For example, the Fourteenth Amendment of the US Constitution (called the “Citizenship Clause”) states: “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside”<sup>47</sup>.

Differently, the *ius sanguinis* model has its historical roots in ancient Greece and Rome, in which children could acquire citizenship at birth only if one of their parents was a citizen<sup>48</sup>. However, the adoption of *ius sanguinis* as criterion of citizenship laws occurred in Europe thanks to French revolution which broke with the feudal *ius soli*. In fact, the post-French Revolution Civil Code of 1804 provided for the transmission of citizenship from French fathers<sup>49</sup> to their children at birth, regardless of whether they were born in France or abroad. Through codification and imitation, in the XIX century other European countries adopted the *ius sanguinis* model of citizenship in their civil codes, such as Austria (1811), Belgium (1831), Spain (1837), Prussia (1842), Russia (1864), Italy (1865), the Netherlands (1888), Norway (1892), and Sweden (1894)<sup>50</sup>. Obviously, today citizenship laws of European States encompass elements of both citizenship models.

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<sup>45</sup> *Ibidem*

<sup>46</sup> Patrick Weil, *cit.*, *supra* note 41, 21.

<sup>47</sup> Constitution of the United States, available at [constitutionus.com](http://constitutionus.com)

<sup>48</sup> Peter J. Spiro, *cit.*, *supra* note 44, 31.

<sup>49</sup> See Part II, Chapter 1 for gender equality in citizenship rights in France.

<sup>50</sup> Patrick Weil, *cit.*, *supra* note 41, 20-21.

Finally, these models entail different advantages and disadvantages. A main advantage of the *ius sanguinis* model is the strengthening of cultural and ethnic bonds of a community. Yet, this is also dangerous because the blood-based principle as the criterion for citizenship acquisition may bear a cultural or ethno-national conception of citizenship, creating disequilibria between ethnic groups within the State and generating exclusionary tendencies<sup>51</sup>. In theory, the reliance on descent in the attribution of citizenship allows the continuation of an inclusive community. In practice, the *ius sanguinis* model prevents the full integration of third-generation and second-generation of immigrants even though they were born and raised in the country concerned. On the contrary, the main advantage of the *ius soli* model is exactly the intergenerational inclusion of immigrants: children born in the territory of the State acquire citizenship *iure soli*. For this reason, the *ius soli* model is seen as more inclusive and democratic than the *ius sanguinis* model. According to I. Honohan, *ius soli* can be regarded as an “important element of an inclusive citizenship regime”<sup>52</sup>, but in order to define a system as inclusive, what matters is the form that *ius soli* takes, not its mere presence<sup>53</sup>. In terms of inclusiveness, the most inclusive form is the pure *ius soli*, under which children born in the State concerned become automatically citizens at birth. This form is immediate and non-discretionary, while the other forms which follow are: *ius soli* with prospective conditions from birth (citizenship is acquired automatically or by declaration after birth); *ius soli* with retrospective conditions at birth (citizenship is acquired at birth on the basis of prior parental residence in the country); double *ius soli* (the acquisition of citizenship is conditional on parents’ birth in the country); and finally, facilitated naturalisation which is delayed and discretionary<sup>54</sup>.

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<sup>51</sup> *Ivi*, 1009.

<sup>52</sup> Iseult Honohan, *EUDO Citizenship Observatory – The Theory and Politics of Ius Soli*, (2010), 5.

<sup>53</sup> *Ibidem*

<sup>54</sup> *Ivi*, 5-8.

## 2.2 Acquisition of citizenship at birth

Within the international system, everyone deserves to be citizen of a State. To this purpose, birthright citizenship is the main mechanism for the allocation of citizenship. Being citizenship an inherently exclusionary national institution, States determine who is entitled to this legal *status* at birth. Thus, citizenship laws always encompass birthright provisions. In general, the majority of persons are linked with the political community/State in which they were born. Even despite mobility and globalization, “most people die in the same country in which not only they are born, but their parents as well”<sup>55</sup>. This is why citizenship can be considered relatively arbitrary: both the place of birth and the citizenship of one’s parents is the crucial determinant of the legal *status* of persons during their whole life. However, the modes of acquisition of citizenship at birth vary from State to State and rely on the two models of citizenship mentioned above.

In order to classify the modes of acquisition of citizenship at birth, it is necessary to look at the definition of “acquisition of citizenship at birth”. In the EUDO Citizenship Glossary, the “acquisition of nationality” is defined as “Any mode of acquisition of nationality that: either occurs automatically (*ex lege*) and immediately at birth; or can occur immediately after birth by declaration, registration, making use of an option or similar action because all the conditions for acquisition had already been met at the time of birth”<sup>56</sup>. This means that birthright-based modes of acquisition can occur both at birth and after birth. In particular, taking into account the classification of modes of acquisition of citizenship in Europe made by the EUDO Observatory on Citizenship<sup>57</sup>, those modes which attribute citizenship immediately at birth can be divided into two sub-groups: “*ius sanguinis* at birth” and “*ius soli* at birth”. While the former applies to persons born to a citizen of the country under consideration (code for this mode: A01), the latter refers to persons born in the

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<sup>55</sup> Maarten P. Vink and Gerard-René de Groot, *cit.*, *supra* note 38, 3.

<sup>56</sup> EUDO Citizenship Glossary, available at [eudo-citizenship.eu](http://eudo-citizenship.eu)

<sup>57</sup> EUDO Citizenship Database, available at [eudo-citizenship.eu](http://eudo-citizenship.eu)

This database is organized around a comprehensive typology of twenty-seven modes of acquisition of citizenship, identified by a code (from A01 to A27).

country (A02) as well as persons found in the country concerned of unknown parentage (foundlings) and persons born in the country who would otherwise be stateless (A03)<sup>58</sup>. Therefore, in the category of modes of acquisition at birth, there are only the three birthright-based modes of acquisition which occur at birth or immediately after birth (A01, A02, and A03). The other two birthright-based modes, i.e. “*ius sanguinis* after birth” and “*ius soli* after birth” (A04 and A05 respectively), are incorporated in the category of modes of acquisition of citizenship after birth under the sub-group “birthright-based modes” in the next paragraph. To sum up, table 1 illustrates the typology of modes of acquisition of citizenship at birth.

**Table 1:** Typology of modes of acquisition of nationality at birth

Sub-group of modes (at birth)	ID	Details and target persons
<i>Ius sanguinis</i> at birth	A01	Acquisition by persons born to nationals of C1 A01a = Descent (born in C1) A01b = Descent (born abroad)
<i>Ius soli</i> at birth	A02	Acquisition by persons born in C1 (except those under mode A03) A02a = Birth in C1 (second generation) A02b = Birth in C1 (third generation)
	A03	Acquisition by persons who are foundlings and by persons born in C1 who would otherwise be stateless A03a = Foundling A03b = Born stateless

Legend: C1 = Country under consideration

In general, these modes of acquisition of citizenship are subject to some variables. Indeed, some *criteria* are used to define eligibility for acquisition both *iure sanguinis* and *iure soli*. With respect to the acquisition of citizenship by descent at birth, it may be relevant 1) whether the child is born in or out of wedlock, 2) whether the child is born in the country concerned or abroad, and 3) the sex of the parent who is a citizen of the country under consideration. In addition, in case of birth

<sup>58</sup> Harald Waldrauch, “Methodology for comparing acquisition and loss of nationality,” in *Acquisition and Loss of Nationality: Policies and Trends in 15 European Countries, Vol.1: Comparative Analyses*, ed. Rainer Bauböck, Eva Ersbøll, Kees Groenendijk and Harald Waldrauch (Amsterdam: Amsterdam University Press, 2006), 108.

abroad, other *criteria* may be: 4) the country of birth of the parents, 5) the reason why the parents live abroad, and 6) how the parents acquired citizenship<sup>59</sup>. Similarly, variables which determine the acquisition of citizenship by birthplace at birth may be: 1) the parents' duration of residence within the country at the time of the child's birth, 2) the residence *status* of the parents, 3) where the parents were born, 4) the sex of the parent that has to meet the previous conditions, and 5) whether the birth of the child occurred in or out of wedlock<sup>60</sup>. Considering these variables, main features of *ius sanguinis* at birth and *ius soli* at birth need to be analysed deeply.

### 2.2.1 *Ius sanguinis* at birth

The acquisition of citizenship *iure sanguinis* at birth (A01) can be transmitted via the mother (*a matre*) and the father (*a patre*)<sup>61</sup>. In this line, Art 6(1) of the European Convention of Nationality (ECN) states: "Each State Party shall provide in its internal law for its nationality to be acquired *ex lege* by the following persons: a) children one of whose parents possesses, at the time of the birth of these children, the nationality of that State Party, subject to any exceptions which may be provided for by its internal law as regards children born abroad. With respect to children whose parenthood is established by recognition, court order or similar procedures, each State Party may provide that the child acquires its nationality following the procedure determined by its internal law"<sup>62</sup>. For instance, in case of birth abroad, States can limit the application of *ius sanguinis* at birth to first generation born outside the country (e.g. Germany), and can add other conditions for the second generation born abroad (e.g. Germany and the United Kingdom, where children must be registered within one

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<sup>59</sup> Harald Waldrauch, "Acquisition of nationality," in *Acquisition and Loss of Nationality: Policies and Trends in 15 European Countries, Vol.1: Comparative Analyses*, ed. Rainer Bauböck, Eva Ersbøll, Kees Groenendijk and Harald Waldrauch (Amsterdam: Amsterdam University Press, 2006), 121.

<sup>60</sup> *Ivi*, 128.

<sup>61</sup> Maarten P. Vink and Gerard-René de Groot, *cit.*, *supra* note 38, 5.

<sup>62</sup> Council of Europe, *European Convention on Nationality* (ECN), November 6, 1997, Council of Europe, Treaty Series (CETS), CETS no. 116, available at [conventions.coe.int](http://conventions.coe.int)

year after birth). Yet, other States, such as France and Italy, facilitate the reacquisition of citizenship, adopting a policy of “re-ethnicisation” abroad<sup>63</sup>. Moreover, this mode of acquisition presents some concerns: one regarding equal treatment between men and women in the transmission of citizenship to their children; others linked to the problematic establishment of “descent” in cases of children born out of wedlock, from incestuous relationships, or through medically assisted reproduction<sup>64</sup>.

### 2.2.2 *Ius soli* at birth

Regarding the acquisition of citizenship by persons born in the country concerned (A02), this mode can be divided into three forms: 1) pure *ius soli*, in which citizenship is attributed to all children born in the country; *ius soli* with retrospective conditions such as a certain period of prior parental residence in the country; and double *ius soli*, where the third generation of immigrants acquire citizenship *ex lege* if their parents were born in the country<sup>65</sup>. With the exception of the first form, the second and the third ones are conditional on parental residence and parental birth respectively. For example, *ius soli* based on parental residence is used for acquisition of citizenship by second generation in Germany and the United Kingdom<sup>66</sup>, whereas *ius soli* based on parental birth is provided for by French citizenship law<sup>67</sup>. On the contrary, pure *ius soli* is not present in the citizenship laws of the four States analysed in this dissertation.

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<sup>63</sup> Maarten P. Vink and Gerard-René de Groot, *cit.*, *supra* note 38, 9-10.

<sup>64</sup> *Ivi*, 6-7.

<sup>65</sup> Iseult Honohan, *cit.*, *supra* note 52, 5.

<sup>66</sup> See German citizenship law: Section 4, par. 3 of Nationality Act of 22 July 1913, Imperial Law Gazette, vol. I, p. 583 - Federal Law Gazette, vol. III, no. 102-1, as last amended by Article 2 of the Act to Implement the EU Directive on Highly Qualified Workers of 1 June 2012 (Federal Law Gazette, vol. I, p. 1224).

See also British citizenship law: Section 1(1) of the British Nationality Act, 30 October 1981, 1981 chapter 61, as last amended by Borders, Citizenship and Immigration Act 2009 (Act of 21 July 2009, 2009 chapter 11).

<sup>67</sup> Iseult Honohan, *cit.*, *supra* note 52, 10.

See also French citizenship law: Art 19-3 (Ordinance no 2005-759 of 4 July 2005) of the Civil Code (Book I, Title I bis: On French Nationality). The current consolidated French version of the Civil Code is available at [www.legifrance.com](http://www.legifrance.com)



With respect to the acquisition of citizenship by persons who are foundlings and by persons born in the country concerned who would otherwise be stateless (A03), I will not focus on this mode within this dissertation because it is less central to the comparative analysis between citizenship laws of France, Germany, Italy, and the United Kingdom. Nevertheless, in this contest it is appropriate to mention the main legal documents concerning this mode: the 1961 Convention on the Reduction of Statelessness<sup>68</sup> and the 1997 European Convention on Nationality (ECN). For example, under Art 6(1)(b) of the ECN, citizenship is acquired *ex lege* by “foundlings found in its territory who would otherwise be stateless”<sup>69</sup>, and under Art 6(2) States have to grant it also to potential stateless persons born in the country, i.e. “to children who remained stateless, upon an application being lodged with the appropriate authority, by or on behalf of the child concerned, in the manner prescribed by the internal law of the State Party. Such an application may be made subject to the lawful and habitual residence on its territory for a period not exceeding five years immediately preceding the lodging of the application”<sup>70</sup>.

### 2.3 Acquisition of citizenship after birth

The expression “acquisition of nationality after birth” refers to “Any mode of acquisition of nationality that does not take place: automatically and immediately at birth; or soon after birth by declaration, registration, making use of an option or similar action, on the basis of conditions for the acquisition that were met already at the time of birth”<sup>71</sup>. Following the classification of modes of

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<sup>68</sup> United Nations, *Convention on the Reduction of Statelessness*, August 30, 1961, United Nations Treaty Series (UNTS), UNTS no. 14458, vol. 989, p. 175, available at [treaties.un.org](http://treaties.un.org)

This Convention was signed on 30 August 1961 in New York City and it entered into force after registration on 13 December 1975, in accordance with article 18. The list of States that ratified or just signed the Convention is available at [treaties.un.org](http://treaties.un.org)

<sup>69</sup> Council of Europe, *European Convention on Nationality* (ECN), November 6, 1997, Council of Europe, Treaty Series (CETS), CETS no. 116, available at [conventions.coe.int](http://conventions.coe.int)

<sup>70</sup> *Ibidem*

<sup>71</sup> EUDO Citizenship Glossary, available at [eudo-citizenship.eu](http://eudo-citizenship.eu)

acquisition of citizenship in Europe made by the EUDO Observatory on Citizenship and that elaborated by H. Waldrauch<sup>72</sup>, table 2 shows the five sub-groups of mode of acquisition after birth: birthright-based modes, residence-based modes, family relation-based modes, affinity-based modes, and residual modes. Each sub-group encompasses more ways to acquire citizenship. In addition, some of these modes of acquisition of citizenship are automatic because they occur *ex lege* (by an act of law), while others require an expression of intent (application, declaration, making use of an option etc.) by the target persons or their legal agents<sup>73</sup>.

**Table 2:** Typology of modes of acquisition of nationality after birth

Sub-group of modes (after birth)	ID	Details and target persons
Birthright-based modes	A04	<i>Ius sanguinis</i> after birth: acquisition by persons born to nationals of C1 whose descent is established by recognition or judicial establishment of maternity/paternity = Establishment of paternity
	A05	<i>Ius soli</i> after birth: acquisition by persons born (or assumed to have been born) in C1 = Birth in C1 (acquisition after birth)
Residence-based modes	A06	Residence-based acquisition by persons with a certain period of residence in C1 (without other special <i>status</i> ) = Ordinary naturalisation
	A07	Socialization-based acquisition by persons raised (while minors) in C1 = Socialization-based acquisition
Family relation-based modes	A08	Transfer of nationality to spouses of s of C1 = Spousal transfer
	A09	Transfer of nationality to children of persons who are now, but were not nationals of C1 at the time of the child's birth, or whose nationality at that time is irrelevant = Filial transfer
	A10	Transfer of nationals to adopted children of nationals of C1 = Adoption
	A11	Transfer of nationality to other relatives of nationals of C1 = Transfer to other relatives
	A12	Transfer of nationality to relatives (spouse, child, grandchild) of former or deceased nationals of C1 = Transfer from former citizen
	A13	Extension of acquisition to spouses of foreign nationals who acquire nationality of C1 = Spousal extension

<sup>72</sup> Harald Waldrauch, *cit.*, *supra* note 58, 112-113.

<sup>73</sup> *Ivi*, 108-109.

	A14	Extension of acquisition to children of foreign nationals who acquire nationality of C1 = Filial extension
	A15	Extension of acquisition to other relatives of foreign nationals who acquire nationality of C1 = Extension to other relatives
Affinity-based modes	A16	Reacquisition by former nationals of C1 = Reacquisition
	A17	Acquisition by special nationals with restricted citizenship = Restricted citizenship rights
	A18	Acquisition by persons with nationality of C2 = Citizenship of a specific country
	A19	Acquisition by persons with cultural affinity to C1 (ethnicity, mother tongue or religion) = Cultural affinity
	A20	Acquisition by persons who acted as nationals of C1 in good faith and/or were presumed C1's nationals for some time = Presumed citizens
	A21	Acquisition by persons with other special connections to C1 = Very long residence
Residual modes	A22	Acquisition by recognised refugees = Refugees
	A23	Acquisition by stateless persons or persons of unclear nationality = Stateless or unclear citizenship
	A24	Acquisition by persons with special achievements for C1 = Special achievements
	A25	Acquisition by persons in the public (military or non-military) service of C1 = Public service
	A26	Acquisition by persons with special financial assets and/or persons who invest money in C1 = Financial assets
	A27	Other modes of acquisition = Acquisition of citizenship for other reasons

Legend: C1 = Country under consideration; C2 = Particular foreign country for which special regulations apply, e.g. Member States of the European Union, Member States of other international organizations, Parties in bilateral or multilateral agreements.

### 2.3.1 Birthright-based modes after birth

As already mentioned above, birthright-based modes of acquisition of citizenship after birth are those which occur after the child's birth even though the conditions for acquisition had already been met at the time of birth. These modes are divided into *ius sanguinis* after birth (A04) and *ius soli* after birth (A05). *Ius sanguinis* after birth (A04) applies to children of persons who were

nationals at the time of their child's birth and the acquisition of citizenship occurs *ex lege* or by simple declaration or registration. According to H. Waldrauch, modes of acquisition *iure sanguinis* after birth take place when 1) a person acquires citizenship by declaration or registration immediately or after birth, 2) a certain category of children is not included by the general rules for the acquisition of citizenship, 3) some transitional regulations after a change in the *ius sanguinis* modes have occurred, and 4) the relationship between children and the parent who is a national of the country concerned is established after birth by legitimation or establishment of filiation<sup>74</sup>. In particular, Art 6(1)(a) of the ECN states: "With respect to children whose parenthood is established by recognition, court order or similar procedures, each State Party may provide that the child acquires its nationality following the procedure determined by its internal law"<sup>75</sup>. In fact, persons targeted in this mode are children born out of wedlock, whose acquisition of citizenship is legislated differently by States. Generally, the citizenship of the father is acquired *ex lege* by children born out of wedlock when a family relationship exists between him and the child, as well as by legitimation after the marriage between the mother and the father of the child<sup>76</sup>. Other means for the establishment of a family relationship are the recognition of a child born out of wedlock by the father and the judicial establishment<sup>77</sup>.

Differently, *ius soli* after birth (A05) includes two possibilities for the acquisition of citizenship by persons born in a country to foreign parents: one is acquisition *ex lege* or by option/declaration at a certain age in childhood or at the age of majority; the other one is facilitated naturalisation, in which requirements for those persons born in the country are less onerous<sup>78</sup>. In the former, the person concerned has to lodge a declaration of option for the acquisition of citizenship,

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<sup>74</sup> Harald Waldrauch, *cit.*, *supra* note 59, 125.

<sup>75</sup> Council of Europe, *European Convention on Nationality* (ECN), November 6, 1997, Council of Europe, Treaty Series (CETS), CETS no. 116, available at [conventions.coe.int](http://conventions.coe.int)

<sup>76</sup> Maarten P. Vink and Gerard-René de Groot, *cit.*, *supra* note 38, 14-15.

<sup>77</sup> *Ivi*, 15-16.

<sup>78</sup> Iseult Honohan, *cit.*, *supra* note 52, 6.

which rarely occurs automatically, such as in France at the age of majority<sup>79</sup>; in the latter, the material conditions, such as the required years of residence, are lower. Moreover, the declaration of option can be oral or written. In case it is made orally, it requires to be proved by the signature of an official document by the person involved or any other means. However, as soon as the conditions have been proved, the person acquires citizenship. Contrarily, when a written declaration is necessary, the authorities have to control that all conditions are met and may also reject the right of option for reasons of lack of integration or public security<sup>80</sup>.

### **2.3.2 Residence-based modes and naturalisation**

Residence-based modes can be classified as general residence-based acquisition of citizenship (A06) and socialisation-based acquisition (A07). Whereas the former is centred on residence requirements, i.e. a minimum duration of residence, the latter is based on socialisation of persons while minors in the country concerned. Indeed, “residence-based acquisition of nationality” is defined as “Any mode of acquisition of nationality after birth for which the main condition is a certain period of residence on the territory of the country under consideration”<sup>81</sup>, whilst “socialisation-based acquisition of nationality” refers to “Any mode of acquisition of nationality after birth based on socialisation of the target person before the age of majority in the country under consideration, i.e. of persons who attended school (for some time) and/or who completed school there, who spent time there for certain years of their childhood or adolescence, etc”<sup>82</sup>. Nevertheless, residence-based acquisition of citizenship (A06) occurs by naturalisation, that is to say a type of acquisition of citizenship whose main features are an application by the person involved and an act

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<sup>79</sup> Maarten P. Vink and Gerard-René de Groot, *cit.*, *supra* note 38, 26.

<sup>80</sup> *Ivi*, 27.

<sup>81</sup> EUDO Citizenship Glossary, available at [eudo-citizenship.eu](http://eudo-citizenship.eu)

<sup>82</sup> *Ibidem*

of granting by the public authority<sup>83</sup>. More specifically, it is defined as “Any mode of acquisition after birth of a nationality not previously held by the target person that requires an application by this person or his or her legal agent as well as an act of granting nationality by a public authority”<sup>84</sup>. This means that naturalisation must be distinguished from automatic acquisition of citizenship as well as acquisition by option/declaration. From an etymological perspective, naturalisation stemmed from the Latin term “*nasci*” (meaning “to be born”) and, consequently, indicates a sort of “re-birth” into the new political community<sup>85</sup>. On one hand, this is one of the most common modes to acquire citizenship for first generation of immigrants. On the other hand, it represents the possibility for States to reject the application by using discretion.

Conditions of residence-based modes of acquisition of citizenship vary from one country to another, but it is possible to list most common procedural requirements and material requirements. The procedural requirements consist of 1) whether citizenship is granted because of the person’s entitlement to acquisition or the public authorities’ discretion, 2) whether or not the public authorities are obliged to justify negative decisions, 3) whether the person involved has the right of appeal, 4) the decision-making authority, 5) the maximum duration of the procedures prescribed by law, 6) fees, and 7) a oath of loyalty and/or a public ceremony<sup>86</sup>. In most States, acquisition of citizenship by the applicant lies within the discretion of the public authority. Yet, the obligation to justify negative decisions can limit discretionary decisions by the public administration such as in France, Germany, and Italy<sup>87</sup>. Another way to limit discretion of public authorities is the possibility of appeal, but, “in most cases, the instances of appeals do not have plenary jurisdiction, i.e. they cannot make a final decision on the case and grant nationality”<sup>88</sup>. What court can do is to remit the

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<sup>83</sup> Harald Waldrauch, *cit.*, *supra* note 59, 135.

<sup>84</sup> EUDO Citizenship Glossary, available at [eudo-citizenship.eu](http://eudo-citizenship.eu)

<sup>85</sup> Ayelet Shachar, *cit.*, *supra* note 39, 1012.

<sup>86</sup> Harald Waldrauch, *cit.*, *supra* note 59, 135-137.

<sup>87</sup> *Ivi*, 139.

<sup>88</sup> *Ivi*, 144.

case back to the authority for a new decision on whether the applicant meets all requirements for the acquisition of citizenship. With respect to the authorities, they can vary from regional judicial authorities, executive authorities at the national, regional, and local level, or national parliaments. In addition, there may be a certain period of time prescribed by law in which the authorities have to decide, as well as fees at the moment of the application for naturalisation or the declaration<sup>89</sup>. Finally, some citizenship laws may require that the new citizen swears an oath of allegiance to the State and its values and/or attends a ceremony. Actually, this public ceremony represents the “re-birth” of the foreign person into a citizen of the State concerned, by singing its anthem, saluting its flag, and declaring allegiance to the State<sup>90</sup>.

However, for naturalisation the applicant has to meet the material requirements which are: 1) minimum age, 2) required years of residence, 3) residence *status* or residence permit, 4), renunciation of prior citizenship, 5) absence of criminal record, 6) “good character”, 7) sufficient financial situation, 8) knowledge of the official language of the country, 8) knowledge about the country, 9) integration and assimilation, and 10) other conditions<sup>91</sup>. Looking more closely at these requirements, the minimum age for naturalisation is the age of majority in most countries. The applicant must have a residence *status* or residence permit, proving current residence in the country, and a certain years of residence without interruption or only limited period of absence allowed by law, proving the past residence. According to Art 6(3) of the ECN, this period of past residence ranges from a minimum of four years to a maximum of ten<sup>92</sup>. Then, naturalisation may require the loss of previous citizenship only in some countries, while a clean criminal record and a “good character” in most of them. Nonetheless, each State uses different criteria to define offences which

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<sup>89</sup> *Ivi*, 145-146.

<sup>90</sup> Ayelet Shachar, *cit.*, *supra* note 39, 1013.

<sup>91</sup> Harald Waldrauch, *cit.*, *supra* note 59, 140-141.

<sup>92</sup> Council of Europe, *European Convention on Nationality* (ECN), November 6, 1997, Council of Europe, Treaty Series (CETS), CETS no. 116, available at [conventions.coe.int](http://conventions.coe.int)

then prevent the acquisition of citizenship<sup>93</sup>. Moreover, the applicants may be required to have a sufficient income that proves that they can maintain themselves economically. Finally, States may require some evidence of language knowledge and integration. Language skills can be tested in an interview or by means of a written test. The rationale is that future citizens have to be able to integrate in the society, communicate with other citizens as well as the authorities, and meet their duties as citizens<sup>94</sup>. In this line, even knowledge of the culture, the history, and the political system of the country concerned is required and proved through citizenship tests, such as in Germany and in the United Kingdom<sup>95</sup>.

### **2.3.3 Family relation-based modes**

Family relation-based modes are numerous (from A08 to A15 as listed in table 2 above) and can be distinguished between transfers of citizenship and extensions of acquisition of citizenship. A transfer is any mode of acquisition of citizenship after birth that presumes a family relationship with the reference person who already is a citizen of the country concerned, while an extension is any mode of acquisition that is conditional on, or results automatically after, the simultaneous acquisition of citizenship by a certain reference person<sup>96</sup>. Therefore, the transfer of citizenship applies to spouses of citizens (A08), to children of persons who became citizens (A09), to adopted children of citizens (A10), to other relatives of citizens (A11), and to relatives (spouse, child, and grandchild) of former or deceased citizens of the country (A12). The remaining three family relation-based modes regard extension: the extension of acquisition to spouses of foreign nationals who acquire nationality of the country concerned (A13); extension of acquisition to children of foreign nationals who acquire nationality of the country concerned (A14); and extension of

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<sup>93</sup> Harald Waldrauch, *cit.*, *supra* note 59, 149.

<sup>94</sup> *Ivi*, 151.

<sup>95</sup> Ayelet Shachar, *cit.*, *supra* note 39, 1014.

<sup>96</sup> Harald Waldrauch, *cit.*, *supra* note 58, 109.



acquisition to other relatives of foreign nationals who acquire nationality of the country concerned (A15). In this dissertation, I will focus only on spousal transfer (A09), filial transfer (A10), and transfer by adoption (A11), as well as spousal extension (A13) and filial extension (A14).

With respect to spouses of citizens, States have to facilitate their acquisition of citizenship in accordance with Art 6(4) of the ECN<sup>97</sup>. In this context, it is possible to identify four types of acquisition of citizenship by spouses of citizens: first, acquisition of citizenship via declaratory procedures, such as in France<sup>98</sup>; second, granting spouses of citizens a right to naturalisation, such as in Italy<sup>99</sup>; third, entitlement to naturalisation as regular applicants, such as in Germany<sup>100</sup>; and fourth, naturalisation with slightly less demanding requirements, such as in the United Kingdom<sup>101</sup>. In general terms, this transfer of citizenship is conditional first of all on marriage with a citizen of the country concerned, and then on the duration of marriage, the duration of common household, the duration of residence in the country, as well as the fact that citizenship has been acquired before or after the marriage and/or a common household<sup>102</sup>. There may be other conditions required, such as fees and the renunciation of previous citizenship. Contrary to transfer to spouses, extension of acquisition of spouses of persons who are acquiring citizenship themselves is not common in Europe. In fact, it is provided for by few States, among which France and Germany<sup>103</sup>. Finally, children of naturalised citizens (A09) and adopted children of citizens (A10) acquire citizenship by

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<sup>97</sup> Council of Europe, *European Convention on Nationality* (ECN), November 6, 1997, Council of Europe, Treaty Series (CETS), CETS no. 116, available at [conventions.coe.int](http://conventions.coe.int)

<sup>98</sup> Art 21-2 (Ordinance no 2011-672 of 16 June 2011) of the French Civil Code (Book I, Title I bis: On French Nationality) of 21 March 1804, as last amended by Law no. 2011-672 relating to immigration, integration and nationality of 16 June 2011 (Official Journal of the French Republic, no. 0139, p. 10290).

<sup>99</sup> Art. 5 of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38, as amended by Art. 1, par. 11 of Act no. 94/2009 on public security (Law of 15 July 2009, n. 94, Official Gazette, no. 170).

<sup>100</sup> Section 9 and Section 10 of Nationality Act of 22 July 1913, Imperial Law Gazette, vol. I, p. 583 - Federal Law Gazette, vol. III, no. 102-1, as last amended by Article 2 of the Act to Implement the EU Directive on Highly Qualified Workers of 1 June 2012 (Federal Law Gazette, vol. I, p. 1224).

<sup>101</sup> Section 6 and Schedule 1 of the British Nationality Act, 30 October 1981, 1981 chapter 61.

<sup>102</sup> Harald Waldrauch, *cit.*, *supra* note 59, 162-164.

<sup>103</sup> *Ivi*, 167.

descent (*iure sanguinis*), whereas those of persons who are acquiring citizenship become citizens themselves either simultaneously or as soon one of their parents is a citizen of the country. This extension may be *ex lege* or has to be applied for<sup>104</sup>.

#### **2.3.4 Affinity-based modes and residual modes**

In order to conclude the classification of modes of acquisition of citizenship after birth, I will mention affinity-based modes (from A16 to A21) and residual modes (from A22 to A27) even though they will not be central in the comparative study of this dissertation. On one hand, the first sub-group of the modes after birth comprises modes that are addressed to former citizens (A16), persons with special citizenship (A17), citizens of certain countries (A18), citizens with cultural affinity to the country concerned (A19), persons who were presumed to be citizens for some time (A20), and persons with connections to the country under consideration (A21). On the other hand, the heading “residual modes” encompasses modes which target refugees (A22), stateless persons or persons of unclear nationality (A23), persons with special achievements for the country under consideration (A24), persons in the country’s public service (A25), and persons with special financial assets and/or persons who invest money in the country (A26) as well as modes of acquisition of citizenship for other reasons (A27).

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<sup>104</sup> *Ivi*, 167-168.

## **II. COUNTRY ANALYSES**

## CHAPTER 1

### French citizenship law

#### 1.1 Historical development of French citizenship law

Current French citizenship law<sup>105</sup> consists of a mixture of *ius sanguinis* and *ius soli* models. As such, it was essentially established by the 1889 law<sup>106</sup> which encompassed “the logic of progressive integration of immigrants and their descendants”<sup>107</sup>. France has undergone several changes of its citizenship law due to immigration and political pressure. To this regard, M. M. Howard wrote in 2009 that “the French case highlights the importance of political factors for understanding national citizenship policy. Most of the policy changes resulted from ideological positions that were relatively predictable given the forces in power at that time”<sup>108</sup>. In order to see these changes, I will describe the historical development of French citizenship law from its origins so far.

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<sup>105</sup> French Civil Code (Book I, Title I bis: On French Nationality) of 21 March 1804, as last amended by Law no. 2011-672 relating to immigration, integration and nationality of 16 June 2011 (Official Journal of the French Republic, no. 0139, p. 10290).

<sup>106</sup> Law of 26 June 1889.

<sup>107</sup> Patrick Weil and Alexis Spire, “France,” in *Acquisition and Loss of Nationality: Policies and Trends in 15 European Countries, Vol.II: Country Analyses*, ed. Rainer Bauböck, Eva Ersbøll, Kees Groenendijk and Harald Waldrauch (Amsterdam: Amsterdam University Press, 2006), 207.

<sup>108</sup> Marc Morjé Howard, *The politics of citizenship in Europe* (Cambridge: Cambridge University Press, 2009), 153.

### 1.1.1 The origins of French citizenship law

Originally, it was the French revolution that broke with the feudal tradition of *ius soli* by introducing *ius sanguinis*. Indeed, the Civil Code of 1804 instituted the principle of *ius sanguinis* in citizenship law against Napoleon Bonaparte's wishes and attributed citizenship only to children born to a French father, either in France or abroad. The ratio behind the introduction of this principle had nothing to do with ethnicity, but with the fact to give more importance of family links transmitted by the father instead of feudal allegiance which was associated to *ius soli* at that time<sup>109</sup>. During the XIX century, *ius sanguinis* represented the dominant criterion of French citizenship law. Yet, this model of acquisition of citizenship presented some problems due to immigration, specifically with regard to foreigners who were born in France and those whose families lived in France for a very long period of time. As foreigners, these people were not obliged to the military draft and their situation was considered as a privilege. Therefore, two modifications of French citizenship law took place in 1851 and then in 1889. The law of 1851 introduced the so called double *ius soli* which granted citizenship at the age of majority to a child born in France to a foreign father also born in France except in case of repudiation of French citizenship by the child<sup>110</sup>. Nevertheless, this law was not successful because many foreigners refused citizenship and continued to escape the military draft which became compulsory in 1872<sup>111</sup>. Consequently, the law of 1889 repealed the law of 1851 and definitively institutionalised *ius soli* in French citizenship law in two ways: first, granting citizenship to third generations of immigrants (children born in France to foreign parents also born in France) at majority and eliminating the possibility of repudiation of citizenship for them (possibility restored in 1893 only in case of a mother born in France); and second, substituting the 'option of choosing' with the 'possibility of repudiation' of citizenship

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<sup>109</sup> *Ivi*, 188.

<sup>110</sup> Christophe Bertossi and Abdellali Hajjat, *EUDO Citizenship Observatory – Country Report: France*, (2013), 4. See also Law of 7 February 1851.

<sup>111</sup> Giovanna Zincone, "L'immigrazione e l'incerta cittadinanza," *Il Mulino*, no. 5 (2010): 762.

granted to second generations of immigrants (children born in France to foreign parents born abroad)<sup>112</sup>.

### 1.1.2 Reforms during the XX century

During the first half of the XX century, other changes have been made in order to adapt French citizenship law to circumstances. First of all, during the First World War (WWI) the main concern for France regarded loyalty of newly naturalised persons from enemy countries, in particular from Germany after its Delbrück Law of 22 July 1913 which allowed Germans naturalised abroad to retain their original citizenship. France responded to this German law with the laws of 7 April 1915 and 18 June 1917 which institutionalised procedures of denaturalisation (*déchéance*), i.e. the review and the possible withdrawal of citizenship after naturalisation under the surveillance of the State Council, and then of the Judicial Court System<sup>113</sup>. Then, at the end of WWI, France had to face a demographic lack due to the numerous human losses of the war and answered to this problem by encouraging immigration and naturalisations. To this purpose, France adopted a new “Code of Nationality” in 1927<sup>114</sup> with significant changes: firstly, these articles were no longer part of the Civil Code; secondly, also French women had the possibility to keep their French citizenship even if married to a foreigner as well as to transmit it to their children; thirdly, the residence requirement for naturalisation was reduced from ten to three years; and finally, this new Code confirmed the possibility of denaturalisation and introduced the requirement of ‘assimilation into the French community’ in naturalisation procedures to be assessed by local civil servants<sup>115</sup>. These changes resulted in an immediate surge in naturalisations. However, this expansion of French citizenship occurred at the same time of the financial and economic crisis of

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<sup>112</sup> Christophe Bertossi and Abdellali Hajjat, *cit.*, *supra* note 110, 4.

See also Law of 26 June 1889 and Law of 22 July 1893.

<sup>113</sup> *Ivi*, 5.

<sup>114</sup> Law of 10 October 1927.

<sup>115</sup> Christophe Bertossi and Abdellali Hajjat, *cit.*, *supra* note 110, 5.

1929-1930, causing an increase of xenophobia and anti-Semitism besides intense debates on the loyalty of “*français de papier*” (paper Frenchmen), i.e. foreigners who have acquired French citizenship. What followed were some restrictive measures: 1) a law of 1934 delayed the entry to certain professions; 2) next, the law of 12 November 1938 provided for further limitations, such as the impossibility of naturalised people to vote and to be elected to public office for five years, the strengthening of denaturalisation procedures, and the need of a visa for more than one year for foreigners who wanted to marry a French citizen; 3) finally, during the Vichy regime (1940-1945), following a Nazi law, previous naturalisations were reviewed and especially Jews were denaturalised and then deported to Germany<sup>116</sup>. Thus, the increasing xenophobia among population in a period of crisis characterized French legislation on citizenship because it strengthened the idea that foreigners were an obstacle for the economy of France and the wellbeing of French people by working in France as well as a danger for French culture due to the lack of assimilation in the French society.

After the Second World War (WWII), France presented again a lack of population and of births which were the main obstacles for French recovery according to De Gaulle<sup>117</sup>. Thus, a new ‘Nationality Code’ was established by the ordinance of 19 October 1945<sup>118</sup> which maintained the logic of progressive integration of immigrants and their children. Yet, the new Code increased the residence requirement for naturalisation from three to five years and limited the possibility of French women to choose their citizenship after marriage with a foreigner. In particular, French women marrying foreigners remained French, unless they declare the contrary before the marriage, while foreign women marrying a French citizen were automatically French except if they express their will to maintain their own citizenship<sup>119</sup>.

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<sup>116</sup> *Ivi*, 5-6.

<sup>117</sup> Patrick Weil and Alexis Spire, *cit.*, *supra* note 107, 191

<sup>118</sup> Ordinance no. 45-2441 of 19 October 1945.

<sup>119</sup> Patrick Weil and Alexis Spire, *cit.*, *supra* note 107, 191.

In addition, the phenomenon of decolonization had an impact on French citizenship law, by leading to some changes: first, the law of 22 December 1961 modified the conditions for former colonial subject to enter France, by deleting the requirement of good health and legal residence and by increasing the possibilities for naturalisation without residence requirements<sup>120</sup>; then, after the 1962 Evian Agreements, Algerians could automatically become French citizens if they were over eighteen, lived in France, and performed a declaration of acceptance of the French Republic<sup>121</sup>; finally, given that very few Algerians wanted to become French while the majority of them considered the mentioned procedure as a betrayal of Algeria, since 1967 Algerians who wished to become French had to follow a procedure of reintegration by decree, which did not require the declaration of acceptance, but five years of residence in France<sup>122</sup>.

Lastly, another turning point during the evolution of French citizenship law is represented by the law of 1973<sup>123</sup>. This law ensured total equality between men and women, allowed that children born in France to parents who have been born in former colonies or overseas territories would acquire French citizenship automatically at birth, and introduced the possibility of the government to impede the acquisition of citizenship by marriage in case of 'lack of assimilation'<sup>124</sup>. For instance, with respect to gender inequality in citizenship law, since 1973 not only French men, but also French women who became citizens of another country would maintain French citizenship<sup>125</sup>.

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<sup>120</sup> *Ivi*, 194.

Law no. 61-408 of 22 December 1961. It modified Ordinance no. 45-2441 of 19 October 1945 which regulated the conditions under which former French colonials could enter France.

<sup>121</sup> *Ibidem*

See also Evian Agreements of 18 March 1962, published in *Le Monde* of 20 March 1962.

<sup>122</sup> *Ibidem*

<sup>123</sup> Law no. 73-42 of 9 January 1973.

<sup>124</sup> Christophe Bertossi and Abdellali Hajjat, *cit.*, *supra* note 110, 8-9.

<sup>125</sup> Patrick Weil and Alexis Spire, *cit.*, *supra* note 107, 196.

According to law of 9 April 1954, all men younger than fifty years old acquiring citizenship of another country would remain French unless they requested permission from the French government. On the contrary, under the same



### 1.1.3 Recent developments

Looking at recent developments, they started in the 1980s through the politicization of citizenship laws and immigration, especially after the electoral success of the National Front (an extreme-right political party) that attacked “the ease with which foreigners became French”<sup>126</sup>. Since then, whereas left parties were in favour of liberalisation, centre-right and the extreme-right supported restrictive measures of French citizenship law<sup>127</sup>. In particular, the government of centre-right Prime Minister Jacques Chirac tried to introduce restrictive measures, such as the limitation of double *ius soli*, by making it no longer automatic but conditional upon a declaration by the person concerned, and the removal of the automatic acquisition of citizenship by marriage. These changes were not possible due to the ‘cohabitation’ with the Socialist President Mitterrand and the protests by the left so that Chirac could only appoint a commission of experts that presented a report entitled ‘*What it means to be French now and in the future*’<sup>128</sup>. Therefore, many reforms of French citizenship law have followed over time, specifically in 1993, 1998, 2003, 2006, and 2011<sup>129</sup>.

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conditions, French women lost French citizenship. This mechanism was established to expand French culture and economic power abroad. Equal treatment of men and women in the acquisition of French citizenship by spouses and descendants of French citizens was established by the law of 9 January 1973.

<sup>126</sup> *Ivi*, 196.

<sup>127</sup> Marc Morjé Howard, *cit.*, *supra* note 108, 151-152.

<sup>128</sup> *Ivi*, 152.

See also Patrick Weil and Alexis Spire, *cit.*, *supra* note 107, 198.

<sup>129</sup> Law no 93-933 reforming the law on naturalisation (1), 22 July 1993, Official Journal of the French Republic, no. 168. See also Law no. 93-1027 on immigration control and the conditions of entry, reception and residence of foreigners in France (1), 24 August 1993, Official Journal of the French Republic, no. 200.

Law no. 98-170 on nationality (1), 16 March 1998, Official Journal of the French Republic, no. 64, p. 3935.

Law no. 2003-1119 on the control of immigration, residence of foreigners in France and nationality (1), 26 November 2003, Official Journal of the French Republic, no. 274, p. 20136.

Law no. 2006-911 relating to immigration and integration (1), 24 July 2006, Official Journal of the French Republic, no. 170, p. 11047. See also Law no. 2006-64 on the fight against terrorism and various provisions relating to security and border control (1), 23 January 2006, Official Journal of the French Republic, no. 20, p. 1129.

Law no. 2011-672 relating to immigration, integration and nationality, 16 June 2011, Official Journal of the French Republic, no. 0139, p. 10290.

Hereafter, I will focus deeply on 1993 reform and I will give only some examples of the next changes.

The law of 22 July 1993<sup>130</sup> is not only a restrictive reform of citizenship law which reincorporated citizenship provisions into the Civil Code, but also a measure to control immigration together with two other laws, i.e. the law of 10 August 1993 facilitating increased surveillance and the law of 24 August 1993 restricting conditions of entry into France<sup>131</sup>. This law restricted double *ius soli* 1) by removing its application to children born in France to foreign parents born in French territories before their independence, and 2) by limiting its application to Algerian children born in France to parents born in Algeria before independence (1962) only if at least one of them had lived in metropolitan France for five years at the moment of birth of the children<sup>132</sup>. Then, it reformed also simple *ius soli*: it removed two options adopted before 1889 (the automatic acquisition of citizenship at the age of eighteen if the children have had their residence in France for five years; the possibility for parents to claim French citizenship by declaration for their children between their birth and eighteen years old); instead, this law introduced a single option under which children born in France to foreigner parents could become French between sixteen and eighteen years old by declaration<sup>133</sup>. Finally, with respect to marriage, in order to fight marriage of convenience the 1993 law increased the delay for acquisition of citizenship to two years after marriage, and added two conditions, i.e. living together during these two years and the maintenance of French citizenship by the French spouse<sup>134</sup>.

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See also Decree no. 2011-1265 on the level of linguistic knowledge required by Art. 21-2 et 21-24 of the Civil Code, and on modalities of evaluation, 11 October 2011, Official Journal of the French Republic, no. 0237, p. 17156.

<sup>130</sup> Law no 93-933 reforming the law on naturalisation (1), 22 July 1993, Official Journal of the French Republic, no. 168.

<sup>131</sup> Patrick Weil and Alexis Spire, *cit.*, *supra* note 107, 198.

<sup>132</sup> *Ivi*, 199.

<sup>133</sup> *Ibidem*

<sup>134</sup> *Ibidem*

In 1997, after the electoral victory of the coalition called the “Plural left” including the Socialist Party, the French Communist Party, the Greens, the Radical Party of the Left, and the Citizen and Republican Movement (MDC), Lionel Jospin became Prime Minister while the French President was the rightist leader Jacques Chirac. Consequently, this third French cohabitation (1997-2002) led to the law of 16 March 1998<sup>135</sup> which reformed the most controversial features of the 1993 Law by re-establishing of automatic simple *ius soli* at the age of eighteen for children living in France during their adolescence as well as double *ius soli* for children of Algerians, and by reducing the delay for acquiring citizenship by marriage to one year<sup>136</sup>. Later, when a new right-wing government has been formed in France in 2002 after the electoral victory of the Union for a Popular Movement (UMP, a French centre-right party) and the re-election of Jacques Chirac as President, citizenship was subject to some restrictions by the law of 2003<sup>137</sup>, such as re-establishing a delay of two years for foreign spouses, and adding the requirement of sufficient knowledge of rights and duties of French citizenship besides knowledge of the French language in naturalisation procedures<sup>138</sup>. Similarly, other changes occurred by the laws of 2006<sup>139</sup>, such as the delay for foreign spouses before becoming French was increased to four years after marriage and the institutionalisation of citizenship ceremonies<sup>140</sup>. Finally, last main reforms are in 2009 the

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<sup>135</sup> Law no. 98-170 on nationality (1), 16 March 1998, Official Journal of the French Republic, no. 64, p. 3935.

<sup>136</sup> Patrick Weil and Alexis Spire, *cit.*, *supra* note 107, 200.

<sup>137</sup> Law no. 2003-1119 on the control of immigration, residence of foreigners in France and nationality (1), 26 November 2003, Official Journal of the French Republic, no. 274, p. 20136.

<sup>138</sup> Patrick Weil and Alexis Spire, *cit.*, *supra* note 107, 202.

See also Law no. 2003-1119 on the control of immigration, residence of foreigners in France and nationality (1), 26 November 2003, Official Journal of the French Republic, no. 274, p. 20136.

<sup>139</sup> Law no. 2006-911 relating to immigration and integration (1), 24 July 2006, Official Journal of the French Republic, no. 170, p. 11047. See also Law no. 2006-64 on the fight against terrorism and various provisions relating to security and border control (1), 23 January 2006, Official Journal of the French Republic, no. 20, p. 1129.

<sup>140</sup> Christophe Bertossi and Abdellali Hajjat, *cit.*, *supra* note 110, 24.

See also Law no. 2006-911 relating to immigration and integration (1), 24 July 2006, Official Journal of the French Republic, no. 170, p. 11047.

decentralisation of the decision-making process for naturalisation<sup>141</sup>, and in 2011 the introduction of a test on the French history and culture to check the assimilation of foreigners into French society<sup>142</sup>.

What emerges from the historical development of French citizenship law is that France has considered integration and assimilation of foreigners as core elements for the acquisition of citizenship. Consequently, French citizenship law has been modified several times and the first outstanding change was the introduction of *ius soli* elements. According to G. Zincone, despite today *ius soli* is seen as a tool which can ease integration of immigrants, it was not introduced as a means in favour of immigrants, but as a legal instrument used by States which wanted to increase their population<sup>143</sup>. In this perspective, acquisition of citizenship *iure soli* has a dual function: on one hand, it allows that a person born in a country from foreign parents does not remain a foreigner in the country where he resides but a citizen of a country that rarely knows; on the other hand, it impede inequality between citizens and foreigners living there for a very long period<sup>144</sup>. For instance, reasons behind changes of French citizenship law varied over time but can be divided into three categories: first, in the late XIX century, these reasons consisted in increasing French population through immigration and ensuring that also foreigners living in France for a long period were obliged to certain public services, such as the military draft; second, citizenship law continued to be aimed at solving demographic lack through the facilitation of naturalisation after the two world wars, but taking into account loyalty of foreigners given that French people were concerned and sceptic about it; finally, exactly xenophobia and political pressure have introduced since the

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<sup>141</sup> Christophe Bertossi and Abdellali Hajjat, *cit.*, *supra* note 110, 31.

See also Decree no. 2009-1671 on experiment with decentralization of decisions regarding requests for acquisition of French nationality, 28 December 2009, Official Journal of the French Republic, no. 0302, p. 22768.

<sup>142</sup> Christophe Bertossi and Abdellali Hajjat, *cit.*, *supra* note 110, 15.

See also Decree no. 2011-1265 on the level of linguistic knowledge required by Art. 21-2 et 21-24 of the Civil Code, and on modalities of evaluation, 11 October 2011, Official Journal of the French Republic, no. 0237, p. 17156.

<sup>143</sup> Giovanna Zincone, *cit.*, *supra* note 111, 761.

<sup>144</sup> *Ibidem*

period of decolonization changes allowing acquisition of French citizenship to those foreigners able to integrate in the French society due to their knowledge of the French language, history, and culture as well as their will to be bound to the essential principles and values of the French Republic. Thus, the evolution of French citizenship law has turned around the need to deal with issues related to the presence of many foreigners in France and the will to maintain, and even to expand under De Gaulle, French culture and identity.

## 1.2 Acquisition of citizenship at birth

Current French citizenship law provides for acquisition of citizenship at birth under Chapter II of Title I bis in Book I of the Civil Code. Specifically, this chapter focuses on “*De la nationalité française d'origine*” (On the attribution of French citizenship at birth) and it is divided into three sections: the first section enshrines provisions on “*Des Français par filiation*” (On French persons by parentage, i.e. acquisition *iure sanguinis*) from Art 18 to 18-1; the second one regards “*Des Français par la naissance en France*” (On French persons by birth in France, i.e. acquisition *iure soli*) from Art 19 to 19-4; and the third one encompasses “*Dispositions communes*” (Common provisions) from Art 20 to 20-5<sup>145</sup>. As it is clear, in France there are different ways to acquire citizenship at birth. Nevertheless, these ways are based on *ius sanguinis* and *ius soli*: citizenship is attributed at birth to children by the descent principle or by the territoriality principle.

With respect to *ius sanguinis*, Art 18 of the Civil Code states: “*Est français l'enfant dont l'un des parents au moins est français*”<sup>146</sup>. This means that children born to at least one French citizen are immediately French citizens at birth. In general, French citizenship law provides for unrestricted

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<sup>145</sup> French Civil Code (Book I, Title I bis: On French Nationality) of 21 March 1804, as last amended by Law no. 2011-672 relating to immigration, integration and nationality of 16 June 2011 (Official Journal of the French Republic, no. 0139, p. 10290).

<sup>146</sup> Art 18 of the French Civil Code (Book I, Title I bis: On French Nationality) as modified by Ordinance no. 2005-759 amending (the law on) parentage, 4 July 2005, Official Journal of the French Republic, no. 156, p. 11159.

My translation: “Is French a child one parent of whom at least is French”.

*ius sanguinis* at birth for children born in France or abroad to at least a French parent. This mode of acquisition of citizenship occurs *ex lege* at birth regardless of the place of birth (in France or abroad), whether the birth was in or out of wedlock, and the sex of the parent who is a French citizen<sup>147</sup>. Gender equality between mothers and fathers for transmission of French citizenship to their offspring (*ius sanguinis a patre et matre*) was introduced in France in 1945<sup>148</sup>. Regarding children born out of wedlock, the Ordinance of 4 July 2005 has suppressed the distinction between ‘legitimate’ and ‘natural’ affiliation<sup>149</sup>. Moreover, there are no special requirements in acquiring French citizenship *iure sanguinis* at birth abroad. Transmission of citizenship abroad is allowed “through an infinitive number of generations, as long as the French descendant applies and registers with a French authority”<sup>150</sup>. Finally, other two features concerning acquisition of citizenship at birth *iure sanguinis* under French citizenship law need to be mentioned. First, a child who was the subject of a plenary adoption is deemed to have been French as from his birth when one or both of the adoptive parents are French (Art 20 and Art 18 civ. c.)<sup>151</sup>. Second, in case only one of the parents is a French citizen, individuals who were not born in France can repudiate French citizenship within six months preceding and twelve months following their majority (eighteen years

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<sup>147</sup> Harald Waldrauch, “Acquisition of nationality,” in *Acquisition and Loss of Nationality: Policies and Trends in 15 European Countries Vol.1: Comparative Analyses*, ed. Rainer Bauböck, Eva Ersbøll, Kees Groenendijk and Harald Waldrauch (Amsterdam: Amsterdam University Press, 2006), 122.

<sup>148</sup> Maarten P. Vink and Gerard-René de Groot, *EUDO Citizenship Observatory – Birthright Citizenship: Trends and Regulations in Europe*, (2010), 6.

<sup>149</sup> Ordinance no. 2005-759 amending (the law on) parentage, 4 July 2005, Official Journal of the French Republic, no. 156, p. 11159.

<sup>150</sup> Patrick Weil and Alexis Spire, *cit.*, *supra* note 107, 188.

<sup>151</sup> Paul Lagarde, “Le droit français de la nationalité,” in *Nationality Laws in the European Union*, ed. Bruno Nascimbene (Milano: Giuffrè, 1996), 312.

See also Art 20, par. 2 of the French Civil Code (Book I, Title I bis: On French Nationality). This article was introduced by Law no 76-1179 of 22 December 1976: “The nationality of a child who was the subject of a plenary adoption is determined according to the distinctions set out in Articles 18 and 18-1, 19-1, 19-3 and 19-4 above”.

old in France)<sup>152</sup>. Yet, this possibility is lost if the foreign or stateless parent acquires French nationality during the minority of the child<sup>153</sup>.

Moving our attention to *ius soli*, the territoriality principle is one of the core elements of French citizenship law. First of all, it is necessary to distinguish between simple *ius soli* and double *ius soli*. While in the former the person concerned was born in France to immigrants (i.e. foreign residents of France born in a foreign country), in the latter the person concerned was born in France and has at least one of the parents who was also born in France. Under French citizenship law, the place of birth alone is not sufficient for the attribution of citizenship with the exception of some cases. For instance, it applies to foundlings (Art 19 civ. c.) and individuals born to stateless parents or to foreign parents whose citizenship cannot be transmitted (Art 19-1 civ. c.)<sup>154</sup>. However, a peculiar aspect of French citizenship law is the acquisition at birth *iure soli* by third generations of immigrants. This mode is called double *ius soli* because it requires that both the child and at least one of its parents were born in France. Indeed, Art 19-3 of the Civil Code states: “*Est français l'enfant né en France lorsque l'un de ses parents au moins y est lui-même né*”<sup>155</sup>. The ratio behind this article is that the family of the person concerned has lived in France for a long time (corresponding to three generations) and its assimilation into the French society has presumably occurred during this period. In this way, double *ius soli* applies also to children who were the subjects of a plenary adoption<sup>156</sup> and to children of Algerian parents who were born in Algeria

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<sup>152</sup> *Ibidem*

See also Art 18-1, par. 1 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 93-933 reforming the law on naturalisation (1), 22 July 1993, Official Journal of the French Republic, no. 168.

<sup>153</sup> Art 18-1, par. 2 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 73-42 of 9 January 1973.

<sup>154</sup> Art 19, par 1 and Art 19-1, par.1 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 73-42 of 9 January 1973.

<sup>155</sup> Art. 19-3 of the French Civil Code (Book I, Title I bis: On French Nationality) as modified by Ordinance no. 2005-759 amending (the law on) parentage, 4 July 2005, Official Journal of the French Republic, no. 156, p. 11159.

My translation: “Is French a child born in France where one at least of his parents was himself or herself born there”.

<sup>156</sup> Paul Lagarde, *cit.*, *supra* note 151, 313.

before independence of 2 July 1962<sup>157</sup>. Then, the Civil Code specifies that the principle of double *ius soli* does not apply to children born in France to diplomatic agents or to regular consuls of foreign nationalities (Art 20-5 civ. c.)<sup>158</sup>.

Finally, in a similar way to Art 18-1 of the Civil Code, Art 19-4 provides for the possibility of children to repudiate French nationality acquired by double *ius soli* within six months preceding and twelve months following his age of majority when only one of their parents was born in France; yet this faculty is lost if one of the parents acquires French nationality during the age of minority of the individual concerned<sup>159</sup>.

### 1.3 Acquisition of citizenship after birth

Acquisition of French citizenship after birth takes place through three different ways: *ex lege* (automatically), by declaration of the person concerned, or by the discretionary decision of the public authorities after the application of the person concerned. This acquisition represents the shift from being a foreigner in France to being a French citizen with effect *ex nunc*, not *ex tunc* (i.e. no retroactive effect)<sup>160</sup>. Therefore, the French Civil Code distinguishes between “*De la nationalité française d'origine*” (On the attribution of French citizenship at birth) and the “*De l'acquisition de la nationalité française*” (On the acquisition of French Nationality after birth)<sup>161</sup>. In the following

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See also Art 20, par. 2 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 93-933 reforming the law on naturalisation (1), 22 July 1993, Official Journal of the French Republic, no. 168.

<sup>157</sup> Christophe Bertossi and Abdellali Hajjat, *cit.*, *supra* note 110, 16.

<sup>158</sup> Art 20-5 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 73-42 of 9 January 1973.

<sup>159</sup> Art. 19-4 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 73-42 of 9 January 1973.

<sup>160</sup> Paul Lagarde, *cit.*, *supra* note 151, 314.

<sup>161</sup> French Civil Code (Book I, Title I bis: On French Nationality) of 21 March 1804, as last amended by Law no. 2011-672 relating to immigration, integration and nationality of 16 June 2011 (Official Journal of the French Republic, no. 0139, p. 10290). In particular, under Chapter III: On Acquisition of French Nationality, Section I includes the following paragraphs: 1) Acquisition of French Nationality by Reason of Parentage, under Art 21; 2) Acquisition of French



paragraphs, I will mention all these modes, but I will analyse the main modes of acquisition of citizenship after birth: automatic acquisition *iure soli* after birth, acquisition after marriage, and acquisition by discretionary naturalisation<sup>162</sup>.

### 1.3.1 Acquisition *ex lege*

Regarding those modes which produce acquisition of citizenship automatically, under Art 21-7 of the Civil Code, persons born in France to foreign parents acquires French citizenship at majority (age of eighteen) if, at that time, they have their residence in France and have had their habitual residence in France for a continuous or discontinuous period of at least five years, since the age of eleven<sup>163</sup>. Yet, the anticipation of this mode of acquisition of citizenship is possible in certain cases by declaration according to Art 21-11 of the Civil Code<sup>164</sup>. First, French citizenship can be claimed by the minor child born in France to foreign parents since the age of sixteen. In particular, he can claim French citizenship by declaration if, at the time of his declaration, he lives in France and has had his residence in France (continuously or discontinuously) for five years since the age of eleven. Second, under the same condition, French citizenship can be claimed by the parents of the minor child born in France to foreign parents since his age of thirteen. Consequently, it is required that the minor child has had his habitual residence in France since the age of eight and that the declaration is made by the parents on behalf of the minor child with his personal consent.

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Nationality by Reason of Marriage, from Art 21-1 to 21-6; 3) Acquisition of French Nationality by Reason of Birth and Residence in France, from Art 21-7 to 21-11; 4) Acquisition of French Nationality by Reason of a Declaration of Nationality, from Art 21-12 to 21-14; 5) Acquisition of French Nationality by a Decision of the Government, from Art 21-14-1 to 21-25-1; 6) Common provisions to certain Modes of Acquisition of French Nationality, from Art 21-26 to 21-27-1; 7) On the ceremony of reception to citizenship, from Art 21-28 to 21-29.

<sup>162</sup> Christophe Bertossi and Abdellali Hajjat, *cit.*, *supra* note 110, 16.

<sup>163</sup> Art 21-7, par. 1 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no. 98-170 on nationality (1), 16 March 1998, Official Journal of the French Republic, no. 64, p. 3935.

<sup>164</sup> Art 21-11 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 2007-1631 relating to immigration control, integration and asylum (1), 20 November 2007, Official Journal of the French Republic, no. 270, p. 18993.

In addition, when one of the parents of the minor child acquires French citizenship, he becomes French as of right (*ex lege*) if he has the same habitual residence of that parent or resides with that parent alternatively in the event of separation or divorce (Art 22-1 par.1 civ. c.)<sup>165</sup>. Under Art 22-1, par. 2 of the Civil Code, this mode of acquisition does not apply to minor children of persons who acquired citizenship by a decision of the French government or by declaration unless his name is mentioned in the decree or the declaration<sup>166</sup>. However, Art 22-3, par. 1 of the Civil Code provides for the possibility of repudiation of French citizenship by declaration of the person who acquires citizenship under Art 22-1 and who was not born in France within six months preceding and twelve months following his majority<sup>167</sup>.

As mentioned above, the rationale behind the use of the *ius soli* principle in the acquisition of citizenship after birth refers to the need to fully integrate foreigners born and living in France for many years into the French society. French citizenship is acquired *ex lege* because they have a genuine link with France being born and grown there. Hence, the acquisition of French citizenship *ex lege*, especially through *ius soli*, represents the practical and legal answer given by French politicians since when France was perceived as a *de facto* immigration country.

### 1.3.2 Acquisition by declaration

Under French citizenship law, citizenship can be acquired by declaration of the persons concerned or of their parents according to Art 21-11 civ. c. mentioned above. This is not the only case in which persons become French by declaration. The main cases are that of simple adoption (Art 21-12 civ. c.), “*état de Français*” (Art 21-13 civ. c.), and marriage (Art 21-1 civ. c. and

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<sup>165</sup> Art 22-1, par. 1 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Ordinance no. 2005-759 amending (the law on) parentage, 4 July 2005, Official Journal of the French Republic, no. 156, p. 11159.

<sup>166</sup> Art 22-1, par. 2 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Ordinance no. 2005-759 amending (the law on) parentage, 4 July 2005, Official Journal of the French Republic, no. 156, p. 11159.

<sup>167</sup> Art 22-3, par.1 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 93-933 reforming the law on naturalisation (1), 22 July 1993, Official Journal of the French Republic, no. 168.

followings). Firstly, in a different way compared to plenary adoption, simple adoption does not attribute citizenship of the French adoptive parents to the child unless he declares his will to become French up to his majority and he resides in France at the time of his declaration. The ratio behind Art 21-12 of the Civil Code is that simple adoption does not break the genuine link of the adopted child with the family of origins<sup>168</sup>. In this way, citizenship can be acquired by declaration not only by children subject to a simple adoption, but also by 1) children sheltered and brought up by a French person for at least five years or those entrusted to the Children's aid service for at least three years, and 2) children sheltered in France and brought up in conditions which provide him a French education<sup>169</sup>. Secondly, according to Art 21-13, par. 1 of the Civil Code also persons enjoying in a constant way the status of French for ten years prior to the declaration can acquire citizenship<sup>170</sup>. Thirdly, with respect to acquisition of citizenship by declaration after marriage, it is provided by the Civil Code from Art 21-1 to Art 21-6. Art 21-1 states: "*Le mariage n'exerce de plein droit aucun effet sur la nationalité*"<sup>171</sup>. Foreign spouses of French citizens are not entitled to the acquisition of citizenship. They can claim citizenship by declaration after a period of four years following the date of the marriage and if the other conditions are met<sup>172</sup>. These conditions are: 1) at the time of the declaration, the community of living both affective and physical has not come to an end, 2) the French spouse has kept his or her nationality, 3) the foreign spouse must prove knowledge of the

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<sup>168</sup> Paul Lagarde, *cit.*, *supra* note 151, 316.

See also Art 21-12 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no. 2003-1119 on the control of immigration, residence of foreigners in France and nationality (1), 26 November 2003, Official Journal of the French Republic, no. 274, p. 20136.

<sup>169</sup> *Ibidem*

<sup>170</sup> Art 21-13, par. 1 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 93-933 reforming the law on naturalisation (1), 22 July 1993, Official Journal of the French Republic, no. 168.

<sup>171</sup> Art. 21-1, of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 93-933 reforming the law on naturalisation (1), 22 July 1993, Official Journal of the French Republic, no. 168. My translation: "Marriage has no effect on nationality as of right".

<sup>172</sup> Christophe Bertossi and Abdellali Hajjat, *cit.*, *supra* note 110, 18.

French language and of the responsibilities linked to French citizenship<sup>173</sup>. Moreover, if the marriage is celebrated abroad, it must be transcribed into the French civil registers and the declaration must be made at the French consulates, not at the *tribunal d'instance* as it occurs when it is celebrated in France<sup>174</sup>. Finally, besides linguistic reasons, the government can oppose the acquisition of citizenship within two years of the marriage for indignity and lack of assimilation of the foreign spouse (Art 21-4, par. 1 civ. c.)<sup>175</sup>, and consequently, “*En cas d'opposition du Gouvernement, l'intéressé est réputé n'avoir jamais acquis la nationalité française*”<sup>176</sup> (Art 21-4, par. 3 civ. c.).

### 1.3.3 Acquisition by naturalisation

Last but not least, French citizenship can be acquired after birth by a decision of the public authorities. There are two modes of acquisition by a discretionary decision in France: naturalisation and reintegration<sup>177</sup>. The former is relevant because it represents the mechanism to become French citizens for first generations of immigrants. As a result, it is disciplined extensively in the French Civil Code from Art 21-14-1 to 21-25-1. The latter regards persons who have lost French citizenship and can be made by decree or by declaration (from Art 24 to 24-3 civ. c.)<sup>178</sup>. In

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<sup>173</sup> Art 21-2 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 2011-672 relating to immigration, integration and nationality, 16 June 2011, Official Journal of the French Republic, no. 0139, p. 10290.

<sup>174</sup> Christophe Bertossi and Abdellali Hajjat, *cit.*, *supra* note 110, 18.

<sup>175</sup> Art 21-2 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law 2006-911 relating to immigration and integration (1), 24 July 2006, Official Journal of the French Republic, no. 170, p. 11047.

<sup>176</sup> Art 21-4, par.3 of the French Civil Code (Book I, Title I bis: On French Nationality) as modified by Law 2006-911 relating to immigration and integration (1), 24 July 2006, Official Journal of the French Republic, no. 170, p. 11047. My translation: “In case of opposition by the Government, the person concerned shall be deemed to have never acquired French nationality”.

<sup>177</sup> Christophe Bertossi and Abdellali Hajjat, *cit.*, *supra* note 110, 19.

<sup>178</sup> French Civil Code (Book I, Title I bis: On French Nationality, Chapter IV: On the loss, the and forfeiture of, and of reintegration in French Nationality, Section 2: On the reintegration in French Nationality) of 21 March 1804, as last

particular, reintegration by decree is subject to the requirements and rules of naturalisation (Art 24-1 civ. c.)<sup>179</sup>. However, in this dissertation I will focus only on naturalisation.

First of all, Art 21-15 of the Civil Code states: “*l’acquisition de la nationalité française par décision de l’autorité publique résulte d’une naturalisation accordée par décret à la demande de l’étranger*”<sup>180</sup>. An exception to this article is present under Art 21-14-1 civ. c. which provides for attribution of French nationality by decree, on a proposal from the Minister of Defence, to foreign persons recruited in French armies who were wounded on duty or on the occasion of an operational action and who made a request<sup>181</sup>.

Next, naturalization requires that the applicant meets certain material conditions: first, habitual residence in France for five years before the submission of the request of naturalisation (21-17 civ. c.); second, being over the age of eighteen (21-22 civ. c.); third, having ‘decent life and manners’ and fourth, absence of specific criminal records (21-23 civ. c.); fifth, demonstrating assimilation into the French community which includes a sufficient knowledge of the French language and that of the French history, culture, and society as well as the rights and duties attached to French citizenship and acceptance of essential principles and values of the Republic (Art 21-24 civ. c.); and last, being in good health (Art 21-25 civ. c.). Looking more closely at the first condition on the required years of residence by the applicants, certain exceptions are provided for by the Civil

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amended by Law no. 2011-672 relating to immigration, integration and nationality of 16 June 2011 (Official Journal of the French Republic, no. 0139, p. 10290).

<sup>179</sup> Art 24-1 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 93-933 reforming the law on naturalisation (1), 22 July 1993, Official Journal of the French Republic, no. 168.

<sup>180</sup> Art 21-15 of the French Civil Code (Book I, Title I bis: On French Nationality) as modified by Law no 99-1141 amending the conditions for acquisition of French nationality by the foreign troops serving in the French army (1), 29 December 1999, Official Journal of the French Republic, no. 302, p. 19730.

My translation: “the acquisition of French nationality by a decision of the public authority results from a naturalisation granted by decree at the request of the foreigner”.

<sup>181</sup> Art 21-14-1, par. 1 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 99-1141 amending the conditions for acquisition of French nationality by the foreign troops serving in the French army (1), 29 December 1999, Official Journal of the French Republic, no. 302, p. 19730.

Code from Art 21-18 to Art 21-20. On one hand, Art 21-18 enshrines a reduction from five years to two years of residence for 1) foreigners who have successfully completed two years of university education in view of getting a diploma conferred by a French university or an institute of higher education; 2) foreigners who gave or can give significant services to France owing to his competences and talents; and 3) foreigners who has a peculiar integration process, assessed with respect to the activities or actions taken in the civic, scientific, economic, cultural or sportive fields<sup>182</sup>. On the other hand, Art 21-19 and Art 21-20 provided for exemption of the five-years residence in France respectively for: a) foreigners who did military service in the French army, foreigners who gave exceptional services to France or one whose naturalisation is of exceptional interest for the country, and political refugees<sup>183</sup>; b) persons who come from a country in which French is the official language or one of these ones, either if French is their mother tongue or if they prove school attendance of at least five years at an institution teaching in French<sup>184</sup>.

Regarding the ‘good character clause’ (Art 21-23 civ. c.), it impedes naturalization in presence of the convictions provided for by Art 21-27 of the same Code, among which there are convictions for crimes or offenses constituting an infringement of the fundamental interests of the nation or an act of terrorism<sup>185</sup>. In general, taking into account all conditions, the applicants must submit the application and the documentation to the public authorities. They must provide proofs of

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<sup>182</sup> Art 21-18 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 2011-672 relating to immigration, integration and nationality, 16 June 2011, Official Journal of the French Republic, no. 0139, p. 10290.

<sup>183</sup> Art 21-19 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law 2006-911 relating to immigration and integration (1), 24 July 2006, Official Journal of the French Republic, no. 170, p. 11047.

<sup>184</sup> Art 21-20 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 93-933 reforming the law on naturalisation (1), 22 July 1993, Official Journal of the French Republic, no. 168.

<sup>185</sup> Art 21-23, par. 1 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 93-933 reforming the law on naturalisation (1), 22 July 1993, Official Journal of the French Republic, no. 168.

See also Art 21-27 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no. 2003-1119 on the control of immigration, residence of foreigners in France and nationality (1), 26 November 2003, Official Journal of the French Republic, no. 274, p. 20136.

identity, legal residence, regular income, ‘good character’ and absence of criminal records, linguistic assimilation, personal bond to the country, and children’s education<sup>186</sup>. Nevertheless, it is useful to analyse deeply Art 21-24 of the Civil Code which states:

*“Nul ne peut être naturalisé s’il ne justifie de son assimilation à la communauté française, notamment par une connaissance suffisante, selon sa condition, de la langue, de l’histoire, de la culture et de la société françaises, dont le niveau et les modalités d’évaluation sont fixés par décret en Conseil d’Etat, et des droits et devoirs conférés par la nationalité française ainsi que par l’adhésion aux principes et aux valeurs essentiels de la République.*

*A l’issue du contrôle de son assimilation, l’intéressé signe la charte des droits et devoirs du citoyen français. Cette charte, approuvée par décret en Conseil d’Etat, rappelle les principes, valeurs et symboles essentiels de la République française”<sup>187</sup>.*

This article confers to the public authorities a largely discretionary power to check assimilation of applicants in order to decide if they can be naturalised as citizens. Considering linguistic assimilation, from 2007 to 2011 it was assessed in an interview of the applicant by a civil servant. It was difficult to pass, especially for women, because it included also a test on the ‘rights and duties’ of French citizenship (condition introduced in 2003 and then transformed in the

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<sup>186</sup> Abdellali Hajjat, *EUDO Citizenship Observatory – Naturalisation Procedures for Immigrants: France*, (2013), 2.

<sup>187</sup> Art 21-24, par. 1 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 2011-672 relating to immigration, integration and nationality, 16 June 2011, Official Journal of the French Republic, no. 0139, p. 10290.

My translation: “No one shall be naturalized unless he proves his assimilation into the French community, specially owing to a sufficient knowledge, according to his conditions, of the French language, history, culture and society, whose level and assessment procedures shall be prescribed by decree in the Conseil d’Etat, and of the rights and duties conferred by French nationality as well as adherence to the essential principles and values of the Republic.

After the control assimilation, the person signs the charter of rights and duties of the French citizen. This charter, approved by decree in the Conseil d’Etat, recalls the essential principles, values and symbols of the French Republic”.

‘essential principles and values of the Republic’ in 2011) as well as a test on French history and culture since 2011<sup>188</sup>. Many applicants were rejected for ‘lack of assimilation’. Since 1 January 2012, civil servants cannot exercise discretion on linguistic assimilation: “applicants must present a linguistic diploma, awarded by an institution accredited by the French State, that certifies the B1 level of the Common European Framework of Reference for Languages”<sup>189</sup>. Yet, the linguistic condition does not apply to certain people, i.e. political refugees, stateless who have resided in France regularly and usually for at least fifteen years and are over seventy<sup>190</sup>. Despite discretion has been eliminated in linguistic assimilation, civil servants still perform cultural assessment in the process of naturalisation. Indeed, they have to check the applicants’ knowledge of the “rights and duties” deriving from French citizenship. To this purpose, the applicants must sign the “charter of rights and duties of the French citizen” which encompasses the essential principles, values, and symbols of the French Republic. In particular, in accordance with Art 21-25 of the Civil Code, establishing that the control on assimilation would be regulated by degree<sup>191</sup>, the decree of 30 January 2012 illustrates the kind of knowledge must be assessed by the civil servant through questions of a multiple-choice questionnaire<sup>192</sup>. However, the questionnaire did not enter into force and was abandoned on 18 October 2012. At the same time, two circulars of the Minister of Interior, both dated 16 October 2012, specify how to evaluate assimilation of applicants: one affirms that

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<sup>188</sup> Abdellali Hajjat, *cit.*, *supra* note 186, 3.

See also Decree no. 2011-1265 on the level of linguistic knowledge required by Art. 21-2 et 21-24 of the Civil Code, and on modalities of evaluation, 11 October 2011, Official Journal of the French Republic, no. 0237, p. 17156.

<sup>189</sup> *Ibidem*

See also Circular of 30 November 2011 regarding the language level required for applicants to French nationality.

<sup>190</sup> Art 21-24-1 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no. 2003-1119 on the control of immigration, residence of foreigners in France and nationality (1), 26 November 2003, Official Journal of the French Republic, no. 274, p. 20136.

<sup>191</sup> Art 21-25 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 93-933 reforming the law on naturalisation (1), 22 July 1993, Official Journal of the French Republic, no. 168.

<sup>192</sup> Abdellali Hajjat, *cit.*, *supra* note 186, 3.

See also Decree no. 2012-126 regarding the level and evaluation of knowledge of history, culture and society required by the Art 21-24 of the Civil Code, 30 January 2012, Official Journal of the French Republic, no. 0026, p. 1768.



knowledge of the applicants has to be assessed during a natural conversation; the other one recalls that the applicants are obliged to sign the charter, and in case of refusal, the application would be inadmissible for ‘lack of assimilation’<sup>193</sup>.

Although foreigners that meet all requirements have no legal entitlement to become citizens in France because naturalisation is granted by the competent public authorities by decree<sup>194</sup>, their discretion is partly limited by procedural conditions. First of all, negative decisions must be justified<sup>195</sup>. Secondly, the maximum length for procedure is eighteen months after the date of the delivery of all the documents needed and the acknowledgement of receipt issued to the applicant. This period can be extended only once for three months by a reasoned decision, or reduced to twelve months if the applicants have been a resident in France for more than ten years<sup>196</sup>. Third, the discretion of public authorities competent for naturalisation (prefectures) is subject to a judicial

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<sup>193</sup> Abdellali Hajjat, *cit.*, *supra* note 186, 4.

See Circular of 16 October 2012 specifying the implementation of the law of 16 June 2011 regarding the signature and the delivery of the charter on rights and duties.

See also Circular of 16 October 2012 regarding the procedures of acquisition of French nationality.

<sup>194</sup> Art 21-15 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 99-1141 amending the conditions for acquisition of French nationality by the foreign troops serving in the French army (1), 29 December 1999, Official Journal of the French Republic, no. 302, p. 19730. My translation of Art 21-15: "Except in the circumstances referred to in Article 21-14-1, the acquisition of French nationality by a decision of the public authority results from a naturalisation granted by decree at the request of the foreigner". In addition, this decision may be an acceptance or a rejection of the application for naturalisation as provided for by articles from 21-16 to 21-25-, stating that no one can be naturalised if he or she does not meet the conditions, as well as by Art 27 of the French Civil Code.

<sup>195</sup> Art 27 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 99-1141 amending the conditions for acquisition of French nationality by the foreign troops serving in the French army (1), 29 December 1999, Official Journal of the French Republic, no. 302, p. 19730: "*Toute décision déclarant irrecevable, ajournant ou rejetant une demande d'acquisition, de naturalisation ou de réintégration par décret ainsi qu'une autorisation de perdre la nationalité française doit être motivée.*"

My translation: "Any decision declaring inadmissible, adjourning or rejecting an application of acquisition, of naturalisation or of reintegration by decree as well as an authorization to lose French nationality shall be motivated."

<sup>196</sup> Art 21-25-1 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law 2006-911 relating to immigration and integration (1), 24 July 2006, Official Journal of the French Republic, no. 170, p. 11047.

review if the applicant appeals against negative decisions<sup>197</sup>. Nonetheless, due to the 2009 reform of French citizenship law which introduced the shift of competence from the central to the local level, prefectures (local authorities) acquired the power to decide on naturalisation applications, leading to a slight discrepancy in the implementation of French citizenship law and consequently to an increase of prefectures' discretion. Before this reform, all applications were transmitted to the Under Secretary of Naturalisations, while since 2009 each prefecture decides whether to accept or reject them. Only in case of refusal of naturalisation, the file is transmitted to the Under Secretary<sup>198</sup>. Lastly, the Civil Code provides for the ceremony of reception to citizenship. It is a symbolic event for 'new citizens', whose participation is not compulsory, and is organised by the prefect in each *département* and by the police prefect in Paris<sup>199</sup> or by the city mayor after authorization<sup>200</sup>.

In conclusion, statistics about naturalisation in France can help understanding this mode of acquisition of citizenship and the shift of rationale behind it occurred over time. First of all, France encouraged immigration to increase its population, especially after the casualties of the First World War. Taking into consideration the high number of foreigners present in France (three million before the Second World War), many naturalisations have taken place in 1939 so that 'new French

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<sup>197</sup> French Civil Code (Book I, Title I bis: On French Nationality) of 21 March 1804, as last amended by Law no. 2011-672 relating to immigration, integration and nationality of 16 June 2011 (Official Journal of the French Republic, no. 0139, p. 10290). In particular, all provisions regarding judicial review are under Chapter VI: On disputes in matters of nationality from Art 29 to 31-3.

<sup>198</sup> Christophe Bertossi and Abdellali Hajjat, *cit.*, *supra* note 110, 22.

See Decree no. 2009-1671 on experiment with decentralization of decisions regarding requests for acquisition of French nationality, 28 December 2009, Official Journal of the French Republic, no. 0302, p. 22768.

See also Circular of 27 July 2010 on decentralization of the decision-making process for naturalisation.

<sup>199</sup> Art 21-28, par. 1 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 2011-672 relating to immigration, integration and nationality, 16 June 2011, Official Journal of the French Republic, no. 0139, p. 10290.

<sup>200</sup> Art 21-29, par. 2 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law 2006-911 relating to immigration and integration (1), 24 July 2006, Official Journal of the French Republic, no. 170, p. 11047.

citizens' could participate in the war:"73000 foreigners were naturalised or reintegrated in 1939 and 43000 in the first six months of 1940"<sup>201</sup>. Indeed, the main reason for naturalisation has been until WWII the need to solve French demographic lack and to avoid inequality in the fulfilment of military duties between French citizens and foreigners living there for a long period. Later, in 1945 foreigners who acquired citizenship via naturalisation were 39000, but this number continued to increase and rose to 112000 in 1947<sup>202</sup>. These naturalised foreigners were mainly Europeans: more than 90 per cent of them came from other European countries, specifically Italy, Poland, and Spain. Yet, the number of naturalisations decreased to 71000 in 1948 and dropped to 25000 in 1952 because of "a policy of choosing foreigners who would be easiest to assimilate"<sup>203</sup>. This emphasis on ethnic criteria which would not alter the cultural character of the French nation led to the fact that migrants from former French colonies outnumbered Italian, Polish, and Spanish immigrants<sup>204</sup>. Hence, the ratio behind the idea of progressive integration of migrants, which is at the basis of French citizenship law, has acquired a cultural connotation over time. In particular, in 2000s cultural assimilation of immigrants has become an essential element along the residence requirement for naturalisation and this is evident from the detailed legislation on language knowledge and integration tests. Recently, statistics show that the number of naturalisations in France is still variable. In 2011 foreigners naturalised as French were 61434, but this number went down to 43067 in 2012 and slightly increased to 49757 in 2013<sup>205</sup>.

To sum up, French citizenship law has developed several modes of acquisition which take into account elements of both the *ius sanguinis* model and the *ius soli* model as well as assimilation of immigrants into the French community. Today, French citizenship can be attributed at birth if at

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<sup>201</sup> Christophe Bertossi and Abdellali Hajjat, *cit.*, *supra* note 110, 6.

<sup>202</sup> *Ivi*, 7

<sup>203</sup> *Ibidem*

<sup>204</sup> *Ibidem*

<sup>205</sup> Institut national de la statistique et des études économiques (National institute of statistics and economic studies), available at [www.insee.fr](http://www.insee.fr)

least one of the parents of the child is French (*ius sanguinis*), or if the child is born in France and has one parent who is also born in France (double *ius soli*). French citizenship can also be acquired after birth *ex lege*, by declaration, or by the discretionary decision of the public authorities. For example, citizenship is acquired automatically at the age of eighteen by persons born in France, whose parents are neither French nor born in France, if they reside and have had their habitual residence in France for at least five years, since the age of eleven (simple *ius soli*); next, citizenship can be claimed by declaration by the spouse of a French citizen after four years following the date of the marriage and if the other requirements are met (acquisition by declaration after marriage); finally, immigrants can acquire French citizenship if they apply for naturalisation, meet all the conditions required, and obtain the approval by the public authorities (ordinary naturalisation).

## CHAPTER 2

### German citizenship law

#### 2.1 Historical development of German citizenship law

Current German citizenship law<sup>206</sup> is the result of a significant evolution of the traditionally *ius sanguinis* model of citizenship of Germany. The first citizenship legislation was adopted in 1913, but it has been subject to changes made first by the Nazi regime, then by the Federal Republic of Germany (FRG), and finally by the reunified Germany. In particular, after the reunification, German citizenship law has been deemed to be restrictive and inadequate taking into account the demographic reality of Germany as a permanent immigration country. From this point of view, in 1992 R. Brubaker affirmed: “In Germany, naturalisation policies were liberalised in 1990. But there is no chance that the French system of *ius soli* will be adopted; the automatic transformation of immigrants into citizens remains unthinkable in Germany”<sup>207</sup>. However, the historical evolution of German citizenship law has demonstrated the contrary, specifically through its major reform

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<sup>206</sup> Nationality Act of 22 July 1913, Imperial Law Gazette, vol. I, p. 583 - Federal Law Gazette, vol. III, no. 102-1, as last amended by Article 2 of the Act to Implement the EU Directive on Highly Qualified Workers of 1 June 2012 (Federal Law Gazette, vol. I, p. 1224).

<sup>207</sup> Rogers Brubaker, *Citizenship and Nationhood in France and Germany* (Cambridge (Mass.): Harvard University Press, 1992), 185.

approved in 1999 and entered into force in 2000<sup>208</sup>. Indeed, the analysis of the German case is important for two main reasons: first, it represents an example of a traditional *ius sanguinis* country which has introduced *ius soli* to allow integration of second-generations of immigrants; second, it shows the interaction of a process driven by political parties towards liberalising changes of German citizenship law and the mobilization of the population in favour of restrictive measures<sup>209</sup>. As a result, the historical overview of German citizenship law is necessary to better understand current provisions on modes of acquisition of citizenship.

### 2.1.1 The origins of German citizenship law

The former citizenship law in Germany traces back to the 1818 Constitution of the Kingdom of Bavaria, followed by those of other German States, such as the Kingdom of Württemberg in 1819 and the Grand Duchy of Hessen in 1820<sup>210</sup>. Each State had its own citizenship law and the sole element in common was the principle of *ius sanguinis*. Actually, the descent principle was introduced in Germany by the Kingdom of Bavaria and only in 1942 was adopted by Prussia<sup>211</sup>. Subsequently, the widespread diffusion of *ius sanguinis* and the origins of a unified German citizenship occurred first through the North German Union (founded in 1867) which established a double nationality with the Nationality Act of 1870: people who were citizens of a State of the Union were also citizens of the Union<sup>212</sup>. This idea was at the basis of the Constitution of the German Empire (*Reich*) from 1871<sup>213</sup>, but it was transposed into legislation only by the German Nationality Law (*Reichs- und Staatsangehörigkeitsgesetz*) of 22 July 1913. Indeed, on one hand,

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<sup>208</sup> Nationality Act, 15 July 1999, Federal Law Gazette, vol. I, p. 1618. It amended the Nationality Act (*Reichs- und Staatsangehörigkeitsgesetz*) of 22 July 1913.

<sup>209</sup> Marc Morjé Howard, *The politics of citizenship in Europe* (Cambridge: Cambridge University Press, 2009), 120.

<sup>210</sup> Markus Krajewski and Helmut Rittstieg, "German Nationality Law," in *Nationality Laws in the European Union*, ed. Bruno Nascimbene (Milano: Giuffrè, 1996), 357.

<sup>211</sup> Marc Morjé Howard, *cit.*, *supra* note 209, 120.

<sup>212</sup> Markus Krajewski and Helmut Rittstieg, *cit.*, *supra* note 210, 358.

<sup>213</sup> *Ibidem*

this law introduced a common German citizenship, which did not replace but supplemented citizenship of each German State (*Land*) as provided for by the Constitution of 1919<sup>214</sup>. On the other hand, *ius sanguinis* was formally established as the leading principle of German citizenship law, and remained as such for the next eight decades, exactly until the reform of 1999.

### 2.1.2 Reforms during the XX century

The first relevant changes of German citizenship law took place during the Nazi regime for the realisation of its aims. Before that period, without changing citizenship law, Germany had to acknowledge that people living in territories lost after the First World War acquired citizenship of the State where they lived<sup>215</sup>. Differently, the Nazi regime manipulated and modified the 1913 German Nationality Law by establishing mass naturalisations of ethnic Germans in occupied territories, such as Austria, Poland, and Czechoslovakia, as well as withdrawing German citizenship from certain categories of people, especially Jews. In general, German citizenship during the NS-dictatorship was structured around a radical ethnoracial ideology in contrast with the ethnocultural aspect of the Wilhelmine citizenship law<sup>216</sup>. The Nazi regime exploited the principle of *ius sanguinis* to achieve racial discrimination and mass murder. The law of 1935, known as the Nuremberg laws realized the point of the Nazi party program which stated: “*Only Volk-comrades can be citizens. And only persons of German blood, irrespective of confession, can be Volk-comrades. No Jew can be a Volk-comrade*”<sup>217</sup>. In fact, the NS-dictatorship modified German citizenship law through the introduction of several measures: first, in 1933 the cancellation of those naturalisations occurred during the Weimar Republic (1919-1933); second, in the same year the

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<sup>214</sup> Kay Hailbronner, “Germany,” in *Acquisition and Loss of Nationality: Policies and Trends in 15 European Countries, Vol.II: Country Analyses*, ed. Rainer Bauböck, Eva Ersbøll, Kees Groenendijk and Harald Waldrauch (Amsterdam: Amsterdam University Press, 2006), 217.

<sup>215</sup> Markus Krajewski and Helmut Rittstieg, *cit.*, *supra* note 210, 359.

<sup>216</sup> Rogers Brubaker, *cit.*, *supra* note 207, 166.

<sup>217</sup> *Ivi*, 167.

withdrawal of German citizenship from persons having violated a duty of loyalty to the German *Reich* or the ‘German nation’; third, in 1934 the abolition of citizenship of the *Länder* and the establishment of a unitary German State; fourth, the collective deprivation of German citizenship of all Jews residing abroad; and last, the collective naturalisation of persons considered as ethnic Germans living in Austria and the other territories under the sovereignty or protectorate of Germany until 1941<sup>218</sup>. Among these discriminatory changes, most of them were repealed by the Allied Control-council after the Second World War, with the exception of the abolition of citizenship in the States (*Länder*) of the Empire (*Reich*) and the simultaneous creation of only one German citizenship in 1934<sup>219</sup>.

Next, the Federal Republic of Germany (FRG, founded in 1949) did not provide a repeal of the 1913 citizenship law, but only measures aimed at eliminate discriminatory changes made by the Nazis. The ratio behind this consisted in the fact that “the German Empire and its nationality did not disappear after the capitulation in 1945”<sup>220</sup> and the 1913 law represented the legal link between the population of the two new States<sup>221</sup> since 1949, i.e. Federal Republic of Germany (FRG) and the German Democratic Republic (GDR). Moreover, there were other practical and political reasons given that many people regarded as ‘ethnic Germans’ (*Aussiedler*) were living in Eastern Europe. Therefore, the 1953 Federal Expellee Law of the FRG included provisions for ‘ethnic Germans’ and their descendants by allowing them to return to Germany and for East German citizens leaving East Germany (*Übersiedler*) by granting them West German citizenship once arrived in the FRG<sup>222</sup>. Other important changes were three amendments of the 1913 Nationality Law: the law of 1955 abolished the collective naturalisations made between 1938 and 1945; the law of 1956 abolished the collective acquisition of citizenship by Austrians, but stated also that those who have established

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<sup>218</sup> Kay Hailbronner, *cit.*, *supra* note 214, 217-218.

<sup>219</sup> Markus Krajewski and Helmut Rittstieg, *cit.*, *supra* note 210, 359-360.

<sup>220</sup> *Ivi*, 360.

<sup>221</sup> *Ibidem*

<sup>222</sup> Marc Morjé Howard, *cit.*, *supra* note 209, 121-122.



their permanent residence in Germany by that time could reacquire German citizenship by declaration; and the law of 1957, followed by a law of 1969, provided for equal treatment of men and women in the acquisition of German citizenship by spouses and descendants of German citizens<sup>223</sup>.

In addition, within the period between the foundation of the FRG and the German reunification, the FRD had continued to consider German citizenship as a common citizenship, even after the foundation of the German Democratic Republic (GDR) in 1949 and the establishment of a separate citizenship of the GDR in 1967<sup>224</sup>. In particular, the FRG insisted upon the validity of the 1913 Nationality Law which granted citizenship by descent regardless the permanent residence of the persons concerned. In this way, the FRG could issue passports and claim as German citizens those who fled legally or illegally from the GDR<sup>225</sup>. Also the Basic Law (*Grundgesetz*, i.e. the Constitution of the FRG)<sup>226</sup> provided for German citizenship under Articles 16 and 116. These two articles are clearly measures to impede deprivation of citizenship for any reason as it happened during the Nazi regime and to repair to those discriminatory actions adopted by Nazis respectively. In fact, under Art 16 “No German may be deprived of his citizenship. Citizenship may be lost only pursuant to a law, and against the will of the person affected only if he does not become stateless as a result”<sup>227</sup>. Then, Art 116, par. 1 defines a German as “a person who possesses German citizenship or who 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 the spouse or descendant of such person”<sup>228</sup>. Complementarily, restoration of citizenship is possible for former German citizens

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<sup>223</sup> Kay Hailbronner, *cit.*, *supra* note 214, 218.

<sup>224</sup> *Ibidem*

<sup>225</sup> *Ibidem*

<sup>226</sup> Constitution of the Federal Republic of Germany, 8 May 1949, Federal Law Gazette, vol. I, p. 1.

<sup>227</sup> Art 16 of the Constitution of the Federal Republic of Germany.

<sup>228</sup> Art 116, par. 1 of the Constitution of the Federal Republic of Germany.

who were deprived of their citizenship due to political, racial or religious reasons between 30 January 1933 and 8 May 1945, and their descendants by application<sup>229</sup>.

Nevertheless, the most relevant changes took place after the reunification of Germany (3 October 1990). Since then, the FRG's citizenship law became fully valid and applicable in Berlin and the former GDR, but the reunified Germany had to face some problems related to citizenship law: on one hand, the increasing number of 'ethnic Germans' who did not speak German well, and on the other hand, the need of integration of immigrants coming to Germany until mid-1990s due to its job opportunities and its generous asylum policy<sup>230</sup>. A reform of citizenship law appeared necessary when the Federal Constitutional Court ruled that local voting by foreigners was unconstitutional because citizenship is the legal prerequisite for the acquisition of political rights<sup>231</sup>. Consequently, Germany tried to solve the integration problem of immigrants through reforms of German citizenship law in 1990, in 1993, and in 1999<sup>232</sup>. In 1990, a first answer to this situation was the facilitation of naturalisation for young foreigners between sixteen and twenty-three years old if they have attended school in Germany for at least six years and lived there for eight years, as well as for migrant workers with legal habitual residence in Germany for fifteen years and ability to earn a living. Moreover, for both other two requirements were the renunciation of previous citizenship and the absence of criminal convictions<sup>233</sup>. Then, the law of 1993 (the Aliens Act) made

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<sup>229</sup> Art 116, par. 2 of the Constitution of the Federal Republic of Germany.

<sup>230</sup> Marc Morjé Howard, *cit.*, *supra* note 209, 122-125.

<sup>231</sup> Decisions of the Federal Constitutional Court, vol. 83, p. 37, 59 ff.

Kay Hailbronner, *cit.*, *supra* note 214, 220.

<sup>232</sup> Act on the Entry and Residence of Aliens in Germany (Aliens Act), 9 July 1990, Federal Law Gazette, vol. I, p. 1354.

Act on the Amendment of Regulations on Asylum Procedure, Aliens and Nationality Law (amending the German Nationality Act), 30 June 1993, Federal Law Gazette, vol. I, p. 1062.

Nationality Act, 15 July 1999, Federal Law Gazette, vol. I, p. 1618.

<sup>233</sup> *Ibidem*

See also Act on the Entry and Residence of Aliens in Germany (Aliens Act), 9 July 1990, Federal Law Gazette, vol. I, p. 1354.

naturalisation an entitlement for above mentioned persons who met the requirements<sup>234</sup>. This law was the result of a compromise between the political parties: the right parties accepted liberalisation of naturalisation procedures and restrictions for ‘ethnic Germans’, while the left parties were willing to reduce the entry of asylum seekers who passed through ‘secure’ third countries<sup>235</sup>. However, all these measures did not placate the debate among the political parties on the liberalisation of German citizenship law, especially through the introduction of *ius soli*. Actually, in the 1980s and 1990s this liberalisation remained at the elite level because the political parties intentionally had kept the issue out of the public debate, fearing the escalation of xenophobia in Germany and the strengthening of the right-wing extremism<sup>236</sup>. This situation changed after the victory of national elections in September 1998 by the Social Democratic Party (SPD) and the Greens, and above all, after Schröder (Chancellor in the new coalition government) made a public pronouncement about the SPD-Greens proposal on citizenship which aimed to introduce *ius soli*, ease naturalisation, and allow dual citizenship. Since then, the centre-right, as part of the opposition in 1998, decided to politicize the issue of citizenship through the public condemnation of the SPD-Greens proposal and mobilize the anti-immigrant sentiment in public opinion against the elite-driven process of liberalisation of citizenship law<sup>237</sup>. Next, this proposal was hampered by the *Bundesrat* (the upper house of the Parliament representing the *Länder*) where the Christian Democratic Party (CDU) got the majority in 1999 after a strong signature campaign against dual citizenship and public mobilization<sup>238</sup>. Dual citizenship was seen by the opposition parties and part of the public opinion as a sign of lack of integration, loyalty and identity on the basis of the traditional ethno-cultural

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<sup>234</sup> *Ivi*, 221.

See Act on the Amendment of Regulations on Asylum Procedure, Aliens and Nationality Law (amending the German Nationality Act), 30 June 1993, Federal Law Gazette, vol. I, p. 1062.

<sup>235</sup> Marc Morjé Howard, *cit.*, *supra* note 209, 126.

<sup>236</sup> *Ivi*, 134.

<sup>237</sup> *Ivi*, 137.

<sup>238</sup> *Ivi*, 136.

concept of citizenship. What followed was the compromise suggested by the Liberal Party (FDP) which provided for not only the introduction of elements of *ius soli*, but also the ‘optional model’, i.e. the required renunciation of the previous citizenship to acquire German citizenship at the age of twenty-one<sup>239</sup>. It was the basis of the new proposal of 1999 by the SPD, the Greens, and the FDP.

### 2.1.3 Recent developments

The law of 15 July 1999<sup>240</sup> entered into force on 1 January 2000 and represented a watershed in German citizenship law because it provided for three major changes: firstly, the introduction of simple *ius soli* which granted citizenship automatically to children born in Germany if at least one parent has had the legal habitual residence in the country for at least eight years or an unlimited residence permit for three years; secondly, the establishment of the ‘optional model’ for people acquiring German citizenship *iure soli* or through naturalisation; and thirdly, the facilitation of naturalisation procedures by reducing the residence period required from fifteen to eight years, along the satisfaction of certain conditions, such as ability to earn a living, absence of criminal convictions, acceptance to be bound to the free and democratic order of the Constitution, and the renunciation of the previous nationality with the exception of some cases<sup>241</sup>.

Despite the 1999 law was the major reform and still today encompasses the principal modes of acquisition of citizenship in Germany, some adjustments occurred over time. Just to mention the most important ones, the Immigration Act of 2004 focused on integration requirements by making essential for naturalisation the proof of sufficient knowledge of the German language and by reducing the residence period to seven years in case of attendance of an integration course on the

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<sup>239</sup> Kay Hailbronner, *cit.*, *supra* note 214, 223.

<sup>240</sup> Nationality Act, 15 July 1999, Federal Law Gazette, vol. I, p. 1618.

<sup>241</sup> Kay Hailbronner, *cit.*, *supra* note 214, 224-225.

German language, history and the political system<sup>242</sup>. Furthermore, given that it modified and reduced to two the residence titles (the residence permit and the settlement permit), the unlimited residence permit formerly required was substituted by the settlement permit<sup>243</sup>. Next, another relevant change consisted of 2007 reform which included provisions on the acquisition of German nationality *ex tunc* after having been treated as a German citizen for twelve years<sup>244</sup>. The law also provided for changes in the naturalisation requirements, specifically standards of knowledge of the language by providing a certificate at level B1 in the Common European Framework of Reference for Languages as well as the adoption of integration tests on knowledge about the country<sup>245</sup>. Lastly, further adjustments took place in 2009, 2011, and 2012<sup>246</sup>. Thus, Germany has modified its citizenship law over time answering to related issues. On one hand, it shifted from a uniquely *ius sanguinis* model to a mixed model by introducing elements of *ius soli* under the necessity to ease integration of immigrants in the country. On the other hand, it provided for several requirements to ensure that ‘new Germans’ are able to integrate themselves into the German society by knowing the essential features of the German State, such as the language, the legal system, and the living conditions.

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<sup>242</sup> *Ivi*, 225. See also Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners (Immigration Act) (amending the German Nationality Act), 30 July 2004, Federal Law Gazette, vol. I, p. 1950.

<sup>243</sup> *Ivi*, 226.

<sup>244</sup> Kay Hailbronner, *EUDO Citizenship Observatory – Country Report: Germany*, (2012), 10.

See also Act on Implementation of the Directives of the European Union with regard to residence and asylum law, 19 August 2007, Federal Law Gazette, vol. I, p. 1970.

<sup>245</sup> *Ibidem*

<sup>246</sup> Law to amend the German Nationality Act, 5 February 2009, Federal Law Gazette, vol. I, p. 158.

Law implementing EU directives regarding residence law and conforming German law to the EU visa codex, 22 November 2011, Federal Law Gazette, vol I, p. 2258.

Act to Implement the EU Directive on Highly Qualified Workers, 1 June 2012, Federal Law Gazette, vol. I, p. 1224.

## 2.2 Acquisition of citizenship at birth

The current German Nationality Act provides for “acquisition by birth”<sup>247</sup> under Section 4 which enshrines for acquisition *iure sanguinis* and *iure soli*. In the first case, children born to at least one German parent, either the mother or the father, acquire automatically German citizenship. This kind of acquisition refers only to children born in wedlock. Differently, when only the father is a German citizen, children born out of wedlock can acquire German citizenship if there is a proof of descent through a declaration of recognition submitted or a procedure for determination of paternity commenced before the children are twenty-three years old<sup>248</sup>. Moreover, recognitions can be challenged by the competent authorities in order to impede false declarations of paternity aimed at obtaining a residence permit<sup>249</sup>. With respect to children born abroad to a German citizen, Section 4, par. 4, limits the acquisition of citizenship *iure sanguinis* to the first generation born abroad. In fact, children born abroad to a German parent who was also born abroad after 31 December 1999 and habitually resides abroad cannot acquire citizenship by descent *ex lege*, unless they would otherwise be stateless<sup>250</sup>. Yet, second generations born abroad can be Germans upon registration of the child’s birth by the parent within one year, but not *ex lege*<sup>251</sup>. Finally, citizenship is also transmitted *iure sanguinis ex lege* to a child adopted by a German if the application of adoption took place during the minority of the child (before the age of eighteen)<sup>252</sup>.

Regarding *ius soli* principle, German citizenship law does not enshrine double *ius soli* as one of the modes of acquisition, but only simple *ius soli* since the 1999 reform<sup>253</sup>. Therefore, besides

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<sup>247</sup> Section 4 of the German Nationality Act.

<sup>248</sup> Section 4, par. 1 of the German Nationality Act.

<sup>249</sup> Kay Hailbronner, *cit.*, *supra* note 244, 17.

<sup>250</sup> Maarten P. Vink and Gerard-René de Groot, *EUDO Citizenship Observatory – Birthright Citizenship: Trends and Regulations in Europe*, (2010), 10.

See also Section 4, par. 4 of the German Nationality Act

<sup>251</sup> *Ibidem*

<sup>252</sup> Section 6 of the German Nationality Act.

<sup>253</sup> Nationality Act, 15 July 1999, Federal Law Gazette, vol. I, p. 1618.

provisions for foundlings, not for stateless persons (Section 4, par. 2), children born in Germany to foreign parents automatically acquire German citizenship if one parent has had the habitual residence in Germany for eight years and has been granted a permanent right to stay or is a citizen of Switzerland with a residence permit<sup>254</sup>. However, there is a further condition for children who acquired German citizenship *iure soli* due to the high controversial concept of dual nationality<sup>255</sup>: they have to declare which citizenship, either the German one or their parents' citizenship, they want to retain after attaining the age of majority (Section 29, par. 1). If they declare to renounce German citizenship (or similarly to retain foreign citizenship) as well as if they do not provide a written declaration by their age of twenty-three, German citizenship is automatically lost (Section 29, par. 2). In addition, whether they declare the wish to retain German citizenship, they must prove the loss of the foreign citizenship by the age of twenty-three otherwise German citizenship is lost (Section 29, par. 3). Nevertheless, there is a possibility to retain foreign citizenship through the application for retention approval made before the 21<sup>st</sup> birthday of the person concerned, but retention of foreign citizenship is granted only if its renunciation or loss is impossible as well as if the foreigner holds the citizenship of another Member States of the European Union (EU) or Switzerland (Section 29, par. 4 in accordance with Section 12). Overall, prior to German 1999 reform the *ius sanguinis* model prevented second and third generations of immigrants from becoming citizens, leading to intergenerational exclusion of immigrants, especially long-term residents, from complete integration in the German society.

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<sup>254</sup> Section 4, par. 3 of the German Nationality Act.

Maarten P. Vink and Gerard-René de Groot, *cit.*, *supra* note 250, 22.

<sup>255</sup> *Ivi*, 25.

See also Kay Hailbronner, *cit.*, *supra* note 244, 18.

See also Section 29 of the German Nationality Act.

## 2.3 Acquisition of citizenship after birth

According to Section 3 of the German Nationality Act, apart from acquisition by birth, all the other modes occur after birth, specifically by declaration (Section 5), by adoption (Section 6), by naturalisation (from Section 8 to 16 along Sections 40a and 40b)<sup>256</sup>. In the next paragraph, I will focus only on acquisition of citizenship by naturalisation because in Germany the two other modes are less articulated. Indeed, the only acquisition of citizenship after birth *ex lege* regards adoption which has been already mentioned, while acquisition by declaration applies only to a child born before 1 July 1993 to a German father and a foreign mother if 1) the father has recognised or determined paternity, 2) the person concerned has resided in Germany for three years, and 3) he or she has submitted the declaration before the age of twenty-three<sup>257</sup>. In addition, as mentioned above, since 2007 German citizenship can be acquired because of factual treatment of foreigners as German citizens by German public authorities for twelve years if the foreigners are not responsible for the error of the authorities, among which the issue of “a certificate of nationality, a passport, or a national identity card”<sup>258</sup>. Consequently, the person concerned has to be deemed to be a German citizen since the first time he or she was treated as such, and this acquisition of citizenship is extended to his or her descendants<sup>259</sup>.

### 2.3.1 Acquisition by naturalisation

Naturalization of foreigners who are resident in Germany has been facilitated since the 1999 reform. The ratio behind this facilitation is that naturalisation is regarded “as being in the public

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<sup>256</sup> Section 3, par. 1 of the German Nationality Act.

<sup>257</sup> Section 5 of the German Nationality Act.

<sup>258</sup> Section 3, par. 2 of the German Nationality Act.

See also Kay Hailbronner, *cit.*, *supra* note 244, 10.

See also Law Act on Implementation of the Directives of the European Union with regard to residence and asylum law, 19 August 2007, Federal Law Gazette, vol. I, p. 1970.

<sup>259</sup> *Ibidem*



interest of Germany rather than as an unavoidable fact”<sup>260</sup>. The change in the citizenship law results from the different perception of immigrants: the idea that migrant workers of 1970s would have come back to their home countries did not find any positive feedback, given that many of them had set their permanent residence in Germany<sup>261</sup>. The need to integrate these persons into German society is the reason why the Nationality Act provides for not only discretionary naturalisation (*Kann-Einbürgerung*) under Section 8, but also an entitlement to naturalisation (*Soll-Einbürgerung*) for foreigners who met the requirements enshrined in Section 10. Discretionary naturalisation applies to former Germans abroad and their children<sup>262</sup> (Section 13) as well as foreigners abroad who maintain ties with Germany<sup>263</sup> (Section 14). In particular, Section 8 states:

“A foreigner who is legally ordinarily resident in Germany may be naturalized upon application provided that he or she

1. possesses legal capacity pursuant to Section 80, sub-section 1 of the Residence Act or has a legal representative,
2. has not been sentenced for an unlawful act and is not subject to any court order imposing a measure of reform and prevention due to a lack of criminal capacity,
3. has found a dwelling of his or her own or accommodation and
4. is able to support himself or herself and his or her dependents”<sup>264</sup>.

Looking at the entitlement to naturalisation, foreigners who have resided in Germany for eight years and possess legal capacity have a legal right to be naturalised if 1) they confirm to commit themselves to the free democratic constitutional system of Germany and declare or credibly assert not to pursue or support actions that subvert the democratic system and security of Germany,

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<sup>260</sup> Kay Hailbronner, *cit.*, *supra* note 244, 17.

<sup>261</sup> *Ibidem*

<sup>262</sup> Section 13 and Section of the German Nationality Act.

<sup>263</sup> Section 14 and Section of the German Nationality Act.

<sup>264</sup> Section 9, par. 1 of the German Nationality Act.

impede the activities of German constitutional bodies or their members, jeopardize foreign interest of Germany through the use of force or terrorist actions<sup>265</sup>. This provision can be read together with Section 11 regarding exclusion on the basis of concrete and justifiable grounds which indicate that the foreigner is engaged or supports activities against the interests and security of Germany<sup>266</sup>. They were introduced by the Immigration Act of 2004 which in turn takes into account “security considerations resulting from the anti-terrorism legislation following 11 September 2001”<sup>267</sup>.

Next, naturalisation depends on other material requirements<sup>268</sup>: 2) possession of the permanent right of residence or a regular residence permit as citizens of Switzerland or freedom of movement as citizens of the European Union; 3) ability of earning a living without recourse to State’s benefits; 4) renunciation or loss of previous citizenship; 5) absence of criminal convictions, specifically the foreigner “has not been sentenced for an unlawful act and is not subject to any court order imposing a measure of reform and prevention due to a lack of criminal capacity”<sup>269</sup>; 6) an adequate knowledge of the German language; and 7) knowledge of the legal system, society, and living conditions in Germany. The fulfilment of these conditions allows the foreigner to be entitled to naturalisation.

The language requirement is considered fulfilled if the foreigner passes the oral and written test leading to the *Zertifikat Deutsch* (equivalent of level B1 in the Common European Framework of Reference for Languages) and in case of children under sixteen years old if they demonstrate age-appropriate knowledge of German<sup>270</sup>. The standard of knowledge of the German language has

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<sup>265</sup> Section 10, par. 1 of the German Nationality Act.

<sup>266</sup> Section 11, par. 1 of the German Nationality Act.

<sup>267</sup> Kay Hailbronner, *cit.*, *supra* note 244, 17.

<sup>268</sup> Section 10, par. 1 of the German Nationality Act.

<sup>269</sup> *Ibidem*

<sup>270</sup> Section 10, par. 4 of the German Nationality Act.

been established by the 2007 law<sup>271</sup> to avoid different practices of the *Länder* in establishing it and to placate the subsequent public debate which blamed the insufficient level of knowledge of German as the reason of economic failure of juvenile foreign workers<sup>272</sup>. Moreover, exemptions with respect to the fulfilment of language tests as well as of integration tests are provided for in case of foreigners unable to fulfil them due to a physical, mental or psychological illness or disability or on account of their age<sup>273</sup>. Regarding integration tests, since 1 September 2008 foreigners who apply for naturalisation have to demonstrate knowledge about civic matters and this is usually made by answering correctly to 17 questions out of 33, chosen from a catalogue of 310 questions of the naturalisation test<sup>274</sup>. Contrarily to the idea that such naturalisation test (*Einbürgerungstest*) hampers foreigners to acquire citizenship, in Germany 99 per cent of the applicants pass the test<sup>275</sup>. Even though it is also plausible that many potential applicants see the naturalisation test as a deterrent, the Federal office for Migration and Refugees allows foreigners to prepare themselves well for integration and language requirements through an interactive website, containing the potential questions of the test<sup>276</sup>.

Then, another relevant aspect related to integration requirements is the reduction of the residence period to seven years instead of eight if the foreigner successfully attends an integration course, or to six years in case he or she has made outstanding efforts at integration exceeding the requirements regarding loyalty to the Federal Republic of Germany<sup>277</sup>. These achievements are in

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<sup>271</sup> Act on Implementation of the Directives of the European Union with regard to residence and asylum law, 19 August 2007, Federal Law Gazette, vol. I, p. 1970.

<sup>272</sup> Kay Hailbronner, *cit.*, *supra* note 244, 19.

<sup>273</sup> Section 10, par. 6 of the German Nationality Act.

<sup>274</sup> Kay Hailbronner, *cit.*, *supra* note 244, 11.

Regulation on Naturalisation Tests and Naturalisation Courses, 5 August 2008, Federal Law Gazette, vol. I, p. 1649.

<sup>275</sup> *Ivi*, 11.

<sup>276</sup> Anuscheh Farahat, *EUDO Citizenship Observatory – Naturalisation Procedures for Immigrants: Germany*, (2013), 3.

<sup>277</sup> Section 10, par. 3 of the German Nationality Act.

the discretion of the naturalisation authorities of each *Land* which have the power to implement federal laws in their own rights<sup>278</sup>. However, in a survey of A. Farahat, the proof of integration requirements and equivalents to the citizenship test are slightly different in the *Länder* analysed (Hessen, Hamburg, and Bavaria): on one hand, language requirements are fulfilled in all three *Länder* not only by language certificate, but also by German school diploma, university diploma, and professional training in Germany, with some differences on the list of certified providers<sup>279</sup>; on the other hand, the “special integration achievements” consist in the level B2 of language skills or an extraordinary good school and university diploma, and voluntary work as a further condition in Bavaria while as a substitutive element in Hessen and Hamburg<sup>280</sup>. Therefore, despite the discretion leaved to the naturalisation authorities of the *Länder*, what emerges from this study is the similar application of provisions concerning the naturalisation requirements<sup>281</sup>. After the description of the material characteristics of naturalisation, in order to complete the picture, three other features require attention: first, spousal transfer as well as spousal and filial extension; second, the controversial ‘optional model’ and exceptions of dual citizenship; and third, the procedural characteristics and implementation of German citizenship law.

First of all, spouses or life partners of German citizens are entitled to naturalise as regular applicants if they meet all requirements for discretionary naturalisation and those provided for by Section 9, such as giving up or losing their previous citizenship, with the exceptions of cases of multiple citizenship enshrined in Section 12, and conforming to the German way of life<sup>282</sup>. Then, spouses and minor children of a foreigner may be naturalised with the foreign applicant, “irrespective of whether they have been lawfully resident in Germany for eight years”<sup>283</sup>.

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<sup>278</sup> Kay Hailbronner, *cit.*, *supra* note 244, 28.

<sup>279</sup> Anuscheh Farahat, *cit.*, *supra* note 276, 7.

<sup>280</sup> *Ivi*, 6.

<sup>281</sup> *Ibidem*

<sup>282</sup> Section 9 of the German Nationality Act.

<sup>283</sup> Section 10, par. 2 of the German Nationality Act.

Secondly, as already mentioned above, dual nationality has been a core issue in the political debate on German citizenship law along *ius soli*, and the compromise reached about the ‘optional model’ has allowed the 1999 reform to be adopted. Despite dual nationality remains a controversial concern in Germany, today a consistent number of exceptions under Section 12: first, the foreigners who apply for naturalisation are not obliged to renounce their previous citizenship if they are unable to do so or had to face particularly difficult conditions<sup>284</sup>; second, foreigners who hold the citizenship of another Member State of the EU or Switzerland are exempted from the requirement of relinquishing their prior citizenship in case of naturalisation<sup>285</sup>. This general rule shows that Germany is following the trend of other European States by being willing towards dual citizenship<sup>286</sup>. Indeed, Germany has renounced the 1963 Convention on Dual Nationality<sup>287</sup>, which provided for a restricted acceptance of dual citizenship, and signed the European Convention on Nationality<sup>288</sup> in 2002, which allows dual nationality in several cases<sup>289</sup>. As a result, not only dual

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<sup>284</sup> Section 12, par. 1 of the German Nationality Act.

<sup>285</sup> Section 12, par. 2 of the German Nationality Act.

<sup>286</sup> Kay Hailbronner, *cit.*, *supra* note 244, 16.

<sup>287</sup> Denunciation of the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality of 6 May 1963, enacted on 20 December 2001, published in Federal Law Gazette, vol. II, p. 171.

See also Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, May 6, 1963, Council of Europe Treaty Series (CETS), CETS no. 043, available at [conventions.coe.int](http://conventions.coe.int)

<sup>288</sup> Act on the European Convention on Nationality of 6 November 1997, enacted on 13 May 2004, published in Federal Law Gazette, vol. II, p. 578.

See also Council of Europe, *European Convention on Nationality* (ECN), November 6, 1997, Council of Europe Treaty Series (CETS), CETS no. 116, available at [conventions.coe.int](http://conventions.coe.int)

Art 14 provides for cases of multiple nationality: “A State Party shall allow: a) children having different nationalities acquired automatically at birth to retain these nationalities; b) its nationals to possess another nationality where this other nationality is automatically acquired by marriage”.

Art 15 provides for other possible cases of multiple nationality, stating that a State can “determine in its internal law whether: a) its nationals who acquire or possess the nationality of another State retain its nationality or lose it; b) the acquisition or retention of its nationality is subject to the renunciation or loss of another nationality”.

<sup>289</sup> Kay Hailbronner, *cit.*, *supra* note 214, 227.

citizenship is increasingly accepted in cases of acquisition of citizenship at birth, but also in more than 50 per cent of all naturalisations<sup>290</sup>.

Finally, with regard to procedural aspects, even though citizenship is a matter under exclusive legislative power of the Federation<sup>291</sup>, interpretation and implementation of federal laws on citizenship are competences of the sixteen *Länder*. Implementation potentially diverges in the *Länder* in spite of the 2000 administrative regulations<sup>292</sup> which are legally binding for the administration of the *Länder*, but do not provide for claims of potential applicants<sup>293</sup>. Yet, these regulations as well as the 2009 preliminary implementation guide for the Nationality Act, which is non-binding for the *Länder*, are partly outdated<sup>294</sup>. In particular, in the study of A. Farahat, differences between Hessen, Hamburg, and Bavaria are not significant regarding language and integration tests as well as exemptions from the renunciation requirements, but mainly with respect to bureaucracy, given that naturalisations authorities vary from a *Land* to another one<sup>295</sup>. For instance, although decisions are taken by local authorities, each *Land* has a different decision-making structure: in Bavaria, local authorities deal with cases of naturalisations under Section 10 of the Nationality Act, while the regional government is responsible for cases under Section 8 and Section 9; in Hamburg, there is only a central naturalisation authority, the central register office which works in cooperation with the Ministry of Interior of Hamburg; in Hessen, while the local naturalisation authorities are in charge of communication with the applicants, the regional councils are those authorities who take the decisions<sup>296</sup>. Then, a peculiar case is that of Nordrhein-Westfalen

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<sup>290</sup> Kay Hailbronner, *cit.*, *supra* note 244, 16.

<sup>291</sup> Art 73 of the Constitution of the Federal Republic of Germany.

<sup>292</sup> General Administrative Regulation on Nationality Law of 13 December 2000, Federal Gazette, vol. 21a.

<sup>293</sup> Anuscheh Farahat, *cit.*, *supra* note 276, 2.

<sup>294</sup> *Ibidem*

<sup>295</sup> *Ivi*, 6-7.

<sup>296</sup> *Ivi*, 7-8.

in which 101 local communities are responsible for decisions on naturalisations<sup>297</sup>. Furthermore, naturalisation fees are regulated on the federal level: adults have to pay 255 euro and 51 euro for children who apply together with their parents, but these amounts may be reduced or renounced “on grounds of equity or public interest”<sup>298</sup> which are in the discretion of the naturalisation authorities. Similarly, also review of naturalisation decisions are mostly provided for by the federal law. Taking again into account Hamburg, Hessen, and Bavaria, only the former provides for a first administrative review by the competent naturalisation authority, while in the other two persons affected by a negative decision of the naturalisation authorities may file an appeal with the local administrative courts, or later with the regional and federal administrative court, and finally with the federal constitutional court<sup>299</sup>.

Statistically, the number of naturalisations in Germany increased from 1970s until 1998 when it reached a peak of 291,331 because of the facilitation of discretionary naturalisation and obligatory naturalisation especially of repatriated ethnic Germans, who represented two-thirds of naturalisations until August 1999. Since then, they were no longer counted in the statistics on naturalisation because they acquired German citizenship automatically by a certificate of admission, and consequently the number of naturalisations dropped to 248,206 in 1999 and to 140,731 in 2003<sup>300</sup>. Nevertheless, the high number of naturalisations in 1999 was the result of an increase of naturalisations of Turks in that year. They profited from the silent agreement of the Turkish government and a loophole in the German citizenship law: after formal renunciation of their citizenship and subsequent acquisition of the German one, they reacquired their Turkish citizenship<sup>301</sup>. This practice was interrupted by the reform of 1999 which provided for the loss of German citizenship after voluntary acquisition of a foreign citizenship even if the German citizen

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<sup>297</sup> *Ivi*, 8.

<sup>298</sup> Section 38, par. 2 of the Nationality Act.

<sup>299</sup> Anuscheh Farahat, *cit.*, *supra* note 276, 8.

<sup>300</sup> Kay Hailbronner, *cit.*, *supra* note 244, 21.

<sup>301</sup> *Ivi*, 22-23.

maintains his or her permanent residence in Germany<sup>302</sup>. This fact demonstrates that more or less acceptance of dual citizenship have a significant impact on naturalisations. Moreover, from 2000 to 2010 there has been a decline of naturalisations: while in 2000 the applicants naturalised were 186,688, in 2008 they were 124,566 and in 2010 only 101,570<sup>303</sup>. A slight increase of this number started in 2011 when 106,897 applicants acquire citizenship via naturalisation<sup>304</sup> and continues nowadays, given that 112,350 foreigners were naturalised in 2013 and this number did not change on the previous year<sup>305</sup>.

In conclusion, easing naturalisation procedures as well as introducing *ius soli* into German citizenship law represented a substantial change which dramatically broke with the previous provisions of the 1913 Nationality Act based uniquely on *ius sanguinis* principle. These changes stemmed from a different perception of Germany as a *de facto* country of immigration, and simultaneously aligned Germany with most European citizenship laws<sup>306</sup>. In particular, K. Hailbronner stated that “facilitation of the naturalisation of foreigners who have been permanently resident on German territory for a long time not only corresponds to a basic principle of democracy but also reflects the increasing need to integrate foreigners into the social and political life of Germany which is in the interests of the German nation as a whole”<sup>307</sup>. Obviously, citizenship law is just one of the means to foster integration of foreigners.

To sum up, German citizenship law can be considered comprehensive, apart from the absence of provisions about double *ius soli* for third generations of foreigners. Thus, German citizenship can be acquired at birth *iure sanguinis*, but elements of *ius soli* have been introduced in

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<sup>302</sup> *Ivi*, 23.

<sup>303</sup> *Ibidem*

<sup>304</sup> *Ivi*, 24.

<sup>305</sup> Press release 254 *Statistisches Bundesamt* (Federal Statistical Office Germany) of 17 July 2014, available at [www.destatis.de](http://www.destatis.de)

<sup>306</sup> Kay Hailbronner, *cit.*, *supra* note 214, 243.

<sup>307</sup> *Ibidem*



the form of simple *ius soli* at birth for second generations of immigrants. Similarly, in the perspective of inclusion of foreigners who were long-term residents in Germany, also facilitation of naturalisation have taken place by providing for entitlement to naturalisation conditional to mentioned requirements along discretionary naturalisation.

## CHAPTER 3

### Italian citizenship law

#### 3.1 Historical development of Italian citizenship law

Italian citizenship law<sup>308</sup> is peculiar in the European scenario due to its family-oriented logic, also called by G. Zincone “familistic model”<sup>309</sup>. In this model, family ties are the principal means of acquiring citizenship, in particular *iure sanguinis* (acquisition by descent) and *iure conubii* (acquisition by marriage), leaving few space to *ius soli* elements. Although modes of acquisition of Italian citizenship have been subject to some modifications over time, the Act no. 91 of 5 February 1992 has remained the main legislation on the subject. However, Italian citizenship law has had a very long history which began before the unification of Italy and was later marked by the birth of the Nation-State, the fascist regime, and the new Italian Constitution of 1948. Exactly, former Italian citizenship law was incorporated first in the Statuto Albertino<sup>310</sup> of 1848, and then in the 1865 Civil Code<sup>311</sup>. A more articulated legislation on the institution of citizenship arrived with the

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<sup>308</sup> Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38, as last amended by Act no. 94/2009 on public security (Law of 15 July 2009, n. 94, Official Gazette, no. 170).

<sup>309</sup> Giovanna Zincone, *Familismo legale. (Non) Diventare italiani* (Bari-Rome:Laterza, 2006), 52-106.

<sup>310</sup> Statuto Albertino, 4 March 1848. It was the Constitution that Charles Albert of Sardinia conceded to the Kingdom of Sardinia on 4 March 1848. Later, the Statute became the Constitution of the unified Kingdom of Italy and remained in force, albeit with changes, until 1948.

<sup>311</sup> Civil Code of 1865, introduced by the Royal Decree of 15 November 1865.

Act no. 555 of 13 June 1912<sup>312</sup> which complemented the principle of *ius sanguinis* with the principle of *ius soli*, but was in turn overcome by the mentioned Act of 1992 based primarily on family ties. Up to 2014 acquisition of Italian citizenship has been regulated by the 1992 Act followed by some changes in 1993, 1994, 2000, 2006, and 2009<sup>313</sup>. Thus, in the next paragraphs I will deal with the evolution of Italian citizenship law in order to understand its family-oriented logic as well as current modes of acquisition of citizenship.

### 3.1.1 The origins of Italian citizenship law

Italy inherited the legislation of the Kingdom of Piedmont and Sardinia which promoted Italian unification. The Constitution of this Kingdom, known as the Statuto Albertino<sup>314</sup>, was conceded in 1848 and then became the Constitution of the State of Italy, founded in 1861. Yet, it did not expressly deal with citizenship as the legal status of belonging to the State, but citizenship as civil and political emancipation<sup>315</sup>. In fact, Art. 24 of the Statuto Albertino stated that “*Tutti i regnicoli, qualunque sia il loro titolo o grado, sono eguali dinanzi alla legge. Tutti godono egualmente i diritti civili e politici, e sono ammissibili alle cariche civili, e militari, salve le*

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<sup>312</sup> Act no. 555 of 13 June 1912.

<sup>313</sup> Decree of the President of Republic no. 572/93: Rules for the implementation of Statute no. 91 of 5 February 1992, 12 October 1993, Official Gazette, no. 2.

Decree of the President of Republic no. 362/94: Procedural rules for the acquisition of nationality, 18 April 1994, Official Gazette, no. 136.

Act no. 379/00 on Dispositions for the recognition of Italian nationality to people born and resident in those Italian areas, belonging in the past to the former Austro-Hungarian Empire, and to their descendants, 14 December 2000, Official Gazette, no. 295.

Act no. 124/06 amending Act no. 91 of 5 February 1992, on recognition of Italian nationality to Italian people from Istria, Fiume and Dalmatia, and to their descendants, 8 March 2006, Official Gazette, no. 73.

Act no. 94/09 on public security, 15 July 2009, Official Gazette, no. 170.

<sup>314</sup> See *supra* note 310.

<sup>315</sup> Marta Arena, Bruno Nascimbene, and Giovanna Zincone, “Italy,” in *Acquisition and Loss of Nationality: Policies and Trends in 15 European Countries, Vol.II: Country Analyses*, ed. Rainer Bauböck, Eva Ersbøll, Kees Groenendijk and Harald Waldrauch (Amsterdam: Amsterdam University Press, 2006), 334.

*eccezioni determinate dalle Leggi*”<sup>316</sup>. In general, Italian citizenship legislation after Unification was the result of 1) Piedmont’s policy legacy which was extended to the newborn State of Italy, 2) its liberal regime, and 3) the strong links between its ruling Savoy family and France<sup>317</sup>. Actually, Piedmont experienced French administration from 1802 to 1814 because it was incorporated into the French metropolitan territory and, consequently, the institution of citizenship was intended to regulate civil and political rights first in Piedmont and then in Italy as it was in the French Republic<sup>318</sup>. Moreover, Italy has been a nation in search of a State for a long time. Even the fact that Italy became a Nation-State relatively late as well as the fact that in 1961 unification was not complete and some people of Italian culture lived outside the borders of Italy contributed to shape Italian legislation on citizenship<sup>319</sup>.

In this perspective, also in the Civil Code of 1837 (known as Codice Civile Albertino)<sup>320</sup>, which was into force in Piedmont and Liguria since 1838 and in Sardinia since 1848, citizenship was considered as political emancipation and only in cases of doubt or conflicts of sovereignty as the legal status of belonging to the State<sup>321</sup>. Therefore, the Italian Constitution (the Statuto Albertino) did not provide for a formal definition of who was entitled to citizenship, but “it was simply assumed, according to custom, that a national was a person who had always been such, together with his descendants and wife”<sup>322</sup>.

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<sup>316</sup> Art. 24 of the Statuto Albertino. My translation: “All *regnicoli* [people of the Kingdom], whatever their title or status, are equal before the law. Everyone has the same civil and political rights, and has access to civil and military office, apart from exceptions determined by law”.

<sup>317</sup> Marta Arena, Bruno Nascimbene, and Giovanna Zincone, *cit.*, *supra* note 315, 333.

<sup>318</sup> Giovanna Zincone, *EUDO Citizenship Observatory – Citizenship Policy Making in Mediterranean EU States: Italy*, (2010), 18.

<sup>319</sup> Marta Arena, Bruno Nascimbene, and Giovanna Zincone, *cit.*, *supra* note 315, 333.

<sup>320</sup> Civil Code of 20 June 1837.

<sup>321</sup> Marta Arena, Bruno Nascimbene, and Giovanna Zincone, *cit.*, *supra* note 315, 335.

<sup>322</sup> *Ibidem*

Next, as a Nation-State, the newly unified Italy required a legal relationship between the State and the Nation and introduced a new Civil Code<sup>323</sup> in 1865. Briefly, it regulated the ‘lesser citizenship’ (*piccola cittadinanza*) for the granting of civil rights through the acquisition of citizenship mainly by *ius sanguinis* (Art. 4), *ius conubii*, and partially by *ius soli* on the basis of ten years residence of the parents (Art. 8)<sup>324</sup>. Despite the presence of some ‘Italians’ outside the borders of Italy<sup>325</sup>, only some provisions regarding them were included in the 1865 Civil Code, but much emphasis was given to belonging the nation by the Kingdom of Piedmont. In this context, co-ethnic preferential *criteria* started to emerge and the naturalisation procedure of ‘Italians’ was simpler than for other foreigners. Indeed, those people who did not owe birth or family relationships in the Royal States, were entitled to vote after naturalisation by royal decree and an oath of loyalty to the king, whereas aliens required naturalisation by Statute Law<sup>326</sup>. In addition, in order to avoid loss of citizens through emerging emigration, the 1865 Civil Code stated that a child born in Italy to a father who had not lost his citizenship after emigration was Italian (Art. 5). Similarly, children born abroad to an Italian father, who had acquired another citizenship, were Italians if they came back to Italy and settled there<sup>327</sup>. Finally, the citizenship system of the 1865 Civil Code was challenged by mass emigration which took place at the end of the 1890s and especially at the beginning of the XX century<sup>328</sup>. Even though the 1865 Civil Code did not formally allow dual citizenship (Art. 11, par. 2), in practice Italian governments gave priority to Art. 4 of the same Code relating to *ius sanguinis*

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<sup>323</sup> Civil Code of 1865, introduced by the Royal Decree of 15 November 1865.

<sup>324</sup> Marta Arena, Bruno Nascimbene, and Giovanna Zincone, *cit.*, *supra* note 315, 336.

<sup>325</sup> The unification of Italy was incomplete in 1861. Veneto and Venice were assigned to Italy in 1866 after Austrian defeat by Prussia, while Rome was conquered in 1870. Therefore, some territories, such as Trento, Trieste, Istria, and Dalmatia, were still under Austrian rule but were culturally Italian. Through the acquisition of Fiume in 1924, Italian unification was completed.

<sup>326</sup> Marta Arena, Bruno Nascimbene, and Giovanna Zincone, *cit.*, *supra* note 315, 336.

See also Electoral Act of 1895 and the Nationality Act reform of 1906 (Act no. 217 of 17 May 1906).

<sup>327</sup> Giovanna Zincone, *cit.*, *supra* note 318, 19.

<sup>328</sup> *Ibidem*

in cases of children born abroad and citizenship could be lost only after an official act of renunciation. Yet, in that period the procedure for reacquisition of citizenship after its loss was highly difficult because a special government authorisation was required. Moreover, this difficult procedure, loss of citizenship, and the existence of sanctions for those who had not comply with the duty of the military service were seen as a way of estrangement of emigrants as well as a deterrent to both repatriation and sending back of remittances<sup>329</sup>. To solve these issues, the Act of 1901<sup>330</sup> eliminated sanctions for those emigrants over the age of thirty-two who had not performed the military service, while the Act of 1906<sup>331</sup> provided for six years of residence for naturalisation (Art. 1), a reduction to four years for people who had served the State and three years for those who had married an Italian woman or provided special services to Italy<sup>332</sup>.

Nevertheless, the impact of mass emigration on citizenship is more evident in the first major Italian citizenship reform occurred in 1912<sup>333</sup>. It focused on repatriating emigrants who could reacquire citizenship not longer by a special government authorisation, but by an automatic procedure after two years of residence in Italy (Art. 9)<sup>334</sup>. Then, this law reasserted *ius sanguinis* as the basic principle of citizenship, but incorporated also *ius soli* as a complementary principle. Finally, dual citizenship was allowed to minors until their majority age, and tolerated for emigrants if the acquisition of the other citizenship was automatic and inevitable as well as for those living in countries with which Italy signed bilateral agreements<sup>335</sup>.

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<sup>329</sup> *Ivi*, 19-20.

<sup>330</sup> Act no. 23 of 31 January 1901.

<sup>331</sup> Act no. 217 of 17 May 1906.

<sup>332</sup> Marta Arena, Bruno Nascimbene, and Giovanna Zincone, *cit.*, *supra* note 315, 338.

<sup>333</sup> Act no. 555 of 13 June 1912.

<sup>334</sup> See Art. 9 of Act no. 555 of 13 June 1912.

Marta Arena, Bruno Nascimbene, and Giovanna Zincone, *cit.*, *supra* note 315, 338.

<sup>335</sup> *Ivi*, 342. For example, Italy signed a Treaty with Argentina in Buenos Aires on 29 October 1971. It entered into force with the Statute no. 282 of 18 May 1973.

Hence, the Italian family-based model has its roots in the fact that Italy achieved unification very late and its concept of State and citizenship derived from the idea of nation. As a nation in search of a State, Italy as well as other European States in the XIX century chose *ius sanguinis* principle as the predominant criterion for acquisition of citizenship, and confirmed it as paramount in Italian citizenship law after large-scale emigration in the first decades of the XX century.

### 3.1.2 Reforms during the XX century

In the XX century, other changes of Italian citizenship law took place after the rise of fascism (1922), specifically through repression towards political opponents, colonial expansion, and the racist and anti-Semitic actions after the alliance with the German Nazi regime<sup>336</sup>. For example, with respect to exiles, the Exiles Act of 1926<sup>337</sup> deprived of their Italian citizenship all those who publicly criticised the fascist regime abroad<sup>338</sup>. Then, although racist laws targeted Jews since 1938, a racist element could already be found in a Royal Decree<sup>339</sup> of 1936 which granted Italian citizenship to persons born in Italian East Africa to unknown parents only if it could be reasonably deduced from their features that both parents were of white race, otherwise they would have received the status of subjects<sup>340</sup>. Finally, Jews have been discriminated since 1938 through ‘Special Regulations towards Foreign Jews’ and ‘Regulations in Defence of the Italian Race’<sup>341</sup>. In particular, the latter prevented marriages between Italian colonists and inhabitants of the colonies and enshrined for the first time a co-ethnic principle, allowing to keep or to reacquire Italian

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<sup>336</sup> *Ivi*, 339.

<sup>337</sup> Exiles Act no. 108 of 31 January 1926.

<sup>338</sup> Marta Arena, Bruno Nascimbene, and Giovanna Zincone, *cit.*, *supra* note 315, 340.

<sup>339</sup> Royal Decree no. 1019 of 1 June 1936.

<sup>340</sup> Marta Arena, Bruno Nascimbene, and Giovanna Zincone, *cit.*, *supra* note 315, 340.

<sup>341</sup> Special Regulations towards Foreign Jews, Regulation with the force of Royal Decree no. 1381 of 7 September 1938.

Regulations in Defence of the Italian Race, Regulation with the force of Royal Decree no. 1728 of 17 November 1938.

citizenship not only to emigrants and their descendents, but also to people of Italian culture and customs, given that “Italians not belonging to the Kingdom are not considered aliens”<sup>342</sup>.

After World War II and fascism, the new Constitution of Italy<sup>343</sup>, entered into force on 1 January 1948, prohibited the loss of citizenship for political reasons (Art. 22 Const.) and discrimination for gender, racial, religious, social, and political reasons (Art. 3 Const.). However, gender equality regarding acquisition of citizenship was established by a law of 1975<sup>344</sup> and a law of 1983<sup>345</sup> in the wave of feminist movements, cultural changes in family relationships, and especially two rulings of the Constitutional Court in the same years respectively. Exactly, in order to comply with a constitutional ruling<sup>346</sup>, Italy adopted the Family Reform Act of 1975<sup>347</sup> which recognised the right of married women to retain their Italian citizenship. Next, also mothers could transfer their Italian citizenship to the children and their foreign husbands thanks to the new Act of 1983<sup>348</sup> which in turn followed a ruling of the Constitutional Court<sup>349</sup>.

Finally, a complete re-formulation of Italian citizenship law occurred in 1992<sup>350</sup> and it was passed unanimously by the Parliament (voted unanimously both in the House of Deputies and in the Senate) because citizenship was not regarded as a political issue<sup>351</sup>. In general, on one hand, the Act 91/92 strengthened the principle of *ius sanguinis* and definitively established a co-ethnic preference for foreigners of Italian descent and EU citizens; on the other hand, it made more difficult

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<sup>342</sup> Art 4 of the Regulations in Defence of the Italian Race (Royal Decree no. 1728 of 17 November 1938).

See also Marta Arena, Bruno Nascimbene, and Giovanna Zincone, *cit.*, *supra* note 315, 340.

<sup>343</sup> Constitution of the Republic of Italy, 22 December 1947, Official Gazette, no. 298.

<sup>344</sup> Act no. 151/75 on the reform of the family law, 19 May 1975, Official Gazette, no. 135.

<sup>345</sup> Act no. 123/83 on nationality, 21 April 1983, Official Gazette, no. 112.

<sup>346</sup> Judgement of the Constitutional Court no. 87 of 16 April 1975. The court ruled that the automatic loss of Italian citizenship by women who married a foreigner was unconstitutional because it violated Art. 3 of the Constitution.

<sup>347</sup> Act no. 151/75 on the reform of the family law, 19 May 1975, Official Gazette, no. 135.

<sup>348</sup> Act no. 123/83 on nationality, 21 April 1983, Official Gazette, no. 112.

<sup>349</sup> Judgement of the Constitutional Court no. 30 of 28 January 1983. The court stated that both mothers and fathers had the right to pass their citizenship *iure sanguinis* to their offspring.

<sup>350</sup> Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38

<sup>351</sup> Giovanna Zincone, *cit.*, *supra* note 318, 17.



acquisition *iure soli* by adding continuity and legality of residence (requirements which were not provided for by the 1912 Act). Indeed, the Act 91/92 stated that children born to at least an Italian parent, either in Italy or abroad, were automatically Italians (Art. 1), while those born in Italy to a foreign citizen could acquire citizenship only at the age of eighteen if they proved their interrupted legal residence in Italy (Art. 4). Then, the family-oriented logic was evident especially in acquisition of citizenship by marriage: the Act 91/92 required only six months of marriage for couples who resided in Italy and three years for those living abroad<sup>352</sup>. This is the main reason why acquisition by marriage was the easiest mode used in Italy before the reform of 2009. In fact, in 1993, 93 per cent of naturalisations were based on marriage, whilst only 7 per cent on residence<sup>353</sup>. In addition, as mentioned above, foreigners who have no family ties with present or former Italian citizens faced, and still do, difficulties for acquisition of citizenship. Act 91/92 reduced the residence requirement for naturalisation from five years to three for persons of Italian descent (to two years in case of minors) and to four years for EU citizens who are conceived as culturally similar; on the contrary, it increased the residence period to ten years for non-EU aliens and maintained the requirement of five years residence only for stateless persons (Art. 9)<sup>354</sup>. Lastly, the 1992 Act formally established dual nationality (Art. 11): acquisition of another citizenship does not imply anymore the loss of Italian citizenship<sup>355</sup>. Consequently, it also allowed people abroad who lost Italian citizenship to reacquire it by making a declaration until 1994 (the deadline for this option was postponed to 1995 and then to 1997)<sup>356</sup>.

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<sup>352</sup> Giovanna Zincone and Marzia Basili, *EUDO Citizenship Observatory – Country Report: Italy*, (2013), 7.

<sup>353</sup> Giovanna Zincone, *cit.*, *supra* note 318, 4.

See page 3 for data regarding acquisition of citizenship by marriage and by residence from 1985 to 2009.

<sup>354</sup> *Ivi*, 2.

<sup>355</sup> Marta Arena, Bruno Nascimbene, and Giovanna Zincone, *cit.*, *supra* note 315, 331.

<sup>356</sup> Giovanna Zincone and Marzia Basili, *cit.*, *supra* note 352, 5.

Decree of the President of Republic no. 572/93: Rules for the implementation of Statute no. 91 of 5 February 1992, 12 October 1993, Official Gazette, no. 2.

Taking into account these changes, the Act 91/92 was considered a step backwards because Italy was no longer a country of emigration, but had already become a country of immigration<sup>357</sup>. In particular, co-ethnic *criteria* regarding modes of acquisition have been adopted by other European States which were countries of emigration, or countries of immigration facing an anti-immigrant backlash, or countries having a large part of people outside their borders unwillingly. However, no one of these conditions was present in Italy in 1992<sup>358</sup>. Instead, just two years before, the 1990 Immigration Act<sup>359</sup> was a comprehensive liberalizing immigration policy passed by the Parliament and represented a proof that the political class was aware of the situation of Italy as an immigration country<sup>360</sup>. Yet, this 1990 legislation was mainly contested by the Lega Nord (LN) party of Umberto Bossi, pressing for the more restrictive 1992 law<sup>361</sup>. Overall, “the 1992 Act was partly a measure which came into being as the result of a delayed-action mechanism, as it was the consequence of a promise made by the political class when Italy was (and still perceived itself as) a country of emigration”<sup>362</sup>.

### 3.1.3 Recent developments

As mentioned above, current Italian citizenship law, i.e. Act 91/92, is obsolete since its inception because it does not correspond with the reality of Italy as a country of immigration. In particular, it presents inconveniences with respect to long-term documented residents and their

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Decree of the President of Republic no. 362/94: Procedural rules for the acquisition of nationality, 18 April 1994, Official Gazette, no. 136.

<sup>357</sup> Marta Arena, Bruno Nascimbene, and Giovanna Zincone, *cit.*, *supra* note 315, 343-344.

<sup>358</sup> *Ivi*, 345.

<sup>359</sup> Act no. 39 of 28 February 1990. This act is known as the Martelli Law. It was named after Claudio Martelli, the Deputy Prime Minister from the Socialist Party.

<sup>360</sup> Marta Arena, Bruno Nascimbene, and Giovanna Zincone, *cit.*, *supra* note 315, 345.

<sup>361</sup> Marc Morjé Howard, *The politics of citizenship in Europe* (Cambridge: Cambridge University Press, 2009), 105-106.

<sup>362</sup> Marta Arena, Bruno Nascimbene, and Giovanna Zincone, *cit.*, *supra* note 315, 346.

children, that is to say second-generation immigrants<sup>363</sup>. Therefore, its reform was and still is deemed necessary. Many bills have been presented in the Parliament, but very few changes have taken place up today. Two main political intentions have appeared in post-1992 bills: first, to favour acquisition of citizenship by long-term resident foreigners, minors born or grown up and educated in Italy, diminishing the difference between non-EU citizens and EU citizens in naturalisation procedures; second, to facilitate acquisition of citizenship for foreigners of Italian descent even if they reside abroad<sup>364</sup>. Actually, only the second intention has been successful, modifying Art. 17 of the 1992 Act<sup>365</sup>. In 2000 the possibility to reacquire Italian citizenship by declaration (within five years) was extended to foreigners who were born or resident in territories belonged to the Austro-Hungarian Empire before 16 July 1920, and their descendants<sup>366</sup>. In a similar way, since 2006 citizenship can be acquired by declaration by people who were resident in the territories of former Yugoslavia after the 1947 treaty, and to their descendants with no time limits, upon the condition of proving a basic knowledge of Italian language and culture<sup>367</sup>. Moreover, an outstanding element in these two changes is that the decree of 2000 was passed by a centre-left Government (with Giuliano Amato as Prime Minister) without opposition, and the decree of 2006 was passed by the centre-right Government (with Silvio Berlusconi as Prime Minister) without any opposition as well<sup>368</sup>.

Nevertheless, there have been several attempts to reform Act 91/92 over time. First of all, a draft of reform was presented by Livia Turco, the Minister of Social Affairs, in 1999 to favour

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<sup>363</sup> *Ivi*, 344.

<sup>364</sup> *Ivi*, 347.

<sup>365</sup> *Ibidem*

See also Art. 17 of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38.

<sup>366</sup> Act no. 379/00 on Dispositions for the recognition of Italian nationality to people born and resident in those Italian areas, belonging in the past to the former Austro-Hungarian Empire, and to their descendants, 14 December 2000, Official Gazette, no. 295.

<sup>367</sup> Act no. 124/06 amending Act no. 91 of 5 February 1992, on recognition of Italian nationality to Italian people from Istria, Fiume and Dalmatia, and to their descendants, 8 March 2006, Official Gazette, no. 73.

<sup>368</sup> Marta Arena, Bruno Nascimbene, and Giovanna Zincone, *cit.*, *supra* note 315, 347.

minors of second and third generation of immigrants, by granting citizenship to children born in Italy at the age of five (or alternatively if the parents have been legal residents in Italy for five years) and by including French double *ius soli*<sup>369</sup>. Then, in 2006 Giuliano Amato, the Minister of the Interior, put on the table of the Committee of Constitutional Affairs the proposal of reforming citizenship law: this proposal took into account comparative studies and was aimed to reduce the residence period for naturalisation to five years and to introduce language requirement as well as an oath of allegiance<sup>370</sup>. Although the mentioned committee delivered the Bressa Unified Text (eventually keeping the ten years residence without any language requirement), its discussion was continually postponed<sup>371</sup> during the second Romano Prodi government (centre-left government from May 2006 to May 2008). The reason behind the abandonment of the reform by the centre-left government is that citizenship had become a contending electoral issue. Taking into account public opinion against the arrival of numerous illegal immigrants and worried about criminals among them, on one hand, the right wing used migration in electoral competition, and on the other hand, the left wing tried to answer to ‘impossible-to-meet-demands’ with false substitute, such as limiting the rights of long-term resident immigrants<sup>372</sup>. Finally, under the fourth Silvio Berlusconi government (centre-right government from May 2008 to November 2011), a bipartisan bill, the so called Granata-Sarubbi bill<sup>373</sup>, was presented on 30 July 2009, reopening the possibility to reform Act 91/92. This bill focused on three changes: 1) acquisition of citizenship *iure soli* at birth

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<sup>369</sup> *Ivi*, 348.

<sup>370</sup> Giovanna Zincone, *cit.*, *supra* note 318, 25-26.

<sup>371</sup> *Ibidem*

<sup>372</sup> Marta Arena, Bruno Nascimbene, and Giovanna Zincone, *cit.*, *supra* note 315, 349-351.

<sup>373</sup> Giovanna Zincone, *cit.*, *supra* note 318, 14.

The Granata-Sarubbi bill was not a compromise between right and left. The name stems from the two first signatories: Fabio Granata (PdL, belonging to the right faction of Gianfranco Fini) and Andrea Sarubbi (PD, belonging to the left progressive catholic faction of the Democratic Party).

conditional on an interrupted period of stay of five years by at least one parent of the child<sup>374</sup>; 2) automatic acquisition of citizenship at the majority age for minors born in Italy or arrived before the age of five upon the condition of legal residence until the age of majority in Italy<sup>375</sup>; and 3) naturalisation of foreigners after five years of legal stay<sup>376</sup>. Apart from the proposed modes, the political debate between the centre-right majority and the centre-left opposition in the Committee of Constitutional Affairs of the House of Deputies is highly significant to understand the contrasting positions on the rationale behind the reform in December 2009. On one hand, in the report of the MP I. Bertolini (speaker of the majority) it is stated that *“la cittadinanza non rappresenta un mezzo per una migliore integrazione, ma rappresenta la conclusione di un percorso di integrazione avvenuta”*<sup>377</sup>. On the other hand, according to G. Bressa (speaker of the opposition) *“sullo sfondo sta il delicato rapporto fra integrazione e cittadinanza, circa il quale è probabilmente errato ogni approccio estremo: sia quello che richiede che lo straniero, per diventare cittadino, sia già integrato, sia quello che concepisce la cittadinanza come volano dell’immigrazione, escludendo ogni verifica sull’esistenza di un percorso nella direzione di essa. Questo testo alternativo sceglie una terza via e concepisce la cittadinanza al tempo stesso come punto di arrivo di un percorso di integrazione sociale e culturale già avviato e come punto di partenza per un approfondimento e per*

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<sup>374</sup> Art. 1 of the A.C. 2670, Proposta di legge d’iniziativa dei deputati (Sarubbi, Granata), Atti parlamentari, Camera dei deputati, XVI legislatura.

<sup>375</sup> Art. 2 of the A.C. 2670, Proposta di legge d’iniziativa dei deputati (Sarubbi, Granata), Atti parlamentari, Camera dei deputati, XVI legislatura.

<sup>376</sup> Art. 4 of the A.C. 2670, Proposta di legge d’iniziativa dei deputati (Sarubbi, Granata), Atti parlamentari, Camera dei deputati, XVI legislatura.

<sup>377</sup> Relazione della I Commissione Permanente n. 103-104-457-566-718-995-1048-1592-2006-2035-2431-2670-2684-2904-2910-A, Relatore: Bertolini (majority), 17 December 2009, Atti parlamentari, Camera dei deputati, XVI legislatura, 9.

My translation: “Citizenship does not represent a means to a better integration, but it represents the conclusion of an occurred process of integration”.

*il completamento di esso*<sup>378</sup>. Thus, an agreement about liberalising changes of the Italian citizenship law was not achieved because the contrasting political parties have different perceptions of citizenship, i.e. as an end of integration in the right-wing, but as both a means to and an end of integration in the left-wing. In general, what emerges from this picture is the politicisation of citizenship that has recently become a contested political issue: under the last Prodi government, the majority and the opposition had divergent points of view on the subject, while under the last Berlusconi government debates on citizenship divided the centre-right majority<sup>379</sup>.

In conclusion, so far the only change that affected the family-oriented model was adopted in 2009 with respect to acquisition of citizenship by marriage. In order to counter marriage of convenience, the Security Act of 2009<sup>380</sup> raised from six months to two years the minimum duration of marriage for couples who reside in Italy and added the requirement of persistence of the marriage bond when the public authorities take the decision. Overall, Italian citizenship law is still based on family ties and, as such, it is an example of path dependence: it depends on a model introduced in the past which has not been adapted to the new reality of Italy as an immigration country<sup>381</sup>. So, *ius sanguinis* and co-ethnic preference continue to be the cornerstones of Act 91/92 even in presence of large-scale immigration and a radical decrease of emigration compared to the past. As a result, Italy faces a contradiction: immigrants of second or third generations born and/or grown up in Italy find

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<sup>378</sup> Relazione della I Commissione Permanente n. 103-104-457-566-718-995-1048-1592-2006-2035-2431-2670-2684-2904-2910-A-bis, Relatore: Bressa (opposition), 17 December 2009, Atti parlamentari, Camera dei deputati, XVI legislatura, 8.

My translation: “In the background, there is the delicate relationship between integration and citizenship, about which every extreme approach is probably wrong: both that one that requires the alien to be already integrated in order to become a citizen, and that one that conceives citizenship as a means to immigration, excluding any checks on the existence of progress made for it [the acquisition of citizenship]. This different text chooses a third way and conceives citizenship simultaneously as the culmination of an already started process of social and cultural integration and as a starting point for the strengthening and the completion of it [the integration process]”.

<sup>379</sup> *Ivi*, 28.

<sup>380</sup> Act no. 94/09 on public security, 15 July 2009, Official Gazette, no. 170.

See also Giovanna Zincone and Marzia Basili, *cit.*, *supra* note 352, 2.

<sup>381</sup> Marta Arena, Bruno Nascimbene, and Giovanna Zincone, *cit.*, *supra* note 315, 357.

difficulties to become Italian citizens, while foreigners born abroad of Italian descent acquire citizenship and even vote in Italian parliamentary elections since 2000 and 2001 constitutional reforms<sup>382</sup>.

### 3.2 Acquisition of citizenship at birth

Family is the principle means for transmission of citizenship in Italy. Act 91/92 is grounded on *ius sanguinis* which consequently is the main mode of acquisition of citizenship at birth. Under Art. 1(1a) of Act 91/92 any child whose father or mother are Italian citizens acquire citizenship by birth<sup>383</sup>. Moreover, Italian legislation puts no limits for acquisition of citizenship *iure sanguinis* when the birth occurs abroad. In general, acquisition of citizenship at birth regards minors born to or recognised or adopted by an Italian citizen. In fact, Art. 2(1) states that a minor acquires citizenship *iure sanguinis* after recognition or judicial declaration of the filiation<sup>384</sup>. Different is the case in which the filiation of an adult is recognised or declared because he or she can acquire citizenship by declaration<sup>385</sup>. Yet, a peculiarity of Italian citizenship law, uniquely in Europe, is that provisions on recognition or judicial declaration “also apply to any person whose paternity or maternity cannot be declared, provided that their right to maintenance has been legally recognised”<sup>386</sup>. Then, also in case of adoption of a foreign minor by an Italian citizen, citizenship is transmitted by descent<sup>387</sup>, while in case of adoption of a foreign adult he or she has to apply for naturalisation<sup>388</sup>. Finally, as already mentioned, there is neither double *ius soli* nor simple *ius soli* at

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<sup>382</sup> Act no. 1 of 17 January 2000 and Act no. 1 of 23 January 2001.

<sup>383</sup> Art. 1(1a) of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38.

<sup>384</sup> Art. 2(1) of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38.

<sup>385</sup> Art. 2(2) of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38.

<sup>386</sup> Art. 2(3) of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38.

See also Maarten P. Vink and Gerard-René de Groot, *EUDO Citizenship Observatory – Birthright Citizenship: Trends and Regulations in Europe*, (2010), 8.

<sup>387</sup> Art. 3(1) of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38.

<sup>388</sup> Art. 9(1b) of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38.

birth in Italy for third and second generations of immigrants respectively. *Ius soli* at birth is only provided for foundlings (Art. 1(2)) and persons born in the territory of Italy whose parents are unknown or stateless or cannot transmit their citizenship due to the citizenship law of their country of origin (Art. 1(1b)). The absence of *ius soli* elements in acquisition of citizenship at birth is the result of Italian dependence from its past: on one hand, Italian citizenship has been rooted in family relationships since the creation of Italy as a Nation-State (when Italy was a nation in search of a State); on the other hand, Italian citizenship law has never taken into account that Italy is no longer a country of emigration, but a country of immigration.

### **3.3 Acquisition of citizenship after birth**

Italian legislation includes several modes of acquisition of citizenship after birth by declaration and discretionary naturalisation, but few modes *ex lege*. Family ties and a co-ethnic preference are predominant in Italian citizenship law. Consequently, acquisition of citizenship is easier for persons of Italian descent rather than persons born and/or grown up in Italy. In this way, current Italian citizenship law (Act 91/92) has resulted to be ill-suited for the acquisition of citizenship by both long-term documented foreigner residents and their children, especially for second and third generations born in Italy. Indeed, these are the main concerns which make necessary a reform of Act 91/92. I will come back to this topic in the third section of this dissertation more deeply, while in the following paragraphs, I will deal with modes of acquisition of citizenship *ex lege*, by declaration, and by naturalisation in Italy as provided for by Act 91/92 (as last amended by Act no. 94/2009 on public security).

#### **3.3.1 Acquisition *ex lege***

Looking at modes of acquisition of citizenship *ex lege*, two main cases are contemplated by Act 91/92 always in the perspective of family ties. First, Art. 14 states that “minor children of a



person who acquires or re-acquires Italian citizenship shall acquire such citizenship if they live with that person, but may renounce it after reaching the age of majority, provided that they have the citizenship of another country”<sup>389</sup>. Second, with respect to persons who have lost Italian citizenship they reacquire it one year after establishing their residence in Italy, except if they expressly renounce citizenship within that year<sup>390</sup>.

### **3.3.2 Acquisition by declaration**

There are several modes of acquisition of citizenship by declaration and they mostly regard cases entailing family ties, such as acquisition by persons whose filiation is recognised or declared (Art. 2(2)), foreign persons whose parent or direct ancestors in the second degree were Italian citizens by birth (Art. 4(1)), foreign persons born in Italy (Art. 4(2)), and persons who wants to reacquire Italian citizenship after its loss (Art. 13). As mentioned above, when filiation of an adult is recognised or declared, he or she has to declare his or her decision to acquire citizenship determined by filiation within one year of the recognition or declaration<sup>391</sup>.

Then, line of Italian descent entitles foreigners or stateless people to become citizens by declaration when a) they perform military service for the Italian State, b) they are a civil servant, even abroad, and c) they have had at least two years of legal residence in Italy after reaching the age of majority and make the declaration within one year<sup>392</sup>. Similarly, children born in Italy to foreign parents become citizens by declaring their intention to acquire Italian citizenship within one year after having attained the age of majority (eighteen years old) and under the condition of a legal and continuous residence in Italy since birth<sup>393</sup>. However, thanks to two 2007 circulars of the Ministry

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<sup>389</sup> Art. 14 of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38.

<sup>390</sup> Art. 13(d) of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38.

<sup>391</sup> Art. 2(2) of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38.

<sup>392</sup> Art. 4(1) of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38.

<sup>393</sup> Art. 4(2) of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38.

of the Interior<sup>394</sup>, the requirement of uninterrupted residence has been weakened: temporary absences of the person concerned for justified reasons such as work or study or cultural exchange cannot be considered prejudicial to the acquisition of citizenship.

Finally, other modes of acquisition of citizenship after birth by declaration are provided for reacquisition of Italian citizenship. Apart from reacquisition of citizenship people abroad who lost Italian citizenship provided for by Art. 17, Art. 17-bis, and Art. 17-ter described above under the historical evolution of Italian citizenship law, persons who lost citizenship reacquire by declaration it in case of a) military service for Italy, b) public employment as civil servant, and c) establishment of their residence in Italy within one year from the declaration<sup>395</sup>.

### 3.3.3 Acquisition by naturalisation

Acquisition of citizenship by adult immigrants can occur through several modes, which can be divided into acquisition by marriage with an Italian citizen and ordinary naturalisation based on residence in Italy. As mentioned above, before the reform of 2009<sup>396</sup> acquisitions of citizenship by marriage outnumbered those by residence given that only six months of marriage were required for couples who resided in Italy. For example, in 2007 acquisitions by marriage were 31.609 while those by residence only 6.857, but after the 2009 Security law acquisition by marriage were 17.122 while those by residence 22.962<sup>397</sup>. What follows in this paragraph is an analysis of both naturalisation after marriage and naturalisation on the basis of residence.

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<sup>394</sup> Circular of the Ministry of Interior, Prot. K.60.1 of 5 January 2007: New interpretative lines in matter of granting Italian citizenship.

Circular no. 22/07 of the Ministry of Interior, Prot. K64.2/13 of 7 November 2007: Acquisition of Italian citizenship for foreigners born in Italy.

See also Giovanna Zincone and Marzia Basili, *cit.*, *supra* note 352, 2.

<sup>395</sup> Art. 13(1) of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38.

<sup>396</sup> Act no. 94/09 on public security, 15 July 2009, Official Gazette, no. 170.

<sup>397</sup> Giovanna Zincone, *cit.*, *supra* note 318, 3.

First of all, in Italy the family model has favoured, and still does, not only blood relatives, but also relatives by marriage. Yet, the family-oriented logic of the original version of acquisition of citizenship by marriage as established in 1992 has been slightly eroded for the first time in 2009. Under Art. 5, the foreign or stateless spouse of an Italian citizen can acquire Italian citizenship after having being married for two years (instead of six months) if the couple legally resides in Italy or for three years if the couple resides abroad. In both cases, the residence period is halved when the couple has children. Moreover, Art. 5 specifies that until the adoption of the decree granting citizenship, “the marriage has not been dissolved or annulled or has not ceased to have civil effects and there is no legal separation”<sup>398</sup>. Despite acquisition by marriage (spousal transfer) is no longer as less demanding as it was prior 2009, it still remains easier compared with naturalisation procedures via residence after taking into account the different length of residence required and the less strict screening<sup>399</sup>. Finally, while former version of Act 91/92 stated that the spouse of an Italian citizen “acquires Italian citizenship”, the amendment of the 2009 Security Law has substituted it with “can acquire”, by introducing a wider discretion. However, this new formulation of article 5 does not seem to affect acquisition of citizenship by marriage because the public authorities can reject the application for naturalisation after marriage only in case of evidence of a marriage of convenience and especially in case of the reasons listed under Art. 6, such as specific criminal records or danger for national security<sup>400</sup>.

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<sup>398</sup> Art. 5 of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38, as amended by Art. 1, par. 11 of Act no. 94/2009 on public security (Law of 15 July 2009, n. 94, Official Gazette, no. 170).

<sup>399</sup> Giovanna Zincone and Marzia Basili, *cit.*, *supra* note 352, 7.

<sup>400</sup> *Ibidem*

See also Art. 6(1) of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38.

“The following reasons shall prevent the acquisition of citizenship, as referred to in Article 5:

- a) conviction for one of the offences provided for in Volume II, Title I, Chapters I, II and III of the Criminal Code [Offences against the State and the citizens’ political rights];
- b) conviction for an offence committed with criminal intent for which the law prescribes a statutory penalty of a maximum of at least three years imprisonment; or conviction by a foreign judicial authority for a non-political offence

With respect to ordinary naturalisation via residence, Art. 9 of Act 91/92 provides for different periods of residence as condition to apply for naturalisation. They diverge on the basis of who ask to be naturalised: a) at least three years of legal residence for foreigners whose father or mother or one of whose direct ancestors to the second degree were citizens by birth, or foreigners who were born in Italy; b) at least five years of legal residence after the adoption for foreigners who, having reached the age of majority, have been adopted by an Italian citizen; c) at least five years for foreigners who have worked as civil servants, even abroad; d) at least four years of legal residence for citizens of a Member State of the European Union (EU); e) at least five years of legal residence for stateless persons; and f) at least ten years of legal residence for non-EU foreigners<sup>401</sup>. As it is clear, the family-oriented logic and, consequently, the co-ethnic preference affect also naturalisation. The shorter period required (three years) applies only to persons of Italian descent and this is consistent with the attitude of the 1992 Act which gives priority to family ties as the main criterion for acquisition of Italian citizenship. Hence, Italy continues to privilege emigrants as well as their descendents by granting to foreigners of Italian origins easier access to citizenship in order to preserve and promote links between them and the motherland. Then, the differentiated treatment in favour of EU citizens through the shorter period of residence, compared with that of non-EU citizens, is explained by the acknowledgement of a common European identity or the assumption of cultural and political similarity. So, EU citizens are another privileged category of people under Italian citizenship law because the legislator has considered them “as a sort of extended public family that includes not only people of national origin (relatives), but also foreigners related by special cultural and political elective affinities and international legal bonds

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for which the law prescribes a custodial penalty of more than one year, when the foreign sentence has been recognised in Italy;

c) the existence, in the case concerned, of substantiated reasons relating to the Republic’s national security”.

<sup>401</sup> Art. 9(1) of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38.

(legally considered akin to in-laws)”<sup>402</sup>. Yet, despite this perception has slightly changed due to 2007 enlargement of the EU, including Romania, and the security concerns relating to the high criminality rates in some East European communities, Act 91/92 has not been modified so far<sup>403</sup>.

Looking at procedural characteristics, the persons concerned have to provide along the application all the certificates demonstrating that the legal requirements are met and they have to pay a fee amounting to 200 euro<sup>404</sup>. Furthermore, the naturalisation procedure is mainly disciplined by a 1994 decree of the President of Republic<sup>405</sup>. The applicant has to submit all documentation required to the Prefecture of the province where he or she lives<sup>406</sup>. Then, the procedure is quite lengthy because several public authorities and civil servants, among which also police officers, are engaged in it: firstly, the prefecture receives the application; secondly, the prefecture checks whether all the requirements are met along the Police Office (*Questura*); thirdly, the application is sent to the Ministry of the Interior which may ask for new documents; fourthly, the Ministry of the Interior makes the decision after a cross-check of documents by different agencies of the Ministry of the Interior, the Ministry of Foreign Affairs, and the Ministry of Justice, and consultation with the Council of State<sup>407</sup>. Finally, Italian citizenship via naturalisation is granted by decree of the President of the Republic, upon a proposal of the minister of the Interior, having heard the Council of State<sup>408</sup>, and the decree “shall only have effect where the person concerned has taken an oath of allegiance to the Republic and respect for the Constitution and the laws of the State within six

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<sup>402</sup> Giovanna Zincone and Marzia Basili, *cit.*, *supra* note 352, 6.

<sup>403</sup> *Ibidem*

<sup>404</sup> Art. 9-bis of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38. It was inserted by Art. 1 of Act no. 94/2009 on public security (Law of 15 July 2009, n. 94, Official Gazette, no. 170).

<sup>405</sup> Decree of the President of Republic no. 362/94: Procedural rules for the acquisition of nationality, 18 April 1994, Official Gazette, no. 136.

<sup>406</sup> Art. 1 of Decree of the President of Republic no. 362/94: Procedural rules for the acquisition of nationality, 18 April 1994, Official Gazette, no. 136.

<sup>407</sup> Giovanna Zincone and Marzia Basili, *cit.*, *supra* note 352, 11.

<sup>408</sup> Art. 9(1) of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38.

months of the decree being served”<sup>409</sup>. In particular, the deadline for a response to the application is fixed at 730 days from the date of the application, but it is actually longer<sup>410</sup>. In order to speed up the bureaucratic process, Carlo Azeglio Ciampi (President of the Republic from May 1999 to May 2006) stopped the practise of personally signing each decree in November 2004, by introducing the practise of signing a decree which contains a list of naturalisations and delegating to the legal Advisor of the President the signature of each single decree<sup>411</sup>.

In addition, the naturalisation procedure is discretionary because possession of all the requirements by the applicant is a necessary but not sufficient condition for the granting of citizenship by residence. The delivery of naturalisation is at the discretion of the public authorities mentioned above. Above all, it is exercised during the integration assessment about language and civic knowledge which is performed informally by the Police Office through interviews. Despite guidelines for this integration assessment are not provided for by official documents, at least those available, lack of Italian language skills and/or civic knowledge represent the main reason the rejection of applications<sup>412</sup>. According to the Ministerial circular K.60.1 of 2007, in case of lack of language and social/civic integration as well as insufficient income (8.300 euro as annual family income is considered enough), naturalisation application can be rejected<sup>413</sup>. In conclusion, in case of rejection, the applicants can appeal before the Regional Administrative Tribunal (TAR) within 60 days from notification of rejection or directly to the President of the Republic within 120 days. The

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<sup>409</sup> Art. 10 of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38.

<sup>410</sup> Giovanna Zincone and Marzia Basili, *cit.*, *supra* note 352, 8.

See also Art. 3 of the Decree of the President of Republic no. 362/94: Procedural rules for the acquisition of nationality, 18 April 1994, Official Gazette, no. 136.

<sup>411</sup> *Ibidem*

<sup>412</sup> Giovanna Zincone and Marzia Basili, *cit.*, *supra* note 352, 12.

<sup>413</sup> Circular of the Ministry of Interior, Prot. K.60.1 of 5 January 2007: New interpretative lines in matter of granting Italian citizenship.

See also Giovanna Zincone and Marzia Basili, *cit.*, *supra* note 352, 12.

TAR can only refer the case to the Council of State and send it back to the competent public authorities, while the applicant can apply again after one year from the notification of rejection<sup>414</sup>.

Overall, Italian citizenship law is enough restrictive towards naturalisation of immigrants and their descendents, with the exception of those married with an Italian citizen, those of Italian origins, and those who are citizens of EU Member State. Yet, acquisitions of citizenship by residence has increased over time and this is the result of “the stabilisation of the number of immigrants in the receiving country and the consequent higher number of long-term residents, as well as by the introduction of several new procedures to speed up the bureaucratic process”<sup>415</sup>.

Statistically, from 2004 and 2009 the total of acquisitions of citizenship by foreigners has continuously increased: while the number of acquisition was 11.945 in 2004, it raised to 19.266 in 2005, to 35.766 in 2006, to 38.466 in 2007, to 39.484 in 2008 and to 40.084 in 2009<sup>416</sup>. Moreover, only since 2009 acquisitions by residence were more numerous than those by marriage: in that year the former were 17.122, whereas the latter were 22.962<sup>417</sup>. This trend has been confirmed in 2010 (18.593 acquisitions by marriage under Art. 5 and 21.630 acquisitions by residence under Art. 9)<sup>418</sup>. Nevertheless, other interesting data regard non-EU citizens who have to wait ten years of legal and continuous residence in Italy before applying for naturalisation. Based on data provided by the Ministry of the Interior, the ISTAT (*Istituto nazionale di statistica*, i.e. the National Institute for Statistics) has reported that 3.874.726 non-EU citizens were regularly present in Italy on 1 January 2014<sup>419</sup>. With respect to acquisitions of citizenship, recent data show that in 2012, they were 65,383

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<sup>414</sup> Art. 5.2 of the Decree of the President of Republic no. 572/93: Rules for the implementation of Statute no. 91 of 5 February 1992, 12 October 1993, Official Gazette, no. 2.

See also Giovanna Zincone and Marzia Basili, *cit.*, *supra* note 352, 13.

<sup>415</sup> Giovanna Zincone and Marzia Basili, *cit.*, *supra* note 352, 8.

<sup>416</sup> Site of the Italian Ministry of the Interior, [www.libertaciviliimmigrazione.interno.it](http://www.libertaciviliimmigrazione.interno.it)

<sup>417</sup> *Idibem*

<sup>418</sup> Site of the Italian Ministry of the Interior, [www.interno.gov.it](http://www.interno.gov.it)

<sup>419</sup> Report of 5 August 2014, *Cittadini non comunitari regolarmente soggiornanti Anni 2013-2014*, available at [www.istat.it](http://www.istat.it)

and 91.9% of them (60,060) involved non-EU citizens, especially Moroccans (14,728) and Albanians (9,493), that represent together 40.3% of the total acquisition of citizenship by non-EU citizens<sup>420</sup>.

To sum up, what characterises modes of acquisition of Italian citizenship is dependence to the past of Italy as an emigration country as well as attachment to the family-oriented logic and the co-ethnic preference. Indeed, the *ius sanguinis* provisions, allowing indefinite extension of citizenship by descent both in Italy and abroad, are emblematic of this logic. In this perspective, it is clear why only *ius soli* after birth is included in Italian citizenship law: children born in Italy who have been resident there until their age of majority can acquire Italian citizenship by declaration (not *ex lege*) within one year after reaching the age of eighteen. Similarly, family-ties explain the preferential access to citizenship for certain categories of people. In particular, they are: spouses of Italian citizens (spousal transfer); minor children of persons who acquire citizenship by naturalisation as long as the children reside with the parent naturalised (filial extension); foreigners of Italian descent through ordinary naturalisation after three years of legal residence in Italy; and EU-citizens through ordinary naturalisation after four years of residence in the country. In conclusion, taking into account the above points, Italian citizenship law can be considered obsolete and in need of a reform because it does not reflect the reality of Italy as an immigration country.

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<sup>420</sup> *Ibidem*



## CHAPTER 4

### British citizenship law

#### 4.1 Historical development of British citizenship law

Current British citizenship law<sup>421</sup> is a complex legislation which includes both *ius soli* and *ius sanguinis* provisions. Yet, it diverges from other European citizenship laws due to the historical background of the United Kingdom (UK). According to A. Dummett, “English, then British, history has been the story of a land and not of a people”<sup>422</sup>. Indeed, *ius soli* principle has characterised acquisition of citizenship (formerly subjecthood) since medieval age. Especially during the British Empire, everyone born within it was a British subject, except those born in Protectorates. Since the mid-twentieth century, independence of some territories of the empire has produced several changes of British citizenship law, in particular through the acts of 1948, 1971, and 1981<sup>423</sup> which focused on the relationship between citizenship and territories outside the United Kingdom. This shows that citizenship has been mainly associated with residence and a connection with the British Empire and

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<sup>421</sup> British Nationality Act, 30 October 1981, 1981 chapter 61, as last amended by Borders, Citizenship and Immigration Act 2009 (Act of 21 July 2009, 2009 chapter 11).

<sup>422</sup> Ann Dummett, “United Kingdom,” in *Acquisition and Loss of Nationality: Policies and Trends in 15 European Countries, Vol.II: Country Analyses*, ed. Rainer Bauböck, Eva Ersbøll, Kees Groenendijk and Harald Waldrauch (Amsterdam: Amsterdam University Press, 2006), 554.

<sup>423</sup> British Nationality Act of 1948, 1948 chapter 56.

Immigration Act of 1971, 1971 chapter 77.

British Nationality Act, 30 October 1981, 1981 chapter 61.

the Crown, instead of the mere territory of the UK. Therefore, the complexity of British citizenship law stems from the geography of the former British Empire, the tradition of common law emphasizing individual rights over national unity, and the existence of several and overlapping categories of citizenship<sup>424</sup>. Taking into account these points, British citizenship law cannot be analysed without referring to its history. In this perspective, in the next paragraphs I will consider first the historical developments of British citizenship law and then current modes of acquisition of British citizenship as provided for by the 1981 British Nationality Act as last amended by the 2009 Borders, Citizenship and Immigration Act.

#### **4.1.1 The origins of British citizenship law**

Originally, British citizenship law and its concept of citizenship were closely related to the concept of ‘subjecthood’. Even though it is anachronistic to denote subjecthood as a former form of citizenship, the term ‘subject’ has been used to refer to people who belonged to the country until 1948<sup>425</sup>. Since the middle ages, subjecthood has primarily been based on birth on or association with the land, and only secondarily on *ius sanguinis* and naturalisation. For instance, in the medieval England, children of immigrants, such as traders, became subjects *iure soli*<sup>426</sup>. In particular, the principle of *ius soli* stemmed from the feudal concept of allegiance: people born on a lord’s land were lord’s subjects and owed him allegiance. Consequently, by the end of the XIII century birth on the king’s land meant that the person concerned was a king’s subject who owed allegiance to the king and received protection in return<sup>427</sup>. The earliest confirmation of the *ius soli* principle can be found in 1608 *Calvin’s Case*<sup>428</sup>, which showed the correlation between allegiance to the king (not to the kingdom) and subjecthood: the court stated that people born in Scotland

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<sup>424</sup> Marc Morjé Howard, *The politics of citizenship in Europe* (Cambridge: Cambridge University Press, 2009), 157.

<sup>425</sup> Ann Dummet, *cit.*, *supra* note 422, 554.

<sup>426</sup> *Ibidem*

<sup>427</sup> *Ibidem*

<sup>428</sup> *Calvin’s Case*, 77 Eng Rep 377 (KB, 1608), 382. See also Part I, Chapter 2 of this dissertation.

before King James VI of Scotland became James I of England (the Union of the Crowns occurred in 1603, but the two kingdoms remained separated) were not subjects in England, but those born in Scotland after James's accession to the English throne were subjects in England and so entitled to the rights of English law. Then, the *status* of 'subject' developed into that of 'British subject' in 1707 when Great Britain was created through the Act of Union which united England and Scotland<sup>429</sup>. British subjects were people born in the Crown's dominions as well as wives and children of male born British subjects<sup>430</sup>. Besides the *status* of British subject, an associated *status* of British Protected Person (BPP) was introduced when the British Empire was expanded by treaty or by annexation in the XVIII and XIX centuries<sup>431</sup>. This *status* was created under the royal prerogative and referred to people of territories which were not part of the dominions of the Crown, but were in protected States, such as protectorates<sup>432</sup>.

With respect to naturalisations, since the late-thirteen century naturalisations of certain individuals were conferred by occasional Acts of Parliament<sup>433</sup>. This mechanism by legislation directed at individuals was substituted with a simple procedure by the Aliens Act of 1844 which allowed the Home Office to grant naturalisation on the basis of a character reference, a fee and an oath of allegiance<sup>434</sup>. Despite this 1844 Aliens Act already removed some restrictions on alien landholding, it was the Naturalisation Act of 1870 that eliminated all restrictions on land for aliens.

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<sup>429</sup> Nicholas Blake, "British Nationality Law," in *Nationality Laws in the European Union*, ed. Bruno Nascimbene (Milano: Giuffrè, 1996), 680.

For a chronological elucidation, Great Britain was created in 1707 and encompassed England, Scotland and Wales which has already been joined to England in 1536. A further Act of Union in 1800 added the Kingdom of Ireland to Great Britain and the country was renamed "the United Kingdom of Great Britain and Ireland". Later, in 1922 Ireland seceded from the United Kingdom to become the Irish Free State and Northern Ireland seceded from the Free State to become part of the United Kingdom. Finally, in 1927 the country changed its formal name to the "United Kingdom of Great Britain and Northern Ireland".

<sup>430</sup> *Ibidem*

<sup>431</sup> Ann Dummet, *cit.*, *supra* note 422, 560.

<sup>432</sup> Nicholas Blake, *cit.*, *supra* note 429, 682.

<sup>433</sup> Ann Dummet, *cit.*, *supra* note 422, 556.

<sup>434</sup> *Ivi*, 559.

However, the 1870 Naturalisation Act was a restrictive measure because it provided that: naturalisation was granted at the discretion of the Home Office after five years of residence or Crown service; renunciation of British *status* for acquiring another *status* was allowed; a woman who married a foreigner would have lost her British *status*, while a foreign woman who married a British person would have become British<sup>435</sup>. Moreover, the period from 1870 to 1948 represented the only period in British history in which plural citizenship was limited.

Yet, since the mid-nineteenth century some territories of the British Empire (Canada, New Zealand, Australia, and South Africa) started to acquire a large degree of autonomy and, consequently, control over immigration. Given that all subjects from any part of the empire had the right of entry to the United Kingdom (UK) and in the XIX century entry of aliens was uncontrolled because of liberalism and free-trade, British authorities started to worry about aliens as subversives in the anarchist and revolutionary context of that period. Simultaneously, racial theories about the superiority of the “Teutonic” British over Latin races and anti-Semitism sentiment appeared. As a result, two legislative measures were taken: first, in 1905 an Aliens Act provided for control of alien entry by the Home Office (the government department in charge of security) and was mainly directed against poor Eastern European Jews who fled persecution; second, other two Aliens Acts of 1914 and 1919 were the outcome of anti-German feelings during the First World War<sup>436</sup>. The 1914 British nationality and Status of Aliens Act created also an Imperial Certificate of Naturalisation valid anywhere in the empire, but local naturalisation continued to be issued<sup>437</sup>. Nevertheless, following the judgment in *Craw v. Ramsey*<sup>438</sup>, naturalisations were effective only in the territory over which the legislator had authority.

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<sup>435</sup> *Ivi*, 559-560.

<sup>436</sup> *Ivi*, 564.

<sup>437</sup> *Ivi*, 561.

<sup>438</sup> *Ivi*, 558. The Irish Parliament passed a Statute to naturalise resident Scots in 1634. The English court stated that naturalisation in Ireland does not mean that the person concerned was a subject in England because legislation (and

#### 4.1.2 Changes during the mid-XX century

The complexity of British citizenship law stemmed from the dismantling of the British Empire through independence of its territories after World War II. This required a change of British citizenship legislation. Thus, a British Nationality Act was passed in 1948 and came into force on 1<sup>st</sup> January 1949<sup>439</sup>, drawing the pattern of British citizenship. According to A. Dummet, this act “retained subjecthood as in theory a nationality of the whole empire, within which there were to be separate citizenships, explaining that nationality (subjecthood) was to be the genus, citizenship the species”<sup>440</sup>. This means that the UK tried to maintain a link with people of new independent States as well as with those of Commonwealth countries<sup>441</sup> through allegiance to the monarch so that from 1949 to 1983 the *status* of British subject became an umbrella category. As a consequence, several categories of people were created: first of all, the “Citizens of the United Kingdom and Colonies”<sup>442</sup> (CUKCs), i.e. people who were British subjects thanks to connections with the UK or territories which were still colonies; secondly, “Citizens of the Independent Commonwealth Countries”<sup>443</sup> (CICCs); thirdly, “British subjects without citizenship of any Commonwealth country”<sup>444</sup> (BSWCs) when people did not acquired a citizenship of the Commonwealth countries and did not become CUKCs because the British authorities considered them as potential citizens of the independent country; and finally, the *status* of British Protected Persons (BPPs) was maintained under the prerogative power of the Crown, but it was lost if a BPP acquired citizenship of a new independent

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consequently naturalisations) took effect only in the territories over which the legislator had authority. However, a person naturalised in England was a subject in Ireland because of the latter was subordinate to the former.

<sup>439</sup> Nicholas Blake, *cit.*, *supra* note 429, 684.

<sup>440</sup> Ann Dummet, *cit.*, *supra* note 422, 562.

<sup>441</sup> Despite the Commonwealth of Nation was created after the decolonisation of the British Empire through increased self-governance of its territories, it was formally constituted by the London Declaration in 1949.

<sup>442</sup> Nicholas Blake, *cit.*, *supra* note 429, 684.

<sup>443</sup> Marc Morjé Howard, *cit.*, *supra* note 424, 158.

<sup>444</sup> Nicholas Blake, *cit.*, *supra* note 429, 686.

State<sup>445</sup>. Yet, if the new State joined the Commonwealth of Nations, both BPPs and BSWCs retained the *status* of British subjects. Then, a peculiar case is represented by Irish people because the Republic of Ireland did not join the Commonwealth: 1) those born before 1922 who domiciled or resided for three years in the UK became CUKCs, while 2) those born between 1922 and 1948 who wanted to retain the *status* of British subject because of residence, employment or ancestral connection have to declare it<sup>446</sup>. In general, Ireland was not considered a foreign country and Irish were not aliens.

In addition, the British Nationality Act of 1948 introduced for the first time some restrictions to the free movement of British subjects. Whilst before 1948 all British subjects could enter the UK, after 1948 only British subjects who were CICC and CUKCs had this right of entry<sup>447</sup>. Consequently, CICC were a privileged category because, once they were in the UK, they could register as CUKCs after a residence period of one year<sup>448</sup>. On the contrary, the other aliens who asked for naturalisation had to reside in the UK for five years, have sufficient knowledge of the English language, and provide evidence of good character<sup>449</sup>. Nevertheless, some problems arose when many British subjects from East African and Asian colonies and independent countries arrived in the UK in search of work. In this context, the Labour government (1945-1951) discouraged 'coloured' immigration and later the Conservative government (1951-1963) adopted the Commonwealth Immigrants Act of 1962 in order to reduce non-white immigration to the UK. This act limited the right of entry of CICC: Commonwealth citizens required a permission to enter the UK, unless they were born in the UK or Ireland or held passports issued by the UK or Irish

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<sup>445</sup> *Ibidem*

<sup>446</sup> *Ivi*, 685.

See also Ann Dummet, *cit.*, *supra* note 422, 563.

See also Ireland Act of 1949 and British Nationality Act of 1948.

<sup>447</sup> Nicholas Blake, *cit.*, *supra* note 429, 686-687.

<sup>448</sup> Ann Dummet, *cit.*, *supra* note 422, 564.

<sup>449</sup> *Ibidem*

governments<sup>450</sup>. Then, minor British Nationality Acts were passed in 1964 and 1965<sup>451</sup>. Subsequently, also CUKCs became subject to immigration control in 1968<sup>452</sup>, with the only exception of those CUKCs with strong connections with the UK (i.e. persons who or whose parent or grandparent were born, naturalised, registered, or adopted in the UK). This measure was the outcome of a high political and racial debate following the arrival of many middle-class Asian families present in newly independent States of East Africa who had retained the status of CUKCs, maintaining also their right of entry the UK, instead of applying for the new country's citizenship<sup>453</sup>.

Finally, the Immigration Act of 1971<sup>454</sup> consolidated this system of immigration control by distinguishing between *patrials*, who could enter the UK without control and had the right of abode there, and *non-patrials* who were subject to control and did not have the right of abode in the UK. In particular, only some citizens of the United Kingdom and Colonies (CUKCs) and a limited class of Commonwealth citizens (CICCs) could be *patrials*: 1) CUKCs born, adopted, registered or naturalised in the UK; 2) CUKCs with a parent or a grandparent with the above mentioned qualifications; 3) CUKCs who had been ordinarily resident in the UK for at least five years at any time; 4) CUKC woman married to a CUKC man; 5) CICCs with a CUKC parent born in the UK; and 6) CICC woman married to a *patrial*<sup>455</sup>. On the contrary, *non-patrials* were all residual people, i.e. aliens, British Protected Persons, CUKCs whose *status* stemmed from colonies, and CICCs not

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<sup>450</sup> Ivi, 565.

<sup>451</sup> Ivi, 566.

<sup>452</sup> Commonwealth Immigrants Act of 1968.

See also Nicholas Blake, *cit.*, *supra* note 429, 687.

<sup>453</sup> Caroline Sawyer and Helena Wray, *EUDO Citizenship Observatory – Country Report: United Kingdom*, (2012), 7.

<sup>454</sup> Immigration Act of 1971. It entered into force on 1<sup>st</sup> January 1973, the same day of entry of the United Kingdom into the European Community.

<sup>455</sup> Ann Dummet, *cit.*, *supra* note 422, 567.

See also Nicholas Blake, *cit.*, *supra* note 429, 696-697.

qualifying as *patrials*<sup>456</sup>. Apart from people who, or whose fathers, were born, registered, or naturalised in Gibraltar<sup>457</sup>, under 1971 legislation only *patrials* could enter the UK without leave. In this way, “patriality had become a quasi-nationality, and the situation was so confusing that it soon became clear that a thorough overhaul of British nationality law was needed”<sup>458</sup>.

#### 4.1.3 Recent developments

The reform of British citizenship law was made by the conservative government of Margaret Thatcher (1979-1990) through the adoption of the 1981 British Nationality Act<sup>459</sup>. This act re-labelled the existing categories of the Immigration Act of 1971 and transformed them into types of citizenship: British citizenship, British Dependent Territories citizenship, and British Overseas citizenship. Briefly, British citizens (BCs) were former *patrial* CUKCs, while British Dependent Territories citizens (BDTCs) were former *non-patrial* CUKCs having a connection with a dependent territory, and British Overseas citizens (BOCs) were former *non-patrial* CUKCs who acquired British citizenship in a former colony and did not lose the *status* when that territory became independent<sup>460</sup>. Moreover, the 1981 Act included in the residual category of British subjects people without citizenship (BSWCs), wives who had registered as British subjects, and Irish people who had previously maintained the *status* of British subjects<sup>461</sup>.

However, the most significant change of the British Nationality Act of 1981 was the restriction of *ius soli*, i.e. the cornerstone principle for acquisition of citizenship until 1981. This act

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<sup>456</sup> *Ibidem*

<sup>457</sup> *Ivi*, 572. Gibraltarians had the right of abode in the UK because of Community purposes given that Gibraltar, as a European territory under the responsibility of a Member State, was included in the rules regarding freedom of movement in the European Economic Community.

<sup>458</sup> *Ivi*, 568.

<sup>459</sup> British Nationality Act, 30 October 1981, 1981 chapter 61. It entered into force on 1 January 1983.

<sup>460</sup> Nicholas Blake, *cit.*, *supra* note 429, 689.

<sup>461</sup> *Ibidem*



added a *ius sanguinis* element for acquisition of citizenship at birth by allowing that only children born in the UK to either a British citizen or a settled parent would have become a British citizen *iure soli*<sup>462</sup>. Then, with respect to acquisition of citizenship by descent, on one hand the 1981 Act limited it to the first generation born abroad; on the other hand, it established for the first time equality between mothers and fathers in the transmission of citizenship to their children<sup>463</sup>. All other modes of acquisition of citizenship under the 1981 Act will be illustrated in the following paragraphs given that the British Nationality Act of 1981 remains the basis of current British citizenship law. Overall, taking into account these provisions and the fact that BDTCs and BOCs did not have the right of entry to the UK, “the purpose of the new law was to limit immigration rather than to deal with nationality itself, and so the means chosen were a complicated collection of provisions to reduce the number of people eligible to pass on nationality and with it the right of abode to their descendants”<sup>464</sup>.

Regarding British Dependent Territories, it is necessary to analyse Gibraltar, the Falklands, and Hong Kong. First of all, under the 1981 British Nationality Act Gibraltarians were British citizens (BCs)<sup>465</sup>, while the habitants of the Falkland Islands were British Dependent Territories citizens (BDTCs). Yet, after the Falklands conflict (1982) between the UK and Argentina, the British Nationality (Falkland Islands) Act of 1983 made inhabitants of the Falklands British citizens<sup>466</sup>. Later, under the 2002 British Overseas Territories Act, the term British Dependent Territories citizenship (BDTC) was substituted with that of British Overseas Territories citizenship

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<sup>462</sup> Section 1(1) of the British Nationality Act, 30 October 1981, 1981 chapter 61.

<sup>463</sup> Ann Dummet, *cit.*, *supra* note 422, 570.

<sup>464</sup> *Ibidem*

<sup>465</sup> Section 5 of the British Nationality Act, 30 October 1981, 1981 chapter 61.

<sup>466</sup> Section 2 of the British Nationality (Falkland Islands) Act, 28 March 1983, 1983 chapter 6. This Act entered into force on 1<sup>st</sup> January 1983, the same date as the 1981 British Nationality Act. However, this section was repealed by the British Overseas Territories Act, 26 February 2002, 2002 chapter 8.

(BOTC) and those who were BOTCs before commencement of the mentioned act became British citizens<sup>467</sup>. Therefore, since 2002, these two forms of citizenship can be held simultaneously<sup>468</sup>.

Turning attention to inhabitants of Hong Kong, the 1981 Act provided that those CUKCs having a connection with Hong Kong and those born in Hong Kong on or after 1983 to a parent settled in Hong Kong were BDTCs. With the Sino-British Joint Declaration of 19 December 1984, Hong Kong became part of the People's Republic of China (PRC) since 1 July 1997. Concerns about loss of BDTC emerged among residents of Hong Kong. In this context, the Hong Kong Act of 1985 gave statutory effect to the mentioned declaration and, as a consequence, the three million or so BDTCs would have lost that citizenship on 30 June 1997<sup>469</sup>. Later, the 1986 Hong Kong (British Nationality) Order created an additional category of British citizenship called British National (Overseas) or BN(O) for Hong Kong CUKCs. This *status* would be maintained even after 1997 and, even though it did not give the right of abode in the UK, Hong Kong residents could enter under the immigration law and then registered as a British citizen after five years of residence<sup>470</sup>. Yet, legislation regarding Hong Kong has been continuously modified over time<sup>471</sup>. For example, after the Tiananmen Square massacre in 1989, the British Nationality (Hong Kong) Act of 1990 allowed registration as British citizens to 50,000 residents of Hong Kong recommended to the Secretary of State for that purpose by the Governor of Hong Kong under the British Nationality Selection

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<sup>467</sup> Section 3(1) of the British Overseas Territories Act (BOTA 2002), 26 February 2002, 2002 chapter 8.

<sup>468</sup> Caroline Sawyer and Helena Wray, *cit.*, *supra* note 453, 7.

<sup>469</sup> Nicholas Blake, *cit.*, *supra* note 429, 693.

<sup>470</sup> *Ibidem*

<sup>471</sup> British Nationality (Hong Kong) Act 1990, 26 July 1990, 1990 chapter 34.

The Hong Kong (British Nationality) (Amendment) Order 1993, 20 July 1993, 1993 No. 1795.

British Nationality (Hong Kong) (Selection Scheme) (Amendment) Order 1993, 08 December 1993, 1993 No. 1789.

British Nationality (Hong Kong) Act 1997, 19 March 1997, 1997 chapter 20.

British Overseas Territories Act (BOTA 2002), 26 February 2002, 2002 chapter 8.

British Nationality (British Overseas Territories) Regulations 2007, 26 October 2007, 2007 No. 3139.

British Nationality (General and Hong Kong) (Amendment) Regulations 2007, 26 October 2007, 2007 No. 3137.

Scheme before 30<sup>th</sup> June 1997<sup>472</sup>. In addition, the already mentioned 2002 British Overseas Territories Act did not apply to Hong Kong, as confirmed by the subsequent 2002 Nationality, Immigration and Asylum Act (NIAA 2002) which stated that a person may not be registered as a British Overseas Territories Citizen (BOTC) by virtue of a connection with Hong Kong<sup>473</sup>.

Then, with respect to recent developments of British citizenship, relevant changes concerning naturalisation and deprivation of citizenship were made through the 2002 Nationality, Immigration and Asylum Act. Under this act, foreigners who apply for naturalisation must demonstrate a sufficient knowledge of the language and life in the UK<sup>474</sup>, and spouses of British citizens are no longer exempt from these requirements<sup>475</sup>. Moreover, they must be present at a mandatory citizenship ceremony in which they take an oath in order to show their commitment to democratic values and civic duties<sup>476</sup>. With respect to deprivation of citizenship, the Secretary of State can deprive any person of his or her citizenship “if the Secretary of State is satisfied that the person has done anything seriously prejudicial to the vital interests of (a) the United Kingdom, or (b) a British overseas territory”<sup>477</sup>. In general, the 2002 Nationality, Immigration and Asylum Act was the expression of the political anxiety emerged after 9/11 (the terrorist attack on New York’s twin towers in September 2001)<sup>478</sup>.

Finally, given that British citizenship law has had a very long evolution, I will only mention other acts recently adopted in order to leave more space for the description of current modes of acquisition of citizenship in the UK. Most significant acts are the Immigration, Asylum and

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<sup>472</sup> Section 1 of the British Nationality (Hong Kong) Act 1990, 26 July 1990, 1990 chapter 34.

<sup>473</sup> Section 14 of the Nationality, Immigration and Asylum Act (NIAA 2002), 7 November 2002, 2002 chapter 41.

<sup>474</sup> Section 1 of the Nationality, Immigration and Asylum Act (NIAA 2002), 7 November 2002, 2002 chapter 41.

<sup>475</sup> Section 2 of the Nationality, Immigration and Asylum Act (NIAA 2002), 7 November 2002, 2002 chapter 41.

<sup>476</sup> Section 3 of the Nationality, Immigration and Asylum Act (NIAA 2002), 7 November 2002, 2002 chapter 41.

See also Ann Dummet, *cit.*, *supra* note 422, 574.

<sup>477</sup> Section 4(2) of the Nationality, Immigration and Asylum Act (NIAA 2002), 7 November 2002, 2002 chapter 41.

<sup>478</sup> Ann Dummet, *cit.*, *supra* note 422, 575.

Nationality Act of 2006<sup>479</sup>, the British Nationality (Proof of Paternity) Regulations of 2006<sup>480</sup>, Borders, Citizenship and Immigration Act of 2009<sup>481</sup>, and Immigration and Nationality (Fees) Order of 2011<sup>482</sup>. Overall, changes of British citizenship law have been made always in association with the rules on immigration and asylum. This is confirmed by the fact that citizenship has been a political issue only in the context of immigration and has not seen a strong political confrontation on it. On the contrary, both the Labour party and the Conservative party have been in favour of and put pressure on restrictive measures when in power<sup>483</sup>. Indeed, as A. Dummett wrote: “Policy on nationality has followed a more or less continuous line regardless of which party has been in power. Both main parties have since 1962 seen nationality as instrumental in achieving the ends of immigration policy. Immigration has been the primary concern, nationality only secondary”<sup>484</sup>.

In conclusion, citizenship has become a tool of immigration policy over time due to UK’s past and the geography of the former British Empire. This dependence of citizenship legislation on land is proved also by the fact that currently British citizenship law defines six categories of citizenship: British Citizenship (BC), British Overseas Territories Citizenship (BOTC, but formerly named British Dependent territories Citizenship or BDTC), British Overseas Citizenship (BOC), British Subjects (BSs), British Protected Persons (BPPs), and British Nationals (Overseas) (BNO). Nevertheless, only British citizens have the right of abode and entry in the UK as well as the right of free movement in the European Economic Area (EEA)<sup>485</sup>. In the next paragraphs, I will take in consideration only modes of acquisition of British citizenship.

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<sup>479</sup> Immigration, Asylum and Nationality Act 2006, 30 March 2006, 2006 chapter 13.

<sup>480</sup> British Nationality (Proof of Paternity) Regulations 2006, 09 June 2006, 2006 No. 1496.

<sup>481</sup> Borders, Citizenship and Immigration Act 2009, 21 July 2009, 2009 chapter 11.

<sup>482</sup> Immigration and Nationality (Fees) Order 2011, 17 February 2011, 2011 No. 445.

<sup>483</sup> Marc Morjé Howard, *cit.*, *supra* note 424, 161.

<sup>484</sup> Ann Dummett, *cit.*, *supra* note 422, 576.

<sup>485</sup> *Ivi*, 551.

## 4.2 Acquisition of citizenship at birth

Until 1983 British citizenship could be acquired at birth only *iure soli* (birthplace was the sole determination in citizenship), while now only foundlings acquire citizenship automatically by birth in the UK or in a qualifying territory<sup>486</sup>. Besides *ius soli*, Section 1 of the 1981 British Nationality Act introduced as conditions for acquisition the parents' *status* and residence consideration, by stating that: "A person born in the United Kingdom after commencement, or in a qualifying territory on or after the appointed day, shall be a British citizen if at the time of the birth his father or mother is (a) a British citizen; or (b) settled in the United Kingdom or that territory"<sup>487</sup>. Then, the 2009 Borders, Citizenship and Immigration Act has inserted that also a person born in the UK or a qualifying territory is a British citizen if at the time of the birth his father or mother is a member of the armed forces<sup>488</sup>. In this context, what requires attention is the meaning given to the term "settled". This condition is satisfied if the parent has a permanent right of residence, but it is not if he or she has a lawful residence for 'qualified person', i.e. the parent is a worker, a job-seeker, a self-employed person, or a student<sup>489</sup>. Also the parent who is resident as a family member of a resident or qualified person does not fit in the category of "settled" persons. Yet, according to the free movements rules, after five years of lawful residence a parent becomes a permanent resident and, consequently, can pass British citizenship to the child born in the UK by registration<sup>490</sup>.

Considering acquisitions of citizenship by descent (*iure sanguinis*), British citizenship law does not make any difference between birth in or out of wedlock. In fact, since the entry into force of the 2002 Nationality, Immigration and Asylum Act in 2006, in cases of birth out of wedlock,

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<sup>486</sup> Section 1(2) of the British Nationality Act, 30 October 1981, 1981 chapter 61.

<sup>487</sup> Section 1(1) of the British Nationality Act, 30 October 1981, 1981 chapter 61.

<sup>488</sup> Section 1(1A) of the British Nationality Act, 30 October 1981, 1981 chapter 61.

<sup>489</sup> Caroline Sawyer and Helena Wray, *cit.*, *supra* note 453, 15.

<sup>490</sup> *Ivi*, 15-16.

See also Section 1(3) of the British Nationality Act, 30 October 1981, 1981 chapter 61.

acquisition *iure sanguinis* can be transmitted not only by the mother, but also by the father<sup>491</sup>. Lastly but not least, British citizenship law includes a section on ‘acquisition by descent’ which stands for the automatic acquisition of British citizenship by children born outside the United Kingdom and the qualifying territories to a British citizen. In particular, a person born abroad after the entry into force of 1981 British Nationality Act is automatically a British citizen if at the time of the birth his father or mother a) is a British citizen otherwise than by descent (e.g. because of birth in the UK or by naturalisation); or b) is a British citizen, is in public service abroad, and his or her recruitment has taken place in the UK or a qualifying territory; or c) is a British citizen, is abroad in service under a European Union institution, and his or her recruitment for that service has taken place in a EU Member State<sup>492</sup>. Thus, the automatic transmission of citizenship by descent is limited to the first generation born abroad under the above mentioned conditions. With respect to the second generation born abroad, British citizenship law provides for entitlement to registration as a British citizen if the requirements are met as explained in the following paragraphs. In general, citizenship by descent is unrestricted only for children born in the UK to British citizens. The main reason behind the introduction of *ius sanguinis* elements in a citizenship system based primarily on *ius soli* before 1983 is that citizenship has been used as a means to regulate immigration. Indeed, “the scope of British nationality has shrunk from including everyone born in a vast empire at the end of the nineteenth century to excluding even some people born in the territory of the UK itself”<sup>493</sup>. After all, the UK has never had a unified ethnic or cultural idea of citizenship which could be the foundation of a citizenship system based on the *ius sanguinis* model. In this context, the limitations on citizenship by descent for children born abroad and the unprecedented limitations on

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<sup>491</sup> Section 9 of the Nationality, Immigration and Asylum Act (NIAA 2002), 7 November 2002, 2002 chapter 41.

See also Section 50(9) and Section 50(9A) of the British Nationality Act, 30 October 1981, 1981 chapter 61.

<sup>492</sup> Section 2(1) of the British Nationality Act, 30 October 1981, 1981 chapter 61.

<sup>493</sup> Caroline Sawyer and Helena Wray, *cit.*, *supra* note 453, 4.

*ius soli* by the 1981 Act seem to confirm the desire of the British legislators to restrict the number of British citizens in the world.

### **4.3 Acquisition of citizenship after birth**

According to British citizenship law, acquisition of citizenship after birth can occur by registration or by naturalisation. Given that British nationality law has its roots in a variety of circumstances derived from the legacy of the British Empire, there is not a clear logic behind the modes of acquisition of citizenship. What has emerged in its history is that British citizenship law is intertwined with immigration and asylum. This fact has influenced both acquisitions by registration and those by naturalisation.

#### **4.3.1 Acquisition by registration**

Registration is a mode of acquisition of British citizenship by application, but only certain persons are eligible, i.e. those people with a closer connection to the UK rather than mere residence<sup>494</sup>. Moreover, registration usually derives from an entitlement to be registered as a British citizen when certain conditions are met, but in some case it includes discretion by the Secretary of State. In particular, entitlement to registration is provided for persons born in the UK while they are minors if their father or mother becomes a British citizen or settled in the UK (or becomes a member of the armed forces) and an application is made for their registration as British citizens<sup>495</sup>. Similarly, persons born in the UK have the right to register as British citizens after they have attained the age of ten years if, as regards each of the first ten years of their life, the number of days on which they were absent from the UK in that year does not exceed 90<sup>496</sup>. These two mentioned

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<sup>494</sup> Nicholas Blake, *cit.*, *supra* note 429, 700.

<sup>495</sup> Section 1(3) and Section 1(3A) of the British Nationality Act, 30 October 1981, 1981 chapter 61.

<sup>496</sup> Section 1(4) of the British Nationality Act, 30 October 1981, 1981 chapter 61.

cases regard application of the principle of *ius soli* after birth. Another relevant case is that of the second generation born abroad. Section 3(2) and 3(3) of the 1981 Act states that:

“(2) A person born outside the United Kingdom and the qualifying territories shall be entitled, on an application for his registration as a British citizen made while he is a minor, to be registered as such a citizen if the requirements specified in subsection (3) or, in the case of a person born stateless, the requirements specified in paragraphs (a) and (b) of that subsection, are fulfilled in the case of either that person’s father or his mother (“the parent in question”).

(3) The requirements referred to in subsection (2) are

(a) that the parent in question was a British citizen by descent at the time of the birth; and

(b) that the father or mother of the parent in question

(i) was a British citizen otherwise than by descent at the time of the birth of the parent in question; or

(ii) became a British citizen otherwise than by descent at commencement, or would have become such a citizen otherwise than by descent at commencement but for his or her death; and

(c) that, as regards some period of three years ending with a date not later than the date of the birth

(i) the parent in question was in the United Kingdom or a qualifying territory at the beginning of that period; and



(ii) the number of days on which the parent in question was absent from the United Kingdom and the qualifying territories in that period does not exceed 270<sup>497</sup>.

In addition, children born abroad whose parents acquired citizenship by descent but have lived in the UK for three years (in the case of each of them, the number of days on which the person in question was absent from the UK in that period does not exceed 270) are entitled to registration as British citizens while they are minors<sup>498</sup>.

Finally, there are cases provided for by the British citizenship law in which an application is made for registration as a British citizen and the registration is caused at the discretion of the Secretary of State. Indeed, if the Secretary of State thinks fit, he may cause the applicant to be registered as such a citizen. For instance, this occurs both when the application is made while the person is a minor<sup>499</sup> and when the applicant is a British Overseas Territories citizen, a British National (Overseas), a British Overseas citizen, a British subject or a British Protected Person, who has legally resided in the UK for five years without being absent for more than 450 days in that period and for more than 90 days in the last twelve months<sup>500</sup>. Then, some of the other modes of acquisition of citizenship by registration apply to British Overseas Territories citizens<sup>501</sup>, certain persons without other citizenship<sup>502</sup>, certain persons born between 1961 and 1983<sup>503</sup>, and children of members of the armed forces<sup>504</sup>. Overall, registration is a simpler mode of acquisition of British citizenship compared to naturalisation. Yet, as mentioned above, there is not a clear rationale

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<sup>497</sup> Section 3(2) and Section 3(3) of the British Nationality Act, 30 October 1981, 1981 chapter 61.

<sup>498</sup> Section 3(5) of the British Nationality Act, 30 October 1981, 1981 chapter 61.

<sup>499</sup> Section 3(1) of the British Nationality Act, 30 October 1981, 1981 chapter 61.

<sup>500</sup> Section 4 of the British Nationality Act, 30 October 1981, 1981 chapter 61.

<sup>501</sup> Section 4A of the British Nationality Act, 30 October 1981, 1981 chapter 61.

<sup>502</sup> Section 4B of the British Nationality Act, 30 October 1981, 1981 chapter 61.

<sup>503</sup> Section 4C of the British Nationality Act, 30 October 1981, 1981 chapter 61.

<sup>504</sup> Section 4D of the British Nationality Act, 30 October 1981, 1981 chapter 61.

behind these provisions regarding registration. Reasonably, registration has been introduced to allow people with a connection to the UK to become British citizens, and at the same time to limit the number of British in the world. This need to restrict British citizenship to a selective group of people is mainly due to the inheritance of the former British Empire, the lack of a clear ethnic or cultural concept of British nation, the existence of a prevailing individualism in the society, and the fear of ‘non-good’ immigration by the British governments since the aftermath of World War II.

#### **4.3.2 Acquisition by naturalisation**

Naturalisation is the principal mode of acquisition of British citizenship for immigrants and the decision to naturalise someone as a British citizen is discretionary. This means that naturalisation is not an entitlement even if all the conditions are met. Indeed, Section 6 of the 1981 British Nationality Act states that in case of application for naturalisation as a British citizen by a person of full age or a person of full age who is a spouse or the civil partner of a British citizen, if the Secretary of State is satisfied that the requirements are met by the applicant, “he may, if he thinks fit, grant to him a certificate of naturalisation as such a citizen”<sup>505</sup>. However, refusals are usually due to the failure to meet a condition or more of them, especially the ‘good character’ requirement<sup>506</sup>. The requirements for naturalisation are set out in Schedule 1 of the 1981 British Nationality Act and differ depending on whether or not the person concerned is applying on the basis of marriage or civil partnership with a British citizen. In fact, the applicants for naturalisation are divided into two categories: spouses or civil partners of a British citizen and others. In the former category, the applicant must 1) be aged 18 or over when he or she applies; 2) be married to or the civil partner of a British citizen on the date of application; 3) be of sound mind; 4) have resided in the UK for a minimum of three years before he or she applies, without being absent from

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<sup>505</sup> Section 6 of the British Nationality Act, 30 October 1981, 1981 chapter 61.

<sup>506</sup> Caroline Sawyer and Helena Wray, *cit.*, *supra* note 453, 6.

the UK in that period for more than 270 days and absent from the UK for more than 90 days in the twelve month period before making the application; 5) be not subject to any restriction under the immigration laws on the date of application; 6) have not been in breach of the immigration rules in the three year period before making the application; 7) be of good character; and 8) have sufficient knowledge of the English, Welsh or Scottish Gaelic language as well as life in the UK<sup>507</sup>. With respect to the other category, those applicants who are not married with a British citizen must meet the mentioned requirements with some differences regarding the residence period (five years). In detail, they must meet these different following conditions: a) being a resident in the UK for a minimum of five years before the date of application, without being absent from the UK for more than 450 days in the five year period and absent from the UK for no more than 90 days in the twelve month period before making the application; b) having either the intention to make his principal home in the UK or the intention to enter into, or continue in, Crown service under the government of the UK, or service under an international organisation of which the UK or Her Majesty's government therein is a member, or service in the employment of a company or association established in the UK<sup>508</sup>.

After this long list of requirements, I will briefly focus on those concerning the residence, the language and civic knowledge, and the applicant's 'good character'. First, under British citizenship law the residence period for spouses is inferior (three years) compared to that of the other applicants (five years), but under the immigration rules the indefinite leave for spouses (a prerequisite for naturalisation) can be obtained from two to five years since July 2012<sup>509</sup>. In this way, the period of residence for spouses is *de facto* increased. Second, looking at the knowledge of

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<sup>507</sup> Schedule 1 of the British Nationality Act, 30 October 1981, 1981 chapter 61. The 'good character clause' as well as the language and civic knowledge have been inserted by Section 2 of the Nationality, Immigration and Asylum Act (NIAA 2002), 7 November 2002, 2002 chapter 41.

<sup>508</sup> Schedule 1 of the British Nationality Act, 30 October 1981, 1981 chapter 61.

<sup>509</sup> Helena Wray, *EUDO Citizenship Observatory – Naturalisation Procedures for Immigrants: United Kingdom*, (2013), 1.

language and life in the UK (the KoLL requirement), applicants must meet it in order to be naturalise as well as to obtain a indefinite leave to remain. Therefore, many immigrants meet this requirement at the settlement stage, while those who settled prior to 2 April 2007 or who were exempted from the requirement after that date have to meet the KoLL requirement at the naturalisation stage<sup>510</sup>. Moreover, before 28 October 2013 the KoLL requirement could be satisfied either by passing the Life in the UK test<sup>511</sup> or by obtaining a speaking and listening qualification in English for Speakers of Other Languages (ESOL) at Entry levels 1, 2 or 3. In this second case, the applicant must have taken a course of study which includes teaching materials based on citizenship at an accredited institution and have progressed from one ESOL level to the next<sup>512</sup>. Differently, since 28 October 2013 applicants have both to pass the Life in the UK test and to obtain a speaking and listening qualification in English at B1 on the Common European Framework of Reference for languages (CEFR) or an equivalent level qualification<sup>513</sup>. In this context, given that minors are not eligible for naturalisation, the only exceptions are provided for those who are aged 65 or over or who are unable to communicate or take the Life in the UK test due to their physical or mental condition<sup>514</sup>. Overall, to understand the meaning of the KoLL requirement for naturalisation, the Home Office has specified that: “Citizenship is a privilege and not a right. The Government expects that all those wishing to become British citizens should demonstrate their commitment by learning

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<sup>510</sup> *Ivi*, 2.

<sup>511</sup> The Life in the UK test is a computer-based, multiple choice test. All information is available online. There are even some free sample questions and a sample online test. Yet, questions are based on official handbooks. Since 25 March 2013, the test has been based on the official handbook “Life in the United Kingdom: A Guide for New Residents”. Moreover, the fee for the test is £50 and must be paid each time the test is taken.

See [www.gov.uk/life-in-the-uk-test/overview](http://www.gov.uk/life-in-the-uk-test/overview)

<sup>512</sup> Knowledge of language and life in the UK for settlement and naturalisation - Statement of Intent, changes to the requirement from October 2013, Home Office, (2013), 3, available at [www.gov.uk](http://www.gov.uk)

<sup>513</sup> *Ivi*, 5.

<sup>514</sup> *Ivi*, 8.

See also Schedule 1 of the British Nationality Act, 30 October 1981, 1981 chapter 61. The Secretary of State may waive the need to fulfil the language and civic requirement if he considers that because of the applicant’s age or physical or mental condition it would be unreasonable to expect him to fulfil one or both of these requirements.

English and have an understanding of British history, culture and traditions”<sup>515</sup>. Last but not least, in order to meet the ‘good character’ requirement, the applicant must show respect for the rights and freedoms in the UK, observe its laws, and fulfil duties as a resident of the UK. Thus, the applicant must be honest and provide all information about criminal convictions (both within the UK and abroad), any cautions, warnings or reprimands received, involvement in terrorism, and even drink driving offences<sup>516</sup>. However, there is not an exhaustive statutory guidance regarding the ‘good character’ requirement and, consequently, decisions about it are at the discretion of the Secretary of State. It is exactly due to this discretion and the rigid interpretation of the ‘good character’ requirements that applications are rejected. Indeed, the failure to meet the ‘good character’ requirement was the first reason for refusal of naturalisation applications in 2012 (37% of all refusals), followed by 32% of refusals because of residence, and only 2% of refusals because of an insufficient language and civic knowledge<sup>517</sup>.

Looking at the naturalisation procedure, foreigners can make their application in the UK in three ways, i.e. through the Nationality Checking Service, through an agent or representative, or directly to the UK Border Agency in Liverpool, while if they are outside the UK, they can apply to a diplomatic post<sup>518</sup>. Despite there is a fee for the Nationality Checking Service which varies (usually around £50 to £60 for a single application) given that the service is administered by local authorities, about 50% of applications are made through it<sup>519</sup>. The use of this service presents two advantages after the delivery of the application by the person concerned to the competent local authorities: first, these authorities check the application and copy documents before submitting the

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<sup>515</sup> *Ibidem*

<sup>516</sup> Guide AN: Naturalisation as a British citizen – A guide for applicants, Home Office, (2014), 8, available at [www.gov.uk](http://www.gov.uk)

<sup>517</sup> Scott Blinder, *Naturalisation as a British Citizen: Concepts and Trends*, The Migration Observatory, 8, available at [www.migrationobservatory.ox.ac.uk](http://www.migrationobservatory.ox.ac.uk)

<sup>518</sup> Helena Wray, *cit.*, *supra* note 509, 4.

<sup>519</sup> *Ibidem*

application to UK Border Agency (UKBA), reducing the number of refused applications (2% instead of 10%); second, the applicant can retain the original documents, such as passports, for the duration of the application process unless they are requested<sup>520</sup>. Therefore, in case of application through the Nationality Checking Service as well as an agent or representative, they check and ensure that the basic requirements, such as age, residence, marriage *status*, and immigration *status*, have been met by the applicant. Differently, if the application has been submitted directly to the UKBA, it is the UKBA itself that makes all checks<sup>521</sup>. In general, officials in UKBA have to check the discretionary requirements and they may request more information from the applicant who has three weeks to respond. In case of no response, it is likely that the application based on available documents will be refused. Yet, UKBA officials carry out checks on information also through consultation of other bodies, such as the Criminal Records Bureau, the HMRC (taxation authorities), the Insolvency Service, educational establishments, Department of Work and Pensions, employers, and social services<sup>522</sup>. Finally, the naturalisation procedure ends with a citizenship ceremony. In fact, a certificate of naturalisation as a British citizen is not granted to the applicant unless he or she has made the relevant citizenship oath and pledge at a citizenship ceremony, where attendance is compulsory except when the requirement is waived by Secretary of State due to the special circumstances of a case<sup>523</sup>.

In addition, British naturalisation procedure is enough expensive and fees have been increased over time: first of all, until 6 April 2012 the fee for naturalisation was £756 for a single application and £1,134 for a joint application, while after that date it became £771 and £1,157 respectively<sup>524</sup>; secondly, there are additional fees, such as £80 for participation at the citizenship

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<sup>520</sup> *Ibidem*

<sup>521</sup> *Ibidem*

<sup>522</sup> *Ivi*, 5.

<sup>523</sup> Section 42 of the British Nationality Act, 30 October 1981, 1981 chapter 61. This section was amended by Schedule 1, Part 1, Section 3 of the Nationality, Immigration and Asylum Act (NIAA 2002), 7 November 2002, 2002 chapter 41.

<sup>524</sup> Immigration and Nationality (Fees) Regulations 2012, 27 March 2012, 2012 No. 971 (into force on 6 April 2012).

ceremony, £50 for taking the Life in the UK test, as well as other costs for language courses and certificates, medical evidence, or the optional Nationality Checking Service; finally, there is no reduction for refugees and no exemptions for those who cannot afford the fee<sup>525</sup>. Nonetheless, in case of refusal of the application, there is no right of appeal because the naturalisation procedure is discretionary. There is the possibility of an administrative review by a different official of the UKBA upon application of the person concerned, but this operation has a fee of £80, which is refunded if the initial decision was incorrect and changed<sup>526</sup>. Yet, despite it is rarely successful due to the high costs and the discretionary nature of the decision on naturalisation, “the only way to obtain judicial oversight is to apply for judicial review of the decision by the High Court on the grounds of illegality, irrationality, procedural impropriety or breach of human rights and/or proportionality”<sup>527</sup>.

Overall, even though British citizenship law provides for several barriers to naturalisation, such as the ‘good character’ requirement, knowledge of the language and the life in the UK, and expensive fees, rates of naturalisation rose over time: acquisitions by naturalisation were 194,344 in 2012, while 177,878 in 2011<sup>528</sup>. After low number of naturalisations between 1995 and 1999 with an annual average of 45,886 naturalisations, this number has increased first in the period 2000-2004 with an average of 114,284 naturalisations per year and then from 2006 to 2010 with a five year

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Immigration and Nationality (Fees) Regulations 2011, 1 April 2011, 2011 No. 1055 (into force on 6 April 2011).

See also Immigration and Nationality (Fees) Order 2011, 17 February 2011, 2011 No. 445. The explanatory note states that “This Order, made under sections 51(1) and (2) and 52(1) of the Immigration, Asylum and Nationality Act 2006 (“the 2006 Act”), enables the Secretary of State to both set fees for applications related to immigration or nationality and to charge for the provision of services or processes related to immigration or nationality. Once this Order comes into force the Secretary of State will be able to make regulations under section 51(3) of the 2006 Act setting out the relevant fees and charges”.

<sup>525</sup> Helena Wray, *cit.*, *supra* note 509, 8.

<sup>526</sup> *Ivi*, 9.

<sup>527</sup> *Ibidem*

<sup>528</sup> Scott Blinder, *Naturalisation as a British Citizen: Concepts and Trends*, The Migration Observatory, 3, available at [www.migrationobservatory.ox.ac.uk](http://www.migrationobservatory.ox.ac.uk)

In this briefing, registrations are included in the number of naturalisations.

average of 169,373<sup>529</sup>. In particular, it seems that the language and civic requirements have not affected the increasing naturalisation trend, but at the same time it cannot be excluded that they may have deterred applications of poorer and less-educated foreigners. Finally, the largest group of those naturalising in 2012 were from India (15%), Pakistan (9%), Nigeria (5%), and then Philippines, China and South Africa (4%)<sup>530</sup>.

To sum up, British citizenship law encompasses both *ius soli* and *ius sanguinis* elements in modes of acquisition of citizenship since 1983. As mentioned above, it provides for six types of legal citizenship, but only British citizenship confers the right of abode in the UK and the freedom of movement in the European Economic Area. As a result, in this dissertation, I focused only on modes of acquisition of British citizenship. However, it is evident that the complexity of British citizenship law derives from several intertwined reasons: the lack of a clear idea of British nation, the existence of a common law system, the legacy of the former British Empire, the failure to deal with different citizenships when it ended, and the government's concern about immigration since 1945. Indeed, British citizenship law has been used as a tool for or in conjunction with immigration policy in order to restrict the number of British citizens in the world and to limit it to a number of people with real connection with the British territory and culture. In conclusion, even if naturalisation of foreigners as British citizens has been made more difficult and expensive over time, British citizenship law remains one of the most liberal and inclusive citizenship law on the European stage.

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<sup>529</sup> *Ibidem*

<sup>530</sup> *Ivi*, 5.



### **III. CONVERGENCES IN EUROPE AND THE ITALIAN REFORM**

## **CHAPTER 1**

### **Convergent trends in Europe**

#### **1.1 Convergences between France, Germany, Italy, and the United Kingdom**

In this dissertation the comparative study on citizenship has been focused on four European countries, specifically France, Germany, Italy, and the United Kingdom (UK). It has been projected as such to provide a better understanding of the modes of acquisition of citizenship within these selected States because they have faced similar issues concerning citizenship in spite of their different history. Thus, after the country analyses, it is now possible to point out similarities and differences between them and to question whether convergent trends exist in Europe. What emerges is that on one hand, no one of these countries presented a similar starting point for the regulation of citizenship as the legal relationship between an individual and the State; on the other hand, they all have responded to the need of reforming their citizenship laws on the basis of historical circumstances, moving towards a process of convergence in the last thirty years.

Yet, the existence of convergent trends regarding citizenship does not mean that there is a common pattern for modes of acquisition of citizenship. There is still a large degree of diversity between countries, and each State provides for specific modes of acquisition even in the recent

process of convergence<sup>531</sup>. Thanks to comparative studies, it has been demonstrated that: “there is no overall ‘European model’ of citizenship legislation, nor is it immediately possible to group several countries into internally coherent clusters with similar citizenship regimes”<sup>532</sup>. There are two main reasons behind this diversity: the history and the exclusive competence of the States. First of all, citizenship laws have been affected by the particular history of the States and their nation-building which diverge sharply compared to other geographic regions<sup>533</sup>. No one of the analysed countries has a similar historical background which inevitably is at the roots of citizenship laws. In fact, citizenship laws are deeply conditional on the history of each country. For example, French citizenship law has been influenced by the French Revolution and the casualties in the two world wars, while German citizenship law has been shaped by German unification and the Nazi regime. Similarly, the imprint of Italian citizenship law traces back to the late birth of Italy as a Nation-State and the phenomenon of mass emigration in the XX century, whereas British citizenship law has been marked by the former imperial experience of the UK. Secondly, citizenship has remained a policy domain under the exclusive competence of the States, even after the political integration in the European Union. This is reasonable if one considers that both the maintenance of national sovereignty on the relationship between the individuals and the State as well as national identities are matters of importance in this context. On one hand, loosening or in extreme losing States’ competence in the determination of who is and how someone becomes a citizen would mean the loss of national sovereignty. On the other hand, besides sovereignty, a State would not exist without

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<sup>531</sup> Maarten P. Vink and Gerard-René de Groot, “Citizenship Attribution in Western Europe: International Framework and Domestic Trends,” *Journal of Ethnic and Migration Studies* 36, no. 5 (May 2010): 730.

<sup>532</sup> Rainer Bauböck, Eva Ersbøll, Kees Groenendijk and Harald Waldrauch, “Introduction,” in *Acquisition and Loss of Nationality: Policies and Trends in 15 European Countries, Vol.1: Comparative Analyses*, ed. Rainer Bauböck, Eva Ersbøll, Kees Groenendijk and Harald Waldrauch (Amsterdam: Amsterdam University Press, 2006), 20.

<sup>533</sup> *Ivi*, 20-21.

its population and citizenship represents not only the legal relationship between the State and an individual, but also the personal identity of people<sup>534</sup>.

Moreover, it was migration that has led States to modify their citizenship laws in a similar way. France, Germany, Italy, and the UK had experienced migration waves in different moments and under different circumstances. For that reason, even the perception of migration diverges between them. For instance, in France immigration was first encouraged in order to face demographic lacks after wars in the XX century and then the source of xenophobic attitude, especially due to economic reasons. On the contrary, Italy is the country that has paid more attention to emigration rather than to immigration since the beginning of the XX century and above all in 1992 when it adopted Act 91/92. Obviously, also security reasons have influenced modes of acquisition of citizenship by immigrants. An example is given by the restrictive measures made in the UK through the mentioned 2002 Nationality, Immigration, and Asylum Act (NIAA 2002) which was adopted after the terrorist attack of 9/11 in New York. Thus, since States had experienced immigration and had faced problems related to immigrants, they started to conceive themselves as immigration countries. As such, they have decided to reform their citizenship laws. Differently, Italy has changed its citizenship law considering itself as an emigration country. Only recently Italy has acknowledged being an immigration country and, as a consequence, a reform of Italian citizenship law should be adopted in the near future as shown in the second part of this chapter.

Finally, citizenship has been subject to instrumentalisation and politicisation because of its connection with immigration<sup>535</sup>. In the former case, citizenship has been considered as a means to achieve integration of immigrants, such as in France and Germany, or to regulate or even limit immigration, such as in the UK after the dismantling of the British Empire. Contrarily, through politicisation, citizenship has been perceived as an identity *status* that can be acquired or granted

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<sup>534</sup> See Part I, Chapter 1, par. 1.3 of this dissertation.

<sup>535</sup> Maarten P. Vink and Gerard-René de Groot, *cit.*, *supra* note 531, 714.

only after integration of immigrants has already occurred, such as in the UK. However, these perceptions of citizenship as a means to or as an end of integration have shaped the reforms of citizenship law up today and are still central in the political debates as well as in the doctrine. Even liberalising and restrictive measures included in citizenship laws are justified by the idea of citizenship as an instrument or as an end of integration respectively. This is why reforms of citizenship laws have had mixed effect, such as German reform of 2000 which introduced not only acquisition of citizenship *iure soli* for second generation of immigrants (a liberalising measure), but also the ‘optional model’, i.e. the renunciation of their previous citizenship by the age of twenty-three (a restrictive measure wanted by domestic opposition)<sup>536</sup>.

Therefore, on the basis of current French, German, Italian, and British citizenship laws, the picture that emerges is still uncertain, but it is in search of a quite difficult equilibrium between the State’s heritage, i.e. its history and tradition, and the most recent phenomena, in particular immigration and the European integration<sup>537</sup>. Although it is difficult to generalise because each State has different migration experiences and specific modes of acquisition of citizenship, six broad trends in citizenship laws of Western countries since 1980s, as indicated by M. P. Vink and G.-R. de Groot<sup>538</sup>: 1) the extension of *ius sanguinis* through equal treatment of men and women in citizenship matters; 2) the development of mixed models of citizenship with both *ius sanguinis* and *ius soli* elements; 3) the increasing acceptance of multiple citizenship; 4) the introduction of language and integration requirements in naturalisation procedures; 5) the avoidance of statelessness; and 6) the increasing relevance of EU citizenship.

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<sup>536</sup> *Ivi*, 715.

See also Part II, Chapter 2, par. 2.1.3 and par. 2.2 of this dissertation.

<sup>537</sup> Laura Montanari, “La cittadinanza in Europa: alcune riflessioni sugli sviluppi più recenti,” in *Studi in onore di Aldo Loiodice, Vol.I*, ed. Cacucci (Bari: Cacucci, 2012), 867-868.

<sup>538</sup> Maarten P. Vink and Gerard-René de Groot, *cit.*, *supra* note 531, 715-716.

### 1.1.1 Extension of *ius sanguinis*

Gender equality in transmission of citizenship, i.e. by not only the father but also the mother, has been achieved over time in all four States analysed. In particular, equal treatment between men and women in transmission of citizenship *iure sanguinis* has been established in 1945 in France, in 1975 in Germany, and in 1983 in Italy and in the UK<sup>539</sup> (see table 3 below). In the 1990s, equal treatment of fathers and mothers has been extended to children born out of wedlock (after the establishment of paternity), children adopted (after registration of the act of adoption), and children born abroad. In case of birth abroad, there are some limitations of transmission by descent in Germany and in the UK. In fact, Germany and the UK limit the automatic acquisition of citizenship *iure sanguinis* to the first generation born abroad under certain conditions, while allow acquisition of citizenship by second-generation born abroad only if their parents register them within one year after birth.

**Table 3:** Transmission of citizenship *iure sanguinis a patre et a matre*

State	Year of introduction	Legal reference	Conditions for children born abroad
France	1945	18 Civil Code	_ (unrestricted transmission of citizenship)
Germany	1975	4(1); 4(4) Nationality Act	Second generation born abroad ( if the German parent is also born abroad and resides there): acquisition of citizenship only through registration within 1 year after birth of the child (unless the child would otherwise become stateless)
Italy	1983	1(1a) Act 91/92	_ (unrestricted transmission of citizenship)
UK	1983	1(1a); 2; 3 British Nationality Act	First generation born abroad: automatic acquisition if a) the British parent is a citizen otherwise than by descent or b) is a British citizen working abroad in public service. Second generation born abroad: if the parent is not born in the UK (or if the child would otherwise become stateless), acquisition after registration within 1 year after birth of the child (further conditions under Art 3 must be fulfilled)

<sup>539</sup> Maarten P. Vink and Gerard-René de Groot, *EUDO Citizenship Observatory – Birthright Citizenship: Trends and Regulations in Europe*, (2010), 6-7.

### 1.1.2 Development of mixed models<sup>540</sup> of citizenship

One of the most significant trends in the European scenario is the development of mixed models of citizenship including both *ius soli* and *ius sanguinis* elements. This mixture has taken place in recent times mostly through the introduction or extension of *ius soli* in traditional *ius sanguinis* countries and, residually, through the limitation of *ius soli* in traditional *ius soli* countries. These measures have been adopted when States started to concern about immigration as a permanent phenomenon. The introduction or extension of *ius soli* in citizenship model based on *ius sanguinis* reflects exactly the intent to avoid that second- and third-generations of immigrants are aliens in the territory where they are born and grown up. *Ius soli* principle gives the opportunity to be included in the country of birth, either at birth or after birth. With respect to the States analysed, France introduced the *ius soli* principle as the criterion for the acquisition of citizenship for the first time in 1851, by providing for double *ius soli*. Then, since 1889 French citizenship law has included both double *ius soli* for third generations of immigrants and simple *ius soli* for second generations of immigrants. Looking more closely at double *ius soli*, children born in France whose parent(s) was (were) also born there acquire French citizenship automatically at birth. Differently, second generations of immigrants acquire French citizenship automatically when they reach the age of majority or by their declaration from the age of sixteen as well as by declaration of their parents since the age of thirteen if residence conditions are fulfilled<sup>541</sup> (see table 4 below).

Yet, one of the most remarkable cases of introduction of *ius soli* elements in a traditional *ius sanguinis* country is represented by the German reform of 1999 (entered into force in 2000). This reform established *ius soli* at birth. Children born in Germany to foreigners acquire German citizenship automatically at birth if one parent has been resident in Germany for eight years and has

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<sup>540</sup> The expression “mixed models” has been used in this dissertation to refer to models of citizenship which include both *ius sanguinis* and *ius soli* provisions.

<sup>541</sup> *Ivi*, 27.

See also Part II, Chapter 1, par. 1.2 and par. 1.3.1 of this dissertation for details about French citizenship law.

been granted a permanent right to stay or is a citizen of Switzerland with a residence permit<sup>542</sup>. Actually, acquisition of German citizenship *iure soli* by second generation of immigrants is conditional on certain residence requirements that must be met by the parents at the birth of their child since 2004. In line with the idea of citizenship as an identity *status*, these residence requirements along the required renunciation of another citizenship acquired *iure sanguinis* before the age of twenty-three have restricted the application of *ius soli* provisions in Germany<sup>543</sup>.

On the contrary, Italy has not introduced provisions on acquisition *iure soli* at birth for second generations of immigrants yet. Italian citizenship law provided for *ius soli* after birth which has been subject to restrictions (legal and uninterrupted residence since birth) since 1992<sup>544</sup>. Precisely, children born in Italy to foreign parents become citizens by declaration within one year after having attained the age of majority if the person concerned has been continuously resident in Italy since birth. However, Italian citizenship law includes also a facilitated naturalisation (three years of residence instead of ten) for persons born in Italy<sup>545</sup>.

Finally, changes in British citizenship law in 1981 confirm that not only traditional *ius sanguinis* countries, but also traditional *ius soli* countries are moving towards mixed citizenship models. Indeed, the UK has restricted *ius soli* at birth by introducing a *ius sanguinis* condition (at least one parent must be British). Alternatively, if the parents are not British, children born in the UK acquire citizenship if one of their parents meets the residence requirements, i.e. being settled in the UK. Regarding acquisition of citizenship *iure soli* after birth in the UK, entitlement to registration is provided for persons born in the UK while they are minors if their father or mother

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<sup>542</sup> See Part II, Chapter 2, par. 2.2 of this dissertation for details about German citizenship law.

<sup>543</sup> Maarten P. Vink and Gerard-René de Groot, *cit.*, *supra* note 531, 718.

<sup>544</sup> *Ivi*, 720.

<sup>545</sup> Maarten P. Vink and Gerard-René de Groot, *cit.*, *supra* note 539, 28.

See also Part II, Chapter 3, par. 3.3.2 and 3.3.3 of this dissertation for details about Italian citizenship law.



becomes a British citizen or settled in the UK as well as for persons born in the UK since the age of ten years under certain conditions<sup>546</sup> (see table 4 below).

**Table 4:** Acquisition of citizenship *iure soli* at birth and after birth

State	<i>Ius soli</i> at birth			<i>Ius soli</i> after birth		
	Legal reference	Procedure	Conditions	Legal reference	Procedure	Conditions
France	19-3 Civil Code	Automatic	If one parent is born in France	21-7 Civil Code	Automatic	At age of 18: if 5 years of residence since age of 11
				21-11 Civil Code	Declaration (himself)	At age of 16-18: if 5 years of residence since age of 11
					Declaration (parents)	At age of 13: if 5 years of residence since age of 8
Germany	4(3) Nationality Act	Automatic	If one parent has habitual residence in Germany for 8 years and has permanent residence right; Renunciation of descent-based citizenship from 18-23 years old (Except EU citizens and Switzerland citizens)	–	–	–
Italy	–	–	–	4(2) Act 91/92	Declaration	At age of 18 within one year: if uninterrupted residence in Italy since birth
				9(1a) Act 91/92	Naturalisation	From age of 18: if 3 years of residence

<sup>546</sup> See Part II, Chapter 4, par. 4.2 and 4.3.1 of this dissertation for details about British citizenship law.

UK	1(1b) British Nationality Act	Automatic	If one parent is a British citizen; or has permanent residence in the UK	1(3) British Nationality Act	Entitlement to registration	Before the age of 18: if one parent becomes a British citizen or settled in the UK
				1(4) British Nationality Act	Entitlement to registration	From age of 10: if residence in UK since birth (no more than 90 days of absence during each year)

### 1.1.3 Increasing acceptance of multiple citizenship

Another considerable trend in Europe is the increasing acceptance of multiple citizenship which is undermining the validity of the 1963 Strasbourg Convention<sup>547</sup>. After the introduction of equal treatment of men and women in citizenship laws, especially through mixed marriages and the transmission of citizenship *iure sanguinis a padre et a madre*, multiple citizenship has become subject to debates in several States<sup>548</sup>. With regard to the countries examined, the UK has never limited multiple citizenship except between 1870 and 1948. In fact, in 1971 the UK made a declaration in the ratification of the 1963 Strasbourg Convention, affirming that UK would not be bound by citizenship provisions of that convention<sup>549</sup>. Differently, Germany, France, and Italy were

<sup>547</sup> Maarten P. Vink and Gerard-René de Groot, *cit.*, *supra* note 531, 723.

See also Council of Europe, *Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality*, May 6, 1963, Council of Europe Treaty Series (CETS), CETS no. 043, available at [conventions.coe.int](http://conventions.coe.int). It was open for signatures on 6 May 1963 in Strasbourg and entered into force on 28 March 1968. States were bound by the citizenship provisions of Chapter I. In particular, Art 1(1) of the Convention states: “Nationals of the Contracting Parties who are of full age and who acquire of their own free will, by means of naturalisation, option or recovery, the nationality of another Party shall lose their former nationality. They shall not be authorised to retain their former nationality”.

<sup>548</sup> *Ibidem*

<sup>549</sup> Council of Europe, *Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality*, May 6, 1963, Council of Europe Treaty Series (CETS), CETS no. 043. See List of declarations, reservations and other communications, available at [conventions.coe.int](http://conventions.coe.int).

originally bound by these provisions under Chapter I<sup>550</sup>. Yet, in 2001 Germany denounced the 1963 Strasbourg Convention, whereas France denounced Chapter I in 2008 and Italy one year later<sup>551</sup>. More generally, increasing acceptance of multiple citizenship can be noticed in two trends: 1) the abolition or restriction of automatic loss of one's citizenship in case of voluntary acquisition of other citizenship or permanent residence abroad, and 2) the abolition or moderation of renunciation of previous citizenship in naturalisation procedures<sup>552</sup>. This latter trend can be found in Italian and German citizenship laws with some differences: while Italy deleted renunciation of the citizenship of origin as a requirement for naturalisation in 1992, Germany provides for this condition for naturalisation as a German citizenship (2000 reform) even though in a moderate way, i.e. by including some exceptions in 2007<sup>553</sup>.

#### 1.1.4 Language and integration requirements in naturalisation procedures

With respect to material and procedural requirements for naturalisation, the trend is mixed because it includes both liberalising and restrictive changes<sup>554</sup>. This dual trend has occurred given that citizenship is *de facto* considered both a means to and an end of integration of first generation of immigrants. I will clarify this consideration through examples of both liberalising and restrictive measures adopted recently in citizenship laws. On one hand, liberalising provisions, such as reduction of the required years of residence, are aimed at facilitating naturalisation and, consequently, integration of immigrants so that they do not remain aliens where they permanently

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<sup>550</sup> *Ibidem*

France, Germany, and Italy ratified the 1963 Convention in 1965, 1969, and 1968 respectively. It entered into force in 1968 in France and Italy, while in 1969 in Germany.

<sup>551</sup> *Ibidem*

<sup>552</sup> Maarten P. Vink and Gerard-René de Groot, *cit.*, *supra* note 531, 715.

<sup>553</sup> *Ivi*, 722.

See also Act on Implementation of the Directives of the European Union with regard to residence and asylum law, 19 August 2007, Federal Law Gazette, vol. I, p. 1970.

<sup>554</sup> Maarten P. Vink and Gerard-René de Groot, *cit.*, *supra* note 531, 725.

live and are not excluded from the community life within the State. After all, it is the concept of citizenship itself that entails simultaneously inclusion of citizens and exclusion of non-citizens. On the other hand, restrictive measures, such as the introduction or the tightening of language and integration requirements, ensure that the naturalised citizens is enough integrated in the country concerned so that they are able to communicate and participate in the political community. At the moment, this mixed effect is the result of mediation between the need to integrate immigrants in the society by easing access to citizenship, and the need to guarantee that they are able to understand the language, enjoy their rights as well as fulfil their obligations as citizens of the State in which they have chosen to live.

Looking at the States analysed, only France, Germany, and the UK present clear examples of this mixed trend because of recent reforms. On the contrary, Italy has an outdated citizenship law whose reform has been discussed without success in previous years, but recently has been taken again into account by the current XVII legislature. Apart this, I will focus below on similarities and differences among these four States with respect to the following material and procedural requirements in naturalisation procedures: years of residence, language, knowledge about the country, and ceremonies (see table 5 below).

First of all, both France and the UK require five years of residence for naturalisation under their citizenship laws. However, French citizenship law provides for reductions from five to two years of residence for certain categories of people who are already integrated in the society because, for example, they have successfully completed two years of university education in view of getting a diploma conferred by a French university or an institute of higher education, or they have demonstrated a peculiar integration process with respect to their activities in the civic, scientific, economic, cultural or sportive fields. Then, in line with the idea of integration already reached by the applicants, there are also exemptions of the residence requirement for certain categories of people, such as foreigners who did military service in the French army and persons who come from

a country in which French is the official language or one of these ones, either if French is their mother tongue or if they prove school attendance of at least five years at an institution teaching in French. Yet, an outstanding change concerning residence requirements occurred in Germany which reduced the number of years required for naturalisation from fifteen to eight in 2000. Obviously, reduction of the years of residence is a liberalising measure. Differently, in 1992 Italy has increased this period from 5 to 10 years for non-EU citizens, while has reduced it from five to three for persons of Italian descent (to two years in case of minors) and to four years for EU citizens. This reduction is in line with Italy's heritage and its family-oriented logic.

Secondly, these States, except Italy<sup>555</sup>, have recently adopted obligatory language and integration requirements in naturalisation procedures. To this regard, until 2011 French authorities undertook interviews of applicants in order to assess their assimilation into the French community on the basis of their knowledge of the French language and that of the French history, culture, and society as well as the rights and duties attached to French citizenship and acceptance of essential principles and values of the Republic. Since 2012, applicants must provide a linguistic diploma, awarded by an institution accredited by the French State which certifies the B1 level in the Common European Framework of Reference for Language (CEFR) and they have to sign the charter of rights and duties of the French citizen during the interviews about their integration. In a similar way, Germany requires knowledge of the German language by providing a certificate at level B1 in the CEFR, and knowledge of the legal system, society, and living conditions in Germany by passing the naturalisation test (at least 17 correct answers out of 33 questions chosen from a catalogue of 310 ones available online). Lastly but not least, also the British citizenship law provides for language and integration requirements. In fact, since 2006 (entry into force of the Nationality, Immigration and Asylum Act of 2002) naturalisation applicants must demonstrate a

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<sup>555</sup> Language and integration requirements have been included in the bills which aim at reforming current Italian citizenship law (Act 91/92). See paragraph 7.2.3 below.

sufficient knowledge of the language and life in the UK (the KoLL requirement). In particular, a last change concerning the KoLL requirement has recently occurred: until 28 October 2013 applicants could satisfy it either by passing the Life in the UK test (a multiple choice test based on questions of an official handbook) or by obtaining a speaking and listening qualification in English for Speakers of Other Languages (ESOL), while since 28 October 2013 applicants have both to pass the Life in the UK test and to obtain a speaking and listening qualification in English at B1 level in the CEFR or an equivalent level qualification. Overall, both German and British integration tests are easy to pass studying the questions available online and on handbooks, even if they may deter poorer and less-educated foreigners not to apply for naturalisation. These requirements have been introduced to assess integration of immigrants in France, Germany and the UK, whereas in Italy “residence is used as the main criterion for deducing integration”<sup>556</sup>.

In conclusion, this emphasis on the importance of integration shows that citizenship is regarded not only as a means, but also as the end of integration. Nevertheless, a further confirmation of the dual meaning of citizenship can be found in the introduction of a ceremony at the end of the naturalisation procedure. Ceremonies are symbolic event for ‘new citizens’, in which participation is either voluntary or compulsory. Naturalised persons demonstrate their integration during ceremonies given that they are willing to take an oath and commit themselves to the democratic values and civic duties of the State concerned. Simultaneously, ceremonies can be considered the symbolic moment of the new-birth of the immigrant as citizen ready to be fully integrated in the society. As a consequence, citizenship ceremonies are both the end of a partial integration (through years of residence in the country, knowledge of the language, and knowledge of the State’s history and culture) and the beginning of a full integration as a member of the society. Regarding the States analysed, only the UK and France include provisions on citizenship ceremony

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<sup>556</sup> Betty De Hart and Ricky Van Oers, “European trends in nationality law,” in *Acquisition and Loss of Nationality: Policies and Trends in 15 European Countries, Vol.1: Comparative Analyses*, ed. Rainer Bauböck, Eva Ersbøll, Kees Groenendijk and Harald Waldrauch (Amsterdam: Amsterdam University Press, 2006), 324.

in their citizenship laws. The UK introduced the mandatory citizenship ceremony as a requirement for naturalisation in 2002. Indeed, a certificate of naturalisation is conferred to the applicant only after his or her oath of allegiance in the ceremony, which starts with a speech on what it means to become a British citizen and ends with the singing of the British National Anthem<sup>557</sup>. Following the British example, in 2006 France introduced the citizenship ceremony in its citizenship law, but contrary to the British case, participation in this ceremony is voluntary.

**Table 5:** Material and procedural requirements in naturalisation procedures

State	Years of residence	Language	Integration / Knowledge about the country	Ceremony
France	5	Certificate B1 level (CEFR) (before 2012: interview)	Signature of charter of rights and duties of the French citizen (2012); Interview	Voluntary (2006)
Germany	8 (before 2000: 15)	Certificate B1 level (CEFR) (before 2007: interview)	Test: questions available online; 17 correct answers out of 33 questions (2008)	
Italy	10 for non-EU citizens (before 1992: 5); 4 for EU citizens (before 1992: 5); 3 persons of Italian descent (before 1992: 5); 5 for refugees and stateless persons.	–	–	–
UK	5	Certificate B1 level (CEFR) or an equivalent level qualification (before 28 October 2013: ESOL courses)	Life in the UK Test: a multiple choice test based on questions of an official handbook + questions available online (2002)	Compulsory (2002)

<sup>557</sup> Maarten P. Vink and Gerard-René de Groot, *cit.*, *supra* note 531, 726.

### 1.1.5 Avoidance of statelessness

Another trend emerging from the country analyses regards statelessness which is an undesirable phenomenon within the international State system<sup>558</sup>. In fact, apart from international and European legal norms which aim at avoiding it, such as the 1948 Universal Declaration of Human Rights (Art 15(1))<sup>559</sup>, the 1961 Convention on the Reduction of Statelessness (Art 1)<sup>560</sup>, the 1997 European Convention on Nationality (Art 6(2))<sup>561</sup>, and the 2006 Convention on the Avoidance of Statelessness in Relation to State Succession (Art 3)<sup>562</sup>, also States have taken into consideration statelessness in their citizenship laws<sup>563</sup>. However, the States analysed provide for similar limitations in modes of acquisition of citizenship for persons who would otherwise be stateless. For

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<sup>558</sup> Maarten P. Vink and Gerard-René de Groot, *cit.*, *supra* note 531, 728.

<sup>559</sup> Art 15(1) of the Universal Declaration of Human Rights. United Nations, *Universal Declaration of Human Rights*, December 10, 1948. It was adopted by the United Nations General Assembly on 10 December 1948 in Paris. Art 15(1) states: “Everyone has the right to a nationality”.

<sup>560</sup> Art 1 of the Convention on the Reduction of Statelessness. United Nations, *Convention on the Reduction of Statelessness*, August 30, 1961, United Nations Treaty Series (UNTS), vol. 989, p. 175, available at [www.treaties.un.org](http://www.treaties.un.org) The convention entered into force on 13 December 1975. Among the four States analysed in this dissertation, Germany and the United Kingdom have ratified the Convention with reservations, while France has only signed it and Italy has not signed it yet. The chart of signatures and ratifications is available at [conventions.coe.int](http://conventions.coe.int) Art 1 states: “A Contracting State shall grant its nationality to a person born in its territory who would otherwise be stateless”.

<sup>561</sup> Art 6(2) of the European Convention on Nationality (ECN). Council of Europe, *European Convention on Nationality* (ECN), November 6, 1997, Council of Europe Treaty Series (CETS), CETS no. 116, available at [conventions.coe.int](http://conventions.coe.int) Among the four States analysed in this dissertation, only Germany has ratified the ECN. The chart of signatures and ratifications is available at [conventions.coe.int](http://conventions.coe.int)

Art 6(2) states: “Each State Party shall provide in its internal law for its nationality to be acquired by children born on its territory who do not acquire at birth another nationality”.

<sup>562</sup> Art 3 of the Convention on the Avoidance of Statelessness in Relation to State Succession. Council of Europe, *Convention on the Avoidance of Statelessness in Relation to State Succession*, May 19, 2006, Council of Europe Treaty Series (CETS), CETS no. 200, available at [conventions.coe.int](http://conventions.coe.int) The convention entered into force on 1 May 2009. Among the four States analysed in this dissertation, no one has ratified the ECN. The chart of signatures and ratifications is available at [conventions.coe.int](http://conventions.coe.int)

Art 3 states: “The State concerned shall take all appropriate measures to prevent persons who, at the time of the State succession, had the nationality of the predecessor State, from becoming stateless as a result of the succession”.

<sup>563</sup> Maarten P. Vink and Gerard-René de Groot, *cit.*, *supra* note 531, 728.



instance, since 2003<sup>564</sup> France has allowed acquisition of citizenship *iure soli* only for foundlings, individuals born to stateless parents or foreign parents whose citizenship cannot be transmitted due to the foreign citizenship law, not for persons who would otherwise be stateless. Same modes of acquisition are included in Italian citizenship law<sup>565</sup>. Also Germany and the UK attribute citizenship at birth *iure soli* only to foundlings<sup>566</sup>. Moreover, States do not avoid statelessness in cases of fraudulent acquisition of citizenship. Since 2006, Germany has allowed deprivation of citizenship in case of fraud even if this leads to statelessness and since 2002, the UK has also tightened the grounds for deprivation of citizenship on the basis of criminal behaviour that are deemed seriously prejudicial to the vital interests of the State<sup>567</sup>.

### 1.1.6 Increasing relevance of EU citizenship

The last trend mentioned is the increasing relevance of EU citizenship in citizenship laws of Member States of the European Union (EU). It is appropriate to extend this comparative analysis by considering EU citizenship for two reasons: first, the four countries analysed are all EU Member States; and second, EU citizenship is a *unicum* at the international level given that no other treaty of international or regional organizations provides for an additional citizenship for the citizens of their Member States. Therefore, in this context the illustration of EU citizenship is necessary for the understanding of the mentioned trend.

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<sup>564</sup> See Art 19, par 1 and Art 19-1, par.1 of the French Civil Code (Book I, Title I bis: On French Nationality) as provided for by Law no 73-42 of 9 January 1973.

<sup>565</sup> Art 1(1b) and 1(2) of Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38.

<sup>566</sup> Section 4, par. 2 of the German Nationality Act.

See also Section 1(2) of the British Nationality Act, 30 October 1981, 1981 chapter 61.

<sup>567</sup> Maarten P. Vink and Gerard-René de Groot, *cit.*, *supra* note 531, 728.

EU citizenship law has been introduced by the 1992 Maastricht Treaty<sup>568</sup>. However, provisions on EU citizenship have been modified in their formulation first by the 1997 Amsterdam Treaty which stated that the EU citizenship complemented and not replaced national citizenship<sup>569</sup>, and then by the 2007 Lisbon Treaty, stating that the EU citizenship is additional to and does not replace national citizenship<sup>570</sup>. Although the derivative nature of EU citizenship has not changed and the determination of modes of acquisition of national citizenship and, consequently, of EU citizenship remains an exclusive competence of EU Member States, the 2007 formulation of EU citizenship provisions has given rise to different interpretations. On one hand, there are scholars who do not see any substantive change; on the other hand, others affirm that this formulation may lead to the creation of an EU citizenship separate from the national ones<sup>571</sup>. Indeed, the complementary character of EU citizenship clearly showed that it cannot exist without national citizenship, while the current qualification as “additional” means that one day the EU citizenship might exist even without national citizenship after a due modification of the Lisbon Treaty, being something that can be added to national citizenship. For this reason, A. Schrauwen points out that

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<sup>568</sup> European Union, *Treaty of Maastricht (Treaty on European Union)*, 7 February 1992. It entered into force on 1 November 1993. Art 8(1) of the 1992 TEC states: “Every person holding the nationality of a Member State shall be a citizen of the Union”.

<sup>569</sup> European Union, *Treaty of Amsterdam amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts*, 2 October 1997. It entered into force on 1 May 1999. It adds to Art 17(1) (ex Art 8(1) of the TEC) that: “Citizenship of the Union shall complement and not replace national citizenship”.

<sup>570</sup> European Union, *Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community*, 13 December 2007. It entered into force on 1 December 2009. It consists of two treaties: the Treaty on the European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). With respect to citizenship, Art 9 of the TEU states that: “Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.” The same provision is stated under Art 20(1) of the TFEU.

<sup>571</sup> Laura Montanari, *cit.*, *supra* note 537, 847.

“the Treaty would need another modification as to determine who would qualify for contributed Union citizenship, but it is important that the concept of Union citizenship offers the possibility”<sup>572</sup>.

After this short elucidation about EU citizenship, it is possible to focus on the increasing relevance of EU citizenship in the Member States’ citizenship laws. Actually, this trend can be noticed both at the domestic and European level. First of all, at the domestic level some States provide for a preferential treatment of EU citizens in naturalisation procedures. For example, this is evident in Italian and German citizenship laws which introduced a privileged position for EU citizens. On one hand, since 1992 Italy requires a shorter residence period for naturalisation of EU citizens (4 years) compared to that of non-EU citizens (10 years); on the other hand, since 2007 Germany does not require renunciation of previous citizenship by naturalised persons from another EU Member State or Switzerland as well as it allows to retain German citizenship to German citizens who voluntarily acquire citizenship of another EU Member State or Switzerland<sup>573</sup>.

Secondly, at the European level the jurisprudence on this subject of the European Court of Justice (ECJ) is wide. For instance, in 2001 the ECJ stated that “Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality”<sup>574</sup>. In particular, the 2010 *Rottmann* case law<sup>575</sup> of the ECJ has recently limited the exclusive competence of EU

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<sup>572</sup> Annette Schrauwen, “European Union Citizenship in the Treaty of Lisbon: Any Change at all?,” *Maastricht Journal of European and Comparative Law*, no. 1 (2008): 60.

<sup>573</sup> *Ivi*, 729.

<sup>574</sup> Case C-184/99, *Rudy Grzelczyk v Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve* (ECJ, 20 September 2001), par. 31. See also the following case law of the European Court of Justice on citizenship matters:

Case C-369/90, *Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria* (ECJ, 7 July 1992).

Case C-200/02, *Kunqian Catherine Zhu and Man Lavette Chen v Secretary of State for the Home Department* (ECJ, 19 October 2004).

Case C-34/09, *Gerardo Ruiz Zambrano v Office national de l'emploi* (ECJ, 8 March 2011).

<sup>575</sup> Case C-135/08, *Janko Rottman v Freistaat Bayern* (ECJ, 2 March 2010).

Member States in the determination of their citizenship laws. Consequently, this case law is pertinent to the increasing relevance of EU citizenship and requires a more detailed analysis.

Briefly, Mr Rottmann, an Austrian citizen by birth, acquired German citizenship by naturalisation and, as a result, lost his Austrian citizenship. Nevertheless, the competent authorities of the Land of Bavaria decided to withdraw this naturalisation with retroactive effect (*ex tunc*) because it was obtained because of fraud, i.e. he did not fully inform German authorities of a pending criminal procedure in Austria at the time he applied for naturalisation. Obviously, the withdrawal of German naturalisation would have had two effects on the *status* of Mr Rottmann: he would have become stateless and would have lost EU citizenship. Therefore, the German Federal Administrative Court asked the ECJ for a preliminary ruling. Concerning whether or not this preliminary ruling was receivable, the German and Austrian Governments argued that the decision withdrawing the naturalisation of the applicant was “a purely internal situation not in any way concerning European Union law”<sup>576</sup>. Contrarily, the Advocate General maintained that the situation concerned the EU legislation because, thanks to the freedom of movement in the European Economic Area (EEA), Mr Rottmann moved from Austria to Germany and in this latter he has been naturalised as a German citizen<sup>577</sup>. However, the ECJ focused directly on the States’ competence to legislate on citizenship<sup>578</sup>. It eventually not only recalled that Member States have the exclusive competence in the determination of the modes of acquisition and loss of citizenship, but also added that this has to be made complying with EU laws<sup>579</sup>. In this way, the ECJ asserted the relevance of

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<sup>576</sup> Case C-135/08, *Janko Rottman v Freistaat Bayern* (ECJ, 2 March 2010), par. 38.

<sup>577</sup> Laura Montanari, “I limiti europei alla disciplina nazionale della cittadinanza,” *Diritto Pubblico Comparato Europeo*, no. 3 (2010): 951.

<sup>578</sup> *Ibidem*

<sup>579</sup> Case C-135/08, *Janko Rottman v Freistaat Bayern* (ECJ, 2 March 2010), par. 39 and par. 41. See also par. 42 which states: “It is clear that the situation of a citizen of the Union who, like the applicant in the main proceedings, is faced with a decision withdrawing his naturalisation, adopted by the authorities of one Member State, and placing him, after he has lost the nationality of another Member State that he originally possessed, in a position capable of causing him to

European Union law, and especially the *status* conferred on citizens of the Member States by EU citizenship rules, as a parameter for legitimacy of the decisions on citizenship withdrawal taken by the authorities of the Member States. In such cases, the national court must ascertain whether the withdrawal observes the principle of proportionality<sup>580</sup> and EU Member States must coordinate their citizenship laws so that EU citizens are not deprived of their *status* as EU citizens. As a result, even though the EU has no competence in citizenship matters, its general principles limit Member States' citizenship legislation. In conclusion, the *Rottmann* case law represents a fundamental achievement on the European stage because for the first time the ECJ extends the primacy of EU legislation to an area that has always been considered as an expression of the exclusive exercise of national sovereignty, i.e. the decision on who is (or is no longer) a citizen of a State<sup>581</sup>.

## 1.2 Reforming Italian citizenship law

In comparison with French, German, and British citizenship laws, current Italian citizenship law<sup>582</sup> appears inadequate to face integration of immigrants in its society. Since the 1990s there have been several attempts to reform Act 91/92, but no one of the bills presented and discussed in the Italian parliament have succeed so far. The Italian citizenship model is still based primarily on *ius sanguinis* and family ties, albeit 2009 reform<sup>583</sup> has slightly undermined this family-based model by increasing the required period of marriage from six months to two years for acquisition of citizenship *iure connubii* in order to fight marriage of convenience. Therefore, taking into consideration both country analyses and the comparative study in this dissertation, Italy is the only

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lose the status conferred by Article 17 EC and the rights attaching thereto falls, by reason of its nature and its consequences, within the ambit of European Union law”.

<sup>580</sup> Case C-135/08, *Janko Rottman v Freistaat Bayern* (ECJ, 2 March 2010), par. 55.

<sup>581</sup> Laura Montanari, *cit.*, *supra* note 577, 951.

<sup>582</sup> Act no. 91/92, Law of 5 February 1992, n. 91, Official Gazette, no. 38, as last amended by Act no. 94/2009 on public security (Law of 15 July 2009, n. 94, Official Gazette, no. 170).

<sup>583</sup> Act no. 94/09 on public security, 15 July 2009, Official Gazette, no. 170.

State among those analysed that has not reformed its citizenship law yet, although it is certainly an immigration country since 1970s<sup>584</sup>. As already mentioned, it was exactly the perception of immigration as a permanent phenomenon in their territories that led France, Germany, and the UK to modify their own citizenship laws. Indeed, once these three States acknowledged that they have become immigration countries, they have changed their citizenship systems in order to allow inclusiveness of immigrants in their societies also through the institution of citizenship and especially through the following measures: first, the introduction or extension of *ius soli* at birth for second- and third- generations of immigrants in order to prevent that persons born and grown up in a State are excluded; second, the easing of naturalisation procedure for first generation of immigrants to avoid the existence of long-term resident non-citizens in the country; third, the tightening of language and integration requirements to check the will of the immigrants to be naturalised and to ensure they have already a basic level of integration which allow them to participate in the political community to the same degree of other citizens. As a consequence, this comparative analysis is an empirical instrument to read critically the bills concerning the Italian reform of Act 91/92 and to detect if also Italian politicians have included in these bills elements which would align Italy with the other mentioned European States.

Unlike French, German, and British citizenship laws, Act 91/92 is obsolete because it does not regulate the institution of citizenship considering Italy as a country of immigration. At the moment, this law is highly exclusionary with respect to immigrants. In fact, the automatic acquisition of citizenship *iure soli* at birth is limited to three marginal cases, i.e. persons born in Italy to unknown parents or stateless parents or parents that cannot transmit their citizenship due to the citizenship law of their country of origin. Instead, for persons born in Italy to foreign parents (second generation of immigrants) acquisition of citizenship *iure soli* is possible only after birth:

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<sup>584</sup> Marta Capesciotti, “Su alcune novità legislative e giurisprudenziali in tema di seconde generazioni dell’immigrazione,” *Rivista telematica giuridica dell’Associazione Italiana dei Costituzionalisti*, no. 1 (2014): 10.

they can acquire citizenship by declaration only at the age of majority within one year, if they have had legal and interrupted residence in Italy since birth. If these conditions are not met, second- and third- generations can acquire citizenship by discretionary naturalisation as well as first generation of immigrants that must reside legally for ten years in Italy before applying for naturalisation. Given that the numbers of foreigners in Italy is increasing over time, one of the main concern is integration of immigrants, in particular those were born or have arrived in Italy as minors (second generation of immigrants) and considered themselves as Italians, like their peers born to an Italian citizen.

In this scenario, the need of a reform of Italian citizenship legislation is urgent and a new input was given by the discourse of the Italian President Giorgio Napolitano on 15<sup>th</sup> November 2011 who stressed the conditions of non-citizens of children born and grown up in Italy and have studied there<sup>585</sup>. However, it seems that the time is ripe for a reform of Italian citizenship law. Indeed, apart from previous bills, in the current XVII legislature several bills concerning citizenship have been proposed and seven of them are before the House of Deputies<sup>586</sup>. They all have a common aim, i.e. reviewing Act 91/92 in order to make it more inclusive. Moreover, the bills of the XVII legislature can be divided into two categories by considering their content: 1) those which include a wide modification of Act 91/92 by increasing possibilities of acquisition of citizenship for foreign minors and introducing cases of entitlement to naturalisation for certain categories of foreigners (the citizens' initiative A.C. 9, Di Lello A.C. 200, Vendola A.C.250, Bressa A.C. 273, Caruso A.C. 647)<sup>587</sup>; and 2) those which provide more possibilities of acquisition for minors who

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<sup>585</sup> *Ivi*, 7-8.

<sup>586</sup> Site of the Italian Senate (last accessed on 9<sup>th</sup> September 2014), available at [www.senato.it](http://www.senato.it)

<sup>587</sup> A.C. 9, Proposta di legge d'iniziativa popolare, Atti parlamentari, Camera dei deputati, XVII legislatura.

A.C. 200, Proposta di legge d'iniziativa dei deputati (Di Lello et al.), Atti parlamentari, Camera dei deputati, XVII legislatura.

A.C.250, Proposta di legge d'iniziativa dei deputati (Vendola et al.), Atti parlamentari, Camera dei deputati, XVII legislatura.

A.C. 273, Proposta di legge d'iniziativa dei deputati (Bressa), Atti parlamentari, Camera dei deputati, XVII legislatura.

born or arrived in Italy while minors or who have attended schools in Italy (Vaccaro A.C. 494 and Marazziti A.C. 525)<sup>588</sup>. For the purpose of this dissertation and in line with the comparative analyses above, I will briefly illustrate the modes of acquisition *iure soli* at birth, *iure domicilii*, *iure culturae*, and by naturalisation, which are included in the mentioned bills.

### 1.2.1 Acquisition *iure soli* at birth

All the mentioned bills provided for the introduction of *ius soli* at birth, i.e. acquisition of Italian citizenship by birth in Italy. The *ius soli* principle is contemplated in current citizenship law only for residual cases, while these bills consider it as a complementary principle in the currently *ius sanguinis*-based Italian model. This is in line with measures adopted in France and Germany which have introduced *ius soli* provisions in their traditionally *ius sanguinis* models of citizenship. Yet, these Italian bills provide for a moderate *ius soli* in order to avoid other issues, such as the so called birth-tourism (e.g. when pregnant women go to a country exclusively to give birth their children and ensuring them citizenship *iure soli*). In general, these bills proposed two modes of acquisition of citizenship *iure soli*: a) acquisition *iure soli* based on residence requirements of one parent (or both parents), such as in Germany; and b) acquisition *iure soli* based on birth in Italy of at least one parent (double *ius soli*), such as in France.

Regarding the residence requirements, the bills diverge on the length of the period (from one year to five years) and the type of permanence in Italy required (regular permit of stay, legal

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A.C. 647, Proposta di legge d'iniziativa dei deputati (Caruso et al.), Atti parlamentari, Camera dei deputati, XVII legislatura.

<sup>588</sup> A.C. 494, Proposta di legge d'iniziativa dei deputati (Vaccaro), Atti parlamentari, Camera dei deputati, XVII legislatura.

A.C. 525, Proposta di legge d'iniziativa dei deputati (Marazziti et al.), Atti parlamentari, Camera dei deputati, XVII legislatura.



residence, or long-term permit of stay)<sup>589</sup>. In details, these bills require: at least one year of legal (citizens' initiative A.C. 9) and regular (Vendola A.C. 250) permit of stay; uninterrupted legal residence for at least five years (Bressa A.C. 273); regular permit of stay for at least five years (Marazziti A.C. 525); both residence (without a specific minimum period) and at least five years uninterrupted regular (Di Lello A.C. 200) or legal (Caruso A.C. 647) permit of stay; regular permit of stay of both parents for at least three years without interruptions (Vaccaro A.C. 494)<sup>590</sup>. Then, with respect to double *ius soli*, only the citizens' initiative A.C. 9, Vendola A.C.250, and Vaccaro A.C. 494 retain sufficient for acquisition the birth in Italy of at least a foreign parent of the person concerned, while the other require also at least one year of residence (Di Lello A.C. 200, Caruso A.C. 647, and Bressa A.C. 273) or of legal permit of stay (Marazziti A.C. 525)<sup>591</sup>.

In both modes, the procedure required by all bill consists in a declaration by a parent, with the exception of Marazziti A.C. 525 which requires a declaration by both parents and consent of the child at the age of fourteen<sup>592</sup>. In case of absence of this declaration or refusal by the parent, the children can acquire Italian citizenship by declaration within two years after attaining the age of majority (all bills mentioned except Vaccaro A.C. 494). Finally, all bills insert the possibility of renunciation of citizenship acquired *iure soli* at birth within one year after reaching the majority age<sup>593</sup>. The rationale behind these *ius soli* provisions consists of the necessity that children, who were born in Italy in a family that steadily lives there, acquire the same rights as their peers with whom they grow up. Above all, the principal aim is to avoid the creation of a “*terra di mezzo*”<sup>594</sup>

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<sup>589</sup> Dossier n.37 per l'esame di Progetti di legge, Norme sulla cittadinanza A.C. 9 e abb., 2nd edition, Camera dei deputati, XVII legislatura, 28 May 2014, 16. It is available at [www.camera.it](http://www.camera.it)

<sup>590</sup> *Ivi*, 16-17.

<sup>591</sup> *Ivi*, 17-18.

<sup>592</sup> *Ivi*, 18.

<sup>593</sup> *Ivi*, 19.

<sup>594</sup> A.C. 494, Proposta di legge d'iniziativa dei deputati (Vaccaro), Atti parlamentari, Camera dei deputati, XVII legislatura, 2. See also A.C. 647, Proposta di legge d'iniziativa dei deputati (Caruso et al.), Atti parlamentari, Camera dei deputati, XVII legislatura, 2.

(meaning “middle ground”) where the children born to foreign parents grow up with a sense of estrangement from the context in which they live. This situation would cause adverse effects on their social inclusion and future integration. Besides, the possession of a different citizenship from the one perceived as their own is a source of trauma which may reflect negatively on the development of children’s personality<sup>595</sup>. Overall, the introduction of *ius soli* at birth for children born in Italy to foreigners would confirm the European trend concerning the development of mixed models of citizenship and would align Italian citizenship law with French, German, and British laws.

### **1.2.2 Acquisition *iure domicilii* and *iure culturae* by minors**

Another two modes of citizenship inserted in these bills have been made in the perspective that children born or arrived in Italy while minors are already integrated in the Italian society thanks to their permanence in Italy until the age of majority (*ius domicilii*) and their education in Italian institutes (*ius culturae* or socialisation-based mode of acquisition of citizenship). In the former case, the mentioned bills aim at repealing or substituting Art 4(2) of Act 91/92 on *ius soli* after birth. For example, the citizens’ initiative A.C. 9 and Vendola A.C. 250 insert that not only foreign persons born in Italy, but also minors who enter Italy before their age of ten, acquire citizenship by declaration within two years after the age of majority if they have had the legal (citizens’ initiative A.C. 9) or regular (Vendola A.C. 250) permit of stay until the majority age<sup>596</sup>. Differently, the other bills provides for acquisition of citizenship by person born in Italy and minors, who enter Italy before the age of five, under the condition of legal residence (or regular permit of stay in Marazziti

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<sup>595</sup> A.C. 525, Proposta di legge d’iniziativa dei deputati (Marazziti et al.), Atti parlamentari, Camera dei deputati, XVII legislatura, 2.

<sup>596</sup> Dossier n.37 per l’esame di Progetti di legge, Norme sulla cittadinanza A.C. 9 e abb., 2nd edition, Camera dei deputati, XVII legislatura, 28 May 2014, 20. It is available at [www.camera.it](http://www.camera.it)

A.C. 525) until their age of majority<sup>597</sup>. Moreover, in Di Lello A.C. 200, Caruso A.C. 647, and Vaccaro A.C. 494, this acquisition occurs automatically, except in case of refusal, whereas in Bressa A.C. 273 and Marazziti A.C. 525 upon a declaration of the person concerned (within one year or two years after reaching majority respectively). In general, these modes reflect the idea that living during childhood and adolescence in a country entails that the person concerned knows its language, culture, and history. In other words, he or she is already integrated in the society and deserves citizenship to be fully Italian.

Under the same considerations, provisions on acquisition of citizenship conditional on education courses in Italian institutes or professional trainings are inserted in all mentioned bills with the exception of Vaccaro A.C. 494. The rationale is that this mode based on *ius culturae* allows acquisition of citizenship to persons who have formed their own personality through a period of study in Italy, even though not necessarily born there. For instance, they acquire citizenship upon attendance (citizens' initiative A.C. 9, Vendola A.C. 250, and Bressa A.C. 273) or completion (Di Lello A.C. 200 and Caruso A.C. 647) or successful completion (Marazziti A.C. 525) of certain types of education courses in Italian institutes or professional trainings by declaration of parents<sup>598</sup>.

### **1.2.3 Acquisition by naturalisation**

Also Art 9 of Act 91/92 has been subject to review in these bills and several adjustments are provided for in cases of acquisition of citizenship by naturalisation. In particular, these bills, except Marazziti A.C. 525, propose to insert a new mode of acquisition which consists in an entitlement to naturalisation (without discretion of the public authorities), such as cases of entitlement to registration in the UK and entitlement to naturalisation (*Soll-Einbürgerung*) in Germany for foreigners who met certain requirements. The novelty of this mode is that once the foreigners have

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<sup>597</sup> *Ibidem*

<sup>598</sup> *Ivi*, 22-23.

met the required conditions, they are entitled to naturalisation as an Italian citizen. For example, non-EU citizens acquire Italian citizenship if they have legal residence (citizens' initiative A.C. 9, Vendola A.C. 250, and Bressa A.C. 273) or uninterrupted legal permit of stay (Di Lello A.C. 200 and Caruso A.C. 647) or uninterrupted regular permit of stay (Vaccaro A.C. 494) in Italy for at least five years and if they meet the financial requirement<sup>599</sup>. In addition, Di Lello A.C. 200, Caruso A.C. 647, Bressa A.C. 273, and Vaccaro A.C. 494 require the foreigners to pass the language and integration test which includes: 1) knowledge of the Italian language at level A2 in the Common European Framework of Reference for Language (CEFR); and 2) knowledge of the civil life in Italy (Di Lello A.C. 200, Caruso A.C. 647, and Vaccaro A.C. 494), knowledge of the Italian Constitution (Di Lello A.C. 200 and Caruso A.C. 647), and the achievement of an adequate degree of social integration (Vaccaro A.C. 494). These last changes are in line with the mixed trend in Europe which concerns material and procedural requirements in naturalisation procedures. On one hand, the residence period required for non-EU citizenship would be decreased from ten to five years in order to ease their integration in Italy. On the other hand, a language and integration test would be introduced to ensure that foreigners have the basic instruments to communicate in Italian, participate in the political community, as well as enjoy rights and fulfil duties as an Italian citizen. Nevertheless, taking into account the family-oriented logic of current Italian citizenship law, a co-ethnic preference is maintained even in these bills. In fact, the required period of residence for EU citizens, who are considered culturally similar, is decreased from four years to three (citizens' initiative A.C. 9, Vendola A.C. 250, Di Lello A.C. 200, Bressa A.C. 273, and Caruso A.C. 647). Moreover, also refugees along stateless persons became a privileged category entitled to acquisition of citizenship upon application if they have had regular permit of stay in Italy for at least three years, while Art 9 of Act 91/92 allows discretionary naturalisation only to stateless persons after 5

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<sup>599</sup> *Ivi*, 28-29.

years of legal residence<sup>600</sup>. Finally, these last considerations are also valid for provisions regarding discretionary naturalisation which is maintained by Marazziti A.C. 525 as the main mode for acquisition of citizenship by adult foreigners with some modifications: first, the reduction from ten to five of a regular stay (instead of legal residence) and the introduction of a specific financial requirement for non-EU citizens; second, the reduction from four to three years of the legal residence required for naturalisation of EU citizens as Italian citizens. Overall, the ratio behind the above mentioned changes regarding naturalisation is that citizenship must become an educational process for the foreign adult. In particular, it must represent the culmination of an already started process of social and cultural integration as well as the starting point for its continuation and strengthening<sup>601</sup>.

In conclusion, the picture that emerges from the analysis of the selected modes of acquisition of Italian citizenship in the seven bills of the XVII legislature, which are before the House of Deputies, reflects both the reality of Italy as an immigration country and its heritage. Thus, the time is ripe: it seems that Italy is willing to align with citizenship laws of other European countries which have already experienced immigration as a permanent phenomenon. To this purpose, Italy should modify its citizenship law in the near future, by adopting both liberalising and restrictive measures: on one hand, the introduction of *ius soli* at birth for acquisition of citizenship by second- and third- generations of immigrants, along the reduction of the residence requirement for naturalisation of first generation of immigrants in order to facilitate their integration; on the other hand, the introduction of language and integration requirements in naturalisation procedures to ensure that the new citizens would be able to participate in the society.

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<sup>600</sup> *Ibidem*

<sup>601</sup> A.C. 647, Proposta di legge d'iniziativa dei deputati (Caruso et al.), Atti parlamentari, Camera dei deputati, XVII legislatura, 2-3. See also A.C. 273, Proposta di legge d'iniziativa dei deputati (Bressa), Atti parlamentari, Camera dei deputati, XVII legislatura, 3.

## CONCLUSION

The comparative study on citizenship in this dissertation aimed at understanding how citizenship laws of France, Germany, Italy, and the United Kingdom (UK) have been changed over time in the wake of not only the peculiar historical circumstances occurred in these States up to date, but also the existence of increasing cross-border migration and the integration process in the European Union (EU). The conclusion I draw from this comparative analysis is that these States have started to reform their citizenship laws in similar ways when they have acknowledged the fact they have become immigration countries, by using citizenship as both a means to and an end of integration of immigrants. As a consequence, they have introduced both liberalising and restrictive measures in their citizenship laws, by producing a mixed effect of their reforms. Indeed, the former reflect the perception of citizenship as an instrument to achieve integration, while the latter are the result of the perception of citizenship as an identity *status* that can be acquired or granted only when basic integration of immigrants has already occurred. This situation is emblematic of the fact that some convergences concerning citizenship do exist in Europe, but that this process of convergence does not entail the existence of a common pattern of modes of acquisition of citizenship. In fact, there is still diversity between States' citizenship laws because they are rooted in the peculiar history of each State and belong to the exclusive competence of the State. Thus, the comparative

study has resulted fundamental to assess that convergent trends on citizenship exist in Europe and that even the analysed bills presented during the XVII Italian legislature include elements of these trends, especially regarding the full integration of the second- and third generations of immigrants through the introduction of *ius soli* at birth as well as the acquisition of citizenship by the first generation of immigrants only after meeting the language and integration requirements in naturalisation procedures.

To sum up, this dissertation has been articulated into three parts in order to support the above mentioned argument: the first part has described the concept of citizenship in general terms; the second part has focused on four country analyses, specifically the evolution and the current modes of acquisition of citizenship in France, Germany, Italy, and the UK; and the last part has evidenced convergences in Europe and has analysed the Italian reform of citizenship law in the light of these convergent trends. With the purpose of highlighting most relevant aspects of this dissertation, I will briefly recap the contents of these three parts.

First of all, the definition and the concept of citizenship have been examined in order to provide a broad understanding of the subject. Yet, a comprehensive definition of citizenship does not exist for two reasons: on one hand, citizenship is a juridical, sociological, philosophic, and political concept, which is therefore subject to several interpretative traditions; on the other hand, the meaning of citizenship has varied given that the relationship between the individual and the political community/State has changed over time. In addition, as far as citizenship is concerned, not only historical events, but also the “national imprinting”, i.e. the traditional understanding of nationhood, must be taken into consideration because both history and tradition are components of the State’s heritage which in turn affects the evolution of citizenship laws. In fact, the relationship between the individual and the State is at the core of the juridical concept of citizenship which can be defined as the legal *status* of citizens and, consequently, as the source of their rights and obligations. Then, looking at the two main meanings of citizenship, “membership” refers to State-

membership on the basis of a common tradition and culture, and “participation” indicates participatory membership due to the participation in the activities of the political community. While the former represents a vertical bond between the individual and the State, the latter is a horizontal bond among people of the political community. Moreover, in ancient times, citizenship meant mainly participation with some differences: whereas in Athens it was a political *status*, in Rome it developed as a legal *status* carrying with it rights and obligations. This last meaning has lasted up to date. However, in modern times, citizenship has become a national institution through the birth of the nation-States which promoted a citizenship-membership based on nationality, after a period in which absolute States had reduced citizenship to the meaning of subjection. Indeed, in the modern liberal States citizenship as “membership” and as “participation” coexisted through the nationality principle, and since the XIX century each State has developed its own nationality law. Finally, both a terminological elucidation on the terms “citizenship” and “nationality” as well as a description of the models and modes of acquisition of citizenship has been carried out in this dissertation. In this context, it is useful to remember that the citizenship models are two, i.e. the *ius sanguinis* model based on the descent principle and the *ius soli* model based on the territoriality principle, whilst the modes of acquisition of citizenship are several and vary from State to State. Generally, they are divided into modes of acquisition at birth and those after birth.

Next, both the historical development of the citizenship laws and the current modes of acquisition of citizenship in the four selected European States (France, Germany, Italy, and the UK) have been deeply analysed. The first country analysis is about France. Current French citizenship law (French Civil Code, Book I, Title I bis: On French Nationality, of 21 March 1804, as last amended by Law no. 2011-672 relating to immigration, integration and nationality of 16 June 2011), was established in 1889 because, in that year, *ius soli* was definitively institutionalised in the *ius sanguinis* French model following the necessity to progressively integrate immigrants and their descendants. Then, French citizenship law was also reviewed several times in the XX century due



to concerns about loyalties of naturalised persons during the wars, human losses after the wars, decolonization, and gender equality. Finally, since the 1980s the politicization of citizenship has led to other reforms of French citizenship law. Overall, France has considered citizenship mainly as a means to integration of foreigners, but after politicization also as an end of integration. In fact, the main reasons behind the continuous changes of French citizenship law were: first, ensuring that also foreigners living in France for a long period were obliged to public services, such as the military draft; second, solving demographic lacks after the two world wars; and third, dealing with the presence of many immigrants in France and, at the same time, guaranteeing the maintenance of French culture as well as the respect of the essential principles and values of the French Republic by naturalised citizens. Consequently, French citizenship is attributed at birth if at least one of the parents of the child is French (*ius sanguinis*), or if the child is born in France and has one parent who is also born in France (double *ius soli*). Otherwise, it is acquired after birth *ex lege*, by declaration, or by naturalisation as French, i.e. through the discretionary decision of the public authorities if the applicants meet all the conditions required.

The second country analysis regards Germany. Current German citizenship law (Nationality Act of 22 July 1913, as last amended by the Act to Implement the EU Directive on Highly Qualified Workers of 1 June 2012) can be considered so far the clearer example of a mixed model of citizenship developed through the introduction of *ius soli* elements in a traditional *ius sanguinis* country. Apart from some changes in the XX century made first by the Nazi regime, which exploited the principle of *ius sanguinis* to achieve racial discrimination, and then by the Federal Republic of Germany (FRG) in order to eliminate the discriminatory measures, the major modifications of the 1913 German Nationality Act occurred after the reunification of Germany (1990) because Germany had to face two main problems related to immigration: the increasing number of ‘ethnic Germans’ who did not speak German well and the need to integrate long-term immigrants coming to Germany due to its job opportunities and its generous asylum policy. As a

consequence, in the 1990s citizenship was subject to instrumentalisation and politicization in Germany, and the 1999 reform (entered into force in 2000) was the result of an elite-driven process towards liberalising measures along the mobilization of xenophobia among the population by the opposition which aimed to fulfil restrictive measures. Finally, this reform provided for three major changes: 1) the introduction of *ius soli*; 2) the establishment of the ‘optional model’, i.e. the renunciation of previous citizenship by persons acquiring German citizenship *iure soli* or by naturalisation; and 3) the facilitation of naturalisation procedures by reducing the residence period required from fifteen to eight years. Besides these liberalising measures which ease integration of immigrants in the country, some restrictive measures, such as the introduction of language and integration tests, have been adopted in the following years in order to ensure that naturalised Germans are able to integrate in the society thanks to the knowledge of the German language, of the legal system, and of the living conditions in Germany. In general, these changes of German citizenship law took place when it was evident that immigrants had set their permanent residence in Germany. The need to integrate these persons into the German society is the reason why the German Nationality Act provides for not only acquisition of citizenship *iure sanguinis*, but also acquisition of citizenship *iure soli* to children born in Germany if at least one parent meets the residence requirements, discretionary naturalisation (*Kann-Einbürgerung*) and entitlement to naturalisation (*Soll-Einbürgerung*) upon certain conditions.

The third country analysis concerns Italian citizenship law (Act no. 91 of 5 February 1992, as last amended by Act no. 94/2009 on public security) which is primarily based on family ties and a co-ethnic preference. The reasons behind this citizenship model come from the evolution of Italian citizenship law and in particular from the fact that Italy became a nation-State relatively late. Indeed, it was for a long time a nation in search of a State. Originally, citizenship was regulated by legislation of the Kingdom of Piedmont and Sardinia which promoted the unification of Italy and then by the 1865 Civil Code. However, the phenomenon of mass emigration in the early-XX

century has marked the evolution of Italian citizenship law and the law of 1912 was the former articulated legislation of Italian citizenship. It reasserted *ius sanguinis* as the preeminent principle, inserted *ius soli* as a complementary principle, and facilitated reacquisition of Italian citizenship by emigrants. Despite some changes during fascism and after World War II, Italian citizenship law was re-formulated in the Act 91 of 1992 which strengthened the *ius sanguinis* principle, definitively established a co-ethnic preference for foreigners of Italian descent and EU citizens in naturalisation procedures, made residual acquisition of citizenship *iure soli*, and made more difficult naturalisation of non-EU citizens by raising the residence requirement from five to ten years. Therefore, this act was obsolete since its inception because Italy was already a country of immigration in 1992, but continued to perceive itself still as an emigration country. As such, Italian citizenship law causes inconvenience to long-term foreign residents and their children (second generation of immigrants). This is why a reform of Act 91/92 is necessary. Nevertheless, many attempts of reform did not succeed because citizenship has become a contending political issue. Overall, Italian citizenship law is an example of path dependence: it depends on a model introduced in the past that has not been adapted to the new reality of Italy as an immigration country. As a result, *ius sanguinis* and co-ethnic preference continue to be the cornerstones of current Italian citizenship law.

The last country analysis focuses on the peculiar citizenship law of the UK (British Nationality Act of 30 October 1981, as last amended by Borders, Citizenship and Immigration Act of 21 July 2009). It is a complex legislation which contains both *ius soli* and *ius sanguinis* provisions since 1981. Actually, the UK was traditionally a *ius soli* country given that the territoriality principle was at the basis of subjecthood since medieval times and derived from the feudal concept of allegiance to the lord of the land in which the person concerned was born. Yet, the complexity of British citizenship law is mainly due to the dismantling of the former British Empire, in particular after World War II. Since then, the UK has tried to maintain a link with persons in new independent countries as well as those in Commonwealth countries through the *status* of British

subject. This is why in 1948 several categories of people were created and among them only “Citizens of the United Kingdom and Colonies” (CUKCs) and “Citizens of the Independent Commonwealth Countries” (CICCs) had the right of entry the UK. Moreover, a more systematic control on immigration was made through the 1971 Immigration Act which distinguished between *patrials* and *non-patrials*. Only the former had the right of entry the UK without control and the right of abode there. However, this classification was really confusing and in 1981 the conservative government adopted the British Nationality Act (entered into force in 1983) which still provides for six categories of citizenship: British Citizenship (BC), British Overseas Territories Citizenship (BOTC, but formerly named British Dependent territories Citizenship or BDTC), British Overseas Citizenship (BOC), British Subjects (BSs), British Protected Persons (BPPs), and British Nationals (Overseas) (BNO). In this dissertation, only modes of acquisition of British citizenship has been dealt with because it is the only one that entails the right of abode and entry in the UK as well as the right of free movement in the European Economic Area (EEA). In fact, the most significant changes since 1983 were: 1) the restriction of *ius soli* by adding a *ius sanguinis* element (at least one of the parent of the child is a British citizen or settled in the UK) in the acquisition of British citizenship at birth *iure soli*; 2) the limitation of acquisition by descent to first generation born abroad; and 3) introduction of the entitlement to registration as British citizens has to certain persons with a connection to the UK. In general, British citizenship law has become over time an instrument of immigration policy in order to limit the number of British in the world. Although there is not a clear logic behind the modes of acquisition of British citizenship, from an historical perspective British citizenship law has always been intertwined with rules on immigration and asylum. This is confirmed by the fact that in the political spectrum, both the Labour party and the Conservative party have favoured restrictive measures when in power. For example, the Labour government have adopted the 2002 Nationality, Immigration and Asylum Act which tightened naturalisation procedures by adding language and integration requirements. Even though acquisition

by naturalisation has been made more difficult and expensive over time, British citizenship law remains one of the most liberal and inclusive citizenship laws on the European stage.

Lastly, the analyses of the citizenship laws of France, Germany, Italy, and the UK have been functional to highlight the existence of convergences on the European stage. Despite the several differences between these States due to their heritage (i.e. their peculiar history and traditional model of citizenship), some common circumstances, above all permanent immigration, have led them to reform their citizenship laws. Consequently, six convergent trends can be noticed in Europe since 1980s: 1) the extension of *ius sanguinis* through equal treatment of men and women in citizenship matters; 2) the development of mixed models of citizenship by adding *ius soli* in traditional *ius sanguinis* countries or *vice versa*; 3) the increasing acceptance of multiple citizenship; 4) the introduction of language and integration requirements in naturalisation procedures; 5) the avoidance of statelessness; and 6) the increasing relevance of EU citizenship through the preferential treatment of EU citizens in naturalisation procedures as well as the jurisprudence of the European Court of Justice (ECJ), ruling that the general principles of the EU, such as the proportionality principle, must be observed by Member States in their citizenship laws.

Among these trends, the development of mixed models of citizenship by introducing or extending *ius soli* elements in traditional *ius sanguinis* countries reflects the need to integrate immigrants in the society of the analysed States. Hence, they have used citizenship as a means to integration of second- and third generations of immigrants. Similarly, the introduction of language and integration requirements in naturalisation procedures is the measure chosen by States to ensure integration of first generation of immigrants through acquisition of citizenship by naturalisation, which is granted only if the applicants demonstrate that they are able to participate in the political community, knowing the official language, the history, and the political system of the State concerned as well as the social life of citizens within it. In this second case, citizenship is considered more as an end of integration. Even though these liberalising and restrictive measures

seem contrasting, they are two sides of the same coin. Therefore, the picture on citizenship that has emerged is still uncertain, but it is undeniable that States are in search of an equilibrium between their heritage and the most recent phenomena, i.e. immigration and European integration. The reason why they are looking for this balance by modifying their citizenship laws is to avoid exclusion of immigrants who are born and grown up in their territories (second- and third generations) as well as those who have lived there as long-term or permanent residents (first generation) and have shown their will and effort to integrate in order to become citizens.

In conclusion, apart from the provisions enshrined in French, German, and British citizenship laws, also the analysed Italian bills (specifically, those presented during the XVII legislature and presently before the House of Deputies) provide empirical evidence of the mentioned trends, in particular with respect to three modes of acquisition of citizenship: 1) acquisition *iure soli* at birth, 2) acquisition *iure domicilii* and *iure culturae* by minors, and 3) acquisition by naturalisation. Italy is even the proof that only when a country starts to conceive itself as an immigration country, reforms of the citizenship laws are taken seriously into consideration. Thus, the time is ripe for reforming the obsolete Act 91 of 1992. Yet, it will be possible to assess the existence of the above mentioned trends also in Italy only when the Italian parliament will find an equilibrium between the heritage of Italy and the need of integration of immigrants in terms of citizenship acquisition, and consequently it will adopt the reform of its citizenship law.

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