



Nationality Laws of the Former Soviet Republics

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INTRODUCTION.

With the formal dissolution of the Soviet Union on 26 December 1991^[1] Soviet nationality ceased to exist. Since then, most former Soviet Republics have adopted their own nationality laws. However, many issues regarding the citizenship of former Soviet nationals must still be resolved. This paper shall provide an overview of nationality laws recently adopted in the independent Republics. It is intended to serve as a guideline for determining the nationality of persons originating from this subregion. In its first part the paper will address the problem of succession of nationality in general international law and identify the obligations of states deriving thereof.

The second part will survey the conditions and requirements for acquisition and loss of nationality for each of the former Soviet Union Republic. The purpose of this exercise is to determine whether such laws are in conformity with international human rights standard and whether they create situations which lead to statelessness.

In the present paper the terms nationality and citizenship are used as synonyms to define a political status^[2] In the Soviet Union, however, citizenship and nationality were two different legal concepts. While the former reflected a political status, the Soviet doctrine used the term nationality in the ethnic sense to define the whole of the members appertaining to the same ethnic nation. The Soviet concept of nationality emerged in 1932 together with the introduction of the internal passports which included, among other data, the nationality of the holder (for example Russian, Tatar, Armenian etc).

PART I: NATIONALITY AND STATE SUCCESSION.

1. Nationality as a matter of reserved domain.

In 1923 in the Nationality Decrees in Tunis and Morocco the Permanent Court of International Justice (PCIJ) stated that

"in the present state of international law, questions of nationality are [...] in principle within [the] reserved domain" of each state^[3] As a matter of sovereignty, every state is free to determine its criteria of granting nationality as well as to establish the conditions of naturalization. The International Court of Justice (ICJ) confirmed in the *Nottebohm Case* that "international law leaves it to each State to lay down the rules governing the grant of its own nationality"^[4] The

same rule can be found in Art. 1 of the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws.^[5] Although a state is free in determining the rules for the acquisition of its nationality, it cannot claim that these rules be recognized by other states, unless they reflect a genuine connection between the individual and the state. This principle of genuine link has been expressed by the ICJ with regard to diplomatic protection as follows: "...On the other hand, a state cannot claim that the rules it has thus laid down are entitled to recognition by another state unless it has acted in conformity with this general aim of making the legal bond of nationality accord with the individual's genuine connection with the state which assumes the defence of its citizens by means of protection as against other states."

and:

"According to the practice of states, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties."^[6]

First recognized in the field of diplomatic protection, the principle of genuine link has been extended to other aspects of nationality. The provisions of the 1961 Convention on the Reduction of Statelessness are based on various criteria of factual connection of the individual with a state.^[7] Art. 91 of the U. N. Convention on the Law of the Sea of 1982 requires the existence of a genuine link for the nationality of ships.^[8] It can be concluded that the principle of genuine link is becoming a general principle in nationality matters.

Further restrictions on state discretion in matters of nationality have been arguably based on the general principles of good faith and abuse of rights.^[9]

Finally, some implication for the freedom of states may derive from international human rights law.^[10] Art. 15 of the Universal Declaration of Human Rights (1948, hereinafter UDHR) which, in its main parts, is generally accepted as an authoritative interpretation of the UN Charter, and consequently as part of international customary law, provides that:

"Everyone has the right to nationality. No one shall be arbitrarily deprived of his nationality, nor denied the right to change his nationality."

Although this provision sets out a general right to nationality^[11], it does not specify which state, if any, has the relating obligation to grant nationality.

However, in some circumstances, it is possible to identify such states. This is the case for children of unknown parents found on the territory of a state and children of stateless people born in the country of habitual residence of their parents. Given their right to a nationality based on Art. 15 UDHR and, for state parties, on Art. 24 para. 3 of the International Covenant on Civil and Political Rights^[12], and considered the fact that they have only a genuine link with one state, it could be deduced that the latter has an obligation to grant him/her its nationality. Such conclusion is also supported by the spirit of Art. 7 para. 2 of the Convention on the Right of the Child of 1989.^[13]

Nevertheless, such restrictions only marginally affect the traditional freedom of states in nationality matters. Most issues regarding nationality are still under domestic jurisdiction.

2. Obligations related to state succession.

Changes of sovereignty over a territory generally affect the nationality of its inhabitants. Previous nationality ceases to exist in all cases in which the predecessor state dissolves. This has been the case after the collapse of the USSR. More problematic is the acquisition of the nationality of the successor state, since, like all matters of reserved domain, it depends from a positive act by the

successor state. International law, however, cannot disregard the fact that habitual residents on the transferred territory are effectively attached to it. The population generally follows the territory. As stated by Brownlie, to accept this substantial connection with the territory "is not to revert to forms of feudalism but to recognize a human and political reality, which underlies modern territorial settlements"[14]

Successor states have to respect this attachment. They may not acquire a territory and disregard completely the population living thereon. With regard to nationality, successor states would be in breach of international law if they treated the population as stateless[15] They have an obligation deriving from customary international law to grant their nationality to all habitual residents on the acquired territory, with the exclusion of nationals of third states. Such obligation is based on consistent state practice and on the existence of an *opinio juris*.

Several authors go even further and suggest that the nationality of the successor state is automatically acquired by the inhabitants of such territories on the day of transfer of sovereignty. [16] They speak of "collective naturalization" to stress the fact that nationality is directly acquired by virtue of international law, without the need of a positive legislative act by the successor state. The same view has been expressed in the Harvard Draft on nationality drawn up in 1929, which was an attempt to codify pre-existing norms in matters of nationality.[17] For the case of partial succession, the existence of such a rule has also been set forth by a report of the Secretariat of the United Nations.[18]

The obligation to grant nationality to the inhabitants of the acquired territories excluding nationals of third states, which derives from general international law, is well reflected by state practice. [19] The normal effect of acquisition of territory by the United Kingdom and by the United States is that the nationals of the State whose territory is annexed, if resident thereon, become respectively British or U. S. nationals.[20] Soviet practice has been similar. Lithuanian, Latvian and Estonian nationals, as well as persons resident in Bessarabia on 28 June 1940 were considered as Soviet nationals.[21]

Reference can also be made to various bilateral treaties which contained express provisions in this sense.[22] In 18th and 19th centuries conventions regarding the transfer of territorial sovereignty, people who had their domicile on the ceded territories were presumed to acquire the nationality of the successor state by virtue of law, unless otherwise provided for.[23]

Peace treaties after World War I deserve particular attention, in as much as they contain an overall solution for the problem of nationality of former citizens of the dissolved Austro-Hungarian Empire. Interestingly, most questions related to the problem of succession of nationality and particularly the determination of the initial body of citizens, were expressly dealt with in the peace treaties. The initial body of citizens has been defined according to the existence of an effective link between individual and territory, which was expressed by the principle of domicile[24] or by the conception of *indigénat*[25] in case of Austria and Hungary. According to Art. 70 of the Treaty of St. Germain and to Art. 61 of the Treaty of Trianon, Austria and Hungary acknowledged that every person possessing rights of citizenship (*indigénat*) on former Austro-Hungarian territories would lose its old nationality and *ipso facto* acquire that of the state to which the territories were transferred.[26]

In order to form ethnically homogeneous states and to preserve the rights of minorities, a right of option was, however, granted to former Austro-Hungarian nationals that differed "in race and language from the majority of the population"[27] of the newly created state. Within a period of one year these individuals could opt for the nationality of the state of ethnic origin[28], provided they transferred their place of residence to that state within one year.[29]

Moreover, the treaties of St. Germain (Art. 65) and of Trianon (Art. 57) contained an important provision aimed at reducing statelessness. All persons born in Austrian (Hungarian) territory who were not born nationals of another state ipso facto became citizens of Austria (Hungary).

States that issued from decolonization have mainly employed the criterion of residence on their territories in order to determine the original body of citizens. The nationality laws of Mali, Mauritania and Niger required only habitual residence on the day of entry into force of the respective nationality laws. More frequently, a pre-condition for the acquisition of nationality has been continuous residence on the ceded territories for some time before the day of entry into force of the nationality law. The required period varied from six months in the case of Indonesia to 10 years in the case of Libya.[\[30\]](#)

It can be concluded that successor states and in particular new states recognized their obligation to grant nationality to the population of the territory they have acquired with the exclusion of nationals of third countries. States have generally acted in conformity with it, thus allowing the formation of a rule of customary law.

Domicile or (prolonged) habitual residence have been the criteria employed to define which part of the population had a right to the nationality of the new state. Looking at the historical evolution it seems that habitual residence, usually lasting for some time, has replaced domicile. Prolonged habitual residence should be preferred to domicile also in the light of the principle of genuine link.

3. The definition of the initial body of citizens.

After its formation, new states need to determine their initial body of citizens. Only then may they establish the principles, rules, and procedures regulating the acquisition of nationality.[\[31\]](#) For the definition of the initial citizenry Brubaker[\[32\]](#) distinguishes three different situations and, related to it, three different models. The most common case is the creation of a new state. The definition of the initial body of citizens is based on territorial terms even if a *ius sanguinis* approach will be adopted for the subsequent recruitment of citizens. Generally, the determination of the original citizenry is very inclusive. Usually, all habitual residents on the territory of the new state, excluding nationals of other states, obtain the new nationality.[\[33\]](#)

The second model is the restored-state model. It refers to states that knew independence before, lost it through foreign occupation and reacquire it. Technically, they are not new states. Statehood had been *de facto* suspended for the time of occupation. With regard to nationality, the citizen status is restored for citizens of the previous independent state and their descendants.[\[34\]](#) All other residents are to be considered as aliens. They may acquire citizenship through naturalization.

Brubaker[\[35\]](#) finally refers to a compromise model that combines the previous two. In several cases the restored state may be very different from its "ascendant". Former nationals and their descendants may not be sufficient to form the initial body of citizens. They will form its core but other groups or individuals will have to be incorporated.

The distinction between new states and restored states is relevant because it has a considerable impact on the rules governing the determination of the initial citizenry. The obligation of successor states to grant their nationality to the inhabitants of the acquired territories outlined in chapter 3 applies only to the situation of state succession. Restored states regained independence after a period of occupation and are not to be considered as successors to the occupying power.

4. Conclusions.

In case of state succession there is an exception to the traditional rule according to which states are free to determine the criteria of granting nationality. Customary international law requires from successor states to grant their nationality to all habitual residents of the acquired territory with the

exclusion of nationals of third states. In addition, it has been argued that according to the principle of genuine link a state should grant its nationality to children of unknown parents found on its territory and to children of stateless people habitually resident on its territory, who are born thereon. The following part of this paper will examine whether the nationality laws adopted in the former Soviet Union Republics are in line with these conclusions.

PART II: A SURVEY OF NATIONALITY LAWS IN FORMER USSR REPUBLICS.

After the coup in August 1991 Belarus, Estonia, Georgia Kazakhstan, Lithuania, Russia and Ukraine passed new nationality laws. Four other former republics, namely Azerbaijan, Kyrgyzstan, Moldova and Tadjikistan had already adopted new legislation on nationality shortly before that date^[36]. These laws reflect different models. Most successor states were not previously independent states, but they are new states. Even if several of the former Soviet Republics previously existed as sovereign states in the chaotic periods of the Bolshevik revolution and civil war, only three, Estonia, Latvia and Lithuania, were able to consolidate their independence for a longer time.^[37] All others, which include Armenia, Azerbaijan, Georgia, and Ukraine, enjoyed only brief interludes of independence before they were absorbed into the Soviet Union^[38] This historical difference is of fundamental importance for the comprehension of the present Baltic nationality policy in defining their initial citizenry. Estonia, Latvia and Lithuania define themselves not as successors to the USSR but to the inter-war republics^[39] These countries view the time after 1940 until the reacquisition of independence as foreign occupation. Their statehood did not terminate in 1940 but subsisted de jure for the whole time of Soviet rule. Indeed several arguments militate in favor of this position. In the light of the Briand-Kellog pact and of the Stimson doctrine^[40]40, it can be argued that annexation by force was contrary to international law already before the adoption of Art. 2, para. 4 of the United Nations Charter. Soviet occupation occurred in contrast to the principle of self-determination, which prevented any form of acquisitive prescription based on effectiveness. Finally, the fact that a considerable number of states, did not recognize the Soviet annexation cannot but corroborate the de jure existence of Estonia, Latvia and Lithuania throughout the five decades of Soviet rule^[41]

In brief, in their nationality laws, Estonia has opted and Latvia is opting for the restored-state model. Lithuania and Moldova have followed a mixed system and have determined their initial body of citizens partly with reference to the situation prior to the Soviet annexation and partly to residence in the newly independent country. Other former USSR Republics have drafted their nationality laws adopting the new-state model and determined their initial citizenry on the basis of permanent or prolonged residence, or simply, residence on their territory on the day of entry into force of the nationality law. Azerbaijan, finally, chose quite an unusual way and based its initial citizenry on the situation previously existing in the Soviet Socialist Republic of Azerbaijan before it attained independence.

1. Armenia.

On 23 August 1990 the Supreme Soviet of Armenia adopted a declaration of sovereignty. In a referendum held on 21 September 1991, 99.3 % voted in favor of an independent Armenia. Two days later the Supreme Council proclaimed Armenian independence^[42] The population of Armenia is rather homogeneous. More than 93.3 % are ethnic Armenians, the rest being Kurds (1.7 %), Russians (1.5 %), Ukrainians and others.^[43]

Armenia is expected to adopt its nationality law by the end of 1993. A draft law, drawn up in Spring 1993 has been forwarded through UNHCR Liaison Office in Yerevan in July 1993.

1.1. The definition of the initial body of citizens (according to the draft law).

The draft follows the new state model. The initial citizenry of Armenia is formed by all former Soviet nationals permanently residing on the territory of Armenia on the day of entry into force of the nationality law. However, the draft provides for the possibility to relinquish Armenian nationality within one month from the day of its entry into force by a simple declaration. Former Soviet nationals born in Armenia and residing outside the territory of the Republic who do not possess any nationality may be recognized as Armenian citizens. Therefore an application has to be submitted to the Armenian authorities. The draft does not define the competent authorities nor does it determine the procedure to follow. Similarly, stateless persons, permanently residing in Armenia may apply for recognition of Armenian nationality within one year from the day of entry into force of the law.

1.2. Acquisition of nationality (according to the draft law).

(1) Birth:

Armenian nationality is acquired by birth according to the principle of *jus sanguinis*. Unless otherwise agreed upon by the parents, children of an Armenian national and a foreigner acquire automatically Armenian nationality if born in Armenia or if they would otherwise remain stateless. Armenian nationality is also automatically acquired by birth if one parent is an Armenian national and the other stateless or unknown.

Children of stateless persons born in Armenia *ipso facto* acquire nationality by birth. There is no provision with regard to children of unknown parents found on the territory of Armenia.

(2) Naturalization:

Pre-conditions for naturalization are 18 years of age, four years of permanent residence in Armenia prior to the submission of the application for naturalization, proficiency in Armenian language and knowledge of the Armenian Constitution.

The residence requirement is not necessary (a) for spouses of Armenian nationals as well as for persons who have a child or at least one parent who is an Armenian national and (b) for persons who have at least one parent who previously had Armenian nationality or was born in Armenia, provided they apply for naturalization within three years from becoming 18 years of age.

Applications for naturalization can be rejected if the applicant (1) is engaged in anti-constitutional activities, (2) is a member of illegal organizations and (3) has been convicted and punished with imprisonment for a crime under Armenian laws.

(3) Restoration:

Persons who have lost Armenian nationality may restore it upon application. Restoration is effected by Presidential decree.

1.3. Loss of Armenian nationality (according to the draft law).

Upon application, Armenian nationality may be renounced, provided certain pre-conditions are fulfilled. Possession of another nationality is not required. Further, Armenian nationality is lost (1) by a naturalized Armenian residing abroad who, without justification, has not registered with the Armenian authorities for a period of seven years, (2) by persons who fraudulently acquired

Armenian nationality, and (3) by persons who have acquired the nationality of a state with which Armenia does not have an agreement on dual nationality.

1.4. Conclusions.

The rather inclusive definition of the initial citizenry contained in the draft is quite efficient in reducing statelessness within the Republic of Armenia. The right to relinquish Armenian nationality within one month, however, is source of concern, since it creates a situation where statelessness may occur. Ethnic Armenians residing outside Armenia and who do not possess any nationality, are eligible for recognition as Armenian nationals only if they are born in Armenia and if they file an application within one year from the entry into force of the nationality law. While such a provision allows those ethnic Armenians who have a close link to this country to return and be recognized as Armenian citizens on the basis of a simplified procedure, it effectively deters other ethnic Armenians, who were not born in the territory of Armenia to move massively to their homelands.

States are free to set up the criteria for naturalization. While language requirements are rather common, states usually limit themselves to require a basic knowledge of the national language(s) or a knowledge which is "sufficient for communication". In comparison, the "proficiency" in Armenian language required by the draft is rather strict.

2. Azerbaijan.

On 23 September 1989 the former Soviet Socialist Republic of Azerbaijan issued a declaration of sovereignty, according to which republican laws have primacy over union laws^[44] On 30 August 1991 Azerbaijan proclaimed its independence^[45] On 26 June 1990, Azerbaijan passed a nationality law which entered into force on 1 January 1991^[46] At 1 January 1991 the total estimated population of Azerbaijan was 7,137,000. Azerbaijanis form the largest group with 82.7 %, followed by Russians (5.6 %) and Armenians (5.6 %, mainly in Nagorny Karabakh).

2.1. The definition of the initial body of citizens.

Azerbaijan's nationality law was passed during Soviet rule. Traditionally, Soviet law acknowledged two-layers of citizenship^[47] Soviet citizens were at the same time citizens of one of the union republics. Art. 21 of the 1936 Constitution of the USSR and Art. 1 of the 1938 Soviet citizenship law as well as Art. 1 of the new Soviet citizenship law adopted in 1978 incorporate the idea that in the USSR there was a single union citizenship and that each citizen of a Union Republic was also citizen of the USSR^[48] Although necessary for ideological reasons, Republican citizenship had little practical relevance^[49] This explains why the Union Republics did not issue any laws or decrees establishing the criteria for acquisition and loss of their nationality^[50] Scholars have concluded that in the absence of laws, it could be inferred from Soviet practice that permanent (or habitual) residence seemed to be the decisive criteria for acquiring the nationality of a Union Republic^[51] However, since no formal provisions in this sense existed, other criteria are not excluded. The Azeri nationality law of 1990 does not break with the past. It is a continuation of the traditional two-layers pattern. Azeri nationals were, according to Art. 2, at the same time Soviet nationals.

Since Azeri nationality existed already before the declaration of sovereignty in 1989, no need was felt to redefine the initial body of citizens, once achieved independence. Previous Azeri nationality was reconfirmed. Art. 4 reassures that all persons who had the citizenship of Azerbaijan SSR on the day of entry into force of the nationality law, have ipso facto the nationality of sovereign Azerbaijan. No issues of state succession seem to complicate the picture. The fictitious continuity of Soviet and sovereign Azerbaijan, in nationality matters, prevented the emergence of disputes and controversial views that usually occur in case of state succession.

In the absence of legal provisions regarding former Azerbaijan SSR nationality, it is difficult to determine who was and who was not an Azeri subject. Local agencies of the Ministry of Internal Affairs or, for residents abroad, the diplomatic representations of Azerbaijan, will decide on the issue. Decisions have to be taken on the basis of USSR legislation, the laws of (former) Azerbaijan SSR and international treaties ratified by the USSR and Azerbaijan SSR existing at the critical date (Art. 37). This leaves to the authorities a large margin of discretion, particularly with regard to those people who had a genuine link with another former Soviet Republic as well. For instance, in examining the cases of Armenians born in Armenia but living in Azerbaijan, the Azeri authorities may refer to the fact that such individuals were former citizens of the Armenian SSR and thus that they are not entitled to the nationality of Azerbaijan.

2.2. Acquisition of nationality.

(1) Birth:

Like other former Soviet republics Azerbaijan adhered to the principle of *ius sanguinis*. According to Art. 12 a child whose both parents had the nationality of Azerbaijan "shall have the citizenship of Azerbaijan regardless of whether the child was born on the territory of Azerbaijan SSR or not". In case of parents of different nationality the child automatically acquires Azeri citizenship if (a) the child was born on Azeri territory or (b) was born outside the country but, at least one parent had permanent residence in Azerbaijan at the time of birth. Should this latter condition not be fulfilled, the child may acquire Azeri nationality on the basis of a written declaration of the parents (Art. 13).

The law introduces further *ius soli* corrections to the principle of *ius sanguinis*. Children of stateless persons permanently resident in Azerbaijan (Art. 14) and children of unknown parents born or found on the territory of Azerbaijan acquire Azeri nationality *ipso facto*. Both provisions contribute to reduce statelessness.

Finally, children may acquire Azeri nationality through adoption. According to Art. 26 a non-Azeri child who has been adopted by citizens of Azerbaijan becomes automatically an Azeri citizen. If one of the adopting parents is an Azeri citizen and the other not, the child may acquire the Azeri nationality upon consent of the adopting parents. However, if the adoptive child is stateless, it acquires the nationality of Azerbaijan *ipso facto* [\[52\]](#)

(2) Naturalization:

The Azeri nationality law does not lay down detailed conditions for naturalization. It limits itself to require from interested individuals to file an application (Art. 30, para. 1.a) and to pronounce an oath (Art. 46). An additional requirement has to be inferred from Art. 9 which prohibits dual nationality, except when allowed by a decision of the President of Azerbaijan. No residence requirements are mentioned. Reference is only made to circumstances that imply a rejection of the application. Art. 16, para. 2 states that an application shall be rejected if the applicant

- calls for anti-constitutional changes of the state or social system of Azerbaijan;
- calls for violation of the territorial integrity of Azerbaijan;
- is engaged in activities that are detrimental to state security, public order, health or moral character of the population;
- propagates hatred, national or racial superiority;
- is engaged in terrorist activities.

Much depends on the way these conditions for rejection are interpreted and applied, since they are formulated in general and vague terms. Particularly points three and four leave a large discretion to national officials dealing with applications for nationality. The reference to "health and moral character" on the one side and to "propaganda of hatred and national superiority" on the other, may easily lead to abuses.

It is unknown if decrees of application of the 1990 nationality law exist. Indeed, basing naturalization solely on the latter leads to quite unusual conclusions. Since no residence requirements are requested, formally the doors of Azeri nationality are as open for non-resident aliens, as they are for permanent residents. Requirements of genuine link^[53] could, of course, be referred to by other subjects of international law that do not intend to recognize a nationality conferred in case of abuses.

(3) Restoration of nationality:

Arts. 17 and 30 provide for an additional form of acquisition of nationality. Individuals who formerly had the citizenship of Azerbaijan may apply to have their Azeri nationality restored. However, the law does not provide for a special procedure and it is not clear if the conditions of rejection provided for the case of naturalization are applicable to restoration of Azeri citizenship. Since they are included in Art. 16, it can be inferred that they are only applicable to naturalization.

2.3. Loss of nationality.

Renunciation of Azeri nationality is allowed upon application. While it can be refused whenever this is contrary to the interests of Azerbaijan (Art. 19), acquisition of another nationality is not a pre-condition. A citizen is deprived of Azeri nationality (a) if he enters military service and if she/he enrolls in the public administration of a foreign state, without permission of Azerbaijan (b) if she/he is permanently residing abroad and, without reasons, fails to register at the consular representations for a period of five years, (c) in case she/he fraudulently acquired Azeri nationality (Art. 20). Azeri nationality is lost on the day of registration of one of these facts by the competent authorities.

Moreover, according to Art. 21 persons "who have committed actions that caused a significant damage to the state interests or state security of Azerbaijan" may be punished with the deprivation of nationality.

Deprivation of nationality as sanction is in contrast with Art. 1 of the Azeri nationality law which recognizes the right to nationality. It may also be viewed as a violation to Art. 15 of the UDHR. Similarly, point (b) is very strict. Five years are not sufficient to delete the existence of a genuine link. Concerned individuals will in most cases not be in a position to acquire another nationality and therefore this provision could easily lead to statelessness.

2.4. Procedure for application.

Section VI of the nationality law lays down the procedure for naturalization and restoration as well as renunciation of citizenship of Azerbaijan. Applications are addressed to the President of Azerbaijan^[54] through local agencies of the Ministry of Internal Affairs or through diplomatic agencies, if the applicant resides abroad. Together with the official's conclusions, the applications are forwarded to the President of Azerbaijan. Additional conclusions on the case are required from the Ministry of Interior, the Ministry of Foreign Affairs, the Committee for State Security and even from the Council of Ministers of Azerbaijan. The latter shall refer to the feasibility of admission to or restoration of Azeri nationality for each individual case (Art. 40). A Commission on Citizenship Matters set up under the Presidency of Azerbaijan examines the individual applications and submits its recommendations to the President. The President adopts his decision

in form of a decree (Art. 42). In case of rejection or deprivation of nationality the motives of the decision are to be communicated to the applicant. The sole remedy the applicant can invoke is to ask the President to re-examine the case (Art. 48). Re-applications are not considered before the expiration of a one year period, unless new important information emerge (Art. 42 para. 3). Art. 43 indicates that the time for consideration of applications on nationality matters should not exceed six months. However, considered the complexity of the procedure this does not appear to be very realistic.

2.5. Conclusions.

The nationality law of Azerbaijan is a mixed creation. It reflects, on the one hand, Western human rights ideology and acknowledges, in the light of Art. 15 UDHR, that in Azerbaijan "every individual shall have the right to citizenship" (Art. 1). On the other hand, it still contains elements of Soviet heritage, like the deprivation of nationality as a sanction (Art. 21). The new Azeri nationality law did not create a new citizenry, but confirmed the one previously existing in the Azerbaijan SSR. However, the law does not provide sufficient mechanisms to determine such previous citizenry. Azeri authorities have therefore considerable discretionary powers in determining who is part of the initial citizenry and who is not. Indeed, very much depends on the way the provisions of the nationality law are applied. Currently, a restrictive approach seems to prevail, which tend to exclude ethnic non-Azeri people that came to Azerbaijan from other former Soviet republics, regardless of the time they have been living in Azerbaijan. Azerbaijan is thus in breach of its obligation deriving from state succession, that imposes upon states the duty to confer their nationality to all habitual residents on its territory at the moment of acquisition of sovereignty.

If excluded from the original body of citizens, these groups of individuals need to apply for naturalization, regardless of the time they have been living in Azerbaijan. In several cases they will remain stateless for the time of the procedure, as well as if their applications are rejected.

Given the considerable lacunas of this law it is not excluded that the Azeri authorities will replace it with a new act in the near future.

3. Belarus

On 27 July 1990 the Belorussian Supreme Soviet adopted a declaration of sovereignty and on 25 August 1991 the same body proclaimed the independence of Belarus and conferred constitutional status to the declaration of sovereignty adopted the year before^[55] At the 1989 census 79.4 % of the population were ethnic Belorussians. The most important minority groups are Russians (11.9 %) and Poles (4.2 %)^[56] On 18 October 1991, Belarus issued its nationality law, which entered into force on 1 December 1991^[57]

3.1. Definition of the initial body of citizens.

Belarus adopted a pure new-state model. Pursuant to Art. 2, para. 1 of the Belorussian nationality law all individuals who had permanent residence in the territory of Belarus on the day of entry into force of the law are considered nationals of the Republic of Belarus^[58] The inclusive territorial approach is very efficient in solving the problem of nationality for individuals permanently resident in Belarus. Belorussian nationality is only denied to people temporarily residing in the Republic.^[59]

The initial Belorussian citizenry does not include ethnic Belorussians permanently resident in other countries. In principle, they may acquire nationality only upon the filing of an application according to Arts. 17 and 21 of the nationality law, which imply that the applicant has to go through an examination procedure.

3.2. Acquisition of nationality.

(1) Birth:

Jus sanguinis is applied in Belarus. According to Art. 9, children whose both parents are Belorussian nationals automatically acquire Belorussian nationality by birth. If only one of the parents is a Belorussian national, the child may automatically acquire the nationality of the Republic of Belarus, if born on Belorussian territory or, otherwise, if at the time of birth one of the parents had permanent residence in Belarus (Art. 10). If neither of the two conditions are present, the child may acquire Belorussian nationality, on the basis of a common written declaration submitted by the parents (Art. 10 para. 2).

In addition, Belorussian nationality is acquired by children of a Belorussian parent and a stateless or unknown person (Art. 10 last paragraph).

The principle of jus soli is applied to children of stateless persons (Art. 11) and of unknown parents (Art. 12). Nationality is acquired ipso facto.

Pursuant to Art. 26, para. 1, nationality is automatically acquired by foreign or stateless children adopted by Belorussian nationals.

(2) Naturalization:

According to Art. 13, four pre-conditions are required for the acquisition of Belorussian nationality. Applicants have to

- accept the duty to respect the Belorussian Constitution and the laws;
- know the state language^[60]60;
- be permanently resident in Belarus for the last seven years prior to the submission of the application;
- have a legal source of income in Belorussia.

It may be inferred from Art. 34, para. 2 that the law does not require the applicant to renounce his or her previous nationality. A different interpretation can however not be excluded^[61]

Those conditions are applied also to foreign nationals that enter into marriage with a Belorussian national (Art. 14, para. 2).

The requirements for naturalization are in conformity with international standards. It may however be argued if it is reasonable to require knowledge of Belorussian language, since it appears that only a slim minority of the population use it regularly^[62]

(3) Restoration:^[63]

The conditions for naturalization have to be met by all individuals with the following exception. The seven-years residence requirement is not required from persons and their offspring who had been permanent residents of Belarus but left or were forced to leave the country prior to the day of the entry into force of the nationality law (Art. 17, para. 1) and from ethnic Belorussians or from persons "who identify themselves as Belorussians"^[64] including their children born outside of Belarus (Art. 17 para. 2).

For these categories of people, Art. 17 implies a right to Belorussian nationality^[65] This right is not subject to prescription and nationality may be restored on initiative of the interested person at any moment. However, to restore nationality, Art. 17 requires that all conditions set forth by Art. 13, excluding permanent residence have to be met. This includes, among others, the submission of an application to the authorities competent for naturalization. Since no simplified procedure is provided for, the application has to follow the ordinary procedure for granting nationality.

The Belorussian law adopts a very strict approach towards ethnic Belorussians who, on the day of entry into force of the law, had their permanent residence in other former Soviet Republics. For instance, according to this provision, ethnic Belorussians, working in Estonia, cannot acquire the nationality of Belarus by a simple declaration, but only through the quite complicate procedure of Art. 17.

(4) Reintegration:

Pursuant to Art. 21, a person who previously had Belorussian nationality, and who has lost it prior to the day of coming into force of the nationality law, may be reintegrated into it^[66] Reintegration may occur either on the basis of an individual application or by the competent authority if the interested person manifests his/her consent to it.

Applications have to follow the ordinary procedure for acquisition of nationality. The law does not further describe in which way an individual may be reintegrated into Belorussian nationality in case no application is submitted. However, for the reintegration of prior nationals, Art. 36 requires the adoption of a decree by the Presidium of the Supreme Soviet. Therefore, it can be inferred that reintegration without previous application will rarely occur.

Further difficulties arise in ascertaining previous Belorussian nationality (i. e. nationality of the Belorussian SSR), since no nationality law has ever been adopted by the Belorussian SSR. The Belorussian nationality law of 18 October 1991 does not indicate any criteria to follow. In the absence of any provision, both Soviet law and Republican law will have to be considered. Determination of nationality will in any case not be easy.^[67]

3.3. Loss of Belorussian nationality.

Art. 19 provides for renunciation of Belorussian nationality. An application has to be submitted and the ordinary procedure for granting nationality is applied. Acquisition of another nationality is not a pre-condition for the application. Pursuant to Art. 20, Belorussian nationality is withdrawn to individuals who acquire the nationality of another state, enrol in military forces or in the government of a foreign country without previous consent of Belarus or who acquired Belorussian nationality on the basis of false witnesses or documents. The nationality is lost from the day this facts are registered by the competent agencies of the Ministry of Interior or of the Ministry of Foreign Affairs.

3.4. Procedure for application.

Applications for naturalization, reintegration and renunciation are submitted to agencies of the Ministry of Interior (or, for persons residing abroad, to diplomatic agencies of Belarus) and addressed to the Presidium of the Supreme Soviet of the Republic of Belarus (Art. 34). The application and the attached documents are examined by the Nationality Commission established under the Presidium, which may collect further information on the applicant (Art. 35). On the basis of a recommendation by the Commission, the Presidium issues a decree conferring Belorussian nationality (Art. 36, para. 1). In case of rejection the Presidium adopts a resolution (Art. 36, para. 2). The decision may be appealed to the Supreme Court of Belarus (Art. 42). Nationality is acquired on the day of adoption of the decree. Pursuant to Art. 37, applications have

to be examined by the competent authorities within one year. If the delay is not respected, as well as in other cases of unlawful actions committed by the competent authorities, the applicant may appeal to a court of law (Art. 43).

In case of rejection, subsequent applications can be submitted only after one year from the day of the first decision (Art. 38).

3.5. Conclusions.

The territorial inclusive approach provides a satisfactory solution for permanent residents and is efficient in reducing statelessness on Belorussian territory. Excluded from the initial body of Belorussian citizens are only temporary residents, like, for instance, officials of the former Soviet Armed Forces stationed in Belarus.

More complicate is the situation for those Belorussians who have transferred their permanent residence outside the country before the day of entry into force of the nationality law. These people retain a (rather weak) right to Belorussian nationality, since they may acquire Belorussian nationality only on the basis of an application, except in those rare cases where a former Belorussian national is reintegrated into Belorussian nationality ex officio. The procedure to follow is rather complex and requires some time. However, there is no deadline for applications.

Individuals of Belorussian origin resident in other former Soviet Republics that do not acquire the nationality of another state, will be forced to remain stateless until their Belorussian nationality is not restored or reintegrated.

4. Estonia[\[68\]](#)

On 16 November 1988 the Supreme Soviet of the Estonian Soviet Socialist Republic adopted a declaration on the sovereignty of the Estonian SSR, according to which Estonian laws have primacy over Union laws[\[69\]](#). On 30 March 1990 the same body issued a resolution proclaiming the restoration of pre-war Estonian statehood and the beginning of a transition period towards independence[\[69\]](#) Finally, during the August coup, on 20 August 1991, the Supreme Council of Estonia declared national independence[\[70\]](#) At the 1989 census ethnic Estonians formed 61.5 % of a total population of 1,565,662 people. The largest minority groups were Russians (30.3 %), Ukrainians (3.1 %) and Belorussians (1.8 %)[\[71\]](#) The introduction of an autonomous Estonian nationality has been discussed since 1988[\[72\]](#) However, the issue remained controversial. National radicals opposed to the adoption of a law that would grant Estonian nationality to all permanent residents. Their views were finally accepted by the Supreme Council on 26 February 1992, when it issued a decree which reintroduced the 1938 Estonian law on nationality in the version that existed on 16 June 1940, the day the Red Army entered Estonia[\[73\]](#) The resolution adopted an almost pure restored-state model.

4.1. The definition of the initial body of citizens.

Estonian citizenry is not defined on territorial terms. The key factor is previous Estonian nationality. With the 1992 resolution Estonian nationality was formally restored to inter-war nationals and their direct descendants (Res., para. 2), regardless of their present place of residence[\[74\]](#) No additional condition needs to be fulfilled. Former Estonians resident in other countries are not required to renounce their second nationality. According to traditional Estonian principles, the provision did not include direct descendants of Estonian mothers, except natural children.

The automatic acquisition of Estonian nationality has been extended to foreign women married to an Estonian national and children legitimized, adopted, or recognized by Estonian nationals, prior to 26 February 1992 (Resolution, para. 2).

Moreover, the qualification period of two plus one year as well as the language test necessary for naturalization^[75] had been waived for some 30,000 non-Estonians who registered with the Congress of Estonia prior to the elections for the Congress of Estonia in February 1990^[76] It seems that they became Estonian nationals with the entry into force of the law^[77]

All other people, regardless of the time they have been living in Estonia, who wish to acquire Estonian nationality must go through the ordinary naturalization process. The treaty concluded between Estonia and the URSS on 12 Jan. 1991, which has been interpreted by the Russian minority as granting almost automatic nationality to all non-Estonians legally residing in the country does not introduce any exception to it.^[78]

A substantial part of the Russian and other immigrants in Estonia had not been granted automatic nationality. Consequently, if they do not apply for the nationality of their country of origin or for Estonian naturalization, they will remain stateless.

Estonia does not consider itself a successor state of the USSR. It argues not to be a new state, but the continuation of the inter-war republic^[79] According to Estonian, pre-1940 statehood did not cease to exist with the Bolshevik annexation. It survived de jure throughout the whole period of Soviet rule and recrystallized with the regain of independence.

This argument seems sufficiently convincing. Not being a successor state to the USSR, Estonia has no obligation to grant its nationality to all habitual residents living on its territory. This does not exclude, however, that it may, for humanitarian or other reasons, grant Estonian nationality to members of the population that are not part of the restored citizenry, and that in some extreme cases such an action could be viewed as a moral obligation. But legally speaking no such obligation exists.

4.2. Acquisition of nationality.

(1) Birth:

According to Art. 3 of the restored 1938 nationality law, Estonian nationality is acquired by children of Estonian fathers and by natural children of Estonian mothers. This restrictive interpretation of the principle of jus sanguinis has been modified on 23 March 1993, when the Estonian parliament extended the automatic acquisition of nationality by birth to the maternal line^[80] With this amendment persons born to at least one parent who was an Estonian citizen at the time of birth automatically acquire Estonian nationality. Thus, the acquisition of Estonian citizenship has been brought in line with European standards.

Jus soli corrections are provided for children of stateless persons and for abandoned children found on Estonian territory^[81] Nationality is acquired ipso facto.

Adoption, recognition and legitimization of children by Estonian nationals are additional means of automatic acquisition of Estonian nationality.

(2) Naturalization:

Non-Estonians that wish to obtain Estonian nationality may, in principle, do it only through the procedure of naturalization. Thus, it is of primary importance to identify which are the pre-conditions required.

Applicants for naturalization^[82] must

- be 18 years of age (or have obtained the consent of the parents or guardians);

- have been residing in Estonia for two years before the submission and for one year after the submission of the application;
- pass an examination in Estonian language^[83]84;
- have a legal source of income^[84]and
- swear allegiance to the Estonian state.

An additional pre-condition is contained in Art. 1, para. 2 of the 1938 law, which prohibits dual nationality^[85]

For new immigrants, residence requirements are not very strict, if compared to other nationality laws. Applications may be submitted already after two years of permanent residence in Estonia and nationality acquired after the expiration of an additional one-year trial period during which the applicants are tested on their knowledge of Estonian language.

For people already resident in Estonia for a long time, however, the law is quite strict. Previous residence, regardless of its duration is not sufficient. They have to go through a reduced qualification period. At para. 5 the Resolution fixed the starting point of the two years on 30 March 1990, the day the parliament declared the transitional period towards the restoration of independence. This implied that nobody could be naturalized prior to 30 March 1993.

Applications for naturalization will be rejected if they are submitted by persons who perform military service in another country, by former staff employees of the Soviet KGB and secret service, by individuals convicted of serious criminal offenses against persons or who have a criminal record of repeated convictions for felonies and individuals without a legal source of income^[86]

The residence and language requirements may be waived for Estonian nationals^[87]88, for stateless people that have been permanently residing in the country for at least ten years and for persons who have rendered particularly valuable services to Estonia (1938 law, Art. 7).

The latter provision has been reconfirmed in 1992^[88](Resolution para. 8). Nominations for nationality are carried out at the place of work. According to a report by RFE/RL, on 4 May 1992 nineteen individuals obtained Estonian nationality through this simplified procedure^[89]

Simplified forms of naturalization existing for foreign women married to an Estonian national have been dropped^[90]

4.3. Loss of Estonian nationality.

Estonian nationals may be released from Estonian nationality upon their own application or excluded from it by the Government of the Republic (1938 law, Art. 18). Paragraph 14 of the 1992 Resolution declared Art. 23 of the 1938 law, which listed the cases of withdrawal of Estonian nationality as non-applicable.

4.4. Procedure of application.

Some provisions relating to the procedure for application for naturalization are set forth in the 1938 law. Applications are addressed to the Government through the Ministry of Interior (Art. 9). Nationality is granted by the Government of the Republic of Estonia.

The Estonian nationality law does not provide for a maximum time limit for the examination of applications.

4.5. Conclusions.

Estonian nationality legislation reflects a restored-state model. The Estonian citizenry was formed by former nationals of the inter-war republic and their descendants. As seen above, this is not in breach of international law. Ethnic Estonians, who were not citizens of the inter-war republic, may acquire the Estonian nationality by a simplified form of naturalization, for which the residence and language requirements may be waived.

Non-ethnic Estonians living in the country did not obtain Estonian nationality, unless (1) they (or one of their parents) were nationals of the inter-war Republic, (2) had an Estonian husband or (3) had registered for nationality prior to the elections for the Congress of Estonia in February 1990. It has been estimated that around 100,000 ethnic Russians automatically became Estonian nationals in this way^[91]

The remaining non-ethnic Estonian population could apply for naturalization starting from 30 March 1992 and obtain Estonian citizenship from 30 March 1993, provided they pass the language test. According to available information, however, relatively few applications for Estonian or Russian nationality were submitted by such people^[92] As a result, on 30 March 1993, some 400,000 to 500,000 residents were stateless^[93] It is however believed that with its entry into force the rather strict aliens law adopted by the Estonian parliament on 21 June 1993^[94]⁹⁵, will force those people to apply for Estonian nationality or to repatriate.

5. Georgia.

In November 1989 the Georgian Supreme Soviet declared the supremacy of Georgian laws over all-Union laws^[95] Georgia declared its sovereignty on 9 March 1990^[96] On 31 March 1991 a referendum on the restoration of previous Georgian independence^[97] was carried out and 93 % of the population voted for independence^[98] Some days later, on 9 April 1991, the Georgian Supreme Soviet passed a decree formally restoring independence^[99] In June 1991 Georgia published a draft law on nationality, which required strict conditions for naturalization. Adopted under Gamsakhurdia^[100]¹⁰¹, it was subsequently replaced by a new nationality law on 25 March 1993, which entered into force on the same day^[101] Contrary to the nationality law of 1991, the current law has been drawn up following the new-state model. It does not allow dual citizenship (Art. 1).

5.1. The initial body of citizens.

Pursuant to Art. 3 (a) of the new nationality law, all persons who have been permanently resident in Georgia for a period of at least five years and who were residing in Georgia on the day of entry into force of the nationality law, and who receive within a period of four months the papers confirming their nationality are considered as Georgian citizens. Such persons may, however, refuse citizenship in writing within three months. Possession of another nationality is not required in order to opt out.

The five years residence need not to be continuous, nor immediately prior to the day of entry into force of the law. Several periods of permanent residence may be added up in order to achieve the five years required by the law.

From the letter of the provision it appears that persons who fulfill the residence requirements but who did not receive the above-mentioned certification within the required delay, are not considered as Georgian citizens. This clause introduces in the determination of the initial citizenry a discretionary element which may be exploited by the Georgian authorities in order to prevent certain persons from acquiring Georgian nationality by simply not issuing him the necessary

documents. The fact that in presence of "valid reasons" Art. 45 allows to extend the four months period does not substantially change this situation.

Although Georgia opted for a rather inclusive definition of its citizenry, the nationality law left an open door that may be exploited in order to exclude people or groups of people arbitrarily.

As a final remark, it may be noted that ethnic Georgians who are not permanently living in Georgia are not granted a privileged status. They may not acquire Georgian nationality by a simplified procedure.

5.2. Acquisition of nationality.

(1) Birth:

Georgia adheres to the principle of jus sanguinis. Pursuant to Art. 11, Georgian nationality is automatically acquired by children of two Georgian nationals, regardless of the place of birth. If only one parent has Georgian citizenship, the child acquires Georgian nationality if born on Georgian territory or, otherwise, if one of the parents has permanent residence in Georgia (Art. 12). In other cases the nationality of the child is decided on the basis of a common declaration by the parents.

Jus soli is applied to children of stateless persons permanently resident in Georgia (Art. 13), to children of a Georgian national and a stateless person (Art. 12,c) as well as to children found on the territory of Georgia (Art. 15). These categories of people automatically acquire Georgian nationality if born in Georgia. The latter are considered as Georgian nationals until information on the contrary emerge.

Georgian nationality is furthermore automatically acquired by foreign or stateless children adopted by a Georgian national (Art. 20). Interestingly, a Georgian national adopted by foreign or stateless parents preserves his nationality (Art. 21).

(2) Naturalization:

The conditions for naturalization are set forth in Art. 26 of the law. In order to naturalize as Georgian citizen a person must have attained full legal age and submit an application to the Ministry of Justice. In addition the following pre-conditions must be fulfilled:

- permanent residence on the territory of Georgia for the last ten years;
- knowledge of Georgian or Abkhazian language, corresponding to the established minimal level;
- knowledge of the Georgian history and constitution, corresponding to the established minimal level;
- have a job or own immovable property in the Republic of Georgia.

Persons who have been sentenced for crimes that are punished with more than three years of imprisonment are excluded from the procedure of naturalization, unless the sentence has been cancelled (Art. 26, para. 2)

Although being rather strict, the pre-conditions for naturalization are in line with international standards.

(3) Marriage:

A simplified naturalization procedure has been established for persons married to a Georgian national who have been living with their spouse on the territory of Georgia for three years prior to the submission of the application for Georgian nationality. Pursuant to Art. 28 such persons may acquire Georgian nationality provided they fulfill the language conditions and the knowledge of Georgian history and constitution as required for naturalization and that they have not committed a crime falling under the exclusion clause at Art. 26, para. 2^[102]

(4) Reintegration:

Reintegration into Georgian nationality is provided for persons illegally deprived of their nationality and for persons who lost Georgian nationality as a result of changes of nationality by their parents. The latter may acquire Georgian nationality provided they are permanently resident in Georgia and fulfill the language, history and constitution knowledge required by Art. 26 and are not excluded for having committed a crime under Art. 26, para. 2^[103]

5.3. Loss of Georgian citizenship.

In order to renounce Georgian citizenship it is necessary to file an application. Possession of another nationality is not a pre-condition. Applications for renunciation are examined according to the general procedure for nationality matters and decisions taken by Presidential decree or directive. Moreover, Georgian nationality is lost by citizens (1) who enter any occupation as official in another state, (2) who have been leaving in another country and without valid reasons have not registered at the Georgian consulate in a period of two years, (3) who acquired Georgian citizenship on the basis of forged documents and (4) who have acquired another nationality.

Claims for the loss of Georgian citizenship may be submitted to the Ministry of Justice by a court, the office of public prosecution, the Ministry of Interior and the Ministry of Foreign Affairs, as well as, the responsible diplomatic representation, for citizens residing abroad (Art. 35). Decisions on the loss of Georgian citizenship are taken by the President of Georgia after the preliminary examination by the Ministry of Justice.

5.4. Procedure.

While the nationality law sets forth the basic provisions, a detailed examination procedure will be set up by Presidential decree. Applications for naturalization, reintegration and renunciation of Georgian nationality are submitted to the Ministry of Justice of the Republic of Georgia (Art. 34). The latter collects the necessary documents for the examination of the case and drafts preliminary conclusions (Art. 36). The final decision is taken by the President of Georgia in form of a decree, if it is a positive decision and in form of a directive when the application is rejected (Art. 37). A negative decision may be appealed to the Supreme Court of the Republic of Georgia (Art. 42).

Examinations of applications shall not exceed the time limit of one year (Art. 38).

5.5. Conclusions.

The original body of citizens has been determined on the basis of prolonged permanent residence (five years) in the country, regardless of ethnic origin. It thus excludes recent immigrants as well as temporary residents like officials of the former Soviet Forced stationed in the country. On the contrary, people born and who lived in Georgia for at least five years, but left for another republic of the Soviet Union, are eligible for Georgian nationality, provided they returned to Georgia prior to 25 March 1993. This includes a number of ethnic Georgians that repatriated after the declaration of independence in 1991.

Problems may, however, derive from the clause introduced in Art. 3 which require the receipt of a certification of nationality in order to make the automatic acquisition operative. Such a provision may be used by the authorities responsible for the application of the law as a means to exclude arbitrarily certain people from Georgian citizenship, which would be in breach of the rule on succession of nationality set out in the first part of this study and would at the same time increase the number of stateless people in the country.

Similarly, the right to opt out included in Art. 3 may lead to statelessness, since acquisition of another nationality is not required as a pre-condition.

The Georgian nationality law, finally, does not contain a simplified procedure facilitating the acquisition of nationality for ethnic Georgians residing abroad on the day of entry into force of the nationality law and who wish to repatriate to the newly created Republic of Georgia. If these persons want to acquire Georgian nationality they have to fulfill all conditions for naturalization, including ten years of residence. Meanwhile, if they do not have another nationality, as it may be the case for Georgians living in some former Soviet republics, they will remain stateless.

6. Kazakhstan

On 25 October 1990 Kazakhstan adopted a declaration of economic sovereignty and asserted its control over the natural resources of the Republic. However, it took until 16 December 1991 until a declaration of independence was finally adopted^[104]¹⁰⁵In the 1989 census Kazakhs formed the largest ethnic group (39.7 %), followed by Russians (37.8 %), Germans (5.8 %) and Ukrainians (5.4 %)^[105]Few days after the declaration of independence, on 20 December 1991, Kazakhstan adopted a nationality law.^[106]No information on the law has been available, except that it allows ethnic Kazakhs who currently reside outside Kazakhstan to return^[107]

7. Kyrgyzstan.

Kyrgyzstan declared its sovereignty on 15 December 1990 and issued its declaration of independence on 31 August 1991^[108]Ethnic Kyrgyz form 52.4 % of the population. The major minority groups are Russians (21.5 %), Uzbeks (12.9 %), Ukrainians (2.4 %) and Germans (1.6 %)^[109]. According to an article published in the Russian newspaper Nezavisimaia Gazeta on 3 December 1991, Kyrgyzstan passed a nationality law before the declaration of independence, which is said to be very similar to the one adopted in Azerbaijan^[110]

In Spring 1993 the Kyrgyz authorities have drawn up a new draft citizenship law, which is deemed to replace the one adopted before August 1991^[111]

7.1. Definition of the initial body of citizens.

No information is available on the way Kyrgyzstan has determined its initial citizenry in the first nationality law. The 1993 draft is of no further help, since it recognizes as citizens all persons who had Kyrgyz citizenship on the day of its entry into force.

7.2. Acquisition of nationality.

(1) Birth:

According to the principle of *jus sanguinis* children of two Kyrgyz nationals ipso facto acquire Kyrgyz nationality at birth. Reportedly, the 1991 law conferred Kyrgyz nationality at birth also to children of a Kyrgyz citizen and an unknown or stateless person (Art. 15)^[112]

Except for children of a Kyrgyz citizen and a stateless person, such provisions are reconfirmed in the 1993 draft law. The draft also grants ipso facto nationality at birth to children of stateless persons permanently resident in the country and to children of unknown parents found on the territory of Kyrgyzstan.

(2) Naturalization:

Reportedly, the 1991 law did not require any pre-condition for the submission of an application for naturalization[\[113\]](#)

On the contrary, the 1993 draft requires renunciation of previous citizenship, permanent residence in Kyrgyzstan during the last five years and a lawful source of income. The residence requirement may be waived for certain categories of people, including ethnic Kyrgyz, persons who rendered special services to Kyrgyzstan and persons restoring Kyrgyz nationality.

The draft law denies Kyrgyz citizenship to persons (1) convicted for grave crimes, (2) who promote ethnic clashes and propagate war, (3) who engage in activities in contrast with the interests of the Kyrgyz Republic and (4) who are involved in terrorist acts.

(3) Restoration:

According to the 1993 draft, upon application former Kyrgyz citizens may restore citizenship of Kyrgyzstan. Restoration is effected by the President of the Kyrgyz Republic.

7.3. Loss of citizenship.

Little is known about the relevant provisions of the 1991 law. Reportedly, Kyrgyz nationality is lost if a Kyrgyz subject has been residing abroad without registering with the Kyrgyz authorities for a period of more than five years[\[114\]](#)

The new draft law provides for the right to renounce citizenship of Kyrgyzstan upon application. Further, Kyrgyz citizenship is lost if a citizen takes up an occupation as official in another state without Kyrgyzstan's authorization and if a person permanently residing abroad has not been registered with the consular office for a period of one year.

7.4. Conclusion.

The 1991 nationality law has been adopted under Soviet rule and does not reflect subsequent political changes. At Art. 1, for instance, it provides that citizens of Kyrgyzstan are at the same time citizens of the USSR. It seems to contain several lacunas, particularly with regard to naturalization. While the 1993 draft would fill this legal gap on naturalization, it also sets up strict provisions deemed to prevent the acquisition of nationality and facilitates the loss of nationality by citizens residing abroad.

8. Latvia[\[116\]](#)

On 4 May 1990 the Latvian Supreme Council adopted a resolution which declared the Soviet annexation as unlawful and the beginning of a transitional period towards full independence[\[115\]](#) One year later, in a referendum held on 3 March 1991, 73.7 % of the population expressed themselves in favor of an independent Latvia[\[116\]](#). Finally, on 21 August 1991, the Supreme Council proclaimed independence.[\[117\]](#) Among the Baltic Republics Latvia has the greatest number of immigrants. Ethnic Latvians form approx. 52 % of the Latvian population. The most important minorities are 905,000 Russians (42 % of the population), 119,700 Belorussians (4.5 %) and 92,100 Poles (3.5 %).[\[118\]](#)

8.1. Legal developments in nationality matters.

With the move towards independence, the question of Latvian nationality gained considerable importance. A first draft law on nationality was drawn up and published for discussion in July 1989^[119] As it had been the case in Estonia, national radicals gained strength and obstructed the adoption of a nationality law.

Nevertheless, two months after the August coup, on 15 October 1991, the Supreme Council adopted a resolution "On the Restoration of the Rights of Citizens of the Republic of Latvia and Main Conditions for Naturalization"^[120] setting forth the principles that a nationality law should follow. The resolution restored inter-war Latvian nationality and re-introduced the pre-war Latvian nationality law. A very strict approach was adopted for all individuals that did not have their nationality restored. They could acquire Latvian nationality through ordinary naturalization. This required, among other conditions, at least 16 years of permanent residence, renunciation of previous nationality and knowledge of Latvian language.^[121] In addition, the resolution listed a series of individuals that could not acquire Latvian nationality. It included, among others, persons who performed anti-constitutional activities against Latvia's independence and its democratic system, individuals who served in former Soviet military forces or state security, persons sent to Latvia after 17 June 1940 as Soviet Communist Party or Komsomol personnel, drug addicts, chronic alcoholics and people without a legal source of income.^[122]

The nationalist movement criticized the resolution and argued that it was passed by a body which was not representative of the existing Latvian citizenry^[123] In their eyes, only a newly elected Supreme Council would be competent to regulate matters of nationality. As a result, the resolution has not been implemented and no nationality law has been passed as of June 1993. The issue has been taken up by the new Parliament elected on 5/6 June and the adoption of a nationality law is expected before the end of the year.

8.2. The initial body of citizens.

At present, the initial body of citizens is formed by pre-war Latvian nationals and their descendants. Latvian nationality, suspended for about five decades re-emerged by operation of law on the moment of restoration of Latvian statehood.

The current draft law on nationality follows the October 1991 resolution and adopts a restored-state approach. The initial body of citizens is formed by inter-war Latvian nationals and their descendants. The basic requirements for naturalization are 16 or, alternatively, 10 years of permanent residence^[124]¹²⁶, knowledge of Latvian language^[125] and of the basic principles of the Latvian Constitution and renunciation of previous nationality. In addition, following the model of the 1991 resolution, the draft excludes persons "closely linked to the former Soviet army, police and security service"^[126]

On 11 December 1991 Latvia has adopted a law on registration of residents which served as a basis for determining the status of the present population in order to establish the group of people who were allowed to vote in the political elections of 5/6 June 1993. As a result of the registration, former citizens of inter-war Latvia and their descendants were given a Latvian passport^[127] and had the right to vote the new Parliament^[128] By the end of January 1993 some 88 % of Latvia's permanent residents had registered; some 75 % of them are Latvian citizens^[129] For other permanent residents registration will serve as a basis for naturalization, once a Latvian nationality law is adopted.

Former Latvian residents, who were forced to leave the country and their descendants may also be registered as Latvian citizens if they transfer their permanent residence to Latvia. The same right of registration as Latvian nationals has been granted to children of unknown parents permanently residing in Latvia^[130]

8.3. Conclusions.

Latvia did not issue a nationality law. However, with the restoration of the Latvia state, pre-war Latvian nationality legislation re-emerged, by operation of law. In practice, the old Latvian law is used to determine the nationality of newly born children. For the rest, the nationality regime is expected to be set up by the new law currently in preparation.

The issue is of considerable importance, since several political and civil rights are linked with the status of Latvian citizen. For instance, Art. 9 of the constitutional law of 10 December 1991 on rights and obligations of a citizen and a person, limits ownership of land and other natural resources to Latvian citizens.

Like Estonia and Lithuania, Latvia is not a new state. With the resolution on 4 May 1990 the Latvian Supreme Council restored inter-war statehood. Latvia is not a successor state of the Soviet Union and thus not bound to confer its nationality to all permanent residents. A UN fact finding mission to Latvia on 27-30 October 1992 reached the same conclusions stating that "Latvia is not in breach of international law by the way it determines the criteria for granting its citizenship"[\[131\]](#)

However, for Latvia, some obligations derive from treaty-law. On 14 April 1992 Latvia acceded to the Convention on the Reduction of Statelessness of 1961[\[132\]](#) According to Art. 1 of the Convention Latvia "shall grant its nationality to a person born in its territory who would otherwise be stateless". Nationality shall be granted at birth, by operation of law, or upon an application which may not be rejected. Thus, children of stateless persons, including Russians and other immigrants who did not acquire any nationality, have a right to be granted Latvian nationality. The obligation to confer nationality includes people born on the territory of Latvia before the day of accession, provided they fulfill the age and residence requirement that a state may set up[\[133\]](#) On the basis of this provision a considerable part of permanent residents, and in particular the younger generation, has a right to become Latvian nationals[\[134\]](#)

9. Lithuania[\[134\]](#)

Some months before the proclamation of independence on 11 March 1990, Lithuania issued its first nationality law. The law adopted on 3 November 1989 was the first nationality law adopted in former Soviet Republics[\[135\]](#) Because of its relatively homogeneous population, the nationality issue was easily resolved in Lithuania[\[136\]](#)

The 1989 law adopted a very liberal approach. All permanent residents were given an opportunity to acquire Lithuanian nationality valid for two years. Persons who were citizens of the Republic of Lithuania, their children and grandchildren, as well as persons who were permanent residents, on the current territory of the Lithuanian SSR, prior to 15 July 1940 and their children and grandchildren, who now are or who have been permanent residents of the Lithuanian SSR are ipso facto considered as Lithuanian citizens (Art. 1 at point 1)[\[137\]](#) This group of persons is integrated by all persons who have a permanent place of residence in the Lithuanian SSR, provided they or at least one of their parents or grandparents were born on its territory, and that they are not citizens of another state (Art. 1 at point 2).

All other permanent residents of Lithuania on the day of entry into force of the 1989 law, who have a legal source of income were granted a right of option. According to it they could choose to become Lithuanian nationals within a period of two years following the entry into force of the law (Art. 1 at point 3). In such a case Lithuanian nationality was acquired by signing a declaration of respect of the Lithuanian Constitution and laws[\[138\]](#)

Art. 1 (3) allowed the naturalization of a great number of non-Lithuanians living in the country. Reportedly, by the end of the two-years period in November 1991, a large majority of non-ethnic Lithuanians had opted for Lithuanian nationality^[139]

On 5 December 1991, Lithuania issued a new nationality law, which entered into force on 11 December 1991^[140] and is currently applied.

9.1. The definition of the initial body of citizens.

At a first glance, the 1991 nationality law attributes to Lithuanian origin more importance than the 1989 law. Pursuant to Art. 1, para. 1 of this law, all persons that were citizens of the inter-war Republic of Lithuania and their children and grandchildren are considered as citizens of Lithuania.

The initial body of citizens includes further all persons who had permanent residence on the territories of Lithuania in the period from 9 January 1919 to 15 June 1940, as well as their children and grandchildren, provided they were permanent residents of Lithuania on 11 December 1991 and that they do not have another nationality (Art. 1, para. 2)^[141]

Finally, at Art. 1, para. 3, the 1991 law recognized as Lithuanian nationals those people who acquired Lithuanian citizenship under the 1989 nationality law. Thanks to this provision a great number of members of the national minorities, who had opted for Lithuanian nationality according to the 1989 law, could preserve their Lithuanian nationality.

Like Estonia and Latvia, Lithuania argues not to be a new state, but the continuation of the inter-war Republic. The 1989 Lithuanian law adopted a mixed solution. It reconfirmed inter-war nationality, but integrated it with the mechanism of the right of option, granting a two-years right to acquire Lithuanian nationality to all permanent residents. All permanent residents had the opportunity to become Lithuanian nationals. Two years seems to be a sufficiently long period for allowing people to express their preferences and choices.

9.2. Acquisition of nationality.

(1) Birth:

According to Art. 8 of the 1991 law a child, both of whose parents are Lithuanian nationals automatically acquires Lithuanian nationality, regardless of the place of birth (Art. 8, *jus sanguinis* principle). If only one of the parents is a citizen of Lithuania the child acquires automatically Lithuanian nationality, if born on the territory of Lithuania or, if not, when, at the moment of birth, at least one of the parents had permanent residence in Lithuania (Art. 9, para. 1). Otherwise, the child may acquire Lithuanian nationality on the basis of a common declaration by the parents. If one of the parents is Lithuanian and the other is unknown or stateless, the child acquires Lithuanian nationality *ipso facto* (Art. 9 para. 3).

Automatic acquisition according to the principle of *jus soli* principle occurs in case of children of stateless people and of unknown parents found on Lithuanian territory (Arts. 10 and 11).

The law does not provide for the case of adoption^[142]

(2) Acquisition of nationality under Art. 17 and restoration of nationality:

Simplified procedures of acquisition of nationality are provided for former Lithuanian nationals or other persons of Lithuanian origin, residing outside the territory of Lithuania and who were not included in the original body of Lithuanian citizens.

a) According to Art. 17 citizens of the inter-war Lithuanian state and other persons of Lithuanian origin retain a right to Lithuanian nationality. They also enjoy immigration privileges, since they may enter the country and reside on its territory without the need of a visa and of other conditions required by the law on immigration.

The law distinguishes two categories of people who retain a right to Lithuanian nationality.

Pre-war Lithuanian citizens residing abroad and having a nationality, other than the Lithuanian, may re-acquire Lithuanian citizenship automatically, if they renounce the other nationality^[143]

Children of pre-war Lithuanian nationals who were born in Lithuania or in refugee camps and are residing in another state (Art. 17, para. 1 at point 2) as well as other persons of Lithuanian origin who are residing in foreign states (Art. 17, para. 1 at point 3) may acquire Lithuanian nationality in a simplified way. Renunciation of current nationality, transfer of permanent residence to Lithuania and the taking of the oath of the Republic of Lithuania are pre-conditions (Art. 18, para. 2).

In these cases Lithuanian nationality is acquired on the basis of a formal application to local agencies of the Ministry of Interior or to diplomatic agencies in case of applicants residing abroad. When all the conditions of Art. 17 are fulfilled the applicant has a right to Lithuanian nationality^[144] Decisions are adopted by the Ministry of Interior (Art. 31, para. 3).

b) Inter-war Lithuanian citizens who left Lithuania in the period from 15 June 1940 to 11 March 1990 and are still residing in another state, as well as their children, provided they have not acquired the nationality of another state by birth, may have their Lithuanian nationality restored. Restoration of Lithuanian nationality is a privileged means of acquisition of nationality for people who fled during Soviet occupation.

Restoration of nationality may be automatic in case a Lithuanian passport has been issued to the applicant. Otherwise, a written declaration stating that the applicant is a Lithuanian national, supplied with the relating evidence, has to be directly submitted to the Ministry of Interior, which will proceed to restore Lithuanian nationality. Art. 28, para. 13 states that once the requirements set forth in Art. 18, para. 3, are met, the applicant shall receive a Lithuanian passport. It can be inferred from it that the application may not be rejected, unless the conditions of Art. 18, para. 3 are not fulfilled.

Moreover, Art. 18, para. 3 can be seen as an exception to the general rule that forbids dual nationality. Since it does not require the applicants to renounce the other nationality the principle *lex specialis derogat lex generalis* should be applied.

(3) Naturalization:

Aliens that cannot or did not acquire Lithuanian nationality through other means may apply for naturalization, provided they meet the required conditions. Pursuant to Art. 12 applicants are required to

- pass an examination in Lithuanian language^[145]148;
- be permanently resident in Lithuania for the last ten years;
- have a permanent place of employment or a constant legal source of income in Lithuania;
- pass an examination in the basic provisions of the constitution of the Republic of Lithuania;
- to be stateless or to renounce former nationality^[146]

The last paragraph of Art. 12 provides that persons meeting these conditions shall be granted Lithuanian nationality "taking into consideration the interests of the Republic of Lithuania". This reference implies more discretionary powers in examining and also in rejecting applications for naturalization.

Although quite strict, the provisions for Lithuanian naturalization are in conformity with international standards.

A person that has contracted marriage with a national of Lithuania and has resided in Lithuania and maintained the marital status during the last three years may apply for Lithuanian nationality without the need to fulfill all the conditions set forth in Art. 12. More particularly, no proof of legal source of income is required and the time of residence is reduced to three years.

Art. 13 lists a number of reasons that preclude the granting of nationality. Persons who have committed crimes against humanity, persons who took part in criminal activities against the Republic of Lithuania, persons who have been sentenced to imprisonment for a crime under Lithuanian law, persons who are chronic alcoholics or drug addicts and persons who carry "extremely infectious diseases" may not be granted Lithuanian nationality.

9.3. Loss of nationality.

Renunciation of Lithuanian nationality is possible only upon application. However, possession of another nationality is not required. Lithuanian nationality shall, moreover, be lost if a person acquires citizenship of another state and for other reasons provided for by international agreements (Art. 19). Moreover, pursuant to Art. 21, a person loses Lithuanian nationality (1) if she or he has been living abroad for an uninterrupted period of more than three years without a valid Lithuania passport and (2) if she or he has joined military service in another state or has been employed as a state official without the permission of the Lithuanian authorities. Lithuanian nationality is lost by a directive of the Presidium of the Supreme Council of the Republic of Lithuania. The Ministry of Internal Affairs and the Ministry of Foreign Affairs have the power to submit motions to establish that a person has lost Lithuanian citizenship (Art. 28 para 7).

Finally, Art. 23 lists the cases in which the granting of Lithuanian nationality may be declared invalid. These include (1) individuals who fraudulently acquired Lithuanian nationality, (2) who have been convicted for a crime against humanity or a crime against the Republic of Lithuania, (3) who, in the period after 15 June 1940, have organized or carried out deportations or exterminations of Lithuanian residents and suppressed the resistance movement or (4) who, after 11 March 1990, took part in activities against the independence and territorial integrity of the Republic of Lithuania. Since some of the clauses have been formulated in a rather vague form, if broadly interpreted, this provisions may lead to abusive deprivation of nationality.

Lithuanian nationality may be returned to individuals that have been deprived of it, unless nationality was lost because of acquisition of the nationality of another state. Therefore an application has to be filed. The requirements of naturalization (except the language examination and the examination on the Lithuanian constitution) need to be met. Nationality is re-acquired by a directive from the Presidium of the Supreme Council of the Republic of Lithuania.

9.4. Procedure for application.

Applications for naturalization, renunciation and returning of nationality are addressed to the Presidium of the Supreme Council (Art. 28, para. 8). Applications for acquisition of nationality under Art. 17 are to be filed with local agencies of the Ministry of Interior, or respectively, with the diplomatic agencies of Lithuania (Art. 28, parr. 9 and 10). Applications for restoration are filed directly with the Ministry of Interior (Art. 28, para. 11). Applications regarding citizenship issues are examined by the Citizenship Committee under the Presidium of the Supreme Council, which

can collect further information from other state agencies and which may also invite the applicant to a hearing (Art. 29, para. 2).

With regard to applications for naturalization, renunciation and returning of nationality, the Citizenship Committee recommends to the Presidium to take a positive decision. Should the Committee refuse to recommend the applicant, the latter must be notified in writing on the reasons for the rejection (Art. 29, para. 4). The Presidium of the Supreme Council takes the final decision. In case of positive decisions it issues a directive which is published in the "Official Reports of the Supreme Council and Government of the Republic of Lithuania" (Art. 33). Otherwise, if the application is rejected it adopts an appropriate resolution (Art. 31, para. 2). Renewed applications shall not be considered prior to one year after the first decision (Art. 34).

Decisions on applications for nationality under Art. 17 and on restoration of nationality are taken by the Minister of Internal Affairs (Art. 31, para. 3).

The acquisition of nationality becomes effective only after the person has taken the oath of the Republic of Lithuania (Art. 31, para. 4).

The law does not provide for a time limit within which nationality applications need to be examined.

A special procedure is provided for foreign nationals who have been of merit to the Republic of Lithuania. They can file an application directly with the Presidium of the Supreme Council, which will be submitted to the Committee of Deputies of the Supreme Council for consideration (Arts 16 and 28, para. 4).

9.5. Conclusions.

In 1989 Lithuania opted for a quite inclusive approach and gave to all permanent residents the opportunity to acquire Lithuanian nationality. Most ethnic non-Lithuanians made use of this opportunity and opted for Lithuanian nationality. Although the 1991 law introduced a stricter approach, those who had opted for Lithuanian nationality according to the provisions of the 1989 law were recognized as Lithuanian nationals also by the 1991 law. Thus, only those who did not opt for Lithuanian nationality in the two-years time period from the entry into force of the 1989 law, were not included in the Lithuanian citizenry. The Lithuanian nationality law is, moreover, very inclusive for people of Lithuanian origin living outside the country. Problems of statelessness may, however, arise from the provisions on the loss of nationality, inasmuch as individuals who have been living abroad for an uninterrupted period of more than three years without a valid passport may lose the Lithuanian nationality.

10. Moldova

On 23 June 1990 the Moldovan Supreme Soviet passed a declaration of sovereignty which asserted the supremacy of Moldova's Constitution and laws throughout the Republic. In addition, the annexation of Bessarabia by the USSR in 1940 was declared as illegal^[147] Moldova proclaimed its independence on 27 August 1991^[148]

According to the 1989 census only 64.5 % of the population are Moldovans (ethnic Rumanians), 13.8 % are Ukrainians, 13 % Russians, 3.5 % Gagauz. In January 1991, the total population has been estimated 4,367,000^[149] On 5 June 1991 sovereign Moldova issued its nationality law^[150] 153, which entered into force on the day of its publication^[151] On 4 August 1992 the Moldovan Parliament passed a decree which implemented regulatory provisions for the application of the law.

10.1. The definition of the initial body of citizens.

Moldova did not define its original body of citizens in pure territorial terms. The criteria followed are mixed, and to a great extent, based on origin. Pursuant to Art. 2 of the Moldovan nationality law of 1991, nationality is acquired ipso facto on the day of entry into force of the law by:

- a) all persons that resided on the present territory of the Republic of Moldova before June 1940 (Art. 2, para. 1);
- b) all descendants of those persons, provided they were residing on the territory of the Republic of Moldova on the day the nationality law entered into force (Art. 2, para. 1);
- c) all persons born and resident on the Republic of Moldova; if born elsewhere, they acquire nationality if, at least, one parent was born on the territory of present Moldova (Art. 2, para. 2). The 1991 law considers as Moldovan nationals also those individuals who had permanent residence on the territory of Moldova as well as a legal means of existence before 23 June 1990, the day of the declaration of sovereignty. However, acquisition does not operate ipso facto. The Parliamentary resolution adopted at the same date^[152] requires those individuals to submit a declaration to local agencies of the Ministry of Internal Affairs, within one year from the adoption of the nationality law (5 June 1991)^[153] They will be considered citizens of Moldova from the day they submit the declaration. Thus, the individuals concerned have only a one-year period of choice, in spite of the express provision at Art. 2, para. 3 of the nationality law, which recognizes them automatically as Moldovan citizens.

A new state has an obligation under international law to grant its nationality to all permanent residents on its territory. This obligation has not been fully respected by Moldova. It may be presumed that, for various reasons, a part of the concerned population has not been able to submit a declaration before the established deadline.^[154] In certain cases, those people may have obtained the nationality of another former Soviet republic. However, it is likely that a large number did not so and that they remained stateless.

10.2. Acquisition of nationality.

(1) Birth:

The basic principle is *ius sanguinis* (Art. 10). Children of a Moldovan mother or father obtain Moldovan nationality at the moment of birth. *Ius soli* is applied only for children of unknown parents (Art. 10, para. 5). According to Moldovan law children of stateless persons do not automatically acquire nationality if born on Moldovan territory. At present, such children will have to wait until they reach the age of 18 years and then go through the ordinary naturalization procedure.

At Art. 11 the Moldovan nationality law regulates the acquisition of nationality through adoption. In such case nationality is acquired ipso facto at the moment of the adoption if both parents are Moldovan subjects (or the one is Moldovan and the other stateless) and if the child has not reached the age of 18 years. Should only one of the adoptive parents be of Moldovan nationality and the other a foreign citizen, the child acquires Moldovan nationality by the parent's mutual agreement^[155] 158, or, in absence of it, by decision of the court.

(2) Naturalization (Art. 15):

Foreign citizens or stateless persons may apply for naturalization, provided that they

- are 18 years of age; -have been permanently residing on the territory of the Republic of Moldova for a period of at least 10 years; the time is reduced to three years in case of individuals married to a Moldovan subject;[\[156\]](#)
- have a legal source of income in the Republic;
- have a sufficient knowledge of the state language;
- are familiar with the Moldovan Constitution;
- show proof of their devotion to the Moldovan state and people;
- renounce their former nationality and
- take an oath of allegiance.

Although the requirements are laid down in quite a detailed way, the pre-condition regarding 'devotion' to the Moldovan state is formulated in rather vague and ambiguous terms. Since it is based on the subjective appreciation of the decision maker it may lead to abuses. However, such vague notions can be found in other nationality laws[\[157\]](#) and are thus not in contrast with international practice.

Moldovan citizenship can be denied to people who (1) are or were convicted to prison sentences; (2) took part in repressions; (3) committed international crimes or crimes against humanity; (4) stir national or racial hatred and propagates fascism, chauvinism or stalinism; (5) perform an activity which undermines the security of the state, or public order, health and morality of the population; (6) call for anti-constitutional changes of the Republic of Moldova; (7) are involved in terrorist activities; (8) are citizens of another state (Art. 20).

Art. 20 is also applicable to restoration and reintegration, in brief to any conferment of nationality which is not automatic or based purely on a declaration.

It is worth noting that, the reference to "national and racial hatred" is rather vague and could be applied to minority groups as a whole instead of examining the position of each individual. While these provisions are in principle not contrary to international human rights standards, their interpretation and application by national officials may well lead to breaches of norms of international law, such as the principle of non-discrimination.

(3) Restoration of Moldovan nationality:

Like other nationality laws of former USSR Republics, the Moldovan nationality law provides for simplified procedures of acquisition of nationality for individuals who were directly or indirectly forced to leave the Moldovan territory after the Soviet annexation in 1940.

a) Pursuant to Art. 14, para. 1, all persons who quitted the territory of Moldova or were expelled from it, after 1940, have a right to Moldovan nationality. This right is also conferred to their children and grandchildren. To reobtain Moldovan nationality, Art. 24 requires the submission of an official application. Art. 25 fixes the deadline of one year from the adoption of the nationality law (5 June 1991). No special procedure is provided for. It appears that the ordinary procedure for acquisition of nationality has to be followed[\[158\]](#)

Neither the nationality law nor the decree on its application refer to additional pre-conditions that need to be fulfilled by the applicant. However, it can be deduced from Arts. 6 and 15 (at points 6 and 20) of the nationality law and of Art. 6 of the application decree that, in general, the applicant would have to renounce his other nationality, since dual nationality is not admitted, except for special cases provided for by international treaties to which Moldova is party. On the contrary,

resettlement into the territory of sovereign Moldova is not required. The provision allows Moldovans residing and working in Moscow or Kiev to apply for the restoration of Moldovan nationality without necessarily moving to Moldova. Since Art. 14 refers to a right to nationality, Moldovan officials should not have large discretionary powers in examining applications for restoration. If the above-stated conditions are fulfilled the application should be rejected only in relation to the categories of individuals listed in Art. 20 (grounds for denial of Moldovan citizenship, see *supra* under naturalization).

b) According to Art. 14, para. 2, other descendants of Moldova may acquire Moldova's nationality on the condition that they transfer their permanent residence into Moldovan territory. This paragraph embraces children and grandchildren of emigrants and individuals who left Moldova prior to 1940 and their descendants. Since para. 2 has to be read and interpreted together with para. 1, settlement into Moldova has to be viewed as an additional pre-condition to be added to those required for the application of para. 1.

Although the provisions of Art. 14 are primarily intended to give a sort of right of option to former Moldovans that escaped or were expelled from the Soviet Union, no distinction is made between individuals residing outside the former USSR and people living in one of the former Soviet republics.

Similarly, Art. 14 applies to former Moldovan USSR officials, stationed abroad, unless they can claim to have Moldovan ascendant prior to 1940 or that they were permanently residing in Moldova's territory on 23 June 1991^[159]

(4) Reintegration into Moldovan nationality:

Art. 17 envisages the case of individuals that possessed Moldovan nationality, but lost it subsequently. They can reacquire Moldovan nationality through a procedure, called reintegration. The ordinary procedure for acquisition of nationality has to be followed^[160] Renunciation of other nationality(ies) is a pre-condition for reintegration into Moldovan nationality (Art. 3, Art. 20). Art. 20 (grounds for denial of citizenship) is applicable. Since the law does not speak of a "right" to Moldovan nationality in this context, it may be inferred that national officials have more discretionary powers.

10.3. Loss of nationality.

Upon application, a Moldovan subject may renounce his Moldovan nationality. To be effective, the renunciation has to be declared by Presidential decree and published in the Monitor of the Parliament of the Republic of Moldova (Art. 32, para. 2).

The Moldovan nationality law provides for deprivation of Moldovan nationality in case of (1) fraudulent acquisition of Moldovan citizenship; (2) enrolment in military forces of a foreign country; (3) employment in the public service of a foreign state without the consent of Moldova; (4) performance of a crime against humanity or of genocide. Moreover, deprivation of nationality is provided for as a sanction for serious offenses against the state. It could be inferred from Art. 15 UDHR that a state cannot withdraw the nationality of its subjects for committing a serious crime, without incurring in a violation of international law.

Deprivation of nationality is limited to "exceptional cases" and possible only on the basis of a resolution by the President of the Republic (Art. 23).

10.4. Procedure.

All applications concerning acquisition of nationality are addressed to the President of the Republic of Moldova through local agencies of the Ministry of Internal Affairs (local police officer) or through diplomatic representatives.

Within 45 days from the submission of the application the officer is obliged to send the application and additional information on the applicant to the Ministry of Internal Affairs. The latter has to ask (within two months) the Ministry of Foreign Affairs, the Ministry of State Security and the Ministry of Labor to submit their conclusions^[161] and to forward all the materials to the Commission for Citizenship Matters, directly subordinated to the President of Moldova^[162] On the basis of a recommendation by the Commission the President of the Republic issues a decree by which he confers the nationality (Art. 32). Pursuant to Art. 34 the maximum term for examining an application has not to exceed one year. The decree may be appealed to the Parliament of Moldova within six months (Art. 38). In case of rejection re-applications are possible only if newly discovered essential circumstances turn up (Art. 33). Unlawful actions or omissions committed by national officials dealing with the application may be appealed to the hierarchically superior official of the same administration or to the court (Art. 39).

10.5. Conclusions.

Not all permanent residents of Moldova on the day of entry into force of the law have acquired Moldovan nationality.

The Moldovan nationality law takes a rather restrictive attitude towards individuals that were not born in Moldova themselves or who do not have a direct ascendant (parent or grandparent) who was born there, but who were permanently residing on the territory of Moldova on the day of the declaration of sovereignty (23 June 1990). They were not included in the initial citizenry, but were only granted a right to chose Moldovan nationality, which they had to exercise within one year from the day of adoption of the law (5 June 1991). Those who did not submit a declaration became stateless, unless they have acquired another nationality.

Moreover, Moldovan legislation is not particularly efficient in reducing statelessness with regard to newly born children. There is no provision according to which children of stateless persons may acquire nationality ipso facto if born on Moldovan territory.

Some problems may finally derive from the way the rather vague provisions concerning naturalization and deprivation of Moldovan nationality will be applied, since they are partly based on the subjective appreciation of the decision-maker.

11. Russian Federation^[166]

About one month before the formal dissolution of the former Soviet Union, on 28 November 1991 the RSFSR adopted its own nationality law. Following smaller changes in connection with the extinction of the Soviet Union, the law has been published on 6 February 1992^[163] and entered into force on that date. On 10 April 1992 the Russian Federation approved the Statute on procedure for considering issues of citizenship of the Russian Federation^[164] The Russian nationality law is very liberal. According to Art. 1 each person living in the RSFSR has a right to citizenship". Moreover, at Art. 7, it contains a provision that encourages the acquisition of Russian citizenship by stateless people.

Some provisions on nationality have also been introduced into the draft for a Russian Constitution dated 24 October 1991^[165] Among others, Art. 17 states that no Russian citizen shall be deprived of its nationality. Art. 18 of the draft admits dual nationality^[166] Previous Soviet practice of a

two-layers nationality is reaffirmed in Art. 19: All the Republics that form the Russian Federation are allowed to confer their own nationality. Thus, an individual living, for instance, in Tatarstan will have the Russian and the Tatar citizenship.

11.1. The definition of the initial body of citizens.

The Russian Federation has adopted a very inclusive model. The initial body of Russian nationals is, first, determined according to territorial terms. All former Soviet nationals permanently residing on the territory of the Russian Federation on the day of entry into force of the law are considered as Russian nationals, unless they declare their desire to relinquish Russian nationality within one year from that date (Art. 13, para. 1)^[167] Russian nationality was acquired *ex tunc* on the day the USSR ceased to exist (26 December 1991).

The initial body is, moreover, integrated by the relatively small number of former citizens of the RSFSR, who, for political reasons, were deprived of their citizenship against their will by the Soviet Union (Art. 20, para. 2). Paragraph 2 of Art. 13 defines a former citizen of the RSFSR as anyone, who was either themselves born on the territory of Russia (as it existed at that time) or if born outside Russia, had at least one parent who, at the time of their birth, had his or her permanent residence in Russia.

Individuals who had been deprived of their Soviet nationality and who automatically acquired the Russian nationality may renounce it by a simple declaration (Art. 13, para. 1 and Art. 20, para. 2). The law does not provide for a time limit. However, the express or tacit^[168] consent to its new Russian nationality should extinguish the right of the individual to relinquish his/her Russian nationality^[169]

11.2. Acquisition of nationality.

(1) Birth:

According to Art. 14 a child both of whose parents are Russian nationals acquires Russian nationality at birth (*ius sanguinis* principle).^[170] In order to reduce statelessness, the principle is corrected by *ius soli*: Children of unknown parents living in the Russian Federation (Art. 16), children of stateless persons born on Russian territory (Art. 17, para. 2) and children of foreign nationals born in Russia who did not acquire the nationality of the parents (Art. 17, para. 1) automatically acquire Russian nationality.

When one parent is a Russian national and the other not, the nationality of the child is determined by a written agreement of the parents, regardless of where the child was born. In the absence of such an agreement, the child automatically acquires Russian nationality if she or he was born on Russian territory or if the child would otherwise remain stateless (Art. 15, para 2).

Russian nationality is furthermore acquired by foreign children adopted by Russian nationals (Art. 29).

(2) Registration:

For persons not included in the initial body of citizens, the Russian nationality law provides for several means of acquisition of nationality. A basic distinction has to be made between the ordinary acquisition of Russian nationality and the simplified acquisition through registration. Purpose of the latter is to offer the right to acquire Russian nationality through a simplified procedure, called registration, to a circle of persons, who has a close relationship to Russia and who is not included in the original body of citizens. Contrary to the individuals that belong to the

initial body of citizens, these persons acquire nationality only after a manifestation of intention and not ipso facto.

The cases in which nationality can be acquired through registration are laid down in Art. 18. Applications are considered by the competent Ministry of Internal Affairs of a constituent republic of the Russian Federation, by the internal affairs departments of krais, oblasts, and cities, and by the diplomatic representations and consular agencies outside the Russian Federation. These bodies are entitled to take a decision on the application^[171] Provided that all pre-conditions are fulfilled, the application cannot be rejected, except for the reasons laid down in Art. 19, para. 4 (grounds for rejection of applications)^[172]

In addition, Art. 3, para. 1 sets out a general condition for acquisition of nationality, which is required also for registration. Russian nationality can only be acquired when the applicant renounces his previous nationality^[173]

a) Spouses of Russian nationals and direct descendants (children, grandchildren, etc.) of a Russian citizen^[174] can apply to register for Russian nationality (Art. 18 a). There is no time limit and foreign spouses don't need to settle down in Russia. The provision is directed primarily to former Soviet nationals that are living outside the borders of the Soviet Union and have an ascendant or a spouse that have acquired Russian nationality ipso facto, because permanently resident in Russia.

Thus, it embraces former USSR professional officers stationed abroad that are originally from Russia^[175] 179, provided that they have a spouse or an ascendant that being permanently resident in Russia became automatically a Russian national. If not, since for example both parents are dead, they have to go through the ordinary naturalization procedure^[176] As Levits pointed out, this is undoubtedly a gap of the Russian nationality law^[177]

b) Within a period of five years of their eighteenth birthday, children of at least one parent who had Russian nationality when they were born, and that have acquired another nationality by birth can apply for registration as Russian nationals (Art. 18 b). This is also the case if the children were born after their parents had already lost their Russian nationality (Art. 18 c). The purpose of these two provisions is to leave a sort of right of option to children of parents, one of which is (or was) a Russian subject and the other not.

c) One of the most liberal provisions of the Russian nationality law is contained in Art. 18 (d). Every former Soviet nationals, living on the territory of one of the other republics of the former USSR as constituted on 1 September 1991 who is not a national of that republic may apply for registration as a Russian national, provided this is done within three years from the day of entry into force of the law (6 February 1992).

Considering itself (the main successor state of the USSR, Russia is very liberal in granting the possibility to acquire its nationality to all former Soviet nationals still living within the borders of the Soviet Union, who could not or did not want to acquire the nationality of one of the other fourteen republics. They may become nationals of the Russian Federation, without the need to move their residence into Russia's territory. The provision is of considerable practical importance since it allows any former Soviet national living on former Soviet territory to avoid statelessness. It is, however, unknown how much the provision has been used in practice and to what extent former Soviet nationals are aware of it.

Levits^[178] pointed out that the provision is not very clear in relation to Estonia, Latvia and Lithuania, since it refers to USSR as of 1 September 1991. The three Baltic states which had already issued their declarations of sovereignty were recognized as independent states by the RSFSR which was still part of the USSR already before Sept. 1991^[179] On the contrary, the USSR recognized the independence of the three Baltic States on 6 September 1991^[180]

Should Art. 18 (d) not be applicable to the Baltic States, for the reasons set out above, only persons who are not nationals of the Baltic states and who have a Russian spouse or a Russian ascendant living in the Russian Federation (Art. 18 a) could apply to be registered as Russian nationals. This restrictive interpretation seems very much in contrast with the purpose of Art. 18 (d) and with the spirit of the whole Russian nationality law. Indeed it would leave all ethnic Russian residents in the Baltic states, that do not fall under the provision of Art. 18 (a) without the opportunity to acquire Russian nationality through the simplified registration procedure.

(d) Art. 18 (e) introduces an additional anti-statelessness measure. Stateless persons residing in the territory of the Russian Federation or of another former Soviet republic can register as Russian nationals within one year from the entry into force of the law (6 Febr. 1992). It must be inferred that the provision refers to persons who were not former Soviet nationals, since those have a three year period for application (Art. 18 d). In other words, Art. 18 (e) can be seen as an attempt to confer nationality to all stateless people inherited from former USSR. It reflects a very liberal approach towards stateless people in other republics. The provision does not apply to stateless people permanently resident in Russia, since they acquire nationality ipso facto, according to Art. 13, para. 1.

(e) Former Russian citizens who are foreign nationals or stateless persons, can register as Russian nationals, regardless of their place of residence if they themselves or, at least, one direct ascendant had acquired Russian nationality by birth. Former Russian nationals are determined according to Art. 13, para. 2^[181]185The purpose of the provision is to give an opportunity to Russian emigrants and their descendants living outside the territory of the Russian Federation, to acquire Russian nationality in a simplified way. Interestingly, also pre-revolutionary emigrants from the Tsarist Empire and their descendants, may make use of this right.

(3) Naturalization:

Any person who does not fit into the above categories can apply for Russian nationality, without distinction of origin, social status, race, nationality, sex, education, language, religious and political beliefs (Art. 19), provided the following pre-conditions are fulfilled:

- a) The applicant has to have legal capacity and thus to be at least 18 years of age (Art. 19, para. 1). Pursuant to Art. 27, if one parent acquires Russian nationality, his or her children may acquire it on the basis of a written declaration by that parent. The consent of the other parent is required (Art. 27), as well as the consent of the child of more than 14 years of age (Art. 25, para. 2).
- b) Art. 3, para. 1 implies that applicants renounce their previous nationality, unless otherwise provided for by a treaty.
- c) A further pre-condition is five years of residence. Residence is reduced to three years when it has been continuous and uninterrupted prior to the submission of the application^[182] Pursuant to Art. 19, para. 3 the duration may be shortened or residence not demanded for the following categories of persons:
 - previous nationals of the USSR;
 - persons who adopted a child who has Russian nationality;
 - persons who have special merits in the field of science, technology or culture or who exercise a profession of particular importance to the Russian Federation;
 - persons who rendered humanitarian service to the people of Russia;

– refugees recognized by the Russian Federation^[183]

Pursuant to Art. 19, para. 4, naturalization is denied to people who are engaged in unconstitutional activities and who are serving a penal sentence for a crime under Russian law.

(4) Restoration of Russian nationality:

Restoration is the re-acquisition of lost Russian nationality. It may occur in three different ways.

First, according to Art. 21, para. 2 restoration operates ipso facto for former Soviet nationals who were deprived of their nationality on the basis of the decree of the Supreme Council of the USSR dated 17 February 1967 or on the basis of other decrees issued by the same body. As has been seen above, this category of people acquire Russian nationality by operation of law and, together with all permanent residents of Russia, they form the initial citizenry of the Federation (see above).

Second, in those cases in which children have lost Russian nationality either as a result of adoption by foreign nationals or through denaturalization of their parents (Art. 20, para. 1) restoration may be implemented through the procedure of registration. Registration for Russian nationality is possible without any time limit for the former and within five years of the eighteenth birthday for the latter.

Third, restoration is effected through an application for persons who were former RSFSR nationals, but were not included in the first two groups (Art. 21, para. 3) The same procedure as for naturalization is followed^[184] However, no residence requirements are demanded. According to Art. 3, para. 1 the applicant must renounce his previous nationality. This group include former Soviet officials or other former Soviet citizens resident outside the previous USSR borders, who were previously nationals of the RSFSR but who cannot register for Russian nationality since they do not have a spouse or a direct ascendant still living in the Russian Federation.

(5) Option:

Individual affected by territorial changes of the Russian Federation may exercise a right of option for Russian nationality (Art. 21).

11.3. Loss of nationality.

It may be noted that Russian citizenship may only be terminated at the citizens's request, except for the revocation of a naturalization decree obtained on the basis of forged documents^[185] No deprivation of Russian nationality is admitted for penal convictions. Upon application, Russian nationality can be renounced (Art. 23), provided certain pre-conditions are fulfilled. Possession of another nationality is not required.

11.4. Procedure for application^[186]

Applications for nationality are to be submitted to local agencies of the Minister of Interior or, if the applicant is resident outside the territory of Russia, to diplomatic agencies of the Russian Federation (Art. 37, para. 1). The final decision is taken by the President of the Russian Federation (Art. 33) on the basis of a proposal submitted by the Commission on Nationality Affairs under the Office of the President (Art. 34, para. 1). In drafting its proposals the Commission shall, among others, take into account the opinion of the Republic of the Russian Federation in which the applicant intends to reside, in order to evaluate the opportunity of its admission to Russian citizenship, including the possibility of ensuring him work, housing, etc. The procedure has not to

exceed six months, or nine months in case of application for naturalization or for restoration according to Art. 21, para. 3.

In case an application is not accepted or the time limit not respected as well as in case of other unlawful actions committed by officials dealing with the application, the applicant can appeal to the next-highest level of the same administrative authority or to the court (Art. 47).

11.5. Conclusions.

The Russian law is very effective in reducing statelessness on the territory of the Russian Federation. All former Soviet nationals permanently resident on it have automatically obtained the Russian citizenship. With regard to ex-Soviet nationals living in other Republics of the former USSR, who did not or could not obtain the nationality of the residence State, the Russian law takes a very inclusive approach, as it allows former Soviet nationals living in other Newly Independent States to register for Russian nationality, unless they have already acquired another nationality. This opportunity is valid until 6 February 1995^[187]

On the contrary, former Soviet officials and other Soviet nationals resident outside the former USSR cannot acquire Russian nationality by operation of law. A simplified procedure for acquisition of nationality is available for those who can register for Russian nationality, because they have a spouse or direct ascendant living in the Russian Federation. The remaining group may acquire or restore their Russian nationality only through the ordinary procedure for acquisition of Russian nationality.

12. Tajikistan

The Supreme Soviet of Tajikistan issued a declaration of sovereignty on 24 August 1990 and proclaimed the independence of the Republic of Tajikistan on 9 September 1991^[188]

The largest ethnic group of the Republic are Tajiks, who form 62.3 %, followed by Uzbeks (23.5 %) and Russians (7.6 %).^[189]193Tajikistan adopted its nationality law in June 1991^[190]No copy of the law has been available. According to the available information, the law confers Tajik nationality to any person who is living on the territory of the Tajik Republic, regardless of national origin and of the amount of time spent in Tajikistan^[191]According to the Tajik law, citizens of Tajikistan were considered to be at the same time citizens of the Soviet Union^[192]

13. Turkmenistan

On 22 August 1990, the Supreme Soviet of Turkmenistan adopted a declaration of sovereignty, which asserted, among other things, the right of the Republic to determine its own political and social system. On 26 October 1991, 94.1 % of the population opted in a referendum for an independent Turkmenistan. The next day, on 27 Oct. 1991, the Supreme Soviet proclaimed the independent Republic of Turkmenistan^[193]According to the available information, Turkmenistan has not yet passed a nationality law.

14. Ukraine

The Supreme Soviet of Ukraine adopted its declaration of sovereignty on 16 July 1990. The declaration proclaimed the primacy of Ukrainian law over Soviet law and acknowledged the right of Ukraine to have its own army and security forces^[194]Ukraine proclaimed its independence on 24 August 1991^[195]

In January 1991 the population of Ukraine was estimated at 51,944,000. 72.7 % Ukrainians form the largest ethnic group, followed by 22.1 % of Russians^[196]

Sovereign Ukraine passed its nationality law on 8 October 1991 and published it on 14 November 1991^[197] The law entered into force on the day of publication^[198] The second paragraph of the preamble of the nationality law defines nationality as an "inalienable human right". According to it nobody shall be deprived of his nationality or of his right to change it.

14.1. The definition of the initial body of citizen.

Ukraine has defined the initial body of citizens in territorial inclusive terms. Initial citizenship is primarily based on residence on Ukrainian territory at the moment of entry into force of the law on nationality.

The initial body of citizens is formed according to Art. 2 which contains two separate provisions.

Pursuant to point one of Art. 2 all persons, resident in Ukraine on the day of entry into force of the law (14 Nov. 1991), who are not nationals of another state are considered as Ukrainian citizens, provided they do not object to it. Interestingly, the term used by the Ukrainian law is "prozhivali" (lived). It is unclear if such a formulation includes also temporary residents and, among others, former Soviet military personnel stationed in Ukraine. The acquisition of nationality operates by virtue of law.

It has to be noted, that the law provides for the possibility to relinquish the Ukrainian nationality, if a citizen so wishes. No conditions are therefore required. Neither does the law fix a time limit for the relinquishment. It has, however, to be inferred that once a citizen has tacitly accepted the Ukrainian nationality, for instance by applying for a passport, the nationality may not be relinquished anymore.

The original body of citizens is furthermore integrated by certain persons of Ukrainian origin who were not residing in Ukraine on 14 November 1991, provided that they (1) are not citizens of another state, (2) were born or permanently reside in Ukraine and (3) express, within one year from the entry into force of the law, the desire to become an Ukrainian national (Art. 2, point 2). For this second category acquisition of nationality does not operate ipso facto. Individuals concerned need to declare their intention to accept Ukrainian nationality within a time limit of one year from the entry into force of the law. There is, however, no need to resettle in Ukraine.

The purpose of this second category is to embrace those Ukrainians who were temporarily living abroad (particularly in other Soviet Republics) at the time the nationality law entered into force and who have not acquired the nationality of another state. However, the law does not include all Ukrainians resident outside the country. Persons working abroad on behalf of the Ukrainian state (po gosudarstvennomu napravleniiu), persons performing military service or studying outside Ukraine are the only three categories that are mentioned. It is not known how Ukrainian officials have applied this provision. If literally interpreted, persons of Ukrainian origin living on other former Soviet Republics cannot become Ukrainian nationals by a simple declaration, unless they fall in one of these three categories. For example, an Ukrainian living and working in Estonia for an Estonian company would be excluded. Thus, Ukrainians resident in other former Soviet Republics are discriminated according to the type of work they perform^[199]

Though very inclusive for all inhabitants of Ukrainian territories, the law leaves some doubts about the integration of ethnic Ukrainians living outside the country. All depends on the interpretation given to it. If the provision at point two is literally applied, many Ukrainian emigrants living in former Soviet Republics do not have a right to opt for Ukrainian nationality. They would have to apply for it and to go through the procedure of reintegration^[200]

14.2. Acquisition of nationality.

(1) Birth:

According to Art. 13 of the Ukrainian nationality law children both of whose parents are Ukrainian nationals automatically acquire the nationality of their parents, regardless of the place of birth (*ius sanguinis* principle). This is also the case for children of a Ukrainian national and a stateless or unknown person (Art. 14, para. 3).

Children of a Ukrainian national and a foreign national acquire Ukrainian nationality *ipso facto*, if born on Ukrainian territory. Such children may also acquire Ukrainian nationality automatically if, at the time of birth, one of their parents is permanently residing in Ukraine. In all other cases Ukrainian nationality of the child is determined by a written declaration of both parents (Art. 14).

The principle of *ius sanguinis* is completed by some other *ius soli* provisions. Children of stateless persons born in Ukraine acquire Ukrainian nationality, provided that the parents are permanently resident in Ukraine (Art. 15). Nationality is automatically acquired by children of unknown parents found on Ukrainian territory (Art. 16).

Ukrainian nationality can, in addition, be acquired through adoption. The modalities are laid down in Art. 26.

(2) Naturalization:

Foreign citizens and stateless persons may apply for Ukrainian nationality if they fulfill the conditions laid down in Art. 17, para. 2. Pursuant to this provisions applicants must:

- renounce foreign nationality, unless otherwise provided in bilateral conventions^[201]205;
- have permanently resided on the territory of Ukraine for the previous five years;
- have a legal source of income in Ukraine;
- know the Ukrainian language as necessary "for communication";
- recognize and obey the Constitution of Ukraine.

These requirements may be waived or softened in the following cases:

- a) For women married to an Ukrainian national, provided they renounce their former nationality and submit an application the requirements may be softened (Art. 17, para. 4)
- b) On the basis of a Presidential decree, the above-mentioned requirements may be waived for individuals that have rendered great services to the Ukrainian state (Art. 17, para. 3).
- c) Finally, the residence requirement does not apply to persons who were born on the territory of Ukraine or who had at least one parent or grandparent that was born on this territory and who are not citizens of other states (Art. 17, para. 2 at 2/2). The purpose of this exception is to allow people that had been forced by the Soviet authority to leave the country and their descendants to reintegrate in Ukraine, if they wish so.

The conditions respect international standards. However, point (a) can be viewed as discriminatory. It allows an adaptation of the conditions (and probably a reduction of the duration of permanent residence) only for foreign women and not for foreign men married to an Ukrainian women.

In its last paragraph Art. 17 mentions three condition which prevent the acquisition of Ukrainian nationality. Applications from persons who have committed crimes against humanity or genocide, who have been engaged in "violent" activities against the Ukrainian state and who have committed serious crimes will be rejected.

(3) Restoration of Ukrainian nationality:

Former Ukrainian nationals may, according to Art. 18, apply to get their nationality restored. According to Art. 34, former Ukrainian citizenship is ascertained on the basis of Ukrainian laws and treaties in force at the relevant date. Interestingly, Soviet law is not mentioned.

Since no provision on the contrary has been inserted in the nationality law, it has to be inferred that the general prohibition of dual nationality has also to be applied in case of restoration.

The grounds for rejection of nationality applications in Art. 17 (naturalization) seem to be applicable also to restoration of Ukrainian nationality. Additional pre-conditions should not be required. Permanent residence and other pre-conditions necessary for naturalization appear to have no value outside the scope of Art. 17.

Restoration of Ukrainian nationality is conferred by Presidential decree.

14.3. Loss of nationality.

Both renunciation (Art. 20) and withdrawal (Art. 21) of Ukrainian nationality are provided for by the law. The former is possible only upon application and there are certain conditions that must be fulfilled. (Art. 20). The latter occurs (1) when an individual enters military service or is employed in the state administration of another country, (2) in case of fraudulent acquisition of Ukrainian nationality and (3) if an Ukrainian national has been living outside the country and has not registered at the consulate for more than five years. The latter could be viewed as too strict an application of the principle of genuine link.

Ukrainian nationality is lost by Presidential decree.

14.3. Procedure for application.

Applications for Ukrainian nationality are addressed to the President of Ukraine through local agencies of the Ministry of Interior or, for foreign residents, through the diplomatic agencies of Ukraine (Art. 32). The Commission For Nationality Matters, created under the Presidency of Ukraine carries out a preliminary examination of the application and submits a recommendation to the President for each individual case (Art. 36). The final decision is taken by presidential decree. The whole procedure shall not last for more than one year from the day of submission of the application (Art. 37).

In case of rejection re-applications are not admitted before one year from the previous decision, unless newly discovered essential circumstances arise (Art. 37, para. 4).

Appeal against negative decisions of the President may be lodged with the Constitutional Court of Ukraine (Art. 41). Illegal omissions by the officers in charge of nationality applications can be appealed to the court (Art. 42).

14.4. Conclusions.

The territorial inclusive approach solves the question of nationality on Ukrainian territory. Since all residents of Ukraine obtained Ukrainian nationality ipso facto, statelessness is efficiently

eliminated on Ukrainian territory. However, Art. 2 of the nationality law provides for the possibility to relinquish Ukrainian nationality. Relinquishment is not subject to any condition and could thus be abusively used by Ukrainian nationals, who could thus become stateless.

Different is the question of Ukrainians living outside the country. Only a part of them have a right to opt for Ukrainian nationality and to obtain it by a simple declaration. Ukrainians who are resident and working abroad not on behalf of the Ukrainian state, can acquire Ukrainian nationality only through the more complicated procedures of restoration or naturalization. Meanwhile, these people will remain stateless, unless they have acquired another nationality.

Similarly, the individuals of Ukrainian origin and residing abroad indicated in Art. 2, point 2 of the law (students, persons performing military service or working on behalf of the Ukrainian state) have only a one year time limit to express their intention to acquire Ukrainian nationality. Once the time limit is expired they have to undergo the rather complicated restoration procedure. If they do not have another nationality, they will remain stateless for the time of the procedure or in case their application is rejected.

15. Uzbekistan

On 20 June 1990 Uzbekistan adopted its declaration of sovereignty and on 31 August 1991, the Supreme Soviet proclaimed the independence of the Republic.^[202] The population of Uzbekistan includes 71.4 % of Uzbeks, 8.3 % of Russians, 4.7 % of Tadjiks and 4.1 % of Kazakhs^[203]

According to the available information no nationality law has been passed.

However, on 14 January 1992, the Uzbek Supreme Soviet adopted a law permitting Uzbeks who are citizens of foreign countries to apply for the nationality of Uzbekistan, while retaining their foreign citizenship^[204] No details on the modalities have been made available.

SELECTED BIBLIOGRAPHY.

BRUBAKER R.

"Citizenship Struggles in Soviet Successor States" in *International Migration Review*, vol. 26, No. 98, Summer 1992, pp. 269-91.

CHAN, Johannes

"The Right to a Nationality as a Human Right" in *Human Right Law Journal*, vol. 12, Nos. 1/2, pp. 1-14.

DMITRIEVA, Galina / LUKASHUK, Igor

"The Russian Federation Law on Citizenship" in *Review of Central and East European Studies*, vol. 19, 1993, No. 3, pp. 267-292.

DONNER, Ruth

The Regulation of Nationality in International Law, Helsinki 1983.

EIDE, Asbjorn

"Citizenship and International Law: The Challenge of Ethno-Nationalism" in *Citizenship and Language Laws in the Newly Independent States of Europe*, seminar held in Copenhagen on 9/10 January 1993, pp. 1-15.

GETTYS, L.

"The Effects of Changes of Sovereignty on Nationality" in *AJIL* vol. 21, 1927.

GINSBURGS, George

"From the 1990 Law on the Citizenship of the USSR to the Citizenship Laws of the Successor Republics", (Part I) in *Review of Central and East European Law*, vol. 18, 1992, No. 1, pp. 1-55 and (Part II) in *ibid.* vol. 19, 1993, No. 3, pp. 233-266.

GINSBURGS, George

"The citizenship of the Baltic States", in *Journal of Baltic Studies*, vol. 21, Spring 1990, No. 1 pp. 3-26.

JELLINEK, H.

Der Automatische Erwerb und Verlust der Staatsangehörigkeit durch völkerrechtliche Vorgänge, Berlin 1951.

LEVITS, Egil

"Das Staatsangehörigkeitsrecht Russlands" in *Das Ständesamt*, 1992, No. 6, pp. 171-175.

MAKAROV, A. N.,

Allgemeine Lehren des Staatsangehörigkeitsrechts, Kohlhammer Verlag Stuttgart, 1947.

NIBOYET,

"La nationalité d'après les traités de paix qui ont mis fin à la Grande Guerre de 1914-18" in *Revue de droit international et de législation comparée* vol. 2, 1921, pp. 284-319.

Regional Surveys of the World: Eastern Europe and the Commonwealth of Independent States, 1992 Eur. Publ., Ltd., London 1992.

SCHÄTZEL Walter

"Der Staatsangehörigkeitswechsel bei Gebietsveränderungen" in *Zeitschrift für Völkerrecht*, vol. 12, 1922, pp. 86-116.

SCHRAM, G. Gunnar

"Article 15" in *The Universal Declaration of Human Rights: A Commentary*, ed. by EIDE, ALFREDSSON et al. Scandinavian University Press, 1992, pp. 229-241.

UIBOPUU, H. J.

Die Völkerrechtssubjektivität der Unionsrepubliken in der UdSSR, Wien, New York, 1975.

UNHCR, Regional Office for the Nordic and Baltic Countries

Statelessness Roundtables Baltic Countries, Vilnius-Tallin-Riga, September 1992.

WEIS P.

Nationality and Statelessness in International Law, Alphen aan den Rijn, Sijthoff & Noordhoff, 1979.

1 On 26 December 1991, a shrunken Soviet Parliament passed a resolution acknowledging the demise of the USSR and ending its own existence; see *New York Times*, 26 December 1991 at A12. Gorbachev had resigned on 25 Dec. 1991; see *Le Monde*, 27 December 1991 at 1.

2 For states with the Roman conception of nationality the terms nationality and citizenship define a political status, while for states with a feudal conception of nationality the term citizenship was used as a synonym for membership of a local community. At present, however, the two terms are used indiscriminately. See P. WEIS *Nationality and Statelessness in*

International Law, Alphen aan den Rijn, Sijthoff & Noordhoff, 1979 at 2. In the present paper nationality and citizenship are used as synonyms.

3 PCIJ, Serie B No. 4 at 24.

4 ICJ Rep. 1955 at 23.

5 See U. N. Laws concerning Nationality, U. N. Publ., New York 1954 at 567: "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 custom, and the principles of law generally recognized with regard to nationality."

6 Nottebohm Case, ICJ Rep. 1955 at 23.

7 United Nations Convention on the Reduction of Statelessness of 30 August 1961, reprinted in *Collection of International Instruments Concerning Refugees*, published by UNHCR, Geneva 1990 at pp 82 ff. See for example Arts. 1 and 4 where country of birth, nationality of the parents and permanent residence are given primary importance.

8 See UNITED NATIONS The Law of the Sea. United Nations Convention on the Law of the Sea, UN Publ., New York 1983 at 31.

9 See thereon A. N. MAKAROV, *Allgemeine Lehren des Staatsangehörigkeitsrechts*, Kohlhammer Verlag Stuttgart, 1947 at 95f.

10 See EIDE Asbjorn "Citizenship and International Law: The Challenge of Ethno-Nationalism" in *Citizenship and Language Laws in the Newly Independent States of Europe*, seminar held in Copenhagen on 9/10 January 1993, pp. 1-15 who develops interesting arguments on the basis of the principle of non-discrimination; SCHRAM, G. Gunnar "Article 15" in *The Universal Declaration of Human Rights: A Commentary*, ed. by EIDE, ALFREDSSON et al. Scandinavian University Press, 1992, pp. 229-241; and Johannes CHAN "The Right to a Nationality as a Human Right" in *Human Right Law Journal*, vol. 12, Nos. 1/2, pp. 1-14.

11 The Conference on Security and Cooperation in Europe (CSCE) introduced a reference to the right to a nationality in its Helsinki Document of 1992 (10 July 1992) at decision VI (The Human Dimension), para. 55 according to which the participating States "recognize that everyone has the right to a nationality and that no one should be deprived of his/her nationality arbitrarily". According to para. 56 the participating States will "... as appropriate, take measures, consistent with their constitutional framework, not to increase statelessness".

12 As of 31 Dec. 1992 the following Newly Independent States had ratified the International Covenant on Civil and Political Rights: Azerbaijan, Belarus, Estonia, Latvia, Lithuania, Russia and Ukraine; see *Human Rights Law Journal*, vol. 14, No. 1-2, 1992 at 62.

13 As of 31 December 1992, Azerbaijan, Belarus, Estonia, Latvia, Lithuania, Russia and Ukraine were parties to the Convention on the Right of the Child of 1989 (ibid). Art. 7 para. 1 of the Convention states that "the child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, ...". Art. 7 para. 2 provides that "States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless".

14 *Op. cit.* at 646.

15 See BROWNLIE, *op. cit.*, at 665.

16 See ROUSSEAU, *Droit international public* Paris 1977, III at 343; BRIGGS, *The Law of Nations* London 1953, at 502-3; OPPENHEIM-LAUTERPACHT, *International Law* London, New York, 1955, seventh impress. 1963, vol. I at 551, 571 and 656-7; HYDE, *International Law. Chiefly as interpreted and applied by the United States*, Boston 1947, vol. II at 1090 and 1092; BROWNLIE, *Principles of Public International Law* Oxford 1990 at 661-5; SCHÄTZEL, *op. cit.* at 101. H. JELLINEK dedicates a whole book to it: *Der Automatische Erwerb und Verlust der Staatsangehörigkeit durch völkerrechtliche Vorgänge* Berlin 1951.

17 See *American Journal of International Law* (hereinafter AJIL), vol. 23 (1929), Special number at 60. Pursuant to Art. 18 of the draft "when the entire territory of a state is acquired by another state, those persons who were nationals of the first state become nationals of the successor state, unless in accordance with the provisions of its law they decline the nationality of the successor state. When a part of the territory of a state is acquired by another state or becomes the territory of a new state, the nationals of the first state who continue their habitual residence in such territory lose the nationality of that state and become nationals of the successor state, in the absence of treaty provisions to the contrary, unless in accordance with the law of the successor state they decline the nationality thereof."

18 See "Survey of the problem of multiple nationality" (A/CN.4/84) presented to the International Law Commission in 1954; in *Yearbook of the International Law Commission*, 1954, II, at 61 para. 39: "(v) Limitations in connection with changes of sovereignty. The opinion is widely held that in case of change of sovereignty over a territory by annexation, or its voluntary cession by one State to another, the annexing State is obliged to grant its nationality to the inhabitants of the territory concerned who were citizens of the ceding State, at least if they have, at the time of annexation, their permanent residence in the ceded territory. [...]"

19 GINSBURGS stresses that "modern international practice favors the 'zero option'", according to which the citizenship of the new state is granted to all "individuals permanently residing on the territory staked out by the newborn entity", "From the 1990 Law on the Citizenship of the USSR to the Citizenship Laws of the Successor Republics", part. II, *op. cit.* at 235.

20 See [McNair](#), *International Law Opinions* 1956, Vol. II at 24 and BROWNLIE, *op. cit.* at 663.

21 See the "Decree of 7 Sept. 1940, concerning the acquisition of USSR citizenship by nationals of the Lithuanian, Latvian and Estonian SSRs" at Art. 1 and the "Decree of 8 March 1941, concerning the recovery of USSR citizenship by persons resident in Bessarabia and the acquisition of Soviet citizenship by persons resident in Northern Bukovina", Arts. 1 and 4; both decrees are reported in *U. N. Laws Concerning Nationality*, New York 1954 at 463f.

22 Express provisions for the acquisition of the nationality of the successor state by the population of the ceded territories can be found in the Treaty of Paris of 1803 by which France ceded Louisiana to the United States, in the Treaty of 2 February 1848 by which Mexico ceded California to the U. S. A. and in the Treaty of 1867 by which Russia ceded Alaska to the United States, all are quoted in the comments to the Harvard Draft, *op. cit.* at 65-6.

23 See Walter SCHÄTZEL "Der Staatsangehörigkeitswechsel bei Gebietsveränderungen" in *Zeitschrift für Völkerrecht*, vol. 12, 1922, pp. 86-116 at 88, who also furnishes examples of treaties that adopted domicile expressly (at note 2).

24 See GETTYS *op. cit.* at 269 and the Arts. 84 (German nationals habitually resident in Czecho-Slovakia) and 91.1 (German nationals habitually resident in Poland).

25 Indigénat (Heimatrecht, pertinenza) is a legal concept derived from Austrian law which defines the link of an individual with a local community. It is a sort of municipal citizenship that may be acquired through birth, marriage and by formal concession by the local community after 10 years of residence; see *Repertoire de droit international*, published by LAPRADELLE and NIBOYET, Paris 1931, vol. IX at 528-29.

26 On the subject see NIBOYET, "La nationalité d'après les traités de paix qui ont mis fin à la Grande Guerre de 1914-18" in *Revue de droit international et de législation comparé* vol. 2, 1921, pp. 284-319 and L. GETTYS, "The Effects of Changes of Sovereignty on Nationality" in *AJIL* vol. 21, 1927, pp. 269 ff.

27 See the Treaty of St. Germain at Art. 80 and the Treaty of Trianon at Art. 64.

28 More precisely, the respective Arts. 64 and 80 refer to the state where the majority of its population "is of the at.LlRo_bodGhe]

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