MINORITY STUDIES

MINORITY STUDIES

Special issue

Trends and Directions of Kin-State Policies in Europe and Across the Globe

16

2014

LUCIDUS KIADÓ

This review is published with the contribution of the
Research Institute for Hungarian Communities Abroad

NPKI | Research Institute for Hungarian Communities Abroad

and with funding by the
National Cultural Fund

nka Nemzeti Kulturális Alap

In cooperation with:
Bethlen Gabor Fund Management

Bethlen Gábor Alap

Editors:
Győző Cholnoky, Zoltán Kántor, András Ludányi,
Eszter Herner-Kovács

ISSN 2064-227X
Published by Lucidus Kiadó

Editorial office:
H-1014 Budapest, Hess A.tér 5.
cholnoky@mol.gov.hu
www.bgazrt.hu/npki
Typography by Scriptor Kft.
Printed by Scriptor Kft.

CONTENTS

Eszter Herner-Kovács – Zoltán Kántor

Kin-state Policies in Europe

Kin-state policies (kin-minority laws, dual citizenship, out of country vote) have been forming an integral part of the political agenda since the democratic transition of the post-communist countries in Europe. The salience of the nations and the issue of national minorities – contrary to the expectations of the European decision-makers and scholars of transitology – became a major focus of the politics of these countries and inevitably caused tensions, particularly in those areas where the boundaries of the state and the nation are not congruent.

After the breakdown of dictatorial regimes in East Central Europe it became again legitimate to organize society on a national basis and to define the state in national terms. This definition of the nation state is reflected in both legal and political practice, though perhaps most importantly through (the revised) constitutions.

The internationalization of kin-state policy dates back to 2001 when Hungary introduced its so-called Status Law, against which Romania raised several objections and thus provoked the statement of the Venice Commission on the matter. The Status Law not only offered preferential treatment (benefits in education, health care and transportation) to non-citizen ethnic Hungarians, but it also institutionalized the relationship of the Hungarian state and transborder Hungarians by issuing the so-called Hungarian Card.

Objections of neighboring states, the Venice Commission, the standpoint of the High Commissioner on National Minorities of OSCE, the letter of the enlargement commissioner of the European Commission and the Council of Europe Parliamentary Assembly all indicate that the Hungarian status law posed questions that are not welcome within the European Union and other organizations. Besides debates in Hungary and in neighboring countries, the issue of minorities living outside the borders of the kin-state and their group rights as well as the rights of individuals composing the group has grown to be a European one. The Venice Commission mainly dealt with theoretical questions, yet after its report it became obvious that supporting nationals living outside the borders is an existing practice of nation-states. From a stability perspective, the High Commissioner for National Minorities on the OSCE considered the support for such co-nationals threatening and saw a potential for conflict in it. PACE (Parliamentary Assembly of the Council of Europe) approached the question from the standpoint of national self-determination, seeing a

linkage between the definition of the nation, stability and minority protection. Those dealing with the question saw clearly that the definition of the nation has political consequences, even though they may be impossible to predict. International reaction also indicated that in the view of many, an ethnocultural definition of the nation might lead to political instability.

Bearing responsibility for and taking care of ethnic kins abroad by the homeland may take various manifestations (state subsidies for education programs, offering social benefits, supporting cultural programs etc.), however, the most evident and "visible" form of kin-state policy is the possibility of dual citizenship, that is, offering preferential naturalization for non-resident ethnic co-nationals, which is very often followed by the extension of voting rights as well. Dual citizenship might be a debated issue and may sometimes even cause bilateral conflicts, however, it is undoubted that this form of kin-state policy practices do exist in the case of almost all countries, therefore, it is necessary to constantly follow the developments in the field and to maintain academic dialogue about the issue as well. The colleagues of the Research Institute for Hungarian Communities Abroad and the European Studies Center of the University of Szeged had exactly the same motivation in mind when they jointly organized the international conference entitled "Kin-state policies in Europe and Across the Globe" in September 2012. This conference hosted lecturers from countries which have (longer or shorter) traditions in allowing dual citizenship and external voting rights for ethnic kins abroad. The present review publishes the papers of this conference.

The other apropos of the conference were the post-2010 developments of Hungary's kin-state policy. Hungary has one of the largest kin-minorities in Europe. There are about 2.2 million Hungarians living outside the borders of Hungary in the neighboring states, and there are probably millions living all over the world. That's why Hungary remains one of the most proactive kin-states in the region. Hungary amended its law on citizenship in 2010, making it possible for former Hungarian citizens and their descendants to acquire Hungarian citizenship without having to live in Hungary. Before the amendment, dual citizenship was only possible if the applicant had residence in Hungary. The amendment now allows those who speak the Hungarian language and are either prior citizens or descendants of Hungarian citizens to apply for citizenship. All those who obtain Hungarian citizenship are eligible to vote in the national elections (regardless of their place of residence).

There are many reasons states made it possible for citizens to vote while living abroad, but the basic reason is that citizens have a right to have a voice in legislation. Kin-minorities and diasporas who have ties to their homeland through citizenship should have the ability to vote regardless of where they reside, be it in the neighboring states or somewhere further abroad. There is no legitimate reason to prohibit citizens from voting because they live in other states, and this has been the European tendency over the last several years. This is especially the case when we consider increased economic migration throughout Europe. The increasing number of citizens who live and work in countries other than their homeland should not have to lose ties with the home state.

This review aims to give a snapshot of current kin-state policies in Europe, more specifically of citizenship and non-resident voting rights regimes, as well as an overview of international norms concerning these policies. While the first part of the issue shows reviews on internationals norms and practices of dual citizenship regimes and external voting, the second and third sections are dedicated to case studies of Western and Eastern European countries. A thorough discussion of existing practices of external voting around the world is offered by Hajnalka Juhász, while Marcel Szabó and László Trócsányi present the international and European legal aspects of external voting and dual citizenship. Since we wanted to illustrate that offering dual citizenship to non-resident ethnic kins is typical not exclusively in East Central Europe, the case studies of Germany (by Karl Cordell), Austria (by Ferdinand Mayrhofer-Grünbühel) and France (by Joëlle Garriaud-Maylam) are provided in the present volume. In the third section the citizenship policy and the practice of out of country vote of Romania (by Irina Culic), Serbia (by Dusko Radosavljevic), Croatia (by Viktor Koska), and Slovenia (by Felicita Medved), and the constitutional aspects of kin-state policy in Hungary (by Márton Sulyok) are presented, since kin-state policy is more relevant in the context of East Central Europe. The organizers of the conference intended to analyze the major issues in the framework of the international conference in order to see similar policies (from a comparative perspective.

All the papers included in this review are based on the presentations delivered at the joint international conference of the Research Institute for Hungarian Communities Abroad and the European Studies Center of the University of Szeged held in September 2012 in Budapest.

I.
Theoretical and Practical Implications of Dual Citizenship and External Voting Rights

László Trócsányi[1]

The Regulation of External Voting at National and International Level

The development of voter enfranchisement and universal suffrage is part of the commitment for civil rights and political freedoms. In general, several landmarks can be identified on the road to universal enfranchisement. Between 1870 and the 1940s, universal suffrage was established for males for example in Austria, Denmark, Italy, France, German, Spain and Switzerland. At the same time, the male suffrage already established was further extended to the entire male adult population in Belgium, Finland, Norway, the United Kingdom and Sweden. Several years later, universal suffrage reached a milestone and became "nearly universal." The earliest countries in Europe to give legal recognition to women's right to vote were Finland in 1906 and Norway in 1913. During the inter-war period and after World War II, women were given the right to vote in many European countries – Austria, Czechoslovakia, Germany Poland, Sweden and the United Kingdom in 1918-19, Hungary in 1920, Spain in 1931, France in 1934, Italy in 1945, Greece in 1952.[2] It is important to note that there are states in Europe where women were enfranchised merely a few decades ago (Switzerland in 1971 and Liechtenstein in 1984). In general, the next barrier to the right to vote was age. For a long time, the minimum voting age was between 23 and 30 as a rule until it was lowered to 18 later on in the 20th century.[3] Let me emphasize

---

[1] Prof. Dr. László Trócsányi, Ambassador of Hungary to France and substitute member of Hungary to the Venice Commission – European Commission for Democracy Through Law (CDL). The author was the co-rapporteur of the CDL on the report on out-of-country voting, Strasbourg, 24 June 2011, Study No. 580/2010. As part of this study the most important statements and observations of the said Report are laid out and explained. Cf. CDL-AD(2011)022 for more details.

[2] Rafael Lopez Pintor, Voter turnout in Western Europe, Stages in the Electoral History of Western Europe, http://www.idea.int/publications/voter_turnout_weurope/upload/Full_Reprot.pdf, 14., hereinafter: Pintor.

[3] "At the beginning of the 20th century, it was 24 in Austria, 25 in Belgium, Prussia, the Netherlands and Norway, and 30 in Denmark. In Sweden the voting age for general elections was lowered to 21 from 23 only in 1945. In the UK, where women had been granted the right to vote in 1918, the voting age for women then was 30; it was reduced to 21 in 1928, and the voting age for both men and women was further

that the long journey of the extension of universal suffrage has not ended yet. Nowadays, one of the major challenges for broadening universal suffrage depends on the willingness of states to improve the efficiency of voting from abroad for citizens living abroad. In our days, the demand for voter enfranchisement for citizens living abroad cannot be separated from a broader sense of the notion, i.e. that the right to vote has become a basic human right.

Several different theories exist about citizens residing abroad. Some people tend to think that the state should not bear responsibility for its citizens if they do not to live in the(ir) country of origin[4], thus they should find their way in the world. Others show indifference to the subject, while a lot of people would like to bridge the distance between them and their expatriates residing abroad. Among those residing abroad we can find a lot to whom their country of origin does not mean anything anymore, but a lot of people still have emotional ties thereto and are interested in its current events. In some countries the issue of citizens residing abroad does not constitute a real problem because the number of people leaving the country is negligible. However, there are a lot of states where, due to various reasons, the number of citizens residing abroad is significant. Therefore the question of the country of origin and citizens residing abroad is a complex one. If citizens live abroad due to migration, we can talk about expatriates, if expatriates establish major communities abroad we can talk about a diaspora. Furthermore there are national communities claiming to belong to the country of origin due to historical reasons. This phenomenon is primarily typical of Central and Eastern Europe. Prior to the democratic transitions in the Central and Eastern European countries, the issue of voting from abroad only surfaced in relation to Western European countries. Following the transition, the question has become relevant in the historically challenged Central and Eastern European states as well. While Serbia, Croatia, Romania, Slovakia and Hungary have adopted electoral laws regulating this issue, Western Europe remains concerned about these developments in the Eastern part of the continent. Do we have to worry about

lowered to 18 in 1969. In France, the right to vote at age 18 was also established in 1969." (Pintor, 15.)

[4] NB where the context necessitates, the terminology used herein corresponds to that used by the pertinent opinion of the Venice Commission on out-of-country voting for the sake of clarity in the arguments presented. At the same time, we shall bear in mind that there are other terms (e.g. kin-state, home country) – also used by the Venice Commission and other international organs – that could be used correctly in this context under different approaches to the topic in international law. I shall also refer to these terms as the context might require.

Central and Eastern European countries regulating the right to vote from abroad, especially with respect to Hungary's legislation on the issue? Does this amount to geopolitical threats? As far I am concerned, the answer is no. In Central and Eastern European countries dual identity is not a rare phenomenon. We can find Romanians and Slovaks living in Hungary who are Hungarian citizens and are not precluded from having a Romanian or Slovak citizenship, either.

The same practice exists between Romania and Moldavia. There are Hungarian citizens living in the neighbouring countries who are Romanian and Hungarian citizens at the same time. In the 21st century, we have to get used to the loosening up of the "texture of the nation-state". In the European Union, a multiple (or layered) identity is rather appreciated than considered to be dangerous. Multiple identity and dual citizenship may enhance reconciliation. It is the joint responsibility of politicians to accept this approach. National minorities living in the neighbouring countries may belong to the host country's political community as well as to the kin-state's cultural community. They can form their opinion on the government's functioning in the state they actually live in and in their country of origin, obviously, taking into consideration different perspectives. Italian or French citizens who hold another state's citizenship receive the same treatment.

The relationship between the country of origin and citizens residing abroad (including the issue of voting from abroad) is not only dealt with on the state level but international organizations also deal with the issue. Regarding the right to vote from abroad, the Council of Europe and its institutions outline a sort of soft law in the form of various recommendations. The judgements of the European Court of Human Rights are already legally binding in addition to the jurisprudence that did not fail to define certain pertinent rights and obligations in certain member states.

The Principle of Out-Of–Country Voting

We cannot state that the right to vote from abroad is regulated in a uniform fashion on the European level. However, we can identify various tendencies. In my brief presentation I would like to touch upon the following topics:

1. Who is entitled to vote?
2. Under what rules?[5]

[5] In this part, I will summarize the practices, soft law and regulation within the framework of the Council of Europe and include certain examples to underline arguments.

We shall endeavour to define the groups into which people voting from abroad can be categorized as a starting point.

1. Who is entitled to vote?

In general:

a.) firstly, citizens of a state may be abroad on the day of the election for business or personal reasons;

b.) secondly, there are citizens, who, for academic or employment purposes, spend a definite and temporary amount of time in another country, where they will reside for a given period;

c.) lastly, the third category comprises citizens residing abroad for a much longer period of time, who may sometimes have double nationality, and who settle down in the host country on a more permanent basis.

2. Under what rules?

The Parliamentary Assembly of the Council of Europe (PACE) encourages member states to allow their citizens living abroad to participate to the fullest extent possible in the electoral process: see Resolution nº 1459 (2005) (paragraph 7) and Recommendation nº 1714 (2005) (paragraph 1.ii) on the abolition of restrictions on the right to vote; see also Recommendation nº 1410 (1999) on links between Europeans living abroad and their countries of origin (paragraph 5.iii). These documents are of political importance, thus are without any legally binding effect. It seems clear that the Parliamentary Assembly of the Council of Europe had realized the utmost importance of the issue of the right vote of expatriates at an early stage. In Recommendation 1410 (1999) on the links between Europeans living abroad and their countries of origin, PACE stressed the necessity for a coherent policy on links between European expatriates and their country of origin, both at the state and the European level. It recommended that the Committee of Ministers (CM) "prepare a recommendation to the member states with the intention of fostering voluntary participation of expatriates in political, social and cultural life in their country of origin." The Assembly also invited member states to take account of the phenomenon of expatriation, its benefits and challenges in their emigration policies, notably with a view to introducing support measures in the cultural, educational, political and social spheres based on the criterion of nationality rather than territoriality. Additionally, Resolution 1459 (2000) of PACE on the abolition of restrictions on the right to vote should also be mentioned here, as it is an important instrument in inviting member states to "grant electoral rights to all their citizens (nationals), without imposing residency requirements;

[…] facilitate the exercise of expatriates' electoral rights by providing for absentee voting procedures (postal and/or consular voting) and [to consider] the introduction of e-voting consistent with Recommendation Rec(2004)11 of CM and to co-operate with one another to this end." Furthermore, according to Recommendation 1714 (2005) of PACE on the abolition of restrictions on the right to vote, the Assembly encouraged member states to allow their citizens living abroad to participate to the fullest extent possible in the electoral process: "The Committee of Ministers agrees with the Parliamentary Assembly that member states should take measures to facilitate the exercise of voting rights of citizens living abroad, for example through postal, consular or e-voting." The Venice Commission also highlighted in the Code of Good Practice in Electoral Matters (Opinion nº 190/2002, 1.1.1.c.v.) that "the right to vote and to be elected may be accorded to citizens residing abroad".

Documents of the Venice Commission

The Venice Commission adopted its aforesaid report on out-of-country voting on 16 June 2011, to the drafting of which I contributed as co-rapporteur. When discussing the contents of the document, the parties had the following debate:

a. Some were convinced that the report had to convey a positive message, since the right to vote could be derived from citizenship and – in principle – member states' regulations ensure the right to vote abroad.
b. However, the other standpoint was to place emphasis on problems and counter-arguments.
c. Finally, the Venice Commission was able to reach consensus: The final argument was that considering the large number of member states having permissive regulations, the report aimed at formulating a positive message; however, it also intended to draw attention to cases when a member state laid down certain specific conditions, restrictions and extraordinary rules for the exercise of the right to vote by its citizens residing abroad. Nevertheless, the report did not intend to formulate counter-arguments against the right to vote, which I personally consider very important and hereby emphasize once again.

Who is entitled to vote?

The Venice Commission's report lists more than thirty countries where the right to vote from abroad is recognised for citizens resident abroad or temporarily out of the country without any restrictions

concerning the period of absence or the obligation to have resided in the country. In this respect, either the period of absence or the duration of staying abroad of staying abroad is irrelevant, so the national legislation does not include any restrictions or limitations (including inter alia: France, Portugal, Italy, Belgium and Austria from Western Europe; Poland, Bulgaria, Romania, Serbia, Slovakia and Croatia from Central and Eastern Europe). According to legal literature this is the model of the 'caring (responsible) kin-state'.

In which countries?

Countries which have a rather significant number of citizens residing abroad adopt the above presented model of the 'caring kin-state'. These states seek to regulate the relationship between the country of origin and national communities living outside the borders that are defined in the constitution or through pertinent legislation. Typical examples are the Portuguese, Spanish and Italian constitutions. France established a special institutional network for French citizens residing abroad. Prior to the transitions in Central and Eastern European countries, the issue of citizens residing abroad was negligible, since living abroad was a suspicious phenomenon in itself. In the socialist countries talking about national communities abroad was forbidden. After the regime change, the situation changed significantly. Kin-states tend to think that they are responsible for the fate of expatriates residing abroad, and do not intend to abandon them or leave them "stranded". Through the amendment of citizenship laws, Central and Eastern European countries guaranteed the possibility of acquiring citizenship for compatriots living abroad comprehensively.

Subsequently, the Venice Commission presents those countries as well which ensure the right to vote for citizens residing abroad but lay down certain conditions. This group primarily includes the United Kingdom and Germany. In these countries the right to vote of citizens residing abroad is restricted to a certain time limit. In the United Kingdom, citizens living abroad or temporarily out of the country, must have lived in the United Kingdom (at a specific moment) during the past 15 years and be entered into the electoral roll at their place of origin. In Germany, citizens living outside the country can vote provided they were continuously resident in Germany for a period of at least three months and have not been out of the country for more than 25 years. Consequently, the Venice Commission took a stand on certain fundamental questions of formal requirements of the participation on elections. Attaching the exercise of the right to vote to entering into the electoral roll is not considered disproportionate or too restrictive. Most countries provide their citi-

zens residing or staying abroad the opportunity to request their entry into a special electoral roll. The state expects citizens residing abroad to cooperate actively and apply for their entry into the electoral roll in person. Most of the time citizens have to turn to embassies and consulates, but there are countries where the petition must be filed with electoral bodies. Most states only allow citizens residing abroad to vote on parliamentary elections or referenda, participation in local elections is solely permitted in exceptional cases.

Voting methods

The Venice Commission adopted recommendations concerning the method of voting as well. In the countries studied, there are five different ways of conducting elections:

a.) In the case of 16 countries (mostly including Central and Eastern European countries with a characteristic fear of "non-personal voting", such as Poland, Romania, Serbia and Croatia) citizens resident abroad can only vote in person. (In all these cases, voting takes place at the diplomatic representations, missions or consulates of the country concerned.)

b.) Vote in person or other methods

b1. Vote by post (solely by post: Italy, Germany, Austria)

b2. Proxy voting (vote by procuration) (e.g. France, United Kingdom)

b3. Advance voting (vote by anticipation) – which is especially advantageous for people who are on a brief stay abroad on election day, then they are allowed to cast their votes a few days or weeks earlier (Scandinavian states)

b4. E-voting (voting through the Internet, exceptional)

Arguments in favour of out-of-country voting and potential reasons for restrictions

The legal recognition of citizens is based on the principle of "nationality". The citizens of a country therefore enjoy, in principle, all the civil rights recognised in that country. The principle of "out-of-country voting" enables citizens living outside their country of origin to continue participating in the political life of their country on a "remote" basis. Some countries even elect Members of Parliament specifically to represent citizens living outside the country (Croatia, France, Italy, Portugal, Romania, "the former Yugoslav Republic of Macedonia").

Out-of-country voting guarantees equality between citizens living in the country and expatriates. It ensures that citizens maintain ties

with their country of origin and boosts their feeling of belonging to a nation of which they are members regardless of geographical, economic or political circumstances.

Finally in European Union Member States, owing to free movement, and taking into account the growing number of citizens making use of this freedom, it is necessary to find a solution to ensure the participation of these citizens in the political life of their country of origin, as a consequence of their mobility.

The starting point of potential restrictions

1. The assumption that a non-resident citizen is less directly or continuously concerned with, and has less knowledge of, a country's day-to-day problems – which may be termed a "tenuous" link with the country of origin;
2. The impracticality and sometimes undesirability (in some cases impossibility) of parliamentary candidates presenting the different electoral issues to citizens living abroad so as to secure the free expression of opinion;
3. The influence of resident citizens on the selection of candidates and on the formulation of their electoral programmes;
4. the correlation between one's right to vote in parliamentary elections and being directly affected by the acts of the political bodies so elected;

In the case of states whose citizens live abroad in large numbers, to the extent that their votes could appreciably affect election results, it seems more appropriate to provide parliamentary representation for the citizens residing abroad by pre-defined numbers of Members of Parliament elected by them. A solution of this kind has been adopted in, for example, France (in the Senate 12 senators represent French citizens living abroad), Italy (12 MPs and four senators represent Italian citizens living abroad; however, these citizens may choose between registering in a constituency within the country or in the constituency of Italians abroad) and Portugal (Portuguese citizens living abroad have four Members of Parliament).

The most recent judgement of the European Court of Human Rights

The practice of the European Court of Human Rights is quite careful when it comes to the issue of acknowledging the right to vote from abroad. On the one hand, the Court recognises that most European states guarantee their citizens the right to vote from abroad; however,

it does not deduct the responsibility of states for providing the aforementioned rights from this practice. In my opinion the Court's Grand Chamber weighed political aspects when, in *Sitaropoulos and Giakoumopoulos v. Greece,* it came to the conclusion that European countries had not yet reached consensus concerning the issue of voting from abroad. Two-thirds of the Council of Europe's member states – i.e. more than thirty countries – provide their citizens the right to vote from abroad, regardless of the duration of their stay abroad. It is beyond argument that there are countries which do not enable their citizens to vote from abroad or only do so with certain limitations. Nevertheless, as far as I am concerned a significant consensus exists regarding the issue within the member states of the Council of Europe. I have to note here that in other cases the European Court of Human Rights has been more permissive when deciding on the existence of consensus within its contracting parties.

Sitaropoulos and Giakoumopoulos v. Greece

As the Venice Commission so aptly observed, a decisive step had been taken by the European Court of Human Rights when it delivered a judgement on Greek officials working for the Council of Europe, who had asked to vote at the 2007 parliamentary elections.[6] Since the adoption of the Greek Constitution in 1975, Article 51(4) has authorised the legislature to lay down the conditions for expatriate voters to exercise voting rights. However, for 35 years the Greek legislature has failed to implement this provision. Since then, no fresh initiative has been taken to promote Greek expatriates' right to vote. The applicants alleged that their inability to vote from their place of residence amounted to disproportionate interference with the exercise of their right to vote in 2007 parliamentary elections, in a breach of Article 3 of Protocol No. 1. In its judgement of 8 July 2010 the Court, sitting in Chamber, held by 5 votes to 2, that there had been a violation of Article 3 of Protocol No. 1. The Court undertook a comparative analysis of the domestic law of 33 Council of Europe member states and established that a large majority (29) had implemented procedures allowing voting from abroad. The Court did not consider that Article 3 of Protocol No. 1 had to be interpreted as generally imposing a positive obligation on national authorities to guarantee voters abroad the right to vote in parliamentary elections. The situation is, however, different in Greece owing to the existence of a specific constitutional provision. Without declaring that the Greek Constitution made it

[6] ECtHR, 8 July 2010, Sitaropoulos and Others v. Greece, Application No. 42202/07, hereinafter: ECtHR Judgement of 10 July 2010.

compulsory to introduce the right to vote from abroad, the Court held that "the absence for such a long period of regulations on the right of expatriates to vote from their place of residence, despite the rule laid down in Article 51 § 4 of the Constitution, is likely to constitute unfair treatment of Greek citizens living abroad in relation to those living in Greece".[7] Referring to European practice (most states allow voting from abroad) and to the fact that the right to vote was at risk, which reduced member states' margin of appreciation, the Court held that "the absence of the legislative implementation of the rules laid down in Article 51 § 4 of the Constitution for a period lasting more than three decades, combined with the development of the law of the Contracting States in this area, is sufficient to engage the liability of the respondent State under Article 3 of Protocol No. 1"[8] According to the applicants' view it was clear that under relevant international documents, such as the instruments of the Council of Europe, Parliamentary Assembly Resolution 1459 (2005), Recommendation 1714 (2005) and the Venice Commission Code of Practice in Electoral Matters, the member states were under an obligation to make the right to vote effective. Especially, the applicants noted the study that the chamber referred to in its judgement, at least twenty-nine member states of the Council of Europe guaranteed in practice the right to vote for expatriates living abroad in parliamentary elections. On 15 March 2012, in its judgement the Grand Chamber of the Court held unanimously that there had been no violation of Article 3 of Protocol No. 1. The Court notably found that neither the relevant international and regional law – ICCPR, American Convention on Human Rights and the African Charter on Human and Peoples' Rights – nor the varying practices of the member states revealed any obligation or consensus, which would require member states to make arrangements for the exercise of voting rights by citizens living abroad. The Court also highlighted that the Contracting States enjoy a wide margin of appreciation in connection with their choice of electoral system. The Court noted that while the great majority of Council of Europe member states allowed their citizens to vote from abroad at the same time, some did not, and in those States who did allow voting from abroad the practices had a wide variety of approaches. The Court also observed that although the Greek Constitution contained a provision encouraging the legislature to arrange the right to vote for expatriates living abroad, it was not obliged to act accordingly. The Court found that the situation, namely, that the applicant had to travel back to Greece in order to

[7] Ibid, para 43
[8] ECtHR Judgement of 10 July 2010, para 44

vote was not disproportionate to the point of infringing the right in the question. Today, in the world of modern technology, when voting by post is widely known and recognised, the Court's argument might seem a little bit anachronistic. Last, but not least, let me emphasize an encouraging observation of the Court: "the Court also takes into consideration the fact that the rights under Article 3 of Protocol No. 1., is not a privilege in the twenty-first century, the presumption in a democratic State must be in favour of inclusion." In spite of the fact that the Court held unanimously that there had been no violation of Article 3 of Protocol No. 1., they nonetheless expressed a favourable and positive approach to external voting. All in all, we can conclude that the European Court of Human Rights was taking political aspects into consideration when deciding on the case, contrary to expectations. However, the fact is that by its judgement, the Court proved that legally not binding recommendations of Council of Europe bodies show a tendency towards ensuring the right to vote for citizens residing abroad. Thus European legal development is heading in the direction of the recognition of the aforementioned right.

Conclusion

National practices regarding the right to vote of citizens living abroad and its exercise are far from being uniform in Europe. However, relevant legislation will hopefully adapt and abide by this more favourable trend for out-of-country voting in the immediate future, at least in relation to national general elections, as regards citizens who maintain their ties with their country of origin. That is true at least of persons who are temporarily out of the country. However, definitions of the temporary nature of a stay abroad may vary on a broad scale and if this criterion is adopted, it should be clarified. Distinctions should also be drawn according to the type of elections. National, single constituency elections are easier to open up to citizens residing abroad, while local elections are generally closed to them, particularly on account of their tenuous link with local politics. The proportion of citizens living out of the country may also vary on a country by country basis. Where these numbers are high, it might have a decisive impact on the outcome of the election, which may justify the implementation of specific measures. It is perfectly legitimate to require voters living abroad to register to be able to vote, even if registration is automatic for residents. The obligation to vote in an embassy or consulate may in practice severely restrict the right to vote of citizens living abroad. This restriction may be justified on the grounds that other means of voting (postal vote, proxy

voting, e-voting) are not always reliable, and are, therefore, unavailable. Although the introduction of the right to vote for citizens who live abroad is not required by the principles of the European electoral heritage, the European Commission for Democracy through Law suggests that states, in view of citizens' European mobility, and in accordance with the particular situation of certain states, adopt a positive approach to the right to vote of citizens living abroad, since this right fosters the development of national and European citizenship.

BIBLIOGRAPHY

European Court of Human Rights, 8 July 2010, Sitaropoulos and Others v. Greece, Application No. 42202/07, hereinafter: ECtHR Judgement of 10 July 2010.

European Commission for Democracy Through Law (Venice Commission), Report on Out-of-Country Voting, Strasbourg, 24 June 2011, Study No. 580/2010, Cf. CDL-AD(2011)022.

Rafael Lopez Pintor, Voter turnout in Western Europe, Stages in the Electoral History of Western Europe, http://www.idea.int/publications/voter_turnout_weurope/upload/Full_Reprot.pdf

Marcel Szabó

International Law and European Law Aspects of External Voting with Special Regard to Dual Citizenship

In the following the author shall analyze the international and European law aspects of participation in elections by citizens residing abroad and persons possessing dual citizenship. As a first step the legal concept of citizenship will be examined. Although the author is rather inclined to define citizenship as Hanna Arendt quite accurately described it: the right of the individual to have rights. A scholar of international law should also make reference to the most widely accepted definition of citizenship as elaborated by the Hague International Court of Justice in the *Nottebohm* judgement[1] of 1955. In the Nottebohm case, the facts of which were also related to a situation of multiple citizenship, the Hague International Court of Justice declared: „*nationality is a legal bond having at its basis a social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred either directly by the law or as the result of an act of the authorities is in fact more closely connected with the population of the State conferring nationality than with that of any other state.*" Thus, the Court of Justice described citizenship as a complex relationship comprising elements of emotional attachment as well as existential aspects, while the whole concept is based on the social reality of the bond connecting the citizen with the state.

The legal content of citizenship was subject to significant changes throughout the centuries. However, it may safely be argued that only citizens of the state enjoy the totality of political rights, while full social and economic rights are also reserved exclusively for the citizens of the state. Citizens have the right of return to their country of origin and the right to establish themselves in the same at all times. Furthermore, in third coutries they are entitled to consular and diplomatic protection afforded by their own state. Citizenship

[1] See judgment of 6 April 1955 in the *Nottebohm case* (Liechtenstein v Guatemala) (I.C.J. Reports [1955]), p. 4.

not only entails rights, but also duties, in particular tax liability and in countries where it still exists: military service as well as citizens' participation in the administration of justice in countries employing the jury system.

It is not up to the citizens, but up to of the state to determine the scope of the persons rights it recognizes as its citizens. Certain states follow the principle of *ius sanguinis* in establishing the relationship towards their citizens, that is, the offspring of their citizens also acquire the respective citizenship, while other states grant citizenship to those born on their territory based on the principle known as *ius soli*. The cohabitation of these two principles in different parts of the world led to the result that many acquired the citizenship of more than one state, giving rise to various problems under international law. In the last few decades even states that had up until now operated on the basis of territorial sovereignty now consider affording voting rights in their national elections to their citizens living abroad. Initially such efforts were limited to diplomats and soldiers, later, the voting rights of citizens residing and working abroad also came into consideration, as well as the possibility of reestablishing the relationship between the native country and those persons who had left as a result of persecution. Finally, around the millenium citizens were afforded voting rights in their country of origin as a kind of historical compensation for their disadvantaged situation resulting from the breaking up of certain European states. With this, the process of granting voting rights to citizens living abroad was completed and widely confirmed. In the following the complicated interplay between the development of external voting and multiple citizenship will be analyzed.

The conceptual expansion of the sociological notion of dual citizenship

In Europe the notion of citizenship has radically changed.[2] From a sociopolitical and sociological point of view the concept of citizenship acquired a significantly broader meaning. As Bosniak points out, citizenship refers to a formal or nominal membership in an organized political community.[3] In this sense, the notion of political community is not merely, or not necessarily restricted to the state. The concept of post-national citizenship marks the diminishing signifi-

[2] Linda Bosniak: Citizenship Denationalized, *Indiana Journal of Global Legal Studies,* 7 (2000) 2:447-508., p. 449.

[3] Ibid. p. 447.

cance of identity pertaining to citizenship on the one hand, at the same time it also enables us to discuss the quasi-membership rights of non-citizens in the framework of post-national citizenship. Moreover, the idea of post-national citizenship also entails that the affinity of a person to a feminist, ecological or other political community is stronger than his or her bond with the state.[4] Trans-national citizenship refers to the situation where a great number of persons belong to several political communities and states at the same time. According to some scholars, those international human rights documents that guarantee a list of rights to the individual also give rise to a feeling of belonging to a certain political community, a community which may be described along the lines of post-national citizenship. Beyond the categories of post-national and trans-national citizenship, Richard Falk also identified the category of global citizenship.[5] Some accord greater weight to their membership in Amnesty International or Greenpeace or another political community than to their connection with a national community.

The European Union has created a special community of law, establishing a link between the 500 million citizens of the Union Member States through the institution of union citizenship. Based on the institution of union citizenship, all union citizens must be afforded the same treatment in the territory of all Member States of the European Union as received by their own nationals with respect to economic and social rights. Citizens are entitled to return to their country at any time, however, within territory of the European Union, union citizenship and relevant provisions of European law also guarantee the right of free entry into other Member States as well. As a result of the rights endowed by European law, union citizens may not only seek diplomatic and consular protection from their home state but – pending certain conditions – also from any other EU Member State. In many cases citizenship offers refuge from prosecution in foreign states for persons returning to their own country. Based on the law of the European Union and with the adoption of the European Arrest Warrant the Member States may no longer afford such a safe haven for their citizens against other European states. In consequence, the institution of national citizenship is becoming more and more an empty shell in Europe. As already mentioned above, the primordial duties of citizens – in countries foreseeing such

---

[4] Linda Bosniak: Multiple Nationality and the Postnational Transformation of Citizenship, *Virginia Journal of International Law,* 42 (2002): 979-1004., pp. 1002-1003.

[5] Richard Falk: The Making of Global Citizenship, in: Jeremy Brecher et al. (eds.): *Global Visions: Beyond the New World Order*. Boston: South End Press, 1993.

duties – are the participation in the administration of justice, military service and tax liability. Employing the jury system was never typical of Europe, military service is in an obvious decline on the continent and from the point of view of the conditions of tax liability, all union citizens are endowed with the same rights and duties.

As a result, those union citizens who have established themselves in other Member States are subject to a special legal status described by Bauböck with the notion of *denizenship*.[6] According to this status the person residing in another state is endowed with almost identical rights as the citizens of the host state, while still possessing the entirety of political and civil rights pertaining to his or her citizenship in the country of origin. Furthermore, union citizens residing in another Member State may participate both in the municipal and European Parliamentary elections in their country of residence.[7]

In the following the author shall shed light on the problematic aspects of this important legal and political issue through the shift in the perception of dual citizenship under international law and European law as well as the voting rights of citizens living abroad.

The development of international law with respect to dual citizenship

While the institution of dual citizenship had existed for centuries, the voting rights of citiznes living abroad was only introduced in the different legal systems following the 2nd World War. We must commence our assessent with the analysis of the development of the institution of dual citizenship, and demonstrat its stong relationship to voting rights.

---

[6] Rainer Bauböck: Stakeholder Citizenship and Transnational Political Participation: A Normative Evaluation of External Voting, *Fordham Law Review,* 75 (2007) 5: 2393-2447., p. 2396.; Rainer Bauböck: Expansive Citizenship: Voting beyond Territory and Membership, *Political Science and Politics,* 38 (2005) 4: 683-687., p. 683.

[7] Exploiting administrative laxity, around one and a half million European citizens vote in the European parliamentary elections both in the country of their residence as well as in their country of origin, and similarly, vote in municipal elections in the country of residence and the country of origin, where they presumably maintain – at least on paper – a place of residence. See: The practice of double citizenship in the EU Member States), June 2010, p. 16. Available at www.kmkf.hu/tartalom/dokumentumok/kettos_allampolgarsag.doc *(Last visited: 12 September 2012).*

The long arm of perpetual allegiance

In the first half of the 19th century dual citizenship was tied to the legal concept of *nemo potest exuere patriam*. This British legal doctrine describes citizenship – or, at that time the status of tributary subjects – as *the long arm of perpetual allegiance*. According to this doctrine citizens couldn't disavow their country, not even by emigrating and establishing themselves in another, foreign state, thus, the bond of citizenship was deemed unbreakable. In the first half of the 19th century, citizens of the United States of America visiting Spain, Prussia or Great Britain were systematically arrested and forcibly enrolled in the armies of their respective states, due to the fact that these countries still viewed such persons as their own citizens.

One state, one citizenship

In the late 19th century the United States of America launched a diplomatic campaign in Europe and liberated its citizens from the „long arm of perpetual allegiance" with the conclusion of the Bancroft Treaties. In accordance with the Treaties the signatory European states accepted that following an uninterrupted five years of residence in the USA their emigrated citizens assumed American citizenship. In turn, the United States of America also accepted that should such persons return to their country of origin, they shall regain their original citizenship and will be the sole citizens of such states. Thus, the Bancroft Treaties may be seen as international conventions drafted on the basis of the principle of exclusive citizenship.[8]

The next step in the history of the development of citizenship under international law was the 1923 advisory opinion of the Permanent Court of International Justice rendered in the case of citizenship decisions issued by Tunisia and Morocco.[9] The Court determined that the issue of who can be deemed a citizen of a country forms part of the exclusive competence of the given state (*domain reservé*). This legal doctrine is still valid under international law. The Hague International Court of Justice reaffirmed the decision of the Permanent Court of International Justice in the *Nottebohm* case, stating that:

[8] So true, that Bancroft himself compared dual citizenship to bigamy in his letter to the British prime minister, Lord Palmerston, dated 26 January 1849, with the distinction that dual citizenship is even worse than bigamy, so horrible that humanity has not even come up with a word for it. See Dimitry Kochenov: Double Nationality in the EU: An Argument for Tolerance, *European Law Journal,* 17 (2011): 323-343., 17. footnote.

[9] See: Advisory Opinion of the Permanent Court of International Justic of 7 February 1923 on Nationality Decrees issued in Tunis and Morocco (France c. Great Britain), PCIJ Series B No 4.).

„*It is for Liechtenstein, as it is for every sovereign State, to settle by its own legislation the rules relating to the acquisition of its nationality, and to confer that nationality by naturalization granted by its own organs in accordance with that legislation*".

According to the preamble of the Hague Convention on certain questions relating to the conflicts of nationality law of 1930, „*the ideal towards which the efforts of humanity should be directed in this domain is the abolition of all cases of statelessness and dual nationality*". The goal of the Convention is therefore to decrease or abolish cases of dual citizenship, however, it realistically counts with such situations and the possibility of legal problems arising therefrom. One of the key aims of the Convention is to find a solution to the multiple military obligation of persons holding several citizenships, which led to the adoption of the additional protocol to the Convention on 30 April 1930.[10] It is worth noting that the Convention is still in force between twenty State Parties,[11] thus, the rules laid down therein continue to form part of the living corpus of international law.

In 1954 Secretary General of the United Nations directed a question to the International Law Commission of the United Nations with regard to multiple citizenship. In response, the International Law Commission elaborated a report on multiple citizenship for consideration by the General Assembly, the main conclusion of which was that „*all persons are entitled to posess one nationality but one nationality only*".

Based on Article 15 of the Universal Declaration on Human Rights, everyone is entitled to the right to citizenship. However, the entitlement contained in the Declaration cannot be invoked against the states, the right of persons to citizenship does not guarantee – whatever legitimate factors underlying their claim notwithstanding – that they may lawfully claim that a state accept them as its citizen.

Towards the acceptance of dual citizenship

We may encounter the implicit acceptance of dual citizenship in the *Convention on the Elimination of All Forms of Discrimination against Women* adopted by the General Assembly on 18 December 1979 which entered into force on 3 September 1981. According to Article 9 of the Convention the State Parties ensure „*that neither marriage to an alien nor change of nationality by the husband during*

[10] Protocol relating to military obligations of certain states of double nationality (Hague, 12 April 1930).

[11] The majority of the Parties to the Convention are members of the British Commonwealth.

marriage shall automatically change the nationality of the wife", in order to avoid a situation that would *„force upon her the nationality of the husband*". Thus, the Convention seeks to prevent states from stripping women of their original nationality due to their marriage with an alien. However, facts show that almost all countries' citizenship laws enable women to acquire the citizenship of their husband. Although states may adopt national rules according to which only women who actually acquire the citizenship of their husband may be deprived of their original citizenship, this is much more difficult for the states to control than the mere act of marriage. Therefore we may conclude that such a rule opens up the possibility of acquiring dual citizenship for a significant portion of the society.

The development of dual citizenship resembles a subterranean brook: for a long period of time only few states accepted it, however, resistance was rare and sluggish, as a result, the institution which was previously merely tolerated became so rooted that in practice even the mightiest states gradually gave up their resistance and multiple citizenship thus evolved into an accepted institution of customary international law. A vivid example would be the study carried out in 2005 by the United States House of Representatives' Committee of the Judiciary on dual citizenship. During the inquiry not only did the esteemed professors state that dual citizenship is incompatible with the moral and psychological foundations of constitutional democracy in America, but that potential terrorists may give birth to children in the United States for the sole reason of building a fifth column. Further, dual citizenship was investigated from the perspective of political bigamy. There is no greater proof of how deeply the institution of dual citizenship became embedded in the international community than the fact that notwithstanding the serious doubts and objections of American decision-makers and opinion leaders the United States of America has totally shed its resistance towards dual citizenship and today, one may only lose American citizenship, if one personally renounces it at an American embassy.

Thus, the international community exhibits more and more acceptance of the notion of dual citizenship and takes the view that „*dual citizenship has to be seen as a gesture of welcome and recognition for those who want to integrate in one political community without giving up links to another community*."[12] As Kochenov quite correctly

[12] Joachim Blatter: Dual Citizenship for Ethnic Minorities with Neighbouring Kin States, in: Rainer Bauböck (ed.): *Dual Citizenship for Transborder Minorities? How to respond to the Hungarian-Slovak tit-for-tat,* European University Institute Working Paper, Robert Schuman Centre for Advanced Studies, RSCAS 2010/75, p.

points out, the development of international law stripped states of the legal possibility to strive towards the creation of a homogenous, ethnically monocultural society using citizenship policy as an instrument.[13] It is worth reiterating Jonathan Bach's position, according to which: „*dual citizenship and extending voting rights does not challenge the principle of national territorial jurisdiction and the nation-state system*".[14]

Dual citizenship – Legal activism of the Council of Europe and the OSCE

In Europe, we are witnessing a novel and significant development regarding multiple citizenship with the adoption of the 1997 *European Convention on Nationality* under the auspices of the Council of Europe.[15] Article 3 of the Convention declares that each state shall determine under its own law who are its nationals, however, such laws must be consistent with international conventions, customary international law and the general principles of law. The Convention marks a shift from the previous rejecting or reserved stance of European states towards dual citizenship by assuming a neutral position regarding the same. The Explanatory Report attached to the European Convention on Nationality makes it clear that the signatories of the Convention remain free to determine whether or not to allow their citizens to possess multiple citizenship. However, should the state permit its citizens to possess dual citizenship, it may not discriminate between such citizens holding just one citizenship and those who actually possess various citizenships.[16] Based on items 69 and 70 of the Explanatory Report, persons living abroad may lose their privileges of retaining their citizenship or regarding favourable renaturalization in case they have resided abroad for several generations.[17]

---

13. Available at http://eudo-citizenship.eu/docs/RSCAS%202010_75.rev.pdf (Last visited: 15 September 2012).

[13] Kochenov 2011, p. 323.

[14] Jonathan Bach: Extending Rights to Citizens Abroad: Implications for the Nation-state, *International Affairs Working Paper*, 2011-02, April 2011, p. 2. Available at http://www.gpia.info/files/u706/Bach_2011-02.pdf (Last visited: 15 September 2012).

[15] European Convention on Nationality adopted under auspices of the Council of Europe and signed on 6 November 1997. Promulgated by Act No. III. of 2002.

[16] This rule is in conformity with Article 17 of the European Convention on Nationality.

[17] „One of the main aims of this provision is to allow a State, which so wishes, to prevent its nationals habitually living abroad to retain its nationality generation after generation. Such loss, however, is only possible for persons possessing

The most important rules of the European Convention on Nationality guarantee fair treatment for the members of two disadvantaged groups in the realm of multiple citizenship. In Article 14 the Convention explicitly foresees the conservation of the citizenship of those multiple citizens who acquired the citizenship of various countries at birth as a consequence of the interplay between different principles of citizenship. Further, Article 16 of the Convention obliges signatory states to conserve the citizenship of such nationals, who, due to the restrictive laws of a third state cannot renounce their previous citizenship.

The judgment of the Strasbourg Court of Human Rights in the *Tănase v Moldova* case[18] further substantiates the wide acceptance of the institution of dual citizenship on the European continent. In said case, the European Court of Human Rights determined that an attempt to prevent the acquisition of mandates by Moldovan dual citizens in the parliament of Moldova constituted an infringement of Article 3 of Protocol No. 1 to the European Convention on Human Rights. The judgment of the European Court of Human Rights reflects the changing stance of the European states towards dual citizenship and the spreading of a more permissive attitude. At the same time, this development may only be described as an emerging regional international law, more precisely, a form of European soft law.

Dual citizenship based on membership in a national community

The Convention prohibits discrimination between citizens based on national or ethnic origin, religion, race, colour or sex and with this, the Convention greatly contributed to the de-ethnicization of citizenship law.[19] However, the prohibition of discrimination based on national or ethnic origin does not exclude the adoption of provisions which afford more favourable conditions for the acquisition of citizenship for persons who share the same culture, language or ethnicity as the majority population of a given state but do not possess its citizenship, as it was laid down in Article 5 of the Explanatory Report

---

another nationality… this provision applies in particular when the genuine and effective link between a person and a State does not exist, owing to the fact that this person or his or her family have resided habitually abroad for generations. It is presumed that the State concerned will have taken all reasonable measures to ensure that this information is communicated to the persons concerned."

[18] ECHR: Tănase and Chirtoacă v Moldova (Application no. 7/08). Judgement. Strasbourg. 27 April 2010.

[19] As it is widely known, the Greek law on citizenship has until quite recently made a distinction between citizens with ancestors of Greek nationality and Greek citizens who are not of Greek ethnicity. Naturally, such a distinction would amount to a serious breach of the provisions of the 1997 Convention on Nationality, but it would also be a grave infringement of the general principles of European law.

to the European Convention on Nationality. Based on the Bolzano/Bozen Recommendations on National Minorities in Inter-State Relations issued by the High Commissioner on National Minorities of the Organization for Security and Co-operation in Europe states are entitled to take into account historical, cultural and family ties as well as language skills when granting citizenship to persons living abroad.[20] We may discern a very significant development of European law in the Bolzano Recommendations. In essence, the Bolzano Reccomendations reflect the acceptance of a form of dual citizenship where citizenship is granted to persons who, albeit living abroad, share the same cultural ties.

Following the dissolution of the Yugoslav states and the break up of the Soviet Union certain successor states adopted new citizenship rules aiming at restoring the citizenship of those persons who had previously possessed the nationality of the state and lost such citizenship through no fault of their own. The Baltic states and other Soviet successor states did not afford citizenship rights to Soviet settlers arriving in the wake of Soviet territorial expansion nor to their descendants, for this reason, Russia offered and granted citizenship to persons affected by such laws. Today there are more than one million Russian citizens residing in the Soviet successor states. Rumania offered citizenship to persons of Rumanian nationality residing in Moldova.[21] For a long period of time, Yugoslavia was the homeland of Southern Slavonic peoples, however, following its dissolution and the drawing of the state borders on the basis of the principle *uti possidetis juris* which in many cases failed to reflect the ethnic realities, successor states guaranteed the possibility of re-establishing the legal bond between nationals residing beyond the state borders and the kin-state. Of all such cases, the issue of the Croats living in Bosnia was the most pressing: today, around 800 000 Bosnian Croats possess Croatian citizenship, but many nationals applied for Serbian citizenship[22] from the Bosnian Republika Srpska.[23]

Such Central-European developments laid the foundations of the legal possibility for Hungary to grant citizenship to those persons, who, through no fault of their own and primarily as a result of the peace treaties signed following the first and the second world war, lost their Hungarian citizenship. In this case we are also witnessing a legal process which is designed to afford a sort of personal justice to

[20] OSCE HCNM (2008), p. 19.
[21] Moldova formed part of Rumania until 1943 when, as a result of the Molotov-Ribbentrop pact it was annexed to the Soviet Union.
[22] Bauböck 2010, p. 5.
[23] The Bosnian Serb Republic.

the individuals involved. It seems that the international community is very understanding and accepting towards such developments that may prevent numerous conflicts and guarantee the peaceful co-existence of peoples in East-Central Europe.

Dual citizenship in the European Union

The concept of dual citizenship is of very different significance in the European Union, than anywhere else in the world. There is a clear breach of European law if citizens living abroad cannot participate in the political life of their own Member State, and with this, the determination of the composition of Union institutions dependant on Member State representation. As a result of the introduction of union citizenship national citizenship has lost some of its meaning: its relevance has been watered down to voting rights in national elections. In consequence, 17 Member States of the European Union no longer prescribe the renouncement of citizenship in case of the acquisition of another citizenship, thereby accepting that their citizens may become dual citizens. However, 10 Member States still insist on this legal condition, notwithstanding the fact that legal scholarship and in particular Dimitry Kochenov find that such rules amount to a serious breach of the fundamental principles of European law.[24]

To sum up we may agree with Ruth Donner, who pointed out that under the classic theory of international law each individual only had a right to possess one citizenship.[25] And although an international law rule of universal scope regarding dual citizenship still doesn't exist, in Judit Tóth's view, states have freely adapted their respective rules to the pressures of changing social circumstances.[26] As a result, 45 percent of the states allow for the institution of dual citizenship. Thus, instead of the previous rejection of the institution we may now say that the states take divergent positions as to the acceptability of dual citizenship. In comparison, due to particular historical and social circumstances, the institution of dual citizenship is much more widely accepted in Europe. In particular, one must have regard to the legal developments brought about by the Council of Europe and

[24] See: Dimitry Kochenov: Double Nationality in the EU: An Argument for Tolerance, *European Law Journal,* 17 (2011): 323-343.

[25] Ruth Donner: *The Regulation of Nationality in International Law*. 2nd ed. New York, Transnational Publishers, Inc., 1994, pp. 18-19., 25.

[26] Dr. Judit Tóth: Miért nem lehet, ha szabad? A többes állampolgárság a nemzetközi és az európai közösségi jog felől [in English: Why isn't it possible if it is allowed? Multiple citizenship in the light of international law and European law], *Romániai Magyar Jogtudományi Közlöny,* (2004) 2: 5-14. Available at http://rmjk.adatbank.transindex.ro/pdf/01KozjogToth.pdf (Last visited: 15 September 2012).

the European Union, the special relationship between the Member States of the Union and their citizens, as well as the institution of union citizenship. If not in the case of universal public international law, but at the very least on the level of European regional international law we may conclude that dual citizenship has become acceptable in the following cases:

a. women acquiring multiple citizenships by virtue of marriage;
b. individuals acquiring the citizenship of more than one state *ex lege* at birth;
c. persons unable to renounce their previous citizenship due to restrictions imposed by third states;
d. the renaturalization of persons residing permanently abroad, but sharing ties with the national community, who, due to historical reasons lost their citizenship through no fault of their own.

In the following the development of the concept of external voting rights of citizens living abroad will be discussed, finally, the relationship between dual citizenship and external voting shall be examined against the backdrop of Union law.

Voting rights of citizens living abroad based on international law (external voting)

Article 25 of the International Covenant on Civil and Political Rights[27] declares that: „*every citizen shall have the right and opportunity … without unreasonable restricion … to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be by secret ballott, guaranteeing the free will of the electors*". Article 2 of the Convention makes clear that each State Party undertakes to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Convention. Article 21 paragraph 1 of the Universal Declaration of Human Rights ensures that everyone has the right to take part in the government of his country, directly or through freely chosen representatives.[28] As Rubio-Marin points out, the wording of the Declaration draws a clear relationship between political rights and citizenship.[29]

[27] Promulgated in Hungary by Statutory decree No. 8 of 1976.

[28] Article 3 of the Additional Protocol 1 to the European Convention on Human Rights also foresees the active and passive voting rights of citizens in equal and secret elections.

[29] Ruth Rubio-Marin: Transnational Politics and the Democratic Nation-State: Normative Challanges of Expatriate Voting and Nationality Retention of Emig-

Soldiers, diplomats

Until world war II states did not find it necessary to afford voting rights to their citizens residing abroad. In many countries however the unthinkable sacrifice rendered by the armed services had the effect that national parliaments decided, soldiers based abroad and diplomats serving in foreign countries must be granted voting rights. This was the case for example in Great Britain, Canada and Australia.[30]

Voting rights of migrant workers

The first milestone of the recognition of the voting rights of migrant workers was the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families adopted under the auspices of the United Nations, which, in its Article 41 declares: „*migrant workers and members of their families shall have the right to participate in the public affairs of their State of origin and to vote and to be elected at elections of that State.*" Hitherto the Convention has only been ratified by 34 states, however, it is a clear sign of the positive attitude of the international community towards the conservation of the political rights in the country of origin of persons working in third states.

As regards the external voting rights of citizens living abroad, the real breakthrough was when the majority of the countries accepted that the state must afford voting rights to those citizens who left the country to take up work somewhere else. The social foundations of this legal development lies in the history of European integration and are based on the fact that today, 12 million citizens of the European Union's population of 500 million persons reside in another Member State, the majority of them are workers and their families. There are good reasons for such persons to retain their political rights in their country of origin. Similar developments took place in other regions of the world as well, in these cases we may discern an attempt to

rants, *New York University Law Review,* 81 (2006): 117-147., p. 119.

[30] A British citizen living abroad of his own accord contested the British law which granted voting rights to soldiers and diplomats on foreign duty. He was of the opinion that in comparison to soldiers and diplomats, as a British citizen living abroad he was put at a disadvantage, which constitutes a breach of his rights under the European Convention on Human Rights. The European Human Rights Commission however found, that there is no breach of the prohibition of non-discrimination when a state only grants external voting rights to its soldiers and persons working under its direct control, such as diplomats, since these persons constitute a separate – albeit very restricted – group of citizens. Due to the fact that these persons belong in a non-comparable group, the Court found that no discrimination had taken place.

link economically successful emigrants to their poor, disadvantaged country of origin. Mexico could be named as a typical example of this effort: today, over 20 million Mexican emigrants reside in the territory of the United States enjoying a standard of living way in excess of the Mexican average. People emigrating from Mexico often made use of their economic success by reviving the economy and living circumstances of their birthplace as true patriots, thereby linleing their economic rights to political rights. First, Mexico offered special Mexican certificates to its nationals living abroad which merely encompassed economic rights, and entitlements regarding inheritance, acquisition of property and free entry. However, this did not satisfy the majority of the Mexican nationals living in America, therefore, the Mexican state later also endowed them with active rights of suffrage, at the same time, these nationals still do not possess passive voting rights.

Voting rights of refugees

Where international law allows for citizens moving voluntarily to a third state to retain their political rights in their country of origin, this is all the more justified in the case of persons who have been forcibly expelled from their homeland. Some scholars extrapolated the obligation of the states to ensure voting rights to refugees in their country of origin from Article 2 of the International Covenant on Civil and Political Rights.[31] In practice, various countries such as Eritrea, East Timor, Namibia, Iraq and Bosnia guaranteed the participation in national elections of refugees resident in third states.[32] In compliance with the Dayton Agreement, this right was expressly guaranteed as a contractual right to persons who fled Bosnia Herzegovina because of the war.[33]

In some of the national elections cited above, in countries where, following a major socio-political cataclysm political life had to be rebuilt from scratch, non-resident nationals were guaranteed voting rights. Nationals who, based on ethnic or cultural traits had a strong connection with the given state and, for reasons of their personal circumstances, had a good chance of acquiring the citizenship of the new state. This was the case in Eritrea and Iraq, where non-citizens,

[31] Jeremy Grace: Challenging the Norms and Standards of Election Administration External and Absentee Voting, Challenging the Norms and Standards of Election Administration (IFES, 2007): 35-58., p. 39. Available at http://www.ifes.org/publication/3dd9c7573d5b38d597a995a5533d456e/3%20IFES%20Challenging%20Election%20Norms%20and%20Standards%20WP%20EXTVOT.pdf (Last visited: 14 September 2012).

[32] Bauböck 2007, p. 2436.

[33] Grace 2007, p. 39.

who shared strong cultural ties with the home country, were afforded voting rights.

According to the OSCE's 1999 Istanbul Summit Declaration the State Parties „*facilitate the rights of refugees to participate in elections in their country of origin*".[34] Thus, as far as *soft law* is concerned, we are witnessing a proactive attitude of the receiving states, based on which such states must facilitate the external voting of refugees in their country of origin. Since 2000 the acceptance of external voting rights of citizens living abroad has gained particular impetus. The Parliamentary Assembly of the Council of Europe endorsed the enforcement of such rights with its Resolution 1459 of 2005.[35] Currently, only Greece, Ireland, Malta and Cyprus restrict the external voting of citizens living abroad. In its judgment on Greek elections[36] the European Court of Human Rights declared, that the fact that the Greek constitution foresees the external voting rights of citizens living abroad and yet the Greek legislatare has failed to enact appropriate legislation to this end, amounts to a breach of the European Convention on Human Rights. Although such a judgment could not have been rendered without the provision of the Greek constitution prescribing the voting rights of non-resident citizens, the judgment nonetheless reflects the positive stance of the European Court of Human Rights towards the external voting rights of citizens living abroad.

Voting rights of national minorities

Besides the above cases, Grace claims that the external voting rights of citizens living abroad may also be substantiated on the basis of belonging to a national community. According to Grace, there are three possible justifications for external voting: first, the voting rights of expelled persons, second, the voting rights of emigrants and migrant workers, and third, the fact of belonging to a national community, a right which may be invoked by minority groups towards their state of nationality.[37] An example would be the process described in relation to dual citizenship, where, in the wake of the dissolution of Yugoslavia and the Soviet Union and the succession of states, ethnic groups in East-Central Europe lost the bond of citizenship tying them to their national community, however, due to the re-established constitutional

[34] The OSCE's *1999* Istanbul Summit Declaration, Istanbul, November 1999, para 26.

[35] Besides the Resolution, the Council of Europe Recommendation 1714. (2005) also invites State Parties to recognize the voting rights of out-of-country voters.

[36] ECHR: Sitaropoulos and Giakoumopoulos v. Greece (application no. 42202/07). Judgement. Strasbourg, 08-07-2010.

[37] Grace 2007, p. 38.

rules of their kin-state they regained their previous citizenship which went hand in hand with the acquisition of external voting rights. The same process took place more peacefully in Central-Eastern Europe and with less repercussions, whereas the individuals concerned viewed these new rights as a form of personal justice. With this, a new, hitherto disenfranchised group acquired external voting rights, contributing also to the development of European law.

The general legal expectation of external voting rights in Europe

In 2011 the Venice Commission issued a recommendation on the out-of-country voting of citizens living abroad.[38] In its report the Venice Commission determined that restrictions on the voting rights of citizens living abroad constitute a restriction of the universal right to vote. Although European electoral traditions do not necessarily dictate that all citizens living abroad should be afforded external voting rights, however, a supportive, more positive trend may be identified in the European states regarding the issue of out-of country voting of citizens living abroad. Today, a total of 150 million citizens reside abroad around the world, with about 100 million migrant workers and 10 million refugees. The changing international law context makes it ever more possible for these non-resident citizens to actively participate in the political life of their country of origin.

Legal considerations of European law

According to Declaration No. 2 attached to the Final Act of the Treaty on the European Union[39] it is up to the law of the affected state to determine who are the citizens of the state. Obviously, this also has a great impact on union citizenship, as there is no possibility to directly acquire the citizenship of the Union, it may solely be acquired indirectly, through the acquisition of the citizenship of a Member State. At the same time, as Stephen Hall points out, citizenship laws of the Member States must comply with Union law.[40] In particular, the judgment of the European Court of Justice rendered in the *Micheletti* case[41] may be mentioned, where the Court underlined the obligation of the Member States to regulate citizenship rela-

[38] The Venice Commission: Report on out-of country voting, Study No. 580/2010, CDL-AD(2011)022. (17-18 June 2011).

[39] HL 1992. C 191., p. 98.

[40] Stephen Hall: *Nationality, Migration Rights and Citizenship of the Union*. Dordrecht, Martinus Nijhoff, 1995, p. 43.

[41] Case C-369/90. Mario Vicente Micheletti and others v Delegación del Gobierno en Cantabria [1992] ECR I-04239.

tions with „*due regard to community law*".[42] In the *Micheletti* case an Argentinian-Italian dual citizen was not recognized az an Italian citizen, and therefore, as a person benefitting from the rights enjoyed under union citizenship. However, the Court declared that in case an individual posesses union citizenship as well as the citizenship of a third state, the Member States of the European Union must recognize him as a union citizen and ensure him the entirety of the rights flowing therefrom.

In the territory of the European Union, where rights derived from national citizenship essentially boil down to the active and passive right of suffrage in national elections, the development of citizenship rights may take two possible directions. In Balibar's words, one direction would be a process, where aliens perceived as enemies are transformed into aliens as citizens, which, according to Balibar is an unsurmountable necessity.[43] In Dahl's view, the demos must encompass each and every adult member of the community, who will thus become the subjects of the common binding norms adopted, except for people in transit and those suffering from mental diseases.[44] These ideas also found their way into European law. The 1992 Convention on the Participation of Foreigners in Public Life at Local Level adopted under the auspices of the Council of Europe also reflects the trend that European states are willing to ensure certain political rights to aliens.

Through the instrument of the so-called *alien suffrage*, Day and Shaw, the propagators of the voting rights of foreigners in the territory of third states, would oblige states to integrate all immigrant communities into their social, economic and political life. The authors contend that this has already been partly implemented on the territory of the European Union and shall help Member States to accept the idea of granting voting rights to foreigners living on their territory.[45]

---

[42] Ibid. para10.

[43] Etienne Balibar: Strangers as Enemies: Further Reflections on the Aporias of Transnational Citizenship, *Globalization Working Papers* 06/4, p. 13. Available at http://www.socialsciences.mcmaster.ca/institute-on-globalization-and-the-human-condition/documents/IGHC-WPS_06-4_Balibar.pdf (Last visited: 12 September 2012).

[44] Robert A. Dahl: *Democracy and Its Critics.* New Haven, CT, Yale University Press, 1989, p. 129.

[45] Stephen Day – Jo Shaw: Implementing Union Citizenship: The Case of Alien Suffrage and the European Union, undated conference paper, p. 7. Available at http://www.reading.ac.uk/AcaDepts/ce/GSEIS-Dreamwea ver/Content/research/tser/papers/vienna_paper.pdf (Last visited: 13 September 2012).

Many authors claim that there is only a thin red line separating the European Union from becoming a fully fledged federal state,[46] therefore, it is worth examining the practice employed by the United States of America regarding state and federal citizenship. According to Article 1 of the 14th Amendment of the American Constitution ,,*all persons born on or naturalized within the United States and subject of the jurisdiction thereof, are citizens of the United States and of the State within which they reside.*" This means that there is a form of state citizenship in the United States as well, however, this automatically changes once an American citizen moves from one state to the other. Therefore, there is a possible direction of the development of European Law, where citizenship coincides with the place of permanent residence of the citizen, and any changes to the place of residence of the citizen would automatically trigger a corresponding change in the citizenship of the given individual. Owen for example also argues for the establishment of citizenship based on the place of permanent residence.[47] At the same time, what we see in the European Union is that Member States continue to be close-fisted about the acquisition of their respective citizenships, therefore it seems that such a direction of development is less likely. However – as Bauböck points out – we must keep in mind that host countries generally do not afford voting rights to their foreign residents. This segment of the population is stripped of its rights of democratic participation. In Bauböck's view, this amounts to a breach of human rights.[48] Bauböck develops this line of thinking with two very important premises. He claims that „*determining the external boundaries of the demos is a matter of democraic self determination*",[49] and further, „*a strictly territorial conception of political community is not plausible in a world where large numbers of people move across international borders and settle abroad*".[50] In consequence, the most plausible direction of development is a setting where the significance of the state as a territorially

[46] Christian Tomuschat: The International Responsibility of the European Union, in: Cannizzaro, E. (ed.): *The European Union as an Actor in International Relations*. Hague, Kluwer Law International, 2002, p. 183.

[47] David Owen: Transnational Citizenship and Rights of Political Participation, *Normative Orders Working Paper,* 06/2011, pp. 2., 7. Available at http://publikationen.ub.uni-frankfurt.de/frontdoor/index/index/docId/ 22387 (Last visited: 15 September 2012).

[48] Rainer Bauböck: How Migration Transforms Citizenship: International, Multinational and Transnational perspectives, *IWE Working Paper Series*, 2002/24, p. 23. Available at http://www.eif.oeaw.ac.at/downloads/ workingpapers/IWE-Papers/ WP24.pdf (Last visited: 12 September 2012).

[49] Bauböck 2007, p. 2411.

[50] Ibid. p. 2419.

defined concept is reduced and one of the main elements of the state, the population shall be the community of citizens who, albeit living scattered in the entire territory of the Union, share a bond with the state. Dimitry Kochenov describes this phenomenon as the deterritorialization of citizenship and contends that in the context of the development of the law of the European Union, this is the most likely scenario.[51]

Others also take the view that persons moving freely within the territory of the European Union are stripped of a fundamental right, since most likely those Member States where such persons take up work, will not afford them political rights. According to Spiro, if identity is lost, the normative basis of citizenship itself is lost.[52] Rubio-Marin makes a very significant point in this respect by stressing that citizenship serves as an expression of political membership. In this sense, citizenship may be a source of self-respect, pride and psychological comfort. According to Rubio-Marin, the sense of membership conveys experiences to individuals which may in itself be regarded as valuable, and goes on to explain: „*a sense of effortless belonging and rootedness allows for a sense of intergenerational connectedness and thus historical transcendence and continuity*".[53] Thus, in Europe we may speak of a clear embeddedness of citizenship in national culture, and Brun quite correctly describes this phenomenon by citing the citizen's dilemma: „But why should I ask for its nationality, if I still feel French, German or Polish?".[54]

In the European Union, guaranteeing the rights of citizens living abroad is more and more turning into a clear obligation under European law. The 2010 EU Citizenship Report of the European Commission[55] stresses that EU citizens living in other Member States and unable to vote anywhere cannot participate in the political life of the

---

[51] Dimitry Kochenov: Rounding up the Circle: The Mutation of Member States' Nationalities under Pressure from EU Citizenship, *EUI Working Paper,* Robert Schuman Centre for Advanced Studies, 2010/23, p. 32. Available at http://cadmus.eui.eu/bitstream/handle/1814/13634/RSCAS_2010_23.corr.pdf?sequence=3 (Last visited: 13 September 2012).

[52] Peter J. Spiro: Dual Nationality and The Meaning of Citizenship, Emory L. J., 46 (1997): 1411-1485., p. 1411.

[53] Rubio-Marin 2006, p. 136.

[54] Alain Brun: A European or a national solution to the democratic deficit?, in: Rainer Bauböck – Philippe Cayla – Catriona Seth (eds.): *Should EU Citizens Living in other Member States Vote there in National Elections?,* Robert Schuman Centre for Advanced Studies, EUI Working Paper RSCAS 2012/32, p. 5. Available at http://eudo-citizenship.eu/docs/RSCAS_2012_32.pdf (Last visited: 15 September 2012).

[55] Commission Communication: EU Citizenship Report 2010. Dismantling the obstacles to EU citizens' rights. Brussels, 2010.10.27. COM (2010) 603.

European Union which amounts to an infringement of their rights under European law. According to Bauböck we may be witnessing the emergence of a rule of customary law which obliges Member States to afford voting rights to their citizens residing abroad.[56] This development notwithstanding, as Bauböck correctly points out, for the time being ensuring voting rights to citizens living abroad is merely a legal possibility, but not an obligation.[57]

Naturally, as all legal constructions, this direction of development may also be contested. Some assume that citizens living abroad who more readily leave the jurisdiction of the state of their citizenship and who are less affected and directly not bound by the legislation and government policy of the place of residence chosen by them, will perhaps make less of an effort to select the right candidates in the course of elections. Another point is that citizens residing abroad may be less informed about the political situation in their country of origin, although this argument seems less realistic what with the possibilities provided by the internet and other forms of telecommunications or travel. However, political arguments are by far outweighed by the legal argument according to which national measures stripping the citizens of their political rights for reasons of their residence abroad may be deemed a restriction on the free movement within the European Union.

In the European Union citizenship has gradually shed its strictly national and ethnical characteristics. At the same time, Member State citizenship has lost its discriminatory function and its nature of a membership affording certain prerogatives, and has essentially evolved to become a legal bond reflecting the self-understanding of a political community. According to Spiro it is less than absurd to envisage Swedish citizens as a club of persons of Swedish ethnicity, since in this case we are dealing with a political community and not a set of prerogatives operating as exclusive rights against third persons.[58] Again, it is worth citing Bauböck, who finds that: „*citizenship in a narrow sense is a legal relation between states and individuals, but in its comprehensive sense it signifies membership in a self-governing community*".[59]

[56] Bauböck 2007, p. 2402.
[57] Ibid. at 2422.
[58] Spiro 1997, p. 1467, para 244.
[59] Bauböck 2002, p. 5.

Conclusion

The history of international law evidences an intrinsic relationship between the development of international law and the development of human rights. Although in many areas international law faces difficulties of enforcement, human rights seems to be the field where international law yielded the greatest results. This is all the more true for the development of European regional international law, which was supported by the adoption of the European Convention of Human Rights and the extensive jurisprudence of the European Court of Human Rights as well as the reccomendations issued by the High Commissioner on National Minorities of the Organization for Security and Co-operation in Europe.

The author would like to revisit the formulation of Hannah Arendt, who defined citizenship as a right to rights.[60] In this context we must keep in mind that in the course of the development of European integration national citizenship gradually lost its legal content, since Member States are obliged to afford the entirety of social and economic rights to all union citizens and even political rights, such as the citizen's right to return to his country at any time or to seek diplomatic or consular protection are not exclusive anymore, better still, in certain cases all union citizens enjoy these rights. Not to mention the fact that in compliance with the European Arrest Warrant the country of origin no longer counts as a „safe haven" towards the rest of the Member States. Exclusive rights related to national citizenship have slimmed down to the core of voting rights in national parliamentary elections. And who would fear more for the future of the Polish, the French or the Spanish nation or state, than members of the French, Spanish or Polish national community, wherever they may reside in the world.

The European Union has just yet embarked upon its pursuit of an own identity, while national citizenship was based on the foundation of a solid national identity for many centuries. Although this has historically led to numerous cases of exclusion and disenfranchisement which would be unacceptable today, the universal system of human rights documents endowed individuals with a very restricted right of „global citizenship" and the processes of European integration afforded union citizens with socio-economic rights of more or less identical content. Citizenship understood as a social and emotional bond between the individual and a state no longer presupposes the element of exclusion and may therefore also be upheld in the future.

---

[60] Hannah Arendt: *The Origins of Totalitarianism.* Cleveland/New York, The World Publishing Company: Meridian Books, 1951, p. 294.

There is no citizenship without identity, and without identity there is no state and – at the present stage of integration – no European Union either.

Based on the approach outlined above, dual citizenship should be understood as an entitlement which – due to the special personal circumstances of the individual – affords him or her the right to belong to two political communities and to enjoy the rights stemming from this situation as well as to undertake the obligations and responsibilities flowing from the same. Although dual citizenship may arise under different circumstances, European regional international law recognizes four groups: women acquiring multiple citizenships by virtue of marriage, individuals acquiring the citizenship of more than one state *ex lege* at birth, persons unable to renounce their previous citizenship due to restrictions imposed by third states and persons residing permanently abroad, but sharing ties with the national community, who, due to historical reasons lost their citizenship through no fault of their own.

As a result of the legal development facilitated by the Council of Europe and the Strasbourg Court, the voting rights of citizens residing abroad have not only become acceptable, but are even desirable. Such a practice takes a tolerant stance towards the question of external voting of dual citizens residing abroad as well as the legal institution itself. Considering the history of these institutions it becomes apparent that both the voting rights afforded to persons residing abroad as well as the institution of dual citizenship served as a primary instrument to compensate for past injustices. The legislation adopted and the legal development that took place in Europe in this field may be deemed exemplary.

Hajnalka Juhász

External Voting in the International Practice: A Comparative Analysis and Overview

The present study attempts to offer a review of several important statements and conclusions of the International IDEA Handbook 2007[1], which monitors external voting practices of 115 countries worldwide. It also examines other relevant materials and presents its own conclusions. Undoubtedly, our world is constantly changing, and we need to formulate our own answers to these challenges. Broadly speaking, globalization, migration, professional and personal life – as challenges of the 21th century – have all contributed to the increasing interest in external voting rights in recent years. At the same time, external voting is quite a new phenomenon, and it also appears on the political agenda in many countries of the world. According to the IDEA Handbook's definition, external voting is none else but *"provisions and procedures which enable some or all electors of a country who are temporarily or permanently outside the country to exercise their voting rights from outside the territory of the country"*.[2]

First of all, it is important to emphasize that there is no uniform legislation for external voting either in the European Union or elsewhere in the world. Essentially, the European Union leaves the regulation of external voting in the competence of the member states. Considering the different electoral systems and electoral practices in the world, external voting has never been easy to implement. Currently, external voting is allowed in 115 countries and territories worldwide.[3] These 115 countries represent more than 50 per cent of the world's democracies, which seems to indicate a tendency in favour of external voting. According to the IDEA Handbook's latest data, a fairly high number (41) of European countries allow external voting in the world[4]. Secondly, international migration has also had an impact on the electoral system of those counties whose citizens are increasingly leaving

---

[1] International Institute For Democracy and Electoral Assistance

[2] *The International IDEA Handbook,* Voting from Abroad, 2007, p. 67, hereinafter IDEA, http://www.idea.int/publications/esd/index.cfm

[3] Ibid p 3.

[4] IDEA, p. 3.

their country due mainly to economic reasons. Essentially, it has also been stated in the IDEA Handbook that *"the entitlement to vote is generally linked to the citizenship."*[5] It can be stated that migration imposes unique logistical and political challenges on those countries that wish to allow their citizens to exercise their political rights recognized in international instruments. Citizens who are residents may stay abroad temporarily or permanently for different reasons on the day of the election. Broadly speaking, an estimated number of 175 to 250 million persons reside outside their home communities or countries of citizenship.[6]

Basically, the justification of external voting is based on the universal principles of the right to vote, but the reasons for introducing external voting vary according to historical or political context. From a historical aspect, external voting is quite a new phenomenon. Although there were exceptions, few countries recognized in time the possible challenges of a changing world. Iceland allowed its sailors and fishermen to cast an external vote at the beginning of the 20th century. Interestingly enough, the first external voting took place in the USA in 1862 when Wisconsin became the first of a number of US states to enact provisions to allow absentee voting for soldiers fighting in the Union army during the American Civil War.[7] Canada introduced proxy voting on behalf of prisoners of war by their closest relatives for the country's general election in 1945. Without any military reasons, New Zealand introduced absentee voting for seafarers in 1890 and Australia did so in 1902.[8] However, up until World War II, external voting was an exceptional arrangement.[9] Admittedly, in the last ten years, more and more countries have gradually allowed for external voting. In 2006, Italy, Slovakia and Mexico held external voting elections for the first time. Moreover, several countries in Latin America (Argentina, Brazil, Mexico), Southern Europe (Portugal, Spain), and Central

[5] IDEA p. 89.

[6] Jeremy Grace: *Challenging the Norms and Standards of Election Administration: External and Absentee Voting,* International Foundation for Electoral Systems, p 1., http://www.ifes.org/~/media/Files/Publications/White%20PaperReport/2007/596/3%20IFES%20Challenging%20Election%20Norms%20and%20Standards%20WP%20EXTVOT.pdf

[7] A Preview of the Forthcoming International IDEA Handbook External Voting, p1., hereinafter, Preview of IDEA Handbook, http://www.idea.int/elections/upload/External_voting_Preview_withlayout_07june06_final.pdf

[8] IDEA p. 41.

[9] Raniner Bauböck: Stakeholder Citizenship and Transnational Political Participation: A normative Evaluation of External Voting, *Fordham Law Review,* Volume 75, Issue 5, 1-1-2007, p 2398., http://law2.fordham.edu/publications/articles/500flspub8266.pdf, hereinafter Bauböck.

Eastern Europe (Estonia, Latvia, Lithuania, Poland, Romania), have also introduced external voting. In general, external voting is the most common in Europe, but it exists in almost every part of the world. It is important to note that unique social, political and cultural factors have always had an influence on the conception of external voting systems existing worldwide. Namely, there is a variety of systems used in relation to external voting. In the next chapters, we will take into account the types of election to which external voting applies, the entitlement to external voting and the voting methods for voting from abroad.[10] As to external voting itself, we will focus on three main aspects: the types of elections, the entitlement to external voting and the voting methods for voting from abroad.[11]

Methods of external voting

First of all, it is important to note that for those countries who allow external voting, factors such as security, transparency and secrecy of the external elections are indispensible to ensure. As Martin Russel has noted, the implementation of external voting should mirror the electoral procedure in the home country.[12] Consequently, the procedures of the 115 countries for external voting vary from country to country. The procedure particularly depends on who is eligible to vote and participate in the registration process. In general, there are five methods of external voting. The four most common and generally accepted ways are personal voting, postal voting, proxy vote and electronic voting, and last but not least voting by fax also exists. Nowadays, the most prevalent voting method remains personal voting. This method of voting is used by only 54 countries analyzed in the IDEA Handbook.[13] Personal voting means that the voter must go to a specific place, usually to diplomatic missions, consulates or polling place set up especially for voting abroad. This type of voting preserves the confidential nature of voting. Personal voting is the only voting method e.g. in Argentina and South Africa. As noted by the IDEA Handbook, the biggest advantage of personal voting is the confidentiality of the vote, the controlled environment and the fact that the voter's choice on the ballot paper cannot be questioned. Moreover, personal voting is one of the safest solutions for external voting,

[10] IDEA p. 15.
[11] Ibid, p. 15.
[12] Martin Russel: *Diaspora Engagement through Representation, Diaspora matters,* University College, Dublin, p. 7., http://diasporamatters.com/wp-content/uploads/2011/05/Diaspora-Toolkit-Booklet-7.pdf, hereinafter Russel.
[13] IDEA p. 23.

although its greatest disadvantage is that it is extremely difficult to manage as a result of geographical distances, which imply limited accessibility and high travel costs. There is another type of personal voting, which is very similar to the previous one except that it takes place at special polling stations abroad, where larger communities of external voters live. The 1996 election in Russia, the Dominican elections in 2004 and Iraqi elections in 2005 were held at special polling stations. This method has nearly the same advantages and disadvantages as personal external voting at embassies and consulates. It is essential to note that the participation of external voters depends on the elaborateness of the home country's diplomatic and consular network around the world.[14] There are considerable differences between countries with respect to the number of diplomatic and consular missions. For the sake of comparison, Russia has diplomatic or consular missions in more than 140 countries whereas Azerbaijan has only twenty. Although the IDEA Handbook emphasizes that the correlation between the number of diplomatic missions overseas and the coverage of potential external voters is not a linear one, the rate of participation also depends on the geographical distribution of potential external voters.[15]

As has been noted by the IDEA Handbook, the second most accepted method for external voting is postal ballots. Twenty-five countries use postal voting only. Voters fill in the ballot paper wherever they choose to do so, and their votes are then transmitted by ordinary post. It is the most common method in Western Europe and North America. [16] Postal voting method is the only voting method in Canada, Norway, Mexico and Switzerland. Voting by post is an easier way of external voting: it reduces personal costs while being flexible. However, the duration of postal service from all the different parts of the world needs to be taken into account. This type of voting allows for voting from most countries in the world. The disadvantages of postal voting are the lack of proper control that must be an integral part of voting, the high costs of postal service, and the differences in the time of the delivery of ballot papers. Nonetheless, the IDEA Handbook emphasizes that postal voting can be an efficient and low-cost method if postal services operate well.

The next method of external voting is proxy voting, which means that the voter can find a person to represent him and vote for him at a polling place or in the home country. A citizen living abroad or

[14] IDEA, p. 24.
[15] Ibid, p. 24.
[16] Bauböck 2404.

staying abroad temporarily can thus be allowed to vote by choosing a proxy, who casts the vote for the voter at a polling place in the home country or abroad.[17] Of course, confidence is indispensable in this kind of voting because no one can control what happens at the time of the actual voting, except the proxy. In other words, what guarantees that the proxy votes for that party or person he was commissioned to? There is no way to know. Proxy voting is not very common; only four countries make use of it worldwide. There are countries which combine proxy voting with personal voting or postal voting. Typically, proxy voting is not the only voting method for external voting. The practice of 27 countries allows citizens living abroad to participate by proxy or by post in using two or more mixed procedures.

Electronic voting, also known as e-voting, takes place when voters can use the Internet, personal digitant assistants (PDAs), telephones or mobile phones to vote. Only few countries have offered e-voting so far, such as Estonia, Netherlands, France. The spread of communication and information technologies in the 21th century, especially the use of the Internet, may lead to the spread of e-voting. Nevertheless, there are several pitfalls to the introduction of this system. First of all, it is extremely expensive. Second, voting via the Internet raises several issues in connection with secrecy and the security of the vote. There are also other, less common methods, which have been introduced by only a few countries. There are countries that rely on electronic technologies as part of the external voting process, without casting votes electronically. For example, Australia, New Zealand and Singapore allow the use of electronic technologies to enhance external voting programmes: Australia authorizes the faxing of documents to obtain the postal ballots, New Zealand lets external voters download their ballot papers and return them by fax or by post, and Singapore allows external voters to download a voter registration form to be returned by registered post.[18]

Remote electronic voting is a type electronic voting, which means that votes are being cast via computer instead of being marked on a paper ballot. As pointed out by Bauböck, e-voting carries the risk of system failure and fraud. It is important to mention the European Parliament elections in the Netherlands where Internet voting was employed as well as the local elections and referenda in Estonia in 2005. It is also being tested in the USA, the United Kingdom and Switzerland.[19] Realizing the possible disadvantages and pitfalls of a single

[17] IDEA p. 6.
[18] Preview of IDEA Handbook, Chapter 11, E-voting and External voting.
[19] Bauböck 2405.

method of voting, several countries offer more than one options for external voting. The IDEA Handbook has identified a mixed system, which allows for personal voting and postal voting, or personal voting with proxy voting, in 27 countries of the world. The predominant combination, used by 12 of these 27 countries, is the mixture of personal and postal voting.[20] For example, in Belgium three options are available for external voters: personal voting, proxy voting and postal voting. These options are put into practice in the following way: personal voting at the diplomatic mission where external voters have been registered, voting through proxy at a diplomatic mission or at the national municipality or voting by post.[21]

Factors influencing external voting

In theory, there are several factors that can influence the choice of the type of external voting procedure, such as the geographical distribution, the estimated participation rate, and the number and location of diplomatic missions.[22] Broadly speaking, there are two basic types of citizens living abroad: those living abroad temporarily and those staying there permanently. Countries prescribe different requirements related to residency, and methods of voting registration. As emphasized by the IDEA Handbook, creating the right balance for a sustainable electoral system, electoral integrity and the values of electoral inclusion are indispensable for countries using external voting.[23]

The IDEA Handbook points out that external voting is a widespread practice. When an external voter is eligible to vote, there is usually a second requirement to be met: the need to be registered in the electoral register in order to show that he or she is entitled to vote.[24] Special registration requirements may be necessary for external voters, or the latter may be required to register in the same way as all other voters.[25] In Britain, citizens living abroad are eligible to register and vote as overseas voters if their name was previously on the electoral register with a UK address, and no more than fifteen years have passed between the date of their registration and the date of their application to register as an overseas elector.[26] In general,

[20] IDEA p. 25.
[21] Ibid p. 26.
[22] Ibid p. 91.
[23] Ibid p 47.
[24] IDEA p 97.
[25] Ibid.
[26] Ibid p. 100.

external voting usually poses a "two-level" requirement for citizens living abroad. The first level is the eligibility to vote and the second level is the requirement for registration to demonstrate that they are entitled to vote.

It has been noted by the IDEA Handbook that several categories of external voters can be distinguished by their residential circumstances: citizens who reside outside their home country without a definite intention to return, citizens who reside temporarily outside their home country who have an intention to return, and finally, citizens with certain occupations, such as diplomatic staff, military personnel, public officials and their families. The fourth category is composed of citizens living outside their home country as refugees or migrant workers. The last category contains those who are non-citizens and have been granted the right to vote in a country through residency but who are temporarily outside that country.[27]

Consequently, each type of voting has its own advantages and disadvantages. However, regardless of the type of external voting, each type poses a "unique challenge"[28] with respect to implementation. In general, we can say that external voting requires additional time both for the registration and the voting stages, especially where voters are scattered over a vast geographical area. There are some countries, which impose additional or special requirements on voters living abroad, such as a minimum period of previous residence or the intention to return to the country. Interestingly enough, in a few countries only limited groups of external voters are eligible to vote such as diplomats, members of the armed forces and their families as well as public officials. On the other hand, there are countries which extend the right to vote to all their citizens living abroad without any limitation of time spent outside their home country.

As we have mentioned earlier, *"Eligibility to vote is usually a link to citizenship"*.[29] This statement of the IDEA Handbook is of fundamental importance; namely, that the majority of the 115 countries and territories' legislation on external voting does not include any special criteria to enable external voters to vote.30 There are approximately 80 countries and territories in the world that do not specifically restrict entitlement to external vote.31 For instance, Belarus, Bosnia-Herzegovina, Estonia, Norway, Poland, South Africa, Sweden and the USA all guarantee their citizens living abroad the right to

[27] A Preview of IDEA Handbook, Chapter 4.
[28] Ibid.
[29] IDEA p. 89.
[30] Ibid, p. 18.
[31] Ibid, p. 21.

vote regardless of the length of time they have spent away from their country.

Nevertheless, there are some countries that have formal limitations or special/restrictive requirements for external voting. Basically, there are two types of restrictive criteria: those related to activities and those related to the length of staying abroad. There are 14 countries and territories, which impose limitations on the external vote. For example, Israel and Ireland allow external voting only for citizens on official missions of a diplomatic or military nature abroad. On the other hand, India allows external voting only for members of the armed forces and civil servants. As for activity-related restrictions, in most of the cases, external voting is allowed only for those on official mission abroad. However, South Africa represents a unique case within this category for it allows external voting not only for diplomatic staff but also for registered voters who are temporarily abroad. To cite another example, Ghana allows external voting also for students studying with a government scholarship.32 Interestingly enough, there are some countries and territories (as already mentioned above) which restrict entitlement to external vote on the basis of the length of staying abroad, such as Australia, Canada, New Zealand, the Cook Islands, the United Kingdom, and Germany. In Australia, Canada, and New Zealand, the duration of the stay is limited to maximum six, five, and three years spent abroad, respectively. Germany draws the line at 25 years of residence in countries that are not members of the Council of Europe, while the time limit is 15 years in the UK. Let us cite two additional ”extreme” examples: that of Brazil where it is compulsory for external voters to vote, however, only 5% of temporary and permanent residents abroad register, 33 and that of Belgium where voting is mandatory, but registration is not.

Regarding the potential difficulties of external voting, it suffices to recall the controversies of the American presidential elections of 2000 in Florida and thoseof 2004 in Ohio. The participation of nearly 4 million American overseas voters, both civilian and military, shook public confidence in America’s electoral administrative system.34 The presidential election is governed by the Uniformed and Overseas Citizens Absentee Voting Act (1986). The Act covers two main groups: U.S. civilian citizens who reside temporarily or permanently overseas and active–duty armed forces both within and outside the

[32] Ibid, p. 19.
[33] Bauböck p. 2404.
[34] Bruce E. Cain, Karin Mac Donald, Michael H. Murakami: *Administering the Overseas vote,* University of California, Berkeley, Public Administration Review, September/October 2008, p. 802.

United States, including their spouses and family members entitled to vote.35 Several academic papers have found that civilian citizens had a harder time registering and voting than military overseas citizens. Consequently, the key factor was the timely transmission of voting materials, and the option of sending votes electronically (by fax, email, or via the Internet) was viewed favourably. At the same time, there are four states in the USA, namely Montana, South Carolina, Florida, and Illinois that have an option of receiving and sending voting materials by electronic transmission (fax, email or Internet). Nonetheless, 73% of respondents from these states requested their ballots or registration forms by regular mail, while only 9% used email or fax.36 One of the main reasons of the result could be that younger generations are much more familiar or comfortable with electronic technologies, whereas older generations have more confidence in the traditional ways of voting like voting by post. One of the biggest challenges of voting by post, which was demonstrated by the presidential election in 2000 in Florida and in 2004 in Ohio, is the time needed for election materials to travel through the various international postal systems. According to the latest study, it took 22 days on average for an absentee ballot to reach the recipient overseas.[37]

Types of elections

In general, there are three major sources which contain legal provisions for external voting: constitutions, electoral laws and regulations. External voting can be interpreted in the context of four types of elections: legislative/national elections, presidential elections, referendums and sub-national elections. The choice of the modalities of external voting is always influenced by political, institutional, technical, and logistical considerations. It is essential to note here that for the member states of the European Union, there is only one external voting for a supranational institution, which is the elections to the European Parliament. As pointed out earlier, there are 115 countries worldwide that have provisions for external voting as observed by the IDEA Handbook. The most common instance of external voting is constituted by legislative elections because 31 countries allow their voters living abroad to vote in this way. The second most common is the combination of legislative elections and presidential elections, with 20 countries allowing for them. Next in line are presidential

[35] Bruce E. Cain, Karin Mac Donald, Michael H. Murakami p. 802.
[36] Ibid, p. 802.
[37] Ibid.

elections with 10 countries. The fourth is the combination of legislative elections, presidential elections, sub-national elections and referendums, with six countries signing up for that. The fifth type of voting is the combination of legislative elections and referendums allowed by seven countries. The sixth most common type of external voting is the combination of presidential elections and referendums adopted by seven countries. Finally, there are nineteen countries who adopted other combinations of external voting types.

Implementation

Obviously, implementation depends on several factors such as the number and the location of electors, and geographical distances within the country where the external voting takes place. Additional administrative complications can occur in relation to the security and supervision of election materials, which require special attention. Administrative problems and delay in the implementation of the external voting may easily lead to deliberate acts of fraud, so it is crucial to eliminate foreseeable pitfalls in advance. The registration of external voting also requires special attention. Generally, electoral registers constitute public records, and the data to be published in the registers need to be approved. [38] It should be highlighted that all the measures taken internally in order to protect the confidentiality of the ballot must be duplicated abroad. The implementation of external voting definitely implies additional costs for the election, and it can be especially expensive when security is especially relevant in the case of a country, or due to the costs of the transportation of materials.

Special representation for external voters

As noted by the IDEA Handbook, there are eleven countries, four in Europe (Croatia, France, Italy, Portugal) four in Africa (Algeria, Angola, Cape Verde and Mozambique) and three in the Americas (Columbia, Ecuador, Panama) that not only allow their citizens abroad to participate in electoral processes, but also enable them to elect their own representatives.[39]

The law on parliamentary elections in Croatia was adopted in 1995, and it created a special electoral district in the single-chamber Parliament to represent Croatians abroad. Twelve seats were

[38] *Preview of IDEA Handbook,* Chapter 5, The Implementation of External Voting.
[39] IDEA p. 28.

assigned to that district. As a result of criticism regarding the excessive number of seats assigned to Croatians expatriates, the law was amended, and currently it provides only six seats. Under the current Croatioan legislation, the exact number will be determined after every election using a formula that takes into account the number of votes cast from abroad and the average number of votes needed to obtain a seat in the Parliament. In the elections of 2003, Croatians abroad were given only four seats, thus there seems to be a trend of gradual decrease in the participation of Croatian expatriates.[40] Interestingly, France has provided French expatriates with representation in the Senate since 1948, and this number went up to 12 seats in 1983. However, it should be underlined that these 12 senators are not chosen directly by the French abroad. Rather, they are selected by an electoral college made up of 150 elected members (out of the 183 persons who make up the High Council of French Citizens Abroad, also created in 1948), which represents approximately 2.5 million French expatriates for the French government. The 150 members of the Council are elected directly by French voters abroad.[41] The constitutional reforms approved in 2000 in Italy provide for representation for Italian citizens living abroad in both chambers of the Parliament, which means 12 seats in the House of Representatives and 6 in the Senate. These constitutional arrangements were regulated by a specific law enacted in 2002, a few months after the May 2001 elections. The law created four electoral districts abroad in both chambers: one for Europe, one for South America, one for North America and Central America and one for Africa, Asia, Oceania and Antarctica. For every district a minimum of one deputy seat and one senator seat is assigned, and the remaining ones are distributed in accordance with the number of external voters.[42] External voting was exercised for the first time in a referendum held in May 2003.[43] Interestingly, Portuguese living abroad have also been represented in the House of Representatives since 1976. Voters living abroad make up two electoral districts, one for Europe and one for the rest of the world. Two deputies are elected, although only if a minimum of 55,000 electors vote within the district. If there are fewer voters, only

[40] Andy Sundberg: Diasporas Represented in Their Home Country Parliaments, Prepared Andy Sunberg based on information from, Voting from Abroad: *The International IDEA Handbook,* 2007, p. 2., https://www.overseasvotefoundation.org/files/Diasporas_Represented_in_their_Home_Country_Parliaments.pdf hereinafter Sundberg.

[41] Sundberg p. 2.

[42] Ibid, p. 2.

[43] Ibid.

one seat is assigned to the corresponding district. In the parliamentary elections of 2005, both districts obtained two seats.[44]

Conclusion

Currently, tens of millions of Europeans live outside their countries of origin, and migration within Europe is constantly on the increase. This new challenge has given rise to the recent phenomenon of external voting. The proportions of citizens living outside the country may also vary from country to country. It is important to see that the right to vote for citizens living abroad is a highly complex problem, which is never easy to put into practice. Ideally, when analyzing the right to vote for citizens living abroad, it is essential to take into consideration the specific features of each case, the socio-political context of each country. On the whole, national practices granting the right to vote for their citizens living abroad are far from being uniform in Europe. Although there is no "one size for all" solution[45] for the regulation of the voting rights of citizens living abroad. It is also important to emphasize that most European countries guarantee the exercise of this right to their citizens. Nevertheless, it is the state's competence to decide whether it wishes to grant the right to vote to its citizens residing abroad. Consequently, each state may give a different response to this challenge depending on its own circumstances in the name of democratic openness. All in all, it is undeniable that there is a worldwide tendency in favour of external voting as an answer to this particular challenge of our changing world.

BIBLIOGRAPHY

A Preview of the Forthcoming International IDEA Handbook External Voting, Preview of IDEA Handbook, http://www.idea.int/elections/upload/External_voting_Preview_withlayout_07june06_final.pdf

Andy Sundberg: Diasporas Represented in Their Home Country Parliaments, Prepared by Andy Sunberg based on information from, Voting from Abroad": The International IDEA Handbook, 2007, https://www.overseasvotefoundation.org/files/Diasporas_Represented_in_their_Home_Country_Parliaments.pdf

Bruce E. Cain, Karin Mac Donald, Michael H. Murakami: Administering the Overseas vote, University of California, Berkeley, Public Administration Review, September/October 2008

[44] IDEA p 30.
[45] Russel p 2.

Jeremy Grace: Challenging the Norms and Standards of Election Administration: External and Absentee Voting, International Foundation for Electoral Systems, http://www.ifes.org/~/media/Files/Publications/White%20PaperReport/2007/596/3%20IFES%20Challenging%20Election%20Norms%20and%20Standards%20WP%20EXTVOT.pdf

Martin Russel: Diaspora Engagement through Representation, Diaspora matters, University College, Dublin, http://diasporamatters.com/wp-content/uploads/2011/05/Diaspora-Toolkit-Booklet-7.pdf

Rainer Bauböck: Stakeholder Citizenship and Transnational Political Participation: A normative Evaluation of External Voting, Fordham Law Review, Volume 75, Issue 5, 1-1-2007,, http://law2.fordham.edu/publications/articles/500flspub8266.pdf.

The International International Institute For Democracy and Electoral Assistance Handbook, Voting from Abroad, 2007, http://www.idea.int/publications/esd/index.cfm

II.
Citizenship in Western Europe

Karl Cordell

Germany as a Kin-state: Norms and Objectives[1]

Germany's role as a kin-state of ethnic German minorities in Central and Eastern Europe stems from a number of factors.[2] At one level it is part and parcel of a unique historical legacy. It is also inextricably linked with the country's foreign policy towards this region. The most profound policy that the Federal Republic of Germany developed in this context after the early 1960s was Ostpolitik which contributed significantly to the peaceful end of the Cold War, but has remained relevant thereafter despite a fundamentally changed geopolitical context, as Germany remains a kin-state for hundreds of thousands of ethnic Germans the entire Eurasian post-communist political space.[3]

In this paper my aim is to show how since the early 1990s, the German government's policies as the kin-state of remaining German minorities in post-communist Europe, demonstrates the basic continuity of German Ostpolitik since the late 1960s and to explain continuity in terms of the development of, and adherence to a set of norms to which the overwhelming majority of the German political class and public subscribes. German Ostpolitik priorities—peace, reconciliation and 'change through rapprochement'—have remained largely constant, while the opportunities for success have at times gradually and at other times rapidly increased.

---

[1] I would like to extend my thanks to Stefan Wolff for his assistance in the preparation of this work, elements of which are based upon our numerous prior collaborations.

[2] Geographically, our understanding of Central and Eastern Europe covers ethnic German minorities in the following countries: Poland, Czech Republic, Slovakia, Hungary, Romania, and the successor states of the former Yugoslavia and of the Soviet Union. On the origins of these communities as well as more recent developments, cf. Cordell and Wolff (2005a and b) and Wolff (2003, 2006). We take ethnic Germans to be people whose ancestors emigrated from the German heartlands and who have retained some affinity with German language and culture, as well as the descendants of people who assimilated German culture and language during periods of German rule of territories that are now integral parts of nation-states other than Germany.

[3] Bade, K. (ed), 1993. *"Republikflüchtlinge-Übersiedler-Aussiedler", Deutsche im Ausland*. München: Verlag C. H. Beck, pp.393-411

I develop my argument by offering a broad contextualisation of Ostpolitik since the 1960s, and examine in greater detail how one of its key components, external minority policy, has been implemented in the Cold War period since 1989/90. This broader analysis forms the context within which I employ case studies of Germany's external minority policy as illustrative examples of this policy continuity.

Later in the paper, I return to the broader context of Ostpolitik and demonstrate that its defining norms have remained constant following another major change occurred in the geopolitical environment, namely European Union (EU) enlargement. I conclude with some general observations about the development and implementation of Ostpolitik as a norm-consistent foreign policy.

Determining a Normative Framework

This framework provides only a partial foundation for the main argument that I develop, namely, that long-standing links between the states and nations of Central and Eastern Europe, and especially events before, during, and after the Second World War and their interpretation on the part of the German political elite have given rise to a set of norms that since the late 1960s have governed the conduct of German foreign policy in the sense of setting out the objectives of Ostpolitik and the appropriate means with which to pursue them.

In order to develop a more persuasive argument, it is worthwhile paying attention to the importance of norms in foreign policy in general and this sub-set in particular, however, we first need to identify the relevant social norms at the domestic and international levels. Here I rely on Boekle, Rittberger and Wagner,[4] who highlight the centrality of the following indicators of international and societal norms:

1) *Indicators of international norms:* general international law; legal acts of international organizations; final acts of international conferences.
2) *Indicators of societal norms:* constitutional and legal order of a society; party programmes and election platforms; parliamentary debates; survey data.

[4] Boekle, Henning, Rittberger, Volker and Wagner, Wolfgang. 2001. 'Constructivist Foreign Policy Theory', in *German Foreign Policy since Unification: Theories and Case Studies.* Manchester: Manchester University Press, pp. 105-137.

The relevance of such an approach is clear. Since the early 1970s, Germany has entered into several legally binding treaties with the countries of Central and Eastern Europe and is also bound by the obligations that derive from its membership in the United Nations. These include limitations on the use of force, plus respect for the sovereignty and territorial integrity of other states. The Federal Republic has long been an advocate of the employment of peaceful and diplomatic means for the resolution of disputes, and in particular in relation to Ostpolitik judicial decisions and opinions at domestic and European level have been significant in determining (and post hoc confirming) the appropriateness of specific courses of action. As a member of the EU, Germany is bound by legal acts of this organization that at the same time it shapes significantly. The critical role that Ostpolitik played in making the process of the Conference on Security and Co-operation in Europe (CSCE) possible and the mutually sustaining relationship that the two have had since the Final Act of the Helsinki Conference of the CSCE in 1975 indicates the significance that can be attached to this process and the principles upon which it was founded.

It is also obvious how societal norms manifest themselves in the German constitutional and legal order, in party programmes and election platforms of the major political parties, and in parliamentary debates and survey data. The architects of Ostpolitik never questioned another fundamental norm with which German foreign policy had to comply—the maintenance of close and permanent ties with Western political, security and economic structures that were established from the early 1950s. The gradual development of a consensus on the value-based norms governing Ostpolitik was only possible as a double consensus on *Westbindung* (embedding the Federal Republic within the nascent process of European integration) and Ostpolitik.[5] In other words the triumph of Germany's first post-1945 chancellor Konrad Adenauer facilitated the (success of) the 'new thinking' toward the Soviet bloc on the part of the *Sozialdemokratische Partei Deutschlands* (Social Democratic Party of Germany/SPD).

This set of circumstances also illustrates the close and dynamic relationship between societal and international norms. Eventually, the success of Ostpolitik in establishing a modus vivendi that allowed both *Westbindung* and the pursuit of a policy of reconciliation, peace and regime change towards the countries of Central and Eastern Europe

[5] Erb, Scott. 2003. *German Foreign Policy: Navigating a New Era. Boulder,* CO: Lynne Rienner.

contributed to the broadening consensus on the norms that governed Ostpolitik. In other words, my argument is not that certain norms suddenly appeared on the horizon of German foreign policy and were immediately embraced by political elites and the general public, but rather that a number of factors combined during the 1960s to transform the context of German foreign policy towards the Soviet bloc. Most important among them was the overall climate of détente within which from 1969, the government of Willy Brandt embedded its new Ostpolitik, including the reorientation of policy on German reunification. Other important factors included the success of the integration process of expellees and refugees, Germany's economic recovery (the economic miracle), reconciliation with the Western Allies and Germany's incorporation into Western economic and security cooperation structures. Against this background, Brandt's determined diplomacy succeeded in reconciling West Germans to the reality of two German states and in re-establishing a modus vivendi with Bonn's eastern neighbours'.[6] This did not mean that German reunification ceased to be an objective of West German foreign policy, but rather that more attainable objectives were placed higher on the foreign policy agenda and in the relevant policy and public discourses.[7]

The Broader Context: German Ostpolitik since the 1960s

Little doubt exists that from the 1960s onwards, a gradual reorientation of German foreign policy occurred towards a more constructive engagement with Central and Eastern Europe. The reasons for this are varied, but they include the consolidation of Germany's links with the West through membership of Nato and the predecessor organizations of today's EU, the completion of the social, political and economic integration of over 10 million refugees and expellees primarily from Poland and Czechoslovakia, and a generational change in the German political class with younger and more pragmatic leaders rising to the top.[8]

---

[6] Wallace, W. 1978 Old States and New Circumstances: The International Predicament of Britain, France and Germany. In: *Foreign Policy making in Western Europe,* edited by William Wallace and William E. Paterson. Westmead: Saxon House.

[7] Brandt, W. 1967. *Entspannugspolitik mit langem Atem, Bulletin des Presse und Informationamtes der Bundesregierung,* 85, 1967,729

[8] Bender, P. 1995. Die *"Neue Ostpolitik" und ihre Folgen.* München: Deutscher Taschenbucher Verlag

In this context and following the post-1963 general relaxation of tensions in Europe, in the Grand Coalition (between 1966 and 1969) of the *Christlich-Demokratische Union*/*Christlich-Soziale Union* (Christian Democratic Union/Christian Social Union–CDU/CSU, and the SPD, and then in an SPD-led coalition government (between 1969 and 1982) with the liberal *Freie Demokratische Partei* (Free Democratic Party/FDP), Willy Brandt and a close-knit circle of his foreign policy advisors grouped around Egon Bahr developed a new policy towards the countries of Central and Eastern Europe.[9] It proceeded from the recognition that the political and territorial status quo in Europe could not and should not be changed through force or a policy of attempting politically to isolate the Soviet bloc. Rather, the premise of the new Ostpolitik was that stable peace, reconciliation, and political transformation in Central and Eastern Europe could only be achieved by means of rapprochement. After 20 years of negligible relations with the East, this shift in foreign policy orientation had something quite revolutionary about it. In a domestic and governmental context in which fear and distrust of the East's intentions had been the order of the day for so long, rapprochement could not but meet initial significant resistance.

Yet, both the governmental and international, as well as to some extent the bilateral contexts of Ostpolitik enabled Brandt and his team to reshape underlying societal norms at the domestic level. Concluding treaties with the Soviet Union, Poland, East Germany and Czechoslovakia, as well as other countries in Central and Eastern Europe, became possible because of an international climate that presented a window of opportunity in the form of détente between the superpowers.[10] The initiative was further strengthened because the SPD/FDP coalition had a secure parliamentary majority as of November 1972 and because of a bilateral context in which coalitions of interest emerged that were able to respond positively to the opportunities that arose.[11]

---

[9] Löwenthal, R. 1974. *Vom kalten Krieg zur Ostpolitik,* Stuttgart: Seewald Verlag. Wolff, S. 2003. *The German Question since 1919: An Analysis with Key Documents*. Westport, CT: Praeger.

[10] Bender, P. 1995. Die *"Neue Ostpolitik" und ihre Folgen*. München: Deutscher Taschenbucher Verlag. (p. 119)

[11] In the case of the German-Czechoslovak treaty of 1973, it was also, and perhaps primarily, Soviet pressure put on the Czechoslovak communist regime that made a successful conclusion of the negotiations possible.

In turn, the success of the new Ostpolitik had a profound impact on the content of societal norms in the domestic context of foreign policy making. Not only did a majority of the population recognise that Ostpolitik was the only way forward in relations with the East under the conditions of Cold War geopolitics but more importantly previously dominant norms that were most obviously embodied in Chancellor Adenauer's *Politik der Stärke* (Policy of Strength) lost credibility very quickly (a process that had begun following the building of the Berlin Wall in 1961).[12] Over time, smaller and smaller constituencies, mainly comprising the elderly, and those who had experienced expulsion and flight as adults, continued to adhere to foreign policy concepts of hostility towards Germany's eastward neighbours, but they were becoming increasingly unimportant in electoral terms. As mentioned, his change had come about because of the successful integration of the large majority of expellees within the social fabric of the Federal Republic, and the gradual realisation on the part of the expellee generation that 'what had been gambled away had been lost forever'.[13] In addition, Ostpolitik became so embedded within the overall political culture of the Federal Republic that it would neither have been worthwhile, nor possible for any mainstream party to depart from a long-established consensus. Consequently, changes in government configuration since 1982, have not led to the return of an Adenauer-style *Politik der Stärke*.

While one could argue that none of this suggests that German Ostpolitik was indeed norm-consistent, i.e., that it pursued a logic of appropriateness rather than one of consequentiality, the preservation of the basic direction of this specific instance of German foreign policy in the post-Cold War era suggests otherwise. Realist predictions, several of which were quite influential at the time, assumed that Germany's power gains, both relative and absolute, as a consequence of the end of bipolarity, the collapse of communism in Central and Eastern Europe and German unification, and sheer economic power would inevitably lead to a more assertive foreign policy, including in relation to its eastern neighbours. Yet, none of this occurred. Germany remained committed to the project of European integration

[12] This is most evident in the 1972 elections which were fought as a *aussenpolitische Richtungswahl*, that is, an election in which the Federal Republic's relations with Central and Eastern Europe were the predominant theme and in which the Ostpolitik approach by Brandt and his allies in the FDP won out over the more traditional westward orientation and eastward hostility of the CDU/CSU.

[13] Brandt, W. 1967. Entspannugspolitik mit langem Atem, *Bulletin des Presse und Informationamtes der Bundesregierung,* 85, 1967,729.

and its ties to its Western partners in the various regional and international organizations in which it was a member, while at the same time continuing its Ostpolitik.[14]

The important point to bear in mind in this discussion is the norm-consistent character of Ostpolitik and the fact that the norms guiding its formulation and implementation have by-and-large remained identical since the 1960s and beyond the end of the Cold War. Policy content may have changed over time but its underlying norms have remained unchanged. In particular, changing dynamics in the international context, can explain this. Take the example of regime change. Always one of the guiding norms of Ostpolitik, the opportunities to realise it were obviously more limited during the Cold War than they were after the collapse of communism. Once the reform process in Central and Eastern Europe was successfully under way, regime change in itself was no longer the key issue. Rather, the question became one of how to consolidate the process of economic and political reform. Clearly, this reorientation in goals required a change in policy content, which in turn was enabled by the broader overall context in which these policies were pursued during the Cold War, the transition period and the period of democratic consolidation in Central and Eastern Europe. As different countries progressed at distinct speeds and paths, policy options towards each country were by necessity diverse. The example of external minority policy helps to illustrate these broad claims, and it is the analysis of this policy area that I shall now turn.

Ostpolitik in Practice (1): The Limits of External Minority Policy, 1949-1989

In the immediate post-war period large numbers of ethnic Germans from Central and East European countries were expelled from their areas of traditional settlement in Poland, Czechoslovakia and a number of other East European countries and/or deported to forced labour camps, prior either to their expulsion to Germany or release back into wider society.[15] By the early 1950s the (communist) authorities had completed the process of expulsion. Although remaining ethnic Germans had their citizenship rights gradually reinstated, their situation was still not considered satisfactory by

[14] K.-M. Schröter, Head of the Europapolitik Section of the Free Democratic Party, interview with Karl Cordell, 16 February 2004.

[15] On the expulsions more generally, see Douglas (2012).

the West German government, partly because they suffered all the 'usual' disadvantages of life under communism, and partly because the experience of German occupation during the Second World War made them vulnerable to continued discrimination.[16] As a result full citizenship rights were not fully re-instated in some countries until as late as the 1960s, and even then, on the de facto condition that total assimilation into the host society was accomplished.[17]

For their part, early post-war governments in the Federal Republic were preoccupied with domestic issues and considerably constrained by the geopolitical situation of the early Cold War in terms of foreign policy. Domestically, the rebuilding of society and the economy, including the integration of millions of refugees and expellees took priority. On the international stage, Chancellor Adenauer had set a foreign policy agenda whose foremost aim was to ensure the integration of the country into the Western Alliance.[18]

This process of integration into the West was the preferred option of the overwhelming majority of the population and politicians. Yet, at the same time, the Western alliance as a symbol of post-war developments signalled, at least temporarily, an acceptance of the status quo, which, given the loss of territory suffered by Germany, found significantly less support, particularly among the several millions of people who had experienced flight or expulsion, many of whom had in fact never lived in Germany prior to the coming of war in their ancestral areas of residence. While it was generally accepted that the *Sudetenland* could not rightfully be claimed by Germany, the fixing of the German-Polish border along the Oder-Neiße line was denounced in public by West German politicians of nearly all political colours, including Adenauer and his cabinet ministers.[19] Simultaneously, however, it was equally clear that the federal government was in no

[16] This took different forms and occurred at different levels of intensity. For example, in the former Soviet Union, until the 1960s ethnic Germans had restricted access to higher education and were among the few minority groups who were not allowed to return to their pre-deportation settlement areas. At the other end of the spectrum, members of the German minority in Romania did have various opportunities to maintain, express and develop their ethnic identity, if only to enable the Ceausescu regime to obtain premium fees from the West German government from the 1970s onwards for each ethnic German allowed to migrate to the Federal Republic.

[17] Cordell, K. and Wolff, S. 'Germany as a Kin-State, *Nationalities Papers,* 35, 2, 2007, 290-315.

[18] Adenauer, K. 1967. *Errinerungen*, Teil Zwei, Stuttgart: Deutsche Verlag.

[19] Loth, N. 1989. *Ost-West-Konflikte und deutsche Fragen*. München: dtv Verlag (p.26-47)

position to offer a credible political approach as to how the German-Polish border might be revised. Not only was any such revision contrary to the interests of all four allied powers of the Second World War, but West Germany itself did not possess a common border with Poland. Despite the claim of the Federal Republic to be the sole representative of the German people (*Alleinvertretungsanspruch)*,[20] it was a matter of political reality that the East German state had officially recognised the new border in a treaty with Poland in July 1950.

When integration into the western world had sufficiently progressed by the mid-1950s through membership of Nato and the precursor institutions of today's EU, Germany could, more confidently, turn eastwards again.[21] As a result of public pressure and political lobbying by the various expellee organisations, but also as a consequence of the *Alleinvertretungsanspruch*, the Federal Republic committed itself to a foreign policy vis-à-vis the communist countries in Central and Eastern Europe that incorporated humanitarian efforts to improve the situation of ethnic Germans in these countries. Until 1989, the possibilities of direct involvement were however, extremely limited, so that the major instrument of German external minority policy was the negotiation of terms, through the Red Cross, with the host-states that would allow ethnic Germans to migrate to Germany. A precondition for deeper involvement could only come through the establishment of diplomatic relations with the relevant states in the east bloc.

The first step in this direction was the Soviet-German treaty of 1955, followed by a verbal agreement in 1958 according to which all those persons of ethnic German origin who had been German citizens before 21 June 1941 were entitled to repatriation.[22] This policy was continued by all successive governments, and received impetus with the coming of the SPD/FDP coalition to power in 1969 in the

[20] In a speech before the German Bundestag on 21 October 1949, Chancellor Adenauer declared that 'pending German reunification, the Federal Republic of Germany is the only legitimate state organisation of the German people.'

[21] Brandt, W. 1967. Entspannugspolitik mit langem Atem, Bulletin des Presse und Informationamtes der Bundesregierung, 85, 1967,729.

[22] This, however, solved only a part of the problem as it included only the Germans of the northern territories of former East Prussia, the so-called Memel Germans, and those ethnic Germans who, in the aftermath of the German-Soviet treaty of 1939, had been resettled to the then German territories from the Baltic states, Galicia, Volhynia, Bessarabia, and the Northern Bukovina, but found themselves again on Soviet territory at the end of the war. Thus, it did not cover the by far largest group of ethnic Germans who had migrated there, mostly between the middle of the eighteenth and nineteenth centuries.

shape of treaties with Poland (1970) and Czechoslovakia (1973), that specifically addressed the sensitive issues of borders, confirming that the German government of the day respected the territorial status quo.[23] Both treaties included provisions to the effect that the signatory states assured each other of respect for each other's territorial integrity and of the fact that neither had territorial claims against the other.[24] Thus, even though the international context remained relatively constraining, important changes occurred at the bilateral level, driven, especially after 1969, by a reorientation of policy in the German governmental context and the support that a majority of the general public was ready to provide to the government for this.

Ostpolitik priorities of promoting peace, reconciliation and 'change through rapprochement' against the background of the political realities of the Cold War did not leave the West German government any other option apart from facilitating the emigration of ethnic Germans from Central and Eastern Europe to the Federal Republic, which included primarily ethnic Germans from the Soviet Union, Romania, and Poland.[25] German external minority policy was thus not very active between 1945 and 1989, partly because it had always been suspected of a hidden revisionist agenda not only by the host-states, but also within Germany itself, and partly because remaining in their host-countries was not the preferred option for most ethnic Germans in Central and Eastern Europe. Thus, international expectations in east and west of what was an appropriate Ostpolitik for the Federal Republic to pursue, combined with a pragmatic recognition of what was achievable through bilateral engagement during the Cold War given the broader German commitment to peace and reconciliation. From this perspective, the set of norms that came to guide German Ostpolitik was determined by both domestic and external factors. It manifested itself in both spheres: in the international obligations that Germany entered into in the form of multilateral and bilateral treaties and agreements; as well as in a set of complementary domestic policies that sought to promote the permanent integration of expel-

[23] Cramer, D. *"Bahr am Ziel",* Deutschland-Archiv, November 1972.(p. 1121-1123)

[24] cf. Bulletin 1970: 1815 and Bulletin 1973: 1631

[25] The agreements between West Germany and some of the host-states on the repatriation of ethnic Germans included financial arrangements setting 'per capita fees' to be paid by the federal government. Average figures of annual emigration of ethnic Germans after 1950 are as follows: 1955-59: 64,000; 1960-64: 18,000; 1965-69: 26,000; 1970-74: 25,000; 1975-79: 46,000; 1980-84: 49,000; 1985-89: 148,000, 1990-94: 258,000; 1995-99: 148,000; 2000-04: 83,000. In 2005, the number fell to 35,000 *(BMI, 2006)*.

lees and refugees after 1945 and of ethnic Germans emigrating from Central and Eastern Europe thereafter.

Ostpolitik in Practice (2): External Minority Policy after 1990

The transition to democracy in Central and Eastern Europe, which began in earnest in 1989-90, provided an entirely different framework of new and increased opportunities for Germany's external minority policy. On the one hand, democratisation meant the granting of such basic rights and liberties as the freedoms of speech, association, and political participation, allowing ethnic Germans in their host-countries to form their own parties, stand for election as candidates of such parties, and actively advocate the interests of their group. On the other hand, it also meant that there were no longer any restrictions on emigration, and given the experience of at least the past forty years, many ethnic Germans, particularly in Poland, Romania, and the Soviet Union and its successor states, seized this opportunity and migrated to Germany. Both developments required a measured and responsible policy response from Germany – domestically to cope with the enormous influx of resettlers, internationally to assure the neighbouring states in Central and Eastern Europe of the inviolability of the post-war borders, while simultaneously continuing the support for the German minorities at qualitatively and quantitatively new levels, and ensuring their protection as national minorities. All this had to happen within the framework of general German foreign policy premises, such as the support for the transition process to democracy and a market economy, the creation of a new collective security order embracing all states in Europe, and respect for international law and human rights.

The Domestic Response: Restriction of Immigration

The most important legal act passed in response to the vast increase of ethnic Germans[26] leaving their host-states to migrate to Germany was the 1993 War Consequences Conciliation Act. Hitherto, effectively automatic entitlement to German citizenship, for those (who claimed to be) of German ancestry was revoked – ethnic Germans now had to prove ethnically-based discrimination in their host-states and a long-standing affinity to German culture, language, and traditions in order to qualify. Furthermore, the annual intake of ethnic

[26] In 1988, over 200,000 ethnic Germans 'returned' to Germany, in 1989 it was 377,000, and in 1990 a figure of 397,000 was recorded.

Germans was limited to the average of the years 1991 and 1992 within a 10 percent margin, i.e., a maximum of about 250,000 people. In 1996, a language test was introduced that has to be passed by ethnic German applicants for citizenship as a way of testing their affinity to German language and culture. Together, these changed regulations have considerably reduced the influx of ethnic Germans to the Federal Republic – from around 220,000 each year between 1993 and 1995, the immigration figures dropped to 178,000 in 1996 and 134,000 in 1997. Since then, yearly immigration numbers have continued to shrink, remaining by and large below 100,000, almost all of them now coming from the former Soviet Union.

It is important to view these changes within the overall context of Ostpolitik. This is not to deny that the federal government did not have one eye on domestic concerns regarding the rate of migration to Germany of individuals who had increasingly tenuous links with Germany, and who were accused of using such connections simply to escape from political and economic uncertainty. However, the German government in partnership with states such as Poland, Hungary and Romania had wider objectives. The primary goal was of course to nurture a set of circumstances that would allow Germany's relations with such states to flourish. In order to achieve these goals a set of measures had to be undertaken which would provide ethnic Germans with a *Zukunftsperspektive* in their countries of origin (as opposed to Germany), and which would make sure that ethnic Germans living in these countries did not become a constant strain on bilateral relations, as had been the case in the past when their presence had been instrumentalised by the governments of both their host- and kin-states.

In addition, the new policies formulated by the German government after 1989/90 would simultaneously also have to align German nationality laws with post-Cold War realities. Moreover, the aforementioned War Consequences Conciliation Act of 1993, which was passed in light of the changed situation, cannot be viewed as being analogous to the so-called benefit laws that have been passed in recent years in countries such as Hungary, Romania or Slovakia that deal with the position of co-ethnics who live outside the borders of their kin-states. The crucial difference is that these benefit laws seek to freeze ethnic identity by allowing the descendants of kin-state passport holders to obtain the nationality of their parents. The German law of 1993 does the opposite, and accords no special nationality privileges for the descendants of those who obtained German nationality under that

statute.[27] On the other hand, both sets of laws lay down the basic framework of interaction between the kin-state and ethnic compatriots living in neighbouring states. Hence, while we can note important changes in the German domestic and governmental contexts in response to a dramatically changed international environment, these changes do not undermine the general premises of Ostpolitik as a whole or of its external minority policy component. On the contrary, German domestic law, as an indicator of societal norms, remains fully committed to Ostpolitik objectives.

Within this context it is important to note that unlike a number of post-communist states, for example Hungary, Croatia and Romania, Germany does not extend voting rights for members of its diaspora born outside of the state's current borders. There is a broad consensus within the German political class that such a step would be counterproductive and contribute to a freezing of ethnic identity as well as hindering the process of social integration of a previously alienated minority. This stance may well have disappointed ethnic Germans scattered across the former Soviet bloc, together with their lobbyists in Germany. However, successive German governments conscious of historical sensitivities and within the setting of attempting to contribute to the creation a new norm consensus built upon deepening European integration have remained resolutely opposed to the idea.

The External Response: Creating an Alternative to 'Repatriation'

Realising that the changed conditions after 1990 required a recalibration of policy toward the former communist bloc, the German government embedded its external minority policy into the wider framework of its efforts to promote democracy, prosperity, and security in Central and Eastern Europe. While peace and reconciliation remained two key objectives of Ostpolitik, 'change through rapprochement' gradually gave way to aiding and consolidating the democratic transitions that occurred in Central and Eastern Europe after 1989. Another objective was to stem the inward flow of migrants many of whom had increasingly tenuous links to Germany.[28] In so doing, the federal government sought not only to ease the burden on its own resources, but endeavoured to minimise the economic damage that the outflow of skilled workers was inflicting upon some areas, particularly in Poland.

---

[27] Cordell, K. and Wolff, S. 2005b. Ethnic Germans in Poland and the Czech Republic: A Comparative Evaluation, *Nationalities Papers,* 33, 2 142.

[28] Bade, K. (ed), 1993. *Republikflüchtlinge-Übersiedler-Aussiedler, Deutsche im Ausland.* München: Verlag C. H. Beck (p. 393-401)

Given the ethnopolitical demography of the region with its many (albeit greatly reduced) national minorities, potential border disputes, and latent inter-ethnic tensions, it was obvious that the role of minorities would be crucial one two ways. The ultimate test of successful democratisation would have to include an assessment of whether or not members of national minorities, individually and collectively, were entitled to full equality and the right to preserve, express, and develop their distinct identities in their host-states. Equally important, however, would be whether old and new democracies with external minorities would pursue foreign policies in this context that were compatible with the aims democratisation across Central and Eastern Europe, as it was clear that it would not be possible to operate a viable collective security system without the definitive settling existing ethnic and territorial conflicts and establishing frameworks within which future disputes could be resolved peacefully. Taking these assumptions as a starting point, the German government concluded that national minorities should play a crucial part in bringing about results in these two interrelated processes as they could bridge existing cultural gaps. It is a stance that successive German governments have held to this day.

Cultural, social, and economic measures to support German minorities, although primarily 'aimed at an improvement of the living conditions of ethnic Germans in their host-countries', would naturally benefit whole regions and their populations independent of their ethnic origin, and thus promote inter-ethnic harmony and economic prosperity while strengthening the emerging democratic political structures.[29] Thus, by creating favourable conditions for the integration of ethnic Germans in the societies of their host-states as citizens with equal rights, the German government hoped to provide an alternative to emigration.[30] In the immediate post-Cold War era, the emphasis was on the creation of large-scale structural projects. In recent years the emphasis has shifted to youth work, the construction of community centres and promoting twinning projects between towns, villages and provinces in Germany with their counterparts in

[29] Bundesministerium des Innern (BMI), http://www.bmi.bund.de/, Deutsch-rummänische Arbeitsgruppe zur Förderung deas muttersprachlichen Deutschunterrichts tagt ersmals in Hermannstadt/Sibiu, accessed 10 July 2012. Bundestagsdrucksachen 13/1116, 13/3195, 13/3428.

[30] Deutschunterrichts tagt ersmals in Hermannstadt/Sibiu, accessed 10 July 2012. Bundestagsdrucksachen 13/1116, 13/3195, 13/3428.

East-Central Europe and the former Soviet Union.[31] The other main factor is declining prejudice toward ethnic Germans. With regard to the former Soviet Union, the economic situation is far more uncertain than it is in much of the former Soviet sphere of influence. Correspondingly, there continues to be greater migration from the former Soviet Union of ethnic Germans to Germany, although once again the rates of migration are much reduced since the peak years 1989-2002.[32]

The situation of German minorities in the former Soviet bloc has improved not only because of the general, although sometimes patchy economic upswing in Poland, the Czech Republic, Hungary and Romania, but also because the process of democratisation has led to a more honest appraisal of long and short term historical relationships between ethnic Germans and their host states, and because governments in the region rarely attempt to utilise residual Germanophobia in order to garner electoral support. At a more concrete level, and in tandem with the desire to 'Return to Europe', i.e. seek membership of Nato and the EU, there have been several legislative/legal milestones that have served to buttress the process of post-communist democratisation by providing better support for ethnic minorities. They include:

1) The European Council's Copenhagen Criteria of 1993, concerning the accession of post-communist countries to the EU.
2) The Council of Europe's minority policy including the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages,
3) A generally more relaxed attitude in home countries toward their minorities which is partly expressed in national protection laws and an active minority policy,
4) Policies (relations between Germany and its putative partners and wider economic factors. in this instance) by the German government in favour of German minorities.

So far we have established three things. First, that the Federal Republic's Ostpolitik has remained norm consistent for a period of over forty years, even if there has been a change of accent due to the changed domestic and international political landscape in Europe. Secondly, in a general sense the analysis has shown that the posi-

[31] Bundesministerium des Innern (BMIa), http://www.bmi.bund.de/, accessed 9 March 2006.

[32] Bundesministerium des Innern (BMIa), http://www.bmi.bund.de/, accessed 9 March 2006.

tion of German minorities in countries that have acceded to the EU has improved and stabilised. Thirdly, it has revealed that in the medium term in countries that remain outside the EU, the situation of German minorities will remain difficult. In this latter group of states the fate of remaining German minorities continues to depend on bilateral-state relations and internal political and economic developments, than it does on developments at the supranational arena.

Having established the context within which these changes have occurred, we are now in a position to evaluate the success of these policies through the presentation of three case studies. Each illustrates how this approach has been implemented in practice, and how, despite changing geopolitical and bilateral opportunity structures, German Ostpolitik remained guided by its fundamental commitment to peace, reconciliation and 'change through rapprochement'. The three case studies: Poland; Hungary and Romania have been chosen because individually and collectively they illuminate the challenges faced by the German government as a kin state, by host state governments and by the minorities themselves. In each instance, the overarching principle employed by the German government is that aid should facilitate the ability of the German minority to act as a bridge between the kin-state and the host state, thereby creating a series of mutually beneficial relationships. I shall commence my analysis with Poland, and then move on to consider Hungary and Romania in turn. This running order has been adopted as a conscious means of elucidating the problems faced in a situation where the German minority is sufficiently territorially concentrated for it to be a significant force the local level (Poland): where the minority is small, but apparently viable in at least the short term (Hungary); and where the minority faces the real possibility of extinction as a minority (Romania).

Poland

The German government estimates that around 300,000 ethnic Germans live in Poland,[33] although the Polish census of 2002 offered a figure of 152,000[34] and preliminary results of the census of 2011 indicate a further decline to 109,000. The situation is complicated given that many respondents to the census of 2011 claimed to have a

[33] Bundesministerium des Innern (BMI), http://www.bmi.bund.de/ 14.Sitzung der Deutsch-Rumänischen Regierungskommission für Angelegenheiten der deutschen Minderheit in Rumänien in Sibiu/Hermannstadt, accessed 10 July 2012.

[34] Cordell, K. and Dybczyński, A. Poland's Indigenous Minorities, and the Census of 2002, P*erspectives on Politics on Society in Europe,* 6, 1, 2005, 87.

dual German-Silesian identity, and that many declared Silesians (of whom there are apparently now 809,000) have cultural and linguistic affinities to Germany. To further confuse matters, the census of 2011 showed there to have been a spectacular growth in the number of Kashubes, up from 5,000 to 228,000,[35] some of whom could also claim cultural affinity to Germany if they so choose. Whatever the case, the large majority of declared Germans continue to reside in the Opole Voivodship of southern Poland.

Relations between Germany and Poland have their legal basis in the 1990 border recognition treaty, in which the Federal Republic explicitly guaranteed the Oder-Neiße line as the common German-Polish border. They also proceed from the 1991 Treaty on Good Neighbourly Relations and Cooperation, which served as a benchmark for similar treaties between Germany and other post-communist states in Europe.[36]. Prior to the conclusion of these treaties, in 1989, a joint declaration by the German Chancellor and the Polish Prime Minister acknowledged the existence of a population of German descent in Poland and of the need to protect its cultural identity. As with all German minorities in post-communist Europe, the *Bundesministerium des Innern* (Federal Ministry of the Interior/BMI), carries primary responsibility for the conduct of Germany's kin-state policy.[37] As such the BMI works closely with its Polish counterpart, which in turn has a watching brief for Germany's Polish minority, under the terms of Poland's National and Ethnic Minorities Act of 2005. Today as in 1991, the BMI has as its main objective the aim of facilitating the expression of German identity in Poland by various means Official recognition of the minority in Poland has been strengthened in a number of ways in Poland. For example in terms of electoral representation (see below), and in administrative terms by virtue of the fact that a German representative sits on the Parliamentary Commission for National and Ethnic Minorities, which is a decidedly post-communist construction. In addition, there is a lone German MP in the lower house of the Polish parliament

The securing of a legal framework for the development of the German minority in Poland was but one part of a policy that has been complemented by substantive material aid in the areas of culture and educa-

[35] Polish Central Statistical Office (GUS), http://www.stat.gov.pl/cps/rde/xbcr/gus/PUBL_lu_nps2011_wyniki_nsp2011_22032012.pdf, accessed 10 July 2012.

[36] Cordell, K. and Wolff, S. 2005a. *German Foreign Policy towards Poland and the Czech Republic:* Ostpolitik Revisited. London: Routledge. (p. 79)

[37] BMI 2012

tion, economic reconstruction and social and community work (the responsibility of the German Red Cross, before 1990 also through the Ministry of Inner-German Affairs). The transition of 1989/90 allowed the allocation of larger funds, through different channels, and for new purposes. Geographically, material support has always been concentrated on Opole Silesia and to a lesser extent Upper Silesia proper.[38]

The provision of German-language educational opportunities has been another key objective by the BMI and its various partners. Then as now, German-language teaching provision is deemed as being vital to the preservation of identity and culture.[39] The German government has provided staff support aimed at improving the quality of German language teaching in Poland, with the German Academic Exchange Service and the Goethe Institute act as conduits in this regard. Since 1993, members of the German minority in Poland have had access to a special grant programme to study in Germany for a period of up to twelve months. The German government also provides supplementary funding for TV and radio broadcasts and print media of the German minority and supplies German newspapers and magazines to the grassroots friendship circles *Deutsche Freundschafts Kreise* (German Friendship Circles/DFKs) of the minority.[40] Crucially, given the particularly poisonous legacy of Polish-German relations in the twentieth century, the BMI is also active in representing and reinterpreting the broader historic pattern of Polish-German relations in an effort to combat and finally bury negative stereotypes.

Over the years, and in particular prior to Poland's accession to the EU in 2004, by far the largest amount of aid has been spent on projects to support the economic recovery of the areas in which members of the German minority live, thus benefiting not only the minority itself, but also these regions and the wider population as a whole. Efforts here have been concentrated on infrastructural improvements. For the distribution of these funds, the federal government employs the Foundation for the Development of Silesia, a private body registered in Opole, which over the past twenty years has engaged in a number of projects designed to improve socio-economic conditions in areas

[38] Cordell, K. and Wolff, S. 'Germany as a Kin-State, Nationalities Papers, 35, 2, 2007, 30-3-304.
[39] BMI: 2012
[40] Cordell, K. and Wolff, S. 'Germany as a Kin-State, Nationalities Papers, 35, 2, 2007, 304.

of Poland in which there is a visible indigenous German presence.[41] Finally, we should mention social service provision, which during the early post-communist years was of particular importance, particularly with regard to medical services in general and care for the elderly in particular.[42]

Probably the most significant manifestation of this previously barely acknowledged minority is its political presence in the Opole Voivodship (province). The German Electoral Committee currently has six representatives on the provincial council. It controls four district councils within the Voivodship, and in addition there are 24 ethnic German mayors and 278 German representatives on a large number of communal councils.[43] The importance of this presence cannot be understated, precisely because it is not particularly controversial in Poland. This is despite the memories of German occupation and subsequent remorseless negative stereotyping by the communists, and the post-communist nationalist right. That it is uncontroversial is in part due to the overall success of a kin-state policy that as we have described has its roots in a norm consensus that first began to emerge in the mid-1960s and has remained remarkably constant over time. Moreover, it has contributed in helping to create a *Zukunftsperspektive* (perspective on the future) among remaining Germans in Poland that is not primarily reliant upon migration and as such, there is every indication, that natural assimilation to one side, the minority has a sustainable future.

Hungary

As with Poland, Germany's relations with Hungary are governed, not only by international frameworks and standards, but also by a bilateral Treaty on Good Neighbourly Relations and Cooperation, which the two governments signed and ratified in 1992. In contrast to Poland, Hungary's German minority carries no particular political weight at the regional level, but unlike Romania's German minority (see below) it does not face the immediate likelihood of probable extinction as a minority. The number of Germans living in Hungary is open to interpretation, with some estimates claiming that over 200,000 Hungarians have some kind of German heritage or back-

[41] Stiftung des Entwicklungs Schlesiens, http://www.fundacja.opole.pl/?setlng=de, accessed 10 July 2012

[42] Deutschunterrichts tagt ersmals in Hermannstadt/Sibiu, accessed 10 July 2012. Bundestagsdrucksachen 13/1116, 13/3195, 13/3428.

[43] Verband der deutscder deutschen sozial-kulturellen Gesellschaften in Polen, http://www.vdg.pl/de, accessed 10 July 2012.

ground.[44] Until the relevant census returns of 2011 are released, we have to make do with above-mentioned estimate and the returns of the census of 2001 in which 62,000 residents gave their nationality as German, with approximately half of that number claiming German as their mother-tongue. I shall proceed from the basis that the figure of 62,000 is reasonably accurate and that the figure of 200,000 plus includes a large number of individuals who have a partly German background, but who in reality have little or no affinity to German language and culture. In terms of governmental and wider institutional support, on the German side the minority is supported principally by the BMI and the government of Baden-Württemberg. They in turn work together with various organs of the Hungarian state and with the *Landesselbstverwaltung der Ungarndeutschen* (Territorial Self-administration of the Hungarian Germans/LdU).[45]

In the early 1990s, as with their counterparts in Poland and Romania, ethnic Germans in Hungary faced a number of problems that have since been ameliorated. In part such disadvantages resulted from the consequences of expulsion between 1945-50 and the social disruption caused to the communities that remained behind[46]. They also related to subsequent years of officially sanctioned neglect during the period of communist rule, and on occasion outright discrimination. Finally, there was, and to an extent still is, comparative disadvantage with regard to Western Europe, which in the 1990s acted as a stimulus for migration to the Federal Republic.

However because of the contemporary economic and political advantages that Hungary enjoyed, these problems were not as structurally embedded as they are in Romania, and neither were they as severe as they were in Poland in the early years of transition. As a consequence, although the BMI and Hungarian government invest in the German minority, the level of per capita investment is not as great as in Poland or in Romania. Having established some basic parameters, it is now worth making some observations on the novel primary

[44] Hungarian Ministry of Foreign Affairs (MFA): The National and Ethnic Minorities in Hungary, http://www.mfa.gov.hu/NR/rdonlyres/9F2D180E-538E-4363-AA-5E-3D103B522E3B/0/etniang.pdf, accessed 10 July 2012:12.

[45] Landsmannschaft der Deutschen aus Ungarn (LDU), Eine kurze Übersicht zur Geschichte und Kultur einer deutschen Minderheit und ihres Schicksals, http://www.ldu-online.de/4.html, accseed 10 July 2012.

[46] Landsmannschaft der Deutschen aus Ungarn (LDU:ND), Eine kurze Übersicht zur Geschichte und Kultur einer deutschen Minderheit und ihres Schicksals, http://www.ldu-online.de/4.html, accseed 10 July 2012.

administrative structures that embrace the organisation and activities of Hungary's German minority.

Since the early 1990s, successive Hungarian governments have sponsored a number of initiatives aimed at securing the identities and futures of Hungary's wider minority populations. They include the creation of an Office for National and Ethnic Minorities; a Parliamentary Committee on Human Rights, Ethnic and Religious Minorities, and the post of Parliamentary Commissioner for the Protection of National and Ethnic Minorities (Ombudsman).[47] Of crucial importance has been the promulgation of a unique system of territorial and non-territorial self-government for each of Hungary's fourteen recognised indigenous ethnic and national minorities. The framework legislation for this system of administration is the 1993 Act on the Rights of National and Ethnic Minorities.[48] As in Poland, the act regularises minority access to the broadcast media, and confirms the right to use minority languages in the public and administrative spheres. The body for co-ordinating and achieving the implementation of the government's objectives is the aforementioned Office for National and Ethnic Minorities. The German minority has taken full advantage of the provisions of this legislation. Since the late 1990s, over 250 German self-governments have been in existence, which in turn receive financial support from the Hungarian state and the BMI. The remit of these bodies is quite extensive and they work together with local authorities and the national government in a number of areas of significance to minority populations. Once again, the most important of these is the educational sphere and specifically the provision of mother-tongue education: Indeed, questions regarding the provision of education by local authorities can only be solved with the agreement of the minority self-governments, which gives the latter an executive as opposed to purely consultative function. In order for minority language to be provided either 25% of a school's children must come from a designated minority, or eight parents or legal guardians must request the provision of such education.[49] In addition to this educational work, the minority self-governments

[47] Teller, N. Local Self-government and Ethnic Minorities in Hungary, http://www.fes.hr/E-, accessed 10 July 2012. (p. 77.)

[48] UNHCR,2005,http://www.unhcr.org/refworld/country,,NATLEGBOD,,-HUN,,4c3476272,0.html, Act LXXVII of 1993 on the Rights of National and Ethnic Minorities, accessed 10 July 2012.

[49] Teller, N. Local Self-government and Ethnic Minorities in Hungary, http://www.fes.hr/E-, accessed 10 July 2012. (p,.79.)

seek to preserve the national character, traditions and customs of the minority.

In many senses, the German minority in Hungary has a number of comparative advantages. The first set of advantages relates to other minorities in Hungary, who do not have the benefit of having a kin-state as active and indeed as wealthy as Germany. Secondly, Hungary's German minority profits from a comparative advantage over other German minorities in post-communist Europe because current economic problems to one side, the standard of living and general economic infrastructure in Hungary is better than it is in, for example, either Romania or Russia. Correspondingly, aid from either the German or Hungarian governments for funds to assist in economic improvement is not as pressing as it is in Romania, or as it was in Poland in the 1990s.

In terms of an overall prognosis the situation of the German minority in Hungary can be described as positive. There is little migration to Germany and inter-state relations are good. Due to its relatively small size and the fact that it is not territorially compact, the minority is however, vulnerable to wider social processes of assimilation.

Romania

Based on the German-Romanian Treaty on Good Neighbourly Relations and Cooperation of April 1992, the aim of German external minority policy vis-à-vis Romania is to secure and improve the living conditions of the German minority in the country in order to provide its members with a viable future in their host-state. In contrast to Poland, but similar to Hungary, there have never been border or territorial disputes between Germany and Romania, so that since 1949, relations between the Federal Republic and Romania have not been burdened by a latent border dispute. However in contrast to the Hungarian and Polish cases, due to the lucrative migration policy of the Ceausescu regime, and massive post-communist outward flows to Germany in the absence of a Romanian economic miracle, the age structure of the residual ethnic German population in Romania is disproportionately elderly. Furthermore, according to the census of 2011, the number of ethnic Germans in Romania has fallen to 37,000, down from 119,000 in 1992, most of whom reside in Transylvania.[50] As such, there are serious questions marks as to the long-term viability of the German minority in Romania.

[50] CPHCC 2012: 5

Despite having been a member of the Council of Europe since 1993, Romania still lacks a law on national minorities. However, Article Sixteen of the aforementioned German-Romanian treaty obliges the signatories to take concrete measures to secure the continued existence of the German minority and to support it in the reconstruction of its social, cultural, and economic life, as long as such measures do not disadvantage other Romanian citizens. As this aim coincides with one of the objectives of Germany's external minority policy – contributing to an environment of inter-ethnic harmony – this has not limited its humanitarian aid efforts.

In 2011, the BMI earmarked 1.661 million Euros in aid for the German minority in Romania.[51] In addition, the Foreign Office supplied a further 473,000 Euros, and the Land governments of Baden-Württemberg and Bavaria provided further subventions. For its part the Romanian government contributed approximately 1,317,000 Euros, primarily earmarked for day to day administrative and project running costs.[52] The German and Romanian governments administer this aid and identify areas of particular need, primarily through the German-Romanian Governmental Commission for the Affairs of the German Minority in Romania which was established in the wake of the aforementioned 1992 treaty. Both governments work together with the *Demokratisches Forum der Deutschen in Rumänien* (Democratic Forum of Germans in Romania (DFDR), established following the collapse of the Ceausescu regime in December 1989.

As with other German minorities in post-communist Europe, aid projects can be grouped into three main areas – social, economic, and cultural. The overall objective is to ensure that the German minority is afforded the opportunity to maintain its cultural identity and cohesion. Again, language teaching plays a crucial role in this regard. A joint German-Romanian working group was established in September 2011, with the brief of extending the provision of such education.[53] Specifically, the commission set itself four main objec-

[51] Bundesministerium des Innern (BMI), http://www.bmi.bund.de/ 14.Sitzung der Deutsch-Rumänischen Regierungskommission für Angelegenheiten der deutschen Minderheit in Rumänien in Sibiu/Hermannstadt, accessed 10 July 2012.

[52] Bundesministerium des Innern (BMI), http://www.bmi.bund.de/, Bundesregierung unsterstützt weiterhin die deutsce Minderheit in Rumänien, accessed 12 July 2012

[53] Bundesministerium des Innern (BMI), http://www.bmi.bund.de/, Deutsch-rummänische Arbeitsgruppe zur Förderung deas muttersprachlichen Deutschunterrichts tagt ersmals in Hermannstadt/Sibiu, accessed 10 July 2012. Bundestagsdrucksachen 13/1116, 13/3195, 13/3428.

tives: First, to improve the pedagogic proficiency of German language teachers in Romania; secondly to intensify partnership and exchange programmes between the two countries' thirdly to improve the physical infrastructure of schools and finally to improve the provision of German language teaching materials.[54]

In addition, the two governments seek to provide aid in the economic sphere for German run enterprises, particularly for the self-employed in the handicraft, and agricultural sectors. Loans for start-up companies are available on preferential conditions, as is the supply of technology and machinery. Initial emphasis on providing farms with modern equipment was replaced some years ago by a programme of support for the creation of networks that enable ethnic Germans (and their Romanian neighbours) to achieve greater cost efficiency. In this context, a project to form a regional community of agricultural producers and an initiative to set up an organisation for the wholesale distribution of fuel has been funded by the German government. Another source of support have been training programmes for agricultural engineers and managers in, and funded by, the German government.

Of increasing importance given the demographic profile of the German minority, is the provision of welfare for the elderly. In 2011, plans were announced for the construction of four care homes for the elderly and two welfare offices.[55] Here we come to the crux of the matter. Despite all the aforementioned measures, many of which are designed to afford ethnic Germans the opportunity to express themselves as Romanian-born Germans who can use through their unique heritage help to act as a bridge between Romania and Germany, the future of this minority seems bleak. Although the wave of mass migration has ended, that wave was so extensive that it is barely conceivable that the minority can survive. Here, unlike in Poland and a lesser extent Hungary, we have an example of policy failure. This failure has occurred not because of inadequate design or faulty implementation, but because the lure of Germany proved to be more attractive than life in Romania, despite the promise of the 'Return to Europe'.

---

[54] Bundesministerium des Innern (BMI), http: bmi.bund.de, accessed 10 July 2012

[55] Bundesministerium des Innern (BMI), http://www.bmi.bund.de/ 14.Sitzung der Deutsch-Rumänischen Regierungskommission für Angelegenheiten der deutschen Minderheit in Rumänien in Sibiu/Hermannstadt, accessed 10 July 2012.

An Interim Report

These three brief case studies illustrate the substance, successes and failures of post-1990 external minority policy. As such they reflect the increased opportunities that the German government had after 1990 for a more active pursuit of kin-state policies following the end of the Cold War and constitute an element of change in Germany's 'bilateral' Ostpolitik. Importantly there is also a significant element of continuity in the approach to formulating and implementing external minority policy. A number of observers concur that no significant in approach changes have occurred in recent years. On the contrary, initiatives launched by the German government in partnership with their interlocutors in East-Central Europe testify to continuity. Concrete examples are legion.[56]

The growth of such partnerships and the general climate of stability in Germany's relations with the states of post-communist Europe clearly indicates that the norms underlying the formulation and implementation of Germany's Ostpolitik, and by extension of its external minority policy, have been of importance to the wider process of democratic consolidation in the region. Germany remained normatively committed to peace, reconciliation and regime change (in the guise of democratic transition and consolidation) after 1990, and successfully pursued policies towards Poland, Hungary and Romania designed to make a practical contribution towards achieving these aims, and that were predicated upon the successful re-orientation of Germany's policy objectives as first laid down by the SPD in the early 1960s

The 'Return to Europe' and Its Consequences

As we have seen, EU accession presented another important turning point for Ostpolitik in general, and for external minority policy in particular. Negotiating entry into the EU meant determining the terms under which the formerly communist countries of Central and Eastern Europe could join a value community with very strong legal foundations.[57] This implied implementing the vast body of existing regulations and laws known as the acquis communautaire but also subscription to the values and principles upon which the EU and its various predecessors had been founded. Crucial among these were

[56] Consider for example the work of the Friedrich-Ebert-Stiftung and the German Academic Exchange.

[57] B. Posselt MEP, interview with Stefan Wolff, 21 November 2003

some of the very norms that came to guide Ostpolitik in the 1960s in an attempt to replicate the ensuing success of Franco-German understanding and reconciliation.

What then were the apparent advantages of EU membership that made the political elites on all sides persist and eventually succeed in the negotiations? From the German perspective, following Hyde-Price,[58] the country's commitment to EU enlargement derives from four key factors. First, there is the desire to ensure stability along its own eastern frontier and to end the mass migration of ethnic Germans to Germany, by wherever possible embedding post-communist Europe within common pan-European structures and initiatives. Second, it was believed that enlargement will bring substantial economic benefits to Germany itself by facilitating trade and investment. Third, by embedding its bilateral relations with East-Central European countries within the overall framework of the EU, Germany sought to dispel fears that it seeks to re-create a German-led Mitteleuropa. Finally, there has long been widespread agreement within Germany that EU membership has been beneficial to all member-states. Therefore, the EU accession of countries in Central and Eastern Europe was supported in full, as it was seen as being virtuous in itself.

Nato membership of Poland and the Czech Republic (a reality as of 1999) provided for improved military security. Bilateral treaties (in place as early as 1990) offered comprehensive ways and means of addressing some of the residual issues of the past, including the borders and minorities. Foreign direct investment from Germany into Central and Eastern Europe also occurred long before EU accession was even seen as a realistic possibility. Yet, in many ways it was clear to German policy makers that the desire of the formerly communist countries of Central and Eastern Europe to become EU members presented a unique opportunity for Germany to assure the permanence of political and economic reforms in (near-)neighbouring countries that were seen as the best guarantee to ensure a constructive approach to the very sensitive issues that remained in relations with the two countries.[59] The very fact that the German government found this important, that no significant public counter-discourse emerged, and that large, albeit not all, sections of the expellee community were included in the implementation of this policy testifies to the fact that

[58] Hyde-Price, A. 2000. *Germany and European Order*. Manchester: Manchester University Press (p. 182-183)

[59] D. Heimsoeth, German Foreign Office, interview with Stefan Wolff, 6 June 2002

German post-1989 policy vis-à-vis Central and Eastern Europe was indeed a continuation of Ostpolitik goals that had been set during the Cold War era. In short, the objectives remained within the parameters of what was deemed appropriate according to persisting norms of German foreign policy conduct.

In 1989, former CDU chancellor Helmut Kohl saw the collapse of communism not simply as an opportunity to unite Germany, but also to promote the eastward enlargement of the EU.[60] In fact, in the case of Poland, Kohl attempted to develop a strategy that sought to replicate post-1949 Franco-German rapprochement and incorporate Poland within the Franco-German axis through the creation of the 'Weimar Triangle' of regional co-operation.[61] The overall strategy was designed to ensure that if the countries of Central and Eastern Europe would be able to accede to the EU, with membership offering a final resolution to most if not all of the residual issues arising from World War Two. After all, the EU operates on the principle of shared sovereignty, regional co-operation, malleability of borders and the freedom of movement. Yet equally importantly, the EU is a community of shared values and norms, and membership in it effectively requires subscribing to these norms and values.

Successive German governments, regardless of ideological stripe, have made it clear that it regarded eastward enlargement as necessary in order to right a historical injustice and in order to promote harmony, growth and stability throughout Europe. They also left no doubt for the *Bund der Vertriebenen* (Union of Expellees/BdV), and to the Czech and Polish governments, that Berlin would not support demands that expellees be compensated or be given special privileges with regard to re-settlement in their former homes. This shared stance has in turn facilitated better inter-state relations between Germany and its eastern neighbours and in turn, as the climate of suspicion has waned, has allowed Germany to better fulfil its role as a kin-state for ethnic Germans in post-communist Europe.

---

[60] Ingram, H. and Ingram, M. eds. 2002. *EU Expansion to the East,* Cheltenham: Edward Elgar. (p. 55.)

[61] Ingram, H. and Ingram, M. eds. 2002. *EU Expansion to the East,* Cheltenham: Edward Elgar. (p. 59.)

Conclusion

Germany's Ostpolitik and external minority policy may have undergone significant changes in terms of its concrete manifestation over the past four decades, but these are due to changing external conditions rather than to fundamentally different objectives. The latter remain guided by a set of norms that have emerged in the 1960s and have remained by and large the same. This was more than mere instrumental recourse to an accepted rhetoric peace, inviolability of borders, etc. The formulation and implementation of German external minority policy followed and follows the broad guidelines set by the norms that underlie Ostpolitik more generally—peace, reconciliation, and 'change through rapprochement'. In this sense, any policy adopted to improve the situation of ethnic Germans in Central and Eastern Europe had to measure up against these overall objectives.

Deriving, in part, from an acceptance of responsibility for the consequences of the Second World War, Ostpolitik norms implied the tacit recognition by German political elites and the German public of the geopolitical and territorial realities of Europe. For reasons of geopolitics coupled with pressing domestic priorities such as economic reconstruction and the crafting of a liberal democratic political culture, Germany's role as a kin-state during the Cold War was thus both externally and internally constrained within a framework of Ostpolitik priorities aimed at peace, reconciliation and 'change through rapprochement'. Political engagement with German minorities in Central and Eastern Europe, even if it was not put aside completely, was scaled down and largely limited to facilitating the emigration of ethnic Germans from their host-countries and their smooth integration into German society, rather than to demand their recognition and protection as minorities.

From the end of the 1980s onwards, the European political landscape experienced a fundamental change. As we have seen, the democratisation of the formerly communist societies in Central and Eastern Europe opened new opportunities for Germany's external minority policy. Greater possibilities to support the German minorities in their host-states, the need to do so in order to halt the mass exodus of ethnic Germans, and the genuine interest of the former communist countries in improving their relationship with Germany, which was seen as an important stepping-stone towards accession to the European Union and NATO, complemented each other in a

unique way. Germany's desire to bridge the gap between cultures and across history could only be fulfilled through reconciliation and mutual understanding. Part of this was the eventual unconditional recognition of the borders with Poland and Czechoslovakia/the Czech Republic. Yet, a common future of Germany and its eastern neighbours could not be secured without addressing the situation of the German minorities in these countries. On the basis of numerous treaties and within the framework set out by the 1993 Copenhagen Criteria, Germany has developed relationships with almost all post-communist states that facilitate the participation of representatives of the German minority in tackling the issue of minority protection and external support for ethnic Germans.

BIBLIOGRAPHY

Adenauer, K. 1967. *Errinerungen, Teil Zwei*, Stuttgart: Deutsche Verlag.

Bade, K. (ed), 1993. *Republikflüchtlinge-Übersiedler-Aussiedler*, *Deutsche im Ausland*. München: Verlag C. H. Beck

Bender, P. 1995. *Die "Neue Ostpolitik" und ihre Folgen*. München: Deutscher Taschenbucher Verlag.

Boekle, Henning, Rittberger, Volker and Wagner, Wolfgang. 2001. Constructivist Foreign Policy Theory. In: German Foreign Policy since Unification: Theories and Case Studies. Manchester: Manchester University Press, pp. 105-137.

Brandt, W. 1967. *Entspannugspolitik mit langem Atem*, Bulletin des Presse und Informationamtes der Bundesregierung, 85, 1967,729.

Bundesministerium des Innern (BMIa), http://www.bmi.bund.de/, accessed 9 March 2006.

Bundesministerium des Innern (BMI), http: bmi.bund.de, accessed 10 July 2012

Bundesministerium des Innern (BMI), http://www.bmi.bund.de/ *14.Sitzung der Deutsch-Rumänischen Regierungskommission für Angelegenheiten der deutschen Minderheit in Rumänien in Sibiu/Hermannstadt, accessed 10 July 2012.*

Bundesministerium des Innern , (BMI) http://www.bmi.bund.de/, 15.Sitzung der Deutsch-Rumänischen Regierungskommission für Angelegenheiten der deutschen Minderheit in Rumänien in Berlin, accessed 10 July 2012.

Bundesministerium des Innern (BMI), http://www.bmi.bund.de/, Bundesregierung unsterstützt weiterhin die deutsce Minderheit in Rumänien, accessed 12 July 2012

Bundesministerium des Innern (BMI), http://www.bmi.bund.de/, Deutsch-rummänische Arbeitsgruppe zur Förderung deas muttersprachlichen Deutschunterrichts tagt ersmals in Hermannstadt/Sibiu, accessed 10 July 2012.

Bundestagsdrucksachen 13/1116, 13/3195, 13/3428.

Cordell, K. and Dybczyński, A. Poland's Indigenous Minorities, and the Census of 2002, *Perspectives on Politics on Society in Europe*, 6, 1, 2005, 103-128.

Cordell, K. and Wolff, S. 2005a. *German Foreign Policy towards Poland and the Czech Republic: Ostpolitik Revisited*. London: Routledge.

Cordell, K. and Wolff, S. 2005b. "Ethnic Germans in Poland and the Czech Republic: A Comparative Evaluation", *Nationalities Papers*, 33, 2 255-276.

Cordell, K. and Wolff, S. 'Germany as a Kin-State, *Nationalities Papers*, 35, 2, 2007, 290-315.

Cramer, D. *Bahr am Ziel, Deutschland-Archiv*, November 1972.

Douglas, R. 2012, *Die Vertreibung der Deutschen nach dem Zweiten Weltkrieg*, Verlag C. H. Beck, München

Erb, Scott. 2003. *German Foreign Policy: Navigating a New Era*. Boulder, CO: Lynne Rienner.

Hungarian Ministry of Foreign Affairs (MFA) : The National and Ethnic Minorities in Hungary, http://www.mfa.gov.hu/NR/rdonlyres/9F2D180E-538E-4363-AA5E-3D103B522E3B/0/etniang.pdf, accessed 10 July 2012.

Hyde-Price, A. 2000. *Germany and European Order*. Manchester: Manchester University Press.

Ingram, H. and Ingram, M. eds. 2002. *EU Expansion to the East*, Cheltenham: Edward Elgar.

Landsmannschaft der Deutschen aus Ungarn (LDU), *Eine kurze Übersicht zur Geschichte und Kultur einer deutschen Minderheit und ihres Schicksals*, http://www.ldu-online.de/4.html, accseed 10 July 2012.

Landesselbstverwaltung der Ungarndeutschen, http://www.ldu.hu/page/69, accessed 10 July 2012.

Loth, N. 1989. *Ost-West-Konflikte und deutsche Fragen*. München: dtv Verlag

Löwenthal, R. 1974. *Vom kalten Krieg zur Ostpolitik*, Stuttgart: Seewald Verlag.

Wallace, W. 1978 Old States and New Circumstances: The International Predicament of Britain, France and Germany. In: *Foreign Policy making in Western Europe*, edited by William Wallace and William E. Paterson. Westmead: Saxon House.

Wolff, S. 2003. The German Question since 1919: An Analysis with Key Documents. Westport, CT: Praeger.

Polish Central Statistical Office (GUS), http://www.stat.gov.pl/cps/rde/xbcr/gus/PUBL_lu_nps2011_wyniki_nsp2011_22032012.pdf, accessed 10 July 2012.

Stiftung des Entwicklungs Schlesiens, http://www.fundacja.opole.pl/?setlng=de, accessed 10 July 2012,

Teller, N. Local Self-government and Ethnic Minorities in Hungary, http://www.fes.hr/E-, accessed 10 July 2012.

UNHCR,2005,http://www.unhcr.org/refworld/country,,NATLEGBOD,,HUN,,4c3476272,0.html, Act LXXVII of 1993 on the Rights of National and Ethnic Minorities, accessed 10 July 2012.

Verband der deutscder deutschen sozial-kulturellen Gesellschaften in Polen, http://www.vdg.pl/de, accessed 10 July 2012.

Wolff, S. 2003. The German Question since 1919: An Analysis with Key Documents. Westport, CT: Praeger.

Wolff, S. 2006. "The impact of post-communist regime change and European integration on ethnic minorities: the 'special' case of ethnic Germans in Eastern Europe", in *European Integration and the Nationalities Question*, eds. J. McGarry and M. Keating. London: Routledge, 2006, pp. 139-168.

INTERVIEWS

D. Heimsoeth, German Foreign Office, interview with Stefan Wolff, 6 June 2002

B. Posselt MEP, interview with Stefan Wolff, 21 November 2003

K.-M. Schröter, Head of the Europapolitik Section of the Free Democratic Party, interview with Karl Cordell, 16 February 2004.

Joëlle Garriaud-Maylam

The Political Rights of French Citizens Abroad and their Parliamentary Representation

In order for globalization not to be accompanied by the impoverishment of the ties between states and their expatriate nationals, it is indispensable to generalize the deterritorialization of political rights, including parliamentary and presidential elections and referenda. Migrants need to be involved in the active and civic life of their state of residence, while preserving their right to participate in the national elections influencing the future and orientation of the country they are expatriates of.

Nonetheless, in light of the current migratory flux, the deterritorialization of political rights is still inadequate, and it is regrettable that globalization does not affect the political rights of the expatriates of several states.

According to the *Manual on out-of-country voting* developed by the Swedish Institute for Democracy and Electoral Assistance (IDEA) published in 2007, 115 states out of 193 dispose of measures enabling electoral participation outside their national borders, which is a mere 60 percent of the states of the world.

The editors of the above study conclude that out-of-country voting suffers from problems regarding the organization of states, logistical obstacles and short deadlines. In the era of globalization, when in the year 2000, one out of 35 citizens was classified as "international migrant", every citizen should be able to enjoy their political rights guaranteed to them by the constitution.

Although the possibility of participation in national elections of the state of residence is more appreciated these days (even if on 8 September of last year the Canadian Minister of Foreign Affairs published a memorandum informing the ambassadors posted in Canada that the government "will continue to refuse any demand of other states to add Canada to their respective extraterritorial election districts"), the situation was different in the middle of the 20th century. The reason behind this is that the political rights, namely the right to vote, of expatriate citizens were rarely exercised.

The context today is totally different, and the European institutions, particularly the Council of Europe, are mobilized in favor of expatriate voting rights.

The European Court of Human Rights had the occasion to pronounce a judgment on the deterritorialization of political rights

on 8 July 2010 in the case *Sitaropoulos and others vs. Greece*. The decision was based on numerous texts adopted by the Venice Commission.

In its judgment of 8 July 2010, the Court concluded that Article 3 of Protocol No. 1 of the ECHR had been violated and assessed that the lack of efficient measures for more than three decades to guarantee – for the applicants – the possibility to exercise their right to vote in the national elections from their place of residence infringed the right to free elections.

Applicants were of the opinion that the impossibility to vote from their state of residence for the Greek parliamentary elections constituted a violation of both the Greek constitution and the Convention. However, the Court clearly limited the scope of their decision by specifying that "[the Court] *does not consider that Article 3 of Protocol No. 1 should be interpreted as generally imposing a positive obligation on national authorities to secure voting rights in parliamentary elections to voters living abroad*." (para. 41)

The deterritorialization of political rights has not yet amounted to efficient migrant rights, but the marked political will of the institutions of the Council of Europe associated with the evolution of numerous national laws in their favor marks the beginning of a new phase towards their official recognition.

Although heavily related to the French concept of the all-encompassing nation from the beginning, the French experience in this respect is worthy of studying to the extent of its voluntary but progressive approach (institutional representation followed by gradually extended political rights) that might serve as an example for other governments. While the proportion of French citizens residing abroad is way inferior to that of great industrial states, France has indeed been a pioneer regarding expatriate representation.

French Citizens Abroad: a Growing Population

Although, as we have seen, the number of French citizens abroad is estimated to be approximately 2.5 million, only 1.5 million of them are registered in the Global Register of French Abroad.

The Global Register, which has replaced the consular registration lists since 2004, contained 1,504,001 persons on 31 December 2010, which corresponds to a 60 percent increase in comparison with the 1995 consular lists. The average annual growth of the number of French abroad since 1987 has increased by 2.33 percent with marked disparities regarding the different continents. Between 1990 and 2005, when the national population increased by 8.7 percent, and

the number of immigrants grew by 19 percent, this value was 43.4 percent for the expatriates.

Even if this phenomenon remains less spectacular than in numerous other European countries – France accounts for only 2.4 percent of expatriates as opposed to the respective 17.5 and 11.5 percent of Ireland and Portugal (based on OECD data) – the number of French residing abroad has never been this high.

The Origins of Political Representation for Expatriate French

It is in the colonial history of France that we need to look for the roots of the French exception: the institutional and parliamentary representation of expatriates. France was effectively the only power ever to recognize the right to vote about the political organs of the state for the people originating from its colonies.

The reclamation of the political rights by French citizens abroad is an ancient phenomenon, but it increased in power since the organization of the expatriates into a global Federation, the French Foreign Union, established in 1927.

Due to the fact that French expatriates took a considerable part in the activities of the Resistance and in the liberation of the territory after that, it seemed logical for General De Gaulle to listen to their demands of political expression and institutional representation. Consequently, French citizens abroad benefited from institutional representation from 1943 at the Algerian Provisional Consultative Assembly (set up by the ordinance of 17 September 1943). This Assembly, sitting for the first time on 3 November 1943, had 84 members 12 of which were representatives of the French Resistance.

The Constitution of 27 October 1946 instituted a bicameral parliamentary system. The National Assembly was elected based on direct universal suffrage, and the Council of the Republic was elected in the same way. It was decided that if French citizens abroad could not vote for their deputies directly, then they should be represented in the High Assembly of the Council of the Republic. Law n° 46-2383 of 27 October 1946 on the composition and election of the Council of the Republic prescribed that from among the 50 councilors of the Republic elected by the National Assembly, 8 seats would be attributed in view of the representation of French citizens abroad (5 for the countries of the Protectorate and 3 for "other countries").

10 years later, in 1958, France inscribed in the Constitution the principle of their parliamentary representation in the Senate and 50

years later in the National Assembly (Article 24 of the Constitution of 1958 as modified by the constitutional organic law of 23 July 2008 sets forth the following: *"French citizens residing abroad are represented both in the National Assembly and in the Senate."*)

I. The Institutional Representation of French Citizens Residing Abroad

Creation of the High Council of French Citizens Abroad

Since direct representation at the National Assembly was rejected by the 1946 Constitution, the creation of a Council of French Citizens Abroad attached to the Ministry of Foreign Affairs seemed like a possible replacement. The High Council of French Citizens Abroad was established by the decree of 7 July 1948, and it was the first institutional structure representing expatriate citizens attached to the government for the purpose of defending their rights and interests.

It might be attributed to the modest handing out of consultative positions in the beginning that the first High Council had 55 members (8 by law, 42 elected by *"organizations of French citizens abroad"*, and 5 members delegated by the Ministry of Foreign Affairs).

From 1959 to 1982, several legislative texts improved the representativity of the High Council through the enlargement of its territorial basis, which adapted it to the fluctuation of the French population abroad. The arrival of the left into power in 1981 accelerated the debate on the election of the High Council by universal suffrage. The laws of 7 June 1982 and 18 May 1983 instituted that the delegates to the High Council would be elected through "*direct and universal suffrage*".

The legitimacy and voice of the High Council are based on a considerably enlarged foundation. Only the elected members of the High Council have the right to elect senators, the number of whom was modified to 12 in 1983.

In the meantime, on the occasion of the 1997 election of the High Council, high rates of abstention from voting were recorded (with only 2 percent of participation) as well as in 2000 (with 19 percent of participation), which brought into question the representativity of the Council and led to the creation of a temporary commission put in charge of the reform of the Council in September of 2000. In 2003, several measures recommended by the commission were put into practice with a view to the creation of the Assembly of French Citizens Abroad one year later.

According to former Senator Charles de Cuttoli, "*evidently, in the beginning, the Council had been conceived to have a purely consultative role; not as an electoral college.*" Fewer were in favor of creating a representative body.

The Transformation of the High Council into an "Assembly of French Citizens Abroad"

The Law n° 2004-805 of 9 August 2004 confirms this transformation. The new denomination, "Assembly" translates into a kind of recognition for the public community of the French citizens abroad. The Assembly provides the government "*with opinions on issues of interest to the French citizens abroad, and on the development of French presence abroad*." It can be requested to interact or it can intervene of its own will.

Since its renewal of June 2009, the Assembly, presided by the Minister of Foreign Affairs, is composed of 155 councilors elected for 6 years through direct universal suffrage by those French citizens abroad who are registered on electoral rolls in 52 districts. Half of the Assembly is renewed every three years. The method of election is proportional representation in the districts that elect at least three councilors, and a majoritarian vote in other districts. The list of election districts and the number of seats available in each are to be found in the Annex to the Law n° 82-471 of 7 June 1982 on the Assembly of French Citizens Abroad, as modified by the Law n° 2004-805 of 9 August 2004.

This law reduced the number of the delegates from 20 to 12, who had only consultative votes based on a list previously barring them from functions. Later on, 12 senators were added to represent French citizens abroad, as well as 11 new deputies in a little while, since the Law n° 2011-411 of 14 April 2011 prescribed that the deputies of French citizens abroad were to be members of the Assembly of French Citizens Abroad by law, just like the Senators for French citizens residing abroad.

Nevertheless, the Assembly struggles to mobilize expatriates. As a matter of fact, the level of participation is extremely low, and it did not stop shrinking in the course of elections: 28.17 percent in 1994, 24.08 percent in 1997, 18.97 percent in 2000, 22.65 percent in 2003, and 14.25 percent in 2006, even if it increased to 20.44 percent at the last elections of June 2009. The introduction of e-voting (on the Internet), launched with the aim of boosting participation by facilitating access to voting, but also carrying the potential risk of numerous incidents, turned out to be a failure due to the fact that a mere 2 percent of voters used e-voting.

This disaffection of French citizens abroad to the election of their own representatives can be put down to several factors.

Firstly, nothing is done to incite French citizens abroad to sign up on the electoral lists or to vote. The consular electoral lists are less well-managed than the registers available in France; certain citizens forgot to have themselves crossed out on their departure from these territories or – on the contrary – fell victim to arbitrary deletion. Article 13 of decree n° 2003-1377 of 31 December 2003 on the registration of French citizens abroad, as modified by the decree n° 2005-302 of 30 March 2005, sets forth precisely that "*any registration into the register of French citizens residing abroad is valid for five years* [and that it is] *renewable. Three months before the expiration of their registration every French citizen shall receive a notice informing them to confirm their residence in the consular district by way of either a certificate or a personal declaration."* Numerous districts, however, omit to send out these notices to those concerned, thus, expatriate French citizens do not pay attention to the validity of the registration into the consular registry. Once deleted *ex officio*, the procedure to get re-registered seems to be too difficult for them. Many of them ignore the fact that they have the possibility to vote in voting wards for them abroad, so their numbers are insufficient or they vote by postal voting.

Consequently, French citizens abroad have little information on the role and the activities of the Assembly; therefore, they are not encouraged to make an effort to vote. A civic initiative of information broadcasted in national and foreign media about the Italian model has become indispensable, and it is already the subject of several proposals for amendment in the Senate. However, the equality of information is not laid out in the law, and everything depends on the programs, finance and good intentions of the radio and television stations.

On top of the lack of information, the total prohibition of any electoral campaign abroad (outside of Europe) has also greatly harmed the participation of French citizens abroad.

Institutional Reforms to be Implemented

Several reforms are imperative in order to improve the participation of French citizens abroad in the election of their representatives and reinforce the representativity of the Assembly.

The transformation of the High Council into an "Assembly" in 2004 did not translate into the granting of new powers to the organization since the Assembly remained a uniquely consultative body, and the project of creating a veritable "territorial" community of

the French citizens abroad, a "community beyond the borders" was discarded.

Back when a "reform commission" was created within the Assembly to propose constructive changes, its recommendations – particularly with respect to the creation of a public, beyond-the-border community in 2006 – were not put into practice.

This "beyond-the-border community" would have been a *sui generis* public community while not composed of people residing in French territory. This community would have provided a real administrative bedrock and legal recognition to the *de facto* community that exists today.

In fact, French citizens abroad are a constitutional category subject to Articles 24 and 39 of the Constitution, represented in the Senate, and from 2012, in the National Assembly as well.

Ever since the start of the reform activities in 2003, no real decision-making power has been granted to the Assembly of French Citizens Abroad. Only its consultative rights have been specified. However, the Assembly must be consulted on a mandatory basis in terms of the legislative and regulatory texts that concern French citizens abroad.

It would be necessary to define the status of those elected into the Assembly, and their competence, rights and prerogatives should be recognized.

Finally, the qualified membership of the Assembly should be dissolved enabling that the Assembly comprise solely those elected through universal suffrage and that its president may no longer be the Minister of Foreign Affairs, but as in the case of every political assembly, it be elected by the members of the Assembly.

II. The right to vote and parliamentary representation

Granting the Right to Vote for French Citizens Residing Abroad

The right to vote is an ancient demand of French citizens abroad, which gained ample force with their organization from 1927 into the French Foreign Union that continued to assert this demand.

A decisive step forward occurred a little before the advent of the Fifth Republic. For the first time the possibility of a direct – postal – vote from abroad was accorded to French citizens abroad by ordinance n° 58-734 of 20 April 1958 on the organization of a referendum. Despite their enthusiastic participation (96 percent of Yeas of the 373,316 votes), diplomatic concerns and protest by certain states doubtful about their territorial sovereignty put an end to this voting experience of the French citizens abroad.

Certainly, French citizens abroad could exercise their right to vote, but in order to do that it was necessary for them to travel to the municipality where they were registered, which of course rendered the exercise of this right theoretical for people geographically distant.

Finally, the year of 1976 saw the introduction of a law about the right to vote from abroad. Since the number of French expatriates rose at a very quick pace, it was imperative to facilitate their participation in national consultations (elections).

Finally, the organic law n° 76-97 of 31 January 1976 on the vote of French citizens residing abroad on the presidential elections, completed by the law of 7 July 1977, instituted voting in the presidential elections, referenda, and European elections in voting wards set up at diplomatic or consular outposts with the consent of the states concerned or in the adjacent counties of the neighboring countries, if the former did not give their consent. (That was the case in federal Germany, Switzerland, the USSR and Cameroon.)

210 voting wards were set up at diplomatic or consular outposts, and in 1979, French citizens abroad could participate in the very first election through universal suffrage of the European Parliament, and two years later, in the presidential elections of 1981.

Casting the vote was to take place on the same day everywhere, in person or by proxy, and the consular authorities had "permanent standing orders" to organize special rounds for those voters whose residence was far from the seat of the consulate or to whom compliance with the formalities of giving a proxy was difficult.

It was not necessary to be registered at the Consulate in order to register on the list of a voting ward, and for the three consultations in question, the right to vote of voters registered in a voting ward was automatically suspended in any municipality of France where they could have been equally registered.

Even though proxy voting was approved, postal voting was not open for French citizens abroad except for the election of the High Council and then that of the Assembly, the latter from 1982 (Law n° 82-471 of 7 June 1982). This latter election was considered to be more "administrative" than political!

According to the Foreign Relations Ministry of the era, allowing postal voting for French citizens abroad as well as for all the votes of interest to French citizens in their entirety *"could go against the principle of equality of citizens before the law."*

Postal voting – either by mail or by electronic means – was nonetheless reintroduced by ordinance n° 2009-936 of 29 July 2009 on the election of deputies by French citizens abroad. On the occasion of the June 2012 general elections, French citizens abroad will have the

possibility to vote for their deputies either in voting wards set up at diplomatic outposts, by postal voting or by e-voting.

Decree n° 2011-843 on the election of deputies by French citizens abroad adopted by the Council of the State on 15 July 2011 sets forth that *"in the interest of augmenting the participation of French citizens residing abroad, the possibility to resort to derogatory measures such as postal or electronic voting is offered to voters."*

We can only hope that this innovation will be accompanied by success on 2 and 16 June 2012, for postal voting (also by electronic means) will be introduced in all national consultations involving French citizens abroad.

The extension of postal voting to other national elections still remains unaccepted e.g. in terms of the presidential elections, while this procedure is widely used in other European states. Its introduction could be justified by the fact that the difficulties of exercising the right to vote from abroad constitute a rupture with the principle of the equality of citizens.

The level of abstention from voting is particularly high: it was more than 40.30 percent in the first round of the presidential elections of 2007 and it was 42.10 percent in the second round.

Reclaiming the Right to Vote for French Citizens Residing Abroad in the European Elections

The very first election, in which French citizens abroad could participate after the law n° 77-729 of 7 July 1977 (Article 23) provided them with this possibility, was the first election of the European Parliament through universal suffrage in 1979. The vote took place at diplomatic and consular outposts.

However, in 2003, the regionalization of voting reduced the rights of French citizens abroad. In fact, Article 28 of the law n° 2003-327 of 11 April 2003 ended the possibility of French citizens abroad to vote in voting wards abroad for the election of the French representatives in the European Parliament, which they used to have since the first elections in 1979, and which they still have today for national elections (presidential elections, referenda and the elections of the Assembly). French citizens abroad could no longer vote in these elections but by proxy or by returning to their French municipality of registration, or – if they were French citizens residing in another Member State of the EU – they were free to vote for the candidates of their country of residence.

Legislative Progress: Law n° 2011-575 of 26 May 2011

The bylaw Law n° 2931 on the election of the representatives of the European Parliament, adopted on 26 May 2011, put an end to the

above situation by allowing once again that French citizens abroad participate from abroad in European elections.

This law fixes, for one, the modalities of election for the two supplementary French representatives in the European Parliament prescribed by the Lisbon Treaty and, on the other hand, it reinstates the possibility of French citizens abroad to vote in European elections by setting forth that they will be accounted for in the Ile de France district.

Certainly, this can be considered as a renunciation of a specific form of representation of French citizens abroad in the European Parliament. Nonetheless, it is coherent with the administrative strings of the Assembly of French Citizens Abroad in Paris.

Finally, although we should be satisfied to have regained the possibility to vote in voting wards abroad, we may still doubt the real impact of this possibility on voter participation abroad since no candidate would represent them at all in the European Parliament.

The demand for a specific district for Europeans residing outside of the European Union recently resurrected in France, with the entry into force of the Lisbon Treaty. In fact, the Treaty of Lisbon attributed two supplementary European seats to France, which led to an increase in the number of mandates from 72 to 74 in the 2014 European elections.

Unfortunately, France did not take the opportunity to distribute these two seats to French citizens abroad.

Nonetheless, the necessity for a representation of European expatriates in the European Parliament has the risk of becoming pressing when the external relations policy of the EU becomes more crystallized and more assertive, namely through the reinforcement of consular and diplomatic protection. European citizens residing beyond the borders of the EU will take to measuring the advantages of European citizenship and will demand the entirety thereof. We could also envisage a specific district on the EU level, a transnational one, which would correspond to the visions of the Founding Fathers of Europe.

III. Institutional and Parliamentary Representation of French Citizens Residing Abroad

Representation in the Senate and then in the National Assembly under the Fifth Republic

"French citizens abroad are represented in the National Assembly and in the Senate." (Article 24, Constitution of 4 October 1958 as modified by the constitutional organic law of 23 July 2008)

Senators of French Citizens Abroad

The Constitution of 4 October 1958, giving the name Senate to the High Assembly, affirmed the principle of parliamentary representation for French citizens abroad, a representation which, as we have seen, began with the Constitution of 1946.

The ordinance of 15 November 1958 set the number of these Senators at 6 and prescribed that they should be from then on elected not by the National Assembly but *"by the Senate, upon the presentation of candidates by the High Council of French Citizens Abroad."* It was thus the High Council, created 10 years later, that presented the Senate with the list of candidates.

Today, the 12 Senators representing French citizens abroad are elected by the elected members of the Assembly of French Citizens Abroad for a term of 6 years, provided that half of the mandates are renewed every three years. (Organic law n° 2003-696 of 30 July 2003)

On the occasion of the next senatorial renewal in 2014, the electoral college of the senators of French citizens abroad will be enlarged by the presence of 11 deputies for French citizens abroad.

The Deputies of French Citizens Abroad

The constitutional revision of 21 July 2008 modified Article 24 of the Constitution as follows: *"French citizens abroad are represented in the National Assembly and in the Senate."*

The creation of seats for deputies of French citizens abroad through the constitutional organic law n° 2008-724 of 23 July 2008 on the modernization of the institutions of the Fifth Republic places resident and expatriate citizens on equal footing.

The law n° 2011-411 of 14 April 2011 ratifies ordinance n° 2009-936 of 29 July 2009 on the election of deputies by the French citizens residing abroad. Article 3 of this law sets forth that *"the deputies elected by the French citizens residing abroad are members of the Assembly of French Citizens Abroad by law."* (para. 1) and modifies Article 13 of ordinance n° 59-260 of 4 February 1959 on the election of senators, in prescribing that the senators representing French citizens residing abroad are elected by a college consisting of (1) the deputies elected by the French citizens abroad, (2) the members of the Assembly of French Citizens Abroad (para. 2).

The number of these deputies was fixed at 11. The government initially intended for a much smaller number (a maximum of 8 deputies), but the Constitutional Council decided that the number shall be fixed with due attention to demographic considerations, and the numbers of the 2.5 million French expatriates justified these 11 seats.

The National Assembly decided that the all-encompassing number of deputies must not surpass 577, thus, 11 districts on the national territory have been abolished in order to allow entry for these new deputies: those of French citizens abroad, whose election will take place on 10 and 17 June 2012.

The ordinance n° 2009-936 of 29 July 2009 on the election of deputies by French citizens abroad determines the technical modalities of the elections of these deputies.

This system, which is unique in the whole world, requires that *"the deputies of French citizens abroad be elected as others, in an election based on single-member constituencies and with two rounds. The electoral lists are established based on the consular registers."*

The limitation and definition of districts must take place, here as well, on the basis of demographic considerations attaching to the number of French citizens in the respective districts. There is going to be a sole district for Asia and Oceania (a zone where French citizens are not so numerous, unfortunately) and two for the Americas (one of which for the whole of Latin America and part of the South of the United States). Two seats will represent Africa and a third will cover Central and Eastern Europe and the Middle East. Western Europe will be divided into five districts: one for the United Kingdom, Ireland, Scandinavia, the Baltic States, and one for Germany. One other district will be assigned to Switzerland (the country where the French presence is the most pronounced, according to the consular registers, with 132,000 voters registered). The several ten thousands of French in Monaco are going to be put in the group of those who live in the Iberian Peninsula.

Even if the method of voting is the same as in France, several adjustments are equally programmed. Postal voting and e-voting will be generalized (decree n° 2011-843 of the Council of State of 15 July 2011 on the election of deputies by the French citizens abroad) for the first time in national elections in response to the wishes of the elected representatives and the associations of French expatriates that had been many times reiterated. The first round for French citizens abroad will be brought forward with a week, thereby providing for a three-week-long span between the two rounds. Campaign finances will also be extended taking into account the distance that the candidates have to travel.

The introduction of deputies for French citizens abroad places them on an equal footing with their compatriots, who reside in France. If the mobilization of voters succeeds, e-voting may be then generalized for other national elections as well (namely, the presidential), in which French citizens abroad may participate.

The year 2011 was an important year: a year of progress for the political rights of French citizens abroad. From the regained possibility to vote from abroad at the European elections to the ratification of the ordinance on the election of deputies for French citizens abroad and to the establishment of a Secretariat of State for French Citizens Abroad on 29 June 2011, the demand of our compatriots residing abroad concerning the right to vote was heard by the government.

The dynamic started in 2011 in favor of the political rights of French citizens abroad will continue and I will continue to battle with my colleagues in the Senate and soon in the National Assembly in order to assure a veritable equality between citizens regardless of their place of residence. In an attempt to convince those countries that have not yet conferred full political rights upon their expatriates, I assert that political rights are fundamental human rights, and nothing can justify the deprivation of citizens of these rights at present.

Ferdinand Mayrhofer-Grünbühel

The Nation-concept and Policies on Citizenship in Austria

The concepts of nation and nationality have of course different meanings for different people. In the English language nationality and citizenship usually are employed interchangeably. In this view a nation is "the body of inhabitants of a country united under an independent government of their own."[1] The same view is predominant in all nation-states, like France, although in reality of course, most states are multi-national. Only 10 percent of states are considered to be nation-states, meaning that the boundaries of the nation and the state coincide and this was not very often the case in Central Europe and still is not today.

While citizenship is a legal category, nation is a social category. It denotes informal membership in or identification with a particular people, characterized usually by a common language (central criterion), common history, culture and territory, sometimes also by a common religious faith. However, in the final analysis the essential criterion seems to be, whether the people concerned *want* to be a nation or see themselves as a nation. Switzerland and Austria are examples in this regard – in both cases some of the most important criteria usually regarded to be essential for a people to be called a nation are missing.

The dismemberment of the Austrian Empire

The Austrian nation concept cannot be understood without a look at history. The importance that the Peace Treaty of Trianon takes in Hungarian political life and, indeed, in the minds of many Hungarians usually comes as a surprise to us Austrians. While the overwhelming majority of Hungarians would be able to say something about the relevance of Trianon, only a small minority of Austrians would be able to put into the right context the Peace Treaty of Saint Germain-en-Laye that together with Versailles and Trianon determined the fate of those who lost the First World War. Yet, in some ways the result of Saint Germain for Austria was more dramatic than that of Trianon for Hungary.

---

[1] Websters Dictionary

This was succinctly put by Georges Clemenceau (1841-1929), Prime Minister of France and co-signatory of the Peace Treaty on 10 September 1919, when he said: "L'Autriche c'est ce qui reste" – Austria is what is left over. And indeed, it is much quicker said what was left over of the Austrian, or the Cisleithanian part of the Dual-Monarchy than what was taken away: The crown lands Bohemia and Moravia, Austrian Silesia and some communities of Lower Austria went to Czechoslovakia; Galicia went to Poland; South Tyrol, Welsh Tyrol the Canal Valley and Istria went to Italy; the Bukovina went to Rumania; most of Lower Styria and parts of Carinthia, the Mieß Valley and the Seeland, and, of course, Dalmatia and Carniola, went to the new Kingdom of the Serbs, Croats and Slovenes.

For completeness' sake it should be added, that the new Austria received a small western, largely German-speaking part of Hungary which became the province of Burgenland.

In this repartition the question of the language spoken by the population concerned, or ethnicity (nationality), played some role but not a very clear and understandable one. What is particularly remarkable is the fact that Saint Germain carved up entities such as Tyrol, Styria or Carinthia which had been in place for nearly thousand years. In the final analysis, what counted at the Paris peace conferences was that Austria-Hungary had lost the war.

The new Austria was in a very peculiar situation. The Austrian Empire, or as it was also called, "The Kingdoms and States represented in the Imperial Council" had 28,5 Million inhabitants in 1910, while 6,*5* Million (not even one fourth) remained in the new Austria. From over 300.000 square km the new state was reduced to 80.000. The vast reduction of population, territory and resources of the new Austria relative to the old empire, wreaked havoc on the economy, most notably in Vienna, an imperial capital without an empire to support it.

More than 3 million German-speaking Austrians found themselves living outside of the borders of the Austrian Republic in the nations of Czechoslovakia, Yugoslavia and Italy. A particularly large German minority remained in the newly-established Czechoslovakia with the entire historic German populations of Bohemia, Moravia and Austrian Silesia cut off from their motherland. Austria was also deprived of half of Tyrol, which was awarded to Italy as a prize for entering the war on the Allied side.

The Austrian identity crisis

While the Hungarian nation – in spite of significant territorial changes over the years, including the dramatic reductions as a result of Trianon – never seems to have had any difficulty with its identity, the majority of the state-supporting class in the new Austria, the "left-over" after the decline of the Dual Monarchy in 1918 suffered from a severe identity crisis. Most Austrians did not believe in the survival of the small Austrian Republic which had lost its economic, political and cultural connections. In the Austrian federal state Vorarlberg there was a vote to join Switzerland, in Tyrol and Salzburg there were tendencies to join Bavaria. Many saw a future only in a union with Germany – the German language having been perhaps the only major link between the old crown lands that now made up Austria. Thus between 1918 and 1919 the new state called itself "German-Austria". The Allied Powers, however, refused the accession (Anschluss), the designation as "German-Austria" had to be abandoned and Austria became the first country in world-history which became sovereign against the will of the majority of its citizens.

Many Austrians rejected the newly founded state. Plenty of government officials, military officers and influential figures who had previously served "the house of Austria" did not "recognize" the new state and did not want to have any part in it. The doubts over Austria, the lack of confidence in the future and divergent opinions about this future played a significant part in the rough – and partly bloody – domestic quarrels in the late 1920s and the 1930s.

The First Austrian Republic lasted until 1933 when Chancellor Engelbert Dollfuss dissolved parliament and established an autocratic regime tending towards Italian fascism (Austrofascism), in order, partly, to check the power of Nazis who were advocating union with Germany. The two big parties at this time —the Social Democrats and the Conservatives— had paramilitary armies, which fought each other. The "Heimwehr", the paramilitary arm of the Conservative party supported Dollfuss's Fascist regime; the "Republikanischer Schutzbund", was the military arm of the Social Democrats which was outlawed in 1933 but still existed underground - civil war was to break out.

After the Austrian Civil War in February 1934, several members of the Schutzbund were executed, the Social Democratic party was outlawed and many of its members were imprisoned or emigrated. In May of that year the so-called "Ständestaat" was introduced in a new constitution which cemented Dollfuss's power but on 25 July he was assassinated in a Nazi coup attempt.

His successor Kurt Schuschnigg, struggled to keep Austria independent (even a restoration of the Habsburgs was contemplated), but on 12 March 1938 German troops occupied the country and organized a plebiscite confirming union with Germany. Hitler himself, as is known, was a native of Austria who had lost Austrian citizenship in 1925.

For five years, the authoritarian government of Austria had defended itself against Nazi-Germany's blackmailing and assimilation initiatives. Finally, Austria failed due to the division of its population which lacked a sense of national cohesion.

A nation is born

After the devastating period of World War II and National Socialism – in which Austria became Nazi-Germany's first victim and in which Austrians were both victims and perpetrators – the way was clear for a new identity to develop. The experiences from that period, the Austrian State Treaty, the Declaration of Permanent Neutrality and the "economic miracle" – which was at least partly based on the specifically Austrian form of "social partnership" – were important components of this process. Thus the new Austria has finally and definitely accepted its identity.

The Austrian writer Michael Scharang, born in 1941, describes this by postulating: *"My generation – grown up in the second republic – is the first for whom Austria as a state and nation is an undoubted fact. That is not self-evident, rather historically new. For the first time, doubts about Austria are no longer a theme of our literature."*

Austrians had to go through a change of national consciousness, since the Habsburg family – formerly the symbol of unity – had lost its function. A sense of national community which would have been based on the affiliation to an ethnical or linguistic group could not provide the necessary framework. Today Austrian national consciousness is based on the affiliation to a state-political community, not to a linguistic-ethnical one.

The change of national consciousness is probably is the reason why we Austrians seem to feel little identification with our own history. Although the majority of Austrians see the time of the monarchy in a basically positive light, they nonetheless pretend not to have much to do with that period. In the Austrian official calendar, not even one day reminds us of our pre-Republican history. The anniversaries we celebrate only refer to post-World War II events.

By contrast, Hungarian political culture appears to be bound to historical categories to a large extent. Hungarians – regardless of

their ideological background – seem to believe in historical continuity. History, as it seems, is being recalled almost every day.

The change of consciousness I mentioned above also means that we accept our small Austria as it is today. The borders of today's Austria are neither being questioned nor are they considered to be unjust (with the exception of South Tyrol). We support the German-speaking communities of former Austria in very modest dimensions and in areas they ask for our help. We showed a strong commitment only in the question of South Tyrol, not so much because South Tyroleans were German speaking but due to the fact that they historically always were Tyroleans. Thus, our engagement relates to their "Tyrolean", rather than their "Austrian" quality. Since World War I the question of South Tyrol has been a point of friction with our neighbour Italy – until a negotiated settlement was found in the 1969. Today the situation in South Tyrol/Alto Adige can be regarded as resolved, and is often referred to as a model for inter-ethnic and transnational cooperation in Europe.

In the past centuries, the meaning of "Austria" has undergone several changes. An "Austrian Empire" existed only since 1804. In 1867 – just over 60 years later– the Compromise between Austria and Hungary created the Austro-Hungarian Dual Monarchy. Only at a later stage, Cisleithania, "The Kingdoms and States represented in the Imperial Council" were referred to as "Austria". The Republic of Austria of today is, as Clemenceau said, what was left over. The trials and lessons of history, our mistakes and the enormous joint effort by the Austrian population, including by many refugees from our neighbouring states, helped build and shape a country which is among the most stable and prosperous in the world. The widespread sense of loss and uncertainty of the first Republic is no longer. It has given way to a solid, perhaps somewhat sceptical and often self-critical patriotism.

The legal background to the current Nationality Law[2]

It is against this historical background that the issues to be highlighted in this Conference need to be seen in the case of Austria. Questions such as *the relation of the kin-state and the expatriates*, or of *the nation-concept of the state - definition of the majoritarian nation (the relation of state and majority), the relation to expatriates, the relation to minorities/nationalities living within on the territory of the state* (quotes from the editorial guidelines) are not automatically applicable and easily answerable in the Austrian context. This is all

[2] For the current Nationality Law see the webpage as follows: *www.ris.bka.gv.at/*

the more so as the Austrian Nationality Law evolved from the Law on *Heimatrecht*, i.e., the right of abode in a municipality, of 1863. According to that law, which is a peculiarity in the context of citizenship law, every Austrian citizen was to have *Heimatrecht* in an Austrian community (municipality)[3]. This law was formally abrogated only in 1939 under the German rule.

The Austrian General Civil Code of 1812 *(Allgemeines Bürgerliches Gesetzbuch)* provides a number of regulations with regard to citizenship. It makes the full benefit of civil rights dependent on Austrian citizenship which is obtained by birth from an Austrian father. A decree of the Ministry of Interior clarifies that children born out of wedlock obtain the citizenship of the mother. A series of other decrees provides further regulations to the citizenship law. The Civil Code itself allows foreigners to obtain Austrian citizenship after ten years of residence, however, a number of conditions are attached that were further elaborated by several decrees.

According to the Civil Code loss of citizenship occurred by emigration or by marriage to a foreigner (§32 ABGB).

After the end of First World War in 1918, the *Heimatrecht* was decisive for the reassignment of former nationals to one of the successor states. According to the Treaty of Saint-Germain-en-Laye that entered into force in 1920, the acquisition of Austrian nationality was conditional upon having *Heimatrecht* in a municipality within the new borders of the Republic of Deutsch-Österreich and not holding the nationality of another state. Accordingly, the law on the German-Austrian nationality[4] defined as Austrian citizens all persons with *Heimatrecht* in a municipality of the German-Austrian Republic. Persons who by 30 June 1919 opted for another state, to which parts of the former Austro-Hungarian Monarchy belonged, lost their Austrian nationality. The same law provided of course for a number of transitional measures necessary at that time of enormous and tumultuous change.

Of particular interest was the right of persons who had lost their Austrian nationality because they lived in a territory that no longer belonged to Austria and had been given another citizenship, to opt within a year for their original citizenship and *Heimatrecht*. These persons had to move to the state for which they had opted, within a year.

---

[3] For an extensive review of Austrian citizenship law see: Peter Kurnik, Österreichisches Staatsbürgerschaftsrecht "Von der Heimatrolle zur Staatsbürgerschaftsevidenz", Festschrift „50 Jahre Fachverband der österreichischen Standesbeamten" 1997

[4] Law of 5.12.1918 on the German-Austrian Citizenship, StGBl. Nr. 91/1918

Hungarian citizens who had the home right in the small part of western Hungary that had been given to Austria were recognized as Austrian citizens unless they opted for Hungarian citizenship.

The Austrian Constitution of 1920 that is still the basis of today's constitutional law introduced two important elements in matters of nationality. First it provided in art. 6 (1) "For every province (Land) exists a land citizenship (Landesbürgerschaft). Precondition for the provincial citizenship is the *Heimatrecht* in a community of the province. Conditions for obtaining and loosing land citizenship are the same in every province". Art. 6 (2) "By obtaining land citizenship a person also obtains federal citizenship".

The Constitution further provides that administration of laws on citizenship and on *Heimatrecht* remains the competence of the federal provinces *(Bundesländer).*

The citizenship law of 1925[5] provides a comprehensive regulation of the acquisition and the loss of citizenship that hitherto was scattered over a great number of different legal texts. It very much emphasises the position of the federal provinces. The citizenship law remained essentially unchanged until Austria was occupied in 1938.

Even the nationality law of 1965[6] still speaks of a federal citizenship and a land citizenship in accordance with art. 6 of the Constitution, but stipulates that this is to be regulated by a future special constitutional legislation. Finally, art. 6 of the Austrian Constitution was amended in 1988[7] to read. "(1)For the Republic of Austria exists a uniform (einheitliche) citizenship. (2) Citizens with regular residence in a land are citizens of that land."

Thus, although the citizenship of the federal provinces was maintained, the amended art. 6 (2) of the Constitution reversed the relationship between the *Bundesbürgerschaft* and *Landesbürgerschaft*. Persons holding Austrian nationality were henceforth considered "citizens" of the federal province where they have their main residence.

The concept of the "regular place of residence" *(ordentlicher Wohnsitz)*, or later "main place of residence" *(Hauptwohnsitz)* continues to have an important role in Austrian Nationality Law and more generally in administrative law.

During the time of the *Anschluss,* on the basis of a German decree, persons that had Austrian citizenship on 13 March 1938 were regarded as German citizens.

---

[5] Federal law of 30.7.1925 on the Acquisition and Loss of Land- and Federal Citizenship, BGBl. Nr. 285/1925 ()

[6] Federal Law of 15. 7. 1965 on the Austrian Citizenship. BGBl Nr. 250/1965

[7] Federal Constitutional Law of 29. 11. 1988, on the Amendment of the Federal Constitution of 1929. BGBl Nr. 685/1988

By decree of the Austrian State Government of 29 May 1945 the laws and decrees of the German Reich on German citizenship for Austrians were abrogated. In accordance with the occupation theory Austrian citizenship was "dormant" during 1938 – 1945 but continued to exist.

This theory is confirmed by the law on the transition to Austrian Nationality of 1945 that was amended several times and reissued in 1949[8] and is still applicable today. Essentially, persons who had Austrian citizenship on 13 March 1938 or would have obtained citizenship during the occupation, if the Austrian law of 1925 had continued to be in force, were declared to be Austrian citizens.

The nationality law itself was adapted in 1945, amended several times and republished in 1949.[9]

Of special interest in the present context is the federal law of 2 June 1954[10] that provides the possibility to opt for Austrian citizenship for ethnic germans *(Volksdeutsche)* that were stateless or whose citizenship was unclear because of World War II events. Between 1945 and 1950 roughly one million 'displaced persons' from Eastern Europe and the former Soviet Union, among them more than 300,000 ethnic Germans, had become stranded in Austria. While many of them left for other destinations, about 530,000 settled permanently. Between 1954 and 1956, roughly 230,000 *Volksdeutsche* acquired Austrian nationality.

The Austrian nationality law was again codified in 1965[11] taking into account three international conventions that had become applicable for Austria, namely the UN Convention of 1957 on citizenship of married women, the UN Convention of 1961 on avoiding statelessness and the Convention of the Council of Europe of 1963 on reducing cases of multiple citizenship and military service in cases of multiple nationality. Central features of the 1965 law are abolition of acquisition as well as loss of citizenship for women by marriage and improvements concerning the acquisition of citizenship by descent. The 1965 Nationality Law was amended on numerous occasions, specifically in 1973, 1974, 1977, 1983 and 1985.

Current citizenship law is codified in the 1985 Nationality Act[12], following again numerous amendments in the version of 22.08.2012.

---

[8] BGBl.276/1949

[9] BGBl.276/1949

[10] Federal Law of 2. 6. 1954, on the Amendment of the Law on Associations of 1951. BGBl. Nr. 142/1954

[11] Federal Law of 15. 7. 1965 on the Austrian Citizenship. BGBl Nr. 250/1965

[12] Federal Law on the Austrian Citizenship of 1985. , BGBl Nr. 311/1985

Principles of the current Austrian Nationality Law

The Nationality Act of 1985 is based on five principles:[13]

First, according to the principle of *ius sanguinis*, a child born in wedlock acquires Austrian nationality by birth if one of the parents is an Austrian national. Similarly, children born abroad to Austrian expatriates acquire Austrian nationality by birth.

Second, the Nationality Act of 1985 contains certain provisions to avoid statelessness.

The *third* principle characteristic of the Austrian Nationality Act is the ban on multiple nationalities.

Fourth, the principle of individual autonomy provides for equality between men and women. *Finally,* the law contains several provisions to ensure that members of a family share the same nationality.

Although these principles have been characteristic of the Austrian nationality legislation for many decades, the priority attached to the different principles has changed over time. In particular, the principle that members of a family should have a common nationality has become less important, because of legislative reforms to achieve gender equality with respect to the acquisition and loss of Austrian nationality.

Austria, historically an emigration country, over the last decades has become an immigration country, yet Austrian Nationality Law still does not contain provisions based on the principle of *ius soli*.

After birth (descent, legitimation) the main paths to Austrian nationality are discretionary naturalisation and legal entitlement. *Naturalisation by discretion* ("may be granted") requires at least ten years of residence, the absence of criminal convictions, sufficient income, sufficient knowledge of German (since 1999), an affirmative attitude toward the Republic and renunciation of the original nationality. *Facilitated naturalisation* may reduce the ten years to four or six years of residence if the general conditions for naturalisation are fulfilled and if there are "grounds particularly deserving of consideration". This applies to recognised refugees, minor children and EEA-nationals, who may acquire Austrian nationality after four years of residence; persons born in Austria, persons who can prove their 'sustainable integration', persons who are former nationals and persons recognized for special achievements may be naturalised after six years of residence.

Groups of foreign nationals who are *legally entitled to obtain Austrian nationality* ("shall … be granted") include, inter alia, (1)

[13] Acquisition and Loss of Nationality, Policies and Trends in 15 European States, IMISCOE Research, Amsterdam University Press

spouses and children of Austrian nationals, (2) spouses and children of applicants for naturalisation who will be granted Austrian nationality (extension of naturalisation), (3) long-term residents, i.e., persons who have been resident in Austria for fifteen years and can prove their sustainable integration and (4) persons who have been resident in Austria for 30 years or (5) stateless persons.

According to art. 11 (1) of the Constitution, nationality legislation is a federal matter, whereas the administration of the law is a matter of the nine federal provinces, their governments being the highest executive authority in each case. The provincial authorities had a wide margin of interpretation in *discretionary naturalisation*, and decisions on matters of nationality were frequently subject to judicial review by the Administrative Courts. The law did not lay down the special reasons justifying the reduction of the residence requirement of ten years until the reform of 1998. The province of Vienna made use of this clause from the late 1980s until the mid- 1990s in order to facilitate the naturalisation of immigrants and of their family members. While during the 1980s between 8,000 and 10,000 persons were naturalised annually, in the following years the number of naturalisations increased steadily.

Naturalization practices, political and public discussion and a new concept

Since the mid-1990s the continuous growth of the number of persons granted Austrian nationality has met with resistance from the right-wing Freedom Party (FPÖ) and the Christian Democratic People's Party (ÖVP), the then coalition partner of the Social Democrats (SPÖ). Between 1996 and 1998, the amendment of nationality legislation became a hotly debated issue. In 1998, the two governing parties SPÖ and ÖVP reached agreement on stiffening the conditions for facilitated naturalisation. Except for former Austrian nationals, recognised refugees and EEA-nationals, this mode of acquisition was made dependent on at least six years of residence and proof of the applicant's 'sustainable integration'. Acquisition of Austrian nationality by discretionary naturalisation or by legal entitlement was made conditional upon sufficient knowledge of the German language.

The aim of the reform of 1998, to restrict the possibility of facilitated naturalisation, was, however, not achieved. Statistics since the entry into force of the new provisions in January 1999 show that the total number of naturalisations kept rising. Roughly 25,000 persons acquired Austrian nationality in 1999. In 2003 and 2004, more than 40,000 persons were granted Austrian nationality. An ever growing

number of immigrants had become eligible to apply for naturalisation after at least ten years of residence. Furthermore, naturalisation of Turkish immigrants increased significantly as they no longer faced serious disadvantages when they renounced their Turkish nationality. At that time Turks were the major immigrant group in Austria.

Political pressure from the right but also popular mood pushed the governing parties to seek regulations that would contain the number of naturalisations.

An extensive amendment to the Nationality Law was passed in December 2005, entered into force in March 2006 and brought the following main changes for *discretionary naturalization*:

- the residence requirements are significantly tightened, for exqample, legal residence is interrupted by residence abroad that exceeds 20 per cent of the required time of residence in Austria.
- any prison sentence, offendes under the Aliens Police Law of 2005 and serious and repeated violations of administrative regulations, especially concerning road safety, will prohibit naturalisation, as well as lack of financial means
- requirements for language proficiency and knowledge of the country are made much stricter
- all decisions on naturalisation have to take into account the applicants orientation towards social, economic and cultural life in Austria and towards the basic values of a European democratic state and its society.

Conditions for facilitated *naturalisation by legal entitlement* were adapted as follows:

- Three groups of foreign nationals (recognised refugees, nationals of EEA states and persons born in Austria) who could be naturalised by discretionary decision after four years of residence under the old law will henceforth be granted legal entitlement after six years, if they comply with the general conditions for naturalisation,
- Naturalisation of foreigners married to Austrian nationals becomes much more difficult. The required duration of uninterrupted and legal residence is raised from three or four to six years and the duration of marriage from one or two to five years.

The 2005 amendment of the Austrian nationality legislation is inspired by the principle of 'integration before new immigration' which has been asserted in domestic politics since the late 1990s. The amendment defines integration as a task to be accomplished by immigrants before they can be granted citizenship rights. The limiting approach towards naturalization of immigrants generated consider-

able criticism, including at the international level, and at the time made Austria appear as an 'outsider' in terms of the integration of immigrants, other European immigration countries have meanwhile followed suit with similar restrictive reforms.

With the reform of 1998, birth in Austria has, for the first time, been specified by law as a reason for facilitated naturalisation. However, birth in Austria still does not constitute a legal entitlement to the acquisition of Austrian nationality, and in practice the majority of minors acquire Austrian nationality together with their parents rather than because of birth in Austria.

The main categories of foreign nationals who have acquired Austrian nationality according to the new provisions for facilitated naturalisation are recognised refugees after four years of residence and foreign nationals who have lived in Austria for at least six years and were able to prove their 'sustainable integration'. Foreign nationals who have attained and are expected to attain 'extraordinary achievements' may be naturalised without having to meet any residence requirement, if the granting of Austrian nationality benefits the interests of the Republic. In this case, neither proof of sufficient income nor renunciation of the original nationality is necessary,

Finally, further amendments to the Nationality Law were approved by Parliament in 2009, entering into force on 1 January 2010, which raised the requirement of sufficient income as a condition for naturalization, made obtaining citizenship by fraud punishable, made an adjustment for adopted children required by a court decision and another adjustment regarding the citizenship test. It further introduced into the oath of loyalty to the Republic a commitment to the "core values of a European democratic state and society."

Dual nationality

The ban on dual or multiple nationalities is one of the principles of Austrian Nationality Law and was reinforced by the adherence to the Convention of the Council of Europe on the Reduction of Multiple Nationality of 1963. Accordingly "a person who acquires a foreign nationality upon his application, his declaration or his express consent loses the nationality if he was not granted the right to retain the nationality before".[14] Such permission is only to be given if the granting of nationality is in the particular interests of the Republic by reason of the alien's actual or expected outstanding achievements

[14] Art. 27.(1)

and if the foreign country whose citizenship the Austrian national is applying for consents to the retention of his or her nationality.[15]

The amendment of the Austrian Nationality Act of 1993 stipulates that victims of National-Socialist persecution once holding Austrian citizenship can re-obtain citizenship by submitting a claim to this effect.[16] This new provision also made it possible for the victims to maintain their current citizenship in their country of residence and as such it is one of the very few exceptions to the ban on dual nationality.

A legal provision that had been a traditional part of Austrian Nationality Law and which granted Austrian Nationality to University or college professors upon acceptance of an employment contract under public law was repealed in 2009.[17]

The case of South Tyrol

As mentioned above, South Tyrol with its predominantly German speaking population (89% according to the census of 1910) was occupied by Italy and annexed as a result of the Treaty of St. Germain following World War I. The agreement between Hitler and Mussolini of October 1939 as well as the result of World War II confirmed this situation, while Italy, in the agreement between Austrian and Italian Foreign Ministers Gruber and De Gasperi of 1946 agreed to extend autonomy to the German (and Ladinian) speaking population and to recognize Austria as a Protecting Power (Schutzmacht). In 1971 the Austrian and Italian Parliaments agreed to a package of measures designed to enhance South Tyrolean autonomy and to a roadmap of implementation which eventually (1992) lead to a settlement of the dispute between Austria and Italy and is often cited as a model for good solutions to difficult minority situations.

By and large all sides seemed satisfied with the situation which had been brought about with the support also of the local parliaments in Tyrol and South Tyrol. South Tyroleans received many privileges in Austria, for example free access to the University in Innsbruck, the capital of the Austria Province Tyrol. For many years neither a possible return of South Tyrol to Austria nor the extension of Austrian nationality to South Tyroleans has been an issue.

However, in the last few years these questions have been raised by representatives of right wing political parties. Official reactions both

---

[15] Art. 28.(1)

[16] Art. 58c of the Federal Law on the Austrian Citizenship of 1985, BGBl Nr. 311/1985

[17] Federal Law of 2009 on the Amendment of (…) the Law on the Austrian Citizenship of 1985.BGBl Nr 122/2009

on the part of the Austrian Government and South Tyrolean Government initially were very reserved. The Austrian Foreign Minister pointed out that dual nationality did not correspond to the basic principles auf the Austrian Nationality Law and would require numerous legal changes. But in 2009, in response to continuing demands, the Austrian Parliament created a Sub Committee on South Tyrol of the Committee for Foreign Affairs that inter alia deals with the issue of citizenship.

An outcome is not in sight but there is agreement that the matter will be further discussed. It is an emotional issue for some but its practical relevance is close to zero. In various comments it was pointed out that the population of South Tyrol itself did not seem to regard the issue as a priority.

Laws relevant to expatriate vote

Voting rights for expatriates were introduced in Austria in 1990.[18] Before the necessary legal changes were made participation of expatriates was excluded, since the *Wählerevidenzgesetz* (law on registry of voters) made voting conditional upon having the main residence in Austria. Several organizations of expatriates had been fighting for voting rights, but it was an individual complaint to the Constitutional Court that cleared the path.

Since then, Austrian nationals living abroad enjoy full voting rights in parliamentary and presidential elections, elections to the European Parliament, as well as in national referenda, if they are included in the register of voters in a municipality. The registration requires an application by Austrian expatriates in his municipality (which usually is the municipality of his last main residence in Austria or failing that some other link as defined in the *Wählerevidenzgesetz)* and needs to be renewed every ten years.

The voting procedure itself was initially complicated and bureaucratic but after much discussion was significantly improved and simplified in 2007[19], 2010[20] and again in 2011.[21] It is noteworthy that

[18] Federal Law of 28. 2 1990 on the Amendment of the Law on National Council Elections of 1971, of the Law on Presidential Elections of 1971, of the Law on the Registry of Voters of 1973, BGBl 148/1990

[19] Federal Constitutional Law of 2007 on the Amendment of the Federal Constitutional Law of 1930. BGBl Nr. 27/2007 and Nr. 28/2007

[20] Federal Law of 2010 on the Amendment of the Law on European Parliamentary Elections (…) BGBl. I Nr. 13/2010

[21] Federal Constitutional Law of 2011 on the Amendment of the Federal Constitutional Law of 1930. BGBl I Nr. 43/2011

no separate law exists for the expatriate vote but the legal dispositions are contained in several laws, of which the *Wählerevidenzgesetz*[22] *and the Nationalratswahlordnung* (law on elections to the National Council, the lower house of the Austrian Parliament)[23] are key. The basic premise is that every Austrian national is entitled to participate in elections; the question was, as it were, a technical one, namely how to make this possible within the existing system. The voting cards are issued by the municipality where the expatriate is registered and the ballot has to reach the district election authority by 5 p.m. of Election Day. That means in practice, that the ballots have to be mailed or deposited with the Consulate several days (at least six) before Election Day. The procedures for voter registration as well as for the voting itself are laid out in great detail by the law.

As the expatriate votes in accordance with the *Wählerevidenzgesetz* are always linked to a specific election district no separate transformation process of expatriate votes is required. The expatriate votes are simply added to the votes in the relevant election district.

According to the Austria Foreign Minister roughly 500.000 Austrian nationals live abroad, nearly half of them in Germany.[24] The participation of expatriates in elections, however, has been very limited. At the parliamentary elections 2008 only 28.151 expatriates voted, 6.308 of them for Vienna. The vote of expatriates is therefore not likely to have an impact on the outcome of elections. By contrast, a relatively large number of persons (558.300) with main residence inside Austria cast their vote during a stay abroad.

Conclusion

It would seem that the case of Austria with regard to National Policy and dual citizenship is quite separate from that of the other countries of Central Europe. Only two, three generations ago Austrians were deeply divided over the issue of nationality and of its own national sovereignty. After the decline of the Dual Monarchy in 1918 the majority of the state-supporting class in the new Austria, the "left-over" (Georges Clemenceau: "L'Autriche c'est ce qui reste"), suffered from a severe identity crisis. Most Austrians did not believe in the survival of the small Austrian Republic which had lost its economic,

[22] Law on the Registry of Voters of 1973, BGBl 601/1973, updated version of 2012

[23] Federal Constitutional Law of 1992 on the Amendment of the Federal Constitutional Law of 1929. BGBl 471/1992

[24] www.auslandsoesterreicher.at/ currenly about 342.000 in Germany, 50.000 in Switzerland, 27.00 in USA, 22.000 in UK, 18.000 in South Africa, and 15.000 each in Australia and Spain (4/5 of the total)

political and cultural connections. This was no basis for a National Policy that would reach beyond its borders.

It took the Austrian civil war in the 1930s and the devastating experience of World War II and National Socialism to clear the way for a new identity to develop. The lessons from that past, the Austrian State Treaty, the Declaration of Permanent Neutrality and the "economic miracle" – which was at least partly based on the specifically Austrian form of "social partnership" – were important components of this process. Thus the new Austria finally and definitely accepted its identity.

The ban on dual or multiple nationalities fits into this picture; it is one of the principles of Austrian Nationality Law and was reinforced by the adherence to the Convention of the Council of Europe on the Reduction of Multiple Nationality of 1963. The exceptions to the rule are very few.

Voting rights for expatriates were introduced in Austria in 1990 following a judgment of the Constitutional Court. Before the necessary legal changes were made participation of expatriates was excluded, since the *Wählerevidenzgesetz* (law on registry of voters) made voting conditional upon having the main residence in Austria. Since 1990, Austrian nationals living abroad enjoy full voting rights in parliamentary and presidential elections, elections to the European Parliament, as well as in national referenda, if they are included in the register of voters in a municipality.

The view from abroad? Generally Austrian National Policy, nationality law and laws on expatriate vote seems to have responded to expectations. In the late Nineties plans and implementation of stiffening conditions for integration of immigrants and for granting of Austrian citizenship to immigrants have met with some criticism. Following some adjustments in the meantime these seem to be more or less within the European mainstream.

III.
Citizenship in East Central Europe

Irina Culic

From Restitution to Privileged Re-naturalisation: The Expansive Politics of Dual Citizenship in Romania after 1989

The transformations engendered by the fall of the communist regimes and the dismantling of multinational federations in Central and Eastern Europe opened a momentous space for state reinvention. Alongside new constitutions pledging loyalty to universal human values and democracy in the name of their constitutive communities, the states, old and new, introduced citizenship laws, establishing the rules of *aptness for membership*. Invoking diverse historically formed principles of legal continuity and nation protection, they tended to follow a double logic. On the one hand, as states of and for a nation[1], they made inclusionary moves towards their external kin-population, through privileged naturalisation and specific kin-state legislation. On the other hand, they took an exclusionary stance towards their internal ethnic minority population, and restrictionist measures of territorial access to foreigners. In terms of dual citizenship regulations, this materialized in significantly asymmetric approaches to naturalisation practices, which favoured ethnic selectivity and citizenship by birth-right.

In what follows I will first discuss dual citizenship as an institutional instance of the changes in, and challenges to, nation states. It reflects the tensions of globalized fluxes of capital and commodities and controlled movement of people across borders, universality of human rights discourse, and particularism of nation state territorialisation. Then I will examine the course of dual citizenship legislation in post-communist Romania, emphasizing state rationality behind its transformation. I will focus on its most debated provision, the restitution of citizenship to former citizens, unwillingly or abusively stripped of their citizenship, and I will discuss its shift towards privileged (re-)naturalisation during the past two decades. As a form of kin-state policies, I will relate it to similar legislation by Hungary, as they have continuously interacted within a multifaceted field of political, symbolic, economic, and social relations. The context in which these legislations unfolded was notably determined by mass interna-

[1] Brubaker, Rogers. 1994. "Nationhood and the National Question in the Soviet Union and Post-Soviet Eurasia: An Institutionalist Account." Theory and Society 23(1): 47-78.

tional labour migration, and supra-statal integration throughout the European Union.

Dual citizenship and the paradox of democratic legitimacy

The occurrence of dual nationality is now considerably higher than four decades ago, when it used to be rather uncommon. The metaphor of bigamy, the famous depiction given to the relation between states and dual citizens by the American Minister at the British Court, George Bancroft, in 1849, has been since used to express the historic aversion towards dual nationality, and the precept of indivisible loyalty.[2] The 1963 Council of Europe's *Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality* was based on the principle that dual nationality is undesirable and should therefore be avoided.[3] Only in 1993 a *Second Protocol* to the convention recommended the retention of the nationality of origin for persons acquiring a second nationality through permanent migration or mixed marriage. Dual nationals used to be perceived as a security threat, not in the guise of cunning spies, saboteurs, or electoral fifth column,[4] but by the instability provoked through conflict over states' rights to regulate persons. This has since changed, as now state power resides much less in military strength understood as manpower, and persons are shielded by internationally guaranteed human rights.

The 1997 *European Convention on Nationality* recommends states to allow multiple nationalities in the case of acquisition at birth or through marriage (Art. 14).[5] But is also affirms the unlimited right of states to strip persons of their nationality if they acquired or possess the nationality of another state, and to require the renunciation of another nationality in order to obtain or retain its own. The *Universal Declaration of Human Rights* (1948) is equally elliptic on the issue of multiple nationalities (Art. 15), as it is on that of mobility rights. It affirms the right to freedom of movement and residence

[2] Great Britain, Foreign Office. 1868. *British and foreign state papers,* Volume 53, 1862-3. London: William Ridgway, 169, Piccadilly. Mr. Bancroft to Lord Palmerston, London, January 26, 1849. pp. 639-646. Also, see the *Convention on Certain Questions relating to the Conflict of Nationality Laws,* 12 April 1930.

[3] The convention was signed by Moldova, but never ratified. Romania and Hungary did not sign it.

[4] Faist, Thomas. 2007. "The Fixed and Porous Boundaries of Dual Citizenship." In Faist, Thomas (ed.), Dual Citizenship in Europe. From Nationhood to Societal Integration. Aldershot: Ashgate, pp. 5.

[5] The convention was signed, ratified, and entered into force in Romania, Moldova, and Hungary.

within one's state, the right to leave any country, and to return to one's own (Art. 13); it also asserts the right to seek and enjoy asylum from persecution in other countries (Art. 14). But it is silent with respect to the right to receive leave of entry in other country than one's own, or the right to temporary sojourn. This stands witness to the continuing force of the international system of states' modern template, organized around notions of exclusive jurisdiction and bounded communities, and the lack of cross-border embeddedness of universal human rights.[6]

Dual citizenship resulted, in general, out of the expansion of individual rights versus state prerogatives in liberal democracies[7], supported by the independent work of the judiciary, and the influence of economic and social interest groups over party politics.[8] This entailed processes of de-gendering, de-racializing, and socializing of citizenship rights, and the multiplication of forms of immigrant denizenship and belonging. States of residence acknowledged that allowing the retention of original nationality for naturalizing immigrants will foster their social inclusion, political participation, and attachment. States of origin started to capitalize on the remittances and economic investments of co-nationals abroad. By promoting their security and welfare as foreign labourers, as well as through their mobilisation, they gained a foothold in the politics of the states of residence.

If dual nationality in the West responded to massive immigration ensuing from its colonial past and its version of modernity, in Central and Eastern Europe political struggles over dual citizenship structured along moving borders: the redrawing of nation-state boundaries, the creation of multi-national federations, and their dismantling. At the fall of communist regimes in 1989, and the breakup of the Soviet Union in 1991 and Yugoslavia (as well as Czechoslovakia) in 1992, the states faced a double structure of challenges. On the one hand, most of them "hosted" historical national minorities, which held a legitimate claim over the territory as their historic native land, and to ethno-cultural recognition. They were supported by external

---

[6] For a discussion of Hannah Arendt's "right to have rights" see Benhabib 2004. For the understanding of citizenship as the right to have rights see Somers 2007.

[7] Spiro, Peter, 2002. "Embracing Dual Nationality", in Randall Hansen & Patrick Weil eds. Dual Nationality, Social Rights and Federal Citizenship in the U.S. and Europe. Berghahn Books 2002

[8] Freeman, Gary. 1995. "Modes of Immigration Politics in Liberal Democratic States." International Migration Review 29(4): 881-902.
Joppke, Christian. 1998. "Why Liberal States Accept Unwanted Immigration." World Politics 50(2): 266-93.

national "homelands," for which they constitute ethno-national kin abroad or transborder national minorities. On the other hand, they contained ethnic groups created through internal migration within political federations, whose claim and right to inclusion is based on ties created through extended residence and/or birth on the territory.[9]

As a political concept, modern citizenship comprises [at least] three dimensions. First, *democratic self-governance* conceives a community of individuals enjoying equal freedom, who have the right to rule and to be ruled. Citizens are not only subjects of the law, but also its authors. This requires congruence between the resident population and the political community. Second, citizens enjoy *social inclusion*, through substantive participation in the social life on the territory. All individuals are recognized by others as moral equals, and due "the same level of respect and dignity as all other members".[10] This requires that they have and are able to enjoy full rights and entitlements – civil, political, social, cultural etc. Third, they claim a *collective identity* through membership, which gives them a status and a sense of belonging.

The historical processes of nation state formation merged two ideals: the civic-republican ideal of self-governance, through the exercise of freedom among equals in the public space, manifested in the practice of public autonomy; and the ideal of territorially circumscribed nation states, providing the administrative framework for citizens' equal enjoyment of rights and entitlements, manifested in the practice of private autonomy.[11] Transborder mobility and the emergence of an international regime of human rights now challenge this model of nation states, by bringing on the question of the *rights of others*. This is at the core of what Benhabib calls the paradox of democratic legitimacy. While the legitimacy of the democratic sovereign arises from the act of its constitution, it also follows from the universal principles of human rights that the sovereign binds itself through this act. "'We, the people' refers to a particular human community, circumscribed in space and time, sharing a particular culture, history, and legacy; yet this people establishes itself as a democratic body by acting in the name of the 'universal'."[12] The ques-

[9] Will Kymlicka (1995) proposed this distinction between national minorities and ethnic groups.

[10] Somers, Margaret. 2007. Genealogies of Citizenship. Markets, Statelessness, and the Right to Have Rights. Cambridge: Cambridge University Press. pp.6.

[11] Benhabib, Seyla. 2005. "Borders, Boundaries, and Citizenship". PS: Political Science and Politics 38(4): 673.

[12] Benhabib, Seyla. 2004. The Rights of Others. Aliens, Residents, and Citizens. Cambridge: Cambridge University Press. pp.44.

tions of justice, moral worth, freedom, participation, and equality are raised in the space of this tension, when non-members cross the porous borders of the community. Noting that every act of self-legislation is also an act of self-constitution, and that democratic rule is exercised by and through a specific constituency alone, Benhabib confronts this tension with the imperative of democratic iterations: through moral and political interlocking dialogues, constituencies of all sorts reassert and give shape to universal principles.[13]

How are to be reconciled states' human rights declarations and their sovereign claims to control access to their territory? Should states give the right to temporary sojourn universally, and accompanied by what citizenship rights? Does extended residence on a territory creates the right to membership? What acts can determine, if any, the loss of birth-right membership in a democratically self-governed community? What sort of borders and how far/close can they be built through acts of self-legislation qua self-constitution by communities entangled in complex ties with other self-governing communities? The politics of immigration and the politics of citizenship are major arenas where this tension is played out, and where a reconstruction of the relation between public and private autonomy takes place. They concern immigration states, settler states, and post-colonial states constellations, as much as they concern the diaspora or kin-state constellations.[14] To borrow again Benhabib's words, "the international system of peoples and states is characterized by such extensive interdependencies and the historical crisscrossing of fates and fortunes, that the scope of special as well as generalized moral obligations to our fellow human beings far transcends the perspective of the territorially bounded state-centric system."[15]

Specific arguments regarding dual citizenship are usually shaped by the democratic theory traditions from within which they are formulated, and accentuate aspects of one or other of the three dimensions of political citizenship outlined.[16] States arrive at embracing dual citizenship for nationals, co-ethnics, or foreign residents through a process where multiple actors interact in specific social and insti-

[13] Benhabib, Seyla. 2004. The Rights of Others. Aliens, Residents, and Citizens. Cambridge: Cambridge University Press. pp.113.

[14] The constellation terminology belongs to Joppke 2005.

[15] Benhabib, Seyla. 2004. The Rights of Others. Aliens, Residents, and Citizens. Cambridge: Cambridge University Press. pp.37.

[16] For example see Blatter 2010 for a brief rehearsal of arguments carried out from various democratic theory perspectives, regarding Hungary's 2010 decision to grant external citizenship to Hungarian ethnics abroad, and Slovakia's retort by banning dual citizenship.

tutional contexts, and where the meaning of community, identity, rights, equality, participation, and citizenship are object and result of political struggles. Giving an account of the dual citizenship politics of a state requires a narrative approach that relates these relational moves, and the discursive regimes that shaped it.

In the following part of the paper I will relate the course of policy-making and the debates around the issue of dual citizenship in Romania. I will not attempt to inventory all changes to the citizenship law, and the relational context that brought them about.[17] I will instead engage the prevalent interpretation of the central provision of the law, the restitution of citizenship to former citizens abroad, and to their descendants. My version is sceptical about the common understanding, formulated in nationalist terms, that along with the aim to correct past injustice, the provision also intended to restore symbolically the interwar political community of Greater Romania, and that its successive changes introduced an ethnic filter.[18] I too understand it as a policy addressing World Wars' and communist regime's legacies of unwilled and abusive loss of citizenship, but I suggest that the policy has retained its original statist and expansive scope. I see its modification in the past two decades, from restitution to privileged(re-)naturalisation, as an expected and desired result, expressive of past and present historical-political processes: global neoliberal capitalism, European integration, and mass labour international migration.

In what follows I will use interchangeably the terms "citizenship" and "nationality," that will refer to the legal relation of citizenship pertaining to the rights and obligations between a state and a person. It links the person to the registered population of a state, and makes

[17] For a detailed and historically contextualized account see Iordachi 2012 and 2009.

[18] Iordachi, Constantin. 2009. "Politics of citizenship in post-communist Romania: Legal traditions, restitution of nationality and multiple memberships." In Bauböck, Rainer, Bernhard Perchinig, Wiebke Sievers (eds), Citizenship Policies in the New Europe, 2nd enlarged edition. Amsterdam: Amsterdam University Press, pp. 177-209.
Iordachi, Constantin. 2012. "Redobândirea cetăţeniei române în perspectivă istorică: de la restituirea drepturilor cetăţeneşti la primatul cetăţeniei de origine." In Iordachi, Constantin (ed.), Redobândirea cetăţeniei române. Bucureşti: Curtea Veche, pp. 67-151. English version of the chapter, pp. 311-395.
Dumbrava, Costica. 2010. "Five Comments on Citizenship Policies in CEE Countries." In Bauböck, R. And Liebich A. (eds), Is There (Still) an East-West Divide in the Conception of Citizenship in Europe? EUI Working Paper RSCAS 2010/19. Badia Fiesolana: European University Institute, pp. 17-18.

her subject to the state sovereign jurisdiction.[19] I will also use the term citizenship as a political concept, when the relevant analytical dimension is in question: self-governance, exercise of rights, or identity.

Dual citizenship in the Romanian law

The acquisition of Romanian citizenship is regulated by the *Romanian Citizenship Law* (Law 21/1991),[20] introduced in 1991, republished in 2000 and 2010, and changed several times in 1999, 2001, 2002, 2003, 2007, 2008, 2009, 2010, and 2013.According to Law 21/1991, Romanian born citizens can become dual or multiple citizens. The law does not explicitly allow or prohibit dual citizenship. It does, however, permit dual citizenship implicitly. In the case of restitution of citizenship or re-naturalisation, the right to dual nationality is explicitly granted. Dual citizenship may arise in several situations: by birth; by foreign naturalisation of Romanian citizens; by naturalisation of foreigners as Romanian citizens; and by restitution of Romanian citizenship or re-naturalisation of former Romanian citizens who hold a foreign nationality.[21]

First, Romanian legislation interacts with other states' legislation regarding ascription of citizenship at birth, which in Romania is based solely on the *jus sanguinis* principle. Children born in mixed marriages may acquire the foreign citizenship of the foreign parent *and* the Romanian citizenship of their Romanian parent, whether they are born on Romanian territory or not. Children born of a Romanian parent outside the territory of Romania, in a country that grants citizenship according to the *jus soli* principle, may acquire the foreign citizenship of that country *together with* the Romanian citizenship of the Romanian parent(s). Romanian citizenship can be passed endlessly intergenerationally and extraterritorially, thus allowing for multiple combinations of possible citizenships, based on the mixing of the descent and the territorial rules for birth-right citizenship.

Second, Romanian citizens may acquire any number of foreign nationalities *and* maintain Romanian citizenship. The Romanian law has no provision with regard to the acquisition of foreign nationali-

[19] The Romanian term for the legal relationship of nationality is *cetățenie. Naționalitate* is used to denote ethnic belonging. For the social career of the legal terms of *cetățenie and naționalitate* see Iordachi 2009: 207, ft.1.

[20] Law 21, 1 March 1991, of Romanian citizenship. Published in the Official Gazette 44/6 March 1991.

[21] Here and in the following dual citizenship will reference also possible situations of more than two citizenships.

ties. In 1999, an addition to the law stipulates that Romanian citizenship cannot be withdrawn from Romanian-born citizens.[22] The procedure for individual renunciation of citizenship is difficult, and requires the provision of extensive proof of lack of penal and financial liability in Romania.[23]

Third, foreign nationals who have their domicile in Romania, and have been legal residents for at least eight years, may acquire Romanian citizenship, without renouncing their foreign nationality, if they meet a number of requirements. These include: proof of adequate means for decent living; "acknowledged good behaviour," and clean criminal record; loyalty towards the Romanian state, proved through "behaviour, actions, and attitude," and no record of acts against the state of law or national security; knowledge of the Romanian language, and possession of elementary notions of Romanian culture and civilisation, necessary to integrate into the social life; knowledge of the Romanian Constitution and of the national anthem.[24]

Finally, former Romanian citizens and their descendants, who also hold a foreign citizenship, may re-naturalise or have their Romanian citizenship restored, by repatriation or by maintaining their domicile abroad. Restitution of Romanian citizenship was present during the communist period, when the Romanian state regularized the situation of citizens denaturalized during the Second World War, displaced persons, or residents who had not been able to naturalize under previous legislation.[25] On the last day of the December 1989, the Council of the National Salvation Front, the revolutionary provisional power emerged after the demise of communist leader Nicolae Ceaușescu's regime, granted the right to repatriate to all Romanians living abroad, and to reacquire Romanian citizenship by request,

---

[22] Law 192, 10 December 1999, to modify and complete the Law of Romanian citizenship 21/1991. Published in the Official Gazette 611/14 December 1999. Law 21/1991, Art. 25, para. 2.

[23] See Government Urgency Ordinance (OUG) 87/2007, and Law 70/2008 for latest changes in this regard.

[24] Law 21/1991, Art. 8, para. 1. In case of spouses of Romanian nationals, the length of the residence is reduced to a minimum of five years. It can also be shortened to half for applicants who are renown personalities, citizens of European Union countries, refugees, or investors of 1 million Euros of more (Art. 8, para 2). All translations from official documents are mine.

[25] Iordachi, Constantin. 2009. "Politics of citizenship in post-communist Romania: Legal traditions, restitution of nationality and multiple memberships." In Bauböck, Rainer, Bernhard Perchinig, Wiebke Sievers (eds), Citizenship Policies in the New Europe, 2nd enlarged edition. Amsterdam: Amsterdam University Press, pp. 187-188.

through repatriation, to those who have lost it.[26] In 1990, the Provisional Council of National Unity passed a decree which gave Romanian expatriates who had lost their citizenship before 22 December 1989the right to reacquire Romanian citizenship, *and* retain their foreign citizenship and domicile abroad.[27] Iordachi notes that "the decree *explicitly* allowed certain categories of citizens to hold dual nationality for the first time in Romania's legal history."

Restitution of Romanian citizenship to former citizens living abroad

The new Romanian Citizenship Law, Law 21/ 1991,set the frame for reacquiring Romanian nationality by former Romanian citizens. It stipulated three possible paths to be reinstated into citizenship: first, through *repatriation* (Art. 8);second, through *simplified re-naturalisation*, by request, with the option to maintain residence abroad (Art. 11); third, through *restitution*, by notarised declaration, to former citizens who before 22 December 1989 lost their nationality because of "various reasons", "even if they have another nationality and do not establish their domicile in Romania" (Art. 37, para. 1), and also to those who "were stripped of their Romanian nationality against their will or for other reasons that cannot be imputed to them, and to their descendants (Art. 37, para. 2)."[28]

Restitution of Romanian citizenship, provided by Article 37 of Law 21/ 1997, represents the most debated provision of the law, and has been subject to several revisions during the past decade. It had been intended as an act of redress of past injustice, within the larger politics of restitution that characterized early post-communist political reform in the majority of countries of the former Soviet bloc.

---

[26] Decree-Law 7, 31 December 1989, concerning the repatriation of Romanian citizens and former Romanian citizens.

[27] Decree-Law 137, 11 May 1990, concerning several resolutions on Romanian citizenship. Published in the Official Gazette 75/21 mai. 1990. Iordachi, Constantin. 2009. "Politics of citizenship in post-communist Romania: Legal traditions, restitution of nationality and multiple memberships." In Bauböck, Rainer, Bernhard Perchinig, Wiebke Sievers (eds), Citizenship Policies in the New Europe, 2nd enlarged edition. Amsterdam: Amsterdam University Press, pp. 188.

[28] Law 21/1991, Art. 37. (1) Foştii cetăţeni români care, înainte de data de 22 decembrie 1989, au pierdut cetăţenia româna din diferite motive, o pot redobândi la cerere, în baza unei declaraţii autentificate, în străinatate, la misiunile diplomatice sau oficiile consulare ale Romaniei, iar în ţară, la Notariatul de Stat al municipiului Bucureşti, chiar dacă au altă cetăţenie şi nu-şi stabilesc domiciliul în România. (2) Beneficiază de dispoziţiile aliniatului 1 şi cei cărora li s-a ridicat cetăţenia română fără voia lor sau din alte motive neimputabile lor, precum şi descendenţii acestora.

It simply repeated the text of the Decree-Law 137/1990, followed by an additional second paragraph which appears to be a clarification: the recipients of the article comprised both former Romanian citizens who lost their nationality as a result of *individual* actions taken unilaterally against the Romanian state, and former citizens who lost their citizenship *en masse* as a result of territorial changes, and their descendants.[29]

The inclusion of Article 37 in the concluding Chapter 7 of the law, "Final and transitory dispositions," indicates that it had been intended as a temporary provision, and a transitional one. The first paragraph talked of Romanians who had been stripped of Romanian citizenship during the communist regime, because of various acts of disloyalty against the communist state (political dissenters, opponents, refugees, asylum seekers, exiles), or who were forced to, or chose to renounce it for other reasons.[30] The second paragraph addressed former Romanian citizens comprising population lost along with territories handed over by the Romanian state.[31] The majority of them were Soviet citizens of the Soviet Socialist Republic of Moldova,[32] now the Republic of Moldova (from hereon the RM), and of the Ukrainian Soviet Socialist Republic, now Ukraine. As a transitory and transitional provision, this form of citizenship acquisition is usually limited to a period of time deemed reasonable for its recipients, former citizens and their descendants, to meet the conditions and apply. In the European countries that maintain a policy of citizenship restitution as a means to remedy wrongs of the past (Austria, Bulgaria, the Czech Republic, Germany, Greece, Hungary, Lithuania, Poland, Slovenia, and Spain), it takes the form of privileged (re-)naturalisation or facilitated (re-)acquisition of citizenship.

---

[29] Iordachi, Constantin. 2009. "Politics of citizenship in post-communist Romania: Legal traditions, restitution of nationality and multiple memberships." In Bauböck, Rainer, Bernhard Perchinig, Wiebke Sievers (eds), Citizenship Policies in the New Europe, 2nd enlarged edition. Amsterdam: Amsterdam University Press, pp. 189.

[30] Among these may be the requirement to renounce former citizenship, in order to naturalize in the state of residence, or to discontinue links or obligations related to holding the citizenship of the country of origin.

[31] This is the case of Bessarabia and Northern Bukovina, handed over to USSR by the effect of the Molotov-Ribbentrop Pact. All post-1989 Romanian presidents have repudiated the Pact. The law also refers to Southern Dobrudja, which belonged to Romania between 1913 and 1940. Under the Treaty of Craiova, which restored Southern Dobrudja to Bulgaria, a mandatory population exchange took place. Almost 95% of Romanians who settled in the territory after 1913 returned to Romania.

[32] Called the Moldavian Soviet Socialist Republic until the *Declaration of Sovereignty* on June 23, 1990.

Article 37 of Law 21/ 1991 has been interpreted by many analysts and certain politicians in a nationalist, revisionist, and imperialist key. It was seen as "a means of recreating the pre-communist citizenry and national community and [as] a means for the restoration of national identity, allegedly lost under communist rule, which was defined as a regime of Soviet occupation"[33] or "hidden nationalism".[34] However, this seems like a rather retrospective, tendentious interpretation of the law, resulted out of the row between Hungary and its neighbours with regard to its (not so) pioneering *Act LXII on Hungarians Living in Neighbouring Countries*(known as the Status Law, 2001);[35] the intermittent tension at top level between Romania and the RM, peaking in the mid-2000s with several rebukes by Moldovan President Vladimir Voronin, at the time of Romania's belated efforts, initiated by President Traian Băsescu, to speed up the tarrying process of citizenship restoration;[36] and the very late concern expressed by the European Union at the possible huge migration of Moldovans into the EU via acquisition of Romanian citizenship.[37]

Kin-state policies

The Status Law episode drew attention to the existence and functioning of similar kin-state policies in Hungary's neighbouring coun-

[33] Iordachi, Constantin. 2009. "Politics of citizenship in post-communist Romania: Legal traditions, restitution of nationality and multiple memberships." In Bauböck, Rainer, Bernhard Perchinig, Wiebke Sievers (eds), Citizenship Policies in the New Europe, 2nd enlarged edition. Amsterdam: Amsterdam University Press, pp. 178; see also Iordachi, Constantin. 2012. "Redobândirea cetăţeniei române în perspectivă istorică: de la restituirea drepturilor cetăţeneşti la primatul cetăţeniei de origine." In Iordachi, Constantin (ed.), Redobândirea cetăţeniei române. Bucureşti: Curtea Veche, pp. 67-151. English version of the chapter, pp. 69,313 English version

[34] Dumbrava, Costica. 2010. "Five Comments on Citizenship Policies in CEE Countries." In Bauböck, R. And Liebich A. (eds), Is There (Still) an East-West Divide in the Conception of Citizenship in Europe? EUI Working Paper RSCAS 2010/19. Badia Fiesolana: European University Institute, pp. 17-18.

[35] For the most comprehensive collection of texts discussing the Status Law see Kántor et al. 2004.

[36] Culic, Irina. 2009a. "Dual Citizenship Policies in Central and Eastern Europe." WP 15, Romanian Institute for Research on National Minorities, Government of Romania.http://www.ispmn.gov.ro/uploads/culic31.pdf Culic, Irina. 2009b. "The 'Romanianness' of Moldovans: History, Practices, and Institutions." Paper presented at the ASN 14th Annual World Convention, Columbia University, New York, 23-25 April 2009.

[37] Bidder, Benjamin. 2010. "Romanian Passports For Moldovans: Entering the EU through the Back Door." Spiegel Online International, 13 July 2010. http://www.spiegel.de/international/europe/romanian-passports-for-moldovans-entering-the-eu-through-the-back-door-a-706338.html (last accessed on July 4, 2013)

tries, as well as in other Western European countries.[38] Through the Department for Romanians Abroad (Departamentul pentru Românii de Pretutindeni, DRP) Romania enacts its foreign policy objective of "maintaining and asserting the ethnic, cultural, linguistic, and religious identity of Romanians in the neighbouring countries and the emigration, according to the specific international standards, and of strengthening the relations between Romania and the Romanian communities across borders."[39] Perhaps the most important element of this strategy is the scholarship program, which has been supporting, for the past two decades, thousands of secondary, undergraduate, and graduate students to pursue studies in Romanian high schools and universities. For the academic year 2012-2013, the Romanian state offered 3,000fully funded scholarships, and 3727 tuition free places for Romanian autochthonous ethnics living in the neighbouring countries, and for Romanian citizens residing abroad. Most of them were specifically allocated to the RM (see Table 1. for detailed figures).

Table 1. Romania's education support for Romanians outside the borders. Data for academic year 2012-2013.

	Republic of Moldova		Other countries	
	Full scholarship	**Tuition only**	**Full scholarship**	**Tuition only**
High school – 9th form	800	700	150	150
Undergraduate studies (Licență)	1,000 (700 high school graduates from the RM, 300 from Romania)	1,800	500	405
Master studies	250	300	113	270
Medical professional stage (Rezidențiat)	25	-	112	-
Doctoral studies	25	100	25	2

Total full scholarships: 3,000. Total tuition only: 3,727. Full total: 6,727.
Source: Data compiled by author from Annex 9A of the Order of the Ministry of Education, Research, Youth, and Sports Nr. 4559, 25 June 2012, following Government Decision Nr. 549, 23 May 2012, concerning the approval of places for secondary and university state education in the academic year 2012-2013. "Other countries" are: Albania, Bulgaria, Macedonia, Serbia, Ukraine, Hungary, and "the Diaspora".

[38] Council of Europe. 2001. "Report on the Preferential Treatment of National Minorities by their Kin-State", adopted by the Venice Commission at its 48th Plenary Meeting, Venice, October 19-20, 2001. Published in Strasbourg, October 22, as document CDL-INF (2001) 19.

[39] See the website of DRP, http://www.dprp.gov.ro/

Related discussions regarding the possibility of granting fast-track extraterritorial citizenship to Hungarian ethnics living in neighbouring countries also pointed to the fact that, since the change of regime in 1989, Romania had been restoring non-resident citizenship to former Romanian citizens and their descendants. In 2010, Hungary passed an amendment to the citizenship law that introduced the possibility of simplified acquisition of citizenship by Hungarians living abroad.[40] Except for the language proficiency requirement, the new form of naturalisation copies the Romanian present restitution procedure as facilitated (re-)naturalisation.

Comparisons drawn between the kin-state politics of Romania and Hungary tended to underscore resemblances. Romania's firm reaction to the Status Law was deemed in tension with its own concern for co-ethnics abroad. Analysts and politicians equally pointed to the dual behaviour of Romania as "nationalizing state" with respect to its internal national minorities, in particular to its most numerous and politically mobilized Hungarian minority; and as external "homeland" with respect to ethnic Romanians in Bessarabia and Bukovina.[41] In my understanding, both the historical-political contexts in which the policies were carried out and their form do not hold comparison.

As a starting point I take issue with the terms commonly used to depict the relational setting of nation-states and ethnic/ national minorities, in which kin-state policies are articulated. Here, and earlier in the text, I used inverted commas for the designations "host" and "homeland," because they misrepresent the situation of the actors involved. Individuals belonging to national minorities cannot be "hosted" by the states in which they were born, and which they recognize as their historical native land. They are not guests in their origin country, even less so in their state of birth-right citizenship. Similarly, the ethnic kin-state abroad is not their "homeland", until they move their residence there and start to feel "at home." For

[40] For a collection of position-takings with respect to this move, and Slovakia's reaction, see Bauböck 2010.

[41] Iordachi, Constantin. 2004. "Dual Citizenship and Policies toward Kin-Minorities in East-Central Europe: A Comparison between Hungary, Romania, and the Republic of Moldova." In Kántor, Zoltán et al. (eds), The Hungarian Status Law: Nation Building and/or Minority Protection. Sapporo: Slavic Research Center, Hokkaido University, pp. 239-269.
Iordachi, Constantin. 2009. "Politics of citizenship in post-communist Romania: Legal traditions, restitution of nationality and multiple memberships." In Bauböck, Rainer, Bernhard Perchinig, Wiebke Sievers (eds), Citizenship Policies in the New Europe, 2nd enlarged edition. Amsterdam: Amsterdam University Press, pp. 177-209.

all practical purposes, their homeland is the country in which they were born and live. At the 2000 *Ehtnobarometer* survey carried out by the Research Center for Interethnic Relations, 53% of Hungarians declared that in the first place they consider themselves Transylvanian Hungarians, 15.8% Hungarians with Romanian citizenship, 15.2% Romanian Hungarians, 12.9% Szeklers, and 3.1% other (answering alternatives given). Similarly, at the 1997 *Interethnic relations in the Carpathian Basin* survey carried out by the Department of Sociology at Babeş-Bolyai University in Cluj-Napoca, at the open ended question "What do you consider your native land?" 57% of Hungarians answered Transylvania, and 17.7% Romania. At the question "What do you consider your home?" a massive 68.4 of Hungarians answered Romania, followed by Transylvania with 20.4%.[42]

Similar questions have a different meaning for the citizens of the RM, and for ethnic Romanians in particular,[43] who belong to a different moment of the world time of nations and of nation-states. In brief: Hungarians in Romania were part of Hungarian nineteenth century assimilationist nationalism, Romanians in Bessarabia missed out the process of Romanian nation and state building between 1859 and 1918; Romanian communist authorities repressed Hungarian national identity, Moldovans were created as a titular nationality by the Soviet regime; Romanians in the RM experience a situation of statehood in a recognized "Romanian" state,[44] whereas Hungarians in Romania that of a national minority in a nation state; present Hungarian identity is founded on the trauma of Trianon, present Romanian identity is founded on the triumph of the Great Union of 1918.[45]

---

[42] Author's calculations based on original data held as co-author of the surveys.

[43] By ethnic Romanians I refer to the majority ethnic group in the RM. It comprises Moldovans, by the census category system, as well as the designated category of Romanians. According to the Constitution, the official language of Moldova is the Moldovan language with Latin script. In his 2007 attacks against Romania, triggered by discontent with Romania's policy of citizenship restitution, President Voronin declared Moldovans in Romania an unrecognized 10 million minority (BBC 2007).

[44] The official policy of Romania towards the RM is one of moral obligation and material and symbolic support, expressed by the syntagm "one nation, two states". The predominant approach of the RM is that of a specific Moldovan people, and of Moldova as a polyethnic, multicultural space. While Moldovans in the RM may claim a separate identity, they also claim to speak Romanian.

[45] On the history, cultural identity and nationhood of Moldovans and the RM see Caşu 2000, Cărăuş 2000, Ciscel 2006, Ionescu 2002, King 1999 and 2003, van Meurs 1994 and 1998. For Moldovanist history see works by Victor Stepaniuc and Vasile Stati.

The essential difference between Romanian and Hungarian kin-state policies, including the acquisition of external citizenship through facilitated (re-)naturalisation, resides in what borders they build and how they do it. Hungary aims at a "unified Hungarian nation" that traverses state borders and encompasses Hungarians abroad.[46] Its policy was devised through a process of multiparty consultation and reflects both the demands of Hungarians abroad and the political divisions inside Hungary.[47] Romania seeks "brotherly states" relations with the RM, and supports energetically RM's effort to access the European Union.[48] Its unification moves were rather practical than symbolical, such as granting passport free travel between the two countries.[49] A political unification with the RM had only marginal appeal in electoral politics in Romania.[50] In a commonly used analytical parlance, the difference between Romanian and Hungarian kin-state policies is that between an ethnic and a statist approach.

The citizenship legislation has never been an issue of public discussion in Romania. The figures of the 2010 Soros Foundation's survey on Romanians' representations about Moldovans display a dominant perception of cultural unity: "Half of the population (51%) stress the cultural unity without reservation, and about one third (34%) mark both similarities and differences between the two populations. [...] [This] minor discourse (which is not dominant and is less articulate at the level of public discourse) [...] does not contest the central thesis (of cultural unity) of the dominant discourse, but rather supports it."[51] There is a general support for political unity

---

[46] In Hungarian, "egységes magyar nemzet". See Kántor 2006 for an analysis of the concept of nation in Hungary's Status Law.

[47] See Culic 2006 for an account of the genesis of the Status Law and of related discussions about external citizenship.

[48] Romania never questioned the stateness of the RM, and was the first to recognize RM's declaration of independence in 1991. Romanian leaders have continuously affirmed the sovereignty of the RM. Individually and through EU framework Romania has continuously supported the RM economically and strategically. While the language of brotherhood evolved as the siblings grew up in a Eurocentric neighbourhood, Romania does appear as the big brother in this relationship.

[49] At EU pressure, in 2001 Romania introduced the requirement of international passports for Moldovans. At its accession to the EU in 2007, Romania introduced a visa regime for Moldovans, which provides maximum facilities allowed by Schengen requirements.

[50] The political union with Bessarabia has been historically less important than the issue of Transylvania, before and after 1918. Similarly, the efforts of political and cultural integration of Transylvania far surpassed those deployed for Bessarabia.

[51] Horváth, István. 2011. "Percepţia şi raportarea la diferenţele culturale." In Ghinea, Cristian et al., Republica Moldova în conştiinţa publică românească. Bucureşti: Fundaţia Soros România, pp. 78-9.

as an objective for both Romania (52% of all respondents strongly agree and agree) and the RM (60% of all respondents strongly agree and agree), as well as a congruence between the official position and Romanians' view on unification via common belonging to the EU.[52] All these seem to unfold on a background of confusion about what the RM is about and little interest towards it.[53]

The Romanian Citizenship Law introduced in 1991 offered Romanian citizenship through restitution as of right to *all former Romanian citizens who lost it before 22 December 1989*, without the requirement to establish residence in Romania, and *irrespective of their ethnic belonging*. This provision was conceived as an interim disposition, and, as a result of huge internal, bilateral, and suprastate structural transformation, it was later redefined, through a series of somewhat confused moves, as a right to privileged re-naturalisation (according to Articles 10 and 11, Law 21/1991 republished in 2010).[54] The right to privileged re-naturalisation for citizens who lost their citizenship and for their descendants, irrespective of their ethnicity and residence, of the mode of loss of citizenship, and of the mode of original acquisition of Romanian citizenship, *has been a constant of Romanian citizenship law throughout*.

The Hungarian legislators defined the scope of the Status Law (2001) first by restricting its application to countries awarded territories lost by Hungary as a result of the 1920 Treaty of Trianon now part of the neighbouring countries (Croatia, Slovenia, Yugoslavia – at that time still, Slovakia, Romania, and Ukraine; Austria is missing from the set), and second by defining the recipients of the law as ethnic Hungarians in these countries. The 2010 amendment to the citizenship law, while offering a very similar mode of fast-track naturalisation as the Romanian privileged (re-)naturalisation provision, as by the 2010 version of the republished Law 21/ 1991, differs by introducing Hungarian ethnicity as a fundamental condition.[55] On

---

[52] "Republica Moldova în conştiinţa publică românească" (The RM in the Romanian public consciousness). For data and analysis see Ghinea 2011, available at http://www.soros.ro/ro/publicatii (last accessed August 4, 2013). Quoted figures are from page 194. See Liliana Popescu's chapter on knowledge about Moldova and attitudes about unification.

[53] Popescu, Liliana. 2011. "Informarea cetăţenilor români cu privire la Republica Moldova şi atitudini faţă de unire." In Ghinea, Cristian et al., Republica Moldova în conştiinţa publică românească. Bucureşti: Fundaţia Soros România, pp. 83-93.

[54] For the trajectory of the law see its official page on the website of the Romanian Parliament Chamber of Deputies. http://www.cdep.ro/pls/legis/legis_pck.htp_act?ida=1293 (last accessed on July 4, 2013).

[55] The following answer was given by Tamás Wetzel, Hungarian ministerial commissioner for simplified naturalization, in a recent interview (Somogyi 2013), when

another note, the symbolic and ethnic character of the citizenship amendment is reflected also in the fact that citizens naturalized under its provisions were not initially granted political rights, such as the right to vote in national elections. Under the new Electoral Law voted by the Hungarian Parliament on December 23, 2011, non-resident citizens were granted the right to vote for party lists, but not for candidates running in single seat constituencies. In contrast, Romanian (re-)naturalized citizens residing abroad and/or dual citizens were granted the right to vote in Romanian national elections, and all rights and entitlements entailed by legal citizenship, except for those that pertain to residence on the territory. In 2003, the amended Constitution removed the requirement of exclusive Romanian citizenship for holding public office, a modification that took account of the rise in the number of dual citizens, the interest in political participation of Romanians living or working abroad, and the involvement of dual citizens in formal political activities. Only citizenship and residence in Romania have since been conditions of access to public office, including the offices of the President and of Members of Parliament.

Romania criticized the ethnic approach of the Hungarian Law from a statist position, claiming that the relationship between Hungary and Hungarians in the neighbouring countries, envisioned by the Status Law, challenged the sovereignty of the home state, its exclusive citizenship relationship with its own citizens, the territoriality principle, and the assumption of a single basis of loyalty and identity for the citizens of a state.[56] It rebuked the institution of distinctions and advantage differentials among citizens, on its territory, based on ethnicity. The Romanian government considered that the requirement of the declaration to belong to the unified Hungarian nation could not stand for a manifestation of the principle of free choice of national identity, since the Certificate of Hungarian Nationality obtained upon such a declaration would bring the person advantages, including social-economic benefits. Awareness of belonging charac-

asked about whether "Magyarabs [people understood to have Hungarian descent from the 16th century and living in Sudan and Egypt] submitted applications for naturalization": "We got an application from a Sudanese man who lived in Oradea (Nagyvárad) in Romania. Although he spoke good Hungarian, *he could not produce documents about Hungarian ancestors* so we turned down his application, and we follow the same policy with other similar cases." (emphasis mine)

[56] Government of Romania. 2001. "The Official Position of the Romanian Government on the Law on Hungarians Living in the Neighbouring Countries. Commentary Concerning the Position Document of the Hungarian Government on the Law on Hungarians Living in the Neighbouring Countries." Submitted to the Venice Commission.

terizes free choice, which "does not suppose supplementary confirmation from any organization or authority" (p. 5). Through the *Memorandum of Understanding* signed between Hungary and Romania on 22 December 2001, with respect to the implementation of the Status Law, Romania obtained that: "All Romanian citizens, notwithstanding their ethnic origin, will enjoy the same conditions and treatment in the field of employment on the basis of a work permit on the territory of the Republic of Hungary." (Article I.2); the name of the certificate would be "Hungarian Certificate" rather than "Certificate of Hungarian Nationality" (Article I.6); "The Hungarian representative organisations or other entity on the territory of Romania shall not issue any recommendations concerning the ethnic origin or other criteria. (Article I.5);

On its own front, similarly departing from Hungary's ethnic approach, Romania's policies of cultural support for its kin, as displayed in the study scholarship program for example, defines two categories of recipients. First, the policies apply to persons belonging to Romanian national minorities, linguistic minorities, and autochthonous ethnic groups living in the neighbouring countries (Albania, Bulgaria,[57] Macedonia, Serbia, and Hungary), who were never part of the Romanian state. These persons do not hold, and never held Romanian citizenship, so they are not entitled to restitution or re-naturalisation. Second, the policy applies to Romanians understood in a statist sense: Romanian emigrants and their descendants, whether they kept or not their Romanian citizenship, and whether they emigrated before December 22, 1989, or after this date; and Romanian citizens living abroad, who had their citizenship restored or (re-)naturalized by keeping their domicile abroad. While Aromanians in Albania or Timok Vlachs are requested to present proof of Romanian ethnicity, Moldovan and Ukrainian students, considered part of the latter category according to the policies, are not. Their entitlement resides in their status of citizens, former citizens, or their descendants.[58]

[57] Southern Dobrudja or Quadrilater was awarded to Romania in 1913 under the Treaty of Bucharest, and returned to Bulgaria in 1940 under the Treaty of Craiova. Almost all Romanians who settled in the area during this period, and the Bulgarians who settled in Northern Dobrudja, returned to Romania and Bulgaria respectively through a mandatory exchange of population.

[58] See for example the guide to the scholarship program for the academic year 2012-2013: *Metodologia de şcolarizare a tinerilor de origine etnică română şi a cetăţenilor români cu domiciliul în străinătate, în învăţământul din România, în anul şcolar/ universitar* 2012 – 2013, MECTS 4559/2012.

From restitution to privileged (re-)naturalisation

Given the transitory character of the restitution right set by Article 37 of Law 21/ 1991, I favour a lesser reading than do other analysts[59] to its transformation into a right to privileged re-naturalisation, in the context of Romania's accession to the political structures, social space, and labour market of the EU. The move was triggered by administrative failure to deal with the surge in applications for citizenship restitution by Moldovans, after the introduction of passport controls for Moldovans, as Romanians were granted visa free travel in the Schengen space. Government Urgency Ordinance (OUG) 167/ 2001 suspended the article for a period of six months. The law which passed the ordinance provided the following explanation: "Taking into account the fact that, based on existing evidence, the restitutory character of dispositions in Article 35, Law 21/1991 has greatly diminished in time, the application of this article is suspended, following that, for the time being, the respective persons (re-)gain their Romanian citizenship based on Article 10 of the law, by Government decision. During the suspension there will be analysed the modalities to achieve a unitary provision for all former Romanian citizens who lost Romanian citizenship because of various reasons, taking into account also the new context created by the abolition of visa requirements for Romanian citizens who travel in the Schengen space."[60]

Ensuing OUG 68/ 2002 abrogated the restitution article, and moved all restitutions under the same provisions as privileged (re-) naturalisation. The explanation to the ordinance repeated the fact that "existing evidence shows that the reparatory character of dispositions in Article 35, Law 21/1991 has greatly diminished in time, as the applicants most often seek to benefit of its patrimonial effects."[61] A new ordinance introduced in November 2002 suspended privileged (re-)naturalisation for former applicants for restitution for another six months. The explanation for the suspension now stated that it

---

[59] Iordachi, Constantin. 2012. "Redobândirea cetăţeniei române în perspectivă istorică: de la restituirea drepturilor cetăţeneşti la primatul cetăţeniei de origine." In Iordachi, Constantin (ed.), Redobândirea cetăţeniei române. Bucureşti: Curtea Veche, pp. 67-151. English version of the chapter, pp. 311-395. Dumbrava, Costica. 2010. "Five Comments on Citizenship Policies in CEE Countries." In Bauböck, R. And Liebich A. (eds), Is There (Still) an East-West Divide in the Conception of Citizenship in Europe? EUI Working Paper RSCAS 2010/19. Badia Fiesolana: European University Institute, pp. 17-18.

[60] Exposition of motives for Law 225/ 2002 to pass OUG 167/ 2001. Emphasis in original.

[61] Exposition of motives for Law 542/2002 to pass OUG 68/ 2002. Almost the same words were used to justify passing Law 165/2003, which suspended restoration of citizenship for six months for the second time.

wanted: "[I]n this period, based on a thorough analysis of the applications made so far and unsolved, to set clear regulations, which will distinguish between the procedure of granting citizenship to former citizens who lost the citizenship in the conditions mentioned above, and their adult descendants, so that there will be removed the grant of citizenship for reasons that are foreign to the aim of the law." The ordinance thus indicated the Romanian government's intention to examine the rightfulness of giving restitution rights to the descendants of former Romanian citizens, who themselves did not suffer unwillful or abusive loss of Romanian citizenship.

The ordinance following the period of suspension, OUG 43/ 2003, finally effected, after more than a decade of steady application of citizenship restitution as reparation, the move from unconditional restitution to privileged (re-)naturalisation. It provided the modes of privileged re-naturalisation, all in the same section in the body of the law. First, citizenship could be granted to former citizens by request, with the option to maintain domicile abroad, and keep the foreign citizenship (Article 10, paragraph one). The applicants were exempted from the requirements to speak the language, have elementary notions of Romanian culture and civilisation, know the Romanian Constitution, and the national anthem. Second, citizenship could be granted to former citizens who lost their citizenship before December 22, 1989, unwillingly or because of reasons that could not be imputed to them, and to their descendants to the second-degree (new Article 10^1). They too could maintain domicile abroad, and keep the foreign citizenship. They were exempted from the requirement to know the Romanian Constitution, and the national anthem, but they had to prove knowledge of Romanian language and elements of Romanian culture and civilisation. A second new Article 10^2, rather bizarrely, allowed the applicants mentioned in Article 10^1 who have been legally residing in Romania for four years (half of the legal residency requirement for regular naturalisation at the time) to apply for re-naturalisation. Another bizarre provision of OUG 43/ 2003 (Article 37^1, abrogated in 2007 by OUG 87/ 2007) restricted the right to free travel abroad on the Romanian passport for citizens (re-)naturalized based on Article 10^1. All these suggest the Romanian government was trying out measures to deter a wave of applications for citizenship restitution from the part of Moldovan citizens on the eve of Romania's access to the EU; the increased recognition of the magnitude and gravity of the phenomenon of mass emigration, which visa free travel to the Schengen space re-enforced; the lack of political will to assign the law the required administrative direction.

Finally, after various trials and rehearsals determined by mobilisation of Moldovan groups, active involvement of the president

of Romania, and increased concern for the situation of Romanian migrants abroad, OUG 147/ 2008 expanded the scope of Article 10, which provides "regular" restitution of citizenship as privileged (re-) naturalisation, to any former citizen who lost Romanian citizenship, *and* to their descendants to the second degree. OUG 36/ 2009 modified the restitution article, so that the basic recipients of restitution as privileged (re-)naturalisation are now "former Romanian citizens who obtained their citizenship by birth or by adoption," instead of "former Romanian citizens who lost their citizenship before 22 December 1989 because of various reasons, or against their will or for other reasons that cannot be imputed to them." Iordachi[62] rightfully notes that this change can be understood as a shift from a "statist" approach to a "descent" approach (thus ethnic) for citizenship restitution. But this can also be interpreted as an alignment of provisions to the fundamental way of acquisition of Romanian citizenship by birthright, through jus sanguinis. Moreover, with the 2008 extension of the right to regular privileged (re-)naturalisation to the descendants to the second-degree, all former Romanian citizens who were not born into Romanian citizenship but became Romanian citizens through the formation of Greater Romania in 1918, and their descendants may apply for privileged (re-)naturalisation under Article 10, instead of Article 10^1. The joint modification of these two articles seems to respond to the generational transformations brought by the passing of time.

OUG 36/ 2009 also extended the scope of Article 10^1 to the descendants of former citizens to the third degree, and eliminated the requirement of knowledge of the Romanian language and basic familiarity with Romanian culture and civilisation. Most analysts interpreted the latter requirement as a sign of ethnicisation of the restitution character of Romanian citizenship law. But the fact that it was required, during 2003-2009, only from persons who had not lived in Romania and do not plan to establish domicile on the territory, and has never been asked at any time from any other category of privileged (re-)naturalisation might also be interpreted differently, from the point of view of citizenship as a political concept. Among all requirements states claim from persons who express the wish to become citizens, functional knowledge of the language is perhaps the only justified requirement necessary to ensure citizen's capacity and

[62] Iordachi, Constantin. 2012. "Redobândirea cetăţeniei române în perspectivă istorică: de la restituirea drepturilor cetăţeneşti la primatul cetăţeniei de origine." In Iordachi, Constantin (ed.), Redobândirea cetăţeniei române. Bucureşti: Curtea Veche, pp. 128. English version of the chapter, pp. 373.

willingness to take part in the act of self-rule and in being ruled. Self-governance is defined by its public character, and by its effect of re-shaping the demos. Being able to express oneself in the official language of the country is the qualifying condition for this. There is also a particular situation in the Romanian case. The Romanian language is also the official language of the country where the vast majority of the recipients of the restitution provision live, the RM.

The position against the ethnicisation was underscored once more in 2012, when ten Romanian MPs advanced a proposal to amend the law so that access to privileged naturalisation is extended to all members of the Romanian Diaspora, as defined by Law 299/2006 concerning the assistance provided to Romanians everywhere. The proposal was rejected because it removed from the claim to privileged naturalisation any objective element of Romanian cultural identity and any form of previous legal link with the Romanian state.

The last years of the 2000s saw not only the stabilisation of restitution as privileged (re-)naturalisation in its most expansive form, culminated with the re-publication of the law in 2010, but also the fluidisation of the administration of the law. Successive ordinances, starting with 2007, simplified the application procedures, set deadline for processing the files, and increased the number of personnel at the Citizenship Commission. By OUG 5/2010 the National Authority for Citizenship (ANC) is set up, dedicated exclusively to the enactment of the citizenship law. As a result, naturalisation figures, which have been stalled at the beginning of the 2000s, took off in 2008 and peaked in 2011 with about 100,000 files admitted and almost 70,000 processed.[63] Based on data provided by the ANC on processed file, the most likely figure for (re-)naturalisations is around 400,000 between 1991 and 2012. The figures are far lower than those circulated by analysts and politicians on the eve of the full liberalisation of EU labour market for Romanian citizens. The scare of "backdoor" entry for Moldovans via Romanian citizenship,[64] which triggered almost "farcical" campaigns to deter Romanian and Bulgarian migrants in

[63] For most recent statistics on naturalisation see Panainte 2013. The study also assesses the administration of the law and points to overlapping activities in the processing of the law and various dysfunctions.

[64] Bidder, Benjamin. 2010. "Romanian Passports For Moldovans: Entering the EU through the Back Door." Spiegel Online International, 13 July 2010. http://www.spiegel.de/international/europe/romanian-passports-for-moldovans-entering-the-eu-through-the-back-door-a-706338.html (last accessed on July 4, 2013)

the UK[65] and the negative reaction of other EU countries,[66] remains unfounded. One may also notice that the figures for privileged naturalisation by Hungary of ethnic Hungarians abroad, both before and after the 2010 amendment allowing external acquisition of citizenship, are much larger than those for privileged (re-)naturalisation by Romania.[67] In 2011 and 2012 there were 370,000 applications for fast-track citizenship (external citizenship for ethnic Hungarians living abroad), and over 320,000 citizenships awarded.[68]

Conclusion

The perusal of the modifications brought to the Romanian Citizenship Law with respect to the restitution provision, since the fall of the communist regime in 1989, inevitably pointed to the main global fluxes that traversed the country, and to its response. The re-making of the political community through a new citizenship law re-settled the country's links with its past, and the premises of its future. Initially, the law and its preceding acts served to redress past injustice. The Romanian state took an inclusive and expansive position, allowing all former Romanian citizens to regain their citizenship, through various ways. Re-naturalisation through repatriation was offered in the first days of the transition, in the name of social justice, democracy, and respect for human rights and liberties. All Romanians who left the country during the communist regime were welcomed home and reinstituted into citizenship rights. The provisional power then introduced the right to re-naturalisation with maintaining the foreign citizenship and the domicile abroad. The 1991 law introduced a transitional and transitory right to citizenship restitution to all former citizens who lost their citizenship against their will and for reasons that could not

---

[65] Travis, Alan and Syal, Rajeev. 2013. "Campaign to deter Romanian and Bulgarian immigrants ‚farcical'." The Guardian, January 28, 2013. http://www.theguardian.com/uk/2013/jan/28/campaign-deter-romanian-bulgarian-immigrants-farcical (last accessed August 9, 2013)

[66] Silverman, Rosa. 2013. "German warning over Romanian and Bulgarian migration." The Telegraph, February 6, 2013. http://www.telegraph.co.uk/news/uknews/immigration/9851577/German-warning-over-Romanian-and-Bulgarian-migration.html (last accessed August 9, 2013)

[67] Data presented by Kovács and Tóth (2009: 167) show that between 1998 and 2008 Hungary granted 75,089 naturalisations and re-naturalisations. Naturalisations peaked in 1992 and 1993, with over 13,000, according to OECD data (SOPEMI 2002: 192). Figures citing official data show that between 1991 and 2005, a number of 96,496 Moldovans received Romanian citizenship (Culic 2009b).

[68] According to the declaration of Deputy Prime Minister Zsolt Semjén on January 3, 2013.

be imputed to them, and to their descendants, with the possibility to maintain the foreign citizenship and the domicile abroad. Romania thus devised an institutional closure for its political community that expanded beyond territorial borders, carving its citizenry along generational and historical links, to its modern national foundation.

The reading I gave to the restitution provisions questioned the ethno-national dimension commonly attributed to it. I also hesitated to see an ethnic filter in the modifications it suffered during the past two decades. The Romanian Citizenship Law has never been the object of public debates, and it rarely caused public interrogation.[69] The changes in the law were brought solely through governmental decision by Urgency Ordinances, later approved by the Parliament, and were mainly reactions to contextual pressure or demand, by the EU, the Romanian President, or by mobilized groups of applicants for citizenship restitution. To ascribe to it other master rationale than its original intent of historical redress for past injustice, and the continuous inclusiveness towards all former citizens, has to be cautiously articulated, documented, and contextualized.

What I would like to note in the final paragraph is the consequence of Romania's policy of dual nationality, and of citizenship restitution. Since 1990 Romania has allowed dual citizenship for all its birth-right citizens, and has granted constantly throughout the right to privileged re-naturalisation to former citizens who lost their citizenship, irrespective of their ethnicity, residence, mode of de-nationalisation, and original acquisition of Romanian citizenship. The main beneficiaries of this policy consist of two categories. First, there are the Romanian expatriates, emigrants, and labour migrants. The majority of these, protagonists of the mass international migration generated by global neo-liberal capitalism and human rights' expansion, have suffered loneliness, hardship, discrimination, illegal existence, abuse, separation from their families. The way towards the regularisation of their situation was long and arduous, and mirrored Romania's road to European integration. Second, there are the descendants of former Romanian citi-

[69] The most important of them is related to the 2012 impeachment referendum organized against President Traian Băsescu, echoing the strife between the President and Prime Minister Victor Ponta. The validity of the referendum was questioned following confusion about what represented the base population to establish if quorum had been met: the permanent electoral lists (which comprised only registered voters, who had their domicile in Romania), or the population of all eligible voters, including Romanian citizens with their domicile abroad, who were not included in the permanent electoral lists, and would be added on the supplementary lists compiled at voting centres abroad. This raised the question whether they should be entitled to vote in national elections and referenda, with the majority opinion that they should have the same rights as all other Romanian citizens.

zens who lost their citizenship with the loss of territories. The majority of these were part of the former Soviet Union, and actors in the drama unfolded after its demise. They too suffered dislocation, loss, and all the trials of post-communist transformation. Like the former, many of them are at work abroad, separated from their homes and families.

I argue that the Romanian dual citizenship policy has reflected the porosity of borders that characterises this phase of globalisation, and the rescaling of institutions and processes driven by dominant political and economic interests. It rightfully maintained its expansive scope, by allowing both birth-right citizens, and (re-)naturalised citizens, to obtain regular status in the countries where historical junctions enabled and determined them to arrive. By this, they are effecting one of the stated goals of the European Union: the enactment of European citizenship through movement across national borders. Presently, as of right. To give voice to one of them: "If all of our citizens obtained the possibility to cross freely the EU border tomorrow, I assure you that the number of legal or illegal Moldovans in the EU would stabilize. Confident that they can leave and come at home anytime, many Moldovans will return to their children, aging parents, will invest the money they have earned in small businesses that would allow them to avoid having to leave abroad for many years, thus endangering the existence of their families."[70]

BIBLIOGRAPHY

Balibar, Etienne. 2004. *We, the People of Europe? Reflections on Transnational Citizenship*. Princeton and Oxford: Princeton University Press.

Bauböck, Rainer (ed.). 2010. *Dual Citizenship for Transborder Minorities? How to Respond to the Hungarian-Slovak Tit-for-tat*. EUI Working Paper RSCAS 2010/75. Badia Fiesolana: European University Institute.

BBC. 2007. "Voronin: 'În România sunt 10 milioane de moldoveni' ". 24 February 2007. http://www.bbc.co.uk/romanian/news/story/2007/02/070224_voronin_moldoveni.shtml (last accessed on August 4, 2013)

Benhabib, Seyla. 2004. *The Rights of Others. Aliens, Residents, and Citizens*. Cambridge: Cambridge University Press.

Benhabib, Seyla. 2005. "Borders, Boundaries, and Citizenship". *PS: Political Science and Politics* 38(4): 673-677.

Bidder, Benjamin. 2010. "Romanian Passports For Moldovans: Entering the EU through the Back Door." *Spiegel Online International*, 13 July 2010.

[70] This comment was left on the internet discussion forum of acum.tv on August 1, 2010, to an article discussing the warning against "backdoor" entry into the EU of Moldovans via Romanian citizenship.

http://www.spiegel.de/international/europe/romanian-passports-for-moldovans-entering-the-eu-through-the-back-door-a-706338.html (last accessed on July 4, 2013)

Blatter, Joachim. 2010. "Dual citizenship for Ethnic Minorities with Neighbouring Kin States." In Bauböck, Rainer (ed.), *Dual Citizenship for Transborder Minorities? How to Respond to the Hungarian-Slovak Tit-for-tat*. EUI Working Paper RSCAS 2010/75. Badia Fiesolana: European University Institute, pp. 13-17.

Bourdieu, Pierre. 1994. "Rethinking the State: Genesis and Structure of the Bureaucratic Field." *Sociological Theory* 12 (1): 1–18.

Brubaker, Rogers. 1994. "Nationhood and the National Question in the Soviet Union and Post-Soviet Eurasia: An Institutionalist Account." *Theory and Society* 23(1): 47-78.

Caşu, Igor. 2000. *"Politica naţională" în Moldova Sovietică, 1944–1989*. Chişinău: Editura Cartdidact.

Cărăuş, Tamara. 2000. *Tzara mea*. Chişinău: Aditura ARC.

Ciscel, Matthew. 2006. "A Separate Moldovan Language? The Sociolinguistics of Moldova's Limba de Stat." Nationalities Papers 34(5): 575 – 597.

Council of Europe. 2001. "Report on the Preferential Treatment of National Minorities by their Kin-State", adopted by the Venice Commission at its 48th Plenary Meeting, Venice, October 19-20, 2001. Published in Strasbourg, October 22, as document CDL-INF (2001) 19.

Culic, Irina. 2003. "State Building and Constitution Writing in Central and Eastern Europe after 1989." *Regio - Minorities, Politics, Society* 6(1): 38-58.

Culic, Irina. 2006. "Dilemmas of Belonging: Hungarians from Romania." *Nationalities Papers* 34 (2): 175-200.

Culic, Irina. 2009a. "Dual Citizenship Policies in Central and Eastern Europe." WP 15, Romanian Institute for Research on National Minorities, Government of Romania. http://www.ispmn.gov.ro/uploads/culic31.pdf

Culic, Irina. 2009b. "The 'Romanianness' of Moldovans: History, Practices, and Institutions." Paper presented at the ASN 14th Annual World Convention, Columbia University, New York, 23-25 April 2009.

Dumbrava, Costica. 2013. "Rolling Back History: The Romanian Policy of Restoration of Citizenship to Former Citizens." *CITSEE Story*, The University of Edinburgh, 15 April 2013. http://www.citsee.eu/citsee-story/rolling-back-history-romanian-policy-restoration-citizenship-former-citizens (last accessed on July 4, 2013)

Dumbrava, Costica. 2010. "Five Comments on Citizenship Policies in CEE Countries." In Bauböck, R. And Liebich A. (eds), I*s There (Still) an East-West Divide in the Conception of Citizenship in Europe?* EUI Working Paper RSCAS 2010/19. Badia Fiesolana: European University Institute, pp. 17-18.

Faist, Thomas. 2007. "The Fixed and Porous Boundaries of Dual Citizenship." In Faist, Thomas (ed.), *Dual Citizenship in Europe. From Nationhood to Societal Integration*. Aldershot: Ashgate, pp. 1-43.

Freeman, Gary. 1995. "Modes of Immigration Politics in Liberal Democratic States." *International Migration Review* 29(4): 881-902.

Ghinea, Cristian et al. 2011. *Republica Moldova în conştiinţa publică românească.* Bucureşti: Fundaţia Soros România.

Government of Romania. 2001. "The Official Position of the Romanian Government on the Law on Hungarians Living in the Neighbouring Countries. Commentary Concerning the Position Document of the Hungarian Government on the Law on Hungarians Living in the Neighbouring Countries." Submitted to the Venice Commission.

Horváth, István. 2011. "Percepţia şi raportarea la diferenţeleculturale." In Ghinea, Cristian et al., *Republica Moldova în conştiinţa publică românească*.Bucureşti: Fundaţia Soros România, pp. 57-79.

Ionescu, Dan. 2002. From SSMR to the Republic of Moldova + Pmr. Chişinău: Museum.

Iordachi, Constantin. 2012. "Redobândirea cetăţeniei române în perspectivă istorică: de la restituirea drepturilor cetăţeneşti la primatul cetăţeniei de origine." In Iordachi, Constantin (ed.), *Redobândirea cetăţeniei române*. Bucureşti: Curtea Veche, pp. 67-151. English version of the chapter, pp. 311-395.

Iordachi, Constantin. 2009. "Politics of citizenship in post-communist Romania: Legal traditions, restitution of nationality and multiple memberships." In Bauböck, Rainer, Bernhard Perchinig, Wiebke Sievers (eds), *Citizenship Policies in the New Europe*, 2nd enlarged edition. Amsterdam: Amsterdam University Press, pp. 177-209.

Iordachi, Constantin. 2004. "Dual Citizenship and Policies toward Kin-Minorities in East-Central Europe: A Comparison between Hungary, Romania, and the Republic of Moldova." In Kántor, Zoltán et al. (eds), *The Hungarian Status Law: Nation Building and/or Minority Protection*. Sapporo: Slavic Research Center, Hokkaido University, pp. 239-269.

Joppke, Christian. 1998. "Why Liberal States Accept Unwanted Immigration." *World Politics* 50(2): 266-93.

Kántor Zoltán et al. (eds). 2004. *The Hungarian Status Law: Nation Building and/ or Minority Protection*. Sapporo: Slavic Research Center, Hokkaido University.

Kántor Zoltán. 2006. "The Concept of Nation in the Central and East European 'Status Laws'." In Ieda, Osamu (ed), *Beyond Sovereignty: From Status Law to Transnational Citizenship?* Sapporo: Slavic Research Center, Hokkaido University, pp. 37-51.

King, Charles. 1999. The Moldovans: Romania, Russia, and the Politics of Culture. Stanford, CA: Hoover Institution Press.

King, Charles. 1999. "The Ambivalence of Authenticity, or How the Moldovan Language Was Made." *Slavic Review* 58(1): 117-142.

King, Charles. 2003. "Marking time in the middle ground: Contested identities and Moldovan foreign Policy." *Journal of Communist Studies and Transition Politics* 19(3): 60 -82.

Kovács, Mária M. and Tóth, Judit. 2009. "Kin-state Responsibility and Ethnic Citizenship: The Hungarian Case." In In Bauböck, Rainer, Bernhard Perchinig, Wiebke Sievers (eds), *Citizenship Policies in the New Europe*, 2nd enlarged edition. Amsterdam: Amsterdam University Press, pp. 151-176.

Kymlicka, Will. 1995. *Multicultural Citizenship. A Liberal Theory of Minority Rights*. Oxford: Oxford University Press.

Mitchell, Timothy. 1999. "Society, Economy, and the State Effect." In Steinmetz, George (ed.), *State/Culture. State Formation after the Cultural Turn*. Ithaca and London: Cornell University Press, pp. 76–97.

Panainte, Sergiu (coord.). 2013. *Redobândirea cetăţeniei române: o politică ce capătă viziune?* Bucureşti: Fundaţia Soros România.

Pogonyi, Szabolcs, Kovács, Mária M., and Körtvélyesi, Zsolt. 2010. *The Politics of External Kin-State Citizenship in East Central Europe*. Comparative Report, RSCAS/EUDO-CIT-Comp. 2010/6, Badia Fiesolana: European University Institute.

Popescu, Liliana. 2011. "Informarea cetăţenilor români cu privire la Republica Moldova şi atitudini faţă de unire." In Ghinea, Cristian et al., *Republica Moldova în conştiinţa publică românească*.Bucureşti: Fundaţia Soros România, pp. 81-94.

Silverman, Rosa. 2013. "German warning over Romanian and Bulgarian migration." The Telegraph, February 6, 2013. http://www.telegraph.co.uk/news/uknews/immigration/9851577/German-warning-over-Romanian-and-Bulgarian-migration.html (last accessed August 9, 2013)

Somers, Margaret. 2007. *Genealogies of Citizenship. Markets, Statelessness, and the Right to Have Rights*. Cambridge: Cambridge University Press.

Somogyi, Marcell. 2013. "Ethnic Hungarians welcome simplified naturalization." In *Budapest Telegraph*, March 14, 2013. http://www.budapesttelegraph.com/news/290/ethnic_hungarians_welcome_simplified_naturalization_ (last accessed August 9, 2013)

SOPEMI. 2002. *Trends in International Migration. Continuous Reporting System on Migration*. Paris: OECD.

Spiro, Peter, 2002. "Embracing Dual Nationality", in Randall Hansen & Patrick Weil eds. *Dual Nationality, Social Rights and Federal Citizenship in the U.S. and Europe*. Berghahn Books 2002

Travis, Alan and Syal, Rajeev. 2013. "Campaign to deter Romanian and Bulgarian immigrants 'farcical'." The Guardian, January 28, 2013. http://www.theguardian.com/uk/2013/jan/28/campaign-deter-romanian-bulgarian-immigrants-farcical (last accessed August 9, 2013)

van Meurs, Wim. 1994. *The Bessarabian Question in Communist Historiography. Nationalist and Communist Politics and History-Writing*. Boulder, Colorado: East European Monographs.

van Meurs, Wim. 1998. "Carving a Moldavian Identity Out of History." *Nationalities Papers* 26(1): 39-56.

Felicita Medved

'Unified Slovenian Nation': Slovenian Citizenship Policy towards Slovenians Abroad

'Slovenians abroad' are Slovenians living outside the Republic of Slovenia as persons belonging to the 'Slovene autochthonous national communities' in neighbouring states and as emigrants and their descendents around the world. The territory inhabited by Slovene autochthonous national communities (also referred to as Slovenian national minorities or shortly Slovenian minority) is in the Slovenian national consciousness embedded as *Slovensko zamejstv*o comprising border areas of all four neighbouring countries, where autochthonous Slovenian populations reside. Their size, location and minority status differ, however.[1] Most numerous and the strongest is the Slovenian national community in Italy where it inhabits the broader frontier region in the three provinces of Friuli-Venezia Giulia: the province of Trieste (Slovene: Trst), the Province of Gorizia (Slovene: Gorica) and of Udine (Slovene: Videm). Since Slovenians in Italy are not officially counted, there are only different estimates on their total number. The Slovenian Government Office for Slovenians Abroad (Slovene: Urad Vlade Republike Slovenije za Slovence v zamejstvu in po svetu) believes that the most realistic estimates range between 70,000 and 80,000 inhabitants. The majority of the Slovene autochthonous minority in Austria live in the southern areas of Carinthia (Slovene: Koroška), between 20,000 and 30,000, and a smaller part, about 1,500 in the Federal State of Styria (Slovene: Štajerska), especially in some places along the Slovenian-Austrian border. In Hungary, approximately 3,000 members of the Slovenian minority live between the river Raba in the north and the Slovenian border in the south. *Porabski Slovenci* in Vas county (Slovene: *županija Železna)* with their centre in Szentgotthárd (Slovene: Monošter) have successfully developed as a small minority in recent years, their out-migration from this underdeveloped area however is still very much present. Less present in Slovenian national consciousness is the Slovenian minority in Croatia. Its members inhabit certain areas along the

[1] This paper does not deal with their minority protection status and minority rights in the neighbouring states.

border with Slovenia. These are primarily places in northern Istria, Rijeka hinterland, Gorski kotar and Med(ži)murje as well as along the rivers Kolpa and Sotla. The Slovene minority inhabiting the territory of the seven counties of the Republic of Croatia, bordering on Slovenia, and the territory of the city of Zagreb, is estimated at approximately 3,500.

Another group of Slovenians abroad are Slovene emigrants and their descendants around the world, outside the above mentioned border zones. Slovenes have emigrated from the Slovenian ethnic territory to foreign countries in different historical periods, on different occasions and in different ways. In a long history of emigration, the first emigrants were missionaries to South America, as well as to North America and Africa. Many Slovenes also emigrated as soldiers in different armies, but most of them were economic migrants, seeking a better life. Another large category was political emigration. First wave of mass emigration due to economic reasons was initiated in the mid-nineteenth century and was directed towards the United States of America (USA), and partly to Brazil and Argentina. The second wave came in the period between the World Wars, caused by the global economic crisis and due to political reasons. The vast majority of the tens of thousands of emigrants of this period moved from the Littoral (Slovene: Primorska), which was at that time under severe pressure from the Italian Fascist authorities. Political emigration occurred again after 1945, when thousands found shelter in refugee camps in Italy and Austria and soon made their way to Canada, USA, Australia and Argentina. Some 12,000 people though were returned to Yugoslavia and large parts of this number were executed. The 1960s and the 1970s brought another big wave of economically, but partially also politically driven emigration, this time mostly to West Germany, France, Sweden and other developed Western countries. In the 1980s, when Slovenia was already an immigration country, emigration of Slovenes began to decline until it took up again after the accession of Slovenia into the European Union (EU) and the economic crisis of 2008. According to most optimistic estimates, there are nearly half a million Slovene emigrants and their descendants living abroad, which would mean one fifth of the Slovenian nation.

The Republic of Slovenia declared its independence on 25 June 1991 and regulated citizenship issues through *Zakon o državljanstvu*[2]

[2] The Slovene language is not aware of two terms, which would conceptually and linguistically emphasise different aspects of *državljanstvo* i.e. citizenship or nationality in legal, political and civic context. For example, in English, citizenship is

(Citizenship Act) adopted within the scope of the legislation relating to Slovenia's newly gained independence. The constitution was adopted six months later, on 23 December 1991, and does not regulate citizenship, but leaves it to the above law. The constitution considers national minorities, both on its own territory and the Slovene national minorities in neighbouring countries. Among general provisions the constitution declares in Article 5 that:

"In its own territory, the state shall protect human rights and fundamental freedoms. It shall protect and guarantee the rights of the autochthonous Italian and Hungarian national communities. It shall maintain concern for autochthonous Slovene national minorities in neighbouring countries and for Slovene emigrants and workers abroad and shall foster their contacts with the homeland. /.../ Slovenes not holding Slovene citizenship may enjoy special rights and privileges in Slovenia. The nature and extent of such rights and privileges shall be regulated by law."[3]

In this paper I attempt to present an account of Slovenia's policy on citizenship in relation to the re-acquisition, acquisition and the retention of country of origin citizenship by Slovene migrants and their descendants and towards the acquisition of external citizenship by 'Slovenians abroad'. After tracing the history of citizenship on the territory of present day Slovenia, I provide a brief description of evolution of Slovenian citizenship legislation, both in terms of the initial determination of its citizenry at the inception of the nation-state on June 1991 and the rules governing the acquisition of citizenship, specifically by Slovenians abroad. Citizenship policies are further discussed in relation to dual or multiple citizenship and out of country voting rights and how, in addition, citizenship acquisition and dual political rights are supplemented by kinship-based ethnic privileges in benefit laws. My focus is to explain the before mentioned issues in the larger context of Slovenia's approach to the concept of nationhood.

---

a term associated primarily with the internal context, while the term nationality is more common in international law. However, the terms are often used as synonyms, as expressed in Article 2 of the 1997 European Convention on Nationality.

[3] The Constitution of the Republic of Slovenia / *Ustava Republike Slovenije,* http://www.pf.uni-mb.si/datoteke/janja/Angleska%20PT/anglesko-slovenska_urs.pdf

A brief overview of the historical evolution of Slovenian citizenship up to 1991

In the territory of Slovenia citizenship legislation first evolved within the framework of the Habsburg Empire. The 1811 Austrian Civil Code, established a link between a unified citizenship status and civil rights and other regulations concerning citizenship, operated in the Slovenian lands until the collapse of the monarchy, except in Prekmurje, where Hungarian citizenship law was in force after 1879. In close relation to citizenship, the right of domicile in municipalities (*domovinska pravica*, *Heimatrecht*), as a form of local citizenship, which gives rights of unconditional residence and poverty relief and was regulated on similar principles in both parts of the Austro-Hungarian monarchy in the second half of the nineteenth century (Radmelič 1994: 207; Kač & Krisch 1999: 607-613).

On 1 December 1918 most of the Slovene lands, the Croat lands and Bosnia and Herzegovina joined Serbia and Montenegro to form the Kingdom of Serbs, Croats and Slovenes (SHS), later to be named the Kingdom of Yugoslavia. The Saint-Germain-en-Laye Peace Treaty, which came into force in July 1920, and the Treaty of Trianon, which came into force one year later, established that a person who had a right of domicile outside of Austria and Hungary from then on acquired the citizenship of one of the successor states. The Saint-Germain treaty postulated, inter alia, that such persons could opt for the citizenship of that successor state in which they once had domicile or the successor state where the majority was of their 'race' or spoke their language. However, not everyone automatically acquired Italian citizenship who had domicile (*pertinenza*) in the Slovenian Littoral and part of Carniola that became part of Italy. Those who were not born there or acquired domicile after 24 May 1915 or once had domicile in this territory could opt for Italian nationality. On 25 November 1920 the provincial government of Slovenia issued executive regulations to the Treaty on the acquisition and loss of Yugoslav citizenship by option and request.[4] The option was based on previous domicile or nationality, i.e. ethnicity. According to the Rapallo treaty between the Kingdom of SHS and Italy of 12 November 1920, Yugoslavia provided a one-year right of option for Italian citizenship for ethnic Italians on Yugoslav territory (Kos 1994).

At the level of Yugoslav internal legislation, the 1928 Citizenship Act[5] introduced a unified citizenship, primarily based on ius sanguinis a patre and the principle of a single citizenship. In the early 1930s,

[4] *Official Gazette of the Provincial Government for Slovenia,* 147/1920 and 122/1921.
[5] *Official Gazette of the Kingdom of Serbs, Croats and Slovenes* (SHS), 254/1928.

the provisions of Austrian and Hungarian regulations concerning the right to domicile were replaced by the membership of a municipality.

In the Slovenian Littoral, Italian citizenship legislation was in force from 7 June 1923 until mid-September 1947. Italy did not apply any special regulations concerning citizenship in the occupied territory during the Second World War, whereas the German and Hungarian occupying forces granted citizenship to certain groups of people by regulation and law respectively, which were subsequently nullified (Radmelič 1994: 222-223).

The post-war regulation of Yugoslav citizenship started on 28 August 1945 before the final organisation of the second Yugoslavia was clear.[6] The following persons became Yugoslav citizens: 1) all those who, on the date of the enforcement of the Act, were citizens under the then valid 1928 Act; 2) persons who had domicile in one of the municipalities in the territory, which according to international treaties became part of Yugoslavia; and 3) persons who belonged to one of the Yugoslav nations and resided in its territory without right to domicile, unless they decided to emigrate or to opt for their previous citizenship. An exception to this regulation was added in 1948, excluding from citizenry with a retroactive effect those persons of German ethnicity who were abroad and were Yugoslav citizens as of 6 April 1941, having domicile in one of the municipal communities and were, according to Article 35a disloyal 'to the national and state interests of the nations of Yugoslavia during and before the war'.[7] Another Act adopted in 1945 (and nullified in 1962) concerned officers of the former Yugoslav army who did not wish to return to Yugoslavia and members of various military formations who served occupying forces and escaped abroad. They lost citizenship ex lege, followed by the sequestration of their property.[8]

According to the Paris Treaty with Italy which came into force in September 1947 persons who had permanent residence on 10 June 1940 in the territory that became Yugoslavia lost their Italian citizenship. As obliged by the Treaty, Yugoslavia adopted a special Act

---

[6] *Official Gazette of the Democratic Republic of Yugoslavia* (DRY), 64/1945; *Official Gazette of the Federal People's Republic of Yugoslavia (*FPRY), 54/1946, 90/1946, 88/1948 and 105/1948.

[7] *Official Gazette of the FPRY,* 105/1948. In 1997 the Constitutional Court of the Republic of Slovenia found that the use of this provision is not unconstitutional in procedures concerning the ascertainment of citizenship. Constitutional Court Decision, U-I-23/93 of 20 March 1997.

[8] *Official Gazette of the DRY,* 64/1945; Official Gazette of the FPRY, 86/1946 and 22/1962.

on the citizenship of these persons in December 1947.[9] The Italian-speaking population had a one-year option for Italian citizenship and Yugoslavia could demand emigration of these persons within one year of the date of the option. In 1947, an option for Yugoslav citizenship was also given to those whose citizenship issue was not solved by the Treaty, i.e. to some 100,000 emigrants from the Littoral to Yugoslavia or other countries before June 1940, who ethnically belonged to one of the Yugoslav nations. The Paris treaty also established the Free Territory of Trieste, a project that lasted seven years until it was divided between Italy and Yugoslavia by the 1954 London Memorandum of Understanding. The latter did not regulate citizenship directly, but gave guarantees for the unhindered return of persons who had formerly held domicile rights in the territories under Yugoslav or Italian administration, which the Yugoslav law interprets as a qualified option.[10] Remaining unsolved questions were settled by the 1975 Osimo agreements, which confirmed that both states could regulate citizenship and provided the possibility of migration for members of minorities (Kos 1994).[11]

Yugoslav citizenship was unified and excluded other citizenship. Acquisition of citizenship remained based on ius sanguinis. A victorious revolutionary communist and national spirit of the immediate post-war period was expressed in legal provisions concerning naturalisation for members of Yugoslav nations and those foreign citizens who actively cooperated in the national liberation struggle, on the one hand, and exclusion and deprivation of citizenship for certain ethnic groups or military formations who really or supposedly worked against Yugoslav interests, on the other. The 1964 reform, following the new constitution, abolished loss of citizenship on grounds of absence (as in previous Austrian and Yugoslav legal arrangements), relaxed naturalisation of expatriates (emigrants) and abolished the oath of loyalty upon admission. An odd characteristic of Yugoslav legislation was that in the areas which did not pose a threat to the regime, such as the equality of spouses, introduced in 1945, gender equality and the position of minors, the legislation was already progressive during the period when international standards were only in the making. Yugoslavia was also party to certain multilateral treaties concerning

[9] *Official Gazette of the FPRY*, 104/1947.

[10] The Memorandum includes a special statute that guarantees for both sides the rights of minorities. It is the first international document that regulates the protection of the Slovene ethnic minority ('Yugoslav ethnic group') in Italy – for the Trieste region.

[11] See also *Slovenia, Italy, White Book on Diplomatic Relations* published in 1996 by the Ministry of Foreign Affairs of the Republic of Slovenia.

citizenship such as the Convention Relating to the Status of Stateless Persons of 1954, the International Convention on the Nationality of Married Women of 1957, the Covenant on Civil and Political Rights of 1966, the International Convention on the Elimination of all Forms of Racial Discrimination of 1966, the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and the Convention on the Rights of the Child of 1989.[12]

Succession and initial determination of citizens of the new state

The determination of citizenship of a state is linked with citizenship in the international sense (i.e. nationality) and international law, both confirming that it is for each state to define who its citizens are. This codification is one of the essential elements of sovereignty. Citizenship is a tool of exclusion and allows the definition of the composition of citizenry and consequently the 'body politic'. Laws on citizenship – providing for who is and who is not a citizen – are quite different among states. Moreover, laws related to citizenship vary considerably. The result is that many people meet the criteria for citizenship in several countries and there are a considerable number of people who are dual or multiple citizens.

State succession is particularly important for the nationality and citizenship of natural persons because it has a potential that some people – at least temporarily – may become stateless, particularly when the predecessor state disappears and no successor state is ready to grant its nationality to the former nationals of the extinct state. The succession often means a creation of a new state and if this is the case, all persons that succession affects, should have the possibility of participation in the newly created state.

At the international level, citizenship in the context of state succession is addressed by binding and non-binding international instruments, such as the 1961 UN Convention on the Reduction of Statelessness and the 1978 Vienna Convention on Succession of States in Respect of Treaties. These documents contain significant principles but lack comprehensive regulations which a state in the case of succession should respect. In addition, it should also be noted that most of these instruments were drafted after the changes that had reshaped the European political landscape at the end of the twentieth century. For example, the 1997 European Convention on

[12] *Official Gazette of the FPRY*, 9-96/1959, 7-115/58; *Official Gazette of the Socialist Federal Republic of Yugoslavia* (SFRY), 7-35/1971, 31-448/1967, 11-48/1981 and 15-65/1990. Slovenia is a party to these instruments by succession.

Nationality, which entered into force on 1 March 2000, contains a chapter on state succession, but also this section focuses on principles and general rules but does not provide for specific rules which states should respect in cases of state succession.[13]

The definition of succession, which is used also in the field of citizenship, talks about 'succession of states' which means 'the replacement of one State by another in the responsibility for international relations of territory' and according to the Vienna Convention on Succession of States in Respect of Treaties refers only to the effects of state succession in accordance with the principles of international law and in particular with the principles of the Charter of the United Nations. The Draft Articles on Nationality of Natural Persons in Relation to the Succession of States which the International Law Commission submitted to the UN General Assembly in 1999 contains mostly the repeated vocabulary of the Vienna Convention. Hence, the primary concerns of the international community in terms of civil law in cases of succession remain focused on the reduction of dual citizenship and the avoidance of statelessness and deals less with the initial determination of citizens, which are not the concerns of the established (old) states.

Within human rights law there has been significant progress in the field of citizenship, but laws concerning the acquisition or loss of citizenship continue to be primarily considered as sovereign prerogatives of the state. In this regard, it must also be noted that the European Union does not consider nationality matters to be in its sphere of competence.

The above shows that during the independence process, Slovenia could not find much support in international law concerning the matters of citizenship. To better understand the problems related to succession in the field of citizenship it is important to emphasise that Yugoslavia (SFRY) was a federal state with a so-called mixed system of citizenship. Jurisdiction to adopt citizenship legislation existed at two levels simultaneously, at the level of the federal state and at the level of the constituent federal units, i.e. republics. From the point of view of international public and private law, the primary citizenship

[13] See also the Declaration on the consequences of State succession for the nationality of natural persons adopted by the European Commission for Democracy through Law at its 28th Plenary Meeting, Venice, 13-14 September 1996; Recommendation No. R (99) 18 of the Committee of Ministers to member States on the avoidance and reduction of statelessness, Council of Europe; Draft Articles on Nationality of Natural Persons in Relation to the Succession of States, prepared by the United Nations International Law Commission (Annex to the UN General Assembly Resolution 55/153 of 2001).

was Yugoslav (Kos 1996a). Internally, however, all Yugoslav citizens also had republic-level citizenship.[14] Changing the place of residence to another republic or abroad did not affect the republic-level citizenship. Access to another republic-level citizenship has changed over time, but was relatively easy. According to the last Citizenship Act of the Socialist Republic of Slovenia of 1976,[15] citizens of other republics received the citizenship of Slovenia upon application if they had permanent residence in Slovenia.

Since the developments of the late 1980s and early 1990s showed that it would not be possible to reach a consensual agreement on some other organisational form of Yugoslavia or on succession, the Republic of Slovenia unilaterally declared its independence on 25 June 1991. Slovenia had no historical heritage of independent statehood or concept of political membership beyond republic-level citizenship within the former federation to fall back on. In that respect, Slovenia differs from some states which came into being following the break-up of former federations, such as the USSR. Notably Estonia and Latvia restored their citizenship laws of half a century earlier, emphasising state continuity broken by 'lost' or 'occupied' sovereignty (see Järve 2009; Krūma 2009). Some other new states adopted a 'zero-option' policy, granting their citizenship to all people actually residing in the republic either at the time of independence or at the moment the new citizenship law was passed. This policy was more acceptable in those states where the proportion of the 'titular' ethnic population was very high (Medved 1996; Ziemele 2001; Mole 2001; Smith and Shaw 2005).

In this context, the Citizenship Act was adopted on the day of independence and has since then gone through several changes. The first supplement was adopted in December 1991, followed by further changes in 1992, 1994, 2002 and most recently in 2006.[16]

Conceptually, the 1991 Act contains two main categories (Table 1). The first category includes provisions of a transitional nature, which refer to the initial collective and automatic determination of the citizens of the new state, complemented by provisions governing

[14] In this article, the term 'republic-level citizenship' is used to denote the membership in constituting entities of the federal state. The term citizenship is used to indicate membership of a sovereign state. In the Slovenian language and legal terminology, *državljanstvo* is used for both legal concepts.

[15] *Official Gazette of the Socialist Republic of Slovenia,* 23/1976.

[16] *Official Gazette of the Republic of Slovenia,* 1/1991-I. Amendments and Supplements to this Act were published in the Official Gazette of the Republic of Slovenia, 30/1991-I, 38/1992, 13/1994, 96/2002 and 127/2006.. The officially revised text was published in the *Official Gazette of the Republic of Slovenia,* 24/2007.

the option for Slovenian citizenship by residents from other federal units of the former SFRY and the restitution of citizenship for those who had lost citizenship or on the grounds of absence, release, renunciation or deprivation due to historical circumstances. The second category regulates the acquisition and loss of citizenship of a standard (permanent) nature.

Table 1: Conceptual scheme of the Citizenship Act 1991 of the Republic of Slovenia

	Norms regulating initial determination of citizenship			Norms regulating standard procedures for acquisition of citizenship (at birth and after) and loss of citizenship
	Primary/overall	Supplementary / Corrective	Restitution and compensation	
Time scope	Ex lege by taking the effective date of the law on 25 June 1991	Temporary application		Permanent application
Personal scope	Collective category	Individual category, which takes into account the will of the individual concerned		Plural category
	Core of citizens of the new state, established by operation of law on the basis of legal continuity – all Slovenia Republic-level citizens of the former SFRY	Maximum number of predefined group of persons – residents from other federal units of the former SFRY	Predefined group of persons – on the basis of the 1945/46 federal law on the deprivation of citizenship or on the grounds of absence; release, renunciation or deprivation due to historical circumstances	Number of persons is not defined in advance
	Correction 1994 Recognition Declaration	Correction 2002	Nullified by the Constitutional Court decision of 1992	

Source: Developed from Baršová´ 2007 and Medved 2007.

The initial overall determination of citizenship

The basic principle of the initial overall determination of citizenship is the continuity of previous republic-level citizenship upon state succession. In theory, the dissolution of a federal state with the internal republic-level citizenship of its constituent units, federal citizenship ceases or disappears, while the internal citizenship of each of the former constituent units remains intact, irrespective of place of residence of a particular citizen. By such an approach, the problem of de jure statelessness is, at least in theory, solved. Article 39 stipulates that any person, who held citizenship of Slovenia and of Yugoslavia according to existing valid regulations, was considered ex lege to be a citizen of Slovenia on the day when the Act came into force. This provision established continuity with the previous legal order, meaning that all laws and regulations which were in force in the territory of Slovenia in the past, including international agreements, are applied within the framework of this provision. The period in which a person was born determines which regulations apply for ascertaining citizenship.

Supplementary and corrective initial determination of citizens

The primary rule of the initial determination of citizens was complemented with the optional acquisition of Slovenian citizenship for citizens of other former Yugoslavian republics who had permanent residence in Slovenia on the day of the Plebiscite for the Independence and Autonomy of Slovenia on 23 December 1990, and who actually lived in Slovenia. These two conditions determined what was considered genuine links with Slovenia: the permanent residence connected with social, economic and certain political rights and the actual living there expressing the criterion of integration, which in practice meant that the person had to reside in Slovenia, not only have a formal residence there (Mesojedec-Pervinšek 1999: 656-659; Medved 2005: 467).

The December 1991 supplement on Article 40 specified a further restriction, stating that the person's application is to be turned down if that person has committed a criminal offence directed against the Republic of Slovenia since Slovenian independence or if the petitioner is considered to form a threat to public order and the security and defence of the state. In practice restrictions related to crime were impossible to carry out since they related to the Criminal Code of the SFRY (Končina 1993). In 1999 the Constitutional Court repealed the paragraph related to the public order risk.[17] The legal period for the submission of the application was six months and expired on 25

[17] Constitutional Court Decision, U-I-89/99 of 10 June 1999.

December 1991. More than 174,000 persons, or 8.7 per cent of the total population, of which around 30 per cent were born in Slovenia, applied for citizenship on the basis of Article 40 and 171,125 became Slovenian citizens.

The registration of former republican citizenship was not carried out very thoroughly and some persons who firmly believed themselves to be Slovenian citizens were not considered as such and could not prove their former republican citizenship in order to acquire Slovenian citizenship. To address this problem two corrections were made in 1994, concerning the recognition and declaration of Slovenian citizenship. Article 39a stipulates that a person is considered a Slovenian citizen if he or she was registered as a permanent resident on 23 December 1990 and has permanently and actually lived in Slovenia since that date. However, this only applies if the person in question would have acquired the citizenship of Slovenia according to the previous legal order. On the other hand, according to the new Article 41, persons younger than 23 and older than eighteen years who were born in Slovenia can declare themselves Slovenian citizens if one of their parents was a citizen of Slovenia at the time of their birth, but the parents later agreed on adopting the citizenship of another republic.

Registered permanent residency posed a problem for those immigrants who were not registered, but had a long-time factual residence in Slovenia. They could not apply for Slovenian citizenship since they were not legally considered residents.[18]

The problem of permanent residency also arose for those who were registered, but did not apply for or did not acquire Slovenian citizenship. Becoming aliens, they had to apply for residency status irrespective of how long they had been residents. The Alien Act[19] did not contain any special provisions for this group of people.[20] It

[18] That immigrants from other republics did not register their permanent residence was partly because they did not know of this possibility or simply did not care; partly it can be attributed to the concept of migration registration and registration of permanent residency in the former state. Slovenia was the sole republic of the SFRY which registered in- and out-migration.

[19] Official Gazette of the Republic of Slovenia, 1/1991-I, 44/1997 and 50/1998 – Constitutional Court Decisions.

[20] Under the then valid Aliens Act they could obtain a one-year temporary residence permit and after three years of uninterrupted residence a permit for permanent residence. Later this condition was prolonged from three to eight years. Cf. the controversial 1993 Estonian law on aliens, which declared that anybody living in Estonia without Estonian citizenship, which had no legal status in Estonian law in 1992-1993, would have to apply for residency status. The Council of Europe experts criticised that the status of those already resident in Estonia was equated

only provided that with respect to the said person provisions of the Law should start to apply two months after the expiry of the time within which they could apply for Slovenian citizenship or on the date of issuance of a final decision on citizenship. On 26 February 1992, when the Alien Act started to apply to these persons, administrative authorities transferred those who did not apply for residency status from the register of permanent population to the record of foreigners, without any decision or notification addressed to those concerned to inform them of their new legal position.[21] This secret 'erasure' became known to the public only much later and it was only in 1999 that the Constitutional Court found that the Alien Act had failed to regulate the transition of the legal status of this group of people to the status of foreigners.[22] The exact numbers of those affected remains unknown. The state first admitted that 18,305 persons had been deprived of their legal residence and later corrected this number to 25,671. The polarisation of the political scene as well as public opinion, including the 2004 referendum, led to various interpretations and despite the efforts made since 1999, the Slovenian authorities had failed to remedy comprehensively and with requisite promptness the grave consequences for the 'erased' people. In June 2012, the European Court of Human Rights held that the Slovenian government should, within one year, set up a compensation scheme for the 'erased' in Slovenia.[23]

During this period, in order to settle the position of some of the people who could not or did not wish to apply for Slovenian citizenship in 1991, or whose applications were rejected and who subsequently became aliens or were even 'erased', the Citizenship Act was amended in 2002. The new 'transitional and final provisions' facilitated acquisition of Slovenian citizenship for citizens of other republics of the former Yugoslavia who were registered as permanent residents on 23 December 1990 and who had been living in Slovenia continuously from that day. Duration of residence, personal, family, economic, social and other ties with Slovenia, as well as the consequences a denial of citizenship might have caused, were also taken into consideration. The deadline for a free application expired on 29

---

with that of non-citizens not currently resident there (see Day & Shaw 2003; Järve 2009)

[21] Only upon the request of the applicants themselves did administrative authorities issue a certificate of removal from the register.

[22] Constitutional Court Decision, U-I-284/94 of 4 February 1999. See also Constitutional Court Decision, U-I-246/02-28 of 3 April 2003.

[23] Kurić and others v.Slovenia, Application no. 26828/06 (Grand Chamber), European Court of Human Rights, 26 June 2012

November 2003, with 1,676 persons being naturalised under this provision.

Altogether, roughly 80 per cent of 208,484 naturalised citizens or approximately one tenth of the total population of Slovenia at the end of 2008 acquired citizenship according to the optional provisions in the immediate post-independence period, with the corrective provision of 2002 increasing the total by to less than 1 per cent. The great majority (98.7 per cent) of them originated in other successor states of the SFRY, of these 46 per cent were from Bosnia and Herzegovina, 30 per cent from Serbia and Montenegro, including Kosovo and 18 per cent from Croatia and only 1.3 per cent from other countries.

Determination of restitution and compensation of citizens

Apart from the two main categories – initial determination of citizenship and optional naturalisation – the Citizenship Act contained a third category of transitional provisions that were of compensatory or restitutional nature. These provided for reacquisition of citizenship, which, according to art. 41, was made possible for those who were deprived of Yugoslav citizenship and Slovenian citizenship on the basis of the 1945/46 federal law on the deprivation of citizenship or on the grounds of absence. 1,278 Slovenes were deprived of citizenship based on the collective decisions by federal authorities, of which the individuals were never notified, and 67 due to absence. They and their children could acquire Slovenian citizenship if they filed a request within one year of the enforcement of the Act. Since most of these people were living abroad, the application period was prolonged to two years in 1992. At the same time, a new Article 13a in the section concerning exceptional naturalisation stipulated that, notwithstanding the conditions for regular naturalisation, an adult may obtain Slovenian citizenship if he or she is of Slovenian descent through at least one parent and if his or her citizenship in the Republic of Slovenia was terminated due to release, renunciation or deprivation or because the person had not acquired Slovenian citizenship due to historical circumstances. The article also granted the government the right to give a preliminary opinion on the applications. Due to this extensive discretion and, inter alia, the violation of the principle of equality before the law, arts. 41 and 13a were nullified in 1993.[24]

[24] Constitutional Court Decision, U-I-69/92-30 of 10 December 1992.

The present conditions for acquisition of citizenship by Slovenians abroad

In general, Slovenian citizenship is acquired by descent, by birth in the territory of Slovenia, by naturalisation (through application) and in compliance with international agreement (which is applicable only in cases where borders changed). Acquisition of citizenship after birth is possible by naturalisation which can be regular, facilitated and exceptional. The latter two modes of naturalisation reflect specific interests of the state. Discretionary power is provided for in all cases of naturalisation; however, it may only be exercised if the reasons, including the proof thereof, are recorded in the written decision.[25]

Ius sanguinis transmission

Persons of Slovenian descent may acquire citizenship of the Republic of Slovenia under the ius sanguinis principle. There are two modes of acquiring citizenship under this principle: ex lege and by registration. A natural person effectively obtains Slovenian citizenship: a) when both parents are Slovenian citizens and b) when the child is born abroad and one of the parents is a Slovenian citizen while the other parent is unknown, of non-determined citizenship or stateless. In both cases, the child's birth has to be notified at an administrative unit in Slovenia or a notification has to be submitted at the diplomatic mission or consular post of the Republic of Slovenia abroad. When the child is born in Slovenia and at least one parent is a Slovenian citizen the citizenship is automatically recorded at birth into the register of births, deaths and marriages.[26] In this case the acquisition of the citizenship ex lege is combined with the territorial principle.

Acquisition of citizenship by registration is another way of acquiring citizenship by descent, but differs in that it is necessary to demonstrate a will for obtaining citizenship. A child born abroad with one parent of Slovenian citizenship at the time of the child's birth obtains Slovenian citizenship by descent within eighteen years after birth if registration is initiated by the parent who is a Slovenian citizen without the consent of the other parent or, if a minor is a ward by his or her guardian, who must be a Slovenian citizen. The child also obtains Slovenian citizenship when he or she actually permanently settles in Slovenia, together with the parent who

[25] Constitutional Court Decision, U-I-98/91 of 10 December 1992.

[26] Under the principle of equality of children born in wedlock and children born out of wedlock a child of a foreign mother is a Slovenian citizen if the fatherhood of a Slovenian citizen is acknowledged, declared or otherwise established. The legal effect of fatherhood is retroactive and as such affects the citizenship of the child.

is a Slovenian citizen, before he or she is eighteen years old.[27] As of 1994, children over fourteen years of age have to give their consent. A person born abroad and over the age of eighteen can acquire Slovenian citizenship based on a personal declaration for registration if from his or her birth to the declaration one of the parents is Slovenian citizen or was a Slovenian citizen till his or her death. The age limit for this procedure was extended from 23 to 36 years of age in 2002. The 2006 Act amending the Citizenship of the Republic of Slovenia Act adds the condition that those who register their Slovenian citizenship should not previously have lost it due to release, renunciation or deprivation after they reached majority. If a person meets the criteria for registration in the prescribed period of time and shows a willingness to become a citizen either by a legal representative or by himself or herself, citizenship is recognized retroactively (ex tunc) from the moment of birth.

Priviledged access to naturalisation and re-acquisition of citizenship

Slovenes without Slovenian citizenship, up to the fourth generation in a straight line, are affected by the facilitated mode of naturalisation, if they apply for citizenship while residing in Slovenia. The generational criterion has been extended in 2006. Exemptions from otherwise very strict requirements for regular and facilitated naturalisation for some other groups of persons are provided in particular regarding the release from current citizenship and the required duration of residency in Slovenia. In comparison, the applicant in a regular procedure must have lived in Slovenia for ten years, of which the five years prior to the application must be without interruption, and, as added in 2002, the person should have the status of foreigner. An individual of Slovenian origin may apply for citizenship after one year of uninterrupted residence with a foreign status in Slovenia. For those who have lost Slovenian citizenship in accordance with the present Act on citizenship or prior Acts valid in the territory of Slovenia, the residence requirement is limited to six months. Nevertheless, the applicant has to meet some of the requirements otherwise valid for regular naturalisation which are that the person does not constitute a threat to public order or the security and defence of Slovenia, has fulfilled his or her tax obligations and has a guaranteed permanent source of income. In fact, since 2006, the applicant is required to have such means of subsistence as will guarantee material and social security to the applicant and persons he or she has an obligation to support i.e. a basic minimum income for each person. Moreover, the law demands

[27] The registration is not necessary if the child would otherwise become stateless.

a clean criminal record, meaning, inter alia, that the applicant should not have served a prison sentence of more than three months or have been sentenced to a conditional prison term of more than one year.[28] Finally, there is the required knowledge of the Slovene language for everyday communication needs and the applicant is obliged to take an oath of respect for the free democratic constitutional order of Slovenia, which has replaced the requirement to sign a declaration of consent to the legal order of the Republic of Slovenia introduced in 2002.

External citizenship

For exceptional naturalisations the interests of the state for example in the field of culture, economy, science, sport, and human rights are decisive and must be confirmed by the government. A person qualifying for exceptional naturalisation may remain a double or multiple citizen, but has to actually live in Slovenia without interruption for at least one year with a foreigner's status before applying for citizenship. The latter condition does not have to be fulfilled when his or her naturalisation benefits the state for national reasons, i.e. when the person is of Slovenian origin, i.e. a Slovenian emigrant or his or her offspring to the fourth generation in a straight line or a member of an autochthonous Slovenian minority in neighbouring countries. The 2006 amendments to Article 13 of the Citizenship Act clarify the conditions for exceptional naturalisation of persons of Slovenian origin. Neither residence in Slovenia nor other conditions such as material and social security or fulfilled tax obligations in a foreign country are required in these cases.

This mode of citizenship acquisition is considered when an applicant resides abroad or when in regard to the applicant none of his/her parents were Slovenian citizens at the time of his or her birth, or when the applicant would satisfy the criteria for acquiring citizenship by registration, but is older than 36 years. It is also considered for some cases of citizenship re-acquisition, where the applicant of Slovenian origin possessed Slovenian citizenship but had been released from it due to justifiable reasons such as admission to citizenship of another state which requested that the applicant denounce their previous Slovenian citizenship.

Compared to facilitated naturalisation, where an administrative unit in Slovenia makes a decision and the Ministry of the Interior gives consent, the Ministry conducts the proceedings and issues a

[28] Before the 2006 amendments the requirements did not include conditional prison sentences. Moreover, the accepted period of imprisonment was decreased from a maximum of one year to three months.

final decision on exceptional naturalisation. In the process, however, the Ministry has to obtain the opinion of the Government Office for Slovenians Abroad which formulates its opinion based on the provisions of the Government Decree.[29] This decree provides that naturalisation is permitted if the applicant is of Slovenian origin and has demonstrated active ties with the Republic of Slovenia or documented long-term activity in Slovenian associations, schools of the Slovene language or other Slovenian emigrant, migrant or minority organisations. Command of the Slovene language is not a requirement. In forming its opinion, the Office may ask for a recommendation from the embassy or consulate of the Republic of Slovenia abroad. The reasoned opinion of the Office is presented to the Government by the Ministry of the Interior which has sole jurisdiction to establish the reasons for the exceptional naturalisation.

Figures

Data acquired from the Ministry of the Interior show that from 25 June 1991 until the end of 2011, 40,775 persons were naturalised according to standard provisions of the Citizenship Act. A majority of them, almost 90 per cent until 2008, were previously citizens of other successor states of SFRY: Bosnia and Herzegovina (47 per cent), followed by immigrants from Croatia (20 per cent), Serbia and Montenegro (17 per cent) and Macedonia (4.5 per cent). Until the end of 2008, a quarter of naturalised citizens by standard provisions acquired Slovenian citizenship by fulfilling all of the conditions. Almost 58 per cent of the persons were naturalised according to facilitated procedure with ethnic-affinity based naturalisations being rather significant (1,789 persons). In the years 2009 to 2011 there were, however only 73 Slovenes who were granted citizenship according to this mode of naturalisation. Approximately a third of these (23) concerned re-acquisition of Slovenian citizenship.

A rather large share of 17 per cent by exceptional naturalisations from 1991 until the end of 2008 has arisen to approximately 30 per cent of all naturalisations in the period 2009-2011. Ethnic affinity is the dominant ground of national interest for exceptional naturalisations and comprised almost an 80 per cent share of all exceptional naturalisations until 2005. In that year, a strikingly high number of refusals for naturalisation of Slovenians living abroad were attrib-

[29] Decree on criteria for establishing the compliance of national interest for acquiring the citizenship of the Republic of Slovenia through article 13 of the Act on the Citizenship of the Republic of Slovenia, *Official Gazette of the Republic of Slovenia,* 41/2007 and 45/2010.

uted to Slovenia's accession to the EU in the year before and the benefits of Slovenian citizenship in this context. With the consequent redefinition of national interest in 2006 amended Citizenship Act concerning external citizenship, further drop in external citizenship acquisition was expected. Contrary to this expectation, the number of exceptional naturalisations has tripled in 2008 (631 persons) when compared to a year before (210). This substantial rise in citizenship acquisition can be attributed to the parliamentary election year of 2008 since Slovenia grants substantial political rights to citizens abroad. In the period from 2009 to 2011 the share of granting external citizenship has increased to around 30 per cent of all naturalisations, with Slovenians abroad representing almost 88 per cent of all citizenships granted in the interest of the state: 523 of 551 in 2009 and 490 of 553 granted in 2010. In the year 2011 there were 554 exceptional naturalisations. External citizenship is most attractive for members of the Slovenian minority in Italy (466), followed by those in Croatia (218). Interest among Slovenians in Austria is low; only 8 persons acquired Slovenian citizenship in this period and none from Hungary. Over half of external citizenships to Slovenian emigrants and their descendants was granted to Slovenians residing in the other successor states of the former SFRY, mainly Serbia (304), but also those residing in overseas countries, particularly where there are substantial Slovenian communities: Argentina (143), Uruguay (40), USA (39) and Australia (29).

'External quasi citizenship' policy

In addition to a privileged, and as it has been shown above preferential access to Slovenian citizenship given to descendants of emigrants and external citizenship policy, Slovenia has also introduced a benefit law, or 'external quasi citizenship' rule that grant special privileges to co-ethnic minorities in neighbouring countries and Slovene emigrants and workers abroad who do not possess formal Slovenian citizenship.

Deriving from the constitutional provision concerning expatriates and external kin groups, Slovenia adopted a number of resolutions, strategies and a statuary legal act with the implementing legal acts. The first *Resolution on the Position of Autochthonous Slovene Minorities in Neighbouring Countries and the Related Tasks of State and Other Institutions in the Republic of Slovenia* was adopted in 1996.[30]

[30] *Official Gazette of the Republic of Slovenia,* 35/1996.

This was followed by the 2002 *Resolution on Relations with Slovenes Abroad*.[31]

The benefit law for co-ethnics abroad, the *Act Regulating Relations between the Republic of Slovenia and Slovenians Abroad,* however, was passed only in April 2006.[32] Fundamental principle of this legislation is that Slovenians abroad are 'an equal part of the unified Slovene nation'. Aiming at the maintenance and development of the Slovene language and culture, the preservation of the cultural heritage and national identity among Slovenians abroad, this legislation facilitates and promotes the integration of Slovenians abroad into the social and political life of 'the mother nation'. The Law thus regulates the affairs of the 'homeland' with Slovenians abroad in order to strengthen national identity and consciousness and to promote mutual ties in the fields of culture, care for the Slovene language, education and science, sports, economy and regional cooperation. This Law also sets out the powers of the authorities of the Republic of Slovenia and regulates the status of Slovenians without Slovenian citizenship and repatriation.

The Act relates to all Slovenians abroad irrespective to their formal citizenship status, nevertheless Slovenia as a 'mother country' introduces a new status of a "Slovene without Slovenian citizenship", regulates citizenship acquisition and loss and provides certain advantages to its beneficiaries. Acquisition of this status which is a novelty in the Slovenian legal order would primarily depend on descent, activity in Slovenian organisations abroad and active ties with the 'homeland'. The Government Office for Slovenians Abroad is responsible for issuing this status. When in Slovenia, the holders of this status will enjoy preferential enrolment at institutions of higher education, equal access to research projects and public cultural goods, such as libraries or archives, as well as equal property rights. They will also enjoy priority in employment over other third-country nationals. The rights listed in this act can be employed exclusively in the Slovene language.

One of the reasons for the introduction of this status was that in July 2005, the government started working on further specifications of national interest as a reason for exceptional cases of naturalisation, in other words, criteria for cultural i.e. ethnic affinity based external citizenship. The Government Office for Slovenian Abroad offers an opinion on the applicant, which has led to criticism and protests from Slovenians living outside the EU in the light of rising demands for

[31] *Official Gazette of the Republic of Slovenia,* 7/2002.
[32] *Official Gazette of the Republic of Slovenia,* 43/2006.

Slovenian citizenship, particularly in the period before and after the accession to the EU. In line with this protest, the political discussion focused on legislation regulating relations between Slovenia and Slovenians abroad and the introduction of a status of a "Slovene without Slovenian citizenship". Since requirements for its acquisition and loss are very similar to those referring to the acquisition of citizenship via national interest, while benefits are not the same, specifically concerning the intra-EU mobility and political rights, no one has applied for, let alone acquired, this 'external quasi-citizenship' status.

There are certain parallels between the Slovenians Abroad Act and the famous and controversial Hungarian Status Law (2001/2003), the 1997 Law on Expatriate Slovaks and the 1999-2001 failed Polish move to install a similar law (Liebich 2009, Kovács and Tóth 2009, Kusá 2009). However, the Slovenian centre-right Government claimed that the Slovenian law cannot be equated with the Hungarian Status Law since it does not interfere with the competences of other EU Member States or the free movement of workers, nor does it establish identity cards which are valid in the territory of any other EU Member State.

Apart from this status, the Act also addresses a requirement of the 2001 parliamentary resolution on Slovenes abroad, by supporting the return of expatriates and their children. It provides for repatriation, meaning immigration of Slovenes to their home country, organised and financed by Slovenia, in cases when there is, according to the assessment of the Ministry for Foreign Affairs, a severe crisis political or otherwise, in the states where they reside, and of Slovenes which repatriation can significantly contribute to the development and promotion of the 'homeland'. The Act devotes a lot of attention to this issue and repatriation procedures and subsequent care for the repatriated persons.

The main promoters of co-operation between Slovenia and the Slovenes abroad are the Government Office for Slovenians Abroad and the Commission for Relations with Slovenians in Neighbouring and other Countries at the National Assembly.[33] The Office maintains constant contact with Slovene minority and emigrant organisations promoting their cultural, educational, economic and other relations with the home country. By means of public tenders, the Office ensures financial support for programmes and projects involving Slovenians

[33] See Office for Slovenians Abroad website, http://www.uszs.gov.si/en/areas_of_activity/ and Commission for Relations with Slovenes in Neighbouring and Other Countries website http://www.dz-rs.si/wps/portal/en/Home/ODrzavnemZboru/KdoJeKdo/DelovnoTelo?idDT=DT026

in neighbouring countries and elsewhere. The Office is chaired by a minister without portfolio. The Commission at the National Assembly monitors the implementation of the policy concerning Slovenians abroad and the cooperation of civil society organisations with Slovenian abroad. It takes part in policymaking in matters that affect Slovenians abroad and advocates for the interests of the Slovenes abroad in drafting and adopting the national budgets of the Republic of Slovenia and co-formulates and proposes programmes of national interest pertaining to concern for Slovenes in neighbouring and other countries. In the scope of their competences and possibilities, also other state bodies, local communities, public institutions, religious communities and civil society organizations, make contacts and foster co-operation with the organizations of Slovenes abroad.

The act regulates two permanent deliberative bodies of the Government of the Republic of Slovenia: the Council for Slovenians Abroad and the Council for Slovenians in Neighbouring Countries. Both councils are headed by the Prime Minister, who appoints their members, composed of representatives of state agencies, institutions, political organisations and civil society organisations from Slovenia and of Slovenians abroad, proposed to the Prime Minister by their organisations. The Council for Slovenians in Neighbouring Countries is composed of six representatives of autochthonous Slovene national minorities in Austria (four from Carinthia and two from Styria), four from Italy, two from Hungary, and two from Croatia. In the Council for Slovenes Abroad there are four representatives of Slovenes living in European states, including two representatives of Slovene migrants, living in the states of the former Yugoslavia; three representatives living in South America, including two representatives of Slovenes living in Argentina; three representatives of Slovenes living in North America: two from the United States of America, and one from Canada; two representatives of Slovenes living in Australia and one representative of Slovenes living in the countries of other continents. The Council for Slovenes in Neighbouring Countries is in session at least two times per annum and the Council for Slovenes Abroad is in session normally once a year. In 2010, the National Assembly amended the 2007 Act with merely technical changes that refer to the mandate duration of the members of the Government's Councils and a clear indication of individual public administration authorities' competence in relation to the Act enforcement, particularly in relation to the repatriation process and social welfare regulations.[34]

[34] Act Amending the Act Regulating the relations between the Republic of Slovenia and Slovenians Abroad, *Official Gazette of the Republic of Slovenia*, 76/2010.

Dual citizenship

When analysing Slovenian legislation, it may be claimed that it is relatively tolerant of dual and multiple citizenship on both the exit and entry sides. The ius sanguinis and gender equality principles contribute to dual citizenship for citizens by birth, both in Slovenia and abroad, since ius sanguinis transmission of Slovenian citizenship is not limited to the first or second generation or by any other requirements. Acquisition of the citizenship of another country does not mean that the Slovenian citizenship is automatically forfeit, neither is release from current citizenship required for Slovenes without Slovenian citizenship, up to the fourth generation, that qualify for facilitated and exceptional naturalisation, nor in cases of regular naturalisation where expatriation would have harsh consequences.

As shown above, Slovenian legislation and citizenship policy at the time of independence was aimed at the immigrant population in order to incorporate the resident population from other republics of the former state in the initial citizenry of the new state. It also aimed at emigrant population, both by restoring and granting citizenship to emigrants and their descendents and in order to facilitate their naturalisation in their countries of residence. Since independence, when restoration of citizenship was included in the initial body of citizens, preferential access to citizenship by Slovenians abroad and adopted external citizenship policy, by removing residence and Slovenian language requirements, have significantly expanded the size of the potential or actual citizenry of the 'homeland' state. Data confirm that external citizenship has risen recently and currently represents around a third of all naturalisations.

The number of dual citizens has thus substantially increased, both in the country and abroad, but their number is unknown. In June 1991, there were 15,000 registered dual citizens residing abroad (Končina 1992). In 2005, this number was estimated at around 60,000.

The number of dual citizens in Slovenia is much larger. It is mainly the consequence of specific historical, social, economic and political context in which the new state was created, but also dependent on the citizenship legislation of other countries, notably Italy that also grants privileged access to citizenship for non-resident persons with close cultural affinity. The transitional provisions regulating the option for Slovenian citizenship did not touch upon dual citizenship and it is estimated that almost all people from other republics of the former Yugoslavia are dual citizens. In 1991, it was also objectively impossible to make this type of naturalisation conditional on a release from current citizenship. The outcome of the Yugoslav crisis

was unknown and the possibility of a bilateral or multilateral regulation of citizenship did not bear fruit. It has been argued that the break-up of Yugoslavia did not lead to de iure statelessness, since all successor states applied the principle of continuity of former republic-level citizenship (Kos 1996b; Mesojedec-Pervinšek 1999: 655). Nevertheless, the interest in Slovenian citizenship was much higher than expected in 1991 when the authorities estimated that approximately 80,000 persons would apply for Slovenian citizenship (Mesojedec-Pervinšek 1997: 32-34). The reasons for such a response are various and have so far not been well researched. Public discussions emphasise utilitarian motives, in particular the possibility to purchase socially owned housing which was only open to Slovenian citizens. Moreover, suspicions that holders of dual citizenship may be disloyal to Slovenia and that they pose a potential threat to state security led to a change in the political and public mood and to legislative attacks on this status. These were mainly supported by the Slovene National Party and the Peoples' Party in the period from 1993 to 1996. While the liberal democratic government also proposed the abolishment of dual citizenship in 1993, some other proposals openly called for the retroactive nullification of all decrees under art. 40. In 1995, there was even an official initiative for a referendum on the issue, which was only stopped by the Constitutional Court[35] (Cerar 1995; Dujić 1996; Medved 2005: 470-474).

On the other side, the Slovenian policy to dual citizenship has been greatly shaped by the experience of emigration and relations with emigrants and kin minorities. For a country, with a long history of emigration which was perceived as 'loss of blood' a century or so ago and more recently as 'brain drain', the new statehood allowed for dual citizenship being not only a way of institutionalising the transnational ties with expatriates but rather an instutionalisation of Slovenians abroad, be it emigrants or kin minorities, being perceived as part of the nation. In addition, Slovenia's independence in 1991 brought about also significant changes among Slovenians around the world. Slovenian ethnic identity of many descendants of emigrants, which was previously often mixed with Yugoslavism, became clearer. There is even a myth of return as shown in the possibility of state-assisted repatriation. Thus, the new nation-state has also been under pressure by the emigrants and their organisations themselves, who are keen on maintaining or re-establishing formal

[35] Constitutional Court Decision on the request for holding a referendum on Article 40 of the Citizenship Act of the Republic of Slovenia, U-I-266/95-8 of 20 November 1995, *Official Gazette of the Republic of Slovenia*, No. 69/1995.

ties with their country of origin without giving up membership in their country of residence. Ethnic origin alone however is not the only reason for extending citizenship. There are also a number of other reasons which are illustrated by strategies and action plans concerning human capital resources of Slovenians abroad, stimulation of foreign investment as well as their support for the domestic and foreign political interests of their country of origin.

Conclusively, while the issue of dual citizenship for immigrants after the initial determination of citizenship became highly politicised and the reluctance to accept dual citizenship has been related to recent independence and fragility, dual citizenship for Slovenians abroad has been much less contested. Tolerance of dual citizenship has been related to the revival of national and ethnic policies that have addressed the need for more effective minority protection, if not nation-building and establishing of formal ties with Slovenians around the world, including their political engagement in the building of the new statehood.

Political participation and out of country vote

In some countries, dual nationality does not automatically lead to dual citizenship and dual citizenship in the sense of dual membership and political rights has often been a critical issue in debates on dual nationality in both countries of origin and residence of external voters and is not equally welcomed by all political actors. In Slovenia, universal and equal right to vote is written in the chapter on human rights and fundamental freedoms of the Constitution. Every citizen who has attained the age of eighteen years has the right to vote and be elected. External voting rights are granted to citizens abroad for parliamentary and presidential elections, referendums and elections to the European Parliament. External voters are registered in a special register.[36] A voter, who is not domiciled in Slovenia, exercises the right to vote in the constituency in which he or she or one of the parents had last permanent residence. If it is not possible to determine, a voter decides in which constituency he or she will vote. External voters may, following the prescribed procedure, vote by mail or at the diplomatic-consular missions of the Republic of Slovenia abroad.[37]

---

[36] Voting Rights Register Act, *Official Gazette of the Republic of Slovenia,* No. 52/2002, 11/2003, 73/2003, 118/2006.

[37] See Državna volilna komisija, http://www.dvk-rs.si/index.php/si/kje-in-kako-volim/glasovanje-iz-tujine.

When looking into data on recent elections, the number of total eligible voters increased since 2008 by 0.78 per cent (13,380) to 1.709.692. Substantial increase is noted in the share of the out the country eligible voters which amounts to 17.08 per cent or 9,551 voters. Accordingly, their share in the electorate has increased from 46,364 or 2, 73 per cent in 2008 to 55,915 or 3.27 per cent. In spite of this, however, their turnout on early elections to the National Assembly on 4 December 2011 was slightly lower compared to the election year 2008 as there were 484 votes or 4.30 per cent fewer voters in 2011. There were 10,778 out of the country votes in 2011 or 0.63 per cent of all voters. In the second round elections for the President of the Republic a turnout was even lower, only 5,786 or about 10 per cent of Slovenians abroad turned out to vote.[38] The usage of external voting rights among Slovenians abroad is thus often much lower compared to in-country voting rights.

Political engagement is not, however, reduced to electoral participation. There is growing evidence of an increasingly complex web of transnational political engagement between Slovenians abroad and their 'mother country'. This seems to be particularly valid in relation to kin minorities and for cross-border engagement in civil society or local affairs that constitute an important resource for local and national governments both in Slovenia and in the neighbouring countries. Namely, basic fields of co-operation of the Republic of Slovenia with Slovenes outside its borders are culture, preserving and learning the Slovene language, science and higher education, sports, economic and regional cooperation. Slovenia grants financial support to maintain the structures and activities of Slovenes outside Slovenia. In addition, civil society organisations, which operate in the field of association with an interest for Slovenians abroad, can receive financial support.

Among documents relevant to these fields of co-operation, the Slovenian Government on 5 May 2011 adopted a *Strategy regarding the co-operation between Slovenia and the autochthonous Slovenian national communities in neighbouring countries in the field of economy until 2020*. The document wishes to implement a co-ordinated, synergic and strategic approach by all economic players of greater significance coming from the Republic of Slovenia and neighbouring countries such as state authorities, chambers, minority associations,

[38] Državna volilna komisija: Poročilo o izvedbi predčasnih volitev polsancev v Državni zbor Republike Slovenije, 4.decembra 2011, http://www.dvk-rs.si/files/files/Porocilo-o-izvedbi-predcasnih-volitev-v-DZ---koncni-20.4.2012-1.pdf; Volitve predsednika Republike 2. Krog – izid glasovanja iz tujine, http://www.dvk-rs.si/files/files/izid-po-posti-iz-tujine.pdf

diplomatic missions and consular posts, other business player and individuals from both sides of the border, with the aim to unite and co-ordinate capital funds, knowledge, know-how, human resources and existing activities. The Strategy has been prepared by a working group which is run and coordinated by the Government Office for Slovenians Abroad and representatives from economic entities representing the autochthonous Slovenian national community from each neighbouring country. Representatives of state bodies and commercial and business association participate in the working group which will also be responsible for the implementation of the strategy. The strategy coincides with the development documents on the European and national level, such as the Europe 2020 Strategy, the Strategy for Smart, Sustainable and Inclusive Growth and the Strategy Regarding the Development of the Republic of Slovenia until 2020.[39]

Conclusion

As I have presented in this article, Slovenia as a new state went through a process of initial determination of its citizenry. The question of the initial 'body' of citizens and simultaneously of legal integration of the majority of 'non-ethnic' Slovenians was resolved early in the process of independence and international recognition, and without great controversy. Several factors contributed to this development. Firstly, although the establishment of Slovenia as a nation-state can be considered as a product of the so-called eastern type of ethno-cultural nationalism, asserting the right to self-determination and self-governance of the Slovenian 'nation', the initial policy of citizenship rather supported democratic statehood over 'nationhood'. Citizenship was defined in territorial terms, close to 'zero-option' policies, in order to ensure an even jurisdiction over the territory and people within the boundaries of the new state. By adopting such an approach Slovenia could exercise 'effective governance', which supported its claim for international recognition, in combination with other elements of external conditionality attached to international recognition, notably democracy and respect for minorities. This meant that although some political groups had favoured, at this juncture, a more restrictive definition of citizenry and consequently of polity based primarily on 'ethnic' criteria, the timing would have worked against it. What mattered was the very fact of instituting an autonomous citizenship, a highly visible claim to external sovereignty. Secondly, such an approach afforded all those affected by state

[39] http://www.uszs.gov.si/si/zakonodaja_in_dokumenti/

succession the possibility of participating in the establishment of Slovenia, reflecting confidence in a harmonious relationship between 'titular' nation and 'other' citizens. The promise given to permanent residents from other former Yugoslav republics that they would receive Slovenian citizenship, if they so wished, was seen as fulfilled.[40] In order to satisfy *émigré* communities, which largely supported the independence process and to remedy injustices caused by deprivation of citizenship under the previous regime, restoration of their citizenship was included in the initial body of citizens. Furthermore, they were granted preferential treatment regarding naturalisation.

What initially might have appeared as a progressive principle of membership based on a civic conception, which could serve as a reference point for the evolving statehood and an opportunity for defining national identity by embracing the multiethnic reality, took an ambiguous turn after independence was achieved. In 22 years of statehood the legal regime on citizenship has undergone several changes. The Constitutional Law on citizenship was supplemented and changed five times, with the first supplement already adopted in December 1991 and the latest amendments made in November 2006. These developments have, on the one hand, implied an opening towards certain groups, both in response to international standards or for national interests. On the other hand, they have slowly supplanted the civic conception of citizenship that governed the initial determination of Slovenian citizenry in 1991 with a concept of nation as a community of descent.

Until recently, the citizenship agenda remained dominated by the legacy of the dissolution of Yugoslavia. First, there was an issue of dual citizenship. Perceptions of dual citizenship have to be viewed in terms of a newly established nation-state and its trajectory of migration and policy towards Slovenians abroad. The country-specific historical, social, economic and political dynamics has influenced the different combinations of acceptance or resistance to dual citizenship and the processes of liberalisation and securitisation of citizenship. In general, dual nationality is accepted when it arises from Slovenian descent and descent of parents with different nationalities. On the other hand, after unsuccessful legislative attempts in the mid-

[40] This promise was given by all of the political parties and in the Letter of Good Intent *(Official Gazette of the Republic Slovenia,* 40/1990) adopted by the Slovenian Assembly prior to the plebiscite on the autonomy and independence on which all permanent residents could vote and by art. 13 of the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia, the correct interpretation of which, however, have arisen specifically in relation to the Aliens Act.

1990s to abolish dual citizenship for the group of people from other Yugoslavian successor states and reluctant acceptance of their dual citizenship, as a reflection of the historical experience, Slovenia tries to make immigrants renounce a previous citizenship when they are naturalising. The latter reflects general debates on models of immigrant integration.

Furthermore, some of those residents who did not apply for citizenship or were not admitted as part of the Slovenian citizenry were deprived of their legal residence. Since the late 1990s, the political scene has been dominated by the issue of the 'erased'. While there have only been partial solutions to resolve the problems of this group of people, either by regulating their status as foreigners or enabling them to naturalise, heated by a historically and emotionally charged political, legal and public debate, the citizenship policy and supplementary or changed provisions on naturalisation throughout the Slovenian statehood functioned as instruments for regulating the status of immigrants and citizens of other Yugoslavian successor states whose status had not adequately been regulated in 1991. In this process, the judiciary, in particular the Constitutional Court played an important role.

At the same time, citizenship policy developed in two directions. First, in the pre-accession period euro compatibility was influenced more by international trends, such as the 1997 European Convention on Nationality of which Slovenia is not a party, than by indirect pressure from the EU. This applies in particular to the amendments of 2002, refining and relaxing access to citizenship for recognised refugees, stateless persons and second- and third-generation immigrants. On the other hand, conditions for naturalisation have been maintained and tightened. Since 2002, applicants must have the status of foreigner. This status is an eligibility criterion that may be waived only in some exceptional cases of naturalisation. Further changes concern the question of loyalty. In 2002, the declaration of agreement with the legal order of Slovenia was introduced, which in 2006 was supplanted by an oath of loyalty.

Second, there has been a focus on external citizenship policy. This has been targeting two different types of external kin populations, territorially dispersed migrant diaspora, on the one hand, and transborder minorities in Italy, Austria, Hungary and Croatia, on the other. In a gradual process of Instituting external citizenship for ethnic Slovenians, none of the political parties opposed. Only the Liberal Democrats criticised that conditions, such as residence in Slovenia or material and social security, are waived in these cases of naturalisation. Furthermore, in April 2007, less than half a year after

the most recent amendments, the National Council of the Republic of Slovenia proposed a bill amending the Citizenship Act of Slovenia. The National Council is the 40-member 'upper chamber' of the parliament, representing social, economic, professional, local and territorial interests. It is designed to neutralise the influence of political parties that are involved in legislative processes, primarily through the National Assembly. The bill was initiated by a representative of local interests in the National Council and a member of the Slovenian People's Party (SLS). He proposed that persons who were over 25 years of age in 1991 should have an opportunity to register as Slovenian citizens by personal declaration until the age of 45, instead of 36, which was the result of a 2002 amendment. Moreover there was a proposal to further relax the conditions for the exceptional naturalisation of persons of Slovenian descent, although the 2006 amendments had already facilitated naturalisation for this particular group. The 2007 proposal foresaw that ancestors of persons who applied for this type of naturalisation did not have to originate from the current territory of the Republic of Slovenia. In the discussion held at the National Assembly's Committee of Interior Affairs, Public Administration and Justice, it became clear that members of the Slovenian diaspora in Argentina, Australia, Brazil and Canada had initiated the proposed amendments. They had been 'promised' by some Slovenian politicians that these amendments would be accepted. Nevertheless, the proposal was rejected by the Committee, with the Minister of the Interior arguing that the age prescribed for registration was already very high compared to some other states and that the exceptional naturalisation of persons who had at least one parent who held Slovenian citizenship should remain limited to those whose parents were citizens by descent and not by naturalisation. The Liberal Democrats expressed concern that this argument might imply a differentiation between citizenship acquired by descent and citizenship acquired by naturalisation.

In Slovenia, dual nationality automatically leads to dual citizenship with external voting rights granted to citizens abroad for parliamentary and presidential elections, referendums and elections to the European Parliament. The provisions for external voting have to be understood in the historical and political context as well as the interests and political weight of the emigrant population. Occasionally it has been argued that the external voting rights of the non-resident population, which is not expected to return and thus will not suffer the day to day consequences of the electoral outcome. However most of the political actors do not question this right. Political participation has never been a major topic for policymakers or at the core of

debates on naturalisation and dual citizenship. Representing around 3 per cent of the electorate, the Slovenian expatriate community is rather small and so is their potential to influence domestic electoral outcomes. Discussion on the issue of the enfranchisement has thus revolved more around the increase of granting external citizenship as an instrument of domestic political competition with political parties recruiting supporters through external electoral engineering. Particularly, election campaigns of right wing parties among Slovenians abroad have been criticised by liberals and leftist parties and in whether some emigrants remain disenfranchised because of logistical and bureaucratic mistakes or obstacles to implement free and secret voting from afar (cf. IDEA 2006). On the initiative of some emigrant organisations, representation of Slovenians abroad in the National Assembly has also been debated. However, if the Slovenian politicians decided to regulate such a representation, it will be necessary to modify the text of the Constitution as well as the National Assembly Elections Act.

In addition to a privileged, and preferential access to Slovenian citizenship granted to Slovenians abroad, Slovenia has also introduced a benefit law, or 'external quasi citizenship' rule that grant special privileges to ethnic kin-groups who do not possess formal Slovenian citizenship as well as a number of resolutions and strategies concerning Slovenians abroad and the position of autochthonous Slovene minorities in neighbouring countries. These are based on a principle that Slovenians abroad are 'an equal part of the unified Slovene nation'. Thus, besides the purpose of protecting kin-minorities with the Republic of Slovenia seen to be *matična domovina* or *matična država* (mother homeland or mother state) of all Slovenians and the state protector of kin-minorities, cross-border ties with Slovene national minorities are also advocated in order to symbolically expand the size of the Slovenian 'homeland nation'. Namely, Slovenia and the territories of neighbouring countries, where there is Slovene national minority (Slovensko zamejstvo) are considered to form a 'common Slovene cultural space'. Close relationship in a common cultural space is thus particularly pronounced in cultural and educational spheres but also economic and political activities.

In comparison with some other states in Central Europe, for example Croatia, Hungary and Romania, the issue of external citizenship, dual political rights and double loyalties as well as kinship-based ethnic privileges in benefit laws, has not become a topic of domestic and interstate political contestation. Nevertheless, there are some inconsistencies in the Slovenian policy that point to a certain absence of principled views on citizenship. State inter-

ests in naturalisation still prevail over those of the individual. The concept of a nation as a community of descent means that the principle of ius sanguinis prevails in defining those entitled to citizenship at birth, that ethno -cultural criteria play a major role in naturalisation procedures and that Slovenia is attempting to establish a special connection with Slovenians abroad. As the language requirement is removed for acquisition of external citizenship, a notion of a nation as an imagined community is supported by, for example, the explicit requirement of proficiency in the Slovenian language for naturalisation of immigrants. Furthermore, the centre-left coalition (2008-2011) with the former president of the Slovenian Academy of Sciences and Arts being the minister for Slovenians abroad, planned to propose new legislation in the field of benefit laws with possible abolition of the current Government Office for Slovenians Abroad. Contrary to these intentions, the National Assembly in 2010 only amended the umbrella act adopted four years ago by bringing forward less demanding amendments and modifications. After the early elections in December 2011, the Office has been headed by the president of Nova Slovenia (NSi) party, which is a member of the European People's Party. On February 2013, the National Assembly dismissed the centre right government with a no confidence vote and the new centre left government in the making, proposed the Government Office for Slovenians Abroad to be moved under the re-established Ministry of Culture with the post of minister for Slovenians abroad being abolished. This proposal was withdrawn after members of the diaspora as well as the Slovenian minority in neighbouring countries criticized such a move as a 'serious step back' and Prime Minister designate from Positive Slovenia party emphasised that 'Slovenians around the world are part of Slovenia'.[41] This does not suggest any substantial change in the basic philosophy guiding citizenship policy towards Slovenians abroad.

BIBLIOGRAPHY

Cerar, M. (1995), 'Zakonodajni referendum o odvzemu državljanstva', [Legislative referendum on the withdrawal of citizenship], *Pravna praksa* 14 (19-20): 8-11.

Day, S. & J. Shaw (2003), 'The boundaries of suffrage and external conditionality: Estonia as an applicant member of the EU', *European Public Law* 9: 211-236.

[41] Finance.si, http://www.finance.si/8335001/Minister-za-Slovence-po-svetu-ostaja, 4.3.2013.

Dujić, S. (1996), 'Zakonodajni referendum o odvzemu državljanstva', [Legislative referendum on the withdrawal of citizenship], *Pravna praksa* 15(2): 22-27.

IDEA (2006). '*Voting from abroad: The international IDEA handbook'*. Stockholm, International Institute for Democracy and Electoral Assistance.

Järve, P. (2009), 'Estonian citizenship: Between ethnic preferences and democratic obligations', in Bauböck, R., Perchinig, B & W. Sievers (eds.), *Citizenship Policies in the New Europe*, 45-65. IMISCOE, Amsterdam: Amsterdam University Press.

Liebich, A. (2009), 'Introduction: *Altneuländer* or the vicissitudes of citizeship in the new EU states', in Bauböck, R., Perchinig, B & W. Sievers (eds.), *Citizenship Policies in the New Europe*, 21-42. IMISCOE, Amsterdam: Amsterdam University Press.

Kač, M. & M. Krisch (1999), 'Pregled predpisov o državljanstvu 1918-1991', in *Slovensko javno pravo na prehodu v novo tisočletje*, *Dnevi javnega prava Portorož* 1999, [Review of regulations on citizenship 1918-1991 ', in *Slovenian public law in transition into the new millennium, Days of public law Portorož 1999*], 607-631. Ljubljana: Inštitut za javno upravo.

Kochenov, D. (2004) 'Pre-Accession, Naturalization, and "Due Regard to Community Law"' The European Union's "steering" of national citizenship policies candidate countries during the fifth enlargement', *Romanian Journal of Political Science*: 71–88.

Končina, N. (1992), '*Dvojno državljanstvo'*, [Dual citizenship], *Pravna praksa* 11 (25): 11-12.

Kočina, N. (1993) *Zakon o državljanstvu Republike Slovenije s komentarjem*, [Citizenship Act of the Republic of Slovenia with commentary], Ljubljana:Ministrstvo za notranje zadeve.

Kos, B. (1994), 'Mednarodni sporazumi z Italijo in državljanstvo', [International agreements with Italy and citizenship], *Pravna praksa* 13 (16): 2-3.

Kos, B. (1996a), 'Primerjava zakonov o državljanstvu držav, ki so nastale na ozemlju nekdanje SFRJ', [Comparison of citzenship acts of states established in the territory of former SFRY] *Pravna praksa* 15 (22-23): XIII.

Kos, B. (1996b), 'Zakoni o državljanstvu v novih državah na območju bivše SFRJ: postopki, prehodne in končne določbe', [Citizenship acts in new states in territory of former SFRY: procedures, transitional and final provisions], *Pravna praksa* 15 (7): I.

Kovács, M. & J. Tóth (2009), 'Kin-state responsibility and ethnic citizenship: The Hungarian case', in Bauböck, R., Perchinig, B & W. Sievers (eds.), *Citizenship Policies in the New Europe*, 151-176. IMISCOE, Amsterdam: Amsterdam University Press.

Kusá, D. (2009), 'The Slovak question and th Slovak answer: Citizenship during the quest for national self-determination and after', in Bauböck, R., Perchinig, B & W. Sievers (eds.), *Citizenship Policies in the New Europe*, 275-303. IMISCOE, Amsterdam: Amsterdam University Press.

Medved, F. (1996), 'Slovenias bevisbyrde', [Slovenia's burden of proof], *Nordisk Östforum* 2: 91-104.

Medved, F. (2001), 'Interaction Between Citizenship and Integration', *2nd European Conference on Nationality: Challenges to national and international law on citizenship at the beginning of the new millennium*, 23-39. Strasbourg: Council of Europe, Proceedings.www.coe.int.

Medved, F. (2005), 'Politična integracija: državljanstvo, politična participacija in reprezentacija', [Political integration: citizenship, political participation and representation] in M. Komac & M. Medvešek (eds.), *Percepcije slovenske integracijske politike* [Perceptions of Slovenian integration policy], 453-558. Ljubljana: Institute for Ethnic Studies.

Medved, F. (2007), 'Državljani nove države v letu 1991 – inicialna opredelitev in korekcijske dopolnitve slovenskega državljanstva', [Citizens of the new state in year 1991 – initial determination and correction supplements of Slovenian citizenship], in M. Komac (ed.), *Priseljenci* [Immigrants], 135-152. Ljubljana: Institute for Ethnic Studies.

Barsová, A. (2006).'Czech citizenship legislation between past and future'. In R. Bauböck,
B. Perchinig and W. Sievers, *Citizenship policies in the new Europe*. Amsterdam,
Amsterdam University Press: 163--184.

Mesojedec-Pervinšek, A. (1997), *Predpisi o državljanih in tujcih z uvodnimi pojasnili.* [Regulations on citizens and aliens with introductory remarks]. Ljubljana: ČZ Uradni list Republike Slovenije.

Mesojedec-Pervinšek, A. (1999), 'Učinek mednarodnega prava v notranjem pravu Republike Slovenije na področju državljanstva', in *Slovensko javno pravo na prehodu v novo tisočletje, Dnevi javnega prava*, [Effect of the iternational law in internal law of the Republic of Slovenia in the field of citizenship], Portorož 1999, 647-661. Ljubljana: Inštitut za javno upravo.

Mole, N. (2001), 'Multiple nationality and the European Convention on Human Rights', *2nd European Conference on Nationality: Challenges to national and international law on nationality at the beginning of the new millennium'*, 129-147. Strasbourg: Council of Europe, Proceedings. www.coe.int.

Polič, V. (1993), 'Kdo ''tukaj dejansko živi''?' [Who 'does actually live here'?], *Pravna Praksa* 12 (22): 16-17.

Polič, V. (1997a), 'Državljanstvo RS. Tri odločitve VS RS, v katerih je bilo obravnavano: nevarnost za javni red države; ničnostni razlog; ugotovitev državljanstva RS',[Citizenship of the RS. Three decisions of the Supreme Court of the RS in which has been discussed: a threat to public order of the state; annulment ground; establishment of citizenship of RS], *Pravna praksa* 16 (17-18): 15-17.

Polič, V. (1997b), *Statusna stanja človeka in državljana v Republiki Sloveniji*. [*Status of a person and citizen in the Republic of Slovenia*] 1. del (part one). Ljubljana: Center Marketing Int.

Radmelič, B. (1994), 'Pridobitev državljanstva na ozemlju Slovenije od obdobja Avstro-Ogrske do konca druge svetovne vojne'[Acquisition of citizenship in the territory of Slovenia from the Austro-Hungary until the end of World War II], *Javna uprava* 30 (2): 207-227.

Rakčević, S. (2002), '''Izbrisani'' prebivalci Slovenije, urejanje pravnega statusa državljanov drugih držav naslednic nekdanje SFRJ v Republiki Sloveniji'['Erased' residents of Slovenia, regulating the legal status of nationals of other successor states of the former SFRY in the Republic of Slovenia], *Pravna praksa* 21 (32): 8-9.

Smith, M. in J. Shaw (2005) 'Changing Polities and Electoral Rights: the case of Lithuania and EU accession', in Shah, P. in W. Minski (ed.), *Migration, minorities and legal systems*. London: Cavendish Publishing.

Ziemele, I. (2001), 'General aspects of nationality and human rights in relation to state succession', *2nd European Conference on Nationality: Challenges to national and international law on nationality at the beginning of the new millennium'*, 149-171. Strasbourg: Council of Europe, Proceedings. www.coe.int.

Duško Radosavljević

State Policy of Serbia – National Communities, Citizenship and Diaspora

At this moment, Serbia is an "*incomplete country*" (M. Podunavac), characterized by a certain kind of political restoration. It consists of several blocks of political power, which belong to the newly established authority, whose political strategy is based on an explosive and very dangerous combination of national and social populism. This includes the reversal of the system of law and politics, its hasty and rather forced deviation from the "*former regime*" (Boris Tadic's Democratic Party), which, altogether, not only resembles but actually revives formative principles of the "*old regime*"(Slobodan Milosevic). Since the first activities of the new political power are defined by ideologi it is hope that the activities which marked Serbia in the last decade of the 20th century will not be brought back to guide public life. The scars which this left on the fragile democratic body of Serbia, on its public life in general, and particularly on our fields of interest – the policy on national communities[1], citizenship and diaspora is of considerable concern.

State Policy of Serbia on National Communities

Before 1990, when a multi-party system was introduced in Serbia and Yugoslavia, national minority communities constituted a specific entity known as nationalities. At that point in time our former country, was constitutionally, legally and politically equated with the concept of all the inhabitants and nationalities. This was particularly the case in SAP Vojvodina, as there were a substantial number of them. In both political practice and everyday life, the complicated but highly efficient system of "*the national key*" was respected, ensuring that all the nationalities are adequately present in the institutions of political

[1] In this paper we will use the term "national communities" , since this term is used in AP Vojvodina, in order to avoid the offensive connotation of the term "minority".

organization[2] and the socio-political communities.[3] Correspondingly, the president of the Presidency of SAP Vojvodina[4] was Nandor Major, Hungarian by ethnicity, as were also many presidents of the Executive Council of the Province (Government of Vojvodina) with non-Serb[5] backgrounds, many presidents of the Assembly of the Autonomous Province of Vojvodina, etc. This unprecedented harmony lasted until the mid 80s of the last century,[6] when the Slovene and Serbian political confrontation started voicing different attitudes regarding the division of the government. The former performed this through administration and bureaucracy – less taxation and less federative and "*other*" involvement in their endeavors, while the latter claimed their right to the "*national-constitutional unity of the whole territory*"! Also, they demanded that others refrain from interfering with their affairs. Near the end of the decade, when Croats surfaced with their own ambition to pursue "*a thousand-year-old dream of independence*", it was evident that the concepts of Yugoslavia, "*brotherhood and unity*", equality between peoples and nationalities, would not be able to remain for long. The wars that were waged, as a consequence resulted in six and one newly-founded states,[7] unspeakable humansuffering and material waste[8], destruction just for destructions, ethnically transformed population, and consequently, by implementing the prevailing nationalistic policies, former nations diminished were to the status of "*national minorities*".

The system which protected ethnic groups in the Republic of Serbia was established at in the time of the Socialist Federal Republic of Yugoslavia, in which the issues of nation and ethnicity were dealt with in a more effective way than in any other socialist country. That meant that the SFRJ provided protection for the ethnic groups

---

[2] League of Communists of Yugoslavia, the leading state and social force, as well as Trade Union, Socialist Alliance of Working People of Yugoslavia, League of Veterans and Socialist Youth League.

[3] Municipality, autonomous province, republic, federation.

[4] The Presidency was a collective authority. Under the Constitution of SFRJ from 1974, the autonomous provinces had the same status as republics, so that they had all of the state authorities likewise.

[5] For instance, Geza Tikvicki, Stipan Marušić, Franja Nad, Jon Srbovan.

[6] For more information refer to: D. Radosavljević. 2001. ELITE I TRANSFORMACIJA, Novi Sad

[7] Serbia does not recognize the independence of Kosovo.

[8] War activities were especially noticeable in Vojvodina, which was a sort of "a war chamber" of Milošević's regime having more than 100.000 soldiers mobilized for war in Croatia and BiH and having been robbed of its many years long agricultural production for those purposes. Besides that, the people belonging to different ethnicities such as Hungarian, Ruthenian, Slovak and Croatian were being forced to wage wars against their nationals in different republics of Yugoslavia.

(Serbian – "*narodnosti*") through various mechanisms. Thus, the 1974 Constitution defined both the position and the collective rights of ethnic minorities, and this was the Yugoslav institution of the "*key*" which enabled the ethnic groups to be a part of political life, in spite of the one-party system. In accordance with this policy, all national groups of the former Yugoslavia (Serbs, Croats, Macedonians, Slovenians, Muslims) had representatives proportionally on all levels of political power. However, they participated in it mostly on the local level. Members of these national groups had the right to the official use of their own language, to cultural autonomy (in the way of founding various cultural associations and cultural institutions) as well as the right to the education in their own mother tongue. Back at the time of the second state of Yugoslavia the majority of the members of ethnic and cultural minorities lived in the Republic of Serbia, in the autonomous province of Vojvodina, to be more precise. After the break up of SFRJ some new national groups – communities appeared on the territory of Serbia. In addition to the difficulties of regulating the status of Slovenes, Macedonians, Croats, Montenegrins and (Bosnian) Muslims, Serbia had to deal with a very tense social climate caused by the sanctions, wars on the territory of the former country and pauperization of a very large part of the population. Ethnic animosity was very obvious, in spite of the 1990 Constitution, which guaranteed rights to the national communitiesHowever, these were not respected.. In the last decade of the 20th century the sources of financing national cultural societies of the ethnic minorities fell apart, as well as the institutions which were responsible for the implementation and protection of their rights. Populism and the ethnification of politics, used by the government in order to gain more votes created in addition to conflicts with neighboring countries the feeling of insecurity among the citizens and even greater distance, animosity and mistrust among the ethnic groups in the country.

The period from 1990, to 2000 has been marked by the victory of pro-European forces in Croatia and Serbia. It challenged the ability of minority communities to endure, preserve their identities, gain power and actively participate in political and public life. Certain elements of the national elite did not survive very well; some did not even make an effort, given the aggressive character of the Serbian regime. This had highly adverse effects both on Vojvodina as a whole and tendencies within the national minority communities. Thus, there were the cases where representatives of certain communities were reluctant to actively support the efforts for democratic changes in government. Some focused solely on their communities' interests, some, disregarding the larger context, and were concerned only with

preserving restricted national benefits (i.e. culture and information). Some others were exponents of the matrix-state policies, some gave up on their rights for public and political engagement thus leaving the issue of solving problems to the politicians of matrix-countries. Others had extremely unequivocal attitudes about indispensible change of the regime and development of democratic politics and institutions for the preservation of human rights. Still, the prevailing inclination of these "*Years of Lead*" was that all these issues would be much more easily tackled within AP Vojvodina, considering the large number of people who belong to national minorities and live there, rather than within Republic of Serbia, not the least within SR Yugoslavia which still existed then.

In the aftermath of the victory of the opposition in 2000, new laws have been issued, which took into consideration the rights of national communities. However, they were not met with expected approval either from the national communities, or from liberal-democratic and civil publics. Although these laws legally and formally complied with the views of European emissaries,[9] it was evident that the assigned national councils, as the umbrella national institutions, would be under the influence of the dominant political party within a particular national community. This entails that the impact of civil society organizations in them would be insignificant or non-existing, that the provisions of the law could easily be counterproductive, that they could trigger unwanted (nationalistic) reactions within the minority communities and even more dangerously, nationalistic reactions of the dominant national community. The the "*minor*" and "*major*" national communities are not treated equally, and the laws are tailored according to the interests of a particular national community. However, it seems that the desire solve this problem as soon as possible, (according to the author), outweighs the justified fears that the law could bring about problems, especially if some of the provisions are carelessly implemented.

Following 5th October, the day of important changes, the democratic government took measures for SRJ to join the United Nations, the European Council and other international organizations, and to take over the is responsibilities in accordance with international standards for the protecting of national communities. In other words meaning that the country put itself under the obligation to encourage

[9] In Serbia after the 5th October in 2000, the unequivocal compliance with the views of European delegations, emissaries and institutions has always been strongly stressed, with a special emphasis on the attitude that our laws are "the highest world standards in this area"!

democratic institutions and procedures and undertook special measures towards the protection of national communities, to put into practice a multicultural system, which was recommended through the instructions of OEBS, Council of Europe and the European Committee.. By way of a reminder, Serbia signed The Frame Convention on the Protection of the Ethnic Minority Rights and the European Charter granting rights to regional and minority languages. All these documents defined the minimum level of protection guaranteed to the national communities. The rights of the national communities were governed by the 2006 Constitution and several specific laws, most important being The Law on National Minority Rights and Freedom (passed in 2002, but it has remained valid in Serbia even after Montenegro left the Union of Serbia and Montenegro), The Law on the Official Use of Language and Script, The Law on State Education, The Law on the Local Home Rule (2002/6/7) are also part of this. Serbia has signed bilateral agreements with Croatia, Macedonia, Hungary and Romania on the protection of ethnic minorities. Now we will try to present the basic legal acts which define the position of national communities and the status of the Romanies in general, since the Romanies, as a community, are in the most unfavourable position.

The Ethnic Structure of Serbia

In terms of ethnic structure, The Republic of Serbia is very heterogeneous. There are 20 ethnic groups with the status of "national community". According to the 2002 census,[10] 13.47% of the members of the national communities live in Serbia (excluding Kosovo). The largest number belongs to Hungarians (293.299 or 3.91%), then come Boshniaks (136.087 or 1.81%) and Romas (108.193 or 1.44%). There is also a significant number of Yugoslavs, Montenegrins, Croats, Albanians and Slovaks, while some national communities, for example Czechs and Ruthenians number only several thousand each. However, it is not the number that is the essential criterion for the status of national community. An ethnic community is considered to be a national community if it has long been in touch with Serbian territory and it is distinct from the rest of the population on the basis of language, religion and customs and tends to preserve its own identity. At the same time, citizens are offered an option not to declare their nationality at all, meaning that they can declare themselves by the region they live in.

[10] The results of the 2011 census are still being processed

Ethnic Structure[11] *in Serbia*

	Serbia	%	CentralSrbija	%	Vojvodina	%
Total	7.498.001	-	5.466.099	73	2.031.992	27
Serbs	6.212.838	82.86	4.891.031	89.48	1.321.807	65.05
Montengrins	69.049	0.92	33.536	0.61	35.513	1.75
Yugoslavs	80.721	0.92	30.840	0.56	49.881	2.45
Albanians	61.647	0.82	59.985	1.10	1.695	0.08
Boshniaks	136.087	1.81	135.670	2.48	417	0.02
Bulgarians	20.497	0.27	18.839	0.34	1.658	0.08
Bunjevatzs	20.012	0.27	246	0.00	1.658	0.08
Wallachs	40.054	0.53	39.953	0.73	101	0.00
Goranatzs	4.581	0.06	3.975	0.07	606	0.03
Hungarians	293.299	3.91	3.092	0.06	290.207	14.28
Macedonians	25.847	0.34	14.062	0.26	11.785	0.58
Moslems	19.503	0.26	15.869	0.29	3.634	0.18
Germans	3.901	0.05	747	0.01	3.154	0.16
Romas	108.193	1.44	79.136	1.45	29.057	1.43
Russians	2.588	0.03	1.648	0.03	940	0.05
Ruthenians	15.905	0.21	279	0.01	15.626	0.77
Slovaks	59.021	0.79	2.384	0.04	56.637	2.79
Slovenians	5.104	0.07	3.099	0.06	2.005	0.10
Ukrainians	5.354	0.07	719	0.01	4.635	0.23
Croats	70.602	0.94	14.056	0.26	56.546	2.79
Czechs	2.211	0.03	563	0.01	1.648	0.08
Other	11.711	0.16	6.400	0.12	5.311	0.26
Undecided	107.732	1.44	52.716	0.96	55.016	2.71
Regionalaf filiation	11.485	0.15	1.331	0.02	10.154	0.50
Unknown	75.483	1.01	51.709	0.95	23.774	1.17

National communities in Serbia have specific territorial affiliation, with the exception of Romanies, who are dispersed on the whole territory of Serbia. Boshniaks mostly populate 6 municipalities in the

[11] Etnički sastav stanovništva Srbije, po popisu iz 2002. godine; Saopštenje br. 295, Republički zavod za statistiku, Beograd, 2003. godine

region of Sandžak. In Novi Pazar, Tutin and Sjenica they are in the absolute majority and there is also a significant number of them in Priboj, Prijepolje and Nova Varoš. Bulgarians make the majority in two municipalities which they inhabit – Dimitrovgrad and Bosilegrad, and Slovaks traditionally live in Kovačica and Bački Petrovac. Albanians make up the absolute majority in the municipalities of Preševo and Bujanovac, and they are in a relative majority in the municipality of Medvedja.[12] A specific fact about this type of territorial arrangement is that in some Serbian multi-ethnic municipalities a minority on the state level is the majority on the local level.[13] As a result, the Serbs, who are generally in the majority, gain a minority status in these municipalities. Speaking of Vojvodina, two ethnic communities predominate: Hungarian (14.28%) and Serbian (65.05%). Hungarians make the absolute majority in 6 municipalities on the north of Vojvodina, and they populate 25 more municipalities in the whole region of Vojvodina.

Constitutional and legal regulations which protect national community rights

The 2006 Constitution was a foundation for the further development of national minority protection and it also generally defines their status and protects their identity and integrity. There are several articles in this act which refer to the guaranteed human and minority rights. Thus, the Constitution defines equality of all citizens' rights, it prohibits discrimination, it is also outlaws the fomenting of racial, religious or national hatred. It supports the right to be different, to keep distinctness, collective national community rights (informing, culture, education, official language use) and the right to home-rule. The constitution also favours the spirit of tolerance, affirmative actions, acquired rights, equality in conducting public matters, and the authority of autonomous regions in the matters of imple-

[12] According to all researches Serbs express the strongest animosity towards Albanians. The report of the Programme for UN Development says that one quarter of the citizens oppose to the possibility of Albanians being Serbian citizens, 30.4% of the people surveyed said they wouldn't like to have them as neighbours, and 65.5% wouldn't accept them for a spouse. See: http://hdr.undp.org./docs/reports/national/YUG_Serbia_and_Montenegro/Serbia_2005_en.pdf

[13] From the total of 169 municipalities in Serbia (with the population of approximately 50 000 people) there are 68 multi –ethnic municipalities. There are 41 in Vojvodina, and 27 on the territory of Central Serbia. A municipality is considered to be multi-ethnic if 5% of the population belong to a certain national community, or, if more national communities together make at least 10% of the total population.

menting national community rights. It prohibits forced assimilation and supports the right to join together, the right to cooperate with fellow– countrymen from other countries and it proclaims the direct application of the guaranteed rights. As it is, the Constitution puts all the citizens into an equal position when it comes to law, no matter what their race, sex, birth, language, nationality, religion and political beliefs are. In addition, according to one of the Constitution articles, any kind of arousing or incitement of racial, national, religious or any other non-equality, hatred or intolerance is subject to legal consequences. Even more, it is expected that all steps and segments of education, culture and media should support mutual understanding, respect and observance of differences, and that Serbia should encourage the spirit of tolerance and inter-ethnic dialogue, as well as partnership and understanding among people generally. Nevertheless, unlike the 1990 Constitution, this one defines Serbia as "*a democratic country of all the people who live in it*", while the concept of "*the civic country*" transforms it into "*the country of Serbian people and all the people who live in it*". However, this Constitution insists on the official use of the Serbian language and Cyrillic script, while the national symbols present Serbian national tradition exclusively. The national community rights are defined in more detail by specific laws.

The law on the Protection of National Minority Rights and Freedom (2002/9) is the starting point for regulating and observing the status of national communities. It was passed on the federal level going back to The Federal Republic of Yugoslavia. This law has been valid ever since, even after Montenegro separated from the union of Serbia and Montenegro. This law will stay in effect until The Parliament of Serbia passes a new law on national communities. This law over the standards which were established in this sphere through the Council of Europe documents – Frame Convention on the Protection of National Minorities and European Charter on Regional and Minority Languages. It also treats the definition of minority identities in a very flexible way. This means that the general concept of national communities covers various views of identity. However, as we have mentioned, a certain group is considered to be a national community if it has a long term relationship and strong connection to its territory, and it has kept distinct features such as language, culture, national or ethnic affiliation, origin or confession, which distinguish them from the rest of the population. The basic principles of the system which protects minority community rights consist of: the ban on discrimination, the actions for preserving equality, freedom of declaring one's nationality and expression, cooperation

with fellow countrymen in their kin-state and abroad, obedience obeying of constitutional acts, international law principles and public acceptance of morality and the protection of the acquired rights. Collective rights of national minorities are being realized through cultural autonomy. The essence of cultural autonomy is the right to keep a group's distinctiveness and to keep its collective identity. Cultural autonomy guarantees the group the right to use its own language and script, to be educated in the mother tongue, to use one's name and surname, to found private educational institutions and to be informed. The idea of keeping a group's distinctiveness covers the concepts by which a group cultivates and enriches its language, religion and culture and brings in the use of national symbols (which, by the way, cannot be identical with the national symbols of the kin-state). So, the most important elements of cultural autonomy are: the right to the official language use (on a condition that 15% of the total population belongs to a certain national community), education, culture and information. This law establishes minority home-rule, or, to be more precise, national councils which represent a national community in sectors like official language use, education, media and culture. These councils are elected by a body of electors. In fact, they are elected in order to ensure the right to cultural autonomy. They are, actually, the representatives of community home-rules and their duty is to monitor the national community status and to start initiatives for passing adequate laws, decisions and measures. The system of their election has not been fully organized yet, although the mandate of The National Council of the Hungarian National Minority, which was formed in 2002, has expired in the autumn of 2006. That is how we get a situation where people don't declare directly on a local level, but the national community political parties directly influence the election of community home-rule in the sphere of cultural autonomy. The fact is that those communities which are well organized have one-party national councils, which is not the best option at all. Apart from that, law neither defines precisely what falls within their competence, nor their shave of the budget. Hungarians organized the first National Council, then followed the Ruthenians, Romanians, Croats, Slovaks, Bunjevatczs, Bulgarians, Ukrainians, Romanies, Boshniaks, Germans, Egyptians, Greeks, Macedonians and Wallachs in that order.

One of the problems is that the community members who live far from traditional settlements can hardly have any influence on its cultural policy. However, it seems that the biggest problem about national councils is that community political parties influence them too much, since they have direct contact with the media, and usually

good possibilities of financing, and they even use their public functions in the sphere of minority home-rule. Since there are usually no more than one or two powerful political parties belonging to a certain community, there cannot be multiple concepts of cultural policy and the direction of the cultural autonomy development is very clear.

The law on the official use of language and script (2010) allows the right to the official use of a national minority language in a local authority unit if the people who traditionally live there make up more than 15% of the total population. This rule means that the national community language is used:

a) In governing and legal processes;
b) In communication with local authorities;
c) In the process of registering people in the civil registers and official documents;
d) In the work of representative bodies;
e) In the use of the names of the local home-rule units, the names of public places, squares, streets and toponyms.

The 2006 Law on Identity Card allows that the form of the identity card can be printed in the language and script of the national community. Of the total of 45 municipalities in Vojvodina there are only 7 in which Serbian is the only language in the official use (Indjija, Irig, Opovo, Pančevo, Pećinci, Ruma and Sremski Karlovci). In case that a certain community status does not meet the requirements necessary for obtaining the right to have its language as the official language in the whole of municipality, its language can be the official language in those parts of the municipality which this community populates in a large percent. Some municipalities have already done this in the cases of Slovakian, Croatian, Hungarian, Romanian, and Ruthenian language, while the others are still delaying this act. At the moment, Hungarian language and script are in the official use in 27 municipalities, Slovakian in 10, Romanian in 8 municipalities, Ruthenian in 5, Croatian in one municipality, and Czech on the territory of Bela Crkva.

We can say that the system of official language use is well developed in Vojvodina. The situation is quite different in Central Serbia, meaning that this right is just partly implemented. Albanian language and script are in official use in Presevo, Bujanovac and Medvedja, Bulgarian language in Bosilegrad and Dimitrovgrad, and Bosnian in three municipalities in which they are in the majority – Sjenica, Tutin and Novi Pazar. To conclude, there are seven languages in official use in Vojvodina (Serbian, Croatian, Romanian, Ruthenian, Hungarian, Slovakian and Czech) while there are only four in Central Serbia (Serbian, Bosnian, Albanian and Bulgarian).

The Law on State Education (2009) states that the aim of education, besides developing the sense of belonging to the country and nationality, and cultivating Serbian culture and tradition, also has the aim to cultivate the tradition and culture of national minorities. Thus, members of national communities can be educated in their mother tongue or bilingually. In case that the curriculum is carried out in Serbian, they also have a right to attend special lessons of their mother tongue with the elements of national culture. This law also states the minimum number of pupils necessary to organize the classes in the language of the national community. The required minimum of pupils who apply for classes in the mother tongue is 15, but, if The Minister of Education gives permission, this number can be smaller. According to this law, in that case, learning Serbian is still obligatory, and there is also an option in bilingual schools for pupils who attend classes in Serbian to study their minority mother tongue as well. In case that a member of a national community chooses to attend classes in Serbian, the school offers the classes of its mother tongue with the elements of national culture. In Vojvodina, the classes are organized in six languages (Serbian, Hungarian, Slovakian, Romanian, Ruthenian, and Croatian). As a result, in 78 primary schools there are classes in Hungarian, in 18 classes in Slovakian and Romanian, in three schools in Ruthenian and in five schools in the Croatian language. Besides schools in which all the classes are organized in national community languages, there are many schools in which they can study their language as a subject. Again, the standards on this issue are higher in Vojvodina than in Central Serbia.

The Law on Local Authorities (2002/2007) is very important for many minority issues, since it brings to practice many elements of participation. This Law, (article 18) says that the municipalities have the authority to implement the national community rights. The mechanisms for the protection of these rights on the local level should create stable social relations and overcome various inter ethnic animosities. According to this law, local authorities are to ensure the conditions for preserving and promoting of the identity of national communities living in a particular territory. In reality this means that local authorities are responsible for taking care national community rights which are related to the functioning of educational institutions, protection of cultural values, sharing news in public, using a language and script in public communication, the work of libraries, museums and other cultural institutions. In fact, local authorities are responsible for the maintenance of the conditions necessary for applying constitutional and legal acts.

The Law on Local Authorities (article 63) states that The Councils for Relations Between Nationalities should be established in multi-ethnic municipalities, or, more precisely, in those municipalities in which a national community constitutes more than 5% of the total population or all communities together make up more than 10%. These councils (control mechanisms on a local level) are responsible for monitoring all activities and take responsibility for implementing and protecting of national equality. This should be a mechanism which can create favourable relations among ethnic groups on a local level. Just like in the case of national community councils it is not clear how the members should be elected (for example, in the municipality of Priboj the members of this Council are the district chairman and his deputy, who, in this case, are supposed to make decisions in accordance with the Constitution). Their concerns and spheres of competence overlap with the spheres of a national council's competence. These councils have the authority to analyze every decision of a municipality council which deals with the national communities on that territory. In reality, there are many problems about the work of these councils because the law does not explicitly define either their competence, or their members' election rules. As a result the work of these councils varies from one town to another. Thus, it happens that somewhere groups of citizens nominate members, and in some places it is the Serbian Orthodox Church or some other religious community, or sometimes even the members of the present Municipality Council. It should also be noted that the Council members who are elected after a nomination by a political party remain under the influence of that party afterwards. It would be better if the Council members were respectable citizens who don't belong to any party. One of the important issues is the overlapping of The Council's competence and the competence of local authorities and other national councils. These councils should be established in 68 municipalities in Serbia, but so far it has been done in only 43 of them. However, in practice these councils don't meet very often and local authorities don' t always pass on their decisions to these councils' for review, which they are supposed to do. It is also known that so far it has never happened that a council set up legal proceedings about a decision brought by a certain municipality council. An additional role of this Council is building mutual trust among ethnic communities in Serbia, which is very important, considering the problems which existed in the 90's.

Summary of the policy on national community right protection

At this moment, when Serbia is entering the second decade of 21st century, it is still burdened with ethnic problems. Modern societies have , or they have adjusted different interests of traditional ethnic communities to each other. Any intention to compare the experience of Serbia to the cases of problematic relations in Western Europe is not productive, since their causes are completely different. In Europe, the problems are related to the population from former colonies, while in Serbia those are related to traditional ethnic groups. Serbia should look for solutions in the neighbouring countries, which have similar multicultural situations, and have found a solid base for developing permanent democratic principles. The present moment in Serbia does not seem to be very promising, and this situation could easily cause a crisis in some parts of Serbia. The It remains to be seen if the constitutional acts and other legal acts will be applied wisely, and thus serve as a starting point for creating appropriate policy in a multicultural society. So far, we are aware that a long time has lapsed since the 2006 Constitution of the Republic of Serbia went into effect and during that time, many excuses were heard for not following through.

State policy on the issues of citizenship

In 2004 The Parliament of Serbia passed a Law on Serbian citizenship,[14] which has been in use since February 2005.[15] This Law governs the process of acquisition and the termination of citizenship in The Republic of Serbia, re-acquisition of citizenship, ascertaining citizenship, the process of acquiring citizenship, jurisdiction, and keeping records on citizenship. The Ministry of Internal Affairs decides on requests for acquiring and terminating of citizenship. The requests for acquiring and terminating of citizenship are submitted to the Internal Affairs offices by place of residence, that is, the current address of the person who applies for it, or, it may be submitted to the competent diplomatic or consular missions of Serbia and Montenegro.[16]

---

[14] *"The Republic of Serbia Gazette",* number 135/04

[15] When the use of The Law on the Citizenship of the Republic of Serbia started, neither The Law on the Citizenship of Yugoslavia nor The Law on the Citizenship of the Socialist Republic of Serbia could no longer be valid.

[16] At the time of passing this law, Serbia was a member of The State Union of Serbia and Montenegro.

The acquisition of citizenship by descent

According to the article 7 of this Law it is provided that a person acquires Serbian citizenship:

1) At the time of his/her birth if both parents are Serbian citizens;
2) At the time of his/her birth one parent is a Serbian citizen and the child is born on the territory of the Republic of Serbia;
3) A person is born in Serbia, and at the time of his birth one parent is a Serbian citizen and the other is another country's citizen, but they mutually agree that the child acquires Serbian citizenship;
4) A person is born abroad, but at the moment of his birth one of the parents is a Serbian citizen, and the other is unknown, or of unknown citizenship or without citizenship.

Children born abroad

In case that one or both parents at the moment of a child's birth are Serbian citizens, and their child is born abroad, one of the parents can submit an application for entry in the registry, where the record on citizenship is also kept. The parent applies for citizenship through DCR[17] of Serbia and Montenegro, whose territory he/she temporarily lives on .

On condition stated in Articles 7 to 10 of this Law, an adopted foreigner can also acquire Serbian citizenship by descent, or if he is an adopted person with no citizenship, in the case of complete adoption. The adopted person should submit the request for citizenship when he/she reaches the age of 18, and it should be by the age of 23.

Acquiring citizenship by admission

The issue of admitting foreigners to be cizitens of The Republic of Serbia is regulated by Article 14 of this Law, which allows a foreigner, in accordance with the regulations on movement and residence granted for permanent stay in The Republic of Serbia, to apply for Serbian citizenship, on condition that:

1) He/she has reached the age of 18 and that he is not deprived of working capacity;
2) He has a release from foreign citizenship or that he can provide some evidence that he would get this release if he acquires admission into Serbian citizenship;
3) He had continuous residence on the territory of Serbia for at least three years prior to the date of submission for citizenship;

[17] DCR – diplomatic and consular representatives

4) He submits a written statement which says that he considers Serbia to be his own country.

A request for admission of emigrants to Serbian citizenship

This process is regulated by Article 18 of this Law, which says that emigrant and his descendant can acquire Serbian citizenship if they have reached the age of 18 and they are not deprived of working capacity. In that case, they should also submit a written statement that they consider Serbia to be their own country. A spouse of the person mentioned in paragraph 1 of this Article (who has acquired Serbian citizenship) can acquire admission into Serbian citizenship if he /she submits a written statement that he/she considers Serbia to be his/her own country. An emigrant is a person who left The Republic of Serbia with the intention to live abroad permanently.

A release from foreign citizenship is not necessary for acquiring Serbian citizenship, which means that a person can have dual citizenship (he doesn't have to live in The Republic of Serbia and he doesn't need permission for permanent residence).

In addition, Article 52 states that a Yugoslav citizen is also considered a Serbian citizen. This stands for a Yugoslav citizen, who, on the day when the application of this Law started, was a citizen of some other former Yugoslav country, or of a new country created on the territory of former Yugoslavia, or if he/she was a permanent resident on the territory of Serbia for at least nine years. He should also submit a written statement that he considers himself to be a Serbian citizen and that he should submit a request for entry in the citizenship records of the citizens of The Republic of Serbia.

Termination of Serbian Citizenship by Release

According to Article 28 the status of Serbian citizenship is terminated by release if a person submits a request for release and if he meets the necessary conditions:

1) That a person has reached the age of 18;
2) That a person has no obligation to military service;[18]
3) That his tax status is in order and that other legal requirements are completed;
4) That he has regulated proprietary obligations, stemming from marital relations and parent child relations;
5) That there are no criminal proceedings for offenses that are prosecuted ex officio and that if a person was sentenced to imprisonment – the sentence has been served;

[18] In the meantime, conscription has been abolished in Serbia

6) That a person has a foreign citizenship or a proof that he will be admitted to one.

Termination of Citizenship by Renunciation

Any adult citizen of The Republic of Serbia, who was born abroad and has been living abroad, and has a foreign citizenship, can renounce his Serbian citizenship, by the age of 25 (Article 33 of this Law). The issues regarding renunciation of citizenship by the age of 18, are regulated by Article 30 of this Law.

Re-acquisition of Serbian citizenship

A person who is released from citizenship of The Republic of Serbia, who has acquired a foreign citizenship, and his citizenship of the Republic of Serbia was terminated at his parents' request by release or renunciation, can re-acquire Serbian citizenship (Article 34 of this Law) when he reaches the age of 18,on condition that he is not deprived of working capacity and on condition that he submits a written statement that he considers The Republic of Serbia his own country.

Ascertaining of citizenship

If a person who has acquired citizenship of The Republic of Serbia, and has not been registered in the registry of births or in the records of the Serbian citizens by The Ministry which is responsible for internal affairs, shall establish his citizenship at his request, or at the request of competent authorities conducting the procedure for exercising the rights ex-officio (Article 44). A person whose citizenship is ascertained shall be registered among Serbian nationals, according to the record kept under this Act.

Amendments to the Law on citizenship

Amendments and additions to the Law on citizenship (2004), which were passed in September 2007, all people of Serbian nationality, who don't have residence in Serbia, are offered a possibility of acquiring Serbian citizenship, on condition that they have reached the age of 18 and that they are not deprived of working capacity. Along with the request for acquiring citizenship it is necessary to submit a written statement that they consider Serbia to be their own country. A special benefit lies in the fact that acquiring citizenship on this basis is not conditioned by prior release from a foreign citizenship. This practically means that the members of the Serbian Diaspora are given an option to add Serbian citizenship to the citizenship they already have, and without the condition that they have to live in Serbia. This

option is also offered to members of other ethnic groups and nationalities from the territory of Serbia, on condition that they submit the application for citizenship within two years afterwards. It should also be noted that the amendments and additions to the Law on citizenship enable citizens of Montenegro to acquire Serbian citizenship if on 3rd June, 2006 (the declaration of independence of Montenegro), they had residence on the territory of Serbia, on condition that they submit the application for citizenship no later than 5 years after this law has come into force.

State policy towards Diaspora

The State policy of Serbia towards Diaspora, status has been, rather sporadic and ineffective. One of the few organized activities was Strategy for preserving and strengthening the relations of the mother country and the Serbs in the region, which was passed as a document by Serbian Government.[19] Here, we shall present certain parts of it, along with the appropriate comments and conclusions.

This strategy was adopted to adress the need to preserve and strengthen the relations between the mother country and Diaspora, as well as with the Serbs in the region. There is no precise data about the number of Serbian people in Diaspora but it has been roughly calculated that this number is around four million,[20] which means that almost one third of all Serbs live abroad, outside the borders of the Republic of Serbia. The relation towards Diaspora and the Serbs in the region is based on Article 13 of The Constitution of the Republic of Serbia. Several acts of different legal force regulate these issues.[21] According to the Law on Diaspora and the Serbs in the Region, the

---

[19] 21st January, amendment 2nd march 2011, *"Gazette of the Republic of Serbia"*, No 4/2011,14/ 2011

[20] All the data in this chapter are taken from The Strategy

[21] *The Constitution of The Republic of Serbia*
The Law on Diaspora and Serbs in the region ("Gazette of The Republic of Serbia", number 88/9) – the first systematic law on the relations between mother country and Diaspora , as well as between mother country and Serbs in the region. As such, it stands for a normative base for practicing long term policy towards scattering. This Law clearly demonstrates willingness to take much more serious, responsible and rational policy towards Diaspora and Serbs in the region as well as :
– Declaration on considering the relation between mother country and the scattering to be a relation of greatest national interest ("Gazette of the Republic of Serbia", number 88/09);
– Strategy on governing migrations
– National strategy for the young ("Gazette of the Republic of Serbia, number 55/08);

term "*Diaspora*" refers to the citizens of the Republic of Serbia who live abroad and those members of the Serbian people, emigrants from the territory of Serbia and from the region and their descendants. The term "*Serbs in the region*" refers the members of the Serbian people who live in Slovenia, Croatia, Bosnia and Herzegovina, Montenegro, Macedonia, Romania, Albania and Hungary.

By period of emigration, it is possible to distinguish several categories of Diaspora status: economic emigration which dates from before The Second World War; political emigration, immediately after The Second World War; economic emigration, which started at the end of the sixties (and lasted until the eighties of the 20th century); the latest, partly economic, partly political migration, which started in the nineties and was caused by the wars on the territory of former Yugoslavia and the long standing economic crisis. At present, about one and a half million Serbs live in European countries, while about a million Serbs live in overseas countries – mostly older emigrants (political emigration after 1945) and their descendants. There is also a considerable number of Serbian emigrants overseas who emigrated after 1990, and they are mostly young people with a university degree. With the disintegration of the SFRY, the number of of the Serbian people who live outside its borders increased, and that the category of Serbian people abroad was covered by the legal definition of "*Serbs in the region*", and they make up almost two million people altogether. In the last twenty years, parts of the Serbian people have become national minorities (communities), or ethnic groups, on the territories of former Yugoslav republics, which have become independent countries in the meantime. Thus Serbia, is the kin state of all its citizens who live abroad, Serbs in the region, and also of the Serbs, who emigrated from the territory of the Republic of Serbia and from the region, as well as their descendants. Presently Serbia is trying to order its relations with them by:

- Restoring the Diaspora's confidence in the home country;
- Improving the position of the Diaspora and Serbs in the region, in the foreign countries in which they live;
- Raising awareness of the Serbian public in the mother country about the importance of the Diaspora and the Serbs in the region;
- Networking.

In order to improve the position of the Diaspora, it is necessary to involve it actively in the political life in Serbia and enhance the participation of the Diaspora in democratic processes in Serbia. These in the Diaspora were granted the right to vote in 2004 (presidential elections) for the first time, but they did not use that right

very much. There are various reasons for the low response and they are mostly political, technical, financial and many other, but some of the reasons also lie in the fact that there was no possibility to vote by mail and by Internet. The Strategy provides that the right to vote is not only active, but passive as well. The passive right to vote would mean considering a possibility for representation of the Diaspora in the National Assembly (Diaspora as an election unit)

The second and the third generation living in Diaspora have a divided identity, meaning that they have both the Serbian and the identity of the country they live in. It is essential to update the Serbian part of their identity and to enrich it with various contents, so that it is no longer frozen in the time of their ancestors who emigrated to a new country. Knowledge and the use of the Serbian language and the Cyrillic alphabet (and naming it by that name exactly) presents *condition sine qua non*, on which all the work on cooperation with Diaspora is based. Apart from direct consequences on individuals, denial of education in mother tongue affects a national community as a whole. Assimilation is prevented by all possible ways of cultivating close relations between the Diaspora and the mother country and with raising awareness of the origin and nurturing of Serbian cultural, ethnic and religious identity. This is achieved by wearing national costumes, by recording, singing and public showing of their own folk songs and other forms of folklore, by the right to practice their own religion and religious ceremonies, by building churches andby religious education. It is also achieved by the right to publish books, the right to have theatres, radio stations, TV programs and other forms of the art of the community, that is, in the language of the community. It is also important that they can use freely their national symbols and that they can show them in public, as well as to have the right to celebrate national and religious holidays of the mother country.

Suggested measures for accomplishing the goal

Preserving national identity – raising capacity, the level of organization and modernization of the organizing principles in the Diaspora in order to use the above mentioned program. Diaspora organizations throughout the world are to use national symbols of the Republic of Serbia – the state emblem, flag and the anthem.

Serbia should encourage and help in sustaining the present and forming new sections and schools associated with the Serbian Orthodox Church, where in addition to already existing religious education, there would be a unique standard of educating children.

One of the instruments which could improve and modernize learning Serbian in Diaspora is creating an interactive Web site.

Specific Goals of Preserving and Strengthening Relations between Mother Country and Serbs in the Region

Serbian Republic(Republika Srpska) – Bosnia and Herzegovina

- Focus on the Serbian Republic should be the most important sphere of interest and one of the major state and national foreign policy priorities of the Republic of Serbia;
- Consistent implementation of the Dayton Agreement and the need to help and support the progress of the Serbian Republic;
- The duty of the ministries with this issue in their jurisdiction to provide citizenship for all the citizens of Serbian Republic who want it;
- The Ministry of Education should carry on with the process of consolidating the two educational systems.

The Federation of Bosnia and Herzegovina – Bosnia and Herzegovina

The Republic of Serbia should be engaged in monitoring the position of the Serbian people in The Federation of Bosnia and Herzegovina; Serbs are a constitutive nation in this entity, but they are in a more unfavorable position than the Bosnians or Croats in the Serbian Republic.

Croatia

- Endeavoring to take a positive approach and thus reduce animosity between Serbs and the majority in Croatia; Serbia must pay great attention to returning Serbs and their existence of as Serbs in the regions of Krajina, Slavonia, and Baranja as well as their position in the cultural, economic and political life of the people in other parts of Croatia, especially in big cities;
- Restoring the sacred heritage of the Serbian people;
- Developing the educational system and Serbian Orthodox Church (seminaries, grammar schools, primary schools, nursery schools etc.)

Montenegro

- The Republic of Serbia should treat Montenegro as the center of its foreign affair and regional policy;
- It is important to provide conditions in which the Serbian people can have equality and a fair participation in state institutions, state administration and local authorities;

– It is essential that all Serbian people acquire Serbian citizenship if they want it;
– It is especially important that the acquired right is systematically arranged and that the right to education in the Serbian language is granted;
– It is necessary to restore the sacred heritage of the Serbian people;
– The Educational System and the Serbian Orthodox Church should get more attention (seminaries, grammar schools, primary schools, nursery schools).

Macedonia

Serbian people in The Republic of Macedonia have the status of a national minority. Nevertheless, their rights are not completely realized, since The Republic of Macedonia fails to fulfill its obligations, especially of a material nature, towards the Serbian people in Macedonia.

Slovenia

Serbian people are the largest national minority community in The Republic of Slovenia. Nevertheless, Serbs are not granted the status of a national minority, the right to participate in The Parliament of Slovenia nor any other rights resulting from that status.

Albania

Serbian people in The Republic of Albania have recently been granted the status of a national minority and there is still a need to put a lot of effort into encouraging them to declare their national and religious identity.

Romania

The status of Serbian people in Romania is satisfactory, but it is necessary to take more active steps in the policy of The Republic of Serbia so that the community in border districts maintains and improves its position. Although Romania has a friendly attitude and affiliation towards the Serbian people, Serbia should pay more attention to preventing the gradual assimilation of Serbs in Romania.

Hungary

The status of the Serbian people in The Republic of Hungary is in accordance with international standards, meaning that they are equal with all other national minorities. Nevertheless, this status is not on the same level as the status of national minorities in The Republic

of Serbia. The Hungarian Parliament ignores the constitutional obligation to provide participation of the minorities in the parliament. Financing of Serbian institutions and cultural and educational projects is sporadic and insecure. It is necessary to strengthen educational policy in general, especially for learning the Serbian language. Another important issue is to increase the population and to slow gradual assimilation of the Serbian community in Hungary.

Present standards

With the exception of Romania and, to one extent, Bosnia and Herzegovina, the rest of the six countries in the region have not reached international standards on the protection of the Serbian people. For realizing the rights of the Serbian people in the region, The Republic of Serbia should invest more diplomatic and financial means into these concerns.

Promised standards

Constituency was promised to Serbian people in Bosnia and Herzegovina. It was guaranteed by The Dayton Agreement and The Constitution of Bosnia and Herzegovina. In the Serbian Republic, Serbs were promised a safe return. In the Republic of Slovenia, the Serbian national community was denied the right to the status of national minority. In Montenegro, Serbian people were denied collective status. In The Republic of Macedonia Serbian people were denied the right to free choice of religion and stable funding of their organizations. In The Republic of Albania Serbian people are just beginning to enjoy the rights of a national minority, after rapid assimilation during 98 years of the existence of Albanian state. In The Republic of Hungary Serbs do not enjoy the guaranteed constitutional rights, most of all, the right to guaranteed representation in Parliament and stable funding of their institutions and media.

Conclusion about politics in the Diaspora

The strategy of preserving and strengthening the relations between mother country and the Diaspora and mother country and Serbs in the region, is a very ambitious project of The Republic of Serbia, which is just beginning its independent life, after 78 years of existence. Not only because of that, it is burdened with historical *"alignments"*, a wish to improve the situation in the spheres where such a situation is not utopian. We also get the impression that, in solving problems which members of the Serbian community objectively face, the only solutions are those which were painfully paid for in the last decade

of the 20th century, or that the members of the Serbian community are treated in a paternalistic manner, so that they are not encouraged to articulate their interests in the public and political life of the countries they live in, and all that is mixed with the deceptive hope that the Serbian government (rather weak so far) and The Republic of Serbia will do that for of them. Without real knowledge about realistic elements in the international community, about existence of certain European values, the policy of Serbian accomplishments in the sphere of the protection of national community rights glorified (a well known expression "*the highest international standards")*, which is disputable, and at the same time it is not the best benchmark of searching for the rights of the members of the Serbian community in the region.[22] Just like many other documents which Serbia passed after 2000, this Strategy offered us just "*another brick in the wall*", just another task of the so called "*European agenda"* done, but the situation has not really improved. Thus, The Strategy is just a paper document and not a real frame for action, similarly to most strategic documents, which have been successively passed for the last 12 years, with no real intention to change certain issues in Serbia.

Conclusion

"Time will punish those who are late!"
(M. S .Gorbachov)

The Republic of Serbia is an incomplete country. This condition is responsible for the problems that exist and the need to for fulfill of the tasks of a certain field of public policy, which Serbia faces today. The situation is similar in the spheres of policy towards national communities, citizenship and the Diaspora. This stops us from viewing certain steps in this sensitive political area with confidence, since they are not systematically designed and carried out carefully, with contradictory contents in different documents. The protection of the rights of national communities has not reached the 1990 level, with the general buzzword in Serbian political speech that all legal solutions, created after 2000, were *"lined up with the highest international standards"*, while on the ather hand the members of the Serbian community in the region ask for more rights, referring to the historical and acquired rights. There is an impression that a bad

[22] Serbia was surprised at Romania "stopping" Serbian candidacy for the membership in UN, and asking for prior discussions on the Wallach and Romanian community in Serbia, as well as the position of The Romanian Orthodox Church.

compromise has been made between Serbian authorities and the authorities of neighbouring countries, especially former Yugoslav republics, so that national communities get nothing but the existence of national Councils, since for anything more than that there is no active response, no need and no financial support. Thus, the prospects in this area is very disputable. Certain improvements in the policy on citizenship, have been made, but there were done under the obvious pressure of the international community. They started to solve this neglected area[23] in some ways, correcting the serious mistakes made in the 90s of the twentieth century. In this way the right to dual citizenship[24] was finally regulated, since it had been an aggravating factor in this area for many years.

The policy on the Diaspora, to some extent, reflects the policy of the "*old regime*". It is absolutely insincere, and unrealistic, in view of its goals and in the ways of achieving them. By its character, it is just a list of nice wishes, and it also contains elements of destabilization of the countries in the region. It is impossible to implement its statements without serious disagreement with neighbouring states. It would be very difficult for neighbouring countries to accept it with the request for reciprocal application, for the protection of their communities' interests in Serbia. Obviously, these difficulties, just like many other matters, were not seriously taken into consideration.

In the end, Serbia has not found on adequate policy for remediation of certain challenges on its route of modernization and reconnection to the flows of Euro-Atlantic integration. One of the major tasks for Serbia is taking the political scene more serious by, turning to productive dialogue with the members of the political elite, which would create a new form of "*social contract*", as a necessary means of mapping Serbia way towards normal situation. All other issues, as well as the policies in the spheres of interest mentioned above, will be the result of that agreement, which is yet to come. However, the lost time cannot be brought back.

---

[23] A very large number of people did not manage to get the citizenship, even after years of waiting for it, although they fulfilled all the conditions, while those individuals who were close to authorities could achieve the same in a very short time

[24] In one part of Serbian political scene, mostly in the Right, giving double citizenship to the members of the Hungarian national community was not welcomed, but this strong disapproval is actually typical for all benefits which minority communities get from a mother country.

BIBLIOGRAPHY

A/ Documents

Ustav R Srbije, 1990
Ustav SR Jugoslavije, 1992
Ustav R Srbije, 2006
Statut AP Vojvodine, 2009
Zakon o lokalnoj samoupravi, 2007
Zakon o utvrđivanju određenih nadležnosti autonomne pokrajine, 2010
Zakon o zaštiti prava i sloboda nacionalnih manjina, 2009
Zakon o nacionalnim savetima nacionalnih manjina, 2009
Zakon o kulturi, 2009
Zakon o osnovama sistema obrazovanja i vaspitanja, 2011
Zakon o osnovnoj školi, 2009
Zakon o srednjoj školi, 2009
Zakon o visokom obrazovanju, 2009
Zakon o službenoj upotrebi jezika i pisma, 2010
Zakon o javnom informisanju, 2010
Zakon o dijaspori i Srbima u regionu, 2009
EUROPEAN PARLIAMENT RESOLUTION ON THE DEFENCE OF MULTY-ETHNICITY IN VOJVODINA. 2005. Strasbourg
IZVEŠTAJ POKRAJINSKOG OMBUDSMANA ZA 2010. GODINU, Novi Sad
IZVEŠTAJ POKRAJINSKOG OMBUDSMANA – DVE GODINE PRIMENE ZAKONA O NACIONALNIM SAVETIMA NACIONALNIH MANJINA, 2011. Novi Sad
Pokrajinski sekretarijat za demografiju, porodicu i društvenu brigu o deci. 2003. *ANALIZA O DEMOGRAFSKOJ SITUACIJI U AUTONOMNOJ POKRAJINI VOJVODINI PO POPISU STANOVNIŠTVA 2002. GODINE*, Novi Sad
Republički zavod za statistiku, 2003. *Saopštenje br. 295*, Beograd

B/ Other

Agencija Lokalne Demokratije. 2001. *Ogledi o regionalizaciji*, Subotica
Bašić, G. i Crnjanski, K. *Politička participacija i kulturna autonomija nacionalnih manjina u Srbiji.* Friedrich Ebert Stiftung, Beograd, 2006.
Borojević, T. *Praktikum za izradu strateškog plana nacionalnog saveta nacionalne manjine.* Original, Beograd, 2011.
Briza, J., Biševac, S., Žigmanov, T., Ilić, V., Biserko, S. i Lazović, K. *Manjine u Srbiji.* Zagorac, Beograd, 2000.
Zs. Csergo. 2005. *Kin-State Politics in Central and Eastern Europe: the Case of Hungary*, EES noon discussion, Meeting Report 315.

Dimitrijević, V. *Ljudska prava u Srbiji 2009 - pravo, praksa i međunarodni standardi ljudskih prava.* Beogradski centar za ljudska prava, Beograd, 2010.

Francuski, G., Pavlović-Križanić, T., Žigmanov, T. i Domonji, P. *Vodič za bolje i kvalitetnije ostvarivanje manjinskih prava na lokalnom nivou.* Friedrich Ebert Stiftung, Novi Sad, 2009.

N. Gojković (rukopis), *Sistem zaštite manjina u republici Srbiji*, Beograd

Otvoreni univerzitet. 2000. *Autonomija i multietnička društva*, Subotica

Položaj nacionalnih manjina u Srbiji – Knjiga CXX. Naučni skupovi – Međuodeljenski odbor za proučavanje nacionalnih manjina i ljudskih prava, SANU, Beograd, 2007.

D. Radosavljević. 2001. *Elite i transformacija*, Novi Sad

D. Radosavljević. 2006. *Dijagnoza međuteničkih odnosa u Vojvodini*, u: *Etnicitet i mediji*, Spens media centar, Novi Sad

D. Radosavljević. 2011. *Vojvodina i ustavni identitet Srbije*, u: *Ustav i demokratija u procesu konsolidacije* (ur. M. Podunavac), Beograd

D. Radosavljević. 2012. *Political Representation of Minorities and Preservation of MultiethnicIdentity of Vojvodina*, Beograd

M. Samardžić. 1999. *Položaj manjina u Vojvodini*, Beograd

Vojvođanski identitet (Zbornik). 2006. Helsinški odbor, Beograd

Viktor Koska

The Development of Kin-state Policies and the Croatian Citizenship Regime

The close relations between Croatia and the Croat ethnic communities abroad precede the constitution of the contemporary Croatian state. However, the salience of these relations intensified during the Croatian struggle for independence from the former multinational Yugoslav federation, reached its peak during the 1990s following the proclamation of independent Croatia and remained one of the most salient issues of the Croatian politics till today. In 1991, the newly proclaimed Croatian state defined itself primarily as a national state of the Croatian ethnic nation. It has been largely argued by many scholars[1] that such novel Constitutional definition of the state opened a venue for the policies of ethnic engineering leading to, on the one hand, exclusion of certain minorities from Croatian citizenship, while on the other, enabled the limitless incorporation of all ethnic Croats regardless of their residency.[2] Closer scrutiny of Croatian citizenship policies, legal provisions regulating the dual nationality status within the Croatian citizenship regime and the recently enacted Strategy on the relations of Croatia with Croatians abroad, reveal that from the 1990s until the present date, the Croatian state resembles in many features of Brubaker's model of the nationalizing state, being perceived as a state 'of' and 'for' a particular ethno-cultural community.[3]

---

[1] Hayden, R. 1992. Constitutional nationalism in the formerly Yugoslav Republics. *Slavic Review*, 51: 654-673.
Štiks, I., 2010b. The citizenship conundrum in post-communist Europe: The instructive case of Croatia. *Europe-Asia studies*, 62 (10), 1639–1660.
Verdery, K., 1989. Transnationalism, natonalism, citizenship and property: Eastern Europe since 1989. *American Ethnologist*, 25 (2), 291–306.

[2] Ragazzi, F. and Štiks, I., 2009. Croatian citizenship: from ethnic engineering to inclusiveness. In: R. Baubock, B. Perchinig and W. Sievers, eds. *Citizenship policies in the New Europe*. 2nd ed. Amsterdam: Amsterdam University Press, 339–363.
Štiks, I., 2010b. The citizenship conundrum in post-communist Europe: The instructive case of Croatia. *Europe-Asia studies*, 62 (10), 1639–1660.

[3] Brubaker, R. 1996. *Nationalism reframed, nationhood and the national question in the New Europe*. Cambridge: Cambridge University Press. (p. 106.)

This paper aims to provide an analytical overview of the developments of the Croatian state's relations with its ethnic compatriots abroad within the framework of Croatian citizenship. For the purpose of this paper, citizenship regime will be defined as 'the concept which encompasses a range of different legal statuses viewed in their wider political context, which are central to the exercise of civil rights, citizenship and full socio-economic membership within a particular territory'.[4] The trajectory of the development of this relationship will be analyzed through three sections of this paper. Firstly, the overview of the special position of the Croat ethic community within the Constitution and the Law on Croatian Citizenship will be provided. Here, the particular accent will be on the preferential treatment of Croats regarding their dual citizenship status, and the political consequences of these provisions. The second part will move to analyze of the ongoing political debates on the scope of political rights that Croatia should grant to its ethnic compatriots abroad. Finally, the paper will analyze the implications of the recently enacted Strategy on the relations between Croatia and Croats abroad and the Law on Relations between the Republic of Croatia and Croats Abroad.

Dual nationality, Croats abroad and the evolution of the Croatian citizenship regime

The development of Croatian kin-state policies and the regulation of dual citizenship within the Croatian citizenship regime cannot be thoroughly studied without understanding the specific political context which enabled the introduction of today's dominant ethnic conception of Croatian nationhood in all constitutive acts of the Croatian state.

During the Socialist Federative Republic of Yugoslavia, the Socialist Republic of Croatia was defined as a national state of Croats, but also as a state of Croatian Serbs and state composed of its other nations and minorities. Thus, *de facto* defining Croats and Croatian Serbs as two constitutive nations of the republic. Croatian republican citizenship was primarily assigned according to the *ius sanguinis* principle, and besides the republican citizenship, each Croatian citizen also possessed a Yugoslav federal citizenship.[5] Dual

[4] Shaw, J. & Štiks, I. 2010. The Europeanization of citizenship in the successor states of the Former Yugoslavia: an introduction. *CITSEE Working Paper* 2010/09. School of Law, University of Edinburgh. (p. 5.)

[5] For the more detailed overview of the Constitutional developments and evolution of the Croatian citizneship regime see: Ragazzi & Štiks 2009, Koska 2011 and Ragazzi, Štiks & Koska 2013.

republican citizenships were not possible within the federative citizenship regime. However, migrants from one republic to another could adjust their republican citizenship according to their residency through simple administrative procedures. Nevertheless, these migrants were rarely encouraged to do so, particularly due to the fact that within the federative citizenship regime, the republican citizenship was legally and practically more or less irrelevant and ineffective compared to the other legal statuses that citizens could have.[6] Hence, for the Yugoslavs it was a federative citizenship, not the republican one, from which all individual rights were derived and which ensured their equality before the law. Considering that in the case of migration, social, political and economic rights were based according to ones place of residency and not on their formal republican citizenship; many migrants did not change their citizenship status with the change of their residency. Since citizenship acquisition was regulated according to *ius sanguinis* criteria, children of these migrants did not have and in many cases were not aware of the fact that they did not have the citizenship of the republic in which they lived and in which they were born. However, what was considered as a mere bureaucratic and administrative formality during the existence of Yugoslavia, after Croatian succession for many Croatian residents it became a huge obstacle for social and political integration into the newly constituted state.

The late 1980s and early 1990s will represent the critical juncture in the development of the Croatian citizenship regime. By the end of the 1980s, as a response to the political and economic crisis in Yugoslavia the key political elites in Croatia moved toward the idea of Croatian independence and later toward state succession. However, on the eve of the first democratic elections in 1990, the republic was divided between two competing visions of the future Croatian polity.[7]

---

[6] Medvedovic´, D., 1998. Federal and republican citizenship in the former SFR Yugoslavia at the time of its dissolution. *Croatian Critical Law Review*, 3 (1–2), 21–56.
Omejec, J., 1998. Initial citizenry of the Republic of Croatia at the time of the dissolution of legal ties with the SFRY, and acquisition and termination of Croatian citizenship. *Croatian Critical Law Review*, 3 (1–2), 99–128.
Ragazzi, F. and Štiks, I., 2009. 'Croatian citizenship: from ethnic engineering to inclusiveness'. In: R. Baubock, B. Perchinig and W. Sievers, eds. *Citizenship policies in the New Europe*. 2nd ed. Amsterdam: Amsterdam University Press, 339–363.
Koska, V., 2011. The evolution of the Croatian citizenship regime: from independence to EU integration. *CITSEE Working Paper* 2011/15. Edinburgh: School of Law, University of Edinburgh.

[7] Grdešić, I. 1991. Izbori u Hrvatskoj: birači, vrijednovanja i prefrencije, in *Hrvatska u izborima* 1990, 49-97, Zagreb: Naprijed.
Koska, V., 2011. The evolution of the Croatian citizenship regime: from independence

The ruling reformed Communist Party of Croatia – Party of Democratic Change (SKH-SDP) sought the support from more moderate segments of the Croatian public and the members of the Serb minority in Croatia by offering a more inclusive vision of the future state. They sought the establishment of the highest possible state independence, but still within the Federative structure and institutions of Yugoslavia. On the other hand, the growing nationalism in Serbia gave impetus to the emergence of the right-wing Croatian Democratic Union (HDZ) party led by its charismatic president Franjo Tudjman. HDZ aimed to mobilize public support on two political goals: firstly, HDZ argued for full Croatian independence and state secession from Yugoslavia. Secondly, it aimed to constitute the new state as a national state of the Croatian nation which will bring together the Homeland and Emigrated Croatia. In HDZ terms, Croatian nation was imagined as an exclusive community of ethnic Croats regardless of their residency. As Ragazzi[8] argues, these two ideas combined were utilized by HDZ's elite to mobilize an otherwise fragmented Croatian emigrant organization and to gain their support in the election campaign. Later on their support was important for financing the Croatian army and Croatia's campaign toward independence. It was at this time that the diaspora discourse was introduced as a high stakes issue into mainstream Croatian politics.

The majority electoral model enacted by the former communist elites for the first democratic elections went largely in favor of the HDZ. In the 1990 elections,[9] HDZ won a relative majority with 40 per cent of the votes, while SKH-SDP won 36 per cent. Nevertheless, the majority electoral formula transformed the HDZ' relative electoral victory into an almost two-thirds majority in the Croatian Parliament. Such majority enabled HDZ to promote its conception of the Croatian nation as a foundation of the key constitutive acts of the Croatian state. By the end of 1990, the newly constituted Croatian Parliament enacted the new Croatian Constitution. Within the provisions of the Constitution, Croatia was defined as 'a national state of the Croatian people and members of other nations and minorities who are its citizens'. According to such definition, the Croatian

to EU integration. *CITSEE Working Paper* 2011/15. Edinburgh: School of Law, University of Edinburgh.

[8] Ragazzi, F., 2009. The Croatian 'diaspora politics' of the 1990s: nationalism unbound? In: U. Brunnbauer, ed. *Transnational societies, transterritorial politics, migrations in the (post)Yugoslav area, 19th–21st centuries.* Munich: Oldenourg Verlag, 145–168.

[9] Grdešić, I. 1991. Izbori u Hrvatskoj: birači, vrijednovanja i prefrencije, in *Hrvatska u izborima* 1990, 49-97, Zagreb: Naprijed.

Serbs lost their previous status of being a constituting nation of the republic and became a minority. At the same time the new constitution institutionalized special obligations of the Croatian state towards its co-ethnics abroad. Namely, article 10 of the Constitution stated that the Croatian state does not belong solely to the Croats residing on Croatian territory, but that the state has constitutional obligations to provide special care and support for the members of Croatian people residing outside the Croatian territory regardless of their citizenship status.

Once the novel definition of the state was set, the second major task of the new political elites was to determine the membership criteria of the initial Croatian polity. In 1991, on the same day on which Croatia proclaimed its independence, the Croatian Parliament passed a new Law on Croatian Citizenship (LCC). As Štiks[10] argues, the citizenship legislation became an invaluable tool for further ethnic engineering. The LCC was founded on two main principles:[11] legal continuity and ethnical criteria. The first principle secured that all citizens of the former SR Croatia will be full citizens of the new state. However, the legislators were aware that within the former federative citizenship regime, many Croatian residents did not possess Croatian citizenship. To overcome this shortcoming of the legal continuity principle, the legislator implemented ethnic criteria for citizenship acquisition to LCC, according to which the criteria for the full political membership will be determined. Croatian ethnicity became important criteria for full citizenship status in two ways: firstly, with the provisions contained in art. 30 par 2 of the LCC, registered residents in Croatia who did not hold Croatian citizenship, but who could prove that they belong to the Croatian people (meaning Croatian ethnic community). They were entitled to citizenship status if they provided a written statement that they consider themselves Croatians. Secondly, the ethnic criterion was also contained in art. 16, which allowed for and facilitated the naturalization of members of the Croatian people abroad. The LCC provided discretionary powers for the bureaucracy (namely to the Ministry of Interior) to determine whether an individual's claim to be of the Croatian ethnic community is valid. In the case where a person was a registered resident of Croatia, but was not an ethnic Croat he would become a legal alien and could apply for Croatian citizenship through a complex naturali-

[10] Štiks, I., 2010b. The citizenship conundrum in post-communist Europe: The instructive case of Croatia. *Europe-Asia studies,* 62 (10), 1639–1660.

[11] Omejec, J., 1998. Initial citizenry of the Republic of Croatia at the time of the dissolution of legal ties with the SFRY, and acquisition and termination of Croatian citizenship. *Croatian Critical Law Review*, 3 (1–2), 99–128.

zation procedure. Within this procedure, the ambivalent approach to the status of dual citizenship represented a particular obstacle for the naturalization of non-Croat residents.

Within the LCC dual citizenship was not regulated by a single direct provision of the law. Besides article 2 which states that the citizens of the Republic of Croatia who also have foreign citizenship are considered exclusively as Croatian citizens by the Government of the Republic of Croatia. Dual citizenship was regulated by the articles that determine naturalization criteria for different categories of applicants. The review of these articles reflects the ambivalent attitude of the state toward such status. While the applicants who wanted to acquire Croatian citizenship through regular naturalization procedures (non-Croats) had to renounce their former citizenship, or provide proof that such renunciation will be made following the admission to Croatian citizenship (art. 8, par 2) , members of the Croatian people residing abroad and applying for Croatian citizenship through the facilitated naturalization process (art. 16) were exempt from this requirement, hence were entitled to multiple citizenship status.[12]

In practice, these provisions were utilized toward the realization of particular HDZ nationalist goals in the 1990s. The majority of the applicants to Croatian citizenship status according to the regular naturalization procedures were the non-Croat residents who had the republican citizenship of the other ex-SFRY republics. While in the most cases they satisfied the residency and language requirements for the admittance to Croatian citizenship, they also had to give proof of the renunciation of their previous citizenship, or to provide proof that such renunciation will be completed once they are granted Croatian citizenship. However, in the context of the violent breakup of Yugoslavia, and little or non-existent diplomatic relations between most of the newly established post-Yugoslav states (and in the case between Serbia and Croatia mutual non-recognition of the statuses followed by the violent conflict), it was clear that it was both legally and practically impossible for such applicants to meet this condition to be admitted to Croatian citizenship. On the other hand, Croatia actively promoted the incorporation of thousands of its ethnic compatriots abroad, regardless of their previous citizenship status. Such policies were most prominent in the relation to the Croats from Bosnia and

[12] Additionally, the foreign citizenship renunciation was not asked from the applicants born in Croatia with at least five years of registered residency on the date of application (art. 9), members of the Croatian emigration (art. 11), dependents of Croatian citizens (art. 10) and applicants whose naturalization represents a special interest for the Republic of Croatia (art. 12).

Herzegovina, who became the major beneficiaries of the named policies. According to the Ministry of Interior data, from 1991 till 2010, Croatia admitted 1,109,407 applicants to Croatian citizenship. From this number 678,918 applicants had BiH's citizenship at the moment of application, while 834,731 were born in BiH.[13] In other words, as Ragazzi argues, Croatia utilized its citizenship policies in order to establish it's *de facto* sovereignty over significant portions of citizens of this republic.[14]

In 2011, two decades after its enactment, the largest changes were introduced to the law. Besides the introduction of the foreign citizenship renunciation criterion for the applicants born in Croatia (art 9), these changes did not alter the previously established provisions for dual citizenship. Hence, the Croatian state which is constitutionally defined as the national state of the Croatian people still presumes that ethnic Croats may express their citizen loyalties to more than one state, while the common foreigners that naturalize through regular naturalization procedures are expected to express their exclusive loyalty only to the Croatian state. Once the described citizenship constellation was set, allowing open access to Croatian citizenship to all Croats abroad, the issues regarding the scope of political rights that should be attributed to non-resident citizens emerged in the Croatian political arena.

External voting rights and diaspora politics

In the contemporary electoral studies several ideal types of justification for electoral rights within particular countries can be identified. Bauböck[15] defines five such positions: traditional republican model, ethno-nationalist model, two variants of liberal democratic model and finally, a model based on the stakeholders principle. According to the traditional republican principle, both the membership in the political community (formal citizenship status) and the residency in the state should be required from the individual in order to grant him voting rights. Contrary to the traditional republican approach ethnic nationalism supports voting rights for all expatriates. However, it

[13] Data issued by Croatian Ministry of Interior in 2010. Document in authors possesion.

[14] Ragazzi, F., 2009. The Croatian 'diaspora politics' of the 1990s: nationalism unbound? In: U. Brunnbauer, ed. *Transnational societies, transterritorial politics, migrations in the (post)Yugoslav area, 19th–21st centuries.* Munich: Oldenourg Verlag, 165.

[15] Bauböck, R. 2005. Expansive citizenship-voting beyond territory and membership, *Political Science and Politics*, October 2005, 38: 683-687

also excludes all permanent residents without formal citizenship from the acquisition of voting rights. Two variants of liberal democratic counterclaims argue for more inclusive criteria for granting voting rights: on the one hand, there are the advocates of voting rights of all individuals who are subjected to the laws within a particular territory. Hence, every permanent resident on the given territory, regardless of his citizenship status, should be granted a right to vote. The more inclusive access to voting rights is advocated by the liberals supporting *what affects all shall be approved by all* principle.[16] Here, neither residency nor citizenship should be set as a condition for voting rights in the particular polity. This approach argues that all who are affected by the particular policies should be included in the *demos* that creates these policies. Finally, as a fifth model, Bauböck proposes a stakeholdership principle. According to this principle, both the formal citizenship status and an interest in membership that makes an individual's fundamental rights dependent on the protection by a particular polity,[17] should be set as a necessary conditions for determining whether a particular individual should be given voting rights in a given polity. Considering the above mentioned typology, Croatia implemented the electoral laws that fall within the ethno-nationalist principle. This was the political outcome of the novel constitutional definition of the Croatian nation that led to constitutional warranties of equal voting rights of all citizens regardless their residency (Art 45).

The first electoral law enacted following the proclamation of independence and for the purposes of Parliamentary and Presidential elections in 1992 envisioned voting rights for non-resident Croatian citizens. However, it did not foresee special parliamentary representation for 'diaspora' voters. For the 1992 parliamentary elections, the so called segmented electoral system was selected.[18] Within such a system, the resident citizens were allowed to vote on two lists: on the state list and on the single mandate electoral lists. In the former list, sixty seats were allocated according to the voting results on a unitary list where the country as a whole was represented as a single electoral unit. In the later, Croatia was divided into 60 (sixty) single-mandate electoral counties. Each resident citizen could cast his second vote for the electoral count of his residency. While the electoral law granted

[16] Bauböck, R. 2005. Expansive citizenship-voting beyond territory and membership, *Political Science and Politics*, October 2005, 38: 686

[17] Bauböck, R. 2005. Expansive citizenship-voting beyond territory and membership, *Political Science and Politics*, October 2005, 38: 686

[18] Zakošek, N., 2002. *Politički sustav Hrvatske*. Zagreb: Biblioteka Politička misao. (p. 19.)

non-resident citizens to vote, they were allowed to cast their ballots only on the state list, hence no special representation for these voters was foreseen. This practice was radically changed on the eve of the 1995 elections.

In 1995, following the military operation "Storm", through which Croatia regained control over the territories formerly held by Serb rebels, the ruling HDZ convoked the early Parliamentary elections. HDZ desired to utilize its growing party support following military victory and to consolidate their position on power. On the eve of the elections the new electoral legislation was enacted.[19] One of the major novelties with the legislation was the introduction of the special representation of non-resident voters.[20] For the 1995 elections, this electorate was allocated with fixed quota of twelve representatives in Parliament, who were to be elected through the special electoral unit, from the so called "diaspora list". Since its introduction, the diaspora list became an object of ideological disputes between the right wing and left-center political parties in Croatian politics.

Theoretical foundation for introduction of this list depends on the replacement of the territorial with the ethno national conception of citizenship.[21] However, Kasapović highlights additional, more problematic political arguments specific to the Croatian political context that allowed the introduction of the diaspora list. Proponents of these policies conceive diaspora voting rights as a tool for reparations for the diaspora's historical sufferings for the Croatian cause in the past, including the diaspora's contributions to the national economy, the emigration's affiliate interests with Croatian politics and the diaspora's contributions to state independence during the Homeland war.[22] However, such pro-diaspora voting argumentation was largely chal-

[19] Zakošek, N., 2002. *Politički sustav Hrvatske*. Zagreb: Biblioteka Politička misao. (p.22-23.)

[20] It may be important to note that almost simultaneously with the enactment of the new electoral law, granting special representation for diaspora, the Parliament has suspended the provisions of the Constitutional law on human rights and minorities that granted proportional representation to the minorities with a share of total population larger than eight per cent (namely Croatian Serbs). Hence, the enactment of these laws enabled greater incorporation of Croats to Croatian body politics, while at the same time secured a greater ethic homogenization of the representatives in the Parliament by limiting the political rights of the Serbian minority, the single largest minority group in Croatia.

[21] Kasapović, M. 2012. Voting rights, electoral systems, and political representation of Diaspora in Croatia. *East European Politics and Societies and Culture,* 26(4): 778.

[22] Kasapović, M. 2012. Voting rights, electoral systems, and political representation of Diaspora in Croatia. *East European Politics and Societies and Culture*, 26(4): 780-781.

lenged by the traditional republican line of argumentation according to which a person that does not have to suffer the consequences of the policies he chooses should not be allowed to vote.[23]

Furthermore, the more sever opponents of the diaspora's voting rights argue that introduction of the diaspora list in Croatia is a blatant example of electoral engineering. Till today, in five consecutive elections since 1995, all seats voted through this list went to HDZ. However, the issue that raised public attention lately, is related to the question of who are the voters who vote on these lists? As Kasapović[24] argues, traditional emigration expressed a very low interest for participation in Croatian elections. In practice, the Croats from Bosnia and Herzegovina formed the great majority of the total share of non-resident citizens that exercised their right to vote.[25] This community's participation in Croatian election is not problematic solely because its members, nor their ancestors, have ever lived in Croatia. More problematic is the fact that the Croat community in Bosnia and Herzegovina is not a national minority in BiH, but is one of its constitutionally defined constitutive nations. Hence, it remains questionable to what extent does their participation in Croatian elections contribute to their full integration into the fragile post-Dayton Bosnian state.

Nevertheless, as these voters have developed into a stable HDZ's constituency[26] it was in HDZ's best interest to argue for the diaspora list, as much as it was in the interest of the opposition parties to argue against them.[27] However, due to the growing public pressure for the changes of these regulations, the changes were introduced already for the 2000 parliamentary elections. The fixed (over)representation of the diaspora was replaced with representation in propor-

---

[23] Zakošek, N., 2002. *Politički sustav Hrvatske*. Zagreb: Biblioteka Politička misao. (p. 27.) Kasapović, M., 2010a, 2012. Državljanstvo i biračko pravo u Hrvatskoj. *Političke analize*, 2, 782.
Koska, V., 2011. The evolution of the Croatian citizenship regime: from independence to EU integration. *CITSEE Working Paper* 2011/15. Edinburgh: School of Law, University of Edinburgh.

[24] Kasapović, M., 2010b. 2012. Tko i kako predstavlja 'dijasporu'. *Političke analize*, 3, 779,780.

[25] In the 2007 Parliamentary elections out of total number of 90,472 voters that voted on the 'diaspora list' 82,226 were voters from BiH. Similarly, in the 2011 Parliamentary elections, out of 21,114 voters on this list, 16,912 were from BiH (Kasapović 2012: 779)

[26] Zakošek, N., 2002. *Politički sustav Hrvatske*. Zagreb: Biblioteka Politička misao. (p. 27.)

[27] Koska, V. 2012. 'Framing the citizenship regime within the complex triadic nexuses: the case study of Croatia', *Citizenship Studies*, 16 (3-4): 402.

tion to the electoral turnout in Croatia. The number of diaspora seats was hence calculated according to the average voting cost of the seat won on the national lists.[28]

Since the introduction of the proportional criteria this number was altered; in the 2000 elections the diaspora was allocated with six seats, in 2003 elections with four and in 2007 elections with five. What did not change in all elections were the electoral results that went in favor of HDZ who won all seats reserved for non-resident citizens. The debate over the diaspora representation reached its peak during the 2007 elections when it became one of the key issues during the election campaign. The debate was temporarily settled in 2010, when during the constitutional changes enacted in order to prepare for Croatia's accession to EU, HDZ and the left-center parties reached the agreement leading to the constitutionally defined fixed quota of three representatives allocated to non-resident citizens.[29]

Kin state and policies toward the Croat communities abroad

Considering the named debate on the scope of political representation of diaspora, it would be misleading to conclude that Croatia is moving toward more de-ethnicized conceptions of citizenship.[30] While there was party cleavage on the issue of the scope of political rights that should be granted to non-resident citizens, the symbolic connection between the Homeland and the Croats abroad remained indisputable value for all political parties, regardless their position on the political spectrum.

This stability of ethnic principles on which the Croatian nation is conceived and according to which the state is 'owned' by the members of the transnational ethnic community has been manifest in a number of elements: firstly, in the unaltered provisions of the Law on Croatian Citizenship. In 2011, two decades after the enactment of the first citizenship legislation, the Croatian Parliament enacted the largest changes to its citizenship legislation. However, besides the administrative and technical details, the key foundation

[28] According to this rule, the number of total diaspora voters that voted in elections was divided with the number of voters needed for winning the single mandate on national list. The given number represented the number of seats that will be allocated to diaspora (Zakošek 2002: 24-25).

[29] For further information on the Croatian elections and external citizens voting rights see Zakošek 2002, Ragazzi 2009, Kasapović 2010a, 2010b, 2012, Koska 2011, 2012, Ragazzi & Balalovska 2011.

[30] Koska, V. 2012. 'Framing the citizenship regime within the complex triadic nexuses: the case study of Croatia', *Citizenship Studies*, 16 (3-4): 404.

of citizenship remained unchanged: the *ius sanguinis* remains the primary principle for citizenship acquisition, while the naturalization provisions privileges non-resident Croats compared to the non-Croat residents.[31]

Secondly, on 5th May 2011, the Croatian Government announced the Strategy on relations of the Republic of Croatia with Croats outside the Republic of Croatia. The Strategy symbolically and legally reinforces a special bond between Croatia and Croats abroad by obliging the state to get actively involved in the protection of the non-resident Croat communities but also the promotion of the Croatian strategic interests through these communities.[32] However, the language of the Strategy and later enacted Law on Relations between the Republic of Croatia and Croats Abroad emphasizes the state's obligation to the ethnic Croats abroad, not merely to the non-resident Croatian citizens. Furthermore, in order to avoid the conceptual blurriness associated with the previous usage of the single term diaspora, the Strategy introduces a more nuanced differentiation of the Croat communities abroad and assigns specific strategic approached to each of these categories. For the regulation of future relations of Croatia with it ethnic-kin communities abroad, three categories of these communities have been defined.[33]

The first category that the Strategy recognizes is the Croatian community in BiH (2011:5). Since Croats represent one of the constitutive nations of this multinational federation, the Strategy declares that Croatia's strategic interest is to support the integration, stay and return of the members of this community to BiH. Through its actions in international politics and through bilateral relations with BiH, Croatia has to act in a manner to secure, promote and protect equal status for Croats in the federation. The second category of Croats abroad is formed of Croat communities that are national minorities

[31] The law introduced more specific procedures for determining applicants' membership in the Croat ethnic community and/or genuine connection to Croatian emigration. However, the greatest restrictions to naturalization are introduced for regular immigrants with permanent stay. For a more detailed overview of the recent amendments on Croatian citizenship legislation see Ragazzi, Štiks, & V. Koska 2013).

[32] Vlada RH, 2011:3. *Strategija o odnosima Republike Hrvatske s Hrvatima izvan Republike Hrvatske*. (Strategy on relations of the Republic of Croatia with the Croats outside of the Republic of Croatia). Available at http://www.mfa.hr/custompages/static/hrv/files/110509-Strategija-prema-Hrvatima-izvan-RH.pdf

[33] Vlada RH, 2011:1, 4-11. *Strategija o odnosima Republike Hrvatske s Hrvatima izvan Republike Hrvatske*. (Strategy on relations of the Republic of Croatia with the Croats outside of the Republic of Croatia). Available at http://www.mfa.hr/custompages/static/hrv/files/110509-Strategija-prema-Hrvatima-izvan-RH.pdf

in other European states (2011:5). Croatia has to secure and promote their minority rights in their countries of residence. Croatia expects that these countries will grant Croat minorities the same minority protection and rights that Croatia grants to constitutionally recognize national minorities on its territory. The last category of Croats abroad is the Croatian emigration and the descendants of Croatian emigrants in transoceanic and European countries (2011:6). The Strategy defines that Croatian strategic interest is to establish and preserve special cultural, political and economic connections with its emigration, to provide support to Croats in the economically and politically unstable countries, and furthermore, to promote and provide support to their repatriation and integration into Croatian society.

The radical novelty announced with the Strategy (2011:6) and the Law on Relations between the Republic of Croatia and Croats Abroad (art 37) is the introduction of the legal status of 'Croat without Croatian citizenship' from which certain cultural, social and economic rights will be derived. This measure should allow special rights for the Croats who had to forfeit their Croatian citizenship during their naturalization to the countries which do not recognize dual citizenships. Furthermore, the Law foresees the establishment of a special institutional framework for promotion of the interests of non-resident Croats (art. 12, art. 16). This framework will consist of the newly established institutions, such as Special state office for the Croats abroad, Governments Council for the Croats Abroad, and Parliamentary committee for Croats abroad. In addition, the ministries of foreign affairs, interior, science, education, sport, culture, economy, health, social welfare, tourism, regional development and finance together with the Croatian Heritage Foundation and other relevant institutions will be actively involved in the creation and implementation of the Croatian policies for Croats abroad.

While these laws openly emphasize the ethnic foundations of the Croatian state, they also enable the state to utilize citizenship related policies as devices for the promotion of Croatia's particular regional and international interests. The strategy presupposes the existence of the homogeneous Croatian ethnic communities, whose group status, rights and interests Croatia has to promote and protect. Thus, it delegates to the Croatian state a two-fold authority over the Croatian communities abroad: Croatia reserves the right to determine what constitutes the best interest of a particular Croat community abroad, and consequently it is Croatia that defines whether these interests are adequately protected by its host states. In the long run such provisions equip Croatia with a venue through which the

discourse on Croat communities abroad can be rhetorically utilized for putting pressure on and possible diplomatic interventions in the internal affairs of the neighboring states. Such interventions may be legitimate acts of the state to promote the cultural identity and the rights of its compatriots, but they also have a potential for the manipulative interventionist actions within the regional political arena.

Additionally, the Strategy's accent on state responsibilities towards co-ethnics abroad clearly creates a hierarchy of Croatia's obligations towards different categories of non-resident citizens. The Strategy completely omits consideration (as the outcomes of the wars in the 1990s) that there are dozens of thousands of the former Serb refugees abroad. Not all of them migrated to the neighboring republics; some sought protection in the other European or transoceanic countries. All these migrants technically form a new non-ethnic Croatian diaspora, which is entitled to a number of rights that stem from their citizenship status. Furthermore, considering that they used to live in Croatia and still have numerous unresolved status issues with the state, in Bauböck's[34] term, they certainly may have stronger normative stake *vis a vis* the Croatian state than, for example, third generation descendants of traditional Croatian emigration. Also, the Strategy does not mention whether the legal status of the 'Croat without Croatian citizenship' may be attributed to the former non-Croat Croatian citizens, who had to forfeit Croatian citizenship in the countries that do not recognize multiple citizenships, equally as it is attributed to Croats in the same position in their host state.

Clearly, the Strategy stretches the meaning of the membership to the political community beyond the territorial borders and beyond the formal citizenship status. Nevertheless, it does not happen by invoking universal personhood as the ground for rights that would stem from the trans-border citizenship, or as post-national theories[35] claim, beyond or besides it. Rather, the particularistic and exclusive membership in the trans-generational, ethnic community is perceived to be the primary source of the cultural identification with, membership in and representation of the state. Through such measures Croatia continues to perceive itself more as an 'ethnic' than 'civic' state, as it is highlighted in the particular wording of the Strategy:

---

[34] Bauböck, R. 2005. 'Expansive citizenship-voting beyond territory and membership', *Political Science and Politics*, October 2005, 38: 683-687

[35] Soysal, Y. (1994) *Limits of Citizenship*, Chicago, IL: University of Chicago Press. Jacobson, D. (1996) *Rights Across Borders. Immigration and the Decline of Citizenship*. Baltimore: Johns Hopkins University Press.
Bosniak, L. 2000. 'Citizenship Denationalized', *Indiana Journal of Global Law Studies*, Vol. 7: 447-509

Croats outside the Republic of Croatia are the most natural social and cultural elements in the promotion and international affirmation of Croatian society and culture on the European and world level.[36]

Conclusion

The overview of the first two decades of the development of the Croatian citizenship regime reveals that the relationship between Croatia and its ethnic kin abroad played a crucial role in the construction of today's predominant understanding of the Croatian nation as a transnational ethnic community. By being reinforced in the key constitutional documents, further developed in preferential treatment of Croats in naturalization procedures, and finally in setting the special administrative bodies and institutions for regulating the policies towards the Croats abroad, the discourse of the Croatian state as a guardian of ethnic Croats regardless of their residence remains a tool which can be easily utilized by political elites for the various political outcomes.

As this paper presented, during the 1990s it was utilized by nationalist elites in order to promote greater national homogenization during the process of the consolidation of the new state. In the later stage, the issue of voting rights of non-resident Croats became an object of disputes between left and right for both symbolic and instrumental reasons. However, such disputes never challenged the preferential treatments that ethnic Croats should have in naturalization procedures or in special protection on behalf of the state. Finally, even though its salience in the political arena depends on the particular social, economic and political conditions at a given time in Croatia, with its institutionalization through the Strategy and the Law on Relations between the Republic of Croatia and Croats Abroad, the discourse on state obligations towards the Croats abroad will remain at the disposition for future Croatian elites either for the struggles over symbolic politics in domestic, or greater interventions in the regional political arena. How will these policies develop (whether they will continue to lose salience for the Croatian public and move Croatia more to the de-ethnicized conceptions of nationhood, or will the ethnic aspect of Croatian nationhood further be reinforced) following the Croatian accession to EU after 1st July 2013, remains to be seen.

[36] Strategy 2011:3

BIBLIOGRAPHY

Bosniak, L. 2000. 'Citizenship Denationalized', Indiana Journal of Global Law Studies, Vol. 7: 447-509

Bauböck, R. 2005. 'Expansive citizenship-voting beyond territory and membership', Political Science and Politics, October 2005, 38: 683-687

Brubaker, R. 1996. Nationalism reframed, nationhood and the national question in the New Europe. Cambridge: Cambridge University Press.

Hayden, R. 1992. 'Constitutional nationalism in the formerly Yugoslav Republics'. Slavic review, 51: 654-673

Grdešić, I. 1991. 'Izbori u Hrvatskoj: birači, vrijednovanja i prefrencije', in Hrvatska u izborima 1990, 49-97, Zagreb: Naprijed.

Jacobson, D. (1996) Rights Across Borders. Immigration and the Decline of Citizenship. Baltimore: Johns Hopkins University Press.

Kasapović, M., 2010a. Državljanstvo i biračko pravo u Hrvatskoj. Političke analize, 2, 21–24.

Kasapović, M., 2010b. Tko i kako predstavlja 'dijasporu'. Političke analize, 3, 15–19.

Kasapović, M. 2012. 'Voting rights, electoral systems, and political representation of Diaspora in Croatia', East European Politics and Societies and Culture, 26(4): 777-791

Koska, V., 2011. The evolution of the Croatian citizenship regime: from independence to EU integration. CITSEE Working Paper 2011/15. Edinburgh: School of Law, University of Edinburgh.

Koska, V. 2012. 'Framing the citizenship regime within the complex triadic nexuses: the case study of Croatia', Citizenship Studies, 16 (3-4): 397-411

Medvedovic´, D., 1998. Federal and republican citizenship in the former SFR Yugoslavia at the time of its dissolution. Croatian critical law review, 3 (1–2), 21–56.

Omejec, J., 1998. Initial citizenry of the Republic of Croatia at the time of the dissolution of legal ties with the SFRY, and acquisition and termination of Croatian citizenship. Croatian critical law review, 3 (1–2), 99–128.

Ragazzi, F., 2009. The Croatian 'diaspora politics' of the 1990s: nationalism unbound? In: U. Brunnbauer, ed. Transnational societies, transterritorial politics, migrations in the (post)Yugoslav area, 19th–21st centuries. Munich: Oldenourg Verlag, 145–168.

Ragazzi, F. & Balalovska, K (2011) 'Diaspora Politics and Post-Territorial Citizenship in Croatia, Serbia and Macedonia', CITSEE Working Paper Series 2011/18, University of Edinburgh, School of Law

Ragazzi, F. and Štiks, I., 2009. 'Croatian citizenship: from ethnic engineering to inclusiveness'. In: R. Baubock, B. Perchinig and W. Sievers, eds. Citizenship policies in the New Europe. 2nd ed. Amsterdam: Amsterdam University Press, 339–363.

Ragazzi F., Štiks I. & Koska V., 2013. Country Report: Croatia. EUDO Citizenship Observatory. Robert Schuman Centre for Advanced Studies. European University Institute.

Soysal, Y. (1994) Limits of Citizenship, Chicago, IL: University of Chicago Press.

Shaw, J. & Štiks, I. 2010. 'The Europeanization of citizenship in the successor states of the Former Yugoslavia: an introduction'. CITSEE Working Paper 2010/09. School of Law, University of Edinburgh.

Štiks, I., 2010b. The citizenship conundrum in post-communist Europe: The instructive case of Croatia. Europe-Asia studies, 62 (10), 1639–1660.

Verdery, K., 1989. Transnationalism, natonalism, citizenship and property: Eastern Europe since 1989. American ethnologist, 25 (2), 291–306.

Zakošek, N., 2002. Politički sustav Hrvatske. Zagreb: Biblioteka Politička misao.

OFFICIAL DOCUMENTS:

Ustav Republike Hrvatske [Constitution of the Republic of Croatia], 1990. [online] Available at http://www.nn.hr/clanci/sluzbeno/2001/0705.htm

Ustav Republike Hrvatske, [Constitution of the Republic of Croatia], 2010. NN br. 85/10

Vlada RH, 2010. Strategija o odnosima Republike Hrvatske s Hrvatima izvan Republike Hrvatske. (Strategy on relations of the Republic of Croatia with the Croats outside of the Republic of Croatia). Available at http://www.mfa.hr/custompages/static/hrv/files/110509-Strategija-prema-Hrvatima-izvan-RH.pdf

Zakon o hrvatskom državljanstvu, (The law on Croatian citizenship), 1991. NN br. 53/91

Zakon o izmjenama i dopunama Zakona o hrvatskom državljanstvu, (The law on the amendments and modifications of the law on Croatian citizesnhip), 2011. NN br. 130/2011.

Zakon o odnosima Republike Hrvatske s Hrvatima izvan Republike Hrvatske, (The law on relations of the Republic of Croatia with the Croats outside of the Republic of Croatia), 2011. NN br. 124/2011

Sulyok Márton

Priorities for Kin-State Policies within Constitutions[1]

When discussing the priorities for Hungarian kin-state policy, the following will first be addressed. Before we begin to map out the key issues underlying the relation of constitutional values and kin-state policy trends, we will first and foremost say a few words about the importance and actual meaning of kin-state policy. How should we interpret kin-state policy within a definitive inquiry focused on constitutional values that are present in fundamental laws?[2]

Let me evoke the thoughts of my paternal ancestor, Ignácz Kuncz, who – in 1902, disserting about the likeness of nation-states – wrote that *the nation is the active collective subject of the state in thought, will and act*.[3] Obviously, the directions of the academic discourse have significantly changed since the appearance of nation states doctrine in the work of the Council of Europe, but, nonetheless, I assert *that kin-state policy as reflected by modern nation-concepts is indeed a reflection of thought, will and act*, all implemented by the constitutional legislator. (Moreover, kin-state policies will formulate *reflections on the cultural reality that the concept of nation designates*.[4])

---

[1] This paper is the written *summary of the main conclusions* of a talk presented at the round-table "Hungary and Hungarian Kin-State Policy" on the Trends and Directions of Kin-State Policies in Europe and Across the Globe international conference (September 28th 2012, Budapest, Magyarság Háza).

[2] The Fundamental Law of Hungary sets forth in its Preamble (National Avowal) that the nation is the fundamental, principal framework for the community, and its most important cohesive values are fidelity, faith, and love.

[3] Original in Hungarian: *"A nemzet az activ államalany gondolatban, akaratban és tettben."* Ignácz Kuncz: *A nemzetállam tankönyve*, Stein János M. Kir. Könyvkereskedése, Cluj-Napoca, 1902, 4. As an analogy, we will mention Jakab's argument referring to Brubaker in *Defining the Borders of the Political Community – Constitutional Visions of the Nation,* where he cites that the category of nation structures perception, informs thought and organizes political action. (p. 1.) (The paper is available in the SSRN Working Paper Series, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2045648)

[4] Council of Europe Parliamentary Assembly (PACE) Recommendation 1735 (2006) The concept of "nation", Article 6. http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=17407&Language=EN

Expatriate national corpora will be borne in mind – thought of – by the constitutional legislator when formulating the content of national self-definition within the constitution. This "thought" then requires the constitutional legislator to dispose of adequate political "will" to assert said thought and realize it through "acts" that strive to reach the "common good", as the preamble of the constitution of Poland so aptly sets it forth.

Kuncz also argued that "*substantially, within the state the nation aside nothing else exists*" and the legal element in this discussion is only the outer frame of the notion.[5] Consequently, the mapping of this concept on non-legal factors is quintessential for a better understanding of the topic by filling in the frame with content through a host of cultural, sociological, ethnic and political science viewpoints. Wide-range debates surround these issues on a societal level that are almost always subject to extensive scrutiny by the public opinion, and certain political decisions are prone to inspire the academia to express their views abundantly on certain topics.

This study aims to primarily dissert on some of these issues with respect to the following two questions:

(i) What defines the main directions/trends and priorities for a national kin-state policy?

(ii) How can kin-state policy priorities of the constitutional legislator be reflected within a constitution?

Delimitation of the Subject Matter

The two questions need to be examined and answered in conjunction with each other; we cannot seek to clarify them independently.

Ad (i) supra, I start out from the statement that priorities, trends and directions for kin-state policies are *defined by the subjection of the constitutional legislator to the responsibility in relation to the national corpora beyond the borders of the state*. *Hungary's policy for the Hungarian communities abroad includes the statement that the Hungarian communities abroad constitute the "border of the nation"*. Although the concept of nation is often criticized for being fluid and "borderless", we might argue that the "borders of the nation" tighten or broaden based on the extent of the obligation the constitutional legislator assumes on

[5] Kuncz, op. cit., fn. 3.

the imaginary lifeline between a sense of responsibility and an active compliance with the obligation to support its expatriates.[6]

The level of responsibility is obviously influenced by the development of international trends and the search for an all-encompassing identity that overarches and incorporates the concept of "nation" – whatever the limits thereof might be – thus becoming the core of national self-determination present in fundamental laws. This national identity, then, is unquestionably influenced by the "layered" (multiple) identity typically apparent in expatriate national corpora, who strive for support and recognition in their country of birth, their host country, which is not identical to their kin-state. This also shapes identity as a basis for national self-determination.

States that host large diasporas need to actively provide them – for lack of a better expression – with "an access to identity", i.e. means for the diasporas to exercise their rights as minorities. The latter factor might eventually become a key element in a strategic partnership (especially within regions that are burdened with historical conflict and – from time to time – flammable neighborhood dynamics.)[7] I support this allegation by citing once again the well-known Recommendation 1735(2006)[8] that sets forth in its Article 12 that strengthening the links with one's identity and allowing any individual to

---

[6] For a definitive inquiry into the borders of the political community, see András Jakab: *Defining the Borders of the Political Community – Constitutional Visions of the Nation* (SSRN Working Paper Series, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2045648)

[7] The Constitution of Slovenia e.g. sets forth that the state *„shall protect and guarantee the rights of the autochthonous Italian and Hungarian national communities."* In parallel, the Spanish Constitution, sets forth (in its preamble) to *"protect all Spaniards and peoples of Spain in the exercise of human rights, of their cultures and traditions, and of their languages and institutions."* In comparison, the Hungarian Fundamental Law undertakes to commit to *"promoting and safeguarding […] the languages and cultures of nationalities living in Hungary"* (Preamble) and acknowledges (Article XXIX) that „Nationalities living in Hungary shall be constituent parts of the State. Every Hungarian citizen belonging to any nationality shall have the right to freely express and preserve his or her identity. Nationalities living in Hungary shall have the right to use their native languages and to the individual and collective use of names in their own languages, to promote their own cultures, and to be educated in their native languages." [Slovenian Constitution - http://www.wipo.int/wipolex/en/text.jsp?file_id=180804; Spanish Constitution – http://www.senado.es/constitu_i/indices/consti_ing.pdf*; The Fundamental Law of Hungary* – http://www.kormany.hu/download/4/c3/30000/THE%20FUNDAMENTAL%20LAW%20OF%20HUNGARY.pdf/

[8] PACE Recommendation 1735 (2006), fn 4.

define themselves as members of a cultural nation irrespective of the country of citizenship or the civic nation they belong to is quintessential in Europe. This *trend of the "evolution of nation state"* amounted to certain changes in national self-definitions globally. *Due to the fact that under this doctrine, the concept of the nation promotes contact between people and integrates the community of citizens, I argue that the direction of kin-state policy priorities is influenced by this trend.* Pertinent efforts –reshaping kin-state policy – have already been recognized: first in 2001, upon a Hungarian request to the Venice Commission[9], and then later on on many occasions in terms of our neighboring countries (Croatia, Slovenia) as well.

Ad (ii) supra, How can kin-state policy appear on the level of the fundamental law? – that was the second question formulated in the first part of this paper. In order to be able to answer this question, we have to conduct a constitutional analysis of values present in constitutional documents.

Including "emotions", other constitutional values and relevant narratives within constitutions is an interesting topic.[10] *"Constitutional sentiments are particularly effective where they affirm an emerging national identity [… and successfully offer] values for public identification."*[11]*,* argues Sajó, and this is certainly an issue that is central to the analysis conducted here. The specific structural unit within the texture of the constitution, in which ruling elites define the core values important to their perception of the "nation", is the preamble. Orgad refers to Carl Schmitt when he declares that preambles have an important (i) integrative function[12] and (ii) they are the most suitable to express fundamental political decisions.[13]

---

[9] Report on the Preferential Treatment of National Minorities by Their Kin-State (2001) http://www.venice.coe.int/docs/2001/CDL-INF(2001)019-e.asp; Balázs Vizi: *The Evaluation of the Status Law in the European Union,* http://src-h.slav.hokudai.ac.jp/coe21/publish/no9_ses/06_vizi.pdf

[10] e.g. See: András Sajó: *„Emotions" in constitutional design,* ICON, Vol. 8, No. 3. 2010, 354-385

[11] Ibid. 362, 363.

[12] Kudrna argues that a preamble *„may serve as a common starting point for the entire society, more connecting than dividing"* and that it is a „common anchor." (Jan Kudrna, *Two Preambles in the Czech Constitutional System,* Acta Juridica Hungarica, 1/2011, 19-28, 28.)

[13] Liav Orgad, *The Preamble in Constitutional Interpretation,* ICON, Vol. 8, No. 4. 2010, 714-738, 715. This integrative function is apparent in the National Avowal of the Fundamental Law of Hungary, where it declares that the Fundamental Law is a *„covenant among Hungarians past, present and future; a living framework*

As a matter of fact, national self-definition – besides being the embodiment of the integrative function – is a fundamental political decision, and as such it must be taken into consideration when defining key policy priorities related to constitutionally anchored kin-state responsibilities, which reflect public sentiment in a way. Sajó argues that *"constitutionalizing the dictates of public sentiment helps to […] extend the cultural environment that, in turn, provides for interpretive schemes for these sentiments."*[14] *Regarding these fundamental political decisions reflected in the preamble, their justification needs to be invoked in the context of expressing and interpreting constitutional sentiments. A preamble also serves to justify the constitution and describe the cultural environment – the roots – that defines national identity.*

Besides integration and justification (and their political contexts elaborated), preambles are also suitable to represent a subtext of normative nature as a basis for normative obligations, says Kovács.[15] For the purposes of our enquiry, such normative obligations are undertaken as embodied by an increased focus on kin-state policy and by the creation of an efficient dual citizenship and external voting regime.

In relation to what has been said before, we will now look at the different forms of preambles suitable to represent kin-state policy priorities, each on different theoretical and practical levels. The internal dynamics and emphases of the preambles' wording signify the extent of responsibility undertaken by the constitutional legislator with respect to the expatriate national corpora. Orgad's classification is most suitable for the purposes of our inquiry:

(i) Ceremonial-symbolic preambles are used to consolidate national identity without binding legal force, through explanatory narrative. The constitutions of Hungary or Poland can be classified in this category.

---

which expresses the nation's will." Orgad describes the integrative function as a *"formative purpose",* a *"political resource for the consolidation of national identity."* (Orgad, op. cit., 722)

[14] Sajó: op. cit, 363. The discussion by Sajó then takes a different direction and focuses on the relation of fundamental rights and constitutional sentiments; however, for the arguments sake it needs to be clarified that these sentiments might considerably influence national self-determination and identity as well, as it was also mentioned by Sajó himself.

[15] István Kovács: *New elements in the development of socialist constitutions,* Akadémiai Kiadó, Budapest, 1962, 141

(ii) Interpretive preambles provide guidance for the interpretation of the fundamental law and inferior legislation. The Hungarian preamble had already been classified as such in 1990 by the Constitutional Court.

(iii) Substantive preambles are sources of fundamental rights independent of the normative text of the constitution. The preambles of France[16] and Bosnia-Herzegovina can be invoked as examples.)

With respect to the identity-question, the historical narrative is another important element of preambles that serves to surround implied objectives for kin-state policy priorities. In the context of the preamble of the Fundamental Law of Hungary, national self-definition is complemented by an extensive historical narrative, in which the following kin-state policy priority is apparent, with a view to finding an identity: Hungary strives to preserve "*the intellectual and spiritual unity of our nation*". It is noteworthy, however, that the case of Hungary is specific to a certain extent, since national self-definition also appears among the provisions the Foundation, as part of the normative text of the constitution.

The Slovenian model is similar to the Hungarian. Within historical narrative it makes reference to historical facts as "*centuries-long struggle for national liberation*" under the permanent right to national self-definition and, already within the normative text of the constitution, it contains the following provision: the state shall "*maintain concern for autochthonous Slovene national minorities in neighbouring countries and for Slovene emigrants and workers abroad and shall foster their contacts with the homeland.*"[17]

---

[16] By reference to the *„bloc de constitutionnalité"* in the preamble of the French Constitution, the French *Conseil Constitutionnel* made possible that a catalogue of explicit fundamental rights codified in the 1789 Declaration of the Rights of Men are used as a point of reference in French constitutional jurisprudence as „principles underlying the Republic." As for the case of Bosnia-Herzegovina, Orgad observes that – in a context relevant to national self-determination – normative preambles are also sources of conflict. Ha argues that when the constitution has been adopted, following the Dayton Agreement, there has been a conflict between the constitutions of the Serbian and Bosnian constitutions due to the fact that the Serbian preamble has been in contradiction with the Bosnian constitution. Eventually, the Constitutional Court – in 2000 - quashed the preamble in question since it did not create two separate nation states, only separate political communities. (In detail, see: Orgad, op. cit., 729-730)

[17] Article 5, Constitution of Slovenia, http://www.wipo.int/wipolex/en/text.jsp?file_id=180804

In the Polish constitution, the expression kin-state is *expressis verbis* apparent as "Homeland" and "*the Polish Nation – all citizens of the Republic, […] equal in rights and obligations* [act together] *towards the common good – Poland.*" Within the context of historical narrative bitter experiences of human rights violations within the Homeland appear, and the respect for the labor of the ancestors (Polish of the past) is emphatic, along with a bond "*in community with the compatriots dispersed throughout the world*" (Polish of the present), complemented with an an obligation to "*bequeath to future generations all that is valuable*" from the over one thousand years' heritage of Poland.[18]

Conclusion

Following from the determinations made in the last portion of the previous part, the argument needs to be stressed that a sustainable and efficient kin-state policy needs to take into consideration temporal implications as well. National political will shall be asserted as a flagship of concrete objectives defined in the long term. The present Hungarian kin-state policy was indeed created as a "*covenant among Hungarians past, present and future*" – as it is declared by the Preamble of the new Fundamental Law. This statement makes reference to the changing façade of the nation-concept, which change needs to take into consideration new trends in kin-state policy across the globe.

The Preamble simultaneously embraces and mentions the forced diasporas of the past, the Hungarians of the present (and the different interpretive approaches to the nation-concept adopted by the Fundamental Law). Moreover, it also takes into consideration the future effects of 'voluntary diaspora' through migration, with a significant potential to further change the "borders of the nation." As the Fundamental Law of Hungary explains, it is a "living framework", expressing the nation's will. If this framework is really alive, it must be open and subject to change following experiences through dialogue. Asserting change in the order of the country can be the result of the common endeavors of the nation as it is apparent in the Preamble.

---

[18] For more on the analysis of the Polish preamble cf. Geneviéve Zubrzycki, *„We, the Polish Nation": Ethnic and civic visions of nationhood in Post-communist constitutional debates,* Theory and Society, Vol. 30, 5/2001, 629-668. or Ewa Poplawska, *Preamble to the Constitution as an Expression of the New Axiology of the Republic of Poland,* Acta Juridica Hungarica, 1/2011, 40-53.

BIBLIOGRAPHY

1. Ignácz Kuncz: *A nemzetállam tankönyve*, Stein János M. Kir. Könyvkereskedése, Cluj-Napoca, 1902, 4.
2. András Jakab: *Defining the Borders of the Political Community – Constitutional Visions of the Nation (http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2045648*)
3. Balázs Vizi: T*he Evaluation of the Status Law in the European Union* (http://src-h.slav.hokudai.ac.jp/coe21/publish/no9_ses/06_vizi.pdf)
4. András Sajó: *„Emotions" in constitutional design*, ICON, Vol. 8, No. 3. 2010, 354-385
5. Jan Kudrna, *Two Preambles in the Czech Constitutional System*, Acta Juridica Hungarica, 1/2011, 19-28, 28.
6. Liav Orgad, *The Preamble in Constitutional Interpretation*, ICON, Vol. 8, No. 4. 2010, 714-738, 715.
7. István Kovács: *New elements in the development of socialist constitutions*, Akadémiai Kiadó, Budapest, 1962, 141
8. Geneviéve Zubrzycki, *„We, the Polish Nation": Ethnic and civic visions of nationhood in Post-communist constitutional debates*, Theory and Society, Vol. 30, 5/2001, 629-668. or
9. Ewa Poplawska, *Preamble to the Constitution as an Expression of the New Axiology of the Republic of Poland*, Acta Juridica Hungarica, 1/2011, 40-53.
10. Council of Europe Parliamentary Assembly (PACE) Recommendation 1735 (2006) *The concept of "nation"* (http://assembly.coe.int/ASP/Doc/XrefViewHTML.asp?FileID=17407&Language=EN)
11. Report on the Preferential Treatment of National Minorities by Their Kin-State (2001) http://www.venice.coe.int/docs/2001/CDL-INF(2001)019-e.asp
12. Slovenian Constitution (http://www.wipo.int/wipolex/en/text.jsp?file_id=180804)
13. Spanish Constitution (http://www.senado.es/constitu_i/indices/consti_ing.pdf*)*
14. *The Fundamental Law of Hungary (*http://www.kormany.hu/download/4/c3/30000/THE%20FUNDAMENTAL%20LAW%20OF%20HUNGARY.pdf*)*

Authors

Cordell, Karl: Professor, School of Government, Plymouth University

Culic, Irina: Professor of Sociology, Faculty of Sociology and Social Work, Babeş-Bolyai Univerity, Cluj-Napoca

Radosavljević, Duško: Professor, Faculty of Law and Business, Novi Sad

Garriaud-Maylam, Joëlle: Senator of French Citizens Abroad (UMP)

Herner-Kovács, Eszter: PhD candidate, Faculty of Humanities and Social Sciences, Pázmány Péter Catholic University, Budapest

Juhász, Hajnalka: PhD candidate, Faculty of Law, Pázmány Péter Catholic University, Budapest

Kántor, Zoltán: Professor, Pázmány Péter Catholic University, Director of the Research Institute for Hungarian Communities Abroad

Koska, Viktor: PhD candidate, Faculty of Political Science, University of Zagreb

Mayrhofer-Grünbühel, Ferdinand: former ambassador of Austria to Hungary

Medved, Felicita: President of the European Liberal Forum and President of the Board of Institute Novum

Sulyok, Márton, Assistant Lecturer, Faculty of Law, University of Szeged

Szabó, Marcel: Professor, Faculty of Law, Pázmány Péter Catholic University, Budapest

Trócsányi, László: Ambassador of Hungary to France, substitute member of Hungary to the Venice Commission – European Commission for Democracy Through Law (CDL)