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Table of contents

1	Introduction	2
2	“But it does move”- Recent citizenship law reforms	3
3	Innovations at the procedural level	3
4	Professionalisation of decision-making	4
5	Formalising the assessment of the “aptitude” criterion	5
6	Who deserves to become Swiss ?	6
7	Conclusion	7
8	Bibliographie	9

1 Introduction

After a number of failed attempts to revise the Federal Act on the Acquisition and the Loss of Swiss Citizenship [German: Bürgerrechtsgesetz, (BüG)] of 1952 a complete overhaul of the Swiss Citizenship Act (SCA) is currently under discussion (see Schweizerischer Bundesrat 2011). The legislative project presented by the Federal Council is highly contested, given that protagonists of and close to the Swiss Peoples' Party SVP see the amendment as an opportunity to clamp down on the number of naturalisations, whereas the left-wing parties consider the time ripe for liberalising the traditionally restrictive naturalisation regime. Attempts to revise the SCA have for many years been blocked, because there is no consensus on whether Switzerland needs a more liberal or restrictive citizenship law (cf. also Achermann et al. 2013: 23 ff.). The objective of this paper is to present the main elements of the reform project, to situate them against the background of recent developments at the national and subnational level and to assess whether and how they impact upon the tension between liberalisation and restriction.

According to the Federal Council the current reform project seeks to standardise and simplify the naturalisation procedure, to improve data exchange among the administrations involved in the naturalisation procedure as well as to harmonise the cantonal residence requirements. The Federal Council's proposal includes two important "liberalising" provisions. Firstly, a reduction of the federal residence requirement from twelve to eight years is proposed. Secondly, the proposal limits the additional cantonal residence requirement to three years. At the same time it restricts access to citizenship by stating that only "successfully integrated" candidates should apply for Swiss citizenship. According to the Federal Council, integration implies the sufficient knowledge of a local language, the willingness to be active economically and/or in education and the absence of a threat to internal or external security. Moreover, the proposal limits access to citizenship to holders of a permanent residence permit, the so called permit C (Schweizerischer Bundesrat 2011). At first sight the Federal Council's proposal may seem balanced, but according to the Swiss Federal Commission on Migration its effects are tilted towards restriction, as the permit C requirement undermines the "liberalising effect" of reducing the federal residence requirement (Wanner and Steiner 2012).

In the 2013 spring plenary session, the National Council discussed the Federal Council's proposal. It agreed with all provisions in the legislative proposal that make access to citizenship more difficult, while at the same time removing the liberalising elements. The National Council, firstly, rejected the reduction of the minimum residence requirement to eight years, suggesting a federal residence requirement of ten years instead. Secondly, it proposed to abolish the facilitated procedure for young adults that allowed counting the years of residence between ages of 10 and 20 double. Thirdly, sufficient language skills should not be considered enough to prove integration; a naturalisation applicant has to demonstrate "good" written and spoken languages skills instead. Finally integration requires the effective participation in the labour market and/or going to school, while the mere willingness to be economically active or to be in education is not enough (Nationalrat 2013a, 2013b). Both the parliamentarians of the left-wing parties and the SVP voted against the resolution. The left-wing parties considered the current proposal a "denial of citizenship", whereas it still was too liberal for the SVP, which also wanted to see "citizenship on probation" introduced. The proposal will be dealt with by the

Ständerat, the upper chamber, in a next step, which will once again face the difficult task of finding a balanced solution.

2 “But it does move”- Recent citizenship law reforms

Though a complete overhaul of the SCA has proven a difficult undertaking, it has in fact been amended on several occasions in the past. A look at the EUDO citizenship observatory shows that the adaptations of the legal basis have been particularly numerous since 2003.¹ The observation that citizenship policy is, therefore, a dynamic area of policy making is all the more appropriate, when one focuses on the sub-national or cantonal level (von Rütte 2011). As the following overview of the developments at the cantonal level shows, the last decade has been marked by important legislative reforms in almost all cantons. Five cantons (GR, SG, SZ, UR, VD) have in the last ten years adopted new citizenship legislation and implementing regulations, fourteen cantons have substantially amended their citizenship regime (AI, AR, BE, BS, FR, GE, GL, NW, OW, SH, SO, TI, VS, ZG) and two cantons are currently revising their legislation (AG, BL). Furthermore in two cantons legislative reform projects were presented, which were eventually turned down by a majority of the voters (TG, ZH). Only three cantons have not sought to revise their cantonal citizenship legislation (JU, LU, NE).

In a nutshell, the legislative reforms undertaken at the cantonal level underline that naturalisation is much less a political rather than an administrative act. In the framework of administrative procedures the involved authorities have to justify their decisions, and the applicants are granted procedural rights and guarantees. In particular the requirement to justify negative decisions has contributed to a professionalisation of the naturalisation procedures, which in many cases has implied a shift of the decision-making authority from the legislative to the executive. This fundamental shift in the nature of citizen making has met fierce resistance by some, in particular the SVP, but it has been – perhaps “grudgingly” – accepted by the majority. On the whole the procedural innovations and the professionalisation of naturalisation decision-making have contributed to a liberalisation of access to citizenship. By contrast, the question of who should be naturalised upon fulfilment of which conditions remains contested. Some argue that access to citizenship should become more selective, whereas others prefer a more liberal regime.

3 Innovations at the procedural level

The majority of the procedural amendments at the cantonal level were introduced to align the cantonal legislation with the changes of the SCA and landmark rulings of the Swiss Federal Tribunal. In particular the two judgments of 2003 (BGE 129 I 232 and BGE 129 I 217), in which the Supreme Court stated that based on the right to be heard and the principle of non-discrimination, the authorities have to justify their decisions on naturalisation, triggered reforms at the cantonal level. With the exception of two cantons, all cantons have since introduced the obligation to justify the decisions in their citizenship legislation. Since the right to a reasoned decision is nowadays a key principle in Swiss citizenship law, it is also applicable in the two cantons that have been opposed to

¹The national citizenship observatory traces all of the amendments that have been introduced since the enactment of the 1952 Citizenship Act <http://eudo-citizenship.eu/databases/national-citizenship-laws/?search=1&year=&country=Switzerland&name=&page=1> (last accessed on 17 April 2013).

introducing the obligation to justify negative decisions in their legislation. In a number of cantons (e.g. OW, SO) the SVP challenged attempts to shift naturalisation decision making from the political to the administrative domain by referendum, but they only won the referendum in the canton of Thurgau (Achermann et al. 2010: 23).

As a result of the defeat of the SVP's popular initiative "for democratic naturalisations" in 2008,² the SCA was further amended. Art. 50 SCA obliges the cantons to put in place an appeal process that includes the possibility to lodge a complaint with a judicial authority at the cantonal level as of 1 January 2009. All cantons had to either amend their cantonal laws on judicial organisation or their citizenship laws to enable individuals to contest the naturalisation decision at the cantonal administrative court. The introduction of the obligation to justify negative decisions and the possibility to contest the naturalisation decision in front of an administrative court at the cantonal level have directly reduced the discretion involved in the naturalisation procedure. The procedural innovations have not only directly strengthened the position of the naturalisation applicants; they have also contributed to the increased professionalisation of decision-making.

4 Professionalisation of decision-making

In the 1990s approximately 80 per cent of the municipalities used instruments of direct democracy (ballot box votes and local assemblies) to decide on naturalisation applications. Since the 2003 Federal Tribunal rulings, there have been no more votes on naturalisation at the ballot box. However, a number of municipalities continued to decide on naturalisation applications in local assemblies. According to a Federal Tribunal ruling local assemblies can decide on naturalisation applications, as long as there is an official discussion on the decision before the vote, and an eventual negative decision is justified in written form. In a 2004 ruling the Federal Tribunal (BGE 130 I 140) interpreted this practice as constitutionally problematic and asserted that it would only accept it on a limited temporary basis.

As a result of this second ruling most municipalities conferred the decision-making power to the municipality council. The shift of the decision-making authority from the citizen assembly to the municipality council has been the object of a number of cantonal citizenship law revisions in the last decade (e.g. AR, BE, GL, SG, SZ, VD). According to Hainmüller and Hangartner (2013: 15) 63% of the municipalities in 2011 use representative democracy for naturalisation decision-making, while 33% of the municipalities continue to adopt the decision in local assemblies. The shift of the decision-making authority towards the executive at the municipal level can also be observed at the cantonal level, where 16 of the 26 cantons have delegated decision-making on naturalisations to the executive (Wichmann et al. 2011: 55).

The research carried out by Hainmueller and Hangartner (2013: 4) revealed that the "heightened accountability that accompanies the transition of decision-making power from the people to the politicians" benefits naturalisation applicants. The professionalisation of naturalisation decision-making has in particular benefitted immigrants from former Yugoslavia and Turkey, which were previously the most vulnerable to discriminatory

² Since the parliament had adopted an indirect counter-proposal to the SVP's referendum on "democratic naturalisations", the counter-proposal automatically entered into force with the rejection of the referendum.

decisions in a direct democracy setting. In sum, one could thus argue that the shift towards executive decision-making further contributes to liberalising access to citizenship.

5 Formalising the assessment of the “aptitude” criterion

In parallel to the increased professionalisation of the naturalisation procedure, we also observe an increased tendency towards formalisation. In the context of this paper formalisation means defining criteria (e.g. level of language proficiency etc.) that are subsequently applied, when an authority decides whether or not to naturalise a person. By showing how the assessment of the “aptitude” criterion has evolved in recent years, the process of formalisation can be illustrated. In the past, the academic literature criticised the procedure for assessing the aptitude of candidates for being arbitrary (Wicker 2004: 15 f.). The aptitude criterion features in Art. 14 of the SCA; it states that a candidate has to be integrated in Switzerland and be familiar with Swiss customs and habits (Art. 14 SCA). A number of cantons additionally demand that the candidates prove “familiarity with Swiss, local and cantonal habits and customs” (e.g. SZ, GL, GE, NW). The question of how familiarity should be measured has caused numerous discussions.

In the past, the naturalisation authorities tended to assess the “familiarity” of the candidates with regional customs and habits in an informal interview setting. The informal interview remains the main modality for testing the aptitude of the candidates. However, the expansion of judicial control in the naturalisation domain has led some cantons to mandate third parties (e.g. language schools) to carry out standardised civic integration tests (e.g. UR, SZ, AG). Alternatively, the cantonal authorities have demanded that naturalisation applicants present certificates of attendance of civic integration courses prior to submitting their application (e.g. SO, BE, TI). In the majority of the cases the applicants have to cover the costs of the civic integration courses. In the framework of such tests or courses the applicants are familiarised and subsequently examined as regards their knowledge of Swiss history, geography and the functioning of the political system.

The language requirement has also been formalised. There is indeed a consensus that naturalisation applicants have to demonstrate knowledge of the local language. In the past, language proficiency was tested in an informal interview setting. Nowadays the majority of the cantons specify either in the cantonal citizenship law or in the implementing regulation which level of language knowledge they require for naturalising an applicant. The standard of reference is the Common European Framework of Reference for Languages. The level of language proficiency required by the cantons varies between A2 and B1, whereby a majority of the cantons demands and the Federal Office for Migration recommends level B1. In most cantons the language requirement applies to the spoken language, but some cantons require both oral and written language skills (e.g. SO, SZ).

By defining “objective” criteria and mandating language school providers to carry out the tests, the amount of discretion exercised by the cantonal authorities has substantially decreased. The “new” integration assessment practice is codified in the cantonal citizenship laws and/or the respective implementing regulations. Since in many cases the municipalities are in charge of assessing integration, the cantonal authorities have either specified in the cantonal citizenship law how integration is to be measured (BE, VD) or they have elaborated detailed manuals that contain instructions on how the municipalities should test the degree of civic and social integration of the applicants (e.g. BL, GR, VS).

In other words, an increasing number of cantons have decided to specify the conditions an individual has to meet to apply for citizenship. The increased formalisation of the naturalisation criteria has certainly reduced the amount of discretion inherent to the

naturalisation procedure. Whether formalisation has ultimately led to more restrictive or liberal policy outcomes is difficult to say, because the formalised criteria can either set higher or lower standards depending on the political climate in which they are formulated. A recent research project has indeed shown that naturalisation decisions frequently mirror the political climate prevailing at the time in a given place (cf. Wichmann et al. 2011).

6 Who deserves to become Swiss ?

While the fundamental shift away from discretionary towards professionalised, reasoned and formalised decision-making on naturalisation applications has either gone unnoticed or has been supported by a majority of the population, the debate has increasingly focused on the naturalisation requirements. The absence of a consensus on the conditions for becoming Swiss explains why reform has proven so difficult at the federal level. Unfortunately turning to the cantonal level does not reveal a clear picture either, as some cantons have raised the hurdles for becoming Swiss (SG, SZ, UR), while others have increased certain requirements (e.g. language skills) but simultaneously reduced others (e.g. the residence requirement) (e.g. BS, GE, VS). Overall, however, there seems to be a tendency towards tougher naturalisation requirements (Bundesamt für Migration 2012: 25). Whether this tougher practice is supported by the majority of the Swiss population is difficult to say, as the tightened citizenship laws were adopted in traditionally conservative cantons (e.g. SG, SZ and UR), while the voters in more liberal settings, such as ZH, voted against tightening access. The points of disagreement concern amongst others the importance of local attachment, social integration, the legal status of applicants and the required economic resources.

The first controversy concerns the question of how **locally attached** naturalisation applicants must be. The importance of local attachment is underscored by the fact that basically all cantons and municipalities demand that the naturalisation candidate has resided in the canton/municipality for a certain number of years. The cantonal residence requirement varies from less than three years in twelve cantons to twelve years in the canton of Nidwalden and in some municipalities in the canton of Graubünden. The other half of the cantons are situated between the two extremes with one canton demanding eight, three cantons six and eight cantons five years (von Rütte 2011; Wichmann et al. 2011). The residence requirement has been shortened in a majority of cantons in the last few years, for example in the revised cantonal citizenship laws of BS or VS, but it has at the same time been increased in the cases of SZ and SG. The debate on the length of residence requirement has also divided the politicians at the federal level, since both the reduction of the federal residence requirement and the limitation of the additional cantonal residence requirement feature among the most controversial points in the current reform debate.

The importance of the local attachment criterion has also arisen with respect to the requirement of **social integration**. An increasing number of cantons state in their implementing regulations and/or guidelines for the municipalities that naturalisation applicants have to participate in the life of the municipality and have to maintain contacts with Swiss citizens (e.g. BL, GR, LU, UR). The practice of demanding social integration from the naturalisation applicants has been endorsed by a ruling of the Federal Tribunal (BGE 132 167). The difficult question is how much social integration can be demanded and how to assess the degree of participation.

The question of the **legal status** that an applicant has to hold at the moment of applying for citizenship has also given rise to controversy. At the moment, the cantonal practices

vary. Whereas in some cantons holders of a provisional admission (permit F) can apply for citizenship, others require that the applicants first obtain a residence permit B or a permanent resident permit C. The Federal Council and the National Council propose that naturalisation applicants must possess a permit C, when applying for Swiss citizenship. By contrast the Federal Commission on Migration recommends not considering the legal status and focusing merely on the duration of stay in Switzerland. The permit C practice has been introduced in the cantonal citizenship laws of SG and SZ; the introduction of the permit C requirement was rejected in ZH on 11 March 2012.

Similar disagreements persist concerning the interpretation of the other naturalisation conditions, for example the economic resources requirement (Wichmann et al. 2011: 58). A number of cantons have specified the economic resources condition in recent years. Frequently a naturalisation application is rejected if the applicant is dependent upon welfare benefits (e.g. GR, SO, TG). In some cantons the question is not whether or not a person is dependent upon welfare; the decisive point is whether welfare dependence is self-inflicted or not (e.g. GE, SG, FR). Some cantons go even further in that they demand that the financial situation has to have been in order for the five or ten years preceding the application (e.g. SG, NW), whereas in other cantons the assessment of the future financial situation is decisive (e.g. GR, ZH). A similar variety of cantonal practices can also be observed, when one considers the interpretation of the criminal record requirement.

7 Conclusion

In sum, we would conclude that whereas in the past there was room for arbitrary decisions on naturalisation applications, the amount of discretion inherent in the procedure has decreased. Naturalisation decision makers know that they have to justify their negative decisions and that their decisions are subject to judicial review. The good news for the applicants is that the practice of applying a different set of standards to different candidates in the same canton depending on their origin, social status etc. has become more difficult to implement. The de-politicisation of decision-making on naturalisation is the result of the rulings of the Federal Tribunal and the professionalisation of naturalisation decision-making. Through the “backdoor” the naturalisation practice has in the last decade, therefore, experienced a certain liberalisation and formalisation.

The story, however, does not end here. As there is no consensus concerning the requirements naturalisation applicants have to fulfil to become Swiss citizens at the national level, the applicants continue to be confronted with a more or less favourable naturalisation regime depending on their canton of residence. This differential treatment is problematic from an equality point of view, but it is inevitable in a federal system that assigns the responsibility for making citizens to its three constituent levels. The Federal Commission for Migration has demanded a complete overhaul of the system, including the introduction of measurable criteria for assessing the “aptitude” of candidates at the national level (Eidgenössische Kommission für Migrationsfragen 2012: 10). The revised SCA may give rise to the definition of harmonised criteria, but judging from the debates in the National Council and the citizenship law reforms passed in SG, SZ, UR, one could expect the definition of tougher criteria for becoming Swiss will be enforced in the future.

It is unfortunate that some politically less salient questions have remained absent in the current debate on citizenship reform. The EUDO CITIZENSHIP Country Report on Switzerland and the Federal Council’s message on reforming the Citizenship Act clearly show that bureaucracy, a high degree of complexity and excessive formalism characterise naturalisation procedures (Carrel and Wichmann 2013). It is in the areas of documentation

and bureaucracy that the EUDO CITIZENSHIP project and country report on naturalisation procedures identify major weaknesses in the Swiss system. The complexity of the procedures is certainly linked to the three-tier organisation of decision-making. Nevertheless it should be possible to improve communication between the involved authorities, introduce deadlines for dealing with applications as well as unify and reduce the documentation required by the applicants. Lastly, the federal setting in Switzerland could also be used to engage in innovative projects to promote citizenship among permanent residents. In this vein we would underline the recent efforts to actively promote citizenship among permanent residents in the cantons of GE and BS (Regierungsrat des Kantons Basel-Stadt 2012), which could eventually serve as a good practice for other Swiss cantons.

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