

EUDO CITIZENSHIP OBSERVATORY

NATURALISATION PROCEDURES FOR IMMIGRANTS MONTENEGRO

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Naturalisation Procedures for Immigrants

Montenegro

Jelena Džankić

1. Introduction

The first separate citizenship regime of Montenegro was formally established by the enactment of the Constitution of Montenegro of 19 October 2007 (Official Gazette of Montenegro 1/07), a year and a half after the country became independent. The citizenship policy was laid out in slightly more detail in the Law on the Implementation of the Constitution of Montenegro (Official Gazette of Montenegro 1/07), which regulated the issue of dual citizenship in the new-born state. Yet the separate Montenegrin Citizenship Act was adopted only on 14 February 2008 (Official Gazette of Montenegro 13/08), due to the internal tensions over statehood and identity in Montenegro (see Džankić 2010). In the context of these internal divisions, Montenegrin policymakers adopted a restrictive citizenship law to prevent the influx of a large number of people who settled in Montenegro after fleeing the wars of Yugoslav disintegration. These people are largely of a Serb ethnicity, and thus more likely to support the opposition parties representing the interests of this minority which forms almost one third of the country's population (see Džankić 2010).

However, the Montenegrin Citizenship Act, and in particular the transitory provisions related to the prospect for naturalisation of the people from the other post-Yugoslav states, has been amended three times, once in 2010 and twice in 2011. The facilitation of the naturalisation procedure for this group of people came as a result of a political compromise between the government and the opposition in the context of the country's aspiration to join the European Union (EU). In fact, the 2010 Opinion of the European Commission on Montenegro's candidacy bid (web) conditioned the start of the accession negotiations on the adoption of electoral legislation, which required an approval of a two-third majority in Parliament. The opposition parties conditioned their endorsement of the new Election Code on facilitating the procedure for naturalisation of the citizens from the former Yugoslav republics.

Nonetheless, even though the conditions for naturalisation have somewhat been relaxed over the past two years, the implementation of the Montenegrin Citizenship Act reveals that the process of naturalisation in this country remains rather restrictive. In order to assess the implementation of the 2008 Montenegrin Citizenship Act this report analyses the promotion of naturalisation by the country's authorities, the documentation required from the applicants to prove that they meet the legal conditions, the authorities' discretion in

interpreting the conditions for naturalisation, the bureaucracy behind the process, and the judicial oversight of the naturalisation procedure in Montenegro.

2. Promotion

Montenegro's citizenship regime is very restrictive due to political reasons explained in detail in the EUDO Citizenship Report on Montenegro (see Džankić 2010). As a consequence of the government's tendency to preserve the country's fragile ethnic and electoral balances, there has been no state-sponsored naturalisation campaign since the adoption of the 2008 Montenegrin Citizenship Act. Instead, applicants are able to obtain information at the state-run information desk at the building of the Ministry of Interior. Rather than being a specialised service offered to those seeking naturalisation in Montenegro, this information service desk is a general counter at the Ministry of Interior where people can ask about administrative affairs (documents and statuses, including citizenship). Prospective applicants may enquire about the naturalisation procedure and the documents they need for naturalisation free of charge and without a prior appointment. The clerks, however, do not check the applicants' documents prior to submission and they do not offer personalised advice on individual applications. Yet one of the major benefits of the information service desk is that it is separate from the desk where the application is submitted. This reduces the waiting time for prospective applicants, who previously had to seek information and submit their application at the same counter.

Despite the existence of a separate information counter, the waiting time for individuals who need information on naturalisation in Montenegro is still rather extensive. There is no website devoted to the promotion of naturalisation, and no leaflets or brochures that explain the process in detail. Rather, the prospective applicant may request information at the desk, in which case he or she may request a naturalisation information sheet (off the printer) listing the documents required under a specific naturalisation procedure. The inspection of the sample of the information sheet shows that the list of documents required is written in clear language, which somewhat facilitates the applicants' access to naturalisation procedures in Montenegro.

Still, the physical availability of application forms may be an issue that increases the length of naturalisation procedures and places additional burden on prospective applicants. In fact, only paper application forms are available only at the Ministry of Interior (Sector for Interior Administrative Affairs) in Podgorica (the capital of Montenegro). There is no online form at the Ministry's website and no interactive assessment tool, which would help the applicants determine their eligibility for naturalisation. However, if the applicant does a general search for the forms for naturalisation on the Internet, he or she will find a link to the PDF document containing application forms for different naturalisation procedures at the website of the General Consulate of Montenegro to Germany (2012, web). The websites of other Montenegrin Embassies and Consulates do not contain links to similar documents. While it is useful for applicants to have access to electronic versions of the naturalisation forms, the fact that one needs to go through a consular website rather than the official

webpage of the Ministry of Interior to obtain them, may prove to be a cumbersome task for prospective applicants with limited computer literacy. This also means that it is likely that the naturalisation costs for such applicants will increase, as many have to travel to the country's capital to obtain the paper application forms.

In general, the cost of naturalisation in Montenegro, as stipulated in laws and used in practice, does not represent a major burden on the applicants. Article 32 of the Montenegrin Citizenship Act states that '[t]axes for proceedings and documents shall be determined by a separate law, in an amount which shall not represent an obstacle for submitting requests.' The fee submitted with the application is determined by the Law on Administrative Taxes and amounts to 5.00 euros (Official Gazette of Montenegro 55/03, 81/05, 2/06, 22/08 and 77/08). Once the applicant's naturalisation request is approved, he or she pays an official fee of 100.00 euros for each person listed on the application. Although this fee is higher than the administrative fee for the national ID card (total taxes 5.00 euros) and passport (total taxes 40.00 euros), the applicant is required to pay this amount only if his or her application has been successful. The fact that the fee is required only after approval favours naturalisation of groups of people of poorer socio-economic background, as the people displaced from the other post-Yugoslav states during the wars of Yugoslav disintegration.¹ Nonetheless, there are no exemptions to the fee on humanitarian or compassionate grounds, which poses a naturalisation barrier to economically vulnerable groups, such as the Roma who are at the greatest risk of statelessness in the country.

The additional costs related to obtaining Montenegrin citizenship include the language assessment, to which all applicants apart from those from the post-Yugoslav states are subject. The cost of the language assessment is 55.00 euros for applicants taking the exam. Those in possession of a school certificate/job contract pay 18.00 euros for a language certificate, and they do not need to pass the language test. The language exam tests the basic knowledge of the Montenegrin language (Examination Centre of Montenegro 2012, web). Although the assessment criteria are listed on the webpage of the Examination Centre of Montenegro, which is in charge of administering the exam, there are no additional publicly available resources for the applicants, such as a publicly available list of questions or a study guide; also, there is no course that the applicants take in order to prepare for the test. Applicants may, at their own discretion, get private language tutoring.

Once the applicant meets all the conditions for admission to Montenegrin citizenship, the person signs a solemn statement, in front of the representative of the Ministry of Interior. The statement reads: 'I, (full name), by accepting Montenegrin citizenship commit to respecting the legal order of Montenegro and being her loyal citizen' (Official Gazette of Montenegro 47/2008). Thus, the act of admission of the applicant into Montenegrin citizenship is contractual rather than ceremonial in nature.

¹ In the Montenegrin laws, these people are referred to as 'displaced people' (if originating from Bosnia and Herzegovina or Croatia) or 'internally displaced people' (if originating from Kosovo). They do not have the 'refugee' status due to political reasons (see Džankić 2010).

3. Documentation

The back page of the application form available at the Ministry of interior contains the list of documents that the applicants need to submit in order to be admitted into Montenegrin citizenship. In addition to the application form, the documents necessary for ordinary naturalisation include: a birth certificate, an ID (accompanied with photocopy of ID), marriage certificate (if any), proof of release from another nationality, proof of residence, proof of accommodation in Montenegro, proof of income in Montenegro, a criminal record certificate from both Montenegro and the country of origin, proof of basic language competence (not required for applicants from the former Yugoslav states), and the proof of tax compliance in Montenegro. All foreign documents require **certified translation**, unless they are in one of the languages of the former Yugoslavia (transitory provisions). Certified translators are approved by the state and the association of translators. The list of translators' names certified for different languages is available on the website of the government (GoM 2012, web).

The first set of documents that accompany the application for naturalisation, including the birth certificate from the country of origin and the photocopy of an ID or passport, are used to establish the **identity** of the applicant. At present, there are no alternative means to establish an applicant's identity in the naturalisation procedure, which has often caused problems for a number of people whose documents remain inaccessible due to the disintegration of the former Yugoslavia.

Furthermore, since Montenegro operates a restrictive citizenship policy, **renunciation of foreign citizenship** is required for naturalisation in the ordinary naturalisation procedure. The documents required include either a proof that the applicant will be released from their citizenship of origin once admitted to Montenegrin citizenship or a proof that he or she will lose citizenship of the state of origin after admission *ex lege*. However, there is no requirement for renouncing the foreign citizenship in naturalisation of expatriates, spouses of Montenegrin citizens, stateless people, and in facilitated naturalisation on grounds of national interest (articles 10, 11, 12 and 14). In addition, in line with the transitory provisions, in force until 31 January 2012, citizens from the former Yugoslav republics who had 'lawful and uninterrupted residence' in Montenegro for at least two years prior to 3 June 2006 (the date of Declaration of independence) were not required to renounce their citizenship of origin, provided that they submitted their application before 31 January 2012.

Yet the most difficult task for applicants seeking to be naturalised in Montenegro is the proof of lawful and uninterrupted **residence**. In order to prove that they meet the residence criterion for naturalisation, applicants need to submit copies of past IDs/residence permits covering a period of 10 years. Since IDs for foreigners are issued for a period of 5 years, two consecutive IDs suffice to meet this criterion. Alternatively, the applicant may obtain a 'certificate of residence' from the Ministry of Interior or the Police (depending on the type of residence). The importance of the proof of residence is also mirrored in the case law of the Administrative Court, which indicates that most rejections have been made on grounds of inadequate proof of residence (see EUDO case law on Montenegro).

In addition to residence, all applicants undergoing ordinary naturalisation need to prove that they have a basic command of the Montenegrin **language**. This can be proven by either passing the certified language exam at the Examination Centre of Montenegro, or by submitting a school/university transcript or proof of employment in state institutions in Montenegro. There is no requirement for language command for expatriates, spouses of Montenegrin citizens, refugees, stateless people, as well as individuals naturalised on grounds of national interest. Moreover, according to the transitory provisions of the 2008 Montenegrin Citizenship Act citizens of the former Yugoslav republics are not required to prove basic language competence, due to the similarity of the post-Yugoslav languages (article 41).

In order to be naturalised, applicants are required to show that they have **economic resources** and that they have **accommodation** in Montenegro. An individual can prove that they have enough economic resources by submitting a permanent job contract and the proof of the amount of salary, a proof of the amount of pension (obtained from the Fund for Pension and Disability Fund) or another proof of permanent income (e.g., maintenance by a third person). The applicant also needs to prove that they own or rent property in Montenegro by submitting an ownership certificate or a certified lease contract, respectively. While there is no right to exemption from the economic requirement in ordinary naturalisation, recognised refugees and stateless people are not required to submit a proof of residence and accommodation, as well as people naturalised in the interest of the state (articles 12, 13 and 14).

Finally, in order to be admitted into Montenegrin citizenship, each applicant is required to submit a **proof of non-conviction**, or the proof that the legal consequences of the sentence have expired; that is – that the sentence is deleted. According to the Criminal Code of Montenegro (Official Gazette of R. of Montenegro 70/04, 13/04), the deletion of a sentence occurs either after a maximum of 10 years, whereby serving the sentence is excluded from this period (article 117) or by rehabilitation (article 118). Rehabilitation, in turn can be legal or court. In cases of legal rehabilitation (first-time offenders only and lighter offences) the sentence is deleted from one to five years after the expiry of the sentence (article 119). In court rehabilitation procedures, the deletion of a sentence takes five to ten years after the expiry of the sentence (article 120), i.e., sentences of 1 to 2 years are deleted after 5 years, and sentences of over 2 to 3 deleted after 8 years. Yet obtaining the criminal record from Montenegro does not suffice, and applicants are required to provide one from their country of origin, too. This raises concerns for some categories of applicants, such as recognised refugees, who are asked to supply a proof of non-conviction from a country that they fled from due to fear of being persecuted.

4. Discretion: how much room do authorities have to interpret the legal conditions?

Naturalisation in Montenegro is a discretionary right of the state, rather than a subjective right of the individual who lodges the application. The discretionary nature of the procedure is mirrored in the fact that the applicant *may* acquire nationality if conditions have been met. Nonetheless, the Ministry of Interior can use its discretionary power to refuse the application

on grounds of proven fraud, threat to the security and defense of Montenegro, or in the general interest of Montenegro. This general ‘interest of Montenegro’ is not defined in laws, which gives authorities broad discretion in deciding on applications for naturalisation. While the reasons for the refusal must be stated in the decision, the authorities do not consider the consequences of the decision for both the resident and his or her family, or alternative measures (such as downgrading to residence permit etc.). This has often been a rationale for challenging the decisions of the Ministry before the Administrative Court, as there have been cases in which the rights of children to nationality have been jeopardised by virtue of the fact that their parents were not admitted into Montenegrin citizenship (see EUDO case law on Montenegro, web).

The procedure in itself is based on a certain degree of discretion, although clear guidelines exist on the majority of criteria for naturalisation listed in article 8 of the Montenegrin Citizenship Act. After an applicant has submitted their request for naturalisation, he or she has the right to seek information on the progress of the procedure. The applicant also may be invited to a hearing during the procedure (article 29 of the Montenegrin Citizenship Act), but the right to be heard is not envisaged by the law.

The Decision on the Criteria for Determining the Conditions for the Acquisition of Montenegrin Citizenship by Naturalisation (Official Gazette of Montenegro 47/08) provides the binding guidelines on the interpretation of requirements for residence, language competence, criminal record, renunciation of the citizenship of origin, and the economic requirements, all stipulated in article 8 of the citizenship law. According to these guidelines, the Ministry’s decision as regards each of these criteria must be based on the documents submitted with the application.

However, the Ministry of Interior has discretion in determining whether the naturalisation of an individual poses a threat to the security and defence of Montenegro. Although the definitions of ‘threat’ are enshrined in articles 6 and 7 of the Decision on the Criteria for Determining the Conditions for the Acquisition of Montenegrin Citizenship by Naturalisation, the Montenegrin Ministry of Interior has the discretionary right to seek further opinion on an applicant’s profile in the context of security and defence from the Agency of National Security and the Ministry of Defence. EUDO case law on Montenegro (web) provides examples of a rejection of naturalisation applications on these grounds.

5. Bureaucracy

Montenegrin bureaucracy is still greatly centralised, due to the legacies of the socialist system. Consequently, the naturalisation process also largely depends on a single central authority and all decisions pertaining to citizenship are taken exclusively at the national level. The Ministry of Interior (Sector for Interior Administrative Affairs, Department for citizenship and naturalisation) confirms that the application is complete, correct, and decides on the application. On matters related to the security and defence criterion for naturalisation, the Ministry of Interior may request data and advice from the Agency of National Security (security matters) and/or the Ministry of Defence (defence matters). Authorities have the right

to check the documentation more than once before the decision is taken and to invite the applicant to a hearing. However, if the application is straightforward, the documents are checked only once before the decision is taken.

The officials deciding on the applications are civil servants, who are usually lawyers. As there is no legal specialisation in citizenship issues in the educational system of Montenegro, the civil servants, who have a general degree in law usually become trainees in the Ministry of Interior (Sector for Interior Administrative Affairs), and over the years they specialise in citizenship affairs.

According to article 29 of the Montenegrin Citizenship Act, the authorities should reach the decision on naturalisation 12 months from the date of submission of the application. The original deadline stipulated in Law in 2008 was 6 months. Due to the high number of applications in the post-independence period, and the slow bureaucratic procedures in Montenegro, this deadline was extended to 12 months in 2010. Even the new time limit for reaching the decision is often not respected. There are no sanctions for the authorities should they fail to reach a decision within 12 months. The only way for applicants whose rights have been violated through excessively lengthy procedures is to initiate proceedings before the administrative court (see EUDO case law on Montenegro, web).

6. Review

The Montenegrin legal system provides legal guarantees in case of rejection of an application for naturalisation. According to article 29 of the Montenegrin Citizenship Act, each decision with a negative outcome for the applicant must state reasons for rejection, and it also must state the type of legal remedy available to the applicant. However, according to the same article of the Law, the appeal against the Ministry's decision is not possible, but the injured party can challenge the Ministry's decision before the Administrative Court of Montenegro. In order to challenge the Ministry's decision on naturalisation, the applicant needs to file the case before the Administrative Court within 15 days from the date of decision. In terms of the scope of the legal remedy available to applicants, the appeal covers both substantive and procedural aspects. The Administrative Court may not grant nationality to the applicant, but it can annul the decision of the Ministry of Interior to reject the applicant. If the Court rules in favour of the applicant, he or she is required to re-submit the application for naturalisation at the Ministry of Interior and to repeat the process.

In theory, an applicant may also fail to submit an application due to his or her failure to pass the language competence exam. The test results are required at the time of application, which means that the applicant knows his or her score at the time of filing the application for naturalisation. Hence, test results, assuming that the applicant submits the exam which he or she has passed, are usually not the grounds for refusal. However, in cases of failed exams, there are no formal provisions to challenge the language competence examination. According to the Examination Centre (interview, 29/4/2012), no applicant has failed the exam so far, so there are no mechanisms dealing with appeals (in law or in practice). In either case,

individuals may not challenge the validity of the exam questions, but they might be able to have his or her test results reconsidered (discretion of the Examination Centre).

Finally, as concerns the procedure for acquiring Montenegrin citizenship, there are no explicit provisions in the Montenegrin Citizenship Act that prohibit discrimination. Rather, the prohibition of discrimination on any grounds is a constitutional matter (article 8, Constitution of Montenegro 2007). In addition to the Constitution, articles 2 and 3 of the Law on the Prohibition of Discrimination (Official Gazette of Montenegro 48/10) stipulate that the anti-discrimination provisions are applicable to 'all people subject to the laws of Montenegro', which includes both nationals and non-nationals legally residing in the country. Hence although there are no directly applicable provisions related to discrimination in the naturalisation procedure, applicants can still seek judicial protection on grounds of constitutional provisions and the Law on the Prohibition of Discrimination. Discrimination complaints are lodged with the Ombudsman of Montenegro (2012, web), and proceedings may also be initiated before the court.

7. In lieu of a conclusion

The implementation of the 2008 Montenegrin Citizenship Act is framed within a context of political tensions that have troubled the new Balkan state over the past two decades. Unlike many European countries, which have established mechanisms for promoting naturalisation, Montenegro does not encourage applicants to seek citizenship. In fact, applicants are commonly required to visit the information counter at the country's capital in order to enquire about naturalisation procedures, obtain the necessary forms, and submit their applications. The modest promotion of naturalisation in Montenegro is clearly a product of the country's restrictive approach to naturalisation and the aspiration of the policymakers to retain the current ethnic and electoral balances.

The sensitivity of citizenship issues in Montenegro, explained in more detail in the EUDO report, also reflects on the procedures for naturalisation, which are a peculiar combination of clearly stipulated criteria and broad discretion of the authorities to decide on an application for naturalisation. That is, while the conditions that the applicant needs to meet and the documents he or she needs to collect are well-defined, the state authorities may still reject an application on grounds of national interest, or if they deem that the applicant represents a security threat to the country. In addition to this, the documents that support the application, which are grounds for determining the applicant's eligibility on many grounds, prove to be cumbersome to obtain, and in particular the proof of residence and release from the citizenship of origin for certain groups of people. Examples of this are residence requirements for displaced people and IDPs (see Džankić 2010), as well as the requirement for recognised refugees to obtain release from their other citizenship of origin and a criminal record certificate from that country. Although there are currently no recognised refugees in Montenegro, the condition requiring the individuals to seek documents from the country they fled from may be problematic from the aspect of human rights.

Indeed, in Montenegro - a country that is shaping its independent citizenship regime for the first time – there are still many outstanding issues regarding the restrictive approach to naturalisation. Many of those issues, and in particular the strict residence requirements, have been highlighted in the judgments of the Administrative Court and in the reports of the country's Ombudsman (2012, web). Having in mind that the 2008 Montenegrin Citizenship Act has been amended three times since its adoption, it is likely that this country's approach to regulating citizenship is still evolving. Since the country started its negotiations for EU accession in June 2012, it is likely that the combination of EU's conditionality and its effect on the domestic politics will yield further changes in both Montenegro's citizenship legislation, and its implementation.

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