Cross-border and EU legal issues: Hungary – Croatia

Tímea Drinóczi and Tamara Takács (eds.)

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Edited by

Dr. habil. Tímea Drinóczi, PhD, associate professor, Head of the Department of Constitutional Law, Faculty of Law, University of Pécs

Dr. Tamara Takács, PhD, assistant professor in European Union Law, Utrecht University, School of Law,

Reviewed by

Prof.dr.sc. Nada Bodiroga-Vukobrat, Head of Jean-Monnet Chair for public European law, Faculty of Law University Rijeka; Director of Jean-Monnet Inter-university Centre of Excellence in Opatija

Prof. Dr. Ádám Antal DSc, professor emeritus at Faculty of Law, University of Pécs, former judge of the Constitutional Court of the Republic of Hungary

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Foreword

On the threshold of the European Union, Croatia can now say that her legal system has been to the maximum extent harmonized with the *acquis* of the EU. However, harmonization on the normative level is not sufficient. Practical implementation of the *acquis* is the next step, which is certainly more difficult than the mere harmonization of norms. Universal legal analysis, both scientific and professional, comparison of standards and of the practice with those countries that have already gained experience in the implementation of the *acquis*, are certainly necessary for the adoption of the *acquis* in a way that will allow the realization of the latter's *ratio legis*.

This book, a collection of papers, may almost be regarded as a symbol. Its origin, its contributors, its themes and the circumstances in which it originated symbolize everything Croatia has been confronted with on her way into the EU which will soon reach its successful end.

On the one hand, with its content, this book covers a wide spectrum of legal topics related to the implementation of the Community *acquis*, and a comparative analysis of several legal institutes in the two neighbouring countries, Hungary and Croatia. On the other hand, it is of great political importance that Hungary is a member of the EU and is fulfilling the role of Presidency at the time of this book's publication. Croatia is a future member. Both countries have abandoned the socialist system and experienced all the hardships of the adjustment of the whole society to new legal, political, economic and national values. Hungary, which, thanks to historical circumstances, has joined the EU before Croatia, has been more than heartily supporting Croatia in her efforts to satisfy all the conditions for EU membership. From the very first day of her membership in the Union, Hungary has been advocating for and encouraging Croatia. As one of the priorities of her presidency over the EU in the first half of 2011, Hungary has set out the completion of Croatian accession negotiations with the EU. Furthermore, Osijek and Pécs are regionally connected and they are constantly emphasizing the importance of universal and quality cross-border relations, not only through the cooperation of their universities, but through every other form of cooperation. Tomorrow, when Croatia and Hungary, Osijek and Pécs, will be divided by the European border, which in fact is not a border at all, this cross-border cooperation will become even more important. Finally, this book has been co-financed by the European

Union through the IPA cross-border program Hungary-Croatia, which shows that EU itself has recognized Osijek and Pécs as centres of jurisprudence that are able to universally analyze particular aspects of cross-border cooperation and of the implementation of the Community *acquis*.

The publishers and authors certainly deserve praise for the choice of topic, the quality of papers, and the message they are sending to the Croatian and Hungarian professional and general public. This message is very simple: Croatia and Hungary are part of the common European legal space, countries that are directed at each other, countries whose resemblances are much greater and much more important than possible differences resulting from different historical circumstances in which they have followed their European way.

Zagreb, 25 January 2011.

Prof.dr.sc. Ivo Josipović
President of the Republic of Croatia

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Preface

The development of cross border issues is strictly interrelated with the expansion, transformation and strengthening of international relations among states. Consequently, in these days, cross border issues and related regulations are attracting more and more attention, becoming one of the core issues of international and supranational relations, especially when studying the European Union. The European Union, in accordance with the subsidiarity principle, emphasizes the significance and the necessity of deepening regional cooperation among the territories even beyond state borders. It is yet another characteristic of the beginning of the 21st century that we have to face different and diverse dangers (for instance epidemics, terrorism, climate change, economic crises, globalization) threatening our lives, health and security. These phenomena obviously raise various and at the same time similar problems clearly and manifestly apparent in each state in the field of civil, business, criminal, and family as well as public law. The answer states can give to these challenges cannot be other than strengthening the cooperation and making it more and more intense. It entails the approximation of legal regulations and establishing joint operations in order to solve, among others, cross border issues. Each EU candidate, including Croatia, has to prove to have created an adequate legal environment for the prerequisites of cross border cooperation. It is obviously true that the cross border phenomenon in itself means much more that is realized in the framework of the supranational organization called European Union. The Pécs Law School and the Strossmayer University have found it inevitable to establish common research and student exchange program even before Hungary joined the EU. This cooperation has not ended after 2004, or after the first decade of this century. It has become even more strengthened as we realized that especially in the legal education and research we can widen our horizons, share our theoretical knowledge and empirical experiences about accession and its effect to our legal system, legal theory and practice in all branches of law. These can be considered backgrounds to the co-operation between the law schools of Pécs and Osijek in the framework of **E**stablishing **UNI**versity **C**ooperation **O**sijek – **P**écs project (EUNICOP; HUHR/0901/2.2.1/0013). EUNICOP is a one-year long common research and curriculum development project that is co-financed and supported by the European Union through the Hungary-

Croatia IPA Cross-border Co-operation Programme and by the two participating law faculties. The EUNICOP project is operated in various interrelated areas and through various activities. One of these activities was the conference "Cross-border and EU legal issues: Hungary – Croatia", organized by the Faculty of Law, University of Pécs on 16-18 September 2010. The conference, where knowledge gained during the joint research activities was shared, successfully brought together researchers and various fields of law were dealt with.

This volume contains all contributions written and presented in English during the conference. Two additional volumes containing the Hungarian and Croatian versions of all conference materials are published in the framework of EUNICOP cooperation, as well.

6 January 2011, Pécs-Osijek-Utrecht

Tímea Drinóczi, Tamara Takács, Mirela Župan

Adrienne Komanovics[*]
Nives Mazur-Kumrić[**]

Dual nationality and ethnic minorities in Hungary and Croatia

I. Introduction

The paramount importance of adequate and effective protection of national minorities as a particular aspect of the protection of human rights and fundamental freedoms and also as a means for promoting stability, democratic security and peace has been repeatedly emphasized.[1] The emergence of new and original forms of minority protection, particularly by the kin-States, constitutes a positive trend insofar as they can contribute to the realization of this goal. Observing recent tendency of kin-States to enact domestic legislation or regulations conferring special rights to persons belonging to their national communities (kin-minorities) has served as a general impetus for the authors of this paper. However, the passing of an amendment to the Hungarian Citizenship Act extending citizenship to non-resident populations in neighboring states made this issue particularly topical. The Hungarian legislation must be viewed in the light of its history in the previous century: the 1920 Trianon Treaty cut off nearly two-thirds of the territory that Hungary had previously controlled, after being on the losing side in World War I. Therefore, large Hungarian minorities now live in neighbouring Slovakia, Romania and Serbia. Other parts of Europe, such as South Eastern Europe and Eastern Europe, could not escape the turmoils of the 20th century either. Expatriate populations have been produced in this part of the continent not only by 'people moving across international borders' but also by 'international borders moving across people'.[2]

[*] Dr. Adrienne Komanivics, PhD, associate professor, Department of Public International and European Law, Pécs, komanovics@ajk.pte.hu
[**] Doc.dr.sc. Nives Mazur-Kumrić, associate professor, Department of International Law, Osijek, nmazur@pravos.hr
[1] See e.g., Art. 27 of the International Covenant on Civil and Political Rights (ICCPR); the European Charter for Regional or Minority Languages, Strasbourg, 5 November 1992, CETS No. 148; the Framework Convention for the Protection of National Minorities, Strasbourg, 1 February 1995, CETS No. 157.
[2] R. Bauböck, 'Stakeholder Citizenship and Transnational Political Participation: a Normative Evaluation of External Voting', 75 *Fordham Law Review* (2007) p. 2438.

This study is divided into two parts, with the first part concentrating on the legitimacy of Hungary's extension of citizenship to persons of Hungarian ancestry living abroad as well as the lawfulness of Slovakia's retaliation law, while the second part focuses on the impact of the dissolution of the former Yugoslavia on the population living in that area.

II. Lack of historical reconciliation with territorial changes: the Hungarian Citizenship Act of 2010

Even before the latest amendment of 26 May 2010, the Hungarian Citizenship Act[3] provided for preferential access to nationality for foreign citizens who declared to be of Hungarian 'nationality' (ethnicity) or who had a Hungarian citizen ancestor and, in either case, had permanent residence in Hungary. Section 4 subsection (3) provided that 'upon request a non-Hungarian citizen claiming to be a Hungarian national who resides in Hungary and whose ascendant was a Hungarian citizen, may be naturalized on preferential terms', which meant exemption from the mandatory eight-years naturalization stage required from aliens.[4] After the parliamentary elections of April 2010,[5] one of the first legislative acts of the new conservative government was to offer citizenship for Hungarians living abroad.[6] The new rules introduce preferential treatment for individual applications from non-citizens if

[3] Act LV of 1993 on Hungarian Citizenship

[4] The relevant provision in Hungarian: 'Az (1) bekezdés b)-e) pontjában meghatározott feltételek fennállása esetén – kérelmére – kedvezményesen honosítható az a magát magyar nemzetiségűnek valló, nem magyar állampolgár, aki Magyarországon lakik és felmenője magyar állampolgár volt.'

[5] 'The Alliance of Young Democrats – Hungarian Civic Union (FIDESZ) gained a two-third majority in the Hungarian Parliament in the elections of April 2010. In December 2004, FIDESZ supported a referendum that aimed at further facilitation of access of ethnic Hungarians to Hungarian citizenship by abolishing the residency requirement. The referendum eventually failed, due to low turnout (37,5 per cent), although the rate of yes votes was 51,57 per cent. An amendment in the same spirit was proposed by FIDESZ in October 2009, but did not get the support of the then parliamentary majority.' Körtvélyesi Zsolt and Tóth Judit, <http://eudo-citizenship.eu/citizenship-news/306-hungarian-government-proposes-access-to-citizenship-for-ethnic-hungarians-in-neighbouring-countries>. All Internet-sources were last accessed on 31.07.2010.

[6] Act XLIV of 2010 amending Act LV of 1993. See further details at <http://eudo-citizenship.eu/citizenship-news/306-hungarian-government-proposes-access-to-citizenship-for-ethnic-hungarians-in-neighbouring-countries>.

they can prove Hungarian ancestry, or else if their origin from Hungary is '*probable*' and, most importantly, *without requiring that they take up residence in Hungary*.[7] The new act no longer requires proof of sufficient means of subsistence and a place of abode in Hungary, nor the passing of an examination in basic constitutional studies. In addition, the applicant does not have to claim to be a Hungarian national. The addressees of this opportunity are the ethnic Hungarians living mainly in Slovakia, Romania, Serbia and the Ukraine. The Act shall enter into force on 20 August 2010, to be applied with regard to applications submitted after 1 January 2011.

In response to the Hungarian legislation, and fearing that a high number of its population could become Hungarian national, *Slovakia* has departed from its previous toleration of multiple nationality. The Slovak Citizenship Act, amended the very same day as its Hungarian counterpart, stipulates that if a Slovak citizen voluntarily acquires the nationality of another State by naturalization, that is neither by marriage nor by birth, the person will automatically lose his/her Slovak citizenship.[8] In *Romania* the relatively mild reaction to the new Hungarian law can be explained by several facts, e.g. a very severe economic crisis that Romania was facing at the time, and the key role that the political party representing the Hungarian ethnic minority in Romania plays a in preserving the majority of the incumbent government in the Romanian Parliament. In addition, Romania follows a similar policy by offering citizenship to kin-minorities in Moldavia.[9]

[7] The new provision in Hungarian is as follows: '[a]z (1) bekezdés b) és d) pontjában meghatározott feltételek fennállása esetén – kérelmére – kedvezményesen honosítható az a nem magyar állampolgár, akinek felmenője magyar állampolgár volt vagy valószínűsíti magyarországi származását, és magyar nyelvtudását igazolja.'.

[8] 'The opposition criticized the amendment as a mere reaction to the Hungarian act on citizenship and pointed out that many young people who applied for citizenship elsewhere will lose employment opportunities due to the changes. Some legal experts claim the new law is unconstitutional, as the Slovak Constitution states that the Slovak citizenship cannot be taken away against a person's will [...].' Dagmar Kuša, EUDO Citizenship, 27 May 2010.

[9] Roxana Barbulescu and Andrei Stavila, EUDO Citizenship. Spiegel Online reported: 'Romania's president wants to increase his country's population and is using an odd means to do so. The country is generously bestowing hundreds of thousands of Romanian passports on impoverished Moldovans. They are gratefully accepting the offer from the EU member state and are streaming into Western

There have not been major reactions on *Serbia's* part. This is due to several factors, such as the relatively low number of ethnic Hungarians living in Serbia and the fact that the Serbian government follows similar citizenship regime.[10] Beside a symbolic aspect, only Serbian Hungarians could expect additional benefits insofar as they would become EU citizens. The lack of official response in *Ukraine* can be explained by several factors. First, because no political force 'owns' the region where ethnic Hungarians live, it may be strategically preferable for politicians to adopt a flexible position on matters sensitive to the voters in the region. Second, the question of the Hungarian minority in Ukraine is not as politically explosive as the Hungarian issue in Slovakia or Romania.[11]
In the wider context, the new Hungarian law has an obvious and significant effect on the EU at large inasmuch as it will open up access to citizenship for groups residing outside the European Union on the basis of cultural or ethnic ties, which affects other EU Member States as well. The opportunity to become EU citizens, principally for ethnic Hungarians of Serbia and Ukraine, with the consequent rights attached, most notably the free movement of persons, may motivate individuals to seek Hungarian nationality. The new Hungarian nationality regime has the potential of creating large numbers of external EU citizens.
The next chapters are dedicated to the examination of the compatibility of the Hungarian law and the Slovak retaliatory steps with the international obligations of Hungary and Slovakia, respectively.

Europe to work as cheap laborers. [...] And when Romania joins the Schengen zone, an area without border controls incorporating 25 European countries, in March 2011, hundreds of thousands of Moldovans with Romanian passports will finally get free entry to the EU.' 'Romanian Passports For Moldovans. Entering the EU Through the Back Door' by Benjamin Bidder, 13 July 2010, available at: <http://www.spiegel.de/international/europe/0,1518,706338,00.html>.

[10] Serbia introduced a very similar approach to citizenship in which naturalization can be accomplished by mere proof of Serb ethnicity or other ethnic group from Serbia without residency requirement. <http://eudo-citizenship.eu/citizenship-news/306-hungarian-government-proposes-access-to-citizenship-for-ethnic-hungarians-in-neighbouring-countries>

[11] O. Shevel, 'Ukraine: Reactions to the Hungarian Citizenship Law' 12 July 2010, available at: <http://eudo-citizenship.eu/citizenship-news/345-ukraine-reactions-to-the-hungarian-citizenship-law>.

III. The concept of nationality and the power to grant nationality

1. Concept of nationality

There is no coherent, accepted definition of nationality in international law and only conflicting descriptions exist under the different municipal laws of states.[12] In the *Nottebohm* case the International Court of Justice stated that:

> '[a]ccording to the practice of States, to arbitral and judicial decisions and to the opinion of writers, nationality is the legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State. Conferred by a State, it only entitles that State to exercise protection vis-à-vis another State, if it constitutes a translation into juridical terms of the individual's connection which has made him its national.'[13]

The 1997 European Convention on Nationality (hereinafter the ECN) provides that 'nationality' means the legal bond between a person and a State and does not indicate the person's ethnic origin.[14] Thus, States are free to decide on the conditions of granting nationality, but the *Nottebohm* case requires a reasonable bond between the State and its national, lack of which may result in other States denying the recognition of nationality.[15] The most relevant notions pertaining to nationality[16] include, among others, the principles provided for by the ECN, namely the right to nationality, avoidance of statelessness, the rule that no one shall be arbitrarily deprived of his nationality, and that marriage and divorce shall not automatically affect the nationality of spouses.[17] In addition, the ECN prohibits discrimination.[18] Apart from

[12] M. N. Shaw, *International Law*. (Cambridge, Cambridge University Press 2003) at p. 585.; J. Hargitai, *Nemzetközi jog a gyakorlatban* [International Law in Practice] (Budapest, Magyar Közlöny Lap- és Könyvkiadó 2008) at p. 64.
[13] *Nottebohm* case, ICJ Reports 1955, p. 23.
[14] Art. 2 para a) of the European Convention on Nationality, Strasbourg, 6 November 1997, CETS No. 166
[15] Hargitai, op. cit. n. 12, at p. 64.
[16] Ibid., at pp. 71-73.
[17] Art. 4. Please note the lack of reference to avoidance of multiple nationality as an objective. Unlike previous treaties, the ECN clearly allows for multiple nationality.

these, we can mention the two principles regulating acquisition through birth – either by descent (*ius sanguinis*) or by birth in the territory (*ius soli*); the unity of citizenship within a family; and non-retroactivity.[19]
Article 4 of the ILC Draft Articles on Diplomatic Protection (hereinafter the Draft Articles)[20] also deals with the question of nationality: for the purposes of the diplomatic protection of a natural person, a State of nationality means a State whose nationality that person has acquired, in accordance with the law of that State, by birth, descent, naturalization, succession of States or in any other manner, not inconsistent with international law. The elements of this definition, in particular the power to grant nationality, the connecting factors, and the limits, if any, imposed by international law on the grant of nationality, will be examined in the next sections.

2. The power to grant nationality

a) Domestic jurisdiction of the individual state

Generally, international law does not regulate the granting of nationality by a State and the matter is regarded as one *within the domestic jurisdiction of the individual State*.[21] Draft Article 4 of the ILC provides that it is for the State of nationality to determine, in accordance with its municipal law, who is to qualify for its nationality. The principle that it is for each State to lay down the conditions for the acquisition and loss of nationality is backed by both judicial decisions and treaties. Thus, the Permanent Court of International Justice stated in the *Nationality Decrees in Tunis and Morocco* case that 'in the present state of international law, questions of nationality are […] in principle within the

[18] Art. 5. ECN
[19] See e.g. Section 1 subsection (4) of the Hungarian Citizenship Act of 1993 (as amended): '[t]his Act has no retroactive effect. The legal rules that had been in force at the time of the occurrence of the facts or events affecting citizenship shall apply to Hungarian citizenship'.
[20] Draft Arts on Diplomatic Protection (2006), adopted by the International Law Commission at its fifty-eighth session. *Official Records of the General Assembly*, Sixty-first Session, Supplement No. 10 (A/61/10)
[21] ILC Commentary to Art. 4 point (1), at p. 31. See also Shaw, op. cit. n. 12, at p. 585. On the distinction between citizenship (concept of municipal law) and nationality (a concept of international law), see e.g., J. O'Brien, *International law* (Cavendish Publishing Ltd. 2002) at p. 240: '[i]nternational law is concerned with nationality, the nexus between the person and the state.'

reserved domain'.[22] Similarly, the 1930 Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws (hereinafter the 1930 Hague Convention) stipulates that '[i]t is for each State to determine under its own law who are its nationals'. Finally, Article 3 of the ECN, titled 'Competence of the State' provides that each State shall determine under its own law who are its nationals.

b) Connecting factors

In general, nationality will depend on some form of link with the state. Draft Article 4 of the ILC provides a non-exhaustive list of *connecting factors* that constitute acceptable grounds for the grant of nationality. The most commonly used factors are the following: birth (*ius soli*), descent (*ius sanguinis*), naturalization,[23] marriage to a national,[24] or acquisition of nationality as a result of the succession of states.[25] According to the ILC, international law does not require a State to prove *an effective or genuine link* between itself and its national as suggested in the *Nottebohm* case, as an additional factor for the exercise of diplomatic protection. Thus

> '[d]espite divergent views as to the interpretation of the case, the Commission took the view that there were certain factors that served to limit *Nottebohm* to the facts of the case in question, particularly the fact that the ties between Mr. Nottebohm and Liechtenstein (the Applicant State) were "extremely tenuous" compared with the close ties between Mr. Nottebohm and Guatemala (the Respondent State) for a period of over 34 years, which led the International Court of Justice to repeatedly assert that Liechtenstein was "not entitled to extend its protection to Nottebohm vis-à-vis Guatemala". This suggests that the Court did not intend to expound a general rule applicable to all States but only a relative rule according to which a State in Liechtenstein's position was required to show a genuine link between itself and Mr. Nottebohm in order to permit it to claim on his

[22] (1923) PCIJ, Ser B, No 4; (1923) 2 ILR 349

[23] Most States provide that aliens may acquire nationality through naturalization by means of a period of lawful residence.

[24] It requires in addition a period of residence, following which nationality is conferred by naturalization. See e.g. Art. 9(1) of the Convention on the Elimination of All Forms of Discrimination against Women (1979), and Art. 1 of the Convention on the Nationality of Married Women (1957), which prohibit the acquisition of nationality in such circumstances.

[25] See Draft Arts on Nationality of Natural Persons in Relation to the Succession of States, adopted by the ILC at its fifty-first session (1999). *Official Records of the General Assembly, Fifty-fourth Session, Supplement No. 10* (A/54/10)

> behalf against Guatemala with whom he had extremely close ties. Moreover, it is necessary to be mindful of the fact that if the genuine link requirement proposed by *Nottebohm* was strictly applied it would exclude millions of persons from the benefit of diplomatic protection as in today's world of economic globalization and migration there are millions of persons who have moved away from their State of nationality and made their lives in States whose nationality they never acquire or have acquired nationality by birth or descent from States with which they have a tenuous connection.'[26]

c) Consistency with international law

As noted above, there are limits imposed by international law on the grant of nationality. Thus, Article 1 of the 1930 Hague Convention stipulates that even though it is for each State to determine under its own law who are its nationals, this law 'shall be recognized by other States insofar as it is consistent with international conventions, international custom and the principles of law generally recognized with regard to nationality'. Similarly, the final phrase in Draft Article 4 categorically specifies that a decision on the granting of nationality is not absolute. Finally, Article 3 paragraph (2) of the ECN provides that domestic rules on nationality shall be consistent with applicable international conventions, customary international law and the principles of law generally recognized with regard to nationality. Consequently, States must abstain from interference in the affairs of other States, including, *inter alia*, the duty not to intervene in the power of other States to determine the conditions of granting nationality.[27] As indicated before, when granting nationality, some kind of connecting factor between the State and its national is required.[28] Furthermore, reflecting the development of human rights law after World War II, there is an increasing recognition that States must comply with international human rights standards in the granting of nationality.[29] Finally, international norms prohibit the arbitrary deprivation of nationality.[30] Restricting our

[26] Op. cit. n. 20, at p. 33. References omitted.
[27] O'Brien, op. cit. n. 21, at p. 148.
[28] Hargitai, op. cit. n. 12, at p. 65.
[29] See e.g. Art. 15 of the Universal Declaration of Human Rights or Art. 7 of the Convention on the Rights of the Child. See also *Re Amendments to the Naturalisation Provisions of the Constitution of Costa Rica*, Inter-American Court of Human Rights, OC-4/84, HRLJ (1984), Vol. 5, p. 161.
[30] In further detail see below in Chapter 4. point a).

examination to fundamental rights limits, the most relevant norm is the prohibition of discrimination based on *inter alia* race, sex, colour, language, religion, national origin, or association with a national minority.[31] Involuntary acquisition of nationality in a discriminatory way, such as where a woman automatically acquires the nationality of her husband on marriage, is inconsistent with international law. Article 9, paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women (1979) provides that:

> '[s]tates parties shall grant women equal rights to men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.[32]

Further restrictions on municipal citizenship laws include the prohibition of torture or inhuman or degrading treatment or punishment,[33] the right to a fair trial,[34] the right to family life,[35] the prohibition of arbitrary expulsion,[36] and the prohibition on the collective expulsion of aliens.[37]

3. Hungarian Citizenship Act: compatibility with international law

The question remains whether the Hungarian Citizenship Act of 2010 is compatible with the rules briefly outlined above. As any other State, Hungary has the power to decide in accordance with its law who are its nationals. Secondly, the connecting factor in determining who qualifies for preferential terms is Hungarian ancestry. Again, this is quite normal, keeping in mind that descent, in the form of the principle *ius sanguinis*, is regarded as one of the major connecting factors between a State and its national. Finally, none of the considerations mentioned above, such as the prohibition of interference with other States' sovereignty,

[31] See e.g., Art. 26 of ICCPR, Art. 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).
[32] See also Art. 20 of the American Convention on Human Rights (ACHR); Art. 5(d) (iii) of the International Convention on the Elimination of All Forms of Racial Discrimination (1965); and Art. 1 of the Convention on the Nationality of Married Women (1957).
[33] Art. 7 of ICCPR, Art. 3 of ECHR, Art. 5 of ACHR
[34] Art. 14 of ICCPR, Art.6 of ECHR, Art 8 of ACHR
[35] Art. 8 of ECHR, Art. 17 of ACHR
[36] Art. 13 of ICCPR
[37] Art. 4 of Protocol No. 4 of ECHR

territorial integrity and political independence, or the obligation to respect human rights, in particular the prohibition of discrimination, have been violated by the Hungarian legislation. Consequently, the Hungarian law is not inconsistent with international treaties or customary international law. This takes us to the next question, namely whether the ensuing Slovak reaction to reject multiple nationality is compatible with international standards. This, in turn, requires the examination of the approach of international law towards multiple nationality and loss of nationality.

IV. Multiple nationality and the loss of nationality

1. How multiple nationality is acquired

Multiple nationality means the simultaneous possession of two or more nationalities by the same person.[38] Since each State is free to set up its own nationality regime, a person can acquire two or more nationalities e.g. by birth,[39] by marriage or by naturalization. A country may allow citizens who obtain foreign citizenship to retain their original citizenship. However, not all nations recognize that their citizens may possess simultaneous citizenship of another country. All States of a multiple national can regard the person as their own national for the purposes of the application of its law.[40] Actually, multiple nationalities can smoothly operate side by side. Problems may arise, however, when an international forum, or the authorities or courts of a third State are confronted with the problem of identifying the 'effective' or 'predominant' nationality. The choice between nationalities has an inevitably important impact on the 'final' decision.[41] Furthermore, the political implications of extending nationality to certain groups of people, such as kin-minorities, can lead to heated internal as well international disputes.[42]

[38] Art. 2(b) of the ECN

[39] E.g., a child born to Hungarian parents in the United States may acquire both US citizenship on the basis of *ius soli* and Hungarian citizenship on the basis of *ius sanguinis*.

[40] The Hungarian Citizenship Act stipulates in Section 2 subsection (2) that '[u]nless an Act provides otherwise a Hungarian citizen who is simultaneously also the citizen of another state shall be regarded as a Hungarian citizen for the purposes of the application of Hungarian law'.

[41] Hargitai, op. cit. n. 12, at pp. 77-78.

[42] Ibid., at p. 80.

2. Former approach: reduction of cases of multiple nationality

According to the 1930 Hague Convention, the signatories were

> 'convinced that it is in the general interest of the international community to secure that all its members should recognize that every person should have a nationality and should have *one nationality only*'.[43]

Thus, the objective was to abolish all cases of statelessness as well as of multiple nationality. In order to achieve this goal, national legislations in most European countries have forbidden dual citizenship, while numerous bilateral agreements, international conventions, and mediating international organizations have tried to eliminate cases of dual citizenship. The 1963 Council of Europe Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality stipulated that a national of a signatory country who acquires of his own free will a second nationality automatically loses his original (former) nationality.[44]

The reasons behind the underlying resistance to multiple citizenship are manifold. Firstly, multiple nationality has been regarded an anomaly for emotional and psychological reasons. Resistance to multiple citizenship is rooted in the emergence of modern nationalism, in the conviction that

> 'each person has one "essential identity" characterized by a single form of national allegiance and political loyalty, and can be therefore a member of only one nation at a given point in time'.[45]

Secondly, the need to guarantee national security contributed to the reluctance towards multiple nationality.[46] Thirdly, States found it desirable to avoid conflicts with other States concerning a multiple national's military duties. Thus, the guiding principle was that persons possessing multiple nationality shall be subject to military obligations in

[43] Preamble, emphasis added.

[44] Strasbourg, 6 May 1963, CETS No. 043; Art. 1

[45] C. Iordachi, 'Dual Citizenship in Post-Communist Central and Eastern Europe: Regional Integration and Inter-Ethnic Tensions', in O. Ieda and T. Uyama, eds., *Reconstruction and Interaction of Slavic Eurasia and Its Neighboring Worlds* (Sapporo, Slavic Research Center, Hokkaido University 2006) p. 105, at p. 110.

[46] Citizenship laws in most countries have denied dual citizens access to legislative bodies, state bureaucracies, or even to certain professions or types of property considered 'strategic', reserving these for 'single' citizens. Ibid., at p. 110.

relation to the Party in whose territory he was ordinarily resident.[47] In fact, this problem is no longer as relevant as it used to be due to the constantly increasing number of States which no longer require obligatory military service. According to a survey carried out in 2005, '[s]lightly fewer than half of the world's States currently enforce some form of obligatory military service'.[48] Even so, the ECN dating from 1997 still comprises several provisions on military obligations in cases of multiple nationality.[49]

Fourthly, opposition to multiple citizenship has also been triggered by pragmatic State interests, such as budgetary considerations. States invariably strive for the maximization of their revenue and are not prepared to relinquish income originating from citizens. This aim, however, can easily lead to double taxation for dual nationals. A person with multiple nationality may have tax obligation to his country of residence and also to one or more of his countries of nationality. Thus, people have been discouraged from possessing multiple nationality. In order to eliminate this problem, many States have concluded tax treaties for avoiding double taxation.

Finally, it has been argued that a person's multiple nationality could strain interstate relations in connection with diplomatic protection. Similarly to the arguments listed above, this contention is no longer convincing. The ILC Draft Articles on Diplomatic Protection provide that any State of a multiple national may exercise diplomatic protection (or they can even exercise it jointly) against a third State.[50] In case of a claim against a State of nationality, the State of dominant or effective nationality might bring proceedings in respect of a national against another State of nationality.[51]

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[47] Art. 5 of Convention on the Reduction of Cases of Multiple Nationality and on Military Obligations in Cases of Multiple Nationality

[48] D. Brett, 'Military Recruitment and Conscientious Objection: A Thematic Global Survey' (2005) p. 4. Available at:
<http://www.cpti.ws/cpti_docs/brett/recruitment_and_co_A4.pdf>.

[49] See Art. 21 of the ECN stipulating that '[p]ersons possessing the nationality of two or more States Parties shall be required to fulfill their military obligations in relation to one of those States Parties only', and that multiple nationals 'shall be subject to military obligations in relation to the State Party in whose territory they are habitually resident'.

[50] Draft Art 6

[51] Draft Art 7

3. Growing tolerance towards multiple nationality

As noted above, the reasons behind the resistance to multiple nationality have largely disappeared during the last decades. There is an ever-growing number of multiple nationals, due to the unprecedented scale of labour migration based on the freedom of movement between the EU Member States resulting in a substantial immigrant population, growing number of marriages between spouses of different nationalities, and the principle of equality of the sexes inasmuch as children born from these mixed marriages automatically possess dual nationality. These new phenomena inevitably justify the reconsideration of the strict application of the principle of avoiding multiple nationality.[52] Apart from the general trends outlined above, the situation is even more complicated in Central and Eastern Europe. As Iordachi summarized it, in these countries

> '[…] dual citizenship has not served as a way of integrating alien residents, but mostly as a way of reconstructing the national 'imagined communities'. [...] There has been a revival of policies of national integration between mother countries and external kin minorities. [...] New citizenship laws in these states [Albania, Bulgaria, Romania, Hungary, and Poland] encompassed therefore an important national dimension: after decades of political isolation from Diaspora and dual citizenship prohibition, most of these states have resumed policies of "positive discrimination" toward their co-ethnics abroad.'[53]

In response to the large-scale proliferation of multiple nationality, Hungary has terminated bilateral agreements with former socialist States excluding dual citizenship,[54] while the Hungarian Citizenship Act of 1993 opens the door for multiple nationality. Growing tolerance towards multiple nationality at international, or at least European, level is clearly evidenced by the 1997 European Convention on Nationality which does not list the objective of reducing the cases of multiple nationality among

[52] The principle of equality of the sexes means that spouses of different nationalities should be allowed to acquire the nationality of their spouse under the same conditions and that both spouses should have the possibility of transmitting their nationality to their children. Explanatory Report to the 1997 European Convention on Nationality, point 8. – See also Iordachi, loc. cit. n. 45, at p. 110.

[53] Ibid., at pp. 116-17. and 124.

[54] Hungary had concluded agreements with the Soviet Union, Bulgaria, Czechoslovakia, Poland, Democratic Republic of Germany, Mongolia and Romania. See Hargitai, loc. cit. n. 12, at p. 100.

the principles in Article 4. In the Preamble, the Contracting Parties refer to 'the varied approach of States to the question of multiple nationality' and recognize that 'each State is free to decide which consequences it attaches in its internal law to the fact that a national acquires or possesses another nationality'. Thus the objective in this regard is to find 'appropriate solutions to consequences of multiple nationality and in particular as regards the rights and duties of multiple nationals', most notably to the fulfillment of military obligations. Further, Article 14(1)a) stipulates that a State Party shall allow children having different nationalities acquired automatically at birth *to retain* these nationalities; while Article 15 provides that State Parties may determine in their internal law whether their nationals who acquire or possess the nationality of another State retain its nationality or lose it.[55]

Even though in the great majority of cases multiple nationality does not cause any problem and each State of nationality can regard a multiple national as its citizen for the purposes of the application of its internal law, certain situations may arise where one of the citizenships shall enjoy priority over the other one(s). The most important example of this competitive situation is the exercise of diplomatic protection against a State of nationality. While the 1930 Hague Convention stipulated that a State may not afford diplomatic protection to one of its nationals against a State whose nationality such person also possesses,[56] the ILC believes that there is strong support in arbitral decisions for another position, namely that:

> '[...] the State of *dominant or effective nationality* might bring proceedings in respect of a national against another State of nationality. [...] No attempt is made to describe the factors to be taken into account in deciding which nationality is predominant. [...] such factors include habitual residence, the amount of time spent in each country of nationality, date of naturalization (i.e., the length of the period spent as a national of the protecting State before the claim arose); place, curricula and language of education; employment and financial interests; place of family life; family ties in each country; participation in social and public life; use of language; taxation, bank account, social security insurance; visits to the other State of nationality; possession and use of passport of the other State; and military

[55] Art. 15(a) provides that '[t]he provisions of this Convention shall not limit the right of a State Party to determine in its internal law whether […] its nationals who acquire or possess the nationality of another State retain its nationality or lose it […]'.

[56] Art. 4

service. None of these factors is decisive and the weight attributed to each factor will vary according to the circumstances of each case.'[57]

4. The loss of nationality upon acquiring nationality of another State and the 1997 European Convention on Nationality

Loss of nationality can happen either at the initiative of the individual (voluntary loss) or, and this is more important for the purposes of this study, *ex lege* or at the initiative of the State (involuntary loss). International law permits the loss of nationality *ex lege* or at the initiative of the State providing its national will not become stateless.[58] Many internal citizenship laws envisage the loss of 'original' nationality upon a citizen's voluntary acquisition of another country's citizenship. Loss of naturalized citizenship usually occurs when the naturalized citizen resided in another country for a specified time,[59] obtained citizenship through unlawful means,[60] or if he did not renounce previous citizenship. As noted above, States should remain free to take into account their own particular circumstances in determining the extent to which multiple nationality is allowed by them.[61] Thus,

'[t]he question of allowing persons, who voluntarily acquire another nationality, to retain their previous nationality will depend upon the individual situation in States. In some States, especially when a large proportion of persons wish to acquire or have acquired their nationality, it may be considered that the retention of another nationality could hinder the full integration of such persons. However, other States may consider it preferable to facilitate the acquisition of their nationality by allowing persons to retain their nationality of origin and thus further their integration in the receiving State (e.g. to enable such persons to retain the nationality

[57] ILC Draft Arts, Commentary to Art. 7 (points (3) and (5)), at pp. 44 and 46. Emphasis added.

[58] See e.g., Art. 7 para 3 of the European Convention on Nationality: '[a] State Party may not provide in its internal law for the loss of its nationality [...] if the person concerned would thereby become stateless,' unless the nationality was acquired by fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant.

[59] Hargitai, op. cit. n. 12, at p. 69.

[60] E.g., by disclosing false or untrue data, or by concealing any consequential data or information, see, *inter alia*, Art. 9 of the Hungarian Citizenship Act of 1993.

[61] Explanatory Report to the ECN, point 10

of other members of the family or to facilitate their return to their country of origin if they so wish).'[62]

a) Prohibition of arbitrary deprivation of nationality

However, certain principles limit State discretion with regard to deprivation of nationality. The most important rule, provided for e.g., by Article 4 of the ECN, is the prohibition of arbitrary deprivation of nationality.[63] Deprivation of nationality may qualify 'arbitrary' if it does not comply with certain guarantees as to the substantive grounds for deprivation as well as the procedural safeguards.[64]

b) Substantive grounds for deprivation

As regards the substantive grounds, deprivation must be foreseeable, proportional and prescribed by law.[65] Article 7(1) of the ECN exhaustively lists the grounds for deprivation.

> Loss of nationality *ex lege* or at the initiative of a State Party
> 1) A State Party may not provide in its internal law for the loss of its nationality *ex lege* or at the initiative of the State Party except in the following cases:
> *a) voluntary acquisition of another nationality*;
> b) acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant;
> c) voluntary service in a foreign military force;
> *d) conduct seriously prejudicial to the vital interests of the State Party*;
> e) lack of a genuine link between the State Party and a national habitually residing abroad;
> f) where it is established during the minority of a child that the preconditions laid down by internal law which led to the *ex lege* acquisition of the nationality of the State Party are no longer fulfilled;
> g) adoption of a child if the child acquires or possesses the foreign nationality of one or both of the adopting parents.
> [...][66]

[62] Ibid., at point 9.
[63] Art. 4(c) stipulates that 'no one shall be arbitrarily deprived of his or her nationality'. This was taken *verbatim* from Art. 15(2) of the Universal Declaration of Human Rights (1948).
[64] Explanatory Report to the ECN, point 35.
[65] Ibid., at point 36.
[66] Emphasis added.

It follows from the negative formulation that loss of nationality cannot take place unless it concerns one of the cases provided for in Article 7. Even so, a State may allow persons to retain their nationality.[67] A further limit to the loss of nationality is the situation where the person concerned would thereby become stateless, unless he acquired nationality by improper conduct.[68] For the purposes of this study, paragraphs a) and d) are relevant and the analysis is restricted to these grounds. Paragraph a) allows, but does not require, States Parties to provide for the loss of nationality when there is a voluntary acquisition of another nationality. The word 'voluntary' indicates that there was an acquisition as a result of a person's own free will.[69] Even though paragraph a) provides absolute legal justification for the loss of nationality, which is a solution followed by many States worldwide,[70] Slovakia could base its retaliatory act on paragraph d) of Article 7, as well as on Article 15. Thus, Slovakia could argue that application for and acquisition of Hungarian nationality is contrary to its national security inasmuch as it can be regarded as a manifestation of disloyalty of a person towards his State of origin, in this case, towards Slovakia, or a violation of duties as a national.[71] However, the general and vague formulation of paragraph d) makes this ground for loss a potential source of legal insecurity.[72] Furthermore, Article 15 of the ECN uses a clear language by stipulating that any State Party might determine in its internal law that its nationals who acquire the nationality of another State lose its nationality. In addition to the prohibited grounds of deprivation of nationality, the ECN specifically addresses the issue of discrimination. Article 5 prohibits State rules or practices on nationality which amount to discrimination on the grounds of sex, religion, race, colour or *national or ethnic origin*. Consequently, loss of nationality

[67] Art. 16 and Explanatory Report to the ECN, point 58.
[68] Art. 7 para 3 of the ECN
[69] Explanatory Report to the ECN, point 59.
[70] See United States Office of Personnel Management, Investigations Service: *Citizenship Laws of the World*. March 2001., available at: <http://www.opm.gov/extra/investigate/IS-01.pdf>. See also the survey carried out by G. de Groot and M.P. Vink, '*Loss of Citizenship. Trends and Regulations in Europe*' (Florence, European University Institute 2010), available at: <http://eudo-citizenship.eu/docs/Loss.pdf>.
[71] See also Art. 8 para. 3(a)ii) of the 1961 Convention on the Reduction of Statelessness.
[72] Groot and Vink, op. cit. n. 70, at p. 28.

shall be deemed arbitrary if it is based on discriminatory grounds. Quite interestingly, the Explanatory Report notes that 'the withdrawal of nationality on *political grounds* would be considered arbitrary',[73] which, however, does not appear in the text of the Convention. It is worth noting that not every type of differentiation is prohibited by Article 5. The requirement of knowledge of the national language in order to be naturalized and the facilitated acquisition of nationality due to descent or place of birth might serve as examples of justified grounds for differentiation or preferential treatment.[74] Likewise, differentiation based on language is not listed as a prohibited ground for discrimination. The Convention itself provides for the facilitation of the acquisition of nationality in certain cases.[75] Furthermore, the Explanatory Report declares that:

> '*State Parties can give more favourable treatment to nationals of certain other States*. For example, a member State of the European Union can require a shorter period of habitual residence for naturalisation of nationals of other European Union States than is required as a general rule. This would constitute preferential treatment on the basis of nationality and not discrimination on the ground of national origin.
> It has therefore been *necessary to consider differently distinctions in treatment which do not amount to a discrimination and distinctions which would amount to a prohibited discrimination in the field of nationality.*'[76]

c) Procedural safeguards

As regards procedural safeguards, the ECN stipulates that decisions relating to nationality shall contain reasons in writing and shall be open to an administrative or judicial review. These provisions are designed to prevent an arbitrary exercise of powers.[77]

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[73] Explanatory Report to the ECN, point 36. Emphasis added.
[74] Ibid., at point 40.
[75] E.g., in the case of spouses of its nationals; children of one of its nationals; children one of whose parents acquires or has acquired its nationality; children adopted by one of its nationals; persons who were born on its territory and reside there lawfully and habitually; stateless persons and recognized refugees lawfully and habitually resident on its territory, etc. See Art. 6 para 4.
[76] Explanatory Report to the ECN, points 41-42. Emphasis added.
[77] Processing of applications within a reasonable time (Art. 10); statement of reasons in writing (Art. 11); right to an administrative or judicial review (Art. 12). Regrettably, Hungary has reservation with respect to Art. 11 and 12. See

V. Hungarian – Slovak controversy: conclusions

Apparently, the concept of nationality is subject to change because the contours of State sovereignty are becoming more porous.[78] This change is definitely evidenced by the growing tolerance towards multiple nationality. In addition, preferences granted to ethnic minorities by a kin-State can be justified on the basis of international law relating to the rights of minorities to preserve and promote their ethnic, linguistic and cultural heritage. Even though there is nothing in international law prohibiting multiple nationality, or the loss of nationality upon acquisition of nationality of another State, certain trends are clearly discernible. Multiple nationality is an everyday reality, increasingly recognized by the members of the international community. The 1997 European Convention on Nationality is neutral on the issue of the desirability of multiple nationality, thus clearly abandons the objective of single nationality characteristic of the 1963 Convention on the Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality. As regards loss of nationality, the ECN expressly provides for the possibility of loss of nationality as a result of voluntary acquisition of a foreign citizenship. Nevertheless, according to a survey, less and less municipal citizenship regimes retain such restriction.[79]

The Hungarian Citizenship Act as amended in May 2010 offering nationality on request to ethnic Hungarians living abroad if they speak Hungarian and have Hungarian ancestry does not violate any international obligations of Hungary. On the face of it, the Slovak retaliatory step is also compatible with international law. However, the automatic loss of nationality of native-born persons residing in the territory of Slovakia seems at least on the brink of incompatibility with international norms. Ethnic Hungarians possessing Slovak nationality acquired by birth clearly have – and wish to maintain – their link with

<http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=166&CM=8&DF=23/07/2010&CL=ENG&VL=1>.

[78] E. Warner, 'Unilateral Preferences Granted to Foreign National Minorities by a Kin-State: A Case Study of Hungary's "Status Law"', 35 *Georgetown Journal of International Law* (2004), 379., at p. 381.; C. Margiotta and O. Vonk, 'Nationality law and European citizenship: the role of dual nationality', p. 3., available at: <http://kcl.ac.uk/content/1/c6/07/52/58/ConstanzaMargiottaandOlivierVonk.pdf>.

[79] Groot and Vink, op. cit. n. 70, at p. 7.

Slovakia, even after applying for and receiving another (Hungarian) nationality. Furthermore, the contention as to the incompatibility of a second citizenship with the duties as Slovak national is very vague, general and thus subject to arbitrary interpretation and implementation, in sharp contrast to the requirement of legal certainty. Finally, the protection of national minorities, which forms an integral part of the protection of human rights, does not fall within the reserved domain of States.[80] A State that hosts a national minority has a special duty to protect it, and this protection must at the very minimum include a citizenship guarantee.[81]

Certainly, the problem appears to be a political rather than a legal one. The Hungarian act is regrettable in the sense that it does not seem to help Hungarian minorities abroad; on the contrary, it creates a dilemma for them, while at the same time the act has provoked protest from Slovakia and put a strain on Hungary's relations with its northern neighbour. The Hungarian act is rather aimed to please constituencies at home. Similarly, the intended target of the new Slovak law is the electorate, the new rules being adopted in the midst of Slovak parliamentary elections.[82] The political motivations behind the move became all the more apparent after the elections, since according to certain sources, the new Government plans to remove the section prohibiting multiple nationality, and until then authorities will not enforce this provision in practice.[83] Doubtless, the next turning point is 1 January 2011, the date set for the actual application of the new

[80] See e.g., Art. 1 of Framework Convention for the Protection of National Minorities (1995).

[81] Unfortunately, the 1995 Framework Convention on National Minorities is silent on the question of citizenship affiliations of minorities as has been noted by Rainer Bauböck, available at: <http://eudo-citizenship.eu/citizenship-forum/322-dual-citizenship-for-transborder-minorities-how-to-respond-to-the-hungarian-slovak-tit-for-tat>.

[82] The issue of ethnic Hungarian minority in Slovakia had been among the centre pieces of the public debate during the election. Slovakia's southern and northern neighbors are perceived as entities against which Slovak law defines itself. Where the Slovakian act has most impact? Dagmar Kusá, Country Report: Slovakia, EUDO Citizenship Observatory (European University Institute, June 2010) p. 1., available at: <http://eudo-citizenship.eu/docs/CountryReports/Slovakia.pdf>

[83] <http://index.hu/belfold/2010/07/17/eletbe_lepett_a_szlovak_allampolgarsagi_torveny/>

Hungarian citizenship rules, but presumably it will have negligible practical value for Hungarian diasporas.

VI. Dual citizenship as an instrument of protection of ethnic minorities in the Republic of Croatia

1. Introduction

The Croatian approach to dual citizenship with respect to ethnic minorities is to be exclusively perceived through the complexity of legal-political consequences originating from the fall of the former Yugoslav Federation. After becoming independent, the Republic of Croatia has mostly abolished the former legislative framework, keeping in force only those provisions which do not contradict the basic postulates of the new democratic order. Moreover, it has maintained them to the least possible extent just to avoid legal gaps. The issue of citizenship has, since the very beginning of the Croatian sovereignty, been identified as the crucial field within the first codification wave initiated in the beginning of 1991. Moreover, the Croatian Parliament adopted the Croatian Citizenship Act[84] as early as on 26 June 1991 and thus legally regulated the prerequisites for acquisition and termination of Croatian citizenship as a link between public law and affiliation of a single person to the Croatian State.[85] This link has immediate repercussions for the legal status of a person not only in terms of national but also in terms of international law. The latter particularly refers to members of ethnic minorities as its most frequent titles.

2. Dual Citizenship in the legal system of the Republic of Croatia

a) Croatian Citizenship Act (1991)

None of the provisions of the Croatian Citizenship Act (hereinafter: the Act) specifies dual citizenship *expressis verbis*. However, certain articles explicitly or implicitly suggest the possibility of Croatian citizens to possess or acquire citizenship of one or more other countries. This holds true, first of all, to Article 2 of the Act which stipulates as follows:

[84] Law on Croatian Citizenship, Official Gazette 53/1991, 70/1991, 28/1992, 113/1993, 4/1994

[85] V. Ibler, *Rječnik međunarodnog prava* (Zagreb, Informator 1987) p. 69.

> '[t]he citizen of the Republic of Croatia who is at the same time foreign citizen, shall be, before the authorities of the Republic of Croatia, deemed to be exclusively a Croatian citizen'.

The provision proclaims the *principle of exclusivity*, giving absolute priority to Croatian citizenship while aiming at the elimination of possible problems which may arise due to the presence of dual or multiple nationality. Hoping to prevent dual and multiple citizenships, the Croatian Parliament has also adopted the provision of Article 8 paragraph 1 item 2 of the Act, according to which Croatian citizenship can be obtained through naturalization by foreigners who have submitted an application for Croatian citizenship under the condition that they have already revoked other country's citizenship or that they have presented an evidence of subsequent revocation thereof if their application is accepted.[86]

In spite of the efforts to legally abolish the possibility of occurrence of dual citizenship, it has often been the case among ethnic Croats living outside the homeland. One of the ways of acquiring dual citizenship is previous revocation of the Croatian one, after which a person, pursuant to provisions of Article 15 of the Act stipulating acceptance into Croatian citizenship under privileged circumstances,[87] obtains it for the second time, without being restrained by Article 8 of the Act which prescribes the conditions for obtaining Croatian citizenship by naturalization.[88] The population of emigrants may find Article 11 of the

[86] The norm has been mitigated by a rule from Art. 8a, according to which 'a guarantee of admission to Croatian citizenship may be issued to a foreigner who has filed a petition for admission to Croatian citizenship, and who, at the time of filing a petition did not receive a revocation of foreign citizenship or who does not have proof that he would get a revocation if he gets admitted to Croatian citizenship, if he meets all other prerequisites from Art. 8, Paragraph 1, of this Law'.

[87] Art. 15 stipulates that '[a] Croatian citizen who petitioned for and had his or her Croatian citizenship revoked for the reasons of acquiring citizenship in another country, which was set forth as a prerequisite by the foreign country in which he or she has place of residence for conducting a profession or a business, can regain Croatian citizenship although he or she does not meet the prerequisites from Art. 8, paragraph 1, points 1-4 of this Law'.

[88] According to Art. 8 para 1 a foreign citizen who files a petition for acquiring Croatian citizenship shall acquire Croatian citizenship by naturalization if he or she meets the following prerequisites: 1. that he or she has reached the age of eighteen years and that his or her legal capacity has not been taken away; 2. that he or she has had his or her foreign citizenship revoked or that he or she submits proof that he or

Act relevant since it determines that even emigrants and their ancestors can acquire Croatian citizenship by naturalization although they do not meet the requirements from Article 8 paragraph 1 of the Act.[89] Following the provisions of Article 11, Article 16 explicitly regulates the possibility of ethnic Croats to obtain Croatian citizenship with the residence outside the Republic of Croatia if they meet the requirement from Article 8 paragraph 1 item 5 of the Act and if they submit a written statement that they consider themselves Croatian citizens. Nevertheless, the details of the conditions under which a person can claim their affiliation to the Croatian nation are not specified by the Act.[90] Finally, it is necessary to take note of Article 30 which brought up many issues, especially in the context of non-discrimination and protection of minority rights. Pursuant to paragraph 1, a Croatian citizen is a person

she will get a revocation if he or she would be admitted to Croatian citizenship; 3. that before the filing of the petition he or she had a registered place of residence for a period of not less than five years constantly on the territory of the Republic of Croatia; 4. that he or she is proficient in the Croatian language and Latin script; 5. that a conclusion can be derived from his or her conduct that he or she is attached to the legal system and customs persisting in the Republic of Croatia and that he or she accepts the Croatian culture.

[89] The respective provision has its connection in Art. 10 of the Constitution of the Republic of Croatia, according to which the Republic of Croatia shall protect the rights and interests of its citizens living or residing abroad and promote their bonds with the homeland while entities of the Croatian nation in other countries shall be granted special care and protection. Emigrants are people who left Croatia in order to live abroad permanently. At this point, a foreigner does not necessarily have to be a member of the Croatian nation in an ethnical sense but only to have lived before on the territory which used to belong to Croatia (including the territories belonging to former states such as the Austro-Hungarian Monarchy). Ustav Republike Hrvatske, Narodne novine, br. 56/1990, 135/1997, 8/1998 – pročišćeni tekst, 113/2000, 28/2001, 41/2001 – pročišćeni tekst, 55/2001; J. Omejec, 'Legal Requirements for Acquiring Croatian Citizenship by Naturalization in Comparison with the Naturalization Laws of Some European and Anglo-Saxon Countries', 46 *Zbornik Pravnog fakulteta u Zagrebu* (1996) pp. 509-511.

[90] Art. 16 assures naturalization of ethnic Croats from neighbouring States, i.e., former Yugoslav Republics, particularly from Bosnia and Herzegovina, while Art. 11 facilitates naturalization of Croatian emigrants and their ancestors although not fulfilling the conditions concerning the knowledge of the Croatian language stipulated in Art. 8. I. Štiks and F. Ragazzi, 'Croatian Citizenship: From Ethnic Engineering to Inclusiveness', in R. Bauböck, et al., eds., *Citizenship Policies in the New Europe*: *Expanded and Updated Edition* (Amsterdam, Amsterdam University Press 2009) pp. 345-346.

who had obtained that status according to the regulations valid until the Croatian Citizenship Act came into force whereas paragraph 2 of the Article stipulates that a Croatian citizen is a member of the Croatian nation who, on the day of entry into force of the Act, did not possess Croatian citizenship but had registered residence in the Republic of Croatia and had already submitted a written statement that they considered themselves Croatian citizens.

The lenient attitude of the Croatian legislature towards dual citizenship is connected to the inclusive ethnic policy facilitating privileged naturalization to members of the Croatian nation living abroad.[91] Štiks and Ragazzi warn about the radical side of these legislative solutions. According to them, these solutions were instruments for creating '*transnational nationalism*', i.e., the nationalism that had the Croatian ethnicity for its starting point for homogenization of national population. On the one side, it, in terms of Croatian citizenship, encouraged exclusion of the category of citizens whose ethnic affiliation is beyond the Croatian one and inclusion of ethnic Croats regardless of their residence, on the other.[92] This kind of policy is about to be abandoned. In fact, the negotiations for Croatian accession to the European Union imply amendments of the Act in the context of Croatian adoption of the 1997 European Convention on Nationality which was signed by Croatia on 19 January 2005 but has never been ratified.[93]

Consequently, the Act obviously proclaims two basic principles: the principle of the legal continuity of republic citizenship and the principle that every member of the Croatian nation (ethnic Croat) shall be considered a Croatian citizen. Such preferential treatment of members of the Croatian nation is not foreseen for other citizens of the former Yugoslavia, which has enticed serious political discussions on discrimination of ethnic minorities. The only way members of other

[91] V. Đ. Degan, *Međunarodno pravo – Drugo osuvremenjeno izdanje* (Rijeka, Pravni fakultet Sveučilišta u Rijeci 2006) p. 499.; Iordachi, loc. cit. n. 45, at p. 121.

[92] Štiks and Ragazzi, loc. cit. n. 90, at p. 339.

[93] After the European Convention on Nationality comes into force in Croatia, it will be much harder to members of the Croatian nation living abroad on a permanent basis to obtain Croatian citizenship if they do not meet the requirements on residing in Croatia. It is this condition that has prevented Croatian ratification of the Convention since there is a public opinion that such a breakthrough would disturb the bonds between Croatia and members of the Croatian nation living abroad, particularly in Bosnia and Herzegovina. Ibid., at p. 352.

nations could acquire Croatian citizenship was ordinary naturalization, fulfilling the conditions defined in Articles 8, 9, 10, 11 and 12 of the Act.[94] The criticism also referred to the fact that the legal prerequisites for acceptance into Croatian citizenship used to be, at their discretion, assessed by police departments and the Minister of Interior while the body in charge was not obliged to provide an explanation of the reasons for decline of an application for Croatian citizenship. The issue appeared before the Constitutional Court in 1993 when one applicant unsuccessfully insisted on amendments of Article 30 of the Act.[95]

Beside the above naturalization, Croatian citizenship can also be obtained in the following three ways: by origin, i.e., having an ancestor with Croatian citizenship (*ius sanguinis*), by birth on the Croatian territory (*ius soli*) and citizenship acquired based on international treaties. Regarding the four ways of obtaining Croatian citizenship, there is a certain hierarchy which prefers the principle of *ius sanguinis* to the other three. With respect to this analysis of dual citizenship, acquisition of citizenship by naturalization and that based on international treaties are worth further discussion.[96] Throughout history, the latter has been a

[94] UNHCR – Regional Bureau for Europe, 'Citizenship and the Prevention of Statelessness Linked to the Disintegration of the Socialist Federal Republic of Yugoslavia', 3 *European Series* (1997) pp. 14-15.

[95] The Constitutional Court in its ruling of 24 May 1993 declared the provision of Art. 30 para. 2 of the Act being fully in accordance with the Constitution of the Republic of Croatia since the referring constitutional provisions did not imply that, on the occasion of obtaining Croatian citizenship, foreign members of the Croatian nation and foreign members of other nations and minorities should be treated equally. Rješenje Ustavnog suda Republike Hrvatske broj: U-I-147/1992, U-I-206/1992, U-I-209/1992, U-I-148/1992, U-I-207/1992 i U-I-222/1992. od 24. svibnja 1993, Narodne novine br. 49/1993. According to data of the Ministry of Interior, a total of 412,137 applications for Croatian citizenship pursuant to Art. 30 para 2 of the Act were submitted in the period from 8 October 1991 to 30 June 1995 while, in the period from 8 October 1991 to 31 December 1991, a total of 557,379 applications were submitted pursuant to Art. 30 para 1 of the Act. Loc. cit. n. 94, at p. 16.

[96] Art. 140 of the Constitution of the Republic of Croatia emphasizes that '[i]nternational agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and shall be above law in terms of legal effects. Their provisions may be changed or repealed only under conditions and in the way specified in them or in accordance with the general rules of international law'.

particular *modus vivendi* in cases of disappearance and emergence of new States.[97] The succession of the former Yugoslavia is one of the most obvious examples thereof, on the occasion of which dual citizenship of people of certain categories in a hostile and post-conflict environment turned out to be a solution for other problems.[98] Croatia established, shortly after becoming independent, the first treaty of the kind with neighbouring Bosnia and Herzegovina. This treaty was signed on 21 July 1992 and is called the Treaty on Friendship and Cooperation between the Republic of Croatia and the Republic of Bosnia and Herzegovina. Article 7 of the Treaty stipulates that

> 'the Republic of Bosnia and Herzegovina and the Republic of Croatia shall mutually facilitate acquisition of dual citizenship on behalf of their citizens'.[99]

This represented a legal foundation for conclusion of a new bilateral treaty on dual citizenship and a thorough regulation of the matter pursuant to international conventional law. Still, the respective process was long-lasting as the corresponding act was adopted fifteen years later.[100]

b) Consequences of the fall of the former Yugoslavia in terms of the principle of the legal continuity of Republic Citizenship

The phenomenon of dual citizenship was a legally recognized institute within the legislative framework of the former Yugoslavia. The Socialist Federal Republic of Yugoslavia was a federal State which, pursuant to the 1976 Citizenship Act, involved both federal and republic citizenship.[101] Citizens of the former Yugoslavia had *de iure* dual citizenship but *de facto* only the federal one since republic citizenship was only a formality without a legal effect in the international community because the republics were not seen as subjects of

[97] J. Dropulić, *Statusna prava građana* (Zagreb, Vizura 2003) pp. 25-26.
[98] See Degan, op. cit. n. 91, at p. 500.
[99] J. Andrassy, et al., *Međunarodno pravo I* (Zagreb, Školska knjiga 1998) p. 286.
[100] Croatia signed a similar Treaty on Friendship and Cooperation with the Former Yugoslav Republic of Macedonia on 6 July 1994, but it does not include provisions on multiple nationality. Ugovor o prijateljskim odnosima i suradnji između Republike Hrvatske i Republike Makedonije, Narodne novine – Međunarodni ugovori, br. 8/1994
[101] Zakon o državljanstvu SFRJ, Službeni list SFRJ, br. 58/1976

international law.[102] The fall of the former Yugoslavia influenced the former member States in a way that each of them provided their citizens, previous holders of republic citizenship, with the new, internationally relevant citizenship. People who opted for citizenship of another member state could obtain it based on the naturalization procedure and pursuant to its citizenship act.[103]

In compliance with the legal continuity of citizenship,[104] all the people who had acquired Croatian citizenship by 8 October 1991 were able to keep it without fulfilling any conditions.[105] Shortly after Croatia gained independence, the issue of the right to dual citizenship became topical among the population of ethnic enclaves, especially due to differences between the Croatian and Yugoslav Citizenship Acts.[106] The former republics, now independent States, are perfect examples of how laws and regulations can be based on different principles of acquisition and termination of citizenship, which, consequently, may lead to statelessness and dual (multiple) citizenship. The latter cases might be unpleasant for some (due to double taxation, conscription and the like),

[102] D. Medvedović, 'Federal and Republican Citizenship in the Former SFR Yugoslavia at the Time of Its Dissolution', in M. Dika, et al., eds., *Croatian Critical Law Review* (Zagreb, Croatian Law Centre 1998) p. 39-55.

[103] See Degan, op. cit. n. 91, at p. 258; Dropulić, op. cit. n. 97, at pp. 14-17., 24., 75.

[104] J. Omejec, 'Initial Citizenry of the Republic of Croatia at the Time of the Dissolution of Legal Ties with the SFRY, and Acquisition and Termination of Croatian Citizenship', in M. Dika, et al., eds., *Croatian Critical Law Review* (Zagreb, Croatian Law Centre 1998) pp. 102-107.

[105] All the others became foreigners, no matter how long they had lived in Croatia before. Štiks and Ragazzi, loc. cit. n. 90, at p. 339.

[106] In that sense one can perceive an appeal of the leadership of the Serbian ethnic minority in Eastern Slavonia directed to the Yugoslav authorities to amend the legal regulations on dual citizenship and enable its acquisition in compliance with the Croatian provisions. Croatian Serbs found the amendments useful to enable the return of part of the Serbian population who left Croatia during the war since they did not want to become Croatian citizens. According to many, such circumstances lead to denaturalization of 85% of the Serbian population in Croatia. The democratic changes at the beginning of the year 2000 also gave rise to a breakthrough in the Croatian policy towards the Serbian refugees and today the Serbs easily present evidences on Croatian citizenship. The Croatian wish to join the European Union has significantly influenced the return of Serbian refugees since restitution and reparation of their material goods are one of the important political conditions for accession in the European Union. Cf., Iordachi, loc. cit. n. 45, at pp. 120., 122.; Štiks and Ragazzi, loc. cit. n. 90, at p. 347.

but may also cause conflicts between States (with respect to military service, diplomatic and consular protection, the duty of acceptance of repatriation and extradition of perpetrators of criminal acts etc.).[107]
However, the prevailing public opinion reflects in the fact that inclination to dual citizenship in cases of succession of States may favour ethnic minorities. This fact was taken into consideration by the European Community when it, within the framework of the 1991 International Conference on the Former Yugoslavia, proposed that the right to dual citizenship should be granted to members of national or ethnic groups (minorities) who resided in the areas with special status where they were the majority population. This right was not incorporated in the final draft of provisions on special status but it was later regulated by special bilateral treaties between particular States such as the 1992 Treaty on Friendship and Cooperation between the Republic of Croatia and the Republic of Bosnia and Herzegovina.[108] Generally speaking, the issue of citizenship in terms of succession of States is usually regulated by international treaties (e.g., peace treaties) and constitutional or other legal acts of a new State.[109]

3. Legal regulation of dual citizenship within the scope of relations between Croatia and Bosnia and Herzegovina

a) Dual Citizenship Treaty between the Republic of Croatia and Bosnia and Herzegovina (2007)

Members of the Croatian minority in Bosnia and Herzegovina constitute about 17.4% of the total population of the State.[110] Although the

[107] M. Petrović, 'Dvojno državljanstvo – prednost ili problem?', in G. Knežević, et al., eds., *Državljanstvo i međunarodno privatno pravo* (Beograd, Centar za publikacije Pravnog fakulteta Univerziteta u Beogradu 2007) pp. 94-96.
[108] Andrassy, et al., op. cit. n. 99, at pp. 285-286.
[109] T. Džunov, 'Succession of States in Respect of Citizenship: The Case of the Former SFRY', in M. Mrak, ed., *Succession of States* (The Hague, Kluwer Law International 1999) p. 146; P. Malanczuk, *Akehurst's Modern Introduction to International Law, Seventh Revised Edition* (London, Routledge 1997) p. 169.
[110] This refers to a datum from the 1991 census of Bosnia and Herzegovina because the latest census of 2001 did not provide data on ethic or national affiliation of the population, so new statistic annuals of Bosnia and Herzegovina still include the data from the 1991 census. In any case, the above percentage should be viewed carefully since the armed conflict in the first half of the 1990s changed the ethnic structure of the population of Bosnia and Herzegovina to a great extent. See Second Report

Croatian ethnic group has been granted the status of a constitutive nation,[111] its members are seen as potential Croatian citizens in diaspora.[112] The Constitution of the Republic of Croatia did not explicitly include the Bosniaks into the list of ten minority groups with the status of autochthonous national minority,[113] even though the Bosniaks made 0.47% of the Croatian population according to the latest official census from 2001.[114]

After the government of Bosnia and Herzegovina gave an incentive for legal regulation of bilateral relations regarding dual citizenship in 1999 and sent the Croatian government a corresponding draft agreement, the government of the Republic of Croatia gave necessary consent for the initiated regulation at the session of 21 November 2002 and at the same time made a decision on initiating procedure for conclusion of a treaty on dual citizenship which was to be signed by the Republic of Croatia and Bosnia and Herzegovina. The Treaty was initiated on 4 August 2005 and signed on 29 March 2007.

The background of the Treaty conclusion involved numerous cases of Bosnian citizens of Croatian origin who had already obtained Croatian citizenship pursuant to Article 16 of the Croatian Citizenship Act, i.e., by naturalization of members of the Croatian nation. Besides, one had to

Submitted by Bosnia and Herzegovina Pursuant to Art. 25, Paragraph 1 of the Framework Convention for the Protection of National Minorities, ACFC/SR/II(2007)005, 2 August 2007 p. 9.

[111] Ljudska prava u Bosni i Hercegovini 2008 (Sarajevo, Centar za ljudska prava Univerziteta u Sarajevu 2009) pp. 411-412, 414-416.

[112] Štiks and Ragazzi, loc. cit. n. 90, at p. 345.

[113] Soon one can expect amendments of the Croatian Constitution with respect to the list of ethnic minorities. The Committee for the Constitution, Standing Orders and Political System proposed, in its draft of amendments of the Constitution of 15 June 2010, modification of the Historical Foundations as the list of national minorities (without the label 'autochthonous') should be extended to 22 national minorities, i.e., all the minorities that were registered in the official censuses. Constitutional amendments are part of the Croatian preparations for admission to the EU and include harmonization of its legal, economic and administrative system with *acquis communautaire* of the EU. Prijedlog Odluke o pristupanju promjeni Ustava Republike Hrvatske s Prijedlogom nacrta promjene Ustava Republike Hrvatske, available at: <www.vlada.hr/hr/content/download/104744/1493080/file/15-01.pdf>, Prijedlog promjene Ustava Republike Hrvatske, available at: <http://www.cpi.hr/download/links/hr/13388.pdf>.

[114] Statistički ljetopis 2009 (Zagreb, Republika Hrvatska – Državni zavod za statistiku 2007) p. 89.

take account of the provision of the Bosnian Constitution which determines that Bosnian citizens will have to make a decision on choosing between Bosnian citizenship and citizenship of another country by 2012, unless they will opt for citizenship of a country that has signed a treaty on dual citizenship with Bosnia and Herzegovina.[115] The Treaty was aimed at permitting parallel possession of Croatian and Bosnian citizenship acquired pursuant to the terms and conditions defined by the respective legislation of each of the parties in the Treaty. Furthermore, the Treaty specified

> 'the ways of resolution of conflict and duality of rights and liabilities, e.g., conscription, exercising the active and passive right to vote, assuring diplomatic and consular protection, repatriation and similar, taking account of firm factual links which refer to the applicable law and fulfilling state liabilities'.[116]

A dual citizen, being on the territory of the Republic of Croatia or of Bosnia and Herzegovina, is exclusively considered a citizen of the party on whose territory the person finds their place at that moment (Article 3), which is in compliance with application of customary international law in a way that each of the States that granted that person its citizenship may deem them as its citizens only.

Double liability to conscription is one of the inevitable repercussions implied by dual citizenship. Therefore, it is no wonder that both States paid special attention to this issue. The problem was solved in a way that every conscript shall complete military or other compulsory service in the State of their residence. One of the vital provisions is contained in Article 6 that grants the States a flexible discretionary right when deciding on the active and passive right of dual citizens to vote and stipulates that this right shall be regulated by the internal legislation of the parties. Dual citizenship also raises the issue of consular and diplomatic protection of dual citizens. The Treaty offers a solution by which a dual citizen in third countries is guaranteed diplomatic and consular protection by the party who has been invited to provide it (Article 7 paragraph 1). In case of repatriation from a third State, a dual citizen shall be repatriated to the State of their last residence, if not

[115] Press Release, 45/06, Republic of Croatia – Ministry of Foreign Affairs and European Integration, available at: <http://www.mvpei.hr/custompages/static/hrv/templates/_frt_Priopcenja_en.asp?id=2292>.

[116] <www.sabor.hr/fgs.axd?id=4764>

agreed otherwise by the parties pursuant to a request of the repatriated person (Article 8).
The Treaty was established for an indefinite period of time and the parties agreed that the Treaty should come into force on the date of reception of the last written notice, which is a diplomatic manner by which the parties inform each other about fulfillment of all the conditions foreseen by their internal legislations regarding entry into force (Article 11).[117] The Treaty's subject matter, however, is extremely complex and involves a number of legal-political consequences. Therefore it is no surprise that the Treaty has not come into force yet. The next step depends on the will and efficiency of the Croatian and Bosnian leadership since pursuant to the Citizenship Agreement of Bosnia and Herzegovina, the deadline for concluding bilateral treaties with other States, including Croatia, on dual citizenship is 1 January 2013.[118]

b) Negative legal effects of dual citizenship in Croatia and Bosnia and Herzegovina

The negative side of dual citizenship of Croats in Bosnia and Herzegovina is particularly exposed at the time of parliamentary and presidential elections in Croatia because members of the Croatian nation living abroad are, according to the Constitution and law, granted the

[117] Ugovor između Republike Hrvatske i Bosne i Hercegovine o dvojnom državljanstvu, Narodne novine – Međunarodni ugovori, br. 9/2007

[118] In February 2008, the Presidency of Bosnia and Herzegovina did not give consent for ratification due to a veto of the Bosniak member of the Presidency, H. Silajdžić who thought that treaties on dual citizenship include an ethnic and discriminating approach. He clarified his veto as insistence on equal treatment of all the Bosnian citizens living abroad, linking the final adoption of the document to amendments of the Bosnian Citizenship Act which, by Art. 17, stipulates that Bosnian citizenship shall be revoked to those people that opt for citizenship of another country, unless this has been regulated by a bilateral treaty on dual citizenship. The Croatian and Serbian members of the Presidency supported the Treaty since, in their opinion, amendments of Art. 17 should not be connected with the negotiations on dual citizenship but the Treaty should be amended in a due parliamentary procedure. 'Silajdžić stopirao ugovor o dvojnom državljanstvu', available at: <http://www.jutarnji.hr/silajdzic-stopirao-ugovor-o-dvojnom-drzavljanstvu/242467/>; 'Ugovor o dvojnom državljanstvu vodi u diskriminaciju', available at: <http://dnevnik.hr/vijesti/svijet/ugovor-o-dvojnom-drzavljanstvu-vodi-u-diskriminaciju.html>

right to vote.[119] The Croatian Elections Act foresees a separate election unit for diaspora (Croatian citizens living outside the mother country) and a great majority of votes from that election unit refer to Bosnian Croats who mainly vote for nationally oriented parties (e.g., Croatian Democratic Union).[120] The seriousness of this issue is confirmed by the fact that the rights to vote and to dual citizenship in Croatia were recently discussed as part of the agenda within the European Parliament. In fact, the Resolution of 10 February 2010, wherein the European Parliament assessed the progress Croatia had achieved in 2009, calls for Croatian action in terms of questioning the policy of dual citizenship, particularly with respect to Croatian citizens with permanent residence in Bosnia and Herzegovina (item 37 of the Resolution).[121] The voting system might have an effect on the results of the EU accession referendum in Croatia since there is a possibility that the votes of dual citizens decide whether Croatia will become a member of the EU or not. Dual citizenship also gave rise to arguments concerning the procedure of extradition of perpetrators of criminal acts. Almost 200 convicts, among whom there are war criminals too, are avoiding execution of the verdicts by fleeing from the State where the verdict was pronounced to the State which citizenship they also possess. The data do not refer only to the territory of Croatia and Bosnia and Herzegovina but also to Serbia; however, the manner of avoiding execution of verdicts due to dual citizenship is the same.

[119] Art. 45 para 2 of the Constitution of the Republic of Croatia, Art. 8, 40, 41 and 42 of the Act on Election of Representatives to the Croatian Parliament and Art. 5 of the Act on Election of the President of the Republic of Croatia. Zakon o izborima zastupnika u Hrvatski sabor, Narodne novine, br. 116/1999, 109/2000, 53/2003, 69/2003 – pročišćeni tekst, 19/2007; Zakon o izboru Predsjednika Republike Hrvatske, Narodne novine, br. 22/92, 42/92, 71/97, 69/04, 99/04

[120] Štiks and Ragazzi, loc. cit. n. 90, at p. 353. According to the official results of the 2007 elections announced by the State Election Commission regarding election of representatives to the Croatian Parliament elected by Croatian citizens with residence outside Croatia, the 11th (special) election unit included as many as 404,950 registered voters which made almost 10% of the total Croatian population. Izbor zastupnika u Hrvatski sabor koje biraju hrvatski državljani koji nemaju prebivalište u Republici Hrvatskoj u XI. izbornoj jedinici, Narodne novine, br. 132/2007

[121] European Parliament resolution of 10 February 2010 on the 2009 progress report on Croatia, available at: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2010-0023+0+DOC+XML+V0//EN>.

Holders of dual citizenship are also protected by national regulations on the ban of extradition of own citizens. Croatia and Bosnia and Herzegovina signed, on 10 February 2010, an Agreement, the purpose of which was prevention of abuse of dual citizenship regarding procedures of extradition of convicts. The Agreement came into force immediately upon its signing. It is actually an amendment of earlier treaties signed by the two States in 1996 and 2004 which were aimed at regulating mutual execution of judgments considering criminal affairs[122] as well as at enabling arrest, extradition and trial of people escaping to one of the States whose citizenship they possess. The Agreement has brought a new provision, according to which the convict's consent to serve the sentence in the State where they have escaped to will not be needed any more. The conclusion of the Agreement had mostly resulted from pressure by the EU toward potential candidate countries that intend to become members of the EU but at the same time allow such an abuse of their legal systems.[123]

The correction of provisions on dual citizenship is based on one of the fundamental rules of international law in the sphere of citizenship specifying that the protection of own citizens in the international order by means of norms of national law must not exceed the limits set by international law because such practice would amount to violation of liabilities of international law by a State and to commitment of an international delict.[124]

4. The issue of dual citizenship within the scope of relations between Croatia and Montenegro

Croatia has also entered negotiations on dual citizenship with Montenegro where the latest census of 2003 showed that the Croatian minority constituted 1.2% of the total population.[125] Referring to the Montenegrin population in Croatia, the 2001 census disclosed the data,

[122] <http://www.mvpei.hr/MVP.asp?pcpid=1169>

[123] <http://eudo-citizenship.eu/citizenship-news/232-croatia-and-bosnia-herzegovina-sign-agreement-to-prevent-abuse-of-dual-citizenship->

[124] Dropulić, op. cit. n. 97, at pp. 21-22.

[125] Crna Gora – Popis stanovništva, domaćinstava i stanova u 2003, Stanovništvo – nacionalna ili etnička pripadnost, Podaci po naseljima i opštinama, Republika Crna Gora (Podgorica, Zavod za statistiku 2004) pp. 12-13.

according to which Montenegrins made 0.11% of the total population of Croatia.[126]

In September 2008 Croatia and Montenegro established a starting point for negotiations on dual citizenship, which was initiated by Croatia by sending the Montenegrin government a draft agreement on citizenship.[127] The possibility of any kind of further agreement is to be seen in the light of announced amendments of Montenegrin legislation. Hence, Montenegro signed the European Convention on Nationality on 5 May 2010 but made reservation to Article 16 of the Convention concerning protection of the former citizenship in a way that a person has the right to obtain or keep the citizenship of one State although he/she already possesses the citizenship of the other one. The reservation corresponds to the previous Montenegrin Citizenship Act which forbade dual citizenship. It should be emphasized that, parallel to the signing of the Convention, the Montenegrin government proposed amendments to their Citizenship Act, so, at this moment, it is not possible to predict how the regulation of dual citizenship between Croatia and Montenegro will end.[128]

The protection of minority rights in these two States is based on a thoroughly elaborated Agreement on Protection of the Croatian Minority in Montenegro and on Protection of the Montenegrin Minority in Croatia signed between the two countries on 14 January 2009.[129] The Agreement was intended to assure the highest level of legal protection of ethnic minorities as well as preservation and development of their national identities pursuant to international treaties and other documents on human rights, fundamental freedoms and minority protection. A long list of rights therein reflects the intention of States to grant and provide the respective minorities with those rights that will contribute to expression, preservation and development of their national, cultural, linguistic and religious identity. The above Agreement was preceded by a similar Agreement signed by the State Union of Serbia and Montenegro and Croatia on 15 November 2004,[130] having contained

[126] Op. cit. n. 114, at p. 89.
[127] <http://www.javno.hr/hr/hrvatska/clanak.php?id=182985>
[128] <http://eudo-citizenship.eu/citizenship-news/311-montenegro-signs-the-european-convention-on-nationality-but-rejects-dual-citizenship>
[129] Narodne novine – Međunarodni ugovori, br. 9/2009
[130] Ibid.

provisions which ceased being valid in relation to Montenegro after this country gained independence in 2006.

5. Latest tendencies in the perception of dual citizenship of ethnic minorities in the Republic of Croatia

The political changes and strengthening of democracy at the beginning of the year 2000 indicated a new phase of perception of dual citizenship in Croatia. The efforts to reach the standards of the EU and to obtain its full membership have encouraged flexible implementation of the Croatian Citizenship Act and thus stimulated a higher level of tolerance and inclusion of ethnic minorities as well as profound sensibility towards political aspirations of ethnic minorities, although the Act has remained unchanged.[131]

Despite significant steps forward in the context of perception of dual citizenship and protection of ethnic minorities, some leading politicians still share a different opinion on the matter. Croatia keeps on insisting on maintaining close bonds with its diaspora (particularly with Bosnia and Herzegovina), repercussions of which are clearly seen when applying its electoral system. Nevertheless, Croatian preparation toward the EU has changed the previous perception of the Croatian ethnic diaspora in a way that these relations no longer awake only political connotations but the bonds therewith include educational, cultural and social cooperation.[132] The EU should undoubtedly take enormous credit for generating these changes. Its interest for the issue of dual citizenship in Croatia results from the Croatian will to join the EU because the Croatian admittance will automatically mean an increase in the number of EU citizens living beyond its borders (500,000 new citizens). According to Štiks and Ragazzi, Croatia confirms the thesis that it is possible to integrate a State into a supranational organization, democratize political life and facilitate social inclusion of ethnic

[131] Štiks and Ragazzi, loc. cit. n. 90, at p. 339.

[132] Attention should be paid to a 2006 Italian Act enabling acquisition of Italian citizenship to ancestors of the Italian ethnic minority in Slovenia and Croatia populated in the areas taken from Italy in the interwar period and during World War II. The adoption of this Act caused a fierce reaction of the Croatian public, so a part of Croatian politicians accused their Italian colleagues of creating citizens with 'double loyalty', forgetting that the acceptance of the Croatian ethnic group in Bosnia and Herzegovina into Croatian citizenship has got all the features of double loyalty. Ibid., at pp. 352-353.

minorities while simultaneously preserving transnational ethnic communities by application of ethnocentric acts on citizenship.[133]
The specific Croatian position as one of the successors of a federal State justifies the existence of dual citizenship with respect to other successor States since, according to Čok

> 'citizenship should be used as an instrument of protection of obtained human rights as well as for solution of vital problems of the so-called foreigners on the territory of the former State'.[134]

Moreover, it is, under these circumstances, an important instrument of protection of identity of ethnic minorities if applied in a way that it does not contradict other provisions of national and international legal order.
With respect to the contemporary international community, the phenomenon of multiple nationality represents a challenge to classical forms of perception of the legal bond between an individual and the state. The examples of the Republic of Hungary and the Republic of Croatia confirm the thesis that the issue of multiple nationality is one of the most controversial and most complicated issues of international law. Multiple nationality itself can have positive repercussions for the preservation of features of the identity of ethnic minorities, but only under the condition that this right is not abused, e. g., by people convicted for committing various crimes (this particularly refers to war crimes committed on the territory of the former Yugoslavia). The purpose of dual citizenship should be establishment of cultural, educational and economic bonds between members of ethnic minorities and their kin-States, the bonds that supersede the level of protection of ethnic minorities assured by conventional forms of ethnic minority and human rights protection of international law.

[133] Ibid., at p. 355.
[134] V. Čok, *Pravo na državljanstvo* (Beograd, Beogradski centar za ljudska prava 1999) p. 104.