

Becoming a German national

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Becoming a German national¹

Introduction

Germany has 82 531 700 inhabitants whereof 75 183 400 are German nationals. Consequently 7 348 300 persons have their permanent residence in Germany but do not have the German citizenship (about 8,5%).²

However any state has an interest that the people permanently living within its territory do have the respective citizenship to assure that the people being bound by the national laws and regulations are for the most part the same people who vote and thus participate at the law making process. This ensures stable conditions and an acceptance of the legal order.³ It is to be avoided, that an important part of the population lives within a country but outside the “national community”⁴ for generations and thus is excluded of the rights and duties of a citizen vis-à-vis the state for generations as well.

The German regulations allowing somebody to become a German citizen are mainly laid out in the Nationality Act.⁵ They have undergone some fundamental changes over the past years. An important reform has been passed in 1999 and is entered into force on January 1st 2000.⁶ The Immigration Act,⁷ another important reform project concerning migration has been in the process of law making over the past years and was finally passed in July this year.⁸ It will enter into force on January 1st 2005. It brought only

¹ Paper to be presented by Matthias Winter, Assistant professor at the faculty of law at the Friedrich-Alexander-Universität of Erlangen-Nuremberg at the Conference on Civic Education and Politics in Democracies: Comparing International Approaches to Educating New Citizens of the Center of Civic Education (cosponsored by the Bundeszentrale für politische Bildung), Sept. 27 to Oct. 1 2004.

² A wide variety of data information about the population, citizenship and foreign nationalities can be obtained under http://www.destatis.de/e_home.htm.

³ Renner, Streitpunkte: Mehrstaatigkeit und Deutschkenntnisse, ZAR 2002, 339, 345.

⁴ BT-Drs. 14/533, p. 11.

⁵ Germ. “*Staatsangehörigkeitsgesetz*”; an English translation of the Nationality Act can be obtained under <http://www.goethe.de/in/download/dengl/staatsge-e.doc>.

⁶ Gesetz zur Reform der Staatsangehörigkeit vom 15.07.1999 (Federal Law Gazette I 1618).

⁷ Act to Control and Restrict Immigration and to Regulate the Residence and Integration of EU Citizens and Foreigners (Immigration Act); Germ. “*Zuwanderungsgesetz*”

⁸ The Immigration Act has been discussed in Germany since 2002 for a variety of legal and political aspects. It was promulgated for the first time in June 2002, but the German Federal Constitutional Court declared it void on 18 December 2002 (published NJW 2003, 33) due to formal reasons. The immigration law has been renegotiated between the parties, adopted by the Bundestag on 1 July 2004 and the Bundesrat on 9 July 2004 and promulgated on August 5 (Federal Law Gazette 2004, I, p. 1950). An English translation of the official document is published on

minor, but nevertheless interesting modifications to the citizenship laws. The main aspect concerning the citizenship law was the incorporation of some provisions laid out in the Foreigners Act into the Nationality Act. Therefore some of the numbers of the rules about naturalisation changed.⁹

I. Citizenship

Citizenship is the legal membership of a person in a state, resulting in numerous rights and duties.¹⁰ Citizenship is the connection between inhabitants and the state. It makes inhabitants to be citizens and thus creates a nation.¹¹

The question who becomes a German citizen can only be answered by the German laws. Germany decides independent from other countries who to confer the German citizenship. Any other state does the same with its citizenship.¹² There is a wide variety of possibilities how to shape the regulations of citizenship, but almost all of them try to make those people to national citizens where there is a certain expectance of integration. The question is how to identify the persons where such an expectance is justified. Which criteria can be used therefore?

Discussing different possibilities to shape nationality laws in the context of migration statelessness and, even more, multiple citizenships are perceived as problems. There is no interdiction made by international public law to any of those two even though tendencies exist to avoid both of them.¹³ The discussion about a possible multiple nationality for (too?) many persons in Germany was the most intensive in the run-up of the reform of 1999. So the German legislator came up with very complex regulations to avoid an

http://www.bmi.bund.de/lang_de/nn_122688/Internet/Content/Common/Anlagen/Gesetze/Zuwanderungsgesetz__englisch,templateld=raw,property=publicationFile.pdf/Zuwanderungsgesetz_englisch.

⁹ Sections 85 to 87 of the Foreigners Act will be slightly modified and become Sections 10 to 12 Nationality Act.

¹⁰ *Creifelds*, 13th ed. 1996, „Staatsangehörigkeit“.

¹¹ *Schnapp/Neupert*, Grundfragen des Staatsangehörigkeitsrechts, Jura 2004, 167, 167

¹² *Staudinger/Blumenwitz*, Anh. I zu Art. 5 EGBGB Rn. 39.

¹³ *Schnapp/Neupert*, Grundfragen ..., Jura 2004, 167, 169.

excessive increase in persons holding several passports. However it can never be avoided completely.¹⁴

Multiple nationality is problematic. Citizenship does not only mean the accordance of rights but also the fulfilment of duties. This may lead to a conflict of interests and loyalties. The accumulation of different nationalities, the gathering of different passports as a secret reserve is no model for the future.¹⁵ On the other hand the reality with its global movements and its increase in mixed national marriages leads inevitably to an increase of multiple nationalities. Additionally very often it is argued that the acceptance of multiple citizenships facilitates the integration, especially for transition generations.¹⁶

II. German citizenship

German nationals have different rights and obligations. The rights include the right to vote (Section 12 Federal Election Law), the right to work as a civil servant, to be elected and hold an office, to be a permanent resident and receive all social benefits. Additionally certain fundamental rights in the German constitution¹⁷ can only be invoked by Germans, such as the Freedom of assembly (Art. 8 of the Constitution), Freedom of association (Art. 9 of the Constitution), Freedom of movement (Art. 11), Occupational freedom (Art. 12 Section 1). Furthermore German nationals benefit from diplomatic protection in foreign countries. Nowadays the value of this protection may not be neglected (tourist kidnapping), even though it does not always help.¹⁸

One of the most important duties is the duty to serve in the military. Additionally there are some further obligations such as the obligation to help during elections or to serve as a lay judge¹⁹

¹⁴ The striker *Kevin Kuranyi* in the German national soccer team for example holds three passports. His father is German, his mother from Panama and he was born in Brazil. By these means he became a German, Panamanian and Brazilian national.

¹⁵ Hailbronner, *Das neue deutsche Staatsangehörigkeitsrecht*, NVwZ 2001, 1329, 1334.

¹⁶ Hailbronner, *Das neue deutsche ...*, NVwZ 2001, 1329, 1334.

¹⁷ The German Constitution is called *Grundgesetz* (Basic Law).

¹⁸ See FAZ of 08/17/04 p. 6: „Schutz endet am Ben-Gurion-Flughafen. Deutsche Palästinenser auf Heimatbesuch“.

¹⁹ Not at all comparable to an American jury duty.

The citizenship of a person also affects private aspects via the private international law, which determines the applicable law among several possibilities. Thus the citizenship may influence the law applicable to questions of legal capacity, right to the use of a name, marriage, divorce, law of succession etc.

In the meantime²⁰ a Citizenship of the (European) Union pursuant to Art. 17 et seqq. EC-Treaty exist. Even though this citizenship leads to certain rights, it is no citizenship in a strict sense and in this way no citizenship comparable to a national citizenship. The European citizenship shall complement and not replace national citizenship (Art. 17 Section 1 Sentence 3 EC-Treaty). Nevertheless, as in almost any other field of law as well, the European Development is important in a lot of aspects to the national European laws of citizenship.

The German Nationality Act names the possibilities how to acquire the German citizenship in its Section 3 Numbers 1 to 5:²¹ by birth (n°1), by declaration pursuant to section 5²² (n°2), by adoption (n°3), by naturalisation (n°5) and special possibilities partly resulting from historical developments such as the possibility to acquire the German citizenship by the issue of a certificate pursuant to section 15 subsection 1 or 2 of the Federal Expellees Act²³ (n° 4) and by transfer as a German without German citizenship within the meaning of Article 116 paragraph 1 of the Basic Law²⁴ (n° 4a).

I will focus my remarks on the acquisition of the German citizenship by birth (A.) and by naturalisation (B.). Those are of predominant importance in the scope of migration.

²⁰ Since the Maastricht Treaty from 1.11.1993.

²¹ The loss of German citizenship is possible by Entlassung auf Antrag (§§ 18 ff. StAG), Erwerb ausländischer Staatsangehörigkeit (§ 25 StAG), Verzicht (§ 26 StAG), Annahme als Kind durch einen Ausländer (§ 27 StAG), durch Wehrdienst in fremden Streitkräften (§ 28 StAG)

²² Section 5 Nationality Act is a special provision concerning children of a German father and a foreign mother born before 1 July 1993.

²³ Germ. „Bundesvertriebenengesetz“.

²⁴ The German Constitution, Germ. „Grundgesetz“

A. German citizen by birth

When a child is born the question arises which nationality it should have. Two main principles exist worldwide to decide about the nationality of a newborn. The *ius sanguinis* rule accords the nationality of the parent to the child, whereas the *ius soli* principle decides about the nationality in respect to the place of birth. The child receives the nationality if it is born on the respective national territory. The latter principle was predominantly applied by immigration countries; otherwise no nation could have developed.

For a long time the German nationality law has been marked by the *ius sanguinis* principle. After the changes this still remains the basic principle, but *ius soli* elements have been added.

I. The ius sanguinis rule and its limitations for births abroad

The basic way to acquire the German citizenship is the acquisition by birth. Pursuant to Section 4 Subsection 1 of the Nationality Act a child becomes a German national by birth if one parent possesses the German nationality. This *ius sanguinis* rule has traditionally been applied in Germany.

In this context the so called “generations cut” (“*Generationenschnitt*”) made by Section 4 Subsection 4 of the Nationality Act has to be taken into account. For the first time the reform of 1999 introduced a limitation of the *ius sanguinis* rule by taking into account the place of birth. Pursuant to Section 4 Subsection 4 the German citizenship shall not be acquired in the case of a birth abroad where the German parent (!) was born abroad after 31 December 1999 and is normally resident there unless the child would otherwise become stateless. Thus a German citizenship cannot be passed on in the second generation abroad. The ties of the child to Germany are considered to not generally be strong enough to automatically award the German citizenship to the child. Under the given circumstances it cannot be expected that it will integrate and accustom itself to the German conditions of living (negative

prediction of integration).²⁵ However the loss of the nationality can be avoided by a mere report of the birth to a diplomatic representation (Section 4 subsection 4 sentence 2 Nationality Act)

Since the birth of the parent has to occur abroad after 31 December 1999 the first cases can be expected around 2018 at the earliest. Not even predictions about the respective number of cases can be made.²⁶

II. The introduction of an additional ius soli element

Next to the just mentioned “generations cut” other criteria depending on the place of birth have been introduced to the German Nationality Act: a *ius soli* acquisition of the German citizenship has been made possible. This element of the reform was in the center of the political and legal discussion on the occasion of the reform of 1999. Finally the legislator intended to promote the integration of children born in Germany and assure the identity of the domestic population and the German nationals.²⁷

However the *ius soli* acquisition is subject to special conditions (1.) and if multiple nationality is a consequence of the *ius soli* acquisition a decision for or against the German nationality is necessary at the age of 23 (2.).

1. The *ius soli* acquisition pursuant to Section 4 Subsection 3 Nationality Act

Pursuant to Section 4 Subsection 3 of the nationality law a child of foreign parents acquires the German citizenship by birth in the domestic territory, if one parent has been a legal resident in the domestic territory for at least eight years and possesses a right of residence or has possessed for three years a residence permit for an unlimited period. Those conditions intend to limit the acquisition of German nationality to those cases where a stable relationship to the state already exists and where it can therefore be expected that the child

²⁵ Hailbronner/Renner – Renner, Staatsangehörigkeitsrecht, 3. Aufl. 2001, § 4 StAG n° 45.

²⁶ Renner, ZAR 2002, 265, 267: Not even the number of Germans living abroad is statistically known.

²⁷ BT-Drs. 14/533, p. 18.

will integrate in Germany by being brought up by a parent who is connected to Germany himself. Additionally it avoids any sort of maternity tourism.

The child becomes German automatically if the conditions are fulfilled. The parents neither have to opt for the acquisition nor can they opt out on the acquisition of the German nationality by their child. The possibility to waive the German nationality exists (Section 26), but as long as the child is a minor, the citizenship can only be waived by the parents if the German guardianship court approves (Section 26 Subsection 4, Section 19 Nationality Act).

If the rule applies, the child will regularly have multiple nationality, because in the most cases it will acquire the nationality of at least one foreign parent by the *ius sanguinis* rule (pursuant to the regulations of the “foreign” country) as well.

In 2000 and 2001 about 40 000 children a year became German nationals by this rule.²⁸

2. The option model

If multiple nationality is the consequence of the application of the *ius soli* principle, the person has to decide between the age of 18 and 23 whether he wishes to retain the German or the foreign citizenship pursuant to Section 29 Nationality Act (so-called “option model”). Only one citizenship shall be maintained permanently.

If they declare to maintain the foreign citizenship they will lose the German one. If they declare to maintain German, they have to proof by their 23rd birthday that they have lost the other citizenship. If no declaration is made until the 23rd birthday the German nationality will be lost.

Additionally the regulation provides for the acceptance of multiple nationality if the giving up or losing of the foreign citizenship is not possible or cannot

²⁸ Renner, Streitpunkte ..., ZAR 2002, 339, 341.

reasonably²⁹ be expected or where the conditions of section 12 (acceptance of multiple nationality in the case of naturalisation) are fulfilled.

The first declarations pursuant to section 29 and section 4 subsection 3 have to be made starting on 1 January 2018.³⁰ Therefore no practical experiences exist at this point of time. Even a prediction is difficult.³¹ Will the German or the foreign nationality be given up or can the persons receive a retention approval for their multiple nationalities? Some expect that the affected persons want to keep the German citizenship without trying hard enough to give up the foreign one.³² Others expect that the vast majority will be granted a retention approval, so that the bureaucracy involved is not worth the outcome.³³

In general the “option model” is criticized for a number of reasons and from both sides, those preferring an easier *ius soli* acquisition and those not wanting such a principle at all.

- The obligation of declaration might lead to problems within the family³⁴;
- the regulation is not in accordance with the constitution, especially with the right of equality before the law (Art. 3 GG) and the right that no German may be deprived of the German citizenship (Art. 16 GG).
- Too much bureaucracy to find out if the conditions are met at the moment of the birth, notify the person at the age of 18 and wait for a declaration.
- A remark in the passport of those persons is made which identifies those kids as children of foreign parents.³⁵
- Curiosity: Children of persons affected by the “option duty” born before the parent has made a declaration or met the age of 23 will be German

²⁹ Those two conditions are named on purpose next to the conditions of section 12 to show that a multiple nationality can more easily be accepted for a person who is already German (and therefore protected by Art. 16 of the German constitution) than for a person who wants to become German for the first time.

³⁰ As far as the temporary solution of Section 40b Nationality Act is concerned, the first declarations have to be made 2008.

³¹ Renner, Streitpunkte ..., ZAR 2002, 339, 341

³² Hailbronner, Das neue deutsche ..., NVwZ 2001, 1329, 1329.

³³ Göbel-Zimmermann, ZAR 2003, 65, 72.

³⁴ Göbel-Zimmermann, ZAR 2003, 65, 68.

³⁵ Martenczuk, KritV 2000, 194, 215.

by the *ius sanguinis* rule (Section 4 subsection 1) even if the parent loses the German nationality afterwards

- Increase of changes of jurisdiction in the field of private international law³⁶

- ...³⁷

B. Acquiring the German citizenship through Naturalisation pursuant to Section 10 Nationality Act

Until now only “automatic acquisitions of nationality” at the moment of birth have been discussed here. However the people having their permanent residence in a “foreign” country for a long time as well as the resident country itself have an interest in the acquisition of the nationality by those residents. For persons who do not acquire the citizenship by birth this can be done by naturalisation.

The German Nationality Act provides three basic possibilities of naturalisation (Section 8 to 10) and some concerning special situations (Section 13 to 15, 40b, 40c). In the year 2003 altogether 140 700 persons were naturalised in Germany (almost 40% of Turkish origin).³⁸

The naturalisation with discretionary power (Section 8 Nationality Act) is practically not so important and the naturalisation of spouses of Germans (Section 9 Nationality Act) is influenced by special considerations. Therefore they will not be separately examined here. Additionally many of the conditions of the naturalisations according to Section 8 or 9 are equivalent to those necessary for a naturalisation pursuant to Section 10.³⁹ Section 10 deals with legitimate claims to naturalisation held by foreigners with a long period of residence. Almost 80% of all naturalisations in 2003 were made pursuant to Section 85 Foreigners Act (2005: Section 10 Nationality Act). 60% (86300

³⁶ For details see Hailbronner, *Das neue deutsche ...*, NVWz 2001, 1329, 1331

³⁷ A short summary of a lot of aspects is given by Dornis, *Ungelöste Probleme ...*, ZRP 2001, 547 et seqq.

³⁸ See Press release of the German Federal Statistical Office from 24 May 2004, <http://www.destatis.de/presse/deutsch/pm2004/p2340025.htm>.

³⁹ Till 31 December 2004 still Section 85 Foreigners Act.

cases) concerned the naturalisation of the foreigner living in Germany for a long time (Section 85 Subsection 1) and 20% (25100 cases) concerned the simultaneous naturalisation of foreign spouses and of children who are minors (Section 85 subsection 2).

The fee for the naturalisation amounts to € 255 (Section 38 Subsection 2 Sentence 1 Nationality Act)

1. The conditions for a naturalisation

Section 10 Subsection 1 of the Nationality Act gives a right to naturalisation to a foreigner who has legally been normally resident in the domestic territory for eight years and if he accepts the free democratic basic order of the German constitution (n°1), possesses a special type of legal title of residence (n°2), can provide for himself and his relatives (n°3), gives up or loses his previous citizenship (n°4) and has not been convicted of a criminal offence (n°5). Those conditions are nothing special in the scope of regulations of citizenship.

The resident time necessary to have this claim of naturalisation – eight years - has to be pointed out. It was radically reduced by the reform of 1999: it used to be fifteen years.

As far as the obligation to give up the previous citizenship is concerned, some exceptions are made. They are laid out in Section 12 of the Nationality Act (today still Section 87 Foreigners Act). Basically the multiple nationality is accepted, where the foreign state does not allow the loss of citizenship, makes unreasonable demands or does not cooperate (long or very expensive administration) or where other considerable disadvantages of an economic or financial kind would be the result. In addition a special exception exists for nationals of another EU member state if that state acts the same way (reciprocal agreement).⁴⁰ Overall the conditions in which multiple nationality is

⁴⁰ Section 12 Subsection 2 Nationality Act. The German Federal Administrative Court has rendered an important decision on 20 April 2004 which results in the affirmation of the reciprocal agreement with more countries in the EU than before, BVerwG 1 C 13/03.

accepted are easier met today and thus multiple nationality is more often accepted.⁴¹

Additionally no claim to naturalisation exists, if the applicant does not have sufficient knowledge of the German language (Section 11 n°1 Nationality Act/Section 86 n°1 Foreigners Act). Since the reform 1999 the wording of the law demands the language knowledge explicitly. Nevertheless already before the reform the conditions where such, that a certain level of language knowledge could be supposed (school visit in Germany for six years, the necessary 15 years of residence).⁴²

No legal definition is given of “sufficient German language knowledge”. There is an intense discussion about the exact level of language capacity needed. Generally sufficient language knowledge can be affirmed if the foreigner does not need an interpreter for activities of daily life, including the usual contacts with authorities and if a conversation in accordance with his age and education is possible.⁴³ Therefore the oral knowledge is more important than the writing capabilities, even though language knowledge principally includes reading, writing, hearing, understanding and speaking.⁴⁴

Even though the oral capacity is more important, the question remains if written exercises can be (maybe less important) part of the examination or not. The difficulties increase because of the authorities, which are competent to carry out the necessary tests. The different Länder are responsible and not the federal authorities. Some demand written tests, others don't. Some tests take 60 minutes, others 30. Some examinations are held by the authorities themselves, sometimes local (civic) education facilities are charged with the carrying out.⁴⁵ In the future the situation might be easier, because the newly introduced integration courses and their syllabus can serve as a basis for the assessment of sufficient language knowledge.

⁴¹ Zu ersten Zahlen aus den Jahren 2000, 2001 im Vergleich zu vorher, vgl. Renner, Streitpunkte, ZAR 2002, 339, 342.

⁴² Renner, Streitpunkte ZAR 2002, 339, 344.

⁴³ Reasoning of the administrative regulations 86.1.1.

⁴⁴ Renner, Streitpunkte ..., ZAR 2002, 339, 344.

⁴⁵ For a detailed description of the differences see Renner, Streitpunkte ..., ZAR 2002, 339, 347; Göbel-Zimmermann, ZAR 2003, 65, 74.

II. The reduction of the necessary residence time by attending an integration course

One new element will be introduced in the naturalisation regulations by the Immigration Act. According to Section 10 Subsection 3 a foreigner who can proof the successful participation at an integration course pursuant to the new regulations in the Residence Act can demand his naturalisation after seven years instead of eight years.

The legal basis for those integration courses will be Sections 43 to 44a⁴⁶ of the new Residence Act. These courses shall cover measures to acquaint foreigners with the language, legal system and culture in Germany and Germany's history. They intend to enable foreigners to act independently in all aspects of daily life, without the assistance or mediation of third parties (Section 43 Subsection 2 Residence Act). Details of the content of those courses and how they should be carried out are laid out in a special regulation passed by the Federal Government.⁴⁷ Under certain conditions the participation at such a course is compulsory, for example if he or she receives social benefits. (Section 44a Residence Act).

As far as the nationality law is concerned it is the first time, the participation at a course has a direct and legally binding effect on the conditions of naturalisations. However one has to admit that the reduction of the residence time from seven to eight years will be less important for the participation in relation to the other sanctions which threaten if the course is not attended. If a foreigner fails to meet an attendance obligation under certain circumstances the social benefits may be reduced by ten percent.⁴⁸ Additionally this may be taken into account for the decision of the extension of a residence permit or the granting of a settlement permit.⁴⁹

⁴⁶ Section 45 concerns an additional integration program.

⁴⁷ Ausländerintegrationskursverordnung.

⁴⁸ Section 44a Subsection 3.

⁴⁹ Section 8 Subsection 3, Section 9 Subsection 2 Residence Act.

The courses are financed by the Federal Government – that was one of the last points of discussion of the whole Immigration Act which had been discussed for years.

But the other effects don't concern the citizenship laws.....

Conclusions

Some important changes over the past years could be recognized. Carefully traditional approaches are changed and adapted to the changed challenges. The balanced changes to the *ius sanguinis* principle and the introduction of a *ius soli* element reflect the adaptation to the changed conditions and promote integration. Some doubts are justified whether the “option model” is not too bureaucratic. Future will show.

The right emphasis is put on language skills. They are indispensable for a successful integration into societal and political life. They are necessary to allow a qualified higher education and better jobs.

Appendix:⁵⁰

Section 4 Nationality Act (Version 1 January 2000)⁵¹

(1) A child shall acquire German citizenship by birth where one parent possesses German nationality. Where at the time of the birth only the father is a German national, and where for proof of descent under German law recognition or determination of paternity is necessary, the claim for acquisition shall require a determination of paternity which is valid under German law; the declaration of recognition must be made or the procedure for determination commenced before the child has attained its 23rd birthday.

(2) A child found in the territory of a *federal state* (foundling) shall be deemed to be a child of a *citizen of that federal state* until there is proof to the contrary.

(3) A child of foreign parents shall acquire German citizenship by birth in the domestic territory if one parent

1. has legally been normally resident in the domestic territory for eight years and
2. possesses a right of residence or has possessed for three years a residence permit for an unlimited period.

The acquisition of German citizenship shall be recorded by the registrar responsible for certifying the birth of the child. The Federal Ministry of the Interior shall be empowered, with the consent of the Bundesrat, to issue on the basis of a statutory order regulations for the procedure for the registration of the acquisition of citizenship in conformity with the first sentence of this subsection.⁵²

(4) German citizenship shall not be acquired in keeping with subsection 1 in the case of a birth abroad where the German parent was born abroad after 31 December 1999 and is normally resident there unless the child would otherwise become stateless. The legal consequence contemplated by the preceding sentence shall not ensue where the German parent reports the birth to the competent diplomatic representation within one year. Where both parents are German nationals, the legal consequence contemplated by the first sentence of this subsection shall only ensue where they both fulfil the conditions there stipulated.

Section 29 (Version 1 January 2000)⁵³

(1) A German who after 31 December 1999 has acquired citizenship pursuant to section 4 subsection 3 or through naturalisation pursuant to section 40b and possesses a foreign citizenship shall be required to state after attaining the age of majority and after being advised in keeping with subsection 5 whether he wishes to retain the German or the foreign citizenship. The statement shall be made in writing.

(2) Where the person incurring the obligation contemplated by subsection 1 states that he wishes to keep the foreign citizenship, German citizenship shall be lost upon the statement being received by the competent authority. It shall also be lost where no statement has been made by the 23rd birthday.

(3) Where the person incurring the obligation contemplated by subsection 1 states that he wishes to keep German citizenship, he shall be obliged to furnish proof that he has given up or lost the foreign citizenship. Where such proof is not furnished by his 23rd birthday, German nationality shall be lost unless the German has already received upon application the written approval of the competent authority to retain German citizenship (retention approval). The application for the granting of retention approval, including as a precautionary measure, may only be made up to the 21st birthday (exclusion limit). The loss of German nationality shall only take effect when the application becomes the subject of a final rejection. The possibility of provisional legal redress under section 123 of the Rules of the Administrative Courts shall remain unaffected.

(4) The retention approval pursuant to subsection 3 shall be granted where giving up or losing the foreign citizenship is not possible or cannot reasonably be expected or where multiple nationality would have to be or could be accepted or in the case of naturalisation in accordance with section 87 of the Aliens Act.

⁵⁰ Main Source of the translated version: "Nationality Law" by IN-Press obtainable under <http://www.goethe.de/in/download/dengl/staatsge-e.doc>

⁵¹ The reform of 2004 will only bring some minor adaptations to new terminology

⁵² Section 4 subsection 3, third sentence, enters into force on the day after promulgation.

⁵³ Only minor changes thru the reform of 2004.

(5) The competent authority shall advise the person who is subject to the requirement contemplated by subsection 1 of his obligations and of the possible legal consequences as set out in subsections 2 to 4. The advice shall be formally served. Such service shall be made immediately after the 18th birthday of the person who is subject to the requirement of section 1. The provisions of the Act to regulate service in administrative proceedings shall be applied.

(6) The continuation or loss of German nationality under this provision shall be determined ex officio. The Federal Ministry of the Interior may, by statutory order and with the consent of the Bundesrat, issue provisions regulating the procedure to determine the continuation or loss of German nationality.

Section 85 Aliens Act - Claim to naturalisation held by foreigners with a long period of residence; simultaneous naturalisation of foreign spouses and of children who are minors⁵⁴

(1) A foreigner who has legally been normally resident in the domestic territory for eight years shall be naturalised upon application where he

1. professes his commitment to the free democratic basic order of the Basic Law of the Federal Republic of Germany and makes a declaration that he neither pursues or supports, nor has pursued or supported, endeavours which are directed against the free democratic basic order, the existence or security of the Federation or of a Land, or which have as their objective an unlawful interference with the functioning of the constitutional organs of the Federation or of a Land or of their members, or which by the use of violence or preparatory acts aimed at this endanger external interests of the Federal Republic of Germany, or where he offers convincing proof that he has turned aside from an earlier pursuit of or support for such endeavours;
2. possesses a residence permit or an entitlement to residence;
3. can provide for himself and his relatives who are entitled to such provision without claiming social security or unemployment benefit;
4. gives up or loses his previous citizenship and
5. has not been convicted of a criminal offence.

The requirement set out under no. 3 above shall be dispensed with where the foreigner for a reason beyond his control cannot provide support without claiming social security or unemployment benefit.

(2) The spouse of the foreigner and his children who are still minors may also be naturalised at the same time even where they have not yet legally been resident in the domestic territory for eight years. Subsection 1 no. 1 shall not be applied where a child who is a minor has not yet attained his 16th birthday at the time of naturalisation.

(3) In the case of a foreigner who has not yet attained his 23rd birthday subsection 1 no. 3 shall not be applied.

New subsection from 1 January 2005 on saying that if a foreigner can proof the successful participation at a integration course pursuant to Section 43 Subsection 3 Sentence 2 of the (then existing) Residence Act the period of subsection 1 will be reduced to seven years!

Section 86 Aliens - Act Grounds for exclusion⁵⁵

A claim to naturalisation pursuant to section 85 shall not exist where

1. the applicant for naturalisation does not have sufficient knowledge of the German language or
2. there are factual indicators justifying the assumption that the applicant for naturalisation pursues or supports, or has pursued or supported, endeavours which are directed against the free democratic basic order, the existence or security of the Federation or of a Land, or which have as their objective an unlawful interference with the functioning of the constitutional organs of the Federation or of a Land or of their members, or which by the use of violence or preparatory acts aimed at this endanger external interests of the Federal Republic of Germany, unless the applicant for naturalisation offers convincing proof that he has turned aside from an earlier pursuit of or support for such endeavours, or

⁵⁴ Section 85 will become Section 10 Nationality Act on 1 January 2005 with mostly minor modifications. The only major change will be a new subsection (then Section 10 Subsection 3). See text.

⁵⁵ Section 86 will become Section 11 Nationality Act on 1 January 2005 with mostly minor modifications.

3. there is a ground for expulsion pursuant to section 46 no. 1.

Section 87 Aliens Act - Naturalisation where multiple nationality is accepted⁵⁶

(1) The requirement set out in section 85 subsection 1 no. 4 shall be dispensed with where the foreigner cannot give up his previous citizenship or can only do so under particularly difficult conditions. This shall be presumed where

1. the law of the foreign state does not make provision for giving up its citizenship;
2. the foreign state regularly refuses release and the foreigner has given the competent authority an application for release for forwarding to the foreign state;
3. the foreign state has refused release from citizenship for reasons beyond the control of the foreigner or has attached unreasonable conditions to it or has not decided within an appropriate period on a complete and formally correct application for release;
4. the naturalisation of older persons is barred by the sole obstacle of resulting multiple nationality, release is meeting with disproportionate difficulties and refusal of naturalisation would create a particular hardship;
5. giving up the foreign citizenship would bring considerable disadvantages to the foreigner, in particular of an economic or financial kind, going beyond the loss of his rights as a citizen, or
6. the foreigner is suffering political persecution within the meaning of section 51 or is being treated as a refugee under the Act to regulate measures for refugees admitted as part of humanitarian aid.

(2) The requirement set out in section 85 subsection 1 no. 4 shall also be dispensed with where the foreigner possesses the citizenship of another member state of the European Union and there is a reciprocal agreement.

(3) The requirement set out in section 85 subsection 1 no. 4 may be dispensed with where the foreign state makes release from the previous citizenship conditional upon the performing of military service and the foreigner has received the major part of his schooling in German schools and the personal growth and development which has familiarised him with the German way of life and brought him to the age where he is liable for military service has taken place in the federal territory.

(4) Further exceptions to the requirement set out in section 85 subsection 1 no. 4 can be provided for in keeping with international agreements.

(5) Where release from the foreign nationality demands that the foreigner should have attained the age of majority and the requirements of subsections 1 to 4 are also not met, a foreigner who under the law of his state of origin is still a minor shall receive in derogation of subsection 1 no. 1 an assurance of naturalisation.

⁵⁶ Section 87 will become Section 12 Nationality Act on 1 January 2005 with minor modifications