



PRESIDÊNCIA DO CONSELHO DE MINISTROS
Alto Comissariado para a Imigração e Diálogo Intercultural, I.P.

INTI PROJECT: “BE NATURALIZED”

REPORT ON NATURALISATION IN PORTUGAL

Partner

High Commission for Immigration and Intercultural Dialogue (ACIDI, IP)

Rua Álvaro Coutinho n.º 14, 1150-025 Lisboa – Portugal

+351 21 8106125 / catarina.oliveira@acidi.gov.pt

Authors

Claire Healy

Catarina Reis Oliveira



PRESIDÊNCIA DO CONSELHO DE MINISTROS
Alto Comissariado para a Imigração e Diálogo Intercultural, I.P.

TABLE OF CONTENTS

0. INTRODUCTION
1. THE EVOLUTION OF PORTUGUESE NATIONALITY POLICY
2. CURRENT NATIONALITY LEGISLATION
 - 2.1 CATEGORIES OF NATIONALITY
 - 2.2 NATIONALITY OF ORIGIN
 - 2.3 DERIVED NATIONALITY BY EFFECT OF WILL
 - 2.4 DERIVED NATIONALITY BY NATURALISATION
3. GOVERNMENT MINISTRIES AND AGENCIES
4. ORGANISATIONAL CONDITIONS
 - 4.1 PROCEDURES
 - 4.2 LANGUAGE TEST
 - 4.3 NATIONALITY CEREMONY
5. BENEFITS OF CITIZENSHIP VS. PERMANENT RESIDENCY
 - 5.1 LONG TERM RESIDENTS
 - 5.2 PORTUGUESE NATIONALS
6. DUAL CITIZENSHIP
7. PURPOSE OF NATURALISATION PROCEDURES
8. CONCLUSION



PRESIDÊNCIA DO CONSELHO DE MINISTROS
Alto Comissariado para a Imigração e Diálogo Intercultural, I.P.

0. INTRODUCTION

The significance of the term ‘citizen (*cidadão*)’ in Portugal extends beyond those with Portuguese nationality, and therefore, for example, the Government’s integration plan refers to ‘immigrant citizens’ (Presidência do Conselho de Ministros & ACIDI, IP, 2007: 9), a phrase that in other countries might be considered an oxymoron. The status of Portuguese national, however, is distinct from that of ‘citizen’, and the acquisition of this status is governed by the regulations outlined in sections 2 and 4 below. The Constitution explicitly refers to foreigners as ‘*cidadãos* (citizens)’, and this usage is found throughout Government discourse and legislation. The term ‘active citizenship’ has also gained currency within Portuguese discourses on civic and political participation.

The concept of naturalisation also differs in the Portuguese context from its usage in many other EU countries. Naturalisation is specifically one of five methods of becoming a Portuguese national, as will be outlined in section 2.1. Naturalisation does not apply to the attribution of Portuguese nationality to a child because their parent has acquired Portuguese nationality. Neither does it apply to people who acquire Portuguese nationality by marriage or adoption.

Nationality by naturalisation in the Portuguese legislative context specifically refers to foreign citizens who acquire Portuguese nationality by residing in the country legally for six years, by completing the first four years of schooling, by being born in the country and residing there for ten years, or by having a parent who has resided legally in the country for five years prior to the application. The broader definition of naturalisation to encompass all forms of acquisition of citizenship is denoted in Portuguese by the more neutral term ‘*nacionalidade* (nationality).’

1. THE EVOLUTION OF PORTUGUESE NATIONALITY POLICY

As in other EU countries, Portuguese nationality laws and policies have been shaped by the country’s historical context. Of particular significance were the processes of decolonisation in the Portuguese Indian colonies in 1954-61, in the African colonies in 1974-5, and in Macau in 1999. Independence movements in Africa coincided with the end of the *Estado Novo* dictatorship in Portugal and the stabilisation of a democratic regime from 1974. Nationality policies are also affected by historical connections with Brazil, though it has been independent from Portugal since 1825.

Implemented during the dictatorship, Law no. 2098/59 of 29 July 1959 regulated the attribution, acquisition, loss and re-acquisition of Portuguese nationality, largely based



PRESIDÊNCIA DO CONSELHO DE MINISTROS
Alto Comissariado para a Imigração e Diálogo Intercultural, I.P.

on *ius soli*. This applied to people born in Portugal, in the Portuguese African colonies and in Macau. In the wake of the decolonisation and democratisation processes of 1974-5, this law was amended by Decree-Law n° 308-A/75 of 24 June, which set out the procedures for the retention or loss of Portuguese nationality by those born or resident in the newly independent countries and regions.¹

According to the Decree-Law, people living in the newly independent countries and regions could retain Portuguese nationality if they had been born in Portugal or in the colonies prior to independence, *and* officially declared their wish to retain Portuguese nationality. Portuguese nationality was also retained by people who were naturalised, born abroad to at least one parent born in Portugal, or the wife or minor children of a Portuguese national. Those who had at least one grandparent born in Portugal also had Portuguese nationality, if they declared that they wished to have it within two years of independence.

Portuguese nationality was also retained by those who had been resident in Portugal for at least five years prior to 1974. Anyone not covered by the Decree-Law automatically lost Portuguese nationality. Those who did not declare their wish to retain Portuguese nationality within the stipulated time automatically lost it, leading to a situation where many immigrants, particularly from African countries, became undocumented in Portugal without knowing it. Children born in Portugal to parents without Portuguese nationality were also thereby denied access.

In preparation for joining the European Economic Community, the Portuguese Government passed Law n° 37/81 of 3 October 1981, revoking the 1959 nationality law. Nationality could only be lost voluntarily, and complete tolerance of dual nationality was put in place. Together with regulating for nationality by descent, Law n° 37/81 put in place Portuguese nationality by marriage for either spouse, without a waiting period. Children born to at least one parent who had been residing in Portugal for at least six years were granted nationality of origin. Immigrants could acquire nationality if they were over 18, had been residing legally in Portugal for at least six years, and had a command of the Portuguese language, moral and civil competence and means of subsistence. Nationality was granted at the discretion of the Minister for Internal Affairs.

In 1987, the Joint Luso-Chinese Declaration on Macau was signed, providing for the eventual transfer of the region from Portuguese to Chinese rule. In anticipation of this, many Chinese nationals began to acquire Portuguese nationality (Oliveira & Inácio, 1999: 12). During the 1990s, the majority of applicants for nationality were residing abroad, particularly in Macau. Most acquisitions of Portuguese nationality during the 1980s and 1990s were by marriage rather than by naturalisation, and there were generally long bureaucratic delays related to the procedure.

¹ These are: the former Indian colonies of Goa, Daman, Diu, Dadra and Nagar Haveli, and the African countries Guinea-Bissau, Mozambique, Cape Verde, São Tomé and Príncipe, and Angola.



PRESIDÊNCIA DO CONSELHO DE MINISTROS
Alto Comissariado para a Imigração e Diálogo Intercultural, I.P.

Overall, levels of naturalisation relative to the immigrant population were remarkably low. Relatively low levels of naturalisation were observed during the 1980s and early 1990s among the African and Brazilian communities, despite their predominance among the immigrant population, possibly due to a lack of information on the procedures (Oliveira & Inácio, 1999: 21). It may also have been the case that many people from these communities did not know that they had automatically lost Portuguese nationality. During the period 1991-1997, an average of 1,200 people acquired Portuguese nationality per year, the majority by marriage. During 1998-2000, this dropped to an annual average of 730, before increasing again during 2001 (1,082), 2002 (1,369) and 2003 (1,741) (Baganha & Urbano de Sousa, 2006: 457-8).

Portugal joined the European Union in 1986, and signed the Schengen Agreement in 1992, which led to stricter regulations on the movement of non-EU citizens, together with increased freedom of movement for EU citizens. The 1992 Maastricht Treaty created the concept of European citizenship as a further dimension to Portuguese national citizenship.

Law no. 25/94 of 19 August 1994 amended the 1981 Nationality Law, extending the minimum period of residence to one of the highest in Europe, ten years, reduced to six years for citizens of Portuguese-speaking countries. Thus citizens of Portuguese-speaking countries were privileged in relation to access to nationality, in a form of “co-ethnic immigration preference” (Bauböck, 2006: 18). This law also imposed a waiting time of three years for the acquisition of nationality by marriage, due to a perception that marriages of convenience for immigration purposes had been taking place. Nationality also became the responsibility of the Minister for Justice. In 1997, Portugal ratified the European Convention on Nationality, and agreed to be bound by this ratification.

2. CURRENT NATIONALITY LEGISLATION

On 15 December 2006, the Portuguese government announced the entering into force of new regulations regarding the acquisition of Portuguese citizenship. The new ‘Portuguese Nationality Regulation’ was approved by 4/5 of members of parliament. The principle changes covered:

1. The principle of *ius soli* for second- and third-generation immigrants was reinforced, as set out in the Programme for Government. The right to nationality of origin was granted to people born in Portugal, where at least one of their parents had been residing legally in the country for at least five years at the time of their birth, or who have completed the first four years of schooling.



PRESIDÊNCIA DO CONSELHO DE MINISTROS
Alto Comissariado para a Imigração e Diálogo Intercultural, I.P.

2. The right to nationality of origin for children born in Portugal to at least one parent born and residing in Portugal, regardless of status.
3. The limitation of discretion by means of the recognition of a subjective right to naturalisation.
4. Proof of legal residence through the holding of any valid permit and not only residence authorisations.
5. Simplification of procedures.

The changes in the law aimed to both simplify the procedures related to naturalisation, and to facilitate access to citizenship for more categories of people. The bureaucratic difficulties and delays related to the nationality process had been seen as a disincentive in the past (Oliveira & Inácio, 1999: 13). The requirement for an applicant for nationality to prove that they had means of subsistence was also abolished, as it was considered to represent socio-economic discrimination. A further subjective right to naturalisation was granted to children who were born in Portugal and, at the time of the application, either have at least one parent who has lived legally in Portugal for at least five years, *or* where the applicant has completed the first four years of schooling in Portugal.

At the discretion of the Minister, Portuguese nationality is granted to people born in Portugal who, on reaching adulthood, can prove that they have resided in the country for the previous ten years, regardless of theirs or their parents' immigration status. If a foreign citizen has had a *de facto* union or marriage with a Portuguese national for at least three years, they may also be granted citizenship. Finally, the law provides for the possibility of citizenship being granted at the discretion of the Minister for Justice. Portuguese citizenship may also be granted to children born on Portuguese territory who would otherwise be stateless. All of these provisions apply retrospectively to anyone who was born before 15 December 2006.



PRESIDÊNCIA DO CONSELHO DE MINISTROS
Alto Comissariado para a Imigração e Diálogo Intercultural, I.P.

2.1 Categories of Nationality*

<u>Nationality of Origin</u>	By law	At birth, by children born in Portugal with at least one Portuguese parent
		At birth, by children born in Portugal with at least one parent born in Portugal, regardless of status
		At birth, by children born in Portugal who would otherwise be stateless
	By effect of will	At birth, by children born in Portugal with at least one parent who was residing legally in Portugal for five years prior to the birth
<u>Derived Nationality</u>	By effect of will	By children of a parent who acquires Portuguese nationality
		Marriage or <i>de facto</i> union with a Portuguese national for at least three years
		By those who lost Portuguese nationality during a period of incapacity
	By adoption	Full adoption by a Portuguese national
	By naturalisation	By people who have resided legally in Portugal for at least six years
		By people born in Portugal with at least one parent who has resided legally in Portugal for five years prior to the application
		By children born in Portugal who have completed the first cycle of basic education
		By people who have lost Portuguese nationality and never acquired any other nationality
May be granted to: Adults who were born in Portugal and who have resided in Portugal, regardless of status, for the previous ten years		

*This table does not include the nationality rights of children born abroad to Portuguese parents or with Portuguese ancestry. Further information available at:

<http://www.acidi.gov.pt/nacionalidade.htm>



PRESIDÊNCIA DO CONSELHO DE MINISTROS
Alto Comissariado para a Imigração e Diálogo Intercultural, I.P.

2.2 Nationality of origin

Among the major changes implemented by this law is the attribution of nationality of origin to those commonly referred to as ‘third-generation’ immigrants – people who were born in Portugal to at least one parent also born in Portugal. Nationality of origin is also granted to children born in Portugal who have at least one parent who has been living in Portugal with legal status for at least five years prior to the birth. The law reduces the procedural demands for the attribution of nationality of origin to immigrants. The process is simplified by way of facilitated access to the necessary documents at the Central Registry Office.

2.3 Derived Nationality by Effect of Will

If a person acquires Portuguese nationality, then their minor or dependent children have a right to apply for nationality on this basis. People who have been married to a Portuguese national for at least three years, or can prove in a civil court that they have been living in *de facto* union with a Portuguese national for the same period of time, may also apply for Portuguese nationality by effect of will. This also applies to same-sex unions.

2.4 Derived Nationality by Naturalisation

Acquisition of nationality by naturalisation is granted by the Minister of Justice, at the request of the applicant. Naturalisation is open to people who have reached the age of majority, have resided in Portugal with any permit other than a short-term visa for at least six years, have a sufficient knowledge of the Portuguese language, and have not committed a crime punishable with three years or more in prison according to Portuguese law.

In the case of minors, applicants must have sufficient knowledge of the Portuguese language and must not have committed a crime punishable with three years or more in prison according to Portuguese law. A minor must also either have a parent who has lived in Portugal with any type of permit other than a short-term visa for five years prior to the application, or have concluded the first four years of schooling in Portugal, regardless of the immigration status of their parents. The new law therefore introduced a right to nationality for children of undocumented migrants.

Nationality by naturalisation is also granted to people who previously had Portuguese nationality, and people who have at least one Portuguese grandparent. Adults who were born in Portugal and who have lived for at least ten years in Portugal prior to their application, regardless of their status or the status of their parents, *may* also apply for Portuguese nationality. Article 23 of the Decree-Law in relation to the latter category



PRESIDÊNCIA DO CONSELHO DE MINISTROS
Alto Comissariado para a Imigração e Diálogo Intercultural, I.P.

expressly differs from the other articles in using the phrase “the Government may concede Portuguese nationality” instead of “the Government concedes Portuguese nationality.”

3. GOVERNMENT MINISTRIES AND AGENCIES

All applications for nationality by naturalisation are referred to the Minister of Justice by the Central Registry Office, with direct lines of communication with the Foreigners and Borders Service within the Ministry of Internal Administration. The 2006 Law transferred the burden of proof with regard to the applicant’s connection with Portuguese society from the applicant to the Ministry of Justice. The Ministry of Education is responsible for administering the system for providing a certificate of competency in the Portuguese language (described in section 4.2 below). The administrative and fiscal tribunals have taken over competency for disputes relating to nationality, and new rules have been introduced in relation to the court procedures and the contestation of decisions made by the Central Registrar.

On foot of Organic Law 2/2006 of 17 April 2006, the Central Registry Office set up a branch at the National Immigrant Support Centre in Lisbon city centre in order to process nationality requests at that location. The Government’s *Plan for Immigrant Integration*, adopted by a Council of Ministers Resolution in May 2007, provides for a publicity campaign in relation to the new Nationality Law, and the creation of a network to support the provision of information on application processes and the acquisition of nationality. This is to be achieved through cooperation with immigrant communities and associations, as well as through the “SOS Imigrante” phonenumber. This is the responsibility of the High Commission for Immigration and Intercultural Dialogue (ACIDI, IP), the Registry and Notary Institute of the Ministry of Justice, and the Ministry of Education.

ACIDI, IP engaged in a nationwide information campaign in order to inform immigrants of their rights in relation to the new Nationality Law. ACIDI, IP has a direct link from its website to a clear and straightforward diagram of nationality rights, and information on where and how to apply for Portuguese nationality.² Advice is also provided on nationality via a special email address or through the “SOS Imigrante” freephone service. At the entrance to the National Immigrant Support Centre in Lisbon, there is a large poster explaining nationality rights under the new law. A support office was also established within the National Immigrant Support Centre to promote and facilitate the acquisition of nationality, together with a leaflet information campaign.

² <http://www.acidi.gov.pt/nacionalidade.htm>



PRESIDÊNCIA DO CONSELHO DE MINISTROS
Alto Comissariado para a Imigração e Diálogo Intercultural, I.P.

This active promotion of the acquisition of nationality as a tool in integration policy in Portugal is more in line with the policies of Canada, USA and Australia than the EU countries (Bauböck et al, 2006b: 16; Kraler, 2006: 40).

4. ORGANISATIONAL CONDITIONS

4.1 Procedures

In order to obtain Portuguese nationality, a number of documents must be presented to the Central Registry Office, a Portuguese consulate or embassy, or a civil registry office. Consulates, embassies and civil registry offices then forward the applications to the Central Registry Office. The Central Registry Office keeps registry books – the Central Nationality Register - on the attribution, acquisition and loss of nationality. The Central Registrar issues decisions on nationality and certificates.

The new Nationality Law contains a number of provisions to simplify the procedures involved in acquiring nationality in order to make it “easier for citizens to exercise their rights” (Decree-Law no. 237-A/2006 of 14 December). Declarations for the purposes of nationality may be made directly to the Central Registry Office rather than at the civil registry offices or consulates. New branches of the Central Registry Office provide nationality services, and other organisations are authorised to provide information on the acquisition of nationality. The practice of publishing details of acquisitions of nationality by naturalisation in the Government journal was abolished by the new law.

The process of acquisition of nationality by effect of will requires the issuing of a declaration of the desire to be Portuguese at a Civil Registry Office or a Portuguese Consulate, and the presentation of the requisite documentation. This may also be conducted by post, and will in the future be available by email. Declarations of the desire to become Portuguese can also be made at the National Immigrant Support Centre in Lisbon. An “effective connection to the national community” must also be declared.

Measures have been undertaken to allow requests for the attribution, acquisition or loss of nationality to be made electronically in the future. The witnessing of signatures for these declarations or requests is now free-of-charge. The registration of a declaration for the acquisition of nationality, as well as the procedures and necessary documentation are now also free-of-charge, together with certificates, photocopies and letters for the naturalisation process, including the issuing of an original birth, marriage, death or miscarriage certificate.

The charge for an adult for the procedure of acquisition of nationality by effect of will, adoption or naturalisation, as well as the registration of verbal declarations, is €175.



PRESIDÊNCIA DO CONSELHO DE MINISTROS
Alto Comissariado para a Imigração e Diálogo Intercultural, I.P.

This is reduced to €120 in the case of applicants who are legally unfit. The cost of the procedure for loss of nationality is €120. In all of these cases, the charge can be waived in the case of certifiable economic difficulties. Information provided by the Foreigners and Borders Service (SEF) involves a charge of €20. SEF issues proof of legal residence where necessary and proof that the applicant or their parents have not been resident in Portugal in the service of a foreign Government.

The Central Registry Office will notify an applicant for nationality of origin within twenty days if any documents are missing, otherwise, the Office processes the documents in thirty days and within a further sixty days the Central Registrar verifies whether all conditions for the attribution of Portuguese nationality have been met. In the case of nationality by naturalisation, the decision of the Central Registry Office is referred to the Minister for Justice for a final decision.

If the decision is negative, then the applicant will have thirty days to dispute the decision. An application for nationality may be opposed on the basis of a proven lack of connection to Portugal, committing a crime with a sentence of over three years' imprisonment, or having exercised a function other than strictly technical in the service of another State. However, the application must be opposed within one year. A decision can be appealed only to the Lisbon Court of Appeal, a civil jurisdiction.

4.2 Language Test

Portuguese language tests for the purposes of the acquisition of nationality are regulated by article 25, section 2 of Decree-Law 237-A/2006 on nationality, and by a normative order published the day after the new nationality law. The tests are required of people who are applying for nationality by naturalisation, and who cannot otherwise certify their knowledge of Portuguese (such as by means of an educational qualification issued by an institution in a Portuguese-speaking country). This applies specifically to adults who were born abroad and are applying on the basis of six years' legal residence in Portugal, or on the basis of having a Portuguese grandparent, and to adults who were born in Portugal and have lived there for at least ten years, regardless of status. The test is also required of children who are applying for Portuguese nationality on the basis that at least one of their parents has lived in Portugal legally for five years prior to the application.

The Decree-Law expressly states that in the case of children younger than 10 years old or people who cannot read or write, "the test of knowledge of the Portuguese language should be adapted to their capacity to acquire or demonstrate knowledge of that language" (Decreto-Lei, art. 25, para. 4). The test is overseen by the Ministries of Justice and Education. The normative order created a new form of test, and provided for the administration of the test and the issuing of a certificate by recognised educational institutions. Prior to the new regulations, the test had been taken at a notary's office or municipal council.



PRESIDÊNCIA DO CONSELHO DE MINISTROS
Alto Comissariado para a Imigração e Diálogo Intercultural, I.P.

There is a fixed cost of €15 for sitting the test, or €20 if it is taken abroad. The test is set at the level of A2 in the Common European Framework of Reference for Languages (one level above basic). Applicants can register for the test online or through educational institutions, and it takes about fifteen minutes. The requirement to pass the test is a score of 50%, and specific tests are designed for people aged 10-14.

In February 2007, 2,806 people registered for the Portuguese test and 1,916 people sat it, of whom 1,354 were men and 562 women, and 84% of these people passed the test. They were mostly from Moldova, Ukraine, Bangladesh, Russia and India, and they sat the test at 57 centres in Portugal. According to the Minister for Education, the tests recognise language as a principal factor in integration. In introducing the new Portuguese language tests in early 2007, the Minister for Justice stated that the applicants had shown “a great interest, and perhaps even a great love, for the idea of being Portuguese.” The requirement to prove knowledge of Portuguese in a written test has, however, thus far excluded some applicants who would otherwise be eligible, but who are not literate.³

4.3 Nationality Ceremony

On 20 May 2007, the first Portuguese nationality ceremony was held at the Jerónimos Monastery in Lisbon. The ceremony was presided over by the Prime Minister and the Ministers for the Presidency, for Justice and for Education. A total of 324 people were granted Portuguese nationality and issued with a certificate, a Portuguese flag and a copy of the Portuguese Constitution. The majority (284) of those granted nationality at the ceremony were under 13 years old. Accordingly, there were performers, music and other entertainment for the children. The Prime Minister addressed the ceremony and participated in awarding the certificates. The majority of those granted nationality were children whose parents had legally resided in Portugal for at least five years prior to their birth.

Those who attended the ceremony and were granted Portuguese nationality were originally from Cape Verde, Guinea-Bissau, Angola, Brazil, Russia, Romania, Moldova, China, India, São Tomé and Príncipe, Ukraine, Pakistan, Bangladesh and Morocco. According to the Portuguese Prime Minister, José Sócrates, the new Portuguese Nationality Law “breaks with a tradition of reservation and distrust” in relation to foreigners, adopting “a progressive and conclusive vision” that will

³ “Cabo-verdeana quer nacionalidade mas “mau português” impede-a (Cape Verdean wants nationality but “bad Portuguese” prevents her).” *Diário de Notícias*, 06.01.2008.



PRESIDÊNCIA DO CONSELHO DE MINISTROS
Alto Comissariado para a Imigração e Diálogo Intercultural, I.P.

transform Portugal “into a more just country for those who have been here for more than five years.”⁴

5. BENEFITS OF CITIZENSHIP VS. PERMANENT RESIDENCY

The principal distinctions between foreign and national citizens lie in the issues of political participation and active citizenship - and therefore the definition of the democratic development of the country -, and in the right to travel freely within and to and from national territory (Pereira da Silva, 2004: 19-20). Article 15 of the Portuguese Constitution grants equal rights to all residents of Portugal: “Foreigners and stateless persons who find themselves or who reside in Portugal shall enjoy the same rights and be subject to the same duties as Portuguese citizens”. In term of working rights, article 59 of the Portuguese constitution establishes that all workers enjoy economic rights, without distinction as to “age, sex, race, citizenship, country of origin, religion, or political or ideological convictions.”

There are four sets of exceptions to the constitutional principle of equal status guaranteed to Portuguese people, foreign citizens and stateless people: political rights, holding public positions that are not predominantly technical, and other rights reserved for Portuguese citizens by the Constitution, and by law. It has been argued that the constitutional equal status principle is in fact compromised in various ways for foreigners in the constitution itself (Pereira da Silva, 2004: 25-7).

5.1 Long-Term Residents

Chapter VII of the new immigration law covers the rights of long-term residents. Long-term residents in Portugal have rights to education and training, employment, to set up a business, professional training, recognition of qualifications, social security, assistance and protection, tax benefits, healthcare and law and courts (Lei nº 23/2007). There are legal provisions that ensure equality of treatment to “foreign citizens” in terms of social welfare, tax, union membership, recognition of qualifications and access to goods and services. Long-term residence permit holders are entitled to family reunification with their spouse or *de facto* partner, minor or dependent children, adopted children, adult children who are single and attending an educational institution, dependent parents, and younger siblings if they are in their charge.

⁴ “Mais de 5 mil estrangeiros pediram nacionalidade portuguesa (More than 5 thousand foreigners request Portuguese nationality).” *A Semana*, 21.05.2007.



PRESIDÊNCIA DO CONSELHO DE MINISTROS
Alto Comissariado para a Imigração e Diálogo Intercultural, I.P.

In order to apply for a permanent residence permit, the applicant must have been legally resident in Portugal for at least five years, not have been convicted of a crime with a sentence of over one year's imprisonment, and have accommodation, means of subsistence and a basic knowledge of the Portuguese language. According to the new immigration law, Law no. 23/2007 of 4 July, permanent residence permits must be renewed every five years.

A permanent residence permit can be revoked if the holder is subject to a deportation order, has made false declarations or provided false documents, has committed a serious crime, or for reasons of public order. If the holder of a permanent residence permit is absent from Portugal for 24 consecutive months, or 30 months within the space of three years, the permit is also revoked, except in specific cases. In the case of temporary permit holders, the durations are six months and eight months respectively.

Immigrants with long-term resident permits for Portugal can only be deported if they pose a real and sufficiently serious threat to public order or public security; this cannot be based on economic reasons. If they are to be deported, the following factors are taken into consideration: the length of residence, age, consequences for this person and for their family, and connections with the country of residence and absence of connections to the country of origin. It is illegal to deport any foreign citizens who were born and live in Portugal, are in charge of minor children who have Portuguese nationality or are resident in Portugal, or people who have lived in Portugal since they were younger than ten years old.

The holder of a long-term residence permit from another EU country may remain in Portugal for longer than three months if they are working, studying or have another reasonable motivation for their stay. Holders of long-term residence permits issued by other EU countries are entitled to equality of treatment with Portuguese nationals in relation to employment, setting up a business, working conditions, education and professional training, recognition of qualifications, social security, tax benefits, healthcare, access to and provision of goods and services, housing, freedom of association, membership and affiliation to trade unions, and free access to the national territory.

5.2 Portuguese Nationals

In articles 26, 27 and 33 of the Constitution, the right to citizenship, personal liberty and guarantees in matters of extradition, respectively, there is an express distinction between the rights of Portuguese nationals and the rights of foreigners (Pereira da Silva, 2004: 31-2). However, the principal area where Portuguese nationals enjoy more rights is in terms of political rights. Only a Portuguese national by origin, that is, not someone who is naturalised Portuguese, may become President of the Republic. Specific political rights are accorded to citizens, which are not shared by long-term residents. These are the rights to:



PRESIDÊNCIA DO CONSELHO DE MINISTROS
Alto Comissariado para a Imigração e Diálogo Intercultural, I.P.

1. participate in public life;
2. information on political organisations;
3. vote in elections and referendums;
4. access public positions;
5. form and participate in political associations and political parties;
6. petition;
7. popular action;
8. popular legislative initiative;
9. popular referendum initiative.

Immigrants from non-EU countries do not generally have a universal right to vote in local, national or EU elections in Portugal, but nationals of certain countries enjoy certain voting rights, according to the principle of reciprocity. According to this principle, if a Portuguese emigrant is allowed to vote in a country of origin, then an immigrant in Portugal from that country may vote in the local elections in Portugal. This is regulated by certain conditions, such as that the immigrant must have resided in Portugal for at least three years.⁵

In the case of immigrants from Cape Verde and Brazil, a residence of just two years is required. Furthermore, for Brazilian immigrants who have resided in Portugal for longer than three years, there also exists an entitlement to vote in the presidential, legislative and autonomous elections. After four years' residence, Cape Verdeans and Brazilians can also stand for local elections, while for Uruguayans and Peruvians the requirement is five years. The extent of rights granted to foreign citizens, particularly to people from Portuguese-speaking countries, had been considered a disincentive to naturalisation, as granting “rights ‘without’ obligations” (Oliveira & Inácio, 1999: 47).

6. DUAL CITIZENSHIP

Portuguese law permits a Portuguese citizen to have other nationalities, though clearly, the country of origin may forbid this and thus revoke the original nationality on acquisition of Portuguese nationality, as is the case, for example, for Ukraine and Guinea-Bissau. In the context of Portuguese law, it is the Portuguese nationality that will be taken into account. Dual nationality was permitted in Portugal prior to the

⁵ This applies to nationals of the following countries: Argentina, Chile, Israel, Norway, Peru, Uruguay and Venezuela.



PRESIDÊNCIA DO CONSELHO DE MINISTROS
Alto Comissariado para a Imigração e Diálogo Intercultural, I.P.

introduction of the new Nationality Law. Law n° 37/81 of 3 October 1981 provided for full tolerance for dual nationality, at a time when many countries of both immigration and emigration were adapting to the necessity for people to have citizenship in more than one country (Bauböck, 2006: 10).

7. PURPOSE OF NATURALISATION PROCEDURES

The purpose of naturalisation procedures has altered and evolved in response to the historical developments outlined in section 1 above, and the political context of each legislative measure. In the context of decolonisation processes in Portuguese Africa, Decree-Law n° 308-A/75 was prefaced by the consideration *‘that it is convenient to grant or facilitate the retention of Portuguese nationality in cases where this is justified by a special relationship of connection with Portugal or the unequivocal manifestation of the desire to retain that nationality’* (Ministérios da Coordenação Interterritorial, da Justiça e dos Negócios Estrangeiros, 1975).

Six years later, Law n° 37/81 of 3 October 1981 was considered urgent both because of the requirements of EEC membership, and because the 1959 law was in conflict with the new 1976 constitution. This law aimed to dispense with the gender discrimination in previous nationality laws with regard to the passing on of nationality through a Portuguese father only (or through the mother if the child was illegitimate), and the automatic acquisition by a woman of her husband’s nationality (Baganha & Urbano de Sousa, 2006: 445).

Apart from a large-scale immigration flow during the 1970s as a result of the decolonisation process, Portugal throughout the twentieth century was primarily a country of emigration. Nationality policy was therefore based on *ius sanguinis* and the law of return for Portuguese emigrants and their descendants. This was reinforced by the 1981 law, bringing the country into line with other European countries and recognising the significance of emigration for Portugal.

Law no. 25/94 of 19 August 1994 aimed to curb increasing undocumented migration, placing the burden of proof of a meaningful connection with Portugal on the applicant (Baganha & Urbano de Sousa, 2006: 446). This Law prioritised nationals of former Portuguese colonies in Africa and Brazil in terms of access to Portuguese nationality, as well as aiming to deter marriages of convenience by imposing a waiting period of three years for naturalisation by marriage.

In the contemporary context of Portugal as a country of immigration, the new 2006 law regulates for the acquisition of citizenship to provide for full integration into Portuguese society for people with *‘a strong connection to the national community.’* Naturalisation



PRESIDÊNCIA DO CONSELHO DE MINISTROS
Alto Comissariado para a Imigração e Diálogo Intercultural, I.P.

is to be considered more a question of citizenship than of policing, and should therefore reflect the ‘*set of rights and obligations inherent in the status of national*’ (Ministério da Justiça, 15.12.2006). This reflects a more inclusive concept of national citizenship.

The new regulation aims to provide for a more cohesive society and a more equitable naturalisation policy. In presenting the proposal for the law, the Minister for the Presidency stated in parliament that the intention was to ‘*correct a very grave social injustice and to provide, by way of access to the status of citizen, full integration into Portuguese society to people who, although they have a strong connection to the national community, have until now remained deprived of their rights as a consequence of an intolerable factor of exclusion*’ (Ministro da Presidência, 18.10.2005). Reference is made here to the situation of people born in Portugal to parents born in Portugal, who previously did not have access to Portuguese nationality due to their parents’ undocumented status.

By mid-December 2007, a year after the new law had come into force, 35,347 applications for nationality had been made – more than triple the number of applications in 2005. Of these, 14,446 were accepted, 205 were refused and around 18,000 were still being processed. Most of the refusals were due to applicants or their parents not having fulfilled the minimum residency requirements. The main countries of origin of the new Portuguese citizens, comprising around 50% of all applicants, were Cape Verde, Brazil, Angola and Guinea-Bissau. The high number of favourable decisions was considered proof that the new law had been very positive in terms of inclusion and that access to Portuguese nationality had become easier.⁶

In terms of visibility, at the Portuguese Nationality Ceremony in May 2007, the Prime Minister delivered his speech with the European Union flag in the background. Although a fear had been expressed in the past that naturalisation in Portugal was simply a route to acquiring EU citizenship, rather than demonstrating a connection with the nation of Portugal (Oliveira & Inácio, 1999: 5), the EU dimension to Portuguese nationality is generally absent from the current discourse. The emotional requirement for nationality remains that of identifying with Portugal, and not with both Portugal and the European Union.

⁶ Lusa. “14.446 pedidos de nacionalidades favoráveis provam que nova Lei é inclusiva (14.446 favourable decisions on nationality applications prove that the new Law is inclusive).” 14.12.2007.



PRESIDÊNCIA DO CONSELHO DE MINISTROS
Alto Comissariado para a Imigração e Diálogo Intercultural, I.P.

8. CONCLUSION

Portuguese nationality law developed as a response to specific historical contexts, particularly influenced by the country's colonial past. Due to changing patterns of migration, and increasing inward migration by a more diverse group of migrants, it was seen as necessary to overhaul the existing system for the acquisition, attribution, loss and re-acquisition of Portuguese nationality. The new law, passed at the end of 2006, reflects many of the recommendations made by policy experts in relation to nationality (Bauböck et al, 2006a: 32-4), including simplification and transparency of procedures, improved access for second and third generation migrants, the removal of differential access for migrants according to country of origin, and the organisation of a public campaign to promote naturalisation. The acquisition of nationality by migrants and their children is therefore seen as a fundamental aspect of immigrant integration policy in Portugal.

REFERENCES

- ACIDI (2007). *Folheto da Nacionalidade*.
- Assembleia da República. “Lei Orgânica nº 2/2006 de 17 de Abril.” *Diário da República – I série-A – Nº 75, 2776-2782*.
- Baganha, Maria Ioannis and Constança Urbano de Sousa. “Portugal” in: Rainer Bauböck, Eva Ersbøll, Kees Groenendijk and Harald Waldrauch (2006). *Acquisition and Loss of Nationality: Policies and Trends in 15 European States. Volume 2: Country Analyses*. IMISCOE Research. Amsterdam: Amsterdam UP, pp435-76.
- Bauböck, Rainer (ed.) (2006). *Migration and Citizenship: Legal Status, Rights and Political Participation*. IMISCOE Reports. Amsterdam: Amsterdam UP.
- Bauböck, Rainer, Eva Ersbøll, Kees Groenendijk and Harald Waldrauch (2006a). *Acquisition and Loss of Nationality: Policies and Trends in 15 European States. Volume 1: Comparative Analyses*. IMISCOE Research. Amsterdam: Amsterdam UP.
- Bauböck, Rainer, Eva Ersbøll, Kees Groenendijk and Harald Waldrauch (2006b). *Acquisition and Loss of Nationality: Policies and Trends in 15 European States. Volume 2: Country Analyses*. IMISCOE Research. Amsterdam: Amsterdam UP.



PRESIDÊNCIA DO CONSELHO DE MINISTROS
Alto Comissariado para a Imigração e Diálogo Intercultural, I.P.

- Kraler, Albert. “The legal status of immigrants and their access to nationality” in: Rainer Bauböck (ed.) (2006). *Migration and Citizenship: Legal Status, Rights and Political Participation*. IMISCOE Reports. Amsterdam: Amsterdam UP, pp33-66.
- Ministérios da Coordenação Interterritorial, da Justiça e dos Negócios Estrangeiros (1975). “Decreto-Lei n.º 308-A/75 de 24 de Junho”.
- Ministério da Justiça. “Decreto-Lei nº 237-A/2006 de 14 de Dezembro.” *Diário da República, 1ª série – No. 239, 8388 (2-16)*.
- , “Novo regime da Nacionalidade Portuguesa entra em vigor”, 15.12.2006.
- Ministério da Justiça e Ministério da Educação. “Portaria nº 1403-A/2006 de 15 de Dezembro.” *Diário da República I Série – Nº 240, 15 December 2006*.
- Ministro da Presidência, “Apresentação da Proposta de Lei da Nacionalidade”, 18.10.2005.
- Oliveira, Catarina Reis and Andreia Inácio (1999). “Nacionalizações em Portugal (1985-1996)”. *Working Paper (11) SociNova*.
- Pereira da Silva, Jorge (2004). *Direitos de Cidadania e Direito à Cidadania: Princípio da equiparação, novas cidadanias e direito a cidadania portuguesa como instrumentos de uma comunidade constitucional inclusiva*. Lisbon: Observatório da Imigração.
- Presidência do Conselho de Ministros & ACIDI, IP (2007). *Plano para a Integração de Imigrantes*. Lisbon.
- Valente Rosa, Maria João, Hugo de Seabra and Tiago Santos (2003). *Contributos dos “Imigrantes” na Demografia Portuguesa: O papel das populações de nacionalidade estrangeira*. Lisbon: ACIME.