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Nationality and Citizenship in the Former Yugoslavia: From Disintegration to European Integration

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In this article the author examines the multiple changes in the nationality and citizenship status of the former citizens of Yugoslavia in three distinct phases between 1991 and 2006. After Yugoslavia's break-up, almost all successor states used their citizenship laws as an effective tool of nation-building and ethnic engineering. The recent democratization of the region under EU influence resulted also in significant improvements in the nationality and citizenship legislations and administrative practices. Nevertheless, this trend depends largely on the further process of EU enlargement and eventual accession of the ex-Yugoslav states.

Introduction

Since 1991, the citizens of the former Socialist Federal Republic of Yugoslavia (SFRY) have been subjected to frequent and unpredictable changes in their nationality and citizenship status. The new citizenship laws of the successor states affected considerably a significant number of individuals, often with dramatic consequences for their everyday lives and personal destinies.

Citizenship is generally considered as a basic precondition for political, economic and social rights, as well as a legal ground for many individual rights (e.g. property, housing, healthcare, employment and social benefits). When a state dissolves and is succeeded by new states, the redefinition of citizenship becomes an issue of crucial importance and the safeguarding—or restriction—of previous rights is at stake. The situation is complicated further when the new state favours a certain ethnic group, usually its ethnic majority, and thus discriminates the *others*, who by their origins

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cannot conform to the dominant ethnic character of the new state, and whose loyalty to the latter is questioned.

My central claim in this article is that almost all successor states of the former Yugoslav federation—with some variation according to their specific context—used their respective citizenship laws as an effective tool of nation-building and ethnic engineering.[1] Citizenship laws played a key role in determining the citizenry of the new states, as well as rights guaranteed to citizens by the new state. Following Yugoslavia's dissolution, new legislation introduced in the successor states in most cases offered privileged status to members of the majority ethnic group regardless of their place of residence (inside or outside their borders). On the other hand, they substantially complicated the process of naturalization for those outside the ethno-national core group, i.e. for ethnic minorities and for nationals of other former Yugoslav republics, who were permanent residents when the new citizenship regime came into effect.

Thus, citizenship laws were an important part of the general strategy of ethnic engineering and redesigning populations of the successor states to solidify their ethno-national core groups. In its extreme manifestation, it was also used as a subtle, but nonetheless powerful, tool of ethnic cleansing. The deprivation of nationality and the subsequent loss of basic social and economic rights were quite effective in forcing a sizeable number of individuals to leave their places of residence. Forced migrations, war crimes and genocidal practices attained the same result that authors of citizenship laws managed to achieve silently, and under the protection of international law, which does not question the exclusive right of a state to define its citizenship. By examining three phases in the evolution of the nationality and citizenship laws in the former Yugoslav states, their administrative implementation and general political consequences, from 1991 to the present day, I will present how this right was used and abused, and how the EU integration process influences current practices in this area.

The overall democratization of the region, which is underway with partial success, requires a profound liberalization and revision of the existing citizenship laws. In order to make these states more inclusive and in principle more democratic, a radical reform of the dominant conception of the ethnically defined nation-state seems to be necessary. However, the realization of this task will not be possible without a strong commitment by the EU to bring these countries swiftly under a new supranational 'roof'.

Dual Citizenship in Yugoslavia

The 1974 Constitution of the SFRY was meant to be the peak of the proclaimed politics of decentralization since the 6th Congress of the Communist Party of Yugoslavia in 1952, after which the Party was significantly renamed the *League of Communists of Yugoslavia*. A general consensus exists among scholars that after its 1974 Constitution, the Yugoslav federation was put on a track of progressive transformation into a confederation. Sabrina P. Ramet, for instance, in her influential book on Yugoslav federalism, argues that the relations between Yugoslav republics since the early 1960s more closely resembled those of sovereign states competing in the balance-of-power system rather

than a well-integrated state (Ramet 1992: 4, 19). Yugoslavs called it a 'cooperative federal system' and its main ideologist Edvard Kardelj qualified it in 1971 as 'no longer classical federation … nor … classic confederation, but … a socialist, self-managing community of nations' (in Ramet 1992: 63). The trend only accelerated after 1974. This *fédéralisme dénaturé* (Drouet 1997: 85), based at the federal level on the rule of consent and unanimity, was characterized by the ever-growing dependence of the federal institutions (the federal army was an exception) on constitutive republics.

The hybrid structure of the state was manifested equally in the constitutional definitions of the federal and the republican citizenship. This legal uncertainty raised the possibility of different and conflicting interpretation, and consequent practical solutions. According to Article 249 of the 1974 Constitution, Yugoslav citizens had a '*single* citizenship of SFRY' and every citizen of a republic was '*simultaneously*' a citizen of SFRY. The third line of the article in question put it as follows: 'a citizen of a republic on the territory of another republic has the same rights and obligations as the citizens of that republic'. Since the possession of one or another republican citizenship did not have any concrete consequences, Yugoslav citizens had the 'practically unlimited right of option for a particular republican citizenship' (Pejić 1998a: 174). Federal citizenship was thus both single and dual by its very nature, ever since *simultaneity* of the republican and federal citizenship was established.

In fact, this created confusion in legal literature over the question of primacy between two citizenships. During the high time of socialist Yugoslavia, it was mostly law students who took an interest in this tricky question, the precise answer to which became of utmost importance when the dissolution of the federation occurred. If one takes a look at the views of legal experts on the issue, it is evident that no consensus exists on the question of primacy. Some authors point out simultaneity and identity of the two citizenships (Pejić 1998a) or find, in the equality of rights and duties of a citizen of one republic living in the other, evidence of 'the primacy of Yugoslav citizenship over those of different republics' (Drouet 1997: 84), and describe the pre-eminence of federal citizenship as 'an important guarantee for minorities facing the majority 'nation' of one or another republic' (Drouet 1997: 91). On the other hand, authors like Rakić argue that, though only federal citizenship was legal in the international arena and republican citizenship had an 'exclusively internal legal role', republican citizenship had the primacy over citizenship of SFRY according to Article 281 on the rights and duties of the Federation and respective provisions of the Law on SFRY Citizenship. 'It can be concluded beyond doubt … that the former republican citizenship had primacy and not the citizenship of SFRY' (Rakić 1998: 59; see also Muminović 1998: 73).

It is important to note that the registries of citizens existed only on the republican and not on the federal level. Multiple changes in citizenship laws, which were similar yet not identical in each republic, general unawareness of the importance of republican citizenship and often chaotic administrative procedures resulted in incomplete registries. This would prove to be a major obstacle for a significant number of individuals at the moment of their registration in the registries of citizens of new states. This almost non-existing awareness of the *dual character* of citizenship in the former Yugoslav

republics was equally shared by the citizens, the administration and even by legal scholars (see Medvedović 1998: 49–52).

Since republican citizenship did not have any practical consequences and was a legally ineffective 'phantom citizenship' (Pejić 1998a: 185), and since federal citizenship was a strong guarantor of the rights for citizens living outside their native republics, the *residence*[2] became the most important factor in the everyday life of Yugoslavs and also stimulated the free movement of people. For more than four decades, the benefits of Yugoslav citizenship established personal and family ties across republican borders, whereas economically motivated migrations and resettlement of the federal administration's personnel resulted in a considerable number of individuals living outside, and even very far, from their republic of origin and, to a certain degree, in the modification of ethno-demographic balances in Yugoslav republics.

Legislators of the successor states deliberately neglected the actual situation on the ground at the moment of disintegration and, once the protective federal roof over their heads disappeared, 'internal' migrants became the first to suffer the consequences. Federal citizenship was invalidated and republican citizenship became the only strong criterion for the acquisition of a new citizenship.

Citizens into Aliens, Neighbours into Enemies

The violent dissolution of socialist Yugoslavia started a troublesome phase in the nationality status of the former federal citizens, lasting throughout the 1990s (i.e. until the end of the wars of Yugoslav succession). By designing republican citizenship as the primary legal basis for the acquisition of new citizenship, all former Yugoslav republics adopted a position of legal continuity between republican citizenship and citizenship of the successor state. The new states also defended their right to define their own citizenry by self-designed criteria. The decision was based and reinforced by international law that places the nationality policy under the exclusive domestic jurisdiction of each sovereign state.

Nonetheless, international law and treaties, as well as international human rights declarations, express a clear intention to limit the autonomy of states in this area.[3] According to legal experts (such as Hofmann 1998 and Pejić 1998a: 185–186), the right to a nationality in the case of state dissolution should be translated as the right to automatic acquisition of the new nationality, the right to the maintenance of one's nationality, the right to dual and multiple citizenship, or the right to opt for nationality.[4]

In the case where the dissolution of a multinational federation leaves its successor states with ethnically mixed populations, and a large number of individuals who as federal citizens established their lives in different parts of the now defunct federation, it is usually up to the ethnic majority to decide on the citizenship status of the entire population. The following analysis of the citizenship and nationality legislation and administrative practices elucidates the character of the states that the former Yugoslav republics decided to construct after the break-up of their federation.

Croatia

The Law on Croatian citizenship is a good example of the new paradigm of citizenship in the former Yugoslavia. Adopted at the end of 1990, the new Croatian Constitution establishes 'the Republic of Croatia as the national state of the Croatian people and the state of members of other nations and minorities who are its citizens'. There is, obviously, a highly significant difference if we compare it with the replaced Constitution of the Socialist Republic of Croatia, which defined Croatia 'as a national state of the Croatian people, *state of the Serbian people in Croatia* [emphasis added] and state of nationalities living on its territory' (Art. 1). The 'Croatian people' in the new Constitution doubtless refers to ethnic Croats in Croatia and abroad, including the 'near abroad' (Bosnia-Herzegovina mostly) and the Croatian ethnic diaspora in general. Consequently, this definition had a direct impact on the new citizenship law, which was conceived on two major principles: legal continuity and Croatian ethnicity (Omejec 1998: 99).

According to this principle, Croatian citizenship was granted automatically to all holders of the former Croatian republican citizenship. To other residents the Article 8 on naturalization of *aliens* applied. Naturalization was thus guaranteed to a resident with at least five years of continuous residence in Croatia, provided that he or she had his or her foreign citizenship revoked, that he or she is *proficient* in the Croatian language and *Latin* (!) script (Art. 8 para 4) and that a conclusion can be derived from the applicant's *conduct* that he or she is attached to the legal system and customs persisting in the Republic of Croatia and, finally, that he or she *accepts the Croatian culture* (Art. 8 para 1, point 5).[5]

Consequently, considerable problems arose for residents with less than five years of residence and for persons unable to prove release from their previous republican citizenship. Great discretionary power was accorded to the Ministry of Internal Affairs' employees in charge of citizenship procedures to judge whether an applicant met all the above-mentioned criteria without obligation—until 1993 when the Constitutional Court found this unacceptable—to state reasons for a refusal.

The law was silent on the status of persons from other republics but it explicitly accorded a privileged position to individuals of Croat ethnic origin (Art. 30) to whom the residency requirements did not apply. Even more problematic was the provision that considered the possibility for ethnic Croats without previous residence in Croatia to obtain Croatian nationality (Art. 16). It largely paved the way for ethnic Croats from Bosnia-Herzegovina—with significant political consequences during the war there in which Croatia was implicated as well—but also to members of the Croatian Diaspora (Art. 11)—even if they did not satisfy the condition in Art. 8 regarding proficiency in the Croatian language—to obtain Croatian citizenship through facilitated naturalization.

A related but somewhat different problem was the status of Croatia's Serb minority, given the fact that, soon after the Croatian Declaration of Independence, Croatian Serb militia, with generous help from what was known as the Yugoslav People's Army, took control of almost one-third of Croatia's territory, and the question of citizenship status

of this population remained unresolved for almost a whole decade (and in the case of Serb refugees it remained precarious until recently). On the other hand, a huge number of Croatian Serbs continued to live in territory controlled by the Croatian authorities. They managed to regulate their status either smoothly (i.e. as holders of the former Croatian republican citizenship they were automatically registered in new registries of citizens) or, in some cases, with considerable difficulties.[6]

Serbia and Montenegro

On 27 April 1992, Serbia and Montenegro jointly proclaimed the Federal Republic of Yugoslavia (FRY). The FRY, for its part, claimed to be the legal successor of the former SFRY in the international arena. Legislators in that country apparently avoided the issue of the nationality and citizenship status of their citizens, the result of which was a delay in the promulgation of a new citizenship law until 1996. FRY's Citizenship Law, which entered into force in 1997, clearly accorded primacy to federal citizenship over that of constitutive units, contrary to the former SFRY Constitution. Individuals entitled to FRY citizenship were those in possession of the republican citizenships of Serbia and of Montenegro on 27 April 1992, as well as permanent residents from other republics living in the FRY on that very day, if they did not have foreign citizenship. A clearly problematic dimension of this law was its retroactive application (the law entered into force five years after the due date of 27 April 1992; Pejić 1998a: 178).

During the wars in Croatia and Bosnia, thousands of Serb refugees settled in the FRY. The law offered a tiny possibility for acquisition of FRY citizenship to this group on the condition that they did not have foreign citizenship and upon application considered by the Ministry of Internal Affairs, which had huge discretionary power. The 1995 commentary on the draft of the law instructs that citizenship should not be granted to refugees from territories under the control of Bosnian Serb or Croatian Serb authorities (Pejić 1998a: 177). Furthermore, the transitional provisions of the 1996 law explicitly state that the decision on granting FRY citizenship to the citizens of other republics (mostly refugees) should not conflict with 'the interest of Yugoslavia's security, defense and international position' (Art. 48-3; see Buzadžić & Baletić 1996: 40).

Evidently, the law made the acquisition of new citizenship difficult for Serb refugees. One could think that this mistreatment of Serb refugees in Serbia and Montenegro—the opposite of the Croatian approach in treating ethnic Croats from Bosnia, for instance—clearly contradicts this paper's claim concerning the use of citizenship legislation in building ethnically homogenized states in the former Yugoslavia. Nevertheless, this was not the case. Deliberate political manipulation of the refugee problem was part of Milošević's Serbian war strategy and attempts to expand its territory at the expense of neighbouring Croatia and Bosnia. Without citizenship of their republics of origin, and without the possibility of rebuilding their lives in the FRY, Serb refugees became real hostages of Milošević's policy and its failure in the neighbouring countries as well as within Serbia and Montenegro. Many refugees were redirected to the

multiethnic region of Vojvodina, and to a lesser degree to Kosovo and Montenegro, where they slightly influenced the ethno-demographic balance.[7]

The Serbian province of Kosovo, until the 1999 NATO intervention, was a place of continuous violations of citizenship rights of local Albanians. Although Kosovo Albanians were lawful citizens of the FRY, their situation had been deteriorating since the autonomy of the province was revoked and Albanians were expelled from public institutions. Under Serbian administrative, military and police rule, this group of Yugoslav nationals in all but name was deprived of political and civil rights. Human Rights agencies reported numerous difficulties for Albanians to register Yugoslav nationality in the registry of citizens and to obtain travel documents or even to re-enter the country.[8] The situation escalated throughout 1998 and 1999 and it is significant that, during the conflict in Kosovo, the Serbian police and Yugoslav army engaged in the massive destruction of identity documents and passports belonging to expelled Albanians.

Bosnia-Herzegovina

The outbreak of war coincided with international recognition of the independence of Bosnia-Herzegovina. The wartime legislation on citizenship was grounded on legal continuity between the republican and the new citizenship—thus citizenship was guaranteed to all of Bosnia's citizens. It adopted a liberal approach when dealing with residents from other republics and formally permitted dual citizenship. This law applied only to the territories controlled by the Sarajevo government, whereas the non-recognized Serb and Croat political entities in Bosnia adopted their appropriate legislation. The Dayton Peace Agreement in its Annex VIII annulled all wartime legislation and the 'Dayton' Constitution of Bosnia and Herzegovina (annex IV) defined citizenship of the country as *dual*.[9]

The question of the primacy between two entities' citizenships and the state's citizenship, however, has not been clarified. Some legal experts even think that the Dayton Peace Agreement accords primacy to these entities, which may have serious legal consequences for Bosnia's state sovereignty (Muminović 1998: 84–86). On the other hand, and in spite of the ethnic definition of the entities (a Serb one and a Croat-Bosniak one), the Constitution of the country provides that all constitutive peoples and all citizens of Bosnia and Herzegovina are equal within its territory. The 1997 Law on Citizenship affirms that they 'shall enjoy the protection of those rights … under the same conditions and regardless of their entity citizenship' (Art. 3).

As a truly multi-ethnic country, with no majority and no minorities, Bosnia-Herzegovina's law on citizenship could not have adopted the strategies used in other ethnically more homogenous former Yugoslav republics. Moreover, its liberal approach to the issue of citizenship of residents from other republics considerably reduced the number of stateless people in that country. However, one cannot ignore the fact that these laws were designed within the general framework of an internationally brokered peace agreement. Even today, the naturalization of foreigners that took place during the war remains the only controversy.[10]

FRY of Macedonia

In fYR Macedonia, similarly to Croatia, the ethnic majority did not resist the temptation to proclaim its independent state as 'a national state of Macedonian people' in spite of the fact that the Albanian minority was at least twice the size (around 25% of the population) of the Serb minority in Croatia.[11] In the 1992 Macedonian Law on Citizenship, legal continuity was also adopted, offering new citizenship to all former citizens of the socialist republic of Macedonia (including Macedonian Albanians and other minorities) and explicitly allowing dual citizenship. One provision considering residents from other Yugoslav republics proved, however, that Macedonian legislators at the time were preoccupied with ethnic demography and engineering as well. The provision affirms that a permanent resident has to live continuously in fYR Macedonia for at least fifteen years (Art. 7). This affected all residents from other republics but it was clear that one particular group was targeted: namely, Kosovo Albanians who moved to fYR Macedonia during the period of socialist Yugoslavia and thus were reinforcing numerically the relative size of the Albanian minority. Perceiving this as a threat, the Slav majority facilitated naturalization for the ethnic Macedonian Diaspora (Art. 8). Albanians complained that the new Constitution rendered them second-class citizens, which was not the case in the republic of Macedonia within the Yugoslav federation. It seems that this perception of their position and the above-mentioned Art. 7 made the seeds of future conflicts (i.e. in 2001) grow faster.

Slovenia

Following the end of the one-week conflict with the federal army in July 1991, Slovenia rapidly distanced itself from the crisis in the rest of the former Yugoslavia, and in succeeding years it managed to promote itself as a promising candidate for EU accession. The country was often characterized as an example of human rights protection with its functioning state apparatus, its respect for the rule of law and its successful adoption of EU legislation. This image would probably have remained unquestioned, had it not been for the case of the so-called 'erased people'.

The Slovenian law on Citizenship from June 1991 in its Article 40 provides that individuals from other republics who had lawful residence in Slovenia on 23 December 1990—the day of the referendum on independence—could become Slovenian citizens upon request within six months. The law was not clear on a number of accounts, such as the question of what constitutes acceptable proof of residence on the due date, the issue of release from previous republican citizenship and the question of exclusion from citizenship of individuals who had 'taken up arms' against the Republic of Slovenia (which clearly targeted the personnel of the federal army and their families). However, some authors—apparently not informed on further developments—qualified the Slovenian law as the 'least controversial' law on citizenship in the former Yugoslavia (Pejić 1998a: 180). In comparison with other laws on citizenship in Yugoslavia's successor states, this may have been true; yet the law itself becomes quite controversial

when we take into consideration that it enabled some policies that might be qualified as contributing to a strategy of ethnic engineering. One such measure was taken on 23 February 1992.

On that day, some 30,000 ethnically non-Slovene residents from other republics were literally *erased* from the civic registries in Slovenia. In the months to come, their documents (passports, driving licences, IDs, etc.) were invalidated. They lost all civic and social rights, their jobs, healthcare and social benefits and became 'dead' from an administrative point of view—put simply, *izbrisani* or the erased.[12] This 'administrative ethnic cleansing'[13] or 'soft genocide' as it was called by observers and human rights activists was facilitated by a short delay of six months, the confusion of application procedures, numerous difficulties in obtaining all the necessary documents at the moment of Yugoslavia's break-up and the following escalation of violence, and finally by overall political confusion (Slovenia was still legally part of the SFRY and was not internationally recognized until January 1992, see Miklavič-Predan 1998: 221–226). The result was that thousands of former permanent residents found themselves without legal status. Among the *erased*, some 12,000 left Slovenia and approximately 18,000 stayed on throughout the 1990s without a satisfactory solution to their problems (seven persons committed suicide, many died without appropriate medical care, to cite just the extreme consequences of the loss of civic status).[14]

It is also worth noting that in the official and public discourse citizens of other republics who settled in Slovenia during the SFRY are often presented as 'economic immigrants',[15] as if Slovenia were not part of the former federation that by its Constitution provided the federal citizens (including Slovenes residing outside Slovenia) with equality in rights and duties within its territory. The intention behind this claim appears to be to compare these new Slovenian minorities to the guest workers in Western Europe, which could eventually serve as grounds for the adoption of similar legal devices when dealing with their nationality status.

The Big Picture: 'Metics' in the Former Yugoslavia

One could safely conclude that 'confusion and arbitrariness' (Pejić 1998a: 173) marked the implementation of the new citizenship laws in the former Yugoslav states. Nevertheless, it is important to add that this confusion was only partly due to the unstable political context. In the majority of cases, the governments involved in the conflict produced it intentionally. As far as arbitrariness is concerned, it occurred somewhere between legal prescriptions and actual administrative practices, and it was clearly part of a general strategy of creating ethnically redesigned states—which often questioned existing borders as well—in favour of a given ethnic majority.

The framework of a common Yugoslav state enabled its population to migrate freely, be it as civil servant or as 'ordinary' citizen. Over the decades, this freedom of movement resulted in a smooth change in the ethno-demographic structure of its constitutive parts. While all constitutive nations (except Bosnian Muslims) saw their proportion of the population decrease, a significant number of mixed marriages as well as a general all-Yugoslav political and cultural attitude resulted in the 1981 census with

the emergence of the ethnic 'Yugoslavs', a trend that was only supposed to gain popularity in the future (Jović 2001: 22–23). From the nationalist point of view, this state of affairs openly challenged the ethnic cohesion of the constitutive nations in Yugoslavia and their respective republics.

The citizenships laws and the procedures of acquisition of new citizenships proved to be part and parcel of administrative ethnic engineering. The targeted population comprised individuals living in republics other than their 'own', especially if they were numerically reinforcing a domestic ethnic minority (perceived as not 'loyal' to the new state), or were simply of different ethnic origins.

Citizenship laws provided an avenue to eliminate a certain number of citizens from the political, social and economic life of the new state. They helped to modify ethnic balances and social and ethnic structures. New *aliens* thus saw their rights reduced and their residency threatened, which proved to be a powerful tool to force them out of their homes and usually out of the country without employing physical violence. As those people could not claim to be victims of outright ethnic cleansing or forced migration, it turned out to be quite a convenient way for a country to avoid accusations of notorious human rights violations.

In general, we could conclude that the dissolution of a multinational federation and the usual attempts of successor states to define its citizenry deprived a significant number of individuals of their previous status as lawful citizens—as was the case in some former Soviet republics and in the former Yugoslavia. When this break-up is followed by a violent conflict, it may also result in massive migrations and in millions of refugees and internally displaced persons. Citizens *à part entière* are thus transformed into *metics*[16] (the category that seems more appropriate for their particular situation than the usual and overly general one of *aliens*).

Classical citizenship implies *bipolar* relations between nationals and aliens, whereas citizenship in a federation is characterized by a *triangular* relationship between nationals of the member states, nationals of the federation and aliens (Beaud 2002: 317–318). I call it the *federal citizenship contract*. It consists of offering equal rights to all federal citizens throughout a federation's territory, regardless of their *federated* citizenship (citizenship of a constitutive part). In the case of the dissolution of Yugoslav federation, successor states broke the existing federal citizenship contract and adopted the classical citizenship contract that distinguishes only between nationals and aliens, a direct consequence of which was the transformation of numbers of lawful citizens into *metics* (legal or illegal residents with no right to the status of citizens), as if the previous contract had never existed.

The major difference is that, unlike *metics* in the ancient Greek *polis* who never had the privileged position of citizens and remained subject to hereditary social position, or unlike temporary or illegal residents, the Yugoslav *metics* were *citizens* in their places of residence and had been turned into *metics* literally overnight with a more precarious status than Athenian *metics* ever had. Consequently, they found themselves in a position that resembles that of temporary or completely illegal immigrants. They became either (more or less) legal residents and were declared aliens with temporary visas, without a clear estimation of whether they would ever regain the status of lawful

citizens and with a potential threat of deportation, or they were simply transformed into illegal aliens and thus subject to immediate expulsion.

To say that a huge number of individuals in the former Yugoslavia experienced the fate of the *metics* is not an exaggeration if we take into account that refugees joined this population. After fleeing from their republic of origin, they often found themselves in the territory of other republic, in most cases with no right to its nationality (even after several years) and with no possibility to renew their nationality status in their republic of origin. To make the whole situation even more complicated, their republic of origin was more often than not in open conflict with the republic in which they found shelter.

It was not until late 1990s that the situation generally began to improve, with *metics* slowly reacquiring their *droit de cité*, and yesterday's enemies being transformed into neighbours under the influence of the EU integration process. This perspective, however, is overshadowed by certain familiar and new problems that have appeared on the horizon recently.

The European Perspective: Aliens Back into Citizens, Enemies Back into Neighbours?

As an American observer recently remarked, 'when dealing with the Balkans, the devil is usually not in the details but in the failure to confront the obvious' (Joseph 2005: 122). The *obvious,* in this case, means that if one takes general political, social and economic conditions into account, a postwar 'no news is good news' maxim based on particular improvements in different domains is no longer appropriate for the Western Balkans, as the region has been recently 'christened'. There is a growing sense of urgency that the region has to move forward rapidly in order to avoid deterioration. The postwar 'status quo has outlived its usefulness', concludes the report of the International Commission on the Balkans (2005: 8). Observers, scholars and journalists usually agree that international pressure is still much needed and that the most effective incentive for reform is still the EU integration process, which should be managed differently in this region than in Central Europe. That is, the understanding that appropriate measures should be devised for dealing with the particularities of the Western Balkans' situation (Batt 2004; International Commission on the Balkans 2005; and Mungiu-Pippidi 2003: 87). The death of Croatian president Franjo Tudjman in 1999 and the final fall of Slobodan Milošević in 2000 saw the beginning of a new phase. The democratization of the region, as it prepares itself for EU accession, has clearly been under way, although the conflict in Macedonia in 2001, the assassination of Serbian Prime Minister Djindjić and the Kosovo riots of March 2004 showed that regression is still possible. This diagnostic explains a question mark in this article's subtitle and underscores the importance of maintenance of the 'European perspective' that is based on an invitation to the Western Balkans to join the EU as quickly as possible. At the Thessaloniki Summit in June 2003, the EU promised 'a European future' for the region.

Improvements and new challenges in the Balkans influenced directly the question of the nationality and citizenship status of former Yugoslav citizens and the reforms introduced after 2000 opened, in my opinion, a new, *third* phase. As it seems that the

legislative and administrative practice in this field could serve as a reliable indicator for the general mood in the region, there is a need for a short review.

Since the democratic changes in 2000, after which Croatia declared clearly its willingness to satisfy all conditions for joining the EU as soon as possible, the situation improved considerably. Although there are no changes in the text of the citizenship law as yet,[17] current practice in granting citizenship shows a greater degree of inclusiveness. Croatian Serb refugees face no significant obstacles in acquiring Croatian citizenship. Their return to Croatia and the full restitution and reparation of their material goods are some of the most important political conditions for the success of Croatia's accession talks with the EU.

In the now former state union of Serbia and Montenegro, on the contrary, this *third phase* was marked by significant reforms of the citizenship laws in both parts of their malfunctioning state union. Final disintegration was in the air with all the unresolved political questions that we already know from the beginning of the 1990s. The problem of primacy between state union and state citizenship has now clearly been resolved in favour of the latter. At the end of 2004, the Serbian National Assembly adopted a new Law on Serbian Citizenship that annulled the old one (1976/1983) and the Law on Yugoslav citizenship from 1996 (amended in 2001 with provisions allowing citizens of other former SFRY republics to obtain FRY citizenship as well). Its main characteristic is facilitated naturalization of ethnic Serbs and members of the Serbian Diaspora.[18] The law abandons the criterion of residence and in Article 26 offers Serbian citizenship to ethnic Serbs[19] and Serb refugees from other former Yugoslav republics, regardless of their actual place of residence (in Serbia or abroad). In many ways—as regards refugees, Serbs from the other SFRY republics, Diaspora members, etc.—this law bears striking similarities to the aforementioned Croatian law on Citizenship from 1991. It is interesting that it does not mention citizens from Kosovo,[20] still formally a province of Serbia, but it is quite flexible when it comes to applications by Montenegrin citizens.

However, Montenegro, the junior partner in the state union, did not allow its citizens to hold Serbian citizenship. As early as 1999, Montenegro adopted its own law on citizenship whose primacy over federal citizenship was clearly stated in apparent conflict with the 1996 law on Yugoslav citizenship. Local and foreign observers specifically criticized one of its provisions,[21] the appearance of which in the text of the law will not surprise readers of this text. Montenegro imposed a quite significant obstacle for foreign residents seeking Montenegrin citizenship (and according to the draft law on citizenship presented in 2005 it maintained this initial position): ten years of residence in the republic. Predictably, this provision had a target population: Albanian migrants or refugees from Kosovo mainly, but in the context of the inner conflict over Montenegro's independence—the strong pro-Serbian group promoting union with Serbia versus the pro-Montenegrin independence movement—the law targeted (at least partly) citizens of Serbia living in Montenegro (for instance, Serb refugees from Kosovo, or army personnel and their families). In both Serbia and Montenegro one can easily see how the law on citizenship was once more used as a way of sustaining and promoting the demographic superiority of the core ethnic group and as a means of reinforcing a particular political position.

By the time of final revision of this article, Montenegro and Serbia had become independent states following the outcome of the Montenegrin referendum on independence (21 May 2006). As in some previous cases, the citizenship issue became one of the crucial problems in the subsequent negotiations between Serbia and Montenegro on dissolution of their state union and diplomatic relations between the two countries. Most probably, dual citizenship will be allowed to the citizens of one country permanently living in another. It will be interesting, however, to observe new changes in the citizenship laws as well as corresponding administrative practices.

The only state that lived through an armed conflict during this phase of 'democratization' is fYR Macedonia. Within the Ohrid Framework Agreement (in August 2001) ethnic Macedonian and Albanian parties committed themselves to a multiethnic country in order to end the Albanian rebellion. Crucial parts of the agreement concern the country's decentralization, administrative reorganization and change in linguistic policies that will certainly influence the ethnic balance on the ground. The Agreement met Albanian demands, which are seen by this group as legitimate according to their percentage of the population, whereas ethnic Macedonians have feared that decentralization is just a first step towards *federalization* and, eventually, partition of the country. However, the referendum against a law to redistrict municipal borders (in November 2004) failed under EU and Western pressure. Application of the Ohrid Agreement continues, with significant improvements in the minority rights of ethnic Albanians. On the other hand, the perspective of fYR Macedonia's accession to the EU counterbalances growing the fears of the Slavic community. EU membership is perceived as the only framework through which fYR Macedonia could survive as such and as a warranty that concessions given to Albanians will not call into question the state itself. In this context, Albanian demands for a reform of the Citizenship Law were met as well. In April 2002, in a final attempt to preserve the spirit of the 1991 law on citizenship, the proposed draft of the new law reduced the residency requirement from fifteen to ten years and introduced another requirement obliging future citizens to sign a 'loyalty oath' to the state. Finally, on 5 December 2003, the Parliament adopted a new law that reduces the residence requirement to eight years and does not offer any further facilitation for ethnic Macedonians living abroad.

In Slovenia, the only ex-Yugoslav republic to join the EU in 2004, there are still a few thousands of the *erased*. In July 1999 the Act on the Status of Citizens of other SFRY Successor States enabled 7000 of them to obtain Slovenian citizenship or to regulate their status. However, there are some 4000 individuals still waiting for the government to act in accordance with the decision of the Constitutional Court of Slovenia (3 April 2003) ordering the administration to issue immediately permanent residence status to this group. Meanwhile, in April 2004, the right-wing parties organized a referendum on the issue—judged unconstitutional by the same Constitutional Court of Slovenia—on which those Slovenians who did vote voted for the most part against the restoration of rights of the *erased*. This outcome was not in any way binding for the government; the government is still silent and recently the *erased* organized another desperate protest (in February 2005). The case shows clearly that it is not enough to become a member of the EU to further pluralize an ethnically based nation-state. The political

actors and large parts of the population are reluctant to accept the reforms—even to make such a small-scale decision as the restoration of rights of a few thousands persons—as if this in any way questions the dominant ethnic character of the state.[22]

Conclusion: European Citizenship—Neighbours into Partners?

To summarize, during the last fifteen years many former SFRY citizens were turned into aliens—or *metics*—to regain their citizenship status only years later. Neighbours that for decades were partners—and, even more, *brothers*—were turned into enemies, but enemies were, eventually, turned into neighbours again. If under the EU supranational roof the neighbours are turned into partners again, we shall surely witness a brand new phase in the Balkans.

By analysing the issue of nationality and citizenship in former Yugoslavia in the last fifteen years, I have described the changes in three distinct phases. I have indicated that an eventual new phase will be launched if all successor states of the SFRY become members of the EU and if all the former federal citizens become European citizens as well. If this happens—although reality is sometimes harsh to the optimists—European citizenship would bring back to the former Yugoslavs certain rights they enjoyed in the SFRY and that at the beginning of the 1990s legislators in each of the newly independent states thought it impossible to restore.

European citizenship, however, is not *federal* by its very nature and it was cautiously defined—it derives from national citizenship of member states and does not *replace* it—in order to displace discussion on primacy. However, it provides some significant rights to its holders: free circulation and residence in other member states, the right to vote in municipal and European elections, and the diplomatic protection provided by all member states for EU citizens outside the EU.

One is naturally tempted to ask what the practice of European citizenship would be within the former Yugoslavia. Before anything else, it could be the use of the right of free circulation and the right of settlement in other member states. In spite of the negative experiences in the recent past, one should not neglect the importance of a shared language and still existing personal and family ties for future migrations within the region. It is hard to predict the scale of these migrations but the fact is that today, after *democratization* of nationality and citizenship policies, many individuals often hold two citizenships from the former Yugoslav states and this has already had a certain political and social impact. Furthermore, European citizenship will provide important economic, social and political rights. Participation and eligibility at the local and the European level (the national level will nevertheless stay inaccessible for *foreign* migrants even in the more developed and more democratic EU states for a while) will certainly herald new dynamic elements in relations between the ex-Yugoslav states. Again, this perspective will only become a *realistic* one if the construction of the EU is further reinforced—which now depends on the agreement of 25 members—and, furthermore, expanded far enough to embrace the former Yugoslav countries as well.

During the last decade of the twentieth century in the former Yugoslavia, the nationality and citizenship issue was often used by the successor states as a tool of

nation-building and, consequently, of ethnic engineering. The eventual introduction of EU citizenship, on the contrary, should be employed as a tool to repair the injustices of the recent past. It could also offer a chance for the 'peace and cooperation' formula—which successfully reunited Western Europe after the disaster of the Second World War—to prove its validity in the Balkans as well, in the not too distant 'European future'.

Notes

[1] Similar intentions have influenced the writing of new constitutions. In this article I will mostly concentrate on the laws on nationality and citizenship and their administrative implementation. They are obviously closely related and even inseparable from the practice of 'constitutional nationalism' (Hayden 1992). That is, the constitutional redefinition of new states as, generally, the national states of their ethnic majority.

[2] In Yugoslavia nevertheless *residence* never became as important for determining the citizenship status as it is, for instance, in the US legislation. American citizens change their state citizenship *automatically* if they move to another state within the US. There is also a legal possibility for Americans to possess federal citizenship only if a citizen, for example, lives abroad (Neuman 2003: 152–153). Obviously, this type of legislation is more appropriate to federal nation-states in which the primacy of federal citizenship is clearly stated.

[3] Article 15 of the 1948 Universal Declaration of Human Rights states that 'everyone has the right to a nationality' and that 'no one shall be arbitrarily deprived of his [*sic*] nationality nor denied the right to change his nationality'. Article 18 of the 1997 European Convention on Nationality prepared by the Council of Europe sets among its principles in the case of state succession that states should take into account 'the genuine and effective link of the person concerned with the State' and 'the *habitual residence* of the person concerned at the time of State succession'.

[4] The policy of collective naturalization (Rakić 1998: 62–63) rather than that of legal continuity would have been more appropriate to the situation in the former Yugoslavia and to general international efforts aiming at the reduction of statelessness and preservation of basic human rights of an individual in the case of state succession. All successor states of the SFRY predictably avoided the collective naturalization of all habitual residents on their territory regardless of their previous citizenship.

[5] These 'conditions' were mostly imposed on non-Croats, namely ethnic Serbs, coming from other republics. They also provided the grounds for the Ministry in charge to refuse Croatian citizenship to certain individuals (usually non-Croats from other republics, but also some Croatian Serbs, i.e. citizens of the former Socialist Republic of Croatia).

[6] Numerous reports testify to cases of violations of their right to Croatian citizenship. See, for instance, reports on the issue published in nos 1–2 of *Croatian Critical Law Review* (Vol. 3, 1998) focusing on The *Citizenship Status of Citizens of Former SFR Yugoslavia after its Dissolution*.

[7] Taking refugees as hostages was common during the Yugoslav wars. It was part of Tudjman's manipulation of Bosnian Croat refugees sent to the Krajina region after the Croatian *blitzkrieg* military action in 1995 that was followed by expulsions and a massive exodus of local Serbs.

[8] See Human Rights Watch Report on FRY for 1996. Available from http: //www.hrw.org/reports/1997/WR97/HELSINKI-14.htm#P594_183369; INTERNET.

[9] 'Citizenship of Bosnia and Herzegovina, to be regulated by the Parliamentary Assembly, and a citizenship of each Entity, to be regulated by each Entity, provided that: all citizens of either Entity are thereby citizens of Bosnia and Herzegovina' (Paragraph 7—Citizenship).

[10] The 1992 amendments to the decree on Bosnian citizenship facilitated naturalization of persons actively involved in the defense forces (Muminović 1998: 79). On this basis, Bosnian

citizenship was granted to a certain number of foreigners who came mostly from Islamic countries and fought on the Bosnian side. In May 2005, a newly formed commission launched a final revision of all naturalizations from 1992 to 1998. Almost 20,000 citizenships are considered problematic and among their holders are, beside Islamic fighters, Serbs from Serbia and Croatia who acquired citizenship of the Serb entity, and ethnic Bosniaks from Sandzak region (Serbia) who were naturalized in the Bosniak-Croat entity (see '*Sporno 20.000 državljanstava*' [20,000 Citizenship Statuses Contested] in *Slobodan Dalmacija*, 14 May 2005, Split. Available from http: //www.slobodnadalmacija.hr/20050514/bih03.asp; INTERNET).

[11] For an early comparison between Croatia and Macedonia, see Canapa (1993) and Hayden (1992).

[12] For more detailed information on the case see: http: //www.preventgenocide.org/europe/slovenia/; INTERNET.

[13] According to some estimates, up to 300,000 non-Slovene residents lived in Slovenia in 1991. Obviously, the idea of having such numerous 'new minorities' consisting of Croats, Serbs, Bosnian Muslims, Albanians and Roma from other republics was problematic for the first Slovenian independent state's administration. According to article 40 some 170,000 among them regulated their status, whereas the status of others remained unsolved. Many of them left Slovenia (federal army personnel and their dependents, others with non-regulated status, etc.), but those who remained in Slovenia and did not ask on time or obtained new citizenship were later *erased* by an administrative decision.

[14] Slovenia was reluctant to accept the European Convention on Nationality, objecting to the principle that obliges new states to guarantee equal status and economic and social rights to alien residents with citizenship of a predecessor state (see Mesojedec-Prvinšak & Debelak 1998: 212–213).

[15] See for example an article written by employees of the Slovenian Ministry of Internal Affairs (Mesojedec-Prvinšak & Debelak 1998: 213).

[16] Of relevance here is Michael Walzer's analysis of the status of *metics* in Western Europe and in North America as residents who, like Athenian metics, are not and cannot be citizens—'They are ruled, like the Athenian Metics, by a band of citizens-tyrants' (Walzer 1983: 58)—and Will Kymlicka's use of the term, borrowed from Walzer, for whom *metics* are *illegal* immigrants and *temporary* immigrants with no right to become citizens as *legal* immigrants (Kymlicka 2001: 39).

[17] The Croatian parliament is supposed to adopt the European Convention on Nationality in 2006. As the Convention forbids any kind of discrimination on ethnic, religious and racial grounds, and since the Council of Europe already required Croatia to change its law on citizenship, it was made clear by the Croatian authorities that the law—especially controversial points regarding non-equal treatment of ethnic Croats and others—will be rewritten. It will be more difficult for ethnic Croats living outside Croatia to obtain citizenship there without satisfying the usual requirements of actual residence in Croatia. Some other provisions that discriminate against non-ethnic Croatian residents will equally be removed.

[18] Facilitated naturalization for the Serbian Diaspora is seen as a pre-electoral promise of the royalist Serb Renewal Movement. See for example an article in the Serbian weekly *Vreme*, 8 December 2004. Available from http: //www.vreme.com/cms/view.php?print=yes&id=398849; INTERNET.

[19] It also mentions in Article 26, para 1, 'member of Serbian or *other ethnicity or ethnic group* from the territory of Republic of Serbia regardless of his [*sic*] place of residence … if he submits a written statement that considers the Republic of Serbia his state'.

[20] The question of the citizenship of Kosovo citizens has yet to be resolved. UNMIK established the new registries of citizens after the 1999 conflict and has issued new Kosovo identification cards and 'travel documents'. The problem of Kosovo citizenship is directly related to the negotiations on the final status of Kosovo.

[21] See, for instance, a report entitled 'Serbian-Montenegrin Relations and the Question of Citizenship of FRY Citizens', by the Lawyers' Committee for Human Rights—YUCOM. An executive summary is available from http: //www.esiweb.org/pdf/esi_document_id_20.pdf; INTERNET.

[22] The review of the postwar phase in nationality and citizenship changes ends here without a report from Bosnia and Herzegovina. There were no significant changes in this domain in this country, save the above-mentioned revision of the registries of citizens.

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