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NATURALISATION PROCEDURES FOR IMMIGRANTS ICELAND

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Naturalisation Procedures for Immigrants

Iceland

Thorbjorn Bjornsson, Gunnar Thór Pétursson

1 Introduction

This report is for the EUDO Citizenship observatory and supplements its indicators on implementation of naturalisation law for Iceland (EUDO Citizenship Implementation Indicators¹). It will thus give an overview of the administrative practices and legal procedures for naturalisation in Iceland. Before entering into discussion on the specific aspects of the legal regime for citizenship it may be appropriate to explain that the processes for naturalisation in Iceland are rather simple and there are few institutional actors involved. This may not be very surprising considering the overall size of the country's administration; the main reason for the simple construction of these processes, however, is that the principle for naturalisation under Icelandic law is that citizenship is granted by way of adoption of statutory law by the *Althing* (the Icelandic Parliament).² Although naturalisation can be provided by the Minister of Interior by an administrative decision, provided that applicants fulfil certain conditions, this authority is an exception to the principle and shall thus be narrowly construed.

Considering the rather special nature of this system it may be helpful, for sake of context, to provide a short overview of the different legal authorities for naturalisation before exploring the administrative processes themselves. In short there are essentially three different legal processes for naturalisation, two of them already being mentioned. Firstly, according to Art. 6 of the *Icelandic Nationality Act no. 100/1952* (hereinafter 'the Citizenship Act') the *Althing* has the power to provide citizenship to any individual by statute.³ The Act does not set any conditions for such citizenship to be awarded by the *Althing* and in practice the *Althing* usually approves a statute once or twice a year which affords a list of individuals with Icelandic citizenship.⁴

Secondly, under Art. 7 of the Citizenship Act naturalisation can be afforded by an administrative decision by the Minister of the Interior, provided that potential applicants meet the conditions set in Arts. 8 and 9 of the Act. These conditions include, *inter alia*, temporal residence requirements, passing a test in Icelandic and conditions with regards to prior criminal offences. As explained above, the authorisation to afford citizenship by an

¹ See <<http://eudo-citizenship.eu/indicators/citimpindicators>>.

² Article 66 of the Icelandic Constitution states that foreigners can only receive citizenship by statutory law. *Constitution of the Republic of Iceland, Act no. 33/1944*. Consequently, the *Althing* is not bound by any criteria as such when adopting an act for awarding citizenship, except the constitution and general constitutional principles, and therefore the sitting parliament cannot set any binding criteria through statute for future parliaments. See Gudni Th. Jóhannesson and Gunnar Thór Pétursson, 'EUDO Citizenship Observatory / Country Report: Iceland' (RCAS/EUDO-CIT-CR 2010/16) October 2009 (Revised April 2010) <<http://eudo-citizenship.eu/docs/CountryReports/Iceland.pdf>> accessed 4 April 2012.

³ An English version of the Act is available at: <[http://eudo-citizenship.eu/NationalDB/docs/ICE%20Nationality%20Act%20100%201952%20\(as%20amended%20in%20007,%20English\).pdf](http://eudo-citizenship.eu/NationalDB/docs/ICE%20Nationality%20Act%20100%201952%20(as%20amended%20in%20007,%20English).pdf)> accessed 4 April 2012.

⁴ E.g. law on grant of citizenship no. 161/2011, which granted 24 individuals citizenship. The supporting documents do not provide any reasoning for why the individuals are granted citizenship but states that since the last analogous legal bill was put forth 42 individuals had applied to the *Althing* for citizenship.

administrative decision is an exception to the principle and shall be constructed narrowly, as the power to afford citizenship rests with the *Althing*. In accordance with this principle the *Althing* has specifically exempted the administrative procedure on naturalisation from the scope of many of the most important rules of *Act no. 37/1993 on Administrative Procedure*, which codifies the main principles of Icelandic administrative law.⁵ Accordingly, principles such as the duty of guidance (Art. 7), prompt handling (Art. 9), rule of investigation (Art. 10), principle of equality (Art. 11) and statement of reasons (Art. 22) are by statute explicitly excluded from applying to decisions on naturalisation by the Minister (the only authority competent to take such a decision). Sadly, there is no case law which clarifies to what extent un-codified principles of administrative law and human rights provisions provide safeguards for applicants with regards to unfair or arbitrary administrative decisions on naturalisation. It should also be noted that as a consequence of the fact that power to afford citizenship resides solely with the *Althing* applicants do not have a *right* to acquire citizenship on the grounds that they fulfil all the requirements set out in the Citizenship Act.⁶ Thus, the Minister of the Interior can lawfully deny an application for naturalisation despite all the requirements and conditions set for naturalisation in the Citizenship Act being fulfilled. In that case the only available alternative is to apply for citizenship to the *Althing*.

Finally, Nordic citizens enjoy a privileged position under Art. 14 of the Citizenship Act in terms of naturalisation. The provision states that domicile in a Nordic state shall be assessed as equivalent to domicile in Iceland in several instances (Art. 14(A)). Furthermore, a citizen of a Nordic state who has acquired citizenship by another mode of acquisition than by naturalisation; has reached the age of eighteen and been domiciled in Iceland for the past seven years; and has not been sentenced to prison or equivalent, may acquire Icelandic citizenship by a notification to the Minister of Interior (Art. 14(B)).

To give a better perspective on the interplay between the two main processes the following table shows the number of citizenships afforded by the *Althing* and the Minister of the Interior respectively, in the period 2004-2008 (the Ministry has not published statistics since then).⁷

	2004	2005	2006	2007	2008
<i>Althing</i>	66	39	52	33	31
Minister of the Interior	563	654	791	566	874

After this broad brush description of the legal authorities for granting of citizenship the report will now turn to discussing specific aspects of the Icelandic citizenship regime following the taxonomy of dimensions for implementation of naturalisation law provided by the CITIMP indicators. Accordingly, the next section will look into promotion and assistance to applicants by the Icelandic state towards potential applicants (section 2). Afterwards the report will consider the nature of documentation requirements which the law imposes both on applicants and the administration (section 3). Then the authority to use discretion within the legal framework will be considered (section 4) followed by a section dedicated to the nature of review for decisions on naturalisation (section 5). The last substantive section will discuss potential changes and developments of the Icelandic citizenship regime (section 6). The final

⁵ For English version, see: <<http://eng.forsaetisraduneyti.is/acts-of-law/nr/17>>.

⁶ See discussion in GT Jóhannesson and GT Pétursson (fn 2).

⁷ Source: Vefrit dóms- og kirkjumálaráðuneytisins [Online journal of the Ministry of Justice and Ecclesiastical Affairs] No. 1/2009 <http://www.innanrikisraduneyti.is/media/vefrit/Vefrit_12.02.09.pdf> accessed 13 February 2013.

section will provide some additional comments on the context of these different categories and the distinctive characteristics of the Icelandic citizenship regime (section 7).

2 Promotion and assistance

The Icelandic government is rather passive in terms of assistance to those who seek Icelandic citizenship. It has for instance never been involved with any sort of naturalisation campaigns and it does not conduct any sort of ceremonies when citizenships are granted.

Potential applicants can still easily access all relevant information on the website of the Ministry of the Interior, including application forms – which are also available in physical form at the Ministry's office. Additionally, the Ministry provides assistance to potential applicants on an individual and general basis: the Ministry offers to answer all questions through e-mail, it has visitation hours where potential applicants can come and receive assistance on their applications and also specific hours where questions are answered by phone.⁸

As previously mentioned, one of the conditions which potential applicants for citizenship under the administrative procedure need to fulfil under Art. 8 of the Citizenship Act is to pass a language test. The Icelandic government grants a certain amount of money to language courses for foreigners on an annual basis (not specifically for those who are seeking to become Icelandic citizens) and thus indirectly supports potential applicants in that way. The amount of support from the government to this issue varies from year to year.⁹

Despite government subsidies those applicants which require language courses will have to pay around ISK 30.000 (60 hours course).¹⁰ This amount may, however, reflect poorly on the actual costs incurred for preparing for the language test, as the applicant may need further lessons or purchase teaching materials. The applicant may also need to travel within Iceland to take a language course and/or the language test; the cost of which will likewise differ tremendously depending on where the applicant resides in Iceland. In more general terms applicants may as well need to gain documents and have them translated, the cost of which is likely to vary greatly depending on the applicant's country of origin.

The cost for applicants stemming from the application itself is still moderate. The fee for a citizenship application is ISK 15.000 (this fee is not applicable to Nordic citizens who acquire citizenship by notification to the Ministry of Interior and pay ISK 7.500¹¹). The fee for taking the language test is ISK 7.500 and there are no waivers afforded for that fee.¹² Nordic citizens don't need to take the test.

⁸ The webpage of the Ministry of Interior

<<http://www.innanrikisraduneyti.is/raduneyti/starfssvid/rikisborgaramal/almennt/>> accessed 14 May 2012.

⁹ Fiscal budget for 2011 ISK 120.900.000 and for 2012 and ISK 127.700.000. Website of the Ministry of Finance <<http://www.fjarmalaraduneyti.is/verkefni/fjarlog/>> accessed 14 May 2012.

¹⁰ Eg Mimir Simenntun (ISK 31.500) <<http://www.mimir.is/icelandic-courses/>>; Alþjóðasetur (*Intercultural Center*) (ISK 29.500) <http://asetur.is/?page_id=25>. It can be noted that labour unions will refund up to 90% of the fees for their members.

¹¹ All monetary amounts in this paper will be given in Icelandic Krona (ISK). Exchange rate at the time of writing is around: 1.00 ISK = 0.00580897 EUR <<http://www.xe.com/>> accessed 3 February 2013.

¹² E-mail reply from Fanney Óskarsdóttir, legal advisor for the Ministry of Interior, dated 16 April 2012 (case IRR12040114).

3 Documentation

The website of the Ministry of the Interior lists the documents and certificates which must be provided by a potential applicant for citizenship,¹³ such as a certificate from the national registry to the fact that the applicant fulfils the residence requirement and an original copy of the applicant's birth certificate. The Ministry is responsible for checking whether the application is complete and authenticity of the information provided by the applicant. The Ministry has the discretion to require further documentation, or seek further information, such as sending requests to embassies abroad to either assist in certifying the absence of criminal record or the authenticity of the documents provided.¹⁴

The Ministry has still no discretion to assess the merits of individual applications, as applications shall be rejected if there is any doubt as to whether the applicant meets all the requirements set by the Citizenship Act (Citizenship Act Art. 7(2)).¹⁵ If the applicant does not meet the requirements for receiving citizenship, or there is doubt as to whether all requirements are fulfilled, the Ministry may at all times forward the submission to the *Althing* (Citizenship Act Art. 7(2)). The Citizenship Act stipulates that before forwarding a submission to the *Althing* the Ministry of the Interior shall receive information from the police authorities of the individual's place of residence and the Directorate of Immigration (Citizenship Act Art. 6(2)).

If the Ministry deems that the documents provided by an applicant shows that there is no doubt that he/she fulfils all requirements set in the Citizenship Act an administrative decision will be taken in the form of a letter of citizenship which grants the applicant Icelandic citizenship from the date of issuance.¹⁶

4 Discretion

As stated above the Ministry of Interior has in principle no discretion to assess applications for citizenship. The Citizenship Act still explicitly mandates the Minister of the Interior to set a regulation on the execution of the language test which, *inter alia*, shall include exemptions from taking the test to those for which it would be considered unfair to make such a requirement. Art. 2 of the implementation regulation repeats that wording and provides examples for factors which could justify such an exemption (e.g. old age or mental or physical conditions), but not a binding criteria.¹⁷

Another condition which is set by the Citizenship Act is that an applicant may not, either in Iceland or abroad, have been fined or imprisoned (although fines lower than ISK 50.000 are excluded), or be involved in a criminal case pending in the justice system in which he or she is suspected of, or charged with, conduct which is criminal according to Icelandic law. Exceptions from this condition can be granted after a certain period of time has lapsed

¹³ See: <<http://www.innanrikisraduneyti.is/raduneyti/starfssvid/rikisborgaramal/verkefni/fylgigogn-med-umsokn-um-rikisborgararett/>>.

¹⁴ E-mail from legal advisor of the Ministry (fn 12).

¹⁵ Wording of the provision: *The authorisation to the Minister of Justice according to the provisions of this Section shall be restricted to those cases in which there is no doubt that the applicant meets the requirements stated in law.*

¹⁶ E-mail from legal advisor of the Ministry (fn 12).

¹⁷ Regulation 1129/2008 (*Reglugerð um próf í íslensku fyrir umsækjendur um íslenskan ríkisborgarétt*) <<http://www.reglugerd.is/interpro/dkm/WebGuard.nsf/58b439f05a7f412f00256a07003476bc/b00bb4150512647200257527005f3b9f?OpenDocument>>.

since the offence was committed, provided that it has not been repeated (Art. 9(6) of the Citizenship Act).¹⁸ On 7 June 2012 the *Althing* passed Act No. 40/2012 amending the Citizenship Act with the purpose of clarifying this condition. The amendment codified guidelines issued by the Ministry on the issue of time lapse since offences.¹⁹ At the time of writing the Ministry has not yet updated its guidelines, but the Minister will still be responsible for assessing the overall qualification of applicants which may require taking into account criminal record in context with the additional conditions that applicants have to be able to work and possess a good reputation. Moreover, new factual situations might make it necessary in time to adopt new guidelines.

In stark contrast to the administrative procedure the *Althing* is not bound by any criteria as such when adopting an act for awarding citizenship, except the constitution and general constitutional principles.²⁰

5 Review

It is not possible to appeal on an administrative level a decision by the Minister of the Interior on naturalisation as his/her office is the highest level of authority within the Icelandic administration. The only part of the administrative process which is ‘outsourced’ from the Ministry is the language test, which is conducted by an independent agency, governmentally under the Ministry of Education (*Námsmatsstofnun*), but Art. 8(2) of regulation no. 1129/2008 *on Icelandic language tests for persons applying for Icelandic citizenship* stipulates that the decision by the party responsible for conducting the test on whether an applicant has passed the test or not shall be final. This means that the decision cannot be appealed at the administrative level. It may be noted that there are no official time limits which apply during the procedure and there are no consequences for the procedure taking excessive time.

It is generally possible to challenge an administrative decision by the Minister of the Interior before a court. However, in the case of decisions related to naturalisation, such an action would be of a complex nature. This is due to the fact that the underlying principle is that the authority to afford naturalisation resides solely with the legislator and the executive power is only granted a limited authority in clear cut cases and the applicant has no legal claim towards citizenship, despite fulfilling all the conditions set out in the Citizenship Act. Accordingly, an applicant cannot request a court to afford him/her with citizenship (the matter is not judicable under Icelandic law). It would be possible to put forth the claim that a court annuls a decision by the Minister of the Interior to reject citizenship, but due to the same reasons as mentioned above and the fact that the naturalisation process is specifically excluded from the most important principles of the Administrative Procedure Act (Article 7 of the Citizenship Act), there are very limited options in this respect.

Challenging a rejection of citizenship by the *Althing* or challenging substantive parts of the Citizenship Act (or future acts on citizenship) before a court would be farfetched. The Icelandic court system is such that no court can directly annul legislation that has been enacted by the *Althing*. A court could however, rule that the act in question is in breach of the Icelandic Constitution, but it would be up to the *Althing* itself to withdraw the act. In addition, for an individual to challenge before a court an act regarding the awarding of

¹⁸ See: <<http://www.innanrikisraduneyti.is/raduneyti/starfssvid/rikisborgaramal/verklagsreglur-vegna-sakaferils/>> accessed 14 May 2012.

¹⁹ See explanatory comments accompanying Act No. 40/2012.

²⁰ See fn 2.

citizenship is also problematic from a *locus standi* point of view, since the individual would have to establish a direct legitimate interest in having that act challenged. This would be difficult since statutory law is normally of general application, i.e. normative, and is aimed at having legal effects that apply to all citizens, not certain individuals only. Lastly, it would also be difficult to form a legitimate claim before the court, apart from having the act deemed unconstitutional, since an individual cannot claim that the parliament should enact an act in his or her favour.²¹

6 Possible future amendments

On 24 March 2011 the *Althing* approved Act no. 90/2010 on the appointment of a Constitutional Council. The Council was to revise the Icelandic Constitution, taking into account, *inter alia*, the views of 950 randomly selected individuals in the year 2010 (National Forum) on the preferred future content of the Icelandic Constitution. By a Resolution of the *Althing* adopted on 24 March 2011, 25 individuals were appointed as members of the Council. The Council concluded its work on 27 July 2011 by approving unanimously a proposal for a new Constitution. On 20 October 2012 an advisory referendum accepted that the Constitution Council's proposals were to form the basis of a new Constitution for the Republic of Iceland. The proposal of the Constitutional Council included a modified provision on citizenship (Article 4).²²

In light of criticisms that the Constitutional Council's proposal received, the *Althing's* standing Committee on Constitutional and Supervisory Affairs appointed an ad hoc group of experts to review the proposals, *inter alia*, for sake of eliminating internal inconsistencies and ensuring compatibility with international obligations.²³ The expert committee returned a report to the Constitutional and Supervisory Committee on 12 November 2012. Its report included a modified version of the proposal of the Constitutional Council (based on the amendments proposed by the expert group). The form of the modified version was such that the *Althing's* Constitutional and Supervisory Committee could agree to introduce it as a legislative proposal to the *Althing* (in other words it was presented as a bill). It should be stressed that after the proposal has been introduced as a bill it has to face the actual legal procedure for amending the Icelandic constitution, i.e. being approved by the majority by two consecutive compositions of the *Althing* – before and after general elections. With elections being scheduled for April 2013, the timeframe for the present *Althing* is narrow to say the least.

One of the recommendations of the expert groups was that an opinion on the proposal would be requested from the *European Commission for Democracy through Law* (the Venice Commission). The recommendation was followed by the *Althing's* Committee on Constitutional and Supervisory Affairs which requested an opinion on the bill from the Commission on 16 November 2012. The Commission issued a draft report on 11 February 2013 on the 'Draft New Constitution of Iceland'. Despite welcoming the numerous innovations of the draft and its overall democratic spirit, the Commission highlighted that

²¹ GT Jóhannesson and GT Pétursson (fn 2).

²² Stjórnlagaráð, Frumvarp til stjórnskipunarlags [The Constitutional Council, A Proposal for a new Constitution for the Republic of Iceland]. English version available at <http://www.stjornlagarad.is/other_files/stjornlagarad/Frumvarp-enska.pdf> accessed 13 February 2013.

²³ Skilabréf sérfræðingahóps um tillögur stjórnlagaráðs að nýrri stjórnarskrá til stjórnskipunar- of efrtlitsnefndar Alþingis [Report of an ad hoc expert committee on the proposal of the Constitutional Council on a new Constitution], Reykjavík 2012, available at <http://www.althingi.is/pdf/skilabref_fylgiskjol.pdf> accessed 13 February 2013.

numerous points remained unclear and also warned that due to the controversial nature of many of the proposed amendments it was very uncertain that the draft in its current form would be accepted by a new *Althing*.²⁴ The Commission did not make comments specific to the citizenship provision of the constitution.

The present proposals on modifications of the Constitution are not likely to bring significant changes to the current regime, but as it is uncertain to what degree it will be amended before it will be brought before the *Althing* and whether a future majority of the *Althing* will be interested in concluding the amendment process, which in many ways has been controversial. Accordingly, it may still be too soon to give meaningful propositions as to its impact. It may also be noted that public debate on the proposals of the Constitutional Council has focused on other issues than citizenship.

7 Summary

The Icelandic citizenship regime, as described above, may seem rather inflexible and perhaps even draconian. However, one must keep in mind that the discussion has focused on the administrative process as that process is more densely codified. It is still the exception from the principle of this issue belonging to the *Althing*, where individual applications are not ultimately decided on the basis of a legal criterion. Although in practice the exception may have developed into the principle, it is still important that the *Althing* complements the administrative process and within that process there is room to take individual circumstances into account. While the wide discretion of the *Althing* of course is open to normative critique on the basis of lack of foreseeability, equality and legal certainty.

Finally, there are two additional factors which may be considered; firstly, the regime is not controversial and very seldom enters the public debate and has even been to a large extent ignored in academic writing. Secondly, it may be taken into account that the administration in Iceland is small and thus often accessible. The avenues for gaining information or assistance may often be informal and as a result the need for codification or development of processes for increasing efficiency may not be pressing.

²⁴ European Commission for Democracy for Law, Draft Opinion on the Draft New Constitution of Iceland (Strasbourg 11 February 2013) CDL(2013)005 <http://www.althingi.is/pdf/Fenevjanefnd_skyrsla_e.pdf> accessed 13 February 2013.

