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COUNTRY REPORT: SLOVENIA

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European University Institute, Florence
Robert Schuman Centre for Advanced Studies
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Report on Slovenia

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SLOVENIA

Felicita Medved

1 Introduction

This report focuses on *državljanstvo* of the Republic of Slovenia, i.e. on citizenship or nationality as a legal bond between a person and a sovereign state. The Slovene does not have two different terms, which would conceptually and linguistically emphasise different aspects of *državljanstvo* in legal, political and civic context. For example, in English, citizenship is 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.¹

After tracing the history of citizenship in the territory of present day Slovenia, the report gives a brief description of the evolution of the Slovenian citizenship legislation, both in terms of the initial determination of its citizenry at the inception of the state in June 1991 and the rules governing the acquisition and loss of citizenship. In fifteen 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, either in response to international standards or in order to promote 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, replacing it with a concept of nation as a community of descent.

2 Historical Background

2.1 A brief overview of the historical evolution of citizenship legislation up to 1991

Citizenship legislation in the territory of Slovenia first evolved within the framework of the Habsburg Empire. The 1811 Austrian Civil Code, which established a link between 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 to unconditional residence and poverty relief, 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 Trianon Treaty, 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

¹ As expressed in art. 2 of the 1997 European Convention on Nationality.

of their 'race' or spoke their language. However, not everyone who had domicile (*pertinenza*) in the Slovenian Littoral and part of Carniola that thereafter belonged to Italy automatically acquired Italian citizenship. 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 the executive regulations to the Treaty on the acquisition and loss of Yugoslav citizenship by option and request.² 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 in the from then on Yugoslav territory (Kos 1994).

At the level of Yugoslav internal legislation, the 1928 Citizenship Act³ introduced a unified citizenship, primarily based on *ius sanguinis a patre* and the principle of a single citizenship. In the early 1930s, provisions of Austrian and Hungarian regulations concerning the right to domicile were replaced by 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.⁴ The following persons became Yugoslav citizens: 1) all those who, on the date of the enforcement of the Act, were citizens under the then applicable 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 art. 35a disloyal 'to the national and state interests of the nations of Yugoslavia during and before the war.'⁵ 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.⁶

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 Italian citizenship. As obliged by the Treaty, Yugoslavia adopted a special Act on the citizenship of these persons in December 1947.⁷ The Italian-speaking population had a one-year option for Italian citizenship and Yugoslavia could demand emigration of

² Official Gazette of the Provincial Government for Slovenia, 147/1920 and 122/1921.

³ Official Gazette of the Kingdom of Serbs, Croats and Slovenes (SHS), 254/1928.

⁴ 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.

⁵ *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.

⁶ *Official Gazette of the DRY*, 64/1945; *Official Gazette of the FPRY*, 86/1946 and 22/1962.

⁷ *Official Gazette of the FPRY*, 104/1947.

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.⁸ Remaining unsolved questions were settled by the 1975 Osimo agreements, which confirmed that both states regulate citizenship and provided the possibility of migration for members of minorities (Kos 1994).⁹

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 legislator was already progressive during the period when international standards were only in the making. Yugoslavia was also party to certain multilateral treaties concerning 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 1989.¹⁰

⁸ 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.

⁹ See also *Slovenia, Italy, White Book on Diplomatic Relations* published in 1996 by the Ministry of Foreign Affairs of the Republic of Slovenia.

¹⁰ *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.

2.2 Succession and initial determination of citizens of the new state

The determination of citizenship of a state is linked to citizenship in international sense (i.e. nationality) and to 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 that there are a considerable number of people who are dual or multiple citizens.

State succession is particularly important for nationality/citizenship of natural persons because it has the potential to mean that some people - at least temporarily - become stateless, particularly when the predecessor State disappears and no successor State is ready to grant its nationality to former nationals of the State which has disappeared. The succession often means the creation of a new state and, if this is the case, all persons who are affected by that succession, should have the possibility to participate in the creation of a new 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 large 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 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.¹¹

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 Charter of the United Nations. Also 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 by the year 1999, mostly repeat the vocabulary of the Vienna Convention. Hence, the primary concern of the international community in terms of civil law in cases of succession remains focused on reduction of dual citizenship and the avoidance of statelessness and deals less with the initial determination of citizens, which is not a concern of the established (old) states.

¹¹ See also 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).

Within human rights law there has been significant progress including in the field of citizenship, but laws concerning the acquisition or loss of citizenship continue to be primarily considered a sovereign prerogative of the state. In this regard, it must also be noted that the European Union does not consider matters related to the acquisition and loss of citizenship to be in its sphere of competence. Nevertheless, in the pre-accession strategy to the fifth enlargement of the European Union, the European Commission more or less successfully intervened in this domain and set a precedent for interference of the European Union in the candidate countries' policies of citizenship (Kochenov 2004).

What was described above shows that during the independence process, Slovenia could not find much support in international law concerning the matters of citizenship. In order that we might 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 was Yugoslav (Kos 1996a). Internally, however, all Yugoslav citizens also had republic-level citizenship.¹² Changing the place of residence to another republic or abroad did not affect the republic-level citizenship. Access to another republic-level citizenship was, however, relatively easy. At first it was conditional on three years of residence, but already in 1946 one year of residence sufficed. In the 1960s a simple declaration was enough for a change of republic-level citizenship, reflecting a high level of centralised decision making.¹³ The 1974 Constitution, however, brought decentralisation of power. According to the 1976 Citizenship Act of the Socialist Republic of Slovenia,¹⁴ citizens of other republics received citizenship of Slovenia upon application if they had permanent residence in Slovenia. Residents from other republics, however, had the same rights as Slovenian citizens, except for those reserved only for citizens of the republic, such as voting rights.

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 for 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).

¹² In this report, 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.

¹³ Official Gazette of the SFRY, 38/64.

¹⁴ Official Gazette of the Socialist Republic of Slovenia, 23/1976.

In this context, Slovenia regulated citizenship issues through the Citizenship Act adopted within the scope of the legislation relating to Slovenia's gaining of independence. The constitution was adopted six months later, on 23 December 1991, and does not regulate citizenship, but leaves it to the law. Since then, the citizenship law has gone through several changes. The first supplement had already been adopted in December 1991, followed by further changes in 1992, 1994, 2002¹⁵ 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 the option for Slovenian citizenship. The second category regulates the acquisition and loss of citizenship of a standard (permanent) nature.

¹⁵ *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 and 96/2002. The officially revised text was published in the *Official Gazette of the Republic of Slovenia*, 7/2003.

¹⁶ *Official Gazette of the Republic of Slovenia*, 127/2006. The officially revised text was published in the *Official Gazette of the Republic of Slovenia*, 24/2007.

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
	<i>Primary/overall</i>	<i>Supplementary /Corrective</i>	Restititional and compensatory	
Time scope	<i>Ex lege</i> by taking the effect of the law on 25 June 1991	Temporary application		Permanent application
Personal scope	Collective category	Individual category, which takes into account the will of 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 in 1992	

Source: Developed from Baršova´ 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, on the dissolution of a federal state with the internal republic-level citizenship into 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 is the problem of de jure statelessness, at least in theory, solved. Art. 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 the continuity with the previous legal order, meaning that all laws and regulations stemming from various legal orders which were in force in the territory of Slovenia in the past, including international agreements, are applied within the framework of this provision. The time when a person was born determines which regulations apply for the purposes of ascertaining citizenship.

Supplementary and corrective initial determination of citizens

The primary rule governing 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 cumulative conditions determined what was considered the genuine link with Slovenia: permanent residence connected with social, economic and certain political rights and actual residence or ‘actual living’ expressing the criterion of integration, which in practice meant that the person had to live in Slovenia, and not only have a formal residence there (Mesojedec-Pervinšek 1999: 656-659; Medved 2005: 467). In dimensions of time, ‘actual living’ was established by the Supreme Court to be at least the period between 23 December 1990 and the date when a final decision on citizenship was issued. As for the content of this notion, which is not legally defined, administrative court practice did not interpret it to mean continuous physical presence but also considered that living activities in a certain territory, such as where a person earns a living, resides and fulfils obligations to the state would qualify as ‘actual living’ (Polič 1993).

The December 1991 supplement to art. 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, the security and defence of the state. In practice restrictions related to crime could not be carried 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 December 1991. More than 174,000 persons, or 8.7 per cent of the total population, of whom around 30 per cent were born in Slovenia, applied for citizenship on the basis of art. 40 and 171,125 became Slovenian citizens.

The registration of the former republican citizenship had not been 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. In order to address this problem, two corrections were made in 1994, concerning the recognition and declaration of Slovenian citizenship. Art. 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 had 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 art. 41, persons younger than 23 and older than 18 years who were born in Slovenia can declare

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

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 resident.

The Aliens Act¹⁹ did not contain any special provisions for this group of people.²⁰ It only provided that with respect to the said persons 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 when a final decision on citizenship was issued. On 26 February 1992, when the Aliens Act started to apply to these persons, administrative authorities transferred those who did not apply for residency status from the permanent population register 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 the exact numbers of these affected remain unknown. The state admitted that 18,305 persons had been deprived of their legal residence. In spite of several appeals by the Ombudsman for human rights,²² non-governmental organisations and some individuals, it was only in 1999 that the Constitutional Court found that the Aliens Act had failed to regulate the transition of the legal status of this group of people to the status of foreigners.²³ The Constitutional Court decided that the error should be corrected by the legislator within six months which resulted in the Settling of the Status of Citizens of Other SFRY Successor States in the Republic of Slovenia Act.²⁴ However, in 2003, the Constitutional Court also found this regulation unconstitutional and ordered the Ministry of the Interior to immediately issue decisions to return retrospectively the status of permanent residence to those who had already had their status changed. Moreover, it asked the legislature to pass a new law within six months, clarifying the criteria for those who, in the period between 1992 and 2003, left Slovenia for shorter or longer periods.²⁵ The polarisation of the political scene as well as public opinion led to various interpretations of the Constitutional Court decision. This resulted in a number of initiatives for referenda, supported by right-wing parties, as well as in the preparation of two separate acts. After the adoption of

¹⁸ That immigrants from other republics did not register their permanent residence was partly due to the fact that 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 with that of non-citizens not currently resident there (see Day & Shaw 2003; Järve 2009)

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

²² The Ombudsman in his first yearly report of 1995 refers to the so-called ‘aliens sur place’ (zatečeni tujci) using a label which resembles the term ‘refugees sur place’.

²³ Constitutional Court Decision, U-I-284/94 of 4 February 1999.

²⁴ *Official Gazette of the Republic of Slovenia*, 61/1999 and 64/2001.

²⁵ Constitutional Court Decision, U-I-246/02-28 of 3 April 2003.

the so-called 'technical law' in October 2003, opposition parties succeeded in calling a referendum on 4 April 2004. The voter turnout was less than a third of the electorate of 1.6 million persons, and the Act was rejected by almost 95 per cent. This development succeeded in thwarting the adoption of any law to comply with the decisions of the Constitutional Court.²⁶

In the meantime, 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 have 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 which a denial of citizenship might have caused, were also taken into consideration. The deadline for a free application expired on 29 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 contributing to less than 1 per cent. The great majority (98.7 per cent) of them originated in other successor states of the Social Federal Republic of Yugoslavia, and of these 46 per cent came from Bosnia and Herzegovina, 30 per cent from Serbia and Montenegro, including Kosovo, 18 per cent from Croatia and only 1.3 per cent from other states.

²⁶ The Ministry of the Interior, however, issued decisions on residency from 26 February 1992 to those 'erased', who already had permanent residence permits. 4,107 such decisions were issued until mid-January 2005, while 8,470 were still in the procedure.

Restitutorial and compensatory determination 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 restitutorial nature. These provided for reacquisition of citizenship, which was, according to art. 41, 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 collective decisions by federal authorities, of which the individuals were never notified; a further 67 persons lost their citizenship due to absence. They and their children could acquire Slovenian citizenship if they filed a request within one year of the entry into force 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 art. 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 has ceased 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 1993.²⁷

3 The current ‘citizenship regime’

The characteristics of current legislation are the principle of *ius sanguinis* and only limited application of *ius soli*, the prevention of statelessness, gender equality in acquisition of citizenship, equality of parents in deciding the citizenship of their minor children, equality of children born in wedlock with children born out of wedlock, will of the person concerned in the process of acquisition and loss of citizenship and protection of personal data. Further principles are the relative tolerance of multiple citizenship and the validity of Slovenian citizenship in these cases, meaning that a dual or multiple citizen is treated as a citizen of the Republic of Slovenia, while in the territory of Slovenia, unless otherwise stated by an international agreement.

Foreign citizens may acquire Slovenian citizenship by naturalisation on the basis of residence or of family ties or because of special interests of the state.²⁸ Facilitated naturalisation is provided for immigrant children born and raised in Slovenia and for Slovene emigrants and their descendants. 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.²⁹

²⁷Constitutional Court Decision, U-I-69/92-30 of 10 December 1992.

²⁸ Decree on Criteria for Establishing the Compliance with Specified Conditions for Acquiring the Citizenship of the Republic of Slovenia through Naturalisation, *Official Gazette of the Republic of Slovenia*, 47/1994.

²⁹ Constitutional Court Decision, U-I-98/91 of 10 December 1992.

3.1. The main modes of acquisition and loss of citizenship

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). Under the *ius sanguinis* principle there are two modes of acquiring Slovenian citizenship: *ex lege* and by registration. The registration has a constitutive character and retroactive effect (*ex tunc*).

Acquisition of citizenship by birth

At birth a natural person obtains Slovenian citizenship *ex lege*: i) when both parents are Slovenian citizens, ii) when the child is born in Slovenia and at least one parent is a Slovenian citizen (in the latter case the acquisition of the citizenship *ex lege* is combined with the territorial principle)³⁰ and iii) 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.

Children born abroad with one parent of Slovenian citizenship at the time of the child's birth can acquire Slovenian citizenship by registration. Registration can be initiated within eighteen years after birth by the Slovenian parent without the consent of the other parent or if a minor is a ward of his or her guardian, who must be a Slovenian citizen.³¹ As of 1994, children over fourteen years of age have to give their consent. Those over the age of eighteen can acquire Slovenian citizenship based on a personal declaration leading to registration. 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, further clarifies the procedure and 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.

Acquisition of citizenship by adoption follows the principle of citizenship by descent when at least one of the adoptive parents is a Slovenian citizen. An adoptee foreigner older than fourteen years has to give his or her consent.

Ius soli applies in respect of a foundling or a newborn infant in the territory of Slovenia with no known parentage or if the parents are of unknown citizenship or stateless. If it is discovered prior to the child reaching the age of eighteen that the parents are foreign citizens, then Slovenian citizenship shall cease at the parents' request.

Those who acquire Slovenian citizenship under above described principles are regarded as citizens of the Republic of Slovenia by birth.

³⁰ 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.

³¹ The registration is not necessary if the child would otherwise become stateless or if the child moves to Slovenia, together with the Slovenian parent, before he or she is eighteen years old.

Acquisition of citizenship by naturalisation

Foreign citizens may acquire Slovenian citizenship by regular, facilitated and exceptional naturalisation.

The conditions that must be fulfilled for regular naturalisation are very strict. The applicant has to submit a release from current citizenship or a proof that such a release will be granted if he or she acquires Slovenian citizenship unless the applicant is stateless or can submit evidence that his or her citizenship is cancelled in the event of naturalisation by operation of the law in his or her state of origin, or that such a release was not decided upon by this state in a reasonable period of two years.³² In cases where applicants cannot present proof of expatriation, e.g. because the voluntary acquisition of a foreign citizenship is considered an act of disloyalty, the declaration by an applicant that he or she will renounce his or her current citizenship if granted Slovenian citizenship suffices. However, the applicant usually has to present proof of expatriation before he or she can be naturalised. This may lead to temporary statelessness which can become permanent if after release from the previous citizenship an applicant is no longer eligible for naturalisation, e.g. due to loss of means of subsistence or a prison penalty. Since the authorities have to check if other conditions are still fulfilled after the prescribed period within which an applicant must present proof of release, the 2006 amendments specify that only those conditions that can be verified administratively will suffice. The condition of a release from current citizenship is waived for citizens of those EU Member States where reciprocity exists.

A second condition is that the applicant 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. This imprecisely defined status is clarified in the 2006 amendments as describing those people who have either a temporary or permanent residence permit, which in practice prolongs the waiting period for naturalisation. In addition, the applicant should not have had his or her residence in Slovenia curtailed.

Further requirements are that the person does not constitute a threat to public order or to the security and defence of Slovenia, has fulfilled his or her tax obligations and has a guaranteed permanent source of income.³³ In fact, the latest amendments state that 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 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.³⁴ 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. Finally, there is the required knowledge of the Slovene language, which has changed substantially. In the early 1990s, it sufficed that the person could communicate. From 1994, an obligatory examination was instituted. Many people failed the examination even though they had been educated in Slovenia. Currently, an obligatory examination at an elementary level is required unless the applicant went to school or acquired education at a higher or at a university level in Slovenia or over 60 years at age

³² Before 1994 an applicant did not have to submit this evidence.

³³ The condition of a guaranteed residence was dropped in 2002.

³⁴ 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.

and has actually lived in the country for fifteen years or, as was added in 2006, has acquired an elementary or secondary education in the Slovenian language in a neighbouring country where there are autochthonous Slovene minorities. Exceptions are made for illiterates and for health reasons.

Facilitated naturalisation reflects specific interests of the state and more recently, the will of the state to comply to a greater extent with the standards of the 1997 European Convention on Nationality. This mode of naturalisation affects particular groups of persons: Slovenian emigrants and their descendants, foreigners married to Slovenian citizens, minors and since 2002 persons with refugee status, stateless persons and those born in Slovenia and living there since their birth. To these groups of persons, the 2006 amendments added foreigners who have concluded their university education in Slovenia. Exemptions from certain requirements are provided for these groups of applicants, in particular regarding the release from current citizenship and the required duration of residency with a foreign status in Slovenia. For example, an individual of Slovenian descent or a foreign spouse of a Slovenian citizen can become a Slovenian citizen after one year of uninterrupted residence. However, the 2006 amendments show that these two groups of persons are not treated equally. While the generational criterion (up to the third generation for direct descent) for descendants of Slovenian emigrants was extended up to the fourth generation, the period of marriage before a foreign spouse of a Slovenian citizen is eligible to apply for naturalisation was prolonged from two to three years in order to dissuade marriages of convenience. For those who have lost Slovenian citizenship in accordance with the present Act or prior Acts valid in the territory of Slovenia, the residence requirement is limited to six months. Acknowledged refugees and stateless persons may be naturalised after five years of actual and uninterrupted residence in the country. For persons born in Slovenia who have lived there since birth (mainly citizens of successor states of the SFRY), personal, family, economic, social and other connections with Slovenia as well as the consequences a denial of naturalisation may cause are taken into consideration. Foreigners who have concluded their university education in Slovenia will be eligible to apply for naturalisation after seven years of residence. For all these cases, release from current citizenship is not necessarily required.

A minor acquires Slovenian citizenship upon the request of one or both naturalised parents if the child has lived with that parent in Slovenia for at least one year prior to the application. If the child is born in Slovenia, Slovenian citizenship can be acquired before the age of one year. Citizenship may also be granted to a child having no parents or whose parents have lost their parental rights or functional capacity and who has lived in Slovenia since birth on the grounds of a petition by the guardian who is a Slovenian citizen and who lives with the child. The Ministry for Family and Social Affairs has to confirm that the acquisition of citizenship is for the benefit of the child. In all of the above cases the consent of the child above the age of fourteen is also necessary.³⁵ In the case of adoption, where there is no such relation between the adoptive parent and adoptee as between parents and children, a child not older than eight years, living permanently in Slovenia, can acquire citizenship upon the request of the adoptive parents. In cases of exceptional naturalisation, 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 Slovene ethnicity. The 2006

³⁵ See also Constitutional Court Decision, U-I-124/94-8 of 9 February 1995.

amendments clarify the conditions for exceptional naturalisation of persons of Slovene descent, including persons belonging to Slovene minorities in neighbouring countries. 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.

From 25 June 1991 until the end of 2008, 35,595 persons were naturalised according to the standard provisions of the Citizenship Act. Most of them were previously citizens of 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). The share of naturalised immigrants from other countries represents 11 per cent. These were mainly citizens of Western European countries and of overseas OECD-states. For example, 2,159 were citizens of the EU States and Switzerland, among them 1,024 from Italy and 510 from Germany. These are followed by previous citizens of the Russian Federation (281) and of Ukraine (237).

Only a quarter of naturalised citizens by standard provisions acquired Slovenian citizenship by fulfilling all conditions. Almost 58 per cent of the persons were naturalised according to the facilitated procedure and a rather large share of 17 per cent by exceptional naturalisations.

Over 80 per cent of facilitated naturalisations refer to extensions of citizenship to family members, i.e. to minor children and spouses. Ethnic-affinity based naturalisations are also significant (1789 persons). On the other hand, only 25 recognised refugees and 5 stateless persons were naturalised after 2002.

Ethnic affinity is also the dominant ground of national interest for exceptional naturalisations, with birth in Slovenia representing the second largest interest. All other state interests such as culture, sports, education, science and economy play only a secondary role, comprising a modest 12 per cent share. Since the peak in 2002 (716 persons), there is a decreasing trend of exceptional naturalisations per year. On the one hand this is the effect of the 2002 supplements to the Citizenship Act whereby second- and third-generation immigrants can be granted citizenship according to a facilitated procedure. On the other hand a strikingly high number of refusals for naturalisation in 2005, mainly ethnic Slovenes living abroad, can be attributed to the Government's redefinition of the national interest in citizenship acquisition.³⁶ This is expected to drop again in the coming years due to the changes in 2006 amended Act concerning the naturalisation of ethnic Slovenes. Nevertheless, 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 2008 since Slovenia grants substantial political rights to citizens abroad, including franchise in local, parliamentary and presidential elections.

Loss of citizenship

A Slovenian citizen cannot lose citizenship by mere operation of law. There are five ways to lose one's Slovenian citizenship: release, renunciation, deprivation and loss of citizenship through international agreements, with the latter only being applied to cases involving changes to state borders. Citizenship can also be lost by the nullification of naturalisation.

³⁶ Decree on criteria for establishing the compliance of national interest for acquiring the citizenship of the Republic of Slovenia through article 13 of Act on the Citizenship of the Republic of Slovenia, *Official Gazette of the Republic of Slovenia*, No. 41/2007

Release is the regular way of losing citizenship by application. It is the right of any Slovenian citizen who fulfils the stipulated conditions, such as actual residence abroad and proof that he or she will be granted a foreign citizenship. Release has to be approved by a public authority, but discretionary power is limited to specific reasons such as national security and national interests, reciprocity or other reasons derived from relations with a foreign country.

In terms of numbers, the development of release from citizenship has been relatively modest. Altogether 4,803 persons were granted release from 1991 until the end of 2008. There was an increase until 1996 with 888 persons released from the Slovenian citizenship in the given year. Since then a steady decrease to a low figure of 28 and 39 in 2007 and 2008, respectively was recorded. According to available data from the Ministry of the Interior only 103 persons of all who requested to be released were not granted release from Slovenian citizenship until the end of 2005.

Renunciation is a qualified option for dual citizens, meaning that such a person has the right to renounce Slovenian citizenship. It is accorded to individuals up to 25 years of age, born in a foreign country, residing there and holding a foreign citizenship. Other conditions have not been foreseen. The Ministry of the Interior has no discretionary power and may issue a decree stating that Slovenian citizenship of such a person ceased on the day that such a statement of renunciation was filed. Minors, up to the age of eighteen years, enjoy a substantially higher degree of protection regarding the release from and renunciation of citizenship, compared to the acquisition of citizenship. The consent of both parents is required, regardless of their citizenship. In a case of dispute, the Ministry for Family and Social Affairs decides in the best interests of the child. Furthermore, children older than fourteen years must give their personal consent.

Deprivation of citizenship is the only type of citizenship loss that the state may initiate. A Slovenian citizen, actually residing in a foreign country and in possession of a foreign citizenship may be deprived of citizenship if it is ascertained that this person's activities are contrary to the international and other interests of the Republic of Slovenia. Proof of the existing conditions must be given in the decree on the deprivation of citizenship, which may be issued exceptionally in the absence of the party concerned.

Cancellation of a decree on naturalisation may occur if it is discovered that naturalisation was granted based on false declarations or deliberate concealment of essential facts or circumstances on the side of the individual in question. It may also be nullified if the person acquired citizenship on the grounds of a foreign state's guarantee that the person's foreign citizenship will cease to exist if the person acquires the Slovenian citizenship and evidence of the loss of the previous citizenship has not been submitted within the prescribed period. Nullification is not possible if such a person would become stateless.

Dual and multiple citizenship

In general, Slovenian legislation is relatively tolerant of plural citizenship on both entry and exit 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. Multiple citizenship is even possible for adopted persons. 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 certain groups that qualify for facilitated and

exceptional naturalisation, nor in cases of regular naturalisation where expatriation would have harsh consequences.

The number of dual and multiple citizens is unknown. In June 1991, there were 15,000 registered dual citizens residing abroad (Končina 1992). After independence the number of dual and multiple citizens substantially increased, both in the country and abroad. In 2005, it was estimated that around 60,000 Slovenes permanently residing abroad had Slovenian citizenship. The number of dual citizens in Slovenia is much larger and is mainly the consequence of specific historical circumstances in which the new state was created and was partially dependent on the citizenship legislation of other countries, notably Italy.

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. 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.

Suspicious that holders of dual citizenship may be disloyal 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 (Cerar 1995; Dujić 1996; Medved 2005: 470-474).³⁷

3.2 Specific status of a Slovene without Slovenian citizenship

According to Constitution of the Republic of Slovenia the state 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. Furthermore, Slovenes not holding Slovenian citizenship may enjoy special rights and privileges in Slovenia and the nature and extent of such rights and privileges shall be regulated by law. Based on Art. 5 of Constitution, the 1996 Resolution on the Position of Autochthonous Slovene Minorities in Neighbouring Countries and the Related Tasks of State and Other Institutions in the Republic of Slovenia³⁸ and the 2002 Resolution on Relations with Slovenes

³⁷ 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.

³⁸ *Official Gazette of the Republic of Slovenia*, 35/1996.

Abroad,³⁹ the Act Regulating Relations between the Republic of Slovenia and Slovenians Abroad was adopted in 2006.⁴⁰

The objectives of this legislation are to organise the relations between the ‘homeland’ and the Slovene diasporas in order to strengthen national identity and consciousness and promote mutual ties in the fields of culture, care for the Slovene language, education and science, sports, economy and regional cooperation. The Act also introduces a new status of a Slovene without Slovenian citizenship, regulates its acquisition and loss and provides certain advantages to its beneficiaries. Acquisition of this status would primarily depend on descent, activity in Slovenian organisations abroad and active ties with the ‘homeland’. The Governmental Office for Slovenes around the world 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. Until now, no one has applied for, let alone acquired, this ‘quasi-citizenship’ status.

3.3 Institutional arrangements

Up to the end of 2006, the Ministry of the Interior had jurisdiction over naturalisation and loss of citizenship. Following the concept of territorial de-concentration of state administration, the 2006 amendments to the Citizenship Act transferred this competence from the Ministry of the Interior to local administrative units. Only cases of exceptional naturalisation remain under the jurisdiction of the Ministry of the Interior. Moreover, the Ministry still has a ‘controlling’ role in the obligatory revision procedure for decisions on naturalisation and loss of citizenship as well as documents related to the release from prior citizenship. In this procedure the Ministry can either confirm decisions made at the local level or make a new decision. A decision by the Ministry may be appealed and is open to judicial review (see Polič 1997a, 1997b).

Legislative competence lies with the government, which specifies the secondary legislation on citizenship by executive powers such as requirements for regular naturalisation regarding, inter alia, ‘actual living’, residence, income and threat to public order, security and defence of the state, and defines the criteria for the naturalisation on the grounds of national interest and for the refusal of release from citizenship as well as rules on the procedure and manner of the solemn act of oath taking.⁴¹

Local administrative units also have the authority to establish and register citizenship.⁴² Record keeping of citizenship is done in compliance with the Births, Deaths and

³⁹ *Official Gazette of the Republic of Slovenia*, 7/2002.

⁴⁰ *Official Gazette of the Republic of Slovenia*, 43/2006.

⁴¹ Among these: Decree on criteria for establishing the compliance of national interest for acquiring the citizenship of the Republic of Slovenia through article 13 of Act on the Citizenship of the Republic of Slovenia, *Official Gazette of the Republic of Slovenia*, No. 41/2007; Rules on the procedure and manner of the solemn act of oath taking, *Official Gazette of the Republic of Slovenia*, 42/2007; Decree on criteria and circumstances establishing conditions for acquiring the citizenship of the Republic of Slovenia through naturalisation, *Official Gazette of the Republic of Slovenia*, No. 51/2007..

⁴² Until 1995 this function was performed by municipalities and then transferred to local administrative units by the Act on the Takeover of State Functions Performed until 31 December 1994 by Municipal Bodies, *Official Gazette of the Republic of Slovenia*, 29/1995, 44/1996 – Constitutional Court Decision.

Marriages Registry Act at the register of births.⁴³ The Ministry of the Interior keeps the central citizenship register. Since this register does not constitute a separate database but is part of the permanent population register, the 2006 amendments provide that the Ministry of the Interior and local administrative units keep a register of persons who acquired citizenship by naturalisation and those who lost Slovenian citizenship. This register is computerised and connected to the registers of foreigners and of births, deaths and marriages. Personal data from this register may be used by the employees of internal affairs when performing their duties defined by law and can be forwarded to other users only if these are authorised by law or upon the consent or request of the individual to whom they relate. The Ministry of the Interior can forward personal data of an individual to other states under the condition of reciprocity only if such data are used for clearly defined purposes (such as settling citizenship issues or realisation of penal proceedings) and that in that state personal data protection applies also to foreigners. Slovenian citizenship can be proven by attestation or any other public document of citizenship issued by any administrative unit with the authority for administering the official register irrespective of where the person permanently resides.

4. Current political debates and reform plans

Until recently, the citizenship agenda was dominated by the heritage of the dissolution of Yugoslavia. Subsequently, the citizenship legislation went through a series of adjustments related to the admission of citizens of other successor states of the former Yugoslavia. As has already been pointed out above, the issue of plural citizenship prevailed in the mid-1990s. After unsuccessful legislative attempts to abolish dual citizenship there is an acceptance of plural citizenship for this group of people as a reflection of the historical experience.

Since the late 1990s, the political scene has been dominated by the issue of the 'erased'. As already pointed out, 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. In an attempt to be re-elected in the 2008 parliamentary elections, the right-centre government, particularly the Slovenian Democratic Party (SDS) confirmed the text of a special Constitutional Law in October 2007 to supplement art. 13 of the Constitutional Act Implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia which specially provided that citizens of other republics with permanent residence who were registered in Slovenia on the day of the plebiscite and who actually lived there should have equal rights and duties as Slovenian citizens during the transitional period with regards to the acquisition of Slovenian citizenship. The bill provoked hot reaction and historically and emotionally charged political, legal and public debate which, once again, extended to the field of the succession *problematic* of Slovenia in the area of citizenship. It proved to be impossible, before the parliamentary elections, to adopt a special Constitutional Law, which requires a two-thirds parliamentary majority. It would also appear that the public opinion has changed since the referendum on the 'erased' in the election year of 2004.

The new centre-left government, composed of Social Democrats (SD), Zares-New Politics and Liberal Democrats (LDS) and Democratic Party of Pensioners of Slovenia (DeSUS) agreed to continue issuing decisions on residency in accordance with point 8 of the Constitutional Court decision from year 2003 and to propose the Act which will comply with

⁴³ *Official Gazette of the Republic of Slovenia*, 37/2003 and 39/2006. The officially consolidated text was published in the *Official Gazette of the Republic of Slovenia*, 59/2006.

the mentioned ruling and specify in which cases the permanent residence cannot be acknowledged from the date of the erasure due or for the whole period from that date due to individual's own doing.

As soon as the Ministry started to issue decisions to the erased and found that they numbered some 7000 more than had previously been admitted, the largest opposition party, the Slovenian Democratic Party accused the Ministry of abuse for political purposes, ignoring the outcome of the referendum on the 'technical' law on the erased and creation of inequality before the law. It also claimed that the system of public finances is clearly endangered because of possible reparations.

Following an unsuccessful action brought against the Minister of Interior in April 2009, a special working group, including representatives of non-governmental organisations, was set up to prepare a draft of the law changing and supplementing the 1999 Settling of the Status of Citizens of Other SFRY Successor States in the Republic of Slovenia Act. The draft, *inter alia*, concerns also those 'erased' who acquired Slovenian citizenship by means of the transitional provisions of the 2002 amended Citizenship Act. The draft has not yet been adopted by the government, but a strong opposition is expected in the National Assembly not excluding a possibility of another referendum on the issue.

Another issue concerns Slovenes abroad. In July 2005, the government started working on a further specification of the national interest as a reason for exceptional cases of naturalisation, in other words, criteria for cultural (understood as ethnic) affinity based naturalisation of Slovenes living abroad. The Governmental Office for Slovenes Abroad may offer an opinion on the applicant, which has led to criticism and protests from members of the Slovene diaspora. In line with this protest, the political discussion focused on legislation regulating relations between Slovenia and Slovenians abroad, in particular concerning the legal position of autochthonous minorities living in neighbouring countries and emigrants and their descendants with or without Slovenian citizenship. In April 2006, the National Assembly passed the Republic of Slovenia and Slovenians Abroad Act. Apart from a new status of a Slovene without Slovenian citizenship, discussed above, the Act also supports the return of Slovenian expatriates and their children and also provides for repatriation, meaning the immigration of Slovenes, organised and financed by Slovenia in cases when there is, according to the assessment of the Ministry for Foreign Affairs, a severe political or other type of crisis, in the states where they reside, and if their repatriation contributes to the development of the 'homeland'. The Council for Slovenians Abroad and the Council for Slovenians in Neighbouring Countries will function as permanent advisory bodies. The councils are headed by the Prime Minister, who appoints their members, composed of representatives of state bodies, institutions, political organisations and civil society organisations from Slovenia and abroad.⁴⁴

There are certain parallels between the Slovenians Abroad Act and the infamous and controversial 2001 Hungarian Status Law, 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 right- centre Government claimed that the Slovenian law cannot be equated with the Hungarian Status Law since it does not interfere with the

⁴⁴ The Council for Slovenians in Neighbouring Countries is composed of six representatives of the Slovenian minority in Austria, four from Italy and two from Hungary and Croatia. The Council for Slovenians Abroad consists of four representatives of Slovenians living in European states, three from South America and North America respectively, two from Australia and one from Slovenians residing in other countries around the world.

competences of other EU Member States or the free movement of workers, nor does it establish Identity Cards valid in the territory of any other EU Member State.

Since the change of government from November 2008, the Office of the Government for Slovenes Abroad is headed by a minister, a former president of the Slovenian Academy of Sciences and Arts. In July 2009, the government approved the text of the Act Amending the Act on Relations with the Republic of Slovenia with Slovenes abroad. The proposal aims at modifying the framework act adopted three years earlier. The proposal brings forward less demanding amendments and modifications necessary for harmonisations within the act as well as with other acts for achieving easier enforcement of the act itself. The modifications are merely technical and refer to the mandate duration of the members of the Government's Councils and set out 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. At the time of writing, the proposal awaited adoption in the National Assembly using the short procedure. However, the centre-left coalition plans to propose a new act in this field incorporating the possibility of abolishing the current Office of the Government.

The latest political discussion concerning the future development of citizenship legislation took place before the adoption of amended Citizenship Act of 2006. Then a working group was set up to analyse citizenship legislation and its implementation and to prepare changes to the Citizenship Act. Due to the complexity of current citizenship legislation there was a tentative suggestion for an overall revision, but this was hardly to be expected. In fact, when – in July 2006 – the Act amending the Citizenship of the Republic of Slovenia Act was proposed, the government claimed that it would not change the aims and principles of the existing legislation, but it focused instead on the requirements for naturalisation and certain practical aspects, such as clarification of some imprecisely defined provisions, and on harmonisation with other legislation, specifically that concerning immigration and record keeping.

Nevertheless, the Act was not adopted using the short parliamentary procedure as initially proposed by the centre-right government, but gave rise to extended discussion, particularly regarding the 89-word long oath of loyalty, suggested by the Ministry of Justice. While the Liberal-Democrats proposed that the text of the oath should be simplified, the Social Democrats, another opposition party, argued that the text confuses the concepts of 'state' and 'homeland' as the latter is not a legal concept and that taking an oath of loyalty 'to my new homeland' shames a civilised and modern society and is reminiscent of nineteenth century patriotism. Moreover, the Liberal Democrats opposed the transfer of the jurisdiction over naturalisation and loss of citizenship from the Ministry of the Interior to local administrative units, which in the Government's view is the main novelty of the amended Act. They argued that such an arrangement could lead to arbitrary decisions in spite of the revision procedure by the Ministry. While none of the political parties opposed relaxed naturalisation for ethnic Slovenes, the Liberal Democrats criticised that conditions, such as residence in Slovenia or material and social security, are waived in these cases.

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 and local/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 relax further 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.

The present government, occupied with settling the issue of the erasure, did not announce any comprehensive legislative reform in the field of citizenship. Political debates, particularly during the last election campaign have shifted the focus to 'active citizenship' and to the idea of participatory democracy, including societal integration of naturalised 'foreigners' and political participation and representation of these 'new minorities'. This debate is further enhanced by the realities of more recent immigration and structural reforms necessary to overcome the deep economic recession.

5. Conclusions

As a new state, Slovenia went through the 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' Slovenes 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 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 the Slovenian citizenship, if they so

wished, was seen as fulfilled.⁴⁵ 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, they were granted preferential treatment regarding naturalisation.

What might initially 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. There were attempts to abolish dual citizenship for people from other Yugoslavian successor states and only reluctantly was it eventually tolerated. Furthermore, some of those who did not apply or were not admitted as part of the Slovenian citizenry were deprived of their legal residence. At the same time, however, citizenship policy and supplementary or changed provisions on naturalisation throughout the period of statehood hitherto have 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, in the pre-accession period the level of ‘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 in 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, as explained above. 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.

State interests 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 ethnic criteria play a major role in naturalisation procedures, and that Slovenia is attempting to establish a special connection with Slovenes residing abroad. It also supports a notion of imagined community by, for example, explicit requirement of proficiency in the Slovenian language for naturalisation. Furthermore, even naturalised citizens are often seen as foreigners in most areas of public life. Current debates point to a need for a stronger public sense of citizenship in the democratic polity, but do not suggest any substantial change of the basic philosophy guiding citizenship policy nor – after the recent amendments – a comprehensive legislative reform.

⁴⁵ 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 concerning the implementation of the Aliens Act.

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