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# The Complexities of Dual Citizenship Analysis

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*The prevalent conceptual approach used to assess multiple citizenship legislation is based on analysing a set of selected elements of the relevant legal framework. This paper argues that the evolution of legal rules on dual citizenship cannot be comprehensively analysed using methods created for comparative analyses and based on a narrow selection of legal rules that reflect either a restrictive or an open approach to dual citizenship. The simplified approach that focuses on the analysis of selected fragments of explicit legislation generates results that may be misleading. Therefore, the terms of reference for comparative study of multiple citizenship should be elaborated and extended. A comprehensive comparative method also has to take into account the migration context as well as relevant aspects of the legal and political context. This article explores these issues through an analysis of Polish legal rules in the field of dual citizenship.*

*Keywords: dual citizenship; migration; Poland*

## Introduction

In the legal literature, citizenship is defined as the legal bond between a person and a state to which various rights are attached. The bond that citizenship creates was until recently commonly characterised as exclusive, which means that it could not co-exist with other ties of this type (Liebich 2000: 97; Aleinikoff and Klusmeyer 2001: 70; Dionisi-Peyrusse 2008: 99). However, over the last 30 years there has been a change of approach towards dual citizenship at the international as well as the state level.

The prevalent conceptual approach used in assessing multiple citizenship legislation is based on analysing a set of selected elements of the legal framework. As a legal phenomenon, however, multiple citizenship seems much more difficult to tackle. The question that interests me, therefore, is whether the comparative methods used to assess the state's approach to dual citizenship take into account all relevant factors. The aim of this article is to show that it is not possible to comprehensively analyse the evolution of legal rules on dual citizenship using methods created for the purposes of comparative analysis, which are based on a narrow selection of

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legal rules reflecting either a restrictive or an open approach to dual citizenship (e.g., if the acquisition of foreign citizenship results in the automatic loss of citizenship of origin).

I take the approach to dual citizenship analysis proposed by Aleinikoff and Klusmeyer (2001: 76 *et seq.*) and subsequently also used by other authors (e.g. Faist, Gerdes and Rieple 2007: 103) and use it to assess Poland's rules on dual citizenship. I want to show what would be the result of the analysis of the evolution of legal rules concerning dual citizenship if only those elements of the legal framework chosen by these authors are considered. I look at Poland's citizenship laws since the adoption of the first law on citizenship in 1920, as it is particularly interesting to juxtapose this law with those adopted since 1951 by communist governments. Having shown that an analysis of legal rules suggests that the 1951 Citizenship Act is characterised by an open approach to dual citizenship, I will argue that such a characterisation is misleading. It omits important factors influencing the assessment of the approach to dual citizenship and it does not allow for the evolutionary nature of the changes that took place.

I begin by examining changing approaches to dual citizenship and briefly discussing the reasons for its gradual acceptance globally (1). I then discuss Aleinikoff and Klusmeyer's approach (2), illustrate its shortcomings based on an analysis of Polish legislation and suggest that other factors need to be taken into account (3).

### **The evolving approach to dual citizenship**

For a relatively long time, most states held the view that multiple citizenship was undesirable and that efforts had to be made to prevent and eliminate it. The last 30 years, however, have seen a change in this approach and greater acceptance of dual nationality.<sup>1</sup>

#### *Lack of acceptance of dual citizenship*

From the second half of the nineteenth century, opposition amongst political elites to dual citizenship grew, along with the belief that cases where it was possible should be prevented (Kivisto and Faist 2007: 105). The clearest example of this tendency was the policy adopted by most countries from the end of the nineteenth century to the end of the Cold War of revoking the citizenship of a person who acquired citizenship in another state or where there were reasons to believe that a person owed fealty to another state (for example by serving in a foreign army; Faist *et al.* 2007: 100). Moreover, most states endeavoured to prevent cases of multiple citizenship acquired by birth by requiring their citizens to renounce one citizenship on attaining their majority, failing which their citizenship would be revoked (Faist and Gerdes 2008: 5).

In the international arena, this trend found most prominent expression in agreements to avoid dual citizenship concluded by the USA from the middle of the nineteenth to the beginning of the twentieth century.<sup>2</sup> The primary aim of these agreements was to make it possible for individuals to change citizenship while simultaneously ensuring that the institution of citizenship would not be employed by individuals for the purpose of avoiding military service or criminal conviction.<sup>3</sup>

At the beginning of the twentieth century conventions reflecting the restrictive approach of states towards possession of multiple citizenship were drawn up. On 13 August 1906 an inter-American convention on the status of naturalised citizens was signed in Rio de Janeiro.<sup>4</sup> Article 1 of this convention provided that if persons who acquired citizenship through naturalisation return to the state of their original citizenship and do not intend to return to the state whose citizenship they acquired through naturalisation, then such persons recover their original citizenship and lose the citizenship acquired through naturalisation.<sup>5</sup> 1930 saw the signing of the first convention of universal application relating to the question of citizenship, which dealt with questions relating to conflict of nationality laws and the protocol concerning statelessness.<sup>6</sup> The preamble of this convention

expressed an ideal for which the international community should strive, namely, that every person should hold just one nationality. After the Second World War, the Council of Europe began work on a convention whose aim was to limit cases of multiple citizenship. Article 1 of the Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality<sup>7</sup> provides that adult citizens of the Contracting Parties who acquire of their own free will, by means of naturalisation, option or recovery, the nationality of another Party shall lose their former nationality.

The dim view of dual citizenship was evident in doctrine and case-law around the world. In Poland, for example, Starzyński (1921: 10–11) wrote that the idea of ‘mixed subjects’ should rapidly disappear from public law.<sup>8</sup> The doctrine of the USSR contained the view that dual citizenship is ‘an evil which should be treated as a legal anomaly’ (Chernichenko 1968: 99). The judicial position is exemplified by the statement of the German Constitutional Court in 1974 that ‘dual or multiple citizenship is perceived both in the internal affairs of states and at the international level as an evil which should be avoided or eliminated in the interests of both the states and the citizen’.<sup>9</sup> By the same token, in the case of *Gaudio v Dulles* Judge Kirkland of the Supreme Court expressed the wish that ‘the plague of “dual nationality” be eliminated to every degree possible’ (Franck 2000: 65).

There were various reasons for the lack of acceptance of multiple citizenship. First, states perceived such citizenship as inconsistent with the principle of the loyalty of citizens towards one homeland, even though this concept has no legally defined meaning. As an analogy to the gospel that no one should serve two masters,<sup>10</sup> so too should no one have two homelands. Dual citizenship was construed as ‘political bigamy’. It was in these terms that the argument was framed by George Bancroft, the initiator of the aforementioned series of agreements to avoid dual citizenship concluded by the USA: ‘states should tolerate neither men with two wives nor persons with two homelands’ (Kosłowski 2003: 158).

Furthermore, states wished to avoid problems connected with the treatment of their citizens who simultaneously held the citizenship of another state. In the era before states began to accept international obligations in the field of human rights, they could treat their citizens according to their own standards without looking to other states. In the case of dual citizenship, however, diplomatic protection from the second state came into play along with the need to take account of the position of the other country. Such a situation was perceived as limiting state sovereignty. There was also a commonly held fear that questions of diplomatic protection of citizens holding more than one citizenship could cause conflicts between states.

In addition, at a time of widespread military conscription, questions of military service for those holding dual citizenship were problematic. A ‘dual’ citizen could be punished by imprisonment or even death for service in the military of a country whose citizenship they held if that country was at war with their other country of citizenship.<sup>11</sup> British–American relations after US independence provide the clearest example of the problems that dual citizenship created for states. Although it was recognised that a British subject may acquire a second citizenship in certain circumstances and for limited purposes,<sup>12</sup> the treatment of persons with dual citizenship gave rise to conflict between the two states. A particularly vivid example of this was the forced conscription into the Royal Navy of American merchant sailors deemed also to be British subjects. This was one of the causes of the Anglo-American War of 1812 (Kettner 1976: 961).

Other arguments which later became increasingly important involved the question of equal status and integration. It was argued that multiple citizenship could be a source of inequality as such citizens might have access to rights and life choices unavailable to persons holding just one citizenship. In this context the argument relating to the exercise of voting rights was of particular significance. It was noted that those with dual citizenship have a choice which the majority of citizens of a given country do not have as there is a second country to which they may emigrate if living conditions in the first one deteriorate. This ‘exit option’ was perceived as having the potential to lead to the irresponsible exercise of voting rights with, for example, extremist groups

receiving the votes of citizens who did not have to fear the accession to power of such parties (Aleinikoff and Klusmeyer 2001: 82; Martin 2003: 12).

Another argument against multiple citizenship was that it might act as an obstacle to the integration of immigrants by encouraging attachment to a foreign state, culture and language. Interestingly, in the present era of growing acceptance of dual citizenship, this argument is used to justify a contrary thesis, namely that maintaining the citizenship of their country of origin assists in the integration of immigrants.

### *Towards acceptance of dual citizenship*

The trend for more and more states to accept dual citizenship has become evident in the last 30 years (Feldblum 2000: 475, 478; Martin 2003: 4; Bauböck 2006: 59; Kivisto and Faist 2007: 104, 107; Dionisi-Peyrusse 2008: 100).<sup>13</sup> It finds expression in, *inter alia*, the fact that an increasing number of states have abandoned the principle that at the moment of acquisition of foreign citizenship a given individual loses their original citizenship. This principle was renounced by, for example, France in 1973, Portugal in 1981, Italy in 1992, Sweden in 2001 and Finland in 2003.

The change in the approach of states towards multiple citizenship is nowhere more clear than at the international level. From the end of the 1970s there was a growing acceptance of conventions which treated the issue of multiple citizenship in a less restrictive manner than had acts adopted previously. The Second Protocol to the Convention on the Reduction of Cases of Multiple Nationality, which was adopted on 2 February 1993,<sup>14</sup> contained in its preamble a clarification of the change towards a less restrictive approach to dual citizenship. It introduced provisions for states to accept cases of multiple citizenship in specified situations.<sup>15</sup> The 1997 European Convention on Nationality also reflected the shift towards recognition that dual nationality is not an anomaly. In Article 14(1) States Parties permit children having different nationalities acquired automatically at birth to retain these nationalities and permit their own citizens to possess another nationality where this other nationality is automatically acquired by marriage. In turn, Article 16 of the Convention provides that States Parties shall not make the renunciation or loss of another nationality a condition for the acquisition or retention of its nationality where such renunciation or loss is not possible or cannot reasonably be required. The Convention does not contain any provision which directly aims to avoid the occurrence of cases of multiple nationality (Aleinikoff and Klusmeyer 2001: 73).

The gradual acceptance of multiple citizenship is of course related to the steadily increasing number of persons holding more than one citizenship. The growth in the incidence of multiple citizenship is connected to the intensity of international migration which has been facilitated by the development of new technologies in information, communication and transport (Legomsky 2003: 82). According to UN estimates, about 191 million people (*c.* 3 per cent of the world's population) live outside their country of citizenship and that number continues to grow.<sup>16</sup> It is not easy to gauge the number of persons with more than one citizenship, as states register only their own citizens and do not record the citizenships held by them. These difficulties are reflected in the figures for the USA, where estimates for persons with dual citizenship range from 500 000 to 5.7 million (Faist and Gerdes 2008: 7).

Despite a social reality conducive to the incidence of multiple citizenship through birth, with children of mixed marriages acquiring two or more citizenships *jure sanguinis* with the possibility of acquiring another *jure soli*, and children of parents having a single citizenship acquiring a second one *jure soli*, states have not reached agreement on the principles of citizenship acquisition and loss (Aleinikoff and Klusmeyer 2001: 71). As regards acquisition of citizenship by birth, states do not apply one rule but use various combinations of the *jus sanguinis* and *jus soli* principles. Despite long-held opposition to multiple citizenship, states have not agreed to adopt one of these principles. On a practical level, states might use only the principle of *jus soli*, but

this principle is far less widespread and no state has used it as the only principle governing acquisition of citizenship by birth. In turn, using *jus sanguinis* in a situation of mass migration has serious flaws as second- and third-generation immigrants do not then acquire citizenship of the state of birth and even though they have never known life in another country they remain foreigners. Such a solution could work only if immigration was stopped, an unrealistic prospect in today's world. Thus the children of immigrants who acquire citizenship at birth *jure soli* most often also acquire the citizenship of their parents *jure sanguinis*.

A further factor which has contributed to the increase in cases of multiple citizenship is changes in the law resulting from the principle of sexual equality. At the beginning of the twentieth century, most states adopted the principle that children at birth acquire the father's citizenship and, in addition, women who married a foreigner acquired his citizenship. While such patriarchal solutions influenced the limited incidence of multiple citizenship occurring through birth and through marriage, they quickly began to disappear with the advent of the female franchise (Bredbenner 1998). Indeed today many states have introduced the rule that women have the right to retain their citizenship and the children of such marriages most often acquire the citizenship of both parents. Thus there has been an increase in the number of states which allow transmission of two citizenships to children (Kosłowski 2003: 161).

Not only the growing number of persons with dual citizenship, but also the fact that traditional arguments against multiple citizenship are not as strong as they were 100 years ago have undoubtedly contributed to the change in states' attitudes. The question of citizens' allegiance, though not without significance in today's political discourse,<sup>17</sup> was far more significant in an era when authority was exercised by warring monarchs and alliances between states were short-lived and depended on the temporary confluence of states' interests. As regards military service, many states have abolished general conscription and of those which continue the practice many have concluded agreements relating to performance of military service by persons with dual citizenship, with most states applying the principle that such persons should undertake military service in their state of residence and are excused from service in the state of citizenship in which they do not reside. Fears relating to diplomatic protection are also less significant than they once were, due in no small part to the development of international protection of human rights (Martin 2003: 11 *et seq.*). Furthermore, the increase in the number of persons with dual citizenship has not led to an increase in tensions and conflicts, something which had been feared in the past.

An important factor which fed into the change in attitude towards multiple citizenship, particularly in immigrant-receiving states, was the growing conviction that facilitating naturalisation of immigrants while allowing them to retain their original citizenship would aid their integration. This of course reflects an understanding of integration as conceived in the EU as a dynamic, two-way process of mutual adaptation of immigrants and the inhabitants of the receiving Member State (EU JHA 2004). Some empirical surveys suggest that immigrants are more inclined to naturalise if they may retain their 'old citizenship' (Faist *et al.* 2007: 98). Many foreigners will be reluctant to naturalise if they are not permitted to maintain their citizenship of origin because they will be unwilling, whether for sentimental or economic reasons, to cut their ties to their homeland (Spiro 2016: 80).

At the turn of the nineteenth and twentieth centuries, political and cultural elites opposed emigration. The shift from opposition to acceptance of dual citizenship is partly a result of claims made by emigrants in respect of their homelands, and partly a result of the realisation by these elites that retention of the citizenship of their country of origin by emigrants is of great significance from the point of view of identity and could be advantageous for the homeland. Emigrants with dual citizenship and a positive relationship with their homeland could promote its interests in the state of new citizenship through, for example, voting and lobbying. Economic factors are also significant, particularly in the case of developing countries (Kivisto and Faist 2007: 109).

Another factor which provoked a change in attitude to multiple citizenship was the demise of empire. The collapse of colonial empires meant that some newly established states concluded agreements with their former imperial masters about dual citizenship. For example Spain entered into an agreement concerning dual citizenship with Chile, Peru, Paraguay, Nicaragua, Guatemala, Bolivia and Ecuador. By the same token, the collapse of the USSR at the beginning of the 1990s saw Russia permit retention of Russian citizenship by citizens of independent states.

Although it is clear that a growing number of states have accepted dual citizenship in the last 30 years, and that international law has evolved accordingly, it is easier to assess this trend than to evaluate changes in the context of a particular country so as to ascertain when the approach to dual citizenship actually changed.

### **Analysing the approach of states to dual citizenship**

In order to evaluate the approach of the state to the issue of the exclusiveness of the ties of citizenship or, in other words, the level of acceptance of dual citizenship, and in order to investigate the evolution of the laws that govern this question, it is necessary to consider the entirety of the rules constituting the institution of citizenship. In seeking to determine the level of acceptance of dual citizenship in a given state it is not sufficient to indicate that there exist legislative provisions forbidding possession of dual citizenship: there may be various provisions which allow exceptions to this rule. This is true in respect of Poland (which will be discussed later) as well as other countries, for example, the Netherlands (van Oers, de Hart and Groenendijk 2013: 16). Only analysis of the entire legal framework will indicate to what degree this principle has been implemented, that is whether and in which situations possession of multiple citizenship is possible on the basis of existing laws. Therefore the fact that there are explicit bans on possession of dual nationality expressed in a state's nationality legislation cannot be decisive in assessing its approach to dual nationality.

The literature proposes assessing the attitude of the state towards dual citizenship through the prism of three basic elements of the legal framework. First put forward by Aleinikoff and Klusmeyer (2001: 76 *et seq.*), this approach has subsequently also been used by other authors (e.g. Faist *et al.* 2007: 103). The first element concerns whether at the moment of birth acquisition of dual citizenship is possible or whether the state requires that one citizenship be chosen. The obligation to choose one citizenship may rest on the parents or on the child who, for example, before reaching the age of majority must surrender one citizenship. The second element is whether or not acquisition of citizenship of a foreign state causes the automatic loss of previous citizenship. The third element is whether a given state requires persons who wish to acquire its citizenship to surrender foreign citizenship. How these elements are configured in an individual state reflects its attitude to multiple citizenship. The legal framework in states with the most restrictive approach to multiple citizenship is characterised by the following elements:

1st element	acquisition by birth – the requirement that one citizenship be chosen by the parents or by the child on reaching the age of majority
2nd element	acquisition of foreign citizenship results in the automatic loss of citizenship
3rd element	a condition of naturalisation is renunciation of foreign citizenship

The greater the extent to which these principles are implemented, the more restrictive the approach to multiple citizenship and vice versa. States may be classified according to a scale on which those with a restrictive approach, implementing all the above elements, are at one end, and states with an open approach, implementing none of them, are at the other. Between these two extremes are states with a mixed approach.<sup>18</sup>

The question is: does the approach described above take into account all relevant factors? An analysis of Poland's law on dual citizenship over the years, including the communist period, exemplifies the shortcomings of this approach.

### **The complexities of dual citizenship analysis: the case of Poland**

Poland has had four citizenship acts (1920,<sup>19</sup> 1951,<sup>20</sup> 1962<sup>21</sup> and 2009<sup>22</sup>). First, I explain that since the adoption of the first act on citizenship in 1920, Poland has always had rules under which dual citizenship was in some instances legally accepted. Next, I show how the rules concerning nationality changed with the adoption of the 1951 Citizenship Act, basing my analysis on the elements presented above. I offer a critique of the results obtained and explain why the approach has to be more nuanced. Based on the Polish example I identify other factors that need to be accounted for when assessing a state's attitude to dual nationality. I also examine when the opening to dual nationality can be situated and whether it should be associated with a particular moment in time or rather perceived as a process.

#### *The 1920 Citizenship Act and 1951 Citizenship Act*

Poland has never implemented a total ban on dual nationality. Even though the 1920 and 1951 citizenship acts stated that a Polish citizen cannot simultaneously be a citizen of another state,<sup>23</sup> the possession of dual nationality was in many cases possible. The legal doctrine attributed 'vagueness' to the abovementioned formulation of the principle of exclusivity of citizenship in the acts of 1920 and 1951. Even though Article 1 of the 1920 Citizenship Act states that 'a Polish citizen may not be simultaneously the citizen of another state', Article 3 of the Implementing Regulation<sup>24</sup> to this act establishes the principle that 'a Polish citizen may not be considered by the Polish authorities at the same time the citizen of another state'. The existence of these provisions in parallel means that the principle expressed in the Act cannot be understood as a ban on possession of dual citizenship as the Implementing Regulation introduces a rule of conflict (which would not be necessary if the Act had explicitly banned possession of multiple citizenship). In summary, the principle of exclusivity expressed in Article 1 of the 1920 Act and Article 1 of the 1951 Act means that a person who holds more than one citizenship will be treated as a Polish citizen on the territory of Poland (Ramus 1968: 35, 228). These Articles express the same rule of conflict as the one contained in Article 3 of the 1930 Hague Convention.<sup>25</sup>

The 1920 Citizenship Act was restrictive in its approach to dual nationality but it did not reflect in full any of the three elements which characterise the restrictive regulation of multiple citizenship in Aleinikoff and Klusmeyer's approach. First, acquisition at birth of two or more citizenships was possible and there was no requirement that one citizenship be renounced (1st element). One manifestation of a restrictive approach to multiple citizenship, however, was the possibility of acquiring citizenship at birth through only one parent. Second, naturalisation in a foreign state did not always entail automatic loss of citizenship as in such a situation citizenship was lost *ex lege* only by persons not subject to general conscription (2nd element). Third, in order to acquire Polish citizenship, it was not always necessary to renounce foreign citizenship. This was required only in the case of certain forms of citizenship acquisition, for example naturalisation, but was not required, for example, when citizenship was acquired through marriage (3rd element).

The 1951 Citizenship Act introduced important changes in regulations concerning dual citizenship. In evaluating the first element of the state's approach to multiple citizenship according to the Aleinikoff and Klusmeyer method, it should be noted that the 1951 Citizenship Act, like the 1920 Citizenship Act, did not require that one citizenship be chosen in the case of acquisition at birth of two or more citizenships. It did, however, modify the principles governing acquisition of citizenship at birth: the principle that citizenship is

acquired only through one parent was replaced by the rule that a child born in Poland, if at least one parent was a Polish citizen, acquired Polish citizenship at birth.<sup>26</sup> This change in the law reflected both an increased acceptance of multiple citizenship and changing notions of gender equality.

However, in evaluating the 1951 Citizenship Act through the prism of the first element it should be noted that this act was passed in a new political context and its provisions must be assessed with due regard for the reality of the then socialist state and above all else the determinants of migration during this period. From the late 1940s unprecedented restrictions were imposed on travel from Poland and there was almost complete closure of the border to passenger traffic.<sup>27</sup> The restrictions on migration were relaxed in the years 1954–1956, primarily in relation to the USSR.<sup>28</sup> This relaxation in Polish–USSR migration was accompanied by the signing by Poland of the first convention on elimination of multiple citizenship. In 1958, just after the sharp increase in departures to the USSR, the two countries signed a convention on regulating the citizenship of persons with dual citizenship.<sup>29</sup> The convention introduced the requirement that, within one year of its entry into force, a choice had to be made between Polish and USSR citizenship for minor children.<sup>30</sup>

When it comes to evaluating the 1951 Citizenship Act through the prism of the second element, it should be noted that according to this act acquisition of foreign citizenship was possible only after obtaining ‘authorisation for change of citizenship’.<sup>31</sup> Unlike the 1920 Act, authorisation for change of citizenship was a condition of the loss of Polish citizenship for all citizens and not just those subject to active military service obligations. However, because Polish citizens could acquire foreign citizenship regardless of other conditions created in this regard by Polish law (in this case authorisation for change), this means that the 1951 Citizenship Act allowed for situations of multiple citizenship in relation to a broader category of persons than the 1920 Act. Furthermore, the marriage of a Polish citizen to a person who did not hold Polish citizenship did not result in changes to the spouse’s citizenship.<sup>32</sup> This meant that the Polish citizen could acquire foreign citizenship in accordance with foreign law and simultaneously not lose Polish citizenship.

These provisions would suggest a greater acceptance of multiple citizenship, since no category of citizen was subject to loss of Polish citizenship *ex lege* upon acquisition of foreign citizenship, which of course had been the case under the 1920 Citizenship Act for persons not subject to active military service. Nonetheless, the tenor of the act should not be automatically treated as expressing greater acceptance of dual citizenship. It is also significant that in the 1950s two resolutions were issued by the State Council in relation to emigrants to Germany<sup>33</sup> and Israel.<sup>34</sup> Their aim was to regulate the authorisation of a change of Polish citizenship for persons going to East or West Germany (as German repatriates) and those moving to Israel on a permanent basis. Thus despite the fact that according to the 1951 Citizenship Act acquisition of foreign citizenship was possible without loss of Polish citizenship if an individual did not apply for authorisation of a change of citizenship, the adoption of the resolutions by the Council of State meant that citizens intending to emigrate to East Germany, West Germany or Israel had to accept the loss of their Polish citizenship. It was to these countries that the highest number of people emigrated legally during the era of the Polish People’s Republic.

If we consider the migration context in which these resolutions obtained,<sup>35</sup> it cannot be claimed that during the period in which the 1951 Citizenship Act was in force the acceptance of dual citizenship increased by comparison with the period governed by the 1920 legislation. In so far as the authorisation required by the 1951 Citizenship Act was intended to hamper renunciation of Polish citizenship by emigrants, and in this sense could be treated as a manifestation of an accepting approach to multiple citizenship, the resolutions of the Council of State facilitated loss of citizenship in relation to a specified category, which in fact reflected a restrictive approach. The resolutions were informed by different values than those pertaining to the 1951 Citizenship Act and ‘created their own particular legal regime, functioning alongside the legislative framework and serving as a general resolution of the problem of citizenship in relation to emigrants of a specified nationality’ (Jagielski 2006: 300).



On another note, it is worth pointing out that the theory according to which the dual citizenship regime is a liberal measure does not ring entirely true. The term ‘liberalisation’ is supposed to denote a trend towards adopting legal solutions accommodating dual citizenship. Polish rules on ‘authorisation of change of citizenship’, however, are a paradigm of a legal policy tolerating dual citizenship in order for the state to retain powers in relation to the individual. The ‘authorisation’ was a way to coerce citizens, particularly in communist Poland, to retain Polish citizenship.

Turning to evaluation of the 1951 Citizenship Act through the prism of the third element it is worth noting that renunciation of foreign citizenship was not obligatory for any form of acquisition of Polish citizenship. The act provided only that the granting of Polish citizenship ‘may be made conditional’ on submission of proof of loss of foreign citizenship<sup>36</sup> In turn, in the case of persons acquiring citizenship through repatriation, it was not possible for the administration to demand renunciation of citizenship on the part of these persons.

Elimination in the 1951 Citizenship Act of the rules relating to the obligation to renounce citizenship in the case of acquisition of citizenship may indicate a greater acceptance of dual citizenship in comparison with the provisions of the 1920 Citizenship Act which required renunciation of foreign citizenship for certain forms of citizenship acquisition. However, the fact that the power to demand renunciation of citizenship was formulated as a discretionary one in the 1951 Citizenship Act did not necessarily mean increased acceptance of dual citizenship because in that period such discretionary power could entail unimpeded government action.

The above analysis of the provisions of the 1920 and 1951 citizenship acts shows that, for a comprehensive assessment of the approach of the state to multiple citizenship, it is necessary to take into account other factors than elements 1 to 3 in the Aleinikoff and Klusmeyer approach. We need to assess the legal provisions against the background of the broader migration and legal-political contexts. This means that the opening of Poland to dual citizenship cannot be situated in 1951 and must be sought elsewhere.

### *The 1962 Citizenship Act*

As previously mentioned, Poland’s citizenship acts never implemented the principle of banning dual citizenship. Thus the fact that the principle of exclusivity of Polish citizenship is worded differently in the 1962 Citizenship Act from the earlier acts does not amount to a substantive difference of content of the principle. Article 2 of the 1962 Act formulated that principle in the following way: ‘a Polish citizen under Polish law may not simultaneously be considered a citizen of another state’. There is therefore no introduction of a new principle, just a more precise wording of the principle of exclusivity which has long been accepted by the Polish legal system (Ramus 1968: 283).

An analysis of the framework of the 1962 Citizenship Act in its original meaning from the perspective of the three elements discussed above shows that the act enables the acquisition of dual citizenship at birth and does not require that one citizenship be chosen (first element).<sup>37</sup> The legislature desisted from distinguishing situations of acquisition of citizenship by birth according to whether the child is born in Poland or abroad, as had been the case in the 1951 Citizenship Act. Both children born in Poland and those born abroad may acquire Polish citizenship if at least one parent is a Polish citizen. The adoption of such a solution meant that the number of children who acquired dual citizenship at birth might increase, a subtle indication of a greater acceptance of multiple citizenship. On the other hand, however, it should be pointed out that in the period 1965–1975 the practice of entering into agreements relating to the avoidance and elimination of dual citizenship became more common. These conventions regulated, *inter alia*, the problem of dual citizenship of a child born before the entry into force of the conventions. This meant that, in relation to East Germany, the USSR, Mongolia, Czechoslovakia, Bulgaria and Hungary, Poland demanded that a child who acquired dual citizenship at birth make a choice between them. Since restrictions on migration were not so stringent and more mixed

marriages were likely to occur in respect of these countries, it is difficult to claim an increased acceptance of dual citizenship acquired at birth.

As regards the second element of the analysis, it should be pointed out that acquisition of foreign citizenship, just as under the 1951 Citizenship Act, did not entail automatic loss of Polish citizenship. The 1962 Citizenship Act provided, subject to the exceptions envisaged in the act, that a Polish citizen may acquire foreign citizenship only where the appropriate Polish authorities have authorised the change of citizenship.<sup>38</sup> Acquisition of citizenship in this way entailed loss of Polish citizenship. This rule meant that a person who acquired foreign citizenship without such authorisation did not lose Polish citizenship and could not be regarded as a foreign citizen under Polish law (Ramus 1980: 247 *et seq.*). However in the context of the period during which this act was in force the comments made above in relation to the resolutions of the Council of State remain valid. These resolutions created, in parallel with the 1962 Citizenship Act, a framework ‘facilitating’ loss of Polish citizenship. Note that the act provides that a Polish woman who acquired foreign citizenship through marriage lost Polish citizenship only if she submitted the appropriate declaration to the competent Polish authority and that authority issued a decision accepting such declaration.<sup>39</sup>

As regards the third element, the situation under the 1951 Citizenship Act remained under the 1962 Citizenship Act, as acquisition of Polish citizenship was never made absolutely conditional on renunciation of foreign citizenship. An optional condition for the acquisition of Polish citizenship that required proof of loss of, or release from, foreign citizenship was provided for in the case of a conferral of citizenship,<sup>40</sup> acquisition of citizenship through marriage<sup>41</sup> and re-integration.<sup>42</sup> Similarly, repatriates acquired citizenship under the 1962 Citizenship Act *ex lege* and the authorities could not demand that they renounce their previous citizenship.<sup>43</sup>

The 1962 Citizenship Act was adopted in a different migration context to the one that prevailed when the 1951 Citizenship Act was enacted. It was a period when cross-border mobility was stable and its increase limited. This period saw the development of cross-border movement for the purposes of tourism within the socialist camp. The percentage of negative decisions in cases of travel to these countries was relatively small and the laws in other socialist states were also gradually being simplified. At the same time, this period witnessed a clear increase in the number of foreigners coming to Poland from neighbouring countries.<sup>44</sup> Thus we may construe legislative changes indicating a more accepting approach to multiple citizenship as an indication of the State’s increasing acceptance of it.

A fundamental change relating to the measures which concern us was introduced by the 1998 amendment to the 1962 Act.<sup>45</sup> This amendment removed the requirement to obtain authorisation from the competent Polish authority for change of citizenship for the purpose of acquiring foreign citizenship and thus removed the principle that acquisition of foreign citizenship after obtaining authorisation for change of citizenship entailed loss of Polish citizenship. It introduced the principle that citizenship may be lost only at the request of the individual after obtaining the consent of the President of the Republic of Poland to renunciation of citizenship.<sup>46</sup> Such a change became necessary after the new Constitution of the Republic of Poland which became effective in April 1997 provided in Article 34.2 that ‘a Polish citizen may not lose Polish citizenship unless he himself renounces it’.

The changes introduced by the 1998 amendment reflect a greater acceptance of dual citizenship in the sense that acquisition of foreign citizenship since then has not in any way entailed loss of Polish citizenship (the concept of ‘authorisation’ for the renunciation of citizenship was removed). At the same time the migration context does not contradict this trend, as since 1989 there have been no restrictions on cross-border mobility.<sup>47</sup>

### *The 2009 Citizenship Act*

In the 2009 Citizenship Act the principle of exclusivity of Polish citizenship is expressed in Article 3.2 in the following way: ‘A Polish citizen may not legally invoke simultaneous possession of citizenship of another State and the rights and duties flowing therefrom in relation to the authorities of the Polish Republic’.<sup>48</sup> This is more clearly expressed than in previous acts. First, there is no doubt as to the possibility of a Polish citizen holding another citizenship and second, it is clearly envisaged that only Polish citizenship may be legally invoked in relation to the authorities of the Republic of Poland (Jagielski 2008). Article 3.1 introduces a new provision, not contained in any of the earlier acts, that ‘a Polish citizen holding at the same time citizenship of another State has in respect of the Polish Republic the same rights and obligations as a person holding only Polish citizenship’. This provision is not entirely clear. A literal reading means that a Polish citizen holding more than one citizenship may not on that account be discriminated against, for example in access to high public office, or accorded special treatment regarding their duties. Whether that was the intention of the legislature is unclear, as at the time this act was passing through the Sejm and Senate a provision of the Act of 21 November 1967 on the general obligation to protect the Republic of Poland<sup>49</sup> was in force. This provided that ‘a Polish citizen, being at the same time a citizen of another State is not subject to the general obligation to protect if permanently resident outside the borders of the Republic of Poland’ (see Zdanowicz 2009).

An analysis of the provisions of the 2009 Citizenship Act from the perspective of the three elements indicating greater or lesser acceptance of multiple citizenship reveals that the most important change is that it is impossible for the relevant state authorities to make acquisition of Polish citizenship conditional on renunciation of foreign citizenship, regardless of the form of naturalisation (third element). As to the second element, the 2009 Citizenship Act maintains the 1998 position (1962 Citizenship Act as amended by the 1998 Act): acquisition of foreign citizenship does not in any case entail loss of Polish citizenship (either *ex lege* or through any interpretation of ‘authorisation’; element 2). As to the first element, neither the parents of children who acquire more than one citizenship by birth nor the children themselves (at a later stage) have to choose one citizenship.

The approach of the Polish legislature to the issue of multiple citizenship cannot be analysed without reference to the agreements on avoidance and elimination of dual citizenship which Poland concluded between the end of the 1950s and the mid-1970s with socialist countries (USSR, Czechoslovakia, Hungary, Bulgaria, Mongolia and East Germany).<sup>50</sup> All of these agreements lost their binding force in the period 1990–2002. If we take into consideration the applicability of the conventions on avoidance and elimination of dual citizenship in relation to Mongolia, Hungary, Bulgaria, Germany and the successor states of the USSR and Czechoslovakia (a total of 21 states), most of these agreements lost their binding force in the face of a political transition which did not seek to continue the conventions.<sup>51</sup> Poland took an active position on the termination of the applicability of bilateral agreements on avoidance and elimination of dual citizenship after 1999. While previously it had not denounced any convention, in the years 1999–2001 it denounced five of them.

The above analysis shows that, ever since the adoption of the first act on citizenship, Poland has always had a legal framework under which dual citizenship was in some instances legally accepted. If we are considering only the criteria of restrictiveness/openness towards dual citizenship proposed by Aleinikoff and Klusmeyer (2001), the opening of Poland to possession of multiple citizenship would have to be located in 1951. However, the legal-political as well as the migration contexts indicate that it is more accurate to situate the ‘opening’ of Poland to dual citizenship significantly later. In the Polish case, changes in citizenship acts gained significance only as they were combined with factors such as the repeal of the resolutions of the Council of State in 1984, removal of the restrictions on migration which occurred in 1989 and the expiry of bilateral agreements in the years 1990–2002. The opening up of Poland in terms of dual citizenship should therefore be

situated not in 1951 but in the period 1989–1990. From that time, all three factors which had modified the interpretation of the legislative measures on citizenship as indicative of an accepting attitude to dual citizenship became irrelevant. 1998 may be identified as the next moment of ‘opening up’ with the amendment of the 1962 Act. Another example of movement in that direction was the enactment by Parliament of the new 2009 Citizenship Act. The Polish example therefore shows that ‘becoming open’ to dual citizenship is not associated with some easily identifiable key amendments of the legislation but with the confluence of several factors.

## Conclusion

The analysis of regulations concerning dual citizenship is complex. The terms of reference for a comparative study of multiple citizenship should be elaborated and extended because they are incomplete if only a narrow selection of legal rules is considered. The analysis of Polish provisions in this field shows that a comprehensive comparative method also has to take into account the migration context as well as relevant aspects of the legal and political context. Otherwise, the simplified approach focusing on the analysis of selected fragments of explicit legislation generates results that may be misleading. Moreover, an analysis of selected provisions of the legal framework does not allow for consideration of all legislative nuances which may also reflect a greater or lesser openness to multiple citizenship. Furthermore, a comparative method should allow for the characterisation of a state’s attitude towards dual citizenship in terms of process. Changes in a state’s attitude may be due not to some easily identifiable key legislative amendments but to the confluence of several factors. Last but not least, in analysing dual citizenship legal regimes it should not be assumed that acceptance by a state of dual citizenship is always an expression of a liberalisation of that state’s approach. As I have shown, the trend towards acceptance of dual nationality may also be an example of illiberal and coercive policies whereby the state refuses to renounce its claim to its citizens.

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No potential conflict of interest was reported by the author.

## Notes

<sup>1</sup> This and the next sections rely extensively on Pudzianowska (2013).

<sup>2</sup> The so-called Bancroft treaties (named for George Bancroft, the US Ambassador in the North German Confederation who initiated the agreements).

<sup>3</sup> All these treaties provided that naturalisation in one of the states parties would be recognised by the second party on condition that a person had spent five years in the state of new citizenship. Moreover, if a person who had acquired new citizenship returned to the country of former citizenship and lived there continuously for a period of at least two years he ipso facto recovered his former citizenship and lost the newer one. The treaties envisaged that such persons would have to finish military service and could be punished for crimes committed before emigration took place. See Oppenheim (2005): 487.

<sup>4</sup> 1906 Rio de Janeiro Convention on the Status of Naturalised Citizens.

<sup>5</sup> A rebuttable presumption of an intention not to return arose from a minimum two years' residence in the territory of the state of original citizenship (Article 2 of the Convention).

<sup>6</sup> The Convention on Certain Questions relating to the Conflict of Nationality Laws was ratified by Poland by the Act of 5 March 1934, Journal of Laws No. 27, item 217.

<sup>7</sup> Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality, 06/05/1963.

<sup>8</sup> In his opinion, 'combining two citizenships in one person is illogical, inconsistent with the understanding of the state as a living organism and sometimes has (...) downright absurd consequences'.

<sup>9</sup> Resolution of the first Senate BvR of 21 May 1974 (1 BvL 22/71 and 21/72), in *Entscheidungen des Bundesverfassungsgerichts*, vol. 37, p. 254–255; Similarly, one can point to the decisions of US courts such as the case of *Rogers v. Bellei* (401 U.S. 815, 1971).

<sup>10</sup> 'No one can serve two masters. For either he will hate the one and love the other, or he will hold to one and despise the other'. Mt 6, 24; see Alland and Rials (2003): 1054.

<sup>11</sup> A famous case was that of Aeneas MacDonald who lived in France but who was also a British subject by reason of birth to English parents. He served as a French officer and was sentenced to death for carrying arms against the king of England. After spending several years in prison the death sentence was commuted to exile. This was not an isolated case. Many such cases at the beginning of the century related to British subjects naturalised in the USA; see Fromagot (1892): 103.

<sup>12</sup> See the case of *Marryat v. Wilson* (Court of Exchequer Chamber 1799) in which the Court developed a standard for decisions in cases relating to conflicting British and American claims of allegiance.

<sup>13</sup> This trend is not confined to European states. In recent years, many African countries have changed their laws to allow possession of multiple citizenship. For more on this subject see Manby (2016): 9.

<sup>14</sup> Second Protocol Amending the Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality, 02/02/1993.

<sup>15</sup> *Inter alia*, in the case of second-generation immigrants, persons acquiring citizenship through marriage and children acquiring more than one citizenship at the moment of birth.

<sup>16</sup> Weissbrodt (2008): 1.

<sup>17</sup> Weinar (2007: 148) cites the following statement of a Freedom Union MP during a debate on the Bill of Polish Citizenship in 1999 (Sejm 1999): 'The logical consequence of the very institution of citizenship is loyalty toward one of these nationalities. If we were to accept here the solution which the Senate has proposed we would break the logic of this institution'.

<sup>18</sup> See analysis of the case of Germany, Holland and Sweden in Faist *et al.* (2007): 103–104.

<sup>19</sup> The Act of 20 January 1920 on Citizenship of the Polish State, Journal of Laws 1920 No. 7, item 44.

<sup>20</sup> The Act of 8 January 1951 on Polish Citizenship, Journal of Laws 1951 No. 4, item 25.

<sup>21</sup> The Act of 15 February 1962 on Polish Citizenship, Journal of Laws 1962 No. 10, item 49.

<sup>22</sup> The Act of 2 April 2009 on Polish Citizenship, Journal of Laws 2012 item 161.

<sup>23</sup> Article 1 of 1920 Citizenship Act; Article 1 of 1951 Citizenship Act.

<sup>24</sup> A Regulation of the Minister for Internal Affairs 7 June 1920 concerning the Implementation of the Act of 20 January 1920 on Citizenship of the Polish State, Journal of Laws 1920 No. 52, item. 320.

<sup>25</sup> The formulation of the exclusivity rule in both acts is ambiguous, which has made some authors claim that 'historically, dual citizenship was never accepted under Polish law' but was tolerated *de facto* (Górny, Grzymała-Kazłowska, Koryś and Weinar 2007).

<sup>26</sup> Article 8 of the 1951 Citizenship Act. A child born abroad, however, acquired Polish citizenship only if both parents were citizens of Poland, unless one parent was a Polish citizen but the second was unknown or of unspecified citizenship (Article 6.2 of the 1951 Citizenship Act), or if at least one parent was a Polish

citizen and if the law of the state in which the child was born applies the same principles to the citizenship of children born in Poland to parents of different citizenship (Article 9 of the 1951 Citizenship Act).

<sup>27</sup> This period is commonly referred to as the Great Closure and lasted until 1954. According to material analysed by Stola (2001: 65–67), in 1951 the total number of all types of trips abroad was 9 360. After the historical low of 1951 the number of departures for foreign travel gradually rose in 1952 to 12 510, in 1953 to 16 730 and in 1954 to 22 200. The relative increase was noticeable but in absolute terms the scale of migration was symbolic. In contemporary Polish history the numbers have never been that low.

<sup>28</sup> The USSR relaxed rules hampering the admission of Polish citizens and its authorities made proposals to their Polish counterparts which aimed to simplify admissions between both States (Stola 2001: 69 *et seq.*).

<sup>29</sup> The Convention between the Government of the Polish People's Republic and the Government of the Union of Soviet Socialist Republics in the matter of the regulation of citizenship of persons with dual citizenship signed in Warsaw, 21 January 1958.

<sup>30</sup> According to Article 4.2 of this Convention, if one of the parents held the citizenship of one of the Contracting Parties, and the second parent citizenship of the other Contracting Party then the citizenship of their minor children holding dual citizenship was decided in the first place on the basis of the unanimous declaration of their parents, though children over the age of 14 could themselves submit the relevant declaration.

<sup>31</sup> Article 11.1 of the 1951 Citizenship Act. Although in the 1920 Citizenship Act there was mention of the requirement of obtaining 'authorisation of acquisition of foreign citizenship' it must be assumed that both descriptions refer to the possibility of 'change of citizenship'. If the State through its internal rules cannot limit the possibility of effective acquisition of foreign citizenship, it cannot claim that it grants 'authorisation of acquisition' of foreign citizenship.

<sup>32</sup> Article 5 of the 1951 Citizenship Act.

<sup>33</sup> Resolution No. 37/56 of the Council of State 16 May 1956 in the matter of authorisation of change of Polish citizenship for German repatriates (unpublished). The two resolutions were issued on the basis of Articles 13.1 and 13.2 of the 1951 Citizenship Act.

<sup>34</sup> Resolution No. 5/58 of the Council of State 23 January 1968 in the matter of authorisation of change of Polish citizenship for persons departing permanently to the State of Israel (unpublished).

<sup>35</sup> Both resolutions were in force until 1984. They were repealed by Resolution No. 26/84 of the Council of State 8 March 1984 (unpublished).

<sup>36</sup> Article 10.2 of the 1951 Citizenship Act.

<sup>37</sup> Like the 1920 and 1951 citizenship acts.

<sup>38</sup> Article 13 of the 1962 Citizenship Act.

<sup>39</sup> Article 14. This Article was repealed by Article 19.4 of the Act of 24 July 1998 amending certain acts defining the powers of public authorities – in connection with the systemic reform of the State, Journal of Laws 1998 No. 106, item 668.

<sup>40</sup> Article 8.3 provided that: 'A conferral of Polish citizenship may be dependent on submission of proof of loss of or release from foreign citizenship'.

<sup>41</sup> Article 10.2. Until 1998 citizenship through marriage could be acquired only by women. In 1998 Article 10 was amended so as to allow foreign men to also be able to acquire citizenship through marriage.

<sup>42</sup> Until 1998 this affected only women and since then both women and men.

<sup>43</sup> Since the removal of regulations on repatriation from the 1962 Act by the Act of 11 April 2001 amending the Aliens Act and certain other acts (Journal of Laws 2001 No. 42, item 475), these issues have been regulated by the Repatriation Act 2000. Interestingly, the Repatriation Act contains an analogous measure – it does not require renunciation of citizenship by repatriates.

<sup>44</sup> Records show that in 1960 in Poland there were 184 000 foreign tourists, while in 1970 there were 10 times more (Stola 2001: 75).

<sup>45</sup> Act of 24 July 1998 amending certain acts defining the powers of public authorities – in connection with the systemic reform of the State, Journal of Laws 1998 No. 106, item 668.

<sup>46</sup> The amended Article 13.

<sup>47</sup> In the 1990s there was a clear increase in the number of foreigners coming to Poland; Rzeplińska (2000): 8.

<sup>48</sup> For the English translation of 2009 Citizenship Act see: [http://eudo-citizenship.eu/admin/?p=file&appl=currentCitizenshipLaws&f=POL\\_Citizenship%20Act%202009\\_as%20enacted\\_ENGLISH.pdf](http://eudo-citizenship.eu/admin/?p=file&appl=currentCitizenshipLaws&f=POL_Citizenship%20Act%202009_as%20enacted_ENGLISH.pdf) (accessed: 23 May 2017).

<sup>49</sup> Journal of Laws 2004 No. 241, item 2416.

<sup>50</sup> These agreements concerned the possibility of choosing between one of two citizenships of the States Parties held by an individual and in the event that a choice was not made by the individual the matter would be decided by the agreement. Persons who did not submit a declaration as to choice of citizenship retained the citizenship of the State Party in whose territory they had their permanent place of residence when the deadline for submission of the declaration passed. If a person holding at the same time the citizenship of the States Parties resided in the territory of a third country the deciding factor would be the State Party in which the person last resided. The conventions also regulated the problem of dual citizenship of a child born before entry into force of the conventions. The agreement with the USSR, signed in 1958, was the only one which related exclusively to the question of elimination of dual citizenship, not just its prevention.

<sup>51</sup> For details on the issue of the conventions, see Pudzianowska (2013): 143–149.

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