Law of Nationality and the Dissolution of Yugoslavia*

An odd and somewhat disquieting feature of citizenship talk in the academy is its oscillation between two discursive poles, one formalistic and the other substantive. We speak of the legal rules that govern and distinguish between citizens and non-citizens, but we also speak of what citizenship actually means in a society in which citizens and aliens tend to be unequal in resources as well as status. We generally use formalistic conception to describe what the law says citizenship is, and the substantive conception to lament the fact that it is not yet what it could and should be. This tension between formal and substantive conceptions of citizenship reflects the start difference between political reality and civic aspiration, and is particularly applicable to former Yugoslavia states.

Recent developments have heightened this tension by infusing new uncertainties and complexities into the current debate over citizenship, gathered under the thematic portmanteau, idée fixe of globalism. Whether commentators think that globalism is a harbinger of universal human rights, political reform, and multicultural ethics, an insidious agent of a corrosive world capitalism, or something else, all agree that it will have profound implications for the future of the nation-state.

Globalism’s cheerleaders and sceptics alike claim that an integrated world economy and new communications and information technologies are inexorably shrinking the planet, transforming a system of territorial nation-states into a global village bounded only by cyberspace. This, they say, renders anachronistic the notion of political identity tied to a nation’s institutions, laws, borders, culture and citizenship. However, in the former Yugoslavia region, nation-states have been proliferating, not dying. In them, demands for ethnic self-determination and even independence multiplied.

As for the citizenship, it has become an important human rights issue in the aftermath of political transitions in Central and Eastern Europe, and of the dissolution of the Soviet Union, Czechoslovakia and Yugoslavia. This is

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essentially true in the former Yugoslavia, where citizens held dual citizenship: that of the federal state, and that of one of the six republics. Thus, current citizenship questions must be viewed in light of the previous legal regime. Citizens of former Yugoslavia held two citizenships: federal and republican, i.e., one of the six republics. Republican citizenship was more consequential in inter-republic relations than in the day-to-day dealings of ordinary people. All citizens were equal before the law notwithstanding their republican citizenship, domicile or location.

A basic characteristic of the previous legal regime was the duality of citizenship. Citizens of the former Yugoslavia held two citizenships: federal and one of the six republics. Federal citizenship derived from republican citizenship. Having been granted republican citizenship, an individual would automatically acquire federal citizenship. Republican citizenship was of particular consequence in inter-republic relations as opposed to the daily lives of ordinary people, and most people, including lawyers, were not even aware of republican citizenship. In birth certificates and certificates of citizenship, republican citizenship was usually not specified, although the law so required. Moreover, citizens were equal before the law notwithstanding their republican citizenship or domicile or where they found themselves. With the confederalization of Yugoslavia in late sixties and early seventies, republican citizenship, as a characteristic of statehood, became important to the republics striving for more autonomy and decentralization.

Republican citizenship was determined by several factors: domicile in 1948, origin, or agreement of parents. The basis for determining republican citizenship was the 1948 Census. Accordingly, a person would be a citizen of the republic in which his/her domicile was in 1948. For instance, an individual who lived in Croatia would be the citizen of Serbia if s/he had been registered in Serbia in 1948.

An individual born after the 1948 Census would be registered as a citizen of the republic whose citizenship his/her parents had held. If the parents were of different republican citizenship, a child would acquire citizenship of the republic in whose territory s/he was born provided that one of the parents held citizenship of that republic. Otherwise, parents could agree on whose citizenship the child would hold, or could register the child as a citizen of a third republic. In the absence of agreement, the child would acquire citizenship of the republic in which s/he was born. Such regulations led, in practice, to situations where some individuals were born in one republic, lived in another, and yet were registered as citizens of a third and there were cases where siblings held different citizenships.

Every citizen of the former Yugoslavia was able to choose his/her republican citizenship regardless of the one acquired by origin. The sole
condition for changing citizenship was establishing domicile in that republic, which was a matter of formality. Thus, the issue of republican citizenship was not significant in daily life. However, it became very important after the dissolution of Yugoslavia, as many citizens found themselves living in the territory of a republic whose citizenship they did not hold.

All the states that emerged from the former Yugoslavia have adopted new citizenship laws, but none of the new laws sufficiently acknowledge the dissolution of Yugoslavia or the previous dual citizenship regime. The cases are very different, though, and the following display of casestudies will not only corroborate such a conclusion but will differ in the approach and the depth of analysis.

The Case study of Bosnia and Herzegovina

I. Description of the Law

The Law on Citizenship of the Republic of Bosnia and Herzegovina regulates conditions and procedure for acquisition and termination of Bosnian citizenship.

I.1. General

Article 27 of the Law provides that persons who acquired Bosnian citizenship under the provisions of the previous law are citizens of the Republic of Bosnia and Herzegovina (RBiH). Article 29 of the Law states that a person who held citizenship of the former Yugoslavia and was domiciled in the territory of the Republic of Bosnia and Herzegovina on April 6, 1992, is considered a citizen of Bosnia and Herzegovina. Article 2 states that: A citizen of the Republic of Bosnia and Herzegovina may also hold citizenship of another country (dual citizenship).

I.2. Acquisition of Citizenship

Citizenship of the Republic of Bosnia and Herzegovina may be acquired by origin, birth in its territory, naturalization, or by international agreements.

A child acquires citizenship of Bosnia and Herzegovina by origin if both parents are citizens of the Republic at the moment of birth, or if one parent is a RBiH citizen at the moment of birth and the child was born in Bosnia, or if one parent is a citizen of RBiH at the moment of birth, the other parent is stateless, and the child was born abroad. A person born abroad who
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qualifies for citizenship by origin must be registered before a competent body in Bosnia and Herzegovina or before its consular mission before the age of 23. Thereafter, this person can claim Bosnian citizenship only if one parent is a RBiH citizen and if s/he would otherwise become stateless. A person who acquired RBiH citizenship by origin is considered to have held this status since birth.

A child acquires citizenship of Bosnia and Herzegovina by birth if the child was born or found in the territory of the RBiH, and both parents are unknown, or their citizenship is unknown, or if they have no citizenship.

An alien may acquire Bosnian citizenship by naturalization or by virtue of an international agreement. By naturalization, an alien acquires citizenship if s/he fulfils the following criteria: is 18 years of age; has a release from a foreign citizenship or evidence that the release would be granted if Bosnian citizenship is acquired; has had a permanently registered residence in the RBiH for the last 10 years prior to applying for citizenship; has a permanent income ensuring his/her material and social security; has not been sentenced to expulsion from RBiH territory as a security measure; and has not been sentenced for committing a crime against the social order, crimes against humanity and humanitarian law, or a crime against the Army.

In addition, an individual who fulfils the conditions of not having been subject to expulsion on security grounds, and not having been sentenced for committing certain crimes, may acquire RBiH citizenship if s/he did not take part in or assist the aggression against Bosnia and Herzegovina, and if s/he provides a written statement that s/he feels like Bosnian citizen. A member of the Armed Forces, which includes the Army, reserves, and the police, may acquire RBiH citizenship without fulfilling the conditions set forth by Article 8. The conditions for acquisition of RBiH citizenship are eased if the person in question is: a Bosnian expatriate or a descendant of an expatriate of Bosnia and Herzegovina; married to a RBiH citizen; a juvenile adopted by a RBiH citizen; or an alien whose acceptance of RBiH citizenship is in the interest of Bosnia and Herzegovina.

A person who acquired citizenship by means of naturalization is considered a citizen of Bosnia and Herzegovina from the date on which the decision becomes effective. A decision on acquisition of Bosnian citizenship may not be annulled, repealed, cancelled or changed if the person in question would, thereby, become stateless.

I.3. Loss of Citizenship

Citizenship of the Republic of Bosnia and Herzegovina may cease by release, renunciation, revocation, or international agreement.
Release may be obtained only if a person fulfils the following conditions: is 18 years of age; has no obstacles regarding military service; has settled all property-rights relations from marriage and/or a child-parent relationship toward RBiH citizens; is not the subject to criminal charges brought ex officio, or, has served any prison sentence; and has foreign citizenship or a proof that s/he will be granted foreign citizenship.

A decision on release shall be annulled upon request if the person who requested the release has not acquired foreign citizenship within one year from the release, and if s/he continues to live in Bosnia and Herzegovina. If foreign citizenship has not been acquired within three years after the release was granted, a person who lives abroad may, through the consular mission of Bosnia and Herzegovina in the country of his/her residence, request an annulment of the decision on release within the following three years. For reasons of security of RBiH, reciprocity, or other reasons arising from relations to another country, a request for release may be refused notwithstanding fulfilment of the said conditions.

A citizen may renounce RBiH citizenship after the age of 18, provided s/he holds another citizenship.

The Bosnian Law on Citizenship provides for revocation of citizenship. Article 20 empowers a competent body to revoke a person’s citizenship without a hearing if the domicile or the residence of the person in question is unknown. If this decision cannot be personally delivered to the person in question, the decision becomes effective on the day of its publication in the Official Gazette of RBiH. Citizenship can be revoked only if the person has another citizenship.

During the State of War or the State of Immediate War Danger, releases from citizenship shall not be granted, nor shall renunciation be accepted. In exceptional circumstances, a person who has lived abroad for longer than fifteen years (ten, if married to a foreign citizen), and who is not eligible for military service or is a male over 50 or a woman over 45 years of age, may be granted a release if s/he was abroad on April 8, 1992.

1.4. Procedure

A petition for acquisition or termination of citizenship is to be filed with a municipal office of the Ministry of the Interior, or if a person resides abroad, with the consular mission of Bosnia and Herzegovina in the country of residence. The Ministry of the Interior shall make a decision on acquisition or termination of citizenship. The decision is final and cannot be appealed, but proceedings may be brought before an administrative court. In exceptional circumstances, during the State of War or the State of Immediate
War Danger, a decision denying the release from or acquisition of citizenship may be appealed before the Government. Citizenship can be proved by a valid identification card or passport, or, in the absence of these, by a certificate of citizenship or a birth certificate.

II. Analysis

States have a sovereign right to determine procedure and conditions for acquisition and termination of their citizenship. Nevertheless, the right to citizenship is a basic human right recognized by Article 15 of the Universal Declaration of Human Rights, and is also a basis for the exercise of many other rights. Therefore, certain minimum standards and due process should be observed. Furthermore, absent an extraordinary justification, persons who enjoy citizenship should not be rendered stateless by the dissolution of states.


Article 29 of the Law states that a person who had the citizenship of the former Yugoslavia and the domicile in the territory of the Republic of Bosnia and Herzegovina on April 6, 1992, is considered a citizen of Bosnia and Herzegovina. This provision imposes citizenship, by operation of law, on persons who for some reason had domicile in Bosnia and Herzegovina (job, education, etc.), but did not intend to become Bosnian citizens or remain in Bosnia, and who were forced to remain there due to the war and the concurrent restrictions on movement. This restriction, with regard to leaving Bosnian territory, still exists.

Citizenship is a right, not an obligation, and thus should not be imposed. Article 15 of the Universal Declaration on Human Rights grants the right to a nationality. Inspired by this provision, all other international treaties that address the issue of citizenship frame the issue in terms of a right. The International Covenant on Civil and Political Rights states, for example, that every child has the right to acquire a nationality. A similar provision is found in the Convention on the Rights of the Child.

When initially promulgated as a decree in 1992, Article 29 stated:

A citizen of another republic of the former Socialist Federal Republic of Yugoslavia, born in the territory of the Republic, and having continuous domicile in the territory of the Republic for the last five years prior to April 6, 1992, is considered a citizen of RBiH if s/he makes a formal statement accepting citizenship of RBiH within six months after the proclamation of
the end of the war, and provides for a document proving cessation of the previous citizenship.

This provision acknowledged the fact of the dissolution of the former Yugoslavia, and enabled citizens to avoid statelessness as a consequence of that dissolution.

The present provision, however, imposes citizenship on all persons who found themselves in the territory of Bosnia. In addition, during the State of War or the State of Immediate War Danger, the provisions on renunciation of, and release from, citizenship are suspended.

One solution is to amend the Law to allow these persons to obtain citizenship of Bosnia and Herzegovina as an option. Another solution is to provide for a simple renunciation procedure where the individual demonstrates that s/he has another citizenship, and declares s/he was forced to remain in Bosnia because of the restrictions on movement caused by the war. In this respect, the principle laid out in Article 6 of the 1930 Convention on Certain Questions Relating to the Conflict of Nationality Laws may prove useful: a person possessing two nationalities acquired without any voluntary act on his part may renounce one of them with the authorization of the State whose nationality he desires to surrender.

II.2. Dual Citizenship

The Bosnian Law on Citizenship clearly provides for dual citizenship. The Dayton Peace Agreement, however, restricts that possibility to cases where there is a bilateral agreement approved by the Parliament of Bosnia and Herzegovina. This provision limits the scope of dual citizenship. The states of the region should consider undertaking negotiations regarding this issue, which will secure not only durable solutions for many refugees, displaced persons and other citizens of the region, but could promote lasting stability as well.

The provision on dual citizenship should be further understood in light of Article 28 of the Law, which states that a citizen who holds citizenship of another state is regarded as if s/he were only a Bosnian citizen. Although this is a usual clause in citizenship laws, this provision should be seen in a broader context. If a person holding Bosnian citizenship is treated as a Bosnian citizen solely, this implies that military duties in the Bosnian army must be performed as well. There is no provision for conscientious objection in Bosnia and Herzegovina. However, Article II.2 of Annex 7 to the Dayton Peace Agreement provides for some guidelines in dealing with this issue. In particular, the Agreement provides for positive consideration of requests for
exemption from military service based on individual needs. The fact that Bosnian citizen holds another erstwhile enemy citizenship could be considered as a justifiable ground for conscientious objection. In addition, provisions of the Draft European Convention on Nationality and Military Obligations in Cases of Multiple Nationality (Chapter IV) may be a good set of guidelines for resolving this issue. The Draft Convention provides that persons possessing the nationality of two or more States Parties shall be required to fulfill their military obligations in relation to one of those States Parties only. States Parties may determine the application of this provision by special agreement. Otherwise, provisions set forth by Article 13.3 of the Draft Convention are applicable. These provisions are based on more effective citizenship and individual choice.

II.3. Acquisition of Citizenship

A member of Bosnian Armed Forces may acquire RBiH citizenship without fulfilling the conditions set forth by Article 8 of the Law. This provision applies to foreign fighters, who were of great concern to the international community in the context of the peace negotiations. This provision could be seen as discriminatory on the grounds of (other) status which is prohibited by the Constitution in Article II.4, and, therefore, should be repealed.

II.4. Loss of Citizenship

The Bosnian Law on Citizenship provides for revocation of citizenship. It is a sovereign right of a state to decide on the requirements and procedures for granting or terminating citizenship status, but due process should be observed. By contrast, Article 20, which governs revocation, empowers the Ministry of Interior to revoke a person’s citizenship without a hearing if the domicile or the residence of the person in question is unknown. If this decision cannot be personally delivered to the individual in question (which is likely the case where the domicile or residence of the person in question is unknown), the decision becomes effective on the day of its publication in the Official Gazette of RBiH. Citizenship can be revoked only if the person in question has another citizenship.

RBiH citizenship may be revoked if: a) a person is a member of an organization whose activities are directed at the destruction of the constitutional system of the Republic; b) a person, including a member of a foreign intelligence service, is considered detrimental to the interests of the Republic by his/her activities in foreign state bodies or organizations, or c) a
person actively takes part in an organization whose aims are contrary to the U.N. Charter and the Universal Declaration of Human Rights.

II.5. Procedure

A decision on acquisition or cessation of citizenship is final and cannot be appealed. It may be remedied only by a proceeding brought before an administrative court. However, since 1992, when the Decree on Non-Application of the Law on Administrative Proceedings was enacted, proceedings before an administrative court were not possible. Therefore, there was no remedy in several cases. In exceptional circumstances, during the State of War or the State of Immediate War Danger, a decision denying the release from or acquisition of citizenship may be appealed before the Government.

In concluding the analysis, however, attention has to be drawn to a particular feature of Dayton Peace Agreement. For, Article I.7 of Annex 4 to the Dayton Peace Agreement (Constitution) states: There shall be a 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.

The Constitution states that "no person shall be deprived of Bosnia and Herzegovina or Entity citizenship arbitrarily or so as to leave him/her stateless." It goes on to say that no person shall be deprived of citizenship on any ground such as sex, race, color, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Hence, like the Law itself, the Peace Agreement relates directly to the issue of the dissolution of Yugoslavia. "All persons who were citizens of the Republic of Bosnia and Herzegovina immediately prior to the entry into force of the Constitution are citizens of Bosnia and Herzegovina." It also addresses the issue of naturalization of individuals after the beginning of the war: "The citizenship of persons who were naturalized after April 6, 1992, and before the entry into force of the Constitution will be regulated by the Parliamentary Assembly." This provides for possible revision of citizenship status that has been acquired. Revision enables a new decision in cases that were legally decided according to the laws which were in force previously. Since such an approach could be contrary to the principles of legal security and vested rights, application of this provision should be closely monitored.

Finally, unlike the Law, which allows dual citizenship unconditionally, Article I.7.d of Annex 4 makes dual citizenship conditional on a
bilateral agreement governing this matter between Bosnia and Herzegovina and that state. The bilateral agreement must be approved by the Parliamentary Assembly, in accordance with Article IV.4.d of Annex 4. In such a context, it is note worthy that Federal Republic of Yugoslavia and Bosnia signed the Agreement on Dual Citizenship on October 29, 2002. Under the deal, residents who have already obtained citizenship in both states would be permitted to maintain dual citizenship. Furthermore, dual citizenship would be available if a person has spent more than three years in each country, or one year for spouses of local residents.

The Casestudy of Serbia and Montenegro

In examining the new democratic Serbian and Montenegro governments’ approach to citizenship issues one cannot separate those from migration issues. Both republics are faced with two principal issues related to immigration and refugees that require substantial cooperation with North American and European countries that are donors of international aid as well as recipients of Yugoslav migrants and third country nationals transiting Yugoslavia. These issues include:

- grappling with migration issues that the international community deems to be priorities, including demilitarizing border management, combating human smuggling and trafficking; and drafting and implementing new aliens law, which are to include asylum policies and procedures consistent with international standards;
- planning for the return or integration of 350,000 refugees from Croatia and Bosnia, and another 150,000 internally displaced Yugoslavs from Kosovo, primarily by offering dual citizenship so that the refugees can integrate but retain their rights and privileges;
- in assessing the situation in the Serbia and Montenegro, it is important to keep in mind that the State Union still faces formidable challenges. In Serbia, the status of Kosovo remains unsettled, with the United Nations continuing to govern the province and NATO peacekeepers maintaining a fragile peace between ethnic Albanians and the smaller number of ethnic Serbs and Roma who remained in Kosovo. As for Montenegro, the political situation is unsettled too, for the republic appears evenly split between those who want to pursue independence and those who wish to remain within the State Union. As for the State Union itself, its true willingness to cooperate with the International Criminal Tribunal in Hague remains an uncertain issue as of this writing. Finally, the economic outlook depends heavily on the
willingness of western countries and the IMF and World Bank to provide
needed assistance and loans.

Some of the principal migration and refugee issues thus require our
immediate attention:

1. Aliens Law. The drafting of a new aliens law, with policies and pro-
cedures to adjudicate asylum claims, is still on the both republics agenda.
The drafting of the law, however, appears to be a higher priority for the
European Union than for the republican governments themselves. At present,
asylum seekers are referred to UNHCR for adjudication of their claims.
UNHCR often requests third country resettlement for those whose claims
fall within the 1951 Refugee Convention. Under the aliens law to be drafted,
Serbia and Montenegro would adjudicate refugee claims itself. Preparatory
to drafting a new law, Serbia and Montenegro are examining the policies and
procedures of other central and eastern European countries, with particular
reference to candidate countries for EU enlargement.

2. Refugees and Displaced Persons. There are more than 400,000 refu-
gees in the republic of Serbia. Most of the refugees are ethnic Serbs dis-
placed from Croatia (primarily the Krajina region and eastern Slavonia) and
Bosnia. Displacement into Serbia began as early as 1992 and continued with
large influxes from Croatia in 1995 and again in 1998. In addition, about
200,000 people are internally displaced, mostly ethnic Serbs and Roma from
the province of Kosovo. Smaller populations of both refugees and internally
displaced persons are in the republic of Montenegro. Some of the refugees
and internally displaced as a result of conflict, whereas others were forced to
relocate as part of ethnic cleansing campaigns.

The challenge for the State Union and republican governments with
the support of the international community is finding durable solutions for
the refugees and internally displaced persons. Generally referenced are three
durable solutions: voluntary repatriation, local integration and third country
resettlement. All three options are in place in Serbia and Montenegro, but
there is still some debate about the relative balance to be given to each
solution, particularly regarding repatriation versus integration.

3. Voluntary Repatriation. Agreements are in place permitting volun-
tary repatriation to both Bosnia and Croatia. Most returns to Bosnia are
spontaneous and appear to be to Republica Srpska, the Serb section of
Bosnia. An exact number of returns to Bosnia is not known, for the porous
borders between Serbia and Montenegro and Republica Srpska permit re-
fugees to go back and forth at will. Reclamation of property remains a major
barrier to repatriation, however, particularly for refugees whose property is
now occupied by others who were displaced during the conflict.
A formal arrangement governs repatriation to Croatia. Under the bilateral agreement between the two governments, the Croatian consulate issues travel documents to those who wish to return. The estimate is that as many as 90,000 Croatian refugees have applied for the documents. Far fewer have returned permanently under this program, however. Refugees must show that they resided in Croatia for five years prior to their departure to qualify for repatriation. They must also demonstrate that they will have accommodations upon return. Since many of the refugees lost their houses upon their departure, or have seen their public housing privatized, the lack of accommodation is a real barrier to return. An even greater barrier is fear about their future safety. There were even the cases of refugees arrested upon coming back to Croatia for visits. These arrests have had a chilling effect on the willingness of refugees to repatriate even though some of the arrests were for well-documented war crimes. Reflecting these problems, recent surveys show that a majority of the refugees do not believe that repatriation is a feasible solution for them. A number of respondents thought that more pressure could be placed on Croatia to lift barriers to return, but an equal number also felt that the majority of refugees would prefer to stay in Serbia. Many families have been in Serbia for years, and their school age children, in particular, have already integrated. A number of programs have been established to encourage and facilitate return to Croatia, but they are still of a rather small scale.

At present, there is little if any expectation of return of internally displaced persons to Kosovo. Even agencies that operate repatriation programs for Croatians and Bosnians agree that the unsettled situation in Kosovo preclude discussion of any large-scale return.

4. Local Integration. In contrast to the pessimism about repatriation, there is optimism that large numbers of refugees and internally displaced persons will be able to achieve local integration. First steps towards this goal occurred when then FRY passed legislation permitting dual citizenship. Since 1997, refugees have been eligible for FRY citizenship but until the new legislation, they had to renounce their previous citizenship. Croatia already accepts dual citizenship, at least in principle, and as already stressed the bilateral agreement on dual citizenship was signed with Bosnia in 2002. Dual citizenship permits refugees who settle permanently in Serbia and Montenegro to retain rights to property and eventual return to their former home country. This provides both psychological and practical safeguards to those who are unwilling to renounce their homeland even if they are doubtful that return will ever take place.
Even those who do not take on Serbia and Montenegro citizenship are afforded most of the rights of citizens. They have indefinite permission to remain in Serbia and Montenegro, access to the labour market and education, access to health care on the same basis as nationals, and can even get passports for travel. Some receive small grants from the government in lieu of the pensions that they would have received had they not emigrated.

The barriers to full integration appear to be more economic than legal. Hence, the prospects for successful integration depend principally on recovery of the economy, which will affect economic opportunities for refugees and internally displaced persons along with others in Serbia and Montenegro. Formal employment is difficult to find in Serbia and Montenegro, and many of the refugees who work do so on the grey economy. They trade items in street stalls and engage in other similar activities. The refugees and internally displaced persons who remain in collective centers need their own housing, as do many of those who have been living with family and friends. Often the housing units are overcrowded and in serious need of repair.

On top of it all, there appears to be considerable need for capacity-building within the republican governments if they are to be full partners in the process of refugee integration.

5. Yugoslav Diaspora. It is estimated that there are some 1.5 million former Yugoslav citizens and another 1.5-1.8 million former nationals working abroad. Many of the expatriates have university degrees. This is particularly true for those who left the country during the Milosevic era. On an annual basis, the Foreign Ministry hosts a conference to which members of the diaspora are invited. In the past, this process has led to contributions from the diaspora towards humanitarian assistance. There is general recognition that the expatriate community is a source of both human and financial capital for the economic development of Serbia and Montenegro. The government would like to stimulate the return of qualified nationals who would bring capital back to invest in productive enterprises. Focusing on a few wealthy expatriates who could buy entire companies, it does not appear to be looking at models used in other countries that permit large numbers of expatriates to contribute small amounts to infrastructure or business development. Officials generally dismissed remittances as an important economic input, saying that the amounts are small and mostly go towards consumption. Again, there appeared to be little familiarity with the experiences of other countries, in which remittances have had multiplier effect in stimulating the economy even when primarily used for consumption.
Conclusion

Serbia and Montenegro is clearly in a state of early transition from dictatorship to democracy. Its future will depend on both internal reform and the willingness of the international community to financially and politically support needed change. Such pressing issues as smuggling/trafficking and durable solutions for refugees and internally displaced persons are receiving welcome attention during this period of transition. Cooperation between Serbia and Montenegro and the donor governments, who are also recipients of irregular migrants from or transiting Serbia and Montenegro, is essential to progress being made on these fronts.

The Casestudy of Macedonia
(Former Yugoslav Republic of)

The account of Macedonian case largely focuses on international instruments and domestic provisions, including the 1992 Law on Citizenship and the Criminal Code, relevant to combating racism and intolerance.

Macedonia has ratified most of the international legal instruments relevant to combating racism and intolerance, and has accepted article 14 of the Convention on the Elimination of All Forms of Racial Discrimination, allowing the possibility for individuals to file petitions before the UN Committee on the Elimination of Racial Discrimination. In accordance with article 118 of Macedonian Constitution, international treaties ratified by Macedonia form part of domestic legislation and are directly applicable.

On the subject of domestic provisions, it is crucial to stress that the Constitution establishes the fundamental principle of equality of all citizens before the law and contains several provisions guaranteeing minority group members' basic rights and ability to develop their cultural identity – for example, article 48, which, inter alia, secures the right of national minorities freely to express, foster and develop their identity and national attributes; and article 7, which sets out their right to use their language and alphabet.

When it comes to the 1992 Law on Citizenship and its requirements for the acquisition of citizenship, it renders the acquisition of citizenship more difficult for ethnic Albanians and Roma/Gypsies, who suffer from especially high levels of unemployment and poverty. It is noteworthy, though, that the government has been preparing revisions to the law. The latest draft reportedly includes a reduction in the period of permanent residency necessary to gain citizenship, as well as a reduction in the
administrative fee for citizenship applications. The Ministry of the Interior is also willing to provide applicants with information about the status of their application at all stages of the process; all decisions on acquisition and loss of citizenship contain reasons in writing and are open to appeal to the Commission for Appeals and ultimately to the Supreme Court; the Ministry also assists applicants in obtaining documentation and records by providing direction as to the appropriate procedures to follow and by checking the records of other former republics of the former Socialist Federal Republic of Yugoslavia.

The Criminal Code contains several important provisions aimed at combatting racism and intolerance: article 137 penalises the limitation or denial of the rights of individuals established by the Constitution, by law or by ratified international covenants on the basis of, inter alia, race, national origin, religious belief and language; article 417 outlaws the violation of any of the basic human rights and freedoms acknowledged by the international community, on the basis of a difference in race, colour of skin, nationality or ethnic appurtenance, and it also penalises the spreading of ideas about the superiority of one race over another, the advocating of racial hatred and the instigating of racist discrimination. However, very few, if any, cases involving racism or discrimination have been brought to court under the criminal law provisions aimed at combating them, so the implementation of legislation in this area could be improved through a clearer understanding of the causes of this state of affairs.

The principle of non-discrimination is contained in different laws and regulations dealing with specific aspects of civil and administrative law, but there is no specific anti-discrimination legislation in the areas of employment, housing, and the provision of goods and services. While the constitutional guarantee of non-discrimination covers these areas, this guarantee would be strengthened by supplementary legislation in specific areas.

In that context, it is noteworthy that the Office of the Public Attorney (ombudsman) began exercising its functions in March 1998. The ombudsman is charged with ensuring that the legal and constitutional rights of citizens are not violated by organs of the state administration or other public bodies and agencies, and is empowered to receive and seek non-judicial settlement of individual complaints.

Another important institution is the Council for Inter-Ethnic Relations, which is empowered to advise the Assembly on issues affecting inter-ethnic relations and the rights of national minorities. This institution is of vital importance in the context of Macedonia, where the different national communities tend to live relatively separate lives and where complex inter-
ethic relations within the region have a large impact. During the Kosovo crisis, the Council served as a forum for open discussions between members of different ethnic groups.

In 1999 Macedonia was overwhelmed by a rapid influx of Kosovar refugees, mostly ethnic Albanian, but also including Roma; while most of the Kosovar Albanians have now returned to Kosovo, Roma continue to seek refuge, fearing persecution by ethnic Albanians in Kosovo, who accuse them of collaborating with the Serb forces; the refugees were granted temporary protection providing them with the right to food, accommodation, health care and education, but this status did not permit them to work or to make a request for temporary residence; in March 2000 the number of refugees benefiting from temporary protection was approximately 8530, including several thousand Roma/Gypsies; the UNHCR estimated the total number of refugees in the country, counting those not registered, at around 12 000. The efforts of the authorities and population of Macedonia to welcome such large numbers of refugees, thus, has to be stressed.

As in many other countries, the Roma/Gypsy community in Macedonia faces particular disadvantages, especially in the area of education and employment, hence special efforts should be made to increase levels of education and employment of this socially and economically marginalised group. Insufficient knowledge of the Macedonian language upon entry into school may present an obstacle to the success of some Roma/Gypsy children living in Roma settlements. The government indeed has taken important provisional measures to increase the numbers of students from minority groups in higher educational institutions, including the introduction of a quota of places reserved for members of these groups. The quota system, however, has provoked a certain amount of hostility from ethnic Macedonians and encouraged negative stereotypes about members of minority groups. As for the national unemployment problem, the most recent surveys estimate that unemployment among the Roma/Gypsy population is 71.8 percent. The government considers this to be a consequence of the changing labour market situation and of a lack of qualifications among the Roma/Gypsy population. However, indirect and direct discrimination frequently play a large part in explaining this situation.

The issue of most particular concern in Macedonia is the need for improved inter-ethnic relations and enhanced interaction between ethnic groups in all areas of society. Macedonia holds together a very delicate ethnic balance, made up of a majority of ethnic Macedonians, a large Albanian minority, and other minority groups including, inter alia, Turks, Roma, Serbs and Vlachs. Despite this diversity, each of the main ethnic
communities tends to live in a relatively homogenous world of its own. Even where members of different ethnic groups live and work alongside each other, they often have limited contact in daily life. Although interaction is increasing, particularly among young people and the educated and professional segments of society, many members of the various groups still tend to go to different restaurants, different cafés, different stores and different schools. The organisations and associations of civil society too, are in large part divided along ethnic lines, as are political parties. Therefore, there is a growing awareness of the need to encourage further interaction and communication between the various communities. Most notably at present, for the inter-ethnic relations are still tense, with each group harbouring negative stereotypes and fears about the others. Relations between the two largest ethnic groups, Macedonians and Albanians are especially complex, being intertwined with the regional context of the Balkans and thus reflecting not only the internal reality within the country, but also events in neighbouring countries. Relations between the Roma and the other ethnic groups have also been negatively affected by the conflicts. In particular, there have been disturbing reports of an increase in ethnically motivated violence against the Roma. In this context of actual or latent inter-ethnic tension and separation between ethnic groups, leaders of public opinion, such as politicians, public figures and journalists, bear a special responsibility for decreasing mistrust and fears as well as improving tolerance and acceptance.

Finally, despite the participation of Albanians and other minority groups in politics at the national and local level, these groups are greatly under-represented in state institutions, such as the public service at the national and local level, the police, and the judiciary. In this regard, a more reflective minority representation would not only allow members of these groups to participate more fully in Macedonian society and have improved access to these institutions, but it would also provide spaces for constructive interaction between members of these groups.

The Casestudy of Slovenia

1. The succession of Slovenia. Slovenia became independent in 1991 and according to international and domestic mainstream public opinion is the only success story on the territory of the former Yugoslavia. Institutionally and economically Slovenia has been the most developed among newly established states of former Yugoslavia. Except 10 days war for independence, there was practically no war, almost no wounded and dead bodies, no bombing, no refuges fleeing the country etc. Slovenia became
known as the country where democracy, economic development, security, civil society and respect for human rights have high priorities. Already before its succession from Yugoslavia Slovenians have claimed for itself an European identity and have tried to differentiate themselves from the “Balkans”. In public discourse the territory of former Yugoslavia was transformed into an imaginary Balkans, the realm of violence, primitivism, irrationality, and the similar.

After the succession of Slovenia from former Yugoslavia ethnic Slovenians automatically become Slovenian citizens. As for the residents of non-Slovenian origin (i.e. from other republics of former Yugoslavia), they had to apply for the Slovenian citizenship. Those who didn’t gain citizenship were secretly erased from the Register of Permanent Residence (RPR). They were deprived of all the rights that arise from the status of permanent residents: they were stripped of all social and economic rights including the right to live in Slovenia, although they had been living in Slovenia for decades with their families; they had their homes, social networks, employments and so forth in this country.

2. Slovenian Law on Citizenship. Slovenian Law on Citizenship was one of the most important laws, which accompanied the proclamation of independence of Republic Slovenia. Before dissolution of former Yugoslavia everyone had federal Yugoslavian and republican citizenship. The later was a special legal institute according to which each person, citizen of Yugoslavia was simultaneously, without special request, a citizen of one republic. The republican citizenship was unknown to the vast majority as it had no legal or other affects regarding rights and duties. Only after the dissolution of Yugoslavia the republican citizenship entailed legal consequences. In Slovenia, those who were registered in republican citizenship book became Slovenian citizens automatically, the rest of the population living in Slovenia had to apply for Slovenian citizenship. As republican citizenship was acquired on the basis of the principle *ius sanguinis* its ethnic perspective could be identified already at this point. People who came to Slovenia as migrant workers from other republics of former Yugoslavia and their children, although born in Slovenia, had to apply for Slovenian citizenship within 6 months window in 1991. There were two conditions. The first one was a formal status of permanent resident. The second condition was that they did not pose a threat for public order, security and defence. One can imagine how such a loose condition – a condition which a priori violates equality before the law – could be (mis)used by public authorities for rejecting their applications for citizenship. For example, officers of former Yugoslav national army were constructed as a “public enemy” and therefore
denied obtaining citizenship, as well as those who were convicted to prison sentences. It can be assumed that there was a hidden principle according to which Slovenian citizenship was or is something of which one had to prove oneself worthy of it. The notion of worthiness of Slovenian citizenship has manifested very clearly in last two years, when erasure become a public issue. Right wing politicians have argued that erased people didn’t want Slovenian citizenship and accordingly this shows their disrespect for Slovenian nation and Slovenian state. The (aspired) political stance of the Slovenian residents of non-Slovenian ethnic origin became a legitimate (but not legal) ground to deny (residential) citizenship and rights that arose from that status.

3. The erasure. After the proclamation of Slovenia’s independence on June 25, 1991 there was a 6-month window for lodging the application to apply for citizenship. The majority gained the Slovenian citizenship (about 171,000 people). The small minority (about 2,300 people) were rejected. There was also a group of people who did not apply for Slovenian citizenship. It can be assumed that they found their status as permanent residents satisfying to enjoy residential, civil, social and economic rights or they taught they were automatically Slovenian citizens. Against these people who did not become Slovenian citizens, either because they didn’t apply for citizenship or their applications were rejected an unconstitutional, illegal act of erasure from Register of Permanent Residents took place in February 1992. This act of erasure was carried out secretly by Ministry of Internal Affairs, without any legal ground whatsoever. The number of the erased persons is 18,305, according to data of the Ministry of Internal Affairs, but also higher numbers were suggested.

According to the Law on Aliens, which suddenly was applied on them, they became “aliens staying illegally in Slovenia”. By staying illegally in Slovenia they fell under the police jurisdiction. About the erasure or “killing the juridical person in them” (to use Hannah Arendt words) erased found out accidentally, on case-by-case basis. People were not officially notified about their loss of permanent residence; they were left without any written decision about the change of their status.

Such a way of non-informing people, without any possibility to control one’s own legal status or to complain violates the constitutional right to legal remedies, right of equal protection of rights and right to personal dignity and safety. In addition, people were completely individualised and treated as bureaucratic objects. The burden for gaining back their residential status was shifted on the affected persons themselves, as if they were responsible for loosing the right to live in Slovenia. It is important to stress,
however, that the exclusion could only be implemented if the erased were first de-humanised, which was done through racist discourse.

4. Racism. How the racist ideology manifested? In the first half of the nineties public discussions appeared, which openly expressed hostility towards Slovenian citizens of non-Slovenian ethnic origin, i.e. those who gained Slovenian citizenship in accordance with Article 40 of the Law on Citizenship (these are people from other republics of former Yugoslavia). There were public suggestions to withdraw their citizenship rights. The rightwing-oriented deputies repeatedly requested revision and revocation of citizenships already acquired under Article 40 of Slovenian Law on Citizenship. The rationalisation for such an unconstitutional idea was that “it was too easy to gain Slovenian citizenship”, that “citizens of non-Slovenian decent have not assimilated enough in Slovenian society/culture”, that “Slovenian culture and Slovenian language are jeopardized”, and the like. As already mentioned, Slovenians were trying to prove that they did not belong in the “Balkans” by spreading the idea that everything related to the Balkans was harmful and incompatible with Slovenian culture, including those citizens (with or without Slovenian citizenship) who had ethnic origins in other ex-Yugoslavia republics.

Such a hate speech didn’t affect only individuals of the “wrong” ethnic origin, but did harm to the whole society. It resulted in all-embracing public normalisation of exclusionary public discourse and practices. The key player is not only the state, which attempts to control everything, and can guarantee or violate rights of individuals, but a different, much more dispersed totalitarianism of mass society or social totalitarianism. It can be defined as a moral social police in the project of forced homogenisation. The implementation of the erasure (and persistent ignorance of the socio-economic problems and personal degradation that erased individuals and their families suffered) was possible in such an ideological context, where it seemed that political nationhood or statehood has been substituted with ethno-national unity, where rights and belonging to political community have had ethnic character. According to Hannah Arendt nation–state cannot exist once its principle of equality before the law has broken down. Without this legal equality, which originally was destined to replace the older laws and orders of the feudal society, the nation dissolves into an anarchic mass of over- and underprivileged individuals.

5. Violation of human rights. As a result of the erasure the whole list of personal and social rights were violated. The most typical were: right to legal remedies; protection of human personality and dignity; right to equal protection of rights; prohibition of torture; protection of personal liberty;
freedom of movement; right to personal dignity and safety; protection of family integrity; parental rights and duties; right to employment or dismissals from work; right to pension; right to medical treatment; right to social assistance; protection of the privacy of correspondence and other means of communication; or right to compensation.

The consequences of the erasure were deportations from Slovenia, confinement to Deportation centres and above all general personal insecurity and radical degradation of their socio-economic status. Many interviewed persons reported that they had found themselves on the edge of the bare survival. They were stripped of every political status and wholly reduced to bare life. Only what was left to them was that they were still human beings and subjects of human rights.

When speaking of the attempts to re-legalize residence in Slovenia, people frequently described it as a bureaucratic vicious circle. One of the conditions for acquiring citizenship (through regular naturalization) or residence permit was official evidence that the person has a permanent means for living in Slovenia. Many did not have a means of survival, precisely because they had been erased – through the erasure they lost their jobs or their pensions. Another option to prove the condition of possessing a permanent means for living in Slovenia was presentation of a contract proving that they were supported by their spouse. However, the salary of a spouse had to be sufficiently high to be deemed as ensuring social security for all family members. In short, the erased people and their families whose material status was not very good (and it deteriorated precisely because of the erasure), did not fulfil conditions for the acquisition of residence permit or citizenship through regular naturalization. And, since they did not have residence permits, work permits or citizenship, they could not get a job, so the vicious circle maintaining social exclusion was perpetuated.

However their inalienable human rights were seriously violated, but no juridical or other institution nor the general public seemed to care to protect them and to compensate the damage. In 1999 and in 2003 the Constitutional court established that constitution was violated and demanded that the authorities compensate them. This demand hasn’t been implemented until today.

6. Human rights as overlapping citizenship rights. It is true what Arendt wrote, that the rights of man, supposedly inalienable, proved to be unenforceable – even in the countries whose constitutions were based upon them – whenever people appeared who were no longer citizens of any sovereign state.
Persons without citizenship or residential rights as they are people who were erased from the register of permanent residents (or as refugees without refugee status are) are becoming such a disturbing element in the context of modern nation-states, because they appear as discontinuity between a man and a citizen, nativity and nationality, they bring to light the difference between the birth and the nation. The whole question of human rights was and still is blended with the question of national emancipation; only the emancipated sovereignty of the people, of one’s own people, seemed to be able to ensure them. In this sense, the erased are truly people of human rights – the first and the only real appearance of rights outside the fiction of citizen that always covers them over.

7. The role of police and bureaucracy. The damage is done to the very structure of legal institutions when a relatively large number of residents had to live outside the jurisdiction of general legal framework and without legal protection. Putting certain categories of people outside the protection of the law is the first essential step on the road to total domination. The incapacity to treat all individuals as legal persons (i.e. persons having the status of a citizen or of a foreigner with permanent or temporary residence) may lead to such a group of people coming under the authority of the police, that is to say, the police regime. The erasure created a situation in which the very presence of these people in Slovenia was a violation of the law, and of course, such situations are dealt with by the police. The sociology of the police teaches us that the categories that first come under the police regime are those who lack power within important state and other institutions. A particular group of people becomes police property when the ruling elite hands over their problems to the police. In symbolic terms, in such a context the police become the guardians of citizenship status. The erased, without right to residence and without the right to work, were forced to transgress the law constantly. They were liable to imprisonment (in Deportation centre or in local police stations) without ever committing a crime. The entire hierarchy of values which pertain to civilized countries was reversed in their case.

In addition to the police also bureaucracy played a huge part in implementing the erasure. One can ask how it was possible that the administrative staff demanded a foreign passport with an official foreign address and an exam proving that someone speaks Slovenian language although they knew that the person was born in Slovenia and had no other homeland than Slovenia. How it was possible that so many ordinary people, bureaucrats, policemen, judges and so forth were involved in systematic severe violations of human rights? Why didn’t they resist the implementation of erasure, which was obviously an outrage not only to legal norms.
but also to common sense? Or to ask with other words, how is it possible that in most known cases there was no ethical dilemma manifested?

In theory, it is suggested that moral inhibitions against criminal or unconstitutional activities tend to be eroded once three conditions are met, either singly or together: 1) the violation of human rights is authorised (by official order; in Slovenian case it came from the Ministry of Internal Affairs); 2) actions are routinized (by rule-governed practices and exact specification of bureaucratic object); and 3) the victims of unconstitutional activities are de-humanized (by ideological definitions). In Slovenian case this was racist ideological subtext, which was and still is largely normalised and widespread.

Conclusion

The erased established their own non-governmental organisation and start fighting politically for their rights only 10 years after the erasure. Only in the 2002 they came out publicly and collectively, as victims of exclusionary governmental practices and bureaucratic oppression. This shows that the fundamental deprivation of human rights is manifested first and above all in the deprivation of a place in the world which makes opinions significant and actions effective.

In ten years of systematic violation of human rights, suffering and pain of constructed ‘other’ did not penetrate the public discourse. Erased were constructed as cultural ‘other’ exactly through humiliation and exclusion from all spheres of life, in many cases even from their family life. The disturbing experiences were rather silenced in order to preserve the normalising premises of everyday life. This silence as well as the gap between advocated values of equality and real life experiences can be defined as cultural anaesthesia. This formula implies that the ability to achieve the collective representation in public culture is unevenly distributed within systems of economic, ethnic, gender, sexual and cultural domination. Although the erasure has become an important public issue and there was even a referendum to question the proposed law, which could partially compensate the damage, cultural anaesthesia still prevails in Slovenian public space.

Concluding remarks

In the light of the casestudies presented above one can claim that in former Yugoslavia countries the citizenship was used as efficient means to
both strengthen and insist political loyalty. Behind this strengthening we can find the classical philosophical idea of bartering freedom and safety. This association of ideas leads the scrutiny to premises of social security – to the main contents of social policy, where the concept of citizenship, as a frame of social rights, is very topical. But the basic questions still remain: who is (or can be) a citizen and what does it mean to be a citizen?

In the legislation there can be found some detailed answers to these questions. As mentioned, the main thread is still construed by reference to nationality, nationhood. Here we move on levels of representations and one fundamental feature of representations is that they are ‘frozen’: fixed objects of longing.

Emotional images of nationhood come to people’s lives in political actions. We or us are formed as entities that can be identified in connection with a space of geographical and political borders (and boundaries) and belonging to particular nationality. The representations thus lead to several – both formal and informal – mechanisms of excluding and including. These processes create hybrid spaces where people, who are neither ‘in’ nor ‘out’, remain invisible and out of hearing, rarely getting possibilities to bring ‘newness’ to prevailing orders or receiving options to figure their own lives. Dual citizens from former Yugoslavia countries fit this picture almost painfully perfectly.

Recent discussions about citizenship, as the above display of casestudies, do show that it is still hard to widen the idea of societal membership across the borders of nation-state. According to most of basic laws being a dual citizen is still a quasi-legal position. True, the current European discussion around citizenship has paid attention to dual citizenship, mainly in order to maintain and promote mobility of labour force to areas wherever and whenever they are needed. In the European context, dual citizenship most obviously will be a noteworthy issue of future.

In such a context, the issues of dual citizenship will most likely shift to the rather obvious questions: Is it possible to be a political member and an active participant in two states at the same time? Does the emergence of dual citizenship bring along the need to redefine parliamentary democracy? How to define political, social and juridical rights and cultural membership in the state of non-residence? And perhaps the most difficult question – how to take a stand in one’s national identities if there are many of those? This far, I cannot answer to these questions. It also has no view of how refugees meet these themes. In the future, however, the issue of dual citizenship will touch especially these people who are at present most vulnerable, as presented above.
Although we can theoretically distinguish ‘state’ as an abstract universal form, there, however, are different concrete political orders and structures where individual people live. The borders of these orders seem rather strict; an individual citizen is either in or out – either formally or informally. Will there be finally space for people who are ‘both-and’? Will it be possible to handle the problems connected with being ‘neither-nor’? The future itself will be the judge of that.