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COUNTRY REPORT: ROMANIA

Constantin Iordachi

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European University Institute, Florence
Robert Schuman Centre for Advanced Studies
EUDO Citizenship Observatory

Report on Romania

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Romania

Constantin Iordachi

1 Introduction

A member of the European Union since January 2007, Romania has brought a rich historical experience into the Union that is attributable to the long-lasting Byzantine and Ottoman imperial legacies as well as to the more recent successive waves of Soviet- and Western-style modernisation. Given Romania's multiple historical legacies, which combine pan-European trends with Central and Southeast European regional features, the history of Romanian citizenship legislation challenges the clear-cut and neatly defined analytical dichotomies, such as 'old' versus 'new' states and 'civic' versus 'ethnic', or 'inclusive' versus 'exclusive' citizenship doctrines, which are, it is submitted, erroneously regarded as corresponding to 'Western' versus 'Eastern' historical experiences (for a critique of such views, see Iordachi 2006).

This report focuses on the interplay between the various historical legacies in the evolution of Romanian citizenship, underlining continuities and ruptures in the transition from communist to post-communist policies of national membership. It focuses on the legal dimension of state citizenship, which is regulated mainly by constitutions and citizenship laws. Particular attention is devoted to the most contested component of post-communist Romanian citizenship policy: the right to reacquisition of citizenship by former citizens and their descendants living outside the state's (post-1945) borders.

This policy resulted in the massive (re)naturalisation of Moldovan and Ukrainian citizens stripped of their Romanian citizenship following the 1940–1941/1944 Soviet occupation of Bessarabia and Northern Bukovina. I argue that Romania's policy regarding the restoration of citizenship should be placed in the political and analytical context of post-communist restitution. Restitution in its various forms has been an important component of legal systems since ancient times, referring to the return of a person to his or her original status and to the restoration of his or her rights or property, prior to a loss, injury or abuse. In post-communist Central and Eastern Europe, the concept took on a peculiar legal meaning because it denoted the process of undoing communist legal and political abuses and dispossessions. Restitution was central to post-communist legal and political transformation, which was aimed at the restoration of the *status quo ante* (before the communist takeover). From this perspective, the legal 'revolutions' initiated in 1989, which led to the dismantling of the communist regimes, should be understood more in the literal meaning of the term 'revolution'—that is, as a movement of rotation, which returns to an original position.

In post-communist East-Central Europe, practices of restitution have been applied to a wide range of societal domains. Yet, to date, scholars have focused their research almost exclusively on the reconstruction of individual and communal property rights. An important but largely understudied aspect is the restitution of citizenship to former de-naturalised citizens. In the context of post-communist nationalist upsurges, this practice was not simply a necessary legal reparation for past injustices; it was also 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. The gap between political visions of recreating the inter-war national 'imagined community' and the far-reaching practical complications this project generated led to a multitude of political, legal-procedural and diplomatic crises, with wide domestic and

international implications. These complications and the debates surrounding them account for the numerous shifts and turns of Romania's policy regarding the restitution of citizenship, which culminated in the temporary suspension of the process of restitution during the period from 2001 to 2007.

Although during this period Romania's policy on the restitution of citizenship can be characterised as chaotic, it is important to stress that the Romanian authorities have not discontinued but have actually expanded this policy, despite the multiple domestic and external conflicts and crises it generated. In addition, it is important to note that Romania's legislation on dual citizenship has influenced other countries in the region as well, being taken as a model for the 2010 amendments to the Law on Hungarian citizenship, which allow former citizens to retrieve their Hungarian citizenship while continuing to preserve their foreign citizenship and to reside abroad.

In 2009, after ten years of legislative instability, substantial amendments to the 1991 law on Romanian citizenship gave a new motivation to the policy of restitution of citizenship to former citizens: the new formulation of the law gives up the "*statist*" principle of *restitution of rights of former citizens who have lost their citizenship for reasons not imputable to them* (i.e. a foreign occupation), which prevailed in the initial law of 1991, in favour of the *primacy of the citizenship of origin, received at birth*. In addition, the new amendments to the law allowed for *the transmission of the right to reacquire Romanian citizenship received at birth, but then lost in various circumstances, down to the third generation descendants of former citizens, based on the principle of ius sanguinis*.

These new stipulations reflect a deep change in the doctrine of Romanian citizenship: from the idea of *citizenship regulated by a judicial contract between the state and the individual*, with mutual rights and obligations, to the idea of *citizenship as an organic, inalienable connection between the state, the nation, and the individual, established at and through birth*. Thus, in 1991, Romania decided to restore to its former citizens, upon request, a right of which they had been deprived arbitrarily, in view of the fact that the terms of the citizenship contract had been unilaterally breached by the communist Soviet Union, through occupation. From 2009 on, the Romanian state has redefined its policy, by granting the right to reacquire citizenship to all former citizens who had obtained such a right by birth, yet had lost it subsequently, irrespective of the reasons and circumstances of that loss. From this point of view, although still part of a widespread phenomenon of using citizenship as an instrument of integrating kin minorities abroad, Romania's policy on citizenship restitution shows some features that distinguish it, in the post-communist Central European context, as a combination between the statist and the hereditary principles in the ascription of citizenship.

2 Historical background

2.1 The making of Romanian citizenship: Pre-communist legacies

Modern Romania was established in 1859 through the state union of the principalities of Moldavia and Wallachia. After their establishment in the fourteenth century, the two principalities were part of the Byzantine political tradition and Eastern Orthodox religious commonwealth. They fell under Ottoman domination in the fifteenth century and were subject to Ottoman suzerainty until 1878; and thereafter experienced major stages of nation- and state-building during the 'long nineteenth century', with such landmarks as the Congress of Paris (1856), the Congress of Berlin (1879), and the Versailles Peace Treaties (1919—1920), all part of successive geo-political reorganisations of Southeast Europe by the great European

powers. One can identify several historical periods in the development of Romanian citizenship, corresponding to major stages in the process of nation-building and state-building: 1859–1918, 1918–1937, 1937–1944, 1944–1989 and 1989 to the present.

The legal bases of modern Romanian citizenship were set out in the 1865 Civil Code, which emulated the French legal system put forward in the 1804 Code Civil, based on the *ius sanguinis* principle of ascribing citizenship at birth, and a selective policy of naturalisation of aliens, favouring those born and raised in the country. The French model was nevertheless amended in several respects: the Romanian Civil Code, soon supplemented but also partially (and restrictively) modified by a modern Constitution adopted in 1866, introduced Christian religion and Romanian ethnicity as criteria for naturalisation, both absent in the Code Civil. Firstly, until 1879, Jews were excluded from Romanian citizenship, on the basis of their religion, even if born and raised in the country for generations; on this basis, they were deprived of substantial civil, social and political rights. In 1879, under pressure from the international community, Jews were granted access to naturalisation; however, instead of enjoying a swift and collective citizenship emancipation, Jews were only allowed to apply for individual naturalisation that could be granted by Parliament by means of a special law adopted for each individual case. This lengthy and highly bureaucratic practice explains the small number of naturalisations before the First World War, the great majority of Jews remaining non-citizen permanent residents. Secondly, the Romanian state pursued an active national policy: ethnic Romanians from neighbouring countries immigrating to the ‘mother country’ were granted privileged access to citizenship by the parliament, without a naturalisation stage, i.e. without the necessity of having lived in the country for a period of ten years. (They could prove their ethnic origin by means of witness accounts or certificates of ethnicity issued by Romanian communities abroad and further corroborated by their knowledge of the Romanian language). This practice, euphemistically called ‘recognition’ of citizenship, was justified by the incomplete ethnic boundaries of the Romanian nation-state and legitimised an irredentist policy of incorporating Romanians from Austria-Hungary, Russia and the Balkans. This legal model functioned until the First World War, with only minor modifications necessitated by the annexation of Northern and Southern Dobrogea/Dobrudja from the Ottoman Empire and from Bulgaria in 1878 and 1913 respectively (Iordachi 2002).

The socio-political upheaval of the Great War brought significant changes to the Romanian citizenry. Firstly, interwar ‘Greater Romania’ almost doubled in size and population as compared to the pre-war ‘Old Kingdom’, by incorporating the province of Bessarabia (situated between the rivers Prut and Dniestr, and annexed by Russia in 1812), and territories that had been previously part of Austria-Hungary—namely Bukovina, Transylvania, the Banat, Maramureş and the Partium. For the first time in their modern history, ethnic Romanians thus lived in a single ‘national and unitary state’, as Greater Romania was defined by the 1923 Constitution. Although dominated by Romanians, the new state also included a high ratio of ethnic and religious minorities: 28.1 per cent of the total population in 1930, including Hungarians (7.9 per cent), Germans (4.1 per cent), Jews (4.0 per cent), Ruthenians (3.2 per cent), Russians (2.3 per cent), Bulgarians (2.0 per cent), Gypsies (1.5 per cent), Turks (0.9 per cent) and Tartars (0.1 per cent) (Institutul Central de Statistică 1940: 44–45). Secondly, the events of the war generated an unprecedented liberalisation of access to citizenship. Under international pressure, Romania took full steps towards the civil and political emancipation of Jews. Adopted in February 1924, the new law on citizenship granted citizenship to all legal inhabitants of the Old Kingdom and the annexed territories. It also preserved the main features of Romanian citizenship doctrine by stipulating three main ways of acquiring citizenship: (1) by descent, according to the principle of *ius*

sanguinis; (2) by marrying a Romanian man; and (3) by naturalisation, after having fulfilled a residence requirement of ten years following the declaration of intent to naturalise. Foreigners born and raised in Romania were exempt from the mandatory residential stage, provided they requested naturalisation upon reaching maturity. Thirdly, the liberalisation of access to citizenship was accompanied by major socio-political reorganisations of the country. Comprehensive reforms such as universal male suffrage (1918), massive land redistribution (1921) and a new liberal Constitution (1923) remodelled the country into a multi-party parliamentary monarchy. While the new liberal regime remained largely unconsolidated, being marred by major regional and socio-political cleavages, it is important to note that political pluralism was preserved almost throughout the entire interwar period, free parliamentary elections being held as late as 1937, at a time when the European continent had long been dominated by authoritarian political regimes. Unfortunately, the 1937 parliamentary elections turned out to be Romania's last free elections until 1990.

The Romanian citizenship doctrine suffered significant changes just prior to and during the Second World War, with long-term legal consequences. Firstly—under the joint pressure of right-wing organisations from below and the authoritarian tendencies of King Carol II (1930–1940) from above—the multiparty parliamentary regime collapsed in 1938, being replaced by a (short-lived) regime of royal dictatorship (1938–1940). The new political changes were also reflected in a new law on citizenship, adopted in 1939 at King Carol's initiative. The law did not alter the main principles of ascribing citizenship, but introduced numerous changes in the procedure of naturalisation, placed under the control of the Ministry of Justice. The most important change was that naturalised citizens were granted full political rights only six years after the act of naturalisation. The law served as the basis of Romania's citizenship policy until 1947–1952, when it was amended and then fully abolished by the new communist regime; however, in the post-communist period, many of its provisions have been reinstated. Secondly, the political ascent of the extreme right led to the massive de-naturalisation of Romanian Jews, their deprivation of substantive political and civil rights during the royal dictatorship of King Carol II, and their partial deportation and extermination during the dictatorial regime of Ion Antonescu (1940–1944). Thirdly, during the Second World War, Greater Romania suffered major territorial losses. In 1940—under the new political conditions created by Nazi Germany's military domination of Europe—Romania was forced to cede Northwestern Transylvania to Hungary and Southern Dobrogea to Bulgaria. Following the 1939 'Ribbentrop-Molotov' Non-Aggression Pact, which divided the spheres of influence between Nazi Germany and the USSR, on 28 June 1940 the Soviet army occupied the provinces of Bessarabia and Northern Bukovina. Romania ceded these provinces without resistance, but in June 1941, it joined Nazi Germany's anti-Soviet war and managed to liberate these occupied territories temporarily between 1941 and 1944.

In 1944, a coalition of communists and democratic parties ousted Antonescu from power, reinstated the 1923 Constitution, abolished all anti-Semitic discriminatory laws and restored citizenship to all denaturalised inhabitants. The new democratic Romania also joined the anti-fascist military coalition and restored its control over Northwestern Transylvania. The return to the legal and territorial order of interwar Greater Romania was nevertheless hampered by several factors: firstly, in 1944, the Soviets reoccupied Bessarabia, which became the Moldavian Soviet Socialist Republic (MSSR) including also the Transnistria region (a long conundrum situated across the river Dniestr); and Northern Bukovina, which was granted to the Ukraine (together with the southern part of Bessarabia, detached from the MSSR). Secondly, the Soviets intervened in the political process by installing the tiny Communist Party in power and initiating the forceful Sovietisation of Romania. The

understanding of the communist legacy is essential to our effort to grasp the main features of citizenship policies in the post-communist period.

2.2 A new legal beginning: Citizenship under the communist regime

The communist regime implemented radical changes to Romania's legal and political system (1945–1989). Through three consecutive constitutions (1948, 1952, 1965), major changes to the civil code and an all-encompassing set of laws regulating every sphere of activity, the new political regime broke with the past and redefined the nature of the state by emulating the Soviet model of development. The evolution of the political regime was, however, neither linear nor fully consistent in its aims. In order to gain political legitimacy, the regime combined three main forms of societal control: remunerative, coercive and symbolic-ideological (Verdery 1991). Based on specific combinations of these three forms of control and the evolution of its relationship with Moscow, one can distinguish four main stages in the development of the communist regime in Romania: 1946–1958, corresponding with the institutionalisation of communist rule; 1958–1965, a period of internal consolidation; 1965–1971, a period of relative liberalisation and relaxation of political control; and 1971–1989, marked by a growing economic and socio-political crisis most aptly described by the concept of 'war-Stalinism'. As a legal boundary defining membership in the national and social-political community, citizenship legislation was an essential dimension of the communist political transformation and was therefore subject to many revisions in 1947, 1948, 1952, 1954, 1956 and 1971, reflecting the shifts and turns of the political regime.

In the first phase of the communist regime, that of the 'primitive accumulation of legitimacy' (1946–58), citizenship legislation had a strong repressive function (Shafir 1985). Deriving its legitimacy and support from the Soviet Red Army, the new communist regime engaged in a process of 'breakthrough' meant to subvert the legacy of 'bourgeois nationalism' and to disrupt alternative centres of power in society (Jowitt 1971: 7).

Citizenship legislation was an important instrument in the arduous processes of both the unmaking of the old bourgeois social classes and the making of the new socialist proletariat. The communist regime also redefined the conditions of acquisition and loss of citizenship. With the stroke of a pen, Decree no. 33/1952 abolished all existing laws on citizenship (Art. 10); instead, in two pages and ten articles, it set new rules for the acquisition of Romanian citizenship, defining the legal boundaries of the socialist nation. Romanian citizenship was ascribed at birth, *iure sanguinis*, to children of at least one Romanian parent. In a major departure from the legal tradition of the country, the decree thus allowed the transmission of citizenship on the maternal as well as on the paternal line in mixed families, provided that at least one parent lived in Romania. This transmission could not result in dual citizenship: upon adulthood, children born into mixed marriages had to choose between the citizenship of the mother or the father, by parental accord. Combined with Decree no. 130/1949 (which allowed official investigations into the paternity of children, thus eliminating 'illegitimacy' as an accepted legal category), these stipulations contributed to the formal legal equality of women, since they were legally enabled to transmit their own citizenship to their children.

The decree discontinued the traditional *ius soli* policy of naturalisation of aliens born in the country and the privileged naturalisation of ethnic Romanians living abroad. Decisions on the naturalisations of aliens, as well as on the renunciation or withdrawal of citizenship were taken by the Presidium of the Grand National Assembly, established in 1947 after the abolition of the monarchy and the proclamation of the republic.

After 1958, political divergences with Moscow and the move of the Romanian leaders towards political autonomy and a ‘national’ path to building socialism led to significant changes in the official socialist ideology. With the retreat of the Red Army (1958), Romanian leaders renounced external sources of legitimisation and recuperated traditional themes of nationalist ideology in an attempt to gain broader domestic support (Shafir 1985). Initiated under the last years of Gheorghe Gheorghiu-Dej’s rule, the nationalist turn of the regime, which was intensified during the rule of Nicolae Ceaușescu (1965–1989), resulted in a syncretism between nationalism and a ‘decayed Marxism’, best described by the concept of ‘national-communism’ (Verdery 1991).

The new nationalist orientation of the regime was also reflected in the definition given to the legal principle governing the ascription of citizenship at birth. Adopted in 1971, the new Law on Romanian citizenship reconfirmed the principle of *ius sanguinis* as the very foundation of a homogeneous national community and imbued it with nationalist connotations. Art. 5 of the law read:

‘As an expression of the relationship between parents and children, *of the uninterrupted continuity of the fatherland of previous generations that fought for social and national freedom*, children born of Romanian parents on the territory of the Socialist Republic of Romania are Romanian citizens’ (emphasis added).¹

This definition linked the application of the *ius sanguinis* principle to birth on the territory and uninterrupted continuity of the nation in its ‘fatherland’. It made reference not only to parents and children in the transmission of citizenship, but also to generations. Other articles of the law made evident that this link operated only at a symbolic-ideological level, the principle of *ius sanguinis* being in fact also applied to children of citizens born outside the country. The argument was nevertheless meant to emphasise the ‘autochthonous’ roots of the Romanian people and the historical ‘symbiosis’ between the nation, its territory and the new socialist citizenry, thus alluding to the idea of organic nationalism elaborated by romantic nationalist thinkers in the first half of the nineteenth century and brought to political prominence by right-wing organisations in the interwar period.

In addition to ascription through *ius sanguinis* at birth, Romanian citizenship could also be acquired by naturalisation, by adoption and by repatriation. Naturalisation was granted at adulthood by the Council of State (a leading organ of the republic created in 1961) to persons who: a) were born in Romania and lived there at the time of their request; b) were born abroad but had lived uninterruptedly in Romania for at least five years; c) were married to a Romanian citizen and had lived in the country for at least three years. In addition to the residence condition, aliens were required to:

- prove, through their behaviour and attitude, attachment to the Romanian state and the Romanian people; be eighteen years of age or above; undertake socially useful work or prove sufficient material means of subsistence;
- renounce their foreign citizenship or any commitment of loyalty to a foreign power and swear allegiance to Socialist Romania.

The Romanian state reserved its right to withdraw unilaterally the citizenship of those individuals who ‘broke with the fatherland by crossing the border clandestinely or, after relocating their domicile abroad, assumed a foreign citizenship, worked against the interests of the country or enrolled in a foreign army’ (art. 19). Access to citizenship was firmly

¹All translations of legal texts are the author’s, if not otherwise indicated.

controlled by the executive power: Ceaușescu alone, as the president of the Council of State (from December 1967 to December 1989), could grant or withdraw Romanian citizenship.

3 The current citizenship regime

The 1989 collapse of the communist regime and the gradual democratisation of the political system had a powerful impact on Romanian citizenship legislation, resulting in the redefinition of the legal criteria of membership in the national community. Without significant dissident or reformist movements during the communist period on which to build the process of democratisation, post-communist Romania modelled its legal and political systems on the interwar political regime: the restitution of urban and land property, the recreation of political parties and Parliament's structure and organisation were all shaped by its pre-communist tradition. Yet, in many ways, the communist legacy deeply affected the society and could not be written off as a simple 'parenthesis' in the country's development.

Citizenship legislation is a relevant example in this respect. Adopted in March 1991, the new Law on Romanian Citizenship was modelled on the 1939 Law, abrogated by the communist regime in 1952; yet it also preserved many provisions of the 1971 Law, resulting in a novel synthesis. The 1991 Law specified four main ways of acquiring citizenship by different categories of inhabitants:

- ascription at birth, through transmission *iure sanguinis* to descendants of citizens, provided at least one of the child's parents holds Romanian citizenship at the time of the child's birth;
- adoption of an alien child by a Romanian citizen;
- by the act of repatriation of former citizens; and
- upon request, by naturalisation of aliens born in Romania or who have lived there for a certain period of time.

3.1 The main modes of acquisition and loss of citizenship

Acquisition at birth

The acquisition of Romanian citizenship at birth is governed solely by the principle of *iure sanguinis*, being granted to children who are: a) born within the territory of the country to two Romanian citizen parents; b) born within the territory of the country in mixed marriages with only one Romanian citizen; and c) born abroad to at least one Romanian parent. That the principle of *iure soli* is of no relevance in the ascription of citizenship at birth is made evident by the provisions concerning the citizenship of newly-born children of unknown parents; they are granted citizenship not on the basis of their birth on Romania's territory, but under the assumption that their parents held Romanian citizenship (art. 5). Evidence to the contrary results in loss of citizenship, followed by the obligation of naturalisation (art. 30). In order to make it clear that this procedure does not constitute a *iure soli* acquisition of citizenship, a 2003 amendment to the citizenship law rephrased art. 5 to read that the child found on Romanian territory 'is considered to be [instead of 'is...'] a Romanian citizen' (art. 5, 3/1; emphasis added).

Naturalisation

The 1991 Law granted naturalisation, upon request, to adult aliens and their minor children, who were: a) born in Romania and lived there at the time of their request; b) born abroad but

had lived uninterruptedly in Romania for at least five years; c) married to a Romanian citizen and had lived in the country for at least three years. In addition to the residence requirement, applicants also had to:

- prove, through their behaviour and attitude, their attachment to the Romanian state and people;
- be eighteen years of age or above;
- prove they possess sufficient material means of existence;
- have a clean criminal record; and
- have ‘sufficient knowledge of the Romanian language’ in order to be able to integrate into society.

Although the naturalisation requirements have been amended several times since 1991 (see next section), the procedure of naturalisation, which is patterned on the 1939 Law, has remained the same. Applications have to be filed personally or through authorised attorneys to a Commission of Citizenship set up by the Ministry of Justice and made up of five judges of the Bucharest Court, appointed for four years by the president of the court. Upon their registration, requests for naturalisation are published in the Official Monitor of Romania, Part III, and are subsequently examined by the Commission. Decisions on naturalisation are taken by the Romanian government upon the recommendation of the commission and are published in the Official Monitor of Romania, Part I. Naturalisation becomes effective upon the would-be citizens taking the oath of loyalty in front of the Ministry of Justice, a sub-secretary of state, or the chief of a diplomatic mission abroad.

Romanian citizenship legislation underwent substantial amendments, additions and modifications in 1999, 2002, 2003 and 2008, which were necessitated by the process of European integration and the intensification of immigration and emigration. As a reaction to growing migration ties, coupled with EU pressure to exert strict control over external acquisitions of Romanian citizenship, requirements for naturalisation have been tightened. The mandatory residence period for the naturalisation of foreigners was increased from five to seven years in 1999, and to eight years in 2003 (albeit reduced to five years for foreigners married to Romanian citizens). In order to eliminate cases of fraud, a 1999 amendment demands a ‘continuous, stable and legal’ residence, while a 2003 amendment requires foreigners applying for naturalisation effectively to relocate to Romania, spend at least six months per year in the country and pay taxes there.² In 1999, the residency requirement was reduced to half of the period for regular naturalisation for persons of international reputation, a privilege granted since 2003 also to those who have invested more than €500,000 in Romania (increased to €5 million in 2008, but decreased to €1 million in 2009), and since 2008 also to refugees and to citizens of EU member states.

Moreover, besides the longer residency requirement, a 1999 amendment to art. 9 of the law introduced additional conditions for naturalisation, such as sufficient knowledge of the Romanian language, of ‘elementary notions of Romanian culture and civilisation,’ of the Constitution and, since 2003, of the national anthem. Applicants for naturalisation also need to sign a declaration of loyalty to the Romanian state. Persons suspected of terrorism and those who present potential threats to national security are ineligible for naturalisation.

²See the parliamentary debates at www.cdep.ro.

Loss of citizenship

According to the 1991 Law, Romanian citizenship can be forfeited: a) as a result of unilateral withdrawal by the state; b) through voluntary individual renunciation by citizens; c) or in other special cases, such as the adoption of children by foreign citizens (art. 24). Firstly, the Romanian state could terminate the citizenship of those individuals who had obtained their naturalisation by fraud, who worked abroad against the interests of the country or who enrolled in an enemy army (art. 25). Secondly, the Law allowed Romanian citizens to renounce their citizenship ‘for solid reasons’ according to a special procedure and pending official approval, provided they are not under trial and have no debts to private or public parties (art. 27).

Since 2001, in particular, Romania has become a major source of intra-EU migration; taking advantage of the freedom of movement, an estimated 2-2.5 million Romanian citizens currently live and work abroad either temporarily or permanently. The most recent stipulations on the loss of Romanian citizenship express the Romanian state’s concern to preserve legal ties with its citizens living abroad and to reduce the number of external renunciations of citizenship. To this end, in 2003, the Romanian state waived its right to terminate unilaterally the citizenship of ‘natural citizens’ who had obtained it at birth (art. 24.d). In addition, in 2007, the procedure for the individual renunciation of citizenship became even more complex, costly and bureaucratic. These stipulations, combined with the fact that the principle of *ius sanguinis* operates externally without generational limits (so that Romanian citizenship can be passed on indefinitely to subsequent generations born abroad even in cases of acquisition of a new citizenship as long as parents do not renounce their citizenship of origin), account for the fact that the number of individual renunciations or losses of Romanian citizenship has been rather small—varying from 12,594 persons in 1999 to 10,938 persons in 2005 (National Institute of Statistics 2006: 81–83)—especially when compared to the massive number of Romanian citizens living abroad on a temporary or even permanent basis.

3.2 Restitution of citizenship and multiple memberships

The most debated provision of the post-communist citizenship legislation was the right to restitution of state citizenship to former citizens. A traditional feature of the Romanian modern legal system, the right to renaturalisation survived in various forms under the communist regime as well. Although the Socialist Republic conceived of itself as a new state and granted citizenship to all inhabitants living in the country, it also (partially) employed the principle of restitution in order to reconstruct Romania’s interwar citizenry on new political bases. Thus, a law passed in 1947 restored Romanian citizenship to all those denaturalised during the Second World War under discriminatory legislation or foreign occupation. The 1952 decree granted Romanian citizenship to all inhabitants who had settled in the country by 1920 (the year of ratification of the Peace Treaty with Austria) but who had failed to qualify for citizenship under previous laws. Another decree passed in 1954 reconfirmed Romanian citizenship for all those who had held this legal status as of 28 June 1940 and had resided in Romania ever since. Under Soviet pressure, the deadline for restitution was chosen specifically to exclude from this right the inhabitants of Soviet-occupied Bessarabia and Northern Bukovina, a clear indication of the limits of the communists’ policy on citizenship restitution.

The communist regime also permitted the renaturalisation of former citizens, but granted this right according to strict political criteria. Art. 1.c of the 1952 Decree and art. 7 of

the 1971 Law allowed former citizens to reacquire their citizenship upon request on the basis of a special authorisation issued by the Presidium of the National Assembly or, after 1969, by the Council of State. Renaturalisation was conditional on renunciation of the claimant's foreign citizenship, repatriation and 'integration into the socialist society' (i.e. integration into the workforce) as well as an attachment to the communist political regime, to be affirmed by an oath of loyalty. In exceptional cases, the Council of State authorised former citizens applying for renaturalisation to maintain their domicile abroad, but they were expressly required to renounce 'in an authentic form' their foreign citizenship or—where they did not hold a foreign citizenship— 'any commitment, obligation of fidelity or oath of loyalty to a foreign state' (1971 Law, art. 10 and art. 11). Due to massive violations of human rights and the deterioration of the standard of living, few former citizens applied for repatriation; on the contrary, in the late 1980s, numerous Romanian citizens fled abroad in order to escape political persecution and material hardship.

Upon the collapse of the communist regime, the repatriation of previously persecuted persons and the restitution of citizenship to former citizens were the major concerns of the new revolutionary power, which was eager to resume ties with the Romanian diaspora and kin-minorities abroad. On 31 December 1989, the National Salvation Front guaranteed the right of repatriation to all Romanian citizens residing abroad (Decree no. 7). In addition to the repatriation of Romanian citizens in exile, the decree also facilitated the reacquisition of citizenship by former Romanian citizens living abroad (art. 2), by request, through the act of repatriation. Unlike the 1971 Law, the new decree did not require former citizens renaturalised in Romania to renounce their foreign citizenship, thus implicitly opening the gate to dual citizenship.

In May 1990, a new decree passed by the provisional government enlarged the rights to reacquisition of citizenship by former citizens. While the 1989 Decree made renaturalisation conditional on repatriation, the 1990 Decree granted former citizens the right to retrieve their Romanian citizenship, upon request, 'even if they hold another citizenship and they do not establish their domicile in Romania'.³ In doing so, the Decree explicitly allowed certain categories of citizens to hold dual citizenship for the first time in Romania's legal history.

The provisions on repatriation and reacquisition of citizenship were reconfirmed and enlarged by the 1991 Law on Citizenship. The law stipulated three methods for the reacquisition of Romanian citizenship: a) by repatriation (art. 8); b) renaturalisation by request without repatriation (art. 11); and c) 'restoration' of citizenship to former Romanian citizens (art. 35) living in the lost territories of interwar Greater Romania. Firstly, the law guaranteed former citizens the right to renaturalisation through repatriation: '[t]he person who has lost Romanian citizenship can reacquire it through repatriation, if he or she expresses a manifest desire to do so' (art. 8). Secondly, in line with the 1990 Decree, the 1991 Law allowed reacquisition of citizenship by former Romanian citizens even without repatriation: '[f]ormer Romanian citizens who, before 22 December 1989, *have lost their Romanian citizenship for different reasons*' can reacquire Romanian citizenship by request even if they retain their foreign citizenship and their domicile abroad (art. 37). Thirdly, and most importantly, the 1991 Law introduced a new form of access to Romanian citizenship that can be generically called 'restoration' or 'restitution.' An additional paragraph to art. 37 stipulated that the right to reacquisition of citizenship is also granted to all those who 'were stripped of Romanian citizenship *against their will or for reasons beyond their control*, and their descendants'.

³*Monitorul Oficial*, 75, 21 May 1990.

Due to the imprecise and ambiguous wording of the law, at first glance, the difference between the second and third forms of renaturalisation is not evident: the second referred to those who had lost Romanian citizenship ‘for various reasons’, while the third referred to those who had lost citizenship ‘against their will or for reasons beyond their control’. The official interpretation of the law, however, made it evident that the first paragraph referred to those who had lost citizenship as a result of individual actions that unilaterally breached their citizenship contract with the Romanian state, while the second concerned those citizens denaturalised *en masse* as a result of territorial changes. In so doing, the additional paragraph to art. 37 introduced several major innovations into Romanian citizenship legislation:

Firstly, the right to reacquisition of citizenship was not restricted only to those persons who had emigrated due to political persecution or were stripped of citizenship by the communist regime; it was also granted to ‘all former citizens and their descendants’ regardless of when or under what conditions they had lost Romanian citizenship. Although not specifically mentioned in the text of the law, the main beneficiaries of the policy of restoration of citizenship have been the inhabitants of the former Soviet Socialist Republic of Moldova, and those of the provinces of Northern Bukovina and Southern Bessarabia in the Ukraine. Following the Soviet wartime occupation, the inhabitants of these provinces were forcefully stripped of their Romanian citizenship; the 1991 Law has enabled them to retrieve that legal status. (Also eligible were the inhabitants of Southern Dobrudja, a province ceded by Romania to Bulgaria in 1940, yet no claims to Romanian citizenship were reported from this region).

Secondly, in a departure from the established legal tradition of the country that had prohibited dual citizenship, the law allowed renaturalised former Romanian citizens to retain their foreign citizenship as well as their domicile abroad. In doing so, the law generated a novel category of non-resident dual citizens living in neighbouring countries.

Thirdly, compared to regular naturalisations, the restitution of citizenship was subject to a simpler procedure: renaturalisation requests could be sent by post or by third-party intermediaries to Romanian embassies or consulates abroad. Applicants were exempt from consular taxes and the major conditions of naturalisation required of ‘regular’ aliens. Moreover, the process of renaturalisation did not necessitate an official interview, and the personal presence of the claimant in Bucharest, as the oath of loyalty could be taken at Romania’s diplomatic representations abroad. It was thus technically possible for a descendant of a former citizen living abroad to ‘reacquire’ Romanian citizenship without ever travelling to the country.

Overall, the legislation on the reacquisition of Romanian citizenship was highly expansive, albeit legally ambiguous. It combined the right to renaturalisation of expatriates and their repatriation with the principle of restoration of citizenship to former citizens and their descendants living in former historical provinces of interwar Greater Romania, including their right to hold dual citizenship. How can one account for these multiple forms of citizenship restitution? According to the legislators, the motivations behind these provisions were democratic, as they were meant to redress communist injustice by allowing anti-communist political dissidents or expatriates to reacquire, upon request, their lost rights. Adopted in anticipation of the imminent dismemberment of the USSR, the March 1991 Law was also animated by implicit nationalist motivations, which aimed to symbolically undo the effects of the Soviet occupation of Bessarabia and Northern Bukovina and to reconstruct the interwar national community. Seen in a historical retrospective, the law thus completed the process of restoration of the citizenship body of interwar Greater Romania. Initiated in the post-1944 period (see above the laws adopted in 1947, 1952 and 1954), this process had,

under Soviet pressure, left out the inhabitants of Bessarabia and Northern Bukovina. These national motivations continued to inform subsequent amendments to the law. In August 2010, referring to the extensive 2010 amendments further facilitating the reacquisition of Romanian citizenship by citizens of the Republic of Moldova, President Traian Băsescu stated unambiguously: “I have to confess that I personally had the initiative of amending the Law on Romanian citizenship [in 2010]. I will tell you why. I believe the citizens of the Republic of Moldova and the citizens of Romania are part of the same people. But we are a single people living in two independent states. The citizens of the Republic of Moldova had a problem. Their problem was that, after the Second World War, nobody asked them if they agree to renounce their Romanian citizenship.”⁴

4 Post-communist political debates on citizenship

The new policy on the restitution of citizenship has triggered numerous domestic and international political debates. Far from concentrating on legal technicalities, these debates were linked to major political issues such as the communist legacy, the ethnic-cultural boundaries of the nation, issues of state sovereignty and territoriality, diplomatic relations with neighbouring countries and the compatibility of this policy with the European standard on citizenship laws and minority protection.

4.1 Restitution of Romanian citizenship to anti-Communist political dissidents

The first political debate concerns the legal and political rehabilitation of persons persecuted and denaturalised by the communist regime. Should rehabilitation be a right granted *upon demand*, as the Romanian legislation stipulated, or a legal and moral obligation of the post-communist state? The most debated case in this respect was the peculiar legal situation of the writer Paul Goma, Romania’s most important anti-communist dissident. Born in 1935 in Romania’s province of Bessarabia, Goma relocated with his family across the river Prut in the face of 1940 Soviet invasion. During the communist regime, as a young writer, Goma engaged in dissident activities, criticising the regime’s internal and foreign policies, encouraging solidarity with the 1956 Hungarian revolution and later, initiating a pro-Helsinki movement in Romania. After serving a short term of imprisonment followed by deportation to the Bărăgan plain (1956–1964), in 1977 Goma was arrested again for dissident activities. Following international pressure, in November 1977 he was released and managed to emigrate to France, where he received political asylum and lives to date. Upon Goma’s emigration, the Romanian Communist authorities stripped him of his state citizenship. Since Goma refused to naturalise to French citizenship, he is currently a *heimatlos*, a person without citizenship. Although Goma is entitled to renaturalise under the 1991 law, he refuses to apply on the ground that he never renounced his citizenship acquired at birth; in his view, it is the legal and moral obligation of the Romanian state to automatically reinstate his citizenship rights. In 2003, a public petition of support demanded that Romanian authorities restore Goma’s citizenship rights; the same call was reiterated in the 2006 *Report of the Presidential Commission for the Study of Communist Dictatorship*, which pleaded for the automatic

⁴Băsescu: Pe cetățenii R. Moldova nu i-a întrebat nimeni dacă renunță la cetățenie’, 15 August 2012 <http://www.digi24.ro/stire/Basescu-Pe-cetatenii-R-Moldova-nu-i-a-intrebat-nimeni-daca-renunta-la-cetatenie_37222> accessed 20 September 2012.

rehabilitation of citizenship rights to all persons persecuted and denaturalised under the communist regime.⁵

4.2 Dual citizenship

A further set of political debates concerned the right to dual citizenship. Was dual citizenship permitted only for former citizens reacquiring Romanian citizenship or was it open to all Romanian citizens? Although the 1991 Law on Romanian Citizenship allowed re-naturalised Romanian citizens to hold dual citizenship, this provision did not imply a generalised acceptance of dual citizenship, but only a tolerance of the *dual membership of renaturalised citizens*. For other modes of naturalisation, the 1991 Law explicitly eliminated the tolerance of dual citizenship. For example, children adopted by aliens lost their Romanian citizenship upon acquiring the citizenship of their adoptive parents (art. 29). Yet, as noted above, the law did not contain provisions referring to the legal status of Romanian citizens residing abroad who acquired another citizenship, and did not expressly oblige them to renounce their Romanian citizenship if the receiving state tolerated dual citizenship in naturalisations, thus de facto allowing for dual citizenship.

The most debated issue was *the right of Romania's ethnic Hungarians to hold dual citizenship*, mostly in connection with campaigns by political forces in Hungary for their access to Hungarian citizenship. The Romanian-Hungarian post-communist debate over dual citizenship was linked to a wider ideological controversy between the two countries over contrasting but also overlapping definitions of the nation (Iordachi 2004: 257–260). These debates originated in the separation of the citizenries of the two countries following the collapse of Austro-Hungary after World War I, and led to numerous diplomatic and territorial conflicts. During the communist period, Hungary abandoned the idea of recovering lost territories but focused instead on the issue of kin-minority protection, legitimised by an *ethno-cultural* definition of the nation. To Hungary's policy of treating its kin minorities abroad as an integral part of the Hungarian nation and its pretence of monitoring their treatment in neighbouring countries, Romania answered with a *statist* definition of the nation according to which all inhabitants of the country—irrespective of their ethnicity—were equal Romanian citizens and full members of the socialist nation, ethnic Hungarians included. The Romanian-Hungarian political-diplomatic conflict over the status of ethnic Hungarians in Romania reached a peak in the late 1980s, as became manifest, for example, during the meetings of the Conference for Security and Cooperation in Europe that took place in Vienna (1986–1989); it also continued in the post-communist period, albeit at a lower intensity. Romanian authorities criticised the stipulations of the 2001 Hungarian Status Law pertaining to Romanian citizens of Hungarian origin, agreeing to its implementation only after Hungary granted access to its labour market to all Romanian citizens, irrespective of their ethnicity. Leading Romanian politicians also opposed, through public statements, the granting of dual citizenship to Romania's ethnic Hungarians. With the liberalisation of the status of dual citizens in Romania in 2003 (see next paragraph), on the one hand, and the failure of the 2004 national referendum in Hungary over granting dual citizenship to ethnic Hungarians living abroad, on the other, the debates over the issue faded away from the public agenda, dual citizenship ceasing to be a matter of political contestation. In retrospect, it is important to note that, while rejecting the right to dual citizenship for Romania's ethnic Hungarians, Romanian policymakers defended this right in the case of Moldovan citizens opting for Romanian citizenship. This

⁵The report is available online at <http://www.presidency.ro/?RID=htm&id=82>. On the request for the restoration of Goma's citizenship, see page 640. See also Tismăneanu, Dobrinicu&Vasile, 2007.

contradiction can be explained by the fact that Romania acted simultaneously in a double role: as a ‘nationalising state’ in regard to the Hungarian minority in Transylvania and as an ‘external homeland’ in relation to ethnic Romanians in Bessarabia and Bukovina (Iordachi 2004: 32; for a conceptualisation of these roles, see Brubaker 1996).

A second set of debates concerned the legal status of dual citizens. The 1991 Constitution restricted the political rights of dual citizens, granting access to ‘public office or dignity, civil or military,’ only to persons ‘whose citizenship is *only and exclusively Romanian*, and whose domicile is in Romania’ (art. 16.3; emphasis added). Gradually, the substantial increase in the number of dual citizens led to a ‘normalisation’ of their status. In 2003, as part of numerous amendments to the Constitution, the restrictions on the political participation of dual citizens were lifted. Currently, the only condition of eligibility to public office, including the parliament and the presidency, is ‘Romanian citizenship and domicile in the country.’

4.3 The restoration of Romanian citizenship to Moldovan and Ukrainian citizens

The restoration of Romanian citizenship to Moldovan and Ukrainian citizens has generated a new category of *non-resident dual citizens*. What is the legal status of these absentee citizens? According to the Romanian legislation, non-resident dual citizens acquired automatic access to full social and political rights, except for the rights and obligations that are temporarily discontinued for citizens residing abroad, such as the obligation to pay taxes and perform one’s military service (also discontinued for resident citizens as of 2006), and—until 2003—eligibility for public offices and awards (restricted for dual citizens, see above paragraph). It is intriguing to note, however, that the public debates over the restoration of Romanian citizenship and the right to dual citizenship focused on the national and geo-political effects of this policy, mostly in connection to Romania’s relations with the Republic of Moldova and, to a lesser extent, Ukraine. The debates did not address the question of the new citizens’ potential socio-political integration into Romanian society or the devaluation of citizenship implied by the policy of granting citizenship to persons who have not proven their knowledge of the country’s legislation and might not have even visited Romania.

The massive numbers of restitutions of Romanian citizenship to Moldovan and Ukrainian citizens also generated international debates regarding issues of overlapping citizenries and the loyalty of dual citizens. Firstly, Romania’s policy on the restitution of citizenship contradicted the internal legislation of two neighbouring states, since neither Moldova (until 2000) nor the Ukraine allowed their citizens to hold dual citizenship. Secondly, Moldovan and Ukrainian policymakers accused Romania of using dual citizenship as a strategy of increasing its political influence in the region, with the final aim of reacquiring its lost territories. Romania’s citizenship policy was thus perceived as adding to regional instability rather than to retroactive justice and integration.

Diplomatic debates concentrated mainly on Romania’s relationship with the Republic of Moldova. With the establishment of the new state in 1991, Romania was trapped in ‘the dilemma of the Romanian-Romanian relations’ (Cojocaru 2001). In the early 1990s, the diplomatic relations between the two countries seemed to proceed in tune with the strategy of the ‘two Romanian states’, put forward by the Moldovan Popular Front and shared by numerous politicians in Romania as well, according to which Moldova’s independence represented the first step toward a gradual and negotiated process of political unification between the two countries. To this end, Romania inaugurated a policy of special partnership with Moldova, introduced visa-free and passport-free travel between the two countries, set up special educational programmes for Moldovan students and built a comprehensive network of

inter-ministerial consultations. However, at the political-diplomatic level, the two countries soon drifted further apart. That was mostly because the Republic of Moldova was tormented by internal inter-ethnic conflicts and secessionist movements, tacitly or openly supported by Moscow, which degenerated into a civil war in 1992 in the multiethnic province of Transnistria (also known as the Trans-Dniestr region). Fearing that ethnic strife would lead to disintegration, Moldovan leaders decided to consolidate the statehood of the new republic by relying on the Soviet version of local identity, i.e. on *Moldovanism* rather than on the pan-Romanian national identity. This change in Moldova's internal policy affected its relations with Romania. At the official level, the formula of the 'two Romanian states' was gradually abandoned, with Romania and Moldova defining themselves as 'two brotherly states' and then more neutrally as 'two neighbouring states'. After the electoral victory of the Communist Party in 2001, the diplomatic relations between Romania and the Republic of Moldova worsened considerably. The new Moldovan President Vladimir Voronin launched aggressive cultural policies to strengthen the Moldovan identity, to marginalise Greater Romanian unionist forces and to forcefully reduce Romania's political influence in the republic. Moreover, blaming Romania's *irredenta* policies, Voronin put forward his own plans for a Greater Moldova, raising territorial claims to Romania's province of Moldova.⁶ This obstructionist policy led to an almost complete deadlock in diplomatic relations between the two countries. Due to its importance, the policy of restoration of citizenship deserves special treatment.

4.4. The status of absentee citizens: electoral rights conditional on taxation and residence in the country?

The most recent political debate on citizenship concerned the electoral rights of absentee citizens, e.g. single or dual citizens who have de facto established their domicile outside Romania on a temporary or permanent basis. As mentioned above, after 1989, but especially after 1999, Romania has become a major supply of cheap labour within the EU, especially in Italy and Spain, and to a lesser extent in France and Germany. Technically, in view of the rules governing labour mobility among EU countries, these people are not immigrants but intra-community labour migrants. It is telling in this respect that few of these citizens residing abroad have renounced their Romanian citizenship or even registered their change of domicile with the Romanian authorities.

By and large, one can identify two categories of absentee citizens: 1) Romanian citizens who reside abroad on a long-term or a quasi-permanent basis but have failed to report their foreign address to the Romanian authorities and thus formally still figure as regular residents in relation to the Romanian state; and 2) re-naturalised dual citizens having their permanent domicile abroad (mostly in the Republic of Moldova) who took up fictitious domicile in Romania in order to claim identity cards and thus qualify for the right to be issued a Romanian passport.

Although this dual phenomenon of absenteeism took on massive proportions, until 2012 the Romanian authorities did not regard the status of these 'ghost citizens' as an issue of political concern or debate. On the contrary, new amendments to the Romanian constitution and citizenship laws guaranteed the inalienable right to citizenship of Romanian citizens by birth, irrespective of their permanent domicile or their (lack of) effective links to the Romanian state. Moreover, the electoral rights of these absentee citizens were never contested; on the contrary, distinct electoral constituencies were set up abroad, thus providing for the parliamentary representation of Diaspora communities. Given the large number of

⁶Voronin: 'În România sunt 10 milioane de moldoveni', 24 February 2007, www.bbc.co.uk

Romanian citizens residing abroad, major political parties started to organise electoral rallies in European regions with high concentrations of Romanians, thus turning national elections into a transborder phenomenon.

In 2012, in the context of the tense political ‘cohabitation’ between the Social Liberal Union (SLU) coalition government and President Traian Băsescu, the status of absentee citizens became an issue of intense political debate. In July 2012, SLU initiated a process of impeachment against President Băsescu. According to the established procedure, the Parliament voted for the temporary suspension of the President in favour of an ad-interim president, and a national referendum was organised on 29 July to decide on the President’s dismissal from office. A major contentious issue was the rules under which the referendum was to take place, most notably if 1) an electoral threshold of participation would be applied, and 2) who would qualify as eligible voters in establishing the threshold. After successive unsuccessful attempts to modify the electoral law through administrative extra-parliamentary practices, the SLU government finally conceded to EU pressure to apply a verdict of the Constitutional Court obliging the government to implement a threshold of 50 percent plus one of the total number of registered voters, in accordance with the existing electoral law. Organised on 29 July 2011, the referendum turnout was 8,459,053 voters out of a total number of 18,292,464 eligible persons, or a participation rate of 46.24 per cent. The referendum produced a massive anti-Băsescu vote, 7,403,836 voters, representing 87.52 per cent of the votes cast, opting for his dismissal, and only 943,375 voters, representing 11.15 per cent of the votes cast, opting for his remaining in office (an additional 111,842 votes or 1.32 per cent of the total being cancelled on procedural grounds).⁷ Yet the participation fell short of the legal quorum necessary to remove the president from office (namely, a minimum of 9,146,233 voters, representing 50 per cent plus one of the total number of registered voters).⁸ This outcome provoked furious reactions from the ruling SLU. In a desperate attempt to lower, post-factum, as it were, the numbers of votes necessary for President Traian Băsescu’s impeachment, the ruling SLU started to contest the number of 18,292,464 eligible voters, as established for the local elections that took place in May 2012 and for the July 2012 referendum. Instead, confusingly, they invoked partial and unreliable figures of an on-going demographic census to argue that Romania’s population has shrunk dramatically to circa 18,000,000 inhabitants, which would require a reduction of the electorate on which the quorum is based to a maximum of 16,000,000 voters. Most importantly for our analysis, SLU also contested the right of absentee citizens (those who reside de facto outside Romania’s borders) to be counted in the total number of eligible votes, arguing, on this count, that more than 2 million voters should be removed from the electoral lists. Determined to pressurise the Constitutional Court to validate the referendum result and thus to put an end to President Băsescu’s impeachment, the government announced its intention to organise an ad-hoc ‘mini-census’ with the aim of updating (post-factum) the electoral lists by using ‘witness accounts’ to remove absentee citizens from the permanent electoral lists. This attitude led to a nationwide debate over the status of absentee citizens and their electoral and citizenship rights. Defending the electoral rights of Romanian citizens residing abroad, President Băsescu stressed the important role they play in the invigoration of the national economy, by supporting their families and by pumping their savings into Romania, into local services and assets; SLU, in contrast, demanded the disenfranchisement of all Romanian citizens residing

⁷ See Biroul Electoral Central, ‘Comunicat privind rezultatele finale ale referendumului național pentru demiterea Președintelui României 29 iulie 2012,’ available at the address:

<http://www.becreferendum2012.ro/DOCUMENTE%20BEC/Rezultate/comunicat%20rezultate%20finale.pdf>

⁸ One reason for this relatively low participation was the recommendation advanced by President Băsescu and his ally, the Liberal-Democrat Party, to their supporters to abstain from voting and thus to boycott the referendum, denounced as an abusive USL action.

abroad, on account of their allegedly irregular legal status. These plans were abandoned only reluctantly and by force of circumstances, due to the lack of an adequate legal framework and the numerous practical difficulties involved by such an ad-hoc, large-scale action. Yet, in a final attempt to influence the Constitutional Court's decision, the government gathered and, unsolicited, provided it with figures on the number of Romanian citizens living abroad. These figures are important for our analysis since they are the most comprehensive statistics on the matter available to date: thus, according to data compiled by Romania's Ministry of Foreign Affairs, as of July 2012, 3,052,397 Romanian citizens lived abroad;⁹ however, out of this total, only 469,810 persons had officially settled their permanent domicile abroad, and had registered as such with the Romanian authorities,¹⁰ while the rest still figure as permanently domiciled in Romania.¹¹

Despite the mounting and highly intimidating governmental and parliamentary pressure, the Constitutional Court re-confirmed the electoral threshold and the failure of the referendum proposal, thus allowing President Băsescu to remain in office. This outcome brought the debate over the status of Romanians living abroad to an abrupt end. In the recent national elections that took place in September 2012, SLU no longer contested the electoral rights of Romanian citizens residing abroad. In fact, in organising the election, the SLU government confirmed, with only minor adjustments, the electoral lists and the total number of voters established for the May 2012 local elections and the June referendum, thus proving, once again, that their campaign against the electoral rights of Romanian citizens living abroad was an abusive, politicised action for immediate, transient political gain.

5. The restoration of citizenship in practice: domestic and international constraints

Restrictions on the policy of citizenship restitution ahead of Romania's EU accession

From 1991 to 2001, the policy of restoration of Romanian citizenship was applied without major convulsions, resulting in massive (re)naturalisations of Moldovan citizens. Since 2001, however, Romania has considerably slowed down the process of restitution for two main reasons. Firstly, the number of applications from Moldova has increased dramatically since January 2001, when Romanian citizens were granted visa-free travel in the Schengen space, effectively clogging the bureaucratic process of restoration of citizenship. Secondly, although the European Commission has repeatedly stated that the policy of restitution of citizenship is an internal matter for Romania, several EU agencies voiced concerns that, upon Romania's accession in January 2007, the country's policy on restitution of citizenship could become an uncontrollable gate of access to the Schengen space for non-EU citizens, bypassing restrictive immigration policies. These combined challenges generated a series of crises in the process of restitution, leading to its intermittent suspension from December 2001 to September 2007.

According to official figures, between August and December 2001 alone the Commission for Citizenship received approximately 300 demands for citizenship per day, or

⁹ The Government warned that this figure might not be entirely accurate, since for a number of 482,219 citizens living in 44 countries (out of the total of , 3,052,397), the Ministry of Foreign Affairs was not able to obtain official data from the host countries but had to rely on their own consular estimates.

¹⁰ Since these citizens settled abroad, they did not figure in the electoral lists in Romania, with the exception of 4,475 who had been erroneously listed but were eliminated as result of this verification.

¹¹ For these figures, see the official communiqué issued by the Prime-Minister's Office, available at the address: <http://www.b1.ro/pictures/documents/438-document-2012-08-20-13059718-0-documentul-trimis-ccr-guvern-20-august-2012.pdf>

an aggregate of 19,000 in six months.¹² Confronted with this massive influx of requests, the government temporarily suspended the provisions on the restoration of citizenship by emergency ordinances valid for two periods of six months each, from December 2001 to June 2002, and then again from November 2002 to May 2003, subsequently approved by Parliament. In justifying the approval of the second ordinance, a parliamentary report in April 2003 pointed out that the ‘explosive increase in the number of demands’ blocked the work of the commission, which was composed of only five magistrates. It also blamed the fact that, according to official statistics, most of the renaturalisation demands were opportunistic, being made ‘in the new context created by the elimination of visa requirements for Romanian citizens who travel in the Schengen space, as well as in view of Romania’s prospective integration into the North Atlantic structures.’ Pointing out that ‘the reparatory character taken into account at the time of elaboration of the Law on Citizenship is present in fewer and fewer cases,’ the parliament asked the government to identify a legal solution ‘to eliminate re-acquisitions of citizenship for a purpose alien to the original intention of the law.’¹³

At the end of each period of suspension of the restoration of citizenship, the government implemented major alterations to the citizenship law by two emergency ordinances passed in June 2002 and April 2003. The first ordinance unified the provisions on the reacquisition of citizenship with those on the restoration of citizenship in a single article (Art. 10) placed in the section dealing with naturalisation, thus implying that the restoration of citizenship to former citizens was a privileged naturalisation granted by the Romanian state and not an automatic entitlement to citizenship. The restoration of citizenship continued to be exempted from consular taxes (Art. 36, para. 2); in addition, claimants were given the right to contest the decision of the Commission of Citizenship within a time limit of fifteen days.

These new provisions did not offer an efficient solution to the flood of naturalisation demands, and thus in November 2002—just four months after its reinstatement—the government yet again suspended the restoration of citizenship process for six months. In May 2003, upon the expiry of the new deadline, the law on citizenship was altered once more by a governmental ordinance approved by parliament with minor modifications in October 2003. The new ordinance reinstated the suspended provisions on the restoration of citizenship, along with two additions to Art.10 dealing with the reacquisition of citizenship (classified as Art. 101 and 102), but introduced ample amendments in relation to the implementation of these provisions: Firstly, applicants for the restoration of citizenship became subject to almost all of the conditions for naturalisation demanded of aliens; the only condition waived for former citizens was the obligation to relocate to Romania and reside there for a mandatory period. Secondly, the requests for citizenship had to be presented in person to the Commission of Citizenship in Bucharest and only ‘in thoroughly justified cases’ by attorneys or third parties. Until 2003, requests for reacquisition of Romanian citizenship could be filed not only personally but also ‘by third parties’, either at the Ministry of Justice in Bucharest or at Romania’s consulates abroad. According to media reports, this procedure led to the creation of clientelist networks in Moldova for the collection of dossiers and their transport in huge packages to Bucharest. In order to eliminate these practices, the new ordinance obliged applicants to travel personally to Bucharest, sometimes for undetermined periods of time necessitated by the new bureaucratic procedures, thus increasing the costs of naturalisation. Thirdly, the ordinance introduced a new form of renaturalisation of former citizens and their descendants: a new article (102) allowed persons eligible for the restoration of citizenship to apply for naturalisation directly to the Ministry of Justice after four years of continuous

¹²‘Expunere de motive pentru aprobarea Ordonanței de urgență a Guvernului nr. 160/2002’, 1, www.cdep.ro.

¹³‘Expunere de motive la Legea pentru aprobarea Ordonanței de urgență a Guvernului nr. 160/2002,’ www.cdep.ro

residence in Romania. This provision was another indication that Romanian authorities intended to transform the restoration of citizenship into a privileged form of naturalisation of former citizens relocating to Romania. Fourthly, in order to eliminate opportunistic reacquisitions of citizenship, the new amendments stripped new citizens of some of the most immediate advantages of Romanian citizenship: art. 37 stated that former citizens who reacquire citizenship and effectively live in Romania ‘cannot exercise their right to free movement of persons’, i.e. they are forbidden to travel abroad with a Romanian passport during the first four years after their naturalisation. Exceptions to this rule were allowed only in emergency situations, such as periods of study abroad, family unification, medical treatment abroad, etc. This overt form of discrimination against a certain category of Romanian citizens depending on the manner of their naturalisation was abolished in September 2007.

These substantial amendments to the citizenship law revealed the government’s intention to discontinue the restitution of citizenship to former citizens living in Moldova and Ukraine, transforming it instead into a selective and privileged naturalisation of alien ethnic Romanians relocating to Romania, after a residence of four years. Thus, while former citizens living abroad were required to fulfil additional conditions that made their naturalisation very lengthy and difficult, former citizens working, studying or living in Romania were granted access to direct naturalisation after a residence period of four years, by means of a special procedure. In addition, by requiring applicants to possess ‘knowledge of the Romanian language and elementary notions of Romanian culture and civilisation’,¹⁴ the government made it more difficult for non-ethnic Romanian applicants to recover their lost citizenship, fuelling suspicion that the new conditions were specifically meant as an obstacle to their renaturalisation.

The restoration of citizenship reloaded, 2007–2009

Predictably, the May 2003 amendments to the citizenship law led to an almost complete deadlock in the process of renaturalisation, at a time when the number of applications was soaring. The restrictive policy of the government triggered incendiary reactions from the pro-Moldovan interest groups in Romania, who conducted media campaigns against the governmental policy and—with the help of naturalised Moldovans elected to the Romanian parliament—initiated bills for amending the citizenship law. The most contested provision was the applicants’ obligation to travel to Bucharest and file their dossiers in person. Following street protests in Bucharest by Moldovan citizens applying for naturalisation, this condition was finally abrogated by parliament in June 2003.

In March and April 2006, two open letters signed by 25 non-governmental organisations from Romania and Moldova urged the government to unblock the process of citizenship restitution. The petitioners argued that the bureaucratic blockage was ‘premeditated,’ with the Ministry of Justice deliberately creating obstacles to the restoration of citizenship. In their view, the restoration of citizenship was a ‘legitimate right’ of the Moldovans and its denial by the Romanian government violated basic human rights and established principles of international law. The petitioners also denounced the restrictions on free movement imposed on new citizens, arguing that this provision discriminated among Romanian citizens according to their place of residence and the manner of their naturalisation, in direct violation of the Constitution which stated that all citizens are equal before the law.

¹⁴*Monitorul Oficial*, Partea I, 399, 9 June 2003.

In two consecutive responses, the Ministry of Justice pointed out that the restoration of citizenship is not an automatic entitlement of former citizens but a right granted by the Romanian state under certain conditions. Acknowledging that the Commission for Citizenship was overwhelmed by the large number of applications, the Ministry pledged to consider potential solutions to the problem.¹⁵

In 2006, two parliamentary bills attempted to provide a legal solution to the issue. In order to speed up the restoration of citizenship process, they proposed simplifying the procedure, shortening the processing time, allocating more magistrates to the task and making the Commission of Citizenship responsible for the resolution of demands within ‘reasonable administrative deadlines.’¹⁶ The Senate, nevertheless, rejected both bills on the grounds that they contradicted Romania’s obligations under the EU treaty of accession, and that they would lead to potential conflicts with the European Commission.¹⁷

More recently, mounting domestic public and political pressure convinced the government to modify its citizenship law yet again. Substantial amendments were passed in September 2007, April and November 2008, and April 2009. On 14 September 2007, a new governmental ordinance facilitated the restoration of citizenship through a simplified procedure. Firstly, the Commission of Citizenship was enlarged to consist of a president and four specially appointed juridical councillors on a full-time basis, who replaced the regular part-time judges. Applications for citizenship could be sent by post as well; incomplete files were not to be automatically rejected, with later additions also being permitted. Secondly, in order to speed up the process of naturalisation, the decisions could now also be taken by the Minister of Justice and not solely by the entire Council of Ministers. Rejections could be appealed by applicants in local courts, not only in Bucharest; new requests for citizenship could also be filed one year after a rejection. Thirdly, the ordinance also obliged naturalised citizens to take the oath of allegiance no later than three months after the decision to naturalise instead of within one year, as previously requested. In April 2008, these governmental modifications were approved by the parliament, and the composition of the Commission of Citizenship was enlarged to six full members.

On 4 November 2008, another governmental ordinance further simplified the procedure of citizenship restitution. The ordinance eliminated a major procedural hurdle in the official registration of new applications: requests for citizenship restitutions were not to be published in the Official Monitor of Romania, Part III, anymore. In addition, it also enlarged the pool of eligible candidates for citizenship restitution from first- to second-degree descendants of former citizens. Most importantly, the decree guaranteed a deadline of six months for Romanian authorities to examine naturalisation applications after they have been officially registered by the secretariat of the Commission.

On 15 April 2009, in response to the political unrest which broke out in Moldova after parliamentary elections on 5 April 2009 had been won by the Communist Party, the Romanian government issued a new decree (no. 36, approved by Parliament through Law no. 354 of 16 November 2009) to speed up the lengthy bureaucratic process. To this end, the decree enhanced the administrative capacity of the Commission of Citizenship from six to eight regular members; extended eligibility from second- to third-degree descendants of

¹⁵The petitions and the official answers are available on the site www.curaj.net.

¹⁶Ilie Ilașcu, Session of the Senate, 19 March 2007, www.parlament.ro. A former Moldovan citizen imprisoned in Transnistria for his opposition to the secessionist leadership of the region during the civil war, Ilașcu was later elected to the Moldovan and Romanian parliaments *in absentia*. Following international pressure, Ilașcu was released from prison in 2001 and migrated to Romania, where he agitated for dual citizenship for all Moldovans, in his capacity as a member of the Romanian parliament. On the case of Ilașcu, see Iordachi (2004: 249–252).

¹⁷Petre Străchinariu, Session of the Chamber of Deputies, 28 June 2007, www.parlament.ro.

former citizens; and reduced to five months the period within which Romanian authorities are obliged to examine naturalisation applications. The decree allowed former citizens resident in Romania to apply for citizenship without a residence requirement of four years (this stipulation was discontinued by a new law adopted in April 2009).¹⁸

The introduction of a five-month time-limit within which the Commission of Citizenship was obliged to examine applications for citizenship restitution necessitated a through reorganisation of the commission's activity, urged by the fact that its failure to process applications within the deadline specified by the law almost invariably resulted in lawsuits. The Romanian government decided to radically reorganise the Commission from both an administrative and an institutional point of view, in order to avoid such situations and to specifically “ensure the effective, non-illusory character of the law-stipulated rights”, following the spirit of the European Convention of Human Rights. To this end, by means of the Emergency Ordinance no. 5 of 10 February 2010 (approved by Law no. 112 of 16 June 2010), the government created the National Authority for Citizenship (NCA), a public institution of national interest under the Ministry of Justice. Financed exclusively from the state budget, the NCA is officially empowered to ensure the implementation of the legal procedures by which Romanian citizenship is being granted, reacquired, renounced, and withdrawn. The NCA is headed by a president, ranking as a secretary of state, and two vice-presidents, ranking as under-secretaries of state; these officials are appointed and removed by decision of the Prime Minister and hold four-year mandates. The Authority also has its own administrative and judicially specialized personnel assimilated to judges and prosecutors. In order to verify that the requirements for granting, restitution, withdrawing, or renouncing Romanian citizenship are met, the Emergency Ordinance incorporated the Citizenship Commission of the Ministry of Justice within the NCA, as an entity without legal personality. The commission is permanently active and is made up of a chairperson and twenty members chosen from within the NCA and appointed by order of the Minister of Justice for two-year mandates. The Citizenship Commission registers applications for restitution or grant of Romanian citizenship at its central offices in Bucharest or its territorial offices that were opened on 1 January 2010, under the National Citizenship Authority.

The requests for restitution of Romanian citizenship due to be answered by the Ministry of Justice have been transferred to the new NCA, and are to be judged according to the *updated* stipulations of the law of Romanian citizenship, as republished in 2010. Thus, after *ten years of bureaucratic blockage, improvised solutions, and legal-political inconsistencies*, the Romanian Government finally decided to create an adequate legal and administrative framework for the implementation of the legal provisions regarding restitution of Romanian citizenship by former Romanian citizens and their descendants.

Most importantly, Article 11 offered *a new justification of the policy of restoring Romanian citizenship* to the former citizens who had lost it before 1989: citizenship was no longer granted to “former Romanian citizens who lost their Romanian citizenship before 22

¹⁸ See the Governmental Emergency Ordinance no. 36 for the modification and completion of the law of Romanian citizenship no. 21/1991, published in Monitorul Oficial, Part I, no. 259, of April 21st, 2009. In 2004, when this residential requirement for former citizens living in Romania was introduced, official statistics registered 1,254 Moldovan citizens and 19 Ukrainian citizens who had their permanent domicile in Romania. In 2007, there were 4,349 Moldovan citizens and 38 Ukrainian citizens permanently residing in Romania. See National Institute of Statistics (2007), 58, available at <http://www.insse.ro/cms/files/pdf/ro/cap2.pdf>. In 2009, when the residential requirement was abolished, the total number of Moldovan citizens legally residing in Romania—including also temporary residents—was 15,500 persons, the largest non-EU contingent. See <http://www.indexstiri.ro/15000-de-cetateni-moldoveni-traiesc-in-romania.html>. Of course, these numbers do not include those Moldovans who received Romanian citizenship and then relocated to Romania.

December 1989, for various reasons or to those who were deprived of their Romanian citizenship against their will or for other reasons not imputable to them and to their descendants”, but, instead, to those “who have obtained Romanian citizenship by birth or by adoption.” In doing so, the law no longer legitimises the restitution of Romanian citizenship through the statist principle, as did the 1991 law, but focuses on the principle of *ius sanguinis*. This important legal modification had a major impact on the *beneficiaries* of the policy of citizenship restitution. As mentioned above, the provisions of the 1991 law on citizenship covered the following main categories of beneficiaries: the former citizens of the *Cadrilater*, Bessarabia, and North Bukovina (the territories Romania lost in 1940 and 1944); those who took refuge in Hungary from North-Western Transylvania during World War II or those who were deported from Northern Dobrogea to Bulgaria as part of the 1940 exchange of population between Romania and Bulgaria; former citizens of Turkish or Tatar ethnic origins who emigrated to Turkey in the interwar years; people of Jewish or German origin who lost their Romanian citizenship because they emigrated from Romania legally, in virtue of the treaties concluded by the communist authorities with Israel and the Federal Republic of Germany; persons who lost their Romanian citizenship because they emigrated from Romania illegally in the communist period by crossing the border secretly; and, finally, persons who were arbitrarily deprived of their Romanian citizenship by the communist authorities or who renounced their citizenship voluntarily. It is important to point out that the 1991 law on Romanian citizenship was based on the statist and not on the ethnic principle, so that all former citizens, irrespective of their ethnic origin (Romanians, Hungarians, Germans, Jews, Bulgarians, Russians, Ukrainians, Turks, Tatars etc.) could reacquire their Romanian citizenship.

The amendments to the law passed in 2009 redefined the beneficiaries of the stipulations regarding the restitution of citizenship. Thus, not all citizens who had lost their citizenship before 1989 could benefit from the right to reacquire Romanian citizenship, but *only those who received it at birth or the ones under age adopted by Romanian citizen parents and their descendants, leaving out those who had become Romanian citizens through naturalization or who had reached the age of majority at the time of the adjoining of certain historic provinces (e.g. in 1918).*

At the same time, the right of reacquiring Romanian citizenship *iure sanguinis* — applicable, from 2008 on, also to the second-degree descendants of former citizens — *was extended, in April 2009, to the third-degree descendants.* Thus, according to the new criteria introduced in April 2009, all the inhabitants of Bukovina, Bessarabia, and Southern Dobrogea (the *Cadrilater*) born in those provinces in the interwar years, who had received Romanian citizenship at birth, are eligible — they and their descendants, *i.e.* their children and grandchildren — for restitution of Romanian citizenship. At the same time, however, the inhabitants of those provinces who had reached the age of majority in 1913 or in 1918, when those territories were integrated into Romania, and who received Romanian citizenship because of that annexation, are no longer eligible for the restitution of citizenship in the spirit of the law. Moreover, neither can their descendants benefit from this right if they were born after those territories were lost (1940 and 1944, respectively). Although there are certainly not many such cases, they do exist, a fact highlighting that the new criterion is less efficient as a filter than the previous one targeting all former citizens.

Statistics regarding the restitution of Romanian citizenship

In the absence of complete and transparent statistics, the number of former citizens and their descendants who have reacquired their Romanian citizenship is still in dispute; the various unofficial estimates that circulate differ depending on the different sources used. What is known for sure from official data is that 108,000 files for reacquiring Romanian citizenship were processed by the relevant authorities between 1991 and June 2002.¹⁹ In addition, according to data provided by the National Citizenship Authority, between June 2002 and August 15th, 2011, 205,372 applications for the restitution of citizenship were registered, of which 118,507 have been processed (Table 1). By collating this data, the result is that in the twenty years since the passing of the law of Romanian citizenship in March 1991, 226,507 applications for the restitution of citizenship have been processed.²⁰

Table 1: The number of applications for the restitution of Romanian citizenship / number of applications processed between June 2001 and 15 August 2011 (source: the National Citizenship Authority, Romania):

Year	Applications Registered	Applications processed
2002	3,126	0
2003	16,975	6
2004	5,379	263
2005	2,895	1,603
2006	3,438	489
2007	2,077	664
2008	3,883	4,512
2009	21,759	21,999
2010	94,391	41,843
2011 (until August 15 th)	51,449	47,128
Total:	205,372	118,507

First, it should be noted that, due to the bureaucratic blockage and to the suspension of the application of the legal stipulations, the number of people who reacquired their citizenship was null or insignificant between 2000 and 2003. Although the process of restitution was resumed in 2004 and on a larger scale in 2005, the annual number of restitutions remained relatively low and fluctuated until 2007, when the whole process was accelerated. After Romania joined the European Union in 2007, the process of restoring Romanian citizenship to former citizens from the Republic of Moldova and Ukraine was resumed and gradually amplified, based on the amendments to the law of citizenship adopted by Parliament. In the course of two years, 2008-2009, no less than 26,401 applications for reacquiring citizenship were processed.

It must also be pointed out that, as shown in Table 2 below, the number of Moldovan citizens who reacquired Romanian citizenship is much higher than the number of Ukrainian

¹⁹Ministry of Foreign Affairs, address no. G5-1/P/2824 of 20 November 2009.

²⁰These official statistics, however, do not indicate whether these requests were accepted or rejected (although it is likely that most of them were accepted). The only figures on the accepted applications have been compiled and added up by Constantin Dolghier, based on the decisions granting or restoring citizenship published in the *Monitorul Oficial*, Part I. These figures are incomplete; for the years 2000-2008, they indicate a number of 7,677 requests that received positive answers. There are no full statistics for the 2009-2012 period.

citizens. Certainly, this disparity reflects the major difference between the populations of the two former provinces. It also reflects the different legal status of those who hold dual citizenship in the two countries. The Republic of Moldova has accepted dual citizenship since 2003, so that the owners of Romanian passports are no longer outside the law. Ukrainian legislation, however, does not accept dual citizenship, which accounts not only for the risks they incur, but also for the reticence of Ukrainian citizens to apply for restitution of Romanian citizenship.

Table 2: Naturalisations in Romania, 1 August 2000-21 December 2007

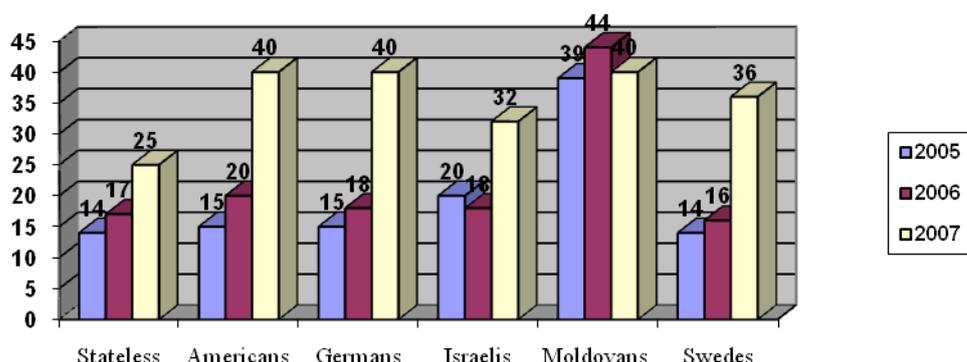
Year	Total Number of Naturalisations	Moldovan Citizens	Ukrainian Citizens
2007	1,150	736	54
2006	740	487	3
2005	1,789	1,592	13
2004	751	258	6
2003	281	8	0
2002	318	1	3
2001	348	1	1
2000	357	1	0
Total 2000-2007	5,734	3,084	80

Source: *Monitorul Oficial al României*, Part I, calculated from official sources made available by Constantin Dolghier, available at cetatenie.info.tm.

Another important statistical aspect of this matter is the proportion of the number of restitutions of Romanian citizenship to the total number of naturalisations. As can be seen in Table 2 above, from 2000 to 2007, the number of citizenship restitutions represents an overwhelming portion of the total number of naturalisations. However, the percentage of citizenship restitutions in the total number of naturalisations is generally much lower than the percentage of former citizens in the total number of applicants. According to some semi-official estimates, expressed even by the President of Romania, Traian Băsescu, the number of applications for the restitution of Romanian citizenship registered by citizens of the Republic of Moldova in time, ranged between 500,000 and 900,000.²¹ Even if such estimates are not being confirmed by the NCA, the Authority's official statistics shows that the number of applications for the restitution of Romanian citizenship has always been very high. For instance, from 2000 to 2008, the Romanian authorities officially registered 31,813 applications for re-naturalisation (by publishing them in the *Monitorul Oficial*, part III; from 2007 on, the practice of having these applications published beforehand was discontinued); of these, only 7,677 people have received Romanian citizenship. The difference between the high number of applications for reacquiring citizenship and the yearly rather low number of re-naturalisation certificates issued to former citizens is due to the fact that, from 2000 on, the procedure of reacquiring Romanian citizenship has been slower than that of naturalisation of foreigners who have settled in Romania, although in principle it had been conceived as a simpler and, hence, swifter form of naturalisation.

²¹ For this estimate, see en.wikipedia.org/wiki/Traian_Basescu.

Figure 1: Duration in months of the process of naturalisation in Romania, by original nationality of applicants accepted in 2005, 2006, and 2007



Source: Data compiled from official sources by Constantin Dolghier, cetatenie.info.tm.

As Figure 1 shows, the applicants from the Republic of Moldova and Ukraine (gathered under the name “Moldovans”) re-naturalised in 2005 had to wait on average 39 months between the official registration of their applications and the decisions of re-naturalisation, while those re-naturalised in 2006 had to wait an average 44 months between the two stages. At the same time, other categories of foreigners had to wait between 14 and 18 months. Since, according to the law, the naturalisation procedure for foreigners is actually more complicated than the one for citizenship restitution to former citizens, it is obvious that the excessively long citizenship restitution process was due not only to the record number of applications to be processed, but also to a political decision to slow down the process by administrative means. The amendments to the law of citizenship that came into effect on 14 September 2007, accelerated the process of citizenship restitution, so the number of Moldovan and Ukrainian citizens who received Romanian citizenship increased. Consequently, for a short time, the duration of the process of naturalisation for all categories of applicants tended to stabilise: while foreigners had to wait longer (for a maximum of 40 months) to obtain naturalisation, the waiting period for the restitution of citizenship dropped slightly, from 44 to 40 months. However, in 2008 and 2009, in spite of the acceleration of the administrative process of citizenship restitution, the duration of the bureaucratic process went up again, while the waiting period for the naturalisation of foreigners dropped.

The reorganization of the administrative body, the authorities’ greater transparency, and the existence of several clear legal guides regarding the procedure of citizenship restitution (see the guide published by Pupăză, 2011), have led to a massive increase in the number of applications for the restitution of Romanian citizenship: 94,391 in 2010 and 51,449 by 15 August 2011. However, although the number of applications processed by the NCA has reached a record level due to the ever-growing efficiency of its activity, the number of files processed annually has remained below the total annual number of requests for reacquiring citizenship — with the exception of 2009; in 2010, for instance, only 41,843 applications were processed of the 94,391 registered. It follows that, although the process of restitution of Romanian citizenship has become more fluid, the waiting lines are still growing, due to the never diminishing number of applicants.

5 Conclusion

The collapse of the communist regimes led to the reorganisation of citizenship policies in Central and Eastern Europe. One can distinguish two main clusters of citizenship policies,

directly related to patterns of nation-building and state-building in these regions: citizenship policies in successor states to former multi-ethnic federal states such as Czechoslovakia, Yugoslavia and the USSR; and in post-communist nation-states such as Albania, Poland, Romania, Bulgaria and Hungary.

The dismantling of the former federal systems generated numerous legal, political and territorial conflicts, most notably in Yugoslavia and the USSR (the ‘velvet divorce’ between Slovakia and the Czech Republic was smoother, although it was not free of legal conflicts, see Liebich, Warner & Dragovic 1995). In his analysis of ‘citizenship struggles’ in the successor states of the former USSR, Rogers Brubaker differentiated between a ‘new state’ model of legislation on citizenship and a ‘restored-state’ model (1992: 275–276). The former was enacted in Soviet republics that lacked a statehood tradition. Without a history of distinctive citizenry, these republics, such as the Republic of Moldova, had to create their citizenship body by conferring rights on all of their residents, on an inclusive basis. The latter, ‘restored-state’ type, was applied in republics that relied on a pre-Soviet statehood tradition, such as the Baltic States. Motivated by the fear that their nation would ‘die out’, these states revived their pre-Second World War citizenship laws in order to restore the citizenry that had existed prior to the Soviet conquest and to initially exclude from citizenship all residents who immigrated to these countries in the post-1945 period. To these, I would add a third, hybrid category, represented by ‘new states’ that have also assumed a ‘restored’ state-dimension, such as Ukraine. The Ukrainian legislation granted citizenship to all inhabitants residing within the republic’s territory, on a very inclusive basis. At the same time, it also granted access to Ukrainian citizenship to former citizens and their descendants born or permanently residing within any territories which formed a part of the historical states of the Ukrainian People's Republic, the Western Ukrainian People’s Republic, the Ukrainian State, the Ukrainian Socialistic Soviet Republic, Trans-Carpathian Ukraine and Ukrainian Soviet Socialistic Republic (URSR), on the express condition that they renounce their foreign citizenship.²²

A different category of citizenship policies can be found in post-communist nation-states. Although these states did not suffer territorial changes or a massive influx of population after 1989, they have all revised their citizenship laws in order to reflect the new political transformations.²³ New citizenship laws in these states encompassed an important national dimension, repressed under the regime of Soviet domination; after decades of political isolation from their kin-populations abroad, most of these states have resumed policies of ‘positive discrimination’ towards their co-ethnics.

Romania’s post-communist citizenship policy belongs to the second cluster mentioned above; yet, due to the country’s geo-political position and its territorial disputes with the Soviet Union during the Second World War, the Romanian policy combines elements characteristic of policies in East-Central European and former Soviet countries. The most important concept that dominated Romania’s post-communist citizenship policy was that of the restoration of citizenship in order to undo the effects of the territorial changes that took place during and after the Second World War, an issue declared taboo during the period of Soviet domination. Romania granted the right to renaturalisation to all former citizens and their descendants, irrespective of their ethnic origin, their form of de-naturalisation and the period of their attachment to the Romanian state. In doing so, Romanian legislation went beyond regular laws on repatriation, of the kind post-communist Poland passed in relation to former citizens of Polish ethnic origin deported to the Soviet Union at the end of the Second

²²See art. 8 of the 2001 Law on Citizenship of Ukraine, available at www.mfa.gov.ua.

²³This claim is valid for Poland, as well. Although the 1962 Polish Nationality Act has not been replaced by a new post-communist law, it was nevertheless amended in important points, while numerous procedural changes have also been implemented. See Górný & Pudzianowska in Bauböck, Perchinig & Sievers (2009: 123-149).

World War. It also went beyond forms of privileged naturalisation of kin-populations abroad, as is the case with Hungary's policy towards former citizens of Hungarian ethnic origin relocating to the kin-state. To a certain extent, Romanian legislation resembles the policy of the restoration of citizenship to former citizens and their descendants implemented by Ukraine, with the notable difference that, unlike Ukraine, Romania allowed new citizens to hold dual citizenship and retain their domicile abroad. Most closely, Romanian citizenship legislation resembles the 'restored-state' policies of the Baltic States. This similarity is not surprising: Greater Romania's provinces of Bessarabia and Bukovina as well as the Baltic States were occupied by the Soviet Union in June 1940 as a direct consequence of the 1939 Ribbentrop-Molotov Pact. In the post-Soviet period, Romania and the Baltic States officially denounced the 'infamous pact' and tried to undo its legal consequences by applying the principle of restitution of pre-Soviet citizenship. The major difference in the application of this principle was that in Romania its provisions were not meant to discriminate against 'internal foreigners' as in the Baltic States, but to include former citizens living abroad. In April 2009, the right to reacquire Romanian citizenship was tacitly redefined, in accordance with another new principle of post-communist Romania's concept of citizenship, namely *the primacy and inalienability of Romanian citizenship of origin, received at birth*. Thus, after the fall of the Romanian communist dictatorship and in response to the withdrawal of Romanian citizenship by the communist authorities, based on political criteria, the 1991 Romanian Constitution stipulated, in article 5, paragraph 2, that "Romanian citizenship cannot be withdrawn if acquired at birth".²⁴ This constitutional guarantee of citizenship received at birth is typical of the democratic regimes established in countries that have ridden themselves of a political dictatorship (see the cases of postwar Germany or post-Franco Spain). This principle was overlooked by the 1991 law of citizenship; it was introduced in 1999, together with other amendments, in order to bring the content of the law into conformity with the constitutional stipulations (see, in this sense, Article 24 of the law of citizenship: "Romanian citizenship cannot be withdrawn if acquired at birth"). In 2009, this constitutional guarantee of the citizenship of origin was extended to those who had lost Romanian citizenship acquired at birth before 1989, for various reasons, or for reasons not imputable to them — as well as to their descendants.

Due to the legacy of territorial conflicts and competing projects of nation-building and state-building in post-communist East-Central Europe, Romania's policy on the restoration of citizenship generated inter-state tensions, most evident in its relations with the Republic of Moldova. Given the complex and multifarious nature of this relationship, Romanian policymakers have been unable to put forward a coherent policy toward Moldova, oscillating between 'sentimentalism' and 'pragmatism'. On the one hand, Romanian politicians regard Moldova as Romania's former province, occupied as a result of the 1939 Ribbentrop-Molotov Pact, and reserve the country's right to unilaterally restore Romanian citizenship to Moldovan citizens. On the other hand, Romania was the first country to recognise the independence of the new Republic of Moldova upon its proclamation in August 1991. Unlike the Federal Republic of Germany, in relation to the former German Democratic Republic, or Greece, in relation to the Former Yugoslav Republic of Macedonia, Romania contested neither the statehood nor the name of the new republic. It has treated Moldova as an independent and sovereign state, thus implicitly recognising its legitimate right to establish its own version of national identity and citizenship legislation. The failure of the policy of special partnership inaugurated between the two countries in the early 1990s and the forceful suspension of the

²⁴ The 1991 Romanian Constitution, in *Codul Civil Roman*, edited by Florin Ciutacu (Bucharest: Teora, 2001, 717

process of restitution of citizenship following pressure from the EU (2001–2007), widened the gap between these two policy lines.

On the one hand, Romania has reiterated its historical rights to Bessarabia. In June 1991, the Romanian parliament officially condemned the 1939 Ribbentrop-Molotov Pact as illegal, null and void *ab initio* of consequences for Romania; in September 2007, President Traian Băsescu announced his intention to officially condemn (yet again) the pact in order ‘to give political force’ to this declaration.²⁵ Moreover, in September 2007 Romania relaunched its policy of restitution of citizenship. Facing criticism from various EU agencies,²⁶ Romanian authorities presented this policy as part of the EU’s programme of integration with neighbouring countries, arguing that it would enable the EU to boost its influence in the former Soviet space, as well as to import a qualified Moldovan workforce in order to reduce its labour shortages. On the other hand, Moldova’s communist leadership, backed by Russia, took advantage of the securitisation of the EU border between Romania and Moldova and the imposition of travel visas to Moldovan citizens travelling to Romania in 2007 in order to discontinue socio-economic and cultural relations between the two countries.

Moreover, a new Moldovan Law on the Status of the Public Functionary, adopted in 2007, excludes all Moldovan citizens who hold dual citizenship or have their domicile abroad, from public office; this effectively stripped a large part of the population of important political rights. Officially justified by the need to reduce the number of naturalisations abroad, to eliminate conflicts of interest with other states and to consolidate Moldova’s statehood, this controversial Law primarily targets Romanian-Moldovan dual citizens with a view toward weakening political opposition to the ruling Communist party and to countering Romania’s political influence in the republic. At a diplomatic level, Moldova has also tried to bypass Romania as a mediator in its relations with the EU (see the decision to prevent the opening of new Romanian consulates in Moldova and to use instead Hungary’s embassy for the purposes of granting EU Schengen visas to Moldovan citizens).

The demise of the Communist Party from power in 2009 has led to the normalisation of diplomatic relations between Romania and the Republic of Moldova, setting their bilateral relationships on new foundations. The new centre-right ruling coalition has set as Moldova’s main foreign policy goal its close cooperation with, and eventual integration into, the European Union. This approach has paved the way toward a renewed diplomatic collaboration with Romania, which acts as the most arduous and active supporter of Republic of Moldova’s European integration. The integration of the Republic of Moldova in the European Union would create the necessary conditions of a vaster economic and socio-political synergy between the two states, thus reducing the importance of the border dividing them along the Prut.

Overall, although the effects of Romania’s policy on the restitution of citizenship and the response to it by the neighbouring states (mostly Moldova and the Republic of Moldova) should not be unduly exaggerated, it is likely that the interaction of citizenship policies in East Central Europe will continue to challenge inter-state relations in the region.

²⁵‘Traian Băsescu va denunța Pactul Ribbentrop-Molotov’, 21 December 2007, www.bbc.co.uk.

²⁶On 25 September 2007, President Băsescu asked the government ‘to simplify to the maximum’ the naturalisation conditions for Moldovan citizens. His statement was criticised by Marianne Mikko, the President of the European Parliament Committee for the Cooperation between the EU and the Republic of Moldova, as lacking ‘political wisdom’. See ‘EP official: Basescu’s statements about citizenship for Moldovans “not wise”’, *Nine O’Clock* 4029, 28 September 2007, www.nineoclock.ro. In July 2007, Kalman Mizsei, the director of the EU representative office in Moldova, called on Romania to cancel its policy of citizenship restitution for Moldovans as it contradicts the EU charter. See: ‘Romania asked to cancel easy citizenship for Moldovans’, *New Europe: The European Weekly*, 14 July 2007, www.neurope.eu.

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