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## SERBIAN-MONTENEGRIN RELATIONS AND THE QUESTION OF CITIZENSHIP OF FRY CITIZENS

### EXECUTIVE SUMMARY

of a case study commissioned by ESI within its Serbia-Montenegro project

prepared by the

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*The views expressed in this report do not necessarily reflect those of ESI*

After the break-up of socialist Yugoslavia at the beginning of the 1990s, hundreds of thousands of citizens had difficulties in obtaining citizenship of the successor state in which they wished to live. Many were left without any citizenship at all. While in the Socialist Federal Republic of Yugoslavia (SFRY) all citizens held the citizenship of one of the member republics in addition to Yugoslav citizenship, this was of no practical relevance as long as the joint state existed. However, after the dissolution of Yugoslavia, restrictive citizenship legislation by the authorities of the Federal Republic of Yugoslavia (FRY), left many former SFRY citizens residing in Serbia or Montenegro with an unresolved citizenship status. Affected were above all married couples with different republican citizenships, children of ethnically mixed marriages, members of “new minorities” and refugees. Ten years after Yugoslavia’s dissolution thousands of such cases remain to be resolved.

Currently Yugoslav citizens enjoy the same rights in both Serbia and Montenegro, regardless of their republican citizenship. However, in the event of a break-up of the FRY, similar problems to those, which appeared after the dissolution of the SFRY, could arise. While there are no official figures available on the numbers of Montenegrin citizens living in Serbia and vice versa,<sup>1</sup> the common understanding in both Serbia and Montenegro is that this figure is significant. This paper analyses the current state of affairs regarding citizenship questions within the FRY, points out existing shortcomings in the legislation and potential problems in the case of separation, and concludes with recommendations as to how these can be avoided.

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<sup>1</sup> YUCOM tried to obtain such data from the federal as well as the republican ministries of interior. Only the Serbian ministry of interior replied, explaining that it did not have the required data.

### **FRY Citizenship**

The FRY law on citizenship, which was adopted only in 1996, asserts the continuity of FRY citizenship with SFRY citizenship. However, inconsistent with this principle, only former SFRY citizens who on the day that the new federal constitution came into force (27 April 1992) held the citizenship of Serbia or Montenegro were able to obtain FRY citizenship through this law (*ex lege*). Other former SFRY citizens could apply for FRY citizenship within one or, in special cases, three years after the law was promulgated, providing that they were resident in FRY on the day the new federal constitution was adopted. A similar provision applied to professional personnel of the Yugoslav Army. Refugees from other former republics could apply for citizenship only if they had no other citizenship or renounced citizenship of any other successor state.

The provisions for obtaining FRY citizenship by others than citizens of Serbia or Montenegro were characterised by a series of flaws. The period of one year – or three years in special cases – to apply for citizenship proved insufficient. The administrative procedures for deciding on applications remained vague. Neither spouses nor children born before April 1992 of former SFRY citizens resident in Serbia or Montenegro had right to FRY citizenship, unless they resided in FRY themselves. The authorities were inconsistent in applying the law with respect to refugees from other former SFRY republics.

In 2001 the federal parliament adopted changes to the existing law, most notably a provision allowing dual citizenship, which makes it easier to resolve the citizenship status of the cases mentioned above, such as people in mixed marriages and of refugees. Other issues, including the conflict between the federal and the republican laws on citizenship, as well as the question of citizenship of the Kosovo population, remain unaddressed.

### **Montenegrin citizenship**

The new Montenegrin citizenship law from 1999, written in accordance with international standards, reads as if Montenegro were an independent state, and refrains from defining Montenegrin citizenship as subsidiary to Yugoslav citizenship. Unlike in the Serbian citizenship law, there is no provision for automatic Yugoslav citizenship by a citizen of the Republic of Montenegro. Under this law, even a foreigner would theoretically be able to obtain Montenegrin citizenship without necessarily becoming a Yugoslav citizen at the same time.

The Montenegrin citizenship law does not allow Montenegrin citizens to also hold Serbian citizenship. In the event of the dissolution of FRY, Serbian citizens could apply for Montenegrin citizenship, but would have to fulfil the requirements that apply to any other foreigner. This could lead to similar problems related to property questions, the status of people in mixed marriages, etc, as those experienced in the case of the break-up of SFRY.

### **Serbian citizenship**

The Republic of Serbia still relies on the old citizenship law of the Socialist Republic of Serbia from 1979. The law is based on the Titoist federal conception of the former SFRY and is incompatible with international standards on regulating citizenship. The law has not been harmonised with the federal citizenship law from 1996 nor does it

adequately reflect the current state of affairs in Kosovo, which is administered by the United Nations and where the question of citizenship of the Kosovar population remains to be addressed.

### **Future relations between Serbia and Montenegro**

While federal and republican citizenship laws will have to be amended in any case, the current state of affairs risks posing problems for citizens of both Serbia and Montenegro in the event of the dissolution of FRY. These problems can be avoided by a solution similar to that between FRY and Macedonia. After Macedonia became an independent state in 1992, Yugoslav and Macedonian authorities assured close relations between the two states through a series of bilateral agreements. These include a trade agreement, exempting domestic products from custom fees, an agreement on visa-free travel for visits of up to 60 days, an agreement ensuring domestic treatment for citizens of both states regarding property rights and investment regulations, as well as an agreement on social insurance and medical treatment.

### **Recommendations**

- 1) In the least likely case, the continuation of FRY in its current form, all three citizenship laws have to be amended: the federal citizenship law needs clearer provisions as to how to resolve conflicts between Yugoslav and republican citizenship laws; the Montenegrin citizenship law has to be rid of the provision enabling a foreigner to obtain Montenegrin citizenship without Yugoslav citizenship; and the socialist-inherited citizenship law of the Republic of Serbia has to be replaced by a new law, reflecting also the new realities in Kosovo.
- 2) In the case of a new federal arrangement along the lines of the proposed “minimal functional federation”, it is necessary that the legal effects of citizenship be connected to federal citizenship. The citizenship laws of the republics must be brought into accordance with the federal law.
- 3) In the case of the dissolution of the current federal state, bilateral agreements between the two states need to include provisions on citizenship, including dual citizenship.
  - a) Relations between Serbian and Montenegrin citizens ought to be regulated similarly to international agreements between FRY and Macedonia or between the Czech Republic and Slovakia. In the latter case dual citizenship was recognised for all Czechs with residence in Slovakia and all Slovaks resident in the Czech Republic. Political rights, such as the right to vote, would be exercised in the country where the person has residency.
  - b) Certain groups (mixed marriages, their children, etc.) should have free choice of citizenship.
  - c) No citizen of FRY may remain without citizenship.
  - d) Regarding issues of property ownership, social and health insurance as well as education, citizens of both states should have equal rights and benefits in both states.