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COUNTRY REPORT: MONTENEGRO

Jelena Džankić

Revised and updated November 2012



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European University Institute, Florence
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EUDO Citizenship Observatory

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Montenegro¹

Jelena Džankić

Introduction

Citizenship policies in Montenegro are similar to the ones of the other successor states of the former Yugoslavia in that they were highly influenced by the political circumstances in which they were adopted. The current Montenegrin citizenship regime was constituted following a series of political transformations, which included the disintegration of the socialist Yugoslavia in the early 1990s and the two turbulent decades of the coexistence of Serbia and Montenegro in a common state, coupled with the internal debate over whether Montenegro should be independent or not and whether Montenegrins were a separate nation or a sub-group of Serbs. These political questions inevitably affected the design of the new state's regulation of citizenship.

The 2008 Montenegrin Citizenship Act explicitly defines citizenship (*državljanstvo*) as the relationship between individuals and the state. Hence the concept of citizenship used in the 2008 Citizenship Act is equivalent to what is understood by nationality in international law. The Montenegrin citizenship regime does not make any inference on the relationship between different groups and the state, and in that respect it has been designed as civic. In other words, the Montenegrin state is not a state of ethnic 'Montenegrins', but a state of citizens of Montenegro (Constitution of Montenegro 2007, article 2).

Yet a deeper insight into the nature of the current citizenship regime of Montenegro, and its implications, requires an understanding of the history of the country's citizenship regime. This will be examined separately in the report. However, it is worth noting here that after the Yugoslav break-up, Montenegro was the only republic that opted to remain in the common state with Serbia, thus establishing the Federal Republic of Yugoslavia (FRY) in April 1992. Having remained in a federal state until 2006, the Montenegrin (republican) citizenship was the second tier of citizenship. The first (federal) tier of citizenship policies had legal primacy over Montenegro's citizenship legislation. The first Citizenship Act of the FRY was enacted in mid-1996, four years after the creation of the common state. During this period, the constituent republics of the FRY applied the republican Citizenship Acts from the mid-1970s as the second tier of citizenship policies.

Only six months after the adoption of the Yugoslav Citizenship Act, a part of Montenegro's ruling elite distanced itself from Slobodan Milošević. This caused the ruling political party – Democratic Party of Socialists (DPS) – to split in two: with the DPS opposing Milošević's policies and the Socialist People's Party (SNP) supporting them. As a manifestation of its objection to Milošević, the ruling DPS adopted a series of laws aimed at detaching Montenegro from the FRY. Subsequently, the 1999 Montenegrin Citizenship Act conflicted with the 1996 Yugoslav Citizenship Act, and almost read as a citizenship law of a sovereign state (ESI 2001). However, even after the enactment of the 1999 Citizenship Act, Montenegrin citizenship was still the second tier of the FRY citizenship regime.

The first independent citizenship policy of Montenegro was adopted in 2008, two years after the establishment of the state. The 2008 Montenegrin Citizenship Act is based on three principles: 1) legal continuity of citizenship; 2) prevention of statelessness; and 3)

¹ Earlier versions of this paper have been published on EUDO and CITSEE websites. This version of the paper contains a series of updates, resulting from changes in the Montenegrin citizenship legislation.

reduction of dual citizenship. The final principle implies rather restrictive approaches to naturalisation and dual citizenship, which were largely generated through Montenegro's internal divisions and the country's strained relationship with Serbia. These issues have dominated the public debate on the citizenship policies, and have inspired the changes to the original citizenship legislation. The 2008 Montenegrin Citizenship Act has been amended three times (in July 2010, in June 2011 and in September 2011), but neither amendment brought about a major liberalisation of the citizenship regime. Rather, as will be explained later in this report, they were all a result of bargaining between political actors who were simultaneously faced with a challenged nation-building project and external pressures stemming from the country's aspiration to join the European Union (EU).

1 The history of citizenship policies in Montenegro

In order to gain a thorough understanding of the current citizenship regime in Montenegro, as well as the circumstances surrounding the adoption of the 2008 Citizenship Act, it is essential to present a survey of the legal and political conditions that shaped the citizenship policies in Montenegro at various historical moments. To that end, it is particularly relevant to outline the historical dimension of the various policies directly or indirectly related to citizenship including the Yugoslav system of federal and republican citizenship, the legacies of this system after the Yugoslav disintegration, and the usage of citizenship policies in the recent Montenegrin quest for independence.

1.1 Pre-Yugoslav citizenship policies in Montenegro

The peculiar geographical position of Montenegro, and the country's unique history, affected the citizenship regime prior to the establishment of the 'first' Yugoslavia in 1918. It is worth mentioning that in this period there were no separate citizenship laws. By the same token, provisions regulating the relationship between the individuals and their belonging to the state were rather scarce and vague. The likely reason for this situation is the general absence of legal acts, largely caused by the modes of social organisation and conflicts that existed on the territory of the present-day Montenegro.

Until the late eighteenth century, societal and political organisation in Montenegro was based on the notion of the tribe, which was a 'military, political and moral collective' (Jovanović 1995: 65). In addition, the territory of Montenegro was divided into 'Crna Gora' ('Montenegro'/'Old Montenegro') and 'Brda' ('Highlands'), each consisting of a number of tribes. Consequently, the construction of a modern administrative and legislative framework in Montenegro was a lengthy process, often hampered by inter-tribal differences.

In fact, before Petar I Petrović (1782-1830) assumed power, tribal divisions often prevented the implementation of any form of central authority. In 1803 Petar I Petrović promulgated the *General Montenegrin and Hill Code*, which is considered to be the first written law in Montenegro. Although no explicit mention of the term citizenship was made in this legal act, two of its provisions are particularly relevant for understanding the meaning of citizenship in nineteenth century Montenegro. The terms *Crnogorac* and *Brdjanin* denoted the legal relationship of the people inhabiting the two regions of Montenegro with the state (art. 18). The term *Primorac* was used to denote people who lived in the coastal areas of present-day Montenegro, that belonged to the 'imperial land and state' (Austria-Hungary). People referred to as *Crnogorac* and *Brdjanin* were considered to be 'the sons of the fatherland' and

were bound to ‘be faithful and devoted to their fatherland and that no wealth can separate him from it, or bribe him so that he becomes a betrayer of his brothers and the fatherland’ (art. 33).² The provisions thus stipulated were based on the principle of *ius sanguinis*, and although defined by territorial principles, they were in fact related to descent.

A similarly vague and poorly defined relationship between the people and the state was enshrined in the *General Legal Code* (1855), which reiterated the provisions of the previous law. However, this legal act introduced an important addition – the rights of aliens in Montenegro. It stipulated that any ‘member of a foreign tribe or faith can freely live [in Montenegro] and have the right to the same freedom and justice as any Montenegrin and Highlander’ (art. 92).³

However, the overall legal framework in Montenegro was rather underdeveloped in the late nineteenth century. Following the expansion of the territory of Montenegro under Nikola I Petrović, the first *Statute of Montenegro* (1905) was adopted, which contained some reference to citizenship policies. The actual acquisition of citizenship was not promulgated in the *Statute of Montenegro*, although the term ‘Montenegrin citizens’ was persistently used instead of ‘Montenegrians’ and ‘Highlanders’. Notwithstanding, according to the *Statute* any citizen could renounce their Montenegrin citizenship, following the completion of military service and other duties towards the state (art. 215). This article represented an important departure from the previous legislation, which contained no such entitlement for ‘Montenegrians’ and ‘Highlanders’.

In addition, the *Statute of Montenegro* provided continuity of rights for aliens, and clearly stipulated that foreigners were subject to Montenegrin laws regarding taxation; while the laws would ‘protect their person and property’ (art. 216). In addition, foreigners convicted on political grounds were granted the right to asylum (art. 217). These provisions marked an important advancement in the pre-Yugoslav legal framework in Montenegro, which – compared to the Western democratic countries was rather underdeveloped.

1.2 Citizenship policies until 1991

The establishment of the Kingdom of Serbs, Croats and Slovenes in 1918 (renamed the Kingdom of Yugoslavia in 1929) marked a new era in the development of the citizenship policies in Montenegro in the subsequent seven decades. At the time of the establishment of the common Yugoslav state, the post First World War settlement and international treaties determined the citizenship issues among the countries in the region (Kos 1994). The centralised Yugoslav Kingdom enacted a Citizenship Act a decade after its creation. This act established single Yugoslav citizenship based on the principle of *ius sanguinis a patre* (Kos 1994, Medved 2009).

Following the collapse of the Kingdom during the Second World War, the common state was restored in 1945 under the name of the Democratic Federal Yugoslavia (renamed the Federal People’s Republic (FPR) of Yugoslavia on 29 November 1945). The Citizenship Act, based on the principles of continuity and *ius sanguinis*, was enacted in DF Yugoslavia on 23 August 1945, and enforced in FPR Yugoslavia as of 5 July 1946. Pursuant to this Act, people who were entitled to Yugoslav citizenship included: 1) the people who had Yugoslav citizenship under the 1928 Citizenship Act; 2) people permanently residing in territories

² Author’s translation.

³ Author’s translation.

adjoined to Yugoslavia following the termination of the Second World War (art. 3);⁴ 3) people having the ethnicity (*narodnost*) of one of the FPR Yugoslav republics and who were born or raised therein, provided that they had no foreign citizenship (art. 25). In addition, the provisions of this Act, and its subsidiary legislation,⁵ were largely a legacy of the communist victory and the Second World War. Consequently, the conditions for naturalisation for those people who cooperated in the national-liberation struggle were facilitated. At the same time, the law deprived the citizens who were believed to have been disloyal to the interests of the FPR Yugoslavia,⁶ and stipulated that citizenship could be taken away on grounds of absence (art. 15), which specifically targeted political, mostly right-wing emigration.

The 1945 Citizenship Act had two further important implications. First, the citizenship of FPR Yugoslavia was exclusive to foreign nationals, i.e. it did not provide for the acquisition of dual citizenship. Second, it established the category of republican citizenship (art. 1, arts. 28-34) as the second tier of citizenship in Yugoslavia. This means that each citizen of the FPR Yugoslavia was simultaneously a citizen of only one of its constituent republics (arts. 28-34).

The latter provisions sparked the adoption of Citizenship Acts in the constituent republics of FPR Yugoslavia. An interesting fact about these acts is that they stipulated identical conditions for the acquisition of citizenship. Montenegro adopted its first separate Citizenship Act in 1950, which was framed within the 1945 Citizenship Act of the FPR Yugoslavia. There were similar provisions in the Citizenship Act of 1965, which mirrored the federal citizenship provisions from 1964, and made no significant departure from the 1950 Citizenship Act. In line with these acts, Montenegrin citizenship was acquired along with the federal citizenship, and under the same conditions. That is, Montenegrin citizenship could be acquired by origin, birth, naturalisation or under international treaties.

The 1950 Citizenship Act also provided that citizens of other republics could acquire Montenegrin citizenship, provided that they renounced the citizenship of the other republic. In this case, their citizenship of another republic would be terminated on the day of the person's admission into Montenegrin citizenship. Yet, the primary rule for the acquisition of citizenship under the 1950 Citizenship Act was *ius sanguinis*, on grounds of which a child would be granted the citizenship of their parents, regardless of the child's place of birth. In cases where the parents were citizens of two different republics, one of whom was from Montenegro, the child would acquire Montenegrin citizenship should his or her parents agree to this. Should no such an agreement be reached by the child's parents, the child would be given the citizenship of one of their parents *ex lege*, having in mind the child's residence.

The republics' citizenship acts had particular relevance in the development of the political processes in FPR Yugoslavia, and were closely related to people's voting rights, as only republic-level registers of citizens existed until 1991. According to the Voters' Register Act of 10 August 1946, voting rights were granted in line with individuals' republican citizenship, regardless of residence. For instance, if a person had Montenegrin citizenship acquired through *ius sanguinis*, but resided in Macedonia, he or she would have voting rights in Montenegro.

⁴ A separate law was adopted on 27 November 1947 which regulated the citizenship of people residing in the territories acquired by FPR Yugoslavia following the conclusion of the peace treaty with Italy.

⁵ Law on the Deprivation of Citizenship for Officers and Non-Commissioned Officers of the Former Yugoslav Army Who Do Not Want to Return to the Homeland, and for the Members of Military Forces Who Have Served the Enemy and Have Defected Abroad (invalidated in 1962). *Official Gazette*, No. 64/1945; No. 86/1946. Amendment and Addendum of the Law on Citizenship. *Official Gazette*, No. 105/1948.

⁶ Amendment and Addendum on the Law on Citizenship. *Official Gazette*, No. 105/1948.

During the existence of the socialist Yugoslavia, two further Citizenship Acts were adopted – in 1964 and in 1976. The first novelty introduced by the 1964 Citizenship Act was the abolition of provisions related to the loss of citizenship on grounds of absence, and the ones referring to the enemies of the state (discussed above). As such, the 1964 Citizenship act substantially facilitated naturalisation of foreign citizens, which is largely due to the international treaties that Yugoslavia had signed in the period from 1945 to 1964 (Medved 2009). To that end, a person could be deprived of Yugoslav citizenship if they abrogated from the general postulates of the Universal Declaration of Human Rights and the UN Charter (art. 19, para. 3). The second novelty introduced by the 1964 Citizenship Act was the explicit primacy of the federal citizenship over the republican one.

The 1976 Yugoslav Citizenship Act streamlined the previous legislation and aligned it with the federal principles enshrined in the 1974 Constitution of the Socialist Federal Republic of Yugoslavia. Similar to its predecessors, this legal act was based on the principle of continuity of citizenship under the 1964 Act. It did, however, provide two further titles aimed at resolving issues that arose as: 1) a result of conflict with republican citizenship norms (Title IV); and 2) a consequence of the previous non-regulation (in the Citizenship Act) of the Citizenship Register (Title V). The former provision regulated the acquisition of citizenship for children whose parents were citizens of different republics (art. 22). In such a case, three options were possible: 1) if the child were born on the territory of the republic of which one of the parents had citizenship, the child would acquire the citizenship of that republic; 2) if the child were born on the territory of the republic of which none of the parents had citizenship, the child would *ex lege* become the citizen of the republic whereby he or she were born, unless the parents decided that the child should have the citizenship of one of the republics that they had the citizenship of; 3) if the child were born abroad, the parents would make an agreement as to which citizenship the child would acquire. In the case of the Citizenship Register, the legislation provided that the Registers were kept by the authorities of the republics, but that the Citizenship Certificate was of SFR Yugoslavia, in which the republican citizenship was also noted (arts. 23-25).

The Citizenship Act of the Socialist Republic of Montenegro was enacted on 27 May 1975, eighteen months prior to the adoption of the Citizenship Act of SFR Yugoslavia. This fact made Montenegro the first among the Yugoslav federal republics to have adopted new citizenship legislation. This law became particularly relevant in the context of citizenship legislation in Montenegro, since it remained in force until the adoption of the 1999 Citizenship Act.

The 1975 Citizenship Act defined the relationship between the Montenegrin and the federal citizenship, whereby the latter had precedence. It established the category of Montenegrin citizenship (arts. 1 and 2), and stipulated that the citizens of other republics of the SFR Yugoslavia had the same rights and duties on the territory of Montenegro as Montenegrin citizens (art. 3). Article 4 of the 1975 Citizenship Act of SR Montenegro established that the citizenship of Montenegro could be acquired through: 1) origin; 2) birth; 3) admission (of citizens of other republics); 4) admission of foreigners into SFRY citizenship; or 5) international agreements. The criteria related to the acquisition of Montenegrin citizenship by birth and origin were in line with the ones stipulated in the federal Citizenship Act of 1964 that was in force at the time. Fashioned after the federal legislation, the Montenegrin Citizenship Act contained provisions aimed at resolving disputes related to citizenship stemming from conflict with the norms of other republics. In such cases, the citizenship of the child whose one parent had Montenegrin citizenship would be determined by parents' agreement (art. 5); or – should no such an agreement be reached – by residence, or by the fact that the parent the child is living with a citizen of SR Montenegro (art. 6).

In terms of naturalisation, two categories were instituted by the 1975 Citizenship Act and related to citizens of other SFR Yugoslav republics or to foreign nationals. The admission of foreign nationals into Montenegrin citizenship was dependent upon the admission of foreigners into the federal citizenship (art. 11). By contrast, the admission of citizens of other SFR Yugoslav republics to Montenegrin citizenship was done upon request, provided that the person had residence in Montenegro (art. 8), while children under the age of eighteen, whose both parents were admitted into Montenegrin citizenship would also obtain citizenship by default (art. 8).

Finally, the 1975 Citizenship Act also regulated the loss of Montenegrin citizenship, which would occur should a person: 1) obtain the citizenship of another Yugoslav republic; 2) request the release from Montenegrin citizenship; 3) renounce their Montenegrin citizenship; or 4) have their Montenegrin citizenship withdrawn (arts. 13-17). The latter three categories were regulated by federal legislation. Interestingly, no provision of the 1975 Citizenship Act required the citizen of another republic to renounce their citizenship in order to obtain the Montenegrin one, although citizens of SFR Yugoslavia could have only one republican citizenship. Instead, the 1975 Citizenship Act stipulated that by acquiring the citizenship of another republic, a person would lose their Montenegrin citizenship (arts. 13 and 14). The outcome of such a provision, and the complex (and often sloppy) administrative procedures was most apparent at the time of the disintegration of the former Yugoslavia, when the citizenship of a number of people depended on the citizenship registers resulting in a number of problems related to the acquisition of citizenship (Štiks 2006).

2.3 Citizenship policies from 1991 to 2008

The early 1990s brought the disintegration of Yugoslavia and the bloodiest conflict that Europe had seen since the Second World War. Unlike the other federal republics of the SFR Yugoslavia, Montenegro decided to remain in the common state with Serbia.⁷ The two former Yugoslav republics established the Federal Republic of Yugoslavia (FRY) on 27 April 1992. Montenegro stayed in the common state with Serbia (restructured into the State Union of Serbia and Montenegro on 14 March 2002) until 21 May 2006, when the population of Montenegro voted for independence. However, the history of common life of the two republics of the former Yugoslavia in the past two decades was far from smooth. From 1997 onwards, one section of the Montenegrin leadership detached itself from Slobodan Milošević and embarked upon a process of ‘creeping independence’, i.e. the gradual establishment of institutions in Montenegro that would function independently from the ones of the FRY (Morrison 2009; Roberts 2007). After 2000, this tendency grew into the quest for independent statehood on the behalf of the Montenegrin ruling elites, and the resistance thereto by Montenegrin opposition parties. As a consequence of the progressive separation from Belgrade, the Montenegrin government utilised a series of laws and policies as a means of detaching the state from the federal institutions. One of them was the citizenship policy, as explained in more detail by Džankić (2010).

The initial FRY citizenship policy was set out in the Constitution of 27 April 1992. The Constitution established Yugoslav citizenship, and republican citizenship as its second tier (art. 17). In line with the constitutional provisions, Yugoslav citizens could not be deprived of their citizenship or extradited to another country, while Yugoslav citizens residing

⁷ At the referendum held on 1 March 1992, 95.4 per cent of the 66 per cent turnout expressed their preference for Montenegro to remain in a common state with other former Yugoslav republics wishing to do so. The independence-oriented Liberal Alliance of Montenegro and ethnic minorities boycotted the 1992 referendum.

abroad enjoyed the protection of the FRY (art. 17, para. 3). Unlike the constitutions of the former Yugoslavia, the FRY constitution allowed dual citizenship, provided that those who also possessed the citizenship of another state were treated as ‘Yugoslavs’ when on the territory of the FRY. Almost simultaneously, the Constitution of the Republic of Montenegro, enacted on 12 October 1992 established the category of Montenegrin citizenship. Montenegrin citizenship was inalienable, and Montenegrin citizens could not be deprived of the right to change it (art. 10). Such provisions were clearly generated by the wartime circumstances on the territory of the former Yugoslavia in the first half of the 1990s.

The FRY Constitution also provided that a separate federal law would regulate the citizenship policies. In contrast to the practices in the other former Yugoslav republics, which adopted their citizenship policies shortly after the disintegration, the Citizenship Act of the FRY came into force only in 1996, over four years after the establishment of the state. The delayed adoption of the citizenship legislation allowed the FRY policymakers to circumvent clear legal definitions of citizenship policies. This avoidance, in turn allowed them a greater margin of manoeuvre when it comes to ethnicity and citizenship, which were particularly malleable at the time of ethnic conflicts (Džankić 2010). The 1996 federal citizenship law had a ‘zero-option’ for citizenship, and was applied retrospectively for four years. During this time, a number of Serb refugees⁸ from Bosnia and Croatia had settled in the FRY. Given the fact that the conditions for acquiring the citizenship of the FRY were quite restrictive, and that a lot of discretionary power was granted to the Ministry of Interior in determining residence due to the poorly administered Citizenship Registers, this policy, by manipulating a huge number of refugees, was used in order to vindicate Milošević’s expansionist aims (Štiks 2006).

Yet by the time the 1996 Citizenship Act entered into force, political circumstances in the FRY had changed significantly, with the Montenegrin ruling elites departing from Milošević’s politics. That said, the Law on Montenegrin Citizenship, enacted on 1 November 1999 is a clear example of how legislative measures were used to detach competences from the federal level as part of a process of creeping independence and of how citizenship policies were pivotal for the arithmetic of voting. The Law on Montenegrin Citizenship of 1999 was in conflict with the Yugoslav Citizenship Act of 1996, since the republican citizenship could be acquired without the prior or simultaneous acquisition of the federal one. In addition, the 1999 Law on Montenegrin Citizenship stipulated that Montenegrin citizenship could be obtained by birth, origin, naturalisation, or international agreements (art. 2). A ten year residence criterion was applied in the case of foreigners living in Montenegro. This residence requirement was reduced to five years in cases of spouses of Montenegrin nationals (art. 9). The stringent criteria for naturalisation were caused by the division that occurred on the Montenegrin political scene between the supporters of Milošević (after 2000 the pro-union camp) and the opponents of the regime in Belgrade (after 2000 the pro-independence camp). In effect, the margins by which the opponents of the Milošević regime won the elections in Montenegro have been rather small since the 1997 split in the ruling DPS which generated this division. Hence, the criteria for naturalisation in the 1999 Law on Montenegrin Citizenship were stringent because the ruling coalition sought to prevent a large number of people who fled from Croatia and Bosnia and Herzegovina from obtaining voting rights (Džankić 2012). The displaced persons and subsequently internally displaced persons (IDPs)⁹

⁸ The current Montenegrin legislation terms these people as ‘displaced persons’. In the context of the Montenegrin legislation, that term will be used. Here, the term ‘refugee’ is more appropriate, and corresponds to the terminology used in the academic literature.

⁹ Shortly before the referendum, then President of Serbia – Vojislav Koštunica – requested that 264,802 Montenegrins residing in Serbia receive voting rights in Montenegro. Because the voting population of

who settled on the Montenegrin soil at the time of conflicts in the former Yugoslavia were predominantly of Serb ethnicity, and thus more likely to vote for the political faction that supported Milošević and – after his ousting – the common state with Serbia.

With the transformation of the common state of Serbia and Montenegro, and the adoption of the Constitutional Charter of the State Union on 4 February 2003, the link between voting rights and citizenship became somewhat clearer. That is, citizens of Serbia and of Montenegro had equal rights and duties in the other state, apart from electoral rights (art. 7). This fact was extremely significant at the time of the 2006 referendum on independence in Montenegro. After Montenegro became independent, the Constitution of Montenegro enacted on 19 October 2007 established a separate Montenegrin citizenship (art. 12). The citizenship policy was more clearly defined in the Law on the Implementation of the Constitution of Montenegro. Enacted on the same day as the Constitution, the Law on Implementation arranged the issue of dual citizenship following Montenegro's independence. Citizens who had citizenship of Montenegro and another country before 3 June 2006 were allowed to retain both citizenships. Citizens who acquired the citizenship of another country after 3 June 2006 are allowed to retain the citizenship of Montenegro until the bilateral agreement of that country is signed, and - at most - for a year after the entry into force of the Constitution of Montenegro (art. 12). Due to the political divisions in Montenegro, the Constitution and the Law on Implementation were met with resistance from the pro-Serb parties.

The tensions between the pro-Serb and the pro-Montenegrin parties in the post-referendum environment led to the delay in the adoption of the Montenegrin Citizenship Act until 14 February 2008. The pro-Serb opposition claimed that the draft Citizenship Act and the adopted text were both restrictive and discriminatory as it did not allow dual citizenship. The pro-Montenegrin government claimed that a restrictive law was a 'better solution' (*Pobjeda*, 15 February 2008). This stance was probably generated because the population of Montenegro was small and because dual citizenship from among the successor states of the former Yugoslavia (most likely Serbia)¹⁰ would have had a high impact on the voting population of the country and their electoral choices.

2 The current citizenship regime

The 2008 Montenegrin Citizenship Act establishes the category of Montenegrin citizenship as the legal relationship between an individual and the state of Montenegro (art. 1). Article 1 of the Citizenship Act clearly states that the term 'citizenship' does not imply 'national and ethnical origin', along the lines of the 2007 Constitution which defined Montenegro as a 'civic' state in light of the debate over statehood and identity in Montenegro.

The most recent Montenegrin Citizenship Act regulates three types of issues: 1) acquisition and loss of citizenship; 2) procedures of acquisition and loss of citizenship; and 3)

Montenegro stood at 457,633 such a major addition of voters would have significantly affected the results of the plebiscite (voters from Serbia were likely to vote for the preservation of the common state). However, the request of Vojislav Koštunica was a political one and there were no legal grounds for it to be applied in Montenegro. The Montenegrin Law on the Election of Representatives and Deputies links voting rights (the same provisions applied to the Referendum Law of 2005) to both Montenegrin citizenship and residence. Only the people who resided in Montenegro for twenty four months before the elections could take part therein (art.11).

¹⁰ Serbian List (the major opposition coalition in 2008) produced a list of 100,000 people living in Serbia and seeking dual citizenship with Montenegro.

the Citizenship Register. It is divided into seven sections: 1) basic provisions; 2) acquisition of Montenegrin citizenship; 3) loss of Montenegrin citizenship; 4) re-acquisition of Montenegrin citizenship; 5) procedures for the acquisition and loss of Montenegrin citizenship; 6) Citizenship Register; and 7) transitory arrangements.

The 2008 Montenegrin Citizenship Act has been amended on 19 July 2010, 31 May 2011, and 8 September 2011. Hence, the subsequent sections will explain in detail the modes of acquisition and loss of Montenegrin citizenship, present the debate over dual citizenship and its implications, examine the implications of the legal provisions for naturalisation for the citizens of the former Yugoslav republics, and give an overview of special institutional arrangements for the acquisition and loss of Montenegrin citizenship.

2.1. The Main modes of acquisition and loss of Montenegrin citizenship

Title II of the 2008 Citizenship Act stipulates the different criteria for the acquisition of Montenegrin citizenship. In line with art. 4 of the Constitution, similar to the previous Citizenship Acts, Montenegrin citizenship can be acquired by: 1) origin; 2) birth on the territory of Montenegro; 3) naturalisation; and 4) international agreements and treaties. The modes of loss of Montenegrin citizenship are stipulated in article 19 of the 2008 Montenegrin Citizenship Act. They include loss by 1) request of the Montenegrin citizen; 2) deprivation; or 3) international agreements. Provisions regarding the acquisition and loss of Montenegrin citizenship on grounds of the international treaties and agreements have not been used in Montenegro.

2.1.1. Ius sanguinis and ius soli at birth and after birth

Pursuant to arts. 5 and 6 of the Citizenship Act, the dominant principle of acquisition of Montenegrin citizenship is that of *ius sanguinis* - the principle of origin. This principle is applied when 1) the child's father and mother had Montenegrin citizenship at the time of the child's birth; 2) one of the parents had Montenegrin citizenship at the time of the child's birth, provided that the child was born on the territory of Montenegro; 3) one of the parents was a Montenegrin citizen at the time of the child's birth, while the other was stateless or of unknown citizenship (or if the parent was unknown) and the child was born abroad; or 4) one of the parents was a Montenegrin citizen at the time of the child's birth and the child was born in a foreign country, or if the child is stateless.

The provisions for the acquisition of Montenegrin citizenship by children born to at least one Montenegrin parent, in Montenegro or abroad, were streamlined in art. 6 of the Citizenship Act. Pursuant to this article, the child is entitled to Montenegrin citizenship, when 1) the child was born abroad, and one of the parents was a Montenegrin citizen at the time of the child's birth, if that child is enlisted in the Birth Register and the Citizenship Register by the age of eighteen, provided that the child does not hold the citizenship of another state; 2) the person is over eighteen years of age, if one of the parents is a Montenegrin citizen, and the other is a citizen of a foreign country, if that person makes a request for enlistment in the Citizenship Register prior to reaching twenty-three years of age; or 3) the child was adopted, if one of adoptive parents is a Montenegrin citizen. After Montenegro became a party to the Council of Europe's Convention on the Avoidance of Statelessness in Relation to State Succession and the European Convention on Nationality in 2010, article 6 has been supplemented by the addition of the line 'provided that he or she [the child] does not have the citizenship of the other parent' to all three paragraphs of the provision (Law on Amendments and Addenda to the Montenegrin Citizenship Act, *Official Gazette of Montenegro* 40/10). In

either of the aforementioned cases, enlistments and the process for the acquisition of Montenegrin citizenship is done by the child's parents until the age of fourteen. For children over the age of fourteen, the consent of that child is also required prior to his or her acquisition of Montenegrin citizenship.

The second principle governing the acquisition of Montenegrin citizenship is *ius soli*; that is – by birth on the territory of Montenegro. Contrary to *ius sanguinis* explained above, *ius soli* is exceptionally used for the acquisition of citizenship at birth in Montenegro. Similar to many other countries, *ius soli* at birth is used almost exclusively for the prevention of statelessness. According to article 7 of the Montenegrin Citizenship Act, a child is entitled to Montenegrin citizenship in case he or she were born or found on Montenegrin soil, if the child's parents were stateless, or of unknown citizenship. However, where it is determined by the time the child reaches the age of eighteen that both of his or her parents are foreign citizens, or if the child acquires citizenship of another country, the child will lose his or her Montenegrin citizenship. If the child is older than fourteen years of age, he or she must consent to the loss of Montenegrin citizenship.

2.1.2 Naturalisation and dual citizenship

The conditions for naturalisation in Montenegro are strict. Such an approach to citizenship in Montenegro has largely been affected by the two decades of political instability; the high number of people who sought refuge on Montenegrin territory throughout the 1990s; and the tendency of the policymakers not to disrupt the current balance of voters. The Ministry of Interior and Public Administration is the authority that has the competence and the discretionary power over citizenship matters. The decision of the Ministry of Interior is final. Complaints on procedural matters can be made to the Administrative Court, which – if the request is resolved in favour of the plaintiff – may annul the Ministry's decision. So far, no significant case law has been developed.

Unfortunately, naturalisation statistics are not publicly available in Montenegro. In March 2012, replying to the parliamentary questions of the SNP parliamentarian Mrs. Snežana Jonica, the Ministry of Interior provided the most recent data on naturalisation in Montenegro from 05 May 2008 to 12 March 2012 (Ministry of Interior and Public Administration 01-653/2). During this period, a total of 26,950 requests for naturalisation were submitted to the Ministry of Interior. Out of those requests, in 19,797 cases a decision was made, and consequently 16,768 people were admitted into Montenegrin citizenship. A total of 1,449 requests were denied and a further 820 requests were rejected; proceedings were temporarily stopped in 684 cases, and terminated in 8 cases.

Ordinary naturalisation is regulated by article 8 of the Citizenship Act, which provides that a person may acquire Montenegrin citizenship through naturalisation, in line with the interests of the Montenegrin state. Therefore, naturalisation is a prerogative of the state, rather than an entitlement of the individual applying for admission into Montenegrin citizenship. The conditions that the petitioner needs to fulfil in order for his or her request to result in Montenegrin citizenship include: 1) that the person has reached eighteen years of age; 2) that he or she has been released from citizenship of another country; 3) that he or she has legally and continuously resided in Montenegro for a period of ten years prior to the application for citizenship; 4) that he or she has a permanent financial guarantee in Montenegro; 5) that they had not been sentenced for more than 1 year, that they are not being prosecuted *in absentio*, or that the legal consequences of the sentence have expired (sentence deleted); 6) that he or she has an active command of basic Montenegrin language skills; 7) that the person is not a security threat to Montenegro; and 8) that she or she has no pending tax obligations. In light

of these criteria, children born to naturalised parents acquire Montenegrin citizenship by default, while adopted children need to continuously reside in Montenegro in order to attain citizenship (art. 16). However, the practice of naturalisation reveals that two criteria are particularly relevant in the context of Montenegrin citizenship by naturalisation – residence and dual citizenship.

The strict **residence** criterion of ten years is not applied to spouses of Montenegrin citizens, who will be naturalised if they were married to a Montenegrin citizen for at least three years and have legally and uninterruptedly resided in Montenegro for at least five years and if they fulfil all other conditions stipulated in article 8 (art. 11). The 2010 Law on Amendments and Addenda to the Montenegrin Citizenship Act has streamlined article 11 by an additional line, which specifies that the condition for naturalisation of spouses (three years of marriage, and five years of lawful and uninterrupted stay) is to be fulfilled ‘prior to the submission of the application for admission to Montenegrin citizenship’. As a consequence of Montenegro’s ratification of the ECN, a completely new provision has also been enshrined in article 11, and it specifies that the same conditions for naturalisation apply where a person had been married to a Montenegrin citizen for at least three years, and the marriage was terminated by the death of the spouse.

The residence criterion is also reduced (to two years) in the case of Montenegrin expatriates and their descendants up to the third generation who fulfil other conditions for naturalisation (art. 10). In July 2010, article 10 has been supplemented by a new provision, which points to Article 17 of the Citizenship Act. The provision stipulates that the criteria for the ‘lawful and uninterrupted stay in Montenegro of at least two years’ are determined by the Government of Montenegro. The same provision, i.e. reference to Article 17, applies to Article 26 – readmission into Montenegrin citizenship, for which one year of ‘lawful and uninterrupted stay in Montenegro’ is required.

The question of **dual citizenship** in Montenegro is a politically sensitive one, largely due to the state of political relations with Serbia.¹¹ As in some of the other successor states of the former Yugoslavia (Ragazzi and Štiks 2009), provisions of the Citizenship Act reflect the ambiguity over whether dual citizenship is possible in Montenegro or not. Art. 2 of the Citizenship Act notes that ‘a Montenegrin citizen holding at the same time also the citizenship of a foreign country’ will be considered a Montenegrin citizen when dealing with Montenegrin authorities. Such a provision implies that it is possible to hold multiple citizenships, including the Montenegrin one. This is further confirmed by art. 18, which provides that dual citizenship with another country is possible following the conclusion of a bilateral agreement. The only dual citizenship agreement that Montenegro has concluded so far is with Macedonia. This agreement is of a rather peculiar nature, as it reiterates the provisions stipulated in the Law on the implementation of the Constitution of Montenegro. However, the agreement does not regulate any matters related to the acquisition or loss of citizenship (Ministry of Interior 02-3226/3, 2009).

Given the lack of bilateral agreements regulating dual citizenship, a foreign citizen is requested to obtain release from his or her other citizenship in order to obtain the Montenegrin one (art. 8, para. 2). In case the person has submitted his or her application for naturalisation in Montenegro, and has not yet relinquished their other citizenship, he or she is not granted Montenegrin citizenship even though he or she fulfils all other conditions. Rather, the Montenegrin authorities will issue a written assurance (with two-year validity) that the applicant will receive Montenegrin citizenship provided that he or she relinquishes their other

¹¹ See details in the previous sections.

citizenship. Should the applicant fail to do so, his or her petition for admission into Montenegrin citizenship will be suspended (art. 9).

If the laws were consistently applied, the only people in possession of dual citizenship in Montenegro would be the ones who possessed citizenship of Montenegro and another country before 3 June 2006 (Law on the Implementation of Constitution of Montenegro 2007, art. 12), and the people covered by legal exceptions. Exceptions to the release from citizenship of origin concern those citizens naturalised pursuant to arts. 10 (expatriates), 11 (spouses of Montenegrin nationals), and 12 (facilitated naturalisation in the interest of the state) of the Citizenship Act. However, practice has shown that it is possible for the citizens of Montenegro residing outside the Balkans (e.g. EU, United States, Canada, etc.) to obtain dual citizenship on the grounds of art. 8 alone. In some cases, citizens from the other republics of the former Yugoslavia were able to do so as well. Still, as citizenship issues are rather complex in the region, and checking is facilitated by the similarities of language, it is generally more difficult to obtain dual citizenship in the latter case.

Article 8 has slightly been liberalised by the 2010 and 2011 amendments to the Citizenship Act. The adopted changes stipulate that the release from citizenship of another state (as per article 8, paragraph 1, point 2) is no longer required if the person is stateless; if the person submits the proof that by entry into Montenegrin citizenship they will lose their citizenship of origin by force of law; and if the person was unable to obtain release from their citizenship of origin because they did not complete the obligatory military service, provided that they signed the statement that in the case of obtaining the Montenegrin citizenship the person would renounce the citizenship of their state of origin. Additional exemptions for the citizens of the former Yugoslav republics are explained in section 2.2.

Therefore, most of the people requesting Montenegrin citizenship are required to relinquish their original citizenship. The issue with the Montenegrin nationals who are naturalised in another country is somewhat different. In most cases, the state's authorities tolerate the acquisition of another citizenship, although such individuals should lose their Montenegrin citizenship by force of law (art. 24 of the Citizenship Act). The reason for this tolerance is usually the unawareness of the authorities that a certain individual has obtained citizenship of another state. Despite the many instances of tolerance of dual nationality in these cases, some have become highly politicised, especially in the context of Montenegro's relationship with Serbia. A notable example is the withdrawal of Montenegrin citizenship to the former leader of People's Party (a pro-Serb opposition party) Predrag Popović in 2011. Popović, who was a Montenegrin citizen by birth, voluntarily acquired the citizenship of Serbia in 2007 and announced it publicly. This prompted the authorities to exclude him from the citizenship of Montenegro, which has been deemed a political move in the public discourse (Bošković 2011).

2.1.3. Modes of loss of Montenegrin citizenship

As explained above, there are two dominant modes of loss of Montenegrin citizenship – release and withdrawal. While the former is done upon an individual's request, the latter is a prerogative of the state and may be used both for those who were born into Montenegrin citizenship and those naturalised into it. However, it should be noted here that if a person requested release from Montenegrin citizenship in order to acquire the citizenship of another state, they are entitled to re-acquire their Montenegrin citizenship provided that they legally and continuously reside in Montenegro for at least one year before their plea (art. 26).

Any person over the age of eighteen can request **release** from Montenegrin citizenship, provided they: 1) hold foreign citizenship or have the proof that they will be granted foreign citizenship; 2) reside in another state (art. 20). Where the person who had requested release from Montenegrin citizenship has not been granted foreign citizenship within two years from the date of submission of their request, their petition for release will be suspended (art. 21). Similarly, if the person has already been granted release from Montenegrin citizenship, but failed to acquire foreign citizenship within one year from the date of their release from the Montenegrin one, they can request their release to be invalidated (art. 23).

A child, or an adopted child, can be released from Montenegrin citizenship (provided that he or she does not remain stateless), when: 1) both parents are released from Montenegrin citizenship; 2) one parent is released from Montenegrin citizenship, and the other: a) consents to the child's release; b) is a citizen of a foreign state; c) is of unknown citizenship or stateless; or 4) is unknown (art. 22). The Law also stipulates that in the case there is no consent between the parents over the release of the child from Montenegrin citizenship, the social welfare state authorities will deal with the case.

By contrast, **withdrawal** of citizenship occurs when the state deprives a person of his or her citizenship. Montenegrin Citizenship Act stipulates that deprivation occurs in several cases, when the person holds another citizenship in addition to the Montenegrin one. The reference to the possession of another citizenship is aimed at preventing statelessness. These cases include: 1) the voluntary acquisition of a foreign citizenship, provided that no dual citizenship agreement has been made; 2) the cases when the decree on naturalisation has been made on the basis of false statements, provided that the person would not remain stateless if their Montenegrin citizenship is taken away; 3) the cases when a person is found guilty of crimes against humanity under international law; 4) when a person has been involved in terrorist activities or activities deliberately endangering the security of Montenegro; 5) the cases of members of foreign military services; or 6) the cases of people whose behaviour is deemed harmful to the interests of Montenegro (art. 24).

A closer look at the cases in which a person may be deprived of Montenegrin citizenship reveals that the determination of 'behaviour' harmful to the state is a discretionary power of the state authorities. Consequently, this legal provision remains rather vague and leaves a large margin of interpretation as to what constitutes 'behaviour harmful to the interests of Montenegro' (art. 24).

2.2. Special rules for citizens of the former Yugoslav republics

As a consequence of the Yugoslav break-up and the conflict that followed, many citizens of the former Yugoslav republics have changed their country of residence. In the early 1990s, a number of people from Croatia and Bosnia and Herzegovina fled to Montenegro due to the wars. In the late 1990s, the conflict in Kosovo pushed many people to seek refuge in Montenegro. While some of these people returned to their countries of origin, many remained in Montenegro as 'displaced persons' or 'IDPs', and sought Montenegrin citizenship after the country became independent (Džankić 2010).

The conditions for naturalisation for the citizens of the successor states of the former Yugoslavia are stipulated in the transitory provisions of article 41, which has been amended three times since the adoption of the 2008 Montenegrin Citizenship Act. On each occasion, amendments to this article resulted from a political compromise between the ruling DPS and the opposition, in the context of pressures stemming from the EU's conditionality. In its

attempt to preserve the fragile electoral balance in Montenegro, the DPS sought to retain the high barriers for naturalisation of the citizens from the former Yugoslav republics. By contrast, the opposition required facilitated conditions for naturalisation of these people, many of whom are of Serb ethnicity and thus likely to increase the voting poll of the opposition parties. The June 2010 amendments to the citizenship act were a direct product of Montenegro's signature of the Council of Europe's Convention on the avoidance of statelessness in relation to State succession and the European Convention on Nationality. The amendments of June and September 2011 were a part of a package of legislative changes required from Montenegro to open the accession negotiations. In order to adopt the changes to the Election Code required by the EU, the Montenegrin opposition required the amendments to article 41 of the 2008 Montenegrin Citizenship Act.

The original provisions of article 41 prescribe that the people from the former Yugoslav republics must not have citizenship of their state of origin, or that they may have renounced such citizenship. Thus, the persons registered as displaced persons and IDPs in Montenegro, are eligible for Montenegrin citizenship if they had registered 'residence' (*prebivalište*) in Montenegro on 03 June 2006. They need to fulfil the criteria from article 8, apart from residency (but only if they have registered 'residence' (*prebivalište*) in Montenegro on 03 June 2006)¹² and the language ones (arts. 13 and 14).¹³ The deadline for the submission of applications was initially set to one year in regular cases and to three years in cases when the person has remained stateless.

In July 2010, article 41 was changed in three respects. First, the deadline for the submission of the application for admission into Montenegrin citizenship for stateless persons (subject to further provisions of articles 8 and 41) was extended from three to five years from the date of the enactment of the Citizenship Act. Second, article 41a, makes explicit reference to the new provisions of article 8, according to which an individual is no longer required to prove release from their citizenship of origin if he or she is unable to obtain that release due to compulsory military service. Third, the 2010 amendment to the 2008 Citizenship Act extended the deadline for the persons covered by the scope of article 41 until 05 May 2011.

While the June 2011 addendum to Montenegro's citizenship legislation merely extended the naturalisation deadline for the citizens of the former Yugoslav republics, a more substantial transitory amendment was adopted in September 2011. According to new article 41v of the Citizenship Act, those citizens of the former Yugoslav republics (and their children), who had registered residence in Montenegro for at least two years before 3 June 2006, and a valid ID, were exempt from the requirement to provide release of their citizenship of origin, provided that they lodged their application for citizenship before 31 January 2012. A further requirement for this group of people was that they had not unregistered their residence from Montenegro since their registration, and that – at the time of application – they submit a written statement declaring that they accept the rights and duties of Montenegrin citizenship. According to the data of the Ministry of interior (Ministry of Interior and Public Administration 01-653/2), a total of 2,579 people submitted new applications, and a further 2,535 persons whose admission to Montenegrin citizenship was on hold due to their dual citizenship submitted the written statement declaring that they accept the rights and duties of Montenegrin citizenship. Hence, a total of 5,114 persons were admitted into Montenegrin

¹² Many of the displaced persons and IDPs in Montenegro, however, have registered their 'temporary stay' (*boravište*). In such cases, the Law on Foreigners applies.

¹³ The rationale for such a provision is likely to be the fact that most of the displaced persons and IDPs that settled on Montenegrin soil come from one of the successor states of the former Yugoslavia, which gives them good command of the Montenegrin language (one of the offset languages of 'Serbo-Croatian'). Stateless persons by default fulfil criterion 2 from art. 8 of the Montenegrin Citizenship Act.

citizenship on grounds of article 41v. Considering that the provision was applied from 24 September 2011 to 31 January 2012, article 41v induced the highest change in the number of naturalised persons in Montenegro by a single legal provision.

2.3. *Special arrangements*

In addition to the modes of acquisition presented above, Montenegro also has the policy to naturalise certain individuals on grounds of exceptional achievements in the national interest of Montenegro.¹⁴ This policy has recently caused much turmoil in the public sphere. Pursuant to article 12, naturalisation may be granted to any person over the age of 18, should the state decide that this will be for the benefit of the state for scientific, economic, cultural, economic, sports, national or other reasons. The 2010 amendments to the Citizenship Act grant the competence to the President of Montenegro, the Prime Minister, or the Speaker of Parliament to propose candidates for naturalisation. The decision over whether the benefit to the state suffices to grant the person in question Montenegrin citizenship is a discretionary power given to the Ministry of Interior.

In June 2010, the government of Montenegro adopted the Decision on the Criteria for Determining Scientific, Business, Economic, Cultural and Sports Interest of Montenegro for the Acquisition of Montenegrin Citizenship by Admission. In the Montenegrin context, the most interesting provision of this decision is the one related to business and economic interest, which establishes the category of ‘citizenship-by-investment’. Montenegrin ‘citizenship-by-investment’ is available to those individuals who have invested in Montenegro’s economy, or donated funds to Montenegro. Pursuant to the decision, such persons should be ‘established experts or investors of undoubted international reputation’ (art.3). On the basis of this article, the government has adopted the Manual on the Implementation of Criteria for the Determination of Business and Economic Interest of Montenegro for the Acquisition of Montenegrin Citizenship by Admission. Thus, individuals who invest 500,000 euros in Montenegro will qualify for this ‘citizenship-by-investment’. The procedure also implies the control over such requests for naturalisation by an independent consultancy agency and an opinion of the Ministry of Finance, while the request will be processed by the Ministry of Interior.

This decision caused much turmoil in the Montenegrin media (*Vijesti*, 10-14 August 2010), and has sparked considerable criticism by the Montenegrin opposition and some NGOs. The likely reason for such a public reaction is related to a recent case of naturalisation on grounds of article 12. In the first half of 2009, the Montenegrin press revealed that the former Prime Minister of Thailand who has been convicted of corruption – Taksin Shinawatra – received a Montenegrin passport (and thus Montenegrin citizenship). A number of domestic NGOs attempted to acquire information from the Ministry of Interior about the grounds on which Montenegrin citizenship was granted to Shinawatra, and claimed that granting such a person Montenegrin citizenship was unlawful (MANS 2009, Jovićević 2009). Despite the many attempts by civil society organisations, the Ministry of Interior refused to reveal the details of this issue, referring to the Law on the Protection of Personal Data. Eventually, the Montenegrin authorities revealed that Shinawatra has been naturalised on grounds of his multi-million investment in Montenegrin tourism. The Spokeswoman of the Montenegrin government – Olivera Đukanović – said that this type of citizenship should cause no concern among the population in Montenegro, as it is a common practice in a number of Western democratic countries, including Austria, Belgium, Canada and the United States of America (Vlada Crne Gore 2010). She also noted that stringent rules will be applied in determining the outcome of all applications.

¹⁴ On the contentious aspects of granting citizenship to investors see Džankić 2012a.

The Montenegrin decision has, however, sparked different reactions internationally. While the European Commission stated that it will comment upon these pieces of Montenegrin legislation in the forthcoming Progress Report, one member of the governing coalition in Germany – Christian Socialist Union (CSU) – has criticised the government’s decision and announced that it might request the reinstatement of visas for the citizens of Montenegro. In contrast to the announcements of the Montenegrin government that the funds invested must be ‘undisputed’ and the origins thereof ‘proven’, CSU implies that this decision might affect the previous progress Montenegro had made in the area of border management and immigration control (*Vijesti*, 12 August 2010). They also emphasise that the link between the citizen and the state, envisaged in the concept of citizenship may not be established solely on grounds of foreign investment. By contrast, the Canadian Ambassador in Belgrade (also representing Canada in Montenegro and Macedonia) John Morrison commended the Montenegrin model of ‘citizenship-by-investment’, and compared it to the Canadian one (B92, 16 August 2010).¹⁵ Morrison emphasised the significance of foreign direct investment for the development of the country and noted that he expected that the issue of the origins of investment will be handled by independent expert agencies.

As a result of such reactions, the Montenegrin ‘citizenship-by-investment’ program has been put on hold. Yet, the country never withdrew its prerogative to naturalise individuals on grounds of their special achievements, including the ones who invest in Montenegro. According to the Ministry of Interior (Ministry of Interior and Public Administration 01-653/2), a total of 121 persons have obtained Montenegrin citizenship on these grounds until 12 March 2012. The Ministry, however, did not provide the data on the exact grounds for the conferral of citizenship pursuant to article 12, citing that these data are with the state authorities who proposed the candidates for this type of naturalisation.

3 Current political debates and reform plans

At present, no further amendments to the 2008 Citizenship Act are being debated. However, since the adoption of the law, there have been manifold changes to the new country’s citizenship legislation. The first Law on Amendments and Addenda to the 2008 Citizenship Act has been passed on 09 July 2010. During the Parliamentary debate, it was emphasised by the Ministry of European Integration and the parliamentary Committee on international affairs and European integration that, while the changes to the Citizenship Act were not formally required in the process of European integration, they are in line with Recommendation No. R(99) 18 of the Committee of Ministers to Member States on the avoidance and reduction on statelessness, International Covenant on Civil and Political Rights, Convention on the Rights of the Child, Convention on the Elimination of All Forms of Discrimination Against Women, Convention relating to the Status of Stateless Persons and the Convention Relating to the Status of Refugees. As explained in the previous sections of this report, the June and September 2011 amendments deal specifically with the acquisition of citizenship for the citizens of the former Yugoslav republics.

All of the changes to the 2008 Montenegrin Citizenship Act largely reflect the political dynamic after Montenegro became an independent state. The post-referendum environment in Montenegro, within which the 2008 Citizenship Act has been adopted, was characterised by the certainty of Montenegrin statehood and the persistence of the division

¹⁵ Unlike Montenegro, Canada grants permanent residence to investors who invest in Canada for five years. Following three years of residence, investors may qualify for Canadian citizenship.

over Montenegrin nationhood. The aim of the DPS-led government, which based its policies on the rhetoric of European integration and multiculturalism, was to attempt to close the division over nationhood with the concept of the 'civic' state. That is, the Citizenship Act adopted has been defined as the legal relationship between the state and the individual, and – in contrast to the other successor states – it has explicitly been noted that the notion of citizenship implied no ethnic belonging. Having said that, the provisions of the Citizenship Act related to the residence criteria for admission and dual citizenship generated a separate political debate. The emergence of this debate has been caused by the inextricability of these provisions from other issues, such as displaced persons and IDPs, and – certainly – voting arithmetic.

With the entry into force on 01 August 2010 of the Law on Ratification of the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, this law became *lex specialis* for cases of statelessness. This law, along with the Law on Ratification of the European Convention on Nationality was adopted by the Parliament of Montenegro, and the country has ratified both Conventions. The European Convention on Nationality entered into force in Montenegro on 01 October 2010. The ratification procedure of these conventions has been rather smooth, since political parties in Montenegro (whose rhetoric is largely the one of 'catching up with Europe') were willing to accept the recommendations of the Council of Europe related to the adoption of international documents. However, the ratification of the European Convention on Nationality still reveals the country's restrictive approach to dual citizenship. In fact, Montenegro has placed a reservation on article 16 of the Convention, dealing with dual citizenship. This reservation clause has its roots in the current Citizenship Act, which allows dual citizenship only in the cases described in section 2.1.2.

In addition, on 22 October 2009, the Parliament of Montenegro enacted the amendments and addenda to the Foreigners Act, which is indirectly related to the Citizenship Act. The addenda to the Foreigners Act included the provisions related to displaced persons and IDPs (art. 105a). Pursuant to the new provisions, displaced persons from the other successor states of the former Yugoslavia were entitled to claim permanent residence in Montenegro, if they had been registered as displaced persons at the time of the adoption of the original Foreigners Act on 31 December 2006. Internally displaced persons (from Kosovo) may obtain permanent residence in Montenegro if they registered with an administrative authority by 14 November 2009 (art. 105a). While the deadline for registration was initially set to two years from the enactment of the amendments to the Foreigners Act, this deadline has been extended to 31 December 2012. By obtaining permanent residence in Montenegro, the individuals concerned will lose their status of displaced persons and IDPs. Instead, those who register will be granted the right of permanent residence and thus the prospect of acquiring Montenegrin citizenship in the future. Their stay in Montenegro as displaced persons and IDPs, which in most cases exceeds ten years, will not count as residence for the purposes of naturalisation in Montenegro. Should over 16,000 displaced persons and IDPs (UNHCR 2012) fail to register, they will be deemed to reside illegally in Montenegro, thus losing those entitlements to healthcare and education that they have under their current status.

The greatest concern brought about by this provision regards the status of different Roma groups (Roma, Ashkali and Egyptian) who fled to Montenegro during the 1999 crisis in Kosovo. According to UNHCR (2012), there are 1,649 Roma, Ashkali and Egyptian people in Montenegro, who are at risk of statelessness, because they often do not register the birth of their children. A further concern that has recently been brought to public attention, and which is likely to be resolved shortly, has been the status of approximately 2,000 Albanian citizens from the regions bordering Montenegro, who sought refuge in the former socialist Yugoslavia

in 1991. At the time of their entry they were registered as refugees with Albanian citizenship and forcefully re-settled in Kosovo as a part of Milošević's ethnic engineering policy (*Portal Analitika* 2012, web). Over 1998 and 1999, those people returned to Montenegro and were registered IDPs from Kosovo, and thus equalised in status with those who only arrived Montenegro during the Kosovo crisis. Over 2011 and 2012, this group of people protested, seeking Montenegrin citizenship, on grounds that they identify as ethnic Montenegrins and that they have come to the country over two decades ago. The Montenegrin government had established a working group for the resolution of these people's status in mid-2012, but the group had been inactive, prompting further protests. With the pending elections in October 2012 and the EU Progress Report shortly thereafter, in September 2012, the government has decided to enable these people, exceptionally, to obtain Montenegrin citizenship. The government cited the 'facts related to their arrival to Montenegro and the specific problems related to the resolution of their legal status' (*Dan*, 14 September 2012). In order to enable these people to gain access to Montenegrin citizenship, the government amended the Decision on the Criteria for Determining the Conditions for Naturalisation in Montenegro on 11 October 2012. The amendment thus adopted enables the 'individuals who, in 1991, have arrived from the People's Socialist Republic of Albania to the Socialist Republic of Montenegro on grounds of the international agreement between the SFRY and the PSR of Albania, and who have obtained the foreign resident status at least one year prior to the submission of their request' (*Odluka o kriterijumima za utvrđivanje uslova za sticanje crnogorskog državljanstva prijemom*).¹⁶ This legal provision will come into force eight days following its publication in the official gazette, which is expected in late 2012.

On the one hand side, the Montenegrin policymakers have obviously been pressured by the European Union accession requirements to tackle the questions of displaced persons and IDPs. On the other hand, the registration changes the status of the displaced persons and IDPs and requires them to meet the residence requirement for naturalisation anew, which is an indicator of the ruling DPS's striving to preserve the current electoral dynamics

This also affects the debate over dual citizenship with other successor states of the former Yugoslavia. In fact, art. 18 (para. 2) of the Citizenship Act enshrines the possibility of establishing the dual citizenship regime through international agreements. So far, an agreement has only been reached with Macedonia, but it merely reiterates the provisions of the Law on the Implementation of the Constitution of Montenegro. As such, it offers no direct provisions related to the acquisition and loss of citizenship in the two states. Negotiations for the establishment of dual citizenship have been ongoing ever since the adoption of the Citizenship Act with the other former Yugoslav republics. The ones with the neighbouring Croatia are ongoing. Negotiations with Bosnia and Herzegovina failed in March 2009, when the president of the presidency of Bosnia and Herzegovina – Haris Silajdžić – deemed that the dual citizenship with Montenegro would be discriminatory. According to Silajdžić, citizens of Bosnia and Herzegovina who did not possess citizenship of countries that allowed dual citizenship would have to renounce their Bosnian and Herzegovinian citizenship, which makes the dual citizenship arrangements unbalanced (*FENA*, 19 March 2009).

However, a more substantial political problem has emerged in the course of negotiations with Serbia. After the referendum on independence, and the decision of the government of Montenegro to recognise the independence of Kosovo in October 2008, the relationship between the two countries remained strained. Late in 2009, the Serbian press announced that the negotiations for dual citizenship between the governments of Serbia and Montenegro have reached a dead end. The headlines in the Serbian press were followed by

¹⁶ Author's translation.

quite different information in the Montenegrin media, who claimed that the negotiations were paused and not terminated. While the conundrum over the continuation of the negotiations is ongoing, the stances of the two governments seem as far away one from another as they were when the negotiations started, because the Serbian approach to dual citizenship is much more liberal than the Montenegrin one. The reason for the Montenegrin restrictive approach to dual citizenship is the tendency of the governing coalition to preserve the voting arithmetic in Montenegro. This arithmetic would be seriously impaired by the addition of new voters to the Electoral Register,¹⁷ thus challenging the DPS-led government and - to a certain extent - Montenegrin statehood. The proposal for dual citizenship in Serbia is supported by the parties that belonged to the former unionist/pro-Serbian bloc, many of which present themselves as the guardians of Serbian interests in Montenegro.

Conclusions

The Montenegrin case does not completely fit the Balkans paradigm of ethnic citizenship. However, neither is it purely 'civic', as the rhetoric of the Montenegrin officials would imply. If the two most recent Citizenship Acts are analysed, what emerges from this is that they were indeed a tool of political engineering (similar to other successor states of the former Yugoslavia). Still, the Montenegrin case is somewhat peculiar, as the two acts were not aimed at providing ethnic homogenisation. The first reason for this is that Montenegro in itself is a pluriethnic society in which none of its ethnic groups forms a majority: 45 per cent are Montenegrins; 28.7 per cent are Serbs; 8.6 per cent are Bosniaks; 4.9 per cent are Albanians; 3.3 per cent are Muslims; and 1 per cent are Croats (Monstat 2011). The second reason is that the rationale for the adoption of the two acts, and the context in which they were enacted were different. While the 1999 Citizenship Act determined the citizenship issues in a republic of the FRY, thus being the second tier of citizenship legislation, the 2008 Citizenship Act is a piece of legislation of a sovereign state. In addition, the 1999 Citizenship Act was adopted as one of the policies of the Montenegrin government aimed at detaching from the FRY institutions and countering Milošević, which explains why this document conflicted with the 1996 Yugoslav Citizenship Act. In itself, this act was neither aimed at framing the quest for Montenegrin independent statehood (as this gained momentum only after the fall of Milošević in 2000), nor at homogenising Montenegrin nationhood. However, the 1999 Citizenship Act reinforced Montenegrin autonomy within the Yugoslav federation, since it openly conflicted with the FRY law (designed for a unitary country or a federation in process of homogenisation and centralisation) and reversed its primacy (republican citizenship became primary instead of the federal one).

By contrast, the 2008 Montenegrin Citizenship Act was a means of consolidating Montenegrin statehood through the separation of the link of individuals with the community of law (state) and the community of sentiment (*ethnié*). The most recent Montenegrin Citizenship Act in itself has generated much public debate due to the restrictions it posed in terms of acquisition of Montenegrin citizenship and the regulation of dual citizenship. The strict residence criterion of 10 years of continuous legal residence on the Montenegrin territory has been a barrier to many displaced persons and IDPs who settled on Montenegrin soil during the wars of Yugoslav disintegration acquiring Montenegrin citizenship. At the

¹⁷ The Electoral Law links voting rights with permanent residence, which means that only the current citizens of Serbia with permanent residence in Montenegro would be added to the Electoral Register, in case they would obtain Montenegrin citizenship. The exact statistics on such people are unavailable at present.

same time, a provision on the establishment of dual citizenship through international agreements on grounds of reciprocity is enshrined in the Montenegrin Citizenship Act. However, due to the political strains, the individual dual citizenship agreements between Montenegro and the other successor states of the former Yugoslavia (apart from Macedonia) failed to materialise. A more important reason for the deadlock in the negotiations over dual citizenship is related to the non-consolidated nationhood and voting arithmetic, particularly in the case of dual citizenship *vis-à-vis* Serbia. Serbian citizens who would be entitled to Montenegrin citizenship, and who would reside in Montenegro for two consecutive years prior to the elections, would increase the number of voters. Since the newly admitted citizens would be most likely to associate themselves politically with the pro-Serb parties in Montenegro, it is unlikely that Montenegro will adopt a more liberal approach to the negotiations for dual citizenship with Serbia.

On 28 April 2010, Montenegro ratified the Council of Europe's Convention on the Avoidance of Statelessness in Relation to State Succession, with effect from 1 August 2010. Additionally, on 22 June 2010, Montenegro ratified the European Convention on Nationality (placing a reservation on Article 16, dealing with dual citizenship), entered into force on 1 October 2010. In addition, it is expected that the political conditionality of the EU will have a significant impact on the facilitation of procedures for the acquisition of citizenship for certain categories of applicants. This, in turn, would reduce statelessness and regulate the status of displaced persons and IDPs. At the same time, it will be interesting to follow and observe to what extent the dynamics induced by political conditionality will be reflected in the willingness of the Montenegrin policymakers to accept the rules of a new quest – the quest for Europeanisation.

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