

# Understanding Montenegrin Citizenship

by  
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## Abstract

This paper maintains that although the citizenship regime of Montenegro was generated amidst domestic political competition, it has also significantly been affected by regional and international political forces. Applying Bellamy's concept of the lineages of citizenship to the case of Montenegro, this study explains how citizenship policies were used to manage the fragile political milieu within this weak and unconsolidated post-Yugoslav state. Further explanations for the restrictiveness of Montenegro's citizenship regime are based on the legacies of the different Yugoslav 'citizenship constellations'. Yet as a consequence of the country's aspirations to join the European Union, the rigid citizenship regime of Montenegro remains permeable to international norms and influence. However, this ostensible normative elasticity does not make Montenegrin citizenship more liberal, as barriers for naturalisation remain high.

**Keywords:** Montenegro, citizenship, nationhood, statehood, politics, EU

## Introduction

The fall of the Iron Curtain and the break-ups of multinational federations in post-communist Europe were followed by the salience of citizenship both as a determinant of membership to a community and as a prerequisite for the exercise of political rights. The link between the normative aspects of citizenship and these issues is reflected in Katherine Verdery's (1998, p.294) observation that 'the process of writing new constitutions enabled ambitious politicians to manipulate the very definition of citizenship'. The normative reinvention of post-communist states through what Hayden (1992) termed as 'constitutional nationalism' did not only seek to establish a congruence between the boundaries of states and the predominant ethnic groups living therein, but it also aimed at excluding those groups who posed a 'threat' to the unconsolidated polities by virtue of their association with the dissolved (or dissolving) state.<sup>1</sup> The most obvious consequence of this dynamic was the radical increase in the number of stateless persons in the successor states of the 'fallen' federations, because many people considered citizens in the old states were not granted access to citizenship in the new ones (Weissbrodt 2008, p.94).

All of these dynamics were reflected in the disintegration of the former Yugoslavia, which brought seven states into being. The differences in how these states defined themselves legally and politically and in how they constructed their perceived ethnic/national identity, had a large impact on their citizenship regimes. Such was the case of Montenegro, the smallest of the former Yugoslav republics, which carved its statehood out of the dissolution of two federations and one state union,<sup>2</sup> in the past two decades. From 1997 until the country became independent in 2006, Montenegrin politics was

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<sup>1</sup> The most cited examples include Slovenia (successor state of Yugoslavia), and Estonia and Latvia (Baltic states).

<sup>2</sup> The Socialist Federal Republic of Yugoslavia, the Federal Republic of Yugoslavia, and the State Union of Serbia and Montenegro.

dominated by strong internal divisions over whether Montenegro should be an independent state or not and an equally intense discord over whether Montenegrins were a separate nation or a sub-group of Serbs (Morrison 2009). The intensity of internal Montenegrin struggle was mirrored in the results of the 2006 referendum, whereby the number of voters that supported Montenegro's independence exceeded the required threshold of 55 per cent set by the European Union by 2,095 votes (CDT 2006). The restrictive Montenegrin citizenship regime, established between 2006 and 2008, is a consequence of the country's political trajectory.

Supplementing Džankić (2010;2010a), this paper ascertains that, while being essentially a reflection of the domestic political competition, the current citizenship regime of Montenegro has also substantially been shaped by exogenous influences. On the one hand, 'citizenship policies in Montenegro were generated by the political circumstances surrounding their adoption as tools of political manoeuvring' (Džankić 2010a: 5). On the other hand, legacies of the different Yugoslav 'citizenship constellations' (Baubock 2010) contributed to the deliberate rigidity of Montenegro's citizenship regime, while the prospect of Montenegro's alignment in the European 'citizenship constellation' made the domestic regulation of citizenship permeable to international norms. Hence citizenship regime echoes both domestic and foreign policy concerns in this post-Yugoslav state.

As there is no single political or legal theory that fully explains the multiple forces that mould the citizenship regimes of new states, this paper combines Bellamy's (2004) 'lineages of citizenship' and Baubock's (2010) 'constellations of citizenship'. While the former unveils the internal dynamics of the current citizenship regime, the latter helps to understand how external influences have affected citizenship legislation in a polity that was historically a member in plurinational states, and that currently aspires to membership in the European Union (EU).

The concept of the lineages of citizenship analyses the normative elements of citizenship by looking at interactions between 'state and society within a given national political community' (Bellamy 2004, p.5). It explores the active relationship between the legal, political and identity/emotional aspects of citizenship. This approach unveils the extent to which the political circumstances have shaped the regulation of citizenship, and – in turn – triggers questions about what layer of identity the citizenship legislation in fact encapsulates. Not only does the notion of citizenship represent the idea of membership in a polity in both its legal and emotional aspects, but it also establishes the prerogatives for the conferral of political rights and duties upon the members of that polity (Marshall & Bottomore 1992). Hence, citizenship is intimately related to political participation, through which individual members of the community exercise their will, which is eventually translated into political power. Given the small size of Montenegro, and its political dynamics, the issue of voting arithmetic has been of particular significance. Therefore, access to citizenship, and the relationship between citizenship and the individuals' perceived ethnic or national identities - the combination of which would decide who could vote and for whom – have been a burning topic on Montenegro's political agenda since the start of the political divisions in 1997.

Yet, for the purposes of this study, which also takes into account the external alignments of citizenship, it is essential to supplement Bellamy's analysis of citizenship with Baubock's (2010) concept of 'citizenship constellations'. In seeking to explain the liaisons that individuals have with multiple states, Baubock defines 'citizenship constellations' as structures 'in which individuals are simultaneously linked to several such political entities, so

that their legal rights and duties are determined not only by one political authority, but by several' (Baubock 2010, p.848). In spite of being conceived as a theory that explains the relationship of individuals (migrants) to multiple polities, Baubock's 'citizenship constellations' may as well be applied to polities, which are members in confederal or federal states, or supranational entities. It is particularly useful for studying postcommunist countries, many of which have seceded from multinational federations and/or integrated in the EU, thus having an experience of a 'citizenship constellation'. Although Montenegro does not belong to any such 'citizenship constellation' at present, it did so in the past, and it aspires towards EU membership, implying that it will in the future. Hence the current citizenship regime of Montenegro and any amendments to it have been affected by the competing streams of the legacies of constellations past and the prospects of the constellation future.

## **2. When citizenship hits home: political management and categories of citizenship in an unconsolidated state**

With the mushrooming of states in the post-communist Europe, matters of status, access and membership became key elements of state and nation building. The legal aspect of citizenship conferred rights upon citizens, and established prerogatives for their participation in the functioning of the polity. The political aspect of citizenship, which entails active participation, translated the individual's preferences in political power. In the Balkans, voting for a certain political party is often seen as an affirmation of an individual's ethnic or national belonging in addition to being a declaration of an ideological standpoint (although the degrees of this nuance differ from country to country).<sup>3</sup> The politicization of ethnicity at the time of the divide over statehood and identity in Montenegro took its toll on the citizenship regime (Džankić 2010; 2010a).

Montenegrin independence in 2006 was the first step towards the establishment of the new country's citizenship regime. Due to the internal political division, Montenegro's constitution purports a 'civic state', whereby sovereignty is vested in the 'citizens having Montenegrin nationality' (art. 2). Such a definition has had two implications on the conception of citizenship in Montenegro. First, the 'civic' nature of Montenegro's state was not only a reflection of the internal polarisation and an attempt to placate it, but also a barrier against the claims of Serbs in Montenegro to be recognised as a constituent people, which would lead to multipartite power-sharing (Džankić 2011). Second, the very citizenship regime has come to encompass the notions of 'citizen' (*građanin*) and 'national' (*državljanin*);<sup>4</sup> the former denoting a broader universalistic concept of citizenship, and the latter being the formal relationship between the individual and the state *strictosensu*. Due to the evolving corpse of Montenegro's legislation, these two elements of Montenegro's citizenship regime have given rise to distinct sets of rights related to individuals' participation in political life.

### *2.1. 'Civic' state as a response to interethnic divisions and competing claims to power*

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<sup>3</sup> This is particularly true in culturally more diverse successor states of the former Yugoslavia – Bosnia and Herzegovina, Macedonia and Montenegro. Voting along ethnic/national lines also happens with minority communities. For more details see Stojarovà & Emerson 2010.

<sup>4</sup> The noun 'national' is used in this paper to denote the legal link between the individual and the state. It bears no connotation of ethnic or national belonging.

According to the 2007 Constitution and the 2008 Montenegrin Citizenship Act, nationality in Montenegro explicitly denotes the relationship between individuals and the state, rather than national or ethnic belonging. This is an important aspect of Montenegro's citizenship regime, since no ethnic or national group forms the majority in the country. In the context of Bellamy's lineages of citizenship, the normative stipulation of nationality in Montenegro contains identification with the state, and thus an ostensibly 'civic' identity. Yet, the avoidance of ethnic elements in citizenship legislation, which is not the case in some other post-Yugoslav states (e.g., Slovenia, Croatia, Serbia), was both a tool for managing interethnic relations in a politically polarised society and a barrier to competing claims to power by these groups. In this respect, Montenegro's citizenship regime is merely 'non-ethnic', and not universalistic as the term 'civic' might imply. This is best mirrored in the relationship between citizenship and minority status and rights.

Montenegro's 2006 Law on Minority Rights and Freedoms stipulates the inextricability of nationality and minority status, revealing the inextricability of the 'civic' and 'ethnic' elements of citizenship in Montenegro. Pursuant to art. 2 of the Law, a minority is defined as 'a group of nationals of Montenegro, fewer in numbers than the prevailing population, who have common ethnic, religious, or linguistic characteristics, different from the remaining population, who are historically connected to Montenegro and who are motivated by the desire to preserve national, ethnic, cultural, linguistic and religious identity'. According to Džankić (2011), this law was adopted in the immediate vanguard of the referendum on independence. As such, it aimed at showing the international community that Montenegro is a positive example of interethnic relations in the Balkans and at attracting the votes of non-Christian Orthodox minorities,<sup>5</sup> who proved pivotal in reaching the threshold of votes for independence. However, the intimate relation between nationality and minority status in Montenegro has been criticised by the Council of Europe, since 'a general provision dealing with the scope of application of minority rights is not appropriate as these rights are human rights and not rights of citizens' (CoE 2008, p. 9).

Due to this criticism the 2007 Constitution of Montenegro stipulates no overt link between nationality and the status of minority. Instead, it alludes to 'free and equal citizens (*građani*), representatives of peoples and national minorities living in Montenegro: Montenegrins, Serbs, Bosniaks, Albanians, Muslims, and others' (Preamble). It foresees the observance of international standards for the protection of human and minority rights, along with 'authentic representation' of minorities in the Parliament of Montenegro and other institutions of local administration where minorities form a significant portion of the population (art. 79). The latter provision generated an ongoing debate in Montenegro as to how to define 'authentic representation'. The Montenegrin electoral system is based on proportional representation, with special provisions for representatives of the Albanian minority.<sup>6</sup> As such, this system contains no legally binding provisions for ensuring either 'proportional' or 'authentic' representation to all of the minorities in Montenegro.

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<sup>5</sup> The main protagonists of the Montenegrin divide - Montenegrins and Serbs - are, in principle, Christian Orthodox. The groups that were at the margins of the identity debate (that is, Albanians, Bosniaks, Croats, Muslims, Roma) were not Christian Orthodox. Thus, the pre-independence legislation in Montenegro assumed that minorities were non-Christian Orthodox (see: Šiška and Dimitrova 2002).

<sup>6</sup> The 1998 Election Law guaranteed the Albanian minority five seats in the republic's Assembly, and a variant of this provision has been retained ever since.

Nonetheless, the concerns over 'authentic representation' have been raised by other minorities, such as Serbs, Bosniaks and Muslims. Particular, after the 2006 referendum, the Serbs have emerged as the numerically largest minority group in Montenegro, counting for almost one third of the country's population.<sup>7</sup> Yet, rather than being an exclusively ethnic identity, as is the case with Serbia proper, the meaning of 'Serb' in Montenegro also contains a political dimension created during the division over statehood and identity. The division gradually bifurcated the previous meaning of 'Montenegrin' identity (which was not exclusive of a 'Serb' component' until the late 1990s), associating 'Montenegrins' with independence, and 'Serbs' with the strife to preserve the common state (Morrisson 2009; Roberts 2007; Džankić 2010).

Following the adoption of the 2007 Constitution, political representatives of Serbs in Montenegro advocated that the Serb population should be given the status of a constituent people in Montenegro (YIHR 2010, p.19). This request has generated an ongoing public debate, whereby the Montenegrin government claims that granting Serbs the status of constituent people is contrary to the 'civic' principle of Montenegro's constitution (Vuković in RFE 2011). What is understood as the 'civic' principle in Montenegro is that the state 'belongs' to its citizens equally, which precludes an overt power sharing agreement. Granting the Serbs in Montenegro the status of a 'constituent people' would ethnify the Constitution and the state. That is, all the substantial ethnic/national groups in Montenegro, including Montenegrins, Bosniaks, Muslims, Albanians and Croats would likely request to be defined as constituent peoples. Moreover, given that ethnification of the constitution in a plurinational state (by granting the status of 'constituent people' to any group) would inevitably lead to multipartite power-sharing, it would generate a number of institutional deadlocks and thus decelerate the process of reform (as is the case in Bosnia and Herzegovina or Macedonia). As a consequence, the legal definition of Montenegro as the state constituted of its 'citizens' was a response to the internal political and ethnic polarisation, as well as a tool for managing the complex multiethnic composite of this Balkan state of less than one million inhabitants.

## *2.2. Citizenship and participation: in the labyrinth of franchise*

Given the complex political milieu in Montenegro, participation is intimately related to voting arithmetic. Thus, franchise can best illustrate the interplay between the legal, political, and identity layers of citizenship. Owing to the small size of Montenegro, individual votes count more as a percentage of the overall citizenry than they would in a more populous country.<sup>8</sup> In the pre-referendum period, the active (participatory) element of citizenship ascribed individuals to either the pro-independence/pro-Montenegrin or the pro-union/pro-Serb camp, thus becoming an identity marker. While the identity debate in Montenegro decreased in intensity after 2006, some of its elements remained significant in the subsequent election rounds (e.g. state symbols, the national anthem, etc.).

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<sup>7</sup> According to the 2003 census (Monstat 2003), the ethnic composite in Montenegro is: Montenegrins (43.2 per cent), followed by Serbs (32 per cent), Bosniaks (7.8 per cent), Albanians (5 per cent), Muslims (4 per cent), Croats (1.1 per cent), and Roma (0.4 per cent). The results of this census are radically different than the ones of the 1991 census (FSO 1991), whereby the largest group were Montenegrins (61.9 per cent), followed by Serbs (9.3 per cent), Muslims (14.7 per cent), Albanian (6.7 per cent), and Croat (1 per cent). The different results indicate the politicization of ethnicity in Montenegro during the debate over statehood and identity.

<sup>8</sup> On 23 May 2010, the number of electors in Montenegro was 494,289 (CDT 2010).

Consequently, the constitutional provisions regulating suffrage contain a barrier to the exercise of voting rights. On the one hand, the Constitution of Montenegro guarantees universal suffrage to the nationals (*državljeni*) of Montenegro who have reached 18 years of age. On the other hand, the Constitution also stipulates a two-year residence requirement in Montenegro in addition to Montenegrin nationality as a prerequisite for voting rights (art.45). This provision has been criticised by the Organization for Security and Co-operation in Europe-Office for Democratic Institutions and Human Rights (OSCE-ODIHR) as a limitation on fundamental rights in the Constitution, because ‘the right to elect and be elected should be granted to all citizens as a fundamental human right, and any practical considerations for the implementation of this right should be addressed in legislation’ (2009: 3).

The 2007 Constitution of Montenegro made a departure from the 1992 Constitution. Art. 32 of the 1992 Constitution stipulated that electoral rights were granted to citizens (*građani*) of Montenegro, with no provision connecting residence to the exercise of electoral rights. The difference in the regulation of political participation has certainly been induced by the internal Montenegrin divisions and the quest for statehood. In fact, the Law on the Registry of Residence and Temporary Stay of 2005, in force at the time of the adoption of the 2007 Constitution, defined the category of citizen (*građanin*) as the ‘Montenegrin citizen (*državljanin*) and the national (*državljanin*) of the other member state,<sup>9</sup> with residence in the Republic of Montenegro’ (art. 5). The main difference between the two legal orders is the definition of the concept of citizenship, which mirrored the political context in Montenegro. In practice, in line with the 1992 Constitution, and the election legislation in force at the time when Montenegro was a party to the State Union, nationals (*državljeni*) of Serbia resident in Montenegro were included in the register of electors.

At the time of the April 2008 presidential elections, electoral legislation was not fully in line with the new Constitution (OSCE 2008). In order to avoid criticism over disenfranchisement by international actors, Montenegro retained voting rights for nationals (*državljeni*) of the other successor states of the former Yugoslavia who previously fell under the category of citizens (*građani*) and with residence in Montenegro.

However, the need to harmonise the laws adopted when Montenegro was a part of the common state with Serbia with the new Constitution gave birth to the new Law on the Register of Electors, a few weeks after the April 2008 elections. The new law was in line with the Constitution in that it provided voting rights to nationals (*državljeni*) of Montenegro, with residence in Montenegro for two years. Immediately after the adoption of this law, municipal authorities disenfranchised voters who did not have Montenegrin nationality (*državljanstvo*), but who were registered electors as citizens (*građani*) with permanent residence in Montenegro. This caused a fierce reaction on the part of the Montenegrin opposition, who deemed this to be a part of the government’s strategy to remain in power (SNP 2008). The Administrative Court ruled that the disenfranchised voters should be reinstated in the register of electors. The Court stated that art. 6, para. 2 of the 2008 Law on the Register of Electors which was cited by the municipalities as the basis for disenfranchisement regulated the matters related to the inscription of voters in the register of electors. The same provision, however, did not grant the municipalities the power to delete electors who do not possess Montenegrin citizenship (Administrative Court, 1329/2008).

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<sup>9</sup> In 2005, Montenegro was a member state in the State Union of Serbia and Montenegro. The state formally dissolved on 3 June 2006.

As a consequence of the tension between the government's attempts to put an emphasis on the independent statehood of Montenegro by granting the right to participation only to nationals (*državljani*), the challenge of implementing such endeavours, and the risk of criticism by the international actors because of actions taken to disenfranchise electors, in practice citizens of the other successor states of the former Yugoslavia were able to vote in 2008 and 2009, along with a number of people with unknown citizenship (OSCE 2009). However, no new inscriptions in the Register of Electors have been allowed for people resident in Montenegro, but who do not have Montenegrin citizenship. This created a misbalance of voting rights in the country. That is, there are people who have obtained voting rights in line with the previous legislation and who would not have been removed from the register of electors. At the same time, there are people who were not granted voting rights, because they do not have Montenegrin citizenship after the adoption of the new Law.<sup>10</sup> This misbalance of voting rights created a political debate that was eventually translated into legislation. In terms of electoral laws, it has been decided that the voting rights should be granted to Montenegrin nationals (*državljani*), but that there should be a transition period for the prospective nationals of Montenegro (i.e., former 'citizens') to regulate their status (*Pobjeda*, 3 February 2010). The latter aspect of this debate was enshrined in the 2010 Law on Amendments and Addenda to the Montenegrin Citizenship Act as an extension to the deadline for naturalisation of citizens from the successor states of the former Yugoslavia stipulated in art. 41 (Džankić 2010).

[Table 1 near here]

Thus, the case of Montenegro shows the inextricable links between the different layers of the notion of citizenship: regulation, participation, and – through participation – identity. In law and in practice, Montenegro's citizenship regime always contained the categories 'citizen' (*građanin*) and 'national' (*državljanin*), shown in Table 1 (above). However, the definition of these concepts before and after independence has been different, in that: a) prior to 2006, the term 'citizen' (*građanin*) denoted 'nationals' (*državljani*) of Montenegro and of other republics of the states Montenegro was party to who resided in Montenegro; b) after 2006, there is no legal provision that defines who the 'citizen' (*građanin*) of Montenegro is, despite the common use of this term in legislation; c) before 2006, 'national' (*državljanin*) denoted the legal link between both Montenegro and the common state (e.g., there was a separate Montenegrin Nationality Law, but the passports were Yugoslav). The major consequence of these changes is that after 2006, 'national' (*državljanin*) has become more commonly used in legislation, particular in relation to civic rights. This explicit relationship between the individual and the state has generated the exclusion of the pre-2006 citizens (*građani*) of Montenegro who formally have not become nationals of the new state, which international organisations deem controversial in light of Montenegro's transition to democracy (OSCE 2009). Such a situation reflects the significance of the legacies of constellations past on a country's citizenship regime, as well the potential for change in view of the prospect of constellations future, analysed in the following part of the paper.

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<sup>10</sup> For example, two people, who are not citizens of Montenegro but have residence therein, may have obtained voting rights in line with the old legislation. Their children, who fulfil the age criterion after the adoption of the new law, will not be inscribed in the Register of Electors, as they do not have Montenegrin citizenship.

### **3. The Almagest of citizenship: legacies of constellations past, prospects of constellations future**

Understanding the citizenship regime of a country, and the conditions that can trigger changes to it, assumes an awareness of its position in the ‘citizenship constellations’ (Baubock 2010). In post-partition states, citizenship regimes are often construed in view of the legacy of federal experience. They also account for the position of the new state within the region, and its relation to other states or supranational organisations. Thus, citizenship regimes are a *sui generis* form of foreign policy. Created after multiple partitions, having very different relations with other post-Yugoslav countries, and aspiring to EU membership, Montenegro is a prime example of the effects of citizenship constellations on a newborn country’s citizenship regime.

#### **3.1. Legacies of constellations past**

While a member of a common state with Serbia from 1992 to 2006, Montenegro had a two tiered citizenship regime (federal and republican). Due to the conflicts in the former Yugoslavia in the first half of the 1990s, the citizenship act of the FRY was adopted only in 1996, and the old socialist legislation was in place at the republican level (see: Štiks 2006; Džankić 2010). Yet, by the time the 1996 Citizenship Act entered into force, political circumstances in the FRY had significantly changed. A part of the Montenegrin ruling elites departed from Milošević’s politics in 1997, and initiated the process of ‘creeping independence’, which resulted in the establishment of a separate Montenegrin foreign policy and a republican citizenship regime which conflicted with the federal one. Within this context, the 1999 Law on Montenegrin Citizenship became a political tool for the elites in relating Montenegro to Serbia and the federation (see: Džankić 2010). The legacies of these post-Yugoslav citizenship constellations are mirrored in Montenegro’s current restrictive approach to naturalisation. This is best illustrated by an overview of categories of non-citizens in Montenegro presented in Table 2 (below).

[Table 2 near here]

In fact, the status of the large number of people settled in Montenegro during the conflicts in the early 1990s (displaced persons), or the conflict in Kosovo in 1998 and 1999 (internally displaced persons) is still a matter of political debates.<sup>11</sup>As a consequence of the action plan of the Montenegrin government, the amendments and addenda to the Law on Foreigners (Official Gazette of Montenegro 72/09) enable displaced persons and IDPs to register as ‘foreigners with permanent stay’ in Montenegro, thus making them ‘denizens’ in light of Hammar’s (1990: 15) definition of the term. This provision grants them a prospect of Montenegrin citizenship, following the expiry of the legal deadline of ten years of residence from the date of their registration, and subject to other conditions stipulated in the 2008 Montenegrin Citizenship Act.

The major problem with the new regulations is the requirement for re-registration of those displaced persons and IDPs who do not have ‘residence’ in Montenegro, but only

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<sup>11</sup> These people are not covered by the definition of ‘refugee’ in Montenegro, which affects the prospect of their admission into Montenegrin citizenship.



'temporary stay' or another type of residence that is not considered 'legal and uninterrupted'.<sup>12</sup> That is, persons who have lived in Montenegro ever since their departure from their state of origin (which may have occurred up to twenty years ago) will be required to reside for another ten years in Montenegro before being able to obtain Montenegrin citizenship unless they had formally registered 'residence' with the Ministry of Interior upon their arrival. By contrast, pursuant to the most recent amendments and addenda to the 2008 Montenegrin Citizenship Act, the citizens of the former Yugoslav republics, who have registered 'residence' in Montenegro before 03 June 2006 did not need to fulfil the ten year residence criterion (art. 41, art. 41a), provided that they do not have the citizenship of their state of origin and that they submit their application for naturalisation within a deadline prescribed by the law (see Džankić 2010).

The issue of acceptance of displaced persons and IDPs into the citizenship of Montenegro are likely related to the need to politically consolidate the newly established state. That is, any significant increase in the number of voters would seriously affect the voting arithmetic in Montenegro.<sup>13</sup> The majority of the displaced persons are of Serbian ethnic origin and thus likely to support the opposition parties. The situation of 10,951 IDPs is quite similar, although it appears different (*Informacija o preregistraciji* 2009). The majority of IDPs have declared their ethnic belonging as 'Montenegrin' (3,683), followed by the IDP RAE population (3,106), and 'Serb' (2,728). Ostensibly, the ethnic composition of the IDPs might imply that only the 'Serb' IDPs would be supportive of the opposition. Still, it is likely that many of the 'Montenegrin' IDPs would not support the government. This is mostly due to their association with Kosovo whose independence is recognised by Montenegro, but is still challenged by the Montenegrin opposition parties, which reveals the complexity of the post-Yugoslav 'citizenship constellations'.

A further legacy of these post-Yugoslav 'citizenship constellations' are the intricate issues related to dual citizenship (Ragazzi&Štikš 2009). The legislation is quite often ambiguous as to whether dual citizenship is possible or not in the majority of the newly established states. This is so because citizenship also implies loyalty to the state (Bar-Yaacov in Boll 2008: 215). In the context of Montenegro's relationship with Serbia in particular, dual citizenship is not only related to participation as argued by Džankić (2010), but also raises issues of loyalty to Montenegro. The restrictive Montenegrin citizenship regime allows dual citizenship only in certain limited circumstances (see Džankić 2010). In the majority of cases, a foreign national is requested to obtain release from his or her other citizenship in order to obtain the Montenegrin one (art. 8, para. 2).

In line with the current legislation (Law on the Implementation of Constitution of Montenegro 2007, art. 12) citizens of Montenegro who possessed dual citizenship on the day of proclamation of Montenegro's independence (3 June 2006) are allowed to retain their Montenegrin citizenship (see: Džankić 2010). In addition, the 2008 Montenegrin Citizenship Act stipulates that dual citizenship is possible upon the conclusion of an international agreement between Montenegro and another country. So far, Montenegro

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<sup>12</sup> Residence (*prebivalište*) is defined as the place of permanent stay, while (*boravište*) denotes temporary stay. Residence, which has to be 'legal and uninterrupted', needs to be formally registered with the Ministry of Interior. The legal differences between the procedures of registering residence and temporary stay have proven to be a barrier to citizenship to a number of displaced persons and IDPs (see EUDO Case Law on Montenegro 2010; CEMI 2010).

<sup>13</sup> This would be the case even though the participation in elections is limited by the two year residence criterion, as voting preferences are unlikely to suffer a major shift.

has only concluded a dual citizenship agreement with Macedonia.<sup>14</sup> The negotiations for a dual citizenship agreement with Serbia reached a dead end early in 2010. The different approaches of Montenegro and Serbia to dual citizenship catalysed the issues of participation (political and legal aspects of citizenship) and loyalty (emotional aspect of citizenship). In Montenegro, the restrictiveness of the citizenship regime is a means of consolidating (or at least covering) the internal divisions over identity and statehood. It is also a mechanism of preventing any substantial inflow of diaspora-oriented Serbia's foreign policy in Montenegro through dual nationals. In Serbia, the liberal dual citizenship regime was primarily adopted as a means of resolving the issue of statelessness (Rava 2010: 27-28). However, Serbia's openness to these bipartite 'citizenship constellations' are also related to this country's political influence in the region, especially in the neighbouring countries with a significant Serb population (see: Rava 2010; Strategy 2011).

### ***3.2. Prospects of constellations future***

Aspirations of membership in 'citizenship constellations' entice policymakers to amend laws. For the majority of post-communist countries in Europe, including Montenegro, EU requirements have caused significant change through the process of Europeanisation, which is largely understood as the countries' adaptation to the norms and standards of the EU and other international organisations, such as the Council of Europe (see Džankić 2010). These exogenous forces had a cumulative positive effect on the political transformation of Montenegro. However, as argued by Swider (2011), the accession of postcommunist states to the EU revealed a number of controversies and often generated laws that were less liberal or more exclusionary than the previous ones. Montenegro's Roma were left at the outskirts of the country's citizenship regime largely due to the requirements of visa liberalisation process, which reinforces the applicability of Swider's conclusions on the Western Balkans.

Visa liberalisation has proven to have been one of the most successful 'mechanisms of change' (Radaelli 2000, p.15) that the EU applied in the case of the Western Balkans. When the Thessalonika Agenda (2003) stipulated the prospect of visa liberalisation for the Western Balkans, cooperation in the area of justice and home affairs was considered a priority. Montenegro, alongside the other successor states of the former Yugoslavia, was considered a soft security threat for the EU, i.e. a transit route for illegal immigrants and countries related to organised crime (Schleiter 2003, p.7). As a consequence, the EU's Roadmap (2008) for visa liberalisation included specific requirements related to document security, illegal immigration, readmission, asylum, public order, judicial cooperation in criminal matters, and non-discrimination in ensuring its citizens the freedom of movement. Hence regulating these matters at the domestic level was essential for ascertaining that the citizens of Montenegro would not pose a threat to EU's external borders.

However, the requirement to obtain secure (biometric) documents<sup>15</sup> had an adverse effect in the context of Montenegro's restrictive citizenship regime. People who previously possessed the documents of the FRY but who were not registered as residents of

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<sup>14</sup> This agreement does not regulate matters of naturalisations after 3 June 2006 (Džankić 2010).

<sup>15</sup> The requirement to change documents was generated also by Montenegrin independence. Thus, it is appropriate to assert that the repercussion created by this requirement has been a combination of Montenegrin independence and EU requirements.

Montenegro were unable to obtain Montenegrin citizenship (and thus Montenegrin identification documents). A number of citizens of the successor states of the former Yugoslavia had this status, owing to the poorly kept registries during the socialist period, a problem analysed in detail by Štiks (2006). Even so, the group of people that was affected the most by the need to obtain identification documents were the IDPs (and in particular the Roma, Egyptians and Ashkali who fled Kosovo in 1998 and 1999) (CoE 2008: 12). At the time of their arrival in Montenegro, this group of people possessed the FRY documents, and in order to qualify for the Montenegrin citizenship (provided they fulfil other requirements stipulated in art. 8), they would need to obtain further documents from the citizenship registries in Kosovo or in Serbia. According to the personal stories collected by UNHCR in Montenegro (2010), and the fieldwork for this paper, most of these registries have been destroyed.<sup>16</sup> As a consequence, many people who fled from Kosovo in 1998 and 1999 are unable to obtain the citizenship of either Montenegro or Serbia, which has an exclusionary effect on this socially vulnerable group.

An additional problem, which predominantly affects the RAE population, is the cost of obtaining the documents required in order to register as resident aliens in Montenegro, which is the first step in the procedure for the admission into Montenegrin citizenship for this group of people (CEMI 2010). The RAE people who do not fall under the category described above, and whose documents have been preserved, are unable to cover the costs of the administrative procedures related to the collection of information from civil registries from Serbia or Kosovo.<sup>17</sup> This de facto excludes them not only from the Montenegrin citizenship, but also from obtaining the minority status and exercising minority rights, as the two are related by law. Hence, the formal requirements of the prospect of joining the EU 'citizenship constellation' had a spill over effect in that they created impermeable borders for the acquisition of citizenship for the ones who were affected the most by the wars of the Yugoslav disintegration.

#### 4 Conclusion

Bellamy (2004, p. 14) argues that '[t]here has been no single trajectory for the development of citizenship. It has been played out very differently in different states'. This is particularly true for the successor states of the former Yugoslavia, all of which have framed their citizenship regimes within the divergent political, social and economic contexts. Although largely generated as a result of domestic political competition, citizenship policies in Montenegro were also affected by exogenous forces. That is, the development of the different aspects of citizenship in Montenegro has been framed through the processes of state and nation building in the past two decades. Notwithstanding, citizenship policies in Montenegro were a peculiar variant of the post-Yugoslav model, in that citizenship was not a mechanism of ethnic homogenisation (Džankić 2010). Yet, neither of these processes occurred in a vacuum, but in a highly complex regional political environment which took its toll on the meaning and regulation of citizenship in Montenegro.

Montenegro's first independent citizenship regime was established by the 2007 Constitution and the 2008 Montenegrin Citizenship Act. The constitutional provisions

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<sup>16</sup> Interview with Slobodan Raščanin, the Senior Protection Clerk at UNHCR Montenegro, Podgorica, 1 July 2010; Interview at Pravni Centar NGO, Podgorica, 6 July 2010.

<sup>17</sup> Interview with Slobodan Raščanin, the Senior Protection Clerk at UNHCR Montenegro, Podgorica, 1 July 2010; Interview with Ana Selić, CEMI NGO, Podgorica, 2 July 2010.

outline the multivalent link between three different aspects of citizenship: citizenship as status (establishment of citizenship), citizenship as access (rights and interests), and citizenship as means of reinforcing statehood (emphasis on sovereignty, no mention of ethnicity). The Constitution defined the scope of Montenegrin citizenship, determining who the subjects of the polity are 'in either a passive or an active sense (that is either as merely subjects to its authority or also having certain rights against or over it)' (Bellamy 2004, p.8). Subsequently, the legal aspect of citizenship became a prerogative for the exercise of the citizens' rights, including their participation in the political life of Montenegro. The political dimension of citizenship, discernible in active participation, converted the political preferences of the citizens of Montenegro into political power. This active, participatory element of citizenship was of particular significance in Montenegro in terms of revealing the relationship between individuals and their communities of membership. As such, active citizenship developed into an identity marker in a society that is still in the process of consolidation of the divisions over the Montenegrin statehood and nationhood.

Nonetheless, citizenship is far from a static concept and it changes in view of both endogenous and exogenous pressures. Hence the birth of Montenegro's citizenship regime was also susceptible to these exogenous influences adjoined through 'constellations of citizenship', which include the institutional and political legacies of the former Yugoslavia and Montenegro's present aspirations to join the EU. A cobweb of legal and political links that Montenegro had with the other republics of the socialist Yugoslavia, and with the federal state, reflect Baubock's argument that 'states in a strongly intertwined citizenship constellation react to each other's citizenship policies without attempting to coordinate them explicitly' (2010: 850). For instance Montenegro's relationship with the other post-Yugoslav states, particular the perplexed bonds with Serbia, has been an essential ingredient of the country's rigid citizenship regime, and the intolerance of dual citizenship. In sum, legacies of constellations past have, in the case of Montenegro, generated restrictive citizenship practices.

By contrast, the prospect of Montenegro's membership into the EU 'constellation of citizenship' was followed by a series of political and economic adaptations to the requirements of accession. Being related to issues such as judicial cooperation, participation, human and minority rights, the concept of citizenship has penetrated to the core of the process of socio-political transition. In view of its aspirations to meet the conditions of membership in the EU, Montenegro allowed a certain degree of change to its citizenship legislation under the aegis of the international actors.

Transiting 'the European route' has, however, also revealed a major by-product of visa liberalisation Montenegro - access to citizenship. Many people – in particular Roma, but also other residents of Montenegro - discovered that they formally did not possess Montenegrin citizenship, and that they have become non-citizens in a country where they have resided habitually for many years (UNHCR 2009: 24-26; Administrative Court Ruling 108/09). As a consequence of the permeability of Montenegro's legislative framework to exogenous influence of the EU, paradoxically, the most vulnerable groups of society became excluded from the guarantees of status, rights and access enshrined in the very concept of citizenship. Hence the idea of a 'borderless Europe' has conceived the 'border-more Balkans'.

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**Table 1. Categories of citizens in Montenegro, current**

Category	Description	Remarks
<b>National (državljanin)</b>	Person formally in hold of Montenegrin citizenship; that is, person who is legally bound to the state of Montenegro.	Sovereignty, franchise, social and economic rights are all conferred upon people who have established the legal link with the Montenegrin state (provided that they meet other conditions for the conferral of these rights)
<b>Citizen (građanin)</b>	This term is not defined in the post 2006 legislation of Montenegro, although it is commonly used to denote civic rights. For previous use, see table 2.	Sometimes used to denote nationals who are active participants to political processes (i.e., of age). More often used to denote the egalitarian and universalistic approach to civic rights.

**Table 2. Categories of non-citizens in Montenegro, current**

Category	Description	Approximate numbers <sup>18</sup>	Remarks
<b>Alien (stranac)</b>	A person who is a citizen of another country, or a stateless person.	Total aliens: N/A  <i>Resident aliens: 508</i>	Resident aliens need to formally register their residence with the Ministry of Interior. Their status is approved from the date of registration, not in retrospect.
<b>Refugee /recognised refugee (izbjeglica/ lice kojem je priznat status izbjeglice)</b>		0	Only 1 person was granted the refugee status in Montenegro, but was recently deprived of this status (see CEMI 2010). The government of Montenegro maintains that there are no 'refugees' in this country.

<sup>18</sup> Sources: UNHCR Montenegro 2010; CEMI 2010; OSCE 2009.



<b>Asylum seeker (lice kojetražiazil)</b>	A person who submits the request for asylum in Montenegro. Once the decision has been reached the asylum seeker becomes a recognised refugee.	7	N/A
<b>Displaced person (raseljeno lice)</b>	People who have fled Bosnia and Herzegovina and Croatia during the conflicts of Yugoslav disintegration in the early 1990s.	5,798	A small number of these people are registered aliens, as they had registered with the Ministry of Interior.
<b>Internally displaced person (internoraseljeno lice)</b>	Persons who have fled Kosovo, during 1998 and 1999 Kosovo crisis.	10,987	Almost none of the IDPs have registered 'legal and uninterrupted' residence, because they submitted the registration to the Commissariat for Refugees and not the Ministry of Interior.
<b>Pre-2006 citizen who is currently Serb national with registered residence in Montenegro (građanin, prije 2006)</b>	Persons who have registered residence in Montenegro before 2006, who had FRY citizenship and Serbian republican citizenship.	25,000	These people After 2006, they are aliens in Montenegro, but they have retained some of the rights they acquired (e.g., voting rights)
<b>Stateless person (lice bezdržavljanstva)</b>	Persons who have no legal link with any state.	1,500	Most of the stateless persons in Montenegro are Roma, Ashkali and Egyptian.