

EUDO CITIZENSHIP OBSERVATORY

NATURALISATION PROCEDURES FOR IMMIGRANTS GREECE

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Naturalisation Procedures for Immigrants

Greece

Dimitris Christopoulos¹

If Greece had not officially plunged into the greatest debt crisis of her modern history in 2010, the year's main news story would certainly have been the amendments the Greek Citizenship Code underwent as a result of Law 3838/2010. The public debate triggered by this law (during the first months of 2010) was, after all, the last to have occupied Greek opinion and the political system without being linked to the notorious "memorandum", which has since then monopolized discussions about the future of the country.

Law 3838/2010 "Current provisions for Greek citizenship, the political participation of repatriated Greeks and lawfully resident immigrants and other provisions" (Official Gazette Issue A 49/24-03-20) is a historically unfortunate piece of legislation. It was the last major piece of Greek legislation before the signing of the infamous memorandum in May 2010 with the IMF, the ECB and EC. Therefore, Law 3838/10, for reasons unrelated to its content, has been unable to bring administrative regularity to even a fraction of life. But the fiscal track the country embarked on just one month after the adoption of the law does not constitute the sole reason it has been problematic.

1. Promotion

The implementation process of Law 3838/2010 has involved the following problems:

The Greek financial situation. For the last two and a half years the public administration in Greece has been faltering because of the drastic restrictions on revenue and expenditure. This overarching condition (also) concerns Law 3838/10: salary cuts, forfeiture of benefits, the operation of the Greek public sector without temporary contractors (who are often burdened with a disproportionate workload), and cuts in very critical expenditures, especially for the commissioning of as complex an administrative process as naturalisation. Among other things, it is indicative that the external members allocated by the new law to the Naturalisation Committees (on the advice of the National Human Rights Commission and one university) have gradually ceased to participate, as they are not entitled to even basic compensation for their participation in the committees which convene twice a month on average.

The inherent difficulties of administrative decentralization. One of the critical changes introduced by Law 3838 is the decentralization of the administrative process of naturalisation. So, while until 2010 the naturalisations throughout the country had been the affair of a central Naturalisation Committee, the new law introduced the

¹ To my knowledge, this report is the first on the implementation process of Law 3838/2010. Therefore, most of the material is based on primary research conducted by the author. I would like to thank Andreas Takis, Maria Rasouli, Dina Staikos, Hyacinth Panagiotaki for our relevant discussions.

formation of committees and the overall displacement of responsibility for the naturalisation process at the level of the 13 Regions, whereby the establishment of a citizenship directorate is mandatory.

Especially for Attica and Central Macedonia, the establishment of up to three directorates is provided for. Notwithstanding the country's current financial situation, the Greek public administration has always encountered great difficulties when confronted with the challenge of decentralization. These difficulties, blatant in the case of Law 3838, are pertinent to the qualitative and quantitative understaffing of the Regions: on the one hand, the number of civil servants well-familiarised with the complex issues of immigration and citizenship law is marginal, and on the other, a major part of the administrative procedures developing at a regional level is inefficiently processed due to lack of staff and infrastructure. Here, it is palpable that the leverage of the first point intersects and increases that of the second.

The ideological rigidity of the administration. Law 3838/10 marks a major shift given the content of the previous Greek citizenship law and the relevant administrative patterns. But Law 3838/10 is far from creating a more liberal citizenship status in the European Union. Yet, the distance separating the pre-3838 status with that introduced by the law is enormous and for this reason, the rigidities against which it strikes are equally great. Cases of administrative disobedience have even been noticed, (such as "I will not implement this law") exacerbated by the wider atmosphere of uncertainty. This uncertainty primarily stems from the fact that decision 350/2011 of the Fourth Division of the Council of State, regarding Law 3838/2010, created a sense of unconstitutionality in terms of the legal provisions on the acquisition of citizenship by parents' declaration for children born and/or with school attendance in Greece (this decision does *not* concern the naturalisation). But uncertainty is intensified by the fact that the conservative opposition had *ab initio* set the "abolition" of the law as an explicit priority. The formation of Samaras' three-party coalition government in June 2012 and the mention in its policy statements of the "need to align the Greek citizenship law with the southern European countries facing similar immigration problems with Greece" was the harbinger of amendment 3838. The first amendment plan leaked in August 2012 while further developments are expected in the autumn, the content of which is hard to predict.

2. Bureaucracy

Despite the aforementioned, the ultimate nightmare of the citizenship directorates is none other than the incredible caseload inherited from the previous regime and the large difficulty in finding an efficient pace of case-processing. The situation is roughly as follows: the regional citizenship directorates were essentially established half a year after the promulgation of the law; therefore, in addition to the need to process the naturalisation applications submitted from then onwards, they also had to process those submitted after March 2010 (according to amendment 3838), and had to review the previous cases, so that they would reach the Ministry's Naturalisation Committee devoid of the typical setbacks. And that is the hardest part: the incalculable naturalisation applications stagnating at the Citizenship Directorate of the Ministry of Interior for years, since, according to the pre-3838 status, the administration was not required to respond to the interested parties' applications. The result is literally tragic. The Naturalisation Committee is still operating at the Ministry

of Interior under the previous law in order to process the naturalisation applications submitted prior to 2000, even before the formation of the specific committee. A significant number of cases were submitted under the Act of 2001 (2910), while it should be particularly mentioned that the most disparaged and, in terms of population, largest category of immigrants had submitted applications under Citizenship Code 3284/2004. These people not only paid the exorbitant fee of 1500 Euros but also submitted applications which have not been examined yet. Actually, we are dealing with a paradox: the later a naturalisation application is submitted the more likely it is to be examined in good time. The legislator himself in the transitional provision of amendment 3838 specifies that all the applications submitted before the amendment came into force should be examined within a three-year period. About 8000 applications submitted over the last 10 years are still pending. This deadline expires in March 2013 and of course, there isn't the slightest possibility of honouring this commitment. Therefore, this time frame will get an extension.

We are, thus, discussing a multispeed naturalisation scheme, which is of course exacerbated by the structural discrimination between the foreign nationals of non-Greek and those of Greek origin ("allogeneis" – "homogeneis"), which pervades the Greek citizenship legislation, and by the partial discriminations that the legislator has introduced in the population of homogeneis: the most noticeable being that the naturalisation applications of homogeneis "holders of the *Special Identity Card for Homogeneis* (EDTO) acquire Greek citizenship through a decision of the General Secretary of the Region of their permanent domicile" and not through a decision of the Minister of Interior (Article 23 of 3838/10). The previous provision and the exemption of foreign nationals of Greek origin from the interview requirement is obviously targeting the decongestion of the huge volume of cases and as a consequence from 2007 until today the vast majority of foreign nationals who have obtained Greek citizenship are Albanian citizens.

It is interesting to note that the 3838/10 naturalisations are not processed in accordance with the substantive provisions of the law, which primarily provides for foreign nationals an EC long-term residence as such titles are no longer awarded to Greece, because for several years now no funds can be allocated for the certification of their knowledge of the Greek language. This certification is a prerequisite for the acquisition of the title. The holders of these titles are still under a thousand out of a total of approximately 250,000 immigrants who meet the conditions for the acquisition of this title. This situation has, in fact, altered the transitional status provided by the law, which makes the naturalisation application accessible to all the holders of valid residence permits administered in Greece in the last fifteen years during the only *de facto* functional system. This will, of course, continue for as long as the Greek state is not able to issue long-term resident permits in measurable numbers.

TABLE 1: Number of naturalized foreign nationals (11/10/04 to 07/12/12)

	Year	Foreign Nationals of Greek origin	Foreign Nationals	Total
1	2004	73	197	270
2	2005	545	1.313	1.858
3	2006	570	1.348	1.918
4	2007	5.823	1.071	6.894
5	2008	9.946	898	10.844
6	2009	12.354	612	12.966
7	2010	6.162	375	6.537
8	2011	6.551	930	7.481
9	2012	2.629	392	3.021
	TOTAL	44.653	7.136	51.789

The results of the situation caused by the implementation process of naturalisation in Greece are that naturalisation essentially concerns specific groups of the foreign national population and particularly those defined as homogeneis (foreign nationals of Greek origin). The rapid increase by 1000% observed in the homogeneis naturalisations from 2006 to 2007 (from 570 naturalisation to 5823) is easily attributable to the political decision made through just one press release (!) from the Ministry of Interior, in November 2006, under which the acquisition of Greek citizenship would thereafter be possible for the Greeks of Albania, who until then – for undisclosed political reasons pertinent to the anticipation of the Greek minority population’s shrinkage in the neighbouring country – could not acquire Greek citizenship.

According to the press release:

the Government has decided to launch the procedures for the acquisition of the Greek Nationality by homogeneis for Northern Ipirus, after report by the Ministers of Internal and Foreign Affairs. The existing delay of the naturalization for this category of our co-ethnics was related to the fact that guarantees should be accorded so that the Greek nationality acquisition would not be detrimental to their rights [in Albania]. Such guarantees, as the Ministry of Foreign affairs certifies, have been obtained.²

The considerable figure of approximately fifty-two thousand naturalisations granted from 2004 until today should be read in the light of the abovementioned observations because otherwise misleading perceptions can be easily attained. The conclusions are the following:

- The fraction of citizenship acquisition for foreign nationals of Greek origin and foreign nationals continues to be overwhelmingly in favour of the former, and this, even after Law 3838/10 came into force. The absolute number of

² Quoted in Dimitris Christopoulos, *Who is a Greek Citizen ? Status of the Greek nationality from the creation of the Greek State till the down of the 21st century*, Vivliorama Pub. Athens, 2012, p. 144-145.

citizenship acquisition through the naturalization process of allogeneis (the immigrants' majority in Greece) has been nearly constant from 2005 to the present, approximately one thousand people annually, even after Law 3838 came into force.

- The relevant discourse predominant in the country these days, deriving even from the prime minister himself, about "a law magnet of illegal immigrants", is utterly unsubstantiated.
- On the contrary, it seems that the ratification of Law 3838 gave no impetus for naturalisations, due to all the reasons we set out earlier. On the contrary, the number of naturalizations has not increased.

In a revealing extract of the Explanatory Memorandum to Law 3838, one reads that

"the proposed provisions, firstly, render the conditions for naturalisation a more realistic but still demanding task for immigrants".

A diligent reader will perhaps notice that a second "more" is missing before the word "demanding". And this is the reality: the new legal framework is indeed more realistic, obviously more "modern", as even the title of the law wants to emphatically indicate, but it is simultaneously demanding; in some of its provisions, even more demanding than the previous scheme. Furthermore, in an effort to support the bill, the government that adopted it was defending it by over-highlighting precisely this aspect: "*Why are you complaining, since no citizenships were granted...*".³ Thus, the spirit of change brought about by Law 3838 is completely undermined and distorted; as a result, the current discussion regarding its impending amendment leaves the law defenceless.

Basically, the only actual impetus for citizenship acquisition by the country's immigrant population stems almost exclusively from the implementations of the new Article 1^A of the Greek Citizenship Code, which provides that citizenship acquisition can be granted to the first and the one-and-a-half immigrant generation after the parents' five years prior lawful residence, in the first case, and after a six-year period of Greek school attendance, in the second. The declaration process is clearly less complicated than that of naturalisation, while for cases where the conditions laid down by the law are met, the responsibility of the administration to grant citizenship is binding. Already, within two years, about ten thousand citizenships have been granted through the parents' declaration process, especially for the children attending Greek school, while approximately fifteen thousand applications are outstanding, the vast majority of which will be accepted. The projection for the future is incremental as the number of children who meet the conditions set by 1^A of the 3838/10 constantly grows. The forthcoming reform of 3838 focuses precisely on the restriction or abrogation of this particular section, aiming, as is already evident, to defer the possibility of Greek citizenship acquisition until after the age of majority. With regard

³ Reacting to the proposal of the president of Nea Demokratia, A. Samaras, to revise the law, the Minister of Internal Affairs, Y. Ragkousis, said in the parliament (21.6.2011) "In 2008 we've had 10844 naturalizations with the previous law, where each and every Minister offered the Greek Nationality where ever he wanted and in 2009 we count 12996 naturalizations. Over the last six months, actually the first months of the new law's implementation, we count only 2347 naturalizations. Actually, it must be said that this number is by far the lowest within the EU." (quoted by Christopoulos, 2012, 226).

to the naturalisation conditions, the intention seems to be the increase of the number of the years of permanent and lawful residence in the country from seven to ten.

3. Documentation

The law provides that (Article 6) a foreign national, who wishes to become a Greek citizen through naturalisation, submits a declaration to the municipality of his/her place of permanent residence. The naturalisation declaration is submitted to the Mayor in the presence of two Greek citizens acting as witnesses. The declaration is recorded in a special register and a copy is issued to the applicant together with an application form on which all the conditions required for the acquisition of Greek citizenship through naturalisation are indicated and an application for naturalisation to the authorities of the Region to which the municipality belongs. Essentially, therefore, the role of the municipality is to inform the interested party about the certificates required and to confirm that the person resides there. The proof of residence – if not apparent from another certificate – can be even carried out by the municipal police.

Hence, we need to distinguish between the naturalisation declaration submitted to the municipality and the application itself, submitted to the Region, which checks the completeness of the application file exactly at the time of its submission. This process saves both the interested party and the competent public authority extra hassles and time while, if the application file is found incomplete, it is returned to the interested party. Therefore, the submission of the case file is equivalent to the formal admissibility of the application.

The Citizenship Directorate of the Region pursues in due course *ex officio* the applicant's Greek criminal record for judicial purposes and a non-deportation statement. Finally, it addresses, through the police station of the applicant's place of residence, a query to the security authorities of the Ministry of Citizen Protection, in case any public or national security concerns about the applicant justify the rejection of his/her the application. The security authorities are required to respond within four months, but, in any case, they can also forward their opinion directly to the Minister of the Interior, at any stage of the procedure. The failure of the security authorities to send their opinion in good time does not inhibit the Minister's decision (Article 7). If the interested party has been convicted in another country apart from Greece, this is indicated by the checks conducted by the Greek Police through Interpol. If the conviction is not registered by Interpol it cannot be known to the Greek authorities. The experience, so far, shows that while the criminal record checks are prompt – within one month the procedure is processed – the department of immigration in the police delays issuing the certificate of non-deportation and almost never answers whether any "concerns of public order" are outstanding, hence, the deadline is missed without any action taken. The fact that all the previous checks are undertaken without a computerized electronic database (e.g., the Region addresses the district attorney by fax etc) causes delays which could be reduced if, at least, the correspondence is carried out electronically.

In Greece, the competent authority to decide on the fate of naturalisation applications has always been the Minister of the Interior, Decentralisation and E-Governance to whom the application is addressed. Until the point that the case file with the Naturalisation Committee's proposal is forwarded to the Minister for the

final decision, correspondence with the interested party is carried out by the Region. Subsequently, the correspondence is carried out directly with the Ministry of the Interior.

Then, provided that the application is accepted, the General Secretariat of Population and Social Cohesion (former General Secretary of immigration policy) forwards to the Region and to the interested party the Naturalisation Decision from which it derives that the request has been accepted, citing the relevant publication in the Official Gazette. The Region is then obliged to invite the interested party to give the oath of the Greek citizen and to register at the City Registry (demotologion) of the municipality of his/her residence. Only after the oath, does he/she become a citizen. *"Greek Citizenship can be acquired following the oath of the foreign national which has to take place within a year from the publication of the naturalisation decision in the Official Gazette. The naturalisation decision is revoked if the oath is not taken within the one-year time frame"* (Article 9, L. 3284/04).

The application for naturalisation is addressed to the Minister of Interior and is accompanied by:

- a. a copy of the naturalisation statement
- b. a copy of the passport, of a travel document or any other proof of identity.
- c. one of the residence titles mentioned in the law of lawful residence in effect.
- d. a birth certificate or other equivalent certificate provided for by the law of the country of his/her first citizenship, officially translated in Greek.

If the foreign national has the right to international protection as a political refugee or enjoys the status of supplementary protection or is a stateless person and cannot present a birth certificate, it suffices to present the act of recognition of his/her status as a political refugee or of his/her status of subsidiary protection or any official certificate issued to stateless persons, respectively. If the foreign national was born in Greece, then it suffices to present the birth certificate. If the foreign national is unable to be in possession of a passport for objective reasons, it suffices to present the residence permit that is issued in such cases.

- e. Fiscal Statement or a copy of the Income Tax Statement of the last fiscal year
- f. Social Security Number
- g. a fee of seven hundred (700) Euros. For the resubmission of the application for naturalisation the respective sum due is two hundred (200) Euros. Foreign nationals of Greek origin (homogeneis), citizens of Member States of the European Union as well as recognised political refugees and stateless persons should submit together with their application for naturalisation a sum of one hundred (100) Euros.

For the naturalisation process, the following special time frames, starting from the submission of the application, have been set:

- a. six months from the submission of the application for naturalisation to the Region until the invitation of the applicant for interview before the Naturalisation Committee. Within this period, the competent authority of the Region should pursue the supporting documents that were mentioned above and the opinion of

the competent security authorities of the Ministry of Citizen Protection. If the application is not complete, the time frame starts from the time of completion of the relevant file or from the resubmission of the application in full.

- b. four months from the invitation of the applicant for interview until the submission of the opinion of the Committee to the Minister of Interior, Decentralization and E-Governance. The proposal of the naturalisation committee is written subsequent to the interview with the interested party, which is carried out in the Region of his/her permanent domicile, by the Naturalisation Committee. Through the invitation for the interview, the foreign national is asked to present the Naturalisation Committee proofs for establishing that he/she speaks the Greek language, as well as any other proofs that he/she meets the substantive conditions of the naturalisation. The invitation for interview to the applicant should be proved by a relevant document. His/her absence from the interview is excused only in case of his/her objective incapacity to attend. In the event of unjustified absence, the application of naturalisation is rejected by the Minister.

4. Discretion

The Committee can organise a test as provided for by the law (article 5). However, the practice to date is that of questions and answers, from which it derives that the interested party meets the three basic conditions set by law:

1st: an adequate knowledge of the Greek language, *"to fulfil the obligations stemming from Greek citizenship"*.

2nd: a smooth integration into the economic and social life of Greece, for the ascertainment of which the following are taken into consideration *"his/her familiarity with Greek history and the Greek culture, his/her professional and overall economic activity, any public or charity activities he/she is involved in, his/her attendance at Greek educational institutions, his/her participation in social organisations or collective entities of which the members are Greek citizens, any familial relationship, even if it is an in-law relationship with a Greek citizen, the consistent fulfilment of his/her tax obligations and his/her obligations towards social security institutions, his/her full ownership of any real estate for residential purposes and the overall condition of the property"*.

3rd: his/her capacity of *"active and substantiate participation in the political life of the Country, respecting the fundamental principles that govern it"*.

The assessment of whether these conditions are fulfilled by the applicant belongs to the Commission which compiles the detailed minutes including the questions asked and the respective replies of the persons who participated in the interview. The justified proposal of the Naturalisation Committee followed by the abovementioned document and the case file is forwarded to the Ministry of the Interior, Decentralisation and E-Governance and is announced to the applicant, who has the right to submit his/her appeal at the Citizenship Council strictly within fifteen days. The time frame, subsequently, is two months for the Ministerial decision and its publication in the Official Gazette. The call to his/her oath ceremony follows.

5. Review

The law provides that if the procedure cannot be completed within the above-mentioned time frames, the Region notifies the applicant, in writing, of the reasons for the delay. The relevant document is also forwarded to the Minister of the Interior, Decentralisation and E-Governance who may order the prioritisation of the procedure within the prescribed time frame. If the appeal of the interested party is not accepted by the Citizenship Council, then he/she has the right to appeal to the Administrative Court, which is the statutory jurisdiction for hearing Greek citizenship law cases. It should be noted that the jurisdiction for relevant cases was transferred from the Council of State to the Administrative Appeal Court some months after the promulgation of the new law.

We are not yet in a position to estimate the strength of the judicial oversight of the new procedure, since the Administrative Appeal Court has, at the time of writing (September 2012), yet to issue any decision based on the new law. Until the promulgation of Law 3838 the judicial oversight of nationality acquisition was very weak indeed: the very fact that the State was not obliged to provide any justification in case of negative decision and the fact that the administration was not obliged to answer within deadlines has enormously limited the judicial oversight of the procedure. In practice, the State Council has never managed to issue any negative decision of naturalization for revision by the administration. It would not be unfair to say that, in practice, under the previous regime there was no substantial judicial oversight of the naturalization procedure. It is an open challenge for the Greek judiciary to overcome the inertias of the past and move forwards the consolidation of a judicial culture of transparency and accountability under the new regime.

6. Conclusions

The naturalisation procedure initiated by the 2010 Act constitutes an unprecedented practice to which the Greek public administration is anything but committed. Until very recently, the arguments by which the Greek state was (not) naturalising could not be made public, since they were only based on state expediency. By making the justification of the naturalisation decision mandatory, the 2010 Act establishes a new era in Greek citizenship law, the transition into which is filled with jolts and problems. In today's extreme conditions of disorganisation and the country's public administration understaffing (see the first chapter of the report) the violation of the time frames is so common that even the proponents of the reform recognise that the total of the one-year time frame set for the naturalisation process is, under the circumstances, a non achievable target. In practice, of course, with a transitional provision of the law, for most of the applications submitted after the ratification of the law, a total period of two years is provided for (Article 25 § 2). The legislator, with the same provision, specifies that the time of prior residence in the country for the foreign nationals residing in Greece when the law came into force is five years (not seven). For these people, the valid time frame is two years after the submission of their application. Thus, the system of naturalisation that works – the way it works in Greece today – either adds seven years of prior residence plus a one-year period as a time frame for the consideration of the application, or five years of prior residence

plus a two-year time frame for the examination of the application by the transitional provision mostly used by the interested parties.

It is certain that the upcoming counter-reform of Law 3838 will not leave the naturalisation procedure intact, as presented above. Yet it can be expected that the accountability for justification introduced in 2010 is here to stay, since nothing indicates that there is any intention to abrogate this provision. A prediction for the distant future regarding the implementation process of the new scheme is far from being a safe one, since these days, the predictability of political developments in Greece is as low as it has ever been.

