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'Unified Slovenian Nation': Slovenian Citizenship Policy towards Slovenians Abroad

'Slovenians abroad' are Slovenians living outside the Republic of Slovenia as persons belonging to the 'Slovene autochthonous national communities' in neighbouring states and as emigrants and their descendents around the world. The territory inhabited by Slovene autochthonous national communities (also referred to as Slovenian national minorities or shortly Slovenian minority) is in the Slovenian national consciousness embedded as *Slovensko zamejstv*o comprising border areas of all four neighbouring countries, where autochthonous Slovenian populations reside. Their size, location and minority status differ, however.[1] Most numerous and the strongest is the Slovenian national community in Italy where it inhabits the broader frontier region in the three provinces of Friuli-Venezia Giulia: the province of Trieste (Slovene: Trst), the Province of Gorizia (Slovene: Gorica) and of Udine (Slovene: Videm). Since Slovenians in Italy are not officially counted, there are only different estimates on their total number. The Slovenian Government Office for Slovenians Abroad (Slovene: Urad Vlade Republike Slovenije za Slovence v zamejstvu in po svetu) believes that the most realistic estimates range between 70,000 and 80,000 inhabitants. The majority of the Slovene autochthonous minority in Austria live in the southern areas of Carinthia (Slovene: Koroška), between 20,000 and 30,000, and a smaller part, about 1,500 in the Federal State of Styria (Slovene: Štajerska), especially in some places along the Slovenian-Austrian border. In Hungary, approximately 3,000 members of the Slovenian minority live between the river Raba in the north and the Slovenian border in the south. *Porabski Slovenci* in Vas county (Slovene: *županija Železna)* with their centre in Szentgotthárd (Slovene: Monošter) have successfully developed as a small minority in recent years, their out-migration from this underdeveloped area however is still very much present. Less present in Slovenian national consciousness is the Slovenian minority in Croatia. Its members inhabit certain areas along the

[1] This paper does not deal with their minority protection status and minority rights in the neighbouring states.

border with Slovenia. These are primarily places in northern Istria, Rijeka hinterland, Gorski kotar and Med(ži)murje as well as along the rivers Kolpa and Sotla. The Slovene minority inhabiting the territory of the seven counties of the Republic of Croatia, bordering on Slovenia, and the territory of the city of Zagreb, is estimated at approximately 3,500.

Another group of Slovenians abroad are Slovene emigrants and their descendants around the world, outside the above mentioned border zones. Slovenes have emigrated from the Slovenian ethnic territory to foreign countries in different historical periods, on different occasions and in different ways. In a long history of emigration, the first emigrants were missionaries to South America, as well as to North America and Africa. Many Slovenes also emigrated as soldiers in different armies, but most of them were economic migrants, seeking a better life. Another large category was political emigration. First wave of mass emigration due to economic reasons was initiated in the mid-nineteenth century and was directed towards the United States of America (USA), and partly to Brazil and Argentina. The second wave came in the period between the World Wars, caused by the global economic crisis and due to political reasons. The vast majority of the tens of thousands of emigrants of this period moved from the Littoral (Slovene: Primorska), which was at that time under severe pressure from the Italian Fascist authorities. Political emigration occurred again after 1945, when thousands found shelter in refugee camps in Italy and Austria and soon made their way to Canada, USA, Australia and Argentina. Some 12,000 people though were returned to Yugoslavia and large parts of this number were executed. The 1960s and the 1970s brought another big wave of economically, but partially also politically driven emigration, this time mostly to West Germany, France, Sweden and other developed Western countries. In the 1980s, when Slovenia was already an immigration country, emigration of Slovenes began to decline until it took up again after the accession of Slovenia into the European Union (EU) and the economic crisis of 2008. According to most optimistic estimates, there are nearly half a million Slovene emigrants and their descendants living abroad, which would mean one fifth of the Slovenian nation.

The Republic of Slovenia declared its independence on 25 June 1991 and regulated citizenship issues through *Zakon o državljanstvu*[2]

[2] The Slovene language is not aware of two terms, which would conceptually and linguistically emphasise different aspects of *državljanstvo* i.e. citizenship or nationality in legal, political and civic context. For example, in English, citizenship is

(Citizenship Act) adopted within the scope of the legislation relating to Slovenia's newly gained independence. The constitution was adopted six months later, on 23 December 1991, and does not regulate citizenship, but leaves it to the above law. The constitution considers national minorities, both on its own territory and the Slovene national minorities in neighbouring countries. Among general provisions the constitution declares in Article 5 that:

"In its own territory, the state shall protect human rights and fundamental freedoms. It shall protect and guarantee the rights of the autochthonous Italian and Hungarian national communities. It shall maintain concern for autochthonous Slovene national minorities in neighbouring countries and for Slovene emigrants and workers abroad and shall foster their contacts with the homeland. /.../ Slovenes not holding Slovene citizenship may enjoy special rights and privileges in Slovenia. The nature and extent of such rights and privileges shall be regulated by law."[3]

In this paper I attempt to present an account of Slovenia's policy on citizenship in relation to the re-acquisition, acquisition and the retention of country of origin citizenship by Slovene migrants and their descendants and towards the acquisition of external citizenship by 'Slovenians abroad'. After tracing the history of citizenship on the territory of present day Slovenia, I provide a brief description of evolution of Slovenian citizenship legislation, both in terms of the initial determination of its citizenry at the inception of the nation-state on June 1991 and the rules governing the acquisition of citizenship, specifically by Slovenians abroad. Citizenship policies are further discussed in relation to dual or multiple citizenship and out of country voting rights and how, in addition, citizenship acquisition and dual political rights are supplemented by kinship-based ethnic privileges in benefit laws. My focus is to explain the before mentioned issues in the larger context of Slovenia's approach to the concept of nationhood.

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a term associated primarily with the internal context, while the term nationality is more common in international law. However, the terms are often used as synonyms, as expressed in Article 2 of the 1997 European Convention on Nationality.

[3] The Constitution of the Republic of Slovenia / *Ustava Republike Slovenije,* http://www.pf.uni-mb.si/datoteke/janja/Angleska%20PT/anglesko-slovenska_urs.pdf

A brief overview of the historical evolution of Slovenian citizenship up to 1991

In the territory of Slovenia citizenship legislation first evolved within the framework of the Habsburg Empire. The 1811 Austrian Civil Code, established a link between a unified citizenship status and civil rights and other regulations concerning citizenship, operated in the Slovenian lands until the collapse of the monarchy, except in Prekmurje, where Hungarian citizenship law was in force after 1879. In close relation to citizenship, the right of domicile in municipalities (*domovinska pravica*, *Heimatrecht*), as a form of local citizenship, which gives rights of unconditional residence and poverty relief and was regulated on similar principles in both parts of the Austro-Hungarian monarchy in the second half of the nineteenth century (Radmelič 1994: 207; Kač & Krisch 1999: 607-613).

On 1 December 1918 most of the Slovene lands, the Croat lands and Bosnia and Herzegovina joined Serbia and Montenegro to form the Kingdom of Serbs, Croats and Slovenes (SHS), later to be named the Kingdom of Yugoslavia. The Saint-Germain-en-Laye Peace Treaty, which came into force in July 1920, and the Treaty of Trianon, which came into force one year later, established that a person who had a right of domicile outside of Austria and Hungary from then on acquired the citizenship of one of the successor states. The Saint-Germain treaty postulated, inter alia, that such persons could opt for the citizenship of that successor state in which they once had domicile or the successor state where the majority was of their 'race' or spoke their language. However, not everyone automatically acquired Italian citizenship who had domicile (*pertinenza*) in the Slovenian Littoral and part of Carniola that became part of Italy. Those who were not born there or acquired domicile after 24 May 1915 or once had domicile in this territory could opt for Italian nationality. On 25 November 1920 the provincial government of Slovenia issued executive regulations to the Treaty on the acquisition and loss of Yugoslav citizenship by option and request.[4] The option was based on previous domicile or nationality, i.e. ethnicity. According to the Rapallo treaty between the Kingdom of SHS and Italy of 12 November 1920, Yugoslavia provided a one-year right of option for Italian citizenship for ethnic Italians on Yugoslav territory (Kos 1994).

At the level of Yugoslav internal legislation, the 1928 Citizenship Act[5] introduced a unified citizenship, primarily based on ius sanguinis a patre and the principle of a single citizenship. In the early 1930s,

[4] *Official Gazette of the Provincial Government for Slovenia,* 147/1920 and 122/1921.
[5] *Official Gazette of the Kingdom of Serbs, Croats and Slovenes* (SHS), 254/1928.

the provisions of Austrian and Hungarian regulations concerning the right to domicile were replaced by the membership of a municipality.

In the Slovenian Littoral, Italian citizenship legislation was in force from 7 June 1923 until mid-September 1947. Italy did not apply any special regulations concerning citizenship in the occupied territory during the Second World War, whereas the German and Hungarian occupying forces granted citizenship to certain groups of people by regulation and law respectively, which were subsequently nullified (Radmelič 1994: 222-223).

The post-war regulation of Yugoslav citizenship started on 28 August 1945 before the final organisation of the second Yugoslavia was clear.[6] The following persons became Yugoslav citizens: 1) all those who, on the date of the enforcement of the Act, were citizens under the then valid 1928 Act; 2) persons who had domicile in one of the municipalities in the territory, which according to international treaties became part of Yugoslavia; and 3) persons who belonged to one of the Yugoslav nations and resided in its territory without right to domicile, unless they decided to emigrate or to opt for their previous citizenship. An exception to this regulation was added in 1948, excluding from citizenry with a retroactive effect those persons of German ethnicity who were abroad and were Yugoslav citizens as of 6 April 1941, having domicile in one of the municipal communities and were, according to Article 35a disloyal 'to the national and state interests of the nations of Yugoslavia during and before the war'.[7] Another Act adopted in 1945 (and nullified in 1962) concerned officers of the former Yugoslav army who did not wish to return to Yugoslavia and members of various military formations who served occupying forces and escaped abroad. They lost citizenship ex lege, followed by the sequestration of their property.[8]

According to the Paris Treaty with Italy which came into force in September 1947 persons who had permanent residence on 10 June 1940 in the territory that became Yugoslavia lost their Italian citizenship. As obliged by the Treaty, Yugoslavia adopted a special Act

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[6] *Official Gazette of the Democratic Republic of Yugoslavia* (DRY), 64/1945; *Official Gazette of the Federal People's Republic of Yugoslavia (*FPRY), 54/1946, 90/1946, 88/1948 and 105/1948.

[7] *Official Gazette of the FPRY,* 105/1948. In 1997 the Constitutional Court of the Republic of Slovenia found that the use of this provision is not unconstitutional in procedures concerning the ascertainment of citizenship. Constitutional Court Decision, U-I-23/93 of 20 March 1997.

[8] *Official Gazette of the DRY,* 64/1945; Official Gazette of the FPRY, 86/1946 and 22/1962.

on the citizenship of these persons in December 1947.[9] The Italian-speaking population had a one-year option for Italian citizenship and Yugoslavia could demand emigration of these persons within one year of the date of the option. In 1947, an option for Yugoslav citizenship was also given to those whose citizenship issue was not solved by the Treaty, i.e. to some 100,000 emigrants from the Littoral to Yugoslavia or other countries before June 1940, who ethnically belonged to one of the Yugoslav nations. The Paris treaty also established the Free Territory of Trieste, a project that lasted seven years until it was divided between Italy and Yugoslavia by the 1954 London Memorandum of Understanding. The latter did not regulate citizenship directly, but gave guarantees for the unhindered return of persons who had formerly held domicile rights in the territories under Yugoslav or Italian administration, which the Yugoslav law interprets as a qualified option.[10] Remaining unsolved questions were settled by the 1975 Osimo agreements, which confirmed that both states could regulate citizenship and provided the possibility of migration for members of minorities (Kos 1994).[11]

Yugoslav citizenship was unified and excluded other citizenship. Acquisition of citizenship remained based on ius sanguinis. A victorious revolutionary communist and national spirit of the immediate post-war period was expressed in legal provisions concerning naturalisation for members of Yugoslav nations and those foreign citizens who actively cooperated in the national liberation struggle, on the one hand, and exclusion and deprivation of citizenship for certain ethnic groups or military formations who really or supposedly worked against Yugoslav interests, on the other. The 1964 reform, following the new constitution, abolished loss of citizenship on grounds of absence (as in previous Austrian and Yugoslav legal arrangements), relaxed naturalisation of expatriates (emigrants) and abolished the oath of loyalty upon admission. An odd characteristic of Yugoslav legislation was that in the areas which did not pose a threat to the regime, such as the equality of spouses, introduced in 1945, gender equality and the position of minors, the legislation was already progressive during the period when international standards were only in the making. Yugoslavia was also party to certain multilateral treaties concerning

[9] *Official Gazette of the FPRY*, 104/1947.

[10] The Memorandum includes a special statute that guarantees for both sides the rights of minorities. It is the first international document that regulates the protection of the Slovene ethnic minority ('Yugoslav ethnic group') in Italy – for the Trieste region.

[11] See also *Slovenia, Italy, White Book on Diplomatic Relations* published in 1996 by the Ministry of Foreign Affairs of the Republic of Slovenia.

citizenship such as the Convention Relating to the Status of Stateless Persons of 1954, the International Convention on the Nationality of Married Women of 1957, the Covenant on Civil and Political Rights of 1966, the International Convention on the Elimination of all Forms of Racial Discrimination of 1966, the Convention on the Elimination of All Forms of Discrimination against Women of 1979 and the Convention on the Rights of the Child of 1989.[12]

Succession and initial determination of citizens of the new state

The determination of citizenship of a state is linked with citizenship in the international sense (i.e. nationality) and international law, both confirming that it is for each state to define who its citizens are. This codification is one of the essential elements of sovereignty. Citizenship is a tool of exclusion and allows the definition of the composition of citizenry and consequently the 'body politic'. Laws on citizenship – providing for who is and who is not a citizen – are quite different among states. Moreover, laws related to citizenship vary considerably. The result is that many people meet the criteria for citizenship in several countries and there are a considerable number of people who are dual or multiple citizens.

State succession is particularly important for the nationality and citizenship of natural persons because it has a potential that some people – at least temporarily – may become stateless, particularly when the predecessor state disappears and no successor state is ready to grant its nationality to the former nationals of the extinct state. The succession often means a creation of a new state and if this is the case, all persons that succession affects, should have the possibility of participation in the newly created state.

At the international level, citizenship in the context of state succession is addressed by binding and non-binding international instruments, such as the 1961 UN Convention on the Reduction of Statelessness and the 1978 Vienna Convention on Succession of States in Respect of Treaties. These documents contain significant principles but lack comprehensive regulations which a state in the case of succession should respect. In addition, it should also be noted that most of these instruments were drafted after the changes that had reshaped the European political landscape at the end of the twentieth century. For example, the 1997 European Convention on

[12] *Official Gazette of the FPRY*, 9-96/1959, 7-115/58; *Official Gazette of the Socialist Federal Republic of Yugoslavia* (SFRY), 7-35/1971, 31-448/1967, 11-48/1981 and 15-65/1990. Slovenia is a party to these instruments by succession.

Nationality, which entered into force on 1 March 2000, contains a chapter on state succession, but also this section focuses on principles and general rules but does not provide for specific rules which states should respect in cases of state succession.[13]

The definition of succession, which is used also in the field of citizenship, talks about 'succession of states' which means 'the replacement of one State by another in the responsibility for international relations of territory' and according to the Vienna Convention on Succession of States in Respect of Treaties refers only to the effects of state succession in accordance with the principles of international law and in particular with the principles of the Charter of the United Nations. The Draft Articles on Nationality of Natural Persons in Relation to the Succession of States which the International Law Commission submitted to the UN General Assembly in 1999 contains mostly the repeated vocabulary of the Vienna Convention. Hence, the primary concerns of the international community in terms of civil law in cases of succession remain focused on the reduction of dual citizenship and the avoidance of statelessness and deals less with the initial determination of citizens, which are not the concerns of the established (old) states.

Within human rights law there has been significant progress in the field of citizenship, but laws concerning the acquisition or loss of citizenship continue to be primarily considered as sovereign prerogatives of the state. In this regard, it must also be noted that the European Union does not consider nationality matters to be in its sphere of competence.

The above shows that during the independence process, Slovenia could not find much support in international law concerning the matters of citizenship. To better understand the problems related to succession in the field of citizenship it is important to emphasise that Yugoslavia (SFRY) was a federal state with a so-called mixed system of citizenship. Jurisdiction to adopt citizenship legislation existed at two levels simultaneously, at the level of the federal state and at the level of the constituent federal units, i.e. republics. From the point of view of international public and private law, the primary citizenship

[13] See also the Declaration on the consequences of State succession for the nationality of natural persons adopted by the European Commission for Democracy through Law at its 28th Plenary Meeting, Venice, 13-14 September 1996; Recommendation No. R (99) 18 of the Committee of Ministers to member States on the avoidance and reduction of statelessness, Council of Europe; Draft Articles on Nationality of Natural Persons in Relation to the Succession of States, prepared by the United Nations International Law Commission (Annex to the UN General Assembly Resolution 55/153 of 2001).

was Yugoslav (Kos 1996a). Internally, however, all Yugoslav citizens also had republic-level citizenship.[14] Changing the place of residence to another republic or abroad did not affect the republic-level citizenship. Access to another republic-level citizenship has changed over time, but was relatively easy. According to the last Citizenship Act of the Socialist Republic of Slovenia of 1976,[15] citizens of other republics received the citizenship of Slovenia upon application if they had permanent residence in Slovenia.

Since the developments of the late 1980s and early 1990s showed that it would not be possible to reach a consensual agreement on some other organisational form of Yugoslavia or on succession, the Republic of Slovenia unilaterally declared its independence on 25 June 1991. Slovenia had no historical heritage of independent statehood or concept of political membership beyond republic-level citizenship within the former federation to fall back on. In that respect, Slovenia differs from some states which came into being following the break-up of former federations, such as the USSR. Notably Estonia and Latvia restored their citizenship laws of half a century earlier, emphasising state continuity broken by 'lost' or 'occupied' sovereignty (see Järve 2009; Krūma 2009). Some other new states adopted a 'zero-option' policy, granting their citizenship to all people actually residing in the republic either at the time of independence or at the moment the new citizenship law was passed. This policy was more acceptable in those states where the proportion of the 'titular' ethnic population was very high (Medved 1996; Ziemele 2001; Mole 2001; Smith and Shaw 2005).

In this context, the Citizenship Act was adopted on the day of independence and has since then gone through several changes. The first supplement was adopted in December 1991, followed by further changes in 1992, 1994, 2002 and most recently in 2006.[16]

Conceptually, the 1991 Act contains two main categories (Table 1). The first category includes provisions of a transitional nature, which refer to the initial collective and automatic determination of the citizens of the new state, complemented by provisions governing

[14] In this article, the term 'republic-level citizenship' is used to denote the membership in constituting entities of the federal state. The term citizenship is used to indicate membership of a sovereign state. In the Slovenian language and legal terminology, *državljanstvo* is used for both legal concepts.

[15] *Official Gazette of the Socialist Republic of Slovenia,* 23/1976.

[16] *Official Gazette of the Republic of Slovenia,* 1/1991-I. Amendments and Supplements to this Act were published in the Official Gazette of the Republic of Slovenia, 30/1991-I, 38/1992, 13/1994, 96/2002 and 127/2006.. The officially revised text was published in the *Official Gazette of the Republic of Slovenia,* 24/2007.

the option for Slovenian citizenship by residents from other federal units of the former SFRY and the restitution of citizenship for those who had lost citizenship or on the grounds of absence, release, renunciation or deprivation due to historical circumstances. The second category regulates the acquisition and loss of citizenship of a standard (permanent) nature.

Table 1: Conceptual scheme of the Citizenship Act 1991 of the Republic of Slovenia

	Norms regulating initial determination of citizenship			Norms regulating standard procedures for acquisition of citizenship (at birth and after) and loss of citizenship
	Primary/overall	Supplementary / Corrective	Restitution and compensation	
Time scope	Ex lege by taking the effective date of the law on 25 June 1991	Temporary application		Permanent application
Personal scope	Collective category	Individual category, which takes into account the will of the individual concerned		Plural category
	Core of citizens of the new state, established by operation of law on the basis of legal continuity – all Slovenia Republic-level citizens of the former SFRY	Maximum number of predefined group of persons – residents from other federal units of the former SFRY	Predefined group of persons – on the basis of the 1945/46 federal law on the deprivation of citizenship or on the grounds of absence; release, renunciation or deprivation due to historical circumstances	Number of persons is not defined in advance
	Correction 1994 Recognition Declaration	Correction 2002	Nullified by the Constitutional Court decision of 1992	

Source: Developed from Baršová´ 2007 and Medved 2007.

The initial overall determination of citizenship

The basic principle of the initial overall determination of citizenship is the continuity of previous republic-level citizenship upon state succession. In theory, the dissolution of a federal state with the internal republic-level citizenship of its constituent units, federal citizenship ceases or disappears, while the internal citizenship of each of the former constituent units remains intact, irrespective of place of residence of a particular citizen. By such an approach, the problem of de jure statelessness is, at least in theory, solved. Article 39 stipulates that any person, who held citizenship of Slovenia and of Yugoslavia according to existing valid regulations, was considered ex lege to be a citizen of Slovenia on the day when the Act came into force. This provision established continuity with the previous legal order, meaning that all laws and regulations which were in force in the territory of Slovenia in the past, including international agreements, are applied within the framework of this provision. The period in which a person was born determines which regulations apply for ascertaining citizenship.

Supplementary and corrective initial determination of citizens

The primary rule of the initial determination of citizens was complemented with the optional acquisition of Slovenian citizenship for citizens of other former Yugoslavian republics who had permanent residence in Slovenia on the day of the Plebiscite for the Independence and Autonomy of Slovenia on 23 December 1990, and who actually lived in Slovenia. These two conditions determined what was considered genuine links with Slovenia: the permanent residence connected with social, economic and certain political rights and the actual living there expressing the criterion of integration, which in practice meant that the person had to reside in Slovenia, not only have a formal residence there (Mesojedec-Pervinšek 1999: 656-659; Medved 2005: 467).

The December 1991 supplement on Article 40 specified a further restriction, stating that the person's application is to be turned down if that person has committed a criminal offence directed against the Republic of Slovenia since Slovenian independence or if the petitioner is considered to form a threat to public order and the security and defence of the state. In practice restrictions related to crime were impossible to carry out since they related to the Criminal Code of the SFRY (Končina 1993). In 1999 the Constitutional Court repealed the paragraph related to the public order risk.[17] The legal period for the submission of the application was six months and expired on 25

[17] Constitutional Court Decision, U-I-89/99 of 10 June 1999.

December 1991. More than 174,000 persons, or 8.7 per cent of the total population, of which around 30 per cent were born in Slovenia, applied for citizenship on the basis of Article 40 and 171,125 became Slovenian citizens.

The registration of former republican citizenship was not carried out very thoroughly and some persons who firmly believed themselves to be Slovenian citizens were not considered as such and could not prove their former republican citizenship in order to acquire Slovenian citizenship. To address this problem two corrections were made in 1994, concerning the recognition and declaration of Slovenian citizenship. Article 39a stipulates that a person is considered a Slovenian citizen if he or she was registered as a permanent resident on 23 December 1990 and has permanently and actually lived in Slovenia since that date. However, this only applies if the person in question would have acquired the citizenship of Slovenia according to the previous legal order. On the other hand, according to the new Article 41, persons younger than 23 and older than eighteen years who were born in Slovenia can declare themselves Slovenian citizens if one of their parents was a citizen of Slovenia at the time of their birth, but the parents later agreed on adopting the citizenship of another republic.

Registered permanent residency posed a problem for those immigrants who were not registered, but had a long-time factual residence in Slovenia. They could not apply for Slovenian citizenship since they were not legally considered residents.[18]

The problem of permanent residency also arose for those who were registered, but did not apply for or did not acquire Slovenian citizenship. Becoming aliens, they had to apply for residency status irrespective of how long they had been residents. The Alien Act[19] did not contain any special provisions for this group of people.[20] It

[18] That immigrants from other republics did not register their permanent residence was partly because they did not know of this possibility or simply did not care; partly it can be attributed to the concept of migration registration and registration of permanent residency in the former state. Slovenia was the sole republic of the SFRY which registered in- and out-migration.

[19] Official Gazette of the Republic of Slovenia, 1/1991-I, 44/1997 and 50/1998 – Constitutional Court Decisions.

[20] Under the then valid Aliens Act they could obtain a one-year temporary residence permit and after three years of uninterrupted residence a permit for permanent residence. Later this condition was prolonged from three to eight years. Cf. the controversial 1993 Estonian law on aliens, which declared that anybody living in Estonia without Estonian citizenship, which had no legal status in Estonian law in 1992-1993, would have to apply for residency status. The Council of Europe experts criticised that the status of those already resident in Estonia was equated

only provided that with respect to the said person provisions of the Law should start to apply two months after the expiry of the time within which they could apply for Slovenian citizenship or on the date of issuance of a final decision on citizenship. On 26 February 1992, when the Alien Act started to apply to these persons, administrative authorities transferred those who did not apply for residency status from the register of permanent population to the record of foreigners, without any decision or notification addressed to those concerned to inform them of their new legal position.[21] This secret 'erasure' became known to the public only much later and it was only in 1999 that the Constitutional Court found that the Alien Act had failed to regulate the transition of the legal status of this group of people to the status of foreigners.[22] The exact numbers of those affected remains unknown. The state first admitted that 18,305 persons had been deprived of their legal residence and later corrected this number to 25,671. The polarisation of the political scene as well as public opinion, including the 2004 referendum, led to various interpretations and despite the efforts made since 1999, the Slovenian authorities had failed to remedy comprehensively and with requisite promptness the grave consequences for the 'erased' people. In June 2012, the European Court of Human Rights held that the Slovenian government should, within one year, set up a compensation scheme for the 'erased' in Slovenia.[23]

During this period, in order to settle the position of some of the people who could not or did not wish to apply for Slovenian citizenship in 1991, or whose applications were rejected and who subsequently became aliens or were even 'erased', the Citizenship Act was amended in 2002. The new 'transitional and final provisions' facilitated acquisition of Slovenian citizenship for citizens of other republics of the former Yugoslavia who were registered as permanent residents on 23 December 1990 and who had been living in Slovenia continuously from that day. Duration of residence, personal, family, economic, social and other ties with Slovenia, as well as the consequences a denial of citizenship might have caused, were also taken into consideration. The deadline for a free application expired on 29

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with that of non-citizens not currently resident there (see Day & Shaw 2003; Järve 2009)

[21] Only upon the request of the applicants themselves did administrative authorities issue a certificate of removal from the register.

[22] Constitutional Court Decision, U-I-284/94 of 4 February 1999. See also Constitutional Court Decision, U-I-246/02-28 of 3 April 2003.

[23] Kurić and others v.Slovenia, Application no. 26828/06 (Grand Chamber), European Court of Human Rights, 26 June 2012

November 2003, with 1,676 persons being naturalised under this provision.

Altogether, roughly 80 per cent of 208,484 naturalised citizens or approximately one tenth of the total population of Slovenia at the end of 2008 acquired citizenship according to the optional provisions in the immediate post-independence period, with the corrective provision of 2002 increasing the total by to less than 1 per cent. The great majority (98.7 per cent) of them originated in other successor states of the SFRY, of these 46 per cent were from Bosnia and Herzegovina, 30 per cent from Serbia and Montenegro, including Kosovo and 18 per cent from Croatia and only 1.3 per cent from other countries.

Determination of restitution and compensation of citizens

Apart from the two main categories – initial determination of citizenship and optional naturalisation – the Citizenship Act contained a third category of transitional provisions that were of compensatory or restitutional nature. These provided for reacquisition of citizenship, which, according to art. 41, was made possible for those who were deprived of Yugoslav citizenship and Slovenian citizenship on the basis of the 1945/46 federal law on the deprivation of citizenship or on the grounds of absence. 1,278 Slovenes were deprived of citizenship based on the collective decisions by federal authorities, of which the individuals were never notified, and 67 due to absence. They and their children could acquire Slovenian citizenship if they filed a request within one year of the enforcement of the Act. Since most of these people were living abroad, the application period was prolonged to two years in 1992. At the same time, a new Article 13a in the section concerning exceptional naturalisation stipulated that, notwithstanding the conditions for regular naturalisation, an adult may obtain Slovenian citizenship if he or she is of Slovenian descent through at least one parent and if his or her citizenship in the Republic of Slovenia was terminated due to release, renunciation or deprivation or because the person had not acquired Slovenian citizenship due to historical circumstances. The article also granted the government the right to give a preliminary opinion on the applications. Due to this extensive discretion and, inter alia, the violation of the principle of equality before the law, arts. 41 and 13a were nullified in 1993.[24]

[24] Constitutional Court Decision, U-I-69/92-30 of 10 December 1992.

The present conditions for acquisition of citizenship by Slovenians abroad

In general, Slovenian citizenship is acquired by descent, by birth in the territory of Slovenia, by naturalisation (through application) and in compliance with international agreement (which is applicable only in cases where borders changed). Acquisition of citizenship after birth is possible by naturalisation which can be regular, facilitated and exceptional. The latter two modes of naturalisation reflect specific interests of the state. Discretionary power is provided for in all cases of naturalisation; however, it may only be exercised if the reasons, including the proof thereof, are recorded in the written decision.[25]

Ius sanguinis transmission

Persons of Slovenian descent may acquire citizenship of the Republic of Slovenia under the ius sanguinis principle. There are two modes of acquiring citizenship under this principle: ex lege and by registration. A natural person effectively obtains Slovenian citizenship: a) when both parents are Slovenian citizens and b) when the child is born abroad and one of the parents is a Slovenian citizen while the other parent is unknown, of non-determined citizenship or stateless. In both cases, the child's birth has to be notified at an administrative unit in Slovenia or a notification has to be submitted at the diplomatic mission or consular post of the Republic of Slovenia abroad. When the child is born in Slovenia and at least one parent is a Slovenian citizen the citizenship is automatically recorded at birth into the register of births, deaths and marriages.[26] In this case the acquisition of the citizenship ex lege is combined with the territorial principle.

Acquisition of citizenship by registration is another way of acquiring citizenship by descent, but differs in that it is necessary to demonstrate a will for obtaining citizenship. A child born abroad with one parent of Slovenian citizenship at the time of the child's birth obtains Slovenian citizenship by descent within eighteen years after birth if registration is initiated by the parent who is a Slovenian citizen without the consent of the other parent or, if a minor is a ward by his or her guardian, who must be a Slovenian citizen. The child also obtains Slovenian citizenship when he or she actually permanently settles in Slovenia, together with the parent who

[25] Constitutional Court Decision, U-I-98/91 of 10 December 1992.

[26] Under the principle of equality of children born in wedlock and children born out of wedlock a child of a foreign mother is a Slovenian citizen if the fatherhood of a Slovenian citizen is acknowledged, declared or otherwise established. The legal effect of fatherhood is retroactive and as such affects the citizenship of the child.

is a Slovenian citizen, before he or she is eighteen years old.[27] As of 1994, children over fourteen years of age have to give their consent. A person born abroad and over the age of eighteen can acquire Slovenian citizenship based on a personal declaration for registration if from his or her birth to the declaration one of the parents is Slovenian citizen or was a Slovenian citizen till his or her death. The age limit for this procedure was extended from 23 to 36 years of age in 2002. The 2006 Act amending the Citizenship of the Republic of Slovenia Act adds the condition that those who register their Slovenian citizenship should not previously have lost it due to release, renunciation or deprivation after they reached majority. If a person meets the criteria for registration in the prescribed period of time and shows a willingness to become a citizen either by a legal representative or by himself or herself, citizenship is recognized retroactively (ex tunc) from the moment of birth.

Priviledged access to naturalisation and re-acquisition of citizenship

Slovenes without Slovenian citizenship, up to the fourth generation in a straight line, are affected by the facilitated mode of naturalisation, if they apply for citizenship while residing in Slovenia. The generational criterion has been extended in 2006. Exemptions from otherwise very strict requirements for regular and facilitated naturalisation for some other groups of persons are provided in particular regarding the release from current citizenship and the required duration of residency in Slovenia. In comparison, the applicant in a regular procedure must have lived in Slovenia for ten years, of which the five years prior to the application must be without interruption, and, as added in 2002, the person should have the status of foreigner. An individual of Slovenian origin may apply for citizenship after one year of uninterrupted residence with a foreign status in Slovenia. For those who have lost Slovenian citizenship in accordance with the present Act on citizenship or prior Acts valid in the territory of Slovenia, the residence requirement is limited to six months. Nevertheless, the applicant has to meet some of the requirements otherwise valid for regular naturalisation which are that the person does not constitute a threat to public order or the security and defence of Slovenia, has fulfilled his or her tax obligations and has a guaranteed permanent source of income. In fact, since 2006, the applicant is required to have such means of subsistence as will guarantee material and social security to the applicant and persons he or she has an obligation to support i.e. a basic minimum income for each person. Moreover, the law demands

[27] The registration is not necessary if the child would otherwise become stateless.

a clean criminal record, meaning, inter alia, that the applicant should not have served a prison sentence of more than three months or have been sentenced to a conditional prison term of more than one year.[28] Finally, there is the required knowledge of the Slovene language for everyday communication needs and the applicant is obliged to take an oath of respect for the free democratic constitutional order of Slovenia, which has replaced the requirement to sign a declaration of consent to the legal order of the Republic of Slovenia introduced in 2002.

External citizenship

For exceptional naturalisations the interests of the state for example in the field of culture, economy, science, sport, and human rights are decisive and must be confirmed by the government. A person qualifying for exceptional naturalisation may remain a double or multiple citizen, but has to actually live in Slovenia without interruption for at least one year with a foreigner's status before applying for citizenship. The latter condition does not have to be fulfilled when his or her naturalisation benefits the state for national reasons, i.e. when the person is of Slovenian origin, i.e. a Slovenian emigrant or his or her offspring to the fourth generation in a straight line or a member of an autochthonous Slovenian minority in neighbouring countries. The 2006 amendments to Article 13 of the Citizenship Act clarify the conditions for exceptional naturalisation of persons of Slovenian origin. Neither residence in Slovenia nor other conditions such as material and social security or fulfilled tax obligations in a foreign country are required in these cases.

This mode of citizenship acquisition is considered when an applicant resides abroad or when in regard to the applicant none of his/her parents were Slovenian citizens at the time of his or her birth, or when the applicant would satisfy the criteria for acquiring citizenship by registration, but is older than 36 years. It is also considered for some cases of citizenship re-acquisition, where the applicant of Slovenian origin possessed Slovenian citizenship but had been released from it due to justifiable reasons such as admission to citizenship of another state which requested that the applicant denounce their previous Slovenian citizenship.

Compared to facilitated naturalisation, where an administrative unit in Slovenia makes a decision and the Ministry of the Interior gives consent, the Ministry conducts the proceedings and issues a

[28] Before the 2006 amendments the requirements did not include conditional prison sentences. Moreover, the accepted period of imprisonment was decreased from a maximum of one year to three months.

final decision on exceptional naturalisation. In the process, however, the Ministry has to obtain the opinion of the Government Office for Slovenians Abroad which formulates its opinion based on the provisions of the Government Decree.[29] This decree provides that naturalisation is permitted if the applicant is of Slovenian origin and has demonstrated active ties with the Republic of Slovenia or documented long-term activity in Slovenian associations, schools of the Slovene language or other Slovenian emigrant, migrant or minority organisations. Command of the Slovene language is not a requirement. In forming its opinion, the Office may ask for a recommendation from the embassy or consulate of the Republic of Slovenia abroad. The reasoned opinion of the Office is presented to the Government by the Ministry of the Interior which has sole jurisdiction to establish the reasons for the exceptional naturalisation.

Figures

Data acquired from the Ministry of the Interior show that from 25 June 1991 until the end of 2011, 40,775 persons were naturalised according to standard provisions of the Citizenship Act. A majority of them, almost 90 per cent until 2008, were previously citizens of other successor states of SFRY: Bosnia and Herzegovina (47 per cent), followed by immigrants from Croatia (20 per cent), Serbia and Montenegro (17 per cent) and Macedonia (4.5 per cent). Until the end of 2008, a quarter of naturalised citizens by standard provisions acquired Slovenian citizenship by fulfilling all of the conditions. Almost 58 per cent of the persons were naturalised according to facilitated procedure with ethnic-affinity based naturalisations being rather significant (1,789 persons). In the years 2009 to 2011 there were, however only 73 Slovenes who were granted citizenship according to this mode of naturalisation. Approximately a third of these (23) concerned re-acquisition of Slovenian citizenship.

A rather large share of 17 per cent by exceptional naturalisations from 1991 until the end of 2008 has arisen to approximately 30 per cent of all naturalisations in the period 2009-2011. Ethnic affinity is the dominant ground of national interest for exceptional naturalisations and comprised almost an 80 per cent share of all exceptional naturalisations until 2005. In that year, a strikingly high number of refusals for naturalisation of Slovenians living abroad were attrib-

[29] Decree on criteria for establishing the compliance of national interest for acquiring the citizenship of the Republic of Slovenia through article 13 of the Act on the Citizenship of the Republic of Slovenia, *Official Gazette of the Republic of Slovenia,* 41/2007 and 45/2010.

uted to Slovenia's accession to the EU in the year before and the benefits of Slovenian citizenship in this context. With the consequent redefinition of national interest in 2006 amended Citizenship Act concerning external citizenship, further drop in external citizenship acquisition was expected. Contrary to this expectation, the number of exceptional naturalisations has tripled in 2008 (631 persons) when compared to a year before (210). This substantial rise in citizenship acquisition can be attributed to the parliamentary election year of 2008 since Slovenia grants substantial political rights to citizens abroad. In the period from 2009 to 2011 the share of granting external citizenship has increased to around 30 per cent of all naturalisations, with Slovenians abroad representing almost 88 per cent of all citizenships granted in the interest of the state: 523 of 551 in 2009 and 490 of 553 granted in 2010. In the year 2011 there were 554 exceptional naturalisations. External citizenship is most attractive for members of the Slovenian minority in Italy (466), followed by those in Croatia (218). Interest among Slovenians in Austria is low; only 8 persons acquired Slovenian citizenship in this period and none from Hungary. Over half of external citizenships to Slovenian emigrants and their descendants was granted to Slovenians residing in the other successor states of the former SFRY, mainly Serbia (304), but also those residing in overseas countries, particularly where there are substantial Slovenian communities: Argentina (143), Uruguay (40), USA (39) and Australia (29).

'External quasi citizenship' policy

In addition to a privileged, and as it has been shown above preferential access to Slovenian citizenship given to descendants of emigrants and external citizenship policy, Slovenia has also introduced a benefit law, or 'external quasi citizenship' rule that grant special privileges to co-ethnic minorities in neighbouring countries and Slovene emigrants and workers abroad who do not possess formal Slovenian citizenship.

Deriving from the constitutional provision concerning expatriates and external kin groups, Slovenia adopted a number of resolutions, strategies and a statuary legal act with the implementing legal acts. The first *Resolution on the Position of Autochthonous Slovene Minorities in Neighbouring Countries and the Related Tasks of State and Other Institutions in the Republic of Slovenia* was adopted in 1996.[30]

[30] *Official Gazette of the Republic of Slovenia,* 35/1996.

This was followed by the 2002 *Resolution on Relations with Slovenes Abroad*.[31]

The benefit law for co-ethnics abroad, the *Act Regulating Relations between the Republic of Slovenia and Slovenians Abroad,* however, was passed only in April 2006.[32] Fundamental principle of this legislation is that Slovenians abroad are 'an equal part of the unified Slovene nation'. Aiming at the maintenance and development of the Slovene language and culture, the preservation of the cultural heritage and national identity among Slovenians abroad, this legislation facilitates and promotes the integration of Slovenians abroad into the social and political life of 'the mother nation'. The Law thus regulates the affairs of the 'homeland' with Slovenians abroad in order to strengthen national identity and consciousness and to promote mutual ties in the fields of culture, care for the Slovene language, education and science, sports, economy and regional cooperation. This Law also sets out the powers of the authorities of the Republic of Slovenia and regulates the status of Slovenians without Slovenian citizenship and repatriation.

The Act relates to all Slovenians abroad irrespective to their formal citizenship status, nevertheless Slovenia as a 'mother country' introduces a new status of a "Slovene without Slovenian citizenship", regulates citizenship acquisition and loss and provides certain advantages to its beneficiaries. Acquisition of this status which is a novelty in the Slovenian legal order would primarily depend on descent, activity in Slovenian organisations abroad and active ties with the 'homeland'. The Government Office for Slovenians Abroad is responsible for issuing this status. When in Slovenia, the holders of this status will enjoy preferential enrolment at institutions of higher education, equal access to research projects and public cultural goods, such as libraries or archives, as well as equal property rights. They will also enjoy priority in employment over other third-country nationals. The rights listed in this act can be employed exclusively in the Slovene language.

One of the reasons for the introduction of this status was that in July 2005, the government started working on further specifications of national interest as a reason for exceptional cases of naturalisation, in other words, criteria for cultural i.e. ethnic affinity based external citizenship. The Government Office for Slovenian Abroad offers an opinion on the applicant, which has led to criticism and protests from Slovenians living outside the EU in the light of rising demands for

[31] *Official Gazette of the Republic of Slovenia,* 7/2002.
[32] *Official Gazette of the Republic of Slovenia,* 43/2006.

Slovenian citizenship, particularly in the period before and after the accession to the EU. In line with this protest, the political discussion focused on legislation regulating relations between Slovenia and Slovenians abroad and the introduction of a status of a "Slovene without Slovenian citizenship". Since requirements for its acquisition and loss are very similar to those referring to the acquisition of citizenship via national interest, while benefits are not the same, specifically concerning the intra-EU mobility and political rights, no one has applied for, let alone acquired, this 'external quasi-citizenship' status.

There are certain parallels between the Slovenians Abroad Act and the famous and controversial Hungarian Status Law (2001/2003), the 1997 Law on Expatriate Slovaks and the 1999-2001 failed Polish move to install a similar law (Liebich 2009, Kovács and Tóth 2009, Kusá 2009). However, the Slovenian centre-right Government claimed that the Slovenian law cannot be equated with the Hungarian Status Law since it does not interfere with the competences of other EU Member States or the free movement of workers, nor does it establish identity cards which are valid in the territory of any other EU Member State.

Apart from this status, the Act also addresses a requirement of the 2001 parliamentary resolution on Slovenes abroad, by supporting the return of expatriates and their children. It provides for repatriation, meaning immigration of Slovenes to their home country, organised and financed by Slovenia, in cases when there is, according to the assessment of the Ministry for Foreign Affairs, a severe crisis political or otherwise, in the states where they reside, and of Slovenes which repatriation can significantly contribute to the development and promotion of the 'homeland'. The Act devotes a lot of attention to this issue and repatriation procedures and subsequent care for the repatriated persons.

The main promoters of co-operation between Slovenia and the Slovenes abroad are the Government Office for Slovenians Abroad and the Commission for Relations with Slovenians in Neighbouring and other Countries at the National Assembly.[33] The Office maintains constant contact with Slovene minority and emigrant organisations promoting their cultural, educational, economic and other relations with the home country. By means of public tenders, the Office ensures financial support for programmes and projects involving Slovenians

[33] See Office for Slovenians Abroad website, http://www.uszs.gov.si/en/areas_of_activity/ and Commission for Relations with Slovenes in Neighbouring and Other Countries website http://www.dz-rs.si/wps/portal/en/Home/ODrzavnemZboru/KdoJeKdo/DelovnoTelo?idDT=DT026

in neighbouring countries and elsewhere. The Office is chaired by a minister without portfolio. The Commission at the National Assembly monitors the implementation of the policy concerning Slovenians abroad and the cooperation of civil society organisations with Slovenian abroad. It takes part in policymaking in matters that affect Slovenians abroad and advocates for the interests of the Slovenes abroad in drafting and adopting the national budgets of the Republic of Slovenia and co-formulates and proposes programmes of national interest pertaining to concern for Slovenes in neighbouring and other countries. In the scope of their competences and possibilities, also other state bodies, local communities, public institutions, religious communities and civil society organizations, make contacts and foster co-operation with the organizations of Slovenes abroad.

The act regulates two permanent deliberative bodies of the Government of the Republic of Slovenia: the Council for Slovenians Abroad and the Council for Slovenians in Neighbouring Countries. Both councils are headed by the Prime Minister, who appoints their members, composed of representatives of state agencies, institutions, political organisations and civil society organisations from Slovenia and of Slovenians abroad, proposed to the Prime Minister by their organisations. The Council for Slovenians in Neighbouring Countries is composed of six representatives of autochthonous Slovene national minorities in Austria (four from Carinthia and two from Styria), four from Italy, two from Hungary, and two from Croatia. In the Council for Slovenes Abroad there are four representatives of Slovenes living in European states, including two representatives of Slovene migrants, living in the states of the former Yugoslavia; three representatives living in South America, including two representatives of Slovenes living in Argentina; three representatives of Slovenes living in North America: two from the United States of America, and one from Canada; two representatives of Slovenes living in Australia and one representative of Slovenes living in the countries of other continents. The Council for Slovenes in Neighbouring Countries is in session at least two times per annum and the Council for Slovenes Abroad is in session normally once a year. In 2010, the National Assembly amended the 2007 Act with merely technical changes that refer to the mandate duration of the members of the Government's Councils and a clear indication of individual public administration authorities' competence in relation to the Act enforcement, particularly in relation to the repatriation process and social welfare regulations.[34]

[34] Act Amending the Act Regulating the relations between the Republic of Slovenia and Slovenians Abroad, *Official Gazette of the Republic of Slovenia*, 76/2010.

Dual citizenship

When analysing Slovenian legislation, it may be claimed that it is relatively tolerant of dual and multiple citizenship on both the exit and entry sides. The ius sanguinis and gender equality principles contribute to dual citizenship for citizens by birth, both in Slovenia and abroad, since ius sanguinis transmission of Slovenian citizenship is not limited to the first or second generation or by any other requirements. Acquisition of the citizenship of another country does not mean that the Slovenian citizenship is automatically forfeit, neither is release from current citizenship required for Slovenes without Slovenian citizenship, up to the fourth generation, that qualify for facilitated and exceptional naturalisation, nor in cases of regular naturalisation where expatriation would have harsh consequences.

As shown above, Slovenian legislation and citizenship policy at the time of independence was aimed at the immigrant population in order to incorporate the resident population from other republics of the former state in the initial citizenry of the new state. It also aimed at emigrant population, both by restoring and granting citizenship to emigrants and their descendents and in order to facilitate their naturalisation in their countries of residence. Since independence, when restoration of citizenship was included in the initial body of citizens, preferential access to citizenship by Slovenians abroad and adopted external citizenship policy, by removing residence and Slovenian language requirements, have significantly expanded the size of the potential or actual citizenry of the 'homeland' state. Data confirm that external citizenship has risen recently and currently represents around a third of all naturalisations.

The number of dual citizens has thus substantially increased, both in the country and abroad, but their number is unknown. In June 1991, there were 15,000 registered dual citizens residing abroad (Končina 1992). In 2005, this number was estimated at around 60,000.

The number of dual citizens in Slovenia is much larger. It is mainly the consequence of specific historical, social, economic and political context in which the new state was created, but also dependent on the citizenship legislation of other countries, notably Italy that also grants privileged access to citizenship for non-resident persons with close cultural affinity. The transitional provisions regulating the option for Slovenian citizenship did not touch upon dual citizenship and it is estimated that almost all people from other republics of the former Yugoslavia are dual citizens. In 1991, it was also objectively impossible to make this type of naturalisation conditional on a release from current citizenship. The outcome of the Yugoslav crisis

was unknown and the possibility of a bilateral or multilateral regulation of citizenship did not bear fruit. It has been argued that the break-up of Yugoslavia did not lead to de iure statelessness, since all successor states applied the principle of continuity of former republic-level citizenship (Kos 1996b; Mesojedec-Pervinšek 1999: 655). Nevertheless, the interest in Slovenian citizenship was much higher than expected in 1991 when the authorities estimated that approximately 80,000 persons would apply for Slovenian citizenship (Mesojedec-Pervinšek 1997: 32-34). The reasons for such a response are various and have so far not been well researched. Public discussions emphasise utilitarian motives, in particular the possibility to purchase socially owned housing which was only open to Slovenian citizens. Moreover, suspicions that holders of dual citizenship may be disloyal to Slovenia and that they pose a potential threat to state security led to a change in the political and public mood and to legislative attacks on this status. These were mainly supported by the Slovene National Party and the Peoples' Party in the period from 1993 to 1996. While the liberal democratic government also proposed the abolishment of dual citizenship in 1993, some other proposals openly called for the retroactive nullification of all decrees under art. 40. In 1995, there was even an official initiative for a referendum on the issue, which was only stopped by the Constitutional Court[35] (Cerar 1995; Dujić 1996; Medved 2005: 470-474).

On the other side, the Slovenian policy to dual citizenship has been greatly shaped by the experience of emigration and relations with emigrants and kin minorities. For a country, with a long history of emigration which was perceived as 'loss of blood' a century or so ago and more recently as 'brain drain', the new statehood allowed for dual citizenship being not only a way of institutionalising the transnational ties with expatriates but rather an instutionalisation of Slovenians abroad, be it emigrants or kin minorities, being perceived as part of the nation. In addition, Slovenia's independence in 1991 brought about also significant changes among Slovenians around the world. Slovenian ethnic identity of many descendants of emigrants, which was previously often mixed with Yugoslavism, became clearer. There is even a myth of return as shown in the possibility of state-assisted repatriation. Thus, the new nation-state has also been under pressure by the emigrants and their organisations themselves, who are keen on maintaining or re-establishing formal

[35] Constitutional Court Decision on the request for holding a referendum on Article 40 of the Citizenship Act of the Republic of Slovenia, U-I-266/95-8 of 20 November 1995, *Official Gazette of the Republic of Slovenia*, No. 69/1995.

ties with their country of origin without giving up membership in their country of residence. Ethnic origin alone however is not the only reason for extending citizenship. There are also a number of other reasons which are illustrated by strategies and action plans concerning human capital resources of Slovenians abroad, stimulation of foreign investment as well as their support for the domestic and foreign political interests of their country of origin.

Conclusively, while the issue of dual citizenship for immigrants after the initial determination of citizenship became highly politicised and the reluctance to accept dual citizenship has been related to recent independence and fragility, dual citizenship for Slovenians abroad has been much less contested. Tolerance of dual citizenship has been related to the revival of national and ethnic policies that have addressed the need for more effective minority protection, if not nation-building and establishing of formal ties with Slovenians around the world, including their political engagement in the building of the new statehood.

Political participation and out of country vote

In some countries, dual nationality does not automatically lead to dual citizenship and dual citizenship in the sense of dual membership and political rights has often been a critical issue in debates on dual nationality in both countries of origin and residence of external voters and is not equally welcomed by all political actors. In Slovenia, universal and equal right to vote is written in the chapter on human rights and fundamental freedoms of the Constitution. Every citizen who has attained the age of eighteen years has the right to vote and be elected. External voting rights are granted to citizens abroad for parliamentary and presidential elections, referendums and elections to the European Parliament. External voters are registered in a special register.[36] A voter, who is not domiciled in Slovenia, exercises the right to vote in the constituency in which he or she or one of the parents had last permanent residence. If it is not possible to determine, a voter decides in which constituency he or she will vote. External voters may, following the prescribed procedure, vote by mail or at the diplomatic-consular missions of the Republic of Slovenia abroad.[37]

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[36] Voting Rights Register Act, *Official Gazette of the Republic of Slovenia,* No. 52/2002, 11/2003, 73/2003, 118/2006.

[37] See Državna volilna komisija, http://www.dvk-rs.si/index.php/si/kje-in-kako-volim/glasovanje-iz-tujine.

When looking into data on recent elections, the number of total eligible voters increased since 2008 by 0.78 per cent (13,380) to 1.709.692. Substantial increase is noted in the share of the out the country eligible voters which amounts to 17.08 per cent or 9,551 voters. Accordingly, their share in the electorate has increased from 46,364 or 2, 73 per cent in 2008 to 55,915 or 3.27 per cent. In spite of this, however, their turnout on early elections to the National Assembly on 4 December 2011 was slightly lower compared to the election year 2008 as there were 484 votes or 4.30 per cent fewer voters in 2011. There were 10,778 out of the country votes in 2011 or 0.63 per cent of all voters. In the second round elections for the President of the Republic a turnout was even lower, only 5,786 or about 10 per cent of Slovenians abroad turned out to vote.[38] The usage of external voting rights among Slovenians abroad is thus often much lower compared to in-country voting rights.

Political engagement is not, however, reduced to electoral participation. There is growing evidence of an increasingly complex web of transnational political engagement between Slovenians abroad and their 'mother country'. This seems to be particularly valid in relation to kin minorities and for cross-border engagement in civil society or local affairs that constitute an important resource for local and national governments both in Slovenia and in the neighbouring countries. Namely, basic fields of co-operation of the Republic of Slovenia with Slovenes outside its borders are culture, preserving and learning the Slovene language, science and higher education, sports, economic and regional cooperation. Slovenia grants financial support to maintain the structures and activities of Slovenes outside Slovenia. In addition, civil society organisations, which operate in the field of association with an interest for Slovenians abroad, can receive financial support.

Among documents relevant to these fields of co-operation, the Slovenian Government on 5 May 2011 adopted a *Strategy regarding the co-operation between Slovenia and the autochthonous Slovenian national communities in neighbouring countries in the field of economy until 2020*. The document wishes to implement a co-ordinated, synergic and strategic approach by all economic players of greater significance coming from the Republic of Slovenia and neighbouring countries such as state authorities, chambers, minority associations,

[38] Državna volilna komisija: Poročilo o izvedbi predčasnih volitev polsancev v Državni zbor Republike Slovenije, 4.decembra 2011, http://www.dvk-rs.si/files/files/Porocilo-o-izvedbi-predcasnih-volitev-v-DZ---koncni-20.4.2012-1.pdf; Volitve predsednika Republike 2. Krog – izid glasovanja iz tujine, http://www.dvk-rs.si/files/files/izid-po-posti-iz-tujine.pdf

diplomatic missions and consular posts, other business player and individuals from both sides of the border, with the aim to unite and co-ordinate capital funds, knowledge, know-how, human resources and existing activities. The Strategy has been prepared by a working group which is run and coordinated by the Government Office for Slovenians Abroad and representatives from economic entities representing the autochthonous Slovenian national community from each neighbouring country. Representatives of state bodies and commercial and business association participate in the working group which will also be responsible for the implementation of the strategy. The strategy coincides with the development documents on the European and national level, such as the Europe 2020 Strategy, the Strategy for Smart, Sustainable and Inclusive Growth and the Strategy Regarding the Development of the Republic of Slovenia until 2020.[39]

Conclusion

As I have presented in this article, Slovenia as a new state went through a process of initial determination of its citizenry. The question of the initial 'body' of citizens and simultaneously of legal integration of the majority of 'non-ethnic' Slovenians was resolved early in the process of independence and international recognition, and without great controversy. Several factors contributed to this development. Firstly, although the establishment of Slovenia as a nation-state can be considered as a product of the so-called eastern type of ethno-cultural nationalism, asserting the right to self-determination and self-governance of the Slovenian 'nation', the initial policy of citizenship rather supported democratic statehood over 'nationhood'. Citizenship was defined in territorial terms, close to 'zero-option' policies, in order to ensure an even jurisdiction over the territory and people within the boundaries of the new state. By adopting such an approach Slovenia could exercise 'effective governance', which supported its claim for international recognition, in combination with other elements of external conditionality attached to international recognition, notably democracy and respect for minorities. This meant that although some political groups had favoured, at this juncture, a more restrictive definition of citizenry and consequently of polity based primarily on 'ethnic' criteria, the timing would have worked against it. What mattered was the very fact of instituting an autonomous citizenship, a highly visible claim to external sovereignty. Secondly, such an approach afforded all those affected by state

[39] http://www.uszs.gov.si/si/zakonodaja_in_dokumenti/

succession the possibility of participating in the establishment of Slovenia, reflecting confidence in a harmonious relationship between 'titular' nation and 'other' citizens. The promise given to permanent residents from other former Yugoslav republics that they would receive Slovenian citizenship, if they so wished, was seen as fulfilled.[40] In order to satisfy *émigré* communities, which largely supported the independence process and to remedy injustices caused by deprivation of citizenship under the previous regime, restoration of their citizenship was included in the initial body of citizens. Furthermore, they were granted preferential treatment regarding naturalisation.

What initially might have appeared as a progressive principle of membership based on a civic conception, which could serve as a reference point for the evolving statehood and an opportunity for defining national identity by embracing the multiethnic reality, took an ambiguous turn after independence was achieved. In 22 years of statehood the legal regime on citizenship has undergone several changes. The Constitutional Law on citizenship was supplemented and changed five times, with the first supplement already adopted in December 1991 and the latest amendments made in November 2006. These developments have, on the one hand, implied an opening towards certain groups, both in response to international standards or for national interests. On the other hand, they have slowly supplanted the civic conception of citizenship that governed the initial determination of Slovenian citizenry in 1991 with a concept of nation as a community of descent.

Until recently, the citizenship agenda remained dominated by the legacy of the dissolution of Yugoslavia. First, there was an issue of dual citizenship. Perceptions of dual citizenship have to be viewed in terms of a newly established nation-state and its trajectory of migration and policy towards Slovenians abroad. The country-specific historical, social, economic and political dynamics has influenced the different combinations of acceptance or resistance to dual citizenship and the processes of liberalisation and securitisation of citizenship. In general, dual nationality is accepted when it arises from Slovenian descent and descent of parents with different nationalities. On the other hand, after unsuccessful legislative attempts in the mid-

[40] This promise was given by all of the political parties and in the Letter of Good Intent *(Official Gazette of the Republic Slovenia,* 40/1990) adopted by the Slovenian Assembly prior to the plebiscite on the autonomy and independence on which all permanent residents could vote and by art. 13 of the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia, the correct interpretation of which, however, have arisen specifically in relation to the Aliens Act.

1990s to abolish dual citizenship for the group of people from other Yugoslavian successor states and reluctant acceptance of their dual citizenship, as a reflection of the historical experience, Slovenia tries to make immigrants renounce a previous citizenship when they are naturalising. The latter reflects general debates on models of immigrant integration.

Furthermore, some of those residents who did not apply for citizenship or were not admitted as part of the Slovenian citizenry were deprived of their legal residence. Since the late 1990s, the political scene has been dominated by the issue of the 'erased'. While there have only been partial solutions to resolve the problems of this group of people, either by regulating their status as foreigners or enabling them to naturalise, heated by a historically and emotionally charged political, legal and public debate, the citizenship policy and supplementary or changed provisions on naturalisation throughout the Slovenian statehood functioned as instruments for regulating the status of immigrants and citizens of other Yugoslavian successor states whose status had not adequately been regulated in 1991. In this process, the judiciary, in particular the Constitutional Court played an important role.

At the same time, citizenship policy developed in two directions. First, in the pre-accession period euro compatibility was influenced more by international trends, such as the 1997 European Convention on Nationality of which Slovenia is not a party, than by indirect pressure from the EU. This applies in particular to the amendments of 2002, refining and relaxing access to citizenship for recognised refugees, stateless persons and second- and third-generation immigrants. On the other hand, conditions for naturalisation have been maintained and tightened. Since 2002, applicants must have the status of foreigner. This status is an eligibility criterion that may be waived only in some exceptional cases of naturalisation. Further changes concern the question of loyalty. In 2002, the declaration of agreement with the legal order of Slovenia was introduced, which in 2006 was supplanted by an oath of loyalty.

Second, there has been a focus on external citizenship policy. This has been targeting two different types of external kin populations, territorially dispersed migrant diaspora, on the one hand, and transborder minorities in Italy, Austria, Hungary and Croatia, on the other. In a gradual process of Instituting external citizenship for ethnic Slovenians, none of the political parties opposed. Only the Liberal Democrats criticised that conditions, such as residence in Slovenia or material and social security, are waived in these cases of naturalisation. Furthermore, in April 2007, less than half a year after

the most recent amendments, the National Council of the Republic of Slovenia proposed a bill amending the Citizenship Act of Slovenia. The National Council is the 40-member 'upper chamber' of the parliament, representing social, economic, professional, local and territorial interests. It is designed to neutralise the influence of political parties that are involved in legislative processes, primarily through the National Assembly. The bill was initiated by a representative of local interests in the National Council and a member of the Slovenian People's Party (SLS). He proposed that persons who were over 25 years of age in 1991 should have an opportunity to register as Slovenian citizens by personal declaration until the age of 45, instead of 36, which was the result of a 2002 amendment. Moreover there was a proposal to further relax the conditions for the exceptional naturalisation of persons of Slovenian descent, although the 2006 amendments had already facilitated naturalisation for this particular group. The 2007 proposal foresaw that ancestors of persons who applied for this type of naturalisation did not have to originate from the current territory of the Republic of Slovenia. In the discussion held at the National Assembly's Committee of Interior Affairs, Public Administration and Justice, it became clear that members of the Slovenian diaspora in Argentina, Australia, Brazil and Canada had initiated the proposed amendments. They had been 'promised' by some Slovenian politicians that these amendments would be accepted. Nevertheless, the proposal was rejected by the Committee, with the Minister of the Interior arguing that the age prescribed for registration was already very high compared to some other states and that the exceptional naturalisation of persons who had at least one parent who held Slovenian citizenship should remain limited to those whose parents were citizens by descent and not by naturalisation. The Liberal Democrats expressed concern that this argument might imply a differentiation between citizenship acquired by descent and citizenship acquired by naturalisation.

In Slovenia, dual nationality automatically leads to dual citizenship with external voting rights granted to citizens abroad for parliamentary and presidential elections, referendums and elections to the European Parliament. The provisions for external voting have to be understood in the historical and political context as well as the interests and political weight of the emigrant population. Occasionally it has been argued that the external voting rights of the non-resident population, which is not expected to return and thus will not suffer the day to day consequences of the electoral outcome. However most of the political actors do not question this right. Political participation has never been a major topic for policymakers or at the core of

debates on naturalisation and dual citizenship. Representing around 3 per cent of the electorate, the Slovenian expatriate community is rather small and so is their potential to influence domestic electoral outcomes. Discussion on the issue of the enfranchisement has thus revolved more around the increase of granting external citizenship as an instrument of domestic political competition with political parties recruiting supporters through external electoral engineering. Particularly, election campaigns of right wing parties among Slovenians abroad have been criticised by liberals and leftist parties and in whether some emigrants remain disenfranchised because of logistical and bureaucratic mistakes or obstacles to implement free and secret voting from afar (cf. IDEA 2006). On the initiative of some emigrant organisations, representation of Slovenians abroad in the National Assembly has also been debated. However, if the Slovenian politicians decided to regulate such a representation, it will be necessary to modify the text of the Constitution as well as the National Assembly Elections Act.

In addition to a privileged, and preferential access to Slovenian citizenship granted to Slovenians abroad, Slovenia has also introduced a benefit law, or 'external quasi citizenship' rule that grant special privileges to ethnic kin-groups who do not possess formal Slovenian citizenship as well as a number of resolutions and strategies concerning Slovenians abroad and the position of autochthonous Slovene minorities in neighbouring countries. These are based on a principle that Slovenians abroad are 'an equal part of the unified Slovene nation'. Thus, besides the purpose of protecting kin-minorities with the Republic of Slovenia seen to be *matična domovina* or *matična država* (mother homeland or mother state) of all Slovenians and the state protector of kin-minorities, cross-border ties with Slovene national minorities are also advocated in order to symbolically expand the size of the Slovenian 'homeland nation'. Namely, Slovenia and the territories of neighbouring countries, where there is Slovene national minority (Slovensko zamejstvo) are considered to form a 'common Slovene cultural space'. Close relationship in a common cultural space is thus particularly pronounced in cultural and educational spheres but also economic and political activities.

In comparison with some other states in Central Europe, for example Croatia, Hungary and Romania, the issue of external citizenship, dual political rights and double loyalties as well as kinship-based ethnic privileges in benefit laws, has not become a topic of domestic and interstate political contestation. Nevertheless, there are some inconsistencies in the Slovenian policy that point to a certain absence of principled views on citizenship. State inter-

ests in naturalisation still prevail over those of the individual. The concept of a nation as a community of descent means that the principle of ius sanguinis prevails in defining those entitled to citizenship at birth, that ethno -cultural criteria play a major role in naturalisation procedures and that Slovenia is attempting to establish a special connection with Slovenians abroad. As the language requirement is removed for acquisition of external citizenship, a notion of a nation as an imagined community is supported by, for example, the explicit requirement of proficiency in the Slovenian language for naturalisation of immigrants. Furthermore, the centre-left coalition (2008-2011) with the former president of the Slovenian Academy of Sciences and Arts being the minister for Slovenians abroad, planned to propose new legislation in the field of benefit laws with possible abolition of the current Government Office for Slovenians Abroad. Contrary to these intentions, the National Assembly in 2010 only amended the umbrella act adopted four years ago by bringing forward less demanding amendments and modifications. After the early elections in December 2011, the Office has been headed by the president of Nova Slovenia (NSi) party, which is a member of the European People's Party. On February 2013, the National Assembly dismissed the centre right government with a no confidence vote and the new centre left government in the making, proposed the Government Office for Slovenians Abroad to be moved under the re-established Ministry of Culture with the post of minister for Slovenians abroad being abolished. This proposal was withdrawn after members of the diaspora as well as the Slovenian minority in neighbouring countries criticized such a move as a 'serious step back' and Prime Minister designate from Positive Slovenia party emphasised that 'Slovenians around the world are part of Slovenia'.[41] This does not suggest any substantial change in the basic philosophy guiding citizenship policy towards Slovenians abroad.

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