

# Nationality, Protection of Ethnic Minorities and Transition to Democracy: the Case of Slovenia – I.

## Nationality and Citizenship

The issues of nationality, citizenship, protection of ethnic minorities, and succession of states seem to be some of central questions of the process of transformation of Central and Eastern European countries. There are several controversies regarding these issues, and this article will address some.

This article discusses different possible meanings of the term "nationality" and focusses on some general and specific problems of citizenship. In this context, the republic of Slovenia is chosen to be a case study.

### *What is Nationality?*

Following general practice of international law (e.g. ANDRASSY, 1984: 227–236; SHAW, 1991; OPPENHEIM, LAUTERPACHT, 1948), nationality is described by J. G. Starke as

"the most frequent and sometimes the only link between an individual and a state, ensuring that effect be given to that individual's rights and obligations at international law. It may be defined as the legal status of membership of the collectivity of individuals whose acts, decisions and policy are vouchsafed through the legal concept of the state representing those individuals" (STARKE, 1989: 340).

Nevertheless, discussing the issues of nationality one should not forget that this term is often used in different ways and can have several different meanings. For example, Webster's Dictionary lists the following possible meanings of the term "nationality":

1. national quality or character,
2. the condition or fact of belonging to a nation by birth or naturalization,
3. the condition or fact of being a nation,
4. a nation' or national group" (Webster's New Universal Unabridged Dictionary.

Deluxe Second Edition. Dorset & Baber, USA, 1983: 1196.)

One could add a list of additional meanings of the term "nationality," but in the

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<sup>1</sup> A nation or ethno-nation is "a stable, historically developed community of people with a territory, (specific) economic life, distinctive culture, and language in common" (Webster's New Universal Unabridged Dictionary. Deluxe Second Edition. Dorset & Baber, USA, 1983: p. 1196.). The existence of a specific "national identity" shall be added to a definition: the consciousness and will of an individual shall exist to be a member of a certain nation, and an individual shall be recognized by other members of such an ethnic community as its member (E. g. SCHLESINGER, 1987). The emergence of modern nations as specific ethnic communities was often conditioned on the existence of nation-states, and sometimes vice versa (See e. g. GELLNER, 1983: 6–7, 53–58).

context of this article I shall only mention two additional specific ways in which this term is used:

(i) to express one's belonging to a certain ethnic group and his/her ethnic identity<sup>2</sup> (SCHLESINGER, 1987);

(ii) to define a specific ethnic group (ethnie), namely an ethnic/national minority (BRETON, 1981). In this meaning, the term "nationality" was used also in the official Yugoslav constitutional and political practice in order to avoid the possible negative connotation of the term "minority" and to indicate the new equal and active status of these communities in the former Yugoslav federation (ŽAGAR, 1992: 9).

To avoid any possible misunderstanding one should always define in which way and meaning the term "nationality" is used in a certain context. When the term "nationality" is used to describe the condition or fact of belonging to a certain nation-state<sup>3</sup> and the (legal and actual) link between an individual and a state it could be replaced by the term "citizenship"<sup>4</sup> (ŽAGAR, 1993). One might consider the two terms synonyms, but sometimes in the practice of the U.S.A. a distinction is made between the nationality and citizenship with regard to inhabitants of Guam (who are US nationals but not citizens).<sup>5</sup>

### *Nationality/Citizenship and Ethnicity*

As mentioned, citizenship or nationality is a special and sometimes the only (legal) link between a sovereign state and its citizens – individuals who live, usually permanently, in a territory of a certain state and possess a special guaranteed legal status. It is the national legislation of a certain state that defines and regulates citizenship of this state;<sup>6</sup> citizenship, its legal regulation and policy of citizenship of a certain state, is usually an important and ardent political issue that can polarize

<sup>2</sup> In this context, e.g. being of a Slovene, English or French, etc. nationality means belonging to Slovene, English or French, etc. culture and nation (as a specific ethnic, historic, cultural, social, economic and political community).

<sup>3</sup> The concept of the nation-state has been shaped simultaneously with the process of formation of modern (ethno)nations in the very specific historical development in Europe from sixteenth and seventeenth century on. It was in this context that the state acquired its ethnic identity and content, and became the nationstate; the state is understood as a specific mean or even the only mechanism that can realize certain national interests of nations as specific ethnic communities. The majority of modern states were established and are still perceived as nation-states of certain nations – one could say "one-nation-states." Although their population is usually ethnically plural and mixed today, "one-nation-states" are still perceived as ethnically homogenous based on traditional perception of the concept of nation-states. Nowadays the international community can, therefore still, be defined as the international community of (one)nation-states (More see, e.g.: DEUTSCH, 1970: 22–24; MACARTNEY, 1934: 192–211; SETON-WATSON, 1977). The fact that the process of formation of modern nation-states in Europe went hand in hand with the process of formation of modern European nations has produced and still is reflected in a terminological problem in some languages. The same term "nation" is used to describe a specific ethnic community as was mentioned above (Footnote 1) and a state as specific social organization and structure.

<sup>4</sup> Webster Dictionary defines "citizenship" as "1. the status or condition of a citizen; 2. the duties, rights and privileges of this status" (Webster's New Universal Unabridged Dictionary. Deluxe Second Edition. Dorset & Baber, USA, 1983: 331).

<sup>5</sup> Guam is constantly trying to lobby for legislation that would change Guam's status from that of U.S. territory to U.S. commonwealth. This would give Guam more control of the policies governing it, but the amount Guam is able to spend lobbying for this goal is relatively small, less than \$ 100,000 a year (PATTERSON, 1993: 380).

<sup>6</sup> International law mostly deals with different problems and conflicts of national citizenship laws, and cases when a certain person does not have his or her citizenship (e.g. double or multiple citizenship, statelessness, disputed citizenship of married women). Citizenship establishes a link between a person and a state which is permanent, even in a case when this person no longer lives in the territory of this state; in such a case, international law and national legislation establish rights and responsibilities of a person and state (e.g. entitlement for diplomatic protection abroad, etc.) (STARKE, 1989: 341–347).

(or, sometimes, homogenize) national political scene in a certain historical moment. Citizenship legislation of a certain state determines the criteria and procedure how an individual becomes a citizen of the state; citizenship laws define the nature and content of this (legal) status, relations and links between the citizen and the state, and the rights and obligations of the citizen and the state<sup>7</sup> (e.g. BRUBAKER, ed., 1989; MEEHAN, 1993).

Three main principles have been developed to determine citizenship (nationality) of a certain person: *ius soli* – based on a territory where a person is born; *ius sanguinis* – based on the nationality of parents at birth; and *ius domicili* – based on the permanent residency of the parents and child.

In the practice of states citizenship might be acquired also in three principal ways:

1. By birth according to *ius soli*, *ius sanguinis*, or according to both.
2. By naturalization in accordance with national laws on citizenship/nationality, based on the application to state authorities usually following the marriage with a citizen of a certain state or lasting habitual/permanent residence.<sup>8</sup>
3. By option, registration or entry into the public service of the state concerned in case of the change of the legal status of a certain territory. "The inhabitants of a subjugated or conquered or ceded territory may assume the nationality (*citizenship* – *M. Ž.*) of the conquering state, or of the state to which a territory is ceded." There is a dispute whether a state may "naturalize persons who do not have their habitual residence in that state's territory" (STARKE, 1989: 344).

The concept of citizenship as such is often perceived as the ethnically neutral category in theory; citizenship belongs or, at least, should belong to all the people who live in a territory of a certain state and/or who qualify for it on the basis of general conditions.<sup>9</sup> On the other hand, ethnicity or, more precisely, belonging to a certain ethnicity (ethnic origin, blood-link) is often an important criterion to acquire a citizenship in the present practice of states.<sup>10</sup> Such a practice is a reflection of the already presented concept of the (one)nation-state,<sup>11</sup> and of the role that ethnicity plays in the current politics in the world.

In the context of ethnic relations in ethnically plural modern societies, citizenship plays an important role. Although rights and protection of aliens have been increasing in the process of development of human rights both at the level of international law and national legislation, several rights and especially (political) participation in the decision-making process within political system are still reserved only for citizens of a certain state.

<sup>7</sup> In view of some, citizenship is understood as a special contract between a certain state and its citizens that determines on the one hand obligations and duties of the state in relation to citizens and on the other hand rights and duties of individual citizens in the relation to the state.

<sup>8</sup> Though there is no duty of states to recognize a nationality acquired by a person who has no genuine link or connection with the naturalizing state according to the decision of the International Court of Justice in the *Nottebohm Case (Second Phase)* (Official report of the International Court of Justice, 1955, 4.)

<sup>9</sup> Usually, a child, although he or she was born abroad, can be or become a citizen of a certain state if his or her parents were citizens of this country in the time of the child's birth; in some cases it is sufficient if at least one of the parent was a citizen of this country (*ius sanguinis*).

<sup>10</sup> E.g. Croatia, Estonia, Germany, Ireland, Lithuania, Slovenia, etc. have national legislation that provide for ethnic Croats, Estonians, Germans, Irish, Lithuanians, Slovenes, etc., if they were born abroad and were citizens of a foreign country, a simplified procedure for acquiring respective citizenship (in comparison with regular procedure for naturalization); in this context, some national legislation accept and allow dual citizenship, and even in such cases provide for immediate acquiring of citizenship (e.g. Ireland, Lithuania, etc.).

<sup>11</sup> See the Footnote 3.

## 1. Citizenship of the Republic of Slovenia

Dismantling of states usually creates some problems regarding citizenship (nationality) of inhabitants in the territory of the former state. These problems seem to be even larger in the cases of former multi-ethnic states. They should be addressed by negotiations and agreements in the process of succession of these states.

There existed a double – republic and federal – citizenship (nationality) in the former Yugoslav federation: based on the principle of primacy of republic citizenship, every person who acquired a republic citizenship automatically had also federal Yugoslav citizenship.<sup>12</sup> Regardless of his/her republic citizenship, every Yugoslav citizen (as such) had equal rights in the whole territory of the federation; the Constitution of the SFR of Yugoslavia (of 1974) even provided for the right of a citizen of SFRY to education in his/her language in every republic or autonomous province.<sup>13</sup> Republic citizenship was determined by republic citizenship of the child's parents: the record of citizenship of a certain child in a book of citizens was usually made and kept in the town where his/her parent was born.<sup>14</sup>

It was a severe – economic and political – crisis in the 1980's and the inability to find a compromise solution to reform its blocked political system that provided the context for the process of dismantling of the former Yugoslav federation. This process started already before the first multi-party elections in Slovenia in the Spring of 1990. Following the procedure provided by the amended republic and federal constitutions of 1974,<sup>15</sup> Slovene republic parliament/assembly adopted a series of constitutional amendments to the republic constitution (of 1974) in the period 1989–1991 that paved the way to Slovenia's independence.<sup>16</sup> After the elections the new assembly adopted also the decision to organize a plebiscite with the question: "Should the Republic of Slovenia become an independent and sovereign state?"<sup>17</sup> In the Declaration on Intents of the Assembly of the Republic of Slovenia issued on the same occasion the will and determination were expressed:

<sup>12</sup> There were some cases when children of parents with Yugoslav citizenship born abroad and with habitual address abroad acquired only federal citizenship.

<sup>13</sup> See: Article 171 of the Constitution of the SFRY of 1974. (Official Gazette of the SFRY, No. 9/1974, and corrections No. 11/1974)

<sup>14</sup> If the father of a child had been known, the record in the book of citizens was usually automatically made and kept in the town or commune where the child's father was born. Taking into account the formally existing equality of both parents introduced after World War II, this was a continuation of the traditional practice in which citizenship of the father and the husband usually determined citizenship of a child and of a wife. This record in the book of citizens had become and was crucial to determine republic citizenship of a child following the territorial principle: a child was a citizen of a republic in which the record was made regardless of where he/she had been born and ethnic origin (nationality in ethnic sense) of his/her parents. Taking into account formal equality of all citizens of the former Yugoslavia in the whole territory of the federation (based on the principle of territorial unity of the federal state), people often did not pay any attention to their republic citizenship.

<sup>15</sup> The Constitution of SFRY and the Constitution of the Socialist Republic of Slovenia, Official Gazette of the Socialist Republic of Slovenia, No. 7/1974.

<sup>16</sup> The most important constitutional amendments to the Constitution of the (Socialist) Republic of Slovenia of 1974 in this context were adopted already before the first multi-party elections in Slovenia in the Spring of 1990 with the participation of than opposition. Amendment XCI changed the official name of the republic from the Socialist Republic of Slovenia to the Republic of Slovenia. Amendment XCII determined the right of the Slovene nation and people of Slovenia to self-determination, reassured special rights of Italian and Hungarian ethnic minorities in Slovenia, and provided for a basis to negotiate (possible) future arrangements in the Yugoslav federation. Amendment XCIII determined the role of political parties in the first multi-party elections in Slovenia in 1990 (The Constitutional Amendments to the Constitution of the Socialist Republic of Slovenia, Official Gazette of the Republic of Slovenia, No. 8/1990 of March 16th, 1990).

<sup>17</sup> Article 2 of the Law on Plebiscite on Independence and Sovereignty of the Republic of Slovenia, Official Gazette of the Republic of Slovenia, No. 44/1990 of December 6th, 1990.

- to become a democratic and lawful state;
- to guarantee social justice and security, ecological responsibility, and human rights and freedoms – including the existing rights of Italian and Hungarian minority, and “rights of members of all other nations and nationalities with a permanent residency in Slovenia to full cultural and linguistic development, including the possibility to acquire citizenship of Slovenia if they wished so”;
- to actually establish independence and sovereignty over the territory of Slovenia;
- to promote and take care for rights of Slovene minorities and emigrants abroad deriving from international legal documents and natural rights;
- to respect international law; to apply for a full membership in the United Nations, Council of Europe and OECD, and to conclude treaties with European Community and EFTA;
- that these decisions were not directed against anyone in (the former) Yugoslavia, and that Slovenia would seek to find appropriate solution to determine peaceful and democratic relations with other parts of (the former) Yugoslavia in the possible Yugoslav confederation or economic community or other kind of union agreed in the negotiations on succession.<sup>18</sup>

More than 88.5% voters voted for the independence of Slovenia at the plebiscite held on December 23rd, 1990.<sup>19</sup> A six months period was decided to negotiate the future arrangements in a new Yugoslav union, but any compromise proved to be impossible. On June 25th, 1991, the republic assembly adopted the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia which declared the independence and sovereignty of Slovenia, ceased the authority of the SFRY in Slovenia, recognized existing international and republic borders, reconfirmed and guaranteed human rights and fundamental freedoms – including the rights of minorities.<sup>20</sup>

The Law on Citizenship of the Republic of Slovenia was adopted in the same session of the republic assembly on June 25th, 1991.<sup>21</sup> According to its Article 39, everybody who had citizenship of the Republic of Slovenia and SFRY at the time of independence of Slovenia became citizen of the Republic of Slovenia. Article 40 of this law provided for a special procedure for the acquisition of Slovene citizenship (actually, by naturalization) for every citizen of the former Yugoslavia who had a permanent residence and actually lived in the territory of the Republic of Slovenia on 23 December 1990, the day of the Plebiscite, and who applied for the Slovene citizenship within six months after the adoption of this law.

The provisions of Article 40 of the Law on Citizenship were very important

<sup>18</sup> See the Declaration on Intents of the Assembly of the Republic of Slovenia, Official Gazette of the Republic of Slovenia, No. 44/1990 of December 6th, 1990.

<sup>19</sup> Every citizen of the SFRY with a right to vote regardless of his/her republic citizenship who had a permanent residency in the Republic of Slovenia in the time of plebiscite had the right to vote at the plebiscite. There was 1,457,020 (100.0%) registered voters, and 1,359,581 (93.3%) of them participated at the plebiscite. 1,289,369 (88.5%) voters voted for the independence, 57,800 (4.0%) voters voted against the independence of Slovenia, and there were 12,412 (0.9%) invalid voting forms. (The Report of the Republic Election Commission on the Results of the Plebiscite of December 23rd, 1990, Official Gazette of the Republic of Slovenia, No. 2/1991 of January 18th, 1991).

<sup>20</sup> The basic constitutional charter on the independence and sovereignty of the Republic of Slovenia of June 25, 1991 (Official Gazette of the Republic of Slovenia, No. 33/1991. The official English translation: Constitution of the Republic of Slovenia, Časopisni zavod Uradni list Republike Slovenije, Ljubljana 1992. See also Appendix I.) On the same day the republic assembly adopted also the constitutional Amendment C to the Constitution of the Republic of Slovenia of 1974 deciding the new flag and coat of arms of Slovenia. (Official Gazette of the Republic of Slovenia, No. 33/1991.)

<sup>21</sup> The Law on the Citizenship of the Republic of Slovenia, 7Official Gazette of the Republic of Slovenia, No. 1/1991.

taking into account the fact that Slovenia was traditionally an immigrational society in the former Yugoslavia. Namely, more than 10% of the population of Slovenia in 1991 were citizens of other republics of the former Yugoslavia, and more than 170,000 of them applied for and were granted Slovene citizenship in accordance with Article 40.<sup>22</sup> Within six months their applications could have been refused only if their applications were incomplete or if they had participated actively in the aggression against Slovenia (as members of the Yugoslav federal army in the – so called – “Ten Days War”).

Following the general practice in the world, the Law on Citizenship of the Republic of Slovenia provides that Slovene citizenship may be acquired in the following (four) ways:<sup>23</sup>

1. by birth and blood, according to *ius sanguinis*,<sup>24</sup>
2. by birth in the territory of the Republic of Slovenia, according to *ius soli*,<sup>25</sup>
3. by naturalization in the case of application,<sup>26</sup>
4. by international agreement.

In this context I would like to present also general conditions for naturalization into Slovene citizenship that apply also for those citizens of the former Yugoslavia with a permanent residence in Slovenia who did not apply for Slovene citizenship in a special procedure within six months after the adoption of the Law on Citizenship. Namely, everyone who is not Slovene citizen may apply for Slovene citizenship on the basis of the following general conditions:

- 18 years of age;
- 10 years of living in Slovenia, of these at least last 5 years permanently;
- an applicant should have a permanent/habitual residence and sources of support (employment) in Slovenia;
- he/she should not be sentenced to a one year or more imprisonment for a major crime in the country of his/her origin, that is also a crime in Slovenia;
- he/she should be able to communicate in the Slovene language;
- a dual citizenship should be avoided;
- the residency permit for foreigners should not have been refused to the applicant previously; – granted citizenship to the applicant shall not represent any danger for public order, security and defence of the Republic of Slovenia.<sup>27</sup>

Taking into account the fact that a large part (more than a quarter) of all ethnic Slovenes live outside the Republic of Slovenia, the Law provides a special procedure to acquire slovene citizenship by naturalization for ethnic Slovenes who *actually live one year in Slovenia*, if he/she: is at least 18 years of age, has a permanent residence and sources of support, is able to communicate in Slovene language, has not been sentenced and punished for a major crime, has not been

<sup>22</sup> For ethnic structure of the population of Slovenia see: Appendix II.

<sup>23</sup> Article 3 of the Law on Citizenship of the Republic of Slovenia.

<sup>24</sup> Articles 4–8 of the Law on Citizenship of the Republic of Slovenia. There are three basic ways in which a child can acquire citizenship of the Republic of Slovenia by birth: “1. Both parents are citizens of the Republic of Slovenia at the time of the birth of a child; 2. One of the parents is a citizen of the Republic of Slovenia at the time of the birth of a child, and a child is born in the territory of the Republic of Slovenia; 3. One of the parents is a citizen of the Republic of Slovenia at the time of the birth of a child, the other parent is unknown or of unknown citizenship, and a child is born abroad” (Article 4).

<sup>25</sup> Article 9 of the Law on Citizenship of the Republic of Slovenia determines that a child may acquired citizenship of the Republic of Slovenia who is born or found in the territory of the Republic of Slovenia, if his/her parents are unknown or their citizenship is unknown or his/her parents have no citizenship.

<sup>26</sup> Articles 10–16 of the Law on Citizenship of the Republic of Slovenia.

<sup>27</sup> Article 10 of the Law on Citizenship of the Republic of Slovenia.

refused a residency permit for foreigners previously, does not represent any danger for public order, security and defence of the Republic of Slovenia.<sup>28</sup>

### Conclusion

Issues of nationality are especially important in the process of transformation and transition to democracy in the countries of Central and Eastern Europe that emerged from the former multi-ethnic states.<sup>29</sup> In this context, this article mentions some possible different meanings of the term "nationality" and suggests the practice to explain in which way this term is used in a certain contribution.

Following the most frequent practice in international law and politics in the use of the term "nationality" this article focuses on issues of citizenship. If compared with the legal regulation and practice of other states the regulation of the Republic of Slovenia seems to follow general trends and standards. It is rather restrictive in determining general conditions for naturalization. On the other hand, it provided for a special procedure to acquire the citizenship of the Republic of Slovenia for former Yugoslav citizens living in Slovenia who did not have Slovene republic citizenship at the time of the proclamation of independence. This solution helped Slovenia to avoid several problems that some other countries had experienced after achieving their independence.

Due to the fact that more than a quarter of ethnic Slovenes live outside the Republic of Slovenia (most of them as citizens of countries where they reside), the law on citizenship provides for a special procedure to acquire Slovene citizenship for ethnic Slovenes who are not citizens of the Republic of Slovenia. This practice might seem to be unusual, but there are several countries that actually provide for a special procedure to acquire their citizenship based on the ethnic origin of applicants. If compared with the legislation of e.g. Germany, Hungary and Ireland it is the special procedure for ethnic Slovenes to acquire Slovene citizenship that is more complicated.

The issues of nationality/citizenship are important also in the context of protection of ethnic minorities and immigrants which will be the topic of the next article in this series.

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<sup>28</sup> Article 12 of the Law on Citizenship of the Republic of Slovenia.

<sup>29</sup> This includes all successor states of the former Czechoslovakia, Soviet Union and Yugoslavia.

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