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Bridging the citizenship law implementation gap: a typology for comparative analysis

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Abstract

While major advances have been made over the past years in comparing citizenship laws globally, most measures remain restricted to the law-on-the-books. Knowledge about the implementation of these laws remains limited. This poses the question to what extent these measures correspond with the law as experienced by targeted populations. In order to overcome the implementation gap when comparing and measuring citizenship law globally, this paper addresses the question of how to gain a coherent understanding of implementation. Developing a comprehensive typology, the paper distinguishes three crucial elements of implementation: (1) the entry into force of legal provisions (capturing the applicable state of citizenship law), (2) the interpretation of law (the specific interpretation of legal provisions used by the authorities responsible for their execution), and (3) the application of law (executing legal provisions in practice by the authorities). Subsequently, the paper illustrates how this typology can be applied to the analysis of citizenship law implementation by a case study of dual citizenship acceptance, focusing on the renunciation requirement for naturalisation and dual citizenship treaties. The paper concludes by outlining directions for a comparative research agenda that better corresponds with the lived experience of citizenship laws.

Keywords: Citizenship, Implementation, Law, Comparative law

Introduction

Over the past decades, significant progress has been made in the mapping of citizenship laws across the world (Vink et al., 2023; Solano & Huddleston, 2020; Schmid, 2020). However, our understanding of the implementation of citizenship law in practice remains limited. The occurrence of implementation gaps poses a challenge for migration and citizenship studies, as scholars have highlighted that research based on the study of the law alone does not necessarily match the lived experiences of migrants (Fargues et al., 2022). The conclusions drawn from such comparative datasets may therefore not be valid, because of the discrepancies between'the law on the books' and 'the law in action'. We must develop a more sophisticated methodological approach for studying implementation in different legal systems across the globe if datasets are to help scholars to analyse the impact of law.

Considering the scholarly and practical relevance of citizenship law implementation, this paper argues that before the implementation gap can be bridged, we need to gain a thorough understanding of what the implementation of citizenship law actually consists of. Therefore, this paper aims to set out how we can capture implementation in a comprehensive and systematic manner in order to measure and compare the implementation of citizenship law on a global scale. To illustrate this, it focuses on two questions of particular importance for international migrants on the interpretation of rules on dual citizenship: the accessibility in practice of procedures for renunciation of citizenship; and the application of dual citizenship treaties.

This paper makes three innovative contributions to this field of study. First, based on a literature review of existing methodological approaches to comparing and measuring citizenship policies, an original typology is developed for the systematic comparison and measurement of citizenship law implementation. Second, the paper introduces the concept of 'double implementation' for cases where the implementation of citizenship law in one country requires interpreting the implementation of citizenship law in another country. Ignoring this phenomenon of double implementation risks reinforcing the methodological nationalism that has traditionally affected migration and citizenship studies (Wimmer & Glick Schiller, 2003). Third, leveraging evidence on the implementation of policies regarding dual citizenship, the paper illustrates how distinguishing different elements of implementation ensures that we comprehensively capture the implementation of citizenship law.

The paper concludes that a systematic analysis of citizenship law implementation can improve our knowledge of how citizenship policies work. It also shows how each element of implementation comes with its own methodological difficulties. While it is clearly challenging to gain a comprehensive knowledge of citizenship law implementation, the paper will illustrate how implementation can be analysed and coded for future empirical legal research.

State of the art: existing approaches to the comparative measurement of citizenship laws

The field of comparative law involves the methodology of comparing and contrasting rules or aspects of the legal systems of different jurisdictions (Cane & Conaghan 2008). Some of the methodological directions within comparative law are used for comparison between legal systems (e.g. the structural comparative legal method) (Van Hoecke, 2015). Other methodological directions compare specific rules or aspects of legal systems, for example the functional approach to comparative law (Zweigert & Kötz, 1996; Samuel, 2014; Michaels, 2019). Established comparative law methodologies generally do not incorporate the implementation of law. As far as implementation of law is addressed, it mainly concerns the incorporation of international or supranational legal instruments into domestic legal systems (c.f. Van Hoecke, 2004; Bignami & Zaring (eds) 2016).

The development of indices for the comparative measurement of policies has proliferated in the field of citizenship studies (Wallace-Goodman, 2015). Scholarly efforts to provide systematic information on comparative citizenship law provisions generally only capture conditions for the acquisition and/or loss of citizenship as established by law (Dutoit, 1973–1980; De Groot, 1989; Weil, 2001; Manby, 2016; Vonk, 2015; Acosta,

2018; Vonk, 2018). Datasets established to facilitate quantitative analysis of this information also generally cover citizenship law rather than its practical implementation. The GLOBALCIT Modes of Acquisition and Loss Dataset, which captures acquisition conditions for the acquisition and loss of citizenship in 190 countries, only covers "the substantive requirements as set out in law", which excludes policy implementation (Vink et al., 2023).

Comparative studies on the implementation of citizenship laws in practice are scarce—and they have only been conducted on a smaller scale (e.g. Koopmans et al. 2012; Blatter et al. 2009). These studies generally do not make a clear distinction between law and practice, for example by treating exception grounds as a form of implementation even though those exceptions are generally set out in the citizenship law itself.

Another expert survey survey includes certain elements related to implementation, namely problems related to obtaining documents, administrative backlogs, and the behaviour of civil servants (Chopin, 2006). While this approach provides valuable insights into administrative practices, its fragmented approach does not allow for a systematic comparison of citizenship legislation. The Citizenship Implementation indicators (CITIMP) also aims to measure naturalisation procedures more broadly (Huddleston, 2013). This index covers a range of aspects that can influence policy outcomes (i.e. promotion, documentation, discretion, bureaucracy, and review). These elements provide valuable insights into implementation, but they cannot provide a systematic measurement of the implementation of citizenship law. It is therefore necessary to develop a more comprehensive and systematic approach.

Towards a typology of implementation measurement

I propose to define legal implementation as both the entry into force of a law, its interpretation as established by law and policy, and the application of that law in practice by the responsible authorities. This goes beyond the substantive text of the law—which is adequately covered by existing datasets—and also addresses the questions surrounding the extent to which the law is both technically in force and has an effect on state practice. For systematic comparison and measurement, I therefore propose an initial typology of implementation that comprises three elements. In addition to these three elements, I propose the concept of 'double implementation' for cases where the implementation of citizenship law in one country is interpreted by the authorities of another country.

It is important to note to which fields of law this typology applies. Evidently, the primary field of law is citizenship law, which I define as the body of law that determines how persons acquire and lose citizenship. This comprises citizenship legislation and its subsidiary rules and regulations but also potentially constitutional law, international agreements, and court decisions. In addition to that, the implementation of citizenship laws might depend on related laws. First, acquiring and losing citizenship often depends on the existence of familial ties which are regulated by (international) family law. Second, the effectuation of a right to citizenship is often dependent on civil registration law, which regulates the registration of vital life events (e.g. birth, adoption, marriage, and death). Third, acquiring or losing citizenship might depend on other related laws, although such cases occur much less frequently. An example could be the residence requirement for ordinary naturalisation which sometimes requires the possession of a

Table 1 A typology of citizenship law implementation for comparative measurement

	Law in force	Official interpretation	Application in practice
Definition	Whether and in what form law is in force	How a legal provision is officially interpreted by the competent authorities	How a provision is applied in practice by officials
Scope	Citizenship law	Citizenship law	Citizenship law
	Family law and civil registration law	Family law and civil registration law	Family law and civil registration law
	Other relevant laws	Other relevant laws	Other relevant laws
Legal authority	Constitution/legislation; Subsidiary legislation (regulations/decrees) regarding entry into force	Subsidiary legislation (regulations/decrees) regarding procedures to be followed; Other public documents providing guidance on policy and interpretation of the law; Court judgments; Internal (non-published) circulars, instructions to officials	n/a
Other sources	General rules on entry into force of laws	Government & parliamentary websites, court reports	Qualitative investigation

specific type of residence status, determined by immigration law. This paper will focus on the implementation of citizenship law itself, but in practice, the implementation of the related fields of law can also be crucial.

This typology primarily serves as a tool for researchers engaged in (empirical) comparative studies concerning the implementation of citizenship law. However, it could also prove valuable in other fields of public law where similar gaps might exist between the law of the books and its implementation by the authorities in practice, such as immigration law. The paper does not furnish guidance for individuals responsible for determining citizenship status in specific cases, such as government officials or judges as in such cases human rights obligations and due process norms should also play an important role. The paper's objective is not to prescribe how citizenship law should be put into practice but rather to provide the analytical building blocks for studying how it is currently implemented (Table 1).

Entry into force

This element addresses whether and in what form a given citizenship law provision is in force at a certain moment. This should be assessed for all relevant sources of citizenship law. This requires considering at minimum the process of bringing legislation into force established by national law; for example, if a minister is given the power by primary legislation to establish a date for entry into force of particular provisions (or the law as a whole). The current validity of provisions in citizenship law can also be affected by sources that we generally do not consider to be part of citizenship law, such as provisions in a superior law (most importantly, the constitution) or by court decisions ruling that a particular provision is not valid. In addition, it can be challenging to understand if a provision was introduced with retroactive effect or if its meaning was altered by transitory provisions. It can be particularly complex if a combination of different legal sources should be assessed. It can be even more complex to assess the impact of obligations arising from international- or supranational law on domestic citizenship law, and

indeed, whether bilateral or multilateral treaties on citizenship are in force at the time of analysis.

Interpretation

By interpretation, I refer to all sources of law and policy documents that establish the rules by which primary legislation is to be put into effect. First of all, it is important to assess the subsidiary legislation (decrees and regulations) that establish procedures to follow, for example to acquire or renounce citizenship. However, such subsidiary legislation does not necessarily fully bridge the gap between law and practice. Whether or not there is an implementing regulation or decree, there may be official circulars, policy manuals or guidelines setting out rules for officials to follow that guide day to day interpretation of the law. In practice, it can be hard to create a clear distinction between the status of such documents as interpretation or application (the next category within this typology). I argue that all sources of law and policy documents should be considered as interpretation—even if it concerns documents that would intuitively be closer to application (e.g. work instructions). While such documents indicate how citizenship law is applied, they can still be deviated from in practice (see, for example, Sperfeldt's findings about the application of citizenship law in Cambodia (Sperfeldt, 2017). By distinguishing interpretation from application, we are able to capture such deviations.

Application

Even if we have established the entry into force of a provision and how it is interpreted according to law and policy, the question remains whether and how that provision is applied in practice. For example, a provision might never be applied in practice, regardless of primary or secondary legislation. This could entail that the authorities in practice act in contravention of established legislation. Next to that, particularly if a provision grants wide discretionary power to the authorities, the question is not only how this provision is interpreted by the authorities, but also whether it is applied at all—whether discretion is in practice exercised to allow renunciation of citizenship, for example (as in the case studies below). Another element to consider is the hierarchy of implementation, as there can be discrepancies between top-down instructions and their application at lower levels, so that street-level bureaucrats do not complete the necessary paperwork in practice.

The study of the application of citizenship law is dependent on in-depth empirical studies and fieldwork that captures the practices of street-level bureaucracies as well as the lived experience of persons that are affected by a country's citizenship law regime and the official understanding of the law by the political and administrative authorities.

Double implementation

I propose the term 'double implementation' to capture the situation when the implementation of citizenship policies in one state requires an interpretation of how another country implements its citizenship policies. Double implementation can occur, for example, when a country requires for naturalisation that a person renounces their original citizenship. In such cases, the state authorities may have to assess whether a person is able to renounce the original citizenship, both in law and in practice. This particular

issue is further illustrated in Sect. "Illustration: Capturing the implementation of dual citizenship policies ". Double implementation can also affect birthright citizenship, as for example certain countries only grant citizenship automatically to a child born abroad if the child has not obtained another citizenship (Vink et al. (forthcoming)). Another example is the determination of statelessness, which can entitle a person to citizenship or facilitated naturalisation—but requires interpretation of the law of other countries. The UNHCR therefore prescribes that implementation in practice must be taken into account when determining whether a person is stateless or not (UNHCR 2014). Understanding how such interdependent citizenship policies are implemented requires capturing how a state's authorities interpret the implementation of citizenship law in another state.

Illustration: capturing the implementation of dual citizenship policies

The threefold typology proposed in the previous section will be illustrated here by means of a topic that is of great importance for international migrants, the tolerance of dual citizenship in national law. This article focuses especially on the situation of those who wish to naturalise in another country (rather than, for example, children born with two citizenships because their parents are citizens of different countries). Studies of transnationalism stress the importance of tolerance of dual citizenship in both the receiving and origin state to enable migrants have a safe legal status in both countries (Bauböck, 2003; Vertovec, 2004; Bloemraad, 2004; Faist (ed) 2016). In this situation, permission to hold dual citizenship requires both (a) that a person can retain their citizenship of origin when they voluntarily acquire another citizenship, and (b) that the voluntary acquisition of that other citizenship is not made conditional upon renouncing their original citizenship. If such renunciation of the original citizenship is required another element comes into play, namely whether and how the citizenship of the country of origin can be renounced under its domestic law (Vink et al. (forthcoming)).

This section will focus on two specific contexts where it can be particularly problematic to understand how the law is implemented: the interaction of renunciation requirements from two different states, and the impact of dual citizenship treaties. For both contexts, I will illustrate how they are affected by each of the three dimensions of implementation (entry into force, interpretation, and application). The topics complement each other as renunciation requirements are part of domestic law and dual citizenship treaties are part of international law. Second, both topics have a transnational component which enables me to better explain the concept of 'double implementation.'

Entry into force: renunciation requirements

As of 2022, there are 72 countries that require a person to either renounce (requiring the person to complete an administrative procedure) or lose (automatically, by operation of law) their current citizenship, in order to naturalize (although it should be noted that numerous exceptions may apply in these cases) (Vink et al. (forthcoming)). Such requirements are generally set out in domestic citizenship legislation as part of the preconditions for ordinary residence-based naturalisation.

How the provisions come into force is then determined by the general implementing procedures under the legislative process prescribed by domestic law. In some cases

such a requirement might arise from treaty obligations, which will be dealt with in the next section. While the process of determining whether and when a legal provision entered into force can be a straightforward matter, in certain cases it may be far more challenging.

In Denmark, for example, an applicant for ordinary naturalisation was in the past required to renounce their original citizenship. However, an amending law that repealed the provision with effect from 1 September 2015 determined that the amendment would not apply to the Faroe Islands and Greenland, although it could be fully or partially extended by royal decree to those territories (Art. 6 Law on Danish Citizenship jo. Circular on Naturalisation, as amended by Art. 5 Law no 1496 of 23 Dec 2014 amending the Law on Danish Citizenship). Within the Kingdom of Denmark, the Faroe Islands and Greenland have a special status and degree of self-governance, which requires that a special legislative process is followed before a law can be applied to those territories, including a consultation round with their local parliaments (Hovgaard & Ackrén, 2017). This process was only completed on 31 July 2019 (for the Faroe Islands) and 26 November 2020 (for Greenland), when the royal decrees that legally implemented the amendment for those two territories came into force. As a consequence, the former restrictive provisions regarding dual citizenship remained in place until that date for anyone who fell under the scope of either the Faroese or Greenlandic version of the Nationality Act.

Differences on date of entry into force do not just occur across geographic space, but also across time. An example is the Bosnian-Herzegovinian Law on Citizenship of 1999. The citizenship law stipulates that any citizen who voluntarily acquired a foreign citizenship has to renounce that other citizenship within 15 years after the law came into force (Art. 39(1)). However, this provision was declared unconstitutional by a ruling on 23 September 2011 (Decision U-9/11, Constitutional Court BHA). As the government failed to implement the ruling within the set time frame, the Court released a second ruling on 28 September 2012 that the provision would cease to have effect from the day following its publication.

These examples illustrate that even when the entry into force of citizenship law provisions is solely a matter of domestic law, challenges can arise in this regard. It is therefore important to be aware of such potential geographic and temporal differences regarding the ways in which citizenship law provisions come into force.

Entry into force: dual citizenship treaties

As dual citizenship treaties are instruments of international law that have to come into force in several states, their entry into force is more complex than domestic law. The entry into force of bilateral and multilateral treaties into domestic legal systems is a topic of extensive legal scholarship and cannot be comprehensively discussed here. In general it is well-documented whether and when the relevant treaties were signed and ratified and entered into force among the relevant states. However, it can be challenging to determine whether a treaty has remained in force after a significant period of time.

This problem is illustrated by Convention between the Union of Soviet Socialist Republics and the Czechoslovak Socialist Republic for the avoidance of cases of dual citizenship of 1980. Due to the dissolution of the Soviet Union into 15 states in 1991 and of Czechoslovakia into the Czech Republic and Slovakia in 1993, a large number of

new potential treaty relations came about. In many of these states, there is great lack of clarity regarding the legal status of the treaty (Hecker 2003). However, for seven country pairs, the legal status could be retrieved on the basis of official documentation. Table 2 below shows that most of the treaty relations remained applicable to the new states until the 2000s, while the treaty remains in force to date between the Russian Federation and Slovakia. Moreover, even if a treaty is no longer in force, it might have affected a person's citizenship status in the past, which can even give rise to problems across generations, because a parent may be deemed not to have held citizenship at the time of the child's birth.

Entry into force: How to code?

Determining whether a provision is in force is a preliminary step that is already intrinsic to empirical legal research projects. After all, empirical legal datasets generally cover law as in force. However, it is useful to flag problematic cases in this regard (e.g. provisions that are legally not in force). In order to do this systematically, I propose introducing a dedicated variable that comprehensively captures this aspect. This variable can categorize the provision's status as in force, not in force, or as unknown. The first two categories allow us to code a provision's legal status, while the latter category allows us to flag provisions of which the legal status cannot be ascertained. In the example above, the 1980 agreement discussed above could be coded as in force for Russia and Slovakia if its status as in force could be ascertained, as 'not in force' if the termination date could be ascertained, and 'unknown' if neither could be ascertained.

Interpretation: renunciation requirements

If the country where a person wishes to naturalise does not permit dual citizenship, it will be necessary to understand the legal and procedural requirements for renouncing or losing citizenship in the applicant's state of origin. While some states explicitly prohibit the renunciation of citizenship, other states hinder renunciation through administrative practices (Harbers & Steele, 2023). Determining how authorities of the person's country of origin interpret a renunciation requirement can be hampered by ambiguous or discretionary wordings of the law, the lack of subsidiary legislation establishing procedural

Table 2 Repeal of the Soviet-Czechoslovakian Dual Citizenship Treaty of 1980 (entry into force on 5 July 1981), in Czech Republic and Slovakia with respective successor states

	Belarus	Kyrgyz Rep	Moldova	Ukraine	Russia	Other successor states
Czech Republic	05.07.2006	05.07.2006	Unclear	28.02.2000	05.07.2006	Unknown
Slovakia	Unknown	Unknown	Terminated at state dissolution	Terminated at state dissolution	In force	Unknown

Sources: Communication No. 73/2006 of the Ministry of Foreign Affairs on the termination of the Agreement between the Czechoslovak Socialist Republic and the Union of Soviet Socialist Republics on the Prevention of Dual Citizenship; Protocol between the Government of the Czech Republic and the Cabinet of Ministers of Ukraine on Bilateral Contractual Relations between the Czech Republic and Ukraine of 17 December 1998; Protocol between the Government of the Slovak Republic and the Government of Ukraine on bilateral treaty relations between the Slovak Republic and Ukraine of 3 March 2000; Exchange of notes of 26 May 2006 on the status of bilateral treaties between the Slovak Republic and the Republic of Moldova [in Czech/Slovak]. On file with the author

rules to implement a substantive provision, or the fact that the interpretation of the authorities does not necessarily match an objective interpretation of law.

We are therefore facing a 'double implementation gap' here, combining an analysis of the implementation of renunciation provisions by the origin countries themselves and the interpretation of these origin country policies and practices by receiving countries that restrict dual citizenship. If it is either *de iure* or de facto impossible to renounce one's citizenship of a country of origin. applicants for naturalisation are often exempted from the renunciation requirement by the law of the country of naturalisation. States that impose a renunciation requirement are therefore required to interpret both their own law and the citizenship law and policy practices of other countries, as the authorities of the receiving country must determine whether and how an applicant can renounce the original citizenship.

Even the interpretation of a state's own law may not be obvious. An example is Costa Rica. According to Art. 8(j) Decree 12–2012, ordinary naturalisation requires a "[…] declaration that they [the applicant] renounce their previous nationality". In previous versions of this Decree, the wording of the requirement is slightly different. In the version as amended in 1991, it is required that applicants submit a "written declaration" that they will keep residing in Costa Rica and declare "in the same form" that they renounce their original citizenship. All these requirements have been interpreted by the authorities in such a way that an applicant only has to declare that their original citizenship is renounced, but do not have to show proof that renunciation has been effectuated by the origin country. The result is that applicants are in practice allowed to retain their original citizenship.

Interpretation of laws in case of double implementation is even more complex. In order to determine whether applicants for naturalisation are able to renounce their original citizenship or not, the authorities of four EU Member States—namely Germany, the Netherlands, Norway (until 2020), and Denmark (until 2015)—either make or made use of country lists that specify in which cases an exemption from the renunciation requirement must be granted due to it being impossible to renounce origin-country citizenship. These lists are an example of evidence of the official interpretation of a law—even as their legal status as binding on officials is not clear. The country lists of Germany and the Netherlands were available in the public domain. For Denmark, the country was originally released as an annex to a parliamentary inquiry. For Norway, the country list was provided to the author by the Norwegian Directorate of Immigration (*Utlendingsdirektoratet*). These country lists were obtained for the reference year of 2014 as that was the last year in which Denmark applied a renunciation requirement (the requirement was abolished for metropolitan Denmark on 1 September 2015). Due to limitations regarding the data availability for Denmark and Norway, the standing of the lists for March 2014 was used for this comparison. Although the structure of the country lists slightly varies, they do allow for comparison as the categorisations that the countries use are sufficiently similar. None of the country lists provide an overview of the data sources that the interpretation is based on.

There are 78 countries that appear on at least one of the four lists as not permitting renunciation. While only a minority of European countries (12%) and Oceanic countries (29%) are on the lists, the shares for Africa (46%), the Americas (51%) and Asia (56%) are

much higher. There are 44 countries that only appear on one of the lists, most of which are only found on the Danish list (34 countries), while the number of unique entries is much lower in Germany (four countries), the Netherlands (one country), and Norway (five countries). The large number of unique entries on the Danish lists is mostly caused by Denmark exempting applicants from the renunciation requirement if there was any kind of uncertainty or unclarity regarding the renunciation requirement in the origin country. The other countries take a more restrictive approach—the Dutch country list, for example, explicitly states that if the conditions for renunciation in the origin country are unknown the renunciation requirements remain applicable unless the applicant proves that renunciation is impossible. There are 14 countries that appear on two of four lists, while 11 countries appear on three of the lists. That leaves only eight out of 78 countries that are present on all four lists (Algeria, Argentina, Iran, Mexico, Morocco, Syria, Tunisia, and Uruguay).

This brief analysis shows that the interpretation of renunciation requirements is fraught with difficulties. The country lists are far from uniform and there is very little consensus among the four states on the interpretation of foreign laws. This can only partially be explained by the ambiguity of renunciation provisions and policy practices in that regard; it seems also that the information on which the country lists are based is also sometimes incorrect or outdated. The decisive factor is not the legal or factual situation regarding renunciation in the origin country, but their interpretation of the authorities of the receiving country. Regarding the interpretation of renunciation provisions, this means that resorting to a single source of information on the application of the law is frequently insufficient, even if that resource is an authoritative one. Instead, interpretation should be based on a combination of resources in addition to the law itself and its implementing regulations/decrees, such as academic resources, statistical data, information provided by the official authorities as well as the input of country experts or regional experts.

All in all, this section makes clear that it's not only a state's interpretation of its own laws that matters, but also its interpretation of the laws of other states. As the comparative analysis shows, major discrepancies can arise in such cases.

Interpretation: dual citizenship treaties

If a long period of time has passed since a dual citizenship treaty came into force, this can cause interpretative difficulties. Domestic policy objectives and political interests have developed in a different direction since the treaty was concluded. This is particularly the case for dual citizenship treaties that were adopted to restrict dual citizenship, since many countries have abolished dual citizenship restrictions in their domestic citizenship legislation over the past decades, making the validity of the treaty unclear in one or all countries concerned (Vink et al., 2019).

A treaty that exemplifies such difficulties is the Bulgarian-American Treaty of Naturalisation of 1923. This treaty is part of the so-called Bancroft treaties that were initiated by the American authorities in order to allow naturalised Americans to cut ties with their countries of origin (Spiro, 2016). In short, the treaties determined that a person loses their original citizenship when they acquire the citizenship of the other state party, but that upon permanent return to the origin country, the original

citizenship is automatically reacquired while the newly acquired citizenship is lost. On the American side, the treaties were deemed unenforceable after the US Supreme Court decision in *Afroyim v. Rusk* due to their unconstitutionality, and most were subsequently terminated in the 1980s (Hing et al., 2021; Spiro, 2016). The Bulgarian-American treaty is an exception, as it remained in force until relatively recent date. There seems to be disagreement over the termination date. A statement released by the Bulgarian embassy in the United States affirms that the treaty was terminated unilaterally by letter in 2003 (on file with author). In the United States, the treaty was considered in force until at least 2015. In 2016, it was removed from the official compendium of treaties that are in force for the US (DOS 2016).

It is likely that the treaty would have fallen into oblivion if it had not become the centre of attention in a judgement of the Bulgarian Constitutional Court in 1995 (Supreme Court of Bulgaria, Case No. 2/1995). The matter concerned the Bulgarian Member of Parliament George Ganchev, who was accused of possessing American citizenship as well as Bulgarian citizenship, which was constitutionally prohibited for members of the Bulgarian parliament. Ganchev argued, among others, that he had lost American citizenship automatically upon remigration to Bulgaria in accordance with the third article of the Bulgarian-American Treaty of Naturalisation of 1923. The Court dismissed this argument, stating that citizenship was not automatically lost on the basis of the treaty, but that its execution was subject to the provisions in domestic citizenship law. In a dissenting opinion, Judge Todor Todorov claimed that this restriction cannot be deducted from the text of the treaty and concluded on the basis of general principles for the interpretation of treaties that citizenship was automatically lost on the basis of the American-Bulgarian treaty.

There is no indication in the text of the Bulgarian-American treaty that the implementation of the provisions is subject to domestic citizenship law. Nevertheless, it cannot be denied that such a formalistic interpretation would have had strong consequences, as it could mean that Bulgarian citizens who had voluntarily acquired American citizenship between 1924 (the year in which the treaty came in force) and its termination date would in hindsight have lost Bulgarian citizenship. As a consequence, this could also imply that their offspring might not have acquired Bulgarian citizenship at birth either as their parent would in hindsight not have been a Bulgarian citizen at the moment of birth. This result would also contradict Bulgaria's current policy stance, as Bulgaria has come to accept dual citizenship for emigrants and actively fosters its relations with its diaspora (Jileva & Smilov, 2013). Severing the ties with this group of citizens would therefore run counter to Bulgaria's current interests. In 2010, the Bulgarian Department of Justice released a statement to declare that the treaty is interpreted not to be self-executing and that loss of citizenship under its provisions is dependent on implementation through domestic law (on file with author).

The Bulgarian-American treaty example shows how a state's interpretation of a dual citizenship treaty evolves over time. This underlines that an analysis of the treaty text itself is in this regard not always sufficient for its interpretation and that other sources must be assessed as well.

Interpretation: How to code?

Researchers can use different coding approaches towards interpretation. First, a binary coding scheme can flag overt discrepancies between the text of the law and its official interpretation, such as the example of the Costa Rican renunciation requirement, where applicants are not required to effectively renounce their original citizenship. However, this approach does not account for more subtle deviations from a strict textual interpretation of a legal provision. To comprehensively capture implementation nuances, researchers can use a more extensive coding scheme. As it is challenging to define such categorizations in advance, multiple rounds of coding may be necessary to establish an optimal categorisation. For instance, a tiered coding scheme that captures the interpretation of renunciation requirements could start with provisions that don't mandate effective renunciation (e.g., the Costa Rican case), progressing to countries with a lenient application (e.g., the former Danish requirement), then moving to a more stringent application (e.g., the Dutch requirement), and concluding with countries that allow no leniency at all.

Application: renunciation requirement

After establishing the status of a legal provision and how it is interpreted by the relevant authorities, the question remains whether and how the provision is applied in practice by officials responsible for completing the necessary administrative tasks in the country where naturalisation is sought. In the country lists that were discussed earlier, this dimension of 'application' is to a certain extent taken into account. For Germany, the Netherlands, and Norway, the country lists indicate for each country whether renunciation is de iure impossible (for example due to lack of a legal basis for renunciation of citizenship or because domestic law expressly prohibits renunciation) or whether renunciation is de facto impossible. In the latter cases, renunciation is considered impossible in practice even though a legal basis for renunciation exists.

In total, in 17 countries, renunciation is regarded as de facto impossible by the authorities of at least one of the abovementioned countries. The countries where renunciation is considered impossible are Afghanistan, Algeria, Angola, Cambodia, Cuba, Eritrea, Iran, Iraq, Jordan, Lebanon, Libya, Morocco, Nigeria, North Korea, Syria, Thailand, and Tunisia. Seven of these countries are only regarded as such by one of the three countries, while eight countries are regarded as such by two of the three countries. That leaves only two countries (Iran and Morocco) for which there is consensus that renunciation is de facto impossible (Table 3).

An example of non-application of a renunciation provision is the case of Morocco. The Moroccan Nationality Code of 1958 provides for renunciation of nationality to be authorized by decree in case of either a Moroccan national who has reached the age of majority and who has voluntarily acquired a foreign nationality or a Moroccan national, even if a minor, who has a foreign nationality of origin (Art. 19 paras 1 and 2). Art. 20 para. 1 of the Nationality Code establishes that the loss of citizenship becomes effective in these cases on the date on which the decree is published. It is well known that the required authorization by decree for the renunciation of

Table 3 Countries where renunciation was considered de facto impossible for March 2014 by Germany, the Netherlands, and Norway

	Germany	Netherlands	Norway
Afghanistan	De facto impossible	Possible	De facto impossible
Algeria	De facto impossible	De iure impossible	De facto impossible
Angola	De facto impossible	Possible	De iure impossible
Cambodia	Possible	Possible	De facto impossible
Cuba	De facto impossible	De facto impossible	De iure impossible
Eritrea	De facto impossible	Possible	De facto impossible
Iran	De facto impossible	De facto impossible	De facto impossible
Iraq	De facto impossible	Possible	De facto impossible
Jordan	Possible	Possible	De facto impossible
Lebanon	De facto impossible	Possible	De facto impossible
Libya	Possible	De iure impossible	De facto impossible
Morocco	De facto impossible	De facto impossible	De facto impossible
Nigeria	De facto impossible	Possible	Possible
North Korea	Possible	Possible	De facto impossible
Syria	De facto impossible	De iure impossible	De facto impossible
Thailand	De facto impossible	Possible	De iure impossible
Tunisia	De facto impossible	De iure impossible	De facto impossible

Sources: See Additional file 1 (Country lists (exemptions from renunciation requirement due to impossibility to renounce original citizenship))

Moroccan nationality is in practice not granted (Perrin, 2011). Renunciation of Moroccan nationality is therefore *de iure* allowed but impossible in practice.

This section shows that existing citizenship provisions are not always applied in practice. As the discrepancies between the country lists show, it is challenging to determine whether that is the case. It is therefore important to assess multiple sources in such cases, even if a source is an authoritative one. Conducting fieldwork studies that capture such administrative practices are therefore of great importance.

Application: dual citizenship treaties

Even if the legal status of a treaty can be determined, its practical application can remain ambiguous. This is illustrated by the Convention of Nationality of 1933, which was signed and ratified by six South and Central American states, namely Brazil, Chile, Ecuador, Honduras, Mexico, and Panama. This treaty has remained in force to date, except for Brazil (repudiated in 1952) and Mexico (terminated in 1998) (OAS 2023). While it is possible that a treaty is tacitly terminated when it falls into disuse (*desuetude* or obsolescence), no state party to date has claimed that this is the case. The Organisation of American States (which administers the 1933 Convention) still considers the treaty to be in force. However, in the almost 90 years since the treaty came into force, many of the state parties have altered their nationality policy objectives. Most of the remaining state parties have at least partially accepted dual citizenship over the past decades, which means that the treaty provisions now contradict domestic legislation. In the case of the 1933 Convention, the complete absence of information on its practical implementation implies that the treaty provisions are not applied by the state parties.

The reverse problem affects the Arab League's Nationality Agreement of 1954. In Art. 11 of the Nationality Agreement, it is stated that the treaty comes in force at the moment when three state parties have submitted their ratification instruments to the Arab League's secretariat. So far, only Jordan and Egypt have done so. From a legal perspective, this means that the treaty never came in force. The Agreement was therefore repealed in 1994 by a resolution issued by the Arab League Minsters of Foreign Affairs Council (Resolution 02/2256/1994). However, Frost demonstrates on the basis of interviews with Jordanian government officials that they refer to the Nationality Agreement of 1954 as one of the reasons for restricting dual citizenship for Palestinian immigrants (Frost, 2022). Therefore, it can be concluded that the agreement is likely applied in practice by the Jordanian authorities even though the agreement is legally not in force.

It can be concluded that establishing whether a treaty is in force or not is not always sufficient to determine whether it is also applied or not. If a treaty is legally in force, state authorities might be unwilling to apply it in practice or they might even be unaware of its existence. If a treaty is not in force, the Jordanian case shows that a treaty might still be applied in practice. This illustrates the importance of taking all elements of the presented implementation typology—entry into force, interpretation, and implementation—into account.

Application: How to code?

When it comes to coding a law's application, researchers may again either opt for a binary categorisation or a more nuanced categorisation. A binary categorisation captures whether a legal provision is (at least to some extent) applied in practice or not. For example, the Moroccan provision for the voluntary renunciation of citizenship could be coded as a provision that is not applied in practice. On the other hand, a more nuanced approach allows researchers to capture a broader spectrum of variations in how legal provisions are applied in practice. Such a categorisation could also capture to what extent practices are in place that are not based on law or policy but that nonetheless affect how the provisions are implemented. Regarding provisions for voluntary renunciation of citizenship, for example, such a categorisation could capture practice making it de facto impossible to renounce citizenship for some, but not for others.

Where to go from here?

Even though many studies highlight the significance of the implementation gap for the study of citizenship, few attempts have been made to bridge that gap. A first step towards improving the comparison and measurement of implementation requires a clear understanding of what implementation entails and how it can be analysed in a systematic manner. Defining implementation the law coming into force) as well as the interpretation and application of that law in practice by the responsible authorities, I proposed an initial typology that distinguishes three different elements of implementation, namely (1) entry into force, (2) interpretation, and (3) application. The paper also illustrated the benefits of this approach by means of two aspects related to dual citizenship policies, namely the implementation of renunciation requirements and the implementation of dual citizenship treaties.

While this paper cannot provide a single all-encompassing methodological approach for coding citizenship law's implementation, I will provide some guidelines for future research.

First, when it comes to measuring citizenship law, implementation should not be completely merged with law within the same indicators or categorisations as this would hinder causal analyses (Helbling, 2013; Janoski, 2010; Schmid, 2021). Hence, researchers should capture implementation in separate variables.

Second, more than one of the implementing dimensions can affect the implementation of a citizenship law provision. An example is the Bulgarian-American dual citizenship treaty, where both the entry into force as well as its interpretation by the Bulgarian authorities turned out to be problematic. Therefore, researchers should systematically assess all three implementation dimensions set out in this paper.

Third, regarding the coding process, there are broadly two different approaches researchers can take. At minimum, a binary categorisation can capture whether a legal provision is in force or not and whether its interpretation or application differs from the text of the legal provision as such. This helps flagging cases where an implementation gap might occur. In contrast, a more nuanced categorisation can also capture *how* citizenship law is applied.

Fourth, regarding sources, a systematic approach for establishing the interpretation of a provision could start with implementing regulations (if any), followed by any official guidance, and, if necessary, secondary sources. While these documents can provide strong indications of policy practices, fully capturing application requires conducting in-depth empirical research and fieldwork.

In order to bridge the implementation gap, it is necessary to set out an agenda for future research. First, future research should not only cover citizenship laws but also related fields of law. Better knowledge of the ties between citizenship law and *inter alia* (international) family law and civil registration law is needed in order to fully understand how citizenship is acquired and lost in practice. The conceptual framework presented in this study is not just relevant for the study of citizenship law, but researchers may also be able to apply it to other fields of public law. Second, researchers need to gain access to a broader array of sources. While the availability of citizenship law has greatly improved, access to secondary legislation is still limited. These sources often contain more specific information and are of great practical relevance. Gaining access to interpretative government sources (e.g. internal circulars) is equally important—if necessary researchers can use freedom of information requests for this purpose. Third, in some cases, it is necessary to conduct fieldwork in order to illuminate how a law's interpreted and applied in practice, which should also take bureaucratic hierarchies and regional differences into account. Improving our knowledge of citizenship law implementation therefore requires an interdisciplinary approach.

Supplementary Information

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Additional file 1. Country lists (exemptions from renunciation requirement due to impossibility to renounce original citizenship).

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Declarations

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