Analysis of changes relating to principles of acquiring Polish citizenship

In connected with a new Act on Polish citizenship that entered into force on 15 August 2012 below there have been enumerated the most important changes as regards the acquisition of citizenship in Poland.

Although new provisions to a great extent overlap with the previous wording of the Act on citizenship, there have been introduced a few important modifications which aim at adaptation of the Polish legislation to the requirements of the European Convention on Citizenship which will be ratified by Poland. The Constitutional Tribunal expressed an opinion that: "(...) the Act of 1962, despite repeated amendments, no longer meets many of the contemporary challenges, such as: numerous migrations, multiple citizenship, frequent marriages of Polish citizens with foreigners (...), and what is more, it does not provide solutions for many historic events, for example the issue of Polish citizenship of persons who lost it irrespective of their will".

The new act envisages four ways of acquiring Polish citizenship: by virtue of law, by conferring, by recognition and by reinstatement. It is especially worthwhile to point out two significant changes: large modification of the already applied institution consisting in recognition as a Polish citizen and introduction of a new one - reinstatement of Polish citizenship. The most important change consisted in abandoning the rule that acquiring the Polish citizenship automatically results in losing one's current foreign citizenship. The negative consequences, i.e. double citizenship, are prevented by the rule on the exclusivity of the Polish citizenship (Article 3 of the Act).

Polish citizenship is acquired by virtue of law in a traditional way, above all by birth as well as by being found on the territory of Poland when the parents are unknown or by adoption. If it is acquired by birth, at least one of the parents must be a Polish citizen. Citizenship is also acquired by birth in a situation when parents of a child born in Poland are unknown, do not have any citizenship or their citizenship is unspecified. In addition, Polish citizenship is also acquired by a child found within the territory of the Republic of Poland when the child's parents are unknown. A completely new solution, however, constitutes a possibility to acquire Polish citizenship as a result of adoption. It relates to a foreign national who is a minor, adopted by a holder or holders of Polish citizenship, provided that full adoption is completed before the child turns 16.
The institution of granting the Polish citizenship by the President was changed in a significant way. Currently, a foreigner applying for the Polish citizenship does not have to meet any criteria as the President is not, in fact, limited by any conditions. In addition, the President may no longer make granting the Polish citizenship dependent on submitting a proof of renouncing one's foreign citizenship. It continues to be a prerogative of the President of the Republic of Poland. The only change was to get rid of the requirement obliging a foreigner to reside in Poland for at least 5 years, although departures from this rule were provided for anyway. Therefore, at present the act does not envisage any requirements that must be met in order to apply for being conferred the citizenship on the basis of this procedure, except for the need to submit an application. What is more, due to the fact that President's resolution is discretionary, no justification is required and foreigners have no right to appeal. In addition, being conferred a citizenship is no longer conditional upon submitting a proof of a loss of or being released from foreign citizenship.

Significant changes have been introduced to the administrative procedure of acquiring the Polish citizenship by way of a decision of the competent authority - a voivode (Article 6(3), Article 9, Article 10 and Article 11 of the Act of 1962) or a consul (Article 6(3) and Article 11 of the Act of 1962.). A decision in that respect is still issued by a voivode, however provisions of the new act considerably increased the possibility of acquiring a citizenship based on this procedure. Previously citizenship could only be conferred in line with this procedure onto stateless persons or persons with unspecified citizenship residing in Poland for no less than 5 years and spouses married to Polish citizens for at least 3 years and residing in Poland. A detailed list of categories of foreigners who can acquire Polish citizenship on the basis of this procedure is included in Article 30 of the new act. It comprises seven main groups of foreigners and the requirement of the length of stay within the territory of the RP differs depending on the group - it can be no less than 2, 3 years or even 10 years. A foreigner can appeal a negative decision to the minister competent for internal affairs and on the basis of general provisions of the Code of Administrative Procedure as well as challenge the decision of the minister in the court. Some people express opinions to the effect that citizenship becomes less a privilege and more a practical concept of a right that can be pursuit before court. A completely new requirement has been introduced for foreigners applying for acquisition of Polish citizenship on the basis of this procedure. That is such foreigners, except for minors, will have to demonstrate knowledge of Polish language by presenting an official certificate, certificate of graduation from an institution of higher education in the Republic of Poland or a certificate of graduation from an overseas school with Polish language of instruction.

An important change has been introduced as regards acquisition of Polish citizenship in connection with entering into marriage. In accordance with the hitherto provisions, Polish citizenship could be
acquired in this way if a foreigner had been married to a Polish citizen for at least 3 years as well as was a holder of a settlement period, a permit for a long term EC resident or the right of permanent residence and submitted a declaration of will within the relevant time limit. This requirement has been changed in the new act which still stipulates that to be recognised as a Polish citizen a foreigner must be married to a Polish citizen for no less than 3 years and must continuously stay within the territory of the Republic of Poland for at least 2 years on the basis of a settlement period, a permit for a long term EC resident or the right of permanent residence. Therefore, introduction of this requirement resulted in lengthening of a period required for acquisition of citizenship on the basis of this procedure.

Another important change, for many years postulated by Polish community, is introduction of a new institution - reinstatement of Polish citizenship. In this way Polish citizenship can be acquired by persons who lost it before 1st January 1999 by virtue of relevant provisions of Polish acts on citizenship that were previously in force. Decision on the reinstatement of citizenship is issued by minister competent for internal affairs. Relevant applications are to be submitted directly to the minister or - in the case of foreigners residing abroad - through a consul having jurisdiction over the place of residence.

The new act on citizenship has aroused some controversy. Changes relating to the institution consisting in recognition as a Polish citizen have become an object of compliant addressed to the Constitutional Tribunal by former President Lech Kaczyński, later upheld by President Bronisław Komorowski. Such extensive modifications of the institution consisting in recognition as a Polish citizen have aroused many doubts as regards compliance of provisions of the new act with constitution, and above all with a belief included therein that Polish citizenship is basically conferred by the President of the RP while the institution of recognition in the shape proposed by the act leads to an erosion of this prerogative of the President and diminishes its actual, practical importance. The Constitutional Tribunal finally decided that conferring of citizenship and recognition as a citizen are two significantly different and non-competitive ways of acquiring Polish citizenship. As emphasised by the Tribunal, the new act on citizenship is a manifestation of “an open vision of Polish citizenship”.